

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 51779 of 2017

(Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-104-17-18 dated 31.07.2017 passed by Commissioner (Appeals) GST, Customs & Central Excise, Bhagya Bhawan, 178, M.P. Nagar, Zone-II, Bhopal (M.P.))

HEG Limited

Plot No.6, 62, 67, 68,
Sector-A, Industrial Area,
Mandideep, Dist -Raisen (M.P.)

..... Appellant

VERSUS

**Commissioner (Appeals) GST,
Customs and Central Excise,
Bhopal (M.P.)**

..... Respondent

APPEARANCE:

Shri B.L. Narasimhan & Shri Kunal Agarwal, Advocate for the Appellant
Shri Rajeev Kapoor, Authorized Representative for the Department

**CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

FINAL ORDER NO. 50612/2023

**DATE OF HEARING: 06 April, 2023
DATE OF DECISION: 08 May, 2023**

HEMAMBIKA R. PRIYA

1. M/s. HEG Limited., Plot No.6, 62, 67, 68, Sector-A, Industrial Area, Mandideep, Dist Raisen (M.P.)¹ have filed the present appeal against the Order-in-Appeal dated 31.07.2017 passed by Commissioner (Appeals), Bhopal (M.P.). Commissioner (Appeals) has confirmed the demand of service tax of Rs.37,89,2921/- and Rs.16,82.9061/- for the period from April 2012 to March 2013 and April 2013 to September 2013 respectively along with interest under Section 75 of the Finance Act,

1. the appellant

1994² and penalty under Section 77 and Section 78 of the Act. The Adjudicating Authority has restrained from imposition of penalty under Section 76 of the Act.

2. The Appellant is engaged in manufacture of graphite electrodes falling under Chapter Heading 85451100 of the Central Excise Tariff Act, 1985. The Appellant is registered both under Central Excise registration No.AAACH6184KXM004 and service tax registration No. AAACH66184KST001 for providing/receiving various taxable services such as Business Auxiliary service, Banking & Financial Service, Cargo Handling service, Consulting Engineers services, Legal service and Renting of Immovable property service, Goods transport agency service etc.

3. The Appellant filed four EXP-1s on 02.04.2012 and another one on 03.04.2013 in the office of the Deputy Commissioner, Central Excise & Service Tax, Division-II, Bhopal intimating their intention to avail exemption from service tax under Notification No. 18/2009 dated 07.07.2009 in respect of four services namely Banking & Financial services, Goods Transport Agency service, Consulting Engineering service and Business Auxiliary services.

4. The Department vide letters dated 15.10.2012 and 15.04.2013 informed the Appellant that the return has to be filed by the Appellant in form EXP-2. Thereafter, the Division office and Range office sought particulars of payment of service tax.

5. In response, the Appellant filed the return in form EXP-2 on 16.08.2013 in the office of Deputy Commissioner, Central Excise, Division- II, Bhopal for the period April 2012 to March 2013 for transport

of the said goods by Goods Transport Agency services³. The Appellant vide letter dated 16.08.2013 claimed exemption from service tax under GTA service amounting to Rs. 37,89,292/-. The Appellant also filed EXP-1s on 07.05.2014 in the office of the Assistant Commissioner, Central Excise & Service Tax, Division- II, Bhopal intimating their intention to avail exemption from service tax under Notification No. 31/2012-ST dated 20.06.2012 for GTA services received during the period April to September, 2013. The Appellant filed the return in form EXP-2 to the department on 07.05.2014 for the period April, 2013 to September 2013.

6. The Department noted that the EXP-2 were not filed timely and in proper format by the Appellant. Therefore, the Appellant had wrongly claimed exemption under Notification 18/2009 - ST dated 07.07.2009 and Notification no. 31/2012 - ST dated 20.06.2012. In this regard, two Show Cause Notices were issued:

- i. Show Cause Notice dated 23.01.2014⁴ was issued for the period from April 2012 to March 2013 proposing demand of Rs. 37,89,292/- under Section 73 of the Finance Act, 1994, interest at applicable rate under Section 75, penalty under Section-76, 77 & 78 of the Act.
- ii. Show Cause Notice dated 20.08.2014⁵ for the period April 2013 to September 2013 proposing demand of service tax amounting to Rs. 16,82,906/- under Section 73 of the Finance Act, 1994 interest at applicable rate under Section 75, penalty under Section-76, 77 & 78 of the Act.

