(2012) 11 MAD CK 0156

In the Madras High Court

Case No : Writ Petition (MD) No. 7312 of 2006

DCW Ltd. APPELLANT

Vs

Union of India and Another RESPONDENT

Date of Decision : 02-11-2012

Acts Referred:

Constitution of India, 1950 — Article 14
Customs Act, 1962 — Section 12, 151A, 25
Customs Tariff Act, 1975 — Section 3, 8B, 8C, 9, 9A
Finance Act, 2007 — Section 136, 2, 66, 91, 94

Citation : (2013) 18 GSTR 32

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : S. Renganathan, for the Appellant; R. Aravindan, Central Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J.—M/s. DCW Limited, represented by its manager (legal and indirect taxation), has sought for writ of declaration, declaring Circular No. 5/2005-Customs, dated January 31, 2005 as illegal, unreasonable, unconstitutional and ultra vires of Constitution of India and sections 12, 25 and 151A of the Customs Act, 1962 and is also beyond the scope of Notifications No. 45/2002-Customs, dated April 22, 2002, No. 96/2004-Customs, dated September 17, 2004, No. 89/2005-Customs, dated October 4, 2005 read with Notifications No. 104/2005-Customs, dated December 26, 2005 and No. 32/2006-Customs, dated March 31, 2006. Mr. S. Renganathan, learned counsel for the petitioner submitted that the petitioner, M/s. DCW limited is a registered company. It is engaged in the manufacture of various excisable products like caustic soda, liquid chlorine, trichloroethylene, PVC resin and upgradedilmenite (SR) among other heavy chemicals.

2. Learned counsel for the petitioner submitted that the petitioner is entitled to the benefits under the duty entitlement passbook scheme (DEPB Licence). In

exercise of the powers u/s 25 of the Customs Act, 1962, the Central Government have issued Notifications No. 45/2002-Customs, dated April 22, 2002 and No. 96/2004-Customs, dated September 17, 2004 exempting payment of basic customs duty, additional customs duty, subject to certain conditions. At that time, education cess was not leviable. Similar Notification No. 89/2005-Customs, dated October 4, 2005 as amended by Notification No. 104/2005-Customs, dated December 26, 2005 were also issued. Further, Notification No. 32/2006-Customs, dated March 31, 2006 has been issued extending the facility of duty entitlement passbook scheme up to March, 2007.

3. Learned counsel for the petitioner submitted that a new levy called education cess was imposed on the imported goods at 2 per cent. of duties of customs, levied and collected on the goods covered under the duty entitlement passbook scheme. The education cess is intended to be levied in addition to any other duties of customs chargeable on such goods under the Customs Act, 1962 or any other law for the time being in force.

4. Learned counsel for the petitioner submitted that the Ministry of Finance issued Circular No. 345/2/2004 TRU(PT), dated August 10, 2004, clarifying the exemption from levy of education cess, in respect of imports, made under the duty entitlement passbook scheme, which is as follows:

Issue No. (2): Whether goods that are fully exempted from excise duty/customs duty or are cleared without payment of excise duty/customs duty (such as clearance under bond or fulfilment of certain conditions) would be subjected to cess.

Clarification: The education cess is leviable at the rate of two per cent. of the aggregate of all duties of excise/customs (excluding certain duties of customs like anti-dumping duty, safeguard duty, etc.), levied and collected. If goods are fully exempted from excise duty or customs duty, are chargeable to nil duty or are cleared without payment of duty under specified procedure such as clearance under bond, there is no collection of duty. Thus, no education cess would be leviable on such clearances. In this regard, letter D.O. No. 605/54/2004-DBK, dated July 21, 2004 issued by Member (customs) may also be referred to.

