

(1992) 12 CAL CK 0001
In the Calcutta High Court
Case No : Matter No. ...of 1992

Pashupati Chemicals and Pharmaceuticals Ltd.

APPELLANT

Vs

Asstt. Collr. of Cus.

RESPONDENT

Date of Decision : 15-12-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Customs (Appeal) Rules, 1982 — Rule 3(3)
Customs Act, 1962 — Section 111, 128, 128(2), 49
Imports and Exports (Control) Act, 1947 — Section 3

Citation : (1993) 64 ELT 361

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Judgement

Ruma Pal, J.—The question involved in this writ application is whether the petitioner could have imported Olive Oil without a licence under the Import and Export Policy or whether it was a restricted item of import.

2. There is no dispute that under the 1990-93 Import and Export Policy Olive Oil was importable under Open General Licence being classified as a "crude durg".

3. Appendix 6 of the Import & Export Policy, 1990-93 Appendix-6 provides for the import of items under Open General Licence (OGL). Item 39 of Appendix 6 reads as follows :-

_____ "Sl. No. Item Categories of eligible importers. _____ 39

Crude drugs required for making By all persons. Ayurvedic and Unani medicines as per List 4 of this Appendix (Import of jade, pearls and corals will be allowed only in powder form and of non-jewellery quality only)." _____

_____ 4.
List 4 provides for List of Items allowed for import of "Crude Drugs" under OGL. Entry 41 in List 4 reads as follows :-

_____ Sl. No. Ayurvedic/Unani name of the Scientific and/ crude drugs inclusive of parts or English name of drug. _____

_____ 41. Zaitun (Tel-oil) Olea europoea Limn. Olive. _____

_____ 5. On 29th February, 1992 Public Notice No. 278-ITC (PN)/90-93 was issued by the Chief Controller of Imports & Exports with reference to the various lists and appendices contained in the Import and Export Policy, 1990-93. The Public Notice provided for a Negative List of Items comprising of restricted, banned and canalized items. Capital goods in Appendix 1 part A, raw materials and components in Appendix 2 Part B, restricted instruments in Appendix 8, and Sports goods in Appendix 11 would be in the Negative List but import would be permitted against licence. Items in the Canalized Lists (Appendix 5 Part B) would also in the Negative List and continue to remain items in the restricted List, Appendix 2 Part A would also be Negative List and continued to be banned. The Public Notice goes on to say :-

"All items not included in the Negative List mentioned above will be freely importable. Accordingly Appendix 1, Part 13, Appendix 3 Part A & B, Appendix 5, Part A, Appendix 6 (Lists 1 to 11), Appendix 9 and Appendix 10 are hereby deleted. Appendix 7 of the Import & Export Policy already stands deleted. Appendix 4 which contains a list of capital goods manufacturer of which were entitled to special import facility would also stand deleted."

6. On the same date order No. 84/90-93 was issued by the Chief Controller of Imports and Exports. The order which was passed u/s 3 of the Imports and Exports (Control) Act, 1947 rescinded with immediate effect the Import Trade Control Orders (Open General Licence) dated 30th March, 1990 as modified from time to time and provided :-

"There shall be a negative list of items comprising of restricted, banned or canalized items.

The negative list shall consist of items mentioned in Appendix 1 Part A, Appendix 2 Part 3, Appendix 8 and Appendix 11 of the Import - Export Policy 1990-93. The negative list shall also include such other items which are importable only against a licence under the applicable provisions of the Import-Export Policy 1990-93. These items will be importable only against a licence granted by the Central Government.

The items mentioned in Appendix 2 Part A of the Import-Export Policy 1990-93 shall also form part of the negative List and shall continue to remain banned.

The items included in Appendix 5 Part B shall also form part of the Negative List and shall continue to remain canalized through the designated agencies.

All items not included in the Negative List mentioned above shall be freely importable."

