

(1980) 11 DEL CK 0015

In the Delhi High Court

Case No : Civil Writ Petition No. 629 of 1980

Hindustan Aluminium Corporation Ltd.

APPELLANT

Vs

Superintendent, Central Excise, Mirzapur and others

RESPONDENT

Date of Decision : 27-11-1980

Acts Referred:

Citation : (1981) ECR 208 : (1981) 8 ELT 642

Hon'ble Judges : Rajinder Sachar, J;O.N. Vohra, J

Bench : Division Bench

Judgement

Sachar, J.—The petition raises the question - whether the goods which are exported under bond are liable to payment of excise duty as demanded by the respondents/Central Government or are totally exempt as maintained by the petitioner ?

2. The petitioner company carries on the business of manufacturing and dealing with Aluminium. Excise duty is imposed on Aluminium under Tariff item 27. The petitioner ever since 1969 has exported various quantities of Aluminium without payment of duties of excise. The said exports were made under a bond given by it under Rule 13 of the Central Excise Rules. However, by the impugned show cause notice of 31-10-1979 the petitioner has been asked as to why it should not be required to pay the duties for the period 17-5-1969 to 23-6-1979 on the aluminium products exported during the period. The amount of Excise duty claimed is on the differential duty as between the Central Excise duty livable under Tariff Item 27 and the Government of India Notification No. 148/69-CE, dated 17-5-1969 issued under the Central Excise Rules. The petitioner challenges this notice on the ground that it is totally exempt from payment of any excise duty on the goods which are exported by it under bond. Additional challenge is to the competency to realise any amount of arrears due prior to six months to the issue of show cause notice dated 31-10-1979 on the ground of being time barred.

3. Section 3 of the Central Excises and Salt Act, 1944 (to be called the Act) provides that there shall be levied and collected in such manner, as may be

prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India. Section 37(1) empowers the Central Government to make rules to carry into effect the purpose of the Act and without prejudice to the generality of foregoing power. Sub-section (2) also empowers the Central Government to make rules amongst others by clause (xvi) to provide for the grant of a rebate of the duty paid on goods which are exported out of India and by clause (xvii) to exempt any goods from the whole or any part of the duty imposed by this Act.

4. The Central Government in exercise of the powers under the Act has framed rules known as "Central Excise Rules, 1944 (to be called the Rules). Rule 7 provides for recovery of duty and lays down that every person who produces or manufactures or stores in a warehouse shall pay the duty or duties livable on such goods at such time or place and to such persons as may be designated under the authority of the Rules, whether the payment of such duty or duties is secured by bond or otherwise.

5. Rule 8 empowers the Central Government to authorise exemption from duty whether in whole or in part the duty livable on the notified goods. Rule 9 on which most of the arguments were made and in so far as it is relevant reads as under :-

"9. (1) No excisable goods shall be removed from any place where they are produced, cured or manufacture or any premises appurtenant thereto, which may be specified by the Collector in this behalf, whether for consumption, export or manufacture of any other commodity in or outside such place, until the excise duty livable thereon has been paid at such manner as is prescribed in these Rules or as the Collector may require :

Provided that such goods may be deposited without payment of duty in a store room or other place or storage approved by the Collector under rule 27 or rule 47 or in a warehouse appointed or licensed under rule 140 or may be exported under bond as provided in rule 13 :

Provided further that such goods may be (removed without payment or on part-payment of duty) livable thereon if the Central Government, by notification in the Official Gazette allow the goods to be removed under rule 49 :

Provided also that the Collector may, if he thinks fit instead of requiring payment of duty in respect of each separate consignment of goods removed from the place or premises specified in this behalf, or from a store room or warehouse duly approved, appointed as licensed by him keep with any person dealing in such goods an account-current of the duties payable thereon and such account shall be settled at interval, not exceeding one month and the account holder shall periodically make deposit therein sufficient in the opinion of the Collector to cover the duty on the goods intended to be removed from the place of production, curing, manufacture or storage."

6. Rule 12 empowers the Central Government that it may from time to time grant the rebate of duty paid on excisable goods if exported outside India to such extent and subject to such conditions as may be specified therein. It is in pursuance of this that the 17-5-1969 notification has been issued. That notification grants rebate to the extent set out in corresponding entry in Column 2 of the table attached to the notification.

