(2014) 01 DEL CK 0229

In the Delhi High Court

Case No : WP (C) 1477 of 1998

Bombay Dyeing and Manufacturing Co. Ltd. and Others APPELLANT

Vs

UOI and Others RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14
Customs Act, 1962 — Section 65 66

Citation : (2014) 201 ECR 289 : (2014) 310 ELT 79 : (2014) 25 GSTR 290

Hon'ble Judges : Sanjiv Khanna, J;Sanjeev Sachdeva, J

Bench : Division Bench

Advocate : Satvik Varma, Mr. Rohan Sharma and Mr. Saurab Seth, for the Appellant;

Judgement

Sanjeev Sachdeva, J.—The petitioner has filed the present writ petition seeking quashing of the order dated 04.11.1997, passed by the Joint Secretary to Government of India, whereby the revision application filed by the petitioners u/s 35EE of the Central Excise Salt Act, 1944, ("Act", in short) against the order passed by the Commissioner (Appeals), Mumbai was rejected. The petitioner is aggrieved by the rejection of the rebate claim of Rs. 2,18,694,64/- made under Rule 191A of the Central Excise Rules, 1944 by the petitioner. The petitioner had raised the claim pursuant to export of "Cotton Quilt Covers" and the Central excise duty paid on the cotton fabrics used in the manufacture of such quilt covers.

2. The petitioner is a company engaged in the manufacture of yarn, fabric, etc. The petitioner manufactures fabrics and pays duty thereon and clears the same to approved job workers for the purpose of manufacturing cotton quilt covers.

3. During the period May 1994 to September 1994, the petitioner exported the quilt covers manufactured by the job workers and applied for refund of the excise amount paid on the inputs (i.e. cotton fabric used in the manufacture of quilt covers).

4. On 16.08.1995, the Assistant Commissioner of Central Excise, Division A, Bombay, issued a show cause notice to the petitioner to show cause as to why the rebate amount sanctioned should not be rejected as inadmissible u/s 11B of the Central Excise Salt Act, 1944 read with Rule 191A of the Central Excise Rules, 1944.

5. The Assistant Commissioner, Central Excise, in the show cause notice mentioned that from the list of the products appended to notification issued under Rule 191A, the entry at serial No. 17 was only "Cotton Quilts" and there was no entry of "Quilt Cover".

6. In reply to the show cause notice, on 25.08.1995, the petitioner submitted a representation contending that it was exporting Quilts/shells and not Quilt covers and as such, was entitled to the rebate.

7. Vide order dated 04.09.1995, the Assistant Collector of Central Excise rejected the rebate claim of the petitioner and held as under:-

I have carefully perused the case records and considered the submissions made by the party in writing as well as orally. I find that the rebate has been claimed on Form AR5s as prescribed under erstwhile Rule 191A. The said Rue 191A provides for procedure for export of articles under rebate of duty on the excisable goods used in the manufacture and packing. In terms of sub-rule 1 of Rule 191A, the Central Board of Excise and Customs have declared Cotton Quilts (Rajais) in respect of which the rebate of duty on the Excisable contents thereof shall be allowed.

In the present case, what has been exported is scoured quilt cover as described in Form AR5s on which refund has been claimed. The shipping Bills relevant to the rebate claims in question described the goods as 100% cotton Fabrics Mill made scoured feather proof quilt covers double stitched. In the relevant contract copy produced by the assessee, the description of the goods exported reads as 100% Cotton Made in India Scoured Feather Proof Silicon Finish Piped Seam Quilt Shells". The similar description appears in few shipping bills also.

The party vide their letter dt. 24.08.95 accepts that the goods are Quilt Shells. At the time of personal hearing I have been shown a sample of Quilt Shell which had a small opening at one side through which the feathers or cotton can be pumped in the said shell. There was no stuffing in the said Quilt Shell/Cover. Thus it is abundantly clear that what has been exported is not the Quilt (Rajais) as it is known in the trade but Quilt Cover/Shell without any stuffing therein. The party themselves have admitted that there is no stuffing inside the said so called shell/cover. The Quilt/Rajais in India or abroad is known as such only with stuffings of feather/cotton/polyester inside two layers of fabrics stitched together from all sides. Quilt shell/cover cannot be called as quilt until it is stuffed with the stuffing materials which can be feather/cotton/polyester fibre. Description Quilt (Rajais) therefore does not cover Quilt Shell/Cover which is a component of Quilt. Since the rebate is allowed only in respect of Quilt (Rajais) only, and not on

Quilt Shell/Cover, party is not entitled to rebate in terms of Rule 191A read with Notification/Declaration issued by Central Board of Excise and Customs in this regard. There is no other Notification/Declaration of C.B.E.C. under which the rebate claim under Rule 191A could be allowed to Quilt Shell/Cover.

In view of above, I reject the rebate claims amounting to Rs. 218694.64 as listed in the annexure to the show cause notice as inadmissible under erstwhile Rule 191A of Central Excise Rules, 1944 read with Section 11B of Central Excise and Salt Act, 1944.

