

(1987) 12 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 8849, 8850, 8851 and 8852 of 1983

Barium Chemicals Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 04-12-1987

Acts Referred:

Customs Valuation Rules, 1963 — Rule 8
Central Excise Rules, 1944 — Rule 8
Customs Act, 1962 — Section 11, 12, 12(1), 14, 15
Customs Tariff Act, 1975 — Section 2, 2(1), 3, 3(1), 3(2)

Citation : (1988) 17 ECC 201 : (1988) 37 ELT 327

Hon'ble Judges : Upendralal Waghray, J;Jeevan Reddy, J

Bench : Division Bench

Advocate : Y. Ratnakar, for the Appellant; K. Jagannadha Rao for Central Government, for the Respondent

Judgement

Upendralal Waghray, J.—The petitioner in all the four writ petitions is the same and the cases raise some common questions and were heard as a batch and can be disposed of by a common judgment. Additional points raised in individual writ petitions will be considered at the end.

2. Taking up the facts in W.P. No. 8849/83 first, the petitioner is a Public Limited Company, having its registered office in Khamman district and is a manufacturer and dealer in chemicals. The Union of India, represented by the Secretary, Ministry of Finance and the Assistant Collector of Customs, Kandla Port, Gujarat State are the two respondents. Pursuant to an order placed by the petitioner, the Chem-Import-Export Foreign Trading Company, Romania, despatched 4000 tons of PVC Resin by the Ship "State of Mysore" which arrived at Kandla Port on 28th September, 1983. The foreign supplier issued four invoices each for 1000 metric tons showing the price at Rs. 3.900/- per metric ton and Rs. 450/- for packing charges per metric ton, thus making up a total of Rs. 4.350/- per metric ton. Aggrieved by the assessment and demand of customs and additional customs duties made by the respondent No. 2 for securing the release of the above goods

on the presentation of the bill of entry, the petitioner has approached this court seeking a writ of mandamus not to levy additional customs duty at 35% and not to include packing charges and post-importation charges in determining the assessable value for the purpose of levying customs duty etc. The respondents are opposing the writ petition.

3. The contentions urged on behalf of the petitioner are as follows :

(1) The imported goods are not liable to any additional customs duty u/s 3(1) of the Customs Tariff for the reasons mentioned in paras 11 to 15 of the affidavit. Alternatively, for levy of the additional duty (a) customs duty; (b) landing charges and stevedoring charges payable by the petitioner to the Port Trust; and (c) packing charges shall not be included in the assessable value of goods for the reasons mentioned in paras 19 to 24 of the affidavit.

(2) In the assessable value of the goods for the purpose of levy of customs duty u/s 12 of the Customs Act, 1962 read with Section 2 of the Customs Tariff Act, 1975, the landing charges and stevedoring charges payable by the petitioner to the Port Trust (i.e. post-importation charges) and packing charges shall not be included for the reasons mentioned in paras 16 to 18 of the affidavit.

4. The Indian Customs Act, 1962 (hereinafter called the Act) by Section 12 provides for the levy of duties of Customs on the rates specified under the Customs Tariff Act, 1975 or any other law on goods imported into India or exported from India. Section 14 of the Act provides for determining the value of goods for the purpose of levy of duty of customs. Section 25 of the Act confers power of exemption on the Central Government.

5. Section 2 of the Tariff Act (hereinafter called the Tariff Act) read with its Schedules provides for the rates at which the Customs duty mentioned in Section 12 is to be levied. Section 3(1) of the Tariff Act provides for the levy of Additional Excise Duty equal to the Excise duty for the time being leviable on a like article. Section 3(1) provides that the value of goods for levy of additional Customs duty shall be the aggregate of the value fixed u/s 14 of the Act and the Customs duty chargeable under that Act. Section 3(1) makes the various provisions of Act including Section 25 applicable to the additional Customs duty chargeable under that Section.

