

(1985) 01 BOM CK 0008

In the Bombay High Court

Case No : Writ petitions No"s. 42, 2259, 2262, 2360, 2640, 2691, 2735, 2920, 2951, of 1982 : 119, 450, 121, 561, 906, 2785, 2787, 2788, 2820 of 1983 : 228, 272, 275, 419, 420, 535, 543, 547, 548, 561, 568, 582, 700, 723 to 726, 732, 733, 766, 768, 769, 810, 965, 1

Polyset Corporation and others

APPELLANT

Vs

Collector of Customs, Bombay and another

RESPONDENT

Date of Decision : 22-01-1985

Acts Referred:

Customs Act, 1962 — Section 12, 14, 14(1), 14(2), 15

Citation : (1989) 20 ECR 73 : (1985) 21 ELT 48 : (1985) MhLj 765

Hon'ble Judges : K. Madhava Reddy, C.J.;P.S. Shah, J

Bench : Division Bench

Judgement

Madhava Reddy, C.J.—The common question of law that arises for consideration in this batch of writ petitions is whether Notification No. 184-Cus., dated 2nd August, 1976 issued by the Central Government (hereinafter referred to as "the exemption notification") in exercise of the powers vested in it under sub-section (1) of Section 25 of the Customs Act, 1962 (hereinafter referred to as "the Customs Act") entitles the petitioners to claim exemption from customs duty on the value of the packages in which the goods imported are packed. Our learned colleague, Smt. Sujata Manohar, J. was of the view that the exemption notification only exempts packages or containers from being separately charged to duty and does not provide for deducting the value of the packages from the value of the goods as arrived at u/s 14 of the Customs Act. This view being at variance with what our learned brother, Pendse, J. Had held in Writ Petition Nos. 1099 of 1978, 1641 of 1982 and 2053 of 1982 Smt. Sujata Manohar, J. has referred these matters to be decided by a Division Bench. Raising the same question several importers have filed writ petitions in this Court, some immediately upon assessment of the duty seeking a writ of certiorari, some after paying the duty seeking a writ of mandamus for refund and some others praying for a writ of mandamus to restrain the customs authorities from including the

value of the packages in assessing the value of the goods for the levy of customs duty. All these matters are now before us.

2. Suffice for the purpose of appreciating the contentions raised to refer to the facts of the Writ Petition No. 42 of 1983 on the basis of which arguments were addressed by Mr. Setalvad, learned counsel for the petitioners which arguments were adopted by all the other learned Counsels for the petitioners appearing in this batch of writ petitions.

3. Polyset Corporation, a company incorporated under the provisions of the Companies Act, imported into India High Density Polyethylene Moulding Powder ("HDPE" for short) which are subject to duties of custom under the Customs Act read with the Customs Tariff Act, 1975 (hereinafter referred to as "the Tariff Act"). The Central Government in exercise of its powers u/s 25 of the Customs Act issued a Notification No. 184/76-Cus., dated 2-8-1976 [G.S.R. 553(E)] exempting the packages in which the said goods are imported from the whole of the duty of customs livable thereon under the First or the Second Schedule to the Tariff Act as also from the additional duty livable thereon u/s 3 of the Tariff Act. That Notification reads as follows :-

"184/76-Cus., dated 2-8-76 G.S.R. 553 (E) -

In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby directs that where any goods are imported into or exported from India, in packages or containers or the like, such packages or containers or the like shall be exempt -

(i) from the whole of the duty of customs livable thereon under the First or the Second Schedule to the Customs Tariff Act, 1975 (51 of 1975), as the case may be, and

(ii) from the whole of the additional duty livable thereon u/s 3 of the Customs Tariff Act, 1975 (51 of 1975), in the case of imports :

Provided that -

(a) the value of the packages or containers or the like in which the goods are packed is included in the value for the contained therein have been invoiced;

(b) the goods are not packed in packages or containers or the like which are of a permanent character and accordingly strong enough to be suitable for repeated use; and

(c) the packages or containers or the like in which the goods are packed are such as are normally used in the trade for packing such goods."

