

(1993) 01 MAD CK 0017
In the Madras High Court
Case No : Writ Petition No. 13993 of 1992

Suresh Colour Labs

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 29-01-1993

Acts Referred:

Customs Act, 1962 — Section 12, 15, 157, 160, 25

Citation : (1993) 64 ELT 399

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : Shri R. Thiagarajan, Habibullah Badsha and R. Gandhi, s and S. Sampath Kumar, for the Appellant; Shri C.A. Sundaram, Addl. C.G.S.C., for the Respondent

Judgement

1. In these writ petitions common questions are raised challenging the orders passed by customs authorities on the basis that Tariff Heading 98.01

does not apply to the photographic machinery imported by the petitioners in view of the definition of "industrial plant" in the Project Imports

Regulations, 1986 which came into force on April 3, 1986. In three of the writ petitions which were filed in 1986 long before the other petitions

were filed, some additional contentions are advanced resting on an interpretation of the said Regulations and the doctrine of promissory estoppel.

2. The three writ petitions filed in 1986, are at the instance of the same person with reference to the same import. The petitioner is a partnership

..... manufacture of colour film, processing and printing and enlargement of the same as a Small Scale Industry. It placed an order for import of two

mini colour laboratories from Japan, one for their factory in Madras and the other for their branch in Madurai at a total cost of Rs. 15,62,000/-

(c.i.f. value) in October 1985. The Letters of Credit were opened on 23-1-1986 and the dates of shipment were 31-3-1986 and 2-4-1986. The

goods arrived at Madras Port in the third week of April, 1986. The petitioner applied to the Director of Industries who was the Sponsoring

Authority for recommendation on 22-3-1986. The same was granted on 24-4-1986. But on 3-4-1986, the new Project Imports Regulations,

1986 were issued under Customs Notification No. 230/86 dated 3-4-1986 and they came into force on that day. They defined the expression

industrial plant"" so as to exclude from its scope photographic studios, photographic film processing laboratories, photocopying studios and certain

other establishments. Applying that definition to the word "Industrial plant" occurring in Tariff Heading No. 98.01 in the First Schedule to the

Customs Tariff Act, 1975, the Customs authorities refused to assess the duty under the heading and held that duty should be paid under Tariff

Heading No. 90.10. The aggrieved petitioner has filed three writ petitions. In W.P. 6477 of 1986, the prayer is for issue of a Certiorarified

Mandamus to quash the order of the Assistant Collector of Customs dated 24-4-1986 in S49/132/86 Group B and direct him to register the

contract in respect of photographic film printing and processing Machine Model No. FUJI Mini Lab 27 and extend the benefit of concessional

duty of 55%. In W.P. 6478 of 1986 the prayer is for a declaration that Clause 3AI of the Project Import Regulations, 1986 contained in Customs

Notification No. 230/86 is ultra vires the Constitution of India. The prayer in W.P. 6479 of 1986 is the same as in W.P. 6477 of 1986 with

respect to the photographic printing and enlarging Machine Model No. QSS 603.

3. Apart from challenging the validity of the definition of "industrial plant" in the Project Import Regulations, 1986 as has been done by all the other

writ petitioners, the petitioner in the above three writ petitions contends that the said Regulations contain a saving provision as they except ""things

done or omitted to be done"" under the old Regulations which were superseded by the present Regulations. According to him, he had done all that

he should do under the old Regulations and the new definition introduced by the new Regulations for the first time on 3-4-1986 will not apply to

the two machines imported by him. He has also raised a contention that the principle of promissory estoppel will apply to his case and the

authorities are barred by the same from applying the new definition as he had acted already on the basis of the old Regulations.

4. It is not necessary to set out the facts in the order writ petitions as they are all similar. It is sufficient to note that in all these cases, the contracts

as well as the imports are years after the coming into force of the Project Import Regulations, 1986 on 3-4-1986.

5. In order to appreciate the contentions advanced and come to a correct conclusion, it is necessary to set out the history of the legislation briefly.

The Customs Act, 1962 (Act 52 of 1962) was enacted to consolidate and amend the law relating to Customs. Before that the law was governed

by the Sea Customs Act 8/1878. The Inland Bonded Warehouses Act 8/1896, the Land Customs Act 19/1924 and the Aircraft Act 22/1934. All

the four Acts were repealed by the Customs Act. Section 12 of the Customs Act provided that duties of customs shall be levied at such rates as

may be specified under the Indian Tariff Act, 1934 except as otherwise provided in that Act or any other law for the time being in force. Indian

Tariff Act XXXII of 1934 was enacted to consolidate the law relating to customs duties on goods imported into or exported from British India by

sea and by land. Section 2 thereof prescribed for levy any collection of the duties specified in the First and Second Schedules to the Act. The

Tariff was mainly based on the Draft League of Nations Nomenclature of 1931. Section 160 of the Customs Act repealed Section 2 of the Indian

Tariff Act and substituted it with a new appropriate Section 2.

6. The substantive provisions and the Schedules of the Indian Tariff Act were amended from time to time. The progress made in industrial growth

and economic development besides the substantial changes in the composition and pattern of the country's external trade made it necessary to

revise the entire nomenclature of the tariff so as to bring in line with the contemporary conditions. The Indian Tariff (Amendment) Act, 1949 was

enacted for the purpose of giving effect to the tariff concessions agreed to by India under the General Agreement on Tariffs and Trade (GATT).

