

(2002) 09 GAU CK 0016

In the Gauhati High Court

Case No : Writ Petition (C) No's. 732, 733, 2007, 2006, 2008, 2009, 2010, 2013, 2014, 2015-2018, 2446, 2779, 2932, 3021, 3020, 3040, 3041, 3042, 3043, 3068, 3088, 3089, 3265, 3899, 4057-60, 4182, 4269-72, 4291-93, 4358-64, 4365, 4422-27, 4428, 4431, 4484, 4557, 45

Duken Hengra Tea Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 04-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 161 ELT 24 : (2003) 1 GLT 230

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : A.K. Panja, H. Roy, N. Tagia, D. Baruah, S.N. Sarma, H. Sarma, J. Sarma, N.K. Choudhury, Y.S. Mannan, J.M. Barman, N. Talukdar, N. Chakraborty, S.K. Kejriwal, S. Kejriwal, A. Thakur, K.D. Chetri, M.R. Baruah, R. Gogoi, M. Hazarika, A. Ajitsaria, I. Gohain, N.C. Debnath, S. Sarma, B.C. Goswami, M. Rajkumari, G.K. Joshi, R.K. Joshi, M.P. Kejriwal, G.N. Sahewalla, A.K. Goswami, P. Bora, S. Senapati and Md. Aslam, for the Appellant; Bipul Sarma, Addl. C.G.S.C., for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—These writ applications involve common questions of law and facts and as such they are taken up together for hearing and this common judgment covers all the writ applications.

2. These writ applications have been filled basically with the following prayers:

(i) for a declaration that there is no levy of any Central Excise duty on tea in unit containers of 20 Kgs. or more; alternatively a declaration that there is no levy of excise duty on bulk tea removed in unit containers of tea chests or the like containing more than 20 Kgs. of tea;

(ii) for a declaration that the order/direction dated 13th October, 1998 is illegal, ultra vires and void;

(iii) the impugned show cause notice of different dates issued in the month of November, 1998 being different annexures to different writ applications [Annexure-H to WP(C) 3088/99] are illegal, ultra vires and void;

(iv) for a declaration to withdraw the show cause notices issued by the authority.

3. The order/letter dated 13th October, 1998 issued by the Director, Ministry of Commerce is [Annexure-G to WP(C) No. 3088/99] (this is the common order in all the writ applications, but the annexure number may be different) and that Annexure-G is quoted below :

"ANNEXURE-G

FAX MESSAGE From : Bharat Bhusan Signature Director Fax No. Ministry of Commerce 033-2215715 Page No. One Dated 13-10-1998 To 1. Shri SS Ahuja Tea Board Calcutta 2. Shri VK Goenka Chairman Indian Tea Association Calcutta. File No. T-29012/1/98-Plant (A) I am directed to refer to the representation on the subject exemption of Excise Duty on bulk tea traded during the period 2-6-98 to 24-6-98. The matter was taken up with the Ministry of Finance who has observed that the exemption on tea packed in unit containers containing more than 20 Kgs. is applicable from the date of issue of notification. The exemption notification is prospective in nature and instructions to this effect has already been issued to the field formations by the CBEC."

4. The relevant portion of the impugned show cause notice is quoted below: "Consequently, duty has become liable on all tea falling under sub-heading 0902.10 of Heading 09.20 when packed in any unit container and bearing a brand name irrespective of the quantity for the period from 2-6-98 to 23-6-98 @ 8% Ad valorem vide Clause 115 of the Finance (No. 2) Bill 1998, under the Provisional Collection of Taxes Act, 1931." So, one is liable to pay tax when tea is put up in unit containers and bears a brand name. Emphasis laid on it as it will have a bearing on the decision of the writ applications.

5. I have heard Mr. Samaraditya Pal, learned Senior Counsel and other Advocates in different writ applications and Mr. Bipul Sarma, learned Addl. CGSC for Union of India and Ors. An affidavit in opposition has been filed on behalf of the respondents.

6. The validity of the impugned show cause notice is basically challenged on the ground that the respondents Central Excise authorities have no power and/or authority to levy Excise duty on the tea removed by the petitioners in unit containers of 20 Kgs. and more as it does not have a brand name and further more, the impugned show cause notice is wholly without jurisdiction and without authority of law and in violation of law inasmuch as in the parent/main Act itself, there was no levy of excise duty on such tea removed in tea chests or gunny bags as it does not have a brand name as required under the statute.

7. The facts of the cases, in brief, are as follows: Petitioners carry on business of producing, manufacturing and selling tea. Petitioners remove tea in bulk in chests or gunny bags containing 20 Kgs or more. Petitioners challenge the levy and/or collection of duty on bulk tea removed/sold in the above way (20 Kgs. and above) for the period from June 2, 1998 to June 23, 1998. The basic contention is that the tea manufactured in tea estate cannot be sold in loose form. It is to be removed either in small packages or in gunny bags containing 20 Kgs or more and for the purpose of identification, in the gunny bags or in tea chest, names of the garden only is written and it is not a brand name. This is done only for the purpose of facilitating transportation so that the same are not mixed up with other tea and/or goods sent in the same truck or in the warehouse. The package tea with brand name stands on a different footing. The Central Excise Act, 1944 levies duty of excise on all excisable goods which are produced and manufactured in India at the rate set forth in the Schedule of the Central Excise Tariff Act, 1985 vide Section 3 of the Act of 1944. The Act of 1944 defines "excisable goods" to mean goods specified in the Schedule to 1985 Act as being subject to a duty of excise. 1985 Act covers coffee, tea and spices and the relevant extract of that chapter prior to its amendment by the Finance Act, 1998 is as follows: " Heading No. Description of goods Rate of Duty 09.02 Tea, including tea waste Nil"

8. Under Tea Act, 1953, a notification was issued in the year 1984 named as Tea Marketing Control Order, 1984 (TMCO), in exercise of the power conferred under sub-sections (3) and (5) of Section 3 of the Tea Act whereby all producers were on a mandate to offer 75% of its bulk tea production through public auction system leaving balance quantity of 25% to be disposed of privately in the event so desired by the producers.

