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**(2019) 06 GUJ CK 0059**

**In the Gujarat High Court**

**Case No :** R/Special Civil Application No. 2233 Of 2016

Adani Power Limited & 1 Other(s) APPELLANT

Vs

Union Of India & 4 Other(s) RESPONDENT

**Date of Decision :** 28-06-2019

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 19(1)(g), 265
Special Economic Zones Rules, 2006 — Rule 22, 47(3)
Special Economic Zones Act, 2005 — Section 2(g), 2(o), 7, 26, 26(2), 27, 30, 30(a), 49, 51, 53, 55(2)(h)
Customs Act, 1962 — Section 2(18), 2(19), 2(23), 2(25), 2(27), 12, 25, 25(1), 62
Customs Tariff Act, 1975 — Section 3, 3(1), 9A(2A)
Central Excise Act, 1944 — Section 5A, 54, 55, 56

**Citation :** (2019) 06 GUJ CK 0059

**Hon'ble Judges :** Harsha Devani, J;A.S. Supehia, J

**Bench :** Division Bench

**Advocate :** Kamal Trivedi, Uday Joshi, Vikram Nankani, Vinya Baragra, Trivedi And Gupta, Avani S Mehta, Devang Vyas, Parth H Bhatt

**Final Decision :** Dismissed

# Judgement

,,,

Harsha Devani, J",,,

1. On 05.05.2017 this court passed the following order:,,,

â??1. In this matter, the learned advocates for the respective parties were heard at length and the court had commenced with the dictation of the",,,

judgment on 10.03.2017. In the midst of the dictation, it was noticed that the notifications in relation to which submissions were advanced, were not",,,

subject matter of challenge and that the relief prayed for was more in the nature of a declaratory relief. Under the circumstances, the learned",,,

advocates for the parties were called upon to address the court on the said

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aspect.,,,

2. On request of the learned advocates for the parties, the matter was, therefore, adjourned whereafter, the learned advocates were heard.",,,

Thereafter, on account of the fact that the court was hearing riots related criminal appeals, it was not possible to proceed further with the dictation,",,,

under the circumstances, stand over to 5th June, 2017 for dictation of judgment.â??",,,

2. Thereafter, on account of change in the roster and for one reason or the other, the matter could not be posted for dictation of the judgment. At the",,,

relevant time, the submissions of the learned counsel for the respective parties had already been recorded and it was only the further arguments which",,,

were yet to be recorded. A considerable time has passed since the matter was heard, but since the learned counsel for the respective parties have",,,

stated that they have no objection if the court proceeds to dictate the judgment, the court has proceeded to dictate the judgment afresh.",,,

3. By this petition under article 226 of the Constitution of India, the petitioners seek the following substantive reliefs:",,,

â??9. The petitioners, therefore, pray that:",,,

[A] YOUR LORDSHIPS may be pleased to hold and declare that there is / was no liability on the part of the petitioner Company to make payment of,,,

customs duty at the rates prescribed under the Notification No.21/2002-Cus dated 01.03.2002, No.91/2010-Cus dated 06.09.2010, No.12/2012-Cus",,,

dated 17.03.2012 and No.26/2012-Cus dated 18.04.2012, in view of the law laid down by this Honâ??ble Court in its judgment dated 15.7.2015,",,,

delivered in case of the petitioner Company itself, i.e. writ petition being Special Civil Application No.3142 of 2010, as all the above referred",,,

notifications are non-est and void ab-initio in view of the aforesaid judgment of this Honâ??ble Court;,,,

[AA] Your Lordships may be pleased to hold and declare that there is/was no liability on the part of the petitioner company to make payment of,,,

customs duty at the rate prescribed under the Notification No.9/2016-Cus dated 16.02.2016, in view of the law laid down by this Honâ??ble Court in",,,

its judgment dated 15.7.2015, delivered in case of the petitioner Company itself, i.e. writ petition being Special Civil Application No.3142 of 2010, as all",,,

the above referred notifications are non-est and void ab-initio in view of the

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aforesaid judgment of this Honâ??ble Court;,,,

[B] Your Lordships may be pleased to issue a writ of prohibition or any other writ in the nature of prohibition or any other writ or order or direction,,,

restricting the respondents, their servants/agents from levying or collecting duty by whatever name @ 10 paise per unit and/or 3 paise per unit or any",,,

other rate by giving effect to Notifications No.91/2010-Cus dated 06.09.2010, No.12/2012-Cus dated 17.03.2012 and No.26/2012-Cus dated",,,

18.04.2012, in view of the judgment dated 15.7.2015 of this Honâ??ble Court in petitionerâ??s own case i.e. Special Civil Application No.3142 of",,,

2010;,,,

[BB] Your Lordships may be pleased to issue a writ of prohibition or any other writ in the nature of prohibition or any other writ, order or direction",,,

restricting the respondents, their servants/agents from levying or collecting duty by whatever name at the rate of 4 paise per unit or any other rate by",,,

giving effect to Notification No.9/2016-Cus dated 16.02.2016, in view of the law laid down by this Honâ??ble Court in its judgment dated 15.7.2015,",,,

delivered in case of the petitioner Company itself, i.e. writ petition being Special Civil Application No.3142 of 2010;",,,

[C] Your Lordships may be pleased to issue a writ of mandamus or any other writ in the nature of mandamus directing the appropriate authority to,,,

refund the amount collected on account of duty on electricity removed from SEZ to DTA in view of the judgment dated 15.7.2015 of this Honâ??ble,,,

Court in petitionerâ??s own case i.e. Special Civil Application No.3142 of 2010;,,,

[D] Your Lordships may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other order or direction calling for the,,,

records of the case and after going into legality and propriety thereof, quash and set aside the letter dated 08.10.2015 (Annexure-A) and letter dated",,,

16.11.2015 (Annexure-J) hereto.â??,,,

4. The petitioner No.1, a company is incorporated under the provisions of the Companies Act, 1956 and is, inter alia, engaged in the business of",,,

generating, transmitting and selling electrical power. The company has set up a Thermal Power Plant, at Mundra within the Special Economic Zone",,,

(hereinafter referred to as â??the SEZâ?), which is the subject matter of the present petition. Mundra Special Economic Zone has been set up as",,,

