

(1988) 12 CAL CK 0034
In the Calcutta High Court
Case No : Matter No. 506 of 1987

Associated Forest Products (P) Ltd.

APPELLANT

Vs

Asstt. Collr. of Customs

RESPONDENT

Date of Decision : 16-12-1988

Acts Referred:

Constitution of India, 1950 — Article 14
Customs Act, 1962 — Section 12, 15(1), 31(2), 31(3), 46
Customs Tariff Act, 1975 — Section 3
Home Consumption Act — Section 46(1)
Tariff Act, 1934 — Section 2A

Citation : (1992) 59 ELT 264

Hon'ble Judges : Ajit K. Sengupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajit K. Sengupta, J.—The short question which calls for determination in this case is whether the Notification dated 6th October, 1986 levying additional or auxiliary duty of customs would be applicable to the subject goods imported by the petitioners.

2. The facts shortly stated are that the petitioner imported diverse quantities of Timber logs from Malaysia on the vessel Clipper Flame which came into Calcutta Port on 2nd October, 1986. On that day basic customs duty chargeable was 10 per cent ad valorem by virtue of exemption Notification No. 62/85-Cus., dated 17-3-1985. Auxiliary duty and additional duty were wholly exempt by virtue of Notification No. 311/86-Cus., dated 13-5-1986 and Notification No. 62/85-Cus., dated 17-3-1985 respectively.

3. On 3rd October, 1986, import manifest was delivered by the Steamer Agent to the Customs-Authorities u/s 31(2) of the Customs Act, 1962 (hereinafter referred to as the Act). According to the petitioner, order was given by proper officer granting "Entry Inwards" to vessel u/s 31(3) of the Act. The petitioner

filed the Bill of Entry for Home Consumption u/s 46(1) of the Act. The said Bill of Entry was not accepted on the ground that the manifest did not contain the name of the importer and as such was incomplete. On 4th and 5th October, 1986 being Saturday and Sunday respectively Customs Department was closed. On 6th October, 1986, supplementary manifest was filed by the Steamer Agent. Exemption Notification No. 62/85-Cus., dated 17-3-1985 in respect of basic customs duty was withdrawn by Notification No. 439/86, dated 6-10-1986 whereby basic customs duty was raised to 60%. Similarly, the Notification No. 311/86-Cus., dated 13-5-1986 exempting auxiliary duty was also withdrawn by a Notification No. 440/86, dated 6-10-1986 and the goods became chargeable to auxiliary duty at the rate of 40 per cent.

4. On 7th October, 1986, Bill of Entry was assessed on the basis of 10 per cent basic customs duty.

5. On 31st October, 1986, public notice regarding withdrawal of aforesaid exemptions was issued by the Calcutta Customs.

6. On 12th November, 1986, basic customs duty was again reduced to 10 per cent ad valorem by Notification No. 459/86-Cus.

7. On or about 24th November, 1986, the petitioner paid the duty on the basis of the assessment made on the Bill of Entry on 7-10-1986 at the rate of 10 per cent. According to the petitioner till today this assessment order stands and has not been revised or reviewed.

8. On 12th January, 1987, this writ petition was filed, inter alia, praying for release of the goods without payment of any duty in terms of Notification dated 6th October, 1986: Upon the said application on 14th January, 1987, an interim order was passed directing clearance of the goods upon securing the difference in duty i.e. 50% on account of basic duty and 40% on account of auxiliary duty by furnishing a personal bond for 50% and on payment of 50% in cash.

9. In January, 1987 the petitioner paid a sum of Rs. 10,74,205.10 being 50% of the difference in duty in cash in terms of the said order passed on 14th January, 1987 and also executed personal bond for the equivalent amount. Thereupon the goods were released.

10. On 11th May, 1988, the petitioner made an application claiming refund of the said sum with interest in the event it is held that the impugned notification will have no application to the facts of this case.

11. It may be mentioned that the petitioner made the said application for refund in view of certain orders passed by the Supreme Court where in similar cases it was directed that the main writ application should be heard.

12. After affidavits have been completed, this matter came up for hearing.

13. The learned counsel appearing for the petitioner submits that Section 15(1) of the Customs Act is beyond the legislative competence of Parliament and ultra

vires the Constitution of India and in particular Article 14 thereof. If such contention succeeds, the duty payable in respect of the imported goods was Rs. 2,38,712.24 at the rate of 10% basic duty as was applicable on the date when the goods entered the territorial waters of India i.e. 2nd October, 1986. It was contended that it is now well-settled that the charging event in the case of importation is importation itself. Such importation takes place when the goods enter the territorial waters of India. The power to levy a tax on importation or exportation of goods is to be found under Entry 83, List I of the VIIIth Schedule" of the Constitution of India. The said entry provided "Duties of customs including export duties". A duty of customs being a tax on the act of importation or exportation, cannot be regarded as a tax on property. It was further contended that the date of presentation of the Bill of Entry is wholly unconnected with taxable event. A Bill of Entry may be filed even before goods enter the territorial waters of India. In this connection the learned Advocate for the petitioner referred to Section 46(3) proviso of the Customs Act. Similarly u/s 48, imported goods for which no Bill of Entry has been filed within 45 days after unloading may be sold by the Customs Authorities. Such goods are in fact sold as imported goods. The learned counsel has also submitted that the taxable event being the importation and the date of importation being the date on which the goods enter the territorial waters of India, the duty chargeable can only be at the rate prevailing on that date and cannot be made dependent on any subsequent event e.g. filing of Bill of Entry.