9. In the Budget speech of Hon"ble Finance Minister for the year 1993-94 it was stated that coffee, tea and other tea are being fully exempted from excise duty. The proposal of the Finance Ministry was implemented by issuing an exemption notification exempting all goods falling under Chapter IX of the Act from the duty of excise excisable thereon. On June 1, 1998 the Finance Minister in the Budget Speech proposed, inter alia, as follows :

"As a first step towards a convergence to the mean rate, I propose to impose excise duty of 8% on certain commodities. These include Package Tea."

10. By the Finance Bill of 1988, the Central Excise Tariff Act was amended in so far as tea is concerned. This amendment was two fold :

(i) In Chapter 9 of the said Schedule entry relating to tea was replaced as under:

"0.02 TEA, INCLUDING TEABAGS AND TEA WASTES 0902.10 Put up in unit containers and bearing a brand name - 8% 0902.09-other Nil"

(ii) Chapters 6, 9, and 16 were amended to include the definition of "brand name" which read as follows:

""brand name" means a brand name, whether registered or not, that is to say, the name or mark such as a symbol, monogram, label, signature or invested words or any writings which is used in relation to a product, for the purpose of indicating or so as to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person."

Significantly, in the Explanatory Memorandum under the section on "Union Excise Duties" under the heading "Major Changes in Duty Rates" the particular item reads as follows :

				Chapter	No.	Description	
Charge	in	rate	duty				9
Packaged	tea,	From	To	branded	0%	8%	

By the notification dated 2nd June, 1998, the Central Government, in exercise of the powers conferred by Sub-section (1) of Section 5A of the 1944 Act exempted diverse excisable goods from so much of the duties of excise as specified in the said notification. In that notification tea was not specified and it is submitted that there was no necessity to specify it as tea was already exempted under the Tariff Act.

11, Some representations were filed by the different bodies mainly by Indian Tea Association and United Planters Association of Southern India and they wanted to know what is the meaning of unit container, what is the maximum weight of unit container and what is the brand name. They wanted necessary clarification by the Central Excise Department. The basic contention of the petitioners is that it was all along the intention of the Legislature of levy excise duty on packaged tea. The imposition of excise duty on bulk tea sold in bulk container of 20 Kgs. or more was never the intention of the Legislature. The 8% duty of excise was sought to be imposed on tea put up in unit container bearing a brand name and Nil rate of duty was on other types of tea. The note 0902.10 - tea put up in unit container bearing a brand name refers to packaged tea only and the entry 0902.90 - other tea is different. Packaged tea is an altogether different concept and other than "other tea". That is why they have been treated as separate items as 0902.10 and 0902.90 respectively.

12. Legislative history indicates a distinction/division between "package tea" and "other tea" and imposed different quantum of excise duty on the same. Then "package tea" was defined as tea in any kind of container containing not more than 60 lb/27 Kgs. net of tea. "other tea" was defined as all varieties of tea except "package tea" and "instant tea".

13. Till the year 1995, the Legislature continued to draw a distinction between "package tea" and "other tea". However, the Legislature divided "package tea" into two groups: Package tea packed in unit containers of content not exceeding 25 gms. And ordinarily intended for sale to consumers in that pack and package

tea packed in unit containers of content exceeding 25 gms but not exceeding 20 Kgs. whether or not ordinarily intended for sale to consumers in that pack. In the years 1996 and 1997 the Legislature excepted all varieties of tea from imposition of excise duty.

14. Learned Counsel for the petitioners makes the following four submissions:

(i) In terms of Chapter 9 of the Tariff Schedule of the Central Excise Tariff Act 1985 as amended by the Finance Act, 1998 there is no levy of Excise Duty of Bulk Tea removed in Tea Chests and by Gunny Bags exceeding 20 Kgs. between 2nd June, 1998 and 24th June, 1998;

(ii) The notification dated 24-6-1998 is merely clarificatory of the position stated as indicated in Point (i);

(iii) The communication dated 13th October, 1998 issued by the Govt. of India is illegal;

(iv) The show cause notices issued in terms of the Govt. decision for recovery of Excise Duty on Bulk Tea removed in tea chests or gunny bags exceeding 20 kgs. between 2nd June, 1998 and 24th June, 1998 are without jurisdiction.

15. On the other hand, Mr. Bipul Sarma, learned Addl. CGSC makes the following submissions:

(i) That these writ applications are not maintainable in view of the fact that Section 11A of the Excise Act provides a concrete machinery and without exhausting those remedies, these writ applications cannot be filed.

(ii) To sell the bulk tea it has to be put into container (either in gunny bags or in a wooden chest) with the name of the garden, net weight/tare weight/emblem or any embose affixed in the container and that will come within the brand name as per Chapter 9, Note 5 of the Finance Act, 1988-89. Brand name simply means any identity mark.

(iii) In interpreting the Finance Act, 1988-89 there is no relevancy to the earlier Legislative history prior to 1998-99. In interpreting the statute, the court is to interpret the enactment made by the Parliament and it cannot go to the intention of the Parliament. In a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words.

(iv) There is no ambiguity or uncertainty at all in the words used in "put up in unit container and bearing a brand name". The meaning is clear, the tax is to be imposed when tea is put up for sale in unit container and bears a brand name and the tax will have to be collected on the amount of tea packed in such container.

(v) The exemption notice makes it abundantly clear that the imposition of 8% duty on unit container weighing 20 Kg. or above was the original imposition which was legally enforceable and in view of that clear language of the

enactment the question of going into the history of the Legislature or to refer to the Finance Minister's Speech etc. does not and cannot arise.

It is submitted that both on merit as well as preliminary objection, these writ applications are to be dismissed.

