
(1981) 07 MAD CK 0026

In the Madras High Court

Case No : Writ Petition No's. 298 and 459 of 1979

Sundaram Textiles Ltd., Madurai

APPELLANT

Vs

Assistant Collector of Customs, Madras and Another

RESPONDENT

Date of Decision : 07-07-1981

Acts Referred:

Customs Act, 1962 — Section 12, 15, 25, 46, 68

Citation : (1984) 2 ECC 265 : (1983) 13 ELT 909 : (1983) 2 MLJ 92

Hon'ble Judges : S. Mohan, J

Bench : Single Bench

Advocate : T.K. Seshadri, T. Kannan, G. Ramaswami, for K.V. Sridharan and C. Arunagirina, for Raj and Raj, for the Appellant; K.N. Balasubramaniam, Additional Central Govt. Standing Counsel, for the Respondent

Judgement

1. Both these writ petitions raise identical questions of law and for the purpose of appreciating that questions it is enough if I refer to the facts in

W.P. 298 of 1979 alone.

2. The writ petition is for issue of a writ of certiorified Mandamus calling for the records relating to the Import department serial No. 000699 dated

13.12.1978 of the first respondents, to quash the order passed on 21.1.1979 by the first respondent and to direct the first respondent to release

the goods without payment of any duty or additional duty.

3. The petitioner is a Public Limited Company registered under the companies Act, 1956. It is carrying on business in the manufacture of Cotton

Yarn, cotton/viscose blended yarn. For manufacturing cotton/viscose staple fibers blended yarn, the petitioner company is importing Viscose stable

fibre yarn from foreign countries. It had imported under Open General Licence O.G.L. No. 3/78, 142 bales of viscose staple fibre (29999.8 kgs.)

valued about Rs. 3,11,465 from U.K. by Steamer "Clan Macnair" from Middlesbrough Port (U.K.) to Madras. The goods were subject to levy

of 100 per cent basic import duty under chapter 56 of the First Schedule of Customs Tariff Act, 1975. It was also further subject to Auxiliary duty

of 20 per cent leviable under sub-section (1) of Section 32 of Finance Act, 1976 together with additional duty leviable u/s 3 of Customs Tariff Act.

4. By a notification No. 388 dated 2-8-1976 issued by the Government of India (Ministry of Finance), Department of Revenue and Banking, in

exercise of the powers conferred by Section 25(1) of the Customs Act, the Central Government exempted viscose staple fibre when imported into

India from the whole of the duty of customs leviable under Chapter 56 of the First Schedule of the Customs Tariff Act. The exemption also applied

to the whole of the additional duty leviable thereon u/s 3 of the Customs Tariff Act, 1975. By an earlier notification No. 385 dated 23-7-1976, the

Central Government exempted viscose staple fibre from the auxiliary duty of Customs leviable thereon under sub-section (1) of Section 32 of the

Finance Act, 1976. The exemption granted by the said notification No. 388 dated 2-8-1976, was to remain in force upto and inclusive of March

31, 1977, and thereafter exemption was granted from time to time under various notification Nos. 439 dated 23-11-1976, No. 299 dated 26-10-

1977, No. 263 dated 30-12-1977, No. 66 dated 18-3-1978. The exemption granted by notification No. 66 dated 18-3-1978 was to remain in

force upto and inclusive of December 31, 1978. On 5-1-1979 two fresh notifications Nos. 6 and 7 exempting viscose staple fibre were issued, as

a result of which it was exempted from the whole of duty of customs as well as 20 per cent leviable under S. 32 of the Finance Act, 1976. By

Notification No. 8 dated 5-1-1979 an additional duty not exceeding Rs. 1.32 per kg. was levied under S. 3 of the Customs Tariff Act.

