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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-01-1983

Reported in : (1990)LC725Tri(Delhi)

Appellant : S. Kumar and ors.

Respondent : Collector of Central Excise and

Judgement :
S. Duggal, Member (J) for herself and on behalf of F.S. Gill, J., S.Venkatesan Sr. V.P.1. This matter before us is as a result of reference having been made by the Regional Bench (North) comprised by Shri M. Gouri Shankar Murthy, Member (Judicial) and Shri I.J. Rao, Member (Technical). The situation which occasioned the reference arose because the above-stated Bench felt disinclined to endorse the view, held by the same Bench earlier, constituted by two different Members, namely, Shri AJ F.D'Souza, Member (Technical) and Shri A.K. Srinivasmurthy, Member (Judicial) on the question as to whether Additional Collector, Central Excise could be deemed to be a 'Collector' for the purpose of determining the forum of appeal, against an order or decision, passed by the former. This is how the present larger Bench (hereinafter referred to as the Bench) came to be constituted, for resolving the issue.

2. The Bench had its first sitting on 18-5-1983, when Shri Harbans Singh, Advocate, who is Counsel for the two Appellants in Appeals No.ED (DEL) STAY No. 10/82-NRB and No ED (DEL) STAY No. 18/82-NRB, which came up before the second Regional Bench who made the reference, was apparently there to

defend the view expressed in the order of reference, while Shri M. Ganesan, Advocate, who happened to be Counsel in another appeal, which had been filed under the provisions of the Gold (Control) Act, was also present to watch the proceedings. Shri D.N. Kohli, Advocate had presumably filed some appeals, before the Tribunal against some order of the Additional Collector, Central Excise, but had withdrawn the same, as a sequel to the earlier order of the North Regional Bench expressing the view that the term "Collector" as used in section 35B of the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act) would not take in its sweep the Additional Collector of Central Excise. Shri Kohli was thus there to defend this view. In addition, Shri K. Narasimhan, President, Customs, Excise & Gold (Control) Bar Association and Shri R.K. Jain, Secretary of the said Bar were present as Interveners, having been invited to assist the Bench because of the far-reaching importance of the question involved. The Department was represented on the first day of hearing by Shri K.D. Tayal, SDR, thereafter by Mrs. Vijay Zutshi, SDR but on subsequent hearings, by Shri Y.R. Gupta, SDR, and it was he who eventually addressed arguments on behalf of the Department.

3. Shri Harbans Singh, Advocate, at the outset, formulated the question falling for consideration of this Bench, which he put as under : - "As to whether 'Additional Collector' is a 'Collector' for the purposes of section 33 of the Act ?" He emphatically stated that this was so, by virtue of the definition of Collector of Central Excise, as contained in Rule 2(ii) of the Central Excise Rules, 1944 (hereinafter referred to as the Rules).

4. He elaborated his arguments by the assertion that the Central Excises and Salt Act, was not a self-contained Act, like the Customs Act, but was only a piece of streamlined legislation inasmuch as, it only contained broad and general principles on the subject of excise duty, leaving all the details to be filled up by subordinate legislation, whether by way of rules to be framed in exercise of the powers conferred by section 37 of the Act or by notifications or orders issued by the Central Government. He quoted page 75 of Maxwell's Interpretation of Statutes (Twelfth Edition) in support of his contention wherein the scope of the rules and regulations made with reference to law, described as 'streamlined statute', was discussed. He further referred to a ruling of the Supreme Court in AIR 1961 SC

751 (State of U.P. v. Babu Ram), which was a case under the Police Act, and Police Rules framed under the said Act, and where this passage had been cited with approval, by holding that : "Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act, and to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction or obligation." 5. He also referred to a Division Bench authority of Madhya Pradesh High Court, reported in 1982 ELT p. 844 (Gwalior Rayon Manufacturing & Weaving Co. v. Union of India and Ors.), which pertained to the Central Excites Act, and Rules framed thereunder, and wherein it was laid down that Rules were part of the Act.

6. Having laid this premise, he elaborated his point by inviting attention to several provisions of the Central Excises and Salt Act, to bring home his arguments that this Act was a typical case of streamlined legislation, and that the rules which have been framed by the Central Government in exercise of the powers vested in it by section 37 of the Act, were statutory rules, and an integral part of the Act, and that by virtue of the definition of Collector as given in rule 2(ii), the term 'Collector' would include : 'Additional Collector' also, particularly when the Act has not at all defined the term 'Collector'. He thus contended that in the absence of any definition of 'Collector', in contrast to the Customs Act which itself defined this term, we have to fall back upon the rules, for this purpose ; particularly, when they are to be treated to be a part of the Act, and were contemporaneously framed.

7. In his view, therefore, the matter did not admit of any doubt, and that it was a golden rule of interpretation, to put a reasonable and harmonious construction, and thus construed 'Collector', would certainly include an 'Additional Collector' for the purposes of section 33(a) of the Act. He further drew attention to the provisions of section 38 to highlight the fact, that the Rules have a statutory status, inasmuch as they have to be placed on the floor of both Houses of Parliament, and acquire tacit approval of the legislature before being operative, and that they have to be read as supplementing the provisions of the Act; particularly wherever the latter is silent, and that there was no inconsistency between the rules and the provisions of the Act in this regard.

8. After Shri Harbans Singh concluded his arguments, Shri M. "Ganesan wanted to intervene but he was persuaded to refrain because of the fact that he represented the party whose appeal had come up under the provisions of the Gold (Control) Act, which was not before us for consideration.

9. Shri K. Narasimhan, President of the Bar Association appearing as an Intervener expressed the view that section 33 of the Act was not the only provision regarding adjudication, and that the term 'adjudicating authority' as contemplated in section 35B of the Act was more comprehensive than envisaged by section 33, inasmuch as vast multitude of powers were exercised by the Central Excise Officers, including the Collectors and Additional Collectors with reference to various provisions of the Rules. He did not counter the view that amendment in the definition of the term 'Collector' as brought in by Notification No. 110/81-CE dated 29-4-1981, would relate both to (A) and (B) of rule 2(ii) of the Rules, and as such within the meaning of this rule, 'Collector' would include an 'Additional Collector' but his stress was that this definition would operate only for the purposes of the rules, and powers, functions and duties described therein, and could, in no case, be inducted into the Act for the purpose of interpreting the provisions thereof.

10. The thrust of his arguments consequently was that so far as orders which have reference to section 33(a) of the Act, were concerned, the definition of 'Collector' as being inclusive of 'Additional Collector' cannot be imported, and that as a logical corollary, appeals against the orders, passed by the Additional Collector while acting under section 33 (a) of the Act would lie only to Collector (Appeals), because for the purpose of the Act, he was certainly a functionary "lower in rank" than the Collector, and that section 35 having provided for first right of appeal to the litigant before the Collector (Appeals) against .orders of an officer "lower in rank to that of the Collector", this right could riot be taken away by an executive fiat, and by bringing in definition as provided by the Rules.

11. He built up his arguments by contending that had there been any intention to include Additional Collector within the definition of Collector, there could have been an amendment in the Act itself, particularly when Chapter VIA of the Act has chosen to define certain terms, for the purpose of said Chapter by means of

section 36 of the Act which Chapter exclusively relates to appeals, and the fact that it was not done would imply that the legislature had not intended to stretch the definition of the Rules to the Act, and that since sections 35 and 35B together provide two stages of appeal, to a litigant, any interpretation, that would have the effect of deprivation of the said right, has to be avoided. He further pointed out that section 33 keeps a distinction between powers of a Collector and those of other Central Excise Officers, and that as a matter of practice, no Additional Collector exercises the powers of a Collector under (a), whereas there have been a chain of notifications right from 1944 ; the last being Notification No. 93/CE dated 5-11-1969, whereby Assistant Collectors and Superintendents had been conferred powers of the Collector, as envisaged by Sub-section (a) of section 33.

12. He further averred that even if there had been some conferment of powers, that was limited to individual collectorates, such as those of Bhubane-shwar and Calcutta where specific notifications were issued ; one being 80/70-CE dated 5-4-1970 and the other : 170/73-CE dated 1-9-1973 and that this clearly indicated that whenever Additional Collector was meant to exercise powers and functions of a Collector, special notification had to be issued and so it could not be said that an 'Additional Collector' has been equated with the 'Collector' generally, and that the former still remained 'lower in rank, than the Collector for the purpose of section 35, and that in order to become Collector, he is first to be elevated to the rank of a Collector and, according to him, this was a very crucial factor in the whole set up.

He concluded his arguments be reiterating that only that construction should be accepted which retained a two stage remedy of appeal.

13. Shri D.N. Kohli was allowed to address brief arguments, because of the implication of the controversy for him, and his clients. He stressed that rules were only a means to an end, as the opening words of section 37 indicated ; having been framed only "to carry out the purposes of the Act". He emphatically argued that rules were certainly subsidiary to the Act, and to illustrate his point, he cited the example of repeal of rules 10 and 11 in 1980, and parallel provisions having been incorporated in the Act which, according to him, was done, as a result of the Supreme Court decision holding that the rules could not provide for a matter which

was not within the ambit of the Act. He further submitted that doctrine of reading down of the rules had to be adopted, and not that of reading up, and that any vacuum could not be filled up by the rules. He also laid great emphasis on the administrative hierarchy prevailing in the Collectorates and asserted that the 'Additional Collector' was certainly not of the 'rank' of a Collector, but lower, and in case an 'Additional Collector' were to be held a 'Collector' anomalous position would ensue. According to him, 'rank' could not be equated with designation. He summed up his arguments by contending that appeals against the orders of Additional Collectors should lie to the Appellate Collector or the Collector (Appeals), as the case may be.

14. Same position was taken up by Shri R.K. Jain, Secretary of the Bar, who argued at great length, as Intervener. He pin-pointed the controversy as being : as to "who is a Collector ?" 15. The main stand of Shri Jain was that rules are certainly distinct from the Act, and that although the Act could be described as a streamlined legislation but that could not be said by way of a sweeping proposition. In his view, the Act was a complete code, so far as the provisions regarding appeals were concerned, and that for the purpose of determining the forum of appeal, and other related matters, rules have not to be referred to. He also made pointed reference to Chapter VIA and contended that it was entirely self-contained and that when there was a section containing definitions, in this very Chapter ; the very fact that "Collector" has not been defined here to mean "Additional Collector" for the purpose of appeal, leads to an inference, that it was not intended to so mean.

16. He vehemently argued that the definition provided in the rules could not be inducted into the Act and that the rules prescribed only procedure, and could be no substitute for substantive provisions, and were not a part of the Act, and could not be looked into to construe the provisions thereof.

17. Shri Jain split up his arguments, to first say that the definition as given in the Rules was in direct conflict with the provisions of the Act and, therefore, could not be looked at and further urged that even if there were no conflict, the rules could not be looked into for the purpose of functioning of the Act. He propounded the

view, that a definition given in the Rules cannot be read for the purpose of construing the same expression under the Act, and cited case of AIR 1968 Allahabad 87 (Jawahar v. State), which related to the question as to whether an Additional District Magistrate could be deemed to be a District Magistrate for the purpose of Arms Act. He strongly contended, that extended meaning given to an expression in the Rules cannot be referred to for the purpose of determining the same expression in the Act and even if rules could be considered as part of the Act, they could not restrict the scope of a section.

