
(1987) 03 CAL CK 0029

In the Calcutta High Court

Case No : Original Order Tender No. 3249/84

Superintendent of Central Excises and Others

APPELLANT

Vs

R.K. Chemical Industries Private Limited

RESPONDENT

Date of Decision : 13-03-1987

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2
Constitution of India, 1950 — Article 226

Citation : (1988) 16 ECC 125

Hon'ble Judges : Manash Nath Roy, J; Dilip Kumar Basu, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Manash Nath Roy, J.—This appeal from original order, at the instance of the central excise authorities, who were respondents in Civil Rule No. 12902(W) of 1981, was directed against the judgment and order dated 5th October, 1983, as made in that Civil Rule by a learned single Judge and whereby the said learned Judge, made the rule absolute and directed the issue of appropriate writ or writs, asking the respondents before him to rescind, recall, cancel and withdraw an order dated 30th March, 1981, passed by the Superintendent of Central Excise concerned and also the order dated 17th November, 1981, passed by the Assistant Collector of Central Excise concerned and consequently, directed the quashing of those records. The said learned Judge also directed that the respondents shall release or refund the amount of Rs. 1,35,185 to the writ petitioner, viz., R.K. Chemical Industries (P) Ltd. who are respondents in the appeal and will hereafter be referred to as the said respondents.

2. The said respondents, who obtained the concerned Civil Rule and from the determinations whereof this appeal has been presented on 19th September, 1984 has claimed to be a company incorporated under the Companies Act, 1956 and has also stated to have their registered office at 141/1, Radhabazar Street, Calcutta-700 001 and their factory at 24, Misrupara Road, P.O. Raipur, District 24

Parganas, apart from indicating that they were and are engaged in carrying on the business of manufacture of "starch" falling under tariff item No. 15C and gum powder amongst others, falling under tariff item No. 68 of the First Schedule to the Central Excises and Salt Act, 1944. The Act in question, will hereafter be referred to as the said Act and First Schedule as the said Schedule.

3. It has also been stated by the said respondents that for the purpose of manufacturing excisable goods they obtained central excise licence being L-4 No. 1/Starch/76 dated 2nd August, 1976 and also complied with all the provisions of the said Act and the Rules framed thereunder, apart from duly submitting the necessary classification lists in Form 1, showing manufacture of all excisable goods falling under tariff item No. 15C and 68 of the said Schedule, as required under Rule 173B of the Central Excise Rules, 1944 (hereinafter referred to as the said Rules). It would appear that a notification being No. 71/78C dated 1st March, 1978, was issued on the same date by the Government of India, exempting various excisable goods of the description as specified in Column III of the records as annexed with the said notification and amongst others the goods as mentioned therein, were termed as "specified goods" and the nature of exemption granted, was that the duty on those specified goods would be exempted on the first clearance to the extent of Rs. 5 lakhs in any financial year, provided that during financial years subsequent to the financial year 1978-79, the total clearances of such goods for home consumption during the preceding financial year would not exceed Rs. 15 lakhs. The notification in question, has been disclosed in the petition of motion and it has also been indicated that the said notification was amended by notification No. 141/79-C.E. dated 30th March, 1979, by inserting a new clause being No. (III) after Clause (II) of the concerned notification No. 71/78-CE dated 1st March, 1978 and it has been pointed out that the new clause as mentioned hereinbefore, was added to the earlier and existing notification No. 71/78-CE, dated 1st March, 1979, and the present clause as incorporated, is in issue as the said respondent was concerned at the relevant time, with the manufacture of excisable goods falling under more than one item of the said Schedule. The subsequent notification No. 141/79-CE dated 30th March, 1979 has also been indicated in the petition.

4. Even after the above, on 19th June, 1980, another notification being No. 80/80-CE has been issued by the Government of India in supersession of the earlier notification No. 71/78-CE dated 1st March, 1978 and by the concerned superseding notification, they have exempted the excisable goods of the description specified in Column III of the Table annexed to the notification and which were referred to as "specified goods". The above subsequent notification, the respondents have stated, was made effective on or after 1st day of April in any financial year and up to an aggregate value of clearance not exceeding Rs. 5 lakhs from whole, of the duty of excise leviable thereon.

5. We feel that for the convenience of determinations and understanding, the notification as referred to hereinbefore, should be indicated and we do that in

seriatim.

