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TAX

REFERENCE ANSWERED BY SUPREME COURT- CONSTITUTION BENCH

A graphic consisting of a black rectangle with a thin red border. Inside the rectangle, the words 'EXEMPTION NOTIFICATION' are written in a bold, red, sans-serif font, centered horizontally and vertically.

EXEMPTION NOTIFICATION



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IN MATTER OF

**COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI V. M/S. DILIP KUMAR AND
COMPANY & ORS.**

CIVIL APPEAL NO. 3227 OF 2007 – THE SUPREME COURT OF INDIA

FACTS

The Respondents imported a consignment of Vitamin – E50 powder (feed grade) in the year 1999.

They claimed the benefit of concessional rate of duty of 5% instead of standard 30%.

The bone of contention was with respect to the eligibility of concessional rate of duty under the notification no. 20/1999 or otherwise.

Initially, it was denied by the **learned Assistant Commissioner** on the ground that the said goods contained chemical ingredients for animal feed and not for prawn feed.

The learned Commissioner (Appeals) reversed the Order passed by the Assistant Commissioner. He placed reliance upon the order of **M/s Sun Export Corporation v. The Collector of Customs, Bombay [(1997) 6 SCC 564]**.

The case travelled from Commissioner of Customs (Appeals) to CESTAT. On being aggrieved by the order of CESTAT, the Revenue filed a Civil Appeal before Supreme Court.

This matter was referred to **5 judge Constitution bench in Supreme Court** to examine the issue after the ratio laid down in **M/s Sun Export Corporation** was doubted by 2 member bench and third member Judge as well.



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ISSUES BEFORE SC

The question in this case was –

“What is the interpretative rule to be applied while interpreting a tax exemption reportable provision/notification when there is an ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied?”

The matter was heard & decided by a 3 judge Supreme Court Bench. The case was against the judgment passed by the Honorable High Court of Bombay.

In *Sun supra*, it was held that an ambiguity in a tax exemption provision or notification must be interpreted so as to favor the assessee claiming the benefit of such exemption.

RECONSIDERATION OF SUN EXPORT

The bench in this case, on Sun Exports judgment, observed that:

“There cannot be any doubt that the ratio in Sun Export Case that, if two views are possible in interpreting the exemption notification, the one favorable to the assessee in the matter of taxation has to be preferred. This principle created confusion and resulted in unsatisfactory state of law. In spite of catena of judgments of this Court, which took the contra view, holding that an exemption notification must be strictly construed, and if a person claiming exemption does not fall strictly within the description of the notification otherwise then he cannot claim exemption.”



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OBSERVATION

After hearing the contentions of both the parties & placing reliance on principles of Interpretation of Statutes, the court observed that **the purpose of interpretation is essentially to know the intention of the Legislature.**

The legislative intention can be known by considering the meaning of the words used in the enactment.

To know the intention of the Legislature following questions needs to be identified:

- *Whether the Legislature intended to apply the law in the given case?*
- *Whether the Legislature intended to exclude operation of law in the given case?*
- *Whether the Legislature intended to give discretion to enforcing authority*

or adjudicating authority to apply the law?

Apart from the general principles of interpretation of statutes the court has looked into the concepts of 'Internal Aid' i.e. Long Title, Preamble, Heading, Marginal Note, Punctuation, illustrations, definitions or dictionary clause, proviso to a section, Explanation, examples, schedule of a act etc. & 'External Aid' i.e. parliamentary debates, history, other statutes, Dictionaries etc.

The bench further observed that statute must be construed according to the intention of the Legislature and the Court should act upon the true intention of the legislation while applying and interpreting the law and if the provision is open to more than one meaning then the court has to choose the interpretation which represents the intention of the Legislature.



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General Rule of interpretation:

- If the words used are capable of one construction then it would not be open to the courts to adopt any other construction.
- If plain meaning is not possible then the construction will be in accordance with the legislative purpose.

Rule of Interpretation for Taxing Statute:

- Strict rule of interpretation has to be done by the Courts.
- No Tax shall be levied or collected except by the authority of Law.
- Strict Interpretation applies on interpretation of taxation statute.
- Principle of Literal and strict interpretation are sometime used interchangeably.
- Literal Interpretation would involve strict interpretation however strict rule may not necessarily involve

literal interpretation especially in the area of Taxation.

- *In Taxation statute neither there is any room for searching intendment nor drawing any presumption.*
- Simply because one class of legal entities is given a benefit which is specifically stated in the Act, does not mean that the benefit can be extended to the legal entities not referred to in the Act, as there is no equity in the matters of Taxation.

