IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2025

CORAM

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. No.955 of 2020
and C.M.P. No.11487 of 2020

M/s.Khivraj Tech Park Pvt. Ltd.,
(Rep by its Authorized Signatory,
Mr.Ajit Kumar Chordia)
No.1, SIDCO Industrial Estate,
Guindy, Chennai 600 006. .. Appellant

-vs-

1. Union of India,
   The Secretary,
   Ministry of Communication Technolocy
   Department of Information & Technology,
   No.6, CGO Complex, Lodhi Road,
   New Delhi 110 003.

2. M/s.Software Technology Park of India,
   No.22/2, I Floor, Sardar Patel Road,
   Adyar, Chennai 600 029.

3. The Assistant Commisssioner of Customs (EOU),
   I Floor, Custom House, No.60, Rajaji Salai,
   Chennai 600 001. .. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 24.07.2019 passed in W.P.No.21623 of 2019 on the file of this Court.

For Appellant : M/s.Radhika Chandra Sekhar

For Respondents : Mr.G.Ilangovan
Spl. Panel Counsel for RR 1 and 2
: Mr.K.S.Ramaswamy
Senior Stdg. Counsel for R-3

JUDGMENT

(Judgment of the Court was delivered by Mohammed Shaffiq, J.)

The question that arises for consideration in this writ appeal is with regard to appellant's entitlement to exemption under Notification No.153/93/Cus. dated 13.08.1993 on imports made for setting up a Software Technology Park.

2.Brief facts:

2.1. Appellant is a company registered under the provisions of Companies Act, 1956. Appellant intended to set up a Software Technology Park in accordance with the policy formulated by the Ministry of Communication and Information Technology, Government of India. Appellant submitted an application on 25.01.2005 to 2nd respondent Software Technology Park of India with all particulars required for permission for setting up of Software Technology Park. List of capital goods to be imported for the project in terms of Notification No.153/93/Cus dated 13.08.1993 was also provided. Respondent No.2

is the nodal agency. Notification No.153/93/Cus. dated 13.08.1993 provides for exemption for imports of Telematic Infrastuctural equipments. Respondent No.1 vide letter dated 26.02.2005, acknowledged receipt of application.

2.2. Proposal for setting up Software Technology Park is required to be approved by Inter-Ministerial Standing Committee (hereinafter referred to as "IMSC") under 1st respondent. Appellant was required to submit the list of proposed capital goods to be imported and CIF value of such goods duly supported by proforma invoice. Appellant submitted all the requisite documents before 01.03.2005 as called for by 1st respondent. Respondent noted the list of capital goods on which duty benefit had been sought, including both imported and indigenous goods and appellant was entitled to the benefit of Notification No.153/93-Cus, dated 13.08.1993 for import of various items including telematic infrastructural equipments.

2.3. Respondent No.1 vide letter dated 22.06.2005 (communicated to appellant on 22.06.2005) informed appellant that IMSC in their meeting held on 04.04.2005, recommended approval of appellant's application for setting up Information Technology Park and import of capital goods for a CIF value of Rs.2,743/- lakhs under Notification No.153/93-Cus dated 13.08.1993. The recommendation

was subject to obtaining permission from the Chennai Metropolitan Development Authority (CMDA).

2.4. Prior to the above, appellant had submitted drawings and necessary documents to CMDA as early as on 10.01.2005 and receipt of the same was also duly acknowledged the very same day. On 21.10.2005, about 10 months later, multi-storey building panel of CMDA approved the plan submitted by appellant and recommended the same to Government of Tamil Nadu for issuance of Government Order. On 16.11.2005, Government of Tamil Nadu approved the recommendation by CMDA for setting up a multi storey building. Respondent No.1 vide letter dated 29.11.2005, communicated the approval of the Government for setting up infrastructural facility for Software Technology Park under the scheme in the name and style of Olympia Technology Park and permission of IMSC.

2.5. In the meantime, appellant imported goods covered in the list of capital goods approved in principle by IMSC for a CIF value mentioned vide letter dated 22.06.2005 as recommended by IMSC based on the approval of IMSC on 04.04.2005.