6. It is not in dispute that at the relevant time the basic duty of Customs u/s 12 of the Act read with Section 2 and Schedule I of the Tariff Act on the imported PVC Resin was 200 per cent ad valorem [Chapter 39.01/06] but because of certain concessions given by Notifications u/s 25 of the Act mentioned in para 10 of the affidavit, the basic duty on the present consignment from Romania is 75% ad valorem. Also these goods were liable to additional duty of Customs at 35% ad valorem u/s 3(1) of the Tariff Act. According to the petitioner, there was an exception and there is no liability for the additional Customs duty and, in any event, the Customs duty shall not be included in the assessable value for calculating additional Customs duty. Further, according to the petitioner, in

determining the assessable value of the goods for levy of Customs duty or additional Customs duty, the landing charges and stevedoring charges paid to the Port Trust shall not be included. Also, the packing charges ought not to be included in the assessable value because of exemption notification referred to in paragraph 16 of the affidavit.

7. The case of the petitioner that the goods in this case are not liable to additional Customs duty is based on two grounds; Firstly, it is contended that notifications issued u/s 25 of the Customs Act and referred to in paragraph 10 of the affidavit exempt any Customs duty in excess of 75% thereof and even additional Customs duty is not payable. Secondly, reliance is placed on another set of notifications mentioned in para 14 of the affidavit for claiming exemption for additional Customs duty. Notification No. 36/83-Cus., dated 1-3-1983 reads as under:

"Effective rate of Duty for Goods falling under Heading No. 39.01/06.

In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 30/82-Customs, dated the 28th February, 1982, the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts the goods, falling under Heading No. 39.01/06 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) specified in Column (2) of the Table hereto annexed, when imported into India, from so much of that portion of the duty of Customs leviable thereon which is specified in the said First Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (3) of the said Table:

Provided that nothing contained in this notification shall affect the exemption granted under any other notification of the Government of India for the time being in force, from the duty of customs specified in the said First Schedule in respect of the goods referred to in this notification.

TABLE S.No. Description of Goods Rate of duty (1) (2) (3) 1. XX XX XX XX 2. Polyvinyl Chloride Resins 150 per cent ad valorem 3 to 4. xx xx xx xx."

8. As pointed out earlier, the Customs duty on PVC Resin u/s 12 of the Customs Act and under Schedule I read with Section 2 of the Tariff Act alongwith Section 12 of the Customs Act is 200 per cent ad valorem. By the aforesaid notification it is provided that any such Customs duty in excess of 150% ad valorem is exempt. By another Notification No. 342/76-Cus., dated 2-8-1976 as amended from time to time for goods imported into India from Romania there is a further exemption equal to 50% of the Customs duty, as a result the effective rate of Customs duty on PVC Resin is 75% ad valorem (i.e. 50% of 150% ad valorem).

9. It is contended that the effect of the aforesaid notifications granting exemption from Customs duty in excess of 75 per cent ad valorem is that,

neither Customs duty u/s 12 of the Customs Act read with Section 2 of the Tariff Act, nor additional Customs duty u/s 3(1) of the Tariff Act, in excess of 75 per cent could be levied. By way of an analogy, two decisions of Delhi High Court dealing with exemption under Rule 8 of the Central Excise Rules reported in *Modi Rubber Ltd. v. Union of India and Ors.* 1983 ELT 24 (Delhi) and *Indian Aluminium Company Ltd. and Anr. v. Union of India and Ors.* 1983 ELT 349 (Delhi), are referred to.

10. The view expressed by the Delhi High Court in connection with the Central Excise Notification has been over-ruled by the Supreme Court in the decision reported in *Union of India v. Modi Rubber Ltd.* AIR 1986 S.C. 1992, where it has been held that the exemption under Rule 8 of the Central Excise Rules will be confined to the duty specifically referred to and not others.

11. In another decision of the Supreme Court reported in *Khandelwal Metal and Engineering Works and Another Vs. Union of India (UOI) and Others*, , the distinction between the Customs duty levied u/s 12 read with Section 2 of the Tariff Act and the Additional Customs duty levied u/s 3(1) of the Customs Tariff Act has been brought out and held that both are no doubt, duties of Customs referable to Section 12 of the Customs Act, but are different and distinct duties of Customs and the measure of each is also different. Section 25 of the Customs Act confers power to grant exemption from Customs duty. Section 3(1) of the Tariff Act provides that the provisions of the Customs Act relating to exemption so far as may be apply to the duty chargeable u/s 3(1) viz., additional Customs duty. Therefore, the language of the notification will determine the exemption granted for the particular duty viz., Customs duty or additional Customs or both.

