

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT JUSTICE ANIS**

C.E.A.Nos. 137 & 140 of 2015 and 8 of 2016

COMMON JUDGMENT: (per V. Ramasubramanian, J.)

These three appeals are filed by the Revenue under Section 35 G of the Central Excise Act, 1944, questioning a common order passed by the Customs, Central Excise & Service Tax Appellate Tribunal (CESTAT) on three appeals that arose out of the orders of the Deputy Commissioner of Central Excise Service Tax.

2. We have heard Mr. B. Narayana Reddy, learned Assistant Solicitor General appearing for the appellant and Mr. S. Sriram, learned counsel for the respondent/Assessee.

3. The respondent/Assessee is engaged in the export of iron ore. The Assessee submitted a refund claim, for a sum of Rs.28,12,788/- under Notification No.41/2007-ST, dated 6-10-2007, for the exports made during the period from January, 2008 to March, 2008, in relation to the service tax paid on the transport of goods by road (GTA) services.

4. The original Notification No.41/2007, dated 6-10-2007, did not attach any conditions for the grant of the benefit of exemption under Section 65 (105) (zzp) in relation to the services provided for transport of certain goods from the inland container depot to the Port of Export. But by an amendment to the said notification, under Notification No.3/2008-ST, dated 19-2-2008, 4 conditions were imposed in relation to the same services, for the grant of the benefit of exemption. One of the conditions so imposed was that the details of exporter's invoice relating to the export goods should be specifically mentioned in the lorry receipt and the corresponding shipping bill.

5. Since the respondent/Assessee did not fulfil the aforesaid condition, the refund claim made by the respondent was rejected by the Deputy Commissioner of Service Tax by an order in original dated 2.2.2010.

6. The respondent/Assessee filed 3 appeals as against the rejection

of 3 different claims for refund. All the 3 appeals in Appeal Nos.67, 68 and 69 were rejected by the Commissioner (Appeals) by a common order dated 27.7.2010. But the order of the Commissioner (Appeals) was reversed by CESTAT by an order dated 31.3.2015 passed on 3 appeals filed by the respondent/ Assessee. To come to the conclusion that the Assessee deserved to succeed, the Tribunal relied upon the decision of the another Bench in **Jumbo Mining Ltd., v. Commissioner of Central Excise, Hyderabad** (2012 (26) STR 525), wherein the Tribunal granted relief on the ground that consignments of huge quantity cannot be transported by a single lorry and that they are required to be aggregated at the port before shipping documents could be prepared. The Tribunal held that strict compliance of the condition for the grant of exemption, cannot be made.

7. Aggrieved by the said order of the CESTAT, the Revenue has come up with the above appeals, raising about 7 substantial questions of law in their memorandum of appeal.

8. But a careful perusal of the material papers would show that only 2 substantial questions of law arise for our consideration in these appeals. They are:-

- 1) Whether any one or more of the conditions stipulated in an exemption Notification can be said to be a mere matter of procedure, on which some amount of laxity can be given?
- 2) Whether the theory of substantial compliance can be applied to the conditions stipulated in exemption Notifications?

Question No.1:

9. The first substantial question of law arising for our consideration is as to whether any one or more of the conditions stipulated in an exemption Notification can be said to be a mere matter of procedure, on which some amount of laxity can be given.

10. Before attempting to find an answer to this question, it is necessary to take note of the original Notification No.41/2007, dated 6-10-2007 and the amendment Notification No.3/2008, dated 19.2.2008.

11. The relevant portion of the Notification No.41/2007, dated 6.10.2007, on which our focus is necessary, reads as follows:

“In exercise of the powers conferred by sub-section (1) of Section 93 of the

Finance Act, 1994 (32 of 1994) and in supersession of the Notification of the Government of India in the Ministry of Finance (Department of Revenue) No.40/2007-Service Tax, dated the 17th September, 2007 which was published in the Gazette of India, Extraordinary, vide number G.S.R. 601 (E), dated the 17th September, 2007, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services specified in column (3) of the Schedule (hereinafter referred to as specified services) received by an exporter and used for export of goods (hereinafter referred to as said goods), from the whole of the service tax leviable thereon under Section 66 and Section 66A of the said Finance Act, subject to the conditions specified in the corresponding entry in column (4) of the Schedule:

Provided that –

- (a).....
- (b)
- (c)
- (d)
- (e)
- (f)

