
(1992) 07 BOM CK 0042

In the Bombay High Court

Case No : Writ Petition No. 3195 of 1991 and Others

Sipta Coated Steel Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-07-1992

Acts Referred:

Customs Act, 1962 — Section 15, 157, 2(34), 4, 5

Citation : (1993) 1 BomCR 201 : (1992) 62 ELT 485

Hon'ble Judges : Sujata V. Manohar, J; B.P. Saraf, J

Bench : Division Bench

Advocate : Shri Kamal Parsurampuriah and others, for the Appellant; Shri M.I. Sethna, H.V. Mehta, R.C. Master and K.C. Sidhwa, for the Respondent

Judgement

Sujata Manohar, J.—All these writ petitions have been heard together because all of them challenge the same Public Notice issued by the Collector of Customs, Bombay dated 11th June 1990 and another Public Notice issued by the Collector of Customs, Bombay dated 15th January 1992.

2. The petitioners in all these petitions have imported goods which arrived at the Bombay Port. The petitioners had filed Bills of Entry for warehousing. For warehousing goods outside Bombay, the petitioners have been required to furnish bank guarantees for the amount of duty payable in respect of these goods in the manner set out in these Public Notices (or such of them as were applicable at the relevant time) to cover the period of transit i.e. the period during which the goods were being transferred from the Bombay Port or a warehouse in Bombay to a warehouse outside Bombay. The petitioners have challenged these Public Notices.

3. The petitions fall into two broad categories or groups :

Category 1 - Those cases where goods were imported and were set for being warehoused outside Bombay directly from the Bombay Port.

Category 2 - Those cases in which goods which were warehoused in a warehouse

at Bombay were thereafter transferred to a warehouse outside Bombay.

In each of these categories there are two sub-groups. Sub-group A consists of those petitions which have been filed prior to the coming into operation of the Public Notice of 15th January 1992. These petitions therefore challenge only the Public Notice of 11th June 1990. Therefore the petitions which are listed in Categories 1A and 2A are petitions which challenge only the Public Notice of 11th June 1990.

Sub-group B consists of those petitions in which either both the Public Notices of 11th June 1990 and 15th January 1992 are challenged or where only the Public Notice of 15th January 1992 is challenged. Petitions in Categories 1B and 2B are such petitions.

4. The Public Notice of 11th June 1990 by itself is no longer in operation. It has been substantially modified by the Public Notice of 15th January 1992. The petitions falling in Categories 1A and 2A have been substantially worked out in the sense that pursuant to the interim orders which have been uniformly passed in all the writ petitions which are before us, the petitioners were permitted to transfer goods to a warehouse outside Bombay on their executing a policy of insurance as per the previous Public Notice which was in force till 11th June 1990. The goods have accordingly been transferred to a warehouse outside Bombay. We need not, therefore, examine the validity of the Public Notice of 15th June 1990 by itself, since this position no longer prevails. Such examination would be academic. In the case of all those writ petitions falling in Categories 1A or 2A the respondents will be at liberty to ascertain whether the goods which were transported for warehousing outside Bombay have reached the warehouse outside Bombay. In the case of any deficiency or shortfall in the quantity of goods reaching the warehouse outside Bombay, the respondents are entitled, under the interim orders, to recover any duty on such deficient goods in accordance with law from the insurance policies which have been furnished. If in any of those cases the respondents are not able to recover any such duty in respect of goods not so transferred, the respondents would be at liberty to apply for appropriate orders from the court. No other orders are required in these petitions.

5. We have therefore to consider the validity of only the Public Notice of 11th June 1990 as modified by the Public Notice of 15th January 1992. Before that, it is necessary to state certain facts.