5. In the present case, the goods were shipped by "Clan Macnair" and the said ship entered into the territorial waters of India on 7.12.1978 and

the vessel actually was berthed at North Quay on 4.1.1979. The Bill of Entry for Home consumption under S. 46 of the Customs Act, 1962 was

prepared on 8.12.1978 and was received by the office of the Assistant Collector of Customs (Imports) Madras on 13.12.1978. In the column

customs duty and additional duty mentioned in the Bill of Entry, it was noted as "free" since the notification No. 388 dated 2.8.1976 was in force

at the relevant time. The sample of the consignment was tested and an endorsement identifying the consignment as synthetic staple fibre of cellulosic origin (viscose) was made on 14.12.1978. On 16.12.1978, the Assistant Collector of Customs made an endorsement for the release of goods,

"Duty foregone" was also noted on 18-12-1978.

6. Due to some operational risk, the unloading of the goods could not be done. The vessel was actually berthed on 4-1-1979. The department did

not release the goods free of import duty. In order to avoid demurrage and wharfage, the petitioner requested the Assistant Collector of Customs

(Imports) to permit the goods to be stored in a public warehouse u/s 49 of the Customs Act, 1962. However, the said request was refused and an

order was passed on 20-1-1979 assessing the goods to basic duty as well as auxiliary duty in the following manner :

Rs.

Basic duty 100% 3,11,465 - 00

Auxiliary duty 20% 62,293 - 00

Additional duty Rs. 1.50 per Kg. 44,999 - 70

5% special excise duty on C.V. 2,249 - 98

10% additional excise duty ... 4,499 - 77

4,25,507 - 65

It is under these circumstances, the present writ petition has come to be filed for the above said relief.

7. The contention of Mr. G. Ramaswami is as follows : The goods in this case entered the territorial waters of India on 7.12.1978. The bill of Entry

was prepared on 8.12.1978. It was received by the office of the Assistant Collector of Customs on 13.12.1978. On 13.12.1978, the Assistant

Collector of Customs made an endorsement. "P.T.O.K." On 14-12-1978 an endorsement was made identifying the consignment as synthetic

staple fibre of cellulosic origin (viscose). On 16.12.1978 the Assistant Collector of Customs duly made an endorsement "Be assessed on P.T.

Home consumption. Drawn on duplicate for test. Goods may be released therefore". On 18-12-1978 a further endorsement was made "duty

forgone". The notification which governed the levy of duty on the relevant date was the one dated 2-8-1976 which granted exemption to the goods

in question. The notification dated 5-1-1979 to the effect that exemption with regard to additional duty u/s 3 of the Customs Tariff Act, 1975 is

only as in excess of Rs. 1.34 is not, therefore, applicable to the present case. Further, the vessel was actually berthed on 4.1.1979. For this reason

also the notification dated 5.1.1979 would be inapplicable. The refusal to permit the warehousing of goods under S. 49 of the Customs Act is

without jurisdiction. Inasmuch as the ship carrying the goods entered the territorial waters of India on 7.12.1978, the liability to duty has to be

determined on the basis of the notification then in force, according to which no duty or additional duty is leviable. The compliance with the other

requirement and formalities of law which might take some time is only procedural to facilitate the imposition and collection of duty. In support of

this submission, learned counsel placed reliance on *Shawney v. Sylvania* and *Laxman* 77 Bom. L.R. 380. In that case also, notwithstanding the fact

that the bill of lading came to be presented later the notification as on the date on which the ship entered the territorial water was said to apply. It is

the further submission of the learned counsel that it is S. 92 of the Customs Act which is the charging section, while Section 15 will come into play

only if a charge arises or in other words where the rate of duty is applicable. Therefore, the date of presentation of bill of lading for the purpose of

home consumption as required under S. 15(1) can have no application whatever. The ratio of this ruling clearly applies to the facts of this case.

8. The ruling has been followed in *Synthetics and Chemicals Ltd. v. B. C. Coutinho and others* 1981 E.L.T. 414; *New Chemi Industries Pte Ltd.*

and another *v. Union of India and others*, 1981 E.L.T. 920. As to when the import takes place has come to be conclusively decided by Division

Bench ruling of this court reported in *The Collector of Customs Vs. H.S. Mehra*, in which it has been categorically laid down that on the date when

the ship enters the territorial waters of India the import becomes complete and there arises a charge on the imported goods under the Customs

Act. In W.A. No. 537 of 1969 this question did not arise. The question that arose was as to what exactly was the rate to be applied having regard

to the prevalence of certain notifications. Hence, that decision cannot be applied against the petitioner. For all these reasons, it is prayed that the

writ petition may be allowed.