2.6. Appellant filed Bill of Entry for the import of approved capital goods on 24.10.2005 and claimed benefit of Notification No.153/93-Cus dated 13.08.1993. Customs Department rejected appellant's claim of

exemption on imports vide Notification No.153/93, on the ground that CMDA approval for setting up of Software Technology Park was granted after import of capital goods.

2.7. Appellant approached 1st respondent vide letters dated 09.02.2006 and 21.03.2006 seeking clarification that the approval by the IMSC and their recommendation in their meeting held on 04.04.2005 may be considered as permission for setting up of Software Technology Park, while requesting to treat the date of Committee Meeting i.e., 04.04.2005, as date of approval as against the date of communication of approval (by CMDA) i.e., 29.11.2005.

2.8. Since the representation made by appellant, was not considered by 1st respondent, appellant approached this Court vide W.P.No.1173/2006 to treat the date of approval for setting up of Software Technology Park as 22.06.2005. This Court vide order dated 21.06.2018 directed 1st respondent to consider the prayer of the appellant.

2.9. Appellant submitted a letter dated 02.11.2018 for considering the effective date to be the date of application or IMSC approval date, i.e., 04.04.2005 as shown in the letter dated 22.06.2005.

2.10. Respondent No.1 rejected the request of appellant stating that appellant was aware that letter dated 22.06.2005 was only a letter

of intent and not a letter of permission and nevertheless went ahead to import goods. Thus, the request to modify date of approval as 25.01.2005 being the date of application for approval (or) 04.04.2005 i.e., date on which IMSC approved instead of 29.11.2005 i.e., date on which 2nd respondent issued the proceeding stood rejected. The relevant portion of the order is extracted hereunder:

> *"...Whereas, the Committee after deliberation opined that there is no merit in changing the date of the approval as the ISP was aware of the fact that the letter dated 22.06.2005 is Letter of Intent (LoI) only and not the LoP still they went ahead to order the goods.*
>
> *Now therefore, with the above observations, the request made by M/s Khivraj Tech Park Pvt. Ltd., Chennai vide the representations dated 09.02.2006 and 21.03.2006 is not agreed to and the matter is treated as "closed".*

3. Aggrieved by the above order, appellant preferred a writ petition in W.P.No.21623 of 2019 to quash order dated 14.12.2018. This Court dismissed the writ petition on the premise that appellant had submitted an application on 25.01.2005, they were informed about approval of their application for setting up a STP on 29.11.2005. But imports were made even prior to above approval. It was thus found by the learned Judge that appellant/writ petitioner made imports even

before approval of its application was communicated thus found that their request for modification of date of approval cannot be acceded to.

4. Case of appellant:

(i) Appellant complied with the Scheme for setting up of Software Technology Park. IMSC considered the application filed by appellant and recommended for approval, list of capital goods required to be imported and the CIF value thereof on 04.04.2005, communicated to Appellant on 22.06.2005. The recommendation of IMSC was communicated to appellant and appellant imported the capital goods, covered in the list of capital goods recommended by the Committee for a value within the approved limit. Appellant imported the capital goods after the communication of approval.

(ii) Appellant is entitled to exemption from the date on which the application for grant of registration is made before the competent authority and not from the date on which the approval was granted by CMDA. Appellant cannot be made to suffer for the delay by CMDA in granting approval on appellant's application made as early as 10.01.2005.

5. Case of respondents:

a) Respondents would submit that exemption notification must be strictly construed.

b) The letter dated 22.06.2005 relied upon by appellant in respect of their entitlement to exemption vide notification No.153 of 1993 dated 13.08.1993 makes it clear that the above approval is "subject to the appellant obtaining permission from CMDA". Imports were made on 24.10.2005 while CMDA had communicated its approval only on 29.11.2005 i.e., subsequent to the import. Impugned order 14.12.2018 and the order of learned Judge found that imports were made by appellant on 24.10.2005 fully aware that Letter of Permission (LoP) is yet to be issued and thus not entitled to exemption. The impugned order dated 14.12.2018 and order of the learned Judge do not warrant interference.

6. Analysis:

Against the above background question which arises is whether grant of approval by CMDA dated 21.10.2005, communicated on 29.11.2005 would prove fatal to appellant's entitlement to claim the benefit of exemption vide notification No.153 of 1993, in respect of imports made prior there to i.e., 24.10.2005.

