

Modi Rubber Ltd. Vs. Union of India and Others

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Overruled by : [Union of India \(UOI\) and Ors. Vs. Modi Rubber Ltd.](#)

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Court : Delhi

Decided On : Aug-06-1982

Reported in : 1984(2)ECC30; 1983(12)ELT24(Del)

Judge : Prakash Narain and; S.S. Chaddha, JJ.

Acts : Central Excise Rules, 1944 - Rules 2, 8, 8(1), 56A, 173, 173B and G; [Central Excise Act, 1944](#) - Sections 2, 3, 6, 8(1), 12, 37 and 37(2); [Finance Act, 1978](#) - Sections 37 and 37(4)

Appeal No. : C.W.P. 1773 of 1979 connected with C.W.Ps. 1517, 2156, 2410 and 2411 of 1981

Appellant : Modi Rubber Ltd.

Respondent : Union of India and Others

Judgement :

S.S. Chadha, J.

1. This petition under Article 226 of the Constitution of India and the connected petitions raise an interesting question of law relating to the interpretation of the notifications granting excise duty relief in respect of selected commodities to the extent indicated therein, and as to whether the relief in excise duty is intended to cover in its scope, both the basic duty of excise livable under the Central Excises

and Salt Act, 1944 and the special/additional/auxiliary duty of excise livable under the Special Acts or Finance Acts.

2. To appreciate the rival contentions of the parties, it is apposite to refer to relevant statutory provisions first. The Central Excises and Salt Act, 1944 (hereinafter referred to as the Act) was enacted to consolidate and amend the law relating to central duties of excise on goods manufactured or produced in certain parts of India and to salt. Section 2(f) defines manufacture and includes any process incidental or ancillary to the completion of a manufactured product. Section 3 is the charging section reading as follows :-

'3. Duties specified in the First Schedule to be levied - (1) There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in, or imported by land into, any part of India, as, and at the rates, set forth in the First Schedule.

(1A) The provisions of sub-section (1) shall apply in respect of all excisable goods other than salt which are produced or manufactured in India by, or on behalf of, Government as they apply in respect of goods which are not produced or manufactured by Government.

(2) The Central Government may, by notification in the Official Gazette, fix, for the purpose of levying the said duties, tariff values of any articles enumerated, either specifically or under general headings, in the First Schedule as chargeable with duty ad valorem and may alter any tariff values for the time being in force.'

In the case of C.W. 1773/79 (Modi Rubber Ltd.), the relative item of the First Schedule to the Act is Item No. 16 reading as follows :-

'16. 'TYRES -

'Tyre' means a pneumatic tyre in the manufacture of which rubber is used, and includes the inner tube, the tyre flap and the outer cover of such a tyre. (1) Tyres for motor vehicles Sixty per centad valorem.(2) * * * *

3. The power to make Rules is conferred on Central Government by Section 37 of the Act. The Central Government may make rules to carry into effect the purposes of the Act. Section 37(2) particularises that without prejudice to the generality of the foregoing power, such rules may, inter alia, exempt any goods from the whole or any part of the duty imposed by the Act. In exercise of the powers conferred by Sections 6, 12 and 37 of the Act, the Central Government has made the Rules called the Central Excise Rules, 1944 (hereinafter called the Rules). Rule 2 is the definition clause. Duty has been defined to mean the duty payable under Section 3 of the Act. Rule 8 gives the power to authorise exemption from duty in special cases. It says that the Central Government may from time to time, by notification in the Official Gazette, exempt subject to such conditions as may be specified in the notification any excisable goods from the whole or any part of duty payable on such goods.

4. The following notification No. 123/74-C.E., dated August 1, 1974 was issued and published in the Official Gazette :-

'In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts tyres for motor vehicles falling under sub-item (1) of Item No. 16 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from so much of the duty of excise livable thereon as is in excess of fifty-five per cent, ad valorem.'

By virtue of this notification, the Central Government granted exemption in duty of excise livable thereon as is in excess of 55% ad valorem. The petitioners accordingly had been submitting their classification lists in terms of Rule 173-B of the Rules and seeking approval thereof for determining the duty payable on the manufactured tyres for motor vehicles to be removed in accordance with such lists under notification No. 123/74-C.E., dated August 1, 1974.

5. In the speech of the Finance Minister made on February 28, 1978 it was expressed that in view of the paramount need for mobilising resources for development without creating fresh distortions in the tax structure, the Finance Minister proposed to levy a special duty at the rate of 1/20th of the basic excise duties presently collected on each item in the central excise tariff. In doing so, the

Finance Minister proposed to exempt coal, electricity and goods which were assessed under Item 68 of the tariff. According to the Finance Minister, that measure would result in an additional revenue of Rs. 214 crores on indigenous production and a sum of Rs. 15 crores by way of increase in countervailing duties on imports. Clause 37 of the Finance Bill, 1978 levied this special duty of excise and was presented and passed by the Parliament as [Finance Act, 1978](#). Section 37 of the [Finance Act, 1978](#) provides that in case of goods chargeable with duty of excise under the Act, as amended from time to time, read with any notification for the time being in force issued by the Central Government in relation to the duty so chargeable, there shall be levied and collected a special duty of excise equal to 5% of the amount so chargeable on such goods. The special duties of excise shall be in addition to any duties of excise chargeable on such goods under the Act or any other law for the time being in force. Sub-section (4) of Section 37 provides that the provisions of the Act and Rules made there under, including those relating to refunds and exemptions from duties, shall, as far as may be applied in relation to the levy and collection of the special duties of excise livable under that section in respect of any goods as they apply in relation to the levy and collection of the duties of excise on such goods under the Act or the Rules, as the case may be.

6. After the judgment of this Court in C.W.P. 1006/78 in case of 'Indian Aluminium Company Ltd., Calcutta v. Union of India & Others', decided on May 24, 1979 by one of us (Chadha, J), the petitioners submitted fresh classification lists wherein they claimed that the total duty of excise livable inclusive of special duty of excise could not exceed the effective duty livable in terms of notification No. 123/74-C.E., dated August 1, 1974. The judgment in the said case related to auxiliary duty of excise levied under Section 36 of the Finance Act, 1976 and the interpretation of notification No. 198/76 dated June 16, 1978 wherein it was held that the relief in excise duty was intended to cover in its scope both the basic duty of excise and the auxiliary duty of excise.

7. The Assistant Collector of Central Excise considered the classification lists filed by the petitioners in the light of the exemption notification and the aforesaid judgment. The Assistant Collector came to the conclusion that the exemptions granted under notification No. 123/74-C.E., dated August 1, 1974 are in respect of

the duty of excise indicated in the First Schedule to the Act only and the same do not refer to the special duty of excise as levied by the Finance Act. By the impugned order dated November 23, 1979, the Assistant Collector, Central Excise ordered that the petitioners are liable to pay the duty of excise at the effective rate indicated in notification No. 123/74-C.E., dated August 1, 1974 and special duty of excise is also payable by them in addition thereon at the rate of 5% of the amount so chargeable under the above notification.

8. The submission of Mr. Soli J. Sorabjee, the learned counsel for the petitioners is that the notification dated August 1, 1974 which exempts the tyres for motor vehicles falling under sub-item (1) of Item 16 of the First Schedule to the Act from so much of the duty livable thereon as is in excess of fifty five per cent ad valorem, not only consists