For the sake of convenience we would refer to the goods in the packages as "principal goods" and the expression "the packages, containers or the like" used in the Notification as "packages".

The petitioners have been importing into India from time to time diverse quantity of HDPE and filing the bills of entry as required under the Customs Act. It is the case of the petitioner that ignoring the said exemption notification these goods were being subjected to duty and additional duty under the Customs Act read with Section 3 of the Tariff Act, upon the value of the principal goods including therein the value of the packages in which they were packed. These goods in the course of international trade are packed in paper packages or bags for the purpose of import and export and the value of the packages or the packing charges are included in the invoice value of the goods. These paper packages or bags are not of a permanent character and are not strong enough to be suitable for any further use or repeated use. These packages are made of paper and for emptying the HDPE contained therein the top portion has to be ripped off. These packages satisfy all the conditions laid down in the exemption notification referred to above. The petitioners though entitled to the benefit of the exemption granted in respect of the value of the packages in which the said goods were imported, being unaware of the said notification, were paying the customs duty and additional duty assessed and demanded from time to time on such imports. Although in view of the exemption notification no duty or additional duty was livable on the value of the packages in which the said goods were imported during the period January 1982 to January 1983 customs duty aggregating to a sum of Rs. 21,00,000/- was paid on the value of the HDPE and the packages put together. The excess duty so paid towards the value of packages amounted approximately to Rs. 90,000/-. The petitioners claim that the customs duty and additional duty paid in respect of the value of the packages is refundable to them.

The petitioners stated that one Milton Plastics, a firm importing the same product applied for exemption from customs duty and additional duty in August/September 1982 on the value of the packages in which the HDPE imported by them was packed. In support of its claim Milton Plastics filed along with the Bill of Entry, a certificate certifying the cost of the packing material and also further certifying that these packages were used in the normal course of international trade for packing such goods, were not of a permanent character and were not suitable for repeated use or further use. Notwithstanding the production of such a certificate, the claim of Milton Plastics for exemption from customs duty and additional duty was refused and the HDPE imported by them was subjected to the levy of the customs duty and additional duty on the full invoice value including the value of the packages. Apprehending that exemption would be refused as in the past Milton Plastics filed Writ Petition No. 2053 of 1982 in this Court. In that writ petition it was contended for the Customs Authorities that the exemption notification does not permit deduction of the value of the packages in which the HDPE was packed. It only exempted the packages independently of the goods with a view to avoid double incidence of duty once on the value of the packages along with the contents and again on the value of the packages separately. The petitioners were presently importing a total of 1360 bags (33.991 M/T) of HDPE by s.s. HELIENIC SPIRIT under a bill of landing which includes the

value of the goods and the value of the packages in which the goods are packed. In respect of the said consignments the petitioners obtained a certificate dated 17th December 1982, certifying that the value of the paper bags in which the goods are packed is included in the value of the goods mentioned in the invoice, namely, US 38 dollars per M/T and that these packages are not of a permanent character and are not strong enough for repeated use or further use and that these packages are used in the normal course of trade for packing such goods. They apprehend that the Customs Authorities would not grant them the exemption on the value of the packages. If the exemption is not granted in respect of the value of the packages, a sum of Rs. 17,943/- would be payable by them. The petitioners, therefore, seek an appropriate writ against the Collector of Customs, respondent No. 1 and the Union of India, respondent No. 2 directing them to refund the excess customs duty and additional duty recovered from them and restraining them from subjecting the value of the packages to customs duty or additional duty. In other words, they seek a direction that in assessing the customs duty or additional duty livable on the goods only the value of the principal goods i.e. HDPE should be taken into account and the value of the packages should be excluded and thus give effect to the exemption notification referred to above.