14. The counsel for the petitioner then submitted that in any event, since the imported goods were totally exempted from additional as well as auxiliary duty as on the date of goods entering the territorial waters of India, no amount of Additional or Auxiliary duty is payable at all. Basic customs duty and auxiliary duty or additional duty are different duties and imposed under different statutes. In the case of *Union of India v. Modi Rubber Ltd.*, reported in AIR 1986 S.C. 1992, it has been held that an exemption notification issued under Rule 8 of the Central Excise Rules, 1944 is only applicable to the basic duty and not to auxiliary and other duties. It is submitted that the ratio of the said decision should be applied in the Customs matters also. In the instant case, according to the petitioner, the goods were totally exempt from additional and auxiliary duties as on the date when the goods entered the territorial waters of India, and as such no such duties were leviable on the goods. The fact that the exemption notification exempting the goods from auxiliary duty was withdrawn subsequent to the date when the goods entered the territorial waters of India makes no difference to the above position. In this connection, the learned counsel for the petitioner relied on the judgment in *Apar Private Ltd. and others Vs. Union of India and others*, . He also relied on an unreported decision of this Court in Matter No. 382 of 1987 (*Dinesh Kumar Newatia v. Collector of Customs*), [reported in 1988 (38) E.L.T. 606 (SC)].

15. Lastly, the petitioner submitted that in any event since the Bill of Entry in the instant case was presented u/s 46 of the Customs Act for home consumption on

3rd October, 1986, the customs duty payable was only 10 per cent basic under the provisions of Section 15(1)(a) of the Customs Act. The learned counsel contended that as and when the goods entered the territorial waters of India i.e. 2nd October, 1986, the goods in question were chargeable to basic customs duty at the rate of 10% by virtue of exemption notification then in force and wholly exempt from auxiliary and additional customs duties.

16. According to the respondents the fact that the Bill of Entry was presented on 3rd October, 1986, is not correct. Even if the said statement is believed, even then it is apparent that they took back the Bill of Entry on 3rd October, 1986, obviously because their name did not appear as the importer in the Import General Manifest on 3rd October, 1986. The Bill of Entry nowhere shows that it was presented on 3rd October, 1986. It is also contended on behalf of the respondents that only when a Bill of Entry is properly presented, the date is given in the Bill of Entry. The respondents further contended that the Bill of Entry was submitted on 7th October, 1986, is also corroborated by the following facts:-

(a) In respect of four consignments (which are the subject matter of the writ application) the Steamer Agent filed a supplementary Import General Manifest showing for the first time the petitioner's name as the importer of the goods. The said supplementary Import General Manifest was filed by the Steamer Agent on 6th October, 1986.

(b) u/s 46 of the Customs Act, 1962 only an importer can file a Bill of Entry. Therefore no Bill of Entry properly could have been filed by the petitioner till its name appears as an importer in the Import General Manifest. Since the name was included as importer in the supplementary Import General Manifest only on 6th October, the petitioner had filed the Bill of Entry on the 7th October, 1986.

(c) It is also significant that in the Bills of Lading in respect of the said goods the petitioner's name appeared as a Notified Party and not as the Consignee importer.

17. It is also contended that u/s 15(1) of the Customs Act, 1962, the petitioner is liable to pay the duty at the rate prevailing on 7th October, 1986. The rate prevailing on that date was much higher, namely 60% plus 40% and the difference in duty is Rs. 21,48,410.06.

18. It is the contention of the respondents that for the purpose of fixing the rate of duty, the date of importation is not relevant. What is relevant is as provided u/s 15 of the Customs Act, 1962. Section 15 fixes (i) the date and (ii) the rate from and at which the duty is to be imposed. From Section 15, it is clear that the date of importation is not mentioned therein. In the present case, the relevant date is the date when the Bill of Entry has been filed for home consumption with the Department. The petitioner presented the Bill of Entry on 7th October, 1986, when the same was assessed to duty on the said date on the basis of the said Notification Nos. 439 and 440, dated 6th October, 1986. It is, therefore, contended by the respondents that in the circumstances the petitioner is liable to

pay duty as per the said Notifications, dated 6th October, 1986.

19. I have considered the rival contentions.

20. Customs duty is leviable on the importation of the goods. Accordingly, the relevant consideration is when was the importation complete. If the importation was completed on October 2, 1986, when the vessel had entered the territorial waters of India, in that event no duty in terms of the Notification dated 6th October, 1986, would be payable by the petitioner. If, however, the importation takes place when the Bill of Entry is assessed the duty may have to be levied on the basis of such notification. This question came up before the Full Bench of the Bombay High Court in the case of Apar Private Ltd. (supra).

21. In that case on the date when the goods in question entered into the territorial waters of India, they were exempted from payment of Customs Duty under the relevant Notification issued by the Central Government. While the goods were sought to be removed from the Bonded Warehouse, exemption earlier granted was withdrawn. The question arose when were the goods imported in India. There was a difference of opinion between the two Division Benches and accordingly the matter was referred to Full Bench. The following questions were referred to the Full Bench.

"1. Under the Customs Act, 1962 when can the event of importation be said to occur?

2. At what point of time or date the rate of customs duty to which imported goods are liable was to be determined under the Customs Act, 1962?

3. Whether it would make any difference to the answer to the second question in cases where, at the date of import the goods were totally exempt from duty, either basic or additional as against being partially exempt from such duty?

4. Whether the countervailing or additional duty payable u/s 2A of the Indian Tariff Act, 1934, or u/s 3 of the Customs Tariff Act, 1975, was customs duty referred to in the charging section, namely, Section 12 of the Customs Act, 1962?"