6.1. To resolve the above controversy, it may be necessary to refer to notification No.153 of 1993 dated 13.08.1993. The relevant portions of which read as under:

> *"Telematic infrastructural equipments imported for being used for the export of software under the Software Technology Parks 100% EOS:*
>
> *In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the telematic infrastructural equipments (hereinafter referred to as the said goods) as specified in the Annexure to this notification, when imported into India for being used for the export of software out of India under the Software Technology Parks Hundred Percent Export Oriented Scheme from the whole of the customs duty leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty if any leviable thereon under Section 3 of the second mentioned Act subject to the following conditions, namely:*
>
> *i) The importer has been granted the necessary permission to import the said goods by the Inter-Ministerial Standing Committee for Hundred Percent Export Oriented Units in the Electronics Hardware Technology Parks (EHTP) and Software Technology Parka (STP) appointed by the notification of the Government of India in the Ministry of Industry. Department of Industrial Developriant No. S.O. 117(E), dated the 22nd February, 1993.*
>
> *ii) The importer uses the said goods only for the purpose of export of software.*
>
> *iii) The said imported goods shall shall be under customs bond and subject to such other conditions as may be specified by the Assistant Collector in this behalf.*
>
> *iv) The importer agrees to-*
>
> *a) bring the said goods into the unit and use them within the unit in connection with the export of software;*
>
> *b) not to move the said goods from the unit without the approval of Assistant Collector of Customs; and*

c) to use the said goods only for the purpose of export of the software.

v) The importer shall produce a certificate to the Assistant Collector of Customs from the concerned Chief Executive of the Software Technology Parks Society set up by the Government of India, Department of Electronics, to the effect that the said imported goods are to be installed or used in the unit and that the importer of such goods has been authorised by the said Inter-Ministerial Standing Committee.

vi) The importer executes a bond in such form and for such sum and with such authority as may be prescribed by the Assistant Collector of Customs binding himself to use the said goods for export of software and to fulfil the conditions stipulated in this notification, and in or under the Import and Export Policy, 1992-97 and the conditions as may be specified by the Department of Electronics, and to pay on demand an amount equal to the duty leviable on the said goods as are not proved to the satisfaction of the Assistant Collector to have been used for the purposes for which the said goods were allowed to be imported.

vii) The Collector of Customs, may subject to such conditions as may be prescribed by him, allow a unit fo re-export the said goods subject to the necessary permission being granted by the Chief Executive of the Software Technology Park.

viii) The procedure as may be prescribed by the Collector of Customs is followed by such unit."

6.2. A reading of the above notification, would show that Telematic Infrastructural equipments imported into India for being used for export of software out of India under the Software Technology Parks Hundred Percent Export Oriented Scheme is exempt from the whole of the customs duty leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty if any leviable thereon under Section 3 of the Act. The above exemption is made subject to the

conditions enumerated in clauses (1) to (8) of the said notification.

6.3. Before proceeding further, it may be relevant rather necessary to refer and extract the relevant portion of the communications dated 22.06.2005 and 29.11.2005 of 1st respondent which reads as under:

Communication dated 22.06.2005 is extracted hereunder:

> *"This has reference to your application dated 25.1.2005, addressed to STPI-Chennai and subsequent letter No. nil dated 4.3.2005 on the above cited subject.*
>
> *2. In this connection, it is to inform that your application regarding approval for setting up of infrastructure facility for STP units under the STP Scheme, namely "Olympia Technology Park" at Plot No.1, SIDCO Industrial Estate, Guindy, Chennai and import of items under Customs Notification No.153/93 dated 13.8.1993, as amended from time to time, was considered by the Inter-Ministerial Standing Committee (IMSC) for Software Technology Park (STP) and Electronics Hardware Technology Park (EHTP) Schemes in its meeting held on 4.4.2005. The Committee has recommended for approval your application for setting up of above infrastructure facility for STP units and import of items for a CIF value of Rs.2743 Lacs, for Phase I of the Project in the first instance under Customs Notification No.153/93 dated 13.8.1993, subject to your obtaining permission from Chennai Metropolitan Development Authority (CMDA).*
>
> *3. In order to enable this Department to issue the approval letter, you are requested to submit a copy of the said CMDA permission for the Project."*