18. He laid pointed emphasis on the status of an Additional Collector, and it was his strong contention that the definition as introduced by Notification No. 110/81-CE dated 29-4-1981 related only to Clause (B) of rule 2(ii) of the Rules, and not to that of (A). It, therefore, could not be said, he urged, even as a fact, that the definition in the rules makes "Collector" to include "an Additional Collector" and that if at all there has been an amendment that related only to "Salt Commissioner".

19. According to him, Additional Collector in every Collectorate was invariably of the rank of a Deputy Collector, who was certainly an officer 'lower in rank' to a Collector, and none of them have been given powers under Sub-section (a) of section 33, particularly those Additional Collectors, namely, of Indore and Chandigarh, whose orders were subject matter of two appeals, which gave rise to this reference.

He placed reliance on the seniority list of these officers inter se and contended that all of them have been shown in the grade of a Deputy Collector and wherever there was any instruction or order with reference to various grades of the officers of the Central Excise, 'Collector' has been shown as a class apart whereas Additional Collector has been clubbed with Deputy Collector, and this was a clear indication of his status in the bureaucratic hierarchy, and that even if an Additional Collector has been entrusted with certain powers under the Rules, his power of adjudication under section 33 has been expressly restricted.

20. He referred in this connection to a Circular issued by the Central Government being Circular No. 41/81-CX6 dated 7-5-1981 in support of this contention, and

contended that the Additional Collector nowhere exercises unlimited power of adjudication of a Collector, as contemplated by section 33(a). According to Shri Jain, rules always remained inferior to the Act and that would remain the position, irrespective of the provisions of section 38, providing for laying of the rules before the two Houses of Parliament. He too propounded the theory of harmonious construction, but with an altogether different stance, contending that rules have to be kept apart, and definition, if any, which he did not even accept, was only for the purposes of functioning under the Rules, but so far as provisions regarding appeals are concerned, he was categorical to the effect that we cannot go beyond the Act, and that the first right of appeal having been conferred by section 35, one could not straightaway travel to the residuary provisions of section 35B, and that the interpretation as sought to be given by the Counsel for the Appellants, was tantamount to total deprivation of the vested right of two stages of appeal, and that such an interpretation could not be countenanced.

21. He went to the extent of saying that the definition as now contained in the Rules, if it were taken to mean to apply to (A) also, would have direct result of bringing the Rules in conflict with provisions of sections 33, 35 and 37A, and that what was not contemplated by way of delegation of power, has been attempted by way of colourable exercise of the rule-making power under section 37, which he contended, was not permissible, and for that reason this definition could not travel beyond the Rules, and that so far as the Act was concerned, the functionary known as an Additional Collector did not exist at all, and he was substantively of the rank of a Deputy Collector, though given the designation of an Additional Collector, and so far as the Act was concerned, he could not exercise powers of a Collector. He, however, conceded, on being pointed out by the Bench, that the Tribunal was not the forum to question the vires of the Rules, but reiterated his stand that nevertheless Rules can be read in such a way that any definition given therein has to be confined to the Rules, and then the position, as stated by him, would be safeguarded, and the rights conferred by the Act would not be in any way diluted or nullified. He also referred to a number of authorities of the Supreme Court and other High Courts which we propose to discuss, and distinguish, in proper context.

22. After Shri R.K. Jain concluded his arguments, Shri Y.R. Gupta, Senior Departmental Representative was called upon to elucidate the Department's stand. He stated at the outset that 'Collector' would include 'Additional Collector'. He systematically controverted the contention that definition given in the Rules was alien, and could not be imported in the Act, and that the Rules were subsidiary piece of legislation, and could never be a part of the Act.

23. First of all, he invited attention to the "Statement of Objects and Reasons" as reproduced in the Commentary on the Central Excises and Salt Act (3rd Edition) by R.S. Sethi, which indicated, inter alia that not only the Act but all Rules and Regulations framed thereunder, formed a complete Excise Code, and argued that the Rules have to be construed as an integral part of the Act. He distinguished status of the rules from what are known as executive instructions, embodied in the orders or circulars referred to by Shri Jain and contended that they have no binding force as against statutory rules, and wherever any restriction had been laid down by the Central Board of Excise and Customs (hereinafter referred to as the 'Board'), that was by way of house-keeping arrangements, and were in exercise of their powers as supervisory authority, and so these internal administrative instructions could not curtail the scope of the statutory definition given in the Rules.

24. He further pointed out that rules have been accorded supremacy in the whole scheme of the Act, so much so that even the collection and levy of excise duty has been left to be regulated by the rules as indicated by section 3 of the Act, which is the charging section, and as such the most vital section in the Act. He thus emphasised that the Rules enjoy a status equal to the statutory provisions in the Act and in that situation, by virtue of the definition of Collector as amended by Notification No. 110/81-CE dated 29-4-1981, which, according to him, related to both (A) and (B) of rule 2 (ii) of the Rules, 'Additional Collector' is equated with the 'Collector', and there does not have to be any separate delegation of powers, or enumeration amongst the Central Excise authorities or officers for the purposes of section 37Aof the Act. He also relied on the Madhya Pradesh High Court ruling as reported in 1982 ELT 844, to fortify his arguments that the rules have to be read alongwith the Act, and treated as a part of the statute.

25. He also placed on record a letter dated 28-2-1981 from the! Ministry of Finance (Department of Revenue) to show that the post o Additional Collector has been created with the sanction of the President of India, and urged that after the Notification No.110/81-CE, he was enjoying the same status as that of the 'Collector', and the fact that he might be unider the administrative control of the Collector would make no difference so far as status as a functionary was concerned and that once he is equated with the Collector, he becomes the 'Collector', and pay scales and grade as referred to by Shri R.K. Jain would not be the criterion for determining his status for the purposes of appeal.

26. Shri Harbans Singh, Advocate supplemented the stand taken by Shri Y.R. Gupta, by way of rejoinder arguments, and reiterated that where statute does not define a term, rules should be taken as a good guide for construction of the said term. He further emphasised that there was no repugnancy between the Rules and the Act nor was this the forum to question the validity or propriety of the Rules or the vires of the Notification which made 'Additional Collector' to mean a 'Collector' and such questions could not be raised before the Tribunal and that otherwise also Rules in the scheme of the Act enjoyed crucial position, and that the terms of the Act were not sacrosanct as could not be touched by the Rules. He illustrated that true intention has been to accord supremacy to the rules to the extent of giving total or partial exemption from duty, by means of notification under rule 8, which can have the effect of totally effacing or modifying the Tariff Rates as provided by the Schedule, which is a part of the Act itself. He argued thus that where the Legislature has provided for such a vast amplitude of powers of far-reaching consequence to the Revenue, the inclusion of the definition in the rules was a very innocuous provision, to make a 'Collector' also to include an 'Additional Collector' and this could not be subject matter of any controversy or challenge particularly when the sister Act, namely, the Customs Act, has made such a provision in the Act itself and nobody has thought of questioning or challenging it or urging that 'Additional Collector, Custom' was not a 'Collector' for the purposes of determining forum of appeal.

27. He also distinguished the authorities cited by Shri R.K. Jain particularly, which lay distinction between the status of the Rules qua the Act, pointing out that

altogether different considerations and situations prevailed in those cases. He did not dispute the proposition of law that wherever there was a repugnancy or inconsistency, the Rules have to be ignored, but emphasised that there was none in the present case. He also contended that curtailing of the powers of the Additional Collector by means of a circular could not be warranted by law, and that here even the authority who has created the post of 'Additional Collector', namely, the Board or the Central Government, were supporting the contention as set out by him, as the arguments addressed by the learned Departmental Representative before the Bench indicated.

He further urged that the term 'rank' did not by itself have any special meaning, and for the purpose of the Act and Rules what is important is the 'functional' rank. He referred to Webster's Dictionary and Maxwell On the Interpretation of Statutes and Black and Cracies and certain other authorities in support of his contentions.

28. Shri R.K. Jain made a short reply to the points made by Shri Harbans Singh by again reiterating that Additional Collector was positively lower in rank than the Collector inasmuch as no appointment of Additional Collector as such was ever gazetted, and that he was only a Deputy Collector, being designated as Additional Collector, and in the case of Delhi, order of such designation had been .issued by the Collector himself. He placed on record copy of an order issued by Shri B.B. Julka, Collector of Central Excise, Delhi vide No. 350/1981 dated 10-9-1981, in support of this contention and again contended that the rule-making authority could not usurp powers of the statutory authorities nor jump out of the bounds, as laid down by section 37A and that there was no general appointment of Additional Collectors, as such but only delimitation of territorial jurisdiction, as reference to rule 2 (ii)(A) would reveal, and consequently Additional Collector could not be deemed to be a Collector for all purposes.

29. A resume of the contentions canvassed before us, as reproduced above, makes it manifest that the controversy boils down to the question as to whether an Additional Collector is to be treated as a Collector for the purpose of determining forum of appeal, against an order passed by him.

30. It is agreed on all hands that the Act itself does not contain any concept of an 'Additional Collector'. But nothing turns on that omission because for that matter, even the term 'Collector' is not defined anywhere in the Act. There is also no difference of opinion on the point that the Rules, as they stand at present, dp refer to a functionary, called 'Additional Collector'.

31. The controversy, however, revolves round the fact as to how this definition in the rules pertains to the Collector as understood by the Act, particularly section 33 thereof, which has reference to power of 'adjudication'.

32. We have had propounded before us two absolutely contradictory views in this regard. Whereas the Departmental Representative and the learned Counsel for the Appellants, contended that the definition under the rules as introduced by the amendment by means of Notification No.110/81 has reference both to Salt Commissioner as well as Collector, in relation to excisable goods, another set of Appellants represented by Shri D.N. Kohli, as well as the Secretary of the Bar earnestly contend that it is wholly disconnected with the Collector, so far as "excisable goods other than salt' are concerned and that it has sole reference to Salt Commissioner, as covered by Clause (B) of rule 2(ii). The only exception was the school of thought as represented by the learned President of the Bar who conceded that this definition has to be taken to cover both (A) as well as (B) ; his contention being that even if it is so, this definition would prevail only for the purpose of the Rules and cannot be stretched to the Act.

33. Although, in view of the fact that the two contending parties before us, namely, the appellants in the appeals in which reference has been made as well the Departmental Representative, who has spoken for the respondent, have both taken a common stand in this regard, and the President of the Bar Association has also accepted this proposition, so far as import of the amending notification itself is concerned, and to that extent we may not feel ourselves called upon to record any finding but considering the fact that the opposite view has also been argued very emphatically by another advocate representing another set of appellants, and also by the Secretary of the Bar Association, and since this controversy is of recurring and far-reaching significance, we would be failing in our duty, if we do not record

our findings in this regard.