9. Mr. K. N. Balasubramaniam, learned counsel for the department would urge it is incorrect to contend that there is no duty. The interpretation

sought to be placed by the petitioner can have the effect of equating the case of exemption to a case of free of duty. The moment the goods are

imported there arises a charge. In working out the rates Section 15 comes into play. In *Prakash Cotton Mills (P) Ltd. Vs. B. Sen and Others*, a

question arose as to what is the rate of foreign exchange that was to be applied. The Court held having regard to the terms of Section 15 it is that

section that will govern. In W.P. 3422 of 1979 reported in *K. Jamal Co. v. Union of India*, 1981 E.L.T. 162 this court has taken the view that the

rate of duty has to be worked out only in terms of S. 15. The Court in that case has taken the view that "Import" with its grammatical variations

and cognate expressions, means bringing into India from a place outside India. "Bringing into India" obviously would mean the clearance of the

goods. Therefore, the relevant date is presentation of bill of entry. On the date there was no exemption. The petitioner cannot avail himself of any

exemption. The general observations contained in *The Collector of Customs Vs. H.S. Mehra*, or *Shawney v. Sylvania and Laxman*, 77 Bom.

L.R. 380 and the subsequent cases reported in *Synthetics and Chemicals Ltd. v. S. C. Coutinho and others*, 1981 E.L.T. 414, and *New*

Chemicals Industries Pvt. Ltd. and another v. Union of India and others, 1981 E.L.T. 920 can afford no assistance to the petitioner. It is Section

15 which will govern the transaction.

10. As I had already observed the point that arises in W.P. 459 of 1979 is the same, excepting that I may note the difference with regard to the

facts. The prayer in the writ petition is for issue of a writ of certiorified Mandamus calling for the records relating to the Import Department, Serial

No. 000417 dated 8-12-1978 of the first respondent, to quash the order passed on 31-1-1979 by the first respondent and to direct the first

respondent to release the goods covered by Import Department Serial No. 000417, dated 8-12-1978 free of duty. The petitioner imported 48

bales of viscose staple fibre (9903.70 kilos) valued about Rs. 1,03,578.52 from United Kingdom by Steamer "Clan Macnair". The goods were

subject to levy of 100 per cent Basic import duty under Chapter 56 of First

Schedule of Customs Tariff Act, 1975. It was also further subject to Auxiliary duty of 20 per cent leviable under sub-section (1) of Section 32 of Finance Act, 1976 together with additional duty leviable u/s 3 of Customs Tariff Act.

11. By a Notification No. 388 dated 2-8-1976 issued by the Government of India, Ministry of Finance, Department of Revenue and Banking, the

Central Government exempted viscose staple fibre when imported into India from the whole of the duty of the customs. By an earlier Notification

No. 385 dated 23-7-1976, the Central Government exempted viscose staple fibre from the auxiliary duty of customs. The exemption granted by

the said Notification No. 388 dated 2-8-1976 was to remain in force upto and inclusive of March 31, 1977 and thereafter exemption was granted

from time to time under various Notification No. 439 dated 23-11-1976, No. 299 dated 26-10-1977, No. 263 dated 10-12-1977, No. 66

dated 18-3-1978. The said ship entered into the territorial waters of India on 7-12-1978 and the vessel was berthed on 4-1-1979 at North Quay.

Though the vessel entered the territorial waters of India on 7-12-1978, the unloading of the goods could not be done due to cyclonic threats and

non-availability of berth in the Madras Port. The vessel was actually berthed on 4-1-1979. On 8-12-1978 the Bill of entry for home consumption

under S. 46 of the Customs Act was filed before the Assistant Collector of Customs (Imports), Madras. The Customs authorities made an entry

against the column "Customs duty and Additional duty" mentioned in the Bill of entry as "duty free" since Notification No. 388 dated 2-8-1976

was in force at the relevant time. Again, the Assistant Collector of Customs made an endorsement for the release of the goods and "duty foregone

was also noted on 29-12-1978 in the Bill of entry. The sample of the consignment was tested and an endorsement identifying the consignment as

stapl, fibre was made on 23-12-1978 the Assistant Collector of Customs duly made an endorsement "Be assessed on P.T. home consumption".