6. Notification No. 71/78-CE dated 1-3-1978.--"In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts the excisable goods of the description specified in column (3) of the Table hereto annexed (hereinafter referred to as the "specified goods"), and falling under such item number of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), as is specified in the corresponding entry in column (2) of the said Table, in respect of the first clearances of such excisable goods for home consumption up to an aggregate value not exceeding Rs. 5 lakhs and cleared on or after the 1st day of April, in any financial year, by or on behalf of a manufacturer, from one or more factories, from the whole of the duty of excise leviable thereon, subject to the following conditions, namely--

(a) the exemption contained in this notification shall not be applicable to a manufacturer,--

i) during the financial year 1978-79, if the aggregate value of the specified goods cleared, if any, by him or on his behalf, for home consumption, from one or more factories, during the period commencing on the 1st day of April, 1977 and ending on the 28th day of February, 1978, had exceeded Rs. 13.75 lakhs; and

ii) during financial years subsequent to the financial year 1978-79, if such clearances, if any, of the specified goods, during the preceding financial year, had exceeded Rs. 15 lakhs.

* * * *

Notification No, 141/79-CE, dated 30-3-1979.--"In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 71/78-Central Excises, dated 1st March, 1978, namely:

In the said notification,--

(i) in condition (a) of the first paragraph, after Clause (ii), the following clause shall be inserted, namely:

(iii) who manufactures excisable goods falling under more than one item number of the said First Schedule and the aggregate value of all excisable goods cleared by him or on his behalf for home consumption, from one or more factories, during the preceding financial year, had exceeded Rs. 20 lakhs;

* * * *

Notification No. 80/80-CE, dated 19-6-1980.--"In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 71/78-Central Excises, dated the 1st

March, 1978, the Central Government hereby exempts the excisable goods of the description specified in column (3) of the Table hereto annexed (hereinafter referred to as the "specified goods"), and falling under such item number of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), as is specified in the corresponding entry in column (2) of the said Table, and cleared for home consumption on or after the 1st day of April in any financial year, by or on behalf of a manufacturer from one or more factories,--

a) in the case of first clearances of the specified goods up to an aggregate value not exceeding rupees five lakhs, from the whole of the duty of excise leviable thereon; and

b) in the case of the clearances (being clearances of the specified goods of an aggregate value not exceeding rupees ten lakhs) immediately following the said first clearances of the value specified in Clause (a), from so much of the duty of excise leviable thereon under the said item [read with any relevant notification issued under Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 and in force for the time being] as is in excess of seventy five per cent of such duty:

* * * *

2. Nothing contained in this notification shall apply to a manufacturer,--

i) if the aggregate value of clearances of the specified goods, if any, by him or on his behalf, for home consumption, from one or more factories, during the preceding financial, year, had exceeded rupees fifteen lakhs;

(ii) who manufactures excisable goods falling under more than one item number of the said First Schedule and the aggregate value of clearances of all excisable goods by him or on his behalf for home consumption, from one or more factories during the preceding financial year had exceeded rupees twenty lakhs.

* * * *

Notification No. 50/81-CE, dated 1.3-1981.--"In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 80/80-Central Excises, dated the 19th June, 1980, namely:

In the said notification,--

a) in paragraph 1--

(i) In Clause (a) for the words "rupees five lakhs", the words "rupees seven and a half lakhs" shall be substituted;

(ii) in Clause (b), for the words "rupees ten lakhs", the words "rupees seven and a half lakhs" shall be substituted;

b) for paragraph 2 the following paragraph shall be substituted, namely:

2. Nothing contained in this notification shall apply to a manufacturer,--

(i) if the aggregate value of clearances of all excisable goods by him or on his behalf, for home consumption, from one or more factories, during the preceding financial year, had exceeded rupees twenty lakhs;

(ii) if the aggregate value of clearances of the specified goods by him or on his behalf, for home consumption, from one or more factories, during the preceding financial year, had exceeded rupees fifteen lakhs;

* * * * *

7. The said respondents have indicated that notification No. 80/80-CE as indicated hereinbefore, contained two express provisions, one relating to "specified goods" and the other relating to "excisable goods" falling under more than one items of the said Schedule, for the purpose of two different sets of exemptions and according to them, since they were manufacturing more than one excisable goods, falling under more than one item of the said Schedule, were entitled for exemption meant for the second category of manufacturers during the preceding financial year for all the excisable goods as they had not exceeded Rs. 20 lakhs which was and really the fundamental basis of exemption of such manufacturers. It has been stated that on perusal and consideration of the said notification No. 50/81-CE, it would appear that the said respondents' claim for exemption remained unchanged and unimpaired, as the conditions in the earlier notification No. 80/80-CE and more particularly in Clause 2(ii) of the same, were retained by Clause 2(i) of notification No. 50/81-CE. It was also claimed and contended that the said respondents being engaged in manufacture of excisable goods falling under more than one tariff item of the said Tariff, viz., serial No. 20 of the Table annexed to notification No. 80/80-CE, i.e., tariff item Nos. 15C and 68 of the said Schedule, were entitled to exemption in terms of Clause 2(ii) of the said notification No. 80/80-CE.