4. In the common affidavit filed in reply, the respondent pleaded that the goods inclusive of the packages are subject to duty as per the invoice value. Packages and packing material themselves constitute goods and are liable to import duty under a different head depending upon as to whether the packages are of paper, aluminium or steel. Since the packages are assessed to duty as part of the goods imported, the exemption notification seeks to exempt packages from levy of separate duty once again as distinct goods. Hence the claim of the petitioners that the value of the packages as certified by the exporter or manufacturer or as may be assessed by the Customs authorities should be deducted from the value of the goods imported, cannot be allowed. It is pleaded that the exemption notification does not authorise deduction of any amount from C.I.F. value or invoice value of the goods on any ground whatsoever including exempted the ground that the value of the packages is exempted under the exemption notification.

5. Section 12 of the Act directs that duties of customs shall be levied on all goods imported into or exported from India. Except as otherwise provided under the Customs Act or any other law customs duty has to be levied at such rates as may be specified under the Customs Tariff Act. Section 12 reads as under :

"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 of the Customs Tariff Act, 1975 directs duties specified in the Schedules to be levied. Section 2 reads as follows :

"2. Duties specified in the Schedules to be levied. - The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules."

Under Section 3 of the Customs Tariff Act, additional duty equivalent to excise duty is also livable on goods imported as specified therein. The HDPE imported into India is subject to the levy of customs duty and additional duty under Schedule I of the Customs Tariff Act. For assessment of the Customs duty livable under the Act the goods have to be valued as laid down in Section 14 which is in the following words :

"14. (1) For the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be -

(a) the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale :

Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented u/s 46, or a shipping bill or bill of export, as the case may be, is presented u/s 50;

(b) where such price is not ascertainable, the nearest ascertainable equivalent thereof determined in accordance with the rules made in this behalf.

(2) Notwithstanding anything contained in sub-section (1), if the Central Government is satisfied that it is necessary or expedient so to do it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

(2) For the purpose of this section -

(a) "rate of exchange" means the rate of exchange -

(i) determined by the Central Government, or

(ii) ascertained in such manner as the Central Government may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in the Foreign Exchange Regulation Act, 1973."

Under Section 25 of the Customs Act, the Central Government is vested with the power to exempt generally either absolutely or subject to such conditions, as it may deem fit, any goods from the whole or any part of the customs duty livable thereon by issuing a notification in the Official Gazette. Section 5 of the Customs Act in force on the date relevant for the purpose of these writ petitions, read as follows :

"25. (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs livable thereon.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is livable."

By Act 11 of 1983 sub-section (3) was inserted in Section 25 with effect from 13th May, 1983; it reads as follows :

"25. (3) An exemption under sub-section (1) or sub-section (2) in respect of any goods from any part of the duty of customs livable thereon (the duty of customs livable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is livable and any exemption granted in relation to any goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of customs chargeable on such goods shall in no case exceed the statutory duty.

Explanation. - "Form or method", in relation to a rate of duty of Customs, means the basis, namely, valuation, weight, number, length, areas, volume or other measure with reference to which the duty is livable."

6. It would be clear from a reading of the above provisions that unless specifically exempted by a notification issued by the Central Government u/s 25, duties of customs are payable upon the value of all goods imported into India. The duty shall be assessed at such rates as are specified under the Customs Tariff Act or any other law for the time being in force. The value of the goods for the purpose of assessing the duty livable thereon is to be determined as laid down in Section 14(1)(a), namely, the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade. If the price is not ascertainable, as specified in Section 14(1)(a), the nearest ascertainable equivalent thereof is required to be determined as provided in clause (b) of sub-section (1). Sub-section (2) empowers the Central Government notwithstanding anything contained in sub-section (1) of Section 14 to fix tariff