Mundra Port and Special Economic Zone Ltd. (hereinafter referred to as â??the

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MPSEZâ?), wherein the MPSEZ is the developer as defined under",,,

section 2(g) of the Special Economic Zones Act, 2005 (hereinafter referred to as â??the SEZ Actâ?). Mundra SEZ is a multi-product SEZ and",,,

electricity is required for both processing and non-processing areas. The petitioner company, therefore, joined as co-developer to set up the Mundra",,,

Plant, which is a coal based Thermal Power Plant. This project was initially planned to generate 1320 MW which was increased to 2640 MW and",,,

ultimately to 5200 MW.,,,

4.1 The petitioner company imported as well as indigenously procured capital goods without payment of duty, customs and excise, as the case may be,",,,

as provided under the provisions of the SEZ Act and the Special Economic Zones Rules, 2006 (hereinafter referred to as â??the SEZ Rulesâ?). The",,,

petitioner company, inter alia, removes/sells electricity outside the SEZ to Gujarat Urja Vikas Nigam Ltd. (GUVNL), a Distribution",,,

Company/Licensee of the Government of Gujarat and Distribution Companies of State of Haryana and others.,,,

4.2 By virtue of a parent Notification No.21/2002-Cus dated 01.03.2002, electrical energy when imported into India was exempt from whole of the",,,

customs duty in terms of Serial No.573 of the Table annexed to the parent notification. On 27.02.2010, the Central Government, by virtue of clause 60",,,

of the Finance Bill, 2010 (2nd Schedule thereto) amended Notification No.21/2002-Cus dated 01.03.2002, by providing for customs duty at the rate of",,,

16% on electricity energy removed from a Special Economic Zone to Domestic Tariff Area or non-processing areas of Special Economic Zones.,,,

However, electricity imported from foreign countries continued to be fully exempted, that is, chargeable to nil duty when imported from foreign",,,

countries.,,,

4.3 The Central Government, in exercise of powers conferred under sub-section (1) of section 25 of the Customs Act, 1962, issued Notification",,,

No.25/2010-Cus dated 27.02.2010 exempting goods falling under Tariff Item 2716 00 00 of the First Schedule to the Customs Tariff Act, 1975, when",,,

imported into India, from the whole of the duty of customs leviable thereon which was specified in the said First Schedule. The proviso thereto",,,

provided that nothing contained in the notification shall apply to electrical energy

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falling under Tariff Item 2716 00 00 removed from a Special,,,

Economic Zone to the Domestic Tariff Area or non-processing areas of Special Economic Zones.,,,

4.4 On 27.02.2010, the petitioner company received a letter dated 26.02.2010 from the fourth respondent â?" Specified Officer, in charge of Mundra",,,

Special Economic Zone, Mundra, requesting it to start payment of duty immediately with retrospective effect from 26th June, 2009. Being aggrieved,",,,

the petitioners approached this court by way of a writ petition being Special Civil Application No.3142 of 2010 challenging the validity of Notification,,,

No.25/2010-Cus dated 27.02.2010 as well as Notification No.21/2002-Cus dated 01.03.2002 (Serial No.573 of the Table) as amended by clause 60 of,,,

the Finance Bill read with Notification No.25/2010-Cus dated 27.02.2010.,,,

4.5 During the pendency of the said writ petition, the Central Government issued Notification No.91/2010-Cus dated 06.09.2010, whereby the entry at",,,

Serial No.573 in the Table to Notification No.21/2002-Cus dated 01.03.2002 came to be substituted prescribing a particular rate of customs duty (i.e.,,,

Rs.100/- per 1000 kwh) for electricity removed from SEZ to DTA or non-processing areas of SEZ. The petitioners, therefore, moved a civil",,,

application being Civil Application No.1173 of 2010 for amendment of the writ petition challenging the validity of the above notification, which came to",,,

be allowed by an order dated 21.09.2010.,,,

4.6 Vide Notification No.12/2002-Cus dated 17.03.2012, Notification No.21/2002-Cus dated 01.03.2002 came to be rescinded. However, in Entry at",,,

Serial No.145 in the Table to Notification No.12/2012-Cus dated 17.03.2012, the same rate of duty as mentioned in Notification No.21/2002 dated",,,

01.03.2002, as amended came to be continued.",,,

4.7 Subsequently, vide Notification No.26/2012-Cus dated 18.04.2012, the said Entry at Serial No.145 in the Table to Notification No.12/2002-Cus",,,

dated 17.03.2012 came to be substituted prescribing a new rate of duty (i.e. from Rs.100/-per 1000 kwh to Rs.30/- per 1000 kwh) for electricity,,,

removed from SEZ to DTA or non-processing areas of SEZ.,,,

4.8 By a judgment and order dated 15.07.2015, a Division Bench of this court allowed the writ petition and set aside the proviso to notification",,,

No.25/2010-Cus dated 27.2.2010 as being ultra vires articles 14 and 265 of the Constitution of India. The court further held that the petitioners are,,,

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entitled to exemption from payment of custom duty for the period 26.06.2009 to 15.09.2010 on the electricity cleared to DTA from SEZ.,,,

4.9 Since the relief granted in the said petition was limited to the period 26.06.2009 to 15.09.2010, the petitioners moved a Note for Speaking to the",,,

Minutes, seeking rectification of the above judgment and order which came to be dismissed as not pressed by an order dated 06.08.2015",,,

4.10 Being aggrieved by the judgment and order dated 17.07.2015 passed by this court in Special Civil Application No.3142 of 2010, the Central",,,

Government filed Special Leave Petition (C) No.30868 of 2015 before the Supreme Court, which came to be dismissed by an order dated 20.11.2015.",,,

4.11 By a letter dated 18.08.2015 addressed to the respondent No.4, the petitioner company stated that since the rate of customs duty on electricity",,,

imported from a place outside India was nil, no customs duty could be levied on electricity removed by it from SEZ to DTA in terms of the ratio laid",,,

down in the above referred judgment and that henceforth, it would not pay the customs duty on electricity removed by it to DTA. In response to the",,,

said letter, the fourth respondent, by a letter dated 08.10.2015 addressed to the petitioner company stated that the petitioner company was entitled to",,,

exemption from payment of customs duty for the period from 26.06.2009 to 15.09.2010 and that, it was required to make payment of duty at the rate",,,

prescribed under Notification No.21/2002-Cus dated 01.03.2002 as amended by Notification No.91/2010-Cus dated 06.09.2010 and Notification,,,