That was a temporary Act, some provisions of which were extended from year to year. Practical difficulties were experienced and it was found

more convenient to give effect to the GATT concessions through notifications under the Customs Act rather than amending the statutory tariff. The

Tariff Revision Committee set up by the Government suggested that the tariff schedule should be revised and based broadly on the Brussels Tariff

Nomenclature making such modifications as necessary to suit the needs of the country. That resulted in the enactment of the Customs Tariff Act,

1975 (51 of 1975) which came into force on the 2nd August, 1976 containing a new Customs Tariff Nomenclature based on the Customs Co-

operation Council Nomenclature known as CCCN. The Act was however not a complete adoption of the CCCN but only an adaptation through

suitable contraction and expansion as specified in the Headings to the First Schedule to the Act to suit the requirements of this country. Section 2

provides that the rates at which duties of customs shall be levied under the Customs Act are specified in the First and Second Schedules. The Act

repealed Indian Tariff Act, 1934 and the Amendment Act of 1940. The Act also made consequential amendments in the Customs Act, 1962 by

substituting the words and figures "'Customs Tariff Act, 1975'" in the place of "'Indian Tariff Act, 1934.'" Thus, Section 12 of the Customs Act

makes a reference to the Customs Tariff Act, 1975.

7. Necessarily the provisions of the Customs Act and the Customs Tariff Act have to be read together in order to consider the matter in the proper

perspective. I have already referred to Section 12 of the Customs Act. Section 15 of the Customs Act prescribes that the rate of duty and tariff

valuation applicable to the imported goods shall be the rate and valuation in force 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. As per the proviso, if a bill of entry is presented before the

date of entry inwards of the ship, the bill of entry shall be deemed to have been presented on the date of such entry inwards. It is not necessary to

refer to the remaining parts of the section in this case. Section 25 of the Customs Act enables the Central Government to grant exemptions from

payment of duty if it considers necessary in the public interest to do so. Section 157 of the Customs Act empowers the Central Board of Excise

and Customs constituted under the Central Boards of Revenue Act, 1963 to make Regulations consistent with the Act and the rules and generally

to carry out the purposes of the Act without prejudice to any power contained elsewhere in the Act.

8. Turning to the Customs Tariff Act, 1975, it was realised that the adaptation of CCCN in the manner done was not quite satisfactory and the

Customs Co-operation Council recommended certain measures to be taken with effect from 1978. Hence Amendment Act 26 of 1978 was

enacted. There were some more amendments and ultimately Act 8 of 1986 was passed which came into force on 28-2-1986. The entire First

Schedule has been replaced. It is based on a system of classification derived from International Convention of "Harmonised Commodity

Description" and "Coding System" which was approved by the Customs Co-operation Council on 14th June, 1983 with suitable modifications.

The Harmonised Commodity Description and Coding System is known as Harmonised System. Under the System, goods have been classified

basically using a four digit system, with two more digits added for further sub-classification. In view of various advantages of the system, India has

acceded to the International Convention in terms of which the contracting parties had to adopt the same in their customs tariff as well as statistical

nomenclature. Hence, the main features of the new First Schedule are as follows :-

(i) The Harmonised System of nomenclature comprising 97 Chapters along with its general interpretative rules, Section Notes, Chapter Notes and sub-heading Notes has been totally adopted.

(ii) The rates of duty have been transposed into the new Schedule maintaining the existing levels of duty on individual items as far as possible.

Wherever it has not been found practicable to transpose the existing duty rates, due to a change in the nomenclature or merger of existing sub-

headings into a single heading or sub-heading in the Harmonised System, the higher rate of duty among the existing sub-headings has been

provided. However, suitable exemption notifications u/s 25 of the Customs Act, 1962, to maintain the same effective levels of duty in such cases

will be considered at the time of implementation of the new tariff.

(iii) Chapter 98 of the Harmonised System (which is for special use) has been made use of for our special needs like project imports, laboratory chemicals, passengers' baggage, imports by post or air and ship stores.

(iv) Chapter 99, which is another Chapter in the Harmonised System for special use, has been utilised to specify in the Schedule itself certain

imports which are currently exempted from customs duty by virtue of notifications u/s 25 of the Customs Act, 1962.

9. The First Schedule contains rules for interpretation. As per Rule, 1, the titles of Sections and Chapters are provided for ease of reference only

and for legal purposes, classification shall be determined according to the terms of the Headings and relative Section or Chapter Notes and if such

Headings or Notes do not otherwise require, according to the rules of interpretation. It is not necessary to refer to those rules. Each Chapter

contains Notes and some of them contain definitions to be applied to the expressions used therein. The entire First Schedule forms part of the

statute and naturally the Notes found in each chapter are equally so. The provisions contained in the Notes are as much binding as the other parts

of the Act and they cannot be ignored unless held unconstitutional.

10. Prior to the introduction of the present First Schedule, that is before 28-2-1986, the goods to which these petitions relate were covered by

Heading No. 84.66. Before the passing of the Customs Tariff Act, 1975, they were covered by Heading No. 72-A under the Tariff Act of 1934.

Under the present Schedule, they will fall under Heading No. 90.10 and the prescribed rate of duty is 100%. The description of the article is

Apparatus equipment for photographic (including cinematographic) laboratories (including apparatus for the projection of circuit patterns on

sensitized semi-conductor materials) and specified or included elsewhere in this Chapter, negatoscopes, projection screens." But it is the

contention of the petitioners that the goods fall under Heading No. 98.01 and by virtue of Note 1, the applicability of Heading No. 90.10 gets

excluded.

11. Chapter 98 deals with "Project imports, laboratory chemicals, etc. Note 1 reads :-

This Chapter is to be taken to apply to all goods which satisfy the conditions prescribed therein, even though they may be covered by a more

specific heading elsewhere in this schedule.

