2026:GUJHC:20119-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO.1106 of 2011

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

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Approved for Reporting	Yes	No
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ATLAS DYE CHEM INDUSTRIES
Versus
UNION OF INDIA THRO. SECRETARY, MINISTRY OF & ORS.

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Appearance:
MR MIHIR H PATHAK(5261) for the Appellant(s) No. 1
MR CB GUPTA(1685) for the Opponent(s) No. 2,3
RULE SERVED for the Opponent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI
Date : 11/03/2026
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Heard learned advocate Mr. Mihir Pathak for the appellant and learned Senior Standing Counsel Mr. Maunil Yajnik for learned Senior Standing Counsel Mr. C.B. Gupta for the respondents.

2. By the order dated 27.08.2012, the Coordinate Bench of this Court had formulated the following substantial questions of law:-

> *"1. Whether the Tribunal is justified in confirming the demand of duty under Order-in-Original in view of the fact that the "High Performance Liquid Chromatograph Machines" was installed in the Laboratory attached to the factory of the Appellant itself, and though vide letter dated 18.1.2002 the conditions of licence was regularised by the Director General of Foreign Trade, Ahmedabad, subsequent to earlier communication dated 9.2.1999?*
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> *2. Whether the Tribunal is justified in confirming the demand of differential duty in view of the fact that the condition no.6 of the notification dated 5.6.1995 has been amended by the Central Government widening the scope of the word "Factory" in subsequent*

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notification dated 30.6.1998 and regularised the condition no.6 in the Notification no.110 of 1995 dated 5.6.1995 ?

3. Whether the Tribunal is justified in coming to a finding that the Director General of Foreign Trade is not the proper authority to examine the availability of the customs notification and the same is the job of the customs officer and the DGFT authority cannot dilute the conditions of the Customs Notification. Therefore, whether the Tribunal is justified in holding that installation of machines at the laboratory amounts to breach of Condition no.6 of the Import Licence ?"

3. In the present Tax Appeal, the case of the respective parties hinges on two notifications viz (1) Notification No. 110/95-Cus dated 05.06.1995 and (2) Notification No. 42/98-Cus dated 30.06.1998. The present Tax Appeal emanates from the judgment and order dated 06.12.2007 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad (for short "CESTAT") in Customs Appeal No. C/ 27/2004 and the order dated 17.03.2008 passed in Rectification Application No. 62 of 2008.

4. The facts as recorded by the CESTAT in the judgment and order dated 06.12.2007 are not in dispute. The appellant was Export Promotion of Capital Goods (EPCG) license holder bearing no. 2053335 dated 21.06.1995. The license was issued for import of HPCL Pumps and accessories of Chromatograph at the address of the appellant. The imported goods covered by the said EPCG License were cleared by filing Bill of Entry No. 2610 of 1995 and Bill of Entry No. 2611 of 1995 dated 22.07.1995. The goods were allowed clearance with the benefit of the partial duty exemption under Notification No. 110/95-Cus dated 05.06.1995. The appellant duly discharged its export obligation under the said license. The appellant installed the imported testing equipment at the testing laboratory at their address 'Near Grid Station, Industrial Area, Odhav, Ahmedabad 382415'. The installation of the imported goods at the testing laboratory was duly certified by the Assistant Commissioner of the Central Excise vide letter dated 09.02.1995.

4.1. Thereafter, the Assistant Commissioner of Customs, Ahmedabad issued a show cause notice dated 26.05.1999 requiring the appellant to show cause as to why duty along with interest totaling to Rs.4,93,883/- should not be recovered from the appellant on the ground that the imported goods were installed at the testing laboratory and they were not installed at the factory premises of the importer as per condition no. 6 of Notification No. 110/95-Cus dated 05.06.1995. The appellant replied to the said show cause notice vide reply dated 29.06.1999. However, the Deputy Commissioner of Customs vide order dated 24.11.1999 confirmed the demand for duty and interest totalling to Rs.4,93,883/-.