34. We have given our anxious thought to this matter, and we are of our considered view that this definition, as introduced by Notification No.110/81-CE dated 29-4-1981, has reference to the Collector as operating for the purpose of excise laws as well as to Salt Commissioner. Our reasons for coming to this conclusion are as follows : (a) On a reading of the rule as it originally stood, we find that Collector was defined to mean - (B) in relation to salt, the Salt Commissioner ; and includes any officer specially authorised under rule 4 or 5 to exercise throughout any State or any specified area therein, all or any of the powers of a Collector under these rules ;" G.S.R. 316(E).- In exercise of the powers conferred by section 37 of the Central Excises and Salt Act, 1944 (1 of 1944), the Central Government hereby makes the following rules further to amend the Central Excise Rules, 1944, namely : - 1. (1) These rules may be called the Central Excise (14th Amendment) Rules, 1981.

(2) They shall come into force on the date of their publication in the official gazette.

2. For Clause (ii)(B) of rule 2 of the Central Excise Rules, 1944, the following shall be substituted, namely : - '(B) in relation to salt, the Salt Commissioner ; and includes an Additional Collector and any officer specially authorised under rule 4 or 5 to exercise throughout any State or in specified area therein all or any of the powers of a Collector under these rules ;' 36. The contention is that the operative part of the Notification as represented by para 2 thereof indicates that only Clause (ii) (B) of rule 2 of the Rules was being substituted and thus the only possible inference is that this inclusion of 'an Additional Collector' has reference only to Salt Commissioner, as envisaged by this Clause (B), and cannot at all be correlated to the 'Collector', as meant in Clause (A). Emphasis was also laid on the presence of a 'full-stop' after (y), i.e., last sub-clause of Clause (ii)(A), and also that of a ';' after the Salt Commissioner. It was urged that Clauses (A) and (B) where totally disjunctive and independent of each other, and consequently substitution of Clause (ii) (B) by this notification would be confined only to latter and could not extend to the former.

37. We have very carefully scanned the wording of the rule as it stood originally vis-a-vis the wording of the notification, and we do not find it possible to concede to the second line of argument, namely that this notification has reference only to Clause (B), and not to Clause (A).

38. We say so, because we cannot be oblivious of the fact that this notification has been issued by the Department of Revenue, Ministry of Finance, who are only administering Central Excise laws, and the Rules, so much so that the Salt Commissioner is not even within their purview, as it was almost the common case that the administrative Ministry for Salt is Ministry of Industrial Development. The reference to Salt Commissioner had to be there in the Rules because salt still remains on the statute book in the form of Chapter V of the Act but that existence is only nominal as there can be no disputing the proposition that for all practical purposes, as an excisable commodity, it is a non-existent item. The position that emerges from this situation thus is that Salt Commissioner is not at all a functionary, to be taken into any reckoning, by the Department of Revenue, Ministry of Finance and we cannot persuade ourselves in holding that the Central Government would have indulged in a futile exercise by way of subordinate legislation, by undertaking to issue this notification ; which would be the only result, if it were to be held to be confined only to 'Salt Commissioner'.

39. It is a settled proposition of interpretation of statutes, and other rules and regulations of delegate and subordinate legislation, that the interpretative authority should always put such a construction which leads to harmonious results, and such a finding should be avoided which would reduce the legislation to futility, and fail to achieve the manifest purpose of the legislation. We are supported in this view by no less an authority than Maxwell On the Interpretation of Statutes, where it is recorded on page 45 that:- "Where two alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute proposes to be regulating ; and that alternative is to be rejected which will introduce uncertainty, friction or confusion, into the working of the system" and that "we should avoid a construction which would reduce the legislation to futility".

40. Considering the fact that, as already observed, that the authority, from whom the notification under reference emanated is only concerned with Collectors as Central Excise Officers, and in view of the fact that Collector of Central Excise is not even ex-officio acting as 'Salt Commissioner', and in view of the fact that the set up of the Salt Commissioner has an absolutely different administrative hierarchy than that of the Central Excise Officers and they are designated as Salt Commissioner, Deputy Salt Commissioner and Assistant Salt Commissioner, we are of our firm view that this notification has primarily reference to the Collector as envisaged by (A) of rule 2(ii), and not merely to (B) ; (b) We come to this view for another reason and that is with reference to the rule of contemporaneous exposition. We observe that shortly before this notification was issued, the Central Government had, as a sequel to the recommendations of a Study Group on Administration made during Collectors' Conference, 1980, decided at the highest level that seniormost Deputy Collector at the Headquarters of all Central Excise Collectorates be designated as 'Additional Collector', excepting Ahmedabad and Calcutta Central Excise Collectorates, where such posts already existed. This decision is embodied in letter No.A-11013/219/80-Ad. IV dated 28th February, 1981 issued by the Ministry of Finance (Department of Revenue).

41. This letter furnishes an intrinsic evidence of the fact that this post of Additional Collector was within the contemplation at highest levels, and, had been created as a separate entity, and a decision was also taken that the seniormost Deputy Collector who would be only next to the Collector, in order of seniority in the cadre, in a particular Collectorate, would invariably hold that post, and it was apparently after this functionary had come into existence that the notification was issued to equate him with the Collector, for all purposes.

42. In view of the sanctioning authority laying down strictly as to who could be 'Additional Collector', the fact that actual posting at times is issued by a Collector is absolutely inconsequential, as he is then acting not as an appointing authority but only an instrument to give effect to the directions of the appointing authority.

43. We also understand that ever since this notification was promulgated every one concerned treated an Additional Collector as a Collector for all purposes

contemplated by the Act as well as the Rules, including that of filing of the appeals against the order of a Collector as envisaged by rule 213(ii), and it has been undisputed practice that Board did entertain first appeal against the orders of the Additional Collector, as against the order of the Collector. It is also a matter for judicial notice that the Board is part of the administrative machinery of the Department of Revenue, and consequently the acceptance of the appeals by the Board would lead to the unmistakable inference that the notification was understood by the framers thereof to correlate definition of the 'Collector' as given in rule 2(ii)(A) to that of 'Additional Collector'.

44. We feel that this practice furnishes an unfailing and unmistakable clue to the real import and meaning of this notification. We find support for this view, from Maxwell's Interpretation of Statutes (12th Edition) also, when he says at page 50 that : "In the past reference has occasionally been made to what those who framed a statute, or individual members of the legislature, intended to do by the enactment, or understood it to have done".

"It is obvious that the language of a statute must be understood in the sense in which it was understood when it was passed, and those who lived at or near the time when it was passed, may reasonably be supposed to be better acquainted with the circumstances to which it has relation, as well as with the sense then attached to legislative expressions".

"that the long acquiescence of legislature in the interpretation put upon its enactment by notorious practice may, perhaps, be regarded as some sanction and approval of it".

47. We can thus surely say with authority that the fact that all concerned with the interpretation of this notification, namely, the persons effected by the decisions and orders of the Additional Collectors, as well as the Board, who was the competent authority to entertain appeals only against the orders and decisions of the 'Collector', so far as statute was concerned, did take the appeal to the Board and the Board correspondingly did entertain the appeals, and this by itself is a clear index of the intention behind the notification, namely, to equate Additional Collector with the Collector.

48. We are alive to the proposition that consent of the parties does not confer jurisdiction where it does not exist, but we are not viewing the practice from that angle but from the point of view of having an inkling as to the real intention of the framers of the Rules, and the authors of the notification.

49. We find another interesting angle to this controversy, because this continued practice had gone unquestioned, until Departmental Representative appearing before the First Regional Bench (North) raised objection about the 'Additional Collector' as not being 'Collector' for the purpose of appeal when Stay Petition in Appeal Nos. ED(SB)STAY No.94/82-NRB in the case of M/s Khatri Biri Works, Beawar (Rajasthan) v.Collector of Central Excise, Jaipur and Appeal No. ED (DEL) 255/82-NRB in the case of M/s Lallubhai B. Patel & Co. Pvt. Ltd., Sagar y.

Collector of Central Excise, Indore, were taken up. There is, however, an indication from the order of the latter Bench that the Departmental Representative appearing before them, was specifically asked to sbtain clear instructions from the Department as to the stand to be taken in this regard.

50. We have every reason to presume that the view now expressed by :he Senior Departmental Representative before us, is on instructions from the Department. We say so, because we notice that the same Departmental Representative, namely, Shri Y.R. Gupta who has appeared before us, and propounded the proposition that 'Collector' would include 'Additional Collector' had appeared before the Second Bench, whereas the objection before the First Regional Bench (North) had been taken up by a Junior Departmental Representative. The fact that the Senior Departmental Representative, who has now appeared after obtaining instructions, has propounded the view, contrary to the stand taken up by the Junior Departmental Representative, appearing before the First Regional Bench, indicates that the said Junior Departmental Representative was only expressing his personal view, and not a5 a result of any studied stand on behalf of the Department, who is the administering authority of the Collectors and Additional Collectors. We are thus in a very advantageous position of having version of that very authority, who issued the notification, and that too not in a very remote past, and which interpretation has had the sanctity of acceptance by all concerned.

(c) We also feel that the golden rule being attempt at avoiding an absurd result, and conflicting views, we ought not be very punctilious about the grammatical forms or drafting irregularities, as are manifest in the notification. For, once we find that the intention was clear, we can safely ignore defects in drafting whatever they may be, or grammatical mistakes in having a full-stop in place of';' so as to give the whole of the rule 2(ii) a running effect. Here again, we have support for our view, from Maxwell On the Interpretation of of Statute (12th Edition) where he goes to the extent of saying at page 231 that: "Sometimes, where the sense of the statute demands it or where there has been an obvious mistake in drafting, a court should be prepared to substitute another word or phrase for that which actually appears, in the text of the Act".

What applies to a statute, can certainly be applied to statutory rules.

We, therefore, do not think that for defects in drafting, as are pointed out, the real import and meaning of the notification can be lost sight of. The rule as it stands now clearly shows that the hanging words of the last part are correlated both to (A) and (B) because after "Salt Commissioner" there is a ';' which indicates that the portion starting from "include" is correlated to both (A) and (B).

51. We thus are of our clear view that the rules from 1981 onwards have inclusive definition of the term 'Collector', so as to take within its sweep all Central Excise Officers, who are designated as 'Additional Collectors'.

52. Next question, however, falling for consideration is as to whether this definition in the rules, can be extended to the Act particularly for the purpose of section 33 and section 35B. The contention here is that the definition in the Rules, if any, is meant to remain only within the confines of the Rules, and cannot be stretched for construing the provisions of the Act, and emphasis is on the status of the rules as a piece of subordinate legislation, and not being capable of equated with the statute itself. It is also contended that in case the definition in the Rules, is given the meaning as is put forward by the other party, then it would have the effect of contravening the fundamentals of the Act, which the rule-making authority endeavoured, but cannot do.

53. We have given our very careful thought to this contention. We must say at the outset that any argument which has the effect of urging that the rules as an exercise in delegated legislation, cannot be accepted in so far as they, according to the Interveners, go contrary to the provisions of the Act, cannot be entertained. We do not consider it even necessary to dwell at length on this aspect of the matter, because the Tribunal being itself a creature of the Act, is not a forum where questions, such as legitimacy or vires of the rules, can be raised, nor we consider ourselves competent to go into these questions.