22. The crucial question before the Full Bench was when can the goods be said to be "imported into India" and at what stage do they become chargeable to customs duty? The Full Bench observed that answer to this question would invariably depend upon what exactly does the expression "goods imported into India" occurring in Section 12 mean? The chargeability of goods to customs duty arises when goods are "imported" and only when such import is "into India". Both the words "import" and "India" have been defined under the Customs Act. The word "import" is defined in Section 2(23) of the Customs Act as under:

"Import with its grammatical variations and cognate expression means bringing into India from a place outside India".

The word "India" itself may mean geographically defined land mass or extended

to either "territorial waters" or "continental shelf or "exclusive economic zone" or "other maritime zones". Each of these expressions extends the territory of India beyond the land mass into the sea to varying extents. In order to give certainty to what is meant by "India" in the context of the Customs Act and chargeability of goods to customs duty, the Parliament thought it expedient to also define "India" in Section 2(27) as under:

""India" includes the territorial waters of India".

The expression "imported goods" is also defined in Section 2(25) in the following words:

""Imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption."

23. The Full Bench after considering the decision of the Supreme Court in S.K. Gupta and Another Vs. K.P. Jain and Another, observed as follows:

"In our view, where the definition itself says that a particular word shall mean or a particular word shall include certain things and such a clause is preceded by the expression "unless the context otherwise requires", it shall mean or include those things or situations, it is not open to the Court to give any other meaning to those words except when the context requires otherwise. The expression "unless the context otherwise requires" excludes all situations except those for compelling reasons the intended definition has to be abandoned. Section 2 directs that in this Act "unless the context otherwise requires" the words occurring in the Act shall be understood as defined therein. In other words, "India" commonly understood is the geographical entity comprising only of the land mass. For certain purpose, the country referred to as "India" may extend into the sea upto the limit of "territorial waters" or "contiguous zone" or "continental shelf or "exclusive economic zone" or "other maritime zones". Section 3(2) of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, provides that a distance of twelve nautical miles from the nearest point of low tide along the baseline of India constitute territorial waters of India. Whatever the word "India" may mean in common parlance and under other enactments, for the purpose of the Customs Act it is made clear under the definition clause 27 of Section 2 of Customs Act that, "India" includes territorial waters of India. Reading the two definitions together it would be manifest that if goods are brought into India, meaning thereby into the territorial waters of India from outside India, that is, from outside the territorial waters of India there is import of goods and the goods become "imported goods". These definitions thus make it clear that no sooner than the goods are brought from outside the territorial waters of India into the territorial waters of India, they become imported goods and become chargeable to duty and upto the moment they are cleared for home consumption, they constitute imported goods for the purpose of the Customs Act. No sooner than they are cleared for home

consumption they cease to be imported goods. That "India" includes the territorial waters and wherever the word "India" occurs in the Customs Act that meaning should be given or so understood, is enjoined by Section 2 using the expression "unless the context otherwise required". Hence for the purpose of the Customs Act, ordinarily "India" must be understood as including its territorial waters. There must be something in the context of Section 12 or other provisions of the Customs Act read with Section 12 which must compel us to give the word "India" a different meaning and as not "including the territorial waters of India". We may, therefore, now examine the provisions of the Customs Act to see if there is anything therein which requires us to hold that the words "import" or "import into India" do not mean bringing goods from outside into territorial waters of India but that it would mean bringing them to the land mass of India. In other words, could it be said that there is no "import" of goods into India when they enter the territorial waters but these would be import only after they are unloaded on the land mass of India."

24. The Full Bench thus held that for the purpose of Customs Act ordinarily "India" must be understood as including its territorial waters.

25. Then the contention was raised on behalf of the Revenue that not only definitions of the words "India" and "import into India" but also the various connotations of the word "levied" occurring in Section 12 must be kept in view in deciding when the "import into India" occurs. According to the Ld. Counsel for the Revenue, the word "levied" in Section 12 of the Customs Act which declares that duties of customs shall be levied, in the context means not merely chargeability but also quantification of the duty, that is the valuation of goods for the purpose of levy of duty, the rate at which the duty should be levied and also recovery of such duty. According to him, the expression "imported into India" occurring in Section 12 must therefore be interpreted not only keeping in view when the goods became chargeable to duty but also the dates with reference to which the goods are to be valued and the event with reference to which the rate at which duty is to be levied and quantified.

26. The Full Bench held:-

"In order to appreciate this contention, it is necessary to notice the various steps required to be taken under the Customs Act for levy of duty on goods imported into India. As stated above, Section 12 declares that duties of customs shall be levied on all goods imported into India. The goods imported shall have to be valued u/s 14 and the duty payable shall have to be determined according to the rates specified u/s 15 of the Customs Act read with the Tariff Act. Every importer of goods is required u/s 46(1) of the Customs Act to make an entry with the proper officer by presenting a bill of entry for home consumption or warehousing in the prescribed form. The goods may be unloaded only at the approved place and under the supervision of the Customs Officer as laid down in Sections 31 to 34 of the Customs Act. Section 29 prohibits the person-in-charge of a vessel or aircraft entering India from any place outside India from permitting the vessel or

aircraft to call or land at any place other than customs port or a customs airport. Within twenty-four hours of arrival the person-in-charge is required by Section 30 to deliver an import manifest or an import report. The person-in-charge of a conveyance which has brought any imported goods or has loaded any export goods is prohibited by Section 42 from leaving the customs station without authority. Section 45 enjoins that all imported goods unloaded in customs area shall remain in the custody of such person as may be approved by the Collector of Customs until they are cleared for home consumption or are warehoused or are transhipped in accordance with the provisions of Chapter VIII. Only the proper officer may clear the imported goods for home consumption after he is satisfied that they are not prohibited goods and the importer has paid the import duty, if any, assessed thereon. Irrespective of whether the goods are dutiable or not the goods may be cleared only after an order permitting clearance of goods for home consumption is made. If the Asstt. Collector of Customs is satisfied that the goods be so cleared within a reasonable time, he may permit the storage of imported goods in a warehouse pending clearance."