Relevant Portions of Communication dated 29.11.2005 is extracted hereunder:

> *"3. I am also directed to convey the permission of the said IMSC for import of items for a CIF value of Rs.2743 Lacs (Rupees Twenty Seven Hundred Forty Three Lacs only) for Phase I of the Project in the first instance, as per attested list enclosed, under Customs Notification No.153/93 dated*

13.8.1993, as amended from time to time, subject to the conditions lister therein, for setting up of above infrastructure facility for STP units under the STP Scheme. This permission is subject to the condition that these goods will be used for the purpose of export of software and IT services by the STP units located in the proposed infrastructure facility.

4. The STP Scheme is presently governed by the Foreign Trade Policy, 2004-2009 and the Handbook of Procedures, Vol.1)2004-2009) of the Department of Commerce, Ministry of Commerce and Industry, Government of India."

6.4. Undisputed facts/position :

a) Appellant had applied on 25.01.2005 for permission to import the goods in question and that was approved by IMSC, subject to approval by CMDA;

b) Appellant had applied to CMDA as early as on 10.01.2005;

c) IMSC approved the application during its meeting held on 04.04.2005;

d) Appellant imported Telematic Infrastructural Equipment, to be used for the export of Software out of India in terms of Software Technology Park 100% Export Oriented Scheme;

e) Value of import was within monetary limit mentioned in communication dated 22.06.2005 and 29.11.2005 of 1st respondent;

f) Goods imported were used for purposes mentioned in the notification;

7. Assuming that approval was granted by CMDA on 29.11.2005 and the imports were prior thereto, denial of exemption in terms of

Notification No.153 of 1993 on the ground that approval of CMDA was granted subsequent to import, cannot be sustained for the following reasons:

a) *Ex-post facto approval – adequate compliance:*

7.1. It may be necessary to note that vide communication dated 22.06.2005 appellant was informed that IMSC had recommended for approval of appellant's application for setting up Infrastructure facility for STP unit and import of items for a CIF value of Rs.2743 Lakhs for Phase I of the project, it was made "*subject to obtaining permission from CMDA*". The letter dated 22.06.2005 effectively informed appellant that IMSC has approved appellant's application for setting up the infrastructural facility for STP unit and does not say anywhere that appellant, to get the benefit of the notification, should first get CMDA's approval in hand. When the letter dated 22.06.2005 is read as a whole, it only means that the appellant may go ahead with import, but should also have the CMDA approval in hand before claiming the benefit under the Scheme, which appellant has.

7.2. In other words, the above communication does not mandate/require a prior approval/permission. In the absence of requirement of prior permission, ex-post facto permission accorded by

CMDA would be adequate compliance. In this regard it may be relevant to refer to the following judgment wherein it was held that the ex-post facto approval was adequate while dealing with similar issue/question:-

(i) LIC v. Escorts Ltd.,[1]

> "63. ..... *The object of the Foreign Exchange Regulation Act, as already explained by us, undoubtedly, is to earn, conserve, regulate and store foreign exchange. ..... The Foreign Exchange Regulation Act is, therefore, clearly a statute enacted in the national economic interest. When construing statutes enacted in the national interest, we have necessarily to take the broad factual situations contemplated by the Act and interpret its provisions so as to advance and not to thwart the particular national interest whose advancement is proposed by the legislation. Traditional norms of statutory interpretation must yield to broader notions of the national interest. If the legislation is viewed and construed from that perspective, as indeed it is imperative that we do, we find no difficulty in interpreting "permission" to mean "permission", previous or subsequent, and we find no justification whatsoever for limiting the expression "permission" to "previous previous'" only. In our view, what is necessary is that the permission of the Reserve Bank of India should be obtained at some stage for the purchase of shares by non-resident companies."*

b) Delay not attributable to appellant – No reason to deny benefit:

7.3. It is necessary to note that appellant had applied to CMDA for approval to set up STP as early as on 10.01.2005. Appellant sought permission to import items for a CIF value of Rs.2743 Lakhs for setting up of the 1st phase of the project. The delay of more than 10 months in