7. The respondent's case is that the petitioner can claim the rebate in terms of notification only and no more, and must pay excise duty on corresponding amount. The petitioner however, invokes Rule 13 which provides that goods may in like manner be exported outside India, without payment of duty from a warehouse or a licensed factory provided that export is made in accordance with the procedure set out in the relevant provisions of Chapter IX of these Rules and the owner enters into a bond in the proper form with such surety or sufficient security and under such conditions as the Collector approves in a sum equal at least to the duty chargeable on the goods for the due arrival thereof at the place of export and their export (within the period prescribed for goods exported under Rule 12) and such bond shall not be discharged unless the goods are duly exported, to the satisfaction of the Collector within the time allowed for such export, or are otherwise accounted for to the satisfaction of such officer nor until the full duty due upon any deficiency of goods not accounted for has been paid.

8. Rule 14 empowers the Collector to permit any person desirous of exporting from India, in the manner provided in the foregoing rules excisable goods on which duty has not been paid to enter into a general bond in the proper Form, in such amount as the Collector approves for the export of, excisable goods within the period prescribed for goods exported under Rule 12. It may be mentioned that the time prescribed under Rule 12 is laid down in the notification of 17-5-1969 which provided that the goods are exported within 2 years from a date of payment of duty or within such shorter period as the Central Government may specify.

9. Rule 44A provides that where a person has removed excisable goods for export under bond in accordance with the provisions of Rules 13 and 14, fails to export in the manner laid down in the notification issued under Rule 12 he shall on demand, by the officer, pay forthwith the duty livable on such goods and shall also be liable to a fine subject to maximum of Rs. 2,000/-.

10. Procedure for export under claim for rebate of duty or under bond is provided in Rule 185 which lays down the conditions that are to be complied with when goods are to be exported under claim for rebate of duty as provided in Rule 12 or under bond for their due export as provided under Rule 13.

11. The controversy lies in a very short compass. Mr. Sorabjee, the learned counsel for the petitioner concedes that if goods are exported not under a bond and they are excisable goods than the petitioner would only be entitled to rebate in terms of notification of 17-5-1969. As a matter of fact as only part of the

petitioner's production is exported under a bond, the petitioner is without objection paying excise duty on the rest of the production subject to the claim for rebate in terms of the notification of 17-5-1969. The petitioner claims however, that as in the present case goods have been exported under bond the notification of 17-5-1969 has no relevance and that it is entitled to export the goods without payment of any excise duty whatsoever. Mr. Sorabjee's argument is that Rules 12 and 13 are totally independent provisions and cannot be read together. The argument proceeds that Rule 12 permits a rebate to be taken in terms of the notification not only by a manufacturer but also by any other person who exports goods within 2 years from the date of payment of duty. This means that when the goods are removed from the factory, duty may be paid and goods may be kept in some warehouse and provided they are exported within 2 years from the date of payment of duty, a person will be entitled to ask for rebate in terms of notification of 17-5-1969. But under clause 13 according to Mr. Sorabjee, goods are allowed to be exported without payment of duty from a warehouse or a licensed factory provided the owner has entered into a bond. The claim of total exemption from excise duty being dependent on whether the exports have been done by entering into a bond or without a bond does not appeal to us to have any plausibility and cannot be accepted by us.

12. Mr. Sorabjee made an effort to show that there are vast differences between the requirements under Rule 12 and 13, to justify the petitioner's claim for total exemption from payment of duty under Rule 13. One such difference suggested was that under Rule 13 it is only the manufacturer who can enter into a bond and thus export without payment of duty, while under Rule 12 any person can claim rebate. That position is not correct.

13. Though Rule 9 provides that no excisable goods shall be removed from any place where they are manufactured, the first provision makes exception by providing that such goods may be deposited without payment of duty in a warehouse appointed or licensed under Rule 140, which empowers the Collector to approve and appoint public warehouse or a private warehouse for the storage of excisable goods on which duty has not been paid and also empowers the Collector that he may require from the licensee of warehouse to furnish a bond binding himself to pay the duty on the goods deposited therein. For the manufacturer, if he does not want to remove goods to a warehouse, the same can be kept in a store room provided on the same premises, without payment of duty as per Rule 47. Of course in such a case the manufacturer has to enter into a bond for payment of duty, as mentioned in Rule 48. As in terms of Rule 13 goods can be exported not only from a licensed factory but also from a warehouse provided the owner enter into a bond, it is possible both for the manufacturers like the petitioner to enter into a bond under Rule 13 or even for another person to have a warehouse under Rule 140 to which goods may be removed from the factory without payment of duty. The said warehouse need not necessarily belong to the manufacturer. It is also significant to note that rule 13 in terms lays down that the goods can be exported without payment of duty

