

(1981) 09 BOM CK 0022

In the Bombay High Court

Case No : Misc. Petition No. 681 of 1978

Tata Sons Limited

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 19-09-1981

Acts Referred:

Customs Act, 1962 — Section 25(1)

Citation : (1982) 10 ELT 53

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. The petitioners are a Company registered under the Companies Act and run a Division known as Tata Consultancy Services which acts as Management and Computer Science Consultants. The petitioners were granted an Import Licence dated July 16, 1974 by the Controller of Imports and Exports for the import of one B. 1728 Computer System and spares thereof of the approximate C.I.F. value of Rs. 30,34,000/-. The goods described were shown in the said licence as falling under Item No. 65 of Part V of the Import Trade Control Schedule which provided for "Article of machinery not otherwise specified".

2. In terms of the said Import Licence, the petitioners imported one new fourth generations Burroughs Computer Machine complete with its allied spares and accessories. The Computer Machine is also known as Data Processing Machine. As the computer system machine consisted of a variable number of separately housed units, the same was imported by Air and came by four consignments. The petitioners filed four Bills of Entry for home consumption with the Customs authorities at the Santa Cruz Air-Port and the Customs authorities classified the computer system machine as falling under Tariff Item No. 73 in Section XVI of the First Schedule to the Indian Customs and Central Excise Tariff (Vol. I) (hereinafter referred to as the "Tariff"). The authorities accordingly assessed the computer system machine for overall duty of Rs. 29,50,994.69.

3. The petitioners paid the duty under protest. According to the petitioners, the

computer system machine attracts duty under Item No. 72(b) of the Tariff and the duty leviable would aggregate to Rs. 17,77,881.42. The petitioners after clearing the goods filed four refund applications to the Assistant Collector of Customs for refund of the excise duty amounting to Rs. 11,73,112.87. The petitioners claimed that the computer consists of different units like Central Processing Unit, Tape drives, Disk Cartridges, Card Reader, Printer etc. and the entire integrated unit being a machine, the customs duty is payable only under Item No. 72(b) and Item No. 72(3) of the Tariff and the levy of duty under Item No. 73 of the Tariff was illegal.

4. The Assistant Collector of Customs, Bombay by four separate orders passed on September 22, 1975 and July 5, 1975 rejected the claim for refund holding that the goods imported were Data Processing Unit which is an ancillary equipment of complete system and it is in the nature of electrical appliance and, therefore, correctly assessed under Item 73 of the Tariff. The petitioners carried appeals before the Appellate Collector of Customs but the appeals came to be dismissed by an order dated September 3, 1976. The Appellate Collector held that the computer systems are integrated units based on complex electronics and the heart of the computer system is the central processor which consists of thousands of pre-determined circuits which are actuated by the instructions fed into the Card read punch by the human programme either through printed punch cards or pre-punched tapes. The functional equipment, according to the appellate authority, does not have any moving parts, and, therefore, cannot be classified as machine. The Appellate Collector also relied upon the Machinery Committee Report (1922) and held that the computer is not directly concerned with any industrial operation and is not used for production of any commodity and, therefore, the levy of duty under Item No. 73 of the Tariff was appropriate. The petitioners carried revision before the Government of India, Ministry of Finance, but the same ended in dismissal by an order dated November 7, 1977. These orders are under challenge in this petition filed under Article 226 of the Constitution of India.

5. Shri Talyarkhan, the learned counsel appearing in support of the petition, submitted that the two reasons assigned by the authorities below in support of their findings that the computer is not a machine but is an electrical appliance or apparatus are totally incorrect. The learned counsel submitted that in all Tariffs, the Data Processing Machines are regarded as machines. It was further urged that the computers are recognised as machines by judicial decisions and even the Customs Department itself has previously treated computers as machines liable for duty under Item No. 72 of the Tariff. The learned counsel urged that the authorities below have not taken into consideration various salient features of the case and have ignored as to how the computer system is known in the trade but have proceeded to record a finding on the strength of trade notice dated February 22, 1972 issued by the Central Board of Excise.