4.2. Being aggrieved by the said order, the appellant preferred an appeal before the Commissioner of Income Tax (Appeals), Ahmedabad (for short "CIT (Appeals") and by order dated 27.08.2001, the CIT (Appeals) directed the appellant to deposit the entire amount of duty and interest. Subsequently an application was filed by the appellant seeking modification of the said order. The Superintendent (Appeals) refused to modify the order and accordingly, the department recovered the amount of Rs.1,32,000/- by encashment of the bank guarantee which was furnished by the appellant towards the goods of the appellant without giving them any hearing in the matter. The CIT (Appeals) vide order dated 28.12.2001 rejected the appeal filed by the appellant. Thereafter, the licensing authority vide order dated 18.01.2002 regularized the installation of the imported goods at the address where it was installed.

4.3. The appellant thereafter preferred an appeal against the order dated 28.12.2001 before the CESTAT, which set aside the order of the CIT (Appeals) and remanded the matter back to decide the same on merits. It appears that while remanding the matter, the CESTAT recorded about the letter dated 18.01.2002 of the licensing authority whereby it has regularized the installation of the imported goods.

4.4. Upon matter being remanded, the CIT (Appeals) appears to have done physical verification at the place of installation of the imported goods and it was confirmed that the goods were installed at the testing laboratory at the address mentioned in the letter dated 18.01.2002. However, the CIT (Appeals) vide order dated 15.10.2003 rejected the appeal. The CIT (Appeals) while making such observations had also recorded that Notification No.110/95/-Cus dated 05.06.1995 did not include the words "premises' in condition no. 6 at the relevant point of time. Hence, no benefit of such notification was required to be extended to the petitioner and the amendment cannot be applied retrospectively to the Bills of Entry issued in the year 1995.

4.5. The said order was challenged by the appellant before the CESTAT by filing Appeal (C) No. 27 of 2004 which came to be dismissed vide judgment and order dated 06.12.2007. The Rectification Application No. 62 of 2008 filed by the appellant was also rejected vide order dated 17.03.2008. Hence, the present Tax Appeal is filed under Section 130A of the Customs Act,1962.

5. Learned advocate Mr. Mihir Pathak appearing for the appellant at the outset has submitted that both the forums being CIT (Appeals) as well as CESTAT have fell in error in construing the Notification No. 42/98-Cus dated 30.06.1998 being prospective in nature. He has submitted that the entire case of the respondent Department as conveyed in the show cause notice dated 26.05.1999 is that the petitioner did not installed the imported goods in its factory, but had installed the same in the testing laboratory which is in violation of condition no. 6 of the Notification No. 110/95-Cus dated 05.06.1995, which has been subsequently amended by Notification No. 42/98-Cus dated 30.06.1998 and hence reliance placed on condition no. 6 of Notification No. 110/95-Cus dated 05.06.1995 is misconceived.

5.1. In support of his submission, he has placed reliance on the decision of the Apex Court in the case of *Government of India v. Indian Tobacco Association 2005 AIR SC 3685*. It is submitted that the Installation Certificate dated 09.02.1999 was also issued by the competent authority certifying that the imported machinery has been installed at the testing laboratory situated at the registered premises and not at the registered factory premises. It is submitted that even the installation of the imported machinery at the testing laboratory situated at the registered premises is not in dispute and hence in view of the amendment in the original Notification No.110/95-Cus dated 05.06.1995, the case of the petitioner will get encompass and hence the petitioner is entitled for full duty exemption.

6. Opposing the aforesaid submissions, learned Senior Standing Counsel Mr. Maunil Yajnik appearing for learned Senior Standing Counsel Mr. C.B. Gupta for the respondent has submitted that since there are concurrent findings, it is urged that the Court may not interfere with, more particularly, in wake of the fact that the petitioner has violated condition no. 6 of the Notification No. 110/95-Cus dated 05.06.1995. It is submitted that the petitioner was supposed to install the goods in the factory premises and instead he had installed the same at the testing laboratory which is not in the registered factory premises. Thereafter, the competent authority had issued show cause notice dated 26.05.1999 calling upon the petitioner as to why duty amounting to Rs.4,93,883/- shall not be confirmed and collected. It is contended that the Bills of Entry is dated 22.07.1995 and Notification No. 110/95-Cus is dated 05.06.1995 and pursuant to it the petitioner installed the goods in his factory premises. It is submitted and as precisely held by the CIT (Appeals) and as confirmed by the CESTAT, Notification No.42/98-Cus dated 30.06.1998 would have a prospective effect and the same cannot be applied to the Bills of Entry of 1995. Thus, it is urged that the judgment and order passed by the CESTAT confirmed by the CIT (Appeals) may not be interfered with.