values for any class of imported goods or export goods for the purpose of assessing the duty, if it is satisfied that it is necessary or expedient so to do. The limited power vested in the Central Government under sub-section (2) of Section 14 in respect of goods imported is to fix tariff value of the goods and that too only in the circumstances mentioned therein for the purpose of levying duty and not for the purpose of granting any exemption as envisaged by Section 25(1) of the Customs Act. The notification with which we are concerned is one issued u/s 25 granting exemption and not one issued u/s 14(2) fixing the tariff value of any class of imported goods. It would be seen that Section 25 as it stood at the relevant time, empowered the Central Government only to exempt from duty any goods which are chargeable to customs duty; it did not empower it to lay down a different mode of valuing the goods; nor did it authorise it to notify deduction of any amount from the value of the goods for the purpose of assessing the duty livable thereon. These provisions make it abundantly clear that the Central Government could not by notification direct the deduction of any portion of the value of the goods either in exercise of any power vested in it under sub-section (2) of Section 14 or in exercise of the power u/s 25 of the Customs Act. What it could legitimately do u/s 14(2) is to fix the tariff value of the imported goods for the purpose of charging customs duty thereon at something different from what their value would be if assessed under sub-section (1) of Section 14. u/s 14(2) the Central Government is not empowered to exempt either wholly or partly any goods imported from the levy of customs duty. When the claim of the petitioners is one for exemption u/s 25 of the Customs Act read with the Notification issued thereunder, what the petitioners can claim is exemption from payment of whole or part of customs duty and not reduction in the assessable value of any imported goods or deduction of the value of the packages or value attributable to the packages in which the goods are imported.

7. Mr. Setalvad, learned Counsel points out that sub-section (3) inserted in Section 25 by Act 11 of 1983 permits the Central Government to grant exemption from duty livable on the goods at a rate expressed in form or method different from the form or method in which statutory duty is livable. According to the learned Counsel, this provision authorises the Central Government to direct the valuation of the goods differently for the purpose of levy of duty so as to result in the reduction of duty livable thereon. We are really not called upon to express any opinion in relation to sub-section (3) of Section 25. Sub-section (3) was inserted in Section 25 only on 13th May, 1983 and was not in force during the period to which these writ petitions relate. Even otherwise sub-section (3) of section 25 empowers the Central Government to grant exemption from statutory customs duty by providing for levy of duty on such goods in a form or method different from the form or method in which the statutory duty is livable. The form or method envisaged by sub-section (3) of Section 25 as stated in the Explanation, means a different basis of valuation also. But the exemption notification with which we are concerned does not lay down a different method or form of valuation for levy of customs duty so as to result in exemption of whole

or part of the customs duty or additional duty. Section 25 of the Customs Act as it then stood only authorised the Central Government to exempt the goods from the duty and not to reduce the CIF value of the goods or deduct any portion thereof as apportionable towards the value of the packages. It did not permit reduction or abatement of the CIF value for assessing the duty u/s 12 read with Sections 14 and 15 of the Customs Act. In our view sub-section (3) of Section 25 has no bearing in the context of the controversy before us.

In this batch of cases, the petitioners rely only upon the exemption notification for their contention that the value of the packages must be wholly excluded from the value of the goods in assessing the duty livable thereon. The exemption notification being one issued in exercise of the powers vested in the Central Government u/s 25 must be primarily read in the light of that provision. It is plain from the notification that it applies to goods imported in "packages or containers or the like". If the goods are imported in packages, "such packages or containers or the like" are exempt (1) from the whole of the duty of customs livable thereon, and (2) from the whole of the additional duty livable thereon u/s 3 of the Tariff Act provided they satisfy certain conditions. By virtue of Section 12, all goods imported are subject to customs duty. Packages are goods and liable to payment of customs duty. What are exempt under the exemption notification from the duty livable are the packages and not the goods imported or exported in packages or on any portion on the value of the goods so imported. In other words, if packages as such are subject to customs duty, they would be exempt from duty. Even then, it is not every package imported that is exempt; only when the goods are imported or exported in packages that such packages are exempt provided they satisfy the other conditions laid down in the notification. The notification itself, in our view, gives a clear indication that both the principal goods as such and the packages in which the principal goods are imported or exported are subject to duty. Proviso (a) makes it clear that if the value of the packages is not included in the invoice value of the principal goods, such packages would not be covered by the exemption notification. Proviso (b) of the notification postulates that packages which are of a permanent character and accordingly strong enough to be suitable for repeated use, are subject to duty even if some goods are packed therein. In view of proviso (c) thereof packages which are not normally used in trade for packing such goods, if used for packing the principal goods would be liable for duty, as packages. In other words, even under the exemption notification the value of the principal goods inclusive of the value of the package is sought to be made liable to customs duty. Once the value of the packages is included in the invoice value, the packages as such are exempted from levy of customs duty as packages separately to which they were liable under the several tariff entries to which we would refer later; but in assessing the value of the principal goods, the value of the packages in which the principal goods are packed in the course of international trade is not deducted. But, if the goods are imported or exported in packages which satisfy the three conditions mentioned in the said notification then such packages are exempt