"Goods referred to in Section 14 are goods on which duty of customs is chargeable by reference to their value. It would be clear that Section 14 by itself does not lay down when or what goods are chargeable to customs duty. It only deals with valuation of the goods imported which are chargeable to customs duty. If they are chargeable to customs duty and are chargeable by reference to their value, then the value has to be determined as laid down in Section 14. It does not lay down at what point of time the goods became imported goods. Whether they are chargeable at all to duty and if so, when they become chargeable must be determined with reference to the other provisions of the Customs Act. That other provisions is only Section 12".

"So too Section 15 only lays down the date for determination of rate of duty and tariff valuation of imported goods. The expression "the rate of duty and tariff valuation, if any, applicable" occurring in Section 15 is significant. Section 15 itself envisages that in respect of certain goods, no rate of duty or tariff valuation may be applicable. The customs duty would be payable only if they are chargeable to duty. What is enjoined by Section 15 would become relevant only if goods are chargeable to duty. Only then for the purpose of determining the amount of duty payable on imported goods the rate at which the duty has to be levied has to be determined as envisaged by Section 15."

"Under all taxing statutes, whether Customs Act, Central Excises and Salt Act, Income Tax or Gift Tax or Estate Duty Act what has to be first determined is when exactly did the taxable event occur? It is with reference to that point of time, that the chargeability or leviability of the tax or duty, as the case may be, has to be determined. That is the crucial date." [Emphasis supplied]

27. Referring to the decisions in (1948) 16 ITR 240 (Privy Council) , Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, , Chatturam Horilram Ltd. Vs. Commissioner of Income Tax, Bihar and

Orissa, , Kalwa Devadattam and Others Vs. The Union of India (UOI) and Others, and in Re Sea Customs Act, reported in AIR 1963 SC 1760, the Full Bench observed as follows:-

"All these decisions make it clear that a taxing statute does not envisage that the taxable event, valuation of goods, income or estate as the case may be, rate of duty or tax and quantification of duty or tax should be completed at any single point of time, or with reference to one and only one point of time, nor that they must be necessarily postponed until all the stages are completed; nor that each of these events could not occur or each of these steps could not be taken at different points of time. Parliament taking cognizance of the fact and having regard to the nature of the levy of customs duty that the word "levied" occurring in Section 12 has several connotations appears to have advisedly specified under different provisions of the enactment the different stages i.e., the stage when goods become chargeable to duty, the stage when the goods have to be valued and the stage when the duty has to be quantified. Under the Customs Act, chargeability is u/s 12, valuation of goods u/s 14 and the rate at which the duty should be assessed is u/s 15. As discussed above, these different events may occur at different points of time, but unless the goods are chargeable to duty and the taxable event occurs, the question of valuation of goods and quantification of duty payable at any particular rate obviously cannot arise. The taxable event has to occur at some particular point of time and cannot in respect of the goods imported at one and the same time occur at different points of time for some when they were unloaded, for some on the different dates as and when they are cleared from the warehouse. That would create confusion and it would be impossible to ascertain which point of time should be taken for the purpose of determining the chargeability of the goods to customs duty. May be, the legislature has the power to fix in respect of goods imported at one and the same time different dates as the dates when the taxable event occurred having regard to the different dates on which they are actually cleared for home consumption. But the question is, has it so fixed under the Customs Act. We have only Sections 12, 14 and 15 with reference to which we have to determine, in the light of the scheme of the Act, as to when the taxable event occurs."

28. What is postponed is quantification and collection and not chargeability. While import duty is on the act of importation which is complete when the goods enter the territorial waters of India, the goods may be valued and duty quantified and collected later as laid down in Section 14 and 15 of the Customs Act.

29. A contention was also raised in that case that taxable event occurs in the case of import of goods into India only when the stage for paying the import duty is reached and without paying which the goods cannot be allowed to cross the customs barrier. In support of this contention reliance was also placed on behalf of the Revenue in Re Sea Customs Act (supra). The Full Bench held as follows:-

"In that case the Supreme Court was discussing as to whether imposition of customs duty on import of goods is a tax on property, that is, on the goods or on

the act of import of goods. The Court held that the taxable event is the act of import of goods into India and the duty is not on property as such, but on the act of importation of goods. The Court was not concerned in that case as to when the goods can be said to have been imported, nor did the Supreme Court lay down that taxable event does not occur when the goods enter the territorial waters. What all the Supreme Court said was that the importer cannot take the goods beyond the customs barrier without first fulfilling the conditions of payment of import duty. The Court was not required to consider Sections 12, 14 or 15 of the Customs Act, 1962, and determine when the taxable event occurred. There can be no doubt that unless the duty is paid, dutiable goods cannot be carried across the customs barrier but that is not necessarily the time when the goods become chargeable and no opinion on that aspect was expressed on that aspect in that case. The Court only held that the payment of duty is a condition without fulfilling which goods imported into India cannot be taken beyond the customs barrier. In our view, in the context of Section 12 import into India, which includes its territorial waters, must mean that for the purpose of chargeability u/s 12, taxable event occurs when the goods enter the territorial waters".

