

(1992) 10 BOM CK 0061
In the Bombay High Court
Case No : Writ Petition No. 1210 of 1987

Kashi Conductors

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 19-10-1992

Acts Referred:

Customs Act, 1962 — Section 25, 25(1)

Citation : (1993) ECR 129 : (1993) 63 ELT 42

Hon'ble Judges : S.P. Kurdukar, J;A.V. Savant, J

Bench : Division Bench

Advocate : Shri K.R. Bulchandani, instructed by M/s Kamal and Co, for the Appellant; Shri Manoj Sanklecha, Shri H.V. Mehta, Shri K.C. Sidhwa and Shri U.J. Makhija, instructed by M/s. Mulla and Mulla, for the Respondent

Judgement

A.V. Savant, J.—The petitioners seek to quash the impugned action of the respondents in endorsing the Bill of Entry, Exh. D., to the petition, to the effect that the petitioners are liable to pay the import duty on the goods imported by them despite the fact that the imports were made under the Special Imprest Licence issued under the Duty Exemption Scheme. The petitioners, therefore, seek a direction restraining the respondents from demanding or recovering from the petitioners any duty of customs or additional duty in respect of the clearance of the goods imported against the said Special Imprest Licence which is at Exh. C to the petition.

2. The first petitioner is a firm of which the second petitioner is a partner. The first respondent is the Union of India. Respondent Nos. 2 and 3 represent the Customs Department whereas respondents Nos. 4 and 5 represent the Chief Controller of Imports and Exports and the 6th respondent is the Bombay Port Trust. The petitioners claim to be the registered manufacturers, who are exporters, engaged inter alia in the manufacture of ACSR conductors which are used in the distribution of electricity by the State Electricity Boards. For this purpose, the petitioners import Aluminium Wire Rods and High Carbon Steel Wire

Rods which are used as raw material in the petitioners' factory for the manufacture of the said ACSR conductors. The petitioners supply the said A.C.S.R. conductors to various projects in India including those aided by the International Bank for Reconstruction and Development (for short, "IBRD") and the International Development Association (for short, IDA) which sponsor some State Aided Projects. There is no controversy before us that in the event of the petitioners supplying in A.C.S.R. conductors to the State Aided Projects sponsored by IBRD and IDA, such supplies are treated as "demand exports" within the meaning of the relevant para of the import policy for the relevant period to which we will make a reference later.

3. There is no dispute before us about the following facts that -

(i) the petitioners obtained the Special Imprest Licence under the Duty Exemption Scheme on September 20, 1985. This licence is at Exh. C to the petition.

(ii) between November 1985 to March 1986 the petitioners supplied their products to the State Aided Projects which supplies are, therefore, to be treated as "deemed exports", and

(iii) the relevant imports by way of replenishment have been effected on 12-03-1987.

4. On 10th September 1982, the Ministry of Finance issued Notification No. 210 of 1982 in exercise of its powers conferred under sub-section (1) of Section 25 of the Customs Act, 1962. The Government thereby exempted the raw materials and components required for manufacture of goods to be supplied to IDA or IBRD for bilateral or multi-lateral aided projects or ONGC or Oil India or Gas Authority of India Ltd., when imported into India, from the whole of the duty of customs leviable thereon which is specified in the first schedule to the Customs Tariff Act, 1975 and the whole of the additional duty leviable thereon u/s 3 of the second mentioned Act subject to certain conditions. On 18-09-1982 a Public Notice No. 46-ITC(PN)/82, Exh. A to the Petition, was issued in respect of the "supplies made in India against IBRD, IDA aided projects and projects financed by the multilateral or bilateral external assistances - exemption of imported inputs from customs duty". The first part of the said public notice at Exh. A reads as under :

"Supplies made in India against IBRD/IDA aided projects financed by the multilateral or bilateral external assistance, are treated as "deemed exports" for the purpose of import replenishment, as laid down in paras 131(b) and (f) of import and Export Policy, 1982-83 (Vol. I), published under the Ministry of Commerce Public Notice No. 16-ITC(PN)/82 dated the 5th April, 1982."

