Super Traders and Another Vs. Union of India and Others

Super Traders and Another Vs. Union of India and Others

Overruled by : Chheda Industries v. Collector of Customs, Madras

SooperKanoon Citation : sooperkanoon.com/682947

Court : Delhi

Decided On : Sep-23-1982

Reported in : 1983(12)ELT258(Del)

Judge : R.N. Aggarwal and; Rajinder Sachar, JJ.

Acts : Customs Act, 1962 - Sections 2(23), 12, 14, 15, 17, 18, 25 and 129; Customs Tariff Act, 1975; Customs Tariff (Amendment) Act, 1982; Constitution of India - Articles 14, 19 and 304

Appeal No. : C.W. 2131 of 1982

Appellant : Super Traders and Another

Respondent : Union of India and Others

Advocate for Pet/Ap. : Mr. Sen

Judgement :
Sachar, J.

1. This group of petitioners was heard together as common points arose in all these petitions. The arguments were addressed in C.W. 2131/1982. A part from details as to the quantity to be imported and the dates there is no difference and the judgment in this case will govern the other writ petitions also.

2. The petitioners import defective/secondary grade stainless steel circles. The said material is broadly used in the consumption of industries engaged in the manufacture of the utensils in the country. By Section 12 of the Customs Act, 1962 (hereinafter to be called the 1962 Act) duty of Customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (hereinafter to be called the 1975 Act). Goods having been received the petitioner presented their bill of entry for clearance to the Customs Authorities. The petitioners claim that they were entitled to clear the goods by paying rate of duty under entry No. 73.15(1) in the schedule to 1975 Act, which is 60% (effective 35% in view of exemption notification dated 18-6-1977). The Customs Authorities however, refused to clear the goods at this rate because according to it the goods imported by the petitioner are covered by the heading 73.15(2) of the schedule of 1975 Act, where the rate of duty is 300% (effective 220% because of exemption notification dated 15-7-1977).

3. The heading 73.15(2) in Customs Tariff Act reads as under :

----------73.15 Description of Rate of duty Central ExciseArticles (a) Standard Tariff Items(b) Preferential area----------(1) (2) (3) (4)----------Alloy Steel and highCarbon Steel in theform mentioned inHeading No. 73.06/07to 73.14(i) Not elsewhere (a) 60%specified(ii) Coils for the (b) 300%rerolling, bars(including bright bars)rods, sheets, and platesof stainless steel.----------

Thus it will be seen that there is a vast difference in the duty payable depending on whether the article imported by the petitioners is held to be covered by 73.15(1) as is claimed by them or is covered by 73.15(2) as is the plea of the respondents. We may note that the Parliament has passed the Customs Tariff (Amendment) Act (No. 15) 1982 by which it has amended the heading 73.15 in the first schedule to the Act of 1975. Now circle is specifically mentioned therein. This amendment is deemed to have come into force with effect form 1-1-1981 though it received the assent of the President on 11-5-1982. We shall have occasions subsequently to

deal with the arguments relating to the virus and other attacks against this Act urged by the counsel for the petitioner.

Are stainless steel circles covered under heading 73.15(2)

4. Iron and Steel articles are covered under Chapter 73 of 1st Schedule to 1975 Act. Heading No. 73.15 relates to Alloy Steel. Stainless steel being alloy steel falls under has heading. This much is common case.

5. The plea of the petitioners is that as there is no mention of stainless steel in the form of circles to be found in heading 73.15(2) (prior to the Amendment Act) the only sub-heading under which the petitioner's imports could be covered would be the residuary one i.e. 73.15(1), i.e. not elsewhere specified. The respondent's plea however, is that circle is nothing else but 'sheets' which is specifically mentioned in 73.15(2) and, thereforee, it would be covered by sub-heading (2). We agree with the interpretation given by the respondents. Reference in this connection be made to clause (n) of Chapter 73 of the schedule to the 1975 Act, which defines sheets, plates in heading 73.13. The note further says that heading No. 73.13 is to be taken to apply inter alias to sheets or plates which have been cut to non-rectangular shape perforated..... Now heading 73.15 requires two things, namely - (a) that gods must be of Alloy steel, stainless; (b) they must be in the form mentioned in headings 73.06/7 to 73.14. Admittedly the goods of the petitioner are of stainless steel. 73.13 deals with sheets and plates of iron and steel. But sheets in terms of clause (n) of Note 1 of Chapter 73 is to be taken to apply to sheets which have been cut to non-rectangular shape. The petitioner is importing stainless steel circle which really means sheet cut to non-rectangular shape. So there does not seem to be any justification to say as to why stainless steel circles would not be included in 73.15(2) read with 73.13, clause (n) of Note 1 of Chapter 73. Mr. Sen the learned counsel for the petitioner sought to urge that non-rectangular does not mean circle because there is not angle in the circles. According to the counsel non-rectangular only means that the form is not rectangular but that the form necessarily must have some angle, otherwise clause (n) of Note 1 is inapplicable. We cannot agree. Now when clause (n) says that sheets or plates are to be taken to apply to sheets which have been cut on non-

rectangular shape we must give it the obvious meaning i.e., the shape which is not rectangular. The additional requirement urged by Mr. Sen that the shape must be in a form which must necessarily have an angle reads some thing extra not found in the definition. A non-rectangular shape may be in the form of circle, may be of a shape having different angles like being quadrangular, or Hexagon. But on no reasonable interpretation of this definition while if exclude sheets cut in the form of circles. In this connection we may note that M. L. Jain, J. in C.M. 2737/1982 in CW 1812/1982 decided on 26-8-1982 also took the view that non-rectangular shapes will include circular and sugar shapes. This view has our respectful concurrence. This view of ours finds powerful support from the manner in which international custom people and trading circles understand the meaning of this heading. In this regard reference may be made to the Compendium of Classification Opinions. This Compendium gives a Numerical List set out in the order of the headings of the Customs Co-operative Council on the advice of the Nomenclature Committee. Thus under the Heading 73.13 or 73.15 (as the case may be) Sheets or Plates of Iron or steel, for boiler or tank bottoms, or ends include sheets or plates, of iron or steel cut to circular shape but not further worked. This will show that in the international trade sheets or plates of iron or steel cut to circular shape will be included under the heading 73.13 or 73.15. There is no reason why for our Indian Customs Sheets should not include sheets or plates cut to circular shape also. It is significant to note that the first schedule to 1975 Act is broadly based on the Brussels Tariff Nomenclature, though some of the individual headings have been merged or sub divided to accord with the pattern of Indian Import trade. The entries in the schedule are common because without it international trade would suffer serious problems in being able to tax and identify various articles. As a matter of fact many a article bear lower rates of duty by virtues of General Agreement on Tariff and Trade (GATT). In that context the fact that international customs opinion describe sheets and plates under 73.15 to include sheets cut to circular shape would be a very strong reason not to interfere with finding of the authorities under the Customs Act which have taken the view that stainless steel sheets would include stainless steel circles also.

6. Mr. Sen urged that whenever the legislature wanted to include circles under any heading it say so specifically and refers us to items 27 and 26A of the first

schedule of the Central Excises Salt Act 1944. Item No. 27 of Aluminium under clause (b) contains the description of manufacture of plates, sheets, circles mentioned separately. Similarly item No. 26A dealing with Copper and copper alloys contains the description of the plates, sheets and circles separately. The suggestion is that as sheets, circles are separately mentioned sheets cannot include circle. We are unable to agree.