5. He further submitted that subsequently, the Ministry of Finance issued another circular in M.F.(D.R.) Circular No. 5/2005-Customs, dated January 31, 2005, directing the importers to debit education cess at 2 per cent., in respect of import clearances under the duty entitlement passbook scheme. The said Circular No. 5/2005-Customs, dated January 31, 2005 is contrary to Notifications No. 45/2002-Customs, dated April 22 2002, No. 96/2004-Customs, dated September 17, 2004, No. 89/2005-Customs, dated January 4, 2005 read with Notifications No. 104/2005-Customs, dated December 26, 2005 and No. 32/2006-Customs, dated March 31, 2006. The above said Circular No. 5/2005-Customs, dated January 31, 2005 is illegal and against the provisions of sections 12, 25 and 151A of the Customs Act, 1962 and also against Notification No. 89/2005-

Customs, dated October 4, 2005 as amended. He also submitted that the impugned circular dated January 31, 2005 is violative of article 14 of the Constitution of India and exemption Notifications No. 45/2002-Customs, dated April 22, 2002, No. 96/2004-Customs, dated September 17, 2004, No. 89/2005-Customs, dated October 4, 2005.

6. Based on the counter-affidavit filed by the Commissioner of Customs, Tuticorin, Mr. R. Aravindan, learned Central Government standing counsel submitted that duty entitlement passbook scheme (DEPB Scheme) is not similar to Cenvat Credit Scheme. Under DEPB Scheme, the incidence of customs duty (basic), is on the deemed import content of the export product, as per the relevant standard input output norms (SION), notified by the Department of Commerce and it is refunded to the exporters. Refund is provided by way of grant of duty credit, against the export product. The credit is given at the notified rates for import of raw materials, component, etc.

7. In working out the DEPB rates, the value addition achieved by the exporter is taken into account. The crucial feature of DEPB Scheme is that, there is no necessity of any correlation between the exported products and imported inputs, i.e., it is not necessary to import only the relevant inputs corresponding to the export product. The DEPB and/or the items imported against it are freely transferable. In contrast to this, under the Cenvat Credit Scheme, as per the Cenvat Credit Rules, 2004, a manufacturer or producer of final products or a. provider of taxable services is allowed to take credit, inter alia, of the duty of excise, additional duty of excise leviable under the Central Excise Act, national calamity contingent duty, education cess on excisable goods/taxable services, leviable under the relevant sections of the Finance Act and service tax leviable, u/s 66 of the Finance Act. He further submitted that unlike credit under the DEPB Scheme, the credit earned under the Cenvat Credit Rules, 2004 is not transferable.

8. He further submitted that the exemption of duties under the DEPB Scheme cannot be construed as absolute exemption, since the notifications, implementing DEPB Scheme, allow an importer to pay customs duties, through debit from DEPB credit/scrip, instead of cash/demand drafts. He further submitted that under the DEPB Scheme, duties are recovered, not in the form of cash, but debited from credit available in the DEPB Scrips, issued to the importer, in lieu of exports. Thus, the exemption under the DEPB Scheme does not mean that no duty is leviable, but the duty leviable on import under the DEPB Scheme is paid by way of debit in the DEPB scrip.

9. Learned Central Government standing counsel further submitted that under the DEPB Scheme, the licence holder is granted duty credit, equivalent to basic customs duty suffered on the import content of the export product, at the rate specified in the DEPB Schedule, published by the Directorate General of Foreign Trade, Department of Commerce. The Department of Revenue has also issued Notification No. 45/2002-Customs, dated April 22, 2002 and other notifications

to operationalise DEPB Scheme. The notifications have been issued to provide for exemption from basic customs duty and additional duty of customs (countervailing duty), subject to the condition that these duties are debited in the DEPB licence. Therefore, in the case of imports under DEPB Scheme, the importer avails of exemption from payment of customs duty, provided the duty is debited from the DEPB scrip, available with the importer. As there is no specific exemption available in Notification No. 45/2002-Customs, dated April 22, 2002 and other similar notifications issued from time to time, from debiting the element of 2 per cent, education cess under DEPB Scheme, it has been viewed that education cess at 2 per cent., on the element of customs duty shall also be debited in the DEPB licence for the purpose of allowing clearance of goods imported under DEPB Scheme and in order to clarify the matter beyond doubt and to maintain uniformity in levying and collection of education cess, the Department of Revenue has issued Circular No. 5/2005-Customs, dated January 31, 2005.