12. A Full Bench of the Bombay High Court in the decision reported in *Apar Private Ltd. and others Vs. Union of India and others*, has also held that the exemption notification u/s 25 of the Customs Act in respect of the Customs duty and the exemption notification u/s 25 read with Section 3(1) of the Tariff Act in respect of additional Customs duty are distinct and one does not affect the other.

13. The present notification is issued in exercise of the powers u/s 25 of the Customs Act and refers to the Customs duty leviable under the First Schedule to the Customs Tariff Act. It is referable to the duty u/s 2 of the said Act which is the Customs duty. The absence of reference to Section 3(1) of the Tariff Act or the duty u/s 3(1) of the Tariff Act or additional Customs duty indicates that it was not meant to apply to the additional Customs duty. For the purposes of comparison the notification referred to by the petitioner in paragraph 14 of the affidavit shows that where an exemption of additional Customs duty was granted, a reference is made specifically to the duty leviable u/s 3(1) of the Customs Tariff Act. Again, the notification referred to in paragraph 16 of the petitioner's affidavit shows that where exemption was to be given in respect of both the Customs duty and additional Customs duty, a reference is made to both the Schedule to the Customs Tariff Act (which is referable to Section 2 thereof viz., Customs duty) and also to Section 3(1) of the Customs Tariff Act which

deals with additional Customs duty. In view of the language of the notification relied upon it cannot be said that the imported goods are exempt from additional duty u/s 3(1) of the Act.

14. The second contentions regarding exemption from additional Customs duty is based on the Notification No. 228/76-Cus., dated 2-8-1976 as amended from time to time which is also extracted in para 14 of the affidavit and reads as follows:

"In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962) the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts articles made of plastics, all sorts, but excluding those specified in the Table annexed hereto, from payment of so much of the duty of Customs as is leviable thereon u/s 3(1) of the Customs Tariff Act, 1975 (51 of 1975).

Explanation.: For the purpose of this notification plastic means the various artificial or synthetic Resins or plastic materials or cellulose, esters and ethers are included in sub-item (1) of Item No. 15A of the 1st Schedule to the Central Excises and Salt Act, 1944 (1 of 1944).

TABLE

Tubes, rods, sheets, foils, sticks, other rectangular or profile shapes, whether laminated or not and whether rigid or flexible including layflat tubings and polyvinyl chloride sheets."

15. For understanding the scope of the exemption it is necessary to refer to Item 15A of the First Schedule to Central Excises and Salt Act as it existed then. It is as follows:

"15A. Artificial or Synthetic resins and plastic materials; and other materials and articles specified below....

(1) xx xx xx

Polymerisation and Co-polymerisation products (for example, polythelene, polytetraha! cethylenes, polyisobutylene, polystyrene, polyvinyl chloride, polyvinyl acetate, polyvinyl chloroacetate and other polyvinyl derivatives, polyacrylic and polymethacrylic derivatives, coumaroneindene resins).

(2) xx xx xx

Articles of materials described in sub-item (1) the following, namely :-Boards, sheeting sheets and films, whether lacquered or metallised or laminated or not; lay flat tubings not containing any textile materials, xx xx xx

Explanation III. - Sub-item (1) is to be taken to apply to materials in the following forms only :-

(a) xx xx xx

(b) blocks, lumps, powders (including moulding powders), granules, flakes and similar bulk forms;

(c) xx xx xx."