16. Before we proceed further, with regard to this, Dr. S. Paul, learned Counsel for petitioner with his usual fairness produces before me a judgment of the learned Single Judge of Calcutta High Court in WP(C) 608/99 wherein the question regarding maintainability of the writ application was agitated and there the learned Single Judge by judgment dated 28-1-2002 after noting the submissions of the learned Counsel for the parties held as follows:

"After considering the facts and circumstances of this case it appears to me that said authorities are not exceeded their jurisdiction to issue such show cause notice. As it has already been held by the Hon'ble Supreme Court that usually the High Court should not interfere at the show cause stage and in my opinion the respondent authorities has jurisdiction to issue the said show cause notice and gave an opportunity to the respondent to place their facts before the said authorities, at this stage the High Court should not interfere in the matter if any order is being passed and any direction is being passed on this application, it will only by pass the statute. Therefore, in my opinion the petitioner shall give a reply to the said show cause notice within six weeks from the date of this order and the respondent authorities after giving a hearing to the petitioner shall pass a reasoned order within eight weeks and communicate the same to the petitioner within ten weeks. However, the said authorities shall not give effect to the said order for a period of three weeks from the date of communication to the petitioner".

17. As against this order, a writ appeal being GA No. 1081/2002 and APOT No. 183/2002 have been filed before the Division Bench of Calcutta High Court and the Division Bench admitted the appeal and passed the following order: "After considering the application and hearing the learned Counsel appearing for the parties, we are not inclined to stay the order passed by the learned Single Judge in the manner it has been asked for. We are of the view that without prejudice to the rights and contentions of the parties to the appeal the appellants shall give reply to the show cause notice and the respondents also shall be at liberty to come to a decision after giving a hearing to the writ petitioner. In accordance with law but no effect to such decision shall be given till the disposal of the present appeal".

18. I have looked to the judgment of the learned Single Judge of Calcutta High Court, but in that judgment there is absolutely no discussion with regard to the submissions of the parties and he simply came to the following finding:

(a) the respondent authorities has jurisdiction to issue show cause notice and gave an opportunity to the respondents to place their facts before the taxing authorities;

(b) If these writ applications are entered into it will amount to by passing the statute.

19. In order to appreciate the points, let us have a look at Section 11A of the Central Excise Act, 1944 (hereinafter called the "Act"). Section 11A is with regard to recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. A remedy by way of show cause or an appeal must be efficacious remedy. If it is shown that the notice itself is without jurisdiction the writ court can entertain an application under Article 226 of the Constitution of India to uphold the cause of justice. It is further submitted by Dr. Pal, learned Counsel that in the case in hand, not only the validity of the notice has been challenged but also the letter dtd. 13th Oct, 1998 issued by the Director, Ministry of Commerce, which has been quoted above, has been challenged. He further submits that as the validity of the letter quoted above cannot be decided in an appeal under the Act, the question of approaching the authority does not arise and show cause reply and further appeal shall be a meaningless exercise.

20. In this connection, reliance is placed on the following decisions :

(I) 2000 (2) GLT 261 : (2001) 3 GLR 287 (Woodcrafts Products Ltd. v. Union of India and Ors.). This is a judgment by a learned Single Judge of this court. There also excisable goods were removed after payment of excise duty as per the approved price list under Rule 173C. The show cause notice was issued on the ground of short-levy and that was challenged before this court and it was pointed out by this court as follows:

"In a catena of decisions by the Supreme Court, latest being Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, a Division Bench of the Supreme Court held that where a show cause notice has been issued by an authority having no power under the law to issue such notice, the person who is subject to the notice need not have to wait for the decision by such authority and will not be required to file his show cause as demanded from him by the notice and will be fully entitled to approach the High Court for invoking its extraordinary remedy under Article 226 of the Constitution for quashing the notice."

Relevant observations by the Supreme Court appear in paras 20 and 21 of the report which need to be reproduced below:

"Much water has flown beneath the bridge but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution in spite of the alternative statutory remedy, is not directed specially in a case where the authority against whom the writ is filed is shown to have had not jurisdiction or had purported to usurp jurisdiction without any legal foundation. That being so, the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show cause notice issued to the appellant was wholly without jurisdiction

and the registrar in the circumstances of the case was not justified in acting as the TRIBUNAL."

Earlier addressing the question in relation to the practice earlier adopted by the High Court while exercising its power under Article 226, the Supreme Court observed in para 15 as follows:

"Under Article 226 of the Constitution the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court imposed upon itself certain restrictions as one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order of proceedings are wholly without jurisdiction or the vires of the act is challenged. There is plethora of case law on this point put to cut down this circle of forensic whirlpool, we would rely on some old decisions of evolutionary era of the constitutional law as they still hold the field."

The learned Single Judge came to a finding that when the action impugned in the writ petition is shown to be wholly without jurisdiction or by way of wrongful usurpation of power, the applicant who has approached the court should not be relegated to avail the alternative statutory remedy. Reliance was placed in that case in Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, that case was also cited by Mr. Pal, learned Counsel for petitioner, but as that case already been considered by the learned Single Judge of this court and the relevant portion has been quoted above, it is not necessary to consider it again.

(II) Seshasayee Paper and Boards Limited Vs. The Assistant Collector, Central Excise, That is a decision of Madras High Court wherein the Madras High Court pointed out that if a show cause notice has been issued without jurisdiction by Central Excise Officer, there could be no valid bar for filing a writ in the High Court, as such, writs are intended to be issued for justice in such cases.

(III) East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta, That was a case where a proceeding was initiated under the Imports and Exports (Control) Act, 1947 and Section 167(8) of Sea Customs Act. The statute itself provided for show cause and appeal. The majority view of the Supreme Court is that if on true construction, the court comes to a finding that the authority has no power to initiate proceeding or make an enquiry under the said Section, but the respondents can certainly be prohibited for proceeding with the same, writ petition is maintainable. The preliminary objection there was rejected by the majority view.

(IV) S.A. International Vs. Collector of Customs, That is a case from Calcutta High Court wherein the learned Single Judge held that an application under

Article 226 of the Constitution shall be maintainable if it is shown that the concerned authority acted without jurisdiction.