Consequently, we do not propose to discuss authorities cited in support of this view, particularly by Shri R.K. Jain, to the effect that rules which go against the word and spirit of the statute, or are in excess of rule-making power, cannot be allowed to usurp the sphere of legislation.

54. However, the question having been raised, we have thought it relevant to see as to whether there is really any inconsistency between the Act and the Rules or are the Rules really repugnant to any of the provisions of the Act? And on a cumulative reading of the provisions of the Act, and its scheme, we find there is none, so far as the controversy before us, is concerned.

55. It is a settled proposition that statutory rules are always considered as part of an enactment, which provides for framing of the same, so much so that they have been given the status of 'law' by even the Constitution of India inasmuch as Article 366(10) defines 'existing law' to mean: "any law, ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, ordinance, order, bye-law, rule or regulation ;". Article 13 further defines 'law' in Sub-section (3)(a) to include any 'ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law ;'. The position is thus beyond the pale of any controversy that statutory rules have the status of a law, and are entitled to same consideration ; the only reservation being that they should not be repugnant to or inconsistent with the statute.

Finding no such inconsistency between the Act and the Rules which are now before us, we are unable to accept the argument that the Rules cannot be read as

part of the Act or cannot be accorded the same status, as the provisions of the Act.

56. We further find that these time-honoured principles, regarding the position of the statutory rules, finds endorsement from number of authorities of the Supreme Court, one of which is reported as AIR 1961 SC 751 in the case of State of U.P. and Ors. v. Babu Ram, wherein it has been laid down in unequivocal terms that rules made under a statute, must be treated for all purposes of construction or obligation, exactly as if they were in the Act, and are of the same effect as if contained in the Act.

57. To the same effect is the view of Madhya Pradesh High Court as expressed in the case of Gwalior Rayon Mfg. (Wvg.) Co. v. Union of India and Ors. reported in 1982 ELT 844, which was dealing with the Subject Act and the Rules, and the principle laid down was that : "The rules framed under the Act, or a part thereof, has to be construed as such for all purposes, and therefore rules made under a statute must be treated as if they were in the Act itself, both for the purposes of construction and also for the purpose of obligation".

In that case, rules were held to be having an equal status, as of the provisions in the Act, so much so that when rule 10 was omitted from the Rules with effect from 17-11-1980, and was replaced by section 11A in the Act simultaneously, it was held that the same provisions continued and what was previously one part of the Act, had subsequently become another part of the same Act, and there has been complete continuity of the provisions. We, therefore, are unable to subscribe to the view that the definition in the rules will enjoy any inferior status, qua the provisions of the Act.

58. The peculiar features of the Central Excises Act further strengthen the view that in the setting of this Act, rules were meant to enjoy a very crucial and significant position. A reading of the Act reveals that it only provided a broad framework and almost all details, and very significant ones at that, were left to be filled up by the Rules, came into force along with the Act, so much so that not only none of the officers were defined in the Act and their designations were left to be provided either by the Board or by means of-an exercise of powers under the

Rules, but even the basic matter of levy arid collection of duty as contemplated by the charging section, was to be determined, by the Rules as indicated by section 3.

59. We further observe that matters of far-reaching consequences for the subject ; namely, that of offences and penalties as provided under section 9 of the Act, including minimum punishment for six months, are with reference to not only contravention of the provisions of the Act, but also that of Rules and even notifications, and reference to them is interspersed, in almost all the clauses of this section 9. We further find that section 37 itself which confers the rule-making power on the Central Government specifies such important matters to be regulated by the Rules, as determination of the "nearest ascertainable equivalent of the normal price" [section 37(2) (i) (a)] defining or specifying the kinds of trade discount [(ib)]; providing for authorities who can discharge the function of assessment of duty [(ic)] provide for remission of duty on any excisable goods, arid most significant of all, to exempt any goods from the whole or part of the duty imposed by this Act (Clause xvii), and we do know as a practice that innumerable notifications are being issued from time to time under rule 8, giving exemption from duty wholly or partially to number of excisable commodities, with the result that whereas excisability is determined by means of the Act and the Schedule annexed thereto, the Rules or notifications issued thereunder can have the effect of totally nullifying the same. Thus, apart from unreserved powers of rule-making conferred by Sub-section (1) of section 37, the specification of items by Sub-section (2) is even more revealing of the intention that matters of great consequence were left to be determined, governed and regulated by the Rules.

60. It is, therefore, difficult to comprehend that when Rules have been given such immense scope, and basic functions, how they could be even urged to be considered inferior or secondary to the Act. We have thus no hesitation in saying that apart from the general proposition that statutory rules are part of the Act ; in the peculiar scheme of Central Excises Act, the Rules are certainly supplementary as well as complementary to the provisions of the Act, and are to provide for everything which is not covered by the provisions of the Act, and the definition of 'Collector' being one of such omissions ; the one given in the Rules has to prevail

as having been supplied by them.

61. We also do not feel impressed with the argument that section 36 having provided definitions, for the purpose of Chapter VIA, which deals with appeals ; failure to define 'Collector' or 'Additional Collector' therein would mean that there was no intention to include 'Additional Collector', in the term 'Collector', because it is apparent that the definitions, as contained in section 36, have a limited purpose and were occasioned by introduction of some new terms, in the amending Act by means of Finance (No. 2) Act, 1980, and since the term 'Additional Collector' was not introduced in this Chapter nor had 'Collector' been originally defined, there was no occasion to incorporate any such definition in section 36 of Chapter VIA, as is now being suggested.

62. We have, thus, to fall back only on the definition given in the Rules, when we find that not only the term 'Collector' but even the 'Additional Collector' and 'Deputy Collector', as defined in the Rules, have nowhere been defined in the Act. Consequently, though the Act does contain reference to a Collector, or Deputy Collector, as a functionary, but for understanding true import of their functions, reference will have to be invariably made to the Rules.

63. The task before us is to construe harmoniously the provisions of the Act and the Rules and determine as to whether the definition of 'Collector' as now amended by means of the Rules, can encompass within its scope, the expression 'Additional Collector', so as to be treated as a 'Collector' as envisaged by section 35P of the Act or is 'Additional Collector' lower in rank to the 'Collector' as an 'adjudicating authority' within the meaning of section 33 of the Act.

64. During the hearings, the 'Additional Collector' has been exposed to a great deal of analysis, as to his status and ranking in administrative hierarchy, and the fact of his subordination to the Collector was repeatedly highlighted to render him as an officer 'lower in rank' to the Collector, but we find ourselves unable to fall in line with the argument advanced in support of the said view.

65. We cannot help saying that this argument about Additional Collector, being lower in rank, has a beguiling simplicity about it because it is very easy to say so,

by taking a hypertechnical or superficial view, that because Additional Collector is carrying a lower scale of pay, and is of the substantive grade of a Deputy Collector and is administratively subordinate to the Collector of a Collectorate, even to the extent of the latter writing confidential reports of the former. But when one analyses the situation, from the point of view of determining his statutory status, as a functionary, we feel that we have to go deeper than these bare technicalities such as scale of pay, or ranking in administrative hierarchy.

66. It is noteworthy that the term 'rank' has no fixed meaning so much that such a renowned authority like Webster in the New Webster's Dictionary of the English Languages (Deluxe Encyclopaedic Edition) has not been able to give any clear-cut connotation of the term 'rank' and has described it in various senses, including one to mean "an aggregate of individuals or class together". To the same effect is the definition given in the "Words and Phrases-Legally defined, Volume 5, 2nd Edition".

67. Taken in this sense, and considering the fact that the Collector as well as Deputy Collectors all belong to one integrated service known as Indian Customs and Central Excise Service and all are classed together in what is known as 'Group A Service', they can cumulatively be considered to be forming 'one aggregate class of persons,' within the aforesaid meaning. We further find that even amongst Collectors, according to the letter, laying down scales of pay issued on 16-11-1982, produced by Shri R.K. Jain, the Collectors are in two different scales, one of Level-I, and the other of Level-II, but nobody has even suggested that Collector of Level-I is superior in rank to Collector of Level-II, which would be the logical corollary of the argument advanced on the basis of scale or grade of pay. There is, on the other hand, authority of even the Supreme Court, in support of the view that pay scales or grade, by itself does not have any bearing on the question of rank (AIR 1967 SC 1864). This was with reference to Article 311 of the Constitution.

68. It is further to be noticed that in the Cognate Act, namely, Indian Customs Act, 1962, where the term "Collector" finds mention in the Act itself, and includes 'Additional Collector' also, and where the question of Additional Collector being

equated by means of rules only, does not even rise, thet same administrative hierarchy prevails but it is nobody's case that appeals against orders of Additional Collectors, under the Customs Act were not filed before the Board in the first instance, or could not now be filed before the Tribunal, in the same manner as against the orders of the Collector. It is a matter for judicial notice that posts of Collectors and Additional Collectors of Customs are inter-changeable with those of their counter-parts as Central Excise Officers. And as such they have to enjoy identical status.

69. It is thus obvious that what is material is only "functional rank" and once an officer is equated with another by means of a deeming provision, such as 'inclusive definition', then for the purpose of functions it becomes equated with the other authority.

70. The most outstanding instance is the definition of a "District Judge" which term, according to Article 236 of the Constitution, includes, inter alia, an "Additional District Judge". Both are members of higher or superior Judicial Service of a State but the cadre has posts carrying time-scale, selection-grade and supertime scale, with different grades of pay ; Additional District Judges may be administratively dependent on District Judges, but so far as judicial functions are concerned, all are equal and appeals against the judgments and orders of Additional District Judges, as of District Judges, all lie to High Court of the State, and this is so, even when an Additional District Judge, may be functioning as such, on officiating basis, with the substantive rank still of a member of lower Judicial Service.

71. The criterion thus is not the administrative ranking, but the import of a term, as indicated by the definition or the ambit of the functions entrusted to, or exercised by, a particular officer. It also goes without saying that whenever a deeming fiction is created or attached to a term, its meaning is enlarged and extended, and it takes within its sweep, things not ordinarily attributed to that term, in the natural course.

72. We find some interesting illustrations in Maxwell 'On the Interpretation of Statutes' (12th Edition) of deeming fictions by means of inclusive definitions, and the point is elaborated on page 270 that: "Sometimes besides defining the exact

scope of a term, the word 'include' is used 'in order to enlarge the meaning of words and phrases occurring in the body of the statute ; and when it is so used these 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 that they shall include".

73. In other words, the word in respect of which 'include' is used, bears both its extended statutory meaning, as well as "its ordinary popular and natural sense, whenever that would be properly applicable".

74. Certain instances are quoted, like by Section 74(1) of the Shops Act, 1950 : "Retail trade or business|has been defined to include business of a barber or hair dresser".

"Where language of a statute is generally extended to new things which were not known, and could not have been contemplated when the Act was passed, when the Act deals with a genus and the thing which afterwords comes into existence was a species of it," and it is recorded that the provisions of Magna Carta, which exempted Lords from the liability of haying their carts taken for carriage, was held to extend to degrees of nobility not known when it was made, such as 'dukes, marquises and viscounts'.