16. The goods imported by the petitioner in this case is PVC resin in powder form which is packed in several bags [that is a material in sub-item (1)]. Item 15A in the Schedule to the Central Excise Act consists of two distinct sub-items. Sub-item (1) consists of artificial or synthetic resins and plastic material while sub-item (2) consists of some articles made of materials in sub-item (1). Explanation III also brings out this difference. The notification relied upon exempts only articles made of plastic excluding those specified in the table annexed. That is, it exempts some articles in sub-item (2) and does not exempt the material mentioned in sub-item (1). The exemption does not apply to the goods Imported in this case. The contention of the petitioner that the imported goods are exempted from additional duty because of any of the exemption notification is rejected.

17. A faint attempt was made to challenge the constitutional validity of Section 3(1) of the Customs Act on both grounds viz., legislative competence of parliament and its being violative of the rights of the petitioner under Articles 19 and 300A of the Constitution of India. Sub-section (2) of Section 3(1) of the Customs Tariff Act provides the mode of assessing the value of goods for levy of the additional Customs duty the measure of which u/s 3(1) is the excise duty leviable on similar articles. Sub-section 2(ii) of Section 3(1) of the Tariff Act provides that the Customs duty chargeable u/s 12 of the Act also shall be included in the assessable value. Section 3(1) contains a statutory mode of determining the assessable value for levy of additional Customs duty and merely because it directs inclusion of Customs duty chargeable it cannot be said that the provision is constitutionally invalid on any of the two grounds urged, in view of the decision of the Supreme Court in *Khandelwal Metal and Engg. Works v. Union of India* (Supra) the legislative competence of Parliament to enact these provisions cannot be questioned. As held by the Supreme Court, the charging section for the additional Customs duty also is Section 12 of the Customs Act and Section 3(1) of Tariff Act provides its measure. Section 3(1) provides for valuation of the imported goods for purposes of levy of additional duty by including the Customs duty chargeable u/s 12 of the Customs Act. It is not shown how this is illegal. The Karnataka High Court has in its recent decision in *B.S. Kamath and Co. v. Union of India* 1986 ELT 456 (Kar) (paras 19 and 20) rejected a similar contention. The contention regarding the validity of Sub-section (2) of Section 3(1) as well as the complaint about inclusion of Customs duty in determining the assessable value of goods is untenable and rejected.

18. The contention regarding the inclusion of packing charges and post-importation charges (that is, landing charges and stevedoring charges) in determining the assessable value of the goods for the levy of additional Customs duty as well as for the assessable value u/s 14 of the Customs Act for the

purpose of levy of basic Customs duty can be considered together.

19. The petitioner's case regarding landing charges and stevedoring charges is, In short, that the Customs duties are to be levied at the time of import into the country that is when the goods enter the territorial waters of India, and the respondents are not justified in including any charges incurred subsequent to import for calculating the assessable value. It is not disputed that the amounts sought to be included by the respondents have been paid by the petitioner towards landing charges and stevedoring charges to the Port Trust for the goods to be unloaded at the Port. These charges are apparently shown in the bill of entry and are required to be shown under it by the prescribed form u/s 46 of the Act. It is necessary to examine some relevant statutory provisions for considering this controversy. Section 12 of the Customs Act provides for levy of duties of Customs on the goods imported into India and this duty is calculated in accordance with Section 2 read with the Schedule. Additional Customs duty is required to be calculated by Section 3(1) of the Tariff Act as equal to the excise duty. Assessable value of the goods for the levy of Customs duty is to be determined in accordance with Section 14 of the Act as well as the Customs Valuation Rules, 1963 framed under it. The assessable value for the levy of additional Customs duty is to be determined in accordance with Section 3(1) of the Tariff Act. The definition clause viz. Section 2 and some Sections requiring that the goods should be imported only through specified Ports and should be landed at specified places in the Ports have to be considered. It is useful to extract some of these provisions.

"2. Definitions : In this Act, unless the context otherwise requires:

(1) to (22) x x x x x x x x x x

(23) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

(25) "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.

(27) "India" includes the territorial waters of India."

Section 7. Appointment of Customs ports, airports etc. - The Central Government may, by notification in the official gazette, appoint....