10. He further submitted that it would be incorrect to infer that education cess at the rate of 2 per cent. was not leviable on import of goods, by availing of the benefit of DEPB Scheme. In fact, education cess at the rate of 2 per cent. of the aggregate of duties of customs, excise and service tax has been imposed in the Budget for the year 2004-05. Education cess is leviable at the rate of 2 per cent. of the aggregate duties of customs (except safeguards duty u/s 8B and 8C, countervailing duty u/s 9 and anti-dumping duty u/s 9A of the Customs Tariff Act). According to him, education cess at the rate of 2 per cent. of the aggregate duties of customs, Central excise and service tax has been imposed in the Budget for the year 2004-2005 itself. The method of calculation of education cess has been explained in D.O. Letter No. 334/3/2004-TRU, dated July 8, 2004, issued by the Tax Research Unit in the Department of Revenue. As per this letter, in the case of customs, education cess is leviable at the rate of 2 per cent. of the aggregate of duties of Customs (except safeguards duty u/s 8B and 8C, countervailing duty u/s 9 and anti-dumping duty u/s 9A of the Customs Tariff Act) on all items imported into India. He further submitted that in the wake of certain doubts expressed by the trade and industry as to the levy and collection of 2 per cent. education cess under various export promotion schemes in terms of the Finance Bill, 2004, the issue was examined in consultation with the Tax Research Unit, Department of Revenue.

11. Accordingly, for removal of doubts, it was clarified vide D.O. letter dated July 21, 2004 that 2 per cent. education cess would be collected in cash only for that portion of aggregate of customs duties which are being collected in cash. In other words, in cases where customs duties are fully exempted under an export promotion scheme, then 2 per cent. education cess shall also stand exempted. In case, where part of the customs duty is collected in cash, under an export promotion scheme, then, 2 per cent. of education cess shall also be collected on that portion of the customs duty collected in cash, as per the illustration given by the TRU. Similar view has been reiterated in the letter F. No. 345/2/2004-TRU

(Pt.), dated August 10, 2004 that, if goods are fully exempted from excise duty or customs duty or chargeable to nil duty or are cleared without payment of duty under specified procedure, such as clearance under bond, there is no collection of duty. Thus, no education cess would be leviable on such clearance. It is submitted that this is not the case in respect of goods imported under the DEPB Scheme. In terms of Notification No. 45/2002-Customs, dated April 22, 2002 and similar other notifications, exemption from basic customs duty and additional duty of customs (CVD), in respect of imports under the DEPB Scheme, has been extended to DEPB licence holder, subject to the condition that the element of these duties are debited in the licences. Thus, in the case of imports under the DEPB Scheme, though the importer avails of exemption from payment of customs duty, such exemption is available subject to the condition that the duty leviable is debited from the DEPB licence/scrip.

12. According to the learned counsel, Circular No. 5/2005-Customs, dated January 31, 2005, is in conformity to the provisions of Notification No. 45/2002-Customs, dated April 22, 2002 and other notifications issued to operationalise DEPB Scheme. He further submitted that in terms of the common opening paragraphs in these notifications, exemption from basic customs duty and additional duty of customs (CVD) is extended to the DEPB licence holder, subject to the condition that the element of these duties are debited in the licences/scrip.

13. Learned counsel for the respondents further submitted that in view of the above, the contentions of the petitioner that debiting 2 per cent. of education cess on the element of customs duty is contrary to the provisions of the Finance (No. 2) Act, 2004 read with Notification No. 45/2002-Customs, dated April 22, 2002 and other similar notifications is legally incorrect. For the above said reasons, he prayed for the dismissal of the writ petition.

Heard the learned counsel appearing for the parties and perused the materials available on record.

14. Before adverting to the merits of the case, some of the relevant provisions in the Customs Act, 1962, are as follows:

12. Dutiable goods.--(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported, from India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

25. Power to grant exemption from duty.--(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty

of customs leviable thereon.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable.