6. The petitioners had imported certain goods which arrived at the Port of Bombay. u/s 15 of the Customs Act, 1962 the petitioners can present a Bill of Entry for Warehousing. u/s 59(1) of the Customs Act, 1962 the importer of any goods specified in Section 61(1)(a) which have been entered for warehousing shall execute a bond binding himself in a sum equal to twice the amount of the duty assessed on such goods and comply with the other conditions specified in that section. Under sub-section (3) a bond executed under this section by an

importer in respect of any goods shall continue in force notwithstanding the transfer of the goods to any other person or the removal of the goods to another warehouse. Section 61 sub-section (1)(a) describes the goods to which Section 59(1) applies. These are non-consumable stores; goods intended for supply to a foreign diplomatic mission; goods intended for use in any manufacturing process or other operations in accordance with the provisions of Section 65, goods intended for use in any hundred per cent export-oriented undertaking and goods which the Central Government may, if it is satisfied that it is necessary or expedient so to do, by notification in the Official Gazette, specify for the purposes.

7. In respect of all other goods Section 59A [which was inserted with effect from 23-12-1991 by Customs (Amendment) Act, 1991] provides that the importer of any dutiable goods which have been entered for warehousing shall deposit fifty per cent of the assessed duty and execute a bond binding himself in a sum equal to twice the amount of the balance of such assessed duty and interest leviable on such balance. He is also required to comply with other conditions laid down in Section 59A. Sub-section (3) of Section 59A provides that a bond executed by an importer in respect of any goods shall continue in force notwithstanding the transfer of the goods to any other person or the removal of goods to another warehouse. As a result of these sections, after 23rd December, 1991, the importer of goods other than those which are covered by Section 61(1)(a), who files a Bill of Entry for warehousing has to deposit 50% of the duty assessed on the goods and for the balance 50% of duty he is required to execute a bond for twice the amount.

8. Section 67 of the Customs Act, 1962 deals with removal of goods from one warehouse to another. It provides as follows :

"Section 67. Removal of goods from one warehouse to another. - The owner of any warehoused goods may, with the permission of the proper officer, remove them from one warehouse to another, subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted."

9. u/s 157 a general power is granted to make regulations to the Central Board of Excise and Customs. It provides that without prejudice to any power to make regulations contained elsewhere in this Act, the Board may make regulations consistent with this Act and the rules, generally to carry out the purposes of this Act. Under sub-section (2), in particular and without prejudice to the generality of the foregoing power such regulations may provide for all or any of the following matters, namely :

(b) the conditions subject to which the removal of warehoused goods from one warehouse to another u/s 67, may be allowed without payment of duty."

10. Thus u/s 67 of the Customs Act, with permission of the proper officer, the owner of any warehoused goods may remove goods from one warehouse to

another. This however, is subject to condition as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted. These conditions have been framed by the Board in the form of regulations in exercise of its powers u/s 157. These regulations are known as the Warehoused Goods (Removal) Regulations, 1963. Under Regulation 2 of these Regulations conditions are laid down for transportation of warehoused goods in the same town. Regulation 3 prescribes conditions for transport of warehoused goods to another town. It provides as follows :

"3. Conditions for transport of warehoused goods to another town. - Where the goods are to be removed from one warehouse to another in a different town the proper officer may require the person requesting removal to execute a bond in a sum equal to the amount of import duty leviable on such goods and in such form and manner as the proper officer deems fit." Regulation 4 prescribes the terms of the bond which is required to be executed under Regulation 3. It is as follows :

"4. Terms of the bond to be executed. - The terms of the bond shall be that if the person executing the bond produces to the proper officer, within three months or within such extended period as such officer may allow, a certificate issued by the proper officer at the place of destination that the goods have arrived at that place, the bond shall stand discharged; but otherwise an amount equal to the import duty leviable on the goods in respect of which the said certificate is not produced shall stand forfeited."

Regulation 5 states as follows :

"5. Surety or security to be furnished. - The proper officer may require that the bond shall be with such surety or security or both as is acceptable to him."

Therefore, in addition to the bond which an importer is required to furnish u/s 59 or 59A, as the case may be, if the importer desires to transport warehoused goods from one warehouse to another warehouse in a different town, he is required to execute an additional bond in a sum equal to the amount of import duty leviable on such goods. This bond will stand discharged on production of a certificate issued by the proper officer to the effect that the goods have arrived at their destination, namely, the second warehouse. The bond, therefore, is directly related to the due arrival of the warehoused goods at the warehouse to which the removal of the goods is permitted. Under Regulation 5, in addition to such a bond the proper officer has the discretion to ask for surety or security or both.

