
(1984) 12 MAD CK 0027
In the Madras High Court
Case No : W.A. No. 136 of 1981

M. Jamal Company

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-12-1984

Acts Referred:

Customs Act, 1962 — Section 11(2), 111, 12, 12(1), 13

Citation : (1985) 6 ECC 202 : (1985) 21 ELT 369

Hon'ble Judges : V. Ramaswami, J; David Annoussamy, J

Bench : Division Bench

Advocate : Habibulla Badsha, for the Appellant; R. Thiagarajan, Senior Central Govt. Standing Counsel, for the Respondent

Judgement

David Annoussamy, J.—This is an appeal directed against the order of dismissal by a Single Judge of this Court, in W.P. No. 3422 of 1979.

2. As per the First Schedule, Section 15.07 of the Customs Tariff Act (51 of 1975), palmolein is subject to standard rate of duty of 60%. By

Notification No. 129, dated 1-7-1977, the Government of India exempted palmolein oil from the whole of the Customs duty leviable thereon as

specified in the said First Schedule to Act 51 of 1975. While so, the appellant imported two consignments of palmolein which came to India by

vessel s.s. Nikoley Somashke. The vessel came to Madras first on 22-2-1979 and was not permitted to discharge the cargo. It went to Kakinada,

left that place on 27-2-1979 and came back to Madras on 2-3-1979. The entry inward was granted on the same date, viz. 2-3-1979, and the

goods were unloaded; the bill of entry was filed by the appellant on 13-3-1979. In the meanwhile two notifications were issued by the Government

of India. As per Notification No. 42, dated 1-3-1979, for palmolein and some other oils exemption was granted in respect of (a) so much of that portion of the duty of customs leviable thereon which is specified in the First Schedule as in excess of 12.5% ad valorem and (b) the whole of the additional duty leviable thereon under S. 3 of the Customs Tariff Act. On the same date, 1-3-1979 another notification bearing number 63 was issued as per which Notification No. 129, dated 1-7-1977 referred to above granting entire exemption to palmolein oil was rescinded along with few other notifications.

3. When the appellant wanted to clear the goods without payment of any tax by virtue of the exemption granted by Notification No. 129, dated 1-7-1977, the Customs Department insisted that the appellant should pay duty at 12.5% as per Notification No. 42, dated 1-3-1979, which had come into force. The appellant paid the duty under protest and filed petitions for refund on 17-3-1979 and 10-4-1979, respectively for each of the consignments. The Assistant Collector of Customs (Refund section) by orders dated 20-4-1979 and 17-5-1979, rejected both the petitions as inadmissible. The reason given was that the bill of entry was presented in both the cases on 13-3-1979, by which date the Notification No. 42, dated 1-3-1979 had come into force and as per the Notification Palmolein remained exempted only from countervailing duty but was subject to Customs Duty at 12.5%.

4. Against these orders the appellant filed W.P. No. 3422 of 1979 before this Court in which he prayed for quashing the orders of the Assistant Collector of Customs along with the Notification No. 42, dated 1-3-1979, issued by the Government of India. He urged two points in the writ petition. Firstly, it was contended that the Customs duty was not leviable at the time when the ship arrived at the territorial waters in India, which in this case, happened as early as on 22-2-1979, and that the notification dated 1-3-1979 was no applicable. The second contention was that S. 25 of the Customs Act, 1962, cannot be made use of for issuing notification imposing duty. Both these grounds were rejected by the Single Judge of this Court in his judgment dated 4-8-1980. He held that for the levy of customs duty the relevant date was the date of presentation of the bill of entry which in this case was 13-3-1979 on which date the Notification No. 42,

dated 1-3-1979 had come into force. As far as the second contention was concerned, he held that the cancellation by Notification No. 63, dated 1-3-1979 of the exemption granted under Notification No. 129, dated 1-7-1977, and the limitation of exemption to the fraction of the rates specified in the schedule by notification dated 1-3-1979 were in order, since the Government had the power to grant exemption under S. 25 wholly or partially. It is against this order that the present writ appeal is filed by the appellant.

