
(2000) 11 DEL CK 0070

In the Delhi High Court

Case No : Civil Writ Petition No. 1159 of 1997

Essar Steel Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 13-11-2000

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(2)
Constitution of India, 1950 — Article 1(8), 19, 21, 24, 245
Customs Act, 1962 — Section 12, 14, 14(1), 14(1A), 156(2)
Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 — Rule 3, 4, 5, 6, 7
General Clauses Act, 1897 — Section 22

Citation : (2001) 128 ELT 353

Hon'ble Judges : Dr. M.K. Sharma, J;A.D. Singh, J

Bench : Division Bench

Advocate : Dushyant Dave, U.A. Rana, Rajesh Nair and Shelly Maggon, for the Appellant; R.N. Trivedi, A.S.G., N.K. Bajpai, Sandeep Aggarwal and Pooja Parmar, for the Respondent

Final Decision : Dismissed

Judgement

M.K. Sharma, J.—The present proceedings is the second bout of litigation between the parties. By the present petition, the petitioners have challenged the validity of the provisions of Sub-section (1A) of Section 14 and Clause (a) of Sub-section (2) of Section 156 of the Customs Act, 1982 (hereinafter referred to as the "Act" for short) as also Rules 3, 4, 9(c) and 9(e) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 (hereinafter referred to as the "Rules" for short). The writ petitioners have also sought for a further direction prohibiting the respondents from acting pursuant to the letter of demand dated 28th October, 1997 issued by the respondents.

2. The petitioner No. 1 - Company carries on the business of manufacturing, amongst others, high quality sponge iron, hot rod coils and plates. On 24th March, 1987, the petitioner No. 1 - Company entered into an agreement to

purchase a plant for manufacture of sponge iron which was originally installed in 1981 at Emden, Germany, by a firm global tender floated by a Bank acting as the Receiver, the plant was purchased by Teviot Investments Ltd., from which the petitioner No. 1 - Company purchased the plant for a sum of DM 26 million. Immediately thereafter the petitioner No. 1 - Company entered into two separate agreements, both dated 4th December, 1987, one of which was entered into with Midrex International for use of Midrex Process to manufacture sponge iron and agreed to pay license fee of DM 2 million and a further fee of DM 10 million was agreed to be paid towards Transfer of Technology for production of sponge iron whereas, the second agreement was entered into by the petitioner No. 1 - Company with Voest Alpine for services for construction projects and rights to use patents for marketing sale design and construction of the said plant at Hazira. For the aforesaid services, the petitioners were required to pay to Voest Alpine a lump sum of DM 23,100,000. The petitioner No. 1 - Company filed two notices dated 29th September, 1988 and 11th October, 1988 in respect of the goods. The respondent authorities while evaluating the cost of the plant imported by the petitioners, included the payments made by the petitioners to Midrex International and the Voest Alpine in the aforementioned agreements. The said Custom authorities on the basis thereof came to the conclusion that there had been under-invoicing on the part of the petitioners and issued a show cause notice on 24th October, 1988 seeking to enhance the value from DM 46.75 million to DM 84.15 million and directed the petitioners to show cause as to why action should not be taken against the petitioners for violation of the said Act. An adjudication proceeding took place and the representative of the petitioners were also heard. The Collector of Customs (Preventive), Ahmedabad passed an order on 18th October, 1989 holding that the process license fee of DM 2 million paid by the petitioners to M/s. Midrex International for the right to use the Midrex Process and patent should be included in transaction value under Rule 9(1)(c) of the said Rules. The value of the plant for the purpose of transaction value was accepted at DM 26 million. Being aggrieved by the aforementioned order, the petitioners filed an appeal against the said order before the Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT). The Customs Department also filed an appeal against the said order impugning the order of the Collector insofar as he held certain items not includable in the price of goods imported. After hearing the parties, the Tribunal (CEGAT) by order dated 13th February, 1991 decided the appeal partly in favor of the petitioners.

3. Being aggrieved by the aforesaid order passed by the CEGAT, the Custom authorities filed an appeal to the Supreme Court of India. By Judgment and order dated 19th November, 1996, the Supreme Court allowed the appeal holding that DM 2 million paid to Midrex International, DM 10 million paid as services to Midrex and DM 2.31 million paid to Voest Alpine should be added to the value of the imported plant. Thereafter, the Custom authorities proceeded to serve a demand notice on 28th January, 1997, demanding a sum of Rs. 10,63,39,665/-, which is annexed as Annexure "A" to the writ petition, the legality of which was

challenged in this writ petition. During the pendency of the writ petition that is or 29th April, 1997, the Revenue enhanced the said demand to Rs. 16,60,35,971.44 by adding interest to the original demand which is also made the subject matter to the present writ petition.