The petitioner's contention, very briefly, is that the Import Export Policy AM 1982-83 para 128 provides for import replenishment to registered exporters in respect of the material required in the manufacture of products already exported.

According to the petitioners, they have made the necessary exports between November 1985 to March 1986 to the State Aided Projects. Hence, the imports made on 12-03-1987 under the Special Imprest Licence issued under the Duty Exemption Scheme were exempted from the payment of customs duty. The petitioners also rely upon Notification No. 235 of 1987 - Customs issued on 5th June 1987 which was published in the gazette dated 15th June 1987. This Notification No. 235 is at Exh. 1 to the Affidavit-in-Reply filed by the Asstt. Collector of Customs and it further amends Notification No. 210 of 1982 which is at Exh. B to the Petition. The relevant part of the amendment reads as under :

"(1)..... In the opening portion after the words "project" the following shall be inserted, namely "or for replenishment of raw material and components used in the manufacture of such goods already so supplied."

5. The petitioners have further placed reliance on the clarification issued by the licensing authority on 11-02-1987 which is at Exh. E to the Petition which says that some of the registered exporters were issued Special Imprest Licence under duty exemption scheme under Appendix 19 of AM 1985-88 Policy Book. In some cases, export obligation had been fulfilled before the imports taking place against particular licence and, therefore, they should be allowed to import goods without executing L.U.T. Bank Guarantee. Since the registered exporters had represented to the licensing authority, viz. the office of the Deputy Chief Controller of Import and Export, Kanpur, that they were facing difficulties with the Asstt. Collector of Customs, Bombay, it was pointed out to the later that in cases where the export obligation was fulfilled before importation, the licences were entitled for import of goods mentioned in the licence duty free. The Asstt. Collector of Customs, Bombay, was, therefore, requested to clear their goods.

6. It may be pointed out that on the Bill of Entry, Exh. "D", being filed, a query memo was issued and the petitioners replied the said query memo and pointed out that they had exported the goods in full and the Duty Exemption Entitlement Certificate Book (for short, "DEEC Book") had been duly endorsed by the concerned project officer. The petitioners, therefore, contended that they were entitled to the benefit of Notification No. 210, dated 10-09-1982 at Exh. B and the goods may, therefore, be released duty free. However, since the goods were not so released, the petitioners approached this Court and have prayed for the reliefs mentioned above.

7. Shri R. V. Pillai, Asstt. Collector of Customs has filed the Affidavit-in-Reply and has contended that the petitioners are not entitled to claim the benefit of Notification No. 210 of 1982, Exh. B to the petition, inasmuch as the petitioners had already exported the goods and were seeking to import raw materials and components in the nature of replenishment. He has pointed out that on the date of import viz. on 12-3-1987, Notification No. 210 of 1982 as it stood without the amendment which came into force with effect from 15-6-1987, contemplated prior imports and subsequent exports. It was only after the issuance of the amending Notification No. 235 of 1987 which came into force with effect from

15-06-1987 that Notification No. 210 of 1982 stood amended and permitted replenishment of imports in respect of prior exports. He has contended that the wording of the Notification No. 210 of 1982 at Exh. B was very clear inasmuch as, it applied only in respect of the import made in advance of fulfilment of export obligation. The petitioners have filed a rejoinder and have contended that what the amending Notification No. 235 of 1987 does is only to clarify the position which was implicit and that even the imports made between 1982 and 1987 for the purpose of replenishment of raw materials being used in prior exports were cleared without payment of customs duty. The petitioners have contended in their rejoinder that if the very object of the replenishment scheme was to permit the import of raw material which was used in the manufacture of certain products which were already exported, it would be unreasonable to deny to the manufacturers and exporters like the petitioners the benefit of the Notification at Exh. B. According to the petitioners, they could not be placed in a disadvantageous position as compared to those who wanted to get the benefit of the replenishment scheme by first importing and thereafter export.

8. We have heard Shri Bulchandani for the petitioners, Shri Sanklecha for respondent Nos. 1 to 5 and Shri Makhija for respondent No. 6. The contentions of Shri Bulchandani, briefly stated, are that the Import Export Policy AM 1982-83 dealing with the registered exporters in Chapter XVII in Para 128 emphasises the object to provide to the registered exporters by way of import replenishment the materials (all or some) required for manufacture of the products exported. Para 131 dealing with the eligibility deals with the "deemed exports" and the material clauses (b) and (f) read as under :

"(b) Supplies made to IBRD/IDA aided projects in India where such supplies are made under the procedure of international competitive bidding; (f) Supplies made in India to projects financed by multilateral or bilateral external assistance, either under international competitive bidding or under limited tender required under the procedure governing multilateral/bilateral assistance and allowing tendering to parties from both India and abroad (This will apply to supplies made on or after 11th December 1981)."

Shri Bulchandani then invited our attention to the relevant provisions appearing in the Import Policy AM 1985-88 Chapter XIV dealing with the import policy for registered exporters. Para 188 of AM 1985-88 is similar to Para 128 of AM 1982-83 and Para 190 of AM 1985-88 is similar to Para 131 of AM 1982-83. Para 242 appearing in Chapter XVI of AM 1985-88 deals with the duty exemption scheme which reads as under :

"242. Duty Exemption Scheme also known as Advance Licensing Scheme was initially introduced in the Import Policy for 1976-77. The details of this scheme, as amended with the procedures for issue of different categories of Advanced Licences thereunder, are given in appendix 19 of this Policy".

He then invited our attention to Appendix 19 Chapter XVI of Policy AM 1985-88

dealing with the duty exemption scheme. The scope of the scheme has been mentioned in the following words :

"The three categories of licences covered by this Scheme are (i) Advance Licence, (ii) Advance licence for supply of Intermediate Products and (iii) Special Imprest Licence".

We are here concerned with the Special Imprest Licence. Para 2 deals with the purpose and scope of the three categories referred to above and sub-para (3) deals with Special Imprest Licence as under :

(3) "Special Imprest Licences are issued to registered exporters for the deemed exports covered by paras 190(b), (f) and (i) of this Policy for import of raw materials and components required for the manufacture of goods to be supplied to projects in India against contracts entered into with IBRD/IDA aided projects, projects financed by multilateral and bilateral external assistance and ONGC/OIL/GAIL vide Deptt. of Revenue Notification in Annexure III to this Appendix".

Dealing with the export obligation, sub-para (4) of Para 24 in the said Appendix 19 says that "Where the export obligation prescribed on a licence under this Scheme has been fulfilled in part before import of the exempt material involved, the bond/legal agreement will be correspondingly reduced in value so that it represents only the unfulfilled part of the export obligation/Customs duty exemption. If the export obligation prescribed has been not in full before any import takes place, execution of a bond/legal agreement will not be necessary. For these purposes, however, the Advance licence holder will have to produce to the licensing authority concerned prescribed export documents to prove such partial or full fulfillment of export obligation alongwith the DEECs showing Customs audited entries." Shri Bulchandani, therefore, invited our attention to the endorsement made in DEECs, Book which read as under :

"Export obligation fulfilled. No. Bank Guarantee/legal agreement in terms of para 24(4) of Appendix 19 of Import Export Policy of 1985-88 is required".

Sd/- 18-8-88"

He further invited our attention to the fact that the project officer of the U.P. State Electricity Board had certified the supply of the products to the U.P. State Electricity Board which amounted to "deemed exports" according to the policy mentioned above. There a letter dated 21-07-1988 addressed by the petitioners to the Asstt. Collector of Customs and para 2 of the said letter reads as under :

"Regarding fulfillment of Export obligation we are to inform you that we have supplied 911.842 Kms. of ACSR..... Conductor to UPSEB in 5 months (Nov. 85 to March 86) against their said deemed export order, i.e. before the stipulated period of 9 months. Thus we have fulfilled export obligation. Photocopy of DEEC book to this regard is being enclosed for your information please. Any other information required may please be informed".

9. Referring the above material Shri Bulchandani contended that there was no controversy that the DEEC Book was duly endorsed by the Project Officer in token of the petitioners having supplied their products to the U.P. State Electricity Board which, therefore, amounted to "deemed exports". These exports were made, as stated earlier, between November 1985 to March 1986. The import licence was issued earlier on September 20, 1985. In this view of the matter, the petitioners contend that the imports made by them on 12-03-1987 were entitled to the benefit of the duty exemption scheme in replenishment of the imports in respect of the exempted material which was utilised in manufacture of the goods supplied which supplies amounted to deemed exports.

10. Shri Bulchandani then contended that there is a clear-cut distinction between the duties of the licensing authorities and those of the customs authorities. Relying upon the decision of this Court in the case of Lokash Chemical Works Vs. M.S. Mehta, Collector of Customs (Preventive) Bombay and others, he contended that it was not open to the customs authorities to interpret the licensing policy. He then contended that the notification, Exh. B, issued on 10-09-1982, as amended by the clarification issued on 05-06-1987, was clearly meant to grant the benefit of Duty Exemption Scheme to person like the petitioners who had earlier exported their products to the State Aided Projects and were, therefore, entitled to replenishment of their imports in respect of the exempted raw material. He contended that in fact from 1982 to 1987 the customs authorities were permitting such duty free clearance, under the duty exemption scheme in respect of the replenishment of imports of the exempted material. Since, however, some doubts were raised by the customs department, it was felt necessary to issue a clarification which was done by issuing Notification No. 235 of 1987. He therefore, contended that the amending Notification No. 235 of 1987 was really in the nature of a clarification. He then invited our attention to certain decisions on the proposition that in case there were any doubts in respect of the grant of benefit of the exemption under the said notification Exh. B, No. 210 of 1982 as amended by Notification No. 235 of 1987, the benefit must go to the assessee. He contended that though it was a settled legal position that the taxing statute has to be construed strictly, in case of doubt, the benefit has to be given to the assessee. In this behalf he has invited our attention to the following three decisions.

(i) Hansraj Gordhandas Vs. H.H. Dave, Assistant Collector of Central Excise and Customs, Surat and Others, . The relevant observations are in para 5 at page 759.

"There is no further requirement under the two notifications that the cotton fabrics must be produced by the Co-operative Society on the powerlooms "for itself". It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax payer is within the plain terms of the exemption it cannot be denied its benefit by

calling in aid any supposed intention of the exempting authority."

(ii) Commissioner of Income Tax, U.P., Lucknow Vs. J.K. Hosiery Factory, Kanpur, . The relevant observations are at page 90 as under :

"Having regard P1 to the scheme of the relevant provisions and in view of the provisions of Section 10(2)(vi) read with Section 24(1) and Section 24(2) of the 1922 Act, we are of the opinion that the deduction of the unabsorbed depreciation should have been allowed. It is necessary to bear in mind that in both the years the firm continued; in one year it was "unregistered", in the next year it got itself transferred as "registered" but its identity was not lost. The firm was one.

In any event, as has been mentioned, in case of doubt, the assessee is entitled to an interpretation which is favorable to him, though we are of the opinion that in the instant case there is no scope for any doubt."

(iii) Union of India and others Vs. Kanunga Industries, . The relevant observations are in para 3 at page 2192 of the report as under :

"Mr. Krishnamurthy Iyer, however, contended that since in the earlier entry the words "stainless steel and sheets/plates/circles" were mentioned, it should be held that the words "stainless steel" included every form of it including the strips. This argument wants us to take into account only the words "stainless steel" and to ignore the words "and sheets/plates/circles". If the entry contained only the words "stainless steel" it was possible to argue that stainless steel in any form whether strips, sheets, plates, circles, ingots, rods etc. was included in it and hence prohibited. But the entry proceeded to mention the specific forms of stainless steel. It would mean that stainless steel only in its original form whatever it may be and its specific forms enumerated therein were along banned. It may also mean that the conjunctive "and" after the words "stainless steel" had crept in the entry inadvertently. Such a reading of the entry would be legitimate taking into account its history referred to earlier. We have pointed out that in 1967 the relevant entry was "stainless steel of any specifications" whereas in 1968 it was "stainless steel sheets/plates/strips/circles of any specifications." The erratum only brought the situation to the 1968 position. It is also for this reason that we cannot accept the contention that the erratum only made clear or explicit what was implicit in the entry earlier. This is apart from the settled legal position that taxation statutes have to be construed strictly, and the benefit of doubt, if any, has to be given to the assessee."

11. In short therefore, the main submission of Shri Bulchandani is that in accordance with the import-export policy AM 1985-88 read along with the provisions of Appendix 19 Chapter XVI dealing with the Duty Exemption Scheme in respect of the replenishment of imports of exempt material utilised in the manufacture of products which are deemed to have been exported, the petitioners are entitled to duty free import in accordance with the Notification No. 210 of 1982 Ex. B dated 10th September 1982 as amended by Notification No.

235 of 1987. He, therefore, contends that the customs authorities have acted in contravention of the said provisions of import-export policy AM 1985-88 and the notification Ex. B issued u/s 25 of the Customs Act, 1962 in refusing duty free clearance in respect of the import of exempt material on 12th March 1987 under the Special Imprest Licence issued under the Duty Exemption Scheme on September 20, 1985.

12. As against this, the main contention of Shri Sanklecha appearing for respondent Nos. 1 to 5 is that, the Import Policy AM 1982-83 and the Public Notice No. 46-ITC(PN)/82, dated 18th September, 1982, Exh. A to the petition, allow the facility of duty exemption only in respect of advance imports made under the Special Imprest Licence. According to him, the licence entitles the importer, like the petitioners in this case, to exemption only in respect of those goods which are supplied after the date of clearance of imported raw materials through the customs. He contends that there has to be prior import followed by a subsequent export; may be a "deemed export" by way of supplies to State Aided Projects. But the persons like the petitioners who have earlier discharged the export obligation will not be entitled to the benefit of the duty exemption scheme in respect of the import of exempt material even under the Special Imprest Licence, as the one issued to the petitioners in the present case.

13. Secondly, Shri Sanklecha contended that Notification No. 210/82, Exh. B dated 10th September, 1982 has been issued in exercise of the powers under sub-section (1) of Section 25 of the Customs Act. It is a statutory instrument. It would, therefore, not be permissible to read into the said statutory instrument anything beyond the plain words thereof and the contents of the Public Notice No. 46-ITC(PN)/82 Exh. A issued on the 18th September 1982 cannot be pressed into service for understanding the true scope and meaning of the said statutory instrument, Exh. B dated 10th September 1982. In this behalf, he placed reliance on the decision of the Supreme Court in the case of Andhra Industrial Works Vs. Chief Controller of Imports and Others, . The relevant observations appear in para 12 of the judgment at page 1542 of the report as under :

"12. Herein, it is not contended that the Imports and Exports (Control) Act, 1947 or any Order or rule made thereunder is ultra vires. Nor is the validity of the Import Control Policy Statement (for the period April-March 1969) known as Red Book impeached. Indeed, this policy statement is the sheet-anchor of the petitioners' claim. Such a policy statement, as distinguished from an Import or Export Control Order issued under Sec. 3 of the said Act, is not a statutory document. No person can merely on the basis of such a statement claim a right of the grant of an import licence, enforceable at law. Moreover, such a policy can be changed, rescinded or altered by mere administrative orders or executive instructions issued at any time."

14. Shri Sanklecha then contended that if there was a conflict between a statutory instrument like the Notification Ex. B, and the Public Notice Exh. A, the

Notification Ex. B issued u/s 25 of the Customs Act must prevail. In support of this submission, he sought to rely upon the decision of the Supreme Court in the case of State of Madhya Pradesh and another Vs. G.S. Dall and Flour Mills and Others, . There can be no doubt about this proposition. But, in our view, this is not a case of any conflict between a statutory instrument or the notification Exh. B and the public notice Exh. A and hence, the ratio of the said Supreme Court decision can have no application here.

15. Relying upon the very cryptic Affidavit-in-Reply filed by the Assistant Collector of Customs, Shri Sanklecha then contended that if at all between 1982 and 1987 clearance of similar imports under the Special Imprest Licence issued under the Duty Exemption Scheme was permitted without the payment of import duty, that was obviously a mistake and the fact that a benefit was wrongly earned in the past cannot be cited as a precedent. He placed reliance on the observations of the Supreme Court in the case of Coromandel Fertilizers Ltd. Vs. Union of India (UOI) and Others, . The relevant observations are to be found in para 12, at page 1984 of the report as under :

"12. Mr. Setalvad made a grievance that the authorities concerned had allowed the benefit of the Notification under similar circumstances to a rival company. If the grievance of the appellant is true, the appellant may no doubt have reasons to feel sore about it. We have, however, to point out that the grievance of the appellant even if it is well founded, does not entitle the appellant to claim the benefit of the notification. A wrong decision in favour of any particular party does not entitle any other party to claim the benefit on the basis of the wrong decision. We are, therefore, clearly of the opinion that the fertilizer manufactured by the appellant in respect of which claim for exemption under the notification is made is not a mixed fertilizer within the meaning and scope of the notification and we have no hesitation in rejecting the case of the appellant, expressing our agreement with the reasons stated in the judgment of the High Court."

There can be no controversy about this submission but suffice it to say that, Shri Bulchandani is not basing his arguments merely upon this circumstance that between 1982 and 1987 the authorities have permitted duty free clearance to the petitioners under the Special Imprest Licence issued under the Duty Exemption Scheme in respect of import of exempt material utilised in the manufacture of products deemed to have been exported.

16. Having considered the rival submissions, in the light of the decisions referred to above, it is not possible for us to accept the main contention of Shri Sanklecha and we are inclined to agree with the main contention raised by Shri Bulchandani. There is no controversy that the petitioners have supplied the products to the State Aided Project and have, therefore, effected deemed exports in accordance with para 131 of Policy AM 82-83 corresponding to para 190 of the Policy AM 85-88 applicable to registered exporters. On a perusal of Appendix 19, Chapter XVI of policy AM 85-88 in respects of Duty Exemption Scheme, we are of the view that Special Imprest Licences are issued to registered exporters for

deemed exports covered by paras 190(b) and (f) of the Import Policy AM 85-88 for the import of raw materials and components required for the manufacture of goods supplied to projects in India against contracts entered into with IBRD/IDA aided projects. In the present case, the petitioners have supplied their product to the State Aided Project viz. the U.P. State Electricity Board and have, therefore, effected deemed exports between November 1985 and March 1986 after they obtained the Special Imprest Licence under the Duty Exemption Scheme on September 20, 1985. Sub-para (4) of para 24 of Appendix 19 provides for an export obligation prescribed under the licence issued under the Duty Exemption Scheme being fulfilled before the import of the exempt material involved in the manufacture of the products. Para 242 under Chapter XVI of the policy AM 85-88 provides for the Duty Exemption Scheme, details whereof are given in Appendix 19 to the policy AM 85-88. The licensing authorities have undoubtedly issued the Special Imprest Licence under the Duty Exemption Scheme in accordance with the Imports & Exports (Control) Act, 1947. They have not found anything wrong with the issuance of the licence, Exh. "C", nor have they exercised their powers for the cancellation of the said licence at Exh. C. It is then difficult to appreciate how the Customs authorities can insist on payment of import duty despite the Special Imprest Licence Exh. C being issued under the Duty Exemption Scheme. It is no doubt contended by Shri Sanklecha that if a person were to first import for the purpose of subsequent export, he would be entitled to claim the benefit of Notification No. 210/82, Exh. "B" dated 10th September 1982. He, however, contends that since the petitioners have first effected deemed exports to the State Aided Project, they cannot be subsequently permitted to import even under the Special Imprest licence issued under the Duty Exemption Scheme. It is not possible for us to accept his contention. In the facts of the present case, we find that the petitioners have made out case for claiming the benefit of the Notification No. 210/82 Ex. B dated 10th September 1982 as amended read with Public Notice No. 46-ITC(PN)/82 Exh. A dated 18th September 1982. The amendment, in our view, only made the position explicit. It is in the nature of a clarification in the facts of the present case. It is not necessary for us to express any opinion on the larger question as to whether the customs authorities can act contrary to the directions issued by the licensing authority and/or the clarification Ex. E issued by the licensing authority in this case. Suffice it to say that the clarification dated 11th February, 1987 Ex. E appears to have been issued by the Asstt. Chief Controller of Imports & Exports for the Deputy Chief Controller of Imports & Exports and his legal authority to issue such a clarification appears to us to be doubtful. Shri Bulchandani, therefore, did not pursue this point any further. It is, therefore, not necessary for us to express any opinion on the contention advanced by Shri Bulchandani on the basis of the judgment of this Court in Lokash Chemical Works Vs. M.S. Mehta, Collector of Customs (Preventive) Bombay and others, . We are of the view that in the facts and circumstances of this case, the petitioners would be entitled to import the exempt material under the Special Imprest Licence issued to them under the Duty Exemption Scheme. If there were any doubts as regards the interpretation

of the provisions of the said Notification. Exh. "B", dated 10th September 1982, as amended by Notification No. 235 of 1987, the benefit must go to the assessee as observed by the Supreme Court in the case of Union of India and others Vs. Kanunga Industries, . We have extracted earlier above Para 3 of the said Judgment appearing at Page 2192 of the Report.

17. Shri Sanklecha's contention in respect of Exh. B being a statutory instrument and Exh. A being not such a statutory instrument may be correct, but we do not find any conflict between the statutory instrument, Exh. B and the public notice, Exh. A. The ratio of the Supreme Court decision in the case of Andhra Industrial Works Vs. Chief Controller of Imports and Others, , with respect, therefore, can have no application in the facts of this case. There is also no question of benefit of a wrong precedent being claimed by the petitioners and hence, in our view, the ratio of the Supreme Court decision in the case of Coromandel Fertilizers Ltd. Vs. Union of India (UOI) and Others, can have no application to the facts of this case.

18. In the view that we are taking, the petitioners are entitled to succeed. The impugned endorsement on the reverse of the Bill of Entry at Exh. "D" is hereby cancelled. The petitioners are held entitled to import the exempted raw material for replenishment of their imports under the Special Imprest Licence at Exh. "C" issued under the Duty Exemption Scheme without payment of the import duty. Rule will have to be made absolute in terms of prayers (a), (c) and (d). Respondent Nos. 2 and 3 are, therefore, directed to issue the detention certificate from the date of the filing of the Bill of Entry for home consumption till the date of clearance of the goods on the Bill of Entry. The 6th Respondent Bombay Port Trust is directed to honour the said detention certificate in accordance with law.

19. Rule made absolute accordingly. There will, however, be no order as to costs.