

GIB/DL/L.R. Brothers/01.09.2020/SC-17**Supreme Court Category :** CESTAT**State :** Delhi**Order No.:** GIB/DL/L.R. Brothers/01.09.2020/SC-17**Name of Entry :**

L.R. Brothers Indo Flora Ltd v. Commissioner of Central Excise

Date : 01-09-2020**Breif Issue :****Issues & Facts of The Case-**

The Court was hearing an appeal from a CESTAT order whereby the customs duty levied upon the appellant on the sale of cut flowers within the Domestic Tariff Area had been confirmed by the Tribunal.

Appellant is a 100% Export Oriented Unit (EOU) engaged in production of cut flowers and flower buds of all kinds, suitable for bouquets and for ornamental purposes. The 100% EOU is required to export all articles produced by it. As a consequence whereof, it is exempted from payment of customs duty on the imported inputs used during production of the exported articles, vide Notification No. 126/94 Cus dated 3.6.1994. Under the said notification, exemption on levy of customs duty had been extended even to the inputs used in production of articles sold in domestic market, in accordance with the ExportImport (EXIM) Policy and subject to other conditions specified by the Development Commissioner. Further, a subsequent Notification was issued which carried out amendments and substituting the charging clause of the inputs used in case of nonexcisable goods.

It was contended that amendment notification being retrospective in its application. Relying upon the CBEC Circular, the appellant contended that the Government intended to apply the notification retrospectively as it was brought in to address an anomaly, which existed vis a vis central excise notifications.

Decision of Advance Ruling Authority :**Decision -**

Rejecting the claim of the appellant, the Court noticed that the Circular discusses the mechanism in force before the amendment, the reason for bringing in the change and the changes brought in. The circular does not mention that the earlier methodology in force was deficient or devoid of clarity in any manner. It rather says that the same was being disadvantageous to the EOU units as compared to the DTA units due to the difference in charging rates in the respective circulars.

It was further noticed that that the subsequent notification posits of carrying out amendments and

substituting the charging clause of the inputs used in case of non-excisable goods. The language employed in the notification does not offer any guidance on whether the amendments as made were to apply prospectively or retrospectively.

“It is a settled proposition of law that all laws are deemed to apply prospectively unless either expressly specified to apply retrospectively or intended to have been done so by the legislature. The latter would be a case of necessary implication and it cannot be inferred lightly.”

The Court explained that the amendment was brought in to establish parity with the excise notifications and to vindicate the disadvantage that earlier regime was causing to EOU units.

“Merely because an anomaly has been addressed, it cannot be passed off as an error having been rectified. Unless shown otherwise, it has to be seen as a conscious change in the dispensation, particularly concerning the fiscal subject matters.”

The Court said that to call the amendment notification clarificatory or curative in nature, it would require that there had been an error/mistake/omission in the previous notification which is merely sought to be explained.

“To understand if the Government brought in the amendment notification to clarify that the articles were to be charged at the rate of duty provided for inputs and not for the final articles, it would be necessary to analyse the position prior to the amendment and to see if duty on inputs chargeable at the rate of final articles was an error that crept in.”

It was, hence, held that the said provision was not an error that crept in but was intentionally introduced by the Government to determine the charging rate, as discussed above. That being the position prior to amendment, the amendment brought in cannot be said to be clarificatory in nature.