from separate duty thereon as packages. That is made abundantly clear by the use of the words "livable thereon", that is, the duty livable on packages as such. The words "livable thereon" cannot govern the word "goods" occurring in the first part of the exemption notification; they refer only to the words "such packages" occurring in the later part. Although packages undoubtedly are of some value, after the exemption notification no duty can be levied on the packages as distinct from the principal goods. What the petitioners claim is not exemption of duty on packages, for even now, none is levied on packages as such. What they really claim is that in assessing the value of the HDPE or any other goods imported or exported in packages, the packages being exempt from duty under the notification the value of the packages must be deducted from the value of the goods for the purpose of assessing duty livable thereon. If we analyse the invoice value of the goods, it actually comprises of several items, to mention but few, cost of production of goods, profit of the manufacturer and the seller, insurance, freight and cost of packages. Packing is done by the manufacturer, seller or the exporter. Cost of package and packing itself is one of the items which goes into the price for which the goods are sold in the course of international trade and is reflected in the CIF value of goods imported. What is required to be assessed u/s 14 of the Act is the value of the goods imported for levying customs duty at the appropriate rate. u/s 14 of the Customs Act which corresponds to Section 30 of the old Sea Customs Act, the duty livable on the value of the goods and there is no provision to exclude or deduct the value of the package from the assessable value of the goods arrived u/s 14. In thus valuing the goods and calculating the duty livable thereon, the duty is imposed on the value of the goods as such and not on the packages in which the principal goods are imported.

In *Vacuam Oil Company v. Secretary of State* - 1978 E.L.T. (J 260) : 34 Bom. L.R. 1057 it was held that for the purpose of duty it is the invoice price that is to be taken into account. In *Ford Motor Company of India Limited v. Secretary of State* - 1978 E.L.T. J 265 : 40 Bom. L.R. 269 this Court held that the price or the valuation at the price of importation is the invoice price. In *Glaxo Laboratories v. Venkateswaran* 61 Bom. L.R. 1 Chagla, C.J., speaking for the Bench held that all considerations must ultimately be directed to the determination and ascertainment of the only fact which has got to be determined and ascertained u/s 30(b) of the Sea Customs Act, 1878, which is the cost of the goods of like kind and quality at the place of importation. Cost of the goods on importation is the value of the goods as such ready for delivery at the time of importation of goods. The Customs Act envisages valuation of the goods u/s 14 in accordance with Rules 3 and 4 of the Customs Valuation Rules, 1963, which deal with packaging. They take into account the type of packing used for goods in the course of international trade and provide for assessing the CIF value of the goods including the value of the packaging. Rules 3 and 4 reads as follows :

"3. (a) The value of the imported goods may be based on the value at which such goods, or comparable goods produced or manufactured by the person who has produced or manufactured the goods to be assessed, are ordinarily sold or

offered for sale to other buyers in India under competitive conditions;