Drawn on duplicate for test goods may be released there. Then on 29-12-1978 a further endorsement was made "Duty foregone". The notification

dated 5-1-1979 to the effect that exemption with regard to additional duty under S. 3 of the Customs Tariff Act, 1975 is only as in excess of Rs.

1.32 per K.G. On 31-1-1979 an order was passed assessing the goods to basic

duty as well as auxiliary duty in the following manner -

Rs.

Basic duty 100% ... 1,04,242.00

Auxiliary duty 20% ... 20,848.40

Additional duty at Rs. 1.50 per kg. 14,855.55

5% special excise duty on C.V. 742.78

10% additional excise duty 1,485.66

Rs. 1,42,174.29

It is under these circumstances the writ petition No. 459 of 1979 had come to be filed for the above said relief.

12. Some arguments are advanced on respective sides. Admittedly, the ship entered the territorial waters on 7-12-1978. On that date, it is the

common case between the parties, there was a notification (Notification No. 66) exempting viscose staple fibre from the whole of the duty of

customs leviable under Chapter 56 of First Schedule of Customs Tariff Act. The exemption covered the whole of additional duty leviable thereon

u/s 3 of the Customs Act. No doubt this was only an extension of the earlier notification. However, it is the common case between the parties that

the exemption granted under Notification No. 66 extended the earlier notification. The exemption was operative till 31st December 1978. Under

these circumstances, the question would be notwithstanding the presentation of the bill of entry subsequent to the expiry of this notification, whether

the petitioner will be liable to pay duty and other duties thereon.

13. To determine this question, I have got to refer to the relevant section of Customs Act, which is referred to as the "Act". Section 2 is the

definition section. Section 2(11) defines "customs area". Section 2(16) states what is meant by "entry". Section 2(23) defines "import". Section

2(27) states "India" includes the territorial water of India. The important section, which is really the heart of the Act is Section 12. That reads as

follows -

12(1) Except as otherwise provided in this Act, or any other law for the time

being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

A careful reading of this provision reveals that the moment the goods are imported into India customs duty can be levied, except as otherwise

provided in this Act or any other law for the time being in force. The levy shall be at such rates as may be specified under the Customs Tariff Act,

which will hereinafter be referred to as "the Tariff Act". It is chapter 56 of First Schedule that deals with viscose fibres. This is because Section 2

of the Tariff Act says the rates at which the duty of customs shall be leviable under the Customs Act, 1962, are specified in the First and Second

Schedules. But when there is an exemption what is the position is the question that arises for consideration in this case. For this, I have to

necessarily refer to Section 15 of the Act. It reads as follows -

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

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

section;

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

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

Provided that, if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry

shall be deemed to have been presented on the date of such entry inwards.

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

What Mr. Balasubramaniam contends is that under the Tariff Act, there are several items which could be imported free of duty, for instance raw

hides and skins.

Heading Sub-heading Rate of duty Duration

No. No. and when rates

description ----- of duty are

of article Standard Preferential protective

areas

1 2 3 4 5

41.01 Raw hides and

skins (fresh),

salted, dried,

pickled or limed)

whether or not split,

including sheep

skins in the wool Free - -

When it is free of duty, according to him, Section 12 cannot be worked out. But in a case where exemption is operative, no doubt duty is leviable

at nil rate. If this interpretation is not accepted, it would tantamount to equating free of duty on a par with exemption. I see great force in the

submission of the learned counsel. But, according to me, how the petitioner scores over this argument is by the language employed by the

Parliament under S. 15. By a reading of S. 12 it has already been noted that the customs duty is leviable on importation into India. Such duty is

leviable at such rates as may be specified. It is in this background Section 15 is to looked into. That also says the rate of duty, if any, applicable to

imported goods, where, in other words, by reason of exemption the chargeability does not arise, u/s 12 there is no room for invoking Section 15 in

aid of the department.

14. I do not think I need labour much on the meaning of import into India. It is well settled by now that import into India, which u/s 2(27) includes

the territorial waters of India would mean the moment the ship arrives in India.