7. An Order-in-Original dated 20.02.2015 was passed by the Joint

3. GTA service

4. Show Cause Notice 1

5. show cause notice 2

Commissioner, Customs, Central Excise and Service Tax, Bhopal confirming the demand raised denying the exemption of Rs. 37,89,292/- and Rs. 16,82,906/-under Section 73 of the Finance Act, 1994, interest at applicable rate under Section 75, penalty of Rs. 10,000/-under Section-77 and penalty of Rs. 37,89,292/- and Rs. 16,82,906/- under Section-78 of the Act.

8. Aggrieved by the said order, the appellant filed an appeal against order-in-original dated 20.02.2015. The Commissioner (Appeals), vide impugned Order-in-Appeal upheld the Order-in-Original and confirmed the demand of service tax of Rs. 54,72,198/- against the Appellant under GTA Service by denying the benefit of the exemption notifications to the Appellant.

9. The learned counsel appearing for the appellant submitted that Appellant is a manufacturer /exporter of graphite electrodes and has used GTA service for transportation of the said goods to port of export. Therefore, the Appellant availed exemption from service tax on taxable services received by them under Notification No. 18/2009-ST dated 7.7.2009 and Notification No. 31/2012 dated 20.06.2012.

10. He submitted that the impugned order traveled beyond the scope of the show cause notice and is required to be set-aside. He submitted that show cause notice is the foundation of the case and since the appellate authority had taken note of the fact that the information/documents were not in the proper format of table A and table B as required in the return EXP-2. He contended that there were no allegations in the show cause notice with respect to the failure to file the shipping bills/bills of export and failure to file the details of use of subject services in exports.

11. He further contended that the said Notifications grant exemption from service tax in respect of GTA services provided to an exporter for transport of goods by GTA in a goods carriage from any container freight station or inland container depot to the port or airport, as the case may, from where the goods are exported or services provided to an exporter in relation to transport of the said goods by GTA in a goods carriage directly from their place of removal to an inland depot, a container freight station or port or airport. Therefore, effectively the said Notifications exempts service tax in respect of GTA services, if are used in export of goods. In the present case, there is no dispute as regards to the actual export of goods by the Appellant.

12. Further, by way of the said Notifications, the Government has imposed certain conditions and has also prescribed certain procedures which are to be followed in order to avail exemption under the said Notifications. The essential conditions and procedures prescribed under both the Notification are same and all the conditions and procedures were duly followed by the Appellant.

13. With respect to GTA services, the condition is that the exporter has to produce the consignment note, issued in Appellant's name. He submitted that the invoices issued to Appellant serve as the consignment note. The same is evident from the invoices enclosed wherein the loading details are indicated and such invoices was submitted along with the return. Therefore, this condition is satisfied by appellant.

14. He further added that the Appellant has satisfied all the conditions of the Notification 18/2009-ST and Notification No 31/2012 and the benefit of the notifications cannot be denied to the Appellant merely on the ground that they have not complied with some procedural requirements.

15. The learned counsel further stated that the issue stands settled in favour of the Appellant by the decision of CESTAT in the case of **Coromandel Stampings & Stones Ltd. Vs. CCE**.⁶ wherein the Tribunal held that when there is no dispute on export of goods, failure to inform the Authorities by filing of EXP-1 and delay in filing of EXP-2 is merely a procedural lapse and benefit of the Notification 18/2009 – ST cannot be denied to the exporter.

"5. It is submitted by the learned Consultant appearing for the appellant, that all the conditions, except the condition that the appellant has to intimate the concerned Asst./Dy. Commissioner by filing Form-EXP-1 was not complied. So also, appellant failed to submit the return in Form EXP-2 as stipulated in sub-clause (c) of the conditions stated in the Notification. Needless to say that exemption/refund/rebate etc. are export oriented schemes. If the fact of export has been established, refund is not to be denied on merely technical interpretation of procedures. In **Suksha International Vs. Union of India - 1989 (39) E.L.T. 503 (S.C.)** the Hon'ble Apex Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided, so that it may not take a way with one hand, what the policy gives with the other. The Hon'ble Apex Court in **Mangalore Chemicals and Fertilizers Ltd. Vs. Dy. Commissioner, 1991 (55) E.L.T. 437 (S.C.)** while drawing a distinction between procedural condition of a technical nature and substantive condition, held that procedural conditions of technical nature can be condoned. The procedures prescribed in the notification are to facilitate verification of the claims. Since there is no dispute with regard to the export made or the service tax paid, the non-fulfilment of the conditions in my view is condonable. Following the judgments laid in the above cases, I am of the view that the non-fulfilment of the conditions is only a procedural lapse and can be condoned. In view thereof, I hold that the appellants are eligible for refund."