5. The main point urged by the appellant is that when the vessel came to Madras first on 22-2-1979, palmolein was exempted from the whole of Customs duty, that the relevant date for ascertaining whether duty is to be levied or not is the date on which the vessel came of Madras first, that, therefore, no duty was leviable on account of the notification dated 1-3-1979, which came into force from that date only, it was pointed out that the vessel which could not discharge the cargo on 22-2-1979 went to Kakinada and came back to Madras on 2-3-1979, the date on which the entry inward was granted. Regarding the point whether the liability to duty is to be ascertained with reference to the date on which the vessel entered the territorial waters or the date on which the articles were actually unloaded there is a divergence among the decisions of Courts. In order to understand the controversy it is necessary to set out some provisions of the Customs Act, 1962, hereinafter referred to as the Act :-

Section 12 of the Act reads as follows :-

12(1) Except as 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, 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 2(27) reads thus :

2. In this Act, unless the context otherwise requires -

(27) "India" includes the territorial waters of India.

Section 15 reads as follows :-

15(1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force :-

(a) in the case of goods entered for home consumption u/s 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a warehouse u/s 68, on the date on which the goods are actually removed from the warehouse;

(c) in the case of any other goods, on the date of payment of duty;

Provided that, if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards.

(2) The provision of this section shall not apply to baggage and goods imported by post.

6. The leading decision in favour of the stand taken by the appellant is a Bench decision of the Bombay High Court in *Shawhney v. Sylvania and*

Laxman - 1975 Bom. L.R. 380, where the following principles were laid down :-

(1) Under S. 12(1) of the Customs Act, 1962, chargeability in respect of levy of customs duty arises when the goods are imported into India.

(2) By the combined effect of the definitions of the words "import" and "India" u/s 2(23) and 2(27) of the Customs Act, 1962, import takes place

when goods are brought into the territorial waters of India.

(3) There is a clear distinction between the concept of chargeability in respect of customs duty embodied in S. 12(1) of the Act and the concept of

assessment or quantification of the amount payable by way of customs duty, which is embodied in S. 15.

(4) If the goods are chargeable to duty or importation as per Section 12, the rate prevalent on the relevant date as per S. 15 of the Act will apply.

(5) There is nothing in the Customs Act, 1962, which indicates that the chargeability is postponed until a bill of entry is presented. Consequently, if

goods are not liable to duty as per S. 12 of the Act they could not be subjected to duty u/s 15 of the Act.

(6) The benefit of exemption available at the time the goods cross the territorial waters of India would not be affected even though the notification

granting exemption had ceased to have effect when the goods were assessed for duty on the basis of the principles embodied in S. 15 of the Act.

So, the primary and basic requirement of liability to duty is that goods should be dutiable on the date of importation, that is to say, on the date of entry within the territorial waters.

7. The above principle have been followed in several other decisions like *New India Industries v. Union of India*, (Single Judge) 1981 Tax L.R.

2763; *Sundaram Textiles Ltd., Madurai v. Asstt. Collector of Customs, Madras* (Single Judge) 1983 E.L.T. 909 and *Krishna Oil Cake Industries*

v. S. R. Patankar, Asstt. Collector of Customs, 1983 E.L.T. 2153. The decision in *Synthetic and Chemicals Ltd. v. S. C. Coutinho and others*,

1981 E.L.T. 414 has applied the same principle, but stressed in addition the point that the exemption on the date of importation should be total.

The above principle was applied in *New Chemi Industries Pvt. Ltd. v. Union of India*, 1981 E.L.T. 920. It was, in fact, held by a Single Judge that

if the goods were totally exempted on the date of their entry within the territorial waters the duty cannot be recovered merely because such total

exemption stands withdrawn on the date of clearance. But, if there was only partial exemption on the date of importation and no exemption on the

date of clearance, the goods would attract the full normal duty leviable as per Section 15 of Act. The rationale of this decision is that the goods

were dutiable as per Section 12 and that the quantification was to be made as per Section 15. In this manner this decision follows the principles

laid down in *Sylvania's* 1975 Bom. L.R. 380 case. But the decision in *All India Medical Corporation v. A. R. Almedia*, 1981 E.L.T. 929, by a