(a) the ports and airports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods;

(b) the places which alone shall be land customs stations for the clearance of goods imported or to be exported by land or inland water or any class of such goods;

(c) the routes by which alone goods or any class of goods specified in the notification may pass by land or inland water into or out of India, or from any

land customs station from or to any land frontier;

(d) the ports which alone shall be coastal ports for the carrying on of trade on coastal goods or any class of such goods with all or any specified ports in India.

Section 8. Power to approve landing places and specify limits of Customs area :
The Collector of Customs may....

(a) approve proper places in any Customs port or Customs airport or coastal port for the unloading and loading of goods or for any class of goods.

(b) specify the limits of any Customs area.

Section 14. Valuation of goods for purposes of assessment: - (1) For the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force where under a duty of Customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be....

(a) the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale;

Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented u/s 46, or a shipping bill or bill of export, as the case may be, is presented u/s 50;

(b) where such price is not ascertainable, the nearest ascertainable equivalent thereof determined in accordance with the rules made in this behalf.

(2) Notwithstanding anything contained in Sub-section (1), if the Central Government is satisfied that it is necessary or expedient so to do it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods having regard to the trend or value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

(3) For the purpose of this section....

(a) "rate of exchange" means the rate of exchange - (i) determined by the Central Government, or (ii) ascertained in such manner as the Central Government may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in the Foreign Exchange Regulation Act, 1973.

Section 33. Unloading and loading of goods at approved places only: "Except with the permission of the proper officer, no imported goods shall be unloaded, and no export goods shall be loaded, at any place other than a place approved

under Clause (a) of Section 8 for the unloading or loading of such goods."

Rule 3(a) of the Customs Valuation Rules, 1963 : - The value of the imported goods may be based on the value at which such goods, or comparable goods produced or manufactured by the person who has produced or manufactured the goods to be assessed, or ordinarily sold or offered for sale to other buyers in India under competitive conditions."

20. In this case, the place of importation is Kandla Port, which is one of the specified Ports u/s 7 of the Act. The import is not permissible from any Port unless it is specified u/s 7. Further, in view of Section 33 read with Section 8, the imported goods can be unloaded only at the specified places in the Ports. Section 46 requires that the importer of goods shall present a bill of entry to the Customs Officer, who, after being satisfied that the assessed import duty has been paid will permit clearance of the goods. The prescribed form of the bill of entry for the purposes of Section 46 requires inclusion of the landing charges payable to the Port Trust for assessment of Customs duty. In this case, the petitioner is asked to include in the bill of entry the amount which he has admittedly paid to the Port Trust in connection with the goods being made available from the vessel on the land mass of India. Port Trust has to incur expenditure, among other things, for bringing the Ship into the harbour and unloading the goods from the Ship on to the Port. These are popularly known as landing charges and stevedoring charges. Section 2 defines "India" in Clause (27) as including the territorial waters. Opening words of Section 2 show that the definition given therein is subject to otherwise requirement by context. "India" is defined Widely by including the territorial waters apparently because the Act provides not only for the levy of Customs duty, but also for prevention of smuggling, that is, illegal import and export of goods in the interest of the Country's economy. Chapter VIII of the Act deals with the goods in transit. The said Chapter broadly provides that the imported goods carried in the same vessel or air-craft which are meant for transshipment or transit are not liable to any Customs duty. However, they are made subject to the provisions of Section 11, which empowers the Central Government to prohibit import or export of any goods. In this case, we are concerned with the limited question of the assessment of the Customs and additional Customs duties on goods which have come through a Port on the land mass of India. Section 12 of the Act provides for the levy of Customs duty on goods imported into India. Section 15 provides for date for determination of rate of duty on imported goods. At the same time, Section 14 provides for the valuation of goods for the purpose of assessment of duty. The Scheme of the Act discloses that assessment of duty is to be made on the valuation as contemplated by Section 14 at the rate of duty prevailing on the date as contemplated by Section 15. It is only after such assessment and payment of duty that the goods are cleared under Sections 46 and 47. Sections 14 and 15 require the goods to be available on the land mass of India at the places provided u/s 8 in the air-port or port notified u/s 7. The words "import" and "India" will have to be understood in the aforesaid context and the opening