1 (1986) 1 SCC 264:

granting approval by CMDA in our view cannot be a reason to deny appellant benefit of exemption in terms of notification No.153/93 dated 13.08.1993. The fact that CMDA took almost 10 months to grant its approval, cannot be a reason to deny the appellant the benefit of exemption. We say so, inasmuch as the delay cannot be attributed to appellant but to CMDA authorities in granting permission. Delay due to inter-departmental issues cannot result in denial of exemption to appellant. In this regard it may be relevant to refer to the following judgments of the Hon'ble Supreme Court:

i) ***Commissioner. of Customs (Imports) v. Tullow India Operations Ltd.[2] :***

7.4. Here respondent's claim to exemption vide Notification No.20 of 1999, was sought to be rejected on the ground that the “essentiality certificate”, from Directorate General of Hydrocarbons was not produced in terms of Condition No.34, at the time of importation. Question was whether such condition was a condition precedent or a condition subsequent. It was held that though the exemption was subject to the condition that importers therein would produce essentiality certificate, grant of essentiality certificate not being in the hands of the assessees but a function of the Government, importers cannot be denied the benefit of

2 ***(2005) 13 SCC 789***

exemption on the ground of delay in furnishing the essentiality certificate. The relevant portions reads as under:

> *"21. Both the importers are licensees. Indisputably, they were entitled to the benefit of the exemption notification subject, of course, to the condition that they would produce the essentiality certificate granted by the Directorate General of Hydrocarbons at the time of importation of goods. Grant of essentiality certificate was not in the hands of the assessees. It was the function of a department of the Central Government. The essentiality certificate admittedly was not granted by the Directorate General of Hydrocarbons within a reasonable time. The importers could not be blamed therefor. It is possible that delay in granting the said essentiality certificate was by way of default on the part of the authorities concerned.*

ii) The above principle was reiterated in ***ONGC Ltd. v. Commr. of Customs,***[3] wherein it was held as under:

> *"14. It may be true that grant of the essentiality certificate was itself dependent upon the question as to whether the appellant was possessed of a valid oil exploration licence or not. It is, however, equally true that the right to renewal of a licence is a valuable right. (SeeD. Nataraja Mudaliar v.State Transport Authority[(1978) 4 SCC 290 : AIR 1979 SC 114] .) The appellant applied for grant of renewal of the said licence before its expiry. The said renewal has been granted with retrospective effect. In law, thus, the appellant had been holding a valid licence continuously. The factual events as noticed hereinbefore clearly show that the appellant's application for grant of essentiality certificate by the Directorate General of Hydrocarbons was not entertained in the absence of renewal of the licence. The application was returned only for that purpose. The appellant filed its application for grant of essentiality certificate within two days from the date of grant of the licence with retrospective effect and then thereafter sent several reminders. The conduct of the appellant must, therefore, be judged from the factual matrix obtaining therein. We, therefore, are unable to agree with the opinion of the learned*

3 ***(2006) 7 SCC 403***,

Commissioner that the appellant made any misrepresentation before this Court or that the Directorate General of Hydrocarbons had shown any favour to it. Once it is held that the Ministry of Petroleum had renewed the licence and the Directorate General of Hydrocarbons had issued the essentiality certificate, the conditions precedent for obtaining exemption in terms of the exemption notification stood fully satisfied.

15. This Court, times without number, has construed such exemption notifications in a liberal manner. [See Commr. of Customs (Imports) v. Tullow India Operations Ltd. [Commr. of Customs (Imports) v. Tullow India Operations Ltd., (2005) 13 SCC 789] , Tata Iron & Steel Co. Ltd. v. State of Jharkhand [(2005) 4 SCC 272], Govt. of India v. Indian Tobacco Assn. [(2005) 7 SCC 396], CCE v. Hira Cement [(2006) 2 SCC 439 : JT (2006) 2 SC 369] and P.R. Prabhakar v. CIT [(2006) 6 SCC 86 : (2006) 7 Scale 191] .] If, thus, the appellant was entitled to the same, it should not be denied the benefits thereof. It is directed accordingly."