4. Mr. Dushyant Dave, Senior Advocate appearing for the petitioners submitted that Sub-Section (1A) of Section 14 as also Clause (a) of Sub-section (2) of Section 156 of the Act are ultra virus of Articles 245, 246, 265 of the Constitution of India. He submitted that by enacting the aforesaid provisions, namely Sub-section (1A) of Section 14 as also Clause (a) of Sub-section (2) of Section 156 the essential legislative functions have been delegated to the executive which is constitutionally impermissible. According to him, determination of value or price :or import of goods is essential legislative function as is clear from Sub-section (1) of Section 14 read with charging Section namely Section 12 read with Clause (22) of Section 2 and, Therefore, the said essential functions could not have been delegated. He also submitted that in enacting/framing Sub-section (1A) of Section 14 and Clause (a) of Sub-section (2) of Section 156, the legislature has provided no guidelines whatsoever for the Executive and that the Power delegated to the Executive is unbridled and uncanalised and that the said delegation is in the nature of excessive delegation. He further submitted that Sub-section (1A) of Section 14 was inserted in 1988 by amending the Customs Act and the Statement of Objects and Reasons of the Amending Act discloses that the amendment was brought about in view of the General Agreement on Tariffs and Trade (GATT). In support of his contention he drew our attention to the provisions of Article 253 of the Constitution of India which provides that the Parliament alone can legislate to effectuate any Inter national agreement to which India is a signatory. Relying on the said provisions he submitted that the legislature while enacting Sub-section (1A) into Section 14 as also Clause (a) into Sub-section (2) of Section 156 did not incorporate the provisions of the GATT Agreement in the said enactment, but the same was left to the Executive to get the same incorporated in the Valuation Rules which was impermissible and that the Parliament could not have delegated the same to the Executive in view of the mandate contained in Article 253 and, Therefore, the Valuation Rules suffered from the aforesaid vice It was also submitted that the provisions of Rules 3, 4, 9(c) and 9(e) of the Valuation Rules are also unconstitutional and ultra virus inasmuch as the said provisions have no nexus to the nature of the Customs Duties, namely, being tax on the import of goods within the customs barrier or their exploit outside the customs barrier and, Therefore, the said provisions purport to levy and authorise collection of tax without any authority of law. He further submitted that the demand is clearly invalid and unauthorised as the assessment has not been finalised. In support of his contentions, he relied upon various decisions to which reference shall be made in the subsequent paragraphs.

5. Mr. R.N. Trivedi, the Additional Solicitor General of India, appearing for the respondents, refuted the aforesaid submissions of the learned Counsel appearing

for the petitioners and in support of his contention, he submitted that the Parliament consciously and deliberately amended the Customs Act in 1988 to make the provisions of Section 14 compatible with the GATT and simultaneously on the same day the Rules were enforced. He also stated that the Statement of Objects and Reasons read with the historical background provide sufficient guidelines and thus the provisions of Sub-section (1A) of Section 14 and Clause (a) of Sub-section (2) of Section 156 cannot be said to be ultra vires. In support of his contention he relied upon the extracts of Article VII of the GATT and also on the Agreement on implementation of Article VII of GATT, dated 12th April, 1979 and Protocol to Agreement on implementation of Article VII of GATT, dated 1st November, 1979 along with the Statement of Objects and Reasons of the Amendment Act. He also relied upon the observations of the Supreme Court in the earlier litigation between the parties that without the licence, the importer could not have utilised the plant and the fee paid for the transfer of license was a condition for sale. He also relied upon the observations of the Supreme Court that the license is a necessary adjunct to the plant and as such the value of the goods would necessarily include the consideration for the transfer of license and had to be added. He submitted that having regard to the historical background, the contents of GATT to which India is a signatory, the Objects and Reasons and the fact that the Act and the Rules were enforced on the same day, sufficient guidelines have been provided for in the provisions of Section 14(1A) of the Act as also Clause (a) of Sub-section (2) of Section 156 and, Therefore, the contention of the petitioners are misplaced.

6. He further submitted that the power to make Rules in the present case is also not unguided and that since the guidelines have been provided for in Section 14(1) and the Objects and Reasons, the contention that the aforesaid Rules are ultra virus is also untenable. He sought to submit that there is a clear distinction in the expressions "goods" and the "value of goods". He also submitted that the interpretation sought to be given by the petitioners to the provisions of Article 253 of the Constitution of India is not tenable in the facts and circumstances of the present case. He submitted that the legislature in the instant case has laid down sufficient guidelines and left implementation of the guidelines to the rule making authority and as such, such a law cannot be held to be ultra virus as the legislature has left it open to the rule making authority to furnish the details only. He also relied upon the various decisions to which reference shall be made while appreciating the contentions of the counsel appearing for the parties.

7. In the light of the aforesaid submissions of the counsel appearing for the parties, four principal issues arise for our consideration which the petitioners have themselves set out in the writ petition and are as follows:-

(i) Whether the mode of determination of price or value is an essential legislative function and whether by delegating it to the Executive, the Legislature has abdicated its essential legislative function?

(ii) Whether Sub-section (1A) of Section 14 is unconstitutional and ultra virus as

it lays down no guidelines or criterion for determination of price of imported goods and, Therefore, it is a case of excessive delegation?

(iii) Whether Sub-section (1A) of Section 14 and Clause (a) of Sub-section (2) of Section 156 are unconstitutional and ultra virus in view of the provisions of Article 253 of the Constitution of India?

(iv) Whether Rules 3, 4, 9(c) and 9(e) of the Valuation Rules made by the Central Government in the exercise of the powers of delegated legislation are unconstitutional and ultra vires?

