2025 INSC 755

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos. OF 2025
[Arising out of SLP (C) Nos. 26178-79 OF 2016]

M/S SURAJ IMPEX (INDIA) PVT. LTD. …. APPELLANT

VERSUS

UNION OF INDIA & ORS. ….RESPONDENTS

J U D G M E N T

SATISH CHANDRA SHARMA, J.

1. Leave granted.

2. The captioned Appeal is directed against the Judgment and Order dated 17.11.2014 passed by the High Court of Madhya Pradesh at Indore in Writ Petition No. 2576/2012 whereby the applicability of the Customs Circular No. 35/2010-Cus. dated 17.09.2010 for the purposes of All Industry Rate (AIR) Duty Drawbacks was observed to be prospective in nature. Review Petition bearing RP No. 1/2015 arising therefrom was dismissed by the High Court vide Order dt. 01.04.2016 at the very threshold

stating that there was no error apparent on the face of the record. Aggrieved, the Appellant has assailed the observations of the High Court thereunder, by way of the present Appeal.

Factual Background

3. The factual conspectus of the captioned case is such that the Appellant, M/s Suraj Impex (India) Pvt. Ltd., primarily engaged in the operations of export of Soyabean Meal, an agricultural-commodity falling under Chapter 23[1] of the Custom Tariff Act, 1975, asserts that as a merchant exporter, the entity is entitled to claim duty drawbacks at All-Industry Rate ("**AIR**") introduced by the Customs Notification No. 81/2006 dt. 13.07.2006 and continued vide annual Notification Nos. 68/2007 dt. 16.07.2007, No. 103/2008 dt. 29.08.2008, No. 84/2010 dt. 17.09.2010. Clause 5 of the Notification no. 81/2006 & 68/2007 and Clause 6 of Notification No. 103/2008 and 84/2010 respectively, are identically worded and state as under:

> *"The figures shown under the drawback rate and drawback cap appearing below the column "Drawback when Cenvat facility has not been availed" refer to the total drawback (customs, central excise and service tax component put together) allowable and those appearing under the*

[1] *First Schedule to the Customs Tariff Act, 1975 - Chapter 23: Residues and waste from the food industries; prepared animal fodder—*

> *column "Drawback when Cenvat facility has been availed" refer to the drawback allowable under the customs component. The difference between the two columns refers to the central excise and service tax component of drawback. If the rate indicated is the same in both the columns, it shall mean that the same pertains to only customs component and is available irrespective of whether the exporter has availed of Cenvat or not."*

4. The Schedule[2] permits **1%** AIR duty drawback on the export of SBM, on both occasions whether the CENVAT Facility (collective component of *customs, central excise and service)* was availed or not. The Appellant regularly received the benefit of the 1% AIR duty drawback up till 2008, when the Director General of Central Excise, ["**DGCEI**"] Indore, Respondent no. 4 herein framed an opinion that the manufacturers/exporters were not entitled to the said AIR drawback, if they had already availed the rebate of central excise duty under Rule 18 or Rule 19(2) of the Central Excise Rules, 2002. The Respondent no. 3 hence withheld the release of the duty drawback to the Appellant and such similarly placed merchant exporters, who then approached the Directorate of Drawback and the Central Board of Excise and Customs, New Delhi vide Representation dt. 13.12.2011 filed on behalf of Federation of Indian Export Organizations, urging that

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[2] *First Schedule to the Customs Tariff Act, 1975—Chapter 23--Column 4 & 6 indicate the Drawback Rate as 1% for both instances whether Cenvat facility is availed or not.*

the drawback on SBM Export was the customs component, whereas the benefit under Rule 18 and Rule 19(2) of the Central Excise Rules, 2002 was towards the central excise portion, which are distinct in nature. It was mentioned thereunder that the "*CBEC had itself fixed this rate uniformly at 1 % for exporters whether the CENVAT facility has been availed or has not been availed because the rate is based on the Customs component of the duty incidence and the CENVAT facility has no bearing on the rebate of Customs Duty."*

5. Eventually, the CBEC issued the Clarificatory Circular No. 35/2010-Cus. dt. 17.09.2010, the bone of contention herein, wherein it was stated that the AIR duty drawback towards the customs portion as well as excise duty benefit under Rule 18 or Rule 19(2) of the Central Excise Rules, 2002 shall be available simultaneously. It is urged by the Appellant that while all previous Notifications introduced the benefit of rate of drawback on the free on board (FOB) Value or on the rate per unit quantity of the export goods, Circular No. 35/2010-Cus. dt. 17.09.2010 made it clear that exporters shall be entitled to the custom duties which remained unrebated through the AIR drawback route, clarifying the applicability and operation of previously issued Circulars by the CBEC. *Per contra*, the Respondents have submitted that the Circular No. 35/2010-Cus. does not have a retrospective effect, and expressly states that the same has been made effective from