provided that procedure under Chapter IX is followed. Chapter IX, from Rule 185 onwards is common both for goods exported under Rule 12 as well as for Rule 13. It is thus apparent that the conditions laid down under the notification of 17-5-1969 issued under Rule 12 will automatically also become applicable to goods exported under Rule 13. We are not able to find any logical reason why the goods which are exported say by one manufacturer who has not entered into bond as provided under Rule 13 (may be for the reason that the being a small manufacturer is not in a position to enter into a bond) will be liable to get only a corresponding rebate on excise duty payable only in terms of the notification dated 17-5-69 issued u/s 12 while the manufacturer who may have entered into a bond will be entitled to export the goods without the liability to pay any excise duty. The only reason for this differential treatment suggested by Mr. Sorabjee was that whereas under Rule 12 read with the notification of 1969 it is open to a manufacturer or any person to take advantage of the two years period mentioned in the notification to decide whether to export or not and if former then to claim rebate, the person or manufacturer under Rule 13 has to make his decision whether to export or not, immediately after goods are manufactured. We do not think that to take benefit of Rule 13 requires such immediate decision making to be done by the manufacturer like the petitioner. Under proviso to Rule 9, goods can be deposited without payment of duty in a place of storage provided by the manufacturer under Rule 47 or in a warehouse licensed under Rule 140. So far no duty is payable, only bonds have to be entered into. Goods can continue to be stored there and the manufacturer need make up his mind to export within the prescribed period of two years and will earn rebate in terms of notification dated 17-5-1969 subject to if goods are exported under bond. Thus there is no difference in the timing of decision making under Rule 12 or 13 to support the petitioner's claim to preferential treatment, for exemption from payment of duty. The decision making regarding export which is alleged to be the basis for the differential treatment claimed by the petitioner does not have to be done at the time when goods are immediately removed by the manufacturer from the licensed factory. As a matter of fact we pointedly asked Mr. Sorabjee as to whether it was not a fact that the goods were removed by the petitioner and stored in a warehouse without earmarked specifically for export or domestic consumption. Mr. Sorabjee accepted that neither at the manufacturing stage nor at the storage stage in the warehouse was there any prior commitment for export or separation of the goods as those which were to be exported or those used for domestic consumption. As a matter of fact it was not the petitioner's case that there is any commitment or undertaking by it to export any particular quantity of goods. It was common case that the decision whether to export or not was an independent decision to be taken by the petitioner notwithstanding that a bond may have been entered by it under Rule 13. The giving of a bond cast no obligation on the petitioner to export any quantity of goods. If it did not export naturally the question of claiming any exemption from payment of duty does not arise, just as a person who has not given a bond and also has not exported goods cannot take advantage of Rule 12 for claiming any rebate. Rules