In *The Collector of Customs Vs. H.S. Mehra*, this Court took the view after referring to Halsbury's :-

Again liability to duty is attracted the moment the goods are imported. Import implies receiving of the goods across the Customs frontiers; vide

item No. 41 of List I of the Seventh Schedule to the Constitution. Under S. 3-A of the Sea Customs Act, the Central Government is empowered

to define the customs frontiers of India. By a notification dated 6-8-1955 the customs frontier has been defined by the appropriate authority to be

"the boundaries of the territory of India including territorial waters.

Therefore, the liability imposed on imported goods will attach the moment the goods cross the frontier, that is even before unloading from the ship.

In Halsbury's Laws of England third edition, volume 33, page 138 it is stated -
"The time of importation of any goods is deemed to be where they

are brought by sea, the time when the ship carrying them comes within the limits of a port.

The same is the view taken in *Shamney v. Sylvania and Laxman* 77 Bom. L.R. 380. On a careful perusal of the facts of the case, I find it applies

on all fours to the present case. There what was imported was glass tubes used in manufacture of fluorescent lamps by the respondent in that case,

who were the manufacturers, importers and dealers in electrical goods, including fluorescent lamps. Exemption notification was operative from

September 8, 1966 to March 31, 1967. The ship arrived on 29-3-1967. On 27-4-1967 the Bill of Entry was presented. On 6-6-1967 the goods

were actually cleared. A question arose whether on the date of the arrival of the ship on 29-3-1967 the exemption could be claimed. At pages 384

and 385 it was observed thus -

It is necessary to examine the scheme of the Act as regards the chargeability in respect of customs duty. It is well settled that a clear distinction

exists between the concept of chargeability and the concept of assessment or quantification of the amount payable by way of customs duty. It will

be useful in this connection to refer to the observations of their Lordships of the Privy Council in *Wallace Brothers and Co. Ltd. v. Commissioner*

of Income Tax, 16 ITR 240 which have been approved by the Supreme Court in *Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of*

Wealth Tax, (Central) Calcutta, . Those observations run as follows (Page 244) -

the rate of tax for the year of assessment may be fixed after the close of the previous year and the assessment will necessarily be made after the

close of that year. But the liability to tax arises by virtue of the charging section alone and it arises not later than the close of the previous year,

though quantification of the amount is postponed".

These observations fully justify the clear distinction that exists inter alia between chargeability in respect of a tax or duty and the quantification of the

amount payable in respect thereof. The only charging section in respect of levy of customs duty is Section 12(1). As provided in that section, duties

of customs shall be levied at such rates as may be specified under the Indian Tariff Act, 1934, or any other law for the time being in force, on

goods imported into, or exported from India. Thus the levy of customs duty either in respect of import or export of goods is under this section and

such levy is subject to other provisions of the Act or any other law for the time being in force. The chargeability in respect of levy of customs duty

arises when the goods are imported into India i.e., when they cross the customs barriers as stated above. That event in the present case took place

much prior to March 31, 1967 when the exemption notification was operative. Such chargeability in respect of levy of customs duty ought not to

be confused with quantification of the amount or assessment thereof as provided under the scheme of the Act. Section 15 of the Act specifies the

date for determination of rate of duty and tariff valuation of goods imported. In case of goods entered for home consumption u/s 46 the rate of

duty applicable to any imported goods shall be the rate in force on the date on which a bill of entry in respect of such goods is presented under that

section. The assessment has to be made as provided in Section 17 of the Act. What Ss. 15 and 17 provide it to determine the rate at which duty is

leviable and to quantify the amount payable by way of duty, but this is entirely different from "chargeability under the Act. Chargeability arises

simply by reason of S. 12(1) of the Act and that takes place only when the goods are imported into India i.e., into the territorial waters of India.