And similarly, Engraving Copyright Act, 1934 which imposed a penalty for piratical engraving, by etching or otherwise, or 'in any other manner copying prints and engravings', applied to copying by photography. Edison's telephone was held to be a telegraph' within the meaning of the Telegraph Act, 1863, and 'Bicycles' were held to be 'carriages' within the provision of the Highway Act, 1835 and so on.

75. We have in our statute book also a number of deeming definitions which create such fictions, as would not be contemplated in their ordinary sense, and the most peculiar definition is given in section 13(2) of the General Clauses Act, which lays down that unless there is anything repugnant in the subject or context : (1) the word importing 'the masculine gender shall be taken to include females' and (2) the words 'in the singular shall include the plural' and vice versa. We have also definition of "person", in section 3(42) of the said Act where a person will include

even a firm.

76. This practice of extending meaning or giving new meaning, to terms of established legal or etymological terminology has been recognised by judicial authorities also. For instance, in case before Kerela High Court, reported as AIR 1969 Kerala 11 (Full Bench), the scope of the deeming definition of 'tenant' came up for consideration and it was held that though the term 'tenant' or 'lease' have a definite implication and connotation, but by virtue of the deeming definition contained in the Act or in the statute under consideration in that case, larger meaning had to be accepted taking note of the fact that "it is a well-known rule of interpretation that the word 'include' or 'includes' is used as a word of enlargement, and ordinarily implies that something else has been included, which falls outside the general language that precedes it, and to add to the general class, a species which does not naturally belong to it".

77. In another case, reported as AIR 1974 SC 818," a 'manager' was held to be an 'owner', in view of the inclusive definition contained in Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

78. Same proposition was endorsed by Supreme Court in case reported as AIR 1961 SC 606 (para 10) that by "including an Additional District Magistrate, power is conferred by the Act itself", irrespective of the fact that Additional District Magistrate, may not be a District Magistrate in the ordinary sense of the term.

79. The aforesaid Supreme Court authority is, in fact, an answer to the argument that if this situation created by the deeming fiction of equating Additional Collector with a Collector is taken to its logical end ; then, the effect of notifications, issued by Central Government, one of said notification being No. 93/59-CE dated 5-11-1959 conferring powers of section 33(a) even on Assistant Collectors or Superintendents would be to make them also Collectors, because there is a clear distinction pointed out in this authority, as it is observed, that the position where only powers are conferred with reference to specific provisions on certain subordinate officers, would be different, as against the one, where the definition is enlarged by means of making it "inclusive of certain other categories," which ordinarily are not connoted by that term.

80. We have thus no hesitation in holding that by virtue of inclusive definition in rule 2 (ii), the term 'Collector' would mean 'Additional Collector' also, for all purposes.

81. We are also of the firm view that there is no contradiction between this interpretation vis-a-vis provisions of section 37A of the Act, because this section speaks of delegation of powers to subordinate authorities and 'Additional Collector' did not have to be mentioned therein, having been equated to the Collector by virtue of the inclusive definition. It is to be noted that corresponding section in the Customs Act, viz., Section 122 also does not make any mention of 'Additional Collector'. This is obviously for the reason, that on account of the definition, he becomes a 'Collector'.

82. In the light of this position, we do not think that circular issued by the Board being No. 41/81 dated 7-5-1981 placing limits on the pecuniary jurisdiction of the Additional Collectors, is of any consequence. This Circular, it may be noted, does not emanate from any statutory power, and it is for this reason that it does not refer to any. It has obviously no reference to section 33 because proviso thereto only contemplates conferment of powers of (a) and not curtailment thereof. This Circular is thus no more than division of work or demarcation of jurisdiction, by way of internal administrative arrangement so as to avoid overlapping of functions amongst officers having co-extensive jurisdiction, by virtue of the inclusive definition. It can, thus, in no manner whittle down the effect of inclusive definition, introduced by the statutory rules.

83. Another pertinent feature to be kept in focus is that section 35B speaks of orders passed by Collector as in 'adjudicating authority'.

The term adjudicating authority' lias been defined in section 2(a) of the Act and means 'any authority competent to pass any order or decision under this Act'.... The only reference to adjudication in the Act is in section 33 but this does not stand by itself, but has reference to the Rules. Thus, on a cumulative reading of the provisions together, it is manifest that decision or order passed in exercise of the powers, functions or duties, as laid down under the Rules are also subject matter of adjudication, as indicated by section 33 itself. For this reason also, we do

not think that the interpretation now sought to be put can be entertained which has the effect of saying that, if at all the definition in Rule 2 can be deemed to have extended the meaning of the term 'Collector' so as to include 'Additional Collector' also, it is to be confined to the Rules and cannot travel beyond the same because if such an interpretation were to be accepted it will be susceptible of anomalous and even absurd results, and no one can suggest such an interpretation, which can lead to absurdities which is bound to be the result, if this interpretation is to be countenanced, because when we have Additional Collectors passing a cons olidated order, some of which with reference to the Rules, and some to the Act, it will amount to saying that in respect to a part of the decision or order, he is to be considered a Collector but for another part, Additional Collector, and nobody can visualise the situation where the order will have to be bifurcated or split up, for the purpose of determining the forum of appeal, as is bound to be if that view is accepted in view of the fact that the Rules and the Act are interdependent, and powers, functions and duties are also interlinked.

The only way out of such an impasse can be to adopt rule of reconciliation and harmonious construction and having that in mind, the only proper interpretation is that the definition of the term : 'Collector' in the Rules, extends to the Act also.

84. We; however, consider it our duty to refer to some of the authorities cited by Shri R.K. Jain, in support of his contention that an Additional Collector cannot be equated with the Collector. The authorities are AIR 1965 SC 1619 (Ajaib Singh v. Gurbachan Singh) where it was held that no officer below the rank of a District Magistrate can exercise the power of detention, and that an 'Additional District Magistrate', vested with the powers of a 'District Magistrate,' within section 10(2) of the Code of Criminal Procedure, could not be deemed to be District Magistrate, in law for the purpose of authorising detention under the Defence of India Act, 1962. This authority is clearly distinguishable because it was not a case of any deeming definition, given in the Act, but conferment of power which had to be done by the State under section 10(2) of the Code of Criminal Procedure, 1898, by specific orders. It was in this context that it was held that Additional District Magistrate who could be given the power of a District Magistrate by the State Government under section 10(2) of the Criminal Procedure Code could not be taken to be a District

Magistrate for the purpose of Defence of India Act, because the equation is not automatic, as by means of a definition, but "as the State may direct".

85. For the same reason, another authority of Supreme Court cited by Shri R.K. Jain as AIR 1969 SC 483 (Hari Chand Aggarwal v. The Batala Engineering Co. Ltd. and Ors.) is also distinguishable, because that also relates to Defence of India Act vis-a-vis section 10(2) of the Criminal Procedure Code, because there it was only by resorting to notification issued under section 10(2) of the said Code, that the Additional District Magistrate was conferred certain powers of the District Magistrate, and it was not a case of any deeming definition, as in the case reported in AIR 1961 SC 606, to which reference has already been made, because in that case intention of the legislature was inferred to mean, by providing an inclusive definition of a District Magistrate with the result that functions intended to be exercised by a District Magistrate could be exercised by an Additional District Magistrate also ; whereas there was no such provision in the Defence of India Act. On the same analogy, the authorities with reference to the Arms Act cited as AIR 1971 Assam and Nagaland Page 149 (Lal Singh v. State of Assam) and AIR 1968 All. 57, are distinguishable because there even the notification, as envisaged under section 10(2) of the Criminal Procedure Code had not been issued, and it was in this context that it was held that the sanction issued under section 39 of the Arms Act by the Additional District Magistrate for prosecution of a person was not valid, when the said section vested power only in a District Magistrate.

86. Moreover, Arms Act also contains a definition of 'District Magistrate'. There is thus no force in the argument based on these authorities that Additional Collector cannot be held to be Collector, for the purpose of the Act and the Rules before us.

87. We also do not feel impressed with the argument that the interpretation as sought to be given by the reference order, would be tantamount to depriving the subject of vested right of first appeal, before the Collector (Appeals) and that any interpretation which had an effect of deprivation of such substantial rights, has to be avoided.

Reliance is placed in support of this contention on the authority of Supreme Court, namely, Collector of Customs and Central Excise v. M/s A.S. Bava (1978 ELT J.

333). There cannot be any disputing the proposition, but the big question is as to whether there was' any such right before the introduction of the inclusion definition by Notification No. 110/81 and the answer is in the negative, inasmuch as the Act as it stood before its amendment, provided only one right of appeal and rule 213 determined the forum of that appeal, against the order of the Collector, only to be the Board and in cases of officers lower in rank that of the Collector, first appeal was provided to the Appellate Collector, and no second appeal but only a revision. It is only by virtue of Finance (No. 2) Act, 1980 that the provisions of the Act were amended so as to provide an entirely different set of forum for appeals, and for the first time, two stages of appeals were created, in certain cases, as covered by Section 35 and then Section 35B, but that right accrued to the subject only with effect from 11-10-1982, which was "the appointed date", for the purposes of the Act. The provisions regarding right of two appeals, became operative, thus, only with effect from 11-10-1982, with the result that there was no such right existing or prevailing in April 1981, when the rules were amended. There is thus no force in the contention that the interpretation which we find to be more consistent with the general purposes and scheme of the Act, would be tantamount to deprivation of vested right of second appeal, as none existed.

88. For the foregoing reasons, we are of the firm view that the term "Collector", includes "Additional Collector", both under the Act, as well as the Rules framed thereunder. Consequently, an appeal against an order of an Additional Collector shall lie to the Appellate Tribunal, and not to the Collector (Appeals). The reference is answered accordingly.

89. Before parting, we would like to place on record our deep appreciation of the able assistance rendered to the Bench by the learned Counsel for the Appellants, the Interveners-particularly the President and the Secretary of the Bar Association, who gave a very analytical and elaborate exposition of the points involved, and also that of the Senior Departmental Representative, Shri Y.R. Gupta, who elucidated Department's position in a very cogent and concise manner.

90. While fully agreeing with the order proposed by sister Smt. Duggal, Member (Judicial), I would like to add the following : - In State of Tamil Nadu Vs. M/s Hindi

Stone Etc. AIR 1981 SC 711, (not cited by any of the parties before us), the Supreme Court, while interpreting Tamil Nadu Minor Mineral Concession Rules, 1959, made by the State in exercise of powers conferred under Section 15 of Mines and Minerals (Regulation and Development) Act, 1957, following State of U.P. Vs. Babu Ram Upadhya AIR 1961 SC 751, to which reference has already been made (in the main order) and Maxwell and distinguishing State of Mysore Vs. H. Sanjeeviah AIR 1967 SC 1189 on which Shri R.K.Jain, relied before us in support of his proposition that Rules do not form part of the Act held as under : - "A statutory rule, while ever subordinate to the parent statute, is, otherwise, to be treated as part of the statute and as effective.