21. On the other hand, Mr. Bipul Sarma, learned Addl. CGSC places reliance on the following decisions:

(I) Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, That was a case under the Sales Tax Act, 1956 and there the Supreme Court pointed out that if the petitioner has efficacious remedy by way of appeal and second appeal and under Sales Tax Act and in the event of failure to get relief in appeals can have the case stated to the High Court, writ petition is not maintainable. The Supreme Court in para 6 held as follows:

"We are constrained to dismiss these petitions on the short ground that the petitioners have an equally efficacious alternative remedy by way of an appeal to the prescribed authority."

It was further pointed out that the act provided for an adequate safeguard against an arbitrary and unjust assessment. It was on this background that the Supreme Court held that alternative remedy should be pursued.

(II) H. B. Gandhi v. Gopi Nath and Sons That was a case under the Haryana General Sales Tax Act and the Supreme Court pointed out that where hierarchy of appeals are provided by the statute statutory remedy must first be exhausted. That was a case where assessment was challenged and the Supreme Court pointed out as follows:

"But here what was assailed was the correctness of findings as if before an appellate forum, judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the court. Judicial review is not an appeal from the decision but a review of the manner in which the decision is made. It will be erroneous to think that the court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

So, this is not an authority for the questions to be decided in these writ applications.

(III) (1997) 2 GLR 105 (Union of India & Many Ors. v Sudarshan Plywood Industries Ltd. and Ors.). That was a case where the proviso to Section HA was considered. The Division Bench of this court pointed out that the dominant motive of the assessee to evade the tax with a view to defeat the provision of law is the essence of the proviso to Section 11A of the Act.

So, this is not an authority for the proposition sought to be advanced.

(IV) Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, wherein the Supreme Court in para 3 pointed out as follows:

"It was not for High Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution ignoring as it where the complete statutory machinery. That it has become necessary, even now, for us to repeat this admonition is indeed a matter of tragic concern to us. Article 226 is not meant to short circuit or circumvent statutory remedies are entirely ill suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where the private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the court must have good and sufficient reason to by pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters we can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

That was a case from Calcutta High Court. The company claims the benefit of exemption to the tune of Rs. 6.5 crores and filed the writ application before the Calcutta High Court and sought an interim order restraining the authority from levy and collection of excise duty and that was the case with regard to interim order and jurisdiction of passing interim order.

22. In the present case in hand, it appears as follows:

(i) the petitioners cannot have any remedy from the Central Excise authority by giving reply to the show cause notice as the Ministry of Commerce has already decided that the duty on bulk tea was leviable from June, 2 1998 to 26th June, 1998 as will be evident from the Fax Message which has been quoted above.

(ii) The validity of the Fax Message quoted above has also been challenged in the writ applications.

(iii) That if it is held that there was no power to levy tax under the parent Act, issuance of notice itself is without jurisdiction.

23. In the above factual background, I hold that these writ applications are maintainable and are not barred because of the existence of alternative remedy.

24. Next let us take up the points urged by Dr. Pal, learned Counsel, for petitioner in seriatim.

Let us first take up point No. 1 as quoted above:

In order to substantiate this point Dr. Pal, learned Counsel for the petitioners draws my attention to the list of dates with regard to excise duty on tea. In the

Finance Act from 1981 to 1986 the position was as follows :

Item No. Tariff Description Rate of Duty Basic duty Cess

3. Tea Tea includes all varieties of the produce known commercially as Tea, and also includes "Green Tea" and "instant tea".

Tea, all varieties except "package tea" and "Instant tea" (falling within sub-items (2) and (3), respectively of this item Package tea, that is to say tea packed in any kind of container containing not more than 27 Kgs. Net of tea but excluding "instant tea" Not exceeding Rs. Two per kg paise Eight as the Central Government per Kg. may by notification in the Official Gazette, fix.

One rupee and twenty-five paise per kg plus duty for the time being leviable under sub-item (1) of this item, if not already paid.

3. "Instant Tea" Ten per cent ad valorem plus the duty for the time being leviable on tea falling under sub-item (1) of this item, if not already paid and if such tea is used in the manufacture of such "Instant tea".

From 1986-87 to 1988-89 the position was follows:

Tea, including tea waste Green tea and Black tea:

0902.11 - Packed in unit containers of content not exceeding 25 grams and ordinary intended for sale to consumers in that pack. 3(44 paise) per kilogram plus the duty for the time being leviable under sub-heading 0902.19.

0902.12 - Packed in unit containers of content exceeding 25 grams but not exceeding 20 kg. whether or not ordinarily intended for sale to consumers in that pack (Rs. 1.10) per kilogram plus the duty for the time being leviable under subheading 0902.10 (11%) plus the duty for the time being leviable under subheading 0902.19 Rs. 2 per kilogram

0902.13 - Packed in bags for retail consumption, known as "tea bags"

0902.19 - other

Tea waste Nil

From 1989-90 to 1994-95 the position was follows:

09.02 Tea including tea waste Green tea and black tea :

0902.11 Packed in unit containers of content not exceeding 25 grams per kilogram and ordinarily intended for sale to consumers in that pack Rs. 2.50 Kg.

0902.12 Packed in unit containers of content exceeding 25 gram but not exceeding 20 kilograms whether or not ordinarily intended for sale to consumers in that pack. Rs. 3.50 Kg.

0902.13 Packed in bags for retail consumption known as "tea bags" 15%

902.19 other Rs. 2 per kg.

From 1995-96 to 1996-97 the position was follows:

0902 0902.00 Tea, including tea Nil waste

25. In the Budget Speech dated 1-6-98 by the Finance Minister, the intention was to impose tax on package tea. The question is that whether in interpreting a taxing statute, one can look to the speech of the Minister. With regard to this the parties are at variance.