8. In order to appreciate the contention of the parties and to arrive at a just decision in the case, reference is required to be made to the various relevant provisions of the Act and the Rules, which are extracted herein- below :-

"2. Definitions

... .. (22) "goods" includes-

- (a) vessels, aircrafts and vehicles;
- (b) stores;
- (c) baggage;
- (d) currency and negotiable instruments; and
- (e) any other kind of movable property;

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

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

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

* * * * * Section 14. Valuation of goods for purposes if assessment. - (1) For the purposes of [the Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such goods or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each ether and the price is the sole consideration for the sale or offer or sale:

Provided that such price shall be calculated with reference to the rate of

exchange as in force on the date on which a bill of entry is presented u/s 46, or a shipping bill or bill of export, as the case may be, is presented u/s 50;

* * * * * (1A) Subject to the provisions of Sub-section (1), the price referred to in that Sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf.

... .. 156. General power to make rules - (1) Without prejudice to any power to make rules contained elsewhere in this Act, the Central Government may make rules consistent with this Act generally to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely:-

(a) The manner of determining the price of imported goods under Sub-section (1A) of Section 14;

... ..

At this stage itself, we may appropriately extract the relevant Rules of the Custom Valuation Rules.

"3. Determination of the method of valuation. - For the purpose of these rules, -

(1) the value of imported goods shall be the transaction value;

(ii) if the value cannot be determined under the provisions of Clause (i) above, the value shall be determined by proceeding sequentially through Rules 5 to 8 of these rules.

4. Transaction value. - (1) The transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9 of these rules.

* * * * * 6. Transaction value of similar goods. - (1) Subject to the provisions of Rule 3 of these rules, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued.

(2) The provisions of Clauses (b) and (c) of Sub-rule (1), Sub-rule (2) and Sub-rule (3) of Rule 5 of these rules shall, mutates mutans, also apply in respect of similar goods.

* * * * * 9. Cost and services. - (1) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, -

(a) the following cost and services, to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely: -

(i) commissions and brokerage, except buying commissions;

(ii) the cost of containers which are treated as being one for customs, purposes with the good is in question;

(iii) the cost of packing whether for labour or materials;

(b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely;-

(i) materials, components, parts and similar items incorporated in the imported goods;

(ii) tools, dies, moulds and similar items used in the production of the imported goods;

(iii) materials consumed in the production of the imported goods;

(iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;

(c) royalties and license fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable.

... .. (e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

... ..

9. Section 14 of the Customs Act deals with the mode of valuation of goods for purposes of assessment of duties of customs chargeable on goods by reference to their value.

This provision, as it stood prior to 16th August, 1988 has undergone certain material changes under the Customs (Amendment) Act, 1988 which came into force from the aforesaid date. Under the Amendment Act, Clause (a) of Sub-section (1) of earlier Section 14 has now been made a continuing part of Sub-section (1) itself whereas Clause (b) of Sub-section (1) has been deleted and in its place a new Sub-section (1A) has been inserted. An amendment was also made in Section 156 by substituting the present Clause (a) in Sub-section (2) in place of earlier Clause (a). In order to appreciate the objects and reasons of the aforesaid amendment, it is relevant to refer to the International General Agreement on Tariffs and Trade (in short called "GATT"). The said agreement was signed on 30th October, 1947 by 23 nations including India. Article VII of the

General Agreement on Tariffs and Trade (GATT) lays down the general principles on customs valuation. Article VII 2(a) of GATT provides that the value for customs purposes of imported merchandise should be based on the actual value whereas Article VII 2(b) defines "Actual value" as the price at which at a time and place determined by the legislation of the country of importation, such or like merchandise is sold or offered for sale in the ordinary course of trade under fully competitive conditions. Article VII 2(c) provides for determination of actual value when it is not ascertainable in accordance with paragraph 2(b) aforesaid. Section 14 of the Customs Act as it stood prior to the amendment took notice of the provisions of aforesaid Article VII.

During the Tokyo Round of Multilateral trade negotiation, some 99 countries participated in the negotiation pursuant to which Agreement on implementation of Article VII of GATT was adopted on 12th April, 1979. Preamble thereto makes the position crystal clear and the same is extracted hereinbelow -

"PREAMBLE

Having regard to the Multilateral Trade Negotiations, the Parties to this Agreement (hereinafter referred to as "Parties");

Desiring to further the objectives of the General Agreement on Tariffs and Trade (hereinafter referred to as "General Agreement" or "GATT") and to secure additional benefits for the international trade of developing countries;

Recognising the importance of the provisions of Article VII of the General Agreement and desiring to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation;

Recognising the need for a fair, uniform and neutral system for the valuation of goods for customs purposes that precludes the use of arbitrary or fictitious custom values;

Recognising that the basis for valuation of goods for customs purposes should, to the greatest extent possible, be the transaction value of the goods being valued;

Recognising that customs value should be based on simple and equitable criteria consistent with commercial practices and that valuation procedures should be of general application without distinction between sources of supply;

Recognising that valuation procedures should not be used to combat dumping;".

Article 1 thereof provides that customs value of imported goods shall be the transaction value that is the price actually paid or payable for goods when sold for export to the countries of importation adjusted in accordance with Article 8. The said Article 8 lays down that in determining the customs value there shall be added to the price actually paid or payable for the imported goods through items, which are mentioned therein. India became a signatory to the aforesaid Agreement dated 12th April, 1979. Article 21 thereof provides that Developing country Parties could delay application of its provisions for a period not exceeding

five years from the date of entry into force of the said Agreement for such countries whereas Article 24 specifically, states that the Agreement would enter into force on 1-1-1981 for the governments which have accepted or acceded to it by that date whereas Article 25 thereof makes a provision that each government accepting or acceding to the said Agreement would ensure conformity of its laws, regulations and administrative procedures with the provisions of the said Agreement not later than the date of entry into force of the agreement i.e., 1st January, 1981. However, latitude was given to the developing countries who were permitted to, hold the application of its provision for a period not exceeding five years.