7. It is no doubt true that in these two articles of the Excise Act both sheets and circles are described separately, but then the description of an article under the Excise Act cannot be taken as covering and determining the meaning of the said item under the Customs Act. Mere fact that sheets and circles have been defined separately does not necessarily mean that sheets under the Customs Act cannot be said to include circles. In this connection one cannot ignore that under Chapter 73 Note 1(n) specifically has said that sheets are to be applied to sheets cut to non-rectangular shape marking it clear that the legislature meant to include circles under the heading of 73.15(2). It is also of interest to note that both under items 26A and 27 of the I schedule of Excise Act the rate of duty is the same for sheets and circles being Rs 2,000/- per M.T. and Rs. 1450/- per M.T. respectively. We are mentioning this to show that even though sheets and circles have been defined separately, nevertheless the rate of duty on both forms i.e., sheets and circles is identically the same. If any inference is suggested to be drawn from the fact the sheets and circles are separate items because they are mentioned separately in the Excise Act as was suggested by the counsel for the petitioner an equally plausible inference can be drawn as suggested by counsel for the respondents by urging that as both sheets and circles are subject to the same rate of duty under the Excise Act it should stand to reason that on same analogy the same rate of duty would be applicable to the sheets and circles under the Customs Act also. We need not however pursue this line under the Excise Act as we are quite satisfied as discussed above, the stainless steel circles are included in Heading 73.15(2) of I Schedule to Import Tariff. Of course after the Amendment Act 15 of 1982 has come into force not even this argument is available because circles are now specifically mentioned in Headings 73.15(2).

Whether the Heading 73.15(2) applies to the prime quality of stainless steel only or does it apply to both prime and defective and secondary stainless steel circles also.

8. Mr. Sen Realizing that even if the entry 73.15(2) did not include circles at one point of time does now include circles specifically by virtue of amendment Act puts forth the alternative argument that Heading 73.15(2) does not cover the petitioners imports because the said Heading only applies to the import of goods of prime quality. Now a reference to headings does not show and indeed Act of 1975 does not distinguish between prime and defective items for the purpose of assessment to duty. As a matter of fact right through the Customs Tariff Act there is no classification of prime quality and secondary or defective quality, as is urged by Mr. Sen. Relevance of prime and defective quality may have connection to the price that is paid by the importer and consequently to the amount of duty because duty of customs is chargeable on any goods by reference to their value as per Section 14 of Customs Act 1962. The rate of duty livable under 73.15(2) is ad valorem and uniform namely 300% for all alloy steel and high Carbon steel under 73.15(2). The effort to read only goods of prime quality in 73.15(2) is not supportable by any reference to Act of 1975. Actually it is not necessary to provide for such a difference because what the legislature is doing is to impose a standard rate of duty of 300%. The duty payable may naturally vary with the quality of the Article. May be if stainless steel is of prime quality it will be valued more with the result that the the rate of duty may be more on that particular consignment and similarly it may be less if goods imported are of defective stainless steel. Thus duty payable will be less because of the value of goods not because it is of any quality. The rates of duty prescribed for under various Heads of the Customs Tariff Act, 1975 are with reference to the shapes and forms of the various types and not with reference to their condition or quality. All items of alloy steel and high carbon steel in the form mentioned from 73.06/07 to 73.14 fall under Heading 73.15 irrespective of whether they are prime quality or of defective seconds quality. To take an instance billets mentioned in heading 73.06/07 if made of stainless steel would fall under heading 73.15(1) whether of prime quality or of defective seconds. This is because billets as such is not specifically mentioned in 73.15(2) and, thereforee, will be covered by 73.15(1) but it will make no difference whether the quality is

prime or defective.

9. Mr. Sen sought to urge that the fact that while amending the Act there is a specific mention in the object and reasons given for amendment that because of the pendency of the large number of petitions the Act was being amended and though, thereforee, circle has been included in 73.15(2) yet it has not been specifically provided that defective and secondary stainless steel items are also covered by 73.15(2), it means that the legislature did not so wish to include it because this point namely that 73.15(2) does not cover goods of secondary quality had been taken in various petitions. We are unable to agree. It was not necessary for the Amendment Act to specify separately secondary and defective stainless steel in 73.15(2) as under the Customs Tariff Act there is no distinction between prime and defective items. All goods made of alloy steel are covered by Heading 73.15.

10. Mr. Sen next urged that as the Amendment Act has specifically included circles in 73.15(2) but has not qualified it by quality it must mean that the legislature did not want to include secondary quality notwithstanding that this point had been raised in the petitions. This is too far fetched an argument and as we have already said there is no distinction between secondary quality and prime quality it was not necessary to specify the quality of the article to be imported. As a matter of fact it would be surprising that when according to the statement of objects and reasons the Act was being amended with the sole object of preventing the manipulation of goods in a way so as to claim lower rate of duty and with a view to making the intention clear the legislature should have deliberately left this point untouched (if it was necessary), the result of which would be the continued payment of lower rate of duty. It should also be realised that it is only defective stainless steel goods which were permitted to be imported by the private parties. The Amending act is specifically passed to meet the situation necessitated by the interim orders of the Courts passed at the instance of the private parties. The importers of defective grade stainless steel goods were the only ones who were claiming to pay lower rate of duty. There was no challenge by importers of prime quality. If the argument of Mr. Sen was to be accepted, legislature would be doing an exercise in futility because persons like the petitioners would then only be liable

to pay lower rate of duty. This would be attributing illogicality and absurdity to the legislature a situation which can never be contemplated. The only rational answer to this is that the legislature did not mention quality in the amended 73.15 because such a requirement is foreign to the Customs Tariff Act and hence totally unnecessary. This aspect of argument, thereforee, fails.

11. Though Mr. Sen was not able to point out any provision in the Tariff Act of 1975 wherein any classification was made between prime quality and secondary quality of goods he nevertheless urged that such a classification was made in the various import policies and the trade understood the articles for import to be classified into prime and secondary and, thereforee, the same principle should be applied in interpreting a heading in the Customs Tariff Act. In that connection our attention was drawn to the import policy of 1980-81; Appendix 6 which contains items which are on the banned list. In the said appendix item 4 deals with all grades of carbon steel and item No. 7 deals with all second grade/defective/cutting circles alloy steel. Reference is also invited to appendix 8 which is a list of items import of which is canalised through public sector agencies and reference is invited to Seriall Nos. 23 and 50 where imports of plates/sheets is described in all grades. Similar references were also given from the Import Policy of 1978-79 and 1979-80. Effort was thus made to persuade us to hold that as the import policy had made a distinction between the prime quality and the secondary quality, the result would be that when the Tariff Act heading mention stainless steel it includes only goods of prime quality and does not include the secondary grade. We have already rejected the argument and shown that there is nothing in the Tariff Act of 1975 to justify the argument of classification of goods between prime quality and defective quality. The Customs Tariff Act only deals with the articles and the duty is with preference to the shapes and forms. So far as the quality of goods are concerned it is totally immaterial so far as the Customs Tariff Act is concerned. The argument of reading classification in the Customs Tariff Act by analogy by interpreting the provisions of the import policy are not permissible. It must also be appreciated that there may be proper and valid reasons why distinction is made between prime and secondary qualities. This is possibly done because some of the items on the banned list are permitted to be imported and some are canalised through public sector agencies. In the banned list item 4 deals with all grades