16. He also relied on the case of **Radiant Textiles Ltd. Vs. CCE**⁷ wherein the Tribunal held that non-filing of documents and EXP-1 and EXP-2 cannot be the basis of denial of the exemption notification to the Appellant. Procedural lapses cannot deny substantive benefit to the assessee. In this context, he drew attention to the following decisions of the Tribunal:

i. **General Manager, Telecom, BSNL Vs CCE, Raipur**⁸ In this case, Hon'ble Tribunal held that substantial benefit cannot be denied in such cases merely because some aspects of the procedure had not been followed. It also observed that such adjustment has been permitted by

6. [2016 (43) STR 221 (Tri - Hyd)]

7. [2017 (47) STR 195 (CESTAT - CHEN)]

8. [2015 (38) S.T.R. 1182 (Tri. - Del.)]

the CESTAT in BSNL's own case. The relevant paragraph of the decision is as under:

2.....

The appellant has contended that a mere procedural infringement should not result in denial of a substantive benefit. They have referred to the following judgments in their support:

(1) **M/s. BSNL Vs. CCE, Chandigarh⁹** - where the Hon'ble CESTAT permitted such adjustment observing that the rules are not tyrants but servant of law and should not be read in a pedantic manner while the appellant is entitled substantial relief.

(2) **M/s. Nirma Architects & Valuers Vs. CCE, Ghaziabad¹⁰** in which similar adjustment was permitted.

(3) **CCE, New Delhi Vs. Sentinel Security (P) Ltd.¹¹** where the Tribunal observed that the assessee has paid extra tax and in the subsequent returns they have adjusted that amount and that although they did not follow the prescribed procedure, in the interest of justice when there is no dispute with regard to the extra payment, we do not find any infirmity in the view taken by the Commissioner (Appeals) allowing such adjustment.

(4) **M/s. Bharti Cellular Ltd. Vs. Commissioner¹²** the CESTAT held a similar view.

3. The learned DR did not object to the relevance of the case laws cited.

4. We have considered the facts and the submissions made in this case. **As is evident from the several judgments cited above, it has been consistently held that substantial benefit cannot be denied in such cases merely because some aspects of the procedure had not been followed. Indeed, such adjustment has been permitted by the CESTAT in BSNL's own case cited in the earlier para.** In the present case there has been no mala fide on the part of the appellant as is evident from the fact that **the adjudicating authority refrained from imposing any penalty observing that he appellant acted in a bona fide manner and mala fide cannot be attributed to them.**

(emphasis supplied)

17. Therefore, applying the ratio of the case laws above, it was submitted that substantive benefit cannot be denied due to mere procedural lapse. Reliance was also placed on the decision of Appellant itself reported at **HEG Ltd. Vs. Commissioner of Customs, Central Excise and Service Tax, Bhopal¹³** wherein exemption benefit has

9. 2010 (17) S.T.R. 209 (Tri.-Del.)

10. 2006 (1) S.T.R. 305 (Tri.-Del.)

11. 2006 (2) S. T.R. 520 (Tri.-Del.)

12. 2006 (1) S.T.R. 39 (Tri.-Del.)

13. 2019 (7) TMI 773-CESTAT, New Delhi,

been allowed under Notification No. 18/2009-ST under similar circumstances including late filing of the aforesaid returns.

18. Further, in various decisions, the exemption benefit has been allowed under the aforesaid notifications even in cases where the return in Form EXP-2 has not been filed. Few of such decisions are cited as under:

- **Radiant Textiles Ltd. Vs. Commissioner¹⁴**
- **Oriental Carbon and Chemicals Ltd. Vs. Commissioner¹⁵**
- **Coromandel Stampings & Stones Ltd. Vs. Commissioner¹⁶**

19. The learned Authorized Representative appearing for the Department submitted that the appellant was having due knowledge of the fact that filing of EXP-2 Return within the prescribed time limit is a mandatory condition for availing the exemption under the said notification, yet they did not file the same in prescribed time.