(2A) The Central Government may, if it considers it necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an Explanation in such notification or order, as the case may be, by notification in the Official Gazette, at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such Explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

(3) An exemption under sub-section (1) or sub-section (2) in respect of any goods from any part of the duty of customs leviable thereon (the duty of customs leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of customs chargeable on such goods shall in no case exceed the statutory duty.

Explanation.--"Form or method", in relation to a rate of duty of customs, means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable.

(4) Every notification issued under sub-section (1) or sub-section (2A) shall--

(a) unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette:

(b) also be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi.

(5) Notwithstanding anything contained in sub-section (4), where a notification comes into force on a date later than the date of its issue, the same shall be published and offered for sale by the said Directorate of Publicity and Public Relations on a date on or before the date on which the said notification comes into force.

(6) Notwithstanding anything contained in this Act, no duty shall be collected if the amount of duty leviable is equal to, or less than, one hundred rupees.

151A. Instructions to officers of customs.--The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of goods or with respect to the levy of duty thereon, issue such orders, instructions and directions to officers of customs as it may deem fit and such officers of customs and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:

Provided that no such orders, instructions or directions shall be issued--

(a) so as to require any such officer of customs to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Commissioner of Customs (Appeals) in the exercise of his appellate functions.

15. The education cess has been introduced under the Finance Bill No. 2, 2004. Section 91 of the Finance Act reads as follows:

91. (1) without prejudice to the provisions of sub-section (2), there shall be levied and collected in accordance with the provisions of this Chapter as surcharge for purposes of the Union, a cess to be called the education cess, to fulfil the commitment of the Government to provide and finance universalised quality basic education.

(2) The Central Government may, after due appropriation made by Parliament by law in this behalf, utilise such sums of the money of the education cess levied under sub-section (11) of section 2 and this Chapter for the purposes specified in sub-section (1), as it may consider necessary.

16. Section 94 of the Finance Act, deals with education cess on imported goods, which reads as follows:

94. (1) The education cess levied u/s 91, in the case of the goods specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), being goods imported into India, shall be a duty of customs (in this section referred to as the education cess on imported goods), at the rate of two per cent., calculated on the aggregate of duties of customs which are levied and collected by the Central Government in the Ministry of Finance (Department of Revenue), u/s 12 of the Customs Act, 1962 (52 of 1962) and any sum chargeable on such goods under any other law for the time being in force, as an addition to, and in the same manner as, a duty of customs, but not including:--

(a) the safeguard duty referred to in section 8B and 8C of the Customs Tariff Act, 1975 (51 of 1975);

(b) the countervailing duty referred to in section 9 of the Customs Tariff Act, 1975 (51 of 1975);

(c) the anti-dumping duty referred to in section 9A of the Customs Tariff Act, 1975 (51 of 1975); and

(d) the education cess, on imported goods.

(2) The education cess on imported goods shall be in addition to any other duties

of customs chargeable on such goods, under the Customs Act, 1962 (52 of 1962) or any other law for the time being in force.

(3) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the education cess on imported goods as they apply in relation to the levy and collection of the duties of customs on such goods under the Customs Act, 1962 or the rules or the regulations, as the case may be.

After amendment, the said Act reads as follows:

94. (1) The education cess levied u/s 91, in the case of the goods specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), being goods imported into India, shall be a duty of customs (in this section referred to as the education cess on imported goods), at the rate of two per cent., calculated on the aggregate of duties of customs which are levied and collected by the Central Government in the Ministry of Finance (Department of Revenue), u/s 12 of the Customs Act, 1962 (52 of 1962) and any sum chargeable on such goods under any other law for the time being in force, as an addition to, and in the same manner as, a duty of customs, but not including:--

(a) the additional duty referred to in sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

(aa) the safeguard duty referred to in section 8B and 8C of the Customs Tariff Act, 1975 (51 of 1975);

(b) the countervailing duty referred to in section 9 of the Customs Tariff Act, 1975 (51 of 1975);

(c) the anti-dumping duty referred to in section 9A of the Customs Tariff Act, 1975 (51 of 1975); and

(d) the education cess, and secondary and higher education cess levied u/s 136 of the Finance Act, 2007 on imported goods.