8. Such and above being the position, the said respondents on 10th March, 1981, represented to the Assistant Collector of Central Excise, Calcutta-III Division, claiming exemption. Such claim under or in terms of Clause 2(ii) of notification No. 80/80-CE was made as the manufacture of their excisable goods extended to more than one item of the said Schedule and furthermore, as the aggregate value of their clearance of all the excisable goods during the preceding financial year, did not exceed Rs. 20 lakhs. It has been stated that in reply, the Superintendent of Central Excise concerned, by his letter dated 30th March, 1981, informed that the said respondents were not entitled to the exemption as claimed, as the value of their clearances of the specified goods under tariff item No. 15C, exceeded Rs. 15 lakhs during the preceding financial year 1980-81. As the said respondents were not satisfied with the reply, they on 10th April, 1981, invited the attention of the Assistant Collector of Central Excise concerned after referring to the notification No. 50/81-CE, which maintained the existing benefits, that their claim was due and justified. On such representation, a

hearing was given by the said Assistant Collector and in such hearing, it has been stated, that the entire position was explained to him by and on behalf of the said respondents.

9. Thereafter, the Assistant Collector of Central Excise, by his letter of 17th November, 1981, intimated that the value of clearance of "starch" alone by the said Respondents, which fall under tariff item No. 15C, exceeded Rs. 15 lakhs during the previous year and as such, they were not entitled to the benefit of exemption under notification No. 80/80-CE and more particularly when they were hit by Clause 2(ii) of the same. The said respondents claimed that in terms of the said notification No. 80/80-CE read with notification No. 50/81-CE they would be entitled to the exemption as claimed and that too when the aggregate value of clearance of all the excisable goods in the preceding financial year, i.e., 1980-81, was only Rs. 17.50 lakhs, and which figure was accepted by the authorities concerned. The said respondents claimed that the assessment as made, was not only arbitrary and erroneous, but the same was made on wrong interpretation of the concerned notification. It was also claimed, that the decision as taken on the basis that the said respondents were not eligible to the benefit of exemption under notification No. 80/80-CE, on the ground that they were hit by Clause 2(H) of that notification, was ill-conceived. According to the said respondents the said clause of the concerned notification and Clause 2(i) of the notification No. 50/81-CE having laid down without any doubt that a manufacturer manufacturing excisable goods falling under more than one item of the said Schedule, with clearance of all such goods in, the preceding financial year not exceeding Rs. 20 lakhs would be eligible for the concerned benefit of exemption and such exemption could not in any event be denied to them for the financial year 1981-82. Such being the position, the order as impeached, was claimed by the said respondents to be wholly void and illegal, apart from being contrary to the notifications as mentioned hereinbefore.

10. It was also contended by the said respondents that notification No. 141/79-CE, which amended notification No. 71/78-CE, had changed and enlarged the criterion of the preceding financial year up to an aggregate clearance value of Rs. 15 lakhs for the "specified goods" and enlarged the clearance value to Rs. 20 lakhs in the case of manufacture of more than one excisable goods, falling under more than one tariff item of the said Schedule and such amended criterion has further been repeated in the subsequent notification Nos. 80/80-CE and 50/80-CE. It was categorically claimed by the said respondents that they having manufactured in 1980-81, more than one item of the excisable goods as specified in the said Schedule and aggregate clearance also thereof, having not exceeding Rs. 20 lakhs the benefit of exemption as mentioned hereinbefore, was available to them and by denying such benefit to them and more particularly that of notification No. 80/80-CE, as amended by notification No. 80/81-CE and by compelling the said respondents to pay excise duty on all day to day clearances since 1st April, 1981, the authorities concerned and each one of them had acted arbitrarily, illegally and without jurisdiction and authority.