2. The exemption contained in this notification shall be given effect to in the following manner, namely:-

- (a)
- (b)
- (c)
- (d)
- (e)
- (f) the refund claim shall be accompanied by documents

evidencing, -

- (i) export of the said goods:
- (ii) payment of service tax on the specified services for which claim for refund of service tax paid is filed;
- (iii) wherever applicable, a copy of the written agreement entered into by the exporter with the buyer of the said goods, as the case may be;

SCHEDULE

S.No.	Taxable Services		Conditions
	Classification under Finance Act, 1994	Description	
(1)	(2)	(3)	(4)

1.	Section 65 (105)(d)	Services provided to an exporter by an insurer, including a re-insurer carrying on general insurance business in relation to insurance of said goods.	(i) document issued by the insurer, including re-insurer, for payment of insurance premium shall be specific to export goods and shall be in the name of the exporter.
2.	Section 65 (105)(zn)	Services provided for export of said goods	-----
3.	Section 65 (105) (zzh)	Services provided by a technical testing and analysis agency in relation to technical testing and analysis of said goods where such technical testing and analysis is required to be undertaken as per the written agreement between the exporter and the buyer of the said goods.	(i) the exporter furnishes a copy of the written agreement entered into with the buyer of t h e said goods requiring testing and analysis of the said goods; and (ii) the invoice i s s u e d by the service provider shall be specific to export goods and shall be in the name of the exporter.
4.	Section 65 (105) (zzi)	Services provided by an inspection and certification agency in relation to inspection and certification of export goods where such technical inspection and certification is required to be undertaken as per written agreement between the exporter and the buyer of the export goods.	(i) the exporter furnishes a copy of the written agreement entered into with the buyer of the said goods requiring inspection and certification of the said goods; and (ii) the invoice i s s u e d by the service provider shall be specific to export goods and shall be in the name of the exporter.
5.	Section 65 (105)(zzl)	Services provided for export of said goods	-----
6.	Section 65 (105) (zzp)	Services provided for transport of said goods from the inland container depot to the port of export.	-----

7.	Section 65 (105) (zzzp)	Services provided for transport of said goods from the inland container depot to the port of export	-----
----	----------------------------	---	-------

12. It is seen from the Notification No.41/2007, dated 6-10-2007 extracted above :

- 1) that as per Para 1 thereof, exemption is granted to the taxable services specified in Column 3 of the Table below the Schedule, subject to the conditions specified in the corresponding entry in column 4 of the Table under the Schedule;
- 2) that as per Paragraph 2 (f) of the exemption notification, which prescribes the procedure, the refund claim should be accompanied by the documents listed therein; and
- 3) that out of 7 taxable services which were exempt thereunder, 4 taxable services, listed in S.Nos.2, 5, 6 and 7, were exempt without any conditions attached thereto and the other 3 services made subject to the fulfilment of the conditions stipulated in column 4. In other words, the grant of exemption for 3 types of services, listed at S.Nos.1, 3 and 4 in the Table below the Schedule to the Notification, was made subject to the conditions stipulated in column 4 of the Table under the Schedule. But column 4 of the Table was left blank in respect of 4 types of taxable services listed in S.Nos.2 and 5 to 7.

13. Therefore, it is clear that as per the original notification of the year 2007, “the services provided for the transport of goods from the inland container depot to the port of export”, included in S.No.6 of the table under the Schedule, relating to Section 65 (105) (zzp), were entitled to exemption, unconditionally. Hence, if an exporter was claiming the benefit of the notification dated 6.10.2007, in relation to the taxable services included at S.No.6 of the table under the schedule, he would not have been required to satisfy any condition.

14. But the Notification dated 6.10.2007 was amended by the Notification No.3/2008, dated 19.2.2008. The relevant portion of the table under the Schedule to the Notification, relating to S.No.6 was amended by

the Notification dated 19.2.2008. The amendment reads as follows:

(1)	(2)	(3)	(4)
6.	Section 65 (105) (zzp)	Services provided to an exporter in relation to transport of export goods directly from the place of removal, to inland container depot or port or airport, as the case may be, from where the goods are exported	(i) export goods are transported directly from the place of removal to inland container depot or port or airport, as the case may be, from where the goods are exported, (ii) invoice issued by the exporter in relation to export goods shall indicate the name of t h e inland container depot or port or airport from where the goods are exported. (iii) details of exporter's invoice relating to export goods are specifically mentioned in the lorry receipt and the corresponding shipping bill, (iv) exporter shall declare in the refund claim indicating whether such service has been received from the said service provider for purposes other than for export.