"Rules made under the Statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if Contained in the Act and are to be judicially noticed for all purposes of construction or obligation" (State of U.P. Vs. Babu Ram Upadhya (1961) 2 SCR 679 at p. 702 ; (AIR 1961 SC 751) ; (See also Maxwell : Interpretation of Statutes, 11th Edn. pp. 49-50). So, statutory rules made pursuant to the power entrusted by Parliament are law made by the Parliament within the meaning of Article 302 of the Constitution. To hold otherwise would be to ignore the complex demands made upon modern legislation which necessitate the plenary legislating body to discharge its legislative function by laying down broad guidelines and standards, to lead and guide as it were, leaving it to the subordinate legislating body to fill up the details by making necessary rules from time to time to meet unforeseen and unpredictable situations, all within the framework of the power entrusted to it by plenary legislating body. State of Mysore Vs. H. Sanjeeviah (1967) 2 SCR 361: (AIR 1967 SC 1189) was cited to us to show that rules did not become part of the statute. That was a case where by reference to Section 77 of the Mysore Forest Act which declared the effect of the rules, it was held that the rules when made did not become part of the Act. That was apparently because of the specific provisions of Section 77 which while declaring that the rules would have the force of law stopped short of declaring that they would become part of the Act. In the absence of any express provision, as now, the ordinary rule as enunciated in Maxwell and State of U.P. Vs. Babu Ram Upadhya would perforce apply." 91. Now that the Act does not have a provision like Section 77 of the Mysore Forest Act, applying the

aforesaid ruling, there can be no doubt that the rules while subordinate to the parent Act are to be treated as part of the Act and as effective.

92. The matter can be viewed from another angle also. It is not necessary or imperative that the powers under the Act and the Rules are invariably exercised only be Officers of Central Excise. It is legally permissible for Officers of other Departments to exercise these powers.

In fact, under Rule 2 (ii) B, Collector for Kandla Area means Development Commissioner, Kandla Free Trade Zone, who is not an Officer of the Central Excise Department. It is only a matter of coincidence that Additional Collector is an Officer of the Central Excise Department. If an Officer belonging to a department other than Central Excise is by the inclusive definition made a Collector under Rule 2 (ii) B, the argument that undei Section 35(1) of the Act an appeal against a decision or order of a Central Excise Officer lower in rank than that of a Collector would lie to a Collector of Central Excise (Appeal), would not be available. This will only illustrate how if by inclusive definition in the rules an Officer becomes a Collector or is equated to a Collector, there is no question of his being lower in rank to the Collector.

93. Material has been placed and considerable argument advanced to show that Officers functioning as Additional Collectors arc in fact not Additional Collectors. We have found above that these Officers are in fact Additional Collectors. Even otherwise, when an Act or Rule provides for a functionary, the Act or the Rule must be interpreted on the basis that such a functionary in fact exists or would if necessary be created. When Rule 2(ii)B speaks of an Additional Collector, it must be interpreted on the basis that such a functionary in fact exists and if necessary would be provided for. To illustrate, if a law speaks of District Judge or an Additional District Judge it must "be interpreted on the basis that such functionaries exist or if necessary would be provided for. The argument that Officers functioning as District Judge or Additional District Judge are in fact not so, would not be relevant, for interpreting the law, though it may be relevant for other grounds.

.Thus viewed, the argument that the Officers are in fact not Additional Collectors would not be relevant for interpreting the Rule.M/s Khatri Bin Works, Beawar v.Collector of Central Excise, Jaipur case by its order which has led to the present reference, in para 5 of the order, found "For the purposes of Central Excise Rules, however, he (Additional Collector) is a Collector" but the Bench held that he is not Collector within the scope of Section 33 of the Act. The reasons which weighed with the Bench for coming to this finding are : (i) Additional Collector does not have unlimited powers but reduced powers ; and (ii) in relation to orders or decisions in adjudication powers to Additional Collector can only flow from the powers vested in the Board by virtue of proviso to Section 33.

Now if the Additional Collector by virtue of rules is a Collector, the fact that his powers have been curtailed would not effect the interpretation of Rules. Besides, when there are two officers having co-extensive jurisdiction, some way has to be found for defining their jurisdiction so that they can exercise their powers without encroaching on jurisdiction on one another. Such distribution unless it is prohibited by law or offends any law would not be illegal. D.R. has pointed out that the distribution of power is a housekeeping arrangement. The same cannot be said to be illegal. As already stated, once under the Rules Collector includes Additional Collector, his administrative subordination to the Collector for the purpose of interpreting the rules has no bearing.

95. President has constituted this larger Bench consisting of five Members to consider the reference from the North Regional Bench consisting of Member (J) Shri M.G.S. Murthy and Member (T) Shri I.J.Rao on their differing from the decisions of the earlier Bench consisting of Member (J) Shri A.K. Srinivasamurthy and Member (T) Shri A.J.F. D'Souza in the above cases. The short point which has been referred to the larger Bench for decision relates to the interpretation of sections 35 and 35-B of Chapter VI-A of the Central Excises and Salt Act, 1944. The earlier North Regional Bench consisting of Member (J) Shri A.K. Srinivasamurthy and Member (T) Shri A.J.F. D'Souza have in their detailed judgments decided that Additional Collector of Central Excise is an officer of the Central Excise Department who is lower in rank than the Collector of Central Excise and, accordingly, appeals against his decision or order would lie to the

Collector of Central Excise (Appeals) under section 35 of the said Act. Appeals against the orders passed by the Collector (Appeals) would lie to the Appellate Tribunal under section 35-B of the said Act. In other words, a person aggrieved by a decision or order under the Central Excises and Salt Act, 1944 by the Additional Collector of Central Excise would have two rights of appeal -in the first instance to the Collector of Central Excise (Appeals) and later to the Appellate Tribunal. If on the other hand, it is held-as indeed has been done by the latter Bench consisting of Member (J) Shri M.G.S. Murthy and Member (T) Shri I. J. Rao that Additional Collector is Collector for the purposes of the Act, the aggrieved person would have only one right of appeal, namely, to the Appellate Tribunal.

96. The larger Bench has held several hearings. Shri K. Narasimhan, President of the Bar Association, Shri R.K. Jain, Secretary of the Bar Association and Shri D.N. Kohli, Customs and Excise Consultant, have very ably assisted the Bench as Intervener advocates. Shri Harbans Singh appeared on behalf of the original appellants and the Department was represented by the Senior Departmental Representative Shri Yuvraj Gupta. The Bench had also the benefit of considering the judgment of the Calcutta Regional Bench consisting of Member (J) Shri K. Gopal Hegde and Member (T) Shri G. Sankaran in the matter relating to M/s National Jute Manufacturing Corporation Ltd., Katihar v. Collector of Central Excise, Calcutta which substantially involved similar issues as have been included in the reference to the larger Bench.

97. The Intervener advocates and the aforesaid judgments of the Calcutta Regional Bench as well as the earlier North Regional Bench have made out a strong case for the view that Additional Collector of Central Excise is an officer of the Central Excise Department lower in rank than the Collector. He is subordinate to the Collector not only in the administrative hierarchy but also with reference to his powers and functions under the Central Excises and Salt Act, 1944.

98. The expression 'Additional Collector' has not been defined either in the Act or the rules made thereunder. There is not a single section in the Act in which the expression 'Additional Collector' finds a place. Similarly, there is no definition of the words 'Additional Collector' even in the Central Excise Rules. The

Departmental Representative in his arguments have clearly stated that there is no cadre of Additional Collector in the Central Excise Department. His appointment in the Department is only as Deputy Collector of Central Excise. However, in accordance with the general executive instructions of the Central Government, he is re-designated as Additional Collector by the concerned Collector of Customs under whom he is, for the time being, posted. These general instructions of the Central Government and order issued by the Collector, Central Excise, Delhi re-designating one of his Deputy Collectors at the Headquarters of the Delhi Collectorate as Additional Collector are reproduced below : - Sub : Re-designation of Deputy Collector at the Headquarters office as Additional Collector, I am directed to refer to this Department's letter of even number dated 28th February, 1981, re-designating the seniormost Deputy Collector at the Headquarters of the Collectorate as Additional Collector and to say that the question of identifying the charge to be held by such Additional Collector, has been under the consideration of the Government for some time past. It has now been decided that the post of Deputy Collector (Technical) in the Hqrs.

office of the Collectorate of Central Excise should be designated as Additional Collector. However, where there is more than one post of Deputy Collector (Technical), the post of Deputy Collector (Tech)-I should be held by the senior of the Deputy Collectors (T) and this post should be designated as Additional Collector.

In pursuance of Ministry of Finance letter No. F. No. A. 11013-219/80-Ad. IV dated 7-8-1981, one post of Deputy Collector (Technical) in the Hqrs. Office of this Collectorate is designated as Additional Collector. Accordingly, in supersession of this Office Establishment Order No. 77/1981, Shri P.R.V. Ramanan, presently working as D.C. (Tech) is hereby re-designated as Additional Collector with immediate effect.

99. It is admitted by all parties that Collector is at the apex of the Central Excise Administration in the field and is in overall charge of the Collectorate within his jurisdiction. In the matter of ranking, he is the head of the hierarchy of officers in his Collectorate. It is in that capacity that he designates a Deputy Collector

working under him as an Additional Collector of Central Excise. It is, however, obvious that an officer designated or appointed by a Collector of Central Excise has necessarily to be lower in rank and subordinate to the Collector himself. The Central Government does not appoint any person as Additional Collector. According to the well known principle delegatus non potest delegare, the Central Government could not in any case delegate its authority to appoint or designate an officer as Additional Collector to any other functionary under the Government.

100. The Intervener Advocates in this connection referred to the definition of the word 'Rank' as given in the Law Laxican by Venkatramiah in the following words : - "The word 'rank' as used in Article 311(2) of the Constitution has not been defined. But it is well established that the words 'dismissal, removal and reduction in rank' have a technical significance due to the special meaning attached to them historically from the very beginning. The meaning so attached to the word 'rank' is that it is a class or a grade of service. The classes or the grades relevant for this purpose are those which are arranged in an ascending or a descending order, that is to say, they must be one above the other or one below the other-S.K. Srivastava v. Union of India 1971 2 Serv. L.R. 453 at page 462." 101. In Webster's dictionary 'Rank' means (1) "relative position or order, relative standing; (2) grade of official standing as in the army, navy or nobility;(3) degree of dignity, eminence or excellence-also relative position in civil or social life or in any scale of comparison, status or grade ; (4) elevated grade or standing, higher degree, high social position, distinction, eminence".

102. The. relative position, standing, status and grade of Additional Collector of Central Excise in the Central Excise Department is lower than a Collector of Central Excise. An Additional Collector cannot by virtue of his rank officiate as a Collector when the Collector is on leave or otherwise. To the trading public, Industry and Tax payers, an Additional Collector is known as an officer subordinate to Collector.

103. Collector of Central Excise is an officer who is "appointed for the purpose of the Act". Clause (xx) of section 37 gives a clear indication to the effect that a Collector of Central Excise is the one who is specifically so appointed by the

Central Government. No other officer in the Central Excise Department can be called Collector unless he is appointed as such. The only other way of amending, expanding or adding to the expression 'Collector' is to provide for a definition of the word 'Collector' on the lines of section 2(8) of the Customs Act, 1962 which reads as : - 104. In the absence of such a statutory definition, it would not be proper to enlarge the expression 'Collector' for the purposes of the Act.