26. Learned Counsel for petitioners relied on K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, That was a case with regard to interpretation of capital gains under the Income Tax Act and the Supreme Court was considering the interpretation of statute and whether in interpreting such a statute external aid can be taken and proceedings of Legislature can be referred to. In para 8 the Supreme Court pointed that sub-sec. (2) of Section 52 was enacted with a view to extending the coverage of the provision in sub-sec. (1) to other cases and the Supreme Court relied on Heydon's case and the subsequent case which is quoted below:

"It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon's case (1584) 3 Co. Rep 7a was decided that ".....For the sure and true interpretation of all statutes in general.....four things are to be discerned and considered: "(1) What was the common law before the making of the Act, (2) What was the mischief and defect for which the common law did not provide, (3) What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth, and (4) the true reason of the remedy and then the office of all the Judges is always to make such construction as shall suppress the mischief and advance the remedy". In re. Mayfair Property Company (1898) 2 Ch 28, Lindley, M.R. in 1898 found the rule "as necessary now as it was when Lord Coke reported Heydon's case." The rule was reaffirmed by Earl of Halsbury in Eastman Photographic Material Company v. Comptroller General of Patents, Designs and Trade Marks 1898 AC 571 in the following words:

"My Lords, it appears to me that to construe the Statute in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy. These three being compared I cannot doubt the conclusion."

And in construing Sub-section (2), the Supreme Court relied on the speech made by the Finance Minister while moving the amendment introducing Sub-section (2) and it was pointed out by the Supreme Court that the speech made by the Members of the Legislature on the floor of the House when a Bill for enacting a statutory provision is being debated are inadmissible for the purpose of interpreting the statutory provision but the speech made by the Mover of the Bill

explaining the reason for the introduction of the Bill can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. In this case the Supreme Court placed reliance on earlier cases i.e. *The Sole Trustee, Lok Shikshana Trust Vs. The Commissioner of Income Tax, Mysore*, and *Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association*, In all the cases, the speech made by the Finance Minister while introducing the enactment was relied upon by the court for the purpose of ascertaining what was the reason for introducing that clause.

(1993) 1 AER 42 [*Pepper (Inspector of Taxes) v. Hart* and related appeals]. That was a case from the House of Lords wherein the House of Lords was considering the Income Tax when the parliamentary proceeding was utilised to interpret the statute and the court pointed out that reference to proceedings in Parliament is an aid to the construction on the following grounds :

"(a) the legislation was ambiguous or obscure or the literal meaning led to an absurdity,

(b) the material relied on consisted of statements by a minister or other promoter of the Bill which lead to the enactment of the legislation together if necessary with such other parliamentary material as was necessary to understand such statements and their effect,

(c) the statements relied on were clear. Furthermore, the use of parliamentary materials as a guide to the construction of ambiguous legislation would not infringe art 9 of the Bill of Rights since it would not amount to a "questioning" of the freedom of speech or parliamentary debate provided Counsel and the Judge refrained from impugning or criticising the Minister's statements or his reasoning, since the purpose of the courts in referring to parliamentary materials would be to give effect to, rather than thwart through ignorance, the intentions of Parliament and not to question the process by which such legislation was enacted or to criticise anything said by anyone in Parliament in the course of enacting it."

27. Dr. Pal, learned Counsel argues that package and bulk teas are distinct and separate concept and product and this was known to the Legislature and that received judicial consideration in *Brooke Bond India Ltd. Vs. Union of India*, . That is a case from Gujarat High Court and there challenge was made that the rate of duty of excise on package tea is illegal and ultra vires. This was with regard to Central Excise Tariff Act, 1985 and the Heading was 9.02 and it provided as quoted above. The Gujarat High Court considered the definition of tea and they referred to *Encyclopaedia Britannica*. The concept of package tea as of different variety was introduced for the first time by the provisions of the Central Excises and Salt (Amendment) Act, 1953 (Act 15 of 1953). The package tea was considered as different varieties of the product commercially as tea itself having distinct character and use and name and commercially known as such

because transportation of package tea from loose tea purchased in bulk would be a question of degree. It was further pointed out that the Parliament deals in tea and have considered package tea as a different product for the last 30 years and subsequently Parliament by deeming provision provided that package tea itself is a different product. The Gujarat High Court further relying on *Dunlop India Ltd. and Madras Rubber Factory Ltd. Vs. Union of India (UOI) and Others*, quoting para 36 of the judgment decided the matter and that para 36 of the judgment is again quoted below :

"We are, however, unable to accept the submission. It is clear that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. But once an article is classified and put under a distinct entry, the basis of the classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, we then see no difficulty for statutory classification under a particular entry."

The Gujarat High Court ultimately came to the finding that package tea had its own market and, is considered by all concerned to be of different variety. It was pointed out by the Gujarat High Court that classification between loose tea and package tea is reasonable and with the specific object of affording relief to the tea growers and to the consumers of loose tea.

1988 (18) E& CC 120.

There also the Calcutta High Court pointed out that package tea is itself a concept and the same is treated as different and distinct from the bulk tea as such package tea created popularity amongst the consumer prior to 1953 and because of that fact/ the same has been levied to tax by the Legislature and same was included in Schedule II to the Act of 1954. In that case/ the Union of India filed an affidavit-in-opposition and took the following stand :

"It has also been stated that on account of the amendment as mentioned above, the said firm became liable to pay excise duty on package tea. It was also stated that the said firm, since 1953, were submitting returns to the respondents-authorities, of their manufacture and/or production of package tea through a mechanical method and was observing excise, formalities, including taking out licence for manufacture of excisable product, viz, package tea, falling under tariff item No. 3(2). According to the deponent, the said firm were manufacturing package tea after holding L-4 licence since 1982 and were paying proper central excise duties on their production up to 24th February, 1983. It has been stated that package tea as manufactured or produced by the said firm and various other persons, were and are well known as such product in the market and also in the commercial and trade parlance and such products are known and treated as distinct and different from loose tea, with different prices and marketability. It was claimed by the deponent that the fact as mentioned above, was and is well

known to the said firm and with that knowledge they had been voluntarily paying excise duty on such package tea. The writ petition was claimed to be wholly misconceived, speculative, and not maintainable."

It was also stated in para 10 of the judgment as follows :

"It was also the case of the deponent that package tea is a product, which is known in the trade parlance and is bought and sold in the market and hence the same would be goods having a distinct name, character and use. Such being the position, the deponent has stated that the duty is duly leviable and has been appropriately levied on such a distinct and identifiable product which has been brought into existence by manufacture. Package tea, according to the deponent, is a product having distinct name, character and use and the same is known as such in the trade parlance."