30. After referring to the decisions of the Supreme Court in *R.C. Jall Vs. Union of India (UOI)*, ; *Shinde Brothers etc. Vs. Deputy Commissioner and Others, etc.*, and *Union of India (UOI) and Others Vs. Bombay Tyre International Ltd. and Others*, , the Full Bench held as follows:-

"In our view, the above decisions also make it clear that the taxable event may occur at one time and the duty chargeable upon that event occurring, may be quantified and collected at a later date but there is nothing in the Customs Act which indicate that the chargeability itself is postponed to a later date. What is postponed is quantification and collection and not chargeability. These decisions though rendered in the context of levy of excise duty lend support to the view we have taken, namely, while import duty is on the act of importation which is complete when the goods enter the territorial waters of India, the goods may be valued and the duty quantified and collected later as laid down in Section 14 and 15 of the Customs Act. The rate itself can be fixed at a later date. But what is crucial to be determined is: When was the act of importation complete? And were the goods chargeable to duty at that point of time? Once they are chargeable, they may be subject to duty on such value and at such rate as is laid in Sections 14 and 15 respectively and recovered in such manner as is laid down in the other provisions of the Customs Act."

31. The Full Bench thereafter considered the contention of the Revenue and held as follows:-

"If according to the contention of the Customs authorities goods do not become imported goods when they enter the territorial waters of India, apart from the fact that would be contrary to the definition of "Imported goods", then at what point of time do these goods become imported goods? One contention is that

they become imported goods when they are sought to be removed for home consumption. If they are not imported goods merely because they are sought to be removed for home consumption, how do they become imported goods? After all the goods sought to be removed for home consumption would have by then not only entered the territorial waters of India but would have been unloaded on to the land mass of India. But then, even according to the learned Counsel for the Customs when the goods are brought to the land mass they do become imported goods. It is common knowledge, goods unloaded on the land mass are not immediately cleared for home consumption. The Customs Act itself gives two options to an Importer. The Importer may clear the goods forthwith or lodge them in a warehouse for clearance from time to time. In the latter event when do they become imported goods? Is it only when they are cleared from the warehouse for home consumption? The goods lodged in the warehouse need not be cleared in one lot; they could be cleared in instalments. Even in respect of goods unloaded on the land mass on the same day or even at the same time, Section 15 of the Customs Act clearly envisages different rates of duties with reference to the date of clearance. Then there will be different dates of importation for the goods unloaded on the land mass on the same day but removed from the warehouse for home consumption on different dates. That being so at what point of time anterior to the actual clearance do the goods become imported goods? Is it when they enter the territorial waters of India? Or is it when the vessel carrying the goods calls at any port in India? Or is it when the goods are unloaded on the land mass of India? If it could be any of these, then, in our view, the definition of the word "India" for the purpose of the Customs Act must clinch the issue. After all, words and expressions are defined in a statute to make the intention of the legislature explicit and precise where such words and expressions are susceptible of several meanings. The combined effect of the definitions of the words "import" and "India" under Sections 2(23) and 2(27) of the Customs Act, to our mind, is that import can be said to take place as soon as goods are brought into the territorial waters of India. The taxable event occurs, when, as laid down by Section 12, goods are imported into India and since "India" includes its territorial waters, the taxable event occurs no sooner than the goods enter the territorial waters of India and does not postpone till they are actually off-loaded on the land mass or till the goods are valued u/s 14 or, till the date for determining the rate at which the customs duty should be levied u/s 15 arrives. Even though as contended by Mr. Dalai, learned Counsel for the Customs, the word "levied" has several meanings viz. chargeability, valuation, determination of duty or tax and/or recovery of the same, there is nothing in the Customs Act which indicates that the chargeability stands suspended until a bill of entry is presented or until the goods are valued and duty payable is ascertained. It would be pertinent to note that S. 12 uses the words "shall be levied". The taxable event occurs u/s 12 when the goods are brought into the territorial waters of India. From that moment the goods are imported goods and continue to be imported goods defined in Section 2(25), until they are cleared for home consumption. In other words, they acquire the character of

imported goods within the meaning of Section 12 no sooner than they enter the territorial waters of India and thus become subject to the levy of customs duty. The chargeability does not remain suspended until they are cleared for home consumption. In fact, the moment they are cleared for home consumption and they become part of the goods on the land mass, they cease to be imported goods for the purpose of levy of customs duty; of course, they are cleared for home consumption only on payment of duty. Even on a reading of Section 12 in the context of the scheme of the Customs Act and in particular in conjunction with Sections 14 and 15, we find nothing which requires a different meaning to be given to the expression "imported into India". We, therefore, hold that goods from outside India, no sooner than they enter the "territorial waters of India" become "goods imported into India" and acquire the character of imported goods".