7. During this period, pursuant to an agreement between the petitioner and a foreign seller, on 28th March, 1992, two consignments of Olive Oil containing 210 and 400 Cartons were shipped from Spain for India. The date of shipment is not in dispute. On 1st April 1992, the ship carrying the Olive Oil arrived at the Sand heads. On that date viz. 1-4-1992 the Import and Export

Policy, 1992-97 came into effect. Under the 1992-97 policy the Negative List of Imports includes a list of restricted items. The first entry in the list of restricted items is "consumer goods". Under the heading description of items it has been stated :-

Sl. No.	Description of items	Nature of restriction
	consumer goods, howsoever	All
	be imported ex- tural, mineral or mineral or animal	Not permitted to described, of industrial agricul-
	whether in SKD/CKD con- licence or in ac- dition or ready to assemble sets or	cept against a origin,
	cordance with a in finished form. Public Notice is-	sued in this behalf.

8. Eleven specific items have been mentioned as being included within the phrase "Consumer Goods". Below the List of these 11 items it is stated :-

"However, the following items shall not be regarded as consumer goods."

9. Twenty eight items have been excepted from the description of consumer goods. Item No. 8 reads as follows :-

Sl. No.	Description of items	Nature of restriction
	Crude drugs required for making Ayurvedic and Unani Medicines. Import of Jade, pearls and corals will be allowed only in powder form and of non-jewellery quality only.	8.

10. The vessel berthed in Calcutta on 3rd April 1992 and on 6th April 1992 the petitioner filed 2 separate Bills of Entry in respect of two consignments for home consumption. The Bills of Entry were assessed on 22nd April 1992. On 30th April 1992 orders were passed by the Customs Authorities for appraisement drawing of samples and physical examination of the goods. The original Bills of Entry were returned to the petitioner by the Customs Authorities. On 14th May 1992 the physical examination of the goods was carried out and the Customs Authorities found that the goods corresponded to the description in the Bills of Entry. It is the petitioner's case that it could not submit both Bills of Entry for clearance as it did not have adequate finance to retire the second Bill of Entry from the bank. The petitioner, however, requested the Customs Authorities for clearance of the goods covered by the Bill of Entry which had been presented. Till the first week of June, 1992 the Customs Authorities did not allow the petitioner to clear the goods. According to the petitioner the

Customs Authorities refused clearance on the grounds that under the Export & Import Policy for the period 1992-97, the Olive Oil could not be imported and was a restricted item as it fell within the description of "consumer goods". The petitioner was further informed by the Customs Appraiser that the Olive Oil being a restricted item under the Import & Export Policy, 1992-97, the importation was in contravention of Section 111(d) of the Customs Act, 1962 and clearance of the Olive Oil could not be allowed.

11. The writ petition was filed by the petitioner on 8th June 1992 challenging the refusal of the Customs Authorities to release the Olive Oil imported by the petitioner. An interim order was passed directing the warehousing of the Olive Oil u/s 49 of the Customs Act, 1962 at the cost of the petitioner. Directions were obtained for filing affidavits by the Customs Authorities. Affidavits have been filed.

12. At the hearing the petitioner has contended that the Olive Oil was freely importable because it formed part of Appendix 6 of the Export and Import Policy, 1990-93. It had been specifically excluded from the Negative List. It is urged that the Customs Authorities had all along classified Olive Oil under the heading Crude Drugs which did not form part of the Negative List under the Order dated 29-2-1992. It is submitted that the intention of the Export and Import Policy was to liberalise the imports so that all items which were hitherto to be imported under OGL would become freely importable. It is further submitted that this was the interpretation of the policy as given by the Office of the Chief Controller of Imports & Exports in a letter dated 15-5-1992.