20.09.2010. The relevant portion of the CBEC Notification No. 35/2010 dt. 17.09.2010 is reproduced herein as under:

> *"The Ministry has announced the revised All Industry Rates (AIR) of Duty Drawback vide Notification No. 84/2010-Cus. (N.T) dated 17.09.2010. The rates of drawback have been made effective from 20.09.2010.*
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> *xxx xxxxxx xxxxxxxxx xxxxxxx*
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> *xxx xxxxxx xxxxxxxxx xxxxxxx*
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> *(vi) Miscellaneous*
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> *xxx xxxxxx xxxxxxxxx xxxxxxx*
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> *xxx xxxxxx xxxxxxxxx xxxxxxx*
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> *(d) The earlier notification (No. 103/2008 Cus. NT dt. 29.08.2008 as amended) provided that the rates of drawback in the Drawback Schedule would not be applicable to products manufactured or exported by availing the rebate of Central Excise duty paid on materials used in the manufacture of export goods in terms of Rule 18 of the Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise Duty under Rule 19(2) of the Central Excise Rules, 2002. References have been received that exporters are being denied 1% of drawback, which is the customs component of the AIR drawback, on the basis of the above*

condition although the manufacturers had taken only the rebate of Central Excise duties in respect of their inputs/procured the inputs without payment of central excise duties; and the Customs duties which remained unrebated should be provided thorough the AIR drawback route."

The issue has been examined. The present Notification no. 84/2020-Cus.(NT) dated 17.09.2010 provides that customs component of AIR drawback shall be available even if the rebate of Central Excise duty paid on raw material used in the manufacture of export goods has been taken in terms of Rule 18 of the Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise Duty under Rule 19(2) of the Central Excise Rules, 2002."

6. The Appellant had approached the Commissioner (Customs) Kandla seeking disbursement of AIR Duty Drawback prior to 17.09.2010, who denied the said benefit stating that the effect of the Circular was not retrospective but prospective in nature, and the benefits will only be applicable once the circular is in operation, i.e. from 20.09.2010. *Vide* Communication dt. 04.01.2012, the CBEC (Drawback Division) also reiterated that the Notification No. 84/2010-Customs (N.T.) dated 17.09.2010 was made effective from 20.09.2010 and since the words are clear and have prospective effect, the request for applicability of the same retrospectively does not arise. The Appellant thus filed Writ Petition No. 2576/2012 challenging Letter dt. 04.01.2012 issued by the CBEC, seeking the following relief:

(i) *Allow this petition with costs;*

(ii) *By a suitable writ, direction or order it may be declared that circular No.35/2010 Cus. dated 17.09.2010 has retrospective effect.*

(iii) *Grant such other relief which this Hon'ble Court deems fit in the facts and circumstances of the case in favour. of the Petitioners*

7. The stand of the Respondents before the High Court remained unwavering that since the Circular No. 35/2010-Cus. dt. 17.09.2010 very categorically mentioned the effective date as 20.09.2010, which is clear and prospective in nature, the question of giving retrospective effect to a statute does not arise. It was argued that the benefit of the Notification could not be extended to the Appellant as the final product was exempted from payment of duty and did not come within the domain of CENVAT Scheme, and rather was covered under clause 8(e) & (f) of the Notification No. 103/2008 whereby the benefit under Rule 19(2) of Central Excise Rules, 2002 had already been availed by the Appellant for the manufacture of the goods. It was argued that the contention of the Appellant that the drawbacks of more than Rs. 11 crores had been withheld was incorrect, as the same was legally inadmissible.

8. The High Court relying upon this assertion of the Respondents dismissed the Writ Petition no. 2576/2012 stating

that the Notification dt. 17.09.2010 was not merely to clarify the position or make explicit, an implicit issue in previous notifications and would not be applicable retrospectively as it clearly mentions that the same shall be effective from 20.09.2010. The Review Petition No. 1/2015 filed by the Appellant was also dismissed *in limine*, vide Order dt. 01.04.2016.