32. The Full Bench referred to the provisions of Sections 21, 22, 23, 31, 32, 33, 34, 37, 45, 46, 48, 49 and 53 of the Customs Act in support of the view that goods become imported goods no sooner than they enter into the territorial waters of India. The Full Bench observed:

"It is thus manifest that under the Act goods on entering the territorial waters of India became imported goods and chargeable to duty u/s 12, but if not unloaded are exempt from payment of duty by virtue of the specific provisions. It is significant to note that such goods are not exempted from the operation of Section 12, but by virtue of this and the other provisions of the Act are allowed to be transitted without payment of duty. Similar provision is made in Section 54 in respect of goods imported into a Customs port or Customs airport but are intended for transhipment. If, as contended for the Customs authorities, the goods become imported goods only when they are sought to be cleared for home consumption or placed in such a position as to be mixed with the goods on the land mass, all the provisions referred to above would be rendered wholly redundant. They would not be imported goods and would not be liable to customs duty until they are actually cleared or sought to be cleared after being lodged in the warehouse. These provisions, in our view, make the legislature's intent abundantly clear that the goods become imported goods no sooner than they enter the territorial waters of India, which provisions would have been wholly unnecessary if goods become liable to customs duty only at the time of clearance."

"What follows from the above discussion is that when goods from a place outside India are brought to India as defined u/s 2(27) of the Customs Act, that is, into the territorial waters of India, they become "imported goods". They continue to be imported goods until cleared for home consumption. The taxable event occurs upon the goods entering the territorial waters of India. If at that point of time, the imported goods are chargeable to duty, then the duty has to be assessed as per the valuation made u/s 14 and at rates specified u/s 15. Except as otherwise provided in the Customs Act or other law in force for the time being, all such

goods would be chargeable to customs duty as laid down u/s 12 of the Customs Act. But by virtue of some of the provisions referred to above, duty may not be leviable or remission or abatement of duty may be granted on these imported goods either because they are damaged, pilfered or not unloaded at the port or cleared for home consumption but transitted. The goods may not be chargeable to customs duty also because the Central Government chooses to exempt from duty by issuing a notification u/s 25 of the Customs Act. In this context, it is necessary to note the distinction between the notification under sub-section (1) of Section 25 of the Customs Act and an exemption notification issued under sub-section (2) of Section 25 thereof. Under sub-section (1) the Government may exempt absolutely or subject to conditions goods of any specified description from the whole or any part of duty of customs leviable thereon. Duty is leviable u/s 12 of the Customs Act and not under the Schedules of the Tariff Act. If duty is leviable u/s 12, then only for the calculation of the duty the Schedules of the Tariff Act become relevant and have to be looked into. A notification u/s 25(1) of the Customs Act exempts goods themselves from the levy of duty u/s 12. A notification under sub-section (2) of Section 25 does not exempt goods from levy of the tariff. A notification thereunder only exempts by special order in each case from payment of duty under circumstances of exceptional nature. While under sub-section (1) of Section 25 goods themselves are exempt from the levy of duty, under sub-section (2) of Section 25 the goods continue to be chargeable to duty but the importer is only exempted from payment of such duty. If the notification under sub-section (1) wholly exempting goods from duty subsists on the date of importation, that is, when they entered the territorial waters of India then duty is not at all leviable. The subsequent withdrawal of the notification before the clearance of the goods does not render such goods chargeable to duty. But where notification under sub-section (2) is issued and is in force on the date when goods are imported, that is, when the goods enter territorial waters of India, as those goods continue to be chargeable to duty and the importer is only exempted from paying it, if any the time they are removed for home consumption that notification is withdrawn, duty would be payable at the time of removal of goods as laid down in Sections 14 and 15 read with Section 12. If the goods are not chargeable to customs duty in view of any of the provisions of the Customs Act or the provisions of any other law, then neither their valuation u/s 14 nor calculation of the duty payable at the rates as mentioned in Section 15 of the Customs Act would be required. Same would be the position when a notification wholly exempting the goods from levy of customs duty is issued under subsection (1) of Section 25 of the Act. The observation in the order of reference that chargeability of the goods to customs duty arises on account of the goods being listed in the Schedule ignores the opening words "Except as otherwise provided in this Act or any other law for the time being in force" occurring in Section 12. We are unable to agree with that observation. If on account of exemption granted u/s 25(1) the goods imported into India are not chargeable to duty and no duties of Customs can be levied, obviously there is no occasion to ascertain the tariff valuation of the goods imported u/s 14 or the rate

at which the duty is payable u/s 15. Sections 14 and 15 would apply only in a case where duties of customs are leviable u/s 12 and the Customs Act or any other Act does not provide otherwise. In other words, if the Customs Act read with the notification issued under Sec. 25(1) thereof provides otherwise, duties of customs shall not be levied under Sec. 12 and consequently, Sec. 15 does not come into operation in respect of these goods and the question of valuation of the goods under Sec. 14 does not arise for the purpose of assessment."

33. Another contention was raised before the Full Bench that when goods are wholly exempt from duty by a notification issued u/s 25, they are still chargeable to duty u/s 12 but at Nil rate. The Full Bench negated that contention and observed as follows:

"The power vested u/s 25(1) is exercised by the Central Government and that is to exempt the goods from the levy of duty itself and not merely from the rate of duty. What is levied u/s 12 is wholly exempted in exercise of the power u/s 25. The fact that the goods are still shown in the Schedule as chargeable under the Customs Tariff Act does not render the goods subject to levy of duty. Only if the goods are chargeable to duty under the Customs Act, the duty will be at the rates specified in the Schedule to the Customs Tariff Act. But, inasmuch as where the notification u/s 25(1) exempts imported goods covered by the Notification from the levy of whole of the duty leviable thereon it cannot be said that "nil" duty is chargeable on these goods. The Schedule to the Customs Tariff Act ceases to apply to the Customs Act, no sooner than the notification u/s 25(1) is issued. The link between the Customs Act and the Customs Tariff Act established by Section 12 is severed by the notification u/s 25(1) and the Schedule to the Customs Tariff Act ceases to apply and no notion of "nil" duty can be imported where the goods are wholly exempt from duty under the notification. The metaphysical concept of "nil duty" cannot be invoked so as to subject to duty goods wholly exempt from levy when the taxable event occurred, that is, when they entered the territorial waters of India even if the exemption notification were withdrawn by the time these goods came to be cleared for home consumption."