carbon steel and separately also with second/second grade/defective. Canalisation is also of all grades. It cannot be suggested that the secondary grades cannot be imported by the public sector agencies. However, the Government has allowed the secondary grade stainless steel to be imported by private sector. It is for this reason that distinction is made in the import policy indicating thereby that permission to the importer for importing stainless steel goods will be of the quality of secondary and defective grades. The quality has not relevancy to the rate of duty that is to be imposed because the same is relatable to the value of the goods. We cannot, thereforee, accept the argument that because of the distinction in the import policy such a classification should also be read in the Customs Tariff Act. As a matter of fact the rules for interpretation of the first schedule of the Act of 1975 clearly go against this contention of Mr. Sen. Thus Rule 2 for the interpretation of schedule of the Act, 1975 states that any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that as imported, the incomplete or unfinished article has the essential character of the complete or finished article. Thus according to this rule even an unfinished article will be included in the heading provided it has the essential character of finished article. Thus the circles which are imported by the petitioners have certainly an essential character of complete article. The fact that it is unfinished in the sense that it is defective or has some dents cannot take it away out of the purview of the main heading. Thus 73.15(2) when it talks of the stainless steel circle must be held to include all stainless steel circles irrespective of whether it is of prime or secondary grade quality. Mr. Sen referred to Dunlop India Ltd. v. Union of India - AIR 1977 SC 597. In that case the Supreme Court came to the conclusion that no reasonable person could come to the conclusion that V.P. Latex would not come under rubber raw, for which there was specific item No. 39 of the Tariff Act and the decision of the Central Government to classify it under item 82(3) of the Tariff Act as artificial or synthetic resins because of the end use of the article was held to be absolutely irrelevant in the context of the entry where there was no reference to the use or adaptation of the article. It is relevant to note that in that case also the Supreme Court emphasised that it was not for the court to determine itself under which item a particular thing falls and it is best left to the authorities entrusted with the subject.

The court only interfered because it took the view that where the very basis of the reason for including the article under the residuary head in order to charge higher duty is foreign to a proper determination of this kind, that court will be loath to say that it will not interfere. This does not carry the matter any further because in the present case there is specific entry 73.15(2) which covers the goods of the petitioner and the effort to take it out of specific entry and to have it covered under the residuary heading must fail.

12. Mr. Sen in this connection had laid much stress on the fact that this being fiscal enactment the subject cannot be taxed unless it comes within the letter of the law and the argument that he falls within the spirit of the law cannot avail the department and further that the interpretation of a fiscal enactment is in doubt, the construction most beneficial to the subject should be adopted even if it results in obtaining an advantage to the subject. In this connection he cited I.T. Officer Tuticorin v. T. S. D. Nadar : [1968]88ITR252(SC) D. Rajiah v. Union of India 0043/1972 : AIR 1974 SC457 and Diwan Bros. v. Central Bank of India Bombay & others. The principle that no tax can be imposed by analogy is unexceptionable.

13. But in this connection it is equally well to remember that 'It is primarily for the Import Control Authorities to determine the head or entry in tariff schedule under which any particular commodity fell, but it in doing so, these authorities adopted a construction which no reasonable person could adopt, i.e. if the construction is preserve, then it is a case in which the Court is competent to interfere. In other words, if there were two constructions which an entry could reasonably bear and one of them which was in favor of Revenue was adopted, the court has no jurisdiction to interfere rarely because the other interpretation favorable to the subject appeals to the court as the better one to adopt.' : [1963]2SCR277 . In that case the dispute was whether feed oats fell within item 42 i.e., fodder, grain, or under item 32 i.e. grain. The Customs authorities held that the goods imported fell within item 32 and the importers had undoubtedly no license to import under that heading. The learned Judges of the High Court however, held that entry 32 reading grain had to be read as excluding all grain which would be fodder and as the petitioner had imported oats for horses feed, the proper item within which the goods imported fell were item 42 fodder etc. The Supreme Court set aside the

judgment of the High Court because it held that it cannot be said that the view taken by the Customs authorities was such which no reasonable person can adopt. It is also well to remember that the court dealing with the petition under Article 226 is not sitting in appeal over the decision of the Customs authorities vide Girdhari Lal v. Union of India : 1964 CriLJ461 .

14. As a matter of fact in V. V. Iyer v. Jasjit Singh : AIR 1973 SC194 the court has cautioned the High Court against interfering under Article 226 of the Constitution with the decision given by the Customs authorities in very strong language wherein it observed :

'Even if it be assumed that because of the language used in the two items viz. Items 74(vi) and 74(x) of the I.T.C. Schedule, there is some room for confusion, it would not be competent for the High Court to interfere in a writ petition with the conclusion or finding of the Collector of Customs regarding the scope and ambit of those items.'

In this case stress was laid on an earlier decision of the Supreme Court to urge that if there is doubt in the construction of the license the appellant against whom the penal provisions of the Sea Customs Act, 1878 are sought to be enforced is entitled to the benefit of doubt. The Court however referred to Collector of Customs v. Ganga Setty : [1963]2SCR277 and Thansingh v. Supdt. of Taxes : [1964]6SCR654 wherein the decisions of the larger benches has taken the view that even if the Collector of Customs had taken a wrong view in construing the entry the High Court cannot interfere with the decision is found to be perverse or such which no reasonable person can arrive at. It is thereforee not correct for Mr. Sen to urge that simply because an interpretation about an entry has to be given this makes the whole thing doubtful and it can only be resolved by decisions against the Revenue. In this connection we would like to note that sometimes the broad maxim that a penal provision should be strictly construed against the department and if any concession is to be made it must be made in favor of the citizen, is put forth as if it is an inevitable mandate that an effort be made at finding any technical flow to help a person from avoiding to pay the duties and taxes livable under the provisions of law. A Bench of this Court had occasion to express

disapproval of such an approach in (C.W. 629/1980 decided on 27-11-1980) Hindustan Aluminium Corporation Ltd. v. The Supdt, Central Excise and others, 1981 ELT J 642, where one of us (Sachar, J.) speaking for the Bench observed :-

'We cannot accept as sound law that a fiscal provision has to be construed against the department and in favor of citizens on any supposed reason of technicality and strict construction. It must be remembered that it is only when there is some equivocation or ambiguity about a word or provision that the rule of strict construction or narrow construction in favor of the subject is to be applied but if there is no ambiguity and the act or omission falls clearly within the mischief of statute then the construction of penal statute will not differ from that of any other, see : Maharaj Book Depot v. State of Gujarat, : 1978 CriLJ1859

15. 'Although the common distinction, 'as Pollock C.B. said in Nicholson v. Fields' taken between penal Acts and remedial Act that the former are to be construed strictly and the others are to be construed liberally, is not a distinction, perhaps, that ought to be erased from the mind of a judge,' yet the distinction now means little more than 'that penal provisions, like all others, are to be fairly construed according to the legislative intent as expressed in the enactment, the courts refusing on the one hand to extend the punishment to cases which are not clearly embraced in them, and on the other equally refusing by any mere verbal nicety, forced construction, or equitable interpretation to exonerate parties plainly within their scope.' see Craise on Statute Law 6th Edition page 531.

16. It was further observed that the principle of strict interpretation being carried to the extent of holding as if there was something inherently bad or penal in the imposition of taxes and duties so that on small technicality the conclusion should be inferred that a citizen is entitled to a void payment of tax cannot be accepted by us as laying down a sound rule of interpretation.

17. Thus Stainless Steel circle must be held to be covered under the Heading 73.15(2) of import Tariff.

Is the Amendment Act Constitutional

18. Realizing that even if the petitioners were to succeed on the interpretation given by them of 73.15(2) it will not avail them because as already mentioned Amendment Act 15/82 specifically includes Stainless Steel Circle, Mr. Sen raised a challenge to the virus of Amendment Act.