Submissions

9. It has been argued on behalf of the Appellant that the Circular No. 35/2010-Cus. Dt. 17.09.2010 was a clarificatory & benevolent circular issued with reference to the previous Notifications issued by the CBEC for the purposes of availing the benefit of the customs component of AIR duty drawback on the export of Soyabean Meal & De-Oiled Cake. The Clarificatory Circular dt. 17.09.2010 which adopted the same language as the previous Notifications for years 2006 to 2010, was intended to have a uniform interpretation for the purpose of all recovery proceedings *qua* duty drawbacks payable from 2006 to 2010. It is averred that the Department has accorded an erroneous interpretation to Clauses 7(e) & (f) of the Custom Notification No. 81/2006 & Notification No. 68/2007 and similar provisions contained in Clause 8 of the Notification No. 103/2008; which pertain to the export of commodities which are either manufactured or exported by availing rebate of duty paid on

materials at the time of processing the product in terms of Rule 18(2) and Rule 19 of the Custom Excise Rules, 2002. The Appellant has placed reliance on decisions by the Commissioner (Appeals) *qua* the application of the same Circular No. 35/2010-Cus. Dt. 17.09.2010, observing that the said CBEC Circular which gives a clarification to the existing law/provisions of Notification, would apply equally to any law/notifications issued earlier[3] and there would not be any double benefit in case an exporter having availed the central excise duty and claims drawback of the customs portion.[4] The Appellant asserts that a beneficial Circular has to be applied retrospectively, while an oppressive circular has to be applied prospectively. [5]

10. *Per contra*, it is argued by the Respondents that the said Circular No. 35/2010-Cus. dt. 17.09.2010 categorically states in the first paragraph that "*the rates of drawback have been made effective from 20.09.2010*" and hence can in no manner be given a retrospective operation. It is stated that Circular No. 35/2010-Cus. dt. 17.09.2010 is an explanation to the Notification No. 84/2010 dt. 17.09.2010 which re-iterates that the Notification as well as the Circular are prospective in nature.

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[3] *Pradeep Overseas Ltd Ahmedabad & Ors. vide OIA F No. S/49-48, 49 & 54/CUS/JMN/2012 dt. 14.09.2012.*
[4] *Ruchi Soya Industries & Ors. vide OIA No. 01 to 06/Commr(A)/JMN/2013 dt. 17.01.2013.*
[5] *Commissioner of Central Excise, Bangalore Vs Mysore Electricals Industries Ltd. [2006] 12 SCC 448.*

11. It was argued on behalf of the Respondents that not all beneficial legislations are necessarily retrospective in nature, referring to the decision in **Shyam Sunder Vs Ram Kumar**[6] whereby it was held that though the amending Act is a beneficial legislation meant for the general benefit of citizens but there is no such rule of construction that a beneficial legislation is always retrospective in operation, even though such legislation either expressly or by necessary intendment is not made retrospective.

Discussion & Analysis

12. We have heard Sh. Arvind Datar, learned Senior Counsel for the Appellant firm and learned counsel for the Respondents at length, and have perused the record. The matter calls for the determination as to whether the Circular No. 35/2010-Cus. Dt. 17.09.2010 for the purposes of claim of custom duty drawbacks for merchant exporters, have retrospective or prospective effect. In the present case, if the Circular is held to be clarificatory, curative and declaratory in nature, its application would be retrospective and would entail the claim of the Appellant of custom duty drawbacks at 1% AIR payable & enforceable against the Respondents.

[6] *Shyam Sunder Vs Ram Kumar [2001] 8 SCC 24.*

13. In determining the said question, it is apposite to give credence to the substance of the Circular and not merely its form as directed by this Court in several decisions including **Sree Sankaracharya University of Sanskrit & Ors. Vs Dr. Manu & Anr**.[7], **State of Bihar vs Ramesh Prasad Verma,**[8] **Commissioner of Income Tax I, Ahmedabad vs Gold Coin Health Food (P) Ltd**[9]**.** On a careful examination of the CBEC Circular/Notification No. 35/2010-Cus. dt. 17.09.2010, the following aspects emerge undisputably:

(i) The Circular was issued pursuant to representations & references received by exporters who were being denied the 1% drawback of the customs portion, despite previous notifications clearly stating that the drawback was available irrespective of whether the exporter had availed CENVAT or not.