7. We have heard the learned counsel appearing for the respective parties at length. We have also perused the records and proceedings. The facts which are established from the record are that the appellant imported machinery vide Bills of Entry Nos. 2610 of 1995 and 2611 of 1995 dated 22.07.1995. The said machinery/goods were allowed clearance against the EPCG scheme and as per Notification no. 110/95-Cus dated 05.06.1995. The petitioner accordingly installed the machinery at its testing laboratory. The installation certificate dated 09.02.1999 was issued by the competent authority which reads as under :

> *"Sub :- Installation Certificate Import under EPCG Scheme.*
>
> *Matter Regarding.*
>
> *xx -xx -xx*
>
> *Please refer to your letter No. file/96-97 dated 13.11.96 and further letter of even number dated 01.02.1999. Please also re fer the personal hearing held on 08.02.1999 before the undersigned by Shri Aviram Keshava Executive (Export-Import) of your factory.*
>
> *In this context as reported by Range Supdt., it may be informed that the imported machinery under Bill of Entry No. 2610/95 and 2611/95 both dated 22.07.95 was installed at their services premises i.e. test laboratories situated at their registered premises at M/s. Atlas Dey Chem Industries, near Grid Station, G.I.D.C. Industrial Estate, Odhav Road, Ahmedabad and not at the registered factory premises situated at Gujarat Vepari Maha Mandal Odhav, Ahmedabad. The letter is issued as requested by the importer-manufacturer.*
>
> *Yours faithfully,*
>
> *sd/-"*

8. Thus, as per the said certificate, it is evident that the imported machinery was installed at the service premises of the petitioner i.e. at the testing laboratory situated at the registered premises and not at the registered factory premises. Accordingly, the show case notice dated 26.05.1999 was issued to the petitioner calling upon him to show cause as to why duty amounting to Rs.4,93,883/- should not be confirmed and collected. The said show cause notice ultimately culminated into impugned

orders as mentioned herein-above. The case of the respective parties hinges only on two notifications as mentioned herein-above i.e. Notification No.110/95 dated 05.06.1995 and Notification No.42/98-Cus dated 30.06.1998, more particularly Condition no.6 of the Notification No.110/95/Cus dated 05.06.1995 reads as under :-

> *"(6) The capital goods imported, assembled or manufactured are installed in the importer's factory and a certificate from the jurisdictional Assistant Commissioner of Central Excise is produced within six months from the date of completion of imports or within such extended period as the said Assistant Commissioner of Customs may allow."*

9. Thus, as per the issuance of the Notification No.110/95-Cus dated 05.06.1995 the petitioner was supposed to install the machinery in importer's factory i.e., at its factory which the petitioner did not do so. However, subsequently the said notification has been amended vide Notification No. 42/98/Cus dated 30.06.1998 and the amended condition no. 6 reads as under :

> *1. Notification No. 110/95-Cus dated 06.06.1995 - In the said notification, for condition (6), the following shall be substituted, namely :-*
>
> *"(6) The capital goods imported, assembled or manufacture are installed in the importer's factory or premises and a certificate from the jurisdictional Assistant Commissioner of Central Excise or independent Chartered Engineer, as the case may be, is produced confirming installation and use of capital goods in the importer's factory or premises, within six months from the date of completion of imports or within such extended period as the said Assistant Commissioner of Customs may allow."*

10. Thus, as per the amended condition no. 6 vide Notification No. 42/98-Cus dated 30.06.1998, the word 'premises' has been added and the notification specifically incorporates that "in the said notification for condition no. 6, the following shall be substituted". Thus, the condition no.6 of Notification No.110/95-Cus dated 05.06.1995 has been "substituted" and the additional words "to the importer's factory" has

been added i.e. by adding words ‘ or premises’. Thus, the venue or the place of installation has been substituted by adding words ‘or premises’. It is not in dispute that the machinery which was imported has been installed at the relevant point of time in the premises which did not find place in the original Notification No. 110/95-Cus dated 06.06.1995, but has been added or substituted in the Notification No. 42/98-Cus dated 30.06.1998.