Heading No. 98.01 is as follows :-

Heading	Sub-heading	Description of article	Rate of duty
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No. No. Stan-Preferendard

tial Areas

(1) (2) (3) (4) (5)

98.01 9801.00 All items of 60%

machinery including

prime movers,

instruments,

apparatus and

appliances, control

gear and transmission

equipment, auxiliary

equipment (including

those required for

research and

development purposes,

testing and quality

control), as well as

components (whether

finished or not) or

raw materials for

the manufacture of

the aforesaid items

and their components,

required for the

initial setting up

of a unit, or the

substantial expansions

of an existing unit,

of a specified :

(1) industrial plant,
(2) irrigation project,
(3) power project,
(4) mining project,
(5) project for the
exploration for oil
or other minerals,
and

(6) such other
projects as the
Central Government
may, having regard
to the economic
development of the
country notify in
the Official Gazette
in this behalf;

and spare parts, other
raw materials (including
semi-finished material)
or consumable stores
not exceeding 10% of
the value of the goods
specified above
provided that such
spare parts, raw
materials or
consumable stores
are essential for

the maintenance of the
plant or project
mentioned in a to 6
above.

12. It is the contention of the petitioners that the language used in the description of article is of very wide amplitude and it will apply to the machinery imported by them. On the other hand, the respondents rely on Note 2 in the Chapter which is in the following terms :

2. Heading No. 98.01 is to be taken to apply to all goods which are imported in accordance with the regulations made u/s 157 of the Customs

Act, 1962 (52 of 1962) and expressions used in this heading shall have the meaning assigned to them in the said regulations.

As seen already, u/s 157 of the Customs Act, it is the Board of Central Excise and Customs which is empowered to make regulations and in

exercise of the said power, the Board issued Customs Notification No. 230/86-Cus., dated 3-4-1986 framing regulations called the Project

Import Regulations, 1986. It superseded the earlier regulations known as Project Imports (Registration of Contract) Regulations, 1965. Clause 2

of the Regulations of 1986 declares that the regulations shall apply for assessment and clearance of the goods falling under Heading No. 98.01 of

the First Schedule to the Customs Tariff Act, 1975. Clause 3(a) defines "industrial plants" as follows :-

(a) ""Industrial Plants"" means an industrial system designed to be employed directly in the performance of any process or series of processes

necessary for manufacture, production or extraction of a commodity, but does not include -

(i) establishments designed to offer services of any description such as hotels, hospitals, photographic studios, photographic film processing

laboratories, photocopying studios, laundries, garages and workshops, or

(ii) a single machine or a composite machine, within the meaning assigned to it, in Notes 3 and 4 to Section XVI of the said First Schedule.

As photographic studios, photographic film processing laboratories and photocopying studios are excluded from the definition of industrial plant

referred to in Heading No. 98.01, the petitioners are disentitled to claim the benefit of the lesser rate of duty prescribed therein and they are

obliged to pay the higher duty prescribed under Heading No. 90.10.

13. It is already seen that Chapters 1 to 97 of the First Schedule describe the goods and prescribe the rates of duty. Chapter 98 is only for special

use which is more or less an exception or proviso to Chapters 1 to 97. While Chapter 1 to 97 prescribe the maximum and usual rates to be

charged on the goods themselves, Chapter 98 provides for certain concession on the basis of the user of such goods and the special needs of the

country. Hence, the conditions set out in Chapter 98 must be satisfied before the benefit thereof is claimed. It is also seen that power of exemption

is entrusted to the Central Government and the power to make regulations is with the Board. Note 2 in Chapter 98 is also a provision conferring

the power and it requires the Board to exercise the power u/s 157 of the Customs Act. While the Parliament has taken the trouble of defining

certain expressions in Chapters 1 to 97, it has chosen to entrust the function to the Board in Chapter 98. Obviously, it has thought fit to do so as

the making of regulations by the Board may be easier than making an amendment to the statute whenever changes are called for. When in its

wisdom the Legislature has entrusted the function of defining the expressions used in Chapter 98 to the Board and the latter has also carried out the

said function, it is not possible to ignore the definition contained in the regulations and contend that the expressions used in the Schedule are of

wider amplitude or that they should be understood in the sense in which they are used in common parlance. Chapter 98 does not contain a

definition of the terms used in the heading and there is no merit in the contention that the Board has cut down the scope of such terms by the

definition contained in the Regulations of 1986. In order to understand the entry under Heading No. 98.01, one has to apply the definition

contained in the Regulations and if that is done, the machinery imported by the petitioners fall outside the Chapter and they will be governed by the

Heading No. 90.10.

14. The language used in the Heading No. 98.01 is also significant. It does not merely refer to all items of machinery of all industrial plants. The

entry has to be divided into four parts as follows :-

- (i) All items of machinery including prime movers, instruments, apparatus and appliances, control gear and transmission equipment, auxiliary equipment (including those required for research and development purposes, testing and quality control), as well as all components (whether finished or not) or raw materials for the manufacture of the aforesaid items and their components;
- (ii) required for the initial setting up of a unit or the substantial expansion of an existing unit;
- (iii) of a specified (1) industrial plant, (2) irrigation project, (3) power project, (4) mining project and (5) such other projects as the Central Government may notify in the Official Gazette;
- (iv) Spare parts etc.