No.26/2012-Cus dated 18.04.2012 amending Entry No.145 of Notification No.12/2012-Cus dated 17.03.2012. The petitioner company was also,,,

directed to make payment of customs duty.,,,

4.13 The petitioner company, thereafter, addressed another letter dated 29.10.2015 to the fourth respondent explaining the legal position and",,,

contending that it was not liable to pay customs duty and would initiate action for refund of customs duty paid during the past period.,,,

4.14 Vide letter dated 16.11.2015, the fourth respondent expressed his disagreement with the contents of the letter dated 29.10.2015 addressed by the",,,

petitioner company and requested for the details mentioned therein. In the meantime, the petitioner company had applied for consequential refund on",,,

09.12.2015, but in view of the stand taken by the respondents vide letter dated 08.10.2015, the petitioner company reserved its right to seek",,,

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appropriate relief in respect of refund application made by it.,,,

4.15 Being aggrieved by the stand taken by the respondents, the petitioners have filed the present petition seeking the reliefs noted hereinabove.",,,

5. Mr. Kamal Trivedi, Senior Advocate, learned counsel with Mr. Uday Joshi, learned advocate for M/s Trivedi and Gupta, learned advocates for the",,,

petitioners, submitted that section",,,

12 of the Customs Act is a charging section, which provides for â??Levy of customs duty on goods imported into and/or exported from Indiaâ?,",,,

which means, the goods which are brought from a territory outside India into India and/or taken out from India to a territory outside India. It was",,,

submitted that in view thereof, removal of electricity from the SEZ to the DTA would not attract customs duty under the Customs Act. It was",,,

submitted that section 25 of the Customs Act empowers the Central Government to grant exemption from customs duty leviable under the provisions,,,

of section 12 of that Act, therefore, once the removal of electricity from SEZ to DTA does not attract customs duty, no question arises of granting or",,,

not granting exemption from customs duty on removal of electricity from SEZ to DTA under the provisions of section 25 of the Customs Act.,,,

Reference was made to section 30 of the SEZ Act, to submit that the same is the charging section which creates a level playing field between the",,,

units located in foreign countries on one hand and the units located in the SEZ on the other. It was submitted that section 30 of the SEZ Act seeks to,,,

charge the goods removed from SEZ to DTA with customs duty, including countervailing duty etc. under the Customs Tariff Act, 1975 as leviable on",,,

such goods when imported.,,,

5.1 It was submitted that in the present case, the Central Government, in exercise of powers conferred under section 25 of the Customs Act, granted",,,

exemption to all the goods imported into India falling under the tariff item No.2716 00 00 from whole of the duties which are specified in the First,,,

Schedule. Therefore, in terms of provisions of section 30(a) of the SEZ Act, when no customs duty is payable on the goods imported in India, no duty",,,

will be payable on identical goods removed from SEZ to DTA. According to the learned counsel, the expression â??leviableâ? as used in section",,,

30(a) of the SEZ Act, is to be interpreted not in context of the word â??levyâ?, which means chargeability, but in context of the word â??payableâ?",,,

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so as to create a level playing field. Reliance was placed upon the decision of this court in the case of Roxul Rockwool Insulation India Pvt. Ltd. v.,,,

Union of India, 2015 (320) ELT 554 (Guj.), wherein this court while dealing with section 3(1) of the Customs Tariff Act, 1975 wherein the court in the",,,

context of a similar expression, namely, â??be liable to a duty equal to excise duty for the time being leviable on a like article if produced or",,,

manufactured in Indiaâ??, has observed thus:",,,

â??18.... ... ... If, therefore, by virtue of an exemption notification, the whole of the excise duty payable as prescribed in the Central Excise Tariff Act",,,

is exempt for the local manufacturers, no CVD would be payable under section 3(1) of the Customs Tariff Act on import of such goods. ... ...",,,

However, the central concept remains the same, namely, the importer would have to pay CVD equivalent of excise duty payable on a like article if",,,

produced or manufactured in India. In the present case, by virtue of the exemption notifications on a like article produced or manufactured in India,",,,

there is no duty of excise payable or leviable is leviable. In other words, excise duty levied on such articles manufactured in India being nil, the CVD",,,

also, in terms of section 3(1) of the Customs Tariff Act, would be nil.â??",,,

5.2 Reference was also made to the decision of the Supreme Court in the case of Aidek Tourism Services Pvt. Ltd. v. Commissioner of Customs,",,,

2015 (318) ELT 3, wherein the court, while dealing with section 3(1) of the Customs Tariff Act, 1975, in the context of the expression â??leviableâ?",,,

used in sub-section (1) of section 3 thereof, has, inter alia, observed that for quantification of additional duty in such a case, it has to be imagined that",,,

the article imported had been manufactured or produced in India and then to see what amount of excise duty was leviable thereon. It was submitted,,,

that it is now settled that a rate of duty would be only that which an Indian manufacturer would pay under the Excise Act with reference to the like,,,

article. Therefore, the importer would be entitled to payment of concessional/ reduced or nil rate of CVD, if any notification is issued providing",,,

exemption/remission to excise duty for the like article, if produced/manufactured in India. It was pointed out that in the case of Union of India v.",,,

Engee Industrial Services Co. Ltd., 2016 (335) ELT 197, the Supreme Court has once again confirmed the above view and observed as under:",,,

â??1. .. .. .. The basis of the judgment of the High Court is that when excise duty

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is exempted, there is no question of payment of additional duty. For",,,

this purpose, the High Court has referred to the Constitution Bench judgment of this court in â??Hyderabad Industries Limited v. Union of India.",,,

2. In these appeals, the appellants have not controverted the aforesaid plea, viz., no excise duty is payable and the product manufactured in India is",,,

exempted from excise duty. In view thereof, the aforesaid judgment of this court stands attracted to the facts of this case and we do not find any",,,

infirmity in the view taken by the High Court.â??,,,

5.3 It was submitted that in all the above decisions, the expression â??leviableâ? as used under section 3 of the Customs Tariff Act, which pertains to",,,

levy of countervailing duty, that is, additional duty equal to excise duty etc. has been interpreted not in context of the word â??levyâ? which means",,,

chargeability, but in the context of the word â??payableâ? and that while interpreting the similarly worded section 30(a) of the SEZ Act, the aforesaid",,,

decisions would apply on all fours.,,,

5.4 It was submitted that while interpreting the provisions of section 30(a) of the SEZ Act, this court in the case of the petitioner company itself in",,,