15. It is seen from the amended notification that on and from 19.02.2008, the services included in S.No.6 of the table under the Schedule to the notification, would be entitled to exemption only if 4 conditions are satisfied. In simple terms these conditions are:

- 1) that the export goods should be transported directly from the place of removal to the inland container depot or port or airport from where the goods are exported;
- 2) that the invoice issued by the exporter should include the name of the inland container depot or port or airport from where the goods

are exported;

- 3) that the details of the exporter's invoice relating to export goods are specifically mentioned in the lorry receipt and corresponding shipping bill; and
- 4) that the exporter should also make a declaration in the refund claim, indicating whether such service has been received from the service provider for purposes other than for export.

16. A careful look at all the four conditions would show that at least 3 out of those 4, are evidentiary in nature. While the 2nd condition relates to what should be found in the invoice, the 3rd condition relates to what should be found in the lorry receipt and the 4th condition relates to a declaration to be made by the exporter in the refund claim.

17. The grievance as well as the contention of the respondent/ Assessee is that in so far as the export of iron ore is concerned, the practice prevalent in the industry is to aggregate significant quantity of the materials at the port of export and to prepare the exporter's invoice thereafter. This practice, according to the respondent, is attributed to the demand-supply factor inherent in the trade, where huge consignments are exported on short notice. The respondent claims that they have exported up to 40,000 tonnes of iron ore and the proportional usage of transport services is to the tune of 3,000 trucks, used to transport the goods from the place of removal to the port of export. Since there was no discrepancy noted in the total quantity of material exported and the extent of transport services utilized, it is claimed by the respondent/Assessee that there was substantial compliance with the exemption notification.

18. Placing reliance upon the decisions of the Supreme Court in **Union of India and others v. Woodpapers Limited and another**^[1], **Bhai Jaspal Singh and another v. Assistant Commissioner of Income Tax and others**^[2] and **Commissioner of Customs Mumbai v. M. Ambalal and Company**^[3], it is contended by Mr. S. Sriram, learned counsel for the respondent/Assessee that an exemption notification has to be interpreted, by applying different rules of construction at different stages or levels. At

the threshold, an exemption notification is to be construed strictly, to find out whether a subject falls within the notification or not. Once it is found that the Assessee falls within the purview of the notification, then a wider and liberal construction has to be adopted.

19. Drawing our attention to a few paragraphs of the above decisions, it is further contended by Mr. S. Sriram, learned counsel for the respondent/Assessee that there is no dispute in the case on hand about the eligibility of the respondent to the benefit of the exemption notification. The respondent/Assessee, according to the learned counsel, has satisfied three out of four conditions. Therefore, the non-compliance with condition No.3, which is merely a matter of procedure, cannot stand in the way of the respondent being entitled to the benefit of the exemption notification.

20. However, it is contended by Mr. B. Narayana Reddy, learned Assistant Solicitor General, that what is stipulated in Column No.4 of the table under the schedule to the exemption notification cannot be construed as a mere matter of procedure. The respondent would be entitled to the benefit of the notification only upon fulfilment of all the conditions prescribed in Column No.4 of the table. Therefore, the learned Assistant Solicitor General contends, on the basis of the decision of the Constitution Bench of the Supreme Court in **Commissioner of Central Excise v. Hari Chand Shri Gopal and others**^[4] that if exemption is available on complying with certain conditions, the conditions have to be complied with.

21. We have carefully considered the above submissions. Since the substantial questions of law raised herein, revolve around the rules of interpretation to be applied to an exemption notification, we think it would be better first to take a survey of the law relating to the rules of construction of exemption notifications.