8. The petitioner assailed the order by filing an appeal before the Commissioner of Central Excise (Appeals). Vide order dated 25.03.1997, the Commissioner (Appeals) rejected the appeal of the petitioner holding that the notification issued under Rule 191A mentioned the name of the final product "Cotton Quilts (Rajais)" but the petitioner trying to cover their product "quit covers" under the said notification traded their product as "cotton quilts". He held that the product exported, to be eligible for the benefit under Rule 191A, should have been the cotton quilts and not quit covers. He rejected the contention of the petitioner that Rule 191B was an analogous Rule and included article "Cotton Quilt Covers" and hence, the same principle should be applied to products covered under Rule 191A.

9. The petitioner thereafter filed a revision petition u/s 35EE to the Central Government. By the impugned order dated 04.11.1997, the said revision petition has been rejected.

10. The Joint Secretary to the Government of India, in the impugned order, has held that Cotton Quilt (Rajais) was the notified article eligible for Rule 191A benefit whereas under Rule 191B the articles covered were Cotton Quilt including Quilt Covers. He held that Rule 191A and Rule 191B were slightly different in their applicability and procedure. Under Rule 191A, duty paid materials are received into factory for further manufacture and upon export, claims of Central Excise duty paid on such materials and packing materials used are settled but under Rule 191B, the articles meant for export are not only manufactured under bond but the excisable goods required for manufacture of such articles are also obtained under bond.

11. He held that Rule 191A and Rule 191B could not be equated on the same footing as Rules 12 & 13 of the Central Excise Rules, 1944, as contended by the petitioner placing reliance on the decision of the Supreme Court in the case Hindustan Petroleum Corporation Ltd. Vs. Collector of Central Excise,

12. The petitioner has assailed the said order in this petition.

13. Learned counsel for the petitioner did not press his submission that what was exported was in fact Cotton Quilt and not Quilt Cover. The stand taken by the petitioner before the authorities below had been that what was exported was in fact Cotton Quilts (Rajais) and covered in the Schedule to the notification issued

under Rule 191A. Before us the contention was not that the goods exported were in fact Cotton Quilt (Rajais) but it was submitted that what was exported was Quilt Covers. The contention of the learned counsel for the petitioner is that in the Schedule to the exemption notification u/s 191B, the entry is Cotton Quilts including Quilt Covers and since the notifications under Rule 191A and Rule 191B virtually operate in the same field and provide the same benefit to the exporter. The entry in Schedule to notification issued under Rule 191B should be read into the entry in the Schedule to notification under Rule 191A. Learned counsel for the petitioner further contended that since the entries were similar, so the entry "Quilt Covers (Rajais) in the Schedule to notification under Rule 191A should also include Quilt Covers, as mentioned in the entry to the Schedule to notification issued under Rule 191B.

14. Learned counsel for the petitioner relied on the decision of the Supreme Court in Hindustan Petroleum Corporation Ltd. (Supra) to contend that in similar circumstances while interpreting Rules 12 & 13 of the Central Excise Rules, the Supreme Court had harmoniously construed Rules 12 & 13 as both the Rules provided for a facility being given to manufacturer of excisable goods for not paying excise duty when such goods are taken out of bonded warehouses and as common procedure had been provided both for the claim for rebate of duty on export of goods as envisaged by Rule 12 and also under bond executed under Rule 13 in connection with export of excisable goods. Similar parity and harmonious construction should be given to the entries in the respective Schedule to the notification under Rule 191A and Rule 191B.

15. Learned counsel for the petitioner further relied upon the Doctrine of Promissory Estoppel and legitimate expectation and contended that in the past for export of quilt covers, benefit under notification issued under Rule 191A had been granted and thus, the respondents were barred from the Principle of Promissory Estoppel from denying the benefit in the present case and the petitioner had a legitimate expectation that the claim of the petitioner would be favourably approved.

16. To understand the controversy, it would be appropriate to extract the relevant notifications.

17. Rule 191A as applicable stipulated as under:-

Rule 191A. Procedure for export out of India of articles under rebate of duty on (the excisable goods used in their manufacture and packing)-

(1) The Central Board of Excise and Customs shall, from time to time, declare the articles to which this procedure shall apply.

(2) Any manufacturer desiring to export any articles under claim for refund of duty paid on (the excisable goods used in the manufacture and packing thereof) shall apply in writing in the form in Appendix ''A to the Collector, giving inter alia the following information:-

(a) Particulars of premises along with a ground plan in duplicate, showing the main sections of manufacturing and packing departments, store-rooms for storage of duty-paid excisable goods and for storage of manufactured articles;

(b) a list of the articles proposed to be manufactured along with their description and manufacturing formulae with particular reference to the quantity or proportion in which the excisable goods are actually used, as well as the quality and tariff category of the excisable goods so used;

(c) the probable annual requirements of the excisable goods in the proposed manufactures;

(d) the (registered) factory or factories from which the excisable goods are to be brought; and

(e) such other information as may be required.

(3) On receipt of the application in the form in Appendix ''A'', the Collector shall enquire about the financial stability of the manufacturer, by a reference to his banker and other sources and, in case of partnership firms, about their actual composition and the individual status of the partners. The Collector may also call for samples of finished goods in order to satisfy himself about the correctness of the formulae mentioned in sub-rule (2)(b).

(4) If, after such enquiry and inspection of the factory premises as he deems fit, the Collector is satisfied that the concession can be allowed to the applicant without danger of abuse, he may grant the application:

Provided that no rebate of excise duty on the raw materials used in the manufacture and packing of goods exported out of India shall be allowed under this procedure if a claim for rebate for the said duty has been made under the Customs and Central Excise Duties Export Drawback Rules, 1971).