20. Despite of various letters from the Divisional and the Range office, they did not respond. Further in addition to delayed filing of EXP-2, the appellant did not enclose the mandatory documents like self-attested copies of Shipping Bills/Bills of Export also. They did not declare the requisite information in Table-B of the EXP-2 Return. Though the appellant undertook to make good the discrepancies within a week, but they did not remove the same even after 2 months. The learned authorized representative placed reliance upon the judgment of Supreme Court of India in **Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company¹⁷**.

21. We have considered the submissions advanced by the learned counsel appearing for the appellant and the learned authorized

14. 2016 (10) TMI 242 (Tri.-Chand.)

15. 2017 (6) TMI 766 (Tri.- Chand.)

16. 2016 (43) STR 221 (Tri. - Hyd.)

17. 2018 (361) ELT 577 (SC)

representative appearing for the Department. At the outset, we acknowledge that there is no dispute as regards to the actual export of goods by the Appellant, which indicates that the Appellant has exported goods and availed GTA services for the same. We now proceed to examine the other submissions made by the learned counsel. In order to appreciate the averments, it would be essential to refer to these provisions in the aforesaid notifications, which are reproduced hereinafter:

Notification no. 18/2009-ST dated 07.07.2009

"GSR (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service received by an exporter of goods (hereinafter referred to as the exporter) and used for export of goods (hereinafter referred to as the said goods), of the description specified in column (3) of the Table below (hereinafter referred to as the specified service), pertaining to sub-clauses of clause (105) of section 65 of the said Act specified in the corresponding entry in column (2) of the said Table, from the whole of the service tax leviable thereon under section 66 and section 66A of the said Act, subject to the conditions specified in column (4) of the said Table, namely

Sl No	Sub- clause	Description of the taxable service	Conditions
1	2	3	4
1	zzp	Service provided to an exporter for transport of the said goods by road from any container freight station or inland container depot to the port or airport, as the case may be, from where the goods are exported; or Service provided to an exporter in relation to transport of said goods by road directly from their place of removal, to an inland container	The exporter shall have to produce the consignment note, by whatever name called, issued in his name.

		depot, a container freight station, a port or airport, as the case may be, from where the goods are exported	
2	zzb	Service provided by a commission agent located outside India and engaged under a contract or agreement or any other	The exporter shall declare the amount of commission paid or payable to the commission agent

Provided that-

(a) the exemption shall be available to an exporter who,-

(i) informs the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory or the regional office or the head office, as the case may be, in Form EXP1, before availing the said exemption;

(ii) is registered with an export promotion council sponsored by the Ministry of Commerce or the Ministry of Textiles, as the case may be;

(iii) is a holder of Import-Export Code Number;

(iv) is registered under section 69 of the said Act;

(v) is liable to pay service tax under sub-section (2) of section 68 of said Act, read with sub-clause (iv) or sub-clause (v) of clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994, for the specified service;

(b) the invoice, bill or challan, or any other document issued by the service provider to the exporter, on which the exporter intend to avail exemption, shall be issued in the name of the exporter, showing that the exporter is liable to pay the service tax in terms of item (v) of clause (a);

(c) the exporter availing the exemption shall file the return in Form EXP2 every six months of the financial year, within fifteen days of the completion of the said six months;

(d) the exporter shall submit with the half yearly return, after certification, the documents in original specified in clause (b) and the certified copies of the documents specified in column (4) of the said Table;

(e) the documents enclosed with the return shall contain a certification from the exporter or the authorised person, to the effect that taxable service to which the document pertains, has been received and used for export of goods by mentioning the specific shipping bill number on the said document.

(f) where the exporter is a proprietorship concern or partnership firm, the documents enclosed with the return shall be certified by the exporter himself and where the exporter is a limited company, the documents enclosed with the return shall be certified by the person authorised by the Board of Directors;

(g) where the amount of service tax in respect of the service specified against serial No. 2 of the Table exceeds one per cent. of the free on board value of the export then, the amount in excess of the said one per cent. shall be paid within the period specified under rule 6 of the Service Tax Rules, 1994;"

22. Further, in order to appreciate the arguments of the learned counsel, we reproduce the EXP-1 & EXP-2 format for ease of reference;

Form- EXP-1 -

S.No-----

To,

The Deputy Commissioner /Assistant Commissioner of Central Excise

Sir,

I/We intend to avail the exemption from service tax under Notification No.18/2009-ST, dated.....in respect of services for transport of said goods by road or services provided by a commission agent located outside India, which have been used for export of goods and the relevant particulars are as follows.