The word "specified" occurring in the third part above is very significant. The Legislature has not made the entry applicable to all industrial plants

and projects automatically but the entry can be invoked only if the machinery etc. is for a specified industrial plant, specified irrigation project,

specified power project or specified project for the exploration for oil or other minerals. Reading the expression "specified" along with Note 2, it is

clear that the Board is conferred with the power of so specifying by defining the expressions. Instead of specifying the industrial plants by separate

orders, the Board has defined the expression in the Regulations. Before 28-2-1986, Heading No. 84.66 was the corresponding entry. While the

wording thereof was almost similar, there was a proviso which read as follows :-

provided there are imported (whether in one or more than one consignment) against one or more specific contracts, which have been registered

with the appropriate Customs House in the manner prescribed by Regulations which the Central Board of Excise and Customs may make u/s 157

of the Customs Act, 1962 (52 of 1962) and such contract or contracts has or have been so registered before any order is made by the proper

officer of Customs permitting the clearance for home consumption, or deposit in a warehouse of items, components or raw materials.

The power of the Board was to prescribe the manner of registration of specific contracts. The Board framed the Project Imports (Registration of

Contract) Regulations, 1965. These Regulations did not contain any definition of the expressions in the Heading. The nomenclature of the

regulations is now suitably changed and the brackets and the words within are omitted. It is only because there was no express specification of the

industrial plants, the question of admissibility of the project import facility on automatic colour film processing laboratory had to be referred to the

Central Government and they passed an order in F. No. 526/52/83-Cus (T.U.) dated 4-11-1983 granting the same subject to certain conditions.

Now that the Regulations contain a definition which excludes named industries, there is no question of Registration of Contracts for import of

machinery for such industries.

15. In order to get over this situation, the petitioners contend that the Regulation defining "industrial plant" and excluding therefrom certain

establishments is not valid for various reasons. At first it is argued that as the language used in Heading No. 98.01 is so wide as to include all

machinery, it is not open to the Board to exclude any machinery therefrom. Reference is made to the judgment of the Privy Council in *Dilworth and*

Others v. The Commissioner of Stamps 1899 A.C. 99, wherein the word "include" occurring in a definition clause is considered and it is held that

the said word is generally used in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used

those words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those

things which the interpretation clause declares what they shall include. The proposition has no applicability to the present case.

16. Similarly, the ruling in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, dealing with the definition of "industry"

in the Industry Disputes Act has no relevance. I have already dealt with at length the fallacy in the contention that the scope of Heading No. 98.01

is reduced by the definition contained in the Project Import Regulations. The word "including" used in the Heading is only with reference to the

items of machinery and not the industrial plant or the projects mentioned therein.

17. It is next contended that the Legislature cannot be understood to have exceeded its power of delegation and conferred a power on the Board

to alter the scope of the legislation itself. In this connection reliance is placed on the propositions laid down by the Supreme Court in *In re : Art.*

143, *Constitution of India*, etc. AIR 1951 S.C. 332. In paragraph 74, the Court

has held that the Legislature cannot abdicate its legislative

functions and, therefore, while entrusting power to an outside agency, it must see that such agency acts as a subordinate authority and does not

become a parallel legislature. Reliance is placed on certain passages found in Legislation and Interpretation by Jagdish Swarup to the similar effect.

It is hardly necessary to refer to these passages, as they have no applicability here.

18. Learned counsel for the petitioners cited the following rulings in support of his contention that a delegatee cannot by exercise of the power

conferred by the Legislature in the delegation act against the main provisions in the statute or vary or abrogate the same :

(1) Commissioner of Income Tax, Madras Vs. S. Chenniappa Mudaliar, ,

(2) Second Income Tax Officer and Others Vs. M.C.T. Trust and Others, ,

(3) Madras Industrial Linings Ltd. Vs. Income Tax Officer and Others, ,

(4) Atmanatha Swami Devasthanam v. The Commissioner Hindu Religious and Charitable Endowments Board, Madras-34 and Another (1980) I

MLJ 375 and

(5) Collector of Central Excise, Bombay-I and Another Vs. Parle Exports (P) Ltd., .

None of the rulings has any bearing on the question before me and I do not consider it necessary to refer to them in detail. As stated earlier, the

Legislature has entrusted the function of specifying or denying the particular industrial plants or projects to the Board and the same has been

carried out. There is no question of whittling down the scope of the entry in the Heading by applying the definition contained in the Regulations. It

would be a case of putting the cart before the horse if the expressions used in the Heading are to be given a meaning other than that contained in

the Regulations and then considering whether the Regulations have cut down the scope of the entry in the Heading. Hence, the judgment in

Onkarlal Nandlal Vs. State of Rajasthan and Another, cited for the proposition that the interpretation of the definition of the expression must be in

the Rules and by-laws as found in the statute, will have no application in this case.

19. It is next contended that the Central Government had by its order dated 4-11-1983 in F. No. 526/52/83-CUS (T.U.) referred to already,

decided to extend the facility to the machinery in question and the Board, which is a subordinate authority, cannot act contrary to it and give a

definition which will deprive the said machinery of the project import facility. There is no merit in this contention. It is unnecessary to consider

whether the Board is subordinate to the Central Government or not. Even if it is so, the Parliament has entrusted the function of defining the

expression to the Board with effect from 30-3-1986. If any other authority had given a different meaning to the expressions contained in the

Heading earlier, that will become ineffective on the framing of the Regulations by the Board on 3-4-1986. The notification of the Central

Government dated 4-11-1983 will automatically cease to be effective after the introduction of the Regulations. No reliance can be placed thereon

by the petitioners. Learned counsel referred to a judgment of this Court in *Benzex Labs Limited Vs. Collector of Customs*, in support of his

proposition that a subordinate authority cannot act in contravention of the order passed by a superior authority. The proposition, though well

settled, has no application in this case.