(5) The list of articles proposed to be manufactured along with the manufacturing formulae shall be submitted in triplicate to the Collector and manufacturer shall give a guarantee in the form in Appendix ''B'' that he shall not alter the formulae, or use excisable goods of the quality and tariff category different from the one mentioned in the formulae, without the previous permission of the Collector.

(6) The original copy of the list and of the formulae countersigned by the Collector, shall be sent to the manufacturer and maintained by him at the factory and any officer of the Central Excise Department shall at any time have access to this copy. The duplicate copy shall be sent to the Assistant Collector of Central Excise for the purpose of granting refunds and the triplicate copy filed in the Collector''s office along with the application.

Whenever the manufacturer intends to change any formula or intends to manufacture any other type of articles with different formula, he shall give prior intimation to the Collector. Intimation of approved changes in the formula shall be conveyed by the Collector to the Assistant Collector also.

(7) In order to be eligible for the concession, the manufacturer shall obtain the excisable goods to be utilized as ingredients or raw materials in the manufacture and packing of the product intended for export direct from a registered factory or registered factories, approved by the Collector, and in which the excisable goods are produced. All such goods shall be conveyed from the manufacturing factory to the receiving factory within three months from the date of payment of duty thereon or such extended period as the Collector may allow for reasons to be recorded in writing and all such goods shall be accompanied by a copy of the A.R. 1 or gate pass or like document evidencing the payment of duty on the quantity so removed and conveyed.

The manufacturer may, with the prior permission of the Collector, procure excisable goods from open market provided they are in mill packed condition and their identity with the duty paying documents can be established.

The goods so obtained shall be stored in a storeroom, the key to which shall remain in the personal custody of the applicant or his Manager and the applicant or his Manager shall maintain accounts in the form in Appendix ''C''. Each consignment of excisable goods procured under this concession shall be stored separately and goods of each distinct variety shall be kept together in distinct lots.

(7A) The Collector may, by special order (and subject to such) conditions and limitations as may be specified by the Collector, permit a manufacturer to remove the article manufactured under the provisions of this rule to the premises of another person for completion of certain manufacturing process and to bring back such articles to his factory without payment of duty or permit the manufacturer to remove, without payment of duty, such articles to the premises of another assessee for completion of certain manufacturing processes and allow the article to be removed by the manufacturer for export under the provisions of this rule from the premises of such assessee to whom such article has been sent.

(8) When the finished goods are ready for export, the manufacturer shall submit to the Assistant Collector of Central Excise an application in triplicate in the proper form showing the quantity of finished goods to be exported, the quantity of excisable goods contained in, and used in packing of such goods, the amount of duty involved and refund claimed and similar particulars.

On receipt of the application, the Assistant Collector of Central Excise shall forward it to the proper officer (as notified by him from time to time) who shall verify the particulars with reference to the manufacturing formula and the accounts of production, and if satisfied, the proper officer shall seal the packages with Central Excise seal, to be supplied by the Department, and shall give a certificate on the application that the percentage and quantity of excisable goods contained as shown in the application are according to the approved formula and that the packages have been sealed by him with Central Excise seal. After endorsing the copies of the application, he shall deal with them in the manner completely specified by the Collector.

(9) The manufactured goods shall be exported within six months from the date on which the manufactured goods were sealed by the proper officer before dispatch; or within such extended period, but not exceeding a total period of two years, as the Collector may in any particular case allow, and the claim for rebate together with the proof of due exportation will be lodged with the Assistant Collector of Central Excise concerned having jurisdiction over the factory before the expiry of the period specified in sub-section (1) of Section 11-B of the Act.

(10) After due verification (***), the Assistant Collector may sanction the refund.

(10A) If the goods are not exported, or the proof of export thereof is not furnished to the satisfaction of the Collector of Central Excise, in the manner and within the prescribed time-limit, the Collector may in his discretion disallow the whole or any part of the claim for such rebate.

(11) The manufacturer shall maintain accounts in the form in Appendix ''C showing the quantities of duty paid excisable goods received and used in the manufacture and packing of the articles. The account of the article manufactured and exported shall also be maintained in the form in Appendix ''D''.

(12) The concession may at any time be withdrawn by the Collector if a breach of this procedure is committed by the manufacturer, his agent or any person employed by him in the factory. In the event of such a breach, the Collector may also (***) confiscate the excisable goods or the manufactured articles in stock at the factory.

(13) The manufacturer shall, on demand being made within 6 months of the date of payment, refund to be Collector may rebate erroneously paid to him.

(14) Any officer of the Central Excise Department may at any time enter the factory, inspect the buildings and the machinery, check the stocks and accounts, and draw samples of articles manufactured and the raw materials including the excisable goods used in the manufacture of each class of article manufactured.

(15) The Collector may draw the schedules of working hours and closed holidays and may impose conditions governing operation at the factory outside such hours and on such holidays.

(16) The manufacturer shall bear the cost of such establishment as the Collector may consider necessary for supervising operation in the factory for the effective implementation of this procedure.

(17) The provisions of sub-rules (8), (9) and (10) shall, so far as may be, apply also to exporters who are not manufactures.