CATEGORY 1 :

11. In respect of petitions which fall in the first category (i.e. when the goods have been directly transported to a warehouse outside Bombay), the first contention which has been raised by the petitioners in the light of this provision is to the effect that the provisions of Section 67 as well as the Warehoused Goods (Removal) Regulations, 1963 are applicable only in those cases where any

warehoused goods are required to be removed to another warehouse. The petitioners in these writ petitions contend that their goods have not been removed from one warehouse to another warehouse. The goods are directly warehoused for the first time outside Bombay. Hence the provisions of Section 67 as well as the said Regulations have no application to them. They should not, therefore, have been asked to furnish any bond or surety under these provisions.

12. It is first necessary for us to examine the factual position regarding these petitions where the petitioners allege that they have not removed their goods from one warehouse to another; they have warehoused the goods for the first time in a bonded warehouse outside Bombay. The documents which these petitioners have executed are produced before us by the respondents. These have been taken on record by us. To appreciate the documents, it is necessary to refer to a letter dated 23rd April 1975 sent by the Under Secretary Government of India to the Collectors of Customs at Bombay, Calcutta, Madras and Cochin. The letter refers to the Customs Bonded warehouses in the interior and the procedure regarding transfer of goods from the port of importation. The letter sets out that a number of places in the interior have been declared to be warehousing stations "mainly with the intention of allowing manufacture in bond facilities to export oriented industries." Instructions have been separately issued for further facilitating warehousing of goods at such stations by other industries also. Paragraph 3 of this letter is important and we would like to reproduce the same :

"3. Normally for transfer of goods in bond from the port of importation to an interior warehousing station under the provision of Section 67 - Cus. Act, 62, it would be necessary that the goods are first warehoused at the port of importation and then removed from one bond to another. As this may entail difficulties for the importers/borders, it has been decided that in deserving cases, the requirement of physical warehousing at the port of importation may be waived by the Assistant Collector of Customs subject to post facto approval of the Ministry. Quarterly statements may be sent for this purpose."

Accordingly right from 1975, the respondents are waiving the requirement of first warehousing at the port of importation in cases where the importer desires to warehouse goods at a warehouse outside Bombay. The respondents have further pointed out that in the cases which are before us, the bond department, in each case has made a request for waiving the physical warehousing of the goods in Bombay. The transfer bond which is executed itself recites that the owner has applied to the Collector of Customs at Bombay to permit the removal of the goods from the warehouse at Bombay to the warehouse at the place of destination. Therefore, in each case the bond department has waived physical warehousing of the goods at Bombay in accordance with the instructions contained in the letter of 23rd April 1975 which is in terms referred to in the document which is signed by the authorities. And this waiver has been done at the instance of the importer so as to eliminate double handling of goods in each

case.

13. We may also refer to a further Public Notice of 6th March 1986 which deals with waiver of physical warehousing for transportation to a warehouse outside the jurisdiction of the Bombay Collectorate. This notice which is issued by the Additional Collector of Customs, Bombay mentions that in a number of cases where the movement of bonded goods u/s 67 of the Customs Act to a warehouse outside the jurisdiction of the Bombay Customs House is permitted by waiving physical warehousing, the goods are not removed from the docks even after a lapse of 3 months. The notice states that in order to ensure the removal of goods from the docks in respect of which physical warehousing is waived within a reasonable time, it has been decided to restrict the removal of such goods within 14 days. In case the goods are not cleared within 14 days, the condition of waiving physical warehousing will not apply and the goods should be cleared on payment of duty at Bombay only. These documents, therefore, clearly show that even in the so-called cases of first warehousing outside Bombay, in fact the petitioners have been required to have their goods warehoused at Bombay. But this requirement has been waived and the petitioners have been permitted to send the goods directly to a warehouse outside Bombay. This is a facility which has been granted to the petitioners in their own interest. Initial warehousing has merely been waived in order to avoid double handling. Therefore, all these are cases where the goods were required to be warehoused in Bombay and were transferred to another warehouse outside Bombay after waiving the requirement of initial warehousing. The bonds of the petitioners clearly set out this position. The provisions of Section 67 and the Regulation are, therefore, clearly applicable to these petitioners also. All the importers and the Collectorate have accepted this position and have followed this practice from 1975 onwards. It is a settled practice, and we do not see any reason why we should unsettle it, especially when the documents executed by the petitioners themselves clearly show that these goods were considered as warehoused in Bombay and have been sent to a warehouse outside Bombay. Only the physical warehousing in Bombay has been waived. The first contention must, therefore fail.