Single Judge of the Bombay High Court goes a step further. After observing that the concept of chargeability to duty and assessment of amount

payable are distinct, the learned Judge held that if no exemption notification was in force on the date of importation of goods into the territorial

water of India but in operation on the day the bill of entry was filed, the goods would still be eligible for benefit of exemption, whether such

exemption was total or partial. If the exemption was only partial the goods were liable to duty as per Section 12 and therefore, duty should be

levied as per the rate fixed by Section 15, as per the principles laid down and followed in the decisions referred to above. But in this case the

learned Judge departs from these principles his decision in saying that Section 15 imposes duty as in force on the date of filing of bill of entry but it

does not mean that it can ignore the exemption available on the date of import but not in force on the date of clearance. As per the decision

chargeability is over as soon as the goods are imported into the territorial waters of India, and such chargeability would also include the amount of

tax leviable so that the exemption whatever total or partial as it was on the date of the import ensures to the importer. It is thus seen that while all

the previous decisions attribute to Section 12 the rule of chargeability and to Section 15 the role of quantification this last decision completely

ignores Section 15.

8. But the principles laid down in *Sylvania's case*, 1975 Bom. L.R. 380, was not followed in all the subsequent decisions. There is an important

stream of decisions in which a contrary view has been taken. In *K. R. Ahmed Shah v. Addl. Collector of Customs, Madras*, 1981 E.L.T. 153, a

Single Judge of this Court held that importation can be said to have taken place only when the goods have crossed the customs barrier and not at

the moment the aircraft landed at the airport or the ship entered the territorial waters of India. Unless the goods are brought into the country for the

purpose of use, enjoyment, consumption, sale or distribution and are incorporated in and got mixed up with the totality of the property in the

country they cannot be said to have been imported. Otherwise, the goods in transit will be covered by the words "imported into" or "exported

from" and that would make the air borne goods passing through India liable to confiscation or other penalties provided for under the Customs Act,

as soon as the plane lands or takes off from the airport. It is the same view which has been taken by the judgment now under appeal.

9. In *Shewbuxrai Onkarmall v. Asst. Collector of Customs and others*, 1981 E.L.T. 298 (Cal.) a Single Judge of the Calcutta High Court decided

that the words "imported into India" have a wide meaning which will also be apparent on a reference to S. 111(d) of the Act which makes a

distinction between goods which are imported or attempted to be imported or are brought within Indian customs waters for the purpose of being

imported. He further observed "to give the words their literal meaning would lead to an absurdity because a person may bring goods into India by

a ship and may re-export them without clearance or an aircraft landing in any airport with goods in the course of transit may not seek customs

clearance, and in such a case they will not be chargeable to customs duty". He concluded that it cannot be said that the goods "imported into

India" would mean the goods which crossed into the territorial waters of India and that unless and until the goods are removed from the bonded

warehouse, the process of importation of goods cannot be said to be complete.

10. In *Prabhat Cotton and Silk Mills Ltd. v. Union of India*, 1982 E.L.T. 203 D.B. a Division Bench of the Gujarat High Court held, "Section 12

of the Act refers to "exportation from or importation into" of goods with reference to landmass of India and not with reference to the territorial

waters of India and in effect the expression "India" in that section means "landmass of India". In this connection, the Bench observed that

otherwise "importation into India" would mean that Customs duty would be payable even if the ship were to stray in territorial water or when the

ship entered the territorial waters changed its course, turned back and left the territorial waters before landing the goods on the landmass of India.

11. In *Shri Ramalinga Mills Pvt. Ltd. and others v. Asst. Collector of Customs and another*, 1983 E.L.T. 65 (Ker) a Single Judge of the High

Court of Kerala observed as follows -

The term "import" is derived from the Latin word "importare". Lexicologically it does not have reference to goods in transit. It generally

contemplates pause and repose of goods. The test is the intention with which the goods were brought in. Mere entry of the vessel with the goods

into the territorial waters or even berthing at an intermediate port will not constitute a complete import of goods. The test is the intention with which

the goods were brought in. When the importer had no intention to unload the goods, there will be no import and importation takes really place only

when the vessel crosses the Customs barriers at the intended port of destination. To interpret the words "import" and "export" literally would

cause even to the goods in transit being subjected to tax on arrival and departure at every intermediate station, which would cause not only

inconvenience and confusion but also would result in an inordinate delay and unbearable burden on the trade.