(18) Notwithstanding anything contained in the foregoing provisions of this rule except sub-rule (9) relating to the time-limit for lodging claim for rebate together

with proof of export, the Collector may, if he is satisfied that any article declared under sub-rule (1) has been exported, allow, for reasons to be recorded in writing, the whole or any part of the claim for rebate.

Notification under Rule 191A

18. Rule 191B as applied laid down as under:-

Rule 191B. Manufacture in bond of articles from excisable goods on which duty has not been paid-

(1) The provisions of section 100A of the Sea Customs Act, 1878 (now sections 65 and 66 of the Customs Act, 1962), modified and set out below shall be applicable to the manufacture in bond of articles from excisable goods on which duty has not been paid.

(2) The Central Government may, from time to time by notification in the Official Gazette, permit the manufacture in bond of such articles from such excisable goods and subject to such conditions and limitations as may be specified in such notification.

(3) The conditions and limitation referred to in sub-rule (2) may relate to all or any of the following matters:-

(a) the supervision by officers of Excise over the manufacture in bond and the payment of fees for such supervision;

(b) the security to be furnished for the due observance of the conditions and limitations specified in this notification.

(4) Where a notification is issued under sub-rule (2) in relation to any excisable goods, the owner of such goods may with the permission of the Collector remove them from the pace of production or manufacturer or storage, without payment of duty.

4A. The Collector may, by special order and subject to such conditions and limitation as may be specified by the Collector, permit a manufacturer to remove the article manufactured under the provisions of this rule to the premises of another person for completion of certain manufacturing process and to bring back such articles to his factory without payment of duty or to permit the manufacturer to remove, without payment of duty such article to the premises of another assessee for completion of certain manufacturing process and allow the article to be removed by the manufacturer for export under the provisions of this rule from the premises of such assessee to whom such article has been sent.

(5) After the process of manufacture have been carried out and the goods repacked in proper or approved packages, the Collector may at the request of the owner of such goods cause or permit any refuse, damaged or surplus goods remaining after the completion of such process or repacking (or at the like request any goods which may not be worth the duty) to be destroyed and may

remit the duty payable thereon.

(5A). The Collector, if he is satisfied that it is necessary or expedient so to do in a particular case, may for reasons to be recorded in writing, relax any of the conditions specified in the notification issued under sub-rule (2).

(6) Where the owner or his agent commits a breach of these rules or of any conditions specified in the Notification issued under sub-rule (2), the owner shall be liable to a penalty not exceeding two thousand rupees and the excisable goods and the articles in respect of which such breach has been committed shall also be liable to confiscation.

Explanation-In this rule, the expression "manufacture" (with its grammatical variations and cognate expressions) includes the process of blending of any goods or making of other alterations therein.

Notifications Under Rule 191B

(1) In exercise of the powers conferred by rule 191B of the Central Excise Rules, 1944, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 129/58-C.E., dated 27.12.1958, the Central Government hereby permits for the purpose of export outside India, the manufacture in bond of the articles specified in column (2) of the Table hereto annexed, from the excisable goods specified in column (3) thereof, subject to the following conditions, namely:-

(1) The manufacture of such articles shall apply for registration in such form as the Collector may prescribe, stating in particular-

(a) the description of each of the excisable goods which is to be used in connection with the manufacture in bond;

(b) every process of manufacture in bond desired to be carried on; and

(c) the description of the premises to be used for manufacture of such articles.

(2) The Collector may register the applicant as a manufacturer for the purpose of rule 191B of the Central Excise Rules, 1944, and grant him a certificate of registration subject to such conditions as he thinks fit to impose, and every such certificate of registration shall specify-

(a) the description of the excisable goods and the articles to be manufactured therefrom;

(b) the formula of manufacture of the articles, stating the quantity of each of the excisable goods per unit of each such articles;

(c) the conditions under which any operation of manufacture in bond may be carried on; and

(d) the registration number allotted to the manufacturer.

(3) The manufacture shall, immediately and change is made in the particulars required under conditions 2(b), intimate the change to the Collector.

(4) The manufacturer shall enter into a bond in the form hereto annexed with the Collector to the extent of twice the amount of excise duty payable on the non-duty paid excisable goods required by him during any month for manufacture of such articles and on the articles proposed to be manufactured during that month.

(5) The manufacture shall apply to the officer of the Central Excise as may be authorized by the Collector, hereinafter referred to as the proper officer, in writing every time he desired to obtain excisable goods required for the manufacture of such articles from the place of manufacture or production or storage of such excisable goods and the provisions relating to the movement of excisable goods from one warehouse to another prescribed in the Central Excise Rules, 1944, shall apply in so far as they are applicable.

(6) The excisable goods, on receipt at the factory of the manufacturer, shall be kept in a separate room or rooms in such manner as the Collector may direct.

(7) In the case of tobacco, there shall be maintained an operation card for each lot of unmanufactured tobacco received under A.R. 3 for manufacture of cigars and cheroots, with the following particulars:-

(i) Date of commencement of operation

(ii) Formula of manufacture.

(iii) Number and date of A.R. 3

(iv) Quantity of unmanufactured tobacco.

(v) Quantity of imported tobacco used, if any.

(vi) Quantity of waste tobacco arising out of operation.

(vii) Number of cigars and cheroots manufactured and their total weight.

(viii) Date of completion of operation.