Looking at these principles, the Court focused to give a judgment on the core issue mentioned above i.e. in the ambiguity in an exemption notification should the benefit of such ambiguity go to the assessee or not?



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CONCLUDING VIEW

The Honorable Apex Court held that **in our country there has been a consistent view that if the words in a taxing statute are ambiguous and open to two interpretations, then the benefit of interpretation is given to the subject** and it does not matter if the taxpayer escapes on account of Legislatures' failure to express itself clearly.

If the Taxing statutes are ambiguous and open to 2 interpretations then the benefit of interpretation is given to the subject and it does not matter if the taxpayer escapes the tax net on account of legislature's failure to express clearly.

The taxing statute has to be interpreted strictly and the entire matter is governed wholly by the language of the notification.

The choice of strict or literal construction arises only in case of doubt and if the words are plain and clear and directly

convey the meaning then there is no need for any interpretation.

Person who claims an exemption has to establish that he is entitled to that exemption or concession. Provision providing exemption has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose has to be achieved.

If exemption is available on a condition then that condition has to be complied with and if there is a failure to comply with some requirements then that would affect the essence or substance of the notification granting exemption.

Henceforth the Court held, in para 41, that:

".....every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provision, the benefit must necessarily go in favor



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of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favor of the Revenue/State."

In para 43, the Constitution Bench conclusively reiterated as under;

".....Thus, we may emphatically reiterate that if in the event of ambiguity in a taxation liability statute, the benefit should go to the subject/assesse. But, in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the revenue, the aforesaid conclusions are expounded only as a prelude to better understand jurisprudential basis for our conclusion. We may now consider the decisions which support our view."

RELIED UPON DECISIONS

The Constitution bench put reliance upon the following decisions in forming the view:

- *Hansraj Gordhandas Vs. H.H. Dave, Asst. Collector of Central Excise & Customs*
- *C.C.E. Vs. Parle Exports (P) Ltd.*
- *Orient Weaving Mills Pvt. Ltd. Vs. UOI*
- *Kailashnath Vs. State of UP*
- *Tata Iron and Steel Co. Ltd. Vs. State of Jharkhand.*
- *Mangalore Chemicals & Fertilisers Ltd Vs. Dy. Commissioner of Commercial Taxes*
- *Novopan India Ltd Vs. Collector CE*



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REASON OF JURISPRUDENCE

The reason for such jurisprudence was concluded in para 48, as under;

“...Exemptions from taxation have tendency to increase the burden on the other unexempted class of tax payers. A person claiming exemption, therefore, has to establish that his case squarely falls within the exemption notification, and while doing so, a notification should be construed against the subject in case of ambiguity.”

ANSWER TO REFERENCE

Their Lordship finally answered to the reference, in para 52, 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 favor of the revenue.**

3. The ratio in the **Sun Exports Case (Supra)** is not correct and all the decisions which took similar view as in **Sun Export Case(supra)** stands over-ruled.

AMLEGAL'S REMARKS

This decision was given with reference to a crucial issue as to “where an ambiguity exists, who will get the benefit, the assessee/subject or the revenue?”

This decision is pertaining only to a situation “where there is an ambiguity in



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an exemption notification or exemption clause”.

The Constitution Bench held that such situation warrants that the benefit to be accorded to the Revenue alone.

The Doctrine of strict interpretation will be also applied if there is any ambiguity itself exists in a taxation provision and in such a case the beneficiary will the assessee alone.

For instance, if there is an ambiguity in the subject of tax i.e. who are the persons liable to pay tax, and whether the revenue has established conditions before raising and justifying a demand.

State has to prove the liability of the person, because of the strict language of the law. There cannot be any implied concept or intendment either in identifying the subject of the tax or person liable to pay tax.

That is why it is often said that subject is not to be taxed, unless the words of the statute unambiguously impose a tax on

him, that one has to look merely at the words clearly stated and that there is no room for any intendment nor has presumption as to tax. Therefore in the event of ambiguity in a taxation liability statute, the benefit should go to the assessee.

But, in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the revenue as the exemption is also allowed wholly by the language of the notification and exemption cannot be gathered by necessary implication or by construction of words.

The jurisprudence behind this ruling is that in the constitution of India the word written is “rule of law” which means that there is no implied power of taxation. The tax power must be specifically conferred and it should be strictly in accordance with the power so endowed by the Constitution itself.



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