

(2002) 10 MAD CK 0110

In the Madras High Court

Case No : Writ Petition No's. 14833 to 14836 of 1994, W.A. No's. 1079, 1080 and 1213 to 1216 of 2000 and W.M.P. No's. 22395 and 22396 of 1994 and 9394 and 9395 of 2000 and C.M.P. No's. 10641 to 10643 of 2000

Wipro Limited, Wipro Systems Limited and Wipro Infotech Limited APPELLANT

Vs

The Assistant Collector of Customs, The Collector of Customs and Union of India (UOI) RESPONDENT

Date of Decision : 11-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 146 ELT 526

Hon'ble Judges : R. Jayasimha Babu, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : C. Natarajan for N. Inbarajan, for the Appellant; V.T. Gopalan, Addl. Solicitor General for K. Sridhar, Addl. Central Govt. Standing Counsel and J. Madhana Gopal Rao, Sr. Central Govt. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.

W.A.No. 1079 of 2000:

1. The petitioner in writ petition No. 7693 of 1993 sought for the relief of declaration or any other appropriate writ or order or direction under Article 226 of the Constitution of India declaring that the proviso (ii) to Rule 9(2) inserted by Notification No. 39/90 dated 5.7.1990 issued by the third respondent, the Union of India, represented by the Secretary, Ministry of Finance, Department of Revenue, New Delhi as invalid, arbitrary and ultra vires Sections 14(1) and 14(1A) of the Customs Act, 1962 and violative of Articles 14 and 19(1)(g) of the Constitution of India.

2. The petitioner engaged in the manufacture and marketing of Mini and Micro

Computer systems and peripheral devices like printer, drivers, etc., inter alia imported various components including software from time to time. The petitioner presented a bill of entry No. 15020 dated 15.4.1993. The chargeable weight of the consignment was 315 kgs and the actual loading, unloading and handling charges amounted to Rs.65.40ps as per the tariff of the International Airport Authority of India, Madras. However, the first respondent on the basis of the impugned notification added a sum of Rs.15,214.69ps to the value of the goods as handling charges. The differential duty as a result of considering the notional handling charges instead of actual handling charges amounted to Rs.16,209.20ps instead of Rs.69.98ps. The petitioner is aggrieved by the addition of handling charges at the notional rate pursuant to proviso (ii) to Rule 9(2) of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, as amended by Notification No. 39 of 1990 dated 5.7.1990, whereby the charges for loading, unloading and handling associated with the delivery of the imported goods at the place of importation had been fixed to be one percent of the free on board value of the goods plus the cost of transport of the imported goods to the place of importation plus cost of insurance. The attack on the amended proviso (ii) to sub-rule (2) of Rule 9 of Customs Valuation (Determination of Price of Imported Goods) Amendment Rules, 1990 is that the notional fixation of one percent of handling charges calculated on the C.I.F. value irrespective of the nature of goods, size of the cargo in total disregard to the actual handling charges, even when the same is ascertainable, is irrational, arbitrary and violative of Article 14 of the Constitution of India and ultra vires to Section 14(1) and 14(1A) of the Customs Act.

3. The above writ petition along with another writ petition in W.P. No. 7694 of 1993, wherein the relief of mandamus directing the respondents therein to forbear from demanding customs duty on loading, unloading and handling charges other than as per schedule of charges for levy of handling charges on imported consignments issued by the International Airport Authority of India, Madras by invoking or relying upon Notification No. 39/90 dated 5.7.90 of the third respondent substituting proviso (ii) to Rule 9(2) of the Customs Valuation (Determination of price of Imported Goods) Rules, 1988, has been prayed for, were dismissed by the learned Single Judge of this Court by Order dated 19.4.2000 by observing that the learned counsel for the petitioner had brought to the notice of the Court a decision of Karnataka High Court in W.P. No. 4150 of 1991, wherein the challenge made to the very provisions had been negated. As against the said Order, the present writ appeal is filed.

4. In the appeal, it is contended that the order of the learned Single Judge of the Karnataka High Court made in W.P. No. 4150 of 1991 was confirmed by the Division bench, However, on appeal to the Supreme Court, the Apex Court by its order dated 14.3.2002 made in Civil Appeal No. 4507 of 1999, set aside the order in the Writ appeal in W.A.No. 2149 of 1998 and restored that appeal to the file of the High Court to be heard and disposed of on merits expeditiously.