(8) Clearance ex-bond shall be allowed free of duty provided the articles are exported within three years of the date of the oldest consignment of excisable goods received by the manufacturer for manufacture of such articles, to any country or territory with a common land frontier with India (except Pakistan, Bangladesh and Burma), or shipped as provisions or stores for use on board a ship to a foreign port, and the packages containing all such articles shall be marked conspicuously with the words, ("FOR EXPORT EX-BOND). (Clearance for export of smoking mixtures may also be permitted under excise supervision, when applied for in Form A.R. 4 suitably adapted for that purpose. The packages covered by A.R. 4 application shall similarly be put on board the ship under official supervision.

(8A). The Collector may, at his discretion, permit exporters other than manufacturers to export the articles in bond subject to such conditions and requirements as he may consider necessary).

(9) Any waste of by-product arising from the process of manufacture in bond unless, it is shown to the satisfaction of the Collector that such waste or by-product has arisen solely from imported materials, shall-

(i) be cleared from bond on payment of duty, or

(ii) subject to an account being maintained to the satisfaction of the Collector-

(a) be allowed to be used again for manufacture in bond, where the goods are intended to be cleared for export; or (b) be allowed, on payment of appropriate duty; to be used again for manufacture, where the goods are intended to be cleared for home consumption)

(iii) where it belongs to such class or category of waste or by product as the Central Government may, from time to time, by order specify for the purpose, be cleared from the bond without payment of duty, for being used in the manufacture of the class or category of goods as may be specified in the said order, subject to the procedure which the Central Government may specify in this behalf, in the said order being followed; or

(iv) on application by the manufacturer and if found unfit for further use or not worth the duty payable thereon, be destroyed in the presence of the proper officer, the duty payable thereon being remitted.

(10) The Collector may at his discretion permit in each individual case clearance of any or all such articles for home consumption, on payment of excise duty leviable both on such articles and on the excisable goods used in the manufacture thereof in the same manner as excisable goods intended for home consumption are cleared from the place of their production or manufacture or storage.

(11) The Collector may require the manufacturer-

(a) to make such alternations or arrangements in the manufacturing premises as may be necessary.

(b) to provide such offices (including furniture and fittings) as may be required by him for his staff;

(c) to pay on demand all duties in respect of the excisable articles and goods not accounted for to the satisfaction of the Collector and to pay promptly all penalties incurred for any violation of the prescribed provisions;

(d) to pay the emoluments including allowances at the prescribed rates of such establishment as may from time to time be appointed by the Collector for the supervision of the process of manufacture in bond;

(e) specify the date or days on which, and the hours between which, the manufacture in bond may be carried on;

(f) specify the conditions subject to, and the manner in which, the articles may be cleared for home consumption or export;

(g) require any person, who has been concerned at any stage with the manufacture, sale and transfer of the articles under export to produce books of accounts and other documents of whatever nature relating to the quantity of non-duty paid excisable goods employed in the manufacture of such articles; and

(h) require the maintenance of records and registers and making such returns relating to the manufacture in bond as he thinks fit.

(12) On receipt of the manufactory unmanufactured tobacco which is to be used in the manufacture of such articles which are eventually meant for export shall be kept in separate rooms under double lock, that is, one by the department and other by the manufacturer.

(13) The operation cared shall contain the following additional particulars, namely:-

(a) Tariff variety and quantity of unmanufactured indigenous tobacco.

(b) Number and date of document on which imported tobacco is received, if any.

(c) Number and date of A.R. 1 (if available) on which other materials used in the manufacture of said articles are received.

(d) In the case of cigarettes the weight of the paper board utilized, and in the case of smoking mixtures the quantity and description of raw materials (other than tobacco used).

(e) Number of cigarettes manufactured and their total weight or the number of packets of smoking mixtures.

(14) After manufacture, the manufactured products shall be packed into suitable packages and each such packages shall be marked conspicuously with the words "For export Ex-Bond" and shall also be sealed. Such sealed packages shall be stored under double lock.

NOTE-In case the premises where such articles for export are manufactured in a separate independent portion of the manufactory, it shall not be necessary to provide separate rooms for such manufactured articles or for the materials used therein. In the case of smoking mixtures it shall be sufficient if the whole manufactory is kept under excise supervision and locked by double locks during non-working hours.

(15) Any waste arising from the processes of manufacture in bond of such articles shall be treated as follows:-

(i.) If the manufacturer so desires, he may be allowed, to re-use the waste in the manufacture of the same article from which the waste results subject to the account being maintained to the satisfaction of the Collector.

(ii.) If it is shown to the satisfaction of the collector that such waste has arisen solely from imported tobacco it may be allowed to be cleared on payment of import duty at the appropriate rate.

(iii.) On a request from the manufacturer if the waste is found unfit for further use or not worth the duty payable thereon, it shall be destroyed in the presence of the proper officer, the duty payable thereon being remitted.

(iv.) In case the manufacturer desires to clear such waste for sale it may be allowed on payment of duty besides the additional duty as follows:

(a) Where the waste has resulted F.C.V. tobacco, duty shall be charged under Item-4-I(3) of the Tariff Schedule.

(b) Where the waste has resulted from other than F.C.V. tobacco, duty shall be charged under item 4-I(6) of the Tariff Schedule.

(c) Where the waste has resulted from both F.C.V. and other than F.C.V. tobacco duty to be charged shall be determined by reference to the formula of manufacture and the composition of the blend as shown on the relevant operation sheets.