13. On 15th May 1992 the Office of the Chief Controller of Imports & Exports had written to the Collector of Customs, Madras, regarding a clarification of the import of buttons, snap and zip fasteners under the Export and Import Policy, 1992-97. In that letter it is said :-

"It is hereby clarified that as per Export and Import Policy, 1992-97, the items allowed earlier under OGL or against Exim Scrips are allowed to be imported freely without a licence. Licence is required only in respect of specified items included in the Negative List of Imports incorporated in the Export and Import Policy, 1992-97. Hence the items not included in the Negative List of Imports may be permitted freely without a licence especially those items which had been shifted earlier from the Restricted List (Appendix-2B) to Appendix 3 (Part A and B) or OGL, as the case may be, prior to the announcement of this policy. It may be further stated that Buttons, Snap and Zip Fasteners are freely importable without import licence and would not be treated as consumer items falling within the scope of Negative List of imports of the current Export and Import Policy."

14. It is urged that this interpretation should be accepted by the Customs Authorities who should not be permitted to take a stand contrary to that of the Import & Export Authorities. Reliance has been placed on the decisions of this Court reported in *Asiatic Oxygen Ltd. Vs. Assistant Collector of Customs*, in this

connection. It is stated that even under the new Import Policy Crude Drugs had been specifically excluded from the List of Restricted items. It is submitted that in any event if any change had been imposed by the new Import Policy, 1992-97 it was not applicable to the Petitioner's case as the shipment had taken place prior to the Policy coming into force. The petitioner relied upon the decisions reported in *M/s. Priyanka Overseas Pvt. Ltd. and another Vs. Union of India and others*, and contended that the date of shipment was the relevant date for the purpose of determining which Policy was applicable to a particular consignment.

15. On behalf of the Customs Authorities it has been submitted :-

1. The Customs Authorities had properly classified the Olive Oil under the leading "consumer goods". By virtue of the order dated 29-2-1992 all references to OGL in the Export and Import Policy, 1990-93 had been deleted.

By virtue of the amendment the Export and Import Policy would have to be read as if the amended policy as contained in the order dated 29-2-1992. The order dated 29-2-1992 had not been challenged. It was clear and unequivocal and provided for the classification of Olive Oil as consumer goods. It is said that Olive Oil was classifiable under Appendix 2 Item 172 of the Export & Import Policy of 1990-1993.

It is submitted that the classification was reasonable as Olive Oil was not a Crude Drug but meant to be consumed. It is stated that this is apparent from the fact that it was not imported in bulk but in tins. Reliance has been placed on the decisions reported in *Yadlapati Venkateswarlu Vs. The State of Andhra Pradesh and another*, ; *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, Head Note B Paras 7, 9 & 12 in this connection.

Therefore the Olive Oil was properly classified under the heading consumer goods. It is submitted that if two views are possible the adoption of the view favourable to the department cannot be interfered with by the Court merely because the Court preferred the other view.

2. The mere fact that the Customs Authorities had allowed the petitioner to import Olive Oil previously as a Crude Drug did not estop the Customs Authorities from classifying it as consumer goods. Reliance has been placed on a decision reported in AIR 1975 Cal 369 paras 65, 66 and Head Notes (e) and (f).

3. The decision to treat Olive Oil as consumer goods and therefore as a restricted item of Import was within the authority of the Customs Authorities and if that were wrong the petitioner should have been gone up by way of appeal. Reliance has been placed on the decisions reported in *The Collector of Customs, Madras Vs. K. Ganga Setty*, ; *Girdharilal Bansidhar Vs. Union of India (UOI)*, ; *V.V. Iyer of Bombay Vs. Jasjit Singh, Collector of Customs and Another*, and *Collector of Customs, Bombay Vs. Swastic Woollens (P) Ltd. and Others*, . It is submitted that it was not open to the petitioner to contend that there was no decision of the Customs Authorities. The decision, according to the respondents, was

embodied in the order dated 29-2-1992. Alternatively it was an oral decision which could have been appealed from. Reliance has been placed on the decisions reported in AIR 1940 105 (Privy Council) Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes, Head Note B; The British India Steam Navigation Co. Ltd. Vs. Jasjit Singh, Addl. Collector of Customs, Calcutta and Others, Head Note C and Girdharilal Bansidhar Vs. Union of India (UOI),

4. The matter involved the revenue and as such Court should not interfere with the action of the Customs Authorities. Reliance has been placed on the decision reported in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, and Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, .