5. The sum and substance of the argument advanced by the learned Senior Counsel Mr. C. Natarajan appearing for the petitioner is that the charges for loading, unloading and handling fixed to one percent to the FOB value by the Amendment Rules, 1990 is unsustainable in law. The said one percent so fixed without reference to the nature of the goods, size of the cargo and value of the goods is irrational, in the sense, high value items like components of computer, involving little or no expense by way of handling, whereas heavy weight items like machinery, hardware might involve substantial expenditure for loading, unloading and handling.

6. It is submitted that the handling services are rendered by the sea port and air port authorities. The handling charges are levied on the basis of either the gross weight or chargeable weight, whichever is higher. Both these weights are incidentally available in the air bill accompanying the consignment. The International Air Port Authorities and the Port Trust are having schedule of tariff and the petitioners have from time to time been paying the handling charges to the authorities as per the tariff. In order to substantiate the same, the petitioner made available the particulars in respect of certain bills of entry by which importation was made by the petitioner since 5.7.1990 for payment of actuals towards handling charges.

7. The learned Additional Solicitor General appearing for the respondents submitted that prior to Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, the importers were required to include in the assessable value of the goods 3/4th percent of the CIF value of the goods on the basis of established practice. The authorities under the Act i.e., the Central Board of Excise and Customs after collecting the materials have now fixed it at one percent of the FOB value of the goods. In actual practice, in several number of years, it was found impossible to ascertain the actual amounts incurred towards loading, unloading and handling charges while making the assessment as they varied depending on quantities and place of import and in order to achieve certainty, one percent of the FOB value is fixed to be included in the assessable value. The valuation rules itself provided that the addition with regard to price actually paid or payable shall be made on the basis of objective and quantifiable data. The percentage has been fixed in the rule because of the difficulties experienced by the respondents in ascertaining the actuals that were incurred towards loading, unloading and handling charges. It may be true that some importers would be getting the benefit while others would suffer certain detriment. That would not by itself be a reason for invalidating the provision. The percentage has been fixed by the rule making authority after taking into consideration of the over all picture.

8. We have considered the arguments and perused the materials on record.

9. Section 156(2)(a) of the Customs Act empowers the Central Government to make rules providing for the manner of determining the price of imported goods in sub-section 1-A of Section 14. Section 14(1-A) provides that the price referred

to in sub-section 1 of Section 14 in respect of the imported goods shall be determined in accordance with the rules made in this behalf. In exercise of the powers conferred u/s 156 of the customs act, 1962 (52 of 1962) read with Section 22 of the General Clauses Act, the third respondent, the Central Government framed Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, which came into force on the 16th day of August, 1988. Prior to the amendment, which is impugned in the writ petition, the rule 9(2) as amended in the year 1989 by notification No. 71 of 1989 dated 19.12.1989 was as follows:

"Provided that -

(i) where the cost mentioned in clause (a) are not ascertainable, such cost shall be twenty percent of the free on board value of the goods;

(ii) Where the charges mentioned at clause (b) are not ascertainable, such charges shall be one percent of the free on board value of the goods;

(iii) Where the cost mentioned at clause (c) are not ascertainable, such cost shall be 1.125% of free on board value of the goods."

By means of the amendment, in sub-clause (ii), the words "where the loading and unloading charges are not ascertainable", have been removed and the remaining portion of fixing the rate of one percent of the FOB value has been retained as it was. It is to be noted that prior to the rules, the addition for the purpose of assessable value of the imported goods were made under the GATT Agreement on the objective and quantifiable data at 3/4% of CIF value of the goods. The figure of the percentage which has been fixed in the rule is on the basis of experience gained all these years and also the difficulty experienced by them in ascertaining the real actuals incurred in respect of loading, unloading and handling charges and to have certainty.