iii) ***Mangalore Chemicals and Fertilisers Ltd. v. CCT*[4] :**

7.5. In this case while dealing with exemption to new industries, it was rejected on the ground that exemption was subject to "prior permission" to be granted by the Deputy Commissioner of Commercial Taxes. However, appellant's renewal application though filed within time was not renewed and in the absence of "prior permission" of renewal Deputy Commissioner of Commercial Taxes the appellant was held dis-entitled to claim exemption. The Hon'ble Supreme Court while dealing with the contention that "prior permission" of renewal, was a condition precedent and in the absence of prior permission, appellant would not be entitled to the benefit of notification, held that the said

4 (1991) 83 STC 234

stand taken by the Revenue is wholly technical and that merely because a benefit / exemption was subject to a condition, it may still be necessary for the Courts to examine if the above condition is procedural in nature or substantive or fundamental to exemption. It was also observed that Courts must be conscious of the distinction between procedural and technical conditions on the one hand and conditions which are substantive and necessary to attain the objectives of the policy. Apex Court found that though the expression used is *"prior permission"*, nevertheless permission was being withheld due to inter-departmental issues and the inaction or the delay in issuing prior permission by department cannot be a reason for denying appellant the benefit of exemption. Relevant portion of the judgment reads as under:

> *"22. Such is not the scope or intendment of the provisions concerned here. The main exemption is under the 1969 notification. The subsequent notification which contains condition of prior permission clearly envisages a procedure to give effect to the exemption. A distinction between the provisions of statute which are of substantive character and were built in with certain specific objectives of policy on the one hand and those which are merely procedural and technical in their nature on the other must be kept clearly distinguished. What we have here is a pure technicality. Clause 3 of the notification leaves no discretion to the Deputy Commissioner to refuse the permission if the conditions are satisfied. The words are that he "will grant". There is no dispute that appellant had satisfied these conditions. Yet the permission was withheld — not for any valid and substantial reason but owing to certain extraneous things concerning some inter-departmental issues. Appellant*

had nothing to do with those issues. Appellant is now told, "We are sorry. We should have given you the permission. But now that the period is over, nothing can be done". The answer to this is in the words of Lord Denning: [See Wells v. Minister of Housing and Local Government, (1967) 1 WLR 1000, 1007 : (1967) 2 All ER 1041] "Now I know that a public authority cannot be estopped from doing its public duty, but I do think it can be estopped from relying on a technicality and this is a technicality".

23. Francis Bennion in his Statutory Interpretation, (1984 edn.) says at page 683:

"Unnecessary technicality: Modern courts seek to cut down technicalities attendant upon a statutory procedure where these cannot be shown to be necessary to the fulfilment of the purposes of the legislation.

...

25. It appears to us that the view taken of the matter by the High Court does not acknowledge the essential distinction between what was a matter of form and what was one of substance. There was no other disentitling circumstance which would justify the refusal of the permission. Appellant did not have prior permission because it was withheld by the Revenue without any justification. The High Court took the view that after the period to which the adjustment related had expired no permission could at all be granted. A permission of this nature was a technical requirement and could be issued making it operative from the time it was applied for."

(emphasis supplied)

c) Object to promote export – Construction to further the objective and not defeat the object ought to be adopted :

7.6. It is well-settled that export of goods is in public interest as valuable foreign exchange is earned. The intention behind grant of

exemption vide notification No. 153 of 93, was to encourage export so as to earn foreign exchange. The legislative intent being to extend the benefit to persons who bring in foreign exchange, it is incumbent on the Revenue to ensure that the construction placed on such instruments be it legislative, delegated or subordinate must be to promote the above objective and not to rely upon technicalities which would frustrate the object. In this regard, it may relevant to refer to the following judgments:

i) CIT v. Punjab Stainless Steel Industries[5] :

> *"19. ..... the Government wanted to encourage businessmen, traders and manufacturers to increase the export so as to bring more foreign exchange in our country. If the purpose is to bring more foreign exchange and to encourage export, we are of the view that the legislature would surely like to give more benefit to persons who are making an effort to help our nation in the process of bringing more foreign exchange. If a trader or a manufacturer is trying his best to increase his exports, even at the cost of his business in a local market, we are sure that the Government would like to encourage such a person. In our opinion, once the Government decides to give some benefit to someone who is helping the nation in bringing foreign exchange, the Revenue should also make all possible efforts to encourage such traders or manufacturers by giving such business units more benefits as contemplated under the provisions of law."*
>
> *(emphasis supplied)*

ii) Sandoz (P) Ltd. v. Union of India[6] :