19. We may note that no challenge was made to the competency of the Parliament to frame such a legislation. Nor was there any challenge to the prospective application of the Amendment Act. The only challenge was to the retrospectivity introduced by Section 3 of the Amendment Act, by which amendment made in Heading 73.15(2) was to have effect as from the first day of January 1981, while the Act received the assent of the President on 11-5-82. Frankly one would have thought that any challenge to the competency of the legislature to make laws retrospectively or even a serious challenge to the unreasonableness of such a legislation unless it was patently plainly, manifestly, discriminatory was a non-starter more so after the same argument had been repelled after number times by the Supreme Court. But nevertheless an argument was raised on this ground, though it must receive short shrift, because it is well settled that 'the legislative power conferred on the appropriate Legislature to enact law in respect of topics covered by the several entries in the three lists can be exercised both prospectively and retrospectively. Where the Legislature can make a valid law, it may provide not only for the prospective operation of the material provisions of the said law, but it can also provide for the retrospective operation of the said provisions'. (Vide Rai Ram Krishna v. State of Bihar : : [1963]50ITR171(SC) . So well establishes is this proposition that in the words of Supreme Court that 'retrospective legislation may be enacted is not now open to question'. (Vide S. T. Swaminar v. Comer. H.R. & C.E. : AIR 1963 SC 166.

'It is well settled that within its competence, a legislature has the power to make a law imposing a tax retrospectively or validate defective laws by subsequent legislation, or even past unlawful collection, the power of validation being ancillary to and included in the power to legislate on a particular subject.' (See : [1975]1SCR312).

20. The next objection was that the Act was discriminatory as it has arbitrarily chosen a date, namely 1-1-81, from which date the Act had been made effective retrospectively. The Explanationn given for this date by Mr. Bhandare was that the objections as to the stainless steel being covered by heading 73.15(2) was raised when Bill of Entry was presented in January 1981. The stand of the respondents is that earlier to this date the customs had never permitted the stainless steel circles to be imported under the head 73.15(1) and it was only because of the direction given by this court that the customs authorities were now permitting the same to be imported under 73.15(1). As there was vast difference in the duty chargeable under respective sub-head in 73.15, the Amendment Act naturally had to cover this period to prevent loss of revenue to the State. We cannot say that the said reasons for fixing this date is in any way extraneous or unreasonable. If the government is faced with a situation where large scale duty of customs is being sought to be avoided its efforts to remove that lacune, if any, is both reasonable and unobjectionable. The fixation of date is by its very nature an ad hoc one and unless it can be said that the fixation of date was totally arbitrary or not related to any reasons the same cannot be held to suffer from the vice of arbitrariness. It is well settled that 'Judicial scrutiny can extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an enquiry permissible it would be open to the court to substitute their own judgment for that of the Legislature or the rule making authority on the need to classify or the desirability of achieving a particular object.' Now it is no doubt true that it is open to a party to contend that the restrictions imposed by a law are so unreasonable that they should be struck down on the ground that they contravene the Fundamental Rights guaranteed by Article 19(1)(g). It is equally true that taxing statutes are not beyond the pale of constitutional limitations prescribed by Articles 19 and 14 and that the test of reasonableness prescribed by Article 304(b) is justifiable, [Vide Rai Ramkrishna case (Supra)]. But it is equally well settled that 'the power of taxing the people and their property is an essential attribute of the Government and Government may legitimately exercise the said power by reference to the objects to which it is applicable to the utmost extent to which Government thinks it

expedient to do so. The objects to be taxed so long as they happen to be within the legislative competence of the legislature can be taxed by the Legislature according to the exigencies of its needs, because there can be no doubt that the State is entitled to raise revenue by taxation. The quantum of tax levied by the taxing statute, the conditions subject to which it is levied, the manner in which it is sought to be recovered, are all matters within the competence of the Legislature, and in dealing with the contention raised by a citizen that the taxing statute contravenes Art. 19, courts would naturally be circumspect and cautious'. (Vide para 12 of Rai Ramkrishna case (supra.). It is relevant to note that in the above said case the period covered by the retrospective operation of the Act was between 1950 and 1961 and yet this retrospectivity was not held to amount to imposing restrictions which were not reasonable and not in public interest. In the present context the period of retrospectivity is only one year, for which there is proper reason. Earlier importers of stainless steel circles had to pay duty under 73.15(2). We say this because though it was sought to be suggested by counsel for the petitioners that prior to the Amendment Act of stainless steel circles were being imported and charged under 73.15(1), no specific reference or material was placed before us to show that the Customs Authorities over permitted stainless steel circles to be imported under sub-heading 73.15(1). The matter became dubious only when petitions were filed in the courts urging that the stainless steel circles are to be covered under the residuary articles of 73.15(1) and not 73.15(2). The statement of objects and reasons for the Amendment Act shows that attempts had bene made by some importers to manipulate the description or form of articles as to claim a lower rate of duty. The retrospective operation, the objects and reasons states, has been given so as to ensure that the effective rates of duty on such angles, sheets and circles are the same as applicable from time to time to stainless steel sheets.

21. 'For a true interpretation of all statutes in general it is very relevant to find out what was the common law before the making of the Act, what was the mischief and defect for which the common law did not provide, what was the remedy the Parliament hath resolved and appointed to cure the disease'. [Vide K. P. Verghese v. Income Tax Officer], : [1981]131ITR597(SC) .

22. Another argument against the alleged unreasonableness of the Amended Act sought to be urged was by saying that by the retrospectivity many of the settled contracts of the parties have been unsettled in as much they had been led to believe that the rate of duty was the lower one under 73.15(1) and because of the amendment excessive burden is being put on him which amounts to unreasonable restriction. In this connection we must dispel the oft repeated suggestion as if there is any estoppel against the Government or the legislature to change the rate of duty of custom or excise during the course of a financial year. The whole stress of this argument seems to be as if during the financial year, the rate of duty of excise or customs or the list of goods which can be imported or exported as indicated either in the Import Policy or in the schedule is immutable and that it is not permissible for the Government or the legislature to revise its policy or rates of duty during the year or in such a manner as to affect existing contracts, which had been entered into prior to the announcement of changed policy. These arguments amount to pleading promissory estoppel against the legislature which is impermissible in law. (See M/s. Jit Ram Shiv Kumar v. State of Haryana, AIR 1960 SC 1285. These arguments proceed on misunderstanding of the role and importance of Import and Export Policies of a State. In the matter of import and export no party can claim any vested right to compel the Government or the legislature to refrain from making any changes during the financial year. This is because the position of foreign exchange varies so much and the requirement and the considerations of national economy are so urgent that it would be trespassing on the legislative and the Administrative field if courts were to hold that a rate of duty or tax was immutable for any particular period. As a practical measure there would always be some parties whose contracts are outstanding. If the spacious argument was carried to its logical and then no change could be made in the rates because some one or the other may always be affected. And if this argument was countenanced then the Government or legislature could be hold to ransom by parties entering into long term contracts at the existing rates of duty and then insisting that no change be made in those rates till all the contracts are executed, which may take years for completion. To take an illustration if A enters into a contract with B to import goods for the next five years of item falling under 73.15(2), at present the duty payable is 300%. But could with any sense of