11. Before the learned Trial Judge, on the basis of the above pleadings, the said respondents claimed and contended that in terms of notification Nos. 71/78-CE and 80/80-CE, they were eligible to exemptions as claimed, since for the preceding years clearance of their unit producing "specified goods" was within the ceiling limit and such being the position, Clause 2(i) of notification No. 71/78-CE and notification No. 80/80-CE was applicable in their case. The answering respondents before the learned Trial Judge in that rule, claimed the application itself to be not maintainable inasmuch as, there was provision for appeal against the order as made by the Superintendent of the Central Excise concerned and it was also contended that on due interpretation of the notifications, the claim as made by the said respondents, was without any basis.

12. It would appear that by the impugned judgment which has since been reported in R.K. Chemical Industries Private Ltd. Vs. Superintendent of Central Excise, Calcutta-III Division and Others, , the learned Trial Court has observed that it is manifest that by mentioning the number of items in case of excisable goods in Clause 2(i) of notification No. 80/80-CE is meant to exempt all excisable goods up to the limit of Rs. 20 lakhs, irrespective of the number of items, but in the case of "specified goods", by non-mentioning of the number of items in item 2(ii) the notification is rigid in its application restricting the limit up to Rs. 15 lakhs in respect of "specified goods". Since "excisable goods" u/s 2(d) of the Central Excise Act are specified in its First Schedule, therefore one of the items referred to therein will not cease to be excisable merely because it is noted as "specified goods" in notification No. 71/78 (80/80). Therefore, if there is more than one item, one is "specified goods" and other is "excisable goods" both will fall under Clause 2(i) of notification No. 80/80 whereunder the total exemption available for their clearances would be up to Rs. 20 lakhs. If this interpretation is not given, the position will become anomalous and the notification will lose its purpose and meaning. In the instant case, the manufacturer manufactured both starch and gum powder, out of which "gum powder" came within the category of "specified goods" and the other under "excisable goods". Since "specified goods" and "excisable goods" being of the same genus, therefore, they will be covered by para. 2(i) of the notification No. 80/80-CE and the exemption limit will be admissible up to Rs. 20 lakhs. Since the petitioner's total clearances for home consumption of starch and gum powder were only of Rs. 17-1/2 lakhs, therefore, they will be exempt from payment of duty and that unless an alternative remedy can give full and effective relief to the aggrieved party, it will not stand in the way of petitioner in moving the High Court under Article 226 of the Constitution, apart from holding that if the petitioner has established his case on merits, the writ petition, cannot be dismissed on the ground of availability of alternative remedy.

13. So far as the question of alternative remedy was concerned, Mr. Bhattacharjee, appearing in support of the appeal, had not put forward any argument. He only advanced his submissions on the question of the notifications and the interpretations thereof. In fact, he submitted that the learned Judge,

while making the determination, was wrong in proceeding on the basis that goods covered by the notifications in question, should be of two different kinds, viz., "excisable goods" and "specified goods". It was contended, that while making the determinations, the learned Judge really failed to appreciate the true scope and ambit of notification No. 80/80-CE under which the said respondents have claimed and are claiming exemption. Such submissions were made by Mr. Bhattacharjee, as he claimed that Clause 2(ii) of notification No. 50/80-CE has taken such exemption as claimed in the case of manufacturers like the said respondents since the aggregate value of clearances of the "specified goods" by them or on their behalf, for home consumption for one or more factories, during the preceding financial year had exceeded Rs. 15 lakhs. In fact, it was claimed that in the instant case the total clearance value of the said respondents exceeded the prescribed amount of the concerned exemption limit. Mr. Bhattacharjee further submitted that the learned Judge was wrong in holding that in the case of "excisable goods" general exemption would be Rs. 20 lakhs and submitted that the exemption which is required to be granted, should be on the total turnover of the "excisable goods", falling under more than one item of the said Schedule, i.e., such turnover should be inclusive of the goods specified as also goods non-specified. Mr. Bhattacharjee further pointed out that in terms of Clause 2(ii) of notification No. 50/81-CE the limit for the aggregate value of the specified goods has been laid down to be not exceeding Rs. 15 lakhs during the preceding financial year and the total clearance value of starch falling under tariff item no, 15C, i.e., the ""specified goods" and being to the tune of Rs. 20 lakhs, the said respondents were not entitled to the benefits of exemption as claimed. It was also pointed out by Mr. Bhattacharjee that the basis of the approach by the learned Judge, viz., that the applicability of exemption granted under notification No. 50/81-CE, should be calculated by taking into consideration the total turnover of Rs. 20 lakhs, was wrong, since such exemption under the concerned notification has to be calculated by taking into consideration, the value of the total turnover of the specified goods and the value of the total turnover of the other excisable goods, not specified by the concerned notification. He also submitted that in a case where the total turnover of the specified goods exceeds Rs. 15 lakhs during the preceding financial year, the exemption contemplated under the concerned notification would not be available to the manufacturer, i.e., the said respondents in this case, even if the total turnover of the specified goods plus the excisable goods exceeds Rs. 20 lakhs and such, not having being the finding of the learned Judge, there was error apparent in the decision, for which the same was vitiated. Mr. Bhattacharjee also claimed and contended that in view of the above, the directions to release or refund the amount of Rs. 1,35,185 as paid by the respondents on account of excise duty towards the manufacture of "starch" was erroneous and the same was made on wrong appreciation of fact and law and it was submitted, that in any event, the learned Court below proceeded erroneously in its views of holding such views that the goods covered by the notification in question, should be of two different kinds, viz., "excisable goods" and "specified goods", on wrong

