(1988) 07 CAL CK 0069

In the Calcutta High Court

Case No : Matter No. 382 of 1987

Dinesh Kumar Nevatia APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 27-07-1988

Acts Referred:

Customs Act, 1962 — Section 12, 12(1), 14, 15, 2
Customs Tariff Act, 1975 — Section 3
Tariff Act, 1934 — Section 2A
Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 — Section 3(2)

Citation : (1988) 18 ECC 422 : (1988) 38 ELT 606

Hon'ble Judges : Ajit K. Sengupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajit K. Sengupta, J.—The question which calls for determination in this case is when was the importation of subject goods complete. The answer to this question will determine whether the subject goods imported by the petitioner are liable to any duty or not.

2. The facts of this case shortly stated are that the petitioner purchased 252 Metric Tons of Dun Peas which arrived at the Port of Calcutta on board M.V. Peters if on or about 27th January, 1987 and discharge of the cargo was completed by 30th January, 1987. The vessel entered the territorial waters of India on 27th January, 1987. The said goods were OGL items and no Customs duty were payable. The said vessel contained similar other goods. On 4th February, 1987, a notification was issued by the Customs Authorities being Notification No. 40/87 which has imposed 25% ad valorem duty on importation Dun Peas.

3. Since the said goods were OGL items and no Customs duty was payable before the said notification came into force, the question is whether the goods

have been imported prior to 4th February, 1987 i.e. before the said Notification No. 40/87, dated 4th February, 1987 came into effect imposing a duty ad valorem. According to the petitioner notification came into force after the goods had entered into the territorial waters of India on 27th January, 1987 and the goods were unloaded on 29th January, 1987 and he presented the bill of entry on 3rd February, 1987.

4. It is the contention of the respondents that for the purpose of fixing the rate of duty, the date of importation is not relevant. What is relevant is as provided u/s 15 of the Customs Act, 1962. Section 15 fixes (i) the date and (ii) the rate from and at which the duty is to be imposed. From Section 15, it is clear that the date of importation is not mentioned therein. in the present case, the relevant date is the date when the Bill of Entry has been filed for home consumption with the Department. The petitioner presented the Bill of Entry on 5th February, 1987 when the same was assessed to duty on the said date on the basis of the said Notification No. 40/87, dated 4th February, 1987. It is, therefore contended by the respondents that in the circumstances the petitioner is liable to pay duty as per the said Notification No. 40/87, dated 4th February, 1987.

5. The Customs duty is leviable on the importation of the goods. Accordingly relevant consideration is when was the importation complete. If the importation was completed on 27th January, 1987 when the vessel had entered the territorial waters of India, in that event no duty in terms of the notification dated 4th February, 1987 would be payable by the petitioner. If however the importation takes place when the Bill of Entry is assessed the duty may have to be levied on the basis of such notification. The question came up before the Full Bench of the Bombay High Court in the case of Apar Private Ltd. and others Vs. Union of India and others, .

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

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

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

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

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

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

"import with its gramatical variations and cognate expression mean bringing to India from a place outside India".

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

"India includes the territorial waters of India".

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

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

10. The Full Bench held :

"In our view having regard to the definition of the word "India" under the Customs Act with which we are presently concerned which is an inclusive definition and which is prefaced by the clause "unless the context otherwise requires".

"In our view where the definition itself says that a particular word shall mean or a particular word shall include certain things and such a clause is preceded by the expression "unless the context otherwise requires", it shall mean or include those things or situations, it is not open to the Court to give any other meaning to those words except when the context requires otherwise. The expression "unless the context otherwise requires" excludes all situations except occurring in the Act shall be understood as defined therein. In other words "India" commonly understood is the geographical entry comprising only extend into the sea upto the limit of ''territorial waters" or "contiguous zone" or "continental shelf'' or "exclusive economic zone" or "other maritime zones" Section 3(2) of the

Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zone Act, 1976 provides that a distance of twelve nautical miles from the nearest point of low tide along the base line of India constitute territorial waters of India. Whatever the word "India" may mean in common parlance and under other enactments, for the purpose of the Customs Act it is made clear under the definition Clause 27 of Section 2 of Customs Act that, "India" includes territorial waters of India. Reading the two definitions together it would be manifest that if goods are brought into India, meaning thereby into the territorial waters of India from outside India, that is, from outside the territorial waters of India there is import of goods and the goods become "imported goods". These definitions thus make it clear that no sooner than the goods are brought from outside the territorial waters of India into the territorial waters of India, they become imported goods and become chargeable to duty and upto the moment they are cleared for home consumption, they constitute imported goods for the purpose of the Customs Act. No sooner than they are cleared for home consumption they cease to be imported goods. That "India" includes the territorial waters and wherever the word "India" occurs in the Customs Act that meaning should be given or so understood, is enjoined by Section 2 using the expression "unless the context otherwise required". Hence for the purpose of the Customs Act ordinarily "India" must be understood as including its territorial waters. There must be something in the context of Section 12 or other provisions of the Customs Act read with Section 12 which must compel us to give the word "India" a different meaning and as not "including the territorial waters of India". We may, therefore, now examine the provisions of the Customs Act to see if there is anything therein which requires us to hold that the words "import" or "import into India" do not mean bringing goods from outside into territorial waters of India but that it would mean bringing them to the land mass of India. In other words, could it be said that there is no "import" of goods into India when they enter the territorial waters but these would be import only after they are unloaded on the land mass of India."