6. Shri Chinai, the learned counsel appearing on behalf of the Department, on

the other hand, submitted that the conclusion arrived at by the authorities below is in accordance with law and requires no interference. It was urged by the learned counsel that there is no distinction between "machinery" and the "apparatus" and the difference lies in whether it is predominantly an electrical instrument or otherwise. Shri Chinai submits that the expression "machinery" connotes generation of movement and the Central Processor which is a heart of the computer lacks any movement. The learned counsel further urged that the computer is only an electrical device and not a mechanical device and, therefore, it was properly assessed under Item No. 73 of the Tariff. It was finally urged by Shri Chinai that even assuming that the two views are possible as to whether the computer would attract duty under Item No. 72 or Item No. 73 of the Tariff, this Court in exercise of its jurisdiction under Article 226 of the Constitution of India should not disturb the conclusion recorded by the authorities below.

7. Before advertng to the various submissions urged on behalf of the petitioners, it would be convenient to set out Items Nos. 72(b) and 72(3) and 73 of Section XVI of the First Schedule of the Tariff :

							Item No.	Name
of	article	Nature	Standard	of	duty	rate	of	duty
							(1)	(2) (3) (4)
							SECTION XVI	
MACHINERY AND APPARATUS; ELECTRICAL MATERIAL							72.	Machinery, namely,
Revenue 40 per cent such of the following ad valorem articles as are not							otherwise specified :- (b) machines and sets of machines to be worked by	
electric, steam, water, fire or other power, not being manual or animal labour,							or which before being brought into use require to be fixed with reference to	
other moving parts." 72(3) Component parts of machinery as defined in Item							Nos. 72, 72(1) and 72(2) and not otherwise specified, namely, such parts only	
as are essential for the working of the machine or apparatus and have been							given for that purpose some special shape or quality which would not be	
essential for their use for any other purpose but excluding small tools like twist							drills and reamers, dies and taps, gear cutters and hacksaw blades : Provided	
that articles which do not satisfy this condition shall also be deemed to be							component parts of the machine to which they belong if they are essential to its	
operation and are imported with it in such quantities as may appear to the							Collector of Customs to be reasonable. 73. Electrical instruments, Preferential 60	
per cent apparatus and appliances Revenue ad valorem not otherwise specified							(excluding telegraphic & telephonic) and parts thereof not otherwise specified.	

XVI MACHINERY AND APPARATUS; ELECTRICAL MATERIAL 72. - - Free - 72(3)
73. 50 per cent - 10 per cent - ad valorem ad valorem

----- The principal question which requires determination is whether the computer would fall under definition of "machine" or could be properly described as an electrical instrument, apparatus or appliance. To appreciate the problem, it would be convenient to find out what the expression "computer" connotes. The "computer" is a comprehensive expression which includes the Central Processing Unit, Disk File Storage Unit, Disk Pack Drive, Disk Cartridge Drives, Magnetic Tape Drive Units, Line Printers, Card Readers, Paper Tape Punch Unit, Console Printers and Display Terminals. The whole combination of these devices constitute an integrated computer system (Data Processing Machine). Individual Units of the system cannot be considered as a computer by itself and none of the units are capable of working except in conjunction with the others and a particular system can be configured after giving due regards to the particular requirements e.g. raw data can be accepted by the system either through punched cards, paper tape, console terminals or can be directly encoded on the magnetic tapes; processed data can either be stored on any of the disk devices, magnetic tapes and/or be outputted on the line printer, paper tape, or can be displayed on the visual display unit. The mode of input or output a user will vary from application to application and, therefore, the computer manufacturers market their systems in this modular fashion. The individual components of the computer system i.e. tape drives, line printers, disk drive, etc. consist of electro-mechanical and electronic devices, while the Central Processor, though it consists of complex electronic circuits also has its own power supply system, relays, switches, cooling fan motors, etc. It is obvious that the computer consisting of several machines by the compound unit and inter-dependent operation of their respective parts produced definite and specific results.

8. The expression "machine" has been defined by the Machinery Committee Report of 1922 as a "contrivance in which the action of several moving parts is combined with the use of force rated in horse power to obtain a mechanical force for a specific purpose". The Privy Council in the decision reported in 48 Indian Appeal 435 Calcutta Corporation v. Cossipore and Chitpore Municipalities sounded a warning in attempting to give the definition of the word "machinery" in the following words :-

"There is great danger in attempting to give a definition of the word "machinery" which will be applicable in all cases. It may be impossible to succeed in such an attempt. If Their Lordships were obliged to run the hazard of the attempt, they would be inclined to say that the word "machinery" when used in ordinary language, prima-facie means "some mechanical contrivances which, by themselves, or in connection with one or more mechanical contrivances, by the combined movement and interdependent operation of their respective parts generate power or evoke, modify, apply or direct natural forces with the object in each case of effecting so definite and specific result."