5. The decision to put the consumer items in the restricted list was a matter of policy which should not be gone into court.

The date of importation was the relevant date for determining whether the item was a prohibited item under the Import & Export Policy. Reliance has been placed on the decision reported in Radha Kishan Bhatia Vs. Union of India (UOI) and Others, and Bharat Surfactants (Private) Ltd. and Another Vs. Union of India (UOI) and Another, . It is stated that the decision in M/s. Priyanka Overseas Pvt. Ltd. and another Vs. Union of India and others, was per incuriam as it had not considered earlier decisions on the point. In any event it is stated that the question of the relevant date was immaterial as under the order dated 29-2-1992 itself, Olive Oil was classifiable as a restricted item.

6. As far as the Circular dated 15-5-1992 was concerned it is submitted that the departmental representation was not binding and that there was no estoppel against statute. Reliance has been placed on the decision reported in Collector of Customs, Kolkata Vs. M/s. M. Shashikant and Co., and State of Jammu and Kashmir Vs. A.R. Zakki and others,

16. The first argument of the respondents is based on Public Order dated 29-2-1992 by which the Import Control Orders (OGL) were rescinded.

17. The decisions cited by the respondents in this connection namely, Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others, and Yadlapati Venkateswarlu Vs. The State of Andhra Pradesh and another, have held that an unamended Act must be read as if the words of amendment had been written into the Act except where that would lead to an inconsistency.

18. There can be no quarrel with this proposition. The question is what was the scope of the" order dated 29-2-1992 and what was its effect on the 1990-92 Export-Import Policy ?

19. In terms, all that the Order dated 29-2-1992 expressly did was to rescind the orders relating to OGL. The rescinded orders have been listed in an appendix to the order dated 29-2-1992. The rescinded orders provided for the requirement of OGL in respect of certain items of import. By rescinding the order, what was

being done away with was this requirement. In my view there is no warrant to conclude from the plain language of the order dated 29-2-1992 that all references to the OGL in the Export-Import Policy, 1990-92 had been deleted even when they were merely used as descriptive words.

20. For example, the contention of the respondents is that by virtue of the order dated 29-2-1992, Item 172 of Appendix 2 Part B was amended. Appendix 2, Part B of the Export-Import Policy, 1990-92 contains a List of restricted Items. Item 172 which is within that list is as follows :

"172. All consumer goods, however described, of industrial, agricultural or animal origin, not appearing individually in Appendices 3 Part A and 5 or specifically listed for import under Open General Licence."

21. In other words all consumer goods except for inter alia, the goods specifically listed for import under OGL are restricted items of import. The respondents' contention is that the Order dated 29-2-1992 so to speak erased this exception resulting in the items which had been listed for import under OGL becoming restricted items of import.

22. This was clearly not the intention of the Import & Export Authorities. The list of items importable under OGL was contained in Appendix 6 to the Export-Import Policy, 1990-92. The list itself was deleted by the Public Notice dated 29-2-1992. The language of the Public Notice as quoted earlier in this judgment would show that specific appendices had been included in the negative list which covered the restricted, banned and canalised items. The appendices mentioned did not include Appendix 6. Therefore, in terms the goods listed in any of the other Appendices did not form part of the negative list. The Public Notice has made this amply clear by expressly stating that all items not included in the negative list would be freely importable and that accordingly Appendices including Appendix 6 were deleted. In another words, because the items mentioned in these lists were freely importable the lists were deleted from the date of the Public Notice. Therefore there was no need for maintaining any list in connection with those items at all.