premises.

14. To supplement and for supplanting his submissions as above, Mr. Bhattcharjee pointed out that the said respondents are manufacturers of "starch" which is mentioned in the tariff item No. 15C of the said Schedule and "starch" according to the said item of the Schedule would mean to include dextrine and other form of modified starch all sorts, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power. He pointed out that gum powder is not included in the said item No. 15C and the said item would come under tariff item No. 68 of the said Schedule, which includes all other goods, not elsewhere specified, but includes the goods as mentioned therein. Such being the position and when admittedly the said respondents have described themselves as manufacturers of "starch" falling under tariff item No. 15C and gum powder, etc., falling under tariff item No. 68 of the said Schedule, the claim as made on account of exemption, was unjustified and according to him the learned Judge should have held so.

15. Mr. Banerjee, appearing for the said respondents, after referring to the notifications, pointed out that notification No. 80/80-CE was issued by the Central Government in supersession of the earlier notification No. 71/78-CE and made it clear, that they will not apply to a manufacturer, who manufactured "excisable goods" or to a limit of Rs. 20 lakhs, "aggregate value of clearance for home consumption during the preceding financial year" and Rs. 15 lakhs for clearance of "specified goods" as detailed out in the petition of motion and also contended that thus, two sets have been notified by the Central Government for the purpose of granting the necessary exemption or to limit the scope of the same. By the word two sets, he meant (1) "excisable goods" and (2) "specified goods". It was contended by him that in the case of a manufacturer manufacturing "excisable goods" of more than one item, the limit of exemption will be Rs. 20 lakhs and the case of the said respondents was that since the aggregate value of their manufacture of "starch" and gum powder was Rs. 17-1/2 lakhs, i.e., below Rs. 20 lakhs, they should have been given exemption and such exemption not having been granted, the authorities concerned had acted contrary to the express purport and tenor of the concerned notification and" as such the letter dated 17th November, 1981, was issued in erroneous exercise of power and competence. He contended further that the Assistant Collector of Central Excise concerned, had misconstrued the relevant notifications and his observations that the said respondents were not eligible to the exemption under notification No. 80/80-CE as their case was hit by paragraph 2(ii) of the notification in question, was based on misconception, as they failed to consider the real purport of the notification in the matter of grant ing exemption. It was also contended by Mr. Banerjee that the aggregate value of manufacture of "starch" and "gum powder" as manufactured by the said respondents was Rs. 17-1/2 lakhs, i.e., below Rs. 20 lakhs and both being "excisable goods" the exemption as asked for, should have been granted to them as a matter of course. It was also contended and claimed that in accordance with the express provisions

of the notification No. 80/80-CE read with the notification No. 50/81-CE, the said respondents were entitled to the exemption as mentioned therein, since their aggregate value of the clearance of the excisable goods manufactured was Rs. 17-1/2 lakhs, i.e., below Rs. 20 lakhs and more particularly when, the authorities concerned had accepted such claim of manufacture of goods to the tune of Rs. 17-1/2 lakhs. It was also contended by Mr. Banerjee that the case of the said respondents should come and must be considered under or in terms of the clause as mentioned hereinbefore and which exempts the manufacturer of more than one item of "excisable goods" and declares such manufacturer, as eligible for exemption up to the value of Rs. 20 lakhs. We have indicated to some extent about the submissions of Mr. Bhattacharjee on the above account. In fact, he contended that as "starch" was "specified goods" and since the exemption of such goods was limited to Rs. 15 lakhs, the said respondents would not be in a position to get the benefit of exemption limit as their total clearance for "starch" which is "specified goods" and which they had manufactured along with gum powder, had exceeded Rs. 15 lakhs and more particularly when, the total clearance of the said respondents was Rs. 17-1/2 lakhs for "starch" and gum powder together.