In a taxing statute it is to be noted that if the authority seeking to recover the tax cannot bring it within the four corners of law, the person is not liable whatever may be the spirit of law. In para 79 the Calcutta High Court pointed out as follows :

"We feel that package tea is itself a concept and the same has different and distinct use from the bulk tea as purchased and such package tea grew as a concept and gained popularity prior to 1953."

28. The question which now arise for determination is whether the tea removed from the tea estate in tea chest or in gunny bags with the name of the garden, name of the product, name of the kinds of tea can be said to be "tea put up in unit container with a brand name". The Dictionary meaning of the word "brand" (as per Webster's New Twentieth Century Dictionary unabridged, Second Edition) is as follows :

"a mark or label of identification, grade, etc., on merchandise, trade-mark; hence, the kind or make of a commodity; as, a brand of "cigarettes" "box, cask, etc., in order to give a description of the contents, or the name of the manufacturer".

One of the meanings of the word "unit" is in a fixed quantity, amount, distance, measure, etc. In Stroud's Judicial Dictionary "brand" means a word if it is placed on the package or parcel so as to stand out as a word by itself, although other trade advertisement matter might also appear thereon. So, "brand" must be a description label of goods which is accepted in a market as a distinct item of the same commodity. The example is Taz, Tea, red label tea etc. The brand name is given to a product which in course of time identifies the owner, but the name of the place of manufacture will not construe the "brand name e.g. tea from Nahatjan tea estate will not be any brand name, it will be sold to consumer without any brand name. Even if the tea chest or gunny bags in which the bulk tea is removed are marked with name of the garden and it cannot be called a brand name. Note 5 of Chapter 9 read with Note 4 will also put of pointer that

0902.90 was not concerned with any brand name. Another aspect to the matter must be borne in mind that if the argument of the learned Counsel for the Union of India is accepted that tea despatched/removed from the garden with the name of the garden in the tea chest or gunny bags are to be included in "tea put up in unit container with a brand name", then the word "other" shall be redundant and it is the law of interpretation that no word of a statute should be considered to be redundant. In support of this contention, we may have a look at the following decisions :

(I) Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, wherein it has been pointed out as follows.

"It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute."

That was a case with regard to right of a advocate to practise.

(II) State of Maharashtra and Others Vs. Santosh Shankar Acharya, That was a case under the Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 and the Supreme Court in para 5 pointed out as follows:

"It is too well known a principle of construction of statutes that the legislature engrafted every part of a statute for a purpose and the legislative intention is that every part of the statute should be given effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the Legislature will not be accepted except for compelling reasons."

So, to avoid redundancy the words "put up in unit container with brand name" must be given a qualified meaning to include only package tea with such qualified meaning because of the following:

- (i) As understood in the ordinary course of trade and business;
- (ii) Legislative history;
- (iii) Finance Minister's speech referring to package tea only;
- (iv) As understood in the trade and business circle because of the various representations made by the two tea associations.

29. Further, the Legislature must be deemed to be aware of the fact that the word "other" appear in the legislation both present as well as earlier and the judicial interpretation was given to the word "other" by Calcutta High Court and the Gujarat High Court as indicated above. The Legislature understood and gave the same meaning to it as interpreted judicially. That is the law of interpretation as will be evident from the decision of the Supreme Court in P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, wherein the Supreme Court

pointed out as follows :-

"The fact that Parliament used the same expressions, namely, "compensation" and "Principles" as were found in Article 31 before the Amendment is a clear indication that it accepted the meaning given by this court to those expressions in *The State of West Bengal Vs. Bela Banerjee and Others*, It follows that a Legislature in making a law of acquisition or requisition shall provide for a just equivalent of what the owner has been deprived of or specify the principles for the purpose of ascertaining the "just equivalent" of what the owner has been deprived of. If Parliament intended to enable a Legislature to make such a law without providing for compensation so defined, it would have used other expressions like "Price", "consideration" etc. In *Craies on Statute Law*, 6th Edn., at p. 167, the relevant principle of construction is stated thus:

"There is a well known principle of construction that where the Legislature used in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted unless a contrary intention appears".

30. The words "package tea and other" received judicial interpretation and the Legislature must be deemed to have used the same expression and did not depart from the meaning given by the courts earlier. If that was the intention of the Legislature, would have used other words. Further the definition of the "brand name" as given in Chapter 5 Part-I quoted above will show that it is for the purpose of indicating or so as to indicate a connection in the course of trade between the product and some persons using such name or mark with or without any indication of the identity of that person. Taz tea, Golaghat tea are purchased by the person by not looking at the name of the owner, but because of their brand name. The words "brand name" must be understood as done by the common man in the common parlance and it is not expected that the Legislature is unaware of this position or ground reality. A specific question was asked to the learned Counsel for Union of India that if the Entry I covers all teas that what will remain for other. He could not give a specific reply, but he simply said that some garden may sell tea in loose manner, but in the written argument he has submitted that bulk tea cannot be sold in loose form or bulk manner like sand, soil. Bulk tea always used the container and as such it will come under Entry I. In support of this contention, he relies on the following;

- (i) Notification issued by the Government itself is a legislation and that not being challenged the writ petitions are to be rejected.
- (ii) The fiscal statute is to be interpreted in a manner which is different from other statutes.

He relies on some decisions with regard to fiscal intention of Legislature :

- (i) *Kasinka Trading and another, etc. etc. Vs. Union of India and another*, That was a case with regard to withdrawal of exemption notification for the import of

PVC rasin. Earlier on 31-3-1981, a notification was issued and that was withdrawn by the impugned notification. The argument was advanced relying on the exemption notification that they made investment and as such invoking the doctrine of promissory estoppel, the argument of the Union of India that the exemption is withdrawn in public interest and the individual interest must give way to the public interest.