The same formula shall be followed in respect of waste which has resulted from both imported and indigenous tobacco.

19. Rule 191A deals with the procedure for export of articles under rebate of duty in excisable goods used in their manufacture and packing. Rule 191A lays down a procedure whereby a manufacturer desiring to export any article can claim refund of the duty paid in excisable goods used in the manufacture and packing of the finished goods. The procedure stipulates that the manufacturer has to get a prior approval of the excisable goods that will be utilized for the purposes of the articles proposed to be manufactured alongwith a manufacturing formula and has to give a guarantee that the formulae shall not be altered and shall not use goods of the quality and tariff quantity different from the one mentioned in the formula. On the finished goods being ready, the manufacturer has to once again apply to the Assistant Collector for verification prior to export of the finished products and it is only on verification of the finished products and the compliance of the formula that refund is sanctioned.

20. Rule 191B deals with the situation where the manufacturer manufactures the finished products using inputs of excisable goods on which the duty has not been paid but a bond has been furnished. The Collector has been empowered to permit the manufacturer of excisable good in bonded conditions. In case of fulfillment of the conditions, the exporter is permitted to manufacture the finished products without payment of excise on the excisable inputs. The

conditions stipulated in the said Rules and the notifications there under relate to receipt of excisable inputs in a bonded area and the movement of the excisable goods and the manufacturing process under strict vigil and supervision of the custom authorities.

21. Comparison of Rule 191A with Rule 191B and the respective notifications issued there under clearly show that both the rules operate in a completely different scenario and contemplate different situations. Rule 191A really operates in a field where the exporter of manufactured goods uses excisable inputs on which excise duty has been paid for the purpose of manufacture of the finished goods. The exporter on submitting proof of export of the finished products is permitted a rebate/refund of the excise duty paid on the excisable inputs of the finished products. For the exporter to avail of the said benefit, the exporter has to follow the said procedure prescribed under Rule 191A and the notifications issued there under.

22. In contrast to the procedure prescribed under Rule 191A and the notifications issued there under, the exporter covered under Rule 191B for the purposes of manufacture of the finished products for the purposes of export can obtain excisable inputs without payment of excise subject to furnishing of a bond. The goods covered under Rule 191B, the notification issued there under and the excisable inputs are received in a bonded area. Their movement from one place to another is restricted and the entire manufacturing process has to be undertaken separately in a bonded area. On export of the goods on fulfillment of the conditions stipulated by Rule 191B and the notification issued there under, the exporter is permitted to export the said finished products without payment of excise.

23. The comparison of the Schedule to the notification issued under Rule 191A and Rule 191B shows that though some of the entries are overlapping or similar but a large number of entries are completely different. Thus the entries in the notification issued under Rule 191A and B are not synonymous and interchangeable. Two separate notifications have been issued.

24. The distinction, as mentioned above, between the Rules 191A and 191B and the procedure prescribed by the respective notifications and the Schedules there under clearly establishes that both operate in completely different fields and for different purposes.

25. The admitted case of the petitioner is that the petitioner had applied the procedure prescribed under Rule 191A and the notification issued there under. This is further fortified by the fact that consistently the petitioner had sought to bring its finished product in the entry "cotton quilts (rajais) which is an entry to the Schedule under Rule 191A and it is only when the petitioner did not succeed before the Commissioner of Customs that the petitioner took an alternative plea that the entry in Schedule to 191B should be read so as to enlarge the scope of the entry to the Schedule to notification under Rule 191A. This is clearly not

permissible.

26. The registration of the petitioner was also under Rule 191A and all permissions, sanctions and approval of formulae for the purposes of manufacture of the finished products were under Rule 191A. Since the quilt covers are not mentioned in the entry to Schedule to Rule 191A clearly, the case of the petitioner is not covered under the entry to Rule 191A. In view of the fact that the goods of the petitioner is not covered in the entry to Schedule to Rule 191A, the petitioner is clearly not entitled to rebate/refund of the excise duty on the inputs used in the manufacture of quilt covers.

27. The reliance of the petitioner to the judgment of the Supreme Court in Hindustan Petroleum Corporation Ltd. (supra) does not advance the case of the petitioner in view of the fact that the Supreme Court has noticed in the said judgment in Para 15 that a common procedure had been provided under Chapter IX both for claim of rebate of duty on export of goods as envisaged by Rule 12 and also under the bond executed under Rule 13 in connection with export of excisable goods and the Supreme Court has noticed as under:-

15. In our view the aforesaid decision of Delhi High Court correctly laid down the scheme of Rules 12 and 13 in the light of other relevant rules holding the field at the relevant time. All that Rule 13 provides for is a facility given to the concerned manufacturer of excisable goods of not paying excise duty when such goods are taken out of bonded warehouse or licensed factory under a bond duly executed under Rule 13 which defers payment of excise duty but at the same time guarantees to the revenue payment of full excise duty thereon if they are not ultimately ex-ported. Thus the liability to pay excise duty does not vanish and the goods do not become totally exempt from payment of excise duty as the charge of the duty attaches moment they are manufactured as laid down by the Act. When we turn to Chapter IX of the rules we find that it deals with export under rebate of duty or under bond. Thus a common procedure has been provided under Chapter IX, both for the claim for rebate of duty on export of goods as envisaged by Rule 12 and also under bond executed under Rule 13 in connection with export of excisable goods. As per rule 13 exporter of excise goods on which duty had not been paid has also to follow the same procedure under Chapter IX as has to be followed for exports under Rule 12. Thus an exporter of excisable goods on which duty is not paid in the first instance but which are covered under the bond duly executed in favour of the revenue by the owner of the goods has also to follow the procedure of Rule 185 found in Chapter IX. All that Rule 13 therefore seeks to do is that it provides for the facility of deferred payment of excise duty and what will be the extent of duty ultimately payable on such goods covered by bond executed under Rule 13 will have to be determined independently of Rule 13 and that is the reason why the liability to pay excise on such goods has to be ascertained before discharging the liability under the bond and for that purpose linkage with Rule 12 become relevant as per the phrase "may in the like manner be exported" as found in Rule 13. If Rules 12