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

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

quantified.

13. The Full Bench held:

"In order to appreciate this contention, it is necessary to notice the various steps required to be taken under the Customs Act for levy of duty on goods imported into India. As stated above, Section 12 declares that duties of Customs shall be levied on all goods imported into India. The goods imported shall have to be valued u/s 14 and the duty payable shall have to be determined according to the rates specified u/s 15 of the Customs Act read with the Tariff Act. Every importer of goods is required u/s 46(1) of the Customs Act to make an entry with the proper officer by presenting a Bill of Entry for home consumption or warehousing in the prescribed form. The goods may be unloaded only at the approved place and under the supervision of the Customs Officer as laid down in Sections 31 to 34 of the Customs Act. Section 29 prohibits the person-in-charge of a vessel or aircraft entering India from any place outside India from permitting the vessel or aircraft to call or land at any place other than Customs Port or a Customs Airport. Within twenty-four hours of arrival the person-in-charge is required by Section 30 to deliver an importer manifest or an import report. The person-in-charge of a conveyance which has brought any imported goods or has loaded any export goods is prohibited by Section 42 from leaving the Customs station without authority. Section 45 enjoins that all imported goods unloaded in Customs area shall remain in the custody of such person as may be approved by the Collector of Customs until they are cleared for home consumption or are warehoused or are transhipped in accordance with the provisions of Chapter VII. Only the proper officer may clear the imported goods for home consumption after he is satisfied that they are not prohibited goods and the importer has paid the import duty, if any assessed thereon. Irrespective of whether the goods are dutiable or not the goods may be cleared only after an order permitting clearance of goods for home consumption is made. If the Assistant Collector of Customs is satisfied that the goods cannot be so cleared within a reasonable time, he may permit the storage of imported goods in a warehouse pending clearance.

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

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

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

14. Referring to the decisions in (1948) 16 ITR 240 (Privy Council) , Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, ; Chatturam Horilram Ltd. Vs. Commissioner of Income Tax, Bihar and Orissa, ; Kalwa Devadattam and Others Vs. The Union of India (UOI) and Others, , and in Re Sea Customs Act reported in AIR 1963 S.C. 1760 the Full Bench observed as follows :

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

12,14 and 15 with reference to which we have to determine, in the light of the scheme of the Act, as to when the taxable event occurs."

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

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

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

17. After referring to the decisions of the Supreme Court in R.C. Jail v. Union of India reported in AIR 1962 S.C. 128; Shinde Brothers etc. Vs. Deputy Commissioner and Others, etc., and Union of India (UOI) and Others Vs. Bombay Tyre International Ltd. and Others, , the Full Bench held as follows :-

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

18. The full Bench thereafter considered the contention of the Revenue and held as follows:-

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

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

"It is thus manifest that under the act goods on entering the territorial waters of India became imported goods and chargeable to duty u/s 12 but if not unloaded are exempt from payment of duty by virtue of the specific provisions. It is significant to note than such goods are not exempted from the operation of Section 54 in respect of goods imported into a Customs Port or Customs Airport but are intended for transhipment. It, as contended for the Customs authorities, the goods become imported goods only when they are sought to be cleared for home consumption or placed in such a position as to be mixed with the goods on the land mass, all the provisions referred to above would be rendered wholly redundant. They would not be imported goods and would not be liable to Customs duty until they are actually cleared or sought to be cleared after being lodged in the warehouse. These provisions, in our view, make the legislature intent abundantly clear that the goods become imported goods no sooner than they enter the territorial waters of India, which provisions would have been wholly unnecessary if goods become liable to Customs duty only at the time of clearance."