10. It is submitted by the learned Senior Counsel Mr. C. Natarajan that he is not challenging the inclusion of loading, unloading and handling charges in the value of the goods for the purpose of assessing the customs duty and he also fairly submitted that the issue has been ultimately settled by the Court in Garden Silk Mills Ltd. and Another Vs. Union of India and Others, . But according to him, when the actuals are available, the fixation of one percent on FOB value is irrational. The learned counsel relied on the decision of the Supreme Court in SALES TAX OFFICER, PONKUNNAM AND ANOTHER VS. K.I.ABRAHAM reported in AIR 1967 S.C. 1823 to contend that the words "manner of determination of the price of imported goods" cannot extend the scope of the Section. In that case, under rule 6 of the Central Sales Tax (Kerala) Rules, 1957, while elaborating the procedure for submitting the returns of the turnover of the dealer prescribed that the declaration forms u/s 8(4) of the Central Sales Tax Act should also be submitted along with the return and the proviso to Section provided that all declaration forms pending submission by the dealer on 2.5.1960 shall be submitted not later than 16th February, 1961. The said proviso was inserted by

Notification dated 16.1.1961. In that case, admittedly, the dealer could not submit the declaration forms, which entitled him for a concessional rate of duty within the time as prescribed in the proviso. Hence, the proviso was challenged as ultra vires to Section 8(4) read with Section 13(4)(e) of the Central Sales Tax Act. Section 13(4) empowers the State Government to make rules for all or any of the following purposes by enumerating the purpose therein in clauses (e), (f) and (g). The enumerated purpose did not contain the times within which the declaration forms have to be submitted. The Apex Court accepting the contention of the assessee ultimately held as follows:

"This makes it clear that the Legislature was conscious of the fact that the expression "in the manner" would denote only the mode in which an act was to be done, and if any time-limit was to be prescribed for the doing the act, the specific words such as "the time within which" were also necessary to be put in the statute."

11. The case of UTAH CONSTRUCTION & ENGINEERING PTY., LTD. AND ANOTHER VS. PATAKY reported in (1965) 3 All England Reports has been relied on to contend that proviso (ii) to Rule 9(2) impugned herein is ultra vires Section 14(1A) with particular reference to the expression "manner" employed in Section 156(2)(a) of the Customs Act. In that case, the appellants were contractors engaged on tunnelling operations in the Snowy Mountains region of New South Wales. The respondent was employed by the appellants as an Assistant Surveyor. The procedure for excavation followed a regular cycle. When the respondent was engaged in the operation of excavation, a rock fell down from the roof of the blasted out area striking him and causing serious injuries. u/s 22(1) of the Scaffolding and Lifts Act, 1912-1960, the Governor had power to make regulations, not inconsistent with the Act, prescribing all matters which were authorised to be prescribed or necessary or convenient to be prescribed for giving effect to the Act; and by sub-section (2)(g), he had power to make regulations relating to "(iv) the manner of carrying out excavation work" and "(v) safeguards and measures to be taken for securing the safety and health of persons engaged in excavation work". Regulation 98, so far as relevant, provided that "every drive and tunnel shall be securely protected and made safe for persons employed therein;". In an action for damages for personal injuries the respondent alleged breach of statutory duty under regulation 98, the validity of which was supported on his behalf under, among other enactments, s.22(1) in conjunction with s.15, which empowered an inspector to give directions to a contractor so as to prevent accidents in excavation work. It was held in that case as follows:

"The relevant part of regulation 98 was ultra vires and invalid on the grounds that

(i) it could not be justified as being within the power to make regulations conferred by Section 22(1) of the Scaffolding and Lifts Act, 1912 (as amended in conjunction with Section 15.

(ii) the expression "manner of carrying out" in s. 22(2)(g)(iv) envisaged a system of working and did not justify a regulation imposing an absolute duty of protecting the drive and tunnel or an absolute duty of ensuring the safety of persons employed in the drive or tunnel; and

(iii) Section 22(2)(g)(v) did not authorise a regulation prescribing that a tunnel must be safe, but authorised only regulations stating specific means which persons subject to the regulations were bound to adopt, and regulation 98 did not provide such specific means."