The Supreme Court pointed out that the character of the rule and recovery made are construed delegated legislation and in para 21 it was pointed out that the liability to pay customs duty or additional duty arises when the taxable event occurs. Here in these cases, the question is altogether different. The question in these cases is that under the parent Act itself there was no liability to pay tax and as such, the notification issued by the Ministry of Commerce on 13-10-98 and the subsequent notices are absolutely without jurisdiction. So, this case is of no help to the respondent. *Shrijee Sales Corporation and Another Vs. Union of India (UOI)*, There also the same notification was challenged and the question was that the imposition of taxes and withdrawal thereof are legislative function and there can be no estoppel against the Legislature. So, this case is also no help to the respondents.

AIR 1972 SC 1168 (*Sitaram Bishambhar Dayal etc. Appellants v. State of U.P. Respondent*). That was a case under the U.P. Sales Tax Act and that was with regard to the power to delegate certain things i.e. fixing the rate of tax. This case is absolutely irrelevant for the purpose of determination of the present controversy. *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, That is a case with regard to the exemption of taxes. That case is of no help to the respondents. *Collector of Central Excise, Bombay-I and Another Vs. Parle Exports (P) Ltd.*, wherein the Supreme Court pointed out as follows:

"The expression in the Schedule to the fiscal statute and in the notification for exemption should be understood by the language employed therein bearing in mind the context in which the expressions occur. The words used in the provisions, imposing taxes or granting exemption should be understood in the same way in which they are understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them. A notification issued under the provisions of Rules has to be read along with the Act. The notification must be read as a whole in the context of the other relevant provisions. When a notification is issued in accordance with power conferred by the statute, it has statutory force and validity and, therefore, the exemption under the notification is, as if it were contained in the Act itself. It is well settled that when two views of a notification are possible, it should be construed in favour of the subject as notification is part of a fiscal enactment. However, that is so in the event of there being a real difficulty in ascertaining the meaning of a particular enactment that the question of strictness or of liberality of construction arises. While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language

employed. It must, however, be borne in mind that absurd results of construction should be avoided."

So, this case instead of helping the respondents helps the petitioner because this is precisely the argument of the learned Counsel for petitioner that tea put up in unit container using brand name means package tea in common parlance and not other teas.

(Aphali Phar-maceuticals Ltd., Appellant v. State of Maharashtra and Ors., Respondent) wherein the Supreme Court pointed out that the proposition of interpretation of a statute Union of India and others Vs. M/s. Wood Papers Ltd. and another, That also was with regard to interpretation of a fiscal statute and the exemption provision and the same proposition as indicated earlier is reiterated by the Supreme Court in Novopan India Ltd., Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad, wherein the Supreme Court pointed out that while interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed, it must, however, be borne in mind that absurd results of construction should be avoided. The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the Legislature manifest on the statutory language.

Chandra Kishore Jha Vs. Mahavir Prasad and Others, That was a case arisen out of an election petition. This case absolutely is of no help in deciding this matter and in para 17 the Supreme Court pointed out that law does not accept a party to do the impossible.

Davis Vs. Sebastian, That is a case under the Rent Control Act and the Supreme Court pointed out that the intention of the Legislature must be adhered to. The court cannot put any objection with regard to that.

M/s. VVS Sugars Vs. Govt. of Andhra Pradesh and Others, That was a case with regard to interest on delayed payment and the Supreme Court pointed out that Act being a taxing statute, it must be interpreted as it reads, with no additions and no subtractions, on the ground of legislative intendment or otherwise the Act must be read in plain meaning. So, that is what I shall do in the instant cases.

State of Kerala Vs. M/s. Vattukalam Chemicals Industries, That was a case under the Sales Tax Act and the Supreme Court pointed out that if the language of the notification is crystal clear, no external aid for construction is not required.

(2001) 8 SCC 61 (Dental Council of India and Anr. v. Hari Prakash and Ors.) wherein the Supreme Court pointed out that when the language of the provision itself is absolutely clear, there is no question to adopt other modes of interpretation. In interpreting fiscal statute, the intention of the Legislature need not be taken into consideration when the language is clear. Reliance is placed by the learned Counsel for respondents with regard to the contention that when the language is clear, there is no question to adopt other modes of interpretation

decisions are as follows: (1) Mathuram Agrawal Vs. State of Madhya Pradesh, (2) Dental Council of India and Another Vs. Hari Parkash and Others, (3) Union of India Vs. Elphinstone Spinning and Weaving Co. Ltd. and Others etc., (4) District Mining Officer and Others Vs. Tata Iron and Steel Co. and Another, (5) Dadi Jagannadham Vs. Jammulu Ramulu and Others,

31. In interpreting a statute, we should bear in mind the following :

(i) If a word is defined in the Act it is that meaning which must be adhered to. But if a word is not defined in the Act, the word must be construed in that sense so that the people can understand the subject-matter in respect of which it is used in a statute. If the word has received judicial interpretation it is the preponderance of judicial opinion which must be accepted.

(ii) The statement, object and reasons are ordinarily not used as an aid to the construction of a statute. It is sometimes referred to for the limited purpose when all other modes of interpretation fails.

(iii) If there is an ambiguity in a taxing statute the benefit should be given to the tax-payer.

32. In interpreting the statute as pointed out by the Supreme Court in Nagar Mahapalika, Meerut Vs. M/s. Prem Nath Monga Bottlers Pvt. Ltd. and another, The Supreme Court pointed out that a mineral water and aerated water/cold drinks are different and distinct articles, whether in common parlance or in the commercial parlance and this always may be taken into consideration. In the instant case also tea with a brand name always is understood not as tea with the name of the tea garden in the tea chest or in gunny bag but it is a different and distinct article. So, this will come in the first entry.

33. In Drug Action Forum and Others Vs. Union of India (UOI) and Others, the Supreme Court considered the case of Analgin. The An-algin is the name but they sold in the market with different brand name. Same is the situation in the case in hand. Herein also tea produced from different gardens may be sold with different brand names in the market as being done in the packets/box.