rationality be it urged that if the government tomorrow was of the opinion that it was expedient in the interest of trade and economy to raise the rate of duty under 73.15(2) from 300% to 350%, it would have no power to do so, on the untenable ground that it will affect the existing contracts entered into by various parties This argument, if accepted, will make a mockery of the whole import-export legislation. We must not forged that as to what duty is to be imposed imported are matters of administrative policy with which the Courts have no concern for the simple reason that they do not have the expertise nor possess all relevant information. At any point of time the Government may well take a view that considering the foreign exchange situation particular goods may be banned notwithstanding that the parties may have entered into various contracts. All private commitments must be and are subject to over-all power of the legislature or the executive to frame any legislation. Policy changes required in the interest of public do not get held up to suit the private convenience of the various business interests. Foreign exchange resources of a country are its great assets. The Government may take a view that if imports are to be permitted because of the exigencies of situation they should bear particular rate so that atleast State Revenues are increased. So even if stainless steel circle was not included in the sheet under the original sub-heading 73.15(2) the Government may well take the view that since scarce foreign exchange is being permitted to be utilised, the imports should atleast earn good State Revenue and if for that purpose also it had increased the duty, its acting could not be said to be unreasonable. 'Policies of imports or exports are fashioned not only with reference to internal or international trade but also on monetary policy, the development of agriculture and industries and even on the political policies of the country but rival theories and views may be held on such policies. If the Government decides an economic policy that import or export should be by a selected channel or through selected agencies the court would proceed on the assumption that the decision is in the interest of the general public unless the contrary is shown'.... (para 16). . ... Ordinarily, the import or export of goods under international contracts of sale frequently requires, in modern time, the permission of a Governmental authority in the form of import or export license. Where this is the case, the parties will usually provide in the contract which of them is to apply for the necessary licenses and what is to happen if the application

is refused (Vide Daruka & Co. v. Union of India : : [1974]1SCR570 at 2716 and 2718). The reluctance and self restraint to be exercised by courts when dealing with the validity of taxation laws including excise was brought out well in Patton v. Bardy : 184 U.S. 608 wherein the U.S. Supreme Court observed :

'But so long as the legislation is not colorable merely, but is confined to the enactment of what is in its nature strictly a tax law, and so long as none of the constitutional rights of the citizen are violated in the directions prescribed for enforcing the tax, the legislation is of supreme authority. Taxes may be and of ten are oppressive to the persons and corporations taxed, they may appear to the judicial mind unjust and even unnecessary, but this can constitute no reason for judicial interference.' ... ...

'It is not the province of the judiciary to inquire whether the excise is reasonable in amount or in respect to the property to which it is applied. These are matters in respect to which the legislative determination is final'.

Courts are not concerned with the wisdom and expediency of a policy. Their concern is the legality of the action. Once the legislation or the executive action steers clear of constitutional or legal prohibition it must be allowed to experiment with any administrative policies which are felt in the circumstances to best serve the public interest. 'Even Sales Tax can be imposed with retrospective effect.' [State of Punjab v. Dewan's modern Breweries Ltd., : [1979]3SCR568

23. The argument, thereforee, that the legislature by making an Act retrospective has acted unreasonably because it will affect some of the contracts which have already been entered into is without any substance. We were referred to a letter of 12-4-1982 addressed to the petitioners by the buyers by pointing out that they had agreed to sell the goods at Rs. 23/- per kg. notwithstanding any subsequent change in duty or tax and urging that if now they were asked to pay duty under 73.15(2) they will have to pay the higher duty and not the buyer. Suggestion being that if the legislation does not provide for recovery of duty of Excise from the buyer it would be per se illegal. As a matter of practical impact the rate of duty of excise does not in any manner affect the importer because whether the duty is paid under 73.15(1) or 73.15(2) the same is going to be recovered from the consumer and the

buyer. In the present case right at the first instance at the time of getting the goods released the petitioner has been told that customs is asking him to pay duty under 73.15(2). As such he will naturally make a provision to include the duty in the price to be recovered from the buyer. But even if the goods had been sold and lower rate of duty had been realised and subsequently the legislature by a retrospective amendment had imposed a higher rate of duty it would have been no argument against the validity of the Amendment Act that as seller is not in a position to realise the higher rate of duty from the buyer the retrospective operation of tax provision makes it unreasonable. In this connection reference may be made to J.K. Jute Mills Co. v. State of U.P. AIR 1961 SC 1934. In that case an amendment had been made imposing sales tax retrospectively and the argument was that as the tax had been imposed retrospectively the seller would not be in a position to pass on the tax to the buyer and, thereforee, this retrospective legislation was unreasonable. While noting that the sales tax is according to the accepted notions intended to be passed on to the buyer the Supreme Court negatived the contention that this situation would make the Act incompetent or unreasonable, the court observed :-

'But it is not an essential characteristic of a sales tax that the seller must have the right to pass it on to the consumer, nor is the power of the legislature to impose a tax on sales conditional on its making provision for sellers to collect the tax from the purchasers. Whether a law should be enacted imposing a sales tax, or validating the imposition of sales tax when the seller is not in a position to pass it on to the consumer, is a matter of policy and does not affect the competence of the legislature.' [Vide J. K. Jute Mills Case (Supra)].

Mr. Sen seems to suggest that there is a distinction between a situation where the Act having been struck down as unconstitutional is later on validated by the Parliament. He says that there is no unreasonableness because as a matter of fact tax was always there though it had been struck down subsequently. We find this distinction without any substance. A law made by the legislature beyond its competence is still born and void ab initio (See Deep Chand v. State of U.P. : : AIR 1959 SC648 . In such a case there is no question of validating a dead law. What happens is that subsequently a competent legislature passes a law and makes its

operation retrospective so as to cover the period during which the earlier law was technically operative before being declared ultra virus by the Courts. In this connection reference may advisedly be made to S.S. Sakhar Karkhana v. Collector, Sonali : [1980]1SCR982 . In that case a tax law passed by State Legislature had been struck down as being incompetent insofar as it sought to impose the recovery of Cess within the factory area on the ground that this was beyond the legislative competence. Parliament later on passed an Act providing that the imposition of assessment under the State tax law will be as if imposed under the Parliament Act. Upholding the validity of this legislation the Supreme Court explained in S.S. Sakhar Case (Supra) that what was done was not merely to validate what the State authority had done but re-enact the provisions by virtue of the authority under the Parliament, and the Supreme Court held that the Parliament could with retrospective power pass a law making the levies valid. We thus cannot find any difference in situations between the position where the Parliament passes an Act for recovery of those Cesses which were held invalid (as having been passed by State Legislature without having legislative competence, or where the Parliament passes a law for the first time imposing a cess with a retrospective effect. The reason is that in law in either case the levy is made with retrospective effect and unless it violates part III of the Constitution or Article 304(6) it will have to be upheld. 'Legislation cannot be considered unreasonable merely because it imposes a tax retrospectively. Retrospective legislation to prevent loss of revenue by transactions between the date of the bill and its enactment is familiar to many countries.' (See Chhotabhai Jethabhai Patel & Co. v. Union of India : AIR 1952 Nag 139. A power of validating a tax is after all implicit in the power to impose a tax retrospectively. Mr. Sen referred to Khyberbari Tea Co. v. State of Assam : [1964]5SCR975 for the proposition that even taxation measures must satisfy the test of reasonable restriction under Article 19. Broadly stated that proposition is unexceptionable but as mentioned in that very judgment, 'when the validity of a tax law is challenged a State would be entitled to rely on the fact that the revenue raised by tax law served the public purpose and that is the basic justification for being treated as a reasonable restriction on the individual's fundamental right under Article 19(1)(g) and Article 304(b). In the present case the only challenge is to the retrospective operation of the Act by a period of over a

year which considering the matter that doubt was cast on the recovery of the custom duty under a particular head cannot be said to be in any way unreasonable.' That the complaint of retrospectively in support of argument of unreasonableness of legislation of customs has always received short shrift is clear from the following observations made by Higgins, J. in Sargood Brothers v. The Commonwealth and another [1910 (3) C.L.R. 250 :-

'We have been reminded of the doctrine that Parliament is to be presumed not to intend to interfere with vested rights. But, in applying this principle, we should bear in mind the nature of the legislation which we have to consider. It is a Customs tariff, legislation in which it is the invariable and necessary practice to interfere with vested rights, to validate past unlawful collections, to make retrospective laws.'