12 and 13 are supplementary and deal with the same matter, namely duty payable on goods exported out of India. It is only in the different modes for claiming rebate that one case will fall within Rule 12, while export under bond will fall within Rule 13. The difference between Rules 12 & 13 according to us is only in the mode and manner of payment of excise duty which each person chooses to follow. There may be persons who are not in a position to enter into a bond or do not wish to give a bond under Rule 13 or those from whom the Collector may not accept a bond, (the Collector's approval being necessary.) These two rules identically with the same situation namely rebate of duty on goods which are exported. The only difference is that Rule 12 covers a case, where goods have been exported by a person without a bond and duty had been paid earlier and refund by way of rebate will be claimed later while Rule 13 deals with a case where goods were exported under bond without payment of duty, and the person will Therefore, be liable only to pay the differential duty on the duty livable under Tariff Item and that under the notification issued under Rule 12, it is important to note that rebate of duty on goods exported is provided under Rule 12. It is this very rebate that can be claimed when export is made under bond in terms of Rule 13. No separate rebate or exemption is provided by Rule 13, which is procedural. Substantive right is to be found in Rule 12 read with notification of 17-5-1969. Rule 13 deals with one manner of export namely under bond. The actually benefit however, will have to be worked out under Rule 12. The provision of a bond is a facility given to the business. Under Rule 9 no excisable goods can be removed from a place until the excise duty livable thereon has been paid. Exception has however, been made for allowing the same to be deposited without payment of duty in a store room under Rule 26 or Rule 47 or in a warehouse appointed or licensed under Rule 140. A reference to these rules would show that Rule 47 or in a permit a manufacturer to provide a store room at his premises for depositing goods without payment of duty. But such a manufacturer is required do enter into a bond for payment of duty under Rule 48 and lays down that no such goods shall be removed from the approved premises before the proper duty has been paid. Sub-rule (2) of Rule 49 permits the goods to be removed from the factory in which they are made to any warehouse licensed under Rule 140 for the storage of excisable goods and situated outside the licensed premises or the factory, on which duty has not been paid. But all these facilities for storage, warehousing and removal of goods from the factory without payment of duty are only allowed subject to bond being entered into for payment of duty. This clearly shows that removal of goods, without payment of duty under the Rule does not by itself mean that no excise duty is payable. Rather every rule makes certain that removal or storage of goods, without payment of duty is only permitted because a bond has been entered into for payment of duty. Thus, removal of goods, without payment of duty only postpones the payment of duty : it does not exempt it. On the same analogy, export under a bond under Rule 13 only means goods may be exported without payment of duty. It cannot mean the total immunity from payment of excise duty, as urged by the petitioner. The only exemption it can claim is by virtue of

notification issued under Rule 12, like notification dated 17-5-1969. If there was no provision for bond, the result will be that immediately the goods are removed from the factory even for the purpose of storage, duty will be livable and payable by the manufacturer. The provision of a bond acts as a great relief. The purpose is to give facilities to the manufacturer because he may have kept a huge amount of stocks in a warehouse : and may dispose them after some time, but if in such a case he is asked to pay excise duty in cash before even his goods have come to this market, it may be excessive and sometimes unbearable burden. Though excise duty is livable on manufacture and is not concerned with sale or distribution of goods, we cannot ignore the practical reality which is that excise duty in the ultimate analysis is to be recovered from the consumers in the shape of price of the goods charged from them. It is in that context that Rules 12 and 13 are to be read together. All that Rule 13 permits is a facility and which the petitioner has been enjoying, namely that it was able to export goods without payment of duty, because it had exported under bond unlike under Rule 12 where one pays duty before removal because one has not entered into a bond therein. That the whole purpose of Rule 13 is only to provide a facility for clearance become clear by reference to Rule 14A which provides for a penalty if goods removed for export have not been exported, but except persons who have after the removal of goods but before export cleared the goods for home consumption on payment of duty as laid down in Rule 52. Similarly, under Rule 14B provision is made that no person shall remove excisable goods for export, the duty livable on which together with the duty livable on goods removed from the factory and not exported until such time exceeds the amount of bond executed under Rule 14. These will show that the purpose of bond is to safeguard the realisation of duty which will be payable in case of export of goods. All these details are not necessary if no duty is payable on export of goods under bond, because then a simple provision for such exemption should have been separately provided for. All this will show the untenability of the argument, to equate the facility of export of goods without the payment of duty, at the time of removal, with a general exemption from payment of any excise duty at all. The provisions relating to provisional assessment, removal of goods on part-payment of duty and removal of goods where there is a current account or execution of bond, appear to have been deliberately made with a view to prevent undue restrictions on the movement of goods on the market for the purpose of trade.

14. This facility of removing without payment of duty cannot be equated with a substantive right of exemption from payment of duty as was the contention of Mr. Sorabjee. Rule 8 empowers the Central Government that it may by notification in the Official Gazette exempt and subject to such conditions as may be specified in the notification from the whole or any part of duty livable on such goods. It is not the petitioner's case that there has been any notification issued under Rule 8 exempting the goods exported under a bond under Rule 13 from payment of any duty. The only notification issued is under Rule 12 by which rebate is allowable in terms of notification of 17-5-1969. Any person, Therefore,

who exports goods can invoke the notification of 17-5-1969. How much he is entitled to the rebate is determined by the relief given in the notification. Mr. Sorabjee, however, argued that the petitioner is not seeking any rebate under the said notification, but claims an independent and substantive right under Rule 13 and that only on the ground that it has entered into a bond for export. We do not read rule 13 as conferring any substantive right. This argument of Mr. Sorabjee suffers from infirmity in as much it assumes as if goods which are exported under a bond have been exempted in whole from payment of any duty. But to give such exemption a notification under Rule 8 would have to be published in the Official Gazette.