12. The Delhi High Court in a Bench decision in *Jain Shudh Vanaspati Ltd. v. Union of India and others* 1983, E.L.T. 1688 (Delhi), considered

the matter elaborately and the following conclusions were arrived at -

Unless the goods are brought into the country for the purpose of use, enjoyment, consumption, sale or distribution and are incorporated in and got

mixed up with the totality of the property in the country, they cannot be said to have been imported. As such, it cannot be said the moment the

aircraft passes through the country or ship enters the territorial waters, an importation takes place. Importation can only be when the goods cross

the customs barriers. As the territorial waters extend upto 12 nautical miles from the base line, the question as to when and at what particular time

a ship entered the territorial water can always become a subject-matter of debate and dispute between the importer and the Customs authorities.

Since there is no machinery with the Customs authorities to keep a check and to know the exact time when the ship enters the territorial waters, S.

15 when it specifies the test with reference to which the date is to be fixed for the purpose of calculating the rate of duty, has obviously the merit of

providing a definite and specific evidence about which there can never be any dispute between the importer and the Customs house. Similarly, S.

12, when it levies a duty on goods, must necessarily refers to the stage of time when goods are to be unloaded at the Customs port and the rate of

duty is leviable under S. 12, which requires inspection by the Customs authorities. Therefore, "import" must necessarily mean at the point of time

when the goods are to be off-loaded from the ship so that thereafter they form a part of the mass of goods in the country of consumption.

13. In order to get over the provisions of S. 12 of the Act, as interpreted by the first set of decisions, the Bench has observed as follows -

The notification under S. 25(1) of the Act is issued precisely because the goods are covered by First Schedule to the Customs Tariff Act, and are

subject to duty of customs. The only effect of notification issued under S. 25(1) is to reduce the effective rate of duty leviable. But even if the rate

of duty is "nil" the goods continue to be dutiable. Therefore, the issue of notification u/s 25(1) exempting the goods from duty does not mean that

the goods in question are not chargeable to levy of duty u/s 12 of the Customs Act.

14. In Aluminium Industries Ltd. Vs. Union of India (UOI), which is the latest decision produced before us, a Single Judge of the Kerala High

Court has observed as follows :

The circumstance that there was no duty at the point of time when the vessel entered the territorial waters, does not altogether take the goods out of the provisions of S. 12. The charge under the Section can arise and operate as a "rate" at any time after such entry and before the goods are cleared because the Customs duty is not imposed on the mere act of bringing the goods into the territorial waters of India, without regard to the question whether they are unloaded, cleared and allowed to become part of the mass of the goods within the country. Import duty is aimed at the goods brought from abroad and allowed to mix up with the local goods and in that view undue importance cannot be attached to the mere arrival of vessel into the territorial waters, notwithstanding the definition in Secs. 2(23) and 2(27) of the Act. Further, u/s 13 of the Act also the importer is not liable to pay any duty on the imported goods pilfered after loading and before clearance. The inclusive definition of "India" as given in Section 2(27) of the Customs Act, is not designed to pin point the point of time at which chargeability to Customs duty under S. 12 could attached to the goods. Utmost the definition satisfies only the earlier point of time from which the goods could be treated as dutiable but does not preclude the charge being imposed at any subsequent point of time so long as goods continue to be imported goods for the purpose of Section 12. Under the definition clause, the goods retain the character of "imported goods" till they are cleared for home consumption for the purposes of Ss. 46 or 68. Even if they were totally exempt from duty at the time the goods entered the territorial waters, a rate of duty could still fasten on them under S. 12, so long as they retain the character of imported goods, if an appropriate notification is issued in the meanwhile. An exemption only suspends or eclipses chargeability which can be revived the moment exemption is lifted or withdrawn. In other words, exemption from duty can also be construed as chargeability at "nil rate" if rate in Section 12 is the whole basis for the chargeability.

15. The learned Judges who adopted the second view were convinced that the technical stand taken by the Judges adopting the first view was unacceptable as being against the whole scheme of the Act, and have pointed out a number of insoluble complications and difficulties which will arise out of that technical interpretation. They endeavoured to get over the objections resulting from the direct interpretation of Ss. 12 and 2(27) in

resorting to some subtle and ingenious interpretations of those sections and to some legal fictions like "nil rate". It is this last aspect that the learned

counsel for the appellant assailed and his simple contention is that a plain reading of the provisions of the Act shows that the dutiable event occurs

when the ship enters the territorial waters and that when the articles are not dutiable under that section, Section 15 does not come into play. But

this solution is fraught with complications as pointed out by the second set of decisions. How to untie the Gordian knot ?