"What follows from the above discussion is that when goods from a place outside India are brought to India as defined u/s 2(27) of the Customs Act, that is, into the territorial waters of India, they become "imported goods". They continue to be imported goods until cleared for home consumption. The taxable event occurs upon the goods entering the territorial waters of India. If at that point of time, the imported goods are chargeable to duty, then the duty has to be assessed as per the valuation made u/s 14 and at rates specified u/s 15. Except as otherwise provided in the Customs Act or other law in force for the time being, all such goods would be chargeable to Customs duty as laid down u/s 12 of the Customs Act. But by virtue of some of the provisions referred to above, duty may not be leviable or remission or abatement of duty may be granted on these imported goods either because they are damaged, pilfered or not unloaded at the port of cleared for home consumption but transitted. The goods may not be chargeable to Customs duty also because the Central Government chooses to exempt from duty by issuing a notification u/s 25 of the Customs Act. In this context, it is necessary to note the distinction between the notification under Sub-section (1) of Section 25 of the Customs Act and an exemption notification issued under Sub-section (2) of Section 25 thereof. Under Sub-section (1) the Government may exempt absolutely or subject to conditions goods of any specified description from the whole or any part of duty of Customs leviable thereon. Duty is leviable u/s 12 of the Customs Act and not under the Schedules of the Tariff Act. If duty is leviable u/s 12, then only for the calculation of the duty the Schedules of the Tariff Act become relevant and have to be looked into. A notification u/s 25(i) of the Customs Act exempts goods themselves from the levy of duty u/s 12. A notification under Sub-section (2) of Section 25 does not exempt goods from levy of the tariff. A Notification thereunder only exempts by special order in each case from payment of duty under circumstances of exceptional nature. While under Sub-section (1) of Section 25 goods themselves are exempt from the levy of duty, under Sub-section (2) of the goods continue to be chargeable to duty but the importer is only exempted from payment of such duty. If the notification under Sub-section (1) wholly exempting goods from duty subsists on the date of importation that is, when they entered the territorial waters of India then duty is not at all leviable. The subsequent withdrawal of the notification before the clearance of the goods does not render such goods chargeable to duty. But where notification under Sub-section (2) is issued and is in force on the date when goods are imported, that is, when the goods enter territorial waters of India, as those goods continue to be chargeable to duty and the importer is only exempted from paying it, if any the time they are removed for home consumption that notification is withdrawn, duty would be payable at the time of removal of goods as laid down in Sections 14 and 15 read with Section 12. If the goods are not chargeable to Customs duty in view of any of the provisions of the Customs Act or the provisions of any other law, then neither their valuation u/s 14 nor calculation of the duty payable at the rates as mentioned in Section 15 of the Customs Act would be required. Same levy of Customs duty is issued under Sub-section (1) of Section 25 of the Act The observation in the order of reference that chargeability of the goods to Customs duty arises on account of the goods being listed in the Schedule ignores the opening words "Except as otherwise provided in this Act or any other law for the time being in force" occuring in Section 12. We are unable to agree with that observation. If on account of exemption granted under no duties of Customs can be levied. Obviously there is no occasion to ascertain the Tariff valuation of the goods imported u/s 14 or the rate at which a case where duties of Customs are leviable u/s 12 and the Customs Act or any other Act does not provide otherwise. In other words if the Customs Act read with the notification issued u/s 25(1) thereof provides otherwise, duties of Customs shall not be levied u/s 12 and consequently, Section 15 does not come into operation in respect of these goods and the question of valuation of the goods u/s 14 does not arise for the purpose of assessment."

20. Another contention was raised before the Full Bench that when goods are wholly exempt from duty by a notification issued u/s 25, they are still chargeable to duty u/s 12 but at Nil rate.

21. The Full Bench negatived - that Contention and observed as follows:

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

22. On behalf of the Revenue, story Reliance was placed in Prakash Cotton Mills (P) Ltd. Vs. B. Sen and Others, .

23. This decision was also considered by the Full Bench and the Full Bench

observed as follows:

"it must be noticed that this was not a case of goods which were totally exempt from Customs duty. They were chargeable to Customs duty u/s 12 and only the rate of duty at which they were chargeable was in question. Are they to be charged at the rate prevalent on the date they were imported or at the rate in force when they were sought to be removed from the warehouse ? As discussed above, on the day the goods were imported, that is, when they entered the territorial waters of India, the taxable event occurred and if on that day the goods were wholly exempt from duty, the question of calculating the rate does not arise at all and, therefore, the further question whether the rate prevalent on the date of importation, i.e. when they entered the territorial waters or when they are sought to be removed from the warehouse for home consumption also does not arise. There is nothing in this decision which warrants a different conclusion that the one we have reached in respect of goods which were totally exempt from duty on the date they were imported into India."

24. Reliance has also been placed by the learned counsel for the respondents in the case of K. Jamal Co. v. Union of India reported in 1981 ELT 162This case was also considered by the Full Bench. There Is not much of discussion In that case and Full Bench rightly observed that learned Single Judge of the Madras High Court changed his views in a subsequent decision in a case of Sundaram Textiles Ltd., Madural v. Assistant Collector of Customs, Madras and Anr. reported in 1983 ELT 909.

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

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

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

27. This application Is therefore allowed. It may be mentioned that the petitioner had to collect the goods upon payment of duties to save demurrage and other charges and a sum of Rs. 1,76,167.40 p. has been paid by way of customs duty. The petitioner has also paid demurrage charges for Rs. 48,680/-. Since the application succeeds the respondents must refund the said sum of Rs. 1,76,167.40 to the petitioner within three weeks from the date of communication of this order. I am, however, not Inclined to award any Interest having regard to the tacts that the duty was collected on the interpretation, of the Notification dated 4th February, 1987. In default of refund within the time specified above the said sum of Rs. 1,76,167.40 will carry interest @ 12% per annum from the date of judgment till the date of refund. However, the Customs Authorities shall issue Wharf rent exemption certificate from the date of arrival of the subject goods till the date of release. The petitioner will be at liberty to ask for refund from the appropriate authorities in respect of demurrage paid for the detention of the goods.

28. All parties shall act on a signed copy of the minutes of the operative part of the judgment and order.