RULES OF CONSTRUCTION OF EXEMPTION NOTIFICATIONS

22. *The rules of interpretation to be applied to exemption notifications are slightly different from the rules of interpretation applicable to the charging provisions.* Way back in 1956, a Constitution Bench of the Supreme Court held (by a majority) in **Union of India vs. Commercial Tax Officer {AIR 1956 SC 202}** that "*exemption is a creation*

of statute and must be construed strictly". Interestingly, that case before the Constitution Bench concerned an exemption under Section 5 of the Bengal Finance (Sales Tax) Act, 1941. Section 5(2)(a)(iii) of the Act exempted the sales to the Indian Stores Department and the Supply Department of the Government of India and any Railway Company from being included in the taxable turnover. The assessee claimed exemption in respect of the sales made to the Ministry of Industry and Supplies, Government of India. But by a majority, the Constitution Bench held that the various departments of the Government of India may have to be treated as distinct units or quasi legal entities and that at any rate, the Act in question treated two named departments of the Government of India as distinct entities from others. Consequently, the Court held that the supplies made to any department other than those two departments, may not qualify for exemption.

23. In **Hansraj Gordhandas vs. Assistant Collector of Central Excise and Customs, Surat {AIR 1970 (SC) 755}**, a Constitution Bench of the Supreme Court held that "*the operation of (exemption) notifications had to be judged not by the object which the rule making authority had in mind, but by the words which it had employed to effectuate the legislative intent*". The Court also held that "*in a taxing statute there is no room for any intendment*" and that "*the entire matter is governed wholly by the language of the notification*". While quoting Lord Watson that "*intention of the legislature is a common but very slippery phrase*", the Constitution Bench laid down the law as follows:-

"If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different but that is not the case here."

24. In **Union of India vs. Wood Papers Ltd {1990 (4) SCC 256}**, the Supreme Court pointed out the distinction in the following manner:-

"Literally exemption is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a

growing economy. For instance tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objection etc. That is why its construction, unlike charging provision, has to be tested on different touchstone. In fact **an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly** either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. **Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it.** When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction".

25. Holding that the above view represents the correct position of law, a three member Bench of the Apex Court, in **Novopan India Ltd vs. Collector of Central Excise and Customs {1994 Supp. (3) SCC 606}**, also referred to the opinion of Lord Halsbury, L.C., in *IRC vs. James Forrest* to the effect that all exemptions from taxation, to some extent increase the burden on other members of the Community. The Bench also referred to the observations of Cohen, L.J., in *Littman vs. Barron* to the effect that "the principle that in case of ambiguity, a taxing statute should be construed in favour of a tax payer does not apply to a provision giving a tax payer relief in certain cases from a section clearly imposing liability". After pointing out that the decisions expressing a contrary view do not reflect the correct position of law, the Bench held in para-16 as follows:-

"The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee – assuming that the said principle is good and sound – does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State."

26. Quoting with approval, the above ratio in *Novopan*, another bench held in **Liberty Oil Mills (P) Ltd., -vs- Collector of Central Excise {(1995) 1 SCC 451}** that *in case of ambiguity or doubt regarding an exemption provision in a fiscal statute, the ambiguity or doubt will be resolved in favour of the revenue and not in favour of the assessee*. The ratio laid down in *Wood Papers Ltd*, which was followed in *Novopan*, was quoted with approval, as late as in 2004, by the Apex Court in **Associated Cement Companies vs. State of Bihar {2004 (7) SCC 642}**. Again in **CCE -vs- Ginni Filaments Ltd {(2005) 3 SCC 378}** it was held that an exemption notification has to be read strictly so far as the eligibility criteria is concerned.

27. As a matter of fact, a two member Bench of the Supreme Court held in **CCE vs. Parle Exports Pvt Ltd {1989 (1) SCC 345}**, that "*when two views of a notification are possible, it should be construed in favour of the subject, as notification is part of a fiscal enactment*". But the said view was held to be incorrect, by another Bench in **State Level Committee vs. Morgardshammar India Ltd {1996 (1) SCC 108}**, in view of the decision of the three member Bench in *Novopan*.

28. Again a three member Bench held in **Sarabhai M. Chemicals vs. CCE {2005 (2) SCC 168}**, that "*it is well settled that an exemption notification has to be strictly construed*" and that "*the conditions for taking the benefit of the exemption have to be strictly interpreted*". Similarly, in **Commissioner of Customs -vs- Tullow India Operations Ltd., {(2005) 13 SCC 789}** the Apex court held in paragraph 34 as follows:-

" The principles as regards construction of an exemption notification are no longer res integra: whereas the eligibility clause in relation to an exemption notification is given strict meaning wherefor the notification has to be interpreted in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed liberally. An eligibility criteria therefore deserves a strict construction, although construction of a condition thereof may be given a liberal meaning."