15. The department relies on Prakash Cotton Mills (P) Ltd. Vs. B. Sen and Others, . That case in my considered view has no application to the

question to be determined because there the question was whether the Amendment Ordinance, 1966 which had come into force on July 7, 1966

can be held to be applicable to imported goods on the date on which the goods were cleared from the warehouse. The Court held as follows -

As it is not in dispute before us that the goods, which are the subject matter of the appeals before us, were removed from the warehouse after the

amending ordinance had come into force on July 7, 1966 the customs authorities and the Central Government were quite right in taking the view

that the rate of duty applicable to the imported goods had to be determined according to the law which was prevalent on the date they were

actually removed from the warehouse, namely, the amended Secs. 14 and 15 of the Act. There is therefore no force in the argument that the

requirement of the amended Section 15 should have been ignored simply because the goods were imported before it came into force, or that their

bills of lading or bills of entry were lodged before that date.

16. In other words, where there was chargeability the question would be as to what is the relevant date for determining the rate of duty. At the risk

of repetition I have to state only when the rate of duty, if any, is applicable to imported goods Section 15 will come into play, where the goods are

exempted on the date of import, into territorial water of India there was not rate at which duty could be levied even as per charge u/s 12 and

consequently Section 15 will have no application whatever. As a matter of fact, the ruling in Synthetics and Chemicals Ltd. v. S. C. Coutinho and

others - 1981 E.L.T. 414, considered the decision of the Supreme Court above cited and held -

We will at once refer to the judgment of the supreme Court, which in our view, has laid down the same proposition though in relation to the

calculation of the rate of foreign exchange. In the case of Prakash Cotton Mills (P) Ltd. Vs. B. Sen and Others, the dispute raised before their

Lordships related to the rate of exchange. Section 15(1), as amended by Amending act No. 20 of 1966, now includes even the rate of exchange.

As it now reads, the rate of duty as well as the rate of exchange and the tariff valuation, if any, applicable to any imported goods shall be the rate

and valuation in force, and in clause (b) the rate of exchange prevalent on the date of actual removal from the warehouse. The facts before the

Supreme Court show that the removal was under S. 15(1)(b) in terms of Section 68. On the date of remove of goods the rupee has devalued and

the Customs duty in terms of the devalued rupees naturally increased. The importer did not want to pay that higher amount in terms of rupee and,

therefore, pleaded that the goods having been already imported into India earlier when they were already chargeable to duty, that rate should

prevail and not the subsequent rate. This argument was expressly negated by the Supreme Court and their Lordships laid down that it was pretty

clear that clause (b) of sub-section (1) of Section 15 contemplates the rate of duty and rate of exchange and tariff valuation applicable to any

imported goods should be the rate of and valuation in force on the date on which the warehoused goods were actually removed from the

warehouse, after the amending Ordinance had come into force, viz., on 7th July 1966, as such the Customs authorities and the Central

Government were quite right in taking the view that the rate of duty applicable to the imported goods had to be determined according to the law

which was prevalent on the date they were actually removed from the warehouse, namely, the amended secs. 14 and 15 of the Act. There is

therefore, no force in the argument that the requirement of the amended section 15 should have been ignored simply because the goods were

imported before it came into force, or that their bills of lading or bills of entry were lodged before that date.

It may be that the Supreme Court was discussing the question of rate of exchange. However, this judgment would directly apply in view of the fact

that some date has been mentioned u/s 15(1)(b) for either the rate of duty, the rate of exchange or the tariff valuation, if any. We think that the

question is already concluded by the Supreme Court." On these basis, it was concluded -

There may be other cases where on the date of importation the goods are liable to duty. It must mean that they are chargeable to duty. At what

rate must they be actually taxed on the date of removal ? As an illustration, suppose a notification exempts certain goods from payment of a part of

duty or whereby the duty payable is reduced to 27-1/2 per cent. If such a notification comes to be withdrawn or ceases to have operation on the

date on which the goods were actually removed from the warehouse, what would be the effect ? Should these goods pay 27-1/2 per cent or 60

per cent which is the normal tariff rate. We have to answer in favour of determination of the rate of 60 per cent the reason being that the goods

were not totally exempt. Once they are chargeable so duty on importation - the rate being irrelevant - the rate prevalent on the date of actual

clearance will apply under S. 15(1)(b). Whether it is rate of duty or rate of exchange, the relevant date is the one contained in Section 15(1)(b). If