10. On 1st November, 1979 Protocol to Agreement on implementation of Article VII of GATT was adopted. Article 1(8) thereof provides that the prices actually paid or payable includes all payments made or to be made as a condition of sale of the imported goods by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller. India being a signatory to the aforesaid Agreement, however, took steps to make its laws in conformity with the aforesaid provision of the Agreement with effect from 1988 when the provisions of Sections 14 and 156 of the Act were amended by the Amending Act of 1986 so as to bring them into parity with the aforesaid contents of the Agreement and the Protocol and the said amendment was brought into force with effect from 16th August, 1988. In the Statement of Objects and Reasons, it was specifically stated that the purpose of the Bill is to suitably amend Section 14 of the Customs Act so as to enable the Central Government to frame rules on the basis of GATT Code of Valuation for the determination of the price of the imported goods. As the aforesaid Statement of Objects and Reasons have relevance, the same is extracted bellows :-

"STATEMENT OF OBJECTS AND REASONS

... .. Article VII of the General Agreement on Trade and Tariff (GATT), to which India is a contracting party, lays down general principles on customs valuation. The provisions of the said Section 14 are, Therefore, based on Article VII of GATT.

2. During the Tokyo Round of Multilateral Trade Negotiations under the GATT (1973-1979), an Agreement on Implementation of Article VII of the GATT, also known as GATT Code of Valuation was adopted. This agreement lays down elaborate rules to provide for greater uniformity and certainty in the application of Article VII of the GATT for determining the value of imported goods As India is a contracting party to this Agreement also, we are required to implement the said GATT Code of Valuation.

3. The purpose of the Bill is Therefore to suitably amend Section 14 of the Customs Act so as to enable the Central Government to frame rules, on the basis of GATT Code of Valuation for the determination of the price of imported goods.

4 The Bill seeks to achieve the above object."

11. In exercise of the powers conferred by Section 156 of the Customs Act read with Section 22 of the General Clauses Act and in supersession of the Customs Valuation Rules, 1963, a set of Rules called the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, was made by the Central Government which came into force on 16th August, 1988. Relevant provisions of the Rules having a bearing on this case have been already extracted. As mentioned above, there was an earlier litigation between the parties which went up to the Supreme Court and the decision rendered by the Supreme Court is also reported being Collector of Customs (Preventive), Ahmedabad Vs. Essar Gujarat Ltd., Surat, . In the said decision, the Supreme Court after taking notice of all the three Agreements entered into by the petitioner- Company with the foreign firms held that, it is not possible to uphold the petitioner's contention that the pre-condition of obtaining license from Midrex was not a condition of sale. It was further held that without a license from Midrex, the plant would be of no use to the petitioner and that is the reason why an overriding Clause was inserted in the Agreement and the said overriding clause was clearly a condition of sale. It was further held that the Interpretative Notes of Rule 9(1)(c) of the Valuation Rules, 1988 would not be helpful to the importer as Midrex had granted to the petitioners not only the right to produce in the Midrex Direct Reduction Process Plant and sell the products produced by the plant world-wide but also to use all patents, confidential information for the operation of the plant and, Therefore, the license fees paid to Midrex would have to be added to the price of the plant to arrive at the transaction value of the plant. It was further held that the value of the plant was not only the price paid for the plant but also the price payable for the operation of the license and the technical know-how and that Rule 9 should be construed bearing the same in mind. The Supreme Court while recording the aforesaid conclusions noticed the provisions of Rule 9 of the aforesaid Rules as also the provisions of Section 14 of the Act and the various clauses of the Agreement entered into by the petitioners with the foreign firms.

12. In the light of the aforesaid background facts, we may now proceed to answer the issues arising for consideration in the present writ petition.

13. India being a signatory party to GATT and in order to satisfy the obligation arising out of the aforesaid agreement while enacting the provision for the purpose of valuation of goods for assessment of duties of customs, it was necessary to enact the Customs Act & Rules framed there under to be in parity with the provisions of GATT. Section 14 of the Customs Act as it was enacted in 1962 took notice of the GATT Agreement. However, after the subsequent development and changes in the GATT provisions in 1979 and 1981, the provisions of the Customs Act were not amended bringing the same to be in conformity with the broad statement of the principles of customs valuation as contained in Article VII of GATT as was obliged. Sub-section (1) of Section 14 as it stood prior to the amendment of 1988 refers to and envisages valuing of goods for purposes of assessment of duties of customs taking into consideration the