(b) if the value cannot be determined under clause (a) it may be based on the export price at which such goods or comparable goods produced or manufactured by the person who has produced or manufactured the goods to be assessed are ordinarily sold or offered for sale under competitive conditions to buyers in countries outside India;

(c) if the value cannot be determined under clause (a) or clause (b) it may be based on the value at which comparable goods, produced or manufactured by other persons in the country in which the goods to be assessed have been produced or manufactured, are ordinarily sold or offered for sale to other buyers in India under competitive conditions;

(d) if the value cannot be determined under any of the foregoing clauses, it may be based on the price at which such goods or comparable goods produced or manufactured by the person who has produced or manufactured the goods to be assessed are ordinarily sold or offered for sale under competitive conditions to buyers in the country of origin.

Explanation. - In this Rule sale under competitive conditions means a sale in the ordinary course of trade between a seller and a buyer who have an interest in the business of each other and where price is the sole consideration.

4. (a) In determining the value of imported goods under Rule 3, the proper officer shall make such adjustments as appear to him reasonable, taking into consideration all relevant factors, and in particular :

(i) the difference in the dates of importation;

(ii) difference in freight and insurance charges depending on the place of importation;

(iii) difference in composition, quality, design, size, type of packing, stage of manufacture, and other characteristics, between the goods to be assessed and the goods with which they are being compared; and

(iv) in cases to which clause (d) of Rule 3 applies, the amount of internal tax levied in the country of origin from which the goods when exported are exempt or are relieved by means of refund."

There is no provision in Section 14 of the Customs Act or the rules made thereunder or in the Customs Tariff Act, 1975, for assessing the value of the packages (which contain the goods) separately and deducting it from the value of the goods for the purpose of ascertaining the duty payable thereon. The invoice value includes packaging. Merely because in some cases the value of the packages or the cost of packages is shown separately in the invoice or the invoice shows the total value of the goods including the value of the packages and the value of the packages can be ascertained from the certificate issued by the foreign suppliers or the local agent of the foreign suppliers, that cannot be

deducted u/s 14 in assessing the value of the goods imported; nor can any abatement in the value of the goods be allowed. That is neither permissible u/s 14 nor directed by the exemption notification issued u/s 25 of the Customs Act.

8. Mr. Setalvad, learned Counsel for the petitioners, contended that goods in the normal course of trade are imported "in packages or containers or the like". In importing goods in packages, two different goods are not being imported, namely : (1) the goods contained in the packages, i.e. the principal goods, and (2) the packages themselves. What are imported are the principal goods and in this case, it is the HDPE contained in the packages and not the packages as such; the principal goods imported in packages constitute a single item of goods. Mr. Setalvad points out that the exemption would not apply to the importation of mere packages or to the importation of goods otherwise than in packages. This notification is intended to apply only to the packages in which any goods are imported or packed. When the exemption notification provides that where the goods are imported in packages, the duty livable thereon, that is, on such packages, is exempt, the only way of giving effect to the notification and granting exemption envisaged by it is to assess the value of the packages and exclude it from the invoice value of the goods which ordinarily includes the value of the packages also. The learned Counsel contends that any other interpretation would render the exemption notification wholly redundant.

9. Of course, no provision of a statute or even of a notification issued in exercise of the statutory powers conferred on the Government should be so interpreted as to render any part of it redundant. But this contention proceeds on the footing that in assessing the value of the goods each component which goes to make up the value of the goods is subjected to the levy of customs duty or additional duty. This assumption, in our view, is not correct. The composite value of the goods at importation, as stated above, comprises of several items, one such item being packages. There is no warrant for splitting up the value of the goods into the value of the goods as such and value of the packages in which they are imported. In the absence of any specific provision permitting the components constituting the value of the goods to be split up and authorising the exclusion of the value of the packages from the total value of the goods, the value of the packages cannot be excluded in assessing the invoice value of the goods for the purpose of customs duty. So far as the Customs Act read with various Headings in the Schedules in the Customs Tariff Act the principal goods as such as well as the packages fall under separate heads and are chargeable to customs duty. Though what are imported are principal goods (HDPE) in packages, as a matter of fact, HDPE by itself constitutes goods and packages by themselves are described as items which are subject to duty under First Schedule to the Tariff Act. Duty is livable on packages as such under the Headings 73.22, 73.23 and 73.24, if they are made of iron and steel, under Heading 76.16, if they are made of aluminium and under the Heading 80.06 if they are made of tin. It is common knowledge that in international trade goods are packaged according to certain standards and certain goods are imported in packages and some cannot be