We are, thereforee, of the view that no infirmity can be stricter to the Amendment Act on the ground that it is retrospective and further that there is no violation of Article 19(1)(g) of the Constitution and Articles 304 and that the restrictions are reasonable and in the public interest. This plea, thereforee, fails.

24. We may mention that though in the petition legality of Sections 3 and 4 of Provisional Collection of Taxes Act, 1931 was challenged on the ground that by these provisions the Amendment Bill was given effect for the period from 16-4-1982 (the date when Bill was introduced) to 11-5-1982, when the President gave his assent to the Bill, at the time of arguments Mr. Sen very properly did not press it as he conceded that the rates and taxes have necessarily to be made effective from the date of introduction of the Bill, otherwise the evasion of Revenue would be the inevitable consequence. Moreover this argument is merely an aspect of the retrospective operation of the Amendment Act and would have failed. 'Where the Legislature can make a valid law, it may provide not only for the prospective operation of the material provisions of the said law but it can also provide for the retrospective operation of the said provisions.' ..... 'The objects to be taxed so long as they happen to be within the legislative competence of the Legislature can be taxed by the Legislature according to the exigencies of its needs, because there can be no duty that the State is entitled to raise revenue by taxation. The quantum of tax levied by the taxing statute, the conditions subject to which it is

levied, the manner in which it is sought to be recovered, are all matters within the competence of the Legislature, and in dealing with the contention raised by a citizen that the taxing statute contravenes Article 19, Courts would naturally be circumspect and cautious.' (Vide Rai Ram Kishan case (Supra.).

Whether landing charges are to be included in the assessable value for the purpose of paying duty of customs

25. Landing Charges are payable to Stevedore Labour as well as the Port authorities for the use of cranes and winches. Under the Customs Act the Central Board of Excise and Customs has provided the Bill of Entry (Forms) Regulations, 1976. The said form prescribes the assessable value on the basis of value of the goods as loaded with landing charges. In the petition challenge has been made to these landing charges. One part of the challenge was on the assumption as if the landing charges are already included in the invoice made out by the foreign supplier and are paid directly by the shipping company to the port authorities. This argument was however, not pressed for the simple reason that factually that is not correct. The dispute really is not that landing charges have been paid to the port authorities and the petitioner is being asked to pay second time. The real dispute relates to whether the landing charges should be included in assessable value of a consignment imported into India for computing the customs duty payable thereon. Varying with the items landing charges normally amount to 3/4% of the C.I.F. value of the goods imported. Section 14 of the Customs Act provides for valuation of goods for the purpose of assessment and lays down that a duty of customs is chargeable with reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale. Now for the purpose of computing value what has to be seen in the value of goods at the time and place of importation and the price at which such or like goods are ordinarily sold. What is, thereforee, done by the Customs authorities is that for the purpose of valuation the value of the goods as determined by them in addition to the charges paid for landing are totalled together

and taken as value for the purpose of assessment under Section 14 of the Act. This is done for the sensible reason that the value of goods must be done at the time and place they are placed at Port and this can only be done if the goods have been unloaded from the ship which can only be after the landing charges have been already paid. The petitioner's contention however, is that under the Customs Act under Section 2(23) import means bringing into India from a place outside India and 'India' is defined to include the territorial waters of India, and thus the moment goods come within the territorial waters of India importation has taken place and the value of goods for assessment purposes must be taken to be at the point of time when the ship enters the territorial water. It is apparent that if this contention of the petitioner is correct then the landing charges will not be included in the value of the goods for the purpose of assessment for the obvious reason that when ship enters the territorial waters no landing charges have yet been incurred. This argument suffers from the infirmity of only looking at the meaning of 'India' defined in the Customs Act and ignoring that the qualification for the purpose of valuing the goods is the price at which goods are sold at the time and place of importation, in the course of the international trade. It may technically be the moment they enter the territorial waters of India. But from that the conclusion does not follow that for the purpose of valuation of goods that is the point of time and place at which value should be calculated. Valuation has to be calculated with reference to the place and time at which goods are ordinarily sold. This situation obviously arises after the goods have been put at the port and after paying landing charges. The argument of the petitioners suffers from being too hypertechnical as well as being impracticable. In this connection a reference may be made to Ford Motor Company of India Ltd. v. Secretary of State wherein the court interpreted that the price at the time and place of importation could not be taken to be 'Ex ship'. It observed that the argument that the cartage charges should be analysed so as to eliminate the proportionate cost of the journey from the boundary of the port to the railway station in Bombay, is not in their Lordships' view necessitated by the phrase 'place of importation'. The court also observed that the Legislature intended to exclude post-importation expenses need not be doubted, but it had to do this in a practicable manner without undue refinement, and it must be taken to have regarded the phrase which it employed as sufficient for the purpose if taken

in a reasonable sense. Reliance by counsel for the petitioner on M. S. Shawhney v. M/s. Sylvania and Laxman I.L.R. (1978) Bom 425 is of no avail. In that case what happened was that the goods were shipped and arrived at the port of Bombay on 29-3-1967. At that point of time these goods (Glass Tubes) which were imported had been given an exemption by means of a notification under Section 25 of the Act and which was to remain in force up to 31-3-1967. But when the Bill of Entry was presented under Section 15 of Customs Act in April, 1967, duties were livable and were imposed by the Customs Collector. The Bombay High Court took the view that taxable event is the import of goods within the Custom barrier. The Bombay High Court made a distinction between the chargeability in respect of levy of Customs which arose when the goods were imported into territorial waters of India i.e. 29-3-1967 and the quantification of the amount or assessment as provided under Section 15 of the Act which specifies the date for valuation and the rate of duty applicable is that rate in force on the date the bill of entry in respect of such goods is presented. It was for that reason that the court held that as the goods entered the territorial waters of India at a point of time when the exemption notification was operative there was no chargeability and hence no custom duty was payable. The present case is clearly distinguishable. In the present case what has to be found is as to what is the quantification and value to be taken for the purpose of assessment and at what point of time and whether the landing charges should be included in the value for the purpose of computing duty. A similar point as the present one directly arose before the Gujarat High Court in Special Civil application Nos. 1640/1981 etc. decided on 9-3-1982; the Division Bench answered it in favor of the Customs authority. We are in respectful agreement with the said decision. This argument of the petitioner suffers from the fallacy in assuming that the import of goods is complete by being brought within the territorial waters of the country. That this is not so is clear from the observations in Empress Mills v. Municipal Committee : [1958]1SCR1102 wherein it was observed :

'Sale is the object of importation, and is an essential ingredient of that intercourse, of which importation constitutes a part. It is as essential an ingredient, as indispensable to the existence of the entire thing, then, as importation itself.....import is not merely the bringing into but comprises something

more i.e., 'incorporating and mixing up of the goods imported with the mass of the property' in the local area. The concept of 'import' as implying something brought for the purpose of sale or being kept is supported by the observations of Kelly C.B. in Harvey v. Corporation of Lyme Regis. (1969) 4 Ex. 260 (P)..... The ordinary meaning and purport of the words is perfectly clear, namely, that tolls are to be paid on goods substantially imported; that is, in fact, carried into the port for the purpose of the town and neighborhood.'