price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation or exportation as the case may be in the course of international trade. The said provision did not undergo any amendment even in the Amendment Act, 1988. A bare reading of the said provision of Sub-section (1) of Section 14 would make it crystal clear that the basic provision of valuation as contained in the said provision as originally enacted was not touched when the Customs Act was amended in 1988. All that has been done by the Customs (Amendment) Act of 1988 is to replace the provision in Sub-section (1)(b) of Section 14 as it stood before the amendment and in its place a new provision was replaced by inserting the provision numbered as (1A) which provision has already been extracted above. We have also extracted hereinbefore the Statement of Objects and Reasons of 1988, Amendment Act which in no uncertain term provides that the purpose of the Amendment Act of 1988 was to suitably amend Section 14 so as to enable the Central Government to frame Rules on the basis of GATT Code of Valuation for determination of the price of imported goods. GATT Code of Valuation was adopted during the Tokyo Round of Multilateral Trade Negotiations under the GATT during the period 1973-79. The said Agreement lays down elaborate Rules to provide for greater uniformity and certainty in the application of Article VII of the GATT for determining the value of imported goods. As India was a contracting party to the aforesaid Agreement, it was necessary for India to implement the said GATT Code of Valuation and in that context, Sub-section (1A) was inserted by replacing Section 14(1)(b), in order to enable the Central Government to frame Rules on the basis of GATT Code of Valuation for determination of the price of imported goods. In terms thereof, a new set of Rules called the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 was brought into force on 16th August, 1988, the very day on which Section 14(1A) was amended.

14. A comparative reading of the GATT Code of Valuation and the aforesaid Rules would also prove and establish that the Central Government incorporated the provisions of GATT Code of Valuation in the aforesaid provisions of the Rules and thereby India fulfilled its commitment as a contracting party to the GATT Agreement by implementing the provisions of Article VII. It could further be seen from the provisions of Section 14(1) that it stipulates a deemed price at which the imported or like goods are originally sold or offered for sale for delivery at the time and place of importation in the course of international trade where the seller and buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale.

15. As the validity of Sub-section (1A) of Section 14 of the Act is challenged on the ground that it is unconstitutional, it is necessary to analyze the said provision in order to judge the merit of the submission. Sub-section (1A) of Section 14 opens with the expression "Subject to the provisions of Sub-section (1)" and thus while construing the provisions of Sub-section (1A) of Section 14 necessarily the provisions of Sub-section (1) have to be kept in mind and taken notice of and

when the said provisions are read along with the Preamble, Objects and Reasons, it would be clear that a legislative policy and guidance as to how the value or the price of imported goods is to be determined for the purpose of assessment of customs duty has been provided for and outlined. Section 14(1) clearly refers to and recognises international trade and practices which would also include the provisions of GATT Code of Valuation, a Code which is internationally accepted by all the Member countries of the World Trade Organisation.

16. Counsel for the parties referred to a catena of decisions in support of their contentions. The petitioners relied upon the decisions in *Rajnarain Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, *Khambalia Municipality and Another Vs. State of Gujarat*, *Hamdard Dawakhana and Another*, *Kalipada Deb and Another*, *Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, *State of Karnataka and Another Vs. H. Ganesh Kamath and Others*, *Agricultural Market Committee Vs. Shalimar Chemical Works Ltd.*, *V. Sudhir v. Bar Council of India*; reported in (1993) 3 SCC 176, *Kunjviharilal Butail v. State of Madhya Pradesh*; reported in (2000) SCC 40, re: Sea Customs Act; reported in AIR 1963 SC 1760, *Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others*, and re. The Delhi Laws Act, 1912; reported in *In Re: The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950*, in order to prove his submission that the essential legislative function consists of the determination of the legislative policy and that a legislature cannot abdicate essential legislative function in favor of another. Specific attention was drawn to paragraph 7 of the decision in *Khambalia Municipality (supra)* for the aforesaid proposition as also for the proposition that power to make subsidiary legislation must be entrusted by the legislature to another body of its choice, but the legislature should before delegating enunciate either expressly or by necessary implication the policy and the principles for the guidance of the delegate. There could be no dispute to the settled proposition of law and we are all bound by the same. At the same time, notice is also to be taken of the Rules and principles of Interpretation of Statutes and the various decisions of the Supreme Court laying down that subject matter, the scheme, the provisions of the Statute including its Preamble, the facts and circumstances in the background of which the Statute is enacted Along with the Statement of Objects and Reasons which provide sufficient guidelines could also be relied upon for the purposes of determining whether a particular provision is bereft of any guidelines and amounts to abdication. While submitting that all the aforesaid factors could be noticed and considered, Counsel for the respondents relied upon the decisions in *Shri Sarwan Singh and Another Vs. Shri Kasturi Lal*, *Sashikant Laxman Kale v. Union of India*; reported in : [1990]185ITR104(SC) , *Kartar Singh v. State of Punjab*; reported in , *Rashtriya Mill Mazdoor Sangh Vs. State of Maharashtra and Others*, *Arul Nadar Vs. Authorised Officer, Land Reforms*, *Shashikant Laxman Kale and Anr. v. Union of India and Anr.*; reported in : [1990]185ITR104(SC) , and the *Consumer Action Group and Anr. v. State of*

Tamil Nadu; 2000 (6) Scale 45.

17. It was the submission that the legislature while empowering the executive agency with the rule making power has not sufficiently indicated the policy and guidance relating to mode of determination of price and value, which is essentially a legislative function and, Therefore, Sub-section (1A) of Section 14 is unconstitutional and that similar is the case with Clause (a) of Sub-section (2) of Section 156. There cannot be any dispute to the legal proposition that essential legislative function cannot be delegated. The same is concluded by the repeated pronouncements of the Supreme Court in *Delhi Laws Act AIR 1951 SC 332*, *Raj Narain Singh, Khambhalia Municipality, Kunj Behari Lal Butail & others and Agricultural Market Committee (supra)*. What consists of essential legislative function is also succinctly brought out in paragraph 7 in the decision of *Khambhalia Municipality (supra)* wherein it was stated thus: -

"An essential legislative function consists in the determination of a legislative policy and its formulation as a binding rule of conduct. Having laid down the legislative policy, the legislature may confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of the policy."