34. On behalf of the Revenue, strong reliance was placed in Prakash Cotton Mills (P) Ltd. Vs. B. Sen and Others, .

35. This decision was also considered by the Full Bench and the Full Bench observed as follows:-

"It must be noticed that this was not a case of goods which were totally exempt from customs duty. They were chargeable to customs duty u/s 12 and only the rate of duty at which they were chargeable was in question. Are they to be charged at the rate prevalent on the date they were imported or at the rate in force when they were sought to be removed from the warehouse? As discussed above, on the day the goods were imported, that is, when they entered the territorial waters of India, the taxable event occurred and if on that day the

goods were wholly exempt from duty, the question of calculating the rate does not arise at all and, therefore, the further question whether the rate prevalent on the date of importation, i.e. when they entered the territorial waters or when they are sought to be removed from the warehouse for home consumption also does not arise. There is nothing in this decision which warrants a different conclusion than the one we have reached in respect of goods which were totally exempt from duty on the date they were imported into India."

36. Reliance has also been placed by the learned Counsel for the respondents in the case of *K. Jamal Co. Vs. Union of India*, . This case was also considered by the Full Bench. There is not much of discussion in that case and the Full Bench rightly observed that learned Single Judge of the Madras High Court changed his views in a subsequent decision in the case of *Sundaram Textiles Ltd., Madurai Vs. Assistant Collector of Customs, Madras and Another*, .

37. Reference has also been made to a decision in *Jain Shudh Vanaspati Ltd. v. Union of India*, reported in 1983 E.L.T. 1688. The Full Bench dealt with that decision at length and distinguished the case. According to the Full Bench there is no contradiction in fixing chargeability of goods to duty with reference to time when the goods acquired the character of imported goods, that is when the taxable event occurred, and the rate of duty with reference to date of clearance. Since the goods brought to India become imported goods from the moment they enter into territorial waters, customs duty becomes leviable on them. The taxable event having occurred at that point of time, it has to be determined whether they are exempt from duty or not on that date. If they are exempt from duty, no question of calculating the duty payable arises at any later point of time; if they are chargeable to some duty and are not wholly exempt then only the question as to what duty is payable.

38. If the goods are wholly exempt from duty as against being partially exempt from such duty, when the goods enter the territorial waters, they cannot be subjected to duty even if the exemption notification is withdrawn or modified before the bill of entry is presented or the goods are cleared for home consumption as the case may be.

39. In my view, the principles laid down by the Full Bench would equally apply to the facts of this case.

40. The event attracting the levy of Customs duty is the importation of the goods into India (Section 12), i.e., when the goods enter the territorial waters of India. This is the charging section. Bill of Entry can be presented either for "home consumption" (by filing white copy of the Bill of Entry) or for warehousing (by filing the yellow copy) (Section 46). Where the Bill of Entry is filed for home consumption (white copy) but goods cannot be cleared within reasonable time, the goods may be stored u/s 49, but such goods are not warehoused goods for the purpose of Customs Act and Chapter IX of Customs Act, 1962, does not apply. In such cases, the white copy of Bill of Entry is assessed and duty paid but

the goods are not cleared (Section 49). According to Section 15(1)(a) of the Customs Act, 1962, the rate of duty and tariff valuation in the above case is on the date on which the while copy of Bill of Entry is presented. In this case we are not concerned with Section 15(1)(b) or 15(1)(c). Admittedly the subject goods arrived at the port of Calcutta on or about October 3, 1986, and the Bill of Entry was presented u/s 46 of the Customs Act for home consumption on October 3, 1986. On that date the customs duty payable was only 10% basic under the provisions of Section 15(1)(a) of the Customs Act.

41. It is now well settled that the charging event in the case of importation is the importation itself. Such importation takes place when the goods enter the territorial waters of India. The date of presentation of the Bill of Entry is wholly unconnected with the taxable event. A Bill of Entry may be filed even before the goods enter the territorial waters of India as per Sec. 46(3) proviso. Similarly, imported goods for which no Bill of Entry has been filed within 45 days after unloading may be sold by the Customs authorities as per Section 48. Such goods are in fact sold as imported goods. The taxable event being the importation and the date of importation being the date on which the goods enter the territorial waters of India, the duty chargeable can only be at the rate prevailing on that date and cannot be made dependent on any subsequent event, e.g., filing of Bill of Entry. In the instant case, the goods were totally exempted from additional and auxiliary duties as on the date when the goods entered the territorial waters of India. As such no such duties were chargeable on the goods. The fact that the exemption notification exempting the goods from auxiliary duty was withdrawn subsequent to the date when the goods entered the territorial waters of India makes no difference to the above position. As and when the goods entered the territorial waters of India, i.e., October 2, 1986, the goods in question were chargeable to basic customs duty at the rate of 10% by virtue of exemption notification then in force and wholly exempt from auxiliary and additional customs duties.