(2) The education cess on imported goods shall be in addition to any other duties of customs chargeable on such goods, under the Customs Act, 1962 (52 of 1962) or any other law for the time being in force.

(3) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the education cess on imported goods as they apply in relation to the levy and collection of the duties of customs on such goods under the Customs Act, 1962 or the rules or the regulations, as the case may be.

17. Power u/s 25 of the Customs Act to impose duties is discretionary. In the case on hand, imposition of education cess on imported goods is to fulfil the

commitment of the Government to provide and provide universalised quality-based education. The said policy decision has been promulgated under the Finance (No. 2) Act, 2004, and to achieve the same, education cess has been levied on the imported goods, with some exceptions.

18. As per Circular No. 345/2/2004-TRU(Pt), dated August 10, 2004, certain clarifications have been issued. Issue No. 2 is on education cess, as to whether goods that are fully exempted from excise duty/customs duty or are cleared without payment of excise duty/customs duty (such as clearance under bond or fulfilment of certain conditions) would be subjected to education cess. The clarification issued is as follows:

Clarification: The education cess is leviable at the rate of two per cent, of the aggregate of all duties of excise/customs (excluding certain duties of customs like anti-dumping duty, safeguard duty, etc.), levied and collected. If goods are fully exempted from excise duty or customs duty, are chargeable to nil duty or are cleared without payment of duty under specified procedure such as clearance under bond fide, there is no collection of duty. Thus, no education cess would be leviable on such clearances. In this regard, letter D.O. No. 605/54/2004-DBK, dated July 21/2004 issued by Member (customs) may also be referred to.

19. In the impugned circular No. 5/2005-Customs, dated January 31, 2005, the issue that has been clarified is whether 2 per cent. of education cess has to be levied on imports cleared under the advance licence, DFRC, EPCG and DEPB schemes. After examination, in the circular dated January 31, 2005, it has been clarified as follows:

2. The matter has been examined by the Ministry. The education cess was imposed in the last Budget is leviable at the rate of 2 per cent. of the aggregate duties of customs (except safeguard duty u/s 8B and 8C, countervailing duty u/s 9 and anti-dumping duty u/s 9A of the Customs Tariff Act, 1975) on all items imported into India. Imports against Advance Licenses are exempt from all duties of customs and, therefore, it follows that education cess at 2 per cent. would not be leviable on such imports. In the case of imports under DFRC, the additional duty of customs is payable and, therefore, education cess is also payable. On the same principle, education cess is also payable in case of imports under EPCG scheme under which the goods attract a concessional duty of 5 per cent. However, in the case of imports under DEPB scheme, the position is slightly different. As per the notifications governing imports under DEPB scheme, the basic duty and additional duty are exempt subject to the condition that the duties leviable on the goods are debited from DEPB. In other words, in the case of DEPB scheme, though the imports are governed by an exemption notification, the fact remains that in case of such imports the duty is debited from the DEPB scrip. Therefore, it has been decided that in the case of imports under DEPB scheme, the education cess at the rate of 2 per cent. would also be debited from the DEPB scrip.

20. A perusal of the provisions of the Finance Act extracted supra shows that education cess would be levied, in the case of goods specified in the First Schedule to the Customs Tariff Act, 1975, i.e., goods imported into India. It is referred to as education cess on imported goods, at the rate of 2 per cent., calculated on the aggregate of duties of customs, which are levied and collected by the Central Government in the Ministry of Finance (Department of Revenue), u/s 12 of the Customs Act, 1962 and any sum chargeable on such goods under any other law for the time being in force, as an addition to, and in the same manner as, a duty of customs, but not including (a) safeguard duty referred to in section 8B and 8C of the Customs Tariff Act, 1975; (b) the countervailing duty, referred to in section 9 of the Customs Tariff Act, 1975; (c) the anti-dumping duty, referred to in section 9A of the Customs Tariff Act, 1975; and (d) the education cess on imported goods. The Government have taken a policy decision to levy education cess on imported goods and it shall be in addition to other duties of customs chargeable on such goods, under the Customs Act, 1962 or any other law in force. Such a decision is in conformity with section 25 of the Act.