Admittedly, there is no such notification. Rule 13 in our view is a procedural provision and gives an additional facility to the person who exports under a bond to remove goods without payment of duty in the first instance. But that he is not liable for the excise duty if the goods are excisable.

15. We also see another difficulty in the way of accepting Mr. Sorabjee's argument, for acceptance of it would entail discrimination between those who export goods but have not given a bond and those who export goods under a bond even though the conditions and circumstances may be identically the same. On the argument of Mr. Sorabjee even if another manufacturer exported goods right from his factory and even if he specifically earmarked all his production for exports, but entered into no bond for export he would not be able to claim total exemption from payment of duty but could only ask for rebate in terms of Rule 12 read with notification of 17-5-1969 while the petitioner even if he exports after having kept his goods in a store-house or warehouse for number of months and after watching the export market and even if it not be under any commitment to export the goods and may at the last minute use it all for home consumption as recognised by Rule 14A read with Rule 52, but if he decides to export would be entitled to total exemption. This would amount to a clear discrimination for which there would be no rational classification having any relation or nexus to the object of the rules. The reason for granting the rebate on exports may be justified because of the need to earn foreign exchange. If that be so then every person who exports, should be entitled to total exemption, as is claimed by the petitioner. If not what rational classification can be urged between those who export without a bond and those who export under a bond. We can find none, as indeed there is no logical reason to deny one and grant in another exemption from payment of full duty. The entering of bond has no relevance for the purpose of eligibility to earn rebate or exemption for the payment of excise duty. This is another reason why we cannot accept Mr. Sorabjee's contention that the petitioner was entitled to a total exemption from payment of excise duty. It must be remembered that as between two interpretations, that which sustains the validity of the law must be preferred. In our view the amount of rebate which the petitioner is entitled to is only in terms of the notification issued on 17-5-1969.

16. Mr. Sorabjee then says that the notification of 17-5-1969 is issued under Rule 12 and makes no mention of Rule 13. We think this alleged distinction is of no substance. The notification for rebate has to be issued under Rule 12 because it is that rule which permits the Central Government to grant rebate of duty paid on excisable goods if exported outside India. Rule 13 is only procedural which permits a party who has exported under a bond to export goods without payment of duty. But how much duty a party will be liable to pay and how much it is entitled to rebate has to be determined by reference to Rule 12 and the notification issued therein. The only facility Rule 13 gives a party is to export without first payment of duty. The words "export without payment of duty" do not mean export without the liability to pay duty at all, as was contended by Mr. Sorabjee, Rule 13 is only a facility if export is under a bond. For the purpose of liability for payment of excise duty, the petitioner can only claim exemption to the extent mentioned in the notification on 17-5-1969. It cannot claim total exemption and to this extent the challenge by the petitioner must fail. We must, Therefore, reject the petitioner's challenge to the impugned orders of 30-11-1979 and 8-1-1980 by which the petitioner has been told that it can only clear the goods without payment of duty for export under the bond, only to the extent that duty has been exempted on the said goods, under the relevant exemption notification. The plea on this aspect by the petitioner, Therefore, fails.

17. The next challenge was to the demand of arrears from the period 17-5-1969 to 23-6-1979. Rule 10 provides for recovery of duty not paid and provides that the proper officer may within 6 months from the relevant date serve a notice on the person chargeable with duty which has not paid the duty requiring him to show cause why he should not pay the amount specified in the notice. Relevant date is defined in sub-rule 2(ii)(a) of Rule 10 to mean in the case of excisable goods on which duty has not been levied the date on which the duty was required to be paid under the Rules. It is common case between the parties that the relevant date would be the date on which goods were cleared for export from the warehouse. Any goods which were, Therefore, cleared for export from the warehouse prior to 30-4-1979 i.e. before 6 months from the date of issue of notice dated 31-10-1979 would evidently be hit by the bar of limitation under Rule 10 and proceedings to recover that amount would be unauthorised.