9. Before considering the claim of the petitioners that the computers are machines liable for duty under Item No. 72(b) of the Tariff, it would be convenient to consider the validity of reasons given by the authorities below in concluding the computers are not machines. The first ground which appealed to the authorities is that the Central Processing Unit being heart of the computer must be considered independently of the ancillary units. According to the authorities, the Central Processing Unit as a functioning equipment, does not have any moving parts and, therefore, it would not fall within the expression "machine". This line of reasoning is clearly erroneous because it would not be appropriate to treat Central Processor Unit independently of the other ancillary systems. As mentioned hereinabove, the entire system has to be classified as one integrated unit. It was not disputed that the Central Processor Unit, by itself, cannot function and the entire computer system can work only as the integrated unit.

10. The second reason which appealed to the authorities below is that as per the Machinery Committee Report of the year 1922, the computer was not adopted for use in the equipment of industrial concern. The appellate authority felt that the computer is not directly concerned with any industrial operation and it is not used for production of any commodity. This reasoning is also faulty. In the first instance, it was not appropriate to take into consideration a report of the year 1922 which had not in contemplation the use of computer in the day-to-day affairs. Secondly, it is not correct to suggest that the computer is not used in industrial operation.

11. Shri Talyarkhan invited my attention to page 740 of the World Book Encyclopaedia, Volume 4. Under the heading "Computer", the following passage appears :

"Computer is a machine that handles information with amazing speed. It works with such information as names and address, book titles, lists of items sold in stores, mathematical problems, and weather forecasts. A computer handles information in the form of numbers. It solves problems dealing with words by changing them into problems dealing with numbers. The fastest computers can do millions of problems in a few seconds.

Businessmen use computers for book-keeping and accounting. A computer keeps track of sales, customer payments, and the amount of stock in warehouses. It figures out employees' wages and prints their paychecks. Many banks have computers to record the amount of money deposited or withdrawn by each customer. Engineers use computers to check the design of buildings, bridges, and dams. Astronauts use computers to keep their spaceships on course. Computers make the connections between telephones in some areas.

Because of the widespread use of computers, the computer industry has become one of the largest industries in the United States. The computer industry consists of companies that manufacture, sell, and lease (rent) computers. It also includes

companies that supply various products and services used by specialists who work with computers.

In some industries, computers control machines that make products. A computer turns the machines on and off, and adjusts their operation when necessary. Machinery controlled by computers is used in making bakery goods, chemicals, steel products, paper and many other items."

It is obvious from the above quotation that the conclusion of the authorities below that the computer is not put in use in the industrial concern is totally erroneous. It was not appropriate for the Customs Authorities to rely upon an out-dated report of the year 1922 and ignore the current realities. The observation of the authorities that the computer does not produce any commodity is also without any substance. The Data Processing Machine does extremely complicated work which the human being would not be able to do with accuracy and speed. In modern days, the computer machines are used for a large number of activities and it is futile to claim that the results given by the computers are to be ignored on the ground that it produces no commodity. It is impossible to imagine that unless concrete commodity is produced, the instrument cannot be described as a machine. The use of the computer gives definite and accurate results and, therefore, it is futile not to treat the computers as machines. In my judgment, both the reasons assigned by the authorities below for holding that the computers are not machines are untenable.

12. Shri Talyarkhan submits that computers or Data Processing Machines are regarded as machines in all Tariffs and in support of his submission relied upon Entry 84.53 in Brussels Nomenclature, Volume 3 at page 1346. The heading of the entry reads as under :

"Automatic Data Processing Machines and Units thereof; Magnetic or Optical Readers, Machines for Transcribing Data onto Data Media in Coded Form and Machines for processing such Data, not elsewhere specified or included."

Paragraph I of Entry 84.53 sets out that Data Processing Machines are described as digital, analogue or hybrid according to the method of processing the data. It further recites that these machines mostly use electronic signals but may also use other technologies (e.g., pneumatic, fluidic or optical). On page 1346b, it is recited that the Data Processing Systems include peripheral units, apart from the input and output units, designed to increase the capacity of the system and the unit is to be regarded as being a part of the complete digital data processing system. From these observations, it is clear that in the Brussels Nomenclature "Computer" is considered as machine.