12. Here in this case, clause (a) of sub-Section (2) of Section 156 of the Customs Act provides that rules could be made providing for the manner of determining the price of imported goods under sub-section (1) of Section 14. A conjoint reading of Section 14(1A) and Section 156(2)(a), in our view, would clearly indicate that the determination of the price contemplated u/s 14(1A) would empower the rule making authority to prescribe the additional components such as cost of transportation of the imported goods, loading, unloading and handling charges associated with the delivery of the imported goods and the cost of insurance. The inclusion of landing charges for the purpose of valuation for assessment has been held to be valid by the Supreme Court in *Garden Silk Mills* case. Hence, we are of the view that the provisions of the rule has not gone beyond the power given u/s 14(1A) of the Act.

13. The learned counsel relied on the decision of the Supreme Court in *Agricultural Market Committee Vs. Shalimar Chemical Works Ltd.*, . In that case, while considering Section 12 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966, Rule 74(2) of Andhra Pradesh Produce and Livestock) Markets Rules, 1969 and Bye-law 24(5) framed u/s 34(1), the Supreme Court has held that:

"... it will be seen that the market fee can be levied under the Act only on the sales and purchase of notified agricultural produce within the notified area. Explanation I to Section 12 creates a legal fiction and provides that if any notified agricultural produce is taken out of a notified market area, it shall be presumed to have been purchased or sold within such area. The presumption is a rebuttable presumption and can be shown to be not correct. The policy in enacting this provision is only to cover such transactions of sale and purchase for which direct evidence may not be available. Since a notified agricultural produce can be sold only within the notified market area, and, that too, by a trader having a licence issued to him by the committee, it is obvious that if such commodity is moved out of the notified area, it would mean either that it has been sold or purchased. Otherwise, there would be no occasion to move such commodity out of the notified market area. The legal fiction was thus limited to the "moving" of the commodity from within the market area to a place outside the market area.

The Government to whom the power to make rules was given u/s 33 and the

committee to whom power to make bye-laws was given u/s 34 widened the scope of "presumption" by providing further that if a notified agricultural produce is weighed, measured or counted within the notified area, it shall be deemed to have been sold or purchased in that area. The creation of legal fiction is thus beyond the legislative policy. Such legal fiction could be created only by the legislature and not by a delegate in exercise of the rule making power."

In that case, a fiction was created by the delegated authority by making rules and regulations whereby the weighing, measurement and counting done within the notified area are presumed to be deemed sale. In that context, it was held by the Supreme Court that such a fiction created by the delegated authority is beyond their power. In the case on hand, the charge is already created by Section 12 of the Customs Act and it is the mode of calculation of the price, which is left to the delegated authority. Such delegation for determination of mode and manner cannot be considered as either abdication of the essential legislative function or widening the scope of the rule making power. Hence, we are of the view that the reliance on the decision is misplaced on the facts and circumstances of the case.

14. The other decision relied on by the Senior Counsel for the petitioner is the case of *Indian Acrylics Vs. Union of India (UOI) and Another*, . The facts of the case are totally different. That was a case, when the exchange rate had been fixed by the Reserve Bank of India for the entire Union of India, by notification, the Customs authorities fixed the exchange rate, at a higher rate than the one fixed by the Reserve Bank of India and in those factual circumstances, it was held by the Supreme Court that the rate fixed by the notification cannot be accepted.

15. The learned counsel relied on the decision of the Supreme Court in *Jaswant Sugar Mills Ltd., Meerut Vs. Lakshmidhar and Others*, , in which the expression "determination" in the context in which it occurs in Article 136 of Constitution of India has been explained as an effective expression of opinion which ends a controversy or a dispute by some authority to whom it is submitted under a valid law for disposal. The said authority, in our view, is not relevant to the facts of the present case.

16. The learned counsel also relied on a decision of the Supreme Court in *VENKATESHWARA THEATRE VS. STATE OF A.P.* reported in (1995) 96 STC 130 to contend that the classification is not founded on intelligible differentia, which distinguishes, those that are grouped together from others and the differentia did not have rational relation to the objects sought to be achieved. But in the facts of the present case, there is no classification among the importers, but what is contended is that the fixation of uniform percentage for all the goods is treating unequals as equals.