105. The Intervener Advocates drew attention of the Bench to the provisions of sections 33, 35-E and 37-A of the Act, which are reproduced below : - "33. Power of Adjudication : Where by the rules made under this Act anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged - (b) upto confiscation of goods not exceeding five hundred rupees in value and imposition of penalty not exceeding two hundred and fifty rupees, by an Assistant Collector of Central Excise.

Provided that the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) may, in the case of any officer performing the duties of an Assistant Collector of Central Excise, reduce the limits indicated in Cl (b) of this section and may confer on any officer the powers indicated in Cl (a) or (b) of this section." "35-E. Powers of Board or Collector of Central Excise to pass certain orders : - The Board may, of its own motion, call for and examine the record of any proceeding in which a Collector of Central Excise as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Collector to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order.

(2) The Collector of Central Excise may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority to apply to the Collector (Appeals) for the determination of such points arising out of the decision or order as may be

specified by the Collector of Central Excise in his order.

(3) No order shall be made under Sub-section (1) or Sub-section (2) after the expiry of two years from the date of the decision or order of the adjudicating authority.

(4) Where in pursuance of an order under Sub-section (1) or subsection (2), the adjudicating authority or the authorised officer makes an application to the Appellate Tribunal or the Collector (Appeals) within a period of three months from the date of communication of the order under Sub-section (1) or Sub-section (2) to the adjudicating authority, such application shall be heard by the Appellate Tribunal or the Collector (Appeals), as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals, including the provisions of Sub-section (4) of section 35-B shall so far as may be, apply to such application." "37-A. Delegation of Powers : The Central Government may, by notification in the official Gazette, direct that subject to such conditions, if any, as may be specified in the notification- (a) any power exercisable by the Board under this Act may be exercis-able also by a Collector of Central Excise empowered in this behalf by the Central Government; (b) any power exercisable by a Collector of Central Excise under this Act may be exercisable also by a Deputy Collector of Central Excise or an Assistant Collector of Central Excise empowered in this behalf by the Central Government; (c) any power exercisable by a Deputy Collector of Central Excise under this Act may be exercisable also by an Assistant Collector of Central Excise empowered in this behalf by the Central Government; and (d) any power exercisable by an Assistant Collector of Central Excise under this Act may be exercisable also by a gazetted officer of Central Excise empowered in this behalf by the Board." 106. The above sections lay down in detail the statutory powers of Collector. They also prescribe the mode, manner and extent to which these powers of Collector can be conferred on or delegated to other officers of Central Excise. For example, powers of adjudication of confiscation and penalties without limit under section 33(a) of the Act can be conferred on other officers by the Central Board of Excise and Customs (and not by rules issued by the Central Government). Powers under section 35-E of the Act can be exercised only by the

Board or the Collector of Central Excise (and not by any other officer). Under section 37-A of the Act, the Central Government may delegate powers of the Board to a Collector of Central Excise empowered in this behalf by the Central Government and likewise delegate the powers of the Collector to a Deputy Collector or an Assistant Collector empowered in this behalf by the Central Government and so on.

107. It is clear from the above that conferment or delegation of powers as envisaged under the Act can be done only in the manner stated in the Act itself and not by the rules issued by the Government. It is also clear that such conferment or delegation of powers does not change or in any way alter the relative rank of these officers. Attention of the Bench in this connection was drawn to the Notifications issued by the Board under proviso to section 33 of the Act under which the powers of Collector for adjudication of confiscation and penalties without limit under section 33(a) have been conferred on Additional Collectors, Deputy Collectors, Assistant Collectors and Superintendents or Central Excise : "In exercise of the powers conferred by the proviso to section 33 of the Central Excises and Salt Act, 1944 (1 of 1944) the Central Board of Excise and Customs hereby confers on the Additional Collector of Central Excise and Customs, Bhubaneswar, Orissa, the powers indicated in Clause (a) of the said section." "In exercise of the powers conferred by the proviso to section 33 of the Central Excises and Salt Act, the Central Board of Excise and Customs hereby confers on the Additional Collector of Central Excise, Calcutta, the powers of the Collector of Central Excise as indicated in Clause (a) of that section." ' In exercise of the powers conferred by the proviso to section 33 the C.B.R. has conferred on Deputy Collectors and Assistant Collectors of Central Excise and on the Superintendents of Central Excise the powers indicated in Clause (a) of the said section." 108. Attention of the Bench was also drawn to section 152 of the Customs Act, 1962 which is analogous to section 37-A of the Central Excises and Salt Act, 1944. Under section 152 of the Customs Act, the Central Government by a Notification can direct that any powers exercisable by the Board shall be exercisable also by a Collector of Customs empowered in this behalf by the Central Government, etc. In pursuance of Clause (a) of section 152 of the Customs Act, the Central Government has by notifications delegated the powers of the Board under

sections 9, 61, 74, 105, 109 and 113 to various Collectors of Customs.

These delegations of powers on the Collectors would not in any manner change their rank as officers subordinate to the Board. Both in law and in fact Collectors of Customs would continue to be subordinate to the Board. Likewise, conferment of powers or delegation of powers of the Collector to other officers of Central Excise would not in any manner disturb the relative position or rank of such officers in the Department either administratively or functionally as envisaged in the Central Excises and Salt Act.

109. The Inteivener Advocates have pointed to a serious anomaly in the matter of powers conferred on Additional Collector of Central Excise under proviso to section 33 of the Act. It would be observed that such powers have been conferred only on the Additional Collector of Central Excise, Bhubneshwar, Orissa and Additional Collector of Central Excise, Calcutta and not on any other Additional Collector in the Department.

Such powers, however, have been conferred on all Deputy Collectors, Assistant Collectors and Superintendents of Central Excise.

110. The said powers under section 33(a) conferred on the above officers have been restricted or limited by the instructions issued from time to time by the CBEC. The powers of Depufy Collector of Central Excise have been restricted to confiscation of goods not exceeding Rs. 50,000 in value and penalty upto Rs. 750 vide Central Board of Excise and Customs instructions No. 35/4/67-CX. I, dated 25-7-67. It is understood that these were later further amended by subsequent instructions of the Board. Powers of Additional Collectors of Central Excise have been similarly restricted and limited by the Board by a circular No. 41/81, dated 7-5-81 which is reproduced below: - "Central Excise-Re-designation of Deputy at the Headquarters as Additional Collector.

Attention is invited to Ministry's F. No. A. 11013/219/80-Ad. IV, dated 28th February, 1981 whereby the senior-most Deputy Collector of Central Excise posted at the Collectorate Hqrs. was re-designated as Additional Collector.

In view thereof, necessary amendments to rule 2(ii)(B) of the Central Excise Rules, 1944 has been made by Notification No. 110/8l-Central Excise dated 29-4-81 the effect of which is that the definition of 'Collector' has been amended to include 'Additional Collector'.

2. In view of the above change in the definition of Collector, the Additional Collector will be able to exercise all the powers of the Collector under the Central Excises and Salt Act, 1944 and Rules framed thereunder. However, if all such work is delegated to the Additional Collector, it will only over-burden on him resulting in consequential delays.

3. It has, therefore, been decided by the Board that the Additional Collector in addition to the adjudication of the offence cases which at present, fall within the competency of the Deputy Collector, may also adjudicate the following cases which at present fall within the powers of the Collector :A. Cases involving alleged or potential Upto Rs. 1,00,000evasion of dutyB. Cases where no evasion of duty Upto Rs. 50,000involved but amount of penalty likely 4. Instructions contained in Board's F. No. 215/3/80-CX. VI dated 12th February, 1981 read with F. No. 204/40/79-CX. VI, dated 18th February, 1980 will stand suitably modified.

5. It has further been decided by the Board that the Additional Collector should continue to exercise the various powers under the rules which have been delegated to the Deputy Collector in terms of Board's F. No. 215/3/80-CX. VI, dated 12th February, 1981 and the Collector should not delegate any other powers under the Central Excise Rules to the Additional Collector for the time being." 111. It would be observed that the powers of Additional Collectors, Deputy Collectors, Assistant Collectors and Superintendents of Central Excise have all been severely restricted or limited by the Board. None of these officers can exercise these powers of adjudication, of confiscation and penalties 'without limit' under section 33(a) of the Act.

112. The Intervener Advocates have cited the following cases to support their view that statutory powers invested with an officer can be exercised only by an officer who is appointed as such. These authorities are relevant and are accordingly stated below: - "AIR 1965 SC 1619 : Ajaib Singh : Appellant v. Gurbachan Singh

and Ors. : Respondents : In this case the Supreme Court has ruled that Additional District Magistrate would continue to be lower in rank than the District Magistrate even if he is specially authorised by the State Government unless he is appointed as such by the competent authority. The Additional District Magistrate even if invested with all the powers of the District Magistrate continues to be below or lower in rank than the District Magistrate unless he is appointed as such.

AIR 1969 SC 483 : Harichand Aggarwal: Appellants v. The Batala Engineering Co. Ltd. and Ors. : Respondents : In this case the Supreme Court has ruled that Distt. Magistrate and Additional Distt. Magistrate are two different and distinct authorities and even though the latter may be empowered to exercise any of the powers of a District Magistrate, by no stietch of reasoning can an Additional District Magistrate be called a District Magistrate. The Additional Distt. Magistrate who is vested with the powers of a District Magistrate does not thereby attain the status of a District Magistrate and continues to be an officer below the rank of District Magistrate.

In this case the Allahabad High Court has ruled that the definitions provided in the Arms Rules govern the rules only and they cannot be applied to expressions used in the Act. The question before the High Court was whether an Additional District Magistrate can sanction a prosecution under section 39 of the Arms Act without being specially empowered by the State Government to do so. The High Court ruled that an Additional District Magistrate was not competent to accord the sanction although under the Arms Rules, 1962, a District Magistrate 'includes in relation to any district or part thereof an Additional District Magistrate." 113. Under the Conservation of Foreign Exchange and Smuggling Activities (COFEPOSA) Act, 1974, detention orders can be issued by the Central Government, by the State Government or any officer of the Central Government not below the rank of Joint Secretary to that Government specially empowered for the purpose or any officer of the State Government not below the rank of a Secretary to the Government specially empowered for the purpose by that Government. The Central or the State Government, as the case may be, could not delegate powers of detention to any other officer lower in rank to the specified officers even though such officers may be enjoying all the powers of Joint Secretary to the Central Government or Secretary to the State Government, as the case may be.

114. The Advocate for the Appellants during the course of the arguments has drawn the attention of the Bench to rule 2(ii)(A) and 2(ii)(B) of the Central Excise Rules, 1944. This rule before its amendment by Notification No. 110/81-C.E., dated 29-4-81 read as follows :- "Rule 2. Definitions-la these rules, unless there is anything repugnant in- the subject or context- (A) in relation to excisable goods other than salt-(Clauses a to y relate to territorial jurisdiction of various Collectors of Central Excise).

