**(1987) 06 BOM CK 0051**

**In the Bombay High Court**

**Case No :** Misc. Petition No. 1278 of 1979

Madhusudan Mills Limited — APPELLANT

Vs

Union of India and others — RESPONDENT

**Date of Decision :** 15-06-1987

**Acts Referred:**
Customs Act, 1962 — Section 25

**Citation :** (1988) 15 ECC 187 : (1988) 36 ELT 45

**Hon'ble Judges :** H. Suresh, J

**Bench :** Single Bench

# Judgement

1. The petitioners are engaged inter alia in the manufacture of textiles. They have for the last several years been importing a product known as polynosic staple fibre. The said fibre is used in the manufacture of cloth. The Central Government has from time to time issued notifications u/s 25 of the Customs Act, 1962 exempting the said fibre from the payment of the whole of the import duty.

2. It appears that a certain consignment of the said fibre was imported by the petitioners and was being brought by a vessel and the vessel entered the territorial waters of India on 19th December, 1978. There is no dispute about it. The steamer, however, entered inwards on 1st January, 1979. It is the contention of the respondents that the notification exempting payment of the duty was in force upto 31st December 1978 only. Since the steamer entered inwards on the 1st of January, 1979, the respondents thought that the petitioners were not entitled to the benefit of the notification exempting payment of the excise duty. Since the respondents would not agree that the import had taken place the moment the consignment had entered the territorial waters of India, the petitioners had no choice but to file the present petition.

3. It is not necessary for me to go into details as this case is directly covered by a Division Bench Judgment of our High Court being the case of Apar Private Ltd. and others Vs. Union of India and others, and the relevant portion is at

 

paragraph 58 and it is as follows :-

"If the goods are wholly exempt from duty as against being partially exempt from such duty, when the goods enter the territorial waters, they cannot be subjected to duty even if the exemption notification is withdrawn or modified before the bill of entry is presented or the goods are cleared for home consumption, as the case may be."

There is no dispute that the said fibres were wholly exempt from payment of excise duty and, therefore, if on the date, the ship carrying the said fabrics entered the territorial waters of India, the said exemption notification was in force, the petitioners must necessarily get the benefit of the said exemption notification.

4. In the result, the petitioners must necessarily succeed and I pass the following order :

5. Rule made absolute in terms of prayers (a) and (b) of the petition. However, it is made clear that if the petitioners are liable to pay the countervailing duty, if they are liable to pay the same. Subject to the above observations, the Bank Guarantee furnished by the petitioners at the time of the admission of this petition stands discharged. There will be no order as to costs.