17. We are not able to uphold the contention of the learned counsel for the petitioner for the reason that prior to the impugned notification, the same one

percent of FOB value was taken by the authorities as loading, unloading and handling charges for determination of the assessable value of the goods, when the actuals are not assessable. Even prior to that, 3/4th of the FOB value has been added to the value of the goods as loading, unloading and handling charges for the purpose of assessment pursuant to the GATT agreement. The one percent FOB value would be very nominal to the importers and that the percentage has been fixed on the basis of objective and quantifiable data taking into consideration of the experience gained by the authorities and the difficulties in ascertaining the actuals.

18. The method of collection or the manner of collection may be prescribed either under the Act or under the rules framed by the delegated authority. In the case on hand, instead of actuals, rules have prescribed a fixed percentage which in some cases may be too harsh where the value of the goods imported is much more and the weight of the commodity is less. There may be number of other items where the value of the imported goods are less and weight of the commodity is very much. The machinery provision so provided for collection of duty, taking into consideration the administrative convenience can not be considered beyond the scope of the rule making power and it cannot be said to be levying duty on amount which is not within the purview of the Customs Act or Section 14(1) simply because the rule making authority have prescribed a fixed percentage based on experience instead of actual.

Section 14 of the Customs Act itself made it clear the value of such imported goods shall be deemed to be the price at which such goods or goods are ordinarily sold or offered for sale for delivery at the time and place of importation or exportation in the course of international trade and the price referred to shall be determined in accordance with the rule made in this behalf. For the purpose of determination of the value, rules have been made and taking into consideration the difficulties experienced in the past in fixing the handling charges on the actuals, it is fixed at one percent of the CIF value of the goods. When the statute confers the power to make rules for determination of the value, such determination of the value by imposition of the same as a percentage cannot at any stretch of imagination be considered as repugnant to Section 14(1) or discriminatory. The issue has been settled as early as 1964 by the Supreme Court in *Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam*, wherein it is held as follows:

"It is well-settled that when a power is conferred on the legislature to levy a tax, that power itself must be widely construed; and must include the power to impose a tax and select the articles or commodities for the exercise of such power; it must likewise include the power to fix the rate and prescribe the machinery for the recovery of the tax. This power also gives jurisdiction to the legislature to make such provision as, in its opinion, would be necessary to prevent the evasion of the tax. In imposing taxes, the legislature can also appoint authorities for collecting taxes and may prescribe the procedure for

determining the amount of taxes payable by any individual; all these provisions are subsidiary to the main power to levy tax."

(bold for emphasis)

The Apex Court in the case of *Avinder Singh and Others Vs. State of Punjab and Others*, has observed as follows:

"The Founding Document of the nation has created the three great instrumentalities and entrusted them with certain basic powers - legislative, judicative and executive. Abdication of these powers by the concerned instrumentalities, it is axiomatic, amounts to betrayal of the Constitution itself and it is intolerable in law. This means that the legislature cannot self-efface its personality and make over, in terms plenary, the essential legislative functions. The legislature is responsible and responsive to the people and its representatives, the delegate may not be and that is why excessive delegation and legislative hara kiri have been frowned upon by constitutional law. This is a trite proposition but the complexities of modern administration are so bafflingly intricate and bristle with details, urgencies, difficulties and need for flexibility that our massive legislatures may not get off to a start if they must directly and comprehensively handle legislative business in all their plenitude, proliferation and particularisation. Delegation of some part of legislative power becomes a compulsive necessity for viability. If the 500-odd parliamentarians are to focus on every minuscule of legislative detail leaving nothing to subordinate agencies the annual output may be both unsatisfactory and negligible. The Law-making is not a turnkey project, ready-made in all detail and once this situation is grasped the dynamics of delegation easily follows. Thus, we reach the second constitutional rule that the essentials of legislative functions shall not be delegated but the inessentials, however numerous and significant they be, may well be made over to appropriate agencies. Of course, every delegate is subject to the authority and control of the principal and exercise of delegated power can always be directed, corrected or cancelled by the principal. Therefore, the third principle emerges that even if there be delegation, parliamentary control over delegated legislation should be a living continuity as a constitutional necessity. Within these triple principles, Operation Delegation is at once expedient, exigent and even essential if the legislative process is not to get stuck up or bogged down or come to a grinding halt with a few complicated bills."