18. This position indeed could not be seriously challenged by Mr. Chandrashekharan the learned counsel for the respondents. The petitioner is, Therefore, entitled to the writ of mandamus directing the respondents not to take any steps to recover any duty which ought to have been paid under the Rules prior to 30-4-1979. We may however, make it clear that our decision with regard to the arrears will not prevent the proceedings which may have been started or may be started by the respondents with regard to the bonds which had already been furnished by the petitioner. As a matter of fact in the writ petition it has been mentioned that bonds referred to at items 1 to 23 had been discharged but proceedings for the discharge of bonds referred to in items 24 and 25 are pending. Our order does not in any way prevent any proceedings

being taken or continued independently with regard to the bonds either of item 24 or 25 of any other pending bond. All that we have directed is that apart from the claims under bonds (with which we are not concerned) arrears can only be asked for within the period specified in Rule 10. As for the duty which was required to be paid subsequent to 30-4-1979 is concerned the notice was admittedly within 6 months from the relevant date and the petitioner can have no grievance, Therefore, with regard to the show cause notice with reference to the demand for payment of duty for the period from 1-5-1979 onwards.

19. Mr. Sorabjee has also raised an additional challenge to the impugned notice dated 31-10-1979 on the ground that the show cause did not specify the amount which the petitioners are required to pay. A reference to the impugned show cause will show that the petitioner has been told to show cause why it should not be required to pay the duties for the period between 17-5-1969 to 23-6-1979. The amount is the differential duty between the Central Excise duty livable under Tariff item 27 and the amount of Central Excise duty relatable in terms of notification of 17-5-1969. Mr. Sorabjee says that this does not satisfy the requirement of Rule 10 which requires the notice to mention a definite amount. According to the counsel the absence of specification of the amount makes the notice bad and he refers us to 1980 ELT 121 J.B. Printing Inks Ltd. v. Union of India & others. In that case a notice issued under Rule 10 called upon the petitioner to pay duty for the period 7-1-1972 onwards. This was held not to be in compliance with Rule 10. We do not think that this authority can be of any assistance to the petitioner. The first reason is that in that case the show cause only called upon the petitioner to pay duty for the period 7-1-1972 onwards. In the present case though the exact amount in terms of Rupees and Paisas is not specified the specification is broadly done by pointing out that the duty payable is differential between the duty livable under Tariff item 27 and the amount of Excise Duty rebatable in terms of notification of 17-5-1969. Though it would have been certainly better if the exact amount was specified, it cannot be said that the petitioner cannot know as to how much duty is being demanded or in what manner to calculate the duty demanded of it. That apart even if we hold that the impugned show cause did not comply with Rule 10 in all particulars meticulously it does not mean that the show cause notice will become void. We cannot read the requirements of Rule 10 to specify the amount to mean that if the specified amount is not mentioned in the show cause notice the same will become void as Lentin, J. of Bombay High Court has purported to hold. In our opinion to give such strict, and we say so with respect, uncalled for construction to the requirement of specification of the amount in the show cause under Rule 10 is neither warranted by any principles of law or any sound rule of interpretation. The whole purpose of the show cause is to indicate the amount that is demanded of the petitioner. If instead of mentioning the amount the show cause indicates the difference between the duty demanded and the duty not paid that would be sufficient compliance. Even if there was a total silence to specify any amount all that this would mean would be that the petitioner would be