1992 (3) SCC 252 [Bharat Beedi Works (Pvt) Ltd. and Anr. v. Commissioner of income tax]. That is a case wherein interpreting the Income Tax Act the Supreme Court took into consideration the Budget speech of the Finance Minister in order to understand the reasons for introduction of the amendment. So, the argument that in interpreting a statute the Budget speech cannot be considered shall have to fall through. Analogy may also be drawn from a case in Astra Pharmaceuticals (P) Ltd. Vs. Collector of Central Excise, Chandigarh, That was a case of levying of tax under the Central Excise Act and there the question was whether the Dextrose injection manufactured by the appellant is liable to pay duty under the Tariff Item 14-E extracted below along with two explanations. That is quoted

below:

"Tariff Description of Goods Rate of duty

Item No.

Basic Special Excise

14-E

14-E Patent or proprietary Medicines not containing alcohol, opium, Indian hemp or other Narcotic drugs or other narcotic other than those medicines which are exclusively Ay-urvedic, Unani, Sidha or Homeopathic 12 1/2 % adv. 10% of the basic duty chargeable

Explanation I. - "Patent or proprietary medicines" means any drug or medicinal preparation, in whatever form, for use in the internal or external treatment of, or for the prevention of ailments in human beings or animals, which bears either on itself or on its container or both, a name which is not specified in a monogram in a Pharmacopoeia Formulary or other publications notified in this behalf by the Central Government in the Official Gazette, or which is a brand name, that is a name or a registered trade mark under the Trade and Merchandise Marks Act, 1958 (43 of 1958) or any other mark such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to that medicine for the purpose of indicating or so as to indicate a connection in the course of trade between the medicine and some person, having the right either as proprietor or otherwise to use the name or mark with or without any indication of the identity of that person.

Explanation II. - "Alcohol," "Opium", "Indian Hemp", "Narcotic Drugs", and "Narcotics" have the meanings respectively assigned to them in Section 2 of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (14 of 1955)."

The Supreme Court after considering that in paragraph 5 has pointed out as follows:

"The medicine manufactured by the appellants is not registered under the Trade and Merchandise Marks Act. Therefore, it would attract levy only if its container or packing carried any distinctive marks so as to establish the relation between the medicine and the manufacturer. But the identification of a medicine should not be equated with the produce mark. Identification is compulsory under the Drug Rules. Technically, it is known as "house mark". In Narayan's book on Trade Marks and Passing-off, the distinction between "house mark" and "product mark" (brand name) is brought out thus :

"677A. House marks and product mark (or brand name) - In the pharmaceutical business a distinction is made between a house mark and a product mark. The former is used on all the products of the manufacturer. It is usually a device in the form of an emblem, word or both. For each product a separate mark known as a product mark or a brand name is used which is invariably a word or a

combination of a word and letter or numeral by which the product is identified and asked for. In respect of all products both the product mark and house mark will appear side by side on all the labels, cartons etc. Goods are ordered only by the product mark or brand name. The house mark serves as an emblem of the manufacturer projecting the image of the manufacturer generally."

The "AB" or "ASTRA" on the container or packing was used to project the image of manufacturer generally. It did not establish any relationship between the mark and the medicine. For instance, if the appellant instead of using Dextrose injections would have described it as Astra injections or Astra Dextrose injections then it could be said that a relationship between the monogram and the medicine was established. In the case of appellant it was only a monogram to identify the manufacturer."

34. Calcutta Chromotype Ltd. Vs. Collector of Central Excise, Calcutta, wherein, no doubt in interpreting the statute the Apex Court relied on in 1985 (3) SCC 230 (McDowell and Co. Ltd. v. CTO) the Supreme Court pointed out as follows :

"In McDowell and Co. Ltd. v. CTO this Court examined the concept of tax avoidance or other the legitimacy of the art of dodging tax without breaking the law. This court stressed upon the need to make a departure from the Westminster principle based upon the observations of Lord Tomlin in the case of IRC v. Duke of Westminster that every assessee is entitled to arrange his affairs as to not attract taxes. The court said that tax planning may be legitimate provided it is within the framework of law. Colourable devices, however, cannot be part of tax planning. Dubious methods resorting to artifice or subterfuge to avoid payment of taxes on what really is income can to-day no longer be applauded and legitimised as splendid work by a wise man but has to be condemned and punished with the severest of penalties."

35. But the question in this case is that whether tax at all was levied on the date of removal through tea chests or gunny bags. On careful examination and scrutiny I hold that they do not come within the entry. They must be deemed to be included in tea and Ors.

36. It is correct that legislative intendment, speech of Finance Minister or parliamentary proceeding or legislative history, all are irrelevant when the language of the statute is clear, in such a situation it is the language which must be taken care of. But if there is ambiguity, doubt or legislation is not clear the external aid must be taken into account. In the case in hand there is no definition of "unit container", the "brand name" also does not clinch the issue and in such a situation the court in order to have the correct interpretation must take the external aid.

37. It has been found that there was no tax on tea removed in tea chests or gunny bags and as such tea does not come within the sweep "tea put up in unit container with brand names".

38. On the basis of the materials and discussions held above, I hold as follows:

There was no tax in the parent Act on tea removed in the manner. It was Nil/above in bulk tea removed in tea chests and gunny bags and it does not come under the definition of "tea put up in unit container with a brand name". As such, the letter dated 13-10-98 (Annexure-G) issued by the Ministry of Commerce is erroneous and the same shall stand quashed. It is not the correct interpretation of the statute. In view of it, all the show cause notices issued by the authority shall stand quashed as bulk tea removed in unit container like tea chests, gunny bags, etc., were not liable for taxation as it will come in the category of "others". The exemption notification issued on 24-6-1998 is really not an exemption notification and there was no necessity to issue such a notification and there was no tax on bulk tea removed in container like tea chest and gunny bags, etc. It is also to be noted that the examination notification which has been issued is absolutely irrelevant in view of the decision arrived at in this case that there was no tax on tea removed/sold in tea chest and gunny bags, etc., by the garden. As there was no tax on such things, the question of granting exemption does not arise and it is in view of that matter, the exemption notification also would not be applicable in connection with tea removed in tea chest and gunny bags as such removal as held earlier does not come within the subject-matter of tax i.e. "tea put up in unit container with a brand name". This can be ignored.

All the writ applications are allowed to the extent as indicated above.