imported except in packages. Even in retail, the same goods are sold in packages as well as loose, that is without any package. Though the goods be the same, if they are sold in packages, they cost more and if they are sold loose, they cost less, because their value is less. Nevertheless, in both the cases what are sold are the principal goods. The buyer pays the higher price for the goods and not for the package; only the value of the goods goes up due to the package. It is not as if the goods and packages are sold in one case and in the other case only the goods. The cost of goods sold in packages is inclusive of the value of the packages. The exemption notification, in our view, does not permit the valuation of the goods in packages being split up into principal goods and packages and exempt the packages from duty. It treats goods in packages as one single item of goods and prohibits levy of customs duty on packages as separate goods. If the exemption notification were not to be issued, even if the value of the packages was included in assessing the value of the goods imported in packages and subjected to duty u/s 14 of the Customs Act read with Section 3 of the Customs Tariff Act, the packages themselves would have been further subjected to duty depending upon whether the packages were made out of paper, iron, steel, aluminium or tin. It is this double incidence of duty that is avoided as a result of this exemption notification. Even then, not every package is exempt from duty. Such packages would still be liable to duty if they do not satisfy the requirements of the provisos (a), (b) and (c) of the said exemption notification. In view of proviso (a) if the value of the packages is not included in the value for which the goods contained therein have been invoiced, the exemption is not attracted and the packages would still be liable to levy of duty. So also even if the goods are invoiced inclusive of the value of the package but the packages are of a permanent character and accordingly strong enough to be suitable for repeated use, the exemption granted under the notification would not enure. Unless the third condition, namely that the packages in which the goods are packed be should such as are normally used in the trade for packing such goods, is also satisfied, the importer or exporter cannot avail of the exemption. The packages would be exempt from duty only if they satisfy all the three requirements laid down in the three provisos of the exemption notification. The exemption is only to that extent. The exemption notification does not permit the value of the goods to be reduced by deducting any amount towards the value of the packages in which the goods are imported. Such an interpretation far from rendering the exemption notification redundant gives full effect to its true intendment.

10. It must be noted that the notification is one granting exemption u/s 25 of the Customs Act and not a notification authorising any deduction from the value of the goods arrived at u/s 14 of the Act on any ground whatsoever. In fact, as Section 25(1) stood at the relevant date, there was no authority vested in the Central Government to reduce the value of the goods even for granting exemption from levy of duty u/s 25.

11. Certain notifications exempting drums and containers were also referred to

contend that under this Notification also the Government intended to wholly exempt all packages from customs duty. They are :

- (1) Notification Nos. 260 and 261, dated 11th October, 1958 under Notes 86 and 87 of the First Schedule to the Tariff Act which deal with drums and containers full and empty and exempt 2% of the empty drums and containers from duty;
- (2) Notification No. 155, dated 28th July, 1980 under Note 96 which deals with empty spare bags used for packing manure, foodgrains or milk; and
- (3) Notification No. 81, dated 5th April, 1978 under Note 99 which deals with empty spare kraft paper bags used for packing cement and exempts spare bags to the extent of 3%.