16. There is no other way than to follow the golden rule of reading carefully the provisions of the Act, more specifically the definitions. The

complete definition of the word "India" in Section 2(27) of the Act is as follows :

2. In this Act, unless the context otherwise requires -

(27) "India" includes the territorial waters of India.

In this definition, the phrase "unless the context otherwise requires" should not be lost sight of. That would mean that the definition would not apply

if not justified by the context. In fact, this is a special definition of the word in the Act. The ordinary definition of the word "India" is to be found in

the General Clauses Act, 1897. Section 3(28)(c) which reads as follows - "India" shall mean - "as respects any period after the commencement of

the Constitution, all territories for the time being comprised in the territory of "India" - it is seen that the word "India" is defined with reference to

the territory of India. We have, therefore, to refer to Article 1 of the Constitution of India, which runs as follows -

(1) India, that is Bharat, shall be a Union of States.

(2) The states and the territories thereof shall be as specified in the First Schedule.

(3) The territory of India shall comprise -

(a) the territories of the States;

(b) the Union territories in the First Schedule; and

(c) such other territories as may be required.

In the first clause, India is defined as a political entity. Clause (3) gives a geographical content of the political entity referred to in Art. 1. With these

definitions in mind, if we peruse the Customs Act we find that the word "India" is often used with the meaning different from the one gives in

Section 2(27) of the Act. We shall now refer to a few sections of the Act, where the word "India" is used. Section 11(2)(p) of the Act reads as

follows -

11(2) The purposes referred to in sub-section (1) are the following -

(a) to (o).....

(p) the carrying of foreign trade in any goods by the State, or by a Corporation owned or controlled by the State to the exclusion, complete or partial of citizens of "India".

Here, the word "India" does not obviously include the territorial waters, it is instead used in its political meaning as defined in Clause 1 of Art. 1 of

the Constitution. Section 2(7) of the Act reads as follows -

2. Definitions :

In this Act, unless the context otherwise requires -

(1) to (6).....

(7) "coastal goods" means goods, other than imported goods, transported in a vessel from one port in India to another.

Section 22(1)(a) reads as follows -

22. Abatement of duty on damages or deteriorated goods - (1) Where it is shown to the satisfaction of the Assistant Collector of Customs -

(a) that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India such goods

shall be chargeable to duty in accordance with the provisions of sub-section (2).

Section 56 of the Act reads as follows -

Imported goods may be transported without payment of duty from one land customs station to another, and any goods may be transported from

one part in India to another part through any foreign territory, subject to such conditions as may be prescribed for the due arrival of such goods at

the place of destination.

It is clear that in the above provisions of the Act the word "India" does not include the territorial waters and it is used in the meaning assigned to it

in the General Clauses Act.

17. We shall now turn to examine what is the meaning to be attributed to the word "India" in Section 12 of the Act, according to the context. The

second stream of decisions analysed above have pointed out that construing "India" in Section 12 of the Act as including the territorial water was

unacceptable as unrealistic and fraught with a number of complications. We may also add that such a construction appears not warranted by the

whole scheme of the Act. If India should include territorial waters for import operations it would also by way of symmetry include territorial waters

for export operations. If it is so, there will be practically no possibility of levying any export duty since the question of levy would arise only when

the ship leaves the territorial waters. The provisions of the Act relating to the clearance of export of goods, more specially, Section 51, show that

only after the proper officer has permitted clearance after payment of the duty that the goods would be loaded for exportation in the ships and

leave the harbour. This shows beyond any pale of doubt that the word "India" in Section 12 of the Act does not include the territorial waters.

Similarly, if chargeability starts for import at the time of entry into the territorial waters there is no possibility of implementing such a provision.

Articles which enter the territorial waters and leave them without touching the port would escape payment of duties which would have become

due. In fact, there is no possibility and no provisions in the Act, to levy duty when the ships are in the territorial waters. The object of the Act is not

tax goods which are just passing through the territorial waters but only those who get mixed with the mass of goods in India.

18. A useful reference may be made to Section 13 of the Act which comes immediately after Section 12 defining the dutiable goods. That section

reads as follows -

If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home

consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are

restored to the importer after pilferage.

The purpose of this section is to give exemption from duty which had become payable; and the goods are considered dutiable only after being

unloaded. This again shows that the chargeability does not start when the goods are still in the territorial waters.