14. Mr. Sethna, learned counsel for the respondents has further submitted that u/s 4 of the Customs Act, 1962, the Central Government may appoint such persons as it thinks fit to be the officers of Customs. Under the various notifications which have been issued from time to time u/s 4, such appointments are notified for the areas which are mentioned in those notifications. The officers have jurisdiction only over the area so specified. The jurisdiction of the Collector of Bombay is limited only to the Municipal limits of Greater Bombay. Mr. Sethna, submits that the Collector, Bombay has no jurisdiction, therefore, to pass a Bill of Entry for warehousing outside Bombay. Therefore, the Bill of Entry for warehousing must necessarily be a Bill of Entry for warehousing in a warehouse within the jurisdiction of the Collector of Customs at Bombay.

15. We are not going into the merits of this argument because in any event, the

factual positions as disclosed by the documents is that all these cases are governed by the provisions of Section 67 of the Customs Act, 1962.

VALIDITY OF PUBLIC NOTICES :

16. The second question which requires to be considered is whether the Public Notices in question are bad in law. The first Public Notice is dated 11th June 1990. It is issued by the Collector of Customs in supersession of Public Notice No. 123 dated 27-8-1981. It sets out that whenever transfer of goods in bond to other warehousing stations u/s 67 of the Customs Act is granted, such transfers are to be covered by a transfer bond for a sum equal to the amount of import duty leviable on the goods in the prescribed form backed by a Bank Guarantee for an equivalent amount in favour of the Collector of Customs, Bombay. This condition shall apply to both public sector as well as private bonders.

17. The second Public Notice is dated 15th January 1992. It is issued "in supersession of instructions contained in earlier Public Notices....." It states that henceforth no insurance policies in favour of Collector of Customs would be required to effect transfers.

"It is further notified that the condition of submission of 100% Bank Guarantee to cover the duty amount will be relaxed in case of non-defaulting importers in the following manner :

(a) Public Sector Undertakings, State/Central Government Undertakings, 100% E.O.U. s, Units located in Export Processing Zones, Manufacturers in bond and Ship Stores will be allowed to transfer the goods on tendering 15% Bank Guarantee along with the bond u/s 59 of the Customs Act, 1962, equal to twice the amount of duty and interest if any, on conditions set out therein. In case the importer is required to deposit 50% of the duty before effecting the transfer, the 15% Bank Guarantee and the bond shall be with reference to the balance duty. In addition, a transit bond u/s 67 of the Customs Act, 1962, will also be required to be executed.

(b) Regular importers who had not defaulted in producing re-warehousing certificate in the past, shall also be required to follow the above mentioned procedure, but they will be required to furnish a Bank Guarantee to the extent of 25%.

(c) In case of importers of heavy consignments or in bulk, the Collector will consider accepting a standard Bank Guarantee.

There are other conditions attached to this class which we need not go into. Export Houses shall be treated at par with the categories of importers mentioned in (a) above.

18. It is necessary to look at the background in which these Public Notices have been issued. In this connection the respondents have annexed to their affidavit dated 9th July 1992 in Writ Petition No. 1501 of 1992, certain correspondence

which has been exchanged between the Central Board of Excise and Customs, New Delhi and the various Collectors of Customs. The first letter from the Central Board of Excise and Customs is addressed to all Collectors of Customs and Excise. It is dated 18th May 1990. In this letter the Board has pointed out that large scale evasion of customs duty has been detected in cases of transfer of warehoused goods from the major ports to interior warehousing stations. This is apparently on account of inadequate monitoring of re-warehousing of the imported goods permitted for transfer and also not insisting on sufficient security of customs duty. It states that the Warehoused Goods (Removal) Regulations, 1963 already provide for taking surety/security or both for transfer bonds taken u/s 67 of the Customs Act. It appears that this requirement is not being strictly enforced by the Customs Houses and that the re-warehousing particulars of the goods allowed for transfer are also not being insisted upon, resulting in the possible evasion of custom duty. The letter goes on to say that the matter has been considered by the Board and it is decided that the following measures should be immediately taken by the Customs Houses :