20. It is next contended that the Customs Tariff Act is a fiscal enactment and it should be strictly construed. It is argued that no equitable

considerations would arise in construing such statutes and it is not open to the Court to interpret such provisions on the basis of any presumption or

intendment of the Legislature. Reliance is placed on a passage in *Principles of Statutory Interpretation* by Justice G. P. Singh, 5th Edn., at pages

455 and 456, which reads as follows :-

1. STRICT CONSTRUCTION OF TAXING STATUTES

(a) GENERAL PRINCIPLES OF STRICT CONSTRUCTION :

A taxing statute is to be strictly construed. The well-established rule in the familiar words of LORD WENSLEYDALE, reaffirmed by LORD

HALSBURY and LORD SIMONDS, means : ""The subject is not to be taxed without clear words for that purpose; and also that every Act of

Parliament must be read according to the natural construction of its words"". [Re : *Hicklotheweit*, (1885) II Ex 452, . 456 : referred to in *Tenant v.*

Smith, (1892) AC 150 (LORD HALSBURY); *St. Aubyn v. A.G.* (1951) 2 All ER 473 (LORD SIMONDS); *Member-secretary, Andhra*

Pradesh State Board for Prevention and Control of Water Pollution Vs. Andhra

Pradesh Rayons Ltd. and Others, In a classic passage LORD

CAIRIS stated the principle thus : ""If the person sought to be taxed comes within the letter of the law he must be taxed, however great the

hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the

letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be

admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can

simply adhere to the words of the statute"". [Partington v. A.G. (1869) LR 4 HL 100, referred to in IRC v. Duke of Westminster, (1936) AC 1;

AIR 1940 183 (Privy Council); A.V. Fernandez Vs. The State of Kerala, ; CIT v. M & G Stores, AIR 1968 SC 200; J.K. Steel Ltd. Vs. Union

of India (UOI), ; Ransom (Inspector of Taxes) v. Higgs (1974) 3 All ER 949 VISCOUNT SIMON quoted with approval a passage from

ROWLATT, J. expressing the principle in the following words : ""In a taxing Act one has to look merely at what is clearly said. There is no room

for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can

only look fairly at the language used"". [Cape Bombay Syndicate v. IRC (1921) 1 KB 64 (ROWLATT, J.); referred to in Canadian Eagle Oil Co.

Ltd. v. R. (1945) 2 All ER 499; Gursahai Saigal Vs. Commissioner of Income Tax, Punjab, ; Banarasi Devi Vs. Income Tax Officer, Calcutta, .

See further, Commissioner of Income Tax, Madras Vs. V. Mr. P. Firm, Muar, ; Commissioner of Income Tax, Patiala and Others Vs. Shahzada

Nand and Sons and Others, ; Janapada Sabha Chhindwara Vs. The Central Provinces Syndicate Ltd. and Another, ; Owen Thomas Mangin v.

IRC, (1971) 2 WLR 39; Controller of Estate Duty v. Kantilal Trikamlal, ; Shrimati Tarulata Shyam and Others Vs. Commissioner of Income Tax,

West Bengal, ; Member-secretary, Andhra Pradesh State Board for Prevention and Control of Water Pollution Vs. Andhra Pradesh Rayons Ltd.

and Others, ; M/s. Aphali Pharmaceuticals Ltd. v. State of Maharashtra, : 1989(44)ELT613(SC) ; Goodyear India Ltd., Gedore (India) Pvt. Ltd.,

Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another, ; Sutlej Cotton Mills Ltd. Vs.

Commissioner of Income Tax, West Bengal III, Calcutta, .] Relying upon this passage LORD UPJOHN said : ""Fiscal measures are not built upon

any theory of taxation"". [Commr. of Customs v. Top Ten Promotions, (1969) 3 All ER 39

In fiscal legislation a transaction cannot be taxed on any doctrine of ""the substance of the matter"" as distinguished from its legal signification, for a

subject is not liable to tax on supposed ""spirit of the law"" or ""by inference or by analogy"". [IRC v. Duke of Westminster, (1936) AC 1; AIR

1940 183 (Privy Council); A.V. Fernandez Vs. The State of Kerala, ; Commissioner of Income Tax, Gujarat Vs. Keshavlal Lallubhai Patel, ; The

Joint Commercial Tax Officer, Harbour Division, II-Madras Vs. The Young Men's Indian Association (Regd.), Madras and Others, ; European Oil

(NZ) Ltd. v. Inland Revenue Commissioner (1976) 1 All ER 503; (Legal Rights arising from a transaction and not its economic results are

materials); Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others, ; The Member Secretary, Andhra Pradesh

State Board for Prevention and Control of Water Pollution v. Andhra Pradesh Rayons Ltd., AIR 1989 SC 911 In refuting the doctrine of "the

substance of the matter" LORD TOMLIN observed : ""It is said that in revenue cases there is a doctrine that the court may ignore the legal position

and regard what is called "the substance of the matter". This supposed doctrine seems to rest for its support upon a misunderstanding of language

used in some earlier cases. The sooner this misunderstanding is dispelled, and the supposed doctrine given its quietus, the better it will be for all

concerned, for the doctrine seems to involve substituting "the uncertain and crooked cord of discretion" for "the golden and straight metwand of

the law". [IRC v. Duke of Westminster, supra, referred to in Pott's Executors v. IRC, supra, p.80 (LORD NORMAND); Commissioner of

Income Tax, Gujarat Vs. B.M. Kharwar, ; J.K. Steel Ltd. v. Union of India, supra, p. 1192; The Commissioner of Income Tax, Calcutta Vs.