the goods change their value in the meanwhile, the third position contemplated by Section 15(1) will operate, viz., the tariff valuation. These are,

therefore, the three facets of the same valuation viz., the rate of duty, the tariff valuation and the rate of exchange. For the sake of tariff valuation a

specified date has been given to us, that is, a fixed date for the purpose of making these calculations. However, where there is no chargeability on

the date of importation, the goods are not liable to duty even though they become so liable, as the exemption may come to an end. That is what

precisely was held by the Division Bench in the case of *M. S. Shawney v. M/s Sylvania and Laxman Ltd.*, 77 Bom. L.R. 880. Where there is initial

chargeability whether as per rates under the Tariff Act or the reduced rate under an exemption Notification u/s 25 of the Customs Act, the Division

Bench judgment or its principle does not apply. Only when there is no chargeability at importation or total exemption at importation, the said

judgment and its principle would apply. We think that this is the only manner in which that judgment be understood and implemented in its

operation when differing facts are presented before the court.

17. This view has been consistently taken by the Bombay High Court can also be seen when reference is made to *New Chemi Industries Pvt. Ltd.*

and another *v. Union of India and others* - 1981 E.L.T. 920 -

Shri Dhanuka very fairly stated that in view of the decision of the Division Bench of this Court reported in 1981 E.L.T.414 in the case of

Synthetics and Chemicals Ltd. v. S. C. Courtinho and others, the controversy is concluded as far as this court is concerned. *Shri Dhanuka* stated

that on the date of filing of the petition, a single Judge of this Court had taken the view in *Miscellaneous Petition No. 346 of 1970* that the relevant

date to determine the liability to pay the customs duty is the date of arrival of the consignment within the customs barriers and the territorial waters.

The decision of the single Judge was overruled by the Division Bench in the case cited hereinabove. The Division Bench has considered in

paragraph 12 of the judgment the cases where the Notification partially exempts

certain goods from payment of duty on the date of arrival within the customs barrier, but such exemption stands withdrawn on the date of actual removal from the warehouse. The Division Bench took the view that the importer is liable to pay the duty prevalent on the date of clearance of the goods from the warehouse and the advantage of partial exemption could not be claimed merely on the ground that the goods entered the barrier on the date when the exemption notification was in existence. The Division Bench held that if the goods were totally exempted on the date of its entry, within the custom's barrier, then duty cannot be recovered merely because such total exemption was withdrawn on the date of the clearance, but in cases where there is only partial exemption available on the date of entry in the custom's barrier, then withdrawal of such partial exemption would make the importer liable to pay the normal duty, if on the date of clearance of the goods exemption stands withdrawn. In view of the dictum laid down by the Division Bench the petitioners would not be entitled to any relief in this petition.

18. Learned counsel for the department relies on the ruling of mine rendered in W.P. 3422 of 1979 reported in K. Jamal and Co. v. Union of India, 1981 E.L.T. 162. No doubt I held in that case -

18. Learned counsel for the department relies on the ruling of mine rendered in W.P. 3422 of 1979 reported in K. Jamal and Co. v. Union of India, 1981 E.L.T. 162. No doubt I held in that case -

On a careful consideration of the above, I am of the view that the stand of the respondent is unassailable. The definition of "Import" is contained in

Section 2(23), stating that "import" with its grammatical variations and cognate expressions, means bringing into India from a place outside India.

"Bringing into India" obviously would mean the clearance of the goods and Section 15, which reads as under puts the matter beyond doubt -

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

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

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

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

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry

shall be deemed to have been presented on the date of such entry inwards.

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

19. But, unfortunately these decisions were not brought to my knowledge and there was no full consideration of the matter as has been done

presently. I do not think, I can stick to my old view which was arrived at without reference to these decisions, all of which fully bring about the

distinction between the chargeability u/s 12 and the assessment u/s 15.

20. In W.A. No. 537 of 1969 this question did not arise at all since what came up for determination was the date and hour of entry for the

purpose of levy of customs duty. As I said above, once the same rate of duty is applicable Section 15 will come into play.

21. For all these reasons, the writ petition will stand allowed. The rule nisi are made absolute. There will be no order as to costs.