(ii) A combined reading of the Circular and the Notifications issued prior thereto, would show there is no express distinction in the benefit accrued to the SBM merchant exporters from day one to the date of

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[7] *Sree Sankaracharya University of Sanskrit & Ors. Vs Dr. Manu & Anr, [2023] SCC Online SC 640.*
[8] *State of Bihar vs Ramesh Prasad Verma [2017] 5 SCC 665.*
[9] *CIT vs Gold Coin Health Food (P) Ltd. [2008] 9 SCC 622.*

issuance of the circular. For reference, the table as indicated by the Appellant is reproduced as under:

Table for Comparison of Customs Notifications No. 81/2006, 68/2007, 103/2008, 84/2010

S. No.	Notification No. 81/2006	Notification No. 68/2007	Notification No. 103/2008	Notification No. 84/2010
1.	(5) The figures shown under drawback rate and drawback cap appearing below the column "Drawback when Cenvat facility has not been availed" refer to the total drawback (customs, central excise and service tax component put together) allowable and those appearing under the column "Drawback when Cenvat facility has been availed" refer to the drawback allowable under the customs component. The difference between the two columns refer to the central excise and service tax component of drawback. If the rate indicated is the same in both the columns, it shall bean that the same pertains to only customs	(5) The figures shown under drawback rate and drawback cap appearing below the column "Drawback when Cenvat facility has not been availed" refer to the total drawback (customs, central excise and service tax component put together) allowable and those appearing under the column "Drawback when Cenvat facility has been availed" refer to the drawback allowable under the customs component. The difference between the two columns refer to the central excise and service tax component of drawback. If the rate indicated is the same in both the columns, it shall bean that the same pertains to only customs	(6) The figures shown under drawback rate and drawback cap appearing below the column "Drawback when Cenvat facility has not been availed" refer to the total drawback (customs, central excise and service tax component put together) allowable and those appearing under the column "Drawback when Cenvat facility has been availed" refer to the drawback allowable under the customs component. The difference between the two columns refer to the central excise and service tax component of drawback. If the rate indicated is the same in both the columns, it shall bean that the same pertains to only customs	(6) The figures shown under drawback rate and drawback cap appearing below the column "Drawback when Cenvat facility has not been availed" refer to the total drawback (customs, central excise and service tax component put together) allowable and those appearing under the column "Drawback when Cenvat facility has been availed" refer to the drawback allowable under the customs component. The difference between the two columns refer to the central excise and service tax component of drawback. If the rate indicated is the same in both the columns, it shall bean that the same pertains to only customs

	component and is available irrespective of whether the exporter has availed of Cenvat or not.	component and is available irrespective of whether the exporter has availed of Cenvat or not.	component and is available irrespective of whether the exporter has availed of Cenvat or not.	component and is available irrespective of whether the exporter has availed of Cenvat or not.
2.	(7) The rates of drawback specified in the said Schedule shall not be applicable to export of a commodity or product if such commodity or product is - (e) manufactured or exported by availing the rebate of duty paid on materials used in the manufacture or processing of such commodity or product in terms of rule 18 of the Central Excise Rules, 2002; (f) manufac-tured or exported in terms of sub-rule (2) of rule 19 of the Central Excise Rules, 2002;	(7) The rates of drawback specified in the said Schedule shall not be applicable to export of a commodity or product if such commodity or product is - (e) manufactured or exported by availing the rebate of duty paid on materials used in the manufacture or processing of such commodity or product in terms of rule 18 of the Central Excise Rules, 2002; (f) manufac-tured or exported in terms of sub-rule (2) of rule 19 of the Central Excise Rules, 2002;	(8) The rates of drawback specified in the said Schedule shall not be applicable to export of a commodity or product if such commodity or product is - (e) manufactured or exported by availing the rebate of duty paid on materials used in the manufacture or processing of such commodity or product in terms of rule 18 of the Central Excise Rules, 2002; (f) manufac-tured or exported in terms of sub-rule (2) of rule 19 of the Central Excise Rules, 2002;	(9) The rates and caps of drawback specified in column (4) and (5) of the said schedule shall not be applicable to export of a commodity or product if such commodity or product is - (a) manufactured or exported by availing the rebate of duty paid on materials used in the manufacture or processing of such commodity or product in terms of rule 18 of the Central Excise Rules, 2002; (b) manufac-tured or exported in terms of sub-rule (2) of rule 19 of the Central Excise Rules, 2002;

(iii) The Circular does not vest any fresh rights on merchant exporters or casts upon any burden on the Department except the one already cast upon them vide previous Notifications.

14. Even otherwise, a threadbare analysis of the nature and substance of the CBEC Circular No. 35/2010-Cus. dt. 17.09.2010, would firstly make it evident that there is no substantive modification and amendment to the previous CBEC Notifications. The language of the Circular does not expand or alter the scope of the previous Notifications, but cements the claim of the merchant exporters, who were entitled to receive the benefit of AIR customs duty drawback since 2007. The Circular dt. 17.09.2010 *per se* clarifies and makes it explicit that the customs duties which remained unrebated to the concerned manufacturers, should be provided through the AIR drawback route, with or without the rebate of Central Excise Duties at the time of processing in terms of Rule 18 or 19 of the Central Excise Rules, 2002.