Special Civil Application No.3142 of 2010 rendered on 15.07.2015, took a view that when no customs duty is payable on the goods imported in India,",,,

no duty will be payable on similar goods transferred from SEZ to DTA in view of section 30 read with section 51 of the SEZ Act, and was further",,,

pleased to hold that the Notification No.25/2010-Customs dated 27.2.2010 as well as the Notification NO.21/ 2002-Customs as amended by clause-60,,,

of the Finance Bill, 2010 (Second Schedule thereto) are ultra vires Entry 83 of List-I of Seventh Schedule of the Constitution of India, section 62 of the",,,

Customs Act, 1962 and section 30 of the SEZ Act, 2005 as well as articles 14 and 265 of the Constitution of India and consequently, deserve to be",,,

quashed and set aside.,,,

5.5 It was submitted that once the initial action of levying customs duty on removal of electricity from SEZ to DTA came to be held as invalid, the",,,

subsequent proceedings would not sanctify the same, inasmuch as, it is a settled legal position that in case the foundation is removed, the",,,

superstructure falls. In support of such submission, the learned counsel placed reliance upon the decision of the Supreme Court in the case of",,,

Kalabharati Advertising v. Hemant Vimalnath Narichania and others, (2010) 9

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SCC 437, wherein the court placed reliance upon its earlier decision in",,,

the case of Badrinath V. State of T.N., (2000) 8 SCC 395 ,wherein it was observed that once the basis of a proceeding is gone, all consequential acts,",,,

action, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial",,,

proceedings is equally applicable to the administrative orders. Reliance was also placed upon the decision of a Division Bench of this court in the case,,,

of Gujarat Paraffins Pvt. Ltd. v. Union of India, (2012) 282 ELT 33 (Guj.), wherein this court has held that it is a settled legal position that if initial",,,

action is not in consonance with law, the subsequent proceedings would not sanctify the same. In such a fact situation, the legal maxim sublato",,,

fundamento cadit opus is applicable, meaning thereby, in case the foundation is removed, the superstructure falls. It was submitted that in the light of",,,

the law laid down in the above decisions, subsequent exemption notifications to the limited extent, viz., (i) Entry at Serial No.573 in Notification",,,

No.91/2010-Cus dated 6.9.2010, providing for rate of duty at Rs.100 per 1000 kwh, (ii) Entry at Serial No.145 in Notification No.12/ 2012-Cus dated",,,

17.3.2012, providing for rate of duty at Rs.30 per 1000 kwh, (iii) Entry at Serial No.145 in Notification No.26/2012-Cus dated 18.4.2012 providing for",,,

rate of duty at Rs.30 per 1000 kwh and (iv) Entries at Serial No.146A and 146B in Notification No.9/2006-Cus dated 16.2.2016 providing for rate of,,,

duty at Rs.40 per 1000 kwh and Rs.24 per 1000 kwh, respectively are non-est and void ab initio to the said extent, more particularly, when no duty at",,,

all is payable with reference to electricity imported from outside India.,,,

5.6 It was submitted that in view of the above position of law, the impugned demand contained in the communications dated 8.10.2015 and 16.11.2015",,,

demanding payment of customs duty on the domestic clearance of electricity deserves to be quashed and set aside. It was pointed out that insofar as,,,

the units engaged in generating electricity in DTA are concerned, they are not at all liable to pay excise duty under the Central Excise Act, 1944,",,,

inasmuch as, â??electricityâ? has been held to be non-excisable goods since against the Excise Tariff Heading No.2716 0000, no duty is indicated. It",,,

was submitted that thus, such domestic units would be even otherwise at an advantageous position as compared to SEZ units in the event of there",,,

being any liability on the part of the SEZ unit to pay customs duty on removal of

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electricity from SEZ to DTA.,,,

5.7 It was submitted that one of the main objectives of the Government of India behind the enactment of the SEZ Act, 2005 is to make available goods",,,

and services free of tax and duties supported by integrated infrastructure for export production, expeditious and single window approval mechanism",,,

and a package of incentives to attract foreign and domestic investments for promoting export-led growth. It was submitted that in order to place the,,,

SEZ Act at a higher pedestal as compared to the Customs Act, the same has been given an overriding effect under section 51 of the SEZ Act.",,,

5.8 It was submitted that section 12 of the Customs Act is a charging section, which provides for â??Levy of customs duty on goods imported into",,,

and/or exported from Indiaâ?, which means, the goods which are brought from a territory outside India into India and/or taken out from India to a",,,

territory outside India would only be taxable under the Customs Act. In the absence of any amendment of the definitions of â??exportâ?,",,,

â??importâ? and â??Indiaâ?, that is in sections 2(18), 2(23) and 2(27) of the Customs Act respectively, or any amendment in the charging section",,,

viz. section 12 of the Customs Act or insertion of a charging provisions under the Customs Act, contemplating movement of goods from the DTA to",,,

SEZ and/or SEZ to DTA as a taxable event entailing a levy of customs duties, the levy of customs duty under the Customs Act would not be justified",,,

with reference to removal/transfer of goods from SEZ to DTA or from DTA to SEZ. Reference was made to the decision of this court in the case of,,,

Essar Steel Limited v. Union of India, 2010 (249) ELT 3, wherein this court while dealing a situation with respect to export duty on goods supplied",,,

from DTA to SEZ, observed as under:",,,

â??39. Having heard the learned counsel appearing for the parties and having gone through their rival submissions as well as pleadings in the light of,,,

the statutory provisions and decided case law on the subjects, we are of the view that the moot question for our consideration is as to whether the levy",,,

of export duty on goods supplied from the Domestic Tariff Area to the Special Economic Zone is justified under law. ....â??,,,

â??41.1.2 The various terms used in section 12 of the said Act, which is the charging section for the purpose of levy of duty, have been defined under",,,

the said Act itself. Section 2(18) defines export to mean taking out of India to a

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place outside India; section 2(19) defines export goods as goods which,,,

are to be taken out of India to a place outside India; section 2(27) defines India as including the territorial waters of India. Therefore, the taxable event",,,

contemplated under the Customs Act, 1962 for the purpose of levy of export duty is taking the goods out of the territorial waters of India to a place",,,

outside India, in which case the goods would be dutiable goods as contemplated under section 12 of the said Act and attract levy of export duty, to be",,,

paid at the time of exportation of such goods. Export under the Customs Act, 1962, therefore, can be said to have taken place only upon movement of",,,

the goods outside the territorial waters of India. Reference is made to the decision of the Apex Court in the case of Union of India v/s. Rajindra,,,

Dyeing and Printing Mills Limited, (2004) 10 SCC 187.",,,

41.1.3 In the absence of any amendment of the definitions of the terms â?? Exportâ? and â??Indiaâ? in the Customs Act, 1962, or any amendment in",,,

the charging section i.e. section 12 or insertion of a charging provision contemplating movement of goods from the Domestic Tariff Area to the,,,

Special Economic Zone as a taxable event entailing a levy of Export Duty as in the case of export, the levy of Export Duty cannot be justified under",,,

the provisions of the Customs Act, 1962.â??",,,

5.9 It was submitted that once the removal of goods from SEZ to DTA, does not attract the customs duty under the provisions of the Customs Act,",,,

then in that case, there arises no question of granting or not granting exemption under the provisions of section 25 of the Customs Act, which",,,

empowers the Central Government to grant exemption from customs duty leviable under the provisions of section 12 of the Customs Act. It was,,,

contended that in view of the above, removal of electricity from SEZ to DTA would be neither import nor export under the provisions of the Customs",,,

Act and consequently, would not attract customs duty under the provisions of the Customs Act. It is under these circumstances, that a deeming fiction",,,

is provided under section 30 of the SEZ Act, as if such removal from SEZ to DTA is chargeable to duties of customs, where applicable, as leviable on",,,

such goods when imported from outside India under the Customs Act. It was submitted that the words â??where applicableâ? as used in section,,,

30(a) of the SEZ Act, would only have to be read for anti-dumping duty, countervailing duty and safeguard duties as the said duties are not levied on",,,

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each and every transaction, but on certain transactions covered under the Customs Tariff Act, 1985. This is because of the peculiar language of",,,

section 9A(2A) of the Customs Tariff Act and section 5A of the Central Excise Act, which is different from section 25 of the Customs Act. These",,,

words, therefore, would not apply to basic customs duty. It was submitted that in the present case, the countervailing duty/additional duty is not",,,

leviable on electricity by virtue of zero duty under the Central Excise Tariff, and not by virtue of any notification issued under section 5A of the",,,

Central Excise Act, 1944.",,,

5.10 It was submitted that this court, in the above referred decision, has held that the expression â??leviableâ? should be read to mean â??payableâ?",,,

and that once the petitioner is held by the above decision to be not liable to pay the duty, it is not permissible for the respondents, by intermittently",,,

issuing similar notifications, to say that the petitioners are liable to pay duty. It was submitted that once this court has quashed the provision, the",,,

foundation has gone and the result would be that as long as there is no requirement of payment of duty on importation of like goods, the petitioner is",,,

not required to pay duty on removal of similar goods from SEZ to DTA. It was submitted that in view of the above decision, the respondents cannot",,,

re-invite the position prior to the decision by issuing other notifications virtually demanding duty at different rates on removal from SEZ to DTA, which",,,

amounts to negation of the decision of this court in the case of the assessee itself. It was emphatically argued that the earlier decision has to be,,,

followed with full vigour and that in view of the decision, the notifications are non est and the petitioners are not liable to pay any duty as there is no",,,

payability on import of electricity.,,,

5.11 The learned counsel submitted that section 30 of the SEZ Act is the charging section, which provides for levy of duty on removal of goods from",,,

SEZ to DTA. It was submitted that the measure of levy under section 30 of the SEZ Act is by reference to customs duty levied on such or like goods,,,

when imported into India under the Customs Act read with Customs Tariff Act, 1975. It was submitted that the SEZ Act is not covered under Entry",,,

83 of List-I of Schedule VII of the Constitution of India, as it does not provide for levy of customs duty on goods imported into India. It is only the",,,

Customs Act which is covered by Entry 83 of List-I of Schedule VII of the

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Constitution of India and has a separate provision in relation to levy of,,,

duty on goods which are imported from a place outside India to SEZ and such imports are defined in section 2(o) of the SEZ Act, which are exempt",,,

by virtue of provisions of section 26 of the SEZ Act. It was submitted that a combined reading of these provisions bring to surface the fact that,,,

Parliament cannot provide for levy of duty on goods from SEZ to DTA under the Customs Act since taxable event of imports as defined in section,,,

2(25) of the Customs Act is bringing into India from a place outside India and not removing goods from SEZ to DTA. The legislative mandate under,,,

Entry 83 of List-I of Schedule VII of the Constitution of India is to provide for levy of customs duty on goods which are imported into India, that is,",,,

goods which are brought from a place outside India into India, which excludes SEZ inasmuch as by virtue of section 53 of the SEZ Act read with",,,

section 26 thereof and section 2(o) thereof, SEZ being outside the customs territory is deemed not to be a part of India for the purpose of import of",,,

goods into SEZ. It was submitted that any other interpretation in this regard would result in direct conflict between the provisions of section 53 and,,,

section 26 of the SEZ Act and section 12 of the Customs Act as it would mean that the Parliament by a special Act enacted subsequently has not,,,

provided for levy of duty on goods imported from a place outside India to SEZ. It was submitted that power to levy customs duty on goods imported,,,

into SEZ or removed from SEZ to DTA cannot be read into section 12 of the Customs Act. It was, accordingly, urged that the petition deserves to be",,,

allowed by granting the reliefs prayed for by the petitioners.,,,

6. Opposing the petition, Mr. Devang Vyas, learned Assistant Solicitor General has submitted that the chargeability under the Customs Act is not",,,

relevant. It is only for computation that recourse has to be made to the Customs Act.,,,

It was submitted that the words used in section 30 are â??as leviableâ? not â?? as payableâ? and that section 30 provides a yardstick for computation,,,

of the amount chargeable.,,,

6.1 Referring to the earlier decision rendered by this court in the petitionersâ?? own case, it was pointed out that though the petitioners had sought a",,,

wider relief, the relief granted by the court was limited to the period from June, 2009 to 15.09.2010. Reference was made to paragraphs 61, 63 and 63",,,

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(wrongly numbered) of the judgment to submit that the decision was confined to the period from June, 2009 to 15.09.2010. It was submitted that,",,,

therefore, the decision of the High Court does not restrict the levy of customs duty for the further period. It was pointed out that the parent notification",,,

was amended from time to time whereby the customs duty was reduced from 16% to 10 paisa per unit and was further reduced to 3 paisa per unit till,,,

15.02.2016, whereafter the exemption was made conditional subject to certain conditions.",,,

6.2 Next, it was submitted that if the petitionersâ?? contention were to be accepted, viz., that no duties of customs are leviable on the removal of",,,

electricity from the SEZ to DTA, it would result into granting double benefit to the petitioners. The attention of the court was invited to Instruction 67",,,

dated 28th October, 2010 issued by the Government of India, Ministry of Commerce and Industry (SEZ Section) to all Development Commissioners,",,,

to point out that in order to implement the Customs Notification No.91/2010 dated 06.09.2010, it had been decided that the operation of rule 47(3) of",,,

the SEZ Rules, 2006 is kept in abeyance with effect from 06.09.2010 till further order. The attention of the court was also invited to the",,,

communication dated 04.09.2015 of the petitioner addressed to the Specified Officer providing details regarding duty benefit availed by APSEZ for,,,

O&M of M/s Adani Power Plant, to point out that the petitioner has availed of duty benefit to the tune of Rs.963.94 crores, whereas the duty paid by",,,

it is only to the tune of Rs.458.50 crores. It was submitted that if the petitioner is permitted to compete with the DTA industries, it would tilt the",,,

balance in favour of the petitioner. It was submitted that insofar as the contention with regard to creating level playing field is concerned, the",,,

difference in price would kill the domestic industry. According to the learned counsel, if the petitioner is granted complete exemption, it makes it non-",,,

viable for local industries.,,,

6.3 Referring to paragraph 63 of the judgment and order dated 15.07.2015, it was pointed out that what has been held is that the customs duty at the",,,

rate of 16% ad valorem levied by notification dated 27.02.2010 could not be imposed retrospectively with effect from 26.06.2009 and that the,,,

petitioner is entitled for exemption from payment of customs duty for the period 26.06.2009 to 15.09.2010 on the electricity cleared to DTA from SEZ.,,,

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It was submitted that thus, the court has set aside the retrospective charging of customs duty and has granted relief covering a specific period only and",,,

hence, levy for a period other than 26.06.2009 to 15.09.2010 is permissible to the authority. Referring to the reliefs prayed for in the earlier petition, it",,,

was pointed out that the petitioner had challenged Notification No.21/2002 dated 1st March, 2002 (Sr.No.573) as amended by clause 60 of Finance",,,

Bill, 2010 read with Notification No.25/2010-Cus dated 27th February, 2010; however, the court has held only the proviso to Notification No.25/2010-",,,

Cus dated 27th February, 2010 to be ultra vires.",,,

6.3 It was submitted that vide Notification No.25/2010-Cus dated 27.02.2010, the parent Notification No.21/2002-Cus dated 01.03.2002 was amended.",,,

The effect of the amendment was that Entry No.573 was split up/bifurcated into two entries, viz., 573 and 573A. Referring to the foot note of the said",,,

notification, it was pointed out that the entry was substituted (with effect from 26.06.2009) by clause 60 read with the Second Schedule to the Finance",,,

Bill, 2010 with validating and saving provisions, namely, the date when the unit was established. It was pointed out that two notifications came to be",,,

issued on the same day, viz., 27.02.2010, one bifurcating the entry and the other providing that goods falling under Tariff Item 2716 00 00 when",,,

imported into India shall be exempted from the whole of the duty specified in the said First Schedule whereas the proviso thereto provided that nothing,,,

contained in that notification shall apply to electric energy falling under Tariff Item 2716 00 00 removed from a Special Economic Zone to the,,,

Domestic Tariff Area or non-processing areas of Special Economic Zones.,,,

6.4 It was contended that from the observations in paragraph 61 of the judgment of the Division Bench, it is evident that the same would not govern",,,

anything beyond 15.09.2010. According to the learned advocate, the court found favour only qua a part of the reliefs prayed for and not in the",,,

remaining part and hence, the petitioners cannot now question the decision. Referring to the statement of benefit availed by the petitioners dated",,,

04.09.2015, it was submitted that th resultant effect of the relief granted would amount to grant of double benefit to the petitioner. It was submitted",,,

that the petitioners having claimed certain reliefs before this court and this court having not granted the same, by virtue of a subsequent petition, the",,,

petitioners are not entitled to claim the reliefs which were not granted in the

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earlier petition and that the petition being devoid of any merit, deserves to",,,

be dismissed.,,,

7. Ms. Avani Mehta, learned senior standing counsel for the respondent No.5, submitted that what the petitioner claims is parity with import of",,,

electricity from Nepal and Bhutan. It was submitted that factually, the electricity produced by the petitioner is being majorly sent to Northern India and",,,

Gujarat. It was submitted that the petitioner is governed by the provisions of the SEZ Act and that the exemptions granted to SEZ units and developers,,,

are under sub-section (2) of section,,,

26 of the SEZ Act and that the petitioner being governed by the SEZ Act, cannot claim any benefit under the Customs Act. It was submitted that",,,

reference to the Customs Act is only for the purpose of quantification and not for exemption.,,,

7.1 Reference was made to section 49 of the SEZ Act, which provides that the Central Government may, by notification, direct that any of the",,,

provisions of that Act (other than sections 54 to 56) or any other Central Act or any rules or regulations made thereunder or any notification or order,,,

issued or direction given thereunder (other than the provisions relating to making of the rules or regulations) specified in the notification â?" (a) shall,,,

not apply to a Special Economic Zone or a class of Special Economic Zones or all Special Economic Zones; or, (b) shall apply to Special Economic",,,

Zone or a class of Special Economic Zones or all Special Economic Zones only with such exception, modification and adaptation, as may be specified",,,

in the notification.,,,

7.2 It was submitted that in view of the overriding effect of section 51 of the SEZ Act, benefit of the provisions of the Customs Act, including the",,,

benefit of exemption under section 25 thereof, cannot be claimed by the petitioners. Reference was made to section 55(2)(h) of the SEZ Act, which",,,

empowers the Central Government to frame rules providing the terms, conditions and limitations subject to which the goods or services exported out",,,

of, or imported into, or procured from the Domestic Tariff Area to, a Special Economic Zone, be exempt from payment of taxes, duties, or cess under",,,

section,,,

7. It was submitted that rule 47(3) of the SEZ Rules, which provides that surplus power generated in a Special Economic Zone Developerâ??s",,,

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Power Plant in the SEZ or Unitâ??s captive power plant or diesel generating set may be transferred to Domestic Tariff Area on payment of duty on,,,

consumables and raw materials used for generation of power subject to the conditions stipulated thereunder, has been been kept in abeyance for a",,,

period of five years and the petitioners have enjoyed the benefit thereof. Therefore, the petitioners cannot claim double benefit, viz., due to rule 47(3)",,,

of the SEZ Rules, having been kept in abeyance as well as exemption from payment of customs duty.",,,

7.3 It was, accordingly, urged that the petitioners are not entitled to the reliefs prayed for in the petition and that the petition deserves to be dismissed.",,,

8. In rejoinder, Mr. Kamal Trivedi, learned counsel for the petitioners invited the attention of the court to rule 22 of the SEZ Rules, to submit that the",,,

terms and conditions for availing exemptions are provided thereunder and that the provisions of the Customs Act will not apply. Reference was made,,,

to paragraph 48 of the previous judgment of this court, to point out that the court has held that in order to give impetus to exports, the SEZ Act has",,,

been enacted. The SEZ Act envisages a deeming fiction where a SEZ area would be considered outside the customs area of the country. It is also,,,

noticed that section 30 of the SEZ Act permits DTA clearances to a SEZ unit under certain conditions. One of the conditions being the goods,,,

removed from SEZ to DTA would be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs",,,

Tariff Act, 1975 where applicable as leviable on such goods when imported. Reference was also made to paragraph 53 of the judgment, wherein it",,,

has been held thus:,,,

â??53. However, from the above statutory provisions, it can be seen that by virtue of Section 30 of the SEZ Act, a SEZ unit on its clearance of goods",,,

to any DTA invites duty of customs where applicable as leviable on such goods when imported. Such DTA clearance by a SEZ unit would, thus, be",,,

treated as imports for computation of customs duty. Section 30 of the SEZ Act only imposes conditions for a SEZ unit to clear the goods to a DTA.,,,

Such condition is payment of authorized duties, as applicable and leviable on such goods when imported. By reference, therefore, the charging Section",,,

12 of the Customs Act, 1962 would be leviable as if the goods cleared by SEZ unit to the DTA are in the nature of imports. If, therefore, by virtue of",,,

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an exemption notification, the whole of customs duty payable is exempted, then no customs duty would be payable on import of such goods. Even",,,

otherwise, Section 51 of the SEZ Act gives overriding effect to the provisions of the Act.â??",,,

8.1 It was submitted that there is no question of applicability of the Customs Act to SEZ and that section 30 is the charging section and the word,,,

â??leviableâ? employed therein has to be interpreted in the context of payability. Reference was also made to the decision of the Supreme Court in,,,

the case of M/s Frick India Ltd. v. Union of India and others, (1990) 1 SCC 400, wherein the court held thus:",,,

â??8. It is well-settled that the headings prefixed to sections or entries cannot control the plain words of the provision; they cannot also be referred to,,,

for the purpose of construing the provision when the words used in the provision are clear and unambiguous; nor can they be used for cutting down,,,

the plain meaning of the words in the provision. Only, in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in",,,

construing the provision but even in such a case it could not be used for cutting down the wide application of the clear words used in the provision.,,,

Sub-item (3) so construed is wide in its application and all parts of refrigerating and air-conditioning appliances and machines whether they are,,,

covered or not covered under sub-items (1) and (2) would be clearly covered under that sub-item. Therefore, whether the manufacturer supplied the",,,

refrigerating or air-conditioning appliances as a complete unit or not is not relevant for the levy of duty on the parts specified in sub-item (3) of Item,,,

29A.â??,,,

8.2 It was submitted that the previous judgment of this court proceeds mainly on the principle that if no duty is liable to be paid on import to DTA,",,,

there is no duty liability. It was submitted that if a particular principle is enunciated by the court as regards payment of duty on transfer of goods from,,,

SEZ to DTA, the same will apply regardless of the period so long as there is no change in the provision. It was submitted that the principle holds the",,,

field for the any period.,,,

8.3 In support of such submission, the learned counsel placed reliance upon the decision of the Supreme Court in the case of Bharat Sanchar Nigam",,,

Ltd. and another v. Union of India and others, (2006) 3 SCC 1, wherein the court

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held thus:",,,

â??20. The decisions cited have uniformly held that res judicata does not apply in matters pertaining to tax for different assessment years because res,,,

judicata applies to debar Courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct.,,,

The Courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in,,,

the factual position. The reason why Courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a,,,

subsequent year is not because of any principle of res judicata but because of the theory of precedent or the precedential value of the earlier,,,

pronouncement. Where facts and law in a subsequent assessment year are the same, no authority whether quasi judicial or judicial can generally be",,,

permitted to take a different view. This mandate is subject only to the usual gateways of distinguishing the earlier decision or where the earlier,,,

decision is per incuriam. However, these are fetters only on a coordinate bench which, failing the possibility of availing of either of these gateways,",,,

may yet differ with the view expressed and refer the matter to a bench of superior strength or in some cases to a bench of superior jurisdiction.â??,,,

8.4 Reliance was also placed upon the decision of the Supreme Court in the case of Union of India and another v. Ranchi Municipal Corporation,",,,

Ranchi and others, (1996) 7 SCC 542, for the proposition that the summary dismissal does not constitute res judicata for deciding the controversy.",,,

Moreover, this being a recurring liability which is ultra vires the power, earlier summary dismissal of the case does not operate as a res judicata.",,,

8.5 In connection with the case put forth by the fifth respondent in the affidavit-in-reply dated 9th December, 2016, wherein it has been stated that in",,,

view of the instruction contained in clause 4 of Instruction No.6 dated 3rd August, 2006 issued by the Government of India, Ministry of Commerce",,,

and Industry (Annexure R-1), any infrastructure created in excess thereof shall not be eligible for any duty and tax concession to the developer or co-",,,

developer as provided in sections 26 and 27 of the Specific Economic Zones Act, 2005, it was submitted that the same does not apply to the petitioners",,,

and that the same applies to residential complexes, hotels, hospitals, schools, etc. It was submitted that insofar as the provisions of section 49 of the",,,

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SEZ Act are concerned, to their knowledge, there is no notification, nor has such notification brought on record. It was submitted that the principle laid",,,

down by this court in the earlier decision will apply to all notifications and in a taxation matter, what has to be seen is the liability.",,,

9. From the facts and contentions noted hereinabove, it is an admitted position that the petitioners had earlier filed a writ petition being Special Civil",,,

Application No.3142 of 2010, seeking the following reliefs:",,,

â??13. The Petitioners, therefore, pray that:-",,,

[A] YOUR LORDSHIPS may be pleased to declare that the impugned Notification i.e. Notification No.25/2010- Cus dated t2h7 February, 2010.",,,

Annexure â??Aâ? hereto, is unconstitutional and ultra vires Entry 83 of List 1 of Schedule VII of the Constitution of India and/or Section 12 of the",,,

Customs Act, 1962 and/or Section 30 of the Special Economic Zone Act, 2005 and/or Article 14 of the Constitution of India and/or Article 19(1)(g)",,,

and Article 265 of the Constitution of India;,,,

[B] YOUR LORDSHIPS may be pleased to issue a writ of certiorari, thereby quashing and setting aside the impugned Notification No.25/2010-Cus",,,

dated 27th February, 2010. Annexure â??Aâ?? hereto;",,,

Sr. No,Text as appearing in the judgment,Text as it should read,"Pg. No. in

judgme nt

1,"In para 61, 7th line reads as under :

â??.... Thus, the dispute in the present

writ petition is confined to the period

from June 2009 to 15.9.2010.","â??.... Thus, the dispute

in the present writ

petition is for the period

from June 2009

onwards.",60

2,"In para 63, 5th line reads as under :

â??.... The petitioner is entitled for

exemption from payment of custom

duty for the period 26.7.2009 to

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15.9.2010.â??","â??.... The petitioner is

entitled for exemption

from payment of custom

duty for the period

26.7.2009 onwards, so

long as no customs

duty is payable on

similar goods imported

in India.â??",61

3,"In para 63 (ultimate para), 5th line

reads as under:

â??.... The petitioners are entitled for

exemption from payment of custom

duty for the period 26.6.2009 to

15.9.2010 on the electricity cleared to

DTA from SEZ.â??","â??.... The petitioners

are entitled for exemption

from payment of custom

duty for the period

26.6.2009 onwards on

the electricity cleared to

DTA from SEZ, so long

as no customs duty is

payable on similar

goods imported in

India.â??",61

22. In this regard it may be noted that insofar as Notification No.21/2002 dated 01.03.2002 as amended by clause 60 of Finance Bill, 2010 and",,,

Notification No.91/2010-Cus dated 06.09.2010 are concerned, the same were subject matter of challenge in the above writ petition, but the Division",,,

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Bench did not deem it fit to grant any relief in respect of those notifications. Therefore, the question of giving a declaration qua those notifications",,,

based upon the findings recorded in the said judgment does not arise. Insofar as Notification No.12/2012-Cus and Notification No.26/2012-Cus are,,,

concerned, the same were issued during the pendency of the previous petition, but the petitioners did not deem it fit to challenge the same at the",,,

relevant time or seek any relief qua those notifications in that petition. Thereafter, belatedly, in this petition which is filed in the year 2016, the",,,

petitioners seek a declaration that they are not liable to pay any customs duty under those notifications. From the submissions advanced by the learned,,,

counsel, it would appear that the above notifications are subject matter of challenge in the petition, however, on a perusal of the reliefs prayed for in",,,

the petition, it emerges that in fact, there is no such challenge to the notifications and that only a declaratory relief based upon the previous judgment",,,

has been prayed for. In the opinion of this court, in the absence of any challenge to such notifications, the question of entering into merits of such",,,

submissions does not arise. Moreover, despite the fact that all these legal aspects were considered by the Division Bench in the previous judgment, the",,,

Division Bench did not deem it fit to grant the relief prayed for in the petition in its entirety, therefore, it is not permissible for the petitioners to seek the",,,

relief which though prayed for in that petition was not granted by the court, in the present petition in the guise of seeking a declaratory relief based on",,,

the principles enunciated in the said judgment.,,,

23. Apart from the fact that for the reasons recorded hereinabove, the decision of the Division Bench would not be applicable for any period beyond",,,

06.09.2010, in the opinion of this court, when similar notifications were subject matter of challenge in the writ petition and the court did not deem it fit",,,

to grant relief to the petitioners in respect of such notifications, no reliance can be placed upon the said decision to claim relief qua other similar",,,

notifications. Moreover, as petitioners have only sought declaratory relief to the above extent, but have not called in question the validity of the said",,,

notifications, granting any declaratory relief would amount to rendering the said notifications nugatory without there being any challenge to the same.",,,

24. Insofar as the relief prayed for in respect of Notification No.9/2016-Cus dated 16.02.2016 is concerned, the said notification stands on a different",,,

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footing than the other notifications. In this notification, there is no general exemption in respect of goods falling under Tariff Item 2716 00 00 of the",,,

First Schedule to the Customs Tariff Act, 1975 when imported into India from the whole of the duty of customs leviable thereon which is specified in",,,

the said First Schedule. Under this notification, different rates are provided for goods falling under Tariff Item 2716 00 00 and it is only in respect of",,,

electrical energy originating from Nepal and Bhutan that the standard rate (paisa per KWh) is nil. Thus, it is not as if import of electrical energy per se",,,

has been exempted from the whole of the customs duty leviable thereon. This notification is country specific and the petitioners cannot claim the,,,

benefit of exemption granted to import from those countries. The above referred decision rendered in Special Civil Application No.3142 of 2010 would,,,

have no applicability whatsoever to Notification No.9/2016-Cus dated 16.02.2016 as the same was rendered in the context of a notification wherein,,,

import of all goods falling under Tariff Item 2716 00 00 was exempted from payment of the whole of the customs duty leviable thereon.,,,

25. In view of what is held hereinabove, the question of directing the appropriate authority to refund the amount collected on account of duty on",,,

electricity removed from SEZ to DTA does not arise and the challenge to the letters dated 8.10.2015 (Annexure-A) and 16.11.2015 (Annexure-H),,,

must also fail.,,,

26. In the light of the above discussion, this court is of the view that the petitioners are not entitled to the declaratory relief as well as the ancillary",,,

reliefs prayed for in the petition. The petition, therefore, fails and is, accordingly, dismissed. Notice is discharged with no order as to costs",,,

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