It is argued by Mr. Setalvad that when spare bags and spare containers imported along with the goods in bags and containers are exempted to the extent referred to in the said Notification, in respect of goods imported in packages there should be abatement in the value of the principal goods to the extent of the value of the packages. This contention cannot be accepted for more reasons than one. Firstly, there is no analogy between those Notifications and the Exemption Notification with which we are now concerned. Those Notifications exempt some empty bags, drums and containers sent as spares along with the goods imported in bags, drums and containers. The drums, containers and bags in which the principal goods are sent are not exempted. Only a certain quantity of spares sent along with the goods in packages are exempt. These packages though sent empty are in fact intended to serve as spares for the packages in which the principal goods are packed to be readily available in case the original packages are damaged in retransit. These notifications neither exempt the packages in which the principal goods are sent from duty nor do they allow abatement in the value of the principal goods.

12. Another contention of Mr. Setalvad is that if packages are also to be valued and subjected to Customs duty, a separate bill of entry in respect of packages also should have been insisted upon; but it is not done. According to him, that gives an indication that only the value of the principal goods is to be assessed and the value of the packages, if included in the value of the goods, should be deducted. This contention, in our view, ignores the fact that the packages as such are not being assessed to duty. It is the principal goods in the packages that are being assessed u/s 14. The principal goods, if loose, will be assessed as such, and if in packages, they are still the same goods which have acquired a higher value on account of being put in packages that are being assessed. Though they have identity of their own as packages, they are not being valued as packages, although they can be so valued for the purpose of customs duty, as they fall within the ambit of the Imports (Control) Order, 1955, under Items 48.01 to 48.21 if they are made of paper and paperboard, or Items 73.22, 73.23 and 73.24, which refer to drums, containers and boxes made of iron and steel or under Items 76.00 to 76.16 if they are made of aluminium or under Item 80.06 if

they are made of tin, as the case may be.

13. In sum Section 14 requires the goods to be valued for the purpose of assessing the duty payable thereon. Even in case the imported goods are in packages there is no provision in the Customs Act to deduct any portion of the value of the goods on the ground that the total value of the goods is comprised of, among other items, the value of the packages also. The goods including the packages in which they are imported are required to be valued for assessing the duty livable thereon and in so valuing the goods, the Customs authorities are not valuing two goods, the principal goods as such and the packages in which the goods are imported and are levying duty on two different goods; they are only valuing the goods contained in the packages. From out of the value of the goods so assessed, the cost or the value of the packages is not severable and is not deductible for the purpose of assessing the duty livable thereon.

14. For the foregoing reasons, we are of the view that the exemption notification does not permit the valuation of the packages in which the goods are imported separately from the principal goods and does not authorise the Customs authorities to deduct the same from the invoice value of the goods u/s 14 of the Customs Act; nor does it entitle the importers to claim exemption from the levy of customs duty on the value of packages u/s 25 read with the exemption notification. We agree with the view taken by Smt. Sujata Manohar, J. that the exemption notification does not provide for reduction in the value of the goods as prescribed in Section 14 of the Customs Act; it only exempts packages from being separately charged to Customs duty. The claim of the petitioners for exclusion of the value of the packages from the value of the goods cannot, therefore, be allowed.

15. These writ petitions fall into three categories :

(i) Petitions in which the invoices show the value of the goods imported and the cost of packaging separately;

(ii) Petitions in which the invoices show the total value of the goods including packaging but the importers have furnished to the Customs authorities a certificate from the foreign suppliers showing the value of the packing material; and

(iii) Petitions in which the invoices show the total value of the goods imported but the importers have furnished to the Customs authorities a certificate from the local agents of the foreign suppliers showing the value of the packaging material. However, in the view we have taken, irrespective of the category in which each of these writ petitions falls, under the exemption notification the value of the packages cannot be deducted from the value of the goods. No direction restraining the respondents from including the value of the packages in assessing the value of the goods for the purpose of levying Customs duty or additional duty thereon can be issued in any of these writ petitions. The petitioners are not entitled to any of the reliefs prayed for. These petitions, therefore, fail and are

accordingly dismissed. Rule issued in each of these writ petitions is discharged. In the circumstances, we make no order as to costs.