- (i) Transfer bonds u/s 67 of the Customs Act should be backed with full bank guarantee to ensure recovery of customs duty immediately on default, as provided under Warehoused Goods (Removal) Regulations, 1963;
- (ii) The rewarehousing of the goods allowed to be transferred should be strictly monitored and immediate action should be taken to recover the duty in cases where the rewarehousing certificates are not produced within the prescribed period;
- (iii) All Customs Houses may carry out an immediate review of cases where movements under transfer bonds were permitted in the past".

It is pursuant to this letter that the first Public Notice of 11th June 1990 appears to have been issued by the Collector of Customs.

19. Thereafter the Central Board of Excise and Customs have modified the directions given by it by issuing its letter of 20th November 1990. By this letter the Board has asked the Collector of Customs that "the following guidelines may be kept in view while relaxing the requirements of 100% Bank Guarantee in permitting transfer of imported goods in bond to inland warehousing stations"..... These guidelines are set out in the letter and need not be reproduced.

20. There is a further letter dated 30th September 1991 from the Central Board of Excise and Customs modifying the letter of 20th November 1990. It once again states that "the following guidelines may be kept in view while relaxing the requirements of 100% Bank Guarantee in permitting transfer of imported goods in bond to inland warehousing stations". These guidelines are relevant. They are as follows :

- (1) 15% bank guarantee may be insisted from public sector undertakings/State/

Central Government undertaking, 100% E.O.U.s and Export Processing Zones, Manufacture-in-bond units and ship stores, alongwith the transit bond equal to the amount of duty on the condition that re-warehousing certificates in respect of the consignments cleared should be produced within three weeks of the despatch failing which next consignment may be allowed only on transit bond supported by 100% bank guarantee.

(2) Regular importers who have not defaulted in producing re-warehousing certificate in the past may be allowed to furnish bank guarantee equal to 25% of the duty amount alongwith transit bond on the same conditions mentioned above.

(3) In case of importers of heavy consignments or in bulk, Collectors could consider accepting a standard bank guarantee. This running guarantee should be of adequate amount, which will be treated as a Security for all the transfers that are likely to be made, during the period of validity of bank guarantee. The validity period of the bank guarantee should be renewed immediately before expiry.

(4) For imports of highly sensitive nature where the rates of duty are very high or which command high premium in the market the Collectors may decide on the requirement of bank guarantee depending on the reputation of the importer. In this case restriction regarding bank guarantee equal to 25% would not apply and the Collector may exercise their discretion to decide upon the bank guarantee.

(5) Established Export Houses/Trading Houses may be allowed to furnish 15% bank guarantee instead of 25% bank guarantee.

(6) Wherever bank guarantee have been furnished, the Collector concerned should monitor their validity and ensure that the cancelled bank guarantee are returned to the importers within ten days of their submitting the re-warehousing certificates to the customs."

The second Public Notice of 15th January 1992 is as a result of these subsequent guidelines which have been issued by the Central Board of Excise and Customs.

21. It is submitted by the petitioners that under the provisions of Warehoused Goods (Removal) Regulations, 1963 regulations 3 and 4 provide for a bond which is required to be executed by the importers while re-warehousing goods in another warehouse. Under Regulation 5 a discretion is given to the proper officer to ask for a surety or security or both in addition to the bond. It is submitted that the proper officer is, therefore, required to exercise his discretion under Regulation 5 as to whether any security should be asked for in addition to a bond when permission is granted for re-warehousing goods. This discretion cannot be fettered by the Board or by the Collector by issuing directions or public notices.