15. Having regard to the concerned Circular dt. 17.09.2010 vis-à-vis the previous Notifications, no new right or benefit came to be created, but the actual scope of the benefit accruing to the Appellant and such similarly placed merchant exporters, was explained and settled once and for all. By virtue of the said Circular, it was merely clarified that the benefit of 1% customs duty drawback as indicated under the prior Notification was available to SBM merchants despite having availed CENVAT. Being explanatory in nature, the Circular in question cannot be construed as an adoption of a fresh fiscal regime for rebate of

customs duty, intended to affect vested rights or impose new burdens upon the Department. It was passed to resolve the ambiguity *qua* the meaning & threshold of the previous Notifications. For the same reason, the operation of such a provision or instruction by the Department could only be retrospective in nature, so as to give effect to the objective of the Notifications issued by CBEC.

16. It also cannot be deduced that by virtue of the Circular, CBEC intended to deprive the Appellant and such similarly placed merchant exporters from the benefit of customs duty drawbacks prior to 20.09.2010. In our considered view, it is inconceivable that the previous Notifications would be in operation in any other manner except as specified and clarified in the manner indicated in the Circular dt. 17.09.2020, and it is not the case of the Department that before the issuance of the Circular dt. 17.09.2020 read with Notification No. 84/2010-Cus of even date, the Notifications for the years 2006 to 2009 were not in operation.

17. The use of the expression "should" in reference to the previous Notifications, is also deliberate & declaratory in nature, and intended to clear all/any ambiguity that could have arisen in the interpretation of the CBEC Circular. The language "shall be deemed always to have meant" or "shall be deemed never to have

included" is declaratory and is in plain retrospective[10] and it is apparent that the CBEC was mindful of its intent whilst adopting the said terminology in issuing the said circular in question. In this respect, the statutory principle of "*contemporanea exposito*" which takes into consideration contemporaneous interpretation also becomes increasingly relevant insofar as the CBEC Circular dt. 17.09.2010 read in conjunction with the previous Notifications already in operation, did not confer a prospective benefit on antecedent facts, but established the scope of the very benefit introduced vide the first Notification No. 81/2006 dt. 13.07.2006 for the sake of the Appellant and such similarly placed exporters. For this simple reason, the operation of the said CBEC Circular dt. 17.09.2010 ought to be retrospective.

18. It may be argued by the Department that not every beneficial legislation is intended to be retrospective in nature; however, the retrospectivity of a statute is to be tested on the anvil of the doctrine of "fairness". The substratum of a beneficial legislation is to ensure that the benefit is uniform and absolute, which may be prospective in nature, but when such benefit to one person does not inflict any undue burden on the other, the purposive construction can be considered to be given a

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[10] *Justice G.P. Singh, "Principles of Statutory Interpretation" (15th Edition LexisNexis 2021).*

retrospective effect[11]. It is therefore pertinent to clarify that except in cases where such enactments or issuance of Circulars are arbitrary, vexatious or constitute a parallel mechanism making its operation unfair, the Courts need not entertain objections to the operation of a clarificatory/declaratory provision which is only intended to assert & give effect to its parent provision/statute.

19. In the present case, the High Court adopted a cursory view by solely relying on the submission of the Respondents that because the subject Circular was to be made effective from 20.09.2010, it was prospective in nature. The High Court did not appreciate the rationale of the CBEC Circular nor the purport of the Notifications time and again issued by the Department and passed the Impugned Order dt. 17.11.2014 in undue haste. Subsequently, as well it refused to remedy the error apparent on record, by dismissing the Review Petition at its threshold.

20. Thus, for the reasons indicated hereinabove, the Impugned Judgment and Order dated 17.11.2014 passed by the High Court of Madhya Pradesh at Indore in Writ Petition No. 2576/2012 and Order dt. 01.04.2016 in R.P No. 1/2015 is set aside, and, the Appellant is entitled to the benefit of **1 %** AIR Customs Duty Drawback on its export of SBM from the year 2008 as applicable,

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[11] *CIT vs Vatika Township (P) Ltd. [2015] 1 SCC 1 & Vijay Vs State of Maharashtra [2006] 6 SCC 289.*

by according retrospective operation to the Circular No. 35/2010-Cus. dated 17.09.2010 issued by the Central Board of Excise & Customs, New Delhi, for the purposes of All Industry Rate (AIR) Duty Drawbacks.

21. The appeals stand disposed of.

22. Pending application(s), if any, stands disposed of.

…….J.
[B. V. NAGARATHNA]

…….J.
[SATISH CHANDRA SHARMA]

NEW DELHI
MAY 22, 2025.