26. Similarly, In re : Sea Customs Act, S. 20 AIR 1963 SC 1760 the Supreme Court held that 'truly speaking, the imposition of an import duty, by and large, results in a condition which must be fulfillled before the goods can be brought inside the customs barriers, i.e. before they form part of the mass of goods within the country. Such a condition is imposed by way of the exercise of the power of the Union to regulate the manner and terms on which goods may be brought into the country from a foreign land.' (para 26).

27. Thus import is inextricably associated with goods being brought into India so as to form a part of the mass of goods in the country. The only way the goods imported by the petitioner can become a part of mass of goods inside the country can be after they have been off-loaded from the ship and brought to the port. But before that situation can be achieved landing charges will have to be incurred so that the goods could be brought to the Port. That is why when valuation of the goods for the purpose of assessment is to be calculated under Section 14 of the Customs Act it will have to be at a value inclusive of landing charges. We are, thereforee, satisfied that the Customs authorities are justified in including the landing charges in the assessable value of the goods imported into India for the purpose of computation of the customs duty. The plea, thereforee, fails.

Alternative remedy, whether a bar to the writ petition

28. We have dealt with all the contentions on merits notwithstanding that a preliminary objection to the entertainment of the writ petition had been raised in the forefront in the reply affidavit. We have done so because large number of writ petitions had been admitted, interim orders passed and implemented in the meanwhile. If we were refuse to decide the matter on merits, it would have

benefited no one because the points would have been still at large without the petitioners or the Revenue knowing their position under law. That is why we have dealt with the merits of the petitions. But we are firmly of the view that the writ-petitions should normally not be entertained if there is an equally efficacious alternative remedy available under the Statute. It is well settled that when an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the court to issue a writ, but as observed by this court in Rashid Ahmed v. Municipal Board, Kairana : [1950]1SCR566 the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs vide also K. S. Rashid and Son v. Income Tax Investigation Commission : [1954]25ITR167(SC) , and where such remedy exists it will be a sound exercise of discretion to refuse to interfere in a petition under Art. 226 unless there are good grounds thereforee, (see Union of India v. T. R. Varma, : (1958)IILLJ259SC . This position was accepted in A. V. Venkateshwaran v. Ramchand Sobha Wadhwani and another : 1983ECR2151D(SC) though it was pointed out that the rule that the party who applies for the issue of a high prerogative writ should before he approaches the Court, have exhausted other remedies open to him under the law, is not one which bars the jurisdiction of the High Court to entertain the petition or to deal with it, but is rather a rule which Courts have laid down for the exercise of their discretion. It is true that in Venkateshwaran's case (Supra.) the Supreme Court refused to set aside High Court judgment which had granted the writ petition even though the party had not moved the Central government in revision, but that was as the court clarified that it took into account the peculiar circumstances of the case that the High Court had already exercised its discretion in granting the writ. The court emphasised this matter when it said that 'it would be remembered that the question is not whether if the respondent's application were before us, we should have directed the writ to issue, but whether the learned Judges of the High Court having in their discretion which they admittedly possessed made an order, there is justification for out interfering with it'. There were also two peculiar features. In that case fountain pens with gold plated nibs were not charged by Customs authorities under item

45(3) of Import Tax of Fountain pens carrying a rate of 30% ad valorem, but under item 61(8) as being articles plated with gold carrying 78% which was manifestly erroneous (though not beyond jurisdiction as the court has keen to emphasise). Also because Central Board of Revenue had issued a ruling that fountain pens with gold plated nibs be included in item 61(8). Now none of these peculiar features apply in the present cases. All that has happened is that on the Bill of Entry having been presented the Assistant Collector of Customs indicated that goods imported by the petitioners are liable to pay duty under Heading 73.15(2) of the Schedule. No order was obtained from the Customs authorities. No resort was made to the remedies of appeal and revision as provided in Chapter XV of the Customs Act. There is no valid Explanationn why these remedies should not have been exhausted before moving this court. After all it is a well established sound rule that the court's jurisdiction ought not to be lightly invoked when the subject can have justice done to him by resorting to the remedies prescribed by statutes. We can find no reason much less any convincing reason as to why the petitioners should not have availed of proper remedy available under the Act. We may also note that even the usually advanced argument (though not necessarily sound) that the party will have to deposit the whole of the duty before it can have the decision corrected in appeal, is not available to the petitioners because proviso to Section 129 of the Customs Act empowers the appellate authority if it is of the opinion that the deposit of duty will cause undue hardship to the appellant to dispense with such deposit, unconditionally or with such conditions as it may deem fit.

29. One other reason why this Court should refrain from interfering unless the parties have exhausted the remedy under the Statute has relevance for valuation of goods for the purposes of assessment as required by Section 14 of the Customs Act. Section 17 further provides that for assessment of duty after the bill of entry has been presented such goods shall be examined and tested by the proper officer and after such examination and testing the duty if any livable shall be assessed. For this purpose the officer can ask for various things about catalogue, the documents and other necessary material. Though the said Section permits the appropriate officer to assess the duty on the basis of the documents produced but if it is found subsequently on examination or testing that any statement in such entry of document is not true the goods may without prejudice to

any other action be reassessed to duty. Section 18 provides for provisional assessment of duty if security is furnished by the importers for the the payment of difference if any between the finally assessed duty and provisionally assessed duty. It will thus be seen that the statement of the importers as to the value of the goods which have been mentioned in the invoice or the bill of entry or the nature or quality of goods are not to be accepted automatically but are subject to scrutiny and inspection by the appropriate officer. Thus it can happen that the goods imported may be priced in the invoice at a particular figure, and also that they may be claiming them to be of secondary quality. The Customs authorities, however, may after inspection, be of the view that the price entered in the invoice is under-priced or that the goods are of prime quality. It is apparent that all these matters of price and quality require evidence and other details to be worked out which can evidently be done by the authorities under the Act. This cannot be done by the High Court in the first instance. It would for example be impermissible for the Court to go into the matter when the authorities under the Act have not looked into the matter and try to determine for itself whether the goods are of prime quality or secondary quality or under which item of the Schedule do the goods fall. These matters require expertise and familiarity with certain date and consideration of the evidence of experts. It these matters are not first determined by the Customs authorities under the Act this Court will be treading on uncertain ground if it undertakes an exercise in the first instance because it will then be deciding the matter without having the views of the authorities under the Act and also without relevant material which is necessary to be obtained for the satisfactory decision of the case. We are, thereforee, of the firm view that the present cases are those in which it would be proper exercise of discretion to also dismiss the petitions on the ground that the petitioners have not availed of the alternative remedy available to them under the Customs Act.