13. Shri Talyarkhan also relied on Entry 65(6) in Schedule I of the Import Trade Control Order, 1955. The relevant portion of the entry reads as under :-

"Machines or parts of machines to be worked by manual or animal labour not otherwise specified and any machines (except such as are designed to be used

exclusively in industrial process) which require for their operation less than one quarter of one-horse power excluding typewriters and sewing machines and parts thereof."

Entry 65(6)(a)(iii) refers to other office machines and includes Data Processing Machines (Computer system including its peripherals). Shri Talyarkhan also relied upon Entry 84.51 in Customs Tariff of India, 1975 Chapter 84 deals with Machinery, mechanical appliances, etc. and Entry 84.51/55 includes automatic data processing machines and units thereof Chapter 85 deals with Electrical machinery and equipment; parts thereof. Shri Talyarkhan submitted that the computers are included in the chapter dealing with machinery and not in Chapter 85 dealing with electrical machinery and equipment. The learned counsel submits that this is an indicator that in Tariffs, the "computer" is never considered as an electrical appliance but only as a machinery. The submission deserves acceptance. Shri Talyarkhan also invited my attention to the history of the "computer" and its development by relying upon Encyclopaedia Britannica, Volume 4. Under the heading "Computer", the Data Processing Machines are described as automatic electronic machines. Encyclopaedia Britannica also gives in detail the advancement of the computer in this century and the fundamentals of the computers and the system of its working. From the material relied upon by Shri Talyarkhan, it is obvious that the computers are treated as machines not only in Tariffs but in Encyclopaedia Britannica and the World Book Encyclopaedia.

14. Shri Talyarkhan also submitted that by judicial decisions, it has been held that the computers are machines. The learned counsel placed reliance on the decision dated August 10, 1972 of Acting Chief Justice K.K. Desai on Miscellaneous Petition No. 330 of 1968 *IBM World Trade Corporation v. The Municipal Corporation of Greater Bombay* and another. *I.B.M. World Trade Corporation* has imported into Greater Bombay, Data Processing machinery and components and spares thereof. In respect of the goods imported, the Corporation levied duty under Item No. 52 of the Octroi Schedule at 2% ad valorem, while according to the petitioners, the duty could have been validly levied only under Item 50 of the Schedule. Item 50 deals with machinery and their components and spares, while Item No. 52 covered instruments, apparatus, appliances and parts thereof. The controversy arose between I.B.M. and the Corporation as to whether the Data Processing Machines are to be treated as machinery or as apparatus attracting duty under Item 52. The learned Judge took the view that possibly all machineries can be described as "apparatus" but the expression "apparatus" cannot be held to have been used in Item 52 in respect of articles which were classifiable as "machinery" under Item No. 50. The learned Judge held that looking to the components of the computer and its use, it is difficult to hold that it is not a machinery. Shri Talyarkhan submits that the learned Single Judge has very rightly come to the conclusion that the computers are machineries and that conclusion squarely applies to the facts of the present case.

15. Shri Chinai, on the other hand, argued that Items Nos. 50 and 52 of the Schedule of Octroi Duty to the Bombay Municipal Corporation are not in identical terms as Items Nos. 72 and 73 of the Tariff. It is true that the wording of the items in the Schedule to the Octroi Duty and the Tariff is different but what is crucial is that the learned Single Judge found that the Data Processing System is machinery and not an apparatus or appliance as claimed by the Corporation. Shri Chinai submits that Item No. 73 in the Tariff refers to electrical apparatus and appliances and it would not be appropriate to rely upon the decision of the Single Judge to hold that the computer is a machinery attracting levy under Item No. 72(6) of the Tariff. In my judgment, the submission is not correct. The reasons given by the learned Single Judge while recording the finding that the computer is a machinery are sound and I do not find any reason not to apply the same principle while determining the application of Item No. 72(b) of the Tariff to the computers in the present case.