1. Name of the exporter.
2. Service Tax Registration No.
3. Division Commissionerate
- 4 Membership No. the Export Council
- 5 Name of the Export Council
6. Address of the registered / head office of exporter:
7. Tel. No. and e-mail ID of the exporter.....:
8. Import -Export Code No.....
9. Details of Bank Account (Name of Bank, branch address and account number)

I/we undertake that I/we shall comply with the conditions laid down in the said notification and in case of any change in aforementioned particulars, I/We shall intimate the same.

Date:
Place:
Signature and full address of Exporter (Affix stamp) Receipt (to be given by office of Assistant Commissioner/ Deputy Commissioner having jurisdiction)

Received Form EXP1 dated --/--/-- submitted by _____

The said intimation is accepted and given acknowledgment No. _____
(S. No. Above) For Assistant, / Deputy Commissioner (Stamp)

Form- EXP-2

To,
The Deputy Commissioner /Assistant Commissioner of Central Excise
Sir,
I/We have availed exemption of service tax under Notification No.18/2009-ST. dated 7th July, 2009 in respect of services, namely, the services provided for transport of said goods by road services provided by a commission agent, located outside India and have used the same for export of goods during the period from to..... .. and the relevant particulars are as follows.
1. Name of the exporter.
2. Address of the registered / head office of exporter
3. Tel. No. and e-mail ID of the exporter.....:
4. Service Tax Registration No.
5. Division Commissionerate
6. Membership No. Of the Export Council
7. Import Export Code No.....
8. Name of the Export Council
9. Details of Bank Account (Name of Bank, branch address and account number)

Table A

S. No.	Details of goods exported (on which exemption of service tax availed) during the six months ending on.....							
	Details of Shipping Bill/ Bill of export (Please enclose self attested copy of Shipping Bill or Bill of Export) and Details of goods exported (in case of exports of more than one commodity, please fill in the proforma, commodity-wise)							
	No	Date	Date of Let Export Order	Export Invoice no.	Date	Description of goods	Quantity	FoB value

Table B

Details of specified services used for export of goods, covered under he Shipping Bill or Bill of Export mentioned in Table 'A' in respect of which the exemption has been availed	Details of Documents attached showing the	Total amount of service tax claimed as
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------	----------------------------------------

during the six months ending on.....					use of such services for export, details of which are mentioned in Table 'A' (self attested)	exemption
Name of the service provider	Address of the service provider	Invoice no	Date	Description of services	Classification of the service under the Finance Atc, 1994	

9. Declaration:-I / We hereby declare that-

(i) **I have complied with all the conditions mentioned in notification No18/09-ST, dated 7th July, 2009;**

(ii) the information given in this application form is true, correct and complete in every respect and that I am authorised to sign on behalf of the exporter;

(iii) no CENVAT credit of service tax paid on the specified services used for export of said goods taken under the CENVAT Credit Rules, 2004;

(iv) I / we, am/ are enclosing all the required documents.

Further, I understand that failure to file the return within stipulated time or non-enclosure of the required document, duly certified, would debar me/us for the refund claimed aforesaid.

Date:

Place:

Signature and full address of Exporter

Enclosures: as above

23. We note that Notification no. 31/2012 dated 20.06.2012 prescribed similar condition and provisions and therefore is not reproduced. A plain reading of the provisions elaborated in the aforesaid notification indicates that in order to avail the exemption enshrined in the said notifications, the appellant had to satisfy the condition indicated in Column 4 of the table, reproduced above. The said condition is that the exporter will have to produce the consignment

note, or any document issued in his name, to claim the exemption. In the instant case, we note that the primary condition for seeking exemption for GTA, the requirement is to produce a consignment note, and for the commission agent, the amount is required to be indicated. There is neither any allegation in the show cause notice nor any finding in the impugned order that the appellant did not export the goods or that there was no consignment note, or any other document in his name. Therefore, the essential condition for availing the benefit of the said exemption notification stands satisfied.