23. The word "accordingly" will have to be given some meaning, and the plain meaning is that the Appendices mentioned after the word "accordingly" were deleted because they had become freely importable, and if any item fell within any of the deleted Appendices they would freely importable.

24. There is no dispute that Olive Oil was listed in Appendix 6, before its deletion. By this reasoning, it also became freely importable.

25. The respondents were alive to the effect of the word "accordingly" in the Public Notice. That was why at the hearing it was submitted that only the order dated 29-2-1992 would have to be construed without reference to the Public Notice dated 29-2-1992. Apart from the fact that there is no reason for ignoring the Public Notice, the respondents in their affidavit have repeatedly contended

that Olive Oil was a restricted item of import both under the Public Notice dated 29-2-1992 and Public Order dated 29-2-1992.

26. The respondents in their affidavit-in-opposition have relied upon the Public Notice dated 29-2-1992 to contend that it was by virtue of this Public Notice that the matters mentioned in Appendix 6 become restricted if they fell within any of the description in any of the lists included in the negative list. This is, in my view, an unreasonable reading of the notice. The intention of the Public Notice dated 29-2-1992 was to make goods which were therefore importable under OGL, freely importable. If the contention of the respondents is accepted this intention would be defeated and all items of import under OGL would become restricted items of import under the blanket description of "consumer goods" under Item 172 of Appendix 2 Part B of the Import-Export Policy, 1990-92.

27. That the Import & Export Authorities had understood the effect of the Public Notice dated 29-2-1992 and Public Order dated 29-2-1992 in the manner in which I have interpreted them, is borne out by the letter dated 15-5-1992 written by the Import & Export Authorities to the Collector of Customs Madras in respect of the consumer items such as buttons, snap, zip fasteners etc.

28. In a similar situation this Court has already held *Asiatic Oxygen Ltd. Vs. Assistant Collector of Customs,]* :

"The Customs Authorities are a department of the same Government. It is arbitrary on their part to put a construction on the phrase "initial setting up" different from the construction put by the other departments of the Government of India."

29. It is true that this Court will not interfere if the view taken by the department is rationally supportable. However, in this case, I am unable to hold that the interpretation put by the Customs Authorities on the scope and effect of the Public Notice dated 29-2-1992 and the Order dated 29-2-1992 can be so supported.

30. The decision relied upon by the respondent authorities in this connection are inapposite. The decisions namely, *Collector of Customs, Madras v. K.G. Sethi*, reported in AIR 1963 Mad 1319 ; *Girdharilal Bansidhar Vs. Union of India (UOI)*, and *V.V. Iyer of Bombay Vs. Jasjit Singh, Collector of Customs and Another*, and *Collector of Customs, Bombay Vs. Swastic Woollens (P) Ltd. and Others*, all dealt with what may be termed as "pure classification" cases. There was no question of classification according to the intention of any order or Public Notice as there is in this case. In fact, in the case of *Swastik Woollen (P) Ltd. (supra)* Sabyasachi Mukharji J. (as his Lordship then was) sounded a caveat when he said that the decision of the Department would not be interfered with if it was arrived at without ignoring material and relevant facts and bearing in mind the correct legal principles even though the Court may itself have arrived at a different conclusion. The important phrase for the purpose in this case is "bearing in mind the correct legal principles". Therefore, if the classification has been made

contrary to any legal principle, it would be interfered with. The legal principle in this case arises out of the interpretation of the order and notice dated 29-2-1992. The contention put on the order and notice dated 29-2-1992 by the Respondent authorities being wrong. The Court would be justified in correcting it.

31. It was not necessary for the respondents to have argued that there was no estoppel against what the statute had said. The position is well established.

32. By Saying that there is no estoppel against statute does not mean that the respondent authorities have the unfettered liberty to classify goods. They must classify them in according with the statute. The question therefore is what does the statute say. I have already held that the statutory provision allowed the import of Olive Oil freely.