16. Shri Talyarkhan also relied upon the judgment of the Division Bench of this Court in the case of Commissioner of Income Tax, Bombay City-I Vs. I.B.M. World Trade Corporation, . The question which came up for consideration before the Division Bench was whether the Data Processing Machines are office "appliances" and are entitled to development rebate. The Commissioner of Income Tax claimed that the rebate is not available as the Data Processing Machines should be classified as "office appliances" and are not eligible for allowance of development rebate u/s 33(1) of the Income Tax Act, 1961. The Division Bench did not accept the claim of the Income Tax Department and Shri Justice Chandurkar, speaking for the Bench, observed as follows :-

"Data processing machines is a complicated machinery which could not be easily operated by laymen and special training for a period which may cover three months in some cases and a much longer period in others is necessary in order to equip a person with the knowledge and art of operating these machines. The installation and operation of the machines is on a scientific basis and even for the purposes of installation certain special conditions have to be provided in the form of air-conditioning or a particular temperature. The purposes for which such machines which can be described as computers are used are well known and in highly scientifically developed systems, they have their own roles to play and they cannot be equated, therefore, with office appliances which would be of a much simpler nature. They are really substitutes for human labour not in the sense of manual labour but in the sense they perform intellectual functions which would normally be performed by highly qualified engineers. One machine by itself serves no purpose, but what has to be used is a group of machines which make up a "system". The basic functions of a computer are : (i) input; (ii) storage; (iii) control; (iv) processing; and (v) output. The processor has to translate the language of the programmer into the computer-code form which is used internally by the computer. A computer system or an electronic data processing system is physically a collection of electromechanical and electronic components and devices assembled in metal cases (modules) and cabinets.

These contain switching and communication components such as transistors, diodes, capacitors, resistors and integrated circuits, all combined into various types of circuitry, together with memory systems, power supplies, delay lines and various types of magnetic media such as tapes and wires for carrying and transforming data and information, as coded, into instructions and computations. In view of the varied functions which the "system" is capable of performing, data processing machines cannot be classified as "office appliances" and are eligible for allowance of development rebate u/s 25 of the Income Tax Act, 1961."

The judgment of the Division Bench undoubtedly supports the contention of Shri Talyarkhan that the computers are "machines" and not "appliances" or "apparatus".

17. Shri Talyarkhan also urged that the Customs Department had previously treated computers as machines and in support of this submission relied upon Exemption Notification No. 71 dated March 26, 1981 issued in exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962. By this Notification, the Central Government granted exemption from payment of duty on computer peripheral devices, falling under sub-heading No. (2) of Heading No. 84.51/55 of the First Schedule to the Customs Tariff Act. The learned counsel submitted that Heading No. 84.51/55 deals with machinery and it is obvious that not only the Data Processing Machines but even the Computer Peripheral devices are treated as machinery liable for duty under Heading No. 84.51/55 of the First Schedule to the Customs Tariff Act.

18. The learned counsel also placed reliance upon the decision of this Court in the case of I.B.M. World Trade Corporation v. Union of India reported in 1980, Excise Law Times 274 and submitted that the Customs Department claimed that the Data Processing Machines are "machines" and not "appliances". The question about levy of countervailing duty for import of Data Processing Machine came up for consideration and Shri Talyarkhan claims that looking to the stand taken by the Department in that case, it is obvious that the Department treated the computers as machines. It is not possible to jump to that conclusion only because of the stand taken by the Department in a particular case.

19. Shri Talyarkhan also relied upon the contents of paragraph 5 of the return dated September 16, 1981 filed by Shri Pichai Mohideen Mohamed Ali, the Assistant Collector of Customs. In paragraph 5, the Department has stated that the "computer" is nothing but a specie of genus which is machine and the computer is nothing but a specialised form of machine which is appropriately classified under Item 73 of the Tariff. Shri Talyarkhan submits that from what has been stated by the Department, it is obvious that even the Department does not dispute that the computers are machines. The learned counsel further submitted that it is impossible to consider "computers" as electric appliances because electric appliance has reference to domestic use only and in support of the submission placed reliance upon the decision in the case of Viswa & Co. v. The State of Gujarat reported in 17, Sales Tax Cases 581. The Division Bench

consisting of Chief Justice J.M. Shelat and Justice Bhagwati of the Gujarat High Court, as they were then, were considering the question whether penalty could be imposed for failure to pay tax due according to the return before furnishing the guarantee and while considering that question they were required to consider whether an electrical fan is an electrical appliance. The Division Bench has quoted the observation from the Encyclopaedia Americana which read as under :-

"Electrical appliance : A term given to many devices operated by electricity which are used in the home for domestic purposes. Such appliances may be divided into two general classes : those operated by heat, and those operated by power. In such appliances as the toaster, grill, flat-iron, waffle-iron, or oven, the electric current heats a wire or conductor to red head, and the heat thus produced performs the function of the device...".