words of Section 2 state that the definition will be subject to the meaning to be ascribed in a given context. The goods which are not in transit (as provided in Chapter VIII) or which have not been imported into the country from the authorised ports or air-ports notified in Section 7 and in the manner provided by the other provisions of the Act, may attract penal action and may be chargeable to duty, as illegal imports. But, that cannot be a circumstance for deviating from the prescribed method of assessment for the purposes of goods imported in accordance with the provisions of the Act. In view of Section 14, the Customs duty is chargeable with reference to the value of the goods at the place of importation in the course of International trade where seller and buyer have no interest in the business of each other, that is, the price is to be determined at an arm's length. The price at the place of importation viz., that is, place specified u/s 8 in a port notified u/s 7 will, naturally, include the cost of making the goods available at these places which are on the land mass of India. Rule 3(a) also makes this clear. As already noticed, the prescribed form u/s 46 also requires landing charges to be mentioned in the bill of entry. In view of these detailed statutory provisions regarding assessment of Customs duty, it cannot be urged that the inclusion of the expenses incurred for making the goods available at the land mass of India ought not to be included in the assessable value of the goods. A Full Bench of the Bombay High Court in the case reported in *Apar Private Limited v. Union of India* (supra) (paras 19 to 23) and a decision of the Karnataka High Court reported in *B.S. Kamath and Co. v. Union of India* (supra) (paras 28 to 32) also support our conclusion. The valuation for the purpose of levy of additional Customs duty is to be done in accordance with Section 3(1) of the Tariff Act which is to be the aggregate of the value u/s 14 and the Customs duty leviable on the goods. As the landing and stevedoring charges are required to be included for the purpose of valuation u/s 14. It is obvious that they have also to be included for the purpose of valuation u/s 3(1) of the Tariff Act for levy of additional Customs duty. The contention that the landing and stevedoring charges paid by the petitioner to the Port Trust ought not to be included in the assessable value, either for Customs duty or additional Customs duty is, therefore, rejected.

21. The petitioner's case regarding inclusion of packing charges in assessable value is based upon the exemption notification referred to in para 16 of the affidavit viz., No. 184-Cus., dated 2-8-1976, which reads as follows :-

"In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby directs that where any goods are imported into, or exported from India in packages or containers or the like, such packages or containers or the like shall be exempt -

(i) from the whole of the duty of Customs leviable thereon under the First or Second Schedule to the Customs Tariff Act, 1975 (51 of 1975) as the case may be, and

(ii) from the whole of the additional duty leviable thereon u/s 3(1) of the Customs Tariff Act, 1975 (51 of 1975) in the case of imports: Provided that:

(a) the value of the package or containers or the like in which the goods are packed is included in the value for which the goods contained therein have been invoiced;

(b) the goods are not packed in packages or containers or the like which are of a permanent character and accordingly strong enough to be suitable for repeated use; and

(c) the packages or containers or the like in which the goods are packed are such as are normally used in the trade for packing such goods."

22. According to it, the packing charges are exempted from the levy of both Customs duty and additional Customs duty, if the three conditions mentioned in it are satisfied. In this case, as pointed out earlier, the cost of packages is separately shown in the invoice. The vendors in Romania have also issued letter and certificate the time of issue of invoice to the effect that the aforesaid conditions are satisfied with reference to the packages in this case as stated in para 17 of the affidavit. The xerox copies of certificates are also filed alongwith the writ petition.