11. The issue which calls for deliberation is that whether the petitioner can be granted the benefit of the amended/substituted condition no. 6 introduced vide Notification No. 42/98-Cus dated 30.06.1998 with retrospective effect or not. At this stage we may refer to the relevant observations of the decision of the Apex Court in the case of ***Indian Tobacco Association (supra)*** which had examined the effect of the amendment by substitution of the words has held as under :

> *“22. Had the intention of the Government of India been only to extend the said benefit only to the exporters from any other seaport, airport or inland container depot, recourse to the proviso appended to sub-clause (iv) of clause (2) of the notification dated 7.4.1997 could have been taken. But by reason of the notification dated 27.11.1997, one 'sea port' and 'six inland container depots' have been added. The last two words in the category of seaport, namely, "Tuticorin and Vishakhapatnam" had been substituted by the words "Tuticorin, Vishakhapatnam and Kakinada. Similarly the last two words, namely, Ludhiana and Hyderabad" in the category of inland container depot had been substituted by the words "Ludhiana, Hyderabad, Nagpur, Agra, Faridabad, Jaipur, Guntur and Varanasi. It, therefore, cannot be said to be a case where some other seaports or inland container depots have been added for the purpose of extension of the benefit but the newly added seaports or inland container depots had been made a part of the original notification. The Union of India while making a subordinate legislation had advisedly used the word "substitution" in place of the word "addition". The object and purport of the subsequent notification issued by the Union of India was, thus, to grant the same benefit which had been granted to the exporters who were registered at the other seaports, airports or inland container depots as specified in the notification dated 7.4.1997 but also to those exporters, who had been exporting from such seaports or inland depots as specified in the amended notification dated 27.11.1997.*
>
> *23. If the Central Government intended to extend the benefit to the members of the Respondent-Association only with prospective effect, it could have said so explicitly. Such a benefit could also have been extended by taking recourse to the proviso appended to sub-clause (iv) of clause (2)*

of the notification dated 7.4.1997. It may, therefore, be safely concluded that by reason of the amended notification, the Central Government only intended to rectify a mistake and, thus, the same will have retrospective effect and retroactive operation.

24. In Ramkanali Colliery of BCCL vs. Workmen by Secy., Rashtriya Colliery Mazdoor Sangh and Another [(2001) 4 SCC 236], a Division Bench of this Court observed :

> *".....What we are concerned with in the present case is the effect of the expression "substituted" used in the context of deletion of sub-sections of Section 14, as was originally enacted. In Bhagat Ram Sharma vs. Union of India, this Court stated that it is a matter of legislative practice to provide while enacting an amending law, that an existing provision shall be deleted and a new provision substituted. If there is both repeal and introduction of another provision in place thereof by a single exercise, the expression "substituted" is used. Such deletion has the effect of the repeal of the existing provision and also provides for introduction of a new provision. In our view there is thus no real distinction between repeal and amendment or substitution in such cases. If that aspect is borne in mind,we have to apply the usual principles of finding out the rights of the parties flowing from an amendment of a provision. If there is a vested right and that right is to be taken away, necessarily the law will have to be retrospective in effect and if such a law retrospectively takes away such a right, it can no longer be contended that the right should be enforced. However, that legal position, in the present case, does not affect the rights of the parties as such."*

25. In Zile Singh vs. State of Haryana & Ors. [(2004) 8 SCC 1] wherein the effect of an amendment in the Haryana Municipal Act, 1973 by Act No.15 of 1994 whereby the word "after" was substituted by the word "upto" fell for consideration; wherein Lahoti, C.J. speaking for a three-Judge Bench held the said amendment to have a retrospective effect being declaratory in nature as thereby obvious absurdity occurring in the first amendment and bring the same in conformity with what the legislature really intended to provide was removed, stating :

> *"23. The text of Section 2 of the Second Amendment Act provides for the word "upto"being substituted for the word "after". What is the meaning and effect of the expression employed therein - "shall be substituted"?*
>
> *24. The substitution of one text for the other pre- existing text is one of the known and well-recognised practices employed in legislative drafting. 'Substitution' has to be distinguished from 'supersession' or a mere repeal of an existing provision.*
>
> *25. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (See Principles of Statutory Interpretation, ibid, p.565). If any authority is needed in support of the proposition, it is to be found in West U.P. Sugar Mills Assn. v. State of U.P., State of Rajasthan v. Mangilal Pindwal,*

Koteswar Vittal Kamath v. K. Rangappa Baliga and Co. and A.L.V.R.S.T. Veerappa Chettiar v. S. Michael. In West U.P. Sugar Mills Association case a three-Judges Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centring around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In Mangilal Pindwal case this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In Koteswar case a three-Judge Bench of this Court emphasized the distinction between 'supersession' of a rule arid 'substitution' of a rule and held that the process of substitution consists of two steps : first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place."