Therefore, in the backdrop of the aforesaid legal position, it would be required to examine whether such legislative policy and guidelines have been spelt out and determined in the Customs Act in order to enable the rule making authority to work out the execution of the policy. Once such policy and guidelines are spelt out, the rule making authority is empowered to work out the details within the framework and ambit of the policy.

As stated in *Halsbury's Laws of England (Fourth Edition, Volume 14 para 981 at page 618)*, the tendency of modern legislation is to lay down general principles and to avoid going into administrative details. Even in *Statute Laws of Craie (Fifth Edition, pages 270-271)*, it is stated that at the present time it seems to be the settled policy of the legislature to confine its effort to the task of laying down general principles of law and to delegate to subordinate authorities not only the power of making rules and orders for the purpose of settling the details of the procedure necessary for giving effect to the general principles, but even to principles themselves.

Counsel for the petitioners sought to derive assistance from the decisions of the Supreme Court in *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, ; and *State of West Bengal Vs. Union of India*, . In those decisions, the Supreme Court has held that the Statement of Objects and Reasons cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation and the courts cannot use this statement as an aid to the construction of the enactment.

At this stage, it is worthwhile to indicate that the legislative policy and the principles of the guidelines could be gathered from the substantive provisions of

the relevant Act read with background and antecedent state of affairs leading up to the Legislation, Preamble and Objects and Reasons of the Act. In support of this conclusion, reference may be made to the observations of the Supreme Court in *The Consumer Action Group and Anr. v. State of Tamil Nadu and Ors.* 2000 (6) Scale 45. In the said case, the Supreme Court after noticing various precedents recorded in paragraph 18 in the following manner :-

"The catena of decisions referred to above concludes unwaveringly in spite of very wide power being conferred on delegate that such a section would still not be ultra vires, if guidelines could be gathered from the Preamble, Object and Reasons and other provisions of the Acts and Rules. In testing validity of such provision, the courts have to discover, whether there is any legislative policy purpose of the statute or indication of any clear will through its various provisions, if there be any, then this by itself would be a guiding factor to be exercised by the delegate. In other words, then it cannot be held that such a power is unbridled or uncanalised. The exercise of power of such delegate is controlled through such policy."

This case, Therefore, succinctly explains the position about rules of interpretation as laid down by the Supreme Court.

18. So far the decisions relied upon by the counsel for the petitioners where the provisions were held to be ultra vires, those are the cases where the Court found that no policy was laid down or spelt out in those enactments. On the other hand, the decision in *Khambhalia Municipality (supra)* relied upon by the petitioners, the Court on consideration of the Preamble and the provisions of the Gujarat Panchayats Act found that the particular provision namely Section 9(1) of the Act is neither unconstitutional nor suffers from the vice or excessive delegation. In *Agricultural Market Committee (supra)*, it was held thus in paragraph 26 :

"26. The principle which, Therefore, emerges out is that the essential legislative function consists of the determination of the legislative policy and the legislature cannot abdicate essential legislative function in favor of another. Power to make subsidiary legislation may be entrusted by the legislature to another body of its choice but the legislature should, before delegating, enunciate either expressly or by implication, the policy and the principles for the guidance of the delegates. These principles also apply to taxing statutes. The effect of these principles is that the delegate which has been authorised to make subsidiary rules and regulations has to work within the scope of its authority and cannot widen or constrict the scope of the Act or the policy laid down thereunder. I cannot, in the garb of making rules, legislate on the field covered by the Act and has to restrict itself to the mode of implementation of the policy and purpose of the Act."

By applying the aforesaid principles to the facts of the said case, it was found that the delegate created a legal fiction which was beyond the legislative function and, Therefore, it was held to be ultra vires.

19. Having analysed the law as applicable to the issues involved, we may proceed to discuss the issue whether the provisions of Sub-Section (1A) of Section 14 and Clause (a) of Sub-section (2) of Section 156 of the Act are in any manner unconstitutional and ultra virus and suffer from the vice of excessive delegation. We have in the preceding paragraphs adverted to the historical background of the enactment of the Customs Act and the circumstances leading to the legislation and also the Statement of Objects and Reasons of the Amendment Act, 1988. They all take notice of the provisions of the GATT Agreement and also the compulsive necessity under which the Amendment Act of 1988 was enacted. Reasons for the changes and requirement of India to bring its provisions of valuation of the goods for the purpose of assessment of customs duty in parity with the said GATT cannot be lost sight of while considering the constitutional validity of Sub-section (1) of Section 14 of the Act.

