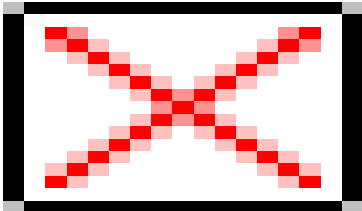


SC ruling in Mother Superior case - An insight

APRIL 28, 2021

By Akhilesh Kangsia, Joint Partner and Madhura Khandekar, Senior Associate, Lakshmikumaran & Sridharan, Attorneys



WE

all know when it comes to interpretation of an exemption notification, the Revenue is always extremely conservative. The Supreme Court's ruling in **Dilip Kumar and Co.**, ¹ has only helped the Revenue in this regard, greatly. This article endeavors to take a re-look at the principle laid down in Dilip Kumar case, in the light of recent decision of the Hon'ble Supreme Court in **Mother Superior Adoration Convent case** ².

A brief recap may be made to the ruling in Dilip Kumar & Co., wherein the issue referred before the Constitution Bench of the Supreme Court was to decide the correctness of the judgment in Sun Exports case ³. In Sun Exports, it was held that **'in case of two views possible, it is well settled, that one favourable to the assessee in matters of taxation has to be preferred'**. The Constitution Bench in Dilip Kumar answered the reference and held that **(a)** Exemption notifications should be interpreted strictly; the burden of applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification, and **(b)** When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject / assessee and it must be interpreted in favour of the revenue.

The ruling in Dilip Kumar & Co. reiterates the settled legal position on the issue as concluded in earlier decisions of **Novopan India Ltd.** ⁴ and in **Wood Papers Ltd** ⁵.

However, the question which comes to mind instantly is whether the ruling in Dilip Kumar & Co. considers and answers all facets of exemption notification and can have universal application especially, for exemption notification(s) having beneficial purpose also.

The jurisprudence for applicability of the principle of strict interpretation to exemption notification has been lucidly explained in the authoritative text **'Principles of Statutory Interpretation'**, by Justice G. P. Singh, 11th Ed., in Chapter 10 'Construction of Taxing Statutes', at page 794 -795. The author explains that exemptions which lift the restrictions of taxability imposed by an Act, are taxing in nature and are, therefore, subject to the rule of strict construction. Thus, taxability is a rule and exemptions are an exception to this rule.

From an economic rationale, when any exemption from the charge of tax is granted to a class of taxpayers, it leads to the shifting of burden to other taxpayers. Therefore, when such exemption is construed liberally, beyond the intention for which it was introduced, there is an unequitable and unintentional shift in the burden to other taxpayers. Hence strict interpretation of an exemption is a necessity.

However, the above principle applies only to general exemption notifications. There are other exemption notifications, with a beneficial objective in mind to encourage manufacture and exports, industrial development, etc. Such beneficial exemptions are : (a) to promote manufacture and exports for e.g. Special Economic Zones, Export Oriented Units, Advance Authorisation Scheme, Export Promotion Capital Goods (EPCG) Scheme, and (b) for industrial and infrastructural development in country for e.g. Project Imports Schemes, Area Based Exemption, etc. Such exemptions would require to be interpreted differently, and in a liberal manner by the Revenue since the purpose / intention behind such exemptions is not to exempt from the levy of tax on any legal basis, but to incentivise the subject/assessee as a policy measure. We may, for e.g., refer to the decision of the Hon'ble Supreme Court in **K R Steel Union Ltd. case** ⁶.

Since the ruling in Dilip Kumar & Co. does not address the exemption notifications which are for beneficial purpose, therefore, we believe that it should not be applied universally.

In a welcome relief, the Hon'ble Supreme Court in its latest ruling in **Mother Superior Adoration Convent** at paragraphs 23, 24, and 25 has addressed this plight of the assessee and made a distinction between interpretation of an exemption of general nature vis-À-vis exemption having a beneficial purpose.

The short question that arose for consideration before the Hon'ble Supreme Court in Mother Superior was whether residential accommodation for nuns and students' hostels attached to educational institutions are eligible for the exemption from building tax under Section 3(1)(b) of Kerala Building Tax Act, 1975 or not. Section 3(1)(b) of the Kerala Building Tax Act, 1975 granted exemption from building tax to buildings that are used principally for religious, charitable or educational purposes or as factories or workshops.