42. Reference may be made to a few material dates relating to the arrival of the goods. On October 2, 1986, the goods entered the territorial waters of India and the vessel was berthed at the Calcutta Port. As on that date the basic customs duty chargeable was 10% ad valorem by virtue of the exemption Notification No. 62/85-Cus., dated March 17, 1985; the auxiliary duty was wholly exempt by virtue of Notification No. 311/86-Cus., dated May 13, 1986, and the additional duty was wholly exempt under Notification No. 62/85-Cus., dated March 17, 1985. On October 3, 1986, the import manifest was delivered by the Steamer Agent to the Customs Authorities u/s 31(2) of the Act, and order was given by proper officer granting "Entry Inwards" to vessel u/s 31(1) of the Act. On that date the Bill of Entry was also presented for Home Consumption u/s 46(1) of the Customs Act, 1962.

43. I may also refer to the paragraph 4(f) of the Affidavit-in-Opposition filed by the respondent which reads as follows:

"The goods belonging to the petitioner landed prior to 6th October, 1986. It sought to present a Bill of Entry with the Customs department on 3rd October, 1986, which upon instant scrutiny was not accepted by the Customs department since the accompanying manifest filed by the importer's agent did not contain the name of the importer and as such was incomplete and/or lacking in a material particular."

44. It appears that the Bill of Entry was not accepted on the alleged ground that the manifest did not contain the name of the importer and as such was incomplete. On October 4 and 5, 1986, the Customs department was closed, being Saturday and Sunday respectively, and the manifest was filed on October 6, 1986, and on that date the exemption Notification No. 62/85-Cus., dated March 17, 1985, in respect of basic customs duty was withdrawn by Notification No. 439/86, dated October 6, 1986, whereby basic customs duty was raised to 60%. Similarly, the Notification No. 311/86-Cus., dated May 13, 1986, exempting auxiliary duty was also withdrawn by a Notification No. 440/86, dated October 6, 1986, and the goods became chargeable to auxiliary duty at the rate of 40% ad valorem. On October 7, 1986, the Bill of Entry was assessed on the basis of 10% basic customs duty. I may, however, add that after the said exemption was withdrawn, the basic customs duty was again exempted to 10% ad valorem by Notification No. 459/86-Cus., dated November 12, 1986. It may also be pointed out that the assessment made on the Bill of Entry on October 7, 1986, at the rate of 10% still stands and has not been revised or reviewed, but nonetheless the goods were not released on the ground that duty was payable on the basis of the Notifications of October 6, 1986.

45. From the facts and circumstances, it would be evident that an order had been given for "entry inwards" to the vessel carrying the imported goods on October 3, 1986, under Sec. 31 of the Customs Act and the Bill of Entry was filed by the petitioner on the same date, i.e., on October 3, 1986. The rate of duty and tariff valuation chargeable on the said goods on October 3, 1986, in accordance with Section 15(1)(a) of the Customs Act, 1962, was 10% ad valorem basic customs duty only. No auxiliary or additional duty was chargeable. Such amount was paid by the petitioner on November 24, 1986. The contention that the import manifest was incomplete can have no bearing on the facts of the present case because the order granting "entry inwards" had been passed on October 3, 1986, u/s 31 of the Customs Act. Such order could only be passed after delivery of the import manifest. The import manifest was permitted to be supplemented u/s 30(3) of the Customs Act, 1962, on October 6, 1986. When the permission is granted to amend or supplement the import manifest u/s 30(3) of the Act, such amendment or supplementation relates back to the date of delivery of the import manifest. This is so because there is no rejection of the original import manifest as presented. Such a rejection is contemplated only when a fraud is perpetrated. Such is not the case here. The imported goods were unloaded at the Customs Station u/s 32 of the Act. Such unloading could not have been done without filing of the import manifest. A Bill of Entry may be

presented even before delivery of the import manifest u/s 46(3). The presentation of a Bill of Entry is not dependent upon a prior delivery of the import manifest and, therefore, the contention of the respondent that there was no proper presentation of the Bill of Entry on October 3, 1986, is without substance.

46. There is another aspect of the matter. The Steamer Agent is not the agent of the petitioner. The Steamer Agent is a public carrier and the relationship between the petitioner (importer) and the Steamer Agent is on a principal-to-principal basis. The contract between the petitioner and the Steamer Agent is evidenced by Bill of Lading which is a document of title. As such the Steamer Agent cannot be the agent of the petitioner and any negligence or laches on its part will not bind the importer. In any event, the Customs Act does not require that import manifest has to be filed along with the Bill of Entry. In the Bill of Entry (Forms) Regulation, 1976, Form 22 specifies the documents to be presented with the Bill of Entry. The import manifest is not specified as a document to be presented with the Bill of Entry.

47. For the reasons aforesaid and having regard to the principles laid down by the Full Bench of the Bombay High Court in *Apar Private Ltd.* (supra) and the reasons given in my judgment in *Dinesh Kumar Newatia* (supra), in my view the petitioner is entitled to the exemption available to it on the date of entry of the goods in the territorial waters.

48. In the result, this application is allowed. The order of assessment already made is set aside. The respondents are directed to make a fresh assessment within one week from the date of communication of this order at the rate applicable in respect of the subject goods on the date when the goods entered the territorial waters of India, i.e., October 2, 1986. The petitioner has got the goods released upon payment of enhanced duties in terms of the impugned notification. The respondents are directed to refund such amount as may be found refundable being the difference between the duty leviable on the subject goods at the rate applicable on such import on October 2, 1986, and the duty actually paid by the petitioner. In the event the refund is not made within two weeks from the date of assessment, the respondents shall pay interest at the rate of 12% on the amount to be refunded from the date of this order till the date of payment.

49. There will be no order as to costs.

50. All parties to act on a signed copy of the operative part of this judgment and order.