20. The entire historical background of the enactment of Section 14, as stood prior to the amendment and as it stood amended, as also the provisions of the GATT Agreement when read along with the provisions of Sections 14 and 156, as amended leave no room for uncertainty regarding the policy and guidelines to be followed while framing rules for determining the mode and manner of customs valuation in case of importation. Statement of Objects and Reasons for bringing in the amendment of Sections 14 and 156 of the Act also lay down the guidelines and the purpose of the amendment and necessary guidelines could also be gathered from the same. The legislature has clearly expressed the policy and guidelines by referring to international trade in the substantive provision of Section 14(1) of the Act. Similar guidelines are also provided by the GATT Agreement and protocol which are part of international trade and which are also referred to in the Statement of Objects and Reasons for insertion of Section 14(1A) and Section 156(2)(a) of the Act. The exercise of power of such delegation Therefore, controlled through such policy and guidelines.

21. In the framework of the aforesaid policy and the guidelines of valuation, elaborate Rules have been framed by the Central Government in exercise of the powers vested in it u/s 156(2)(a) of the Act to maintain uniformity and certainty in the matter of valuation of goods in the light of the principles adopted under the GATT Code of Valuation which is widely and internationally accepted by the Member countries of the World Trade Organisation, Section 14(1) recognises international trade and the Rules framed by the Central Government on the same day amplify the same bringing it in parity with the GATT Code of Valuation. The said method and mode of Valuation as incorporated in the Rules are matters of procedure and detail of the policy enunciated in the substantive provisions of Section 14(1) and 14(1A).

22. Thus having regard to the aforesaid provision, namely Sections 14(1) and 14(1A) and historical background which necessitated enactment of the said provision with its Sub-section read along with the GATT Agreement to which India is a signatory and the Objects and Reasons as enumerated and extracted

above, it cannot be said that the said provision is devoid of any legislative policy and guidance about the determination of price or value of goods.

23. The aforesaid discussion makes it crystal clear that the legislature took the basic legislative decision in order to conform the provisions of the Customs Act to be in parity with the international trade agreement, the GATT. Such enactment brought in through amendment Act, 1988 ushered in a policy of uniformity with the international trade practices and agreement in the matter of method of custom valuation. In *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. Vs. The Asstt. Commissioner of Sales Tax and Others*, , the Supreme Court upheld the validity of Section 8(2)(b) of the Central Sales Tax Act, 1958 holding that the Parliament, with a view to prevent evasion of tax, can make a provision that Central Sales Tax shall be levied at the same rate at which sales tax is levied under the State Act. In *International Cotton Corpn. (P) Ltd. Ors. Vs. Commercial Tax Officer, Hubli, and Others*, , it was held by the Supreme Court that legislative policy being that the inter-state trade should not be discriminated against a comprehensive provision could be made avoiding the necessity of unending series of amendments every time one State or the other altered its rate of tax. The validity of the aforesaid provisions of the Central Sales Tax Act was upheld holding that the provision cannot be assailed for impermissible delegation. In our considered opinion similar is the position in the present case. The background for the amendment in the Amendment Act and policy of the provision being to bring in parity and uniformity with the provisions of the GATT and international trade practices, the Legislature committed no constitutional impropriety in leaving the matter of furnishing the details of the mode of valuation to the executive and thereby avoiding unnecessary amendments that could be required as and when there is a change in the mode of valuation under GATT. In doing so the Legislature did not delegate uncanalised and uncontrolled power but set the limit of the banks of the power delegated by declaring that the same is to be in parity with the provisions of GATT. Thus, it cannot be said that while delegating the power to make the Rules to the Executive in the nature as enacted in Section 14(1A) and Section 156(2)(a), the legislature has abdicated its legislative function to the Executive, nor it could be said that it is a case of excessive delegation.

24. A contention was also advanced on behalf of the petitioners that the said provisions of Section 14(1) and Section 156(2)(a) are ultra virus of the provisions of Article 253 of the Constitution. It was submitted that under the provisions of Article 253, the Parliament is empowered to bring an International Treaty in the field of Municipal law only by a Parliamentary legislation. In support of his contention counsel relied upon the decision in *State of Gujarat Vs. Vora Fiddali Badruddin Mithibarwala*, and *In Re: The Berubari Union and Exchange of Enclaves Reference Under Article 143(1) of The Constitution of India*, He also relied upon the case of *Maganbhai Ishwarbhai Patel etc. Vs. Union of India (UOI) and Another*,

25. We have considered the said submission of the learned Counsel appearing for the petitioners and also carefully examined the provisions of Article 253 of the Constitution which finds place in Chapter 11 of the Constitution of India. The said Chapter starts with Article 245 and ends with Article 263. In the said Articles the word "law" has been repeatedly used. As the same expression came to be used repeatedly in the said Articles, the word "law" shall have the same meaning and effect in all the aforesaid Articles. Although a non obstante clause is used in Article 253 of the Constitution of India, it only explain and provides for the legislative competence of the Parliament for the whole or any part of the territory for the purpose of implementing any treaty or agreement with any other country or any decision made at any international conference etc. If the Parliament or the State legislature are competent to lay down the guidelines and leave the implementation of the guidelines to the rule making authority, such a law cannot be held to be ultra virus because of use of a non obstante clause in Article 253. In our considered opinion, the same does not in any way restrict or whittle down the meaning of the word "law" in the said Article. It is not possible for the Parliament itself to provide for each and every detail for the purpose of valuation for determination of price of the imported goods as the value of the goods in the course of international trade and that the amendment of the GATT Code of Valuation could undergo changes at different point of time and accordingly the legislature thought it fit to leave the same to the Executive to take notice of and to provide for such details of valuation in the Rules.