(B) in relation to salt, the Salt Commissioner, and includes any officer specially authorised under rule 4 or 5 to exercise throughout any State or any specified area therein all or any of the powers of a Collector under these rules".

115. The above Clause (ii)(B) was substituted by Notification No.110/81-C.E., dated 29-4-81 which is reproduced below : - G.S.R. 316(E).-In exercise of the powers conferred by section 37 of the Central Excises and Salt Act, 1914 (1 of 1944), the Central Government hereby makes the following rules further to amend the Central Excise Rules, 1944, namely : - (2) They shall come into force on the date of their publication in the Official Gazette.

2. For Clause (ii)(B) of rule 2 of the Central Excise Rules, 1944, the following shall be substituted, namely : - "(B) in relation to salt, the Salt Commissioner, and includes an Additional Collector and any officer specially authorised under rule 4 or 5 to exercise throughout any State or any specified area therein all or any of the powers of a Collector under these rules".

116. Under rule 4 of the Central Excise Rules, the Central Board of Excise & Customs may appoint such persons as it thinks fit to be Central Excise officers or to exercise all or any of the powers conferred by these rules on such officers.

117. Under rule 5 of the Central Excise Rules, a Collector may authorise any officer subordinate to him to exercise throughout his jurisdiction or any specified area therein all or any of the powers of a Collector under these rules.

118. The Advocate for the Appellants and the Senior Departmental Representative have argued that the hanging sub-clause of the above amending notification

beginning with the words "and includes" and ending with the words "these rules" would also govern Sub-clause (A) of Clause (ii) of rule 2. They have further argued that the above rule (ii)(B) as amended should also be read into the statute and should be deemed to amplify the term 'Collector' used in the Central Excises and Salt Act as well. Additional Collector of Central Excise would thus be equal in rank to the Collector for the purposes of the Rules as well as the Act.

119. The Intervener advocates, however, have countered the above arguments by saying that according to the normal rules of construction, the said Clause (ii)(B) can relate only to the Salt Commissioner and the officers duly empowered in relation to salt. Strictly interpreted, there is considerable force in the arguments of the intervener advocates. The hanging sub-clause of Clause (ii)(B) cannot be construed as governing Clause (ii)(A) which specifically relates to "excisable goods other than the Salt". However, even if for the sake of argument the point made by the advocate for the appellants is accepted, it is clear that this sub-clause is intended to expand the meaning of the expression 'Collector', only for the purposes of the rules and that too only in relation to the powers of the Collector excisable under the rules.

120. The above interpretation of the Advocate for the appellants and the Senior Departmental Representative would also lead to an absurdity, inasmuch as not only Additional Collectors but also other officers of Central Excise who are specially authorised under rules 4 and 5 to exercise all or any powers of a Collector under the Rules would be included in the term 'Collector' and as such be entitled to exercise the powers of a Collector both under the rules as well as under the Act.

121. Under Rule 4, large number of officers of diverse designations and ranks have been given the powers of Collectors by the Board, e.g.

Director of Inspection, Director of Revenue Intelligence, Director of Statistics and Intelligence, Chief Chemist, Central Revenues Control Laboratory, etc. Under Rule 5, powers of Collectors have been delegated by Collectors to Central Excise officers of different designations and ranks like Superintendents, Assistant Collectors, Deputy Collectors, etc. (Reference : pages 9-B to 9-M of the Central

Excise Manual 1983 by D.N. Kohli and I.D. Grover). According to the submissions made by the Advocate for the Appellants and the Senior Departmental Representative as stated above, the term 'Collector' would not only include Additional Collector but also all the aforesaid officers empowered under rules 4 and 5 both for the purposes of Rules as well as of the Act. This interpretation, in my opinion, would lead to absurd results and certainly could never have been the intention of the rule-makers.

122. The Central Excise Rules, 1944 have been issued by the Central Government in exercise of its powers under sections 6, I 2 and 37 of the Central Excises and Salt Act, 1944.

123. Section 6 of the Act provides for certain operations to be subject to a licence granted under the Act.

124. Section 12 of the Act refers to application of the provisions of the Customs Act, 1962 to the Central Excise duties.

125. Section 37 of the Act provides for Central Government to make rules to carry into effect the purposes of this Act.

126. Provisions of section 37 of the Act relevant to our purpose here are contained in Sub-clauses (vi) and (xx) which are reproduced below : - Central Government may make rules to carry into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may - Clause (vi) provide for the employment of officers of the Government to supervise the carrying out of any rules made under this Act; and Clause (xx) authorise the Central Board of Excise and Customs constituted under the Central Board of Revenue Act, 1963 (54 of 1963) or Collectors of Central Excise appointed for the purposes of this Act, to provide by written instructions, for supplemental matters arising out of any rule made by the Central Government under this section".

127. The above rule-making power does not include the power to amend, restrict or enlarge the meaning of the words used in the Act so as to confer statutory

powers on officers other than those who are specified in the Act itself. Accordingly, rule 2(ii)(B) as amended cannot be interpreted so as to enlarge or extend the meaning of the expression 'Collector' for the purposes of the Central Excise Act.

128. The Intervener Advocates in this connection have referred to section 38 of the Act before its amendment, according to which all such rules and notifications had the effect as if enacted in the Act. The words, namely, "all such rules and notifications shall thereupon have effect as if enacted in the Act" have now been omitted in the present section 38 of the Act. Section 38 of the Central Excise Act as it read before the present section 38 of the Act are reproduced below : - "38. Publications of rules and notifications. - All rules made and notifications issued under this Act shall be made and issued by publication in the Official Gazette. All such rules and notifications shall thereupon have effect as if enacted in this Act: Provided that every such rule shall be laid as soon as may be after it is made before Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more sessions, and if before the expiry of that period, Parliament makes any modification in the rule or directs that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be." [Repealed vide section 2 and Schedule of the Repealing and Amendment Act, 1947 (Act No. 11 of 1948).

"38. Publication of rules and notifications and laying of rules before Parliament.-(1) All Rules made and Notifications issued under this Act, shall be published in the Official Gazette.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect, only in such modified form or to be of no effect, as the case may ; so' however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rule".

It would be observed that the Central Excise Rules can no longer form part of the Central Excise Act although they may be published in the Official Gazette and are laid before each House of Parliament.

129. As stated, the Central Excise rules cannot widen the meaning or definitions in the Act which are otherwise clear and unambiguous. The Supreme Court has ruled that rules and regulations which are contrary or repugnant to statutes under which they are made are 'ineffective'.

It is further stated that the executive cannot under the power of framing rules and regulations clothe itself with powers which the statute itself does not give and which are inconsistent with the terms used in the Act. The cardinal rule in regard to promulgation of by-laws or making rules is that they must be legi fidei rationi consona and, therefore, all regulations which are contrary or repugnant to statutes under which they are made are ineffective. Definition of words used in the statute cannot be widened by a statutory rule or a regulation promulgated under the statute or by executive fiat.

The Supreme Court has ruled that the rules issued under the Act are meant only for purpose of carrying out the provisions of the Act and they could not take away what was conferred by the Act or whittle down its effect.

[1971 (82) ITR 44-Commissioner of Income-tax, Andhra Pradesh v Taj Mahal Hotel] By-laws made in pursuance of statutory power must not go beyond nor be repugnant to the enactment under which they are made. (Craies on Statute Law 7th Edition Page 329) Statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made. It is not correct to widen the terms used in the statute simply because the statute does not define any expression It is an important rule of construction that if the words of the statute are clear and unambiguous, it is the plain duty of the court to give effect to that whatever may be the consequences, for in that case, the words of the statute speak the intention of the legislature.

The Gujarat High Court has stated that any rule framed under a statute and even having force of law cannot restrict or narrow down the scope of the section. If there

would be a conflict between a section and a rule or between the statute and a rule enacted under it, obviously the statute must prevail over the rules.

[The Navjeevan Mills Co. Ltd., Calol-1972 Company Law Cases Vol 42 Page 265] The High Court of Karnataka has stated "it is the settled rule of construction of statutes that the provisions of an Act are not to be construed with reference to the rules made thereunder or the forms prescribed by the rules. On the contrary, the rules have to be construed with reference to the provisions of the Act under which they are made".

[The Electro-Mechanical Corporation and Canara Chemical Corporation v. the State of Mysore reported in 1974 (33) STC 56] In the light of the above pronouncements, it would neither be correct nor proper to conclude that 'Collector' would include 'Additional Collector' for the purposes of the Central Excise Act.

130. Another important aspect of the matter to which our attention was pointedly drawn by the Intervener Advocates relates to the substantive right of appeal vested in the appellants. If the arguments of the Advocate for the appellants were to be accepted, namely, under the aforesaid Clause (ii) (B) of the Rules, as amended, 'Collector' will include 'Additional Collector' for the purposes of the Act as well as the rules, an appellant would be deprived of his substantive right of appeal to two forums, namely the Collector (Appeals) under Sec. 35 and the Appellate Tribunal under Sec 35-B of the Central Excises and Salt Act. In a case relating to Collector of Customs and Central Excise, Cochin v. A.S. Bawa reported in 1978 ELT J 333, the Supreme Court has set aside the provision which was calculated to deprive the appellants of his unfettered right of appeal and ruled that this could not be regarded as a mere alteration in procedure.

131. I have considered very carefully and closely the submissions made by all the parties in the light of the decisions and pronouncements of the High Courts and the Supreme Court in similar cases. I am of the firm view that 'Additional Collector' is an officer of the Central Excise Department who is lower in rank than a Collector of Central Excise. The amendment to Clause (ii)(B) of Rule 2 of the Central Excise Rules referred to above can, at best be interpreted with reference to the rules only and not to the statutory' powers of the Collector which can be delegated to or

conferred on Additional Collector only in the manner or extent as expressly provided for in the Act itself.

Additional Collectors are subordinate to the Collectors of Central Excise and are known as such by the trading public, industry and the taxpayers who have to deal with Central Excise Department every day.

Such of the statutory powers like adjudication of confiscation and penalties under section 33(a) of the Central Excise Act as have been conferred on some Additional Collectors, viz. Additional Collector of Bhubaneswar and of Calcutta have also been severely limited and restricted by the Board. Additional Collectors of Central Excise, therefore, cannot, either in law or in fact rank equal to Collectors of Central Excise. Administratively they are subordinate to the Collector under whom they are posted and who designates them as Additional Collector from amongst the Deputy Collectors under him. I find considerable force in the arguments advanced by the Intervener Advocates, I entirely agree with the judgment of the earlier North Regional Bench [consisting of Member (Judicial) Shri A.K.Srinivasamurthy and Member (Technical) Shri A. J.F. D'Souza] and the judgment of the Calcutta Regional Bench [consisting of Member (Judicial) Shri A. Gopal Hegde and Member (Tech) Shri G. Sankaran] that Additional Collector of Central Excise is an officer of Central Excise who is lower in rank than the Collector of Central Excise. In the result, I hold that the appeals from orders or decisions of Additional Collector will lie to the Collector (Appeals) under section 35 of the Central Excises Act and not directly to the Appellate Tribunal under section 35-B of the Act.

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