24. We now refer to the other conditions envisaged in the said notification. The exporter had to file the half yearly return within 15 days of the completion of the said six months. The notification also required the appellant enclose documents as indicated in the Table A and Table B of the return EXP-2. We note that the details of the shipping bills or bill of export is required is to be given, while filing the return in the EXP-2 format. When the return itself requires the details, there is no requirement for the show cause notice to specify in the said details, as has been submitted by the learned counsel for the appellant.

25. One of the other conditions in the notification indicates that the exporter has to inform the jurisdictional Assistant Commissioner by filing the form EXP-1 before availing the exemption under the said notification. It is observed that the appellant was very prompt in filing this intimation format before availing the exemption. The appellant undertook to comply with all the conditions mentioned therein, including filing of half yearly returns within the specified period. However, when it came to the actual filing the said return for compliance verification by the department, the appellant did not show

the much-needed promptness. We find that the department had issued several reminders for filing the said return, but the appellant did not feel it necessary to respond to these letters. Our attention was drawn to the earlier decision of this Tribunal in the Appellant's own case **HEG Ltd vs Commissioner of Customs, Central Excise & Service Tax, Bhopal**¹⁸. The benefit of the exemption notification was extended to the appellant despite their delay in filing the required returns. The Tribunal opined that the mere procedural lapse which admittedly is on account of non availability of shipping bills due to delay on the part of Customs cannot be the ground to deny the substantial benefit of the notification. As has been observed previously, the appellant was very prompt when seeking the exemption under the said notifications, but did not show similar promptness while filing returns. It is also seen that while filing the returns, the appellant did not take due care to file the data/documents as required, despite having undertaken to file the same. The appellant can be excused once for not having complied with the provisions of the notification for which the Tribunal has allowed the benefit. But it cannot be the case for the appellant to seek the indulgence of this Tribunal to overlook such lapses repeatedly.

26. We take note of the case of **Commissioner of Customs(Imports), Mumbai vs Dilipkumar & Co**¹⁷ the Supreme Court held as follows:

"51. In Hari Chand case (supra), as already discussed, the question was whether a person claiming exemption is required to comply with the procedure strictly to avail the benefit. The question posed and decided was indeed different. The said decision, which we have already discussed supra, however, indicates that while construing an exemption notification, the Court has to distinguish the conditions which require strict compliance, the non-compliance of which would render the assessee ineligible to claim exemption and those which require substantial compliance to be entitled for exemption. We are

18 [2019(7) TMI 773-CESTAT, New Delhi]

*pointing out this aspect to dispel any doubt about the legal position as explored in this decision. As already concluded in para 50 above, **we may reiterate that we are only concerned in this case with a situation where there is ambiguity in an exemption notification or exemption clause, in which event the benefit of such ambiguity cannot be extended to the subject/assessee by applying the principle that an obscure and/or ambiguity or doubtful fiscal statute must receive a construction favouring the assessee.** Both the situations are different and while considering an exemption notification, the distinction cannot be ignored.*

52. To sum up, we answer the reference holding as under -

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue....."

27. It is seen that the above decision, as relied upon by the learned authorised representative, the Supreme Court is categorical in holding that an exemption notification should be interpreted strictly and the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification. As already held above, we find that the appellant has complied with the notification condition as enumerated in column 4 of the aforesaid table. In view of the same, we set aside the demand of duty and interest upheld in the impugned order.

28. We now come to the penalties imposed under section 77 and 78 of the Finance Act on the appellant. Penalty under section 78 is imposed when there is a willful intention to evade the payment of tax. The delay in filing of the return for claiming the exemption cannot be termed as willful intention to evade payment of duty. Therefore, we set aside the penalties imposed under section 78 of the Act.

29. However, as observed previously, the appellant was very prompt when filing the intimation for seeking the exemption under the said notifications, but did not show similar promptness while filing returns.

It is also seen that while filing the returns, the appellant did not take due care to file the data/documents as required, despite having undertaken to file the same. Consequently, the penalty under section 77 is upheld for failure to file the returns in time.

30. The order-in-appeal is modified to the extent indicated above, and the appeal is allowed partially.

(Pronounced in the open court 08.05.2023)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Rekha/ss