

Exemption notification is to be interpreted strictly and therefore benefit of ambiguity in exemption notification cannot be claimed by the taxpayer – Supreme Court

Background

Recently, the Constitutional Bench¹ (five-judge bench) of the Supreme Court in the case of Dilip Kumar and Company & Ors² (the taxpayer) has overruled the ratio laid down by the three judge judgement in case of Sun Export Corporation³.

The constitution bench held that:

- Exemption notification should be interpreted strictly; the burden to prove its applicability rests with the taxpayer
- The benefit of ambiguity in exemption notification cannot be claimed by the taxpayer and it must be interpreted in favour of the tax department
- All decisions which took a similar view as in Sun Export case stands over-ruled

Five Judge Constitution Bench of the Supreme Court (constitution bench) was setup to examine the correctness of the ratio laid down in case of Sun Export Corporation.

The constitution bench has analysed various Supreme Court decisions and basis the same has overruled the ratio laid down by the three judge bench of Supreme Court in Sun Export case. The gist of the constitution bench ruling is as under:

- The burden of proving the applicability of an exemption notification rests with the taxpayer
- The taxpayer requires to show that his case comes within the parameters of the exemption clause or exemption notification

¹ Constitution bench is the name given to the benches of the Supreme Court of India which consist of at least five judges of the court which sit to decide any case "involving a substantial question of law as to the interpretation" of the Constitution of India. This provision has been mandated by Article 145(3) of the Constitution of India.

² CC v. Dilip Kumar and Company & Ors (Civil Appeal No. 3327 of 2007) – Taxsutra.com

³ Sun Export Corporation v. CC [1997] 6 SCC 564

- Ambiguity in the exemption notification is subject to strict interpretation
- The benefit of ambiguity cannot be claimed by the taxpayer

Facts of the case

- The taxpayer imported a consignment of vitamin – E50 powder (feed grade). Relying on the ratio laid down in Sun Export case, the respondent had claimed the benefit of concessional rate of customs duty of 5 per cent vide notification no. 20/1999 and had classified the product under CH 2309.90 which admittedly pertains to 'prawn feed'. The standard rate of customs duty prescribed 30 per cent. The benefit of the exemption was denied by the adjudicating authority (AA) to the respondents. Department had contended that the goods imported contained chemical ingredients for animal feed and not animal feed/prawn feed as such. However, the appellate authority had reversed the order of the AA.
- Aggrieved, the department had filed an appeal and accordingly the matter was placed before the Bench of two-judges of the Supreme Court. The Bench in its order doubted the ruling of Sun Exports. The gist of the observation made is as under:
 - Exemption notification has to be strictly construed i.e. if the person claiming exemption notification does not fall strictly within the letter of the Notification, he cannot claim notification
 - If two views are possible, for matters in connection with the charging section of a statute, one favourable to the taxpayer has to be preferred

- Sun Export case was not concerned with the charging section of a taxation statute but was concerned with the interpretation of an Exemption Notification

The matter was thereafter placed before Hon'ble Chief Justice of India to constitute an appropriate Bench to resolve the doubts raised in the order.

Supreme Court decision

Principles of interpretation

- Acts and Regulations are either made by the act of Parliament or by Legislature. While forming the Acts/Regulations, words, phrases and principles of interpretation as laid down in the General Clauses Act are kept in view.
- In case of conflict between the General Clauses Act and the statutory provision, the court must necessarily refer to the intent of the statute. The purpose of interpretation is essentially to know the intention of the legislature.
- Statutory provision if open to more than one meaning, the Court has to choose the interpretation which represents the intention of the Legislature. When words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the courts are bound to give effect to the said meaning irrespective of the consequences. Hardship or inconvenience caused cannot form a basis to alter the meaning to the language employed by the legislation.
- Where legislature mandates taxing certain persons/objects in certain circumstances, it cannot be expanded/interpreted to include this, which were not intended by the legislature. In a Taxation statute, there is no room for any intendment, regard must be had to the clear meaning of the words and the matter should be governed wholly by the language of the notification. Equity has no place in the interpretation of tax statute.

Other observations

Basis the analysis of the principles laid in various judgments referred to in the order, the Constitution Bench held

- Exemption notification should be interpreted strictly; the burden of proving applicability would be on the taxpayer to show that his case comes within the parameters of the exemption clause or exemption notification.
- When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/taxpayer and it must be interpreted in favour of the revenue.

- The ratio in Sun Export case is not correct and all the decisions which took a similar view as in Sun Export Case stands over-ruled.

Our comments

The decision has put across a firm position that an exemption notification should be interpreted strictly and any ambiguity in an exemption notification must be interpreted in favour of the tax department. The burden of proving the applicability of the exemption notification would be on the taxpayer.

Even though the Supreme Court has rendered the decision in the context of Customs, it could have a far-reaching impact on direct tax laws as well. Taxpayers would now be required to be more vigilant while claiming the benefit of the exemption notification.

The decision is likely to have great ramification in all the existing litigation on the exemption under the Direct Tax laws, Customs law, and erstwhile Indirect Tax law and even under the GST law.



www.kpmg.com/in

Ahmedabad

Commerce House V, 9th Floor,
902, Near Vodafone House,
Corporate Road,
Pralhad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru

Maruthi Info-Tech Centre,
11-12/1, Inner Ring Road,
Koramangala,
Bengaluru – 560 071.
Tel: +91 80 3980 6000

Chandigarh

SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai

KRM Towers,
Ground Floor, 1, 2 & 3 Floor,
Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram

Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad

Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2,
Serilingampally Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur

Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road
Jaipur – 302 018.
Tel: +91 141 – 7103224

Kochi

Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata

Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai

1st Floor, Lodha Excelus,
Apollo Mills,
N. M. Joshi Marg,
Mahalaxmi, Mumbai – 400 011.
Tel: +91 22 3989 6000

Noida

Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune

9th floor, Business Plaza,
Westin Hotel Campus,
36/3-B, Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara

Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2018 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

This document is meant for e-communication only