& 13 arc not read in conjunction with each other an anomalous and also discriminatory result will follow. This can be demonstrated by taking a simple example.

16. If an excisable commodity like Sewing Machine is exported from a bonded warehouse under Rule 13 under a bond it may not have to bear excise duty till it is exported. But if the same commodity namely, sewing machine is cleared ex-factory gate on payment of full excise duty and thereafter it is exported and if it is covered by a notification under Rule 12(1) granting rebate then only because the same commodity is first cleared from factory gate on payment of full duty, it will have to bear a reduced excise duty as per the notification on proof of export while the same commodity if placed in a bonded warehouse and then exported may get totally exempted from duty. If say for such a sewing machine the excise duty is Rs. 100 per machine, and on proof of export if 20% rebate is to be available then proof of export of such machine after payment of Rs. 100 excise duty would entitle the exporter to get refund of Rs. 20 and such machine may have to bear the excise duty of Rs. 80. While if the same sewing machine which otherwise is liable to pay Rs. 100 excise duty is placed in a bonded warehouse by availing the facility of deferred payment of duty under bond as per Rule 13 and if Rule 13 is to be read independently of Rule 12, then export of such a machine from bonded warehouse would entitle the exporter to claim full exemption of Rs. 100 by way of duty on the same machine. Thus a person who first pays excise duty and then exports the commodity would pay Rs. 80 by way of reduced duty, while a person who enjoys the facility of non-payment of duty at the stage of taking out the commodity from bonded warehouse and getting it exported would enjoy on the same commodity total exemption from duty when it is otherwise liable to bear the same rate of excise duty. Such a result would be discriminatory and arbitrary. To avoid such an anomalous result Rule 13 will have to be read in conjunction with Rule 12 and as complementary to Rule 12. If Rule 13 is read independently of Rule 12 as contended by senior standing counsel for appellants, Sh. Sorabjee an exporter of such a sewing machine who is prompt in paying full duty of Rs. 100/- and then exports it will have to suffer as he will have to pay Rs. 80/- as duty ultimately but one who does not pay duty shall in the first instance after satisfying conditions of Rule 13 will pay nil duty. It would put premium on nonpayment of duty and result in treating equals unequally. On the other hand an equitable result would follow if Rules 12 and 13 are read as complementary to each other dealing as they do with the same subject of remission of duty on export of excisable goods. It is obvious that interpretation of these rules must be made in such a manner as to avoid inequitable result and to ensure an equitable result. According to us the view taken by the Delhi High Court is quite justified and unexceptionable as it avoids such an inequitable result. On the contrary, the view expressed by Calcutta High Court in the case of Indian Aluminium Company Limited v. Union of India (supra) wherein it is held that Rule 13 is to be applied independently of Rule 12, would obviously result in the aforesaid inequitable consequences which cannot be countenanced, Turning to the Division Bench

judgment of the Calcutta High Court, we find that the Calcutta High Court has placed emphasis on the words used in these rules, namely, "rebate on duty of excise paid" as found in Rule 12 as contra distinguished from the words used in Rule 13 to the effect "export under bond of commodities on which duties have not been paid". In our view if the common scheme of both these rules is appreciated in its proper perspective, mere difference of phraseology contained in these rules regarding the time and mode of payment of excise duty would pale into insignificance. It is true as observed by Calcutta High Court that Rule 12 talks of a notification, while Rule 13 does not refer to any notification. But once, it is kept in view that the burden of duty which has to be borne by the concerned commodity, whether it is exported from a bonded warehouse or from open market has to be the same to avoid any inequitable result, the difference in phraseology employed by these rules cannot have any impact on the true construction of these rules. This should be for the simple reason that ultimately the exact burden of the excise duty to be borne by an exported commodity will have to be governed by the notification issued under Rule 12. Equally unjustified is the reasoning adopted by the Calcutta High Court in Para 14 of the report that as per Rule 13 the export is made from bonded warehouse and therefore manufacturer may not cam profit which he may cam if first the goods are cleared on payment of excise duty and then they are exported. In our view this distinction is without any real difference. It has to be kept in view that if the excisable goods are first cleared for home consumption and then exported within the time prescribed under Rule 12, refund would be claimed by the exporter who may not be the manufacturer of such commodity. Such a manufacturer when he sells the goods for home consumption may get profit out of the transaction but ultimately the burden of the excise duty paid by him on the cleared commodity will be passed on to the purchaser and such a purchaser if he exports the commodity within the time limit prescribed by Rule 12 can claim refund of duty paid to the extent permissible under the notification issued under Rule 12. Therefore, the benefit of such exporter is only to the extent of the lesser duty which he ultimately pays while in case of Rule 13 If the manufacturer directly exports the commodity he directly gets the benefit which he will have no occasion to pass on to the foreign imported buyer. He will load the export price to the extent of the duty which ultimately the exported commodity is to bear. In either case the burden of duty borne by the exporter under Rule 13 or the manufacturer of goods cleared for home consumption would be nil as he would pass on the burden to the foreign importer under Rule 13 or to the purchaser for home consumption under Rule 12 who may cam in his turn rebate on duty paid if goods are exported as per Rule 12.