33. The case cited by the respondents in this connection however, namely, Collector of Customs and Central Excise, West Bengal and Others Vs. Hindustan Motors Ltd. and Another, is a case where clearance had been allowed previously by mistake. The Court held that such a mistake would not debar the authorities from taking action against the importer if the import was prohibited. It is not the respondents' case that the Olive Oil had been permitted to be imported as a Crude Drug under Appendix 6 of the Import & Export Policy, 1990-92 by way of mistake. Not only has this case not been made out in the affidavit in opposition but it has been repeatedly admitted that the Olive Oil was classified and cleared under Item 41, List 4 of Appendix 6.

34. The next submission of the respondents was that the petitioner should be relegated to the remedy by way of appeal u/s 128 of the Customs Act, 1962. The first hurdle that the respondents had to face in making this submission was that there was no decision from which an appeal could be preferred.

35. I have found it difficult to understand the submission of the respondents that the order dated 29-2-1992 was the decision of the Customs Authorities. Apart from anything else, this submission surely begs the question as to what then was the decision? According to this Court the effect of the Order dated 29-2-1992 was that items which had been listed in Appendices which has been deleted were freely importable. If that is the decision, there is no reason for the respondents to detain the Olive Oil on the ground that it is a prohibited item of import at all.

36. The alternative submission of the respondents was that the decision of the Customs Authorities was verbal. Reference has been made to the statement in the petition to this effect.

37. In the case of AIR 1940 105 (Privy Council) relied upon by the respondents, the Privy Council has to consider whether a communication in writing relating to the assessment of goods was a decision. The Privy Council held that it was and that a decision was not limited to the determination on an adjudication.

38. This case is certainly not an authority for the proposition that a decision of the Customs Authorities under the Customs Act may be oral. In fact, the Section

128(2) of the Customs Act, 1962, which provides for appeals by any persons aggrieved by any decision or order, also provides that every appeal is required to be made in the manner prescribed by the rules specified in this behalf. Rule 3(3) of the Customs Appeal Rules requires that the copy of the order must accompany the appeal. It would be impossible for the petitioner to comply with this requirement. In any event, to hold that the decision of the Customs Authorities for the purpose of an appeal would include an oral decision would open the gates to a chaotic situation where the contents of the decision might be the subject matter of interminable and insoluble dispute between importers and the authorities. There was no scope therefore, for the petitioner to have referred an appeal as admittedly there was no decision in writing of the Customs Authorities.

39. Apart from this genuine difficulty of availing of the alternative remedy under the Act, none of the cases cited by the respondents namely, *Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes*, *The British India Steam Navigation Co. Ltd. Vs. Jasjit Singh, Addl. Collector of Customs, Calcutta and Others*, and *Girdharilal Bansidhar Vs. Union of India (UOI)*, have laid down that the existence of an alternative remedy bars the jurisdiction of the Court to entertain an application under Article 226. It is well recognised that the rule of alternative remedy is a rule imposed by Courts on themselves for the exercise of their discretion. Where disputed questions of fact are involved or where the taking of evidence would be necessary, the Courts have left the matter to be decided by the Statutory Authorities. However, where pure questions of construction or interpretation are involved, the Courts have not hesitated to determine the issue in proceedings under Article 226. Even in the case of *British India Ship Navigation Company (supra)*, the Supreme Court allowed the Counsel to argue the writ petition on the question of construction even though there was an alternative remedy provided under the statute.

40. Finally, in the case of *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, the Supreme Court has held that it would not be a proper exercise of judicial discretion to reject a writ petition on the ground of alternative remedy when the matter had been entertained and heard on merits. The third contention of the respondents is accordingly rejected.