Gillanders Arbuthnot and Co., ; Commrs. of Customs v. Top Ten Promotions (1969) 3 All ER 39; Ransom (Inspector of Taxes) v. Higgs (1974)

3 All ER 949

Learned counsel also drew my attention to certain passages found in the rulings of the Supreme Court referred to in the foot-notes. I do not find

any necessity to refer to them in detail, as the above passage in the text-book as well as the passages in the judgments cited have no application in

this case.

21. It is next argued that Note 2 in Chapter 98 does not contain any guidelines to the Board and it will tantamount to excessive delegation. It is

also contended that there is no need for the petitioners to challenge the validity of Note 2 as such, as the very conditions precedent for such

delegation as contained in Note 2 have not been fulfilled in the present case. Reference is made to the decisions of the Supreme Court in *Devi Das*

Gopal Krishnan and Others Vs. State of Punjab and Others, *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. Vs. The Asstt. Commissioner of Sales*

Tax and Others, *Govind Saran Ganga Saran Vs. Commissioner of Sales Tax and Others*, *A.N. Parasuraman Etc. Vs. State of Tamil Nadu*,

M/s. Frick India Ltd. v. Union of India and Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, . The rulings will not apply,

as this is not a case of empowering the Board to levy any tax, but only authorising the Board to define the industrial plants or other projects which

will be entitled to the concessional rate prescribed in Chapter 98 having regard to the conditions prevailing in the trade.

22. It is also contended that Note 2 should be interpreted in such a manner that the Legislature expected the Board to frame Regulations in

accordance with the subsisting law and the Board was not expected to brush aside that which is contained in the main statute. It is also argued that

the expression ""industrial plant"" is a well-known concept and particularly it has been understood in a specific manner for over 52 years. It is

submitted that Item 72(A) in the Schedule to the Indian Tariff Act of 1934 was similar in language and it held the field till the Act of 1975 was

passed and in the later Act Heading No. 84.66 was understood in the same manner for about 11 years till the new Regulations were framed by the

Board. It is not open to the Board to ignore the position that the expression has been understood for such a long time in a particular manner and

introduce a new definition so as to cut down the scope of it. Reference is made to a judgment of the Supreme Court in *The Commissioner of Gift*

Tax, Madras Vs. N.S. Getty Chettiar, . The Court had to interpret the word ""transaction"" occurring in the Gift Tax Act. It was held that partition in

a Hindu family did not affect any transfer as generally understood in law. The argument is unsustainable for the reasons already given and the ruling has no relevance in the present case.

23. Reliance is also placed on the judgment of the Supreme Court in *Hukam Chand etc. Vs. Union of India (UOI) and Others*, in which it was held that the rule making authority has to act within the limits of power delegated to it. The judgment does not in any way apply to the facts of this case.

24. It is next argued that the Board is empowered by Section 157 of the Customs Act only to make Regulations generally to carry out the purposes of that Act. It is submitted that the Customs Act is penal in nature and it is enacted with the object of providing a machinery for collection of duty and prevention of smuggling and it is contended that the Board can make only Regulations for carrying out the objects of the Customs Act and has no power to make Regulations for other purposes. There is no merit whatever in this contention. When Note 2 in Chapter 98 expressly confers the power to make Regulations for project imports and also assign meanings to the expressions found in the Headings, it is futile to contend that the Board can make only such regulations as would fall strictly within the scope of the Customs Act. Apart from that, the relevant provisions of the Customs Act have already been referred to and it has been pointed out that the two Acts viz., Customs Act and Customs Tariff Act should be read together and the provisions are complementary to each other. Reliance placed by learned counsel on the judgment of the Supreme Court in *Amba Lal Vs. The Union of India (UOI) and Others*, and that of the High Court of Australia in *Shanahan v. Scott* 96 C.L.R. 245 as well as that of the Privy Council in *Utah Construction & Engineering Pvt. Ltd. and Another v. Pataky* (1965) 3 All E.R. 650 is of no relevance in this case.

25. It is next argued that there is no nexus between the object of the Regulations and the definition of the expression "industrial plant". Counsel has not been able to substantiate this contention in any manner.

26. It is next contended that the imported machinery is a new technical development, which is very much required for the advancement of the trade in this country and if the concession available in Chapter 98 is not made applicable, it will cause a setback to the development of the industry. It is

not for this Court to decide the validity of the provision on such considerations of hardship.

27. It is contended that the Central Government has given exemption u/s 25 in Notification No. 132/85 dated 19-4-1985 and by applying the

definition contained in the present Project Import Regulations, such exemption will be taken away. The Board has no power to do so. The

question does not arise in this case as it is a matter for interpretation of the said Notification in appropriate cases where it may arise. The said

Notification, even if understood as contended by learned counsel for the petitioners, does not nullify or invalidate the definition of "industrial plant

contained in the Project Import Regulations of 1986.

28. Senior counsel appearing in W.P. Nos. 6477 to 6479 of 1986 raised some additional contentions. According to him, the Customs Tariff Act

being a plenary legislation, cannot be amended by a subordinate legislature viz., the Project Import Regulations of 1986. There is no merit in this

contention. There is no case of amending the statute by a subordinate legislation. The statute has not dealt with the matter and left it to be decided

by the Board. While the statute has used certain expressions in the Chapter, the function of assigning meanings to the same has been entrusted with

the Board. Once the Board assigns certain meanings, they alone will apply to the expressions and they cannot be understood in a different manner.