Thus the duty of excise will have no real impact on the extent of profit earned by the manufacturer on goods cleared for home consumption or on goods exported. Profit on such goods will be the difference between market price in home or foreign market and the cost price. In home market the margin may be less as excise duty will form part of cost. In foreign market it may be more if goods are exported under Rule 13 without payment of duty. Consequently, it is not possible to agree with the view of the Calcutta High Court that because under Rule 12 the manufacturer earns more profit by selling in local market for home consumption, the exporter under Rule 12 may bear a larger burden of excise duty as compared to the exporter, manufacturer of the same type of goods under Rule 13. Similarly, it is not possible to appreciate the reasoning adopted by the Calcutta High Court in Para 28 of the report to the effect that under Rule 13 what is sought to be secured is the proper exportation of goods and not duty to be borne by the exporter. It has to be kept in view that excise duties have nothing to do with the exports as such or with the charging of custom duty on export. They are only concerned with charging and recovery of excise duties which are attached to the manufacture of the goods and their clearance either for borne consumption or for export as the case may be. The Calcutta High Court is also in error in taking the view that the words "in the like manner be exported" as found in Rule 13 deal with the procedure for export, as the procedure is already provided in the same rule by making an express provision that such an export will be made in accordance with the procedure laid down in Chapter IX of these rules. Consequently, the meaning assigned to the phrase, "may in the like manner be exported" by the Calcutta High Court as found in Rule 13 would on the reasoning of the High Court become tautologous. It must therefore be held that when the rule 13 refers to the export to be made in the like manner, it would necessarily mean subject to the same conditions and requirements as laid down by the preceding Rule 12 which refers to the same topic, namely, export of excisable commodities and excise duty payable on them whether the manufacturer of articles has exported them after payment of duty or before payment of duty would make no difference on these aspects. The Calcutta High Court has found fault with the reasoning of the Delhi High Court in Hindustan Aluminium Corporation Limited v. Superintendent, Central Excise (supra) by taking the view that the Delhi High Court had wrongly assumed that the exported goods are not exempted from payment of excise duty under Rule 8 and that the provisions of Section 37 of the Act were overlooked by the High Court. Now it cannot be gainsaid that no exemption notification covering the goods in question is issued under Rule 8. So far as Section 37 is concerned, all that it provides is that the Central Govt. may make rules for providing exemption in whole or part from duties imposed by the Act. In this connection, it is necessary to note that the Central Excise rules are made by the Central Govt. in exercise of its powers u/s 37. Rule 8 relating to exemption is also a part and parcel of these rules and it has a linkage with Section 37 of the rules. Rule 13 has nothing to do with exemption as wrongly assumed by the Calcutta High Court. If Rule 13 was dealing with total exemption from payment of excise duty on excisable goods exported from bonded warehouse, there would have been no occasion for the rule making authority for providing execution of bonds for covering the entire duty payable on such excisable goods. Even apart from all these reasons, it is obvious that the conclusion to which the Calcutta High Court reached that Rule 12 is independent of Rule 13 would result in an anomalous and discriminatory situation as already discussed earlier such an interpretation cannot be countenanced on the touch stone of Article 14 of the Constitution of India. It must there be held that the decision of Calcutta High Court cannot be treated to be laying down correct law. On the contrary as seen earlier the decision of the Delhi High Court in Hindustan Aluminium Corporation Lid. v. Superintendent, Central Excise has correctly interpreted Rules 12 and 13. The Tribunal was therefore right in following the decision of Delhi High Court and coming to its conclusion in that light. In the result these appeals fail and are dismissed. In the facts and circumstances of the case there will be no order as to costs.

28. The Supreme Court was dealing with a case where the same procedure had been prescribed for claim under Rule 12 or Rule 13 however in Rule 13, there was a facility for deferment of payment of excise duty which was ultimately to be paid. The Supreme Court was not dealing with different entries or articles under the notifications issued under the two rules. In the present case, the two notifications clearly operate in completely different fields and the two notifications have specified different articles as being covered by the respective notifications. As the notifications have different articles/entries, entry in one cannot be read as an entry under the other notification and as such, the judgment of the Supreme Court is not applicable in the facts of the present case.

29. The reliance of the learned counsel for the petitioner on the Doctrine of Promissory Estoppel and legitimate expectation does not advance the case of the petitioner any further. The Doctrine of Promissory Estoppel and legitimate expectation do not operate where the estoppel or expectation is contrary to any law or Rule. Clearly, the claim for rebate/refund is not admissible under the Rule or the notification issued there under and as such, the petitioner is not entitled to the same. In view of the above, we find no merit in the present writ petition. The same is accordingly dismissed. No order as to costs.