41. As far as the fourth submission of the respondent authorities is concerned, no rule that the High Courts should not interfere on matters involving the revenue. The decision in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, relied upon by the respondents was on an appeal from an interim order and did not relate to the final disposal of a writ application involving questions of revenue. The second decision relied on by the respondents in this connection viz. *Titagarh Paper Mills Co. Ltd. v. State of Orissa* is an authority for the proposition that an alternative remedy should normally be availed of before a writ application is entertained. The decision is not limited to questions arising out of revenue matters. I have already set out the reasons for holding that the petitioner had in fact, no remedy under the Customs

Act, 1962 in the absence of a written decision and also that in any event, the remedy available under the Act is not an absolute bar.

42. The fifth submission of the respondents is misconceived. It is true that the Court will not normally go into matters of policy in an application under Article 226. In this case, the policy is not under challenge. The question which is being resolved in this judgment is what the policy in fact is.

43. In view of the decision that I have taken regarding the scope and ambit of the order dated 29-2-1992, the Question of the relevant date for deciding the question whether an item is prohibited or not under the Import & Export Policy is immaterial. Both the parties had conceded at the hearing that the situation would be covered by the order dated 29-2-1992.

44. I am not in any event, persuaded to hold that the decision in M/s. Priyanka Overseas Pvt. Ltd. and another Vs. Union of India and others, was per incuriam. The earlier decisions which according to the respondents had not been considered by the Supreme Court in M/s. Priyanka Overseas, were not at all relevant to the issue. The first decision cited by the respondents in this connection is Radha Kishan Bhatia Vs. Union of India (UOI) and Others, . That decision dealt with an offence solely under the Customs Act and not an offence which was an offence under the Customs Act because it was an offence under the Import & Export Control Act, 1947. Similarly in Gramophone Company of India Ltd. Vs. Birendra Bahadur Pandey and Others, , the Supreme Court was considering the meaning of the word "Import" in the Copyright Act. That is not in dispute in this case. The third case is the decision in Bharat Surfactants (Private) Ltd. and Another Vs. Union of India (UOI) and Another, . That was a case in which the Supreme Court was called upon to decide the relevant date for the purpose of determining the import duty under the Customs Act, 1962. This issue is not at all germane in this case.

45. The sixth and last submission of the respondents that the representation in the circular dated 15-5-1992 did not create an estoppel is rejected. Firstly the circular dated 15-5-1992 was not a representation of the Customs Authorities, but the decision of the Import & Export Control Authorities. It is not the respondents' case that the Import & Export Authorities wished to resile from the stand taken by them in the circular dated 15-5-1992. The decision of the Import & Export Control Authorities ought to be followed by the Customs Authorities as I have already held. The question of estoppel does not arise.

46. In the decision in Collector of Customs, Kolkata Vs. M/s. M. Shashikant and Co., the Supreme Court was considering a situation where the Tribunal had held that an importer was justified in importing a canalised item because he had acted on the representation of the departmental authorities. The Supreme Court held that this should not have been permitted as such representation was contrary to the clear law laid down by the Supreme Court earlier. Reliance on this judgment by the respondents was wrongly placed. Not only is there is no question of any

representation being made by the Customs Authorities in this case, there is also no question of the circular dated 15-5-1992 being contrary to any law. The last case cited by the respondents is the decision in State of Jammu and Kashmir Vs. A.R. Zakki and others, . That is a case which dealt with the recommendation of a High Court regarding the rules pertaining to reservations in the service of the High Court. I am unable to comprehend the applicability of this decision to the facts of the case before me.

47. Having rejected all the contentions of the respondents I make the rule absolute by directing the respondent authorities to allow clearance of the said goods subject to the petitioner making payment of the Customs duties as may be assessed by the respondent authorities within a fortnight from this judgment. In the facts of the case there will be no order as to costs.

48. Prayer for stay of this judgment is made which is considered and is refused.

49. All parties concerned are to act on a signed copy of the operative part of this judgment on the usual undertaking.

50. Let xerox copy of this judgment be given to the parties upon their undertaking to apply for the certified copy of this judgment and on payment of usual charges.