29. The next contention is that Note 2 in Chapter 98 refers only to the Regulations of 1965 which were then in force and not to any subsequent

Regulations. Learned counsel submits that the Note does not use the expression "Regulations from time to time". He relies on the judgment of the

Supreme Court in *Hukam Chand etc. Vs. Union of India (UOI) and Others*, . The question considered in that case was whether the Central

Government had been vested by the statute with powers to make rules with retrospective effect. Section 40 of the Displaced Persons

(Compensation and Rehabilitation) Act, 1954, was considered by the Court and it was held that the said section did not confer any such power on

the Government. The ruling has no bearing in this case. Moreover, it should be remembered that the Project Import Regulations of 1965 did not

contain any definition and did not assign any meaning to the expressions found in the Heading 84.66, which corresponded to the present Heading

98.01. The Legislature was undoubtedly aware of the said position when it introduced Note 2 in Chapter 98. Hence, Note 2 refers only to the

Regulations to be framed by the Board thereafter. Consequently, the Regulations referred in Note 2 are the Project Import Regulations of 1986.

30. It is next argued that the Regulations except from its purview things done or omitted to be done before the supersession of the old Regulations

of 1965. It is submitted by learned counsel that his client had entered into a contract for import of the machinery and also opened the Letter of

Credit on 23-1-1986. The petitioner in these three writ petitions applied for a recommendation to the sponsoring authority on 22-3-1986 and the

same was granted to him only on 24-4-1986. It is contended that the petitioner had done what all he could do and the delay was caused only by

the concerned authorities for which he cannot suffer. There is no substance in this contention, though it is attractive. As rightly pointed out by

learned counsel for the respondents, the Regulations refer to things done or omitted to be done under the old Regulations and not anything done

outside the Regulations. There was no application for registration of contract under the old Regulations by the petitioner. He had only applied for a

recommendation from the sponsoring authority viz., the Director of Industries. Even that was done only on 22-3-1986 and the new Regulations

came into force on 3-4-1986. It cannot be contended that there was considerable delay on the part of the Director of Industries in considering the

application for recommendation made by the petitioner. In any event, the words ""things done or omitted to be done"" cannot cover the application

for recommendation by the sponsoring authority. Hence, reliance placed by learned counsel on the judgment of the CEGAT Special Bench, New

Delhi in *DPS India (P) Ltd. v. Collector of Customs* 1922 (62) E.L.T. 837 is of no use.

31. Learned counsel for the petitioner has relied on the following judgments to contend that the expression ""things done"" should be given a liberal

interpretation and the application for recommendation made to the sponsoring authority would also fall within the scope of the expression :-

(1) *Universal Imports Agency and Another Vs. The Chief Controller of Imports and Exports and Others*, ,

(2) *Shri Ram Prasad (Deceased) by his Legal Representative Vs. The State of Punjab*, ,

(3) Hasan Nurani Malak Vs. Assistant Charity Commissioner, Nagpur and Others, , and

(4) The Gujarat Electricity Board Vs. Shantilal R. Desai, .

The above rulings have no relevance in this case as the expression used in the Regulations does not admit of any doubt that it refers only to "things done" or steps taken under the superseded regulations.

32. Learned counsel submits that the certificate of the Sponsoring Authority is a sine qua non for an application for registration of the contract. That

does not in any way help the petitioner as he ought to have taken steps therefore much earlier. When according to him the Letter of Credit was

opened in January 1986, he has to blame himself for applying to the Sponsoring Authority for recommendation only towards the end of March

1986. In this connection reliance is placed on Dhampur Sugar Mills Ltd. Vs. Union of India and Others, . In that case, a notification was issued by

the Government u/s 29B of the Industries (Development and Regulation) Act (65 of 1951) exempting sugar industry from certain provisions of the

Act and the Rules framed thereunder. The exemption was applicable for setting up a new industry and the scheme envisaged that the undertaking

should merely register itself with the Government without requirement of a licence. The petitioner in that case had made such an application for

registration when the Scheme was in force, but the Government delayed the consideration of the same and later withdrew the exemption. The

Court held that the undertaking was entitled to registration and exemption under the Scheme and the rejection of the application was arbitrary. The

ruling has no bearing in the present case, as there is no application by the petitioner for registration of the contract under the old Regulations.

33. Reliance is placed on the judgment of the Supreme Court in Union of India and others Vs. Kanunga Industries, to contend that if there is any

doubt in a taxing statute, benefit should be given to the assessee. The judgment has no application to this case.

34. The definition clause in the Regulations excluding certain industries from the scope of the expression ""industrial plant"" is, according to learned

counsel, manifestly arbitrary and violates Article 14 of the Constitution of India. It is submitted that establishments excluded are hotels, hospitals,

photographic studios, photographic film processing laboratories, photocopying

studios, laundries, garages and workshops. They do not belong to any class and there is no connection between one and the other. There is no reasonable classification in the provision. There is no justification for excluding these establishments from the general expression "industrial plant", which has a settled meaning in the common parlance. Reliance is placed on the judgments in *Glass Chatons Importers and Users' Association Vs. Union of India (UOI)*, *Indian Express Newspapers (Bombay) Private Ltd. and Others v. Union of India and Bhor Industries Ltd., Bombay Vs. Collector of Central Excise, Bombay*. There is no merit in this contention. I have already pointed out that the expression "industrial plant" occurring in Heading No. 98.01 can have only such meaning as assigned to it by the Board in the Regulations of 1986. Hence, there is no question of any discrimination or violation of principles of Article 14 of the Constitution of India. It is not also possible to accept the contention that the exclusion of certain establishments from the definition is manifestly arbitrary.