22. Now, the term "proper officer", is defined u/s 2(34) of the Customs Act, 1962 as follows :-

"2(34) "proper officer", in relation to any functions to be performed under this

Act, means the officer of customs who is assigned those functions by the Board or the Collector of Customs."

Therefore, according to the petitioners only the Assistant Collector of Customs who is assessing the goods of the petitioner can decide in each individual case whether the Bank Guarantee should be asked for. This discretion of the proper officer is taken away by the two Public Notices in question and hence these Public Notices are bad in law.

23. It is undoubtedly correct that an authority which is entrusted with discretionary powers cannot be compelled to act at the dictation of another authority while exercising that discretion. In *de Smith's "Judicial Review of Administrative Action"*, Fourth Edition, at page 309 it is stated as under :

"An authority entrusted with a discretion must not, in the purported exercise of its discretion, act under the dictation of another body or person Authorities directly entrusted with statutory discretions, be they executive officers or members of distinct tribunals, are usually entitled and are often obliged to take into account considerations of public policy, and in some contexts the policy of a Minister or of the Government as a whole may be a relevant factor in weighing those considerations, but this will not absolve them from their duty to exercise their personal judgment in individual cases, unless explicit statutory provision has been made for them to be given binding instructions by a superior, or possibly unless the cumulative effect of the subject-matter and their hierarchical subordination (in the case of civil servants and local government officers) make it clear that it is constitutionally proper for them to receive and obey instructions conveyed in the proper manner and form."

In the light of this legal position we have to consider whether the discretion granted to the proper officer under Regulation 5 is taken away as submitted by the petitioners.

24. In the first place the term "proper officer" has been defined in Section 2(34) with reference to the functions to be performed under the Act. Section 5 of the Customs Act, 1962 deals with powers of officers of the Customs Department. Sub-sections (1) and (2) provide as follows :

Section 5 :

"(1) Subject to such conditions and limitations as the Board may impose, an officer of Customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him."

Therefore the Collector of Customs who is superior officer of the Assistant Collector of Customs can also exercise powers under Regulation 5. Under sub-

section (1) of Section 5 the exercise of such powers by an officer of the Customs Department is subject to such conditions and limitations as the Board may put.

25. In the present case the Board has issued certain letters. The respondents point out that these letters have been issued in order to ensure that there is a certain degree of uniformity in exercise of powers under Regulation 5. An unguided exercise of discretion under Regulation 5 may lead to a charge of arbitrariness in exercise of powers. In order to avoid arbitrariness in exercise of powers u/s 5, the Board has issued these letters. The letters in terms refer to the exercise of powers under the Regulation issued u/s 67. Therefore, the discretion which is granted to the proper officer is sought to be guided by the letters which the Board has issued. In fact, apart from the first letter of 19th May 1990, the two subsequent letters of 20th November 1990 and 30th September 1991 in terms call their contents "guidelines to be followed while relaxing the requirement of 100% bank guarantee". When the three letters are read together, it becomes clear that all these letters are intended as guidelines to the Collector for exercise of powers under Regulation 5. The two public notices which have been issued by the Collector of Customs at Bombay pursuant to these letters, are therefore, in the nature of guidelines to proper officers in the exercise of their discretion under Regulation 5. They cannot be considered as mandatory. The learned counsel for the respondents has submitted that these are to be construed as guidelines for the exercise of discretion, in order that there may not be any arbitrary exercise of powers under the Regulations and there may be uniformity in the exercise of discretion. We are inclined to accept this submission.

26. Looked at from a slightly different angle, a perusal of all the documents which have been produced before us makes it clear that the two Public Notices which have been issued are based on the letters received from the Central Board of Excise and Customs. u/s 5(1) of the Customs Act, 1962 the exercise of powers by the officers under the Act is subject to such conditions and the limitations as the Board may impose. In the present case it is as a result of the guidelines issued by the Board that the Collector has issued two Public Notices. Section 5(1), therefore, in terms provides for such guidelines to be issued by the Central Board of Excise and Customs, in order to guide the exercise of powers granted to the officers under the provisions of the Act and the Regulations. Looked at in this context also, the two Public Notices cannot be said to take away the discretion granted to the proper officer under the Regulations.