26. We are not oblivious of the fact that in certain situations, the court having regard to the purport and object sought to be achieved by the legislature may construe the word "substitution" as an "amendment" having a prospective effect but such a question does not arise in the instant case.

29. The question has furthermore to be considered having regard to the language and object discernible from the statute read as a whole. The Respondents were not ineligible from obtaining the benefit. Once they are held to be eligible for obtaining the benefit, the amended notification being an exemption notification should receive the beneficent construction."

11. Applying the legal precedent as enunciated by the Apex Court in the aforesaid decision to the present case, it is not in dispute that the Notification No. 110/95-Cus dated 05.06.1995 has been issued for granting the benefits to the importers by substituting the condition no. 6 and adding words 'or premises'. Thus the intention of the legislature was to grant the benefit by the adding words 'or premises' to the Notification No. 110/95-Cus dated 05.06.1995 by the Notification No. 42/98-Cus dated 30.06.1998. Thus, the benefit which ought to have been granted or has accrued in favour of the importers at the relevant time in the present case in the year 1995, but was not extended only for the absence of the word 'premises' is sought to be subsequently extended by substituting the words 'importer's factory' or 'premises' vide Notification No. 42/98-Cus dated 30.06.1998. The intention of the legislature does not appear to be that the benefit

accruing from the Notification No.42/98-Cus dated 30.06.1998 would only be prospective in nature as the notification nowhere mentions that the same will apply prospectively only.

12. Thus, as held by the Apex Court in the aforesaid decision once the party is held eligible for obtaining the benefits of the amended notification being an exemption notification it should receive beneficial construction and it would be highly unfair if the benefit to such importer is taken away and if that be so, the intention of the statute would have been expressly worded that it has to be given only a prospective effect. The Apex Court has categorically held that where a statute is passed for the purpose of supplying an obvious omission in a former statute, the subsequent statute relates back to the time when prior Act was passed. Thus, it appears that there was a clear omission in the Notification No. 110/95-Cus dated 05.06.1995 by not introducing the word 'premises', but the same has been introduced and substituted in condition no.6. Hence, we are of the opinion that the CIT (Appeals) as well as CESTAT have fell in error in applying the settled legal precedent and construing the Notification No. 42/98-Cus dated 30.06.1998 having only prospective effect.

13. There is another aspect which requires to be examined and addressed by us is that the show cause notice dated 26.05.1999 has been in fact issued after the Notification No. 42/98-Cus dated 30.06.1998 wherein condition no. 6 is substituted and the word 'premises' has been introduced. While issuing show cause notice, the competent authority has only placed reliance on condition no. 6 of Notification no. 110/95-Cus dated 05.06.1995, but has conveniently ignored the Notification No. 42/98-Cus dated 30.06.1998 while issuing show cause notice dated 26.05.1999. While issuing show cause notice dated 26.05.1999, the competent authority was also required to consider the effect of Notification No. 42/98-Cus dated 30.06.1998.

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14. Thus, on an oral analysis of the facts and legal precedent, we are of the opinion that the CIT (Appeals) as well as the CESTAT have committed patent illegality and hence the substantial questions of law are answered in favour of the appellant and against the Revenue. The impugned judgment and order passed by the CESTAT along with the order passed by the CIT (Appeals) are hereby quashed and set aside. The respondent is directed accordingly to extend the benefit arising from the Notification no. 110/95-Cus dated 05.06.1995 to the appellant. We further direct that the benefits arising from the notification shall be paid to the petitioner and the consequential benefit arising from setting aside of the order of the CESTAT as well as confirmed by CIT (Appeals) shall be paid to the petitioner within a period of ***12 weeks*** from the date of receipt of copy of this order.

15. The Tax Appeal stands allowed accordingly.

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI,J)

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