35. It is next argued that printing industry has been treated as an industrial establishment and there is an unreasonable discrimination. Learned counsel for the respondents clarified the position and produced before me the Tariff Circular No. 21/86 and F. No. 528/17/86-CUS(TU) dated 18-6-1986. A perusal of the same shows that there is no discrimination in favour of the printing industry as contended by the petitioner.

36. It is then argued that the principle of equitable estoppel would apply and consequently, the new Regulations would not apply to the contracts entered into by the petitioner in October 1985, particularly after he had opened a Letter of Credit in January 1986. Reliance is placed upon the judgment of the Supreme Court in *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, in which it is held that the principle of promissory estoppel is available against subordinate legislation. Reliance is also placed on a recent judgment of mine in W.P. No. 10044 of 1992.

It is rightly pointed out by learned counsel for the respondents that the doctrine of promissory estoppel or the principle of equitable estoppel will not apply to this case. It is not legality of the import that is questioned by the authorities. The validity of the import is accepted. The only question relates to the quantum of duty payable by the petitioner. Section 15 of the

Customs Act, to which reference has already been made, has specified the relevant date for determination of rate of duty and tariff valuation on imported goods. In view of the clear provisions of Section 15 of the

Customs Act, the principle of estoppel cannot be invoked. Whatever is the prevalent rate on the relevant date has to be applied by the authorities.

That provision is contained in the plenary legislation viz., the Customs Act and it is not part of the subordinate legislation viz., the Regulations.

37. In *Bharat Surfactants (Private) Ltd. and Another Vs. Union of India (UOI) and Another*, the Apex Court considered the provisions of

Section 15 of the Customs Act and upheld the constitutional validity of the same. In that case, the petitioners entered into a contract with foreign

sellers for the supply of edible oils and the vessel carrying the consignment approached Bombay and made its prior entry on 4th July, 1981.

Actually it arrived and registered in the Port of Bombay on 11th July, 1981. As the port authorities were not able to allot a berth to the vessel, it

left the port for Karachi for unloading other cargo intended for that port. Thereafter, it returned to Bombay and arrived on 23rd July, 1981 and

waited for a berth. On 4th August, 1981, a berth was allotted and the Customs Authorities made the final entry on that date. The petitioners

presented the Bill of Entry to the Customs Authorities on 19th July, 1981. An order was passed by the Customs Officer on 18th July, 1981

directing examination of the consignment. Duty was assessed on the footing that the import was made on 31st July, 1981, the date of "inward

entry". It was contended that the rate of duty leviable was that ruling on 11th July, 1981 and not the later date. The contention was rejected by the

Court in view of the express provisions of Section 15 of the Customs Act. The ratio of the decision would apply to the present case also and the

principle of estoppel is excluded.

38. The next argument of learned counsel that the petitioner cannot be made to suffer because the prescribed formalities could not be completed

for no fault of his. It is rightly pointed out by learned counsel for the respondents that there is no equity about a tax and the provisions of a fiscal

enactment have to be interpreted strictly and that if such interpretation is not to the benefit of the subject, the latter cannot escape the same.

Reliance is placed on the following passage in Maxwell on The Interpretation of

Statutes, 12th Edition at page 256 :

"In a taxing Act", said Rowlatt, J., "one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used. But this strictness of interpretation may not always enure to the subject's benefit, for "if the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be.

39. Learned counsel for the respondents has drawn my attention to the judgment of the Supreme Court in Babu Ram Jagdish Kumar and Others

Vs. State of Punjab and Others, , and contended that the delegation of power to the Board under Note 2 is constitutionally valid and as a fact, the petitioners have not challenged the same in these writ petitions. The following passage in the judgment is relevant and instructive :-

14. A review of the decisions of this Court to some of which we will presently refer shows that the delegation of power by the legislature to a local authority or to the Executive Government to vary or modify an existing law would not be unconstitutional so long as such delegation does not involve the abdication of essential legislative power by the legislature. Such delegations of legislative power have been upheld by this Court on several varied and diverse grounds such as the scheme and policy of the statute under which the power is delegated, the presence of guidelines in the statute regarding the exercise of delegated power, the lack of time for the Legislature to make provision with regard to all the details involved in the administration of the law, the incapacity of the Legislature to foresee all future events, the nature of the subject matter of legislation and the nature of the donee of power etc. Even in matters relating to taxation laws, it has been consistently held that the Legislature can delegate the power to fix rates of tax provided there are necessary guidelines regarding such fixation on the ground that in a modern society, taxation is one of the methods by which economic and social goal of the State can be achieved and the power to tax, therefore, should be a flexible power and capable of being easily altered to meet the exigencies of circumstances. Such delegation has been held to be not amounting to delegation of essential

legislative function.

40. The question whether the photographic machineries imported by the petitioners fell under Heading No. 98.01 has been considered by a

Division Bench of the Bombay High Court in Subhash Photographics Vs. Union of India, . By judgment dated 2nd April, 1992, the contentions

raised by the petitioners herein have been fully considered and negated by the Division Bench. With respect, I concur with the reasoning of the

Division Bench in that judgment.

41. Yet another judgment of the same Court by the same Division Bench is reported in Lazor Colour Prints Pvt. Ltd. Vs. Union of India, . The

Division Bench rejected the contention that the doctrine of promissory estoppel would apply and also held that the Project Import Regulations are

not in any way impaired or affected by the power of exemption granted u/s 25 of the Customs Act to the Government.

42. Both the rulings of the Bombay High Court are of the petitioners herein and I agree with the reasoning of the Division Bench in the

two rulings.

43. In the result, the writ petitions have to fail and they are dismissed. On the facts and circumstances of the case, there will be no order as to

costs.