21. A policy decision of the Government, in the case on hand, imposing education cess can be challenged only if such imposition is ultra vires of the Constitution of India or against the statutory provisions of the Customs Act, 1962. Though the petitioner has assailed the notification as violative of article 14 of the Constitution of India, the petitioner has not made out a case. The power to levy customs duty or any other duty, as per the law, time being in force, is conferred u/s 25 of the Customs Act, 1962, by the Legislature. Therefore, the impugned notification cannot be said to be ultra vires of the enactment.

22. What has been clarified in Circular No. 345/2/2004-TRU(Pt), dated August 10, 2004 is that whether the goods that are fully exempted from payment of excise duty/customs duty or are cleared without payment of excise duty/customs duty (such as clearance under bond or fulfilment of certain conditions) would be subjected to education cess and that the clarification issued is to the effect that, if the goods are fully exempted from excise duty or customs duty or chargeable to nil duty or cleared without payment of duty, under specified procedure such as clearance under bond, there is no collection of duty. But education cess is leviable at the rate of 2 per cent. of the aggregate of all duties of excise/customs (excluding certain duties of customs like anti-dumping duty, safeguard duty, etc.).

23. The subsequent clarification issued in the year 2005, in Circular No. 5/2005-Customs, dated January 31, 2005 only reiterates the imposition of education cess chargeable at the rate of 2 per cent. of the aggregate of all duties of excise/customs (except safeguard duty u/s 8B and 8C, countervailing duty u/s 9 and anti-dumping duty u/s 9A of the Customs Tariff Act, 1975) on all items imported into India.

24. The circular only clarifies that in the case of imports under the DFRC, an additional duty of customs is payable and therefore, education cess is also payable. Under the EPCG scheme, goods are imported and since it attracts, a

concessional duty of 5 per cent. and therefore, education cess is also levied. However, as per the notifications governing imports under the DEPB scheme the basic duty and additional duty are exempted only subject to the condition that the duties leviable on the goods are debited from the DEPB scrip. Thus, it would be manifestly clear that there is no total exemption from payment of duty, but they are debited from the DEPB scrip, issued by the Department of Foreign Trade.

25. A perusal of Notification No. 45/2002-Customs, dated April 22, 2002 and other notifications makes it clear that the education cess is leviable at the rate of 2 per cent. of the aggregate duties of customs (except safeguard duty u/s 8B and 8C, countervailing duty u/s 9 and anti-dumping duty u/s 9A of the Customs Tariff Act, 1975). The impugned Circular No. 5/2005-Customs, dated January 31, 2005 is only a clarification issued by the Department of Revenue, Ministry of Finance, Government of India, as to how, education cess has to be levied and collected on the goods debited under the DEPB Scheme. Levy of education cess introduced in the Finance Act, 2004, on the imported goods has been only clarified in the notification and it cannot be said to be contrary to the provisions of the Finance Act.

26. As stated supra, education cess introduced in the Finance Act makes it clear that education cess would be collected on all imported goods, subjected to certain exceptions, but in the case of imports under the DEPB Scheme, there is no such total exemption. Although the imports are governed by exemption notifications, the effective payment of duty is through debit from the DEPB Scrip. But the subsequent notifications issued by the Ministry from time to time, has only clarified the position of levy and collection of education cess, in cases, where there is a total exemption of duty on the imported goods and in cases where duty is levied and collected, subject to exceptions (such as, safeguard duty, anti-dumping duty, countervailing duty) under the provisions of the Customs Tariff Act. There is no total exemption of payment of duty, under the DEPB Scheme, but it is debited from the scrip. The impugned Circular No. 5/2005-Customs, dated January 31, 2005 is not violative of the Constitution of India or any provision of the Customs Act or the notifications relied on by the petitioner. For the above said reasons, the writ petition fails and the same is dismissed. No costs.