Shri Talyarkhan is right in his submission that the computer cannot be described as "electrical appliance" because it is not an article of domestic use. In my judgment, the submission of Shri Talyarkhan that in view of the Tariff definitions, judicial decisions and because the Customs itself treated "computers" as "machine", the decisions of the authorities below holding that the computers are liable to duty under Item 73 of the Tariff are incorrect, deserves acceptance.

20. Shri Chinai referred to the definitions of "machine", "instrument", "apparatus", "appliances" and "equipment" as given in various Dictionaries like Roget's Thesaurus 12th Impression (1978), Chambers 20th Century Dictionary, Shorter Oxford, The living Webster Encyclopaedia Dictionary, and Random House Dictionary, to claim that the expressions "machine", "computer", "instrument", "apparatus", "appliance" and "equipment" are overlapping. With reference to the Dictionary meaning, the learned counsel urged that there is hardly any distinction between the words "machinery" and "appliances" or "apparatus". It was urged that in the first instance, the computer is not a machine but even assuming it is so, it would not attract duty under Item 72 because it squarely falls under Item No. 73 as electrical apparatus. In my judgment, it would not be proper to refer to Dictionary meaning to determine whether a particular item should attract duty under Item 72 or Item 73 of the Tariff.

21. Shri Chinai urges that the computer is only an electrical devices and is not any mechanical device at all. The learned counsel urges that initially the computers were known even as engines, arithmetic machines, stepped reckoner, etc. and it would not be appropriate to determine the liability to duty by reference to nomenclature of data processing machines. The submission is that in the early years, the computers worked not purely on electrical or electronic devices and that time it was possible to treat them as machines. As the technology advanced, the computers' function becomes purely electronic and mechanical processes are deleted. The learned counsel submitted that in the present days, the computers are worked purely on electrical or electronic devices and, therefore, it should not be considered as electrical apparatus liable for duty under Item No. 73 of the Tariff. The submission of Shri Chinai that the

mechanical devices are ruled out and the present computers worked purely as an electrical or electronic device is correct. The history of the development of the computers given in Encyclopaedia of Britannica and in the book "The Computer from Pascal to Von Neumann" by Herman H. Goldstone leaves no manner of doubt that in view of the development in the technology, the modern computers are fully automatic electronic or electrical equipments. The mere fact that the computer imported by the petitioners is a fully automatic electrical equipment would not necessarily attract the duty under Item No. 73 of the Tariff because even if it is an electrical device based on electricity and electronics, it would not cease to be a machine.

22. Shri Chinai relied upon the passage "digital computer" on page 299 of the book "Electricity and Basic Electronics" by S.R. Matt and also on passage at page 197 under heading "digital computer" in "Encyclopedia of Instrumentation and Control" by D.M. Considine. In my judgment, the reference to these passages would not advance the claim of Shri Chinai that computers are not machines but electrical apparatus. The question as to whether the computer is liable to duty under Item 72(b) or Item 73 of the Tariff cannot be solved by reference to the meaning assigned to the word "computer" by various authorities. Once it is found that the "computer" is "machine", then the duty could be levied only under Item No. 72 and it would not be appropriate to stretch the meaning so as to attract the duty under Item No. 73 under the heading "electrical apparatus". In my judgment, on the material produced on record, the authorities were clearly in error in holding that the goods imported by the petitioners were liable to duty under Item No. 73 of the Tariff. The submission of Shri Talyarkhan that the authorities were more impressed by the Departmental Tariff Advice than the true interpretation of the entries is not without any substance. In my judgment, the claim made by the petitioners is correct and the petitioners are entitled to the relief sought in the petition.

23. Accordingly, the petition succeeds and the rule is made absolute in terms of prayers (a) and (b) of the petition. The respondents are directed to refund the excess duty of Rs. 11,73,112.87 within six weeks from today. The respondents shall pay the costs of the petitioners.