19. The Supreme Court in *Garden Silk Mills Ltd. and Another Vs. Union of India and Others*, has observed that Section 14 is a deeming provision. The legislative intent is clear that the actual price of imported goods viz., the landing costs cannot alone be regarded as the value for the purpose of calculating the duty. The language of Section 14 clearly indicates that though the transaction value may be relevant consideration, the value for the purpose of custom duty will have to be determined by the Customs Authority, which value can be more and at times even less than what is indicated in the document of purchase or sale.

The majority judgment of the Constitution Bench of the Supreme Court in the case of R.K.GARG VS. UNION OF INDIA reported in AIR 1981 SC 2138 has observed as follows:

"Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straight jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The Court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in *Morey v. Doud*, (1957) 354 US 457 where Frankfurter, J. said in his inimitable style:

"In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The Courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."

The Court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry" that exact wisdom and nice adaption of remedy are not always possible and that "judgment is largely a prophecy based on meagre and uninterpreted experience." Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The Court cannot, as pointed out by the United States Supreme Court in *Secy. Of Agriculture v. Central Roig. Refining Co.*, (1950) 94 L ed 381, be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be

the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues."

(bold for emphasis)

The said decision has been followed subsequently by the Apex Court in the case of **STATE OF KEARALA VS. BUILDERS ASSOCIATION OF INDIA** reported in (1997) 104 STC 134, wherein in the context of levy of compounding tax in respect of works contract, a contention was raised that the levy of two percent tax on the whole amount of the contract or a particular rate applied to the entire value of the contract and not merely upon the value of the goods transferred in the course of execution of works contract is invalid. The Court after noticing the position that the goods, which were transferred in the course of execution of works contract might be declared goods, they might be goods which were liable to be taxed under the Central Sales Tax Act, the goods so transferred might also be taxed under the different Schedule, which prescribed different rates, rejected the contention on the ground that the alternative method of composition of tax is hassle free and the rough and ready method evolved for ascertaining the tax payable cannot be questioned. The Constitution Bench judgment was quoted in another nine Judge Judgment of the Supreme Court in the case of **Attorney General for India and Others Vs. Amratlal Prajivandas and Others**, .

The learned Additional Solicitor General cited several cases starting from **P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others**, . In all those cases, the same proposition as laid down by the Constitution Bench of Apex Court in **R.K. Garg's** case stated supra has been reiterated. Hence, we are not elaborating all the cases in detail.

20. The other contention of the learned counsel that by the impugned rule, a fiction is created over a fiction is also not acceptable. As stated earlier, the price is a deemed price, which includes certain other components also. By the impugned rule, one percent of the CIF value has been fixed towards loading, unloading and handling charges, which cannot be said to be a fiction. The reasons for fixing the percentage irrespective of the weight of articles imported vis-a-vis the value is only to achieve certainty for proper determination in advance of the duty and directed at eliminating the problems made manifest by experience. Such a fixation cannot be construed as arbitrary. It has been ruled by number of pronouncements of the Supreme Court that in arriving at the assessable profits, the Authorities under the Income Tax may disallow many expenses actually incurred by the assessee or may include many items on notional basis and in taxation matters, even notional figure can be taken for the

purpose of liability to tax (vide Commissioner of Income Tax, West Bengal Vs. Gangadhar Banerjee and Co. (Private) Ltd.,). Likewise, in Commercial Tax cases also, certain amount of guess work has been statutorily conferred upon the assessing authority in finding out the suppression. It is also well established rule that it must be presumed that the legislature understands and correctly appreciates the needs of its own people that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds (vide Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, Hence, fixation of one percent of the CIF value, which is very nominal, as handling charges is not arbitrary and it has been fixed for the purpose of determining the manner of computation of price under the power conferred by the Parliament on the rule making authorities. Such an act cannot be considered as beyond the power conferred by Section 14(1) or u/s 156 of the Customs Act.

21. For the fore-going reasons, we are of the view that the impugned rule is neither hit by arbitrariness nor repugnant to Section 14(1) of the Customs Act.

Therefore, the writ petitions and the c However, there is no order as to costs.