30. Before we part with the case, we would like to reiterate what we aid in our order in Civil Miscellaneous Application No. 3769/1982 in C.W. 2606/1982 passed on August 17, 1982, giving caution in the matter of giving stay in these matter, it must be remembered that stay of payment of excise or any tax should only be directed when there is a clear case of transgression of law or total excess of jurisdiction by the respondent-authorities. Barring such exceptional and clear

cases of excess of jurisdiction it would be proper exercise of jurisdiction of this Court not to stay the recovery of the duty of excise or customs or tax which has been imposed by the Parliament. The caution mentioned therein needs to be emphasised by what has happened in these cases. The petitioners had come to this court claiming that they were only liable to pay duty at the rate of 45% and not at 220% as was demanded by the Customs Authorities. This Court permitted the goods to be released on paying the admitted duty and giving a bond for the disputed amount and only 50% of bank guarantee for the disputed amount. Thus the petitioners were able to get their goods released by paying duty in cash only about 1/5th of what they have been found liable to pay as per our decision of today. Even the bank guarantee only covers 50% of the disputed duty, and whether realisation of the rest of the disputed amount will cause no problem in the lap of future. The result has been that the revenue has been deprived of these substantial amounts of the duty for all this period for which the stay has operated. Because the amounts involved were very substantial and was causing anxiety for the budget estimates with consequential train of administrative problems that it was considered serious enough for the Parliament to have allocated special urgent time to pass the Amendment Act 15 of 1982. That the sole reason why the parliament had to rush through the Amendment Act 15 of 1982 was the issue of interim orders by Courts permitting the goods to be got released by paying low rate of duty is evident, and as a matter of fact has been specifically mentioned in the statement of objects and reasons which clearly state that the difference in duty under the two sub-heads i.e. 73.15(1) and 73.15(2) is so large that the importers have claimed a low rate of duty though the Customs Authorities held the view that the goods were liable to higher rate of duty. But as this position has been challenged in various courts and the release of the consignment in term of the interim orders of the courts has resulted in deferment of substantial amount of revenue due to the Government the bill was being introduced to seek to achieve the objects of payment of higher duty. As it now turns out our decision of today holds that the un-amended sub-heading 73.15(2) includes stainless steel circles; in that view it was really not necessary for the Parliament to have amended the Act. The parliamentary exercise would not have been necessary if on the writ petitions, even though admitted on the ground that prima facie the matter requires

examination at regular hearing no interim order had been given permitting the goods to be got released on payment of lesser than the customs duty which was being demanded by the Customs authorities. In such a case no deferment of revenue would have taken place and hence no necessity to rush through an Amendment Act. Of course, it is true that if after regular hearing the court was to come to the conclusion that heading 73.15(2) did not include stainless steel circle the Parliament may well, if it was of the view that the circles should be included in the sub-heading, have had to go with the exercise of amending legislation. But that would be after a full hearing by the Courts and a reasoned decision so that the legislature could make the amendment in the high light of lacuna and defects pointed out in the judgment. That such situations may arise quite often is a normal even and is readily accepted as a routine feature of any parliamentary democratic system with independent judiciary having power of judicial review, as in our country. But the two situations are different and the Courts could lighten the process if ordinarily they were not to exercise their discretion in directing stay of recovery of taxes unless a clear unmistakable case was made out. The argument normally put forth by the parties for asking for interim stay that if duty has been paid in between and ultimately the writ petitions are allowed it will lead to multifarious proceedings and long delay in getting back the refund is answered shortly that the Courts have full powers and will in such a case exercise its discretion to issue a mandamus directing the refund of the duty which it finds has been recovered under an illegal levy. In this connection reference may be made to Firm A.I.B. Mehtab Malid and Co. v. State of Madras and another : AIR 1963 SC928 where after holding Rule 16(2) of the Madras General Sales Tax (Turnover and Assessment) Rules 1939 as invalid a writ was issued by the Supreme Court not only to refrain from enforcing any of provision of Rule 16(2) but further directing the sales tax authorities to refund the tax illegally collected.

31. Another aspect should also be borne in mind. In the normal course the challenge to any entry in schedule may be common in the case of many importers who are dealing with the same articles. An order passed in one case will naturally become a precedent for passing similar interim orders in large number of cases necessarily resulting in large revenue collection being held up. It is for this reason that we feel that it would be an exercise of proper discretion if the courts were to

impose self restraint on them in the matter of issue of interim orders concerning Revenue. We like to clarify that we are mentioning this not as an inflexible rule against the issue of any interim stay order in matters of excise and customs. So far as the jurisdiction of this court to issue such an interim order is concerned that is undoubted. But situation where such an order would be issued would, in our opinion be extremely rare where an apparent reading of the entry would demonstrate unmistakably that the customs and excise authorities are purporting to take a view which is so manifestly unreasonable and perverse that there is not a moment's doubt that the view taken by them is such which no reasonable person can possibly take and not to issue an interim order in the circumstances would be manifestly unjust and oppressive. In such cases the court would undoubtedly issue interim orders staying the recovery of any excise or tax and not let a manifest unjust exaction continue till the matter is finally disposed of. Fore obvious reasons such occasions will be few and far between and will depend on the circumstances of each case.

32. As result of the above our findings are as follows :-

(a) that the stainless steel circles are covered by the unamended heading 73.15(2) of the first schedule of the Customs Tariff Act, 1975;

(b) that the said entry 73.15(2) covers both the prime as well as defective and secondary quality of the goods;

(c) that the Amendment Act 15 of 1982 is valid and constitutional and does not in any way violate Articles 19(1)(g) and 304(b) of the Constitution of India;

(d) that the customs authorities are justified in including the landing charges in assessable value of the goods imported into India for the purpose of computation of customs duty;

(e) that though the existence of alternative remedy is not a bar to the exercise of jurisdiction of this Court under Article 226 of the Constitution. Ordinarily it would be proper exercise of discretion not to entertain the petition unless the parties concerned have exhausted the statutory remedy available to them under the

Customs Act and Excise Act;

(f) barring exceptional and clear cases of excess of jurisdiction of manifest perversity it would be a proper exercise of discretion for the courts to decline to pass interim orders staying the recovery of the duty of customs or excise or tax which has been imposed, during the pendency of the writ petition.

33. We may mention that at the time of admission interim orders were obtained to the effect that the Port Authorities may allow the goods to be removed without the petitioner paying the full demurrage charges subject to the furnishing of bond and further security/bank guarantee. Mr. Chopra, the learned counsel for the Port Authorities makes a grievance that the Port Authority is not concerned with the alleged dispute between the Customs Authority and the petitioners and that it has a right to recover the demurrage charges for the delay in clearing the goods whosoever may be at fault. He refers in this connection to Port of Bombay v. I.G. Supplying Co. : [1977]3SCR343 and specially to the observations that 'even though the delay in clearing the goods was not due to the negligence of the importer for which he could be held responsible yet he cannot avoid the payment of demurrage as the rates imposed are under the authority of law, validity of which cannot be questioned.' We need not go into this aspect because we are not at the stage of disposing of the interim matters but disposing of finally the writ petitions. As we are now dismissing the writ petitions it is apparent that the interim directions given against the Port Authorities will stand vacated and are so ordered accordingly. The Port Trust can proceed to recover any amount of demurrage which it is entitled. Naturally it can recover it from the bond and the bank guarantee which were furnished by the petitioners in pursuance of the Court's order. As the Port Trust was imp leaded and has had to suffer expenses it is entitled to the costs of these petitions which we assess at Rs. 300/- in each petition.

34. The result is that the writ petitions are dismissed with costs. The respondent (Union of India) will have costs of petitions which we assess at Rs. 1,000/- in each petition.

35. As the writ petitions are being dismissed the interim orders permitting the petitioners to import goods without paying the duty asked for by Customs Authorities are hereby recalled and vacated. The respondents are at liberty to take any appropriate steps as advised to realise the amount of duty from the petitioners in terms of the bond and/or bank guarantee and to encash the same which were furnished to them in pursuance of our order or to proceed against them for recovery in any way as is deemed proper.