16. Mr. Banerjee, appearing for the said respondents, argued that his clients at the material times used to manufacture two articles, viz., "starch" and "gum powder" and according to him the former one would come under the category of "specified goods" as defined under the notification in question and the latter would not be "specified goods". But he claimed, that both the articles were excisable goods and only one of them is specified article would not make the same non-excisable or would take it out from the category of "excisable goods" as defined u/s 2(d) of the said Act which means goods specified in the Schedule to the Central Excise Tariff Act as being subject to a duty of excise and includes salt, It was the further contentions of Mr. Banerjee that since both the articles as mentioned above, were "excisable" and belonged to the same genus and the "specified goods" is one of the species for which different types of exemption has been notified. In fact, the above submissions were advanced on behalf of the said respondents before the learned Trial Judge and on consideration of the impact, effect and import of the notifications in question, he has observed that by mentioning the number of item in case of "excisable goods" the notification in question, meant to exempt all "excisable goods" up to a limit of Rs. 20 lakhs, irrespective of the items, i.e., whatever may be the number of the items in case of such "excisable goods". The learned Trial Judge has also observed that such being the position, the exemption limit of "excisable goods" have been indicated as Rs. 20 lakhs, but in case of "specified goods", not mentioning the number of items, the notification in question is rigid in its application making the same Rs. 15 lakhs in case of purely "specified goods". The learned Judge has finally concluded that if the manufacture in respect of more than one item of which one is specified but the other is not and nonetheless excisable, the total amount of exemption available would be Rs. 20 lakhs, because "specified goods" do not

cease to be "excisable", for which the exemption limit is fixed at Rs. 20 lakhs. We have also considered the submissions and the effect of the notifications and are of the same view with learned Judge and we also feel, that if such interpretations as has been given by him, is not accepted, the classifications as contained in Clauses 1 and. 2 will lose its purpose and meaning.

17. There is no doubt that in item 15C of the said Schedule, all sorts of "starch", excluding the other materials as have been indicated hereinbefore, have been included and goods were specified in terms of notification No. 71/78-CE, as issued in terms of or in exercise of the powers conferred by Rule 8(1) of the said Rules and the Government of India have also granted some exemptions under certain conditions, to a number of "excisable goods" of the descriptions as given in column (3) of the Table as annexed thereto and falling under the concerned item of the said Schedule to the said Act and as is specified in the corresponding entry in column (2) of the concerned Tariff and it may also be noted, that "starch" was included as "specific goods" being item No. 18 of the concerned Table. There is also no dispute that in respect of taxing statutes, viz., the said Act in this case, one has to look, to what has been clearly indicated and there is no room for intendment nor there is equity about tax and, since there is no presumption as to tax, therefore, all charges upon the subject, must be imposed by clear and unambiguous language. In view of the above also, we agree with the observations of the learned Judge that an anomalous position is bound to arise and created, if a manufacturer manufactures goods which are "specified" and also goods which are not specified, but all the same excisable. Such anomaly can, in our view, be avoided if the interpretation as given by the learned Judge of the notifications, is accepted. We are of the view that the interpretation as was given by the learned Judge in this case was due, legal and proper and we also record that notification No. 80/80-CE has meant to exempt all excisable goods up to the necessary limit of Rs. 20 lakhs without any reservation of the number of items, and as such we feel that there is no merit in this appeal and accordingly, we dismiss the same, without any order as to costs.

18. Before we leave the matter, we must also have it on record that Mr. Banerjee, appearing for the said respondents, further referred to the case of Collector of Central Excise, Calcutta and Ors. v. Madura Coats Limited, Serampore (1982) ELT 129, where a Division Bench of this Court has observed, that if the liability to pay excise duty is recurring, then the provisions of refund cannot be regarded as an effective alternative remedy and on a reference to that determinations, he wanted to establish further, that in this case, the availability of other remedy was not a bar, as the liability to pay excise duty was and is a recurring one.

19. Prayer for stay of operation of this order as made, is refused.