23. On behalf of the Revenue it is contended that the petitioner ought to have satisfied the authority at Kandla Port that the conditions in the notification are satisfied and for this purpose the case should be remitted back for enquiry by the 2nd respondent as was done by the Karnataka High Court in the case of B.S. Kamath & Co. v. Union of India (supra). If the conditions are satisfied the petitioners are entitled to the relief of exclusion of the packing charges from the assessable value for levy of Customs duty and additional Customs duty. They have referred to the certificates issued by the exporter in para 17 of the affidavit. No counter-affidavit is filed by respondent No. 2 or any one else who has seen the packing material to controvert this. After the hearing was over, we have asked the Central Government Standing Counsel to file a counter-affidavit of respondent No. 2 or someone who can deny the statement in para 17 of the affidavit as the xerox copies of the certificates were also produced in court. But, even after time was given no such counter-affidavit was filed. Here the import is from Romania where the export is by Government controlled companies. The vendor has issued a certificate to the petitioner at the time of the export itself to the effect that three conditions mentioned above are satisfied. From a perusal of the four invoices in this case, it is seen that 1,000 tons of imported material is packed in 10,000 paper bags of one Kg. each, which are placed in polyethylene/textile bags of 25 Kgs. each. The packing charges of Rs. 4;350/- metric tonne as mentioned above includes the charges for this packing material. The nature of the bags cannot be said to be of a permanent character and value of the bags in which the material is packed cannot also be said to be unreasonable in this case. The goods were imported about four years ago and the possibility of the

evidence being available now has to be kept in view. The petitioner has apparently approached this court because he was challenging the validity of the levy of additional Customs duty and the issue of valuation. At that time there was some controversy about this. In the circumstances mentioned above, we do not consider that in this case a remand for further enquiry about the conditions having been satisfied will serve any useful purpose. We are inclined to accept the certificates issued by the Romanian Company and hold that the petitioners are entitled to the relief of excluding the packing charges from the levy of Customs duty as well as additional Customs duty, in view of the notification referred to above. The petitioner is entitled to the relief only to this extent and the writ petition is dismissed in respect of all other reliefs claimed by the petitioner and is allowed only to the extent of the relief regarding exclusion of the packing charges from the assessable value of the imported goods for purposes of levy of Customs duty and additional Customs duty. By virtue of interlocutory orders the petitioner was permitted to remove the goods on payment of part of the duty demanded and on furnishing bank guarantee for the balance. The respondents will, therefore, exclude the value of packing charges from the assessable value and compute the Customs duty and additional Customs duty and after adjusting the amounts paid, recover the balance by enforcing the Bank guarantee furnished by the petitioner. The petitioner shall pay the balance amount of duty after it is determined in the manner indicated.

24. Writ Petition No. 8850/1983. -In this case, the goods imported are 110 metric tons HDPE from the same exporter. The price and packing charges are separately shown in the invoice and the necessary certificates regarding the packing material to satisfy the requirements of the exemption notification have also been given by the Exporter. The imported material is liable to the levy of Customs duty and also auxiliary duty of Customs. In addition, additional Customs duty and surcharge are also to be levied. An additional contention is raised that the auxiliary duty should not have been included in the assessable value for purpose of levy of additional Customs duty. For the same reasons given in the earlier writ petition, this contention also cannot be accepted, because the auxiliary duty is also a duty of Customs which has to be included in the assessable value by virtue of Section 3(1) of the Tariff Act. All the contentions raised, except regarding packing charges are rejected and, there will be a direction only to the extent of exclusion of packing charges for determining the assessable value on the imported goods for purposes of levy of Customs duty and additional Customs duty in this case also. A direction similar to the one in W.P. No. 8849/1983 shall issue.

25. Writ Petition No. 8851/1983. - in this case, the goods imported are 360 metric tons of HDPE from the same exporter. The contentions are similar to those in W.P. No. 8850/1983. Following the said judgment, the petitioner is entitled only to the relief of exclusion of packing charges from determining the assessable value on the imported goods and all other contentions are rejected. A direction similar to one in W.P. No. 8850/1983 shall issue.

26. Writ Petition No. 8852/1983. - In this case, 1,200 metric tons of caustic soda was imported. The contentions raised are similar in the earlier writ petitions. Except to the extent of exclusion of the packing charges, all other contentions are rejected and there will be a similar direction in this case also.

27. There shall be no order as to costs in all the four writ petitions.

28. The learned counsel for the petitioner makes an oral request for grant of leave to appeal to the Supreme Court. We do not consider this to be a case involving any substantial question of law of general importance requiring the consideration of the Supreme Court. Oral request for leave is refused.