Revenue relied on strict interpretation to the exemption notification which favours them in case of a doubt / ambiguity referring to the earlier Supreme Court decisions (**Wood Paper Ltd case** ⁷, **Star Industries case** ⁸) and Larger bench decision in **Dilip Kumar & Co case** supra. Whereas, Assessee countered with distinction between interpretation of a beneficial exemption notification vis-À-vis general exemption notification, which provides for a liberal and purposive interpretation to achieve the beneficial purpose behind such exemption. Their submission was supported by earlier decisions of the Hon'ble Supreme Court in **Straw Board case** ⁹, **Bajaj Tempo Ltd. case** ¹⁰, **Tata Cummins Ltd.** ¹¹ case, **Pondicherry State Co-op. Consumer Federation Ltd.** ¹² case, **M. Ambalal & Co.** ¹³ case, **Rupa & Co.** ¹⁴ case, **Favourite Industries** ¹⁵ case.

The Hon'ble Supreme Court ruled in favour of purposive interpretation of a beneficial exemption notification and held that :

a. decision in Dilip Kumar & Co., did not refer to the line of authority which made a distinction between general exemption provision and exemption provision which has a beneficial purpose, and the said decision is sub-silentio on the line of authority qua beneficial exemption.

b. the beneficial purpose of the exemption benefit must be given full effect. Such statute must be construed in accordance with the object sought to be achieved. And on the assumption that any ambiguity arises in such construction, such ambiguity must be in favour of that which is exempted.

The Author(s) are of the view that the above decision is a much-needed reprieve to all the stakeholders who were / are struggling with their legitimate exemption claims having a beneficial purpose. It will be a great relief to the assessee if the Revenue considers the distinction between a general exemption and a beneficial exemption and avoids straightway universal application of strict interpretation, even to beneficial exemptions.

It will also be interesting to see how the ruling in Mother Superior case will be applied in context of EOUs, SEZ, Advance Authorisations, Project Imports Scheme and many other beneficial exemptions. However, one thing is now certain and that is that the assessee will be on a better footing to litigate the issue.

[The views expressed are strictly personal.]

¹ 2018 (361) ELT 577 (SC) - [2018-TIOL-302-SC-CUS-CB](#)

² 2021 SCC OnLine SC 151 - [2021-TIOL-156-SC-MISC](#)

³ 1997 (6) SCC 564

- 4 1994 Supp (3) SC 606 - [2002-TIOL-89-SC-CX-LB](#)
- 5 (1990) 4 SCC 256 (Para 4, Pg. 260) - [2002-TIOL-454-SC-CX](#)
- 6 2001 (129) ELT 273 (SC) (*dealing with exemption to Free Trade Zone unit under Notification No.77/80-Cus*)
- 7 (1990) 4 SCC 256 - [2002-TIOL-454-SC-CX](#)
- 8 (2016) 2 SCC 362 - [2015-TIOL-234-SC-CUS](#)
- 9 1989 Supp (2) SCC 523 (*dealing with concessional rate of income-tax as priority industry*)
- 10 (1992) 3 SCC 78 (*dealing with partial exemption under income tax as 'new' undertaking*) - [2002-TIOL-767-SC-IT](#)
- 11 (2006) 4 SCC 57 (*dealing with benefit of Industrial Policy 1995 to Sales Tax Dues*) - [2006-TIOL-27-SC-CT](#)
- 12 (2008) 1 SCC 206 (*dealing with Sales Tax exemption*) - [2007-TIOL-205-SC-CT](#)
- 13 (2011) 2 SCC 74 (*dealing with Kar Vivad Samadhan Scheme 1998*) - [2010-TIOL-111-SC-CUS](#)
- 14 2004 (170) ELT 129 (SC) (*dealing with import of textile machinery under Export Promotion Capital Goods Scheme*) - [2004-TIOL-65-SC-CUS](#)
- 15 (2012) 7 SCC 153 (*dealing with EOU notification*) - [2012-TIOL-30-SC-CX](#)

(DISCLAIMER : The views expressed are strictly of the author and Taxindiaonline.com doesn't necessarily subscribe to the same.
Taxindiaonline.com Pvt. Ltd. is not responsible or liable for any loss or damage caused to anyone due to any interpretation, error, omission in
the articles being hosted on the site)