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**(1988) 07 CAL CK 0043**

**Calcutta High Court**

**Case No:** Matter No. 4154 of 1987

Khetwat Chemicals and  
Fertilizers Ltd.

APPELLANT

Vs

Collector of Customs

RESPONDENT

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**Date of Decision:** July 21, 1988

**Acts Referred:**

- Customs Act, 1962 - Section 25(1)
- Customs Tariff Act, 1975 - Section 3

**Citation:** (1991) 33 ECR 698 : (1989) 41 ELT 10

**Hon'ble Judges:** Baboo Lall Jain, J

**Bench:** Single Bench

**Advocate:** Gautam Chakraborty, for the Appellant;None, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Baboo Lall Jain, J.

The question that arises in this application is as to the interpretation of a notification bearing No. 155/86-Cus., dated 1st March, 1986. The relevant portion thereof is set out hereunder : .

"Exemption to parts imported for the purpose of setting up, for the assembly or manufacture of specified ankles falling under Chapter 84 or 85. In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notifications of the Government of India in the Ministry of Finance (Department of Revenue) Nos. 94/86 Customs and 95/86 Customs both dated 17th February, 1986. The Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts parts required for the purpose of initial setting up, or for the assembly or manufacture, of any Article specified in Column (2) of the Table hereto annexed, when imported into India and proved to the satisfaction of the Assistant Collector of Customs, to be so required for such setting up, assembly or manufacture,

from so much of that portion of the duty of customs leviable thereon which is specified in the corresponding entry in Column (3) of the said Table...."

2. The relevant portion of the Table under the said notification reads as hereunder :

TABLE

| Sl.No. | Description                                                                                                                                        | Rate of Duty                                                                                                                                                                                                                                                                                                                                        |
|--------|----------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1)    | (2)                                                                                                                                                | (3)                                                                                                                                                                                                                                                                                                                                                 |
| 1.     | Any Article falling under the following heading Nos. of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) namely: (a) 84.01 to 84.08 | The rate which is specified in the Schedule to the Customs Tariff Act, of 1975) as is in excess of the amount levied at the rate applicable to the goods when imported complete reduced by 15% of the net value of the goods in free valorem and the whole of the additional duty of customs leviable thereon u/s 3 of the said Customs Tariff Act. |

3. Item 84.06 of the Chapter 84 of the said First Schedule which is relevant for the purpose of this application reads as hereunder :

| Heading No. | Sub-heading No. | Description of Articles                            | Standard | Preferential Areas |
|-------------|-----------------|----------------------------------------------------|----------|--------------------|
| (1)         | (2)             | (3)                                                | (4)      | (5)                |
| 84.01       | ***             | ***                                                |          |                    |
| ***         | ***             | ***                                                |          |                    |
| 84.06       |                 | Steam turbines and other Vapour turbines Turbines: | 40%      | ...                |
|             | 8406.11         | For marine propulsion                              | 50%      | ...                |
|             | 8406.19         | Other                                              | 50%      | ...                |
|             | 8406.90         | Parts                                              | 40%      | ...                |

The petitioner imported the following goods :

"STC 5 pieces Prime Mover Coppers RLHA-24 Steam Turbine - 237 KW and Hoffman Blower Model 791038 with Stainless (410) Impeller Type-Centrifugal and Spares (As per B/L)."

4. It has been submitted on behalf of the petitioner that the petitioner got the reduction to the extent of 5% of the customs duty under Notification No. 59/87-Cus., dated 1-3-1987. Under the said notification, the steam turbine and other vapour turbines excluding parts have been exempted from so much of that portion of the duty of customs leviable thereon which is specified in the said First Schedule as is in excess of the amount calculated at the rate of 45% ad valorem and the whole of the additional duty on customs leviable thereon u/s 3 of the said Customs Tariff Act. This exemption the petitioner got on the basis that what he imported was steam turbines excluding parts thereof. The rate of customs duty leviable on Steam Turbines is 50% and the rate of customs duty leviable on the parts is 40%. The petitioner has obtained certificates from the D.G.T.D. Regional Office, Ministry of Industry and Company Affairs, to the effect that the steam turbine imported by the petitioner is for the initial setting up of their new unit at Haldia. It is to be noted that the petitioner was setting up a new unit to manufacture sulphuric acid and alum at Haldia. One of the certificates also states that the Steam Turbine and Hoffman Blower are required for initial setting up of their new unit at Haldia and are required to be used as a specifically designed part for efficient operation and will be assembled with their existing fans purchased indigenously after being assembled and coupled with the said fans. The Assistant Collector of Customs was of the opinion that what was exempted under Notification No. 155/86-Cus. was "parts required for the purpose of initial setting up or for assembly or for manufacture of any Article specified in the Table" annexed to the said notification. The said meaning is also apparent from the heading of the said Notification No. 155/86-Cus. What is contended before me on behalf of the petitioner is that the petitioner was initially setting up the sulphuric acid plant of which the said turbine is a part. What is exempted under the notification is "Parts required for the purpose of initial setting up or for assembly or manufacture of any Article specified in Col. 2 of the Table. "Sulphuric Acid" or "Alum" are not specified in Col. 2 of the said Table.

5. Mr. Gautam Chakraborty, learned counsel appearing on behalf of the petitioner, contended that the words "initial setting up" are in respect of the entire factory for manufacture of or initial setting up of any other Article other than those specified in Column 2 of the aforesaid Table and not necessary of any Article specified in Col. 2 thereof. According to Mr. Chakraborty, the Article specified in Col. 2 of the Table could be a part of any bigger establishment or factory or manufacturing unit for manufacture of any other items, other than those specified in Column 2 of the said Table. In my opinion, this cannot be read in the said notification, because the notification clearly says, "Parts required for the purpose of initial setting up of any Article specified in Col. 2".

6. The Collector (Appeals) also upheld the decision of the Assistant Collector of Customs. The said decisions of the Assistant Collector of Customs and of the Collector (Appeals), are in my opinion correct and in accordance with the said Notification No. 155/86-Cus., and I do not find any infirmity in the same, and in my opinion the petitioners was only entitled to the exemption of 5% under Notification No. 59/87-Cus. and was not entitled to the exemption under Notification No. 155/86-Cus. In the premises, the petitioner is not

entitled to the benefit of the exemption under the Notification No. 155/86-Cus., dated 1-3-1986.

7. In the circumstances aforesaid, there are no merits in this application and the application is dismissed. The Rule if any, is discharged and all interim orders are vacated.