29. In **Southern Petrochemical Industries Co. Ltd vs. Electricity Inspector {2007 (5) SCC 447}**, the court held that "*the principle of*

construction of a statute that the exemption provisions would be attracted only when requisite conditions therefor are satisfied, would also apply in a case of constitutional interpretation".

Application of Principles of law to the facts on hand

30. Having traced the nuances of the law relating to the construction of exemption notifications, let us now see the application of those principles to the facts of the cases on hand.

31. The main contention of the respondent/Assessee is that condition No.3 in the amended exemption notification is a mere matter of procedure and that therefore some amount of laxity can be given with regard to its compliance. According to the respondent/Assessee, they have satisfied the substantial requirements (1) of export of iron ore; (2) of payment of service tax on the service of transportation of material from the place of removal to the port; and (3) of actual export of the material. Therefore, the failure to have the details of the exporters invoice mentioned in the lorry receipt and corresponding shipping bill, on account of the peculiar nature of the trade, cannot be a ground for denying the benefit of the exemption notification.

32. But unfortunately for the respondent/Assessee, condition No.3 cannot be construed as a mere matter of procedure. It is a matter of evidence. As we have indicated earlier, the original notification dated 6.10.2007 did not make the applicability of exemption, conditional. But by an amendment to the original notification, the grant of exemption was made conditional. Therefore, ***the object of the amendment is very clear to the effect that proof of eligibility to claim exemption was made equivalent to the eligibility for exemption.***

33. The Courts always tell statutory authorities that if something is required to be done by law in a particular manner, it shall be done only in that manner and not otherwise. After repeatedly advising statutory authorities to the above effect, it would be awkward for a Court to say that even if something is not done in accordance with the procedure prescribed by law, the same can be condoned.

34. What could at the most be done by Courts or even by the statutory authorities, is to condone certain insignificant requirements. For instance, if an application for extension of the benefit of exemption has to be endorsed by someone, but was endorsed by some other person, the mistake can be condoned as mere procedural in nature. But when the very availability of the benefit of exemption is made contingent upon the fulfilment of certain conditions, those conditions cannot be dismissed as matters of procedure.

35. The object of requiring the details of exporters invoice to be mentioned in the lorry receipt and the corresponding shipping bill is to ensure that what had reached the port was actually the consignment of that exporter and that there was no duplication of the claim. Therefore, the relaxation of such a condition would tantamount to the removal of the very life breath of the notification. Hence, the first question of law is to be answered in favour of the appellant/Revenue and against the respondent/Assessee.

Question No.2

36. The second question of law that arises for consideration is as to whether the theory of substantial compliance can be applied to the conditions stipulated in exemption notifications.

37. The answer to the above question is to be found very clearly in the decision of the Constitution Bench of the Supreme Court in **Commissioner of Central Excise v. Hari Chand Shri Gopal**. If we look at the facts of the case decided by the Constitution Bench, it is seen that the Assessee in the case before the Supreme Court were engaged in the manufacture of excisable goods, which became chargeable to the duty of excise with effect from 01.03.1994. The Assessee was transferring a major portion of the manufactured goods to certain companies, under the cover of transfer challans, describing them in a particular manner. The factory of the Assessee was raided by the Preventive Wing of the Excise Department and on the basis of what was found out, notices were issued. The Assessee claimed the benefit of exemption under a notification. But the

claim was rejected and the demand was confirmed. On appeal, the Tribunal confirmed the findings of the adjudication officer, but directed re-examination of the question of applicability of the notification. At the time of re-examination by the adjudicating Commissioner, the Assessee contended (1) that they despatched the goods to their final manufacturing units through transfer challans, and receipts were also recorded in Form-IV register and the utilisation of the goods was recorded in RG-12 register; and (2) that the manufacture of final products could be ascertained through RG-1 register maintained at the recipient end. These, according to the Assessee, established substantial compliance with the procedure set out in Chapter-X for duty exemption.

38. In **Commissioner of Central Excise v. Hari Chand Shri Gopal**, heavy reliance was placed by the Assessee on the decisions of the Supreme Court in **Thermax (P) Ltd., v. Collector of Customs**^[5] and **CCE v. J.K. Synthetics**^[6], wherein the Supreme Court held that the benefit of exemption notification cannot be denied if there has been a substantial compliance with the procedure and if the intended use of the goods for the manufacture of final product had been established. The said contention was accepted by the Tribunal and the Revenue took the matter on appeal to the Supreme Court.