26. Since in the present case the Parliament has laid down the guidelines in the substantive provision of Section 14 of the Customs Act and left the implementation of the guidelines to the rule making authority, the said power conferred upon the delegate u/s 156(2)(a) read with Section 14(1) cannot be said to be either unguided or uncontrolled or that it amounts to abdication of essential legislative function. Thus, we hold that Section 14(1A) as also Section 156(2)(a) are valid piece of legislation and that the said provisions are not ultra virus to the Constitution of India as submitted by the learned Counsel appearing for the petitioners.

27. The petitioners have also challenged the validity of the provisions of Rules 3, 4, 9(c) and 9(e) of the Valuation Rules. The said provisions have already been extracted for a better understanding of the contention of the learned Counsel appearing for the parties. The said Rules provide the details as to how the value or price of imported goods is to be determined for purposes of assessment of customs duty. It is provided in Rule 3 that the value of the imported goods would be the transaction value and what is the transaction value is explicitly stated in. Rule 4 read with Rule 9. The said Rules are in parity with the GATT Code of Valuation, which would be apparent on a comparative reading of the conditions of the GATT Agreement and the present Rules. It was sought to be submitted on behalf of the petitioners that levy of customs duty on the value of goods which includes the payment for royalties, license fees, cost of technical services and engineering and consultancy fees goes beyond the concept of "goods" as

understood in the Customs Act. We have given our anxious consideration to the said contention and proceed now to deal with the said contention.

28. Section 2(22) of the Customs Act defines goods and the charging section being Section 12 of the Act provides for the incidence of tax read with Customs Tariff Act. The expression "value of goods", however, cannot be said to be controlled and governed by the definition of the word "goods" as found in Section 2(22) of the Customs Act. In our considered opinion, the expression "goods" and "value of goods" cannot be equated for the concept of value of goods cannot be confined only to the tangible part of the goods. The legislative mandate of Section 14(1) speaks of the price at which the goods are ordinarily sold or offered for sale in the course of international trade. Since the legislature has thought it fit to use the expression "price of the goods", the Central Government while exercising the powers of delegate defined the expression "transaction value" as the price actually paid or payable adjusted in accordance with Rule 9 in order to give just and proper interpretation to the price at which such or like goods are ordinarily sold or offered for sale, for delivery at the time and place of importation in the course of international trade. It is fully consistent with the legislative mandate of Section 14(1) of the Act which speaks of the price at which goods are ordinarily sold or offered for sale in the course of international trade. In terms of the aforesaid provisions of Rule 4 read with Rule 9, levy of customs duty on the value of the goods would also include the payments for the royalties, license fees, cost of technical services and engineering and consultancy fees. It is no doubt true that the same goes beyond the concept of the expression "goods" as defined under the Customs Act. But nonetheless as expressed by the legislature in the substantive provision of Section 14(1) of the Customs Act, the entire value of the goods has to be taken into account in the concept of sale and purchase of goods like in the present case the sponge iron plant which is required to be sold as operational with the license and technology incorporated in it. It cannot be disputed that without obtaining the license and technology, the plant could neither be shifted to nor could be made operational in India.

29. In terms of the three agreements placed on record executed between the petitioners and their foreign suppliers and collaborators, the value of the plant and the price paid for it were related to its use and utility when it was operational and for doing so, the three payments made in addition to the basic price of the plant had to be included in its intrinsic value. The aforesaid conclusions were also the conclusions of the Supreme Court in *Collector of Customs, Preventive* (supra) wherein, the Supreme Court has upheld the view that the transaction value also includes the payments made for using the technology shall have to be included in the adjustments permissible under Rule 9. The same being concluded by the Supreme Court, it cannot be disputed by the petitioners that in a transaction of sale which ordinarily takes place in the course of international trade, the cost of technology incorporated in the machinery or plant is to be included in determining its price. Thus, there is no substance in the submission of the

learned Counsel appearing for the petitioners that the provisions of Rules 3, 4, 9(c) and (e) are not in conformity with the provisions of Section 14(1). While rejecting the said contention it is also held that the said Rules are not ultra virus of the provisions of Articles 245, 246, 265 and 19(1)(g) of the Constitution of India.

30. It was also sought to be submitted by the learned Counsel appearing for the petitioners that the assessments made in the present case are provisional. The petitioners approached this Court immediately on issuance of a notice of demand to the petitioners. The notice of demand was challenged by the petitioners on the aforesaid grounds that the provisions of Section 14(1A) and Section 156(2)(a) as also the Rules are invalid and ultra virus the Constitution of India. No specific plea of the nature sought to be urged now were pleaded in the writ petition and the petition was basically filed challenging the constitutional validity of the aforesaid provisions on the issues raised in paragraph 2 of the writ petition. The said contention has been found to be untenable by recording reasons Therefore If the petitioners have any statutory remedy in accordance with the provisions of the Customs Act and the Rules made thereunder, the same would be available to the petitioners. However, no direction could be issued to the respondents in the present case, at this stage, as sought for by the petitioners for finalising the assessment as sought for by them. The law has to take; its own course and the statutory authority has to proceed in the matter in accordance with law. We have no hesitation in our mind that a statutory authority vested with statutory obligation would proceed in the manner provided for and would not act otherwise.

31. In terms of the aforesaid observations and directions, the writ petition stands dismissed, but we make no order as to costs.