entitled to ask the respondents to indicate the specified amount to the petitioner and then to give his reply to it. But that would not mean that the notice per se would become illegal. The requirements of specifying the amount is a salutary one and must in all cases be followed but the absence of it would not make the notice bad. We feel that sometimes the broad maxim that penal provision should be strictly construed against the department and if any concession is to be made it must be made in favor of the citizen is literally construed as an effort at finding any technical flaw to help a person from avoiding to pay the duties and taxes livable under the provisions of law. We cannot accept as sound law that a fiscal provision has to be construed against the department and in favor of citizens on any supposed reason of technicality and strict construction. It must be remembered that it is only when there is some equivocation or ambiguity about a word or provision that the rule of strict construction or narrow construction in favor of the subject is to be applied but if there is no ambiguity and the act or omission falls clearly within the mischief of statute then the construction of penal statute will not differ from that of any other, see *Maharaja Book Depot Vs. State of Gujarat*, . The Rule that statutes imposing criminal or other penalties should be construed narrowly in favor of the person proceeded against was more rigorously applied in former times when the number of capital offences was still very large, when it was still punishable with death to cut down a cherry-tree in an orchard or to be seen for a month in the company of gypsies see *Interpretation of Statutes by Maxwell* page 238 12th Ed. There was obvious sense in giving a strict construction to penal statute and in requiring the fulfillment to the letter of statutory condition precedent to the infliction of punishment and insisting on the strict observance of technical provision concerning criminal procedure and jurisdiction page 240. This rule of interpretation of strict construction was later on extended in England to even statutes which it was said to encroach on the rights of the subject, whether as regards person or property so that they would also be subject to strict construction like a penal act. The next stage was that the statute which imposes pecuniary burden were also made subject to the same rule of strict construction and that is why the English Court in interpreting the taxing act stated, "There is no room for any intendment. There is no equity about a tax, ... but this strictness of interpretation may not always ensure to the subject's benefit, for "if the person sought to be taxes comes within the letter of the law he must be taxed, however, great the hardship may appear to the judicial mind to be. "It obviously the original reason for the growth of the rule, to mitigate the extension of capital felonies says *Livingstone Hall*, "no longer applies to all penal statutes, if indeed it was ever of such widespread application; this has often been recognised, in (Unites States) where the rule has been abrogated, and where this argument is still made, it has been limited to few statutes carrying punishments believed by the courts to be disproportionately severe as compared with acts sought to be punished, "*Livingstone Hall - Strict and Liberal Construction of Penal Statutes*, *Harvard Law Review* (1934-35) p. 765. "Although the common distinction," as *Pollock C.B.* said in *Nicholson V. Fields*, "taken between penal

Acts and remedial Acts, that the former are to be construed strictly and the others, are to be construed liberally, is not a distinction, perhaps, that ought to be erased from the mind of a judge, yet the distinction now means little more than that penal provisions, like all others, are to be fairly construed according to the legislative intent as expressed in the enactment, the courts refusing on the one hand to extend the punishment to cases which are not clearly embraced in them, and on the other equally refusing by any mere verbal nicety, forced construction, nor equitable interpretation to exonerate parties plainly within their scope. See Carries on Statute Law 6th Edition page 531. It is thus not, Therefore, correct to seek to equate the strict construction principle applicable to the penal statute which imposes punishment and imprisonment in the same identical way as to those statutes imposing taxes and duties. That a different approach may be necessary in the context of our situation of the requirement of social justice was recognised by the Supreme Court in Commissioner of Income Tax, Andhra Pradesh Vs. T.N. Aravinda Reddy, where Krishna Iyer, J. speaking for the court said, "A passing reference to avoidance and evasion of tax was made at the bar, a dubious refinement of a dated legal culture sanctified, though by judicial dicta. The court is not the mint of virtue and one day in our welfare state geared to Social justice, this clear concept of avoidance against "evasion" may have to be exposed. Enough unto the day is the evil thereof. That administration of tax law must also recognise the demand of social justice, was emphasised by P. N. Bhagwati, J. in AIR 1977 S.C. 1182.

20. In welfare state like ours there is no question of having a tilt in favor of interpretation which will assist in avoiding to pay the taxes and duties which have been levied. Either the provision of law is clear that a citizen is not liable to pay that particular duty or tax, in which case of course he would be entitled to exemption; but the principle of strict interpretation being carried to the extent of holding as if there was something inherently bad or penal in the imposition of taxes and duties so that on small technicality the conclusion should be inferred that a citizen is entitled to avoid payment of tax, cannot be accepted by us as laying down a sound rule of interpretation. We are also of the view that the rule of strict construction applicable to penal statute like those provisions which imposed a sentence of fine or imprisonment for any alleged branch cannot in all fairness be applied in the same manner for interpreting the laws like imposition of excise or tax. To equate the law for imposition of tax or excise duty as equivalent to penal provision is to hark back to the exploded laissez faire theory of 19th century and to refuse to accept the compulsions of 20th century Welfare state which necessarily postulate the imposition of taxes and duties of excise and custom for carrying out its multifarious social welfare activities. We, Therefore, cannot accept that J.B.T. Printing Ink Ltd. is laying down the correct law.

21. As a result the petition is disposed of as above. The respondents will now proceed to decide the matter in the light of this judgment and observations made herein. As there has been partial success there will be no order as to costs.