39. A three member bench before whom the appeal came up doubted the correctness of the decisions in **Thermax (P) Ltd.**, and **J.K. Synthetics**. Therefore by an order reported in 2005 (8) SCC 164, the question as to the correctness of the ratio laid down in **Thermax (P) Ltd.**, and **J.K. Synthetics** was referred to a Larger Bench of the Supreme Court. It was the decision of the larger bench that was reported in 2011 (1) SCC 236.

40. The larger Bench, while allowing the appeals filed by the Revenue and holding that the decisions in **Thermax (P) Ltd.**, and **J.K. Synthetics** are confined to the facts of those cases alone, held that the doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke an exemption. ***What can be forgiven is the non-compliance of unimportant***

and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.

41. To understand the scope of the ratio of the decision of the Larger Bench in **Commissioner of Central Excise v. Hari Chand Shri Gopal** case, it is necessary to look at the nature of the contention raised before the Supreme Court in that case. As seen from para-17 of the report, the contention of the Assessee before the Supreme Court was that the conditions stipulated in Chapter-X are only procedural in nature, warranting liberal construction and that if there was substantial compliance and if the intended use of the goods had been established, then the benefit of exemption notification cannot be denied.

42. While dealing with the said contention, the Supreme Court opined in para-29 as follows:

“The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption.”

43. After expressing an opinion as aforesaid, the Supreme Court considered the previous decisions in **Novopan India Ltd.**, and **Hansraj Gordhandas** in para-30, and indicated the distinction between the provisions which are directory and those which are mandatory in para-31, as follows:

“Of course, some of the provisions of an exemption

notification may be directory in nature and some are mandatory in nature. A distinction between the provisions of a 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. In TISCO Ltd. this Court held that the principles as regard construction of an exemption notification are no longer *res integra*; whereas the eligibility clause in relation to an exemption notification is given strict meaning wherefor the notification has to be interpreted in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed literally. An eligibility criteria, therefore deserves a strict construction, although construction of a condition thereof may be given a liberal meaning if the same is directory in nature.”

44. The Constitution Bench pointed out in para-32 that ***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 substance of the requirements.*** The Court pointed out that the acceptance of a plea of substantial compliance depended upon two things, viz., (a) facts and circumstances of the case and (b) the purpose and object sought to be achieved and the context of the prerequisites which are essential to achieve the object and purpose.

45. The Supreme Court went on to point out that substantial compliance is insisted where mandatory or directory requirements are lumped together and that ***in cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty.*** In para-34, the Supreme Court held as follows:

“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.”

45. Therefore, what can be condoned, is that which is not the essence of the thing to be done, but that which is prescribed merely for the orderly conduct of the business. In the case on hand all the four conditions stipulated in the amended notification, are intended to ensure that there are checks and balances for the authority conferred with the power of processing the application for exemption to arrive at a subjective satisfaction that the requirements are fulfilled. If the Courts recognise some amount of latitude for the authorities, who are vested with the power to process the application for exemption, then the same may tantamount to enlarging the scope of the discretionary power on the part of those authorities. Many times the exercise of discretion, one way or the other, leads to complications, when there are no guidelines for the exercise of the power of discretion. Once a full-fledged system is put in place, for the exercise of discretion, the compliance with the requirements of such a system alone will remove any kind of arbitrary exercise of power. The Courts are obliged to interpret notifications of this nature, in such a manner that the power of discretion is reduced to the minimum. Therefore, the second substantial question of law is also to be answered in favour of the appellants/Revenue by holding that condition No.3 in the exemption notification at serial No.6 of the table under the schedule, is also the substance or essence of the exemption notification and the compliance with the same is mandatory.

Conclusion

46. In light of our answer to both the substantial questions of law, the appeals deserve to be allowed. Accordingly the appeals are allowed and the order of the Tribunal is set aside. There shall be no order as to

costs.

47. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

V. RAMASUBRAMANIAN, J

ANIS, J

Date:

Ksn/js

L.R. copy to be marked.

[\[1\]](#) (1990) 4 SCC 256

[\[2\]](#) (2011) 1 SCC 39

[\[3\]](#) (2011) 2 SCC 74

[\[4\]](#)^[4] (2011) 1 SCC 236

[\[5\]](#) (1992) 4 SCC 440

[\[6\]](#) (2000) 10 SCC 393