27. Our attention was drawn to a decision in the case of Ram Co Coke Industries and Anr. v. Commissioner of Sales Tax, U.P., Lucknow, and Anr. reported in (1986) 61 S.T.C. 212. The case dealt with Section 8C(2) of the U.P. Sales Tax Act, 1948. Under this Section the assessing authority had the discretion to fix the amount of security. The Commissioner issued certain circulars specifying the amount of security to be furnished by the dealers under that section. The court said that the discretion which was granted to the assessing authority was taken away by the circulars which fixed the amount of security and hence the circulars

took away the discretion which was granted to the assessing authority. The court took this decision after consideration of the scheme of the Act. In the present case, however, the public notices in question are only in the nature of guidelines. In our view they do not take away the discretion which is granted under Regulation 5. They are merely meant to regulate their discretion so as to prevent arbitrariness in the exercise of their powers, and ensure certain uniformity in such exercise throughout the country.

28. Our attention is also drawn to a decision in the case of Atlantic Engineering Services (P) Limited v. Union of India and Anr., reported in 1979 II LJ 136. The Delhi High Court in that case considered Section 14B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and a table framed by the Central Government fixing the quantum of damages for delay in payment of Provident Fund Contribution by the employer. The constitutional validity of Section 14B was challenged before the Delhi High Court. While considering various arguments advanced before it, the court negated the contention that preparation of the table by the Government showed that the Government did not apply its mind and was mechanically making the demand. The court said that the framing of the table of damages by the Government was for the guidance of the officers u/s 14B. The court held that the table was only a guideline and was not a determination. This decision has been followed by the Punjab and Haryana High Court in the case of International Electricals, Faridabad v. Regional Provident Fund Commissioner, Punjab, reported in (1980) 57 PJR 94 where the Punjab and Haryana High Court also held that the standard table framed u/s 14B was reasonable and prevented the officers from acting arbitrarily. These cases, of course, do not apply directly.

29. We have to consider, looking to the scheme of the Customs Act and the Regulations, whether the Public Notices are in the nature of guidelines. For reasons which we have set out earlier, in our view, these Public Notices are in the nature of guidelines to prevent the officers from acting arbitrarily in the exercise of their discretion under Regulation 5. They do not supercede powers granted to the officers concerned. In none of these cases before us, have any of the petitioners applied for a special departure from the guidelines based on the special circumstances of their case. Therefore, we have not gone into this aspect.

30. The submission that the guidelines are beyond the scope of Section 67 also has no merit. u/s 67 the proper has the power to impose conditions while granting permission for rewarehousing. Section 157 gives to the Board power to make regulations to provide inter alia, for conditions subject to which permission for rewarehousing may be granted u/s 67. The Board has framed the Warehoused Goods (Removal) Regulations, 1963 in the exercise of this power. Regulation 5 of these Regulations grants a discretion to the proper officer [including the Collector, vide Section 5(2)] to demand security in addition to a bond. The public notices by the Collector guide the exercise of this discretion. They are issued pursuant to the letters of the Board u/s 5(1). Hence the public

notices are in proper exercise of power and are not ultra vires Section 67.

31. It was also submitted that the public notices are unreasonable and arbitrary because while Regulation 5 only empowers the proper officer to require a security in addition to a bond in a given case, the public notices require a bank guarantee in every case. A perusal, however, of the modified public notice of 15th January 1992, makes it clear that there is a reasonable classification of different categories of importers from whom bank guarantees at different percentages are required. The reason why a bank guarantee is also required to set out in the Board's letters referred to earlier. The public notices also do not take away the discretion of the proper officer not to demand a bank guarantee in a suitable case. Hence the public notice of 15th January 1992, which substantially modifies the public notice of 11th June 1990 is not arbitrary or unreasonable.

In the premises all the writ petitions are dismissed and the rule is discharged.

We have already given liberty to the respondents to apply in the circumstances set out earlier in petitions falling in categories 1A and 2A. A similar liberty is granted to the respondents in the writ petitions falling in Categories 1B and 2B, since similar interim orders have been passed in all these writ petitions.