> *"29. The authorities propounding the FTP were*

5 *(2014) 15 SCC 129*
6 *(2022) 16 SCC 176*

obviously conscious of the purport of the provisions of the 1944 Act and the Rules framed thereunder. Despite that, the subject policy had been propounded with the sole objective of promoting exports and earning foreign exchange. At the relevant time, the goal set forth by the policy makers was to achieve the target of at least one per cent of the global trade by promoting exports. It is thus clear that the concessions or so to say, benefits and entitlements provided under the FTP cannot be constricted by the provisions of the taxing statute of 1944 and the rules framed thereunder. To put it tersely, the dispensation provided under the 1992 Act and the FTP must operate independently and is thus mutually exclusive in this regard. Taking any other view would be counter-productive and whittle down the intent behind formulation of a liberal FTP for promoting exports."

(emphasis supplied)

d) Doctrine of Substantial Compliance:

7.7. We have already found appellant had applied for permission to import the goods in question and the same was also approved by IMSC subject to approval by CMDA. Appellant had applied to CMDA as early as on 21.05.2005. Appellant imported Telematic Infrastructural Equipment. Imports were used for export of Software out of India in terms of Software Technology Park 100% Export Oriented Scheme. In other words, goods imported were used for purposes mentioned in the notification. Value of import was within monetary limit mentioned in communication dated 22.06.2005 and 29.11.2005 of 1st respondent. Appellant in our view has substantially complied with the requirement/conditions to claim the benefit of exemption on imported

goods in terms of notification No.153/93. In the circumstances we find applying the *"doctrine of substantial compliance",* to the facts of the case, the denial of exemption is unjustified. In this regard, it may be relevant to refer to the Constitution Bench judgment of the Hon'ble Supreme Court in ***Commissioner of Customs (Import), Mumbai vs. Dilip Kumar and Company and Others***[7], wherein the above doctrine was explained as under:

> *Doctrine of substantial compliance and "intended use"*
>
> *"32. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means 'actual compliance in respect to the substance essential*

7 (2018) 9 SCC 1

to every reasonable objective of the statute' and the Court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.

33. A fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance with an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.

34. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are

given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance with those factors which are considered as essential."

8. For all the above reasons, the writ appeal stands allowed and the order of the learned Single Judge is quashed and set aside. Consequently, the order dated 12.12.2018/14.12.2018 impugned in the writ petition is also quashed. Appellant is entitled for return of the bank guarantee which has been furnished.

9. Ms.Radhika Chandra Sekhar states that a connected writ petition, viz., W.P.No.6981 of 2020, is pending before the learned Single Judge where appellant had impugned the invocation of the bank guarantee connected with the same import. Ms.Radhika requests that in view of the finding given by this Court in this writ appeal, the learned Single Judge may be requested to take up the said writ petition expeditiously. Appellant may make a request to the learned Single Judge, who may consider the same as he deems fit.

There shall be no order as to costs. Consequently, the interim application stands closed.

(K.R.SHRIRAM, CJ.) **(MOHAMMED SHAFFIQ, J.)**

15.04.2025

Index : Yes/No
Neutral Citation : Yes/No

sra/pam

To

1. The Secretary,
   Union of India,
   Ministry of Communication Technolocy
   Department of Information & Technology,
   No.6, CGO Complex, Lodhi Road,
   New Delhi 110 003.

2. M/s.Software Technology Park of India,
   No.22/2, I Floor, Sardar Patel Road,
   Adyar, Chennai 600 029.

3. The Assistant Commisssioner of Customs (EOU),
   I Floor, Custom House, No.60, Rajaji Salai,
   Chennai 600 001.

4. The Assistant Registrar,
   Writ Section,
   Madras High Court, Chennai.

The Hon'ble Chief Justice
and
Mohammed Shaffiq, J.

sra/pam

W.A.No.955 of 2020

15.04.2025