19. We may also refer to a decision of the Supreme Court. Of course, it has not

decided therein directly the question of meaning to be assigned to the word "India" in Section 12. But it has impliedly answered the question by indicating at what moment import takes place, in a reference made by the President of India under Art. 143(1) of the Constitution of India : In re. Sea Customs Act, 1878 [see S. 20(2)] - AIR 1963 S.C. 1760 : 1964 2 SCR 51. Under the Sea Customs Act, 1878, Customs duties on the import and export of goods belonging to a State Government were leviable only in cases where such goods were used for the purpose of a trade or business carried on by or on behalf of that Government. The Union Government proposed to amend these provisions and levy customs duties and Central Excise duties on the State Government irrespective of whether or not the goods in question were used for the purposes of trade or business of the State Government. In answering a reference made in that connection, the Supreme Court observed as follows -

Similarly, in the case of duties of customs including export duties, though they are levied with reference to goods, the taxable event is either the import of goods within the Customs barriers or their export outside the Customs barriers. They are also indirect taxes like excise, and cannot, in our opinion, be equated with direct taxes on goods themselves. Now, what is the true nature of an import or export duty ? Truly speaking, the imposition of an import duty, by and large, results in a condition which must be fulfilled before the goods can be brought inside the Customs barriers, i.e., before they form part of the mass of goods within the country. Such a condition is imposed by way of the exercise of the power of the Union to regulate the manner and terms on which goods may be brought into the country from a foreign land. Similarly, an export duty is a condition precedent to sending goods out of the country to other lands. It is not a duty on property, in the sense of Art. 289(1).

It is, thus, abundantly clear that the definition of the word "India" as including the territorial waters u/s 2(27) of the Act, is incompatible with S. 12(1) of the Act. The context of Section 12(1) clearly requires that the word "India" in this section is not given the meaning it has as per Section 2(27) of the Act. It should instead be given the meaning as per the General Clause Act viz. the territory of India. If Section 12(1) is understood in this manner, the imbroglio ceases. As per the first stream of decisions Section 12

deals with chargeability and Section 15 with quantification of duties; as per the second stream of decisions, the import as per Section 12 and therefore, the chargeability takes place at the time of the unloading of the articles. Each stream stressed correctly one aspect of the meaning of the section, the conflict which remained unsolved was on account of the definition of the word "India" u/s 2(27) of the Act, which is now found not applicable to Section 12, since the content requires otherwise.

20. Let us now turn to the facts of the case. The articles were unloaded on 2-3-1979. By that time, Notification No. 42, dated 1-3-1979 fixing the Customs duty at 12.5% had come into force. Chargeability operates when the goods are imported into the territory of India, as per the meaning to be assigned to the word "India" u/s 12(1) of the Act. Therefore, the goods unloaded on 2-3-1979 were chargeable and duties levied are in order.

21. The second ground urged on behalf of the appellant is based on the doctrine of promissory estoppel. This ground does not appear to have

been urged before the learned Single Judge. However, since both parties advanced arguments, we are also dealing with this point. The case of the appellant is that he resorted to the import of a large quantity of palmolein on account of the total exemption granted by Notification No. 126, dated

1-7-1977 and that imposition of duty at 12.5% all of a sudden before his operations could be completed caused him a loss and that the

Government which has issued the Notification of total exemption was estopped from cancelling it in such a way as to cause damages to the

persons who acted on the belief that the effect of the Notification would be available to them. In support of this contention, learned counsel for the

appellant placed reliance on the following decisions : In Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., it was held that the

Government is not exempt liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and

undisclosed ground of necessity of expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to

the citizen on an ex parte appraisal of the circumstances in which the obligation had arisen. This decision was given on a matter when the

quantum of import certificate was reduced after it has been made known to the exporters that they will be given certificates to import material equal

to 100% of the value of exports. In *M.P. Sugar Mills v. State of U.P.* AIR 1979 S.C. 622, the following principle was brought forward :

The true principle of promissory estoppel, therefore, seems to be that where one party has by his words or conduct made to the other a clear and

unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would

be acted upon by the other party to whom the promise is made and it is, in fact, so acted upon by the other party, the promise would be binding on

the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealing

which have taken place between the parties and this would be so irrespective whether there is any pre-existing relationship between the parties or

not.

In the same decision, it was, however, observed that the doctrine of promissory estoppel would not apply in the teeth of an obligation or liability

imposed by law and that there can be no promissory estoppel against the exercise of legislative power.

22. In *Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*, the Gujarat State Financial Corporation entered into an agreement in

performance of its statutory duty to advance loan to a company and acting on that undertaking the company proceeded to undertake and execute

a project of setting up a 4-Star Hotel and incurred huge expenses and suffered liabilities. It was held that the principle of promissory estoppel

would certainly estop the Corporation from backing out of its obligation arising from a solemn promise made by it to the respondent. In *Tapti Oil*

Industries v. State of Maharashtra, 1984 Excise and Law Cases 307, it was held that though it would be necessary for a person, who sought to

rely on the doctrine of promissory estoppel, to show that certain promises or representations were made to him, it was not necessary that those

promises or representations must be made expressly only in a communication addressed to that individual.

23. All the decisions relied upon by the learned counsel for the appellant did not omit to mention that a promise is necessary for claiming benefit

under the doctrine of promissory estoppel. In fact, promissory estoppel as the name itself would suggest that a promise, in whatever form it may

be, is an essential element. In the present case, no promise whatsoever was made by the Government to keep the exemption granted by Notification No. 129, dated 1-7-1977 alive indefinitely or upto a certain point of time. Therefore, exemption could be at any point of time put an end to, that notification can be contrasted with another notification in respect of the same product bearing No. 390 and issued on 2-8-1976 in which it is specifically stated that the Notification would be in force upto and inclusive of the 31st March, 1977. If in the Notification dated 1-7-1977 (No. 129) also there was any indication of the duration of the effect of the Notification and if such Notification was withdrawn before the expiry of that duration any person affected by such withdrawal could plead promissory estoppel. It is not so in the present case. Further, the Notification itself being Section 25 of the Act is only to the effect of suspending temporarily the collection of Customs duties. Such an exemption by its very nature is susceptible of being revoked or modified or subjected to conditions at any point of time unless there is an indication to the contrary in the Notification itself. No doubt, when a certain amount of duty not anticipated by the importer becomes due, the importer is compelled either to increase the price and thereby cause the sale to slow down or to keep the price at the same level and suffer diminution in his profit or even face loss. In a speculative venture like trade profits and losses are common and it is well known that international trade is subject to more speculation in both ways. The appellant, who has entered the field, should therefore, be prepared for tides in the business. At any rate, no justifiable prejudice was caused to the appellant in the absence of any promise by the Government to keep the total exemption alive all the time. Further, in this case, there was not only absence of promise but the Government was acting in discharge of their function under the law and therefore, the doctrine of estoppel would not be available to the appellant as held in *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, . The same principle was applied in a Bench decision of the Delhi High Court in *Khandelwal Metal and Engg. v. Union of India*, 1983 E.L.T. 292. In another decision of the same High Court viz. *Jain Shudh Vanaspati v. Union of India*, 1983 E.L.T. 1688, this point was gone into in detail and it was held as follows :

It is well settled that under the General Clauses Act an authority which has power to issue a notification has the undoubted power to rescind, modify the said notification in the like manner The Central Government when issuing notification u/s 25(1) is not in any way violating the mandate of Parliament because in fact the power to issue a notification u/s 25(1) is a delegation of the legislative power given to the Central Government, and in any case the notifications were placed before the Parliament. Therefore, if the same Central Government which initiated notification and amended it subsequently under S. 25(1) *ibid* it cannot be said that the Central Government cannot modify the total exemption or partial exemption.....

We, therefore, find that there was no promise made by the Government in the Notification No. 129, dated 1-7-1977 to keep it alive indefinitely and that accordingly, the Government had the power to rescind or modify the order whenever they were satisfied that it was necessary in the public interest so to do. Therefore, the notification cannot be challenged on the ground of promissory estoppel and this plea is also rejected.

24. In the result, the appeal is dismissed. In the circumstances of the case, there will be no order as to costs.

25. Learned counsel for the appellant made an oral request for leave to appeal to the Supreme Court under Act. 134-A of the Constitution. We are of the view that this is a fit case for appeal to Supreme Court and an authoritative pronouncement by the Supreme Court on this complicated question and especially on the scope of Section 12 of the Act, is necessary and therefore, we grant leave to appeal to Supreme Court.