

(1979) 10 AP CK 0005
In the Andhra Pradesh High Court

Andhra Pradesh Paper Mills Ltd.

APPELLANT

Vs

Assistant Collector of Central Excise, Rajahmundry and
Another

RESPONDENT

Date of Decision : 09-10-1979

Acts Referred:

Central Excise Rules, 1944 — Rule 173C, 233, 8, 8(1)
Central Excises and Salt Act, 1944 — Section 3, 37, 37(2), 38, 4

Citation : (1980) 6 ELT 210

Hon'ble Judges : B.P. Jeevan Reddy, J

Bench : Single Bench

Judgement

1. Petitioner, the Andhra Pradesh Paper Mills Ltd., Rajahmundry, manufactures and sells among other products, paper of all sorts. Paper is one of the products liable to Central Excise duty under Tariff Item No. 17 of the Schedule to the Central Excises and Salt Act, 1944. Duty is levied on ad valorem basis, value being determined in accordance with Section 4, Rules, have been framed by the Central Government u/s 37, rule 8 empowers the Central Government to exempt, from time to time by Notification in the Official Gazette, any excisable goods from the whole or any part of the duty leviable on such goods, subject to such conditions as may be specified in the notification. Rule 233 empowers the Central Board of Revenue and Collector of Central Excise for issue written instructions providing for any supplemental matters arising out of these rules."

2. With a view to encourage the production and manufacture of paper, the Central Government issued a Notification under Rule 8, being Notification No 198/1976, dated 16-6-1976 (amended latter under Notification No. 216/1976, dated 24-7-1976). Under the Notification, manufacturers of specified commodities and paper is one of the commodities mentioned therein are entitled to 25% reduction in the Central Excise duty leviable on clearances of their manufacture which are in excess of the clearances in the "base period", subject to the prescribed conditions. The relevant portion of the Notification reads as follows : -

"In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government, hereby exempts the excisable goods of the description specified in column (3) of the Table herein annexed (hereinafter referred to as the specified goods) and falling under such item number of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), as are specified in the corresponding Entry in column (2) of the said Table and cleared from one or more factories in excess of the base clearances by or on behalf of a manufacturer from so much of the duty of excise leviable thereon under the said sub-rule (1) of rule 8 and in force for the time being as is in excess of seventy-five per cent. of such duty, subject to the following conditions."

3. By making rule 173-C, the Government of India, in 1968 introduced a procedure, known as "self removal procedure". Under this procedure, the manufacturers can clear the excisable goods without prior assessment by the Central Excise officer or his counter-signature on the gate pass at the time of the clearance of the goods. But under this scheme there is an obligation on the manufacturers to submit to the appropriate excise authorities, from time to time, price lists in the prescribed form, for their approval, for the purpose of levying excise duty, within seven days of the close of each month. After the issuance of the exemption Notification, the Petitioner placed before the department the necessary information and record, to determine the "base year" and the quantum of specified goods manufactured during the "base year", for enabling the department to work out the benefit of the said notification., This was approved by the Superintendent of Central Excise, Rajahmundry, by his letter dated 7-12-1976 According to the petitioner, it became entitled to avail of the benefit of the exemption notification, from December, 1976 and the same was extended to it until March, 1977. In that month, however, the Department refused to extend the benefit of the said notification, and issued a notice to the petitioners, calling upon it to show cause why the amount of duty short-paid should not be demanded and collected in accordance with the rules. The petitioner submitted an explanation, stating that it was entitled to the benefit of the notification in respect of the excess production over the "base period" and that, therefore, there was no short payment of duty. This explanation was rejected by the Assistant Collector of Central Excise, Rajahmundry, who, by his order dated 9-2-1978 held that according to the instructions it is for the manufacturer to decide whether the benefit of duty exemption earned by him should be retained by him or passed onto the consumer. In the event of the manufacturer not passing on the benefit to the buyer, the assessable value of the goods assessed on ad valorem basis (except those for which will have to be adjusted according to the formula prescribed and the duty computed on the higher assessable value so arrived at....." Inasmuch as the petitioner, admittedly did not pass on the benefit of exemption to the consumer, the petitioner was held disentitled to claim the benefit of the said notification. Accordingly, he confirmed the demand of Rs. 2,826.76 ps. on the R. T. 12, for March, 1977.

4. The instructions referred to in the order of the Assistant Collector are the instructions issued by the Government of India under rule 233, communicated to all the officers by the Collector of Central Excise, Guntur, under Trade Notice No. 46/77 dated 5- 3-1977. The relevant portion of the instructions can usefully be set out :

"In June, 1876, Government had brought into force a scheme under which manufacturers of specified commodities would be entitled to 25% reduction in the Central Excise duty leviable on clearances in the "base period" subject to prescribed conditions. A question has arise whether the duty relief can be retained by the manufacturers. Government wish to clarify that it is for the manufacture to decide whether the benefit of the duty exemption earned by him should be retained by him or not. However, it may be noted THAT IN THE EVENT OF THE MANUFACTURE NOT passing on the benefit in whole or in part to the buyer, the assessable value of the goods will have to be adjusted accordingly and the duty computed on the assessable value so adjusted. The assessable value will be worked out by the following formula :

100 Assessable value = Sale price X ----- (cum duty)
(100 + reduced rate of duty)

The duty thereon will be worked as follows :

Reduced rate Sale price X ----- (cum duty) (100 +
reduced rate of duty)

The aforesaid considerations are applicable only in the case of goods subject to ad valorem rates of duty in respect of which no tariff value has been fixed. The Central Excise authorities have been suitably instructed.

5. It is brought to my notice by both the counsel that though the amount involved in this Writ Petition is small, the issue arising herein is of substantial importance, involving duty in several lakhs of Rupees.

6. Against the order of the Assistant Collector, the petitioner approached this Court by way of this Writ Petition without filing an appeal Provided by the Act, on the ground that so long as the aforesaid instructions stand. It cannot except any different decision from the appellate authority. The Petitioner's main attack is upon the validity and enforceability of the aforesaid instructions. Mr. K. Srinivasa Murthy, the learned COunsel for the petitioner, submitted that the exemption notification issued under rule 8 cannot be amended, modified or qualified in any manner by means of instructions issued under Rule 233. The exemption notification does not itself say that the exemption, will be available only to those manufactures who pass on the benefit to the buyer/consumer. In the absence of such a provision in the notification, it is contended, the same cannot be filled in by way of instructions under rule 233, which do not have a statutory character. It is further argued by Mr. K. Srinivasa Murthy that, in any event, the formula prescribed by the aforesaid instructions does violence to the very concept of an

excise duty, which is a tax on production and manufacture of goods alone, and on nothing else. The instructions, according to the counsel, in effect amount to adding a part of the Excise duty to the value of the goods determined u/s 4, which is impermissible.

7. On the other hand, it is contended by Shri K. Subrahmanya Reddy, the learned Standing Counsel for the Central Government that the instructions issued by the Central Government are merely explanatory in nature and are not in any manner inconsistent with the provisions of the Act, or the concept of excise duty as such. He laid stress upon the definition of the expression "Value" in clause (d) of sub-section (4) of section 4 (amended) and submitted that while determining the normal price of the goods under the said provision, only the amount of duty of excise actually paid by the petitioner should be deducted, and nothing more. Both the counsel relied upon certain decisions, which I shall refer to at the proper stage.

8. Entry 45 in the Federal Legislative List, in the Seventh Schedule to the Government of India Act, 1935, which read :

"duties of excise on tobacco and other goods manufactured or produced in India..... empowered the Federal Legislature to impose excise duty on manufacture and production of goods in India. Accordingly, the Central Legislature enacted the Act in 194. It may be noticed that Entry 84 in List 1 of the Seventh Schedule to our Constitution, is substantially on the same lines as Entry 45 aforesaid. It is well settled by the decisions of the Federal Court and the Supreme Court that "excise duty is primarily a duty on the production or manufacture of goods produced or manufactured within the country. It is an indirect duty which the manufacturer or producer passed on to the ultimate consumer, that is, its ultimate incidents will always be on the consumer..... The method of collection does not affect the essence of the duty, but only relates to the machinery of collection for administrative convenience." (Vide : R. C. Jall vs. Union of India (1) 1962 S. C., 1006). It has been repeatedly affirmed that the taxable event in the case of duty of excise is the production or manufacture of goods. Duty is not on the goods directly, nor is it on the sale of goods, but on the production and manufacture thereof. It is immaterial whether the goods are sold or not, or whether they are destroyed or otherwise disposed of. The production or manufacture of the goods attracts the duty though it may be that it is collected at the factory gate for the sake of convenience.

9. Section 3 of the Act is the charging section. The duty can be levied ad valorem or on any other basis, as may be supplied. Section 4, prior to its amendment in 1973, prescribed the manner in which the value of the goods was to be determined where the duty was charged on the basis of value. Section 4 contained two clauses. Clause (a) introduced the concept of "wholesale cash price" out of which were to be deducted the trade-discount and the amount of duty payable thereon. Where, however, it was not possible to ascertain the

"wholesale cash price" in the case of any goods, clause (b) provided that the value shall be the price at which an article of the like kind and quality is sold, or is capable of being sold at the time of removal from the factory. After the decision of the Supreme Court in A.K. Roy and Another Vs. Voltas Limited, , section 4 was entirely recast. The present section introduces the concept of the "normal price" in the place of the "wholesale cash price", and prescribes the mode in which the normal price of the article is to be determined. Since the definition of the expression "value", in section 4(4)(d), constitute the sheet-anchor of Mr. K. Subrahmanya Reddy case, it may well be set out :

(d) "value", in relation to any excisable goods.....

(i) x x x x (Omitted as not relevant) does not include the amount of the duty of excise, sales-tax and other taxes, if any, payable on such goods and, subject to such rules as may be made, the trade discount (such discount not being refundable on any account whatsoever) allowed in accordance with the normal practice of the wholesale trade at the time of removal in respect of such goods sold or contracted for sale."

10. Before the amendment of section 4 it was unequivocally held by the Supreme Court and other Courts in India that the duty can be levied only on the manufacturing cost and manufacturing profit alone, and on nothing else. It was held that the assessable value cannot be loaded by including other items and that, all post-manufacturing cost and expenses have to be deducted from out of the `wholesale cash price" to arrive at the manufacturing cost and profit. Even after the substitution of section 4 by the aforesaid amendment Act, it has been held by a Bench of our High Court, in Indo-National Limited, Nellore, vs. Union of India & Others, 1979. Excise Law Times (J 334) (at p. 366), that the basis remains the same it has been observed :

`For the purpose of determining the assessable value u/s 4 of the Act, as it stood prior to 1-10-1975, the "wholesale cash price" was to be ascertained. After the amendment from 1-10-1975, the "normal price" is to be ascertained. Section 3 of the Act authorising the levy of excise duty on the manufacture and production of goods. It may be noted, is left intact and has not been amended by the Amending Act of 1973. What is more, the concept of `Factory Gate Sale" which was the basis for determination of the assessable value u/s 4 of the Act, as it stood prior to the amendment, is re-affirmed in the amended section and in the definition of `normal price" contained in the amended section 4, the element of sale of goods for delivery at the item and place of the removal has been preserved, The basis of Excise Duty therefore, continues to be the manufacturing cost and manufacturing profit and the amendment of section 4 does not and cannot, in any way, alter the basis of the levy of excise duty contained in section 3 of the Act, remaining the same untouched and un-amended even after the substitution of the new section 4. If the normal price were to be construed as to take within its ambit anything except the manufacturing cost and manufacturing profit. The impost ceases to be excise duty and the rational nexus between the

duty and the person upon whom it is imposed ceases to exist, so it amounts to tax on sale, which under Entry 54 of List II of Schedule VII to the Constitution, exclusively falls within the domain of the State Legislature, and the Parliament has no legislative competence to make any law with regard to it, It, therefore, follows that under the new section 4 of the Act it is not permissible to include in the assessable value any element of post-manufacturing costs of profits attributable to post- manufacturing operations."

The above decision thus re-affirm the basic nature of the excise duty.

11. The exemption notification, it is significant to notice, does not state that the benefit thereunder is available only to those manufacturers who pass on the benefit of exemption to the buyer/consumers. As pointed out by a Bench of the Delhi High Court in *Modi Rubber Limited vs. Union of India & others*, 1978, *Excise Law Times*, (J 127), this omission is not insignificant. V. S. Deshpande J., in his opinion has referred to Notification G. S. R. 1089, dated 29-4-1969, which expressly stated that the benefit of exemption was to be available only to those manufactures who produced proof to the satisfaction of the Collector that such benefit has been passed on by them to the buyers. Indeed H. L. Anand, J., has stated in his opinion that the counsel for the Government of India did not dispute before them that on a number of earlier occasions, when similar exemptions were given, the frame of the concerned notifications was such that the exemption was subject to the benefit of it being passed on to the consumer by a suitable modification in the pricing policy of the industry. The absence of such a provision in the instant notification was very much deplored by the learned Judge, who expressed himself very strongly on that score.

12. Now, the first contention of Mr. K. Srinivasa Murthy is that the said omission cannot be supplied by way of instructions issued under rule 233. I am inclined to agree. It is not disputed before me that a notification of exemption issued under rule 8, is statutory. Rule 8 itself has been framed in pursuance to the express power conferred upon the Central Government, by section 37(2)(xvii), to "exempt any goods from the whole or any part of the duty imposed by this Act". It is equally not in dispute before me that the instructions issued under rule 233 are not statutory in character, rule 233, in my opinion, merely empowers the Central Board of Revenue and the Collectorate to fill in the working details, but not in such a manner as to qualify, abridge, or curtail the statutory provisions or notifications. The instructions aforesaid, in my opinion, do just that and are, therefore, liable to be ignored. I may mention that this very notification and this very question came up for consideration before a Bench of the Delhi High Court in its decision referred to above, viz., *Modi Rubber Limited vs. Union of India & Others*, 1978 *Excise Law Times* (J 127). Before the Delhi High Court it was argued that the intention of the Government was to extent the aid benefit only to those manufacturers who pass on the same to the buyers/consumers. But, the said argument was held unacceptable in view of the clear language employed in the notification, as distinguished from the earlier notifications, wherein such a

provision was expressly made. It was also pointed out that accepting that department's interpretation would amount to giving different interpretation to the said notification in respect of goods subjected, on one hand, to ad valorem duty and, on the other hand, duty on the basis of tariff values, or weight or number, which was likely to result in discrimination. I respectfully agree with the view taken by the learned Judges constituting the Bench.

13. Mr. K. Subrahmanya Reddy sought to sustain the instructions issued by the Central Government, with reference to the definition of the expression "value" in section 4(4)(d)(ii) (amended). In fact, he based his argument mainly on the definition. I have already set out the relevant portion of the definition : but, it would be appropriate to clear the context in which the definition occurs. Section 4, as noticed hereinbefore, prescribes the manner in which the normal price of excisable articles is to be determined where the duty is levied/assessed ad valorem. The definition of the expression `value" merely says that, where the goods are delivered, at the time of removal, in a packed condition, the cost of such packing shall also be included in the value, unless the packing is of a durable nature and is returnable by the buyer to the assessee. Clause (ii), which is relied upon by the learned Counsel, says further that, from out of the value of the article, the amount of excise duty, sales- tax, other taxes, and the Trade-discount allowed in accordance with the normal practice of the wholesale trade, shall also be deducted. Hereinbefore I have referred to the decisions of the Courts stating that duty is leviable only on the manufacturing cost and manufacturing profit alone and that, the other expenses or costs, including post-manufacturing expenses, cannot be added/loaded to the manufacturing cost and profit, while assessing the value u/s 4. Clause (ii) of the definition, in my opinion, merely reiterates the same principle, though no doubt, it is not supposed to be exhaustive. It specifically refers to excluding the amount of excise duty, sales-tax, other taxes and the trade-discount the latter in accordance with and subject to the rules as may be made in that behalf. Now, Mr. Subrahmanya Reddy wants this court to hold that the words "the amount of the duty of excise, occurring in clause (ii) of the definition, mean only the actual amount of duty paid, and not what is leviable in law. I find it difficult to agree with this contention. Duty is levied by section 3 of the Act, read with the Tariff Schedule. The exemption notification issued under rule 8 does not take away the levy. It only grants exemption from the levy in specified circumstances, and the specified extent. In other words, because of the exemption of the levy of duty is not erased. The object of the notification is to confer certain benefit upon the manufacturer or the buyer/consumer through the manufacturer, as the case may be. In other words, a part of the duty is passed on to the manufacturer, or the buyer/consumer, as the case may be, as an incentive, either with a view to encourage production, or the consumption. Accepting Mr. Subrahmanya Reddy's argument would virtually amount to adding a part of the excise duty to the manufacturing cost and profit while arriving at the value for the purpose of duty which is not permissible.

14. Mr. K. Subrahmanya Reddy relied strongly upon a decision of the Calcutta

High Court, reported in *Bat Shoe Company Private Ltd. v. Collector of Central Excise, Calcutta*, 1979, *Excise Law Times* (J 464). That was a decision rendered on 24-12-1971; with reference to the unamended section 4. The appellant thereto is a leading manufacturer of foot-wear in India. Under a notification, dated 24-7-1967, issued under rule 8(1), the Central Government exempted "footwear falling under Item No. 36 of the First Schedule to the Central Excises and Salt Act, 1944, of which the value does not exceed Rs. 5/- per pair, from the whole of the duty of excise leviable thereon." The question was what do the words "the value does not exceed Rs. 5/- per pair" mean ? Whether such value is to include the excise duty should be excluded from out of the value of the foot-wear ? A Bench of the Patna High Court came to the conclusion that the duty element has got to be deducted from the wholesale price, regardless of any consideration and that, if after such deduction the value of the footwear is less than 5/-, it would be entitled to exemption. That decision was dissented from by the Calcutta High Court, which held that for the purpose of exemption notification, the duty cannot be exempted. The following observations of the court are opposite.

"The words..... in rule 8 are material and should, in our view, be decisive. What is exempted is the "excisable goods". What is exempted is "the duty or any part of duty leviable on such goods." Unless the duty is levied, the exemption cannot be granted. Therefore, I am of the opinion that after the levy of the duty if the value of the goods is below Rs. 5.80 then alone it is exempted. To take the view which the Patna High Court does, "the liability to excise duty is not to be determined upon the wholesale cash price", is to apply the same meaning to the word "value" in the notification, of exemption dated 24th July, 1967, and to the "value" in section 4 of the Act and in the Explanation thereto. As at present advised, I do not see any warrant for it. All that section 4 of the Act does is to lay down the formula or this principle for "determination of value for the purposes of duty". It does not lay down any principle of formula for the determination of the value for an exemption from duty.....Besides, section 3 of the Act lays down that there shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods." The word "prescribed" means prescribed for the Rules made under the Act within the meaning of section 2(g) of the Act. Under rule 8 of the Central Excise Rules, exemption is granted in respect of excisable goods from the whole or any part of duty leviable on such goods. That means that the goods should be both "excisable goods" and be "leviable with the duty". Therefore, the "value for purposes of exemption from duty is the real actual value after the duty has been paid and calculated and act the deemed value of section 4 of the Act "for the purposes of duty". Rule 8 of the Central Excise Rules is a part of the Act by virtue of Section 38 of the Central Excise and Salt Act, 1944....."

15. I am unable to see the relevance of the principle of the said judgment, herein. The question at issue in that case was : how should the value of an article be determined for the purpose of the exemption notification : and not for

the purpose of the levy of excise duty. That decision cannot be read as an authority for the proposition that the assessable value u/s 4 can include a part or whole of the excise duty. In fact, the learned Judges were at pains to make a distinction between the value for the purpose of section 4, and the value for the purposes of exemption notification. In this case, we are not concerned with the value for the purpose of exemption notification. Mr. Subrahmanya Reddy wants to read that judgment in support of this contention that, while arriving at the assessable value, only the duty actually paid should be excluded, notwithstanding the fact that there is a difference between the "duty levied:" and "duty actually paid". I am unable to agree.

16. Mr. K. Subrahmanya Reddy then relied upon a decision of the Kerala High Court in *Kerala Ceramics, Feroke vs. Assistant Collector of Central Excise and others* 1979 Excise Law Times (J 453). That was a case dealing with the deduction of trade discount from out of the whole-sale cash price. The case arose under the un-amended section 4. The petitioner therein was a manufacturer of crockery, and it effected the wholesale sales only to its sole agent Messrs. Bawa Agencies Private Ltd., to which a discount of 19 1/4 % was allowed. It claimed deduction of the same. The department disallowed it on the ground that there were certain sales by the petitioner to persons other than Bawa Agencies, aggregated to less than 1% of the total sales, and that they were really, to the workmen of the Petitioner and other private parties, and not to dealers. In that situation, the Kerala High Court sent the matter back to the assessing authority, observing that without examining the relevant material, the assessing authority has jumped to the arbitrary conclusion that sales to persons other than Bawa Agencies were wholesale sales. I am unable to see any relevance of the principle of the said judgment, in the present case.

17. Counsel for the Department then relied upon a decision of this court in *Coramandal. Fertilisers Ltd.. v. Union of India and Three Others* 1979 Excise Law Times, (J 501) (at page 509). This again is a case arising under the un-amended section 4. One of the contentions of the petitioner therein was that the 3 1/2% commission paid by it to its selling agents should be deducted from out of the assessable values. That was rejected by the Court, observing that unless the said amount is paid by way of trade discount, or is an amount of duty payable at the time of removal of the article from the factory the same cannot be deducted. It was held that the said commissions not a trade- discount but that, it is a remuneration paid by the manufacturer, to its" selling agents for the services rendered. Mr. K. Subrahmanya Reddy, however, sought to rely upon the following observations :

"The commission of 3 1/2% paid to the selling agents is not a trade discount given either to the whole-sale buyer or to the retail buyer. It is not given to the consumer or to the trader. Therefore, it is not trade discount within the meaning of Explanation to section 4."

Merely because there is a reference to the "consumer" or "Trader" it cannot be

said that the said observations have any application herein. Those observations must be read in their proper content they have nothing to do with the question at issues before me.

18. Counsel also relied upon the decision of a single judge of the Madras High Court in *Dollar Company Madras vs. Joint Secretary, Ministry of Finance (Department of Revenue)* 1979 Excise Law Times (J 79). A notification issued by the Central Government granting a partial exemption from excise duty to the patent and proprietary medicines manufactured by the petitioner therein, arose for consideration. The notification, in so far as it is relevant, that the patent and proprietary medicines shall be exempted from so much of the duty of excise leviable thereon as is in excess of the duty calculated on the value arrived at after allowing a discount of 25% on the price specified in the price list showing the retail price, referred to in the said order. There was an Explanation appended to the above clause, which read : "In the price specified in the price list referred to above, the element of excise duty, if any, added to the price of any of the medicines, shall be deducted before allowing the discount". The petitioners' contention, on the basis of the definition of the expression "value," in amended section 4, was that the excise duty can be deducted only if it is separately added as an item to the retail price of medicines and that, the same cannot be deducted on the basis of an assumed inclusion. On the other hand, the departments' contention was that, in light of the aforesaid Explanation, the proper course was to eliminate the element or excise duty from the price of the medicine in the first instance, and then allow discount of 25% on the net price arrived at after the deduction of excise duty. The Court agreed with the departments' contention, observing that if the petitioners' contention were to be accepted, it will mean that in giving 25% discount the excise content will also be included for the purpose of deduction, which certainly could not have been the intention of the Act or the notification. I am of the view that the said decision also is of no relevance.

19. While parting with this case, I cannot but express my surprise at the strange attitude taken by the department. If benefit of exemption only to those manufacturer who passed on the benefit of the buyers consumers, then nothing could have been easier than providing for the same in the exemption itself. Indeed, in several such notification issued earlier, such a provision was specifically made. It is intriguing to know why no such provision was made in the notification concerned herein and why it was sought to be brought in by way of supplementary instructions under rule 233. It is indeed surprising that even after the decision of the Delhi High Court, rendered as far back as 8-2-1978, the department has not chosen to amend the exemption notification, and continues to persist in its' unsustainable stand. May be that an amendment would not ensure to the past period; but, at least for the future period such an amendment of the exemption notification would obviate any controversy. So far as the past period is concerned, the Government or the Parliament, as the case may be, can always think of appropriate steps, if they think any steps are called for in public

interest. I echo in full measure the sentiments expressed by H. L. Anand, J., in *Modi Rubber Limited v. Union of India & Others*, 1978 Excise Law Times (J 127), to the following effect :

"..... We were at a loss to understand why if the intention in issuing the present notification was the same as on the previous occasions, i.e., that the benefit should pass to the well deserved hands of the consumer, was the benefit not made dependent on being reflected in the pricing policy. We also looked around in vain for an Explanation as to why, when the industry failed to pass the benefit to the consumer, steps were not taken to either modify the language of the notification or to withdraw the benefit altogether. Was the departure in the frame of the notification the result of a mere slip or gross negligence or something worse ? If the language of the notification was deliberate Act, was it intended to give an unconditional gift to, as the industry with a mere pious wish the benefit would be passed on as if by a religious duty, by the industry to the consumer ? Would there be a justification, a substantial benefit was passed on to the industry with an Illusory one to the consumer as a mere eye wash ? We have decided the petition, but these questions, still remain unanswered, our pointed questioning of the Government counsel notwithstanding. It is not for us to suggest as to whether the circumstances in which the notification was issued and in the way it was framed would call for appropriate administrative action, but there is little doubt in our mind that the matter would deserve attention even an appropriate inquiry, if for the reason that no suitable machinery exists today to protect the interests of the consumer. It is high time some one in authority considered the propriety of introduction of the institution of Smbudaman in Industry as watchdog over the cost price relationship and quality control to protect the vital consumer interest as indeed, public interest."

20. For the aforesaid reasons, the writ petition is allowed and it is declared that the benefit of the Notification No. 198/1976, dated 16- 6-1976, cannot be denied to the petitioner only on the ground that the benefit of exemption has not been passed on by the petitioner to the buyer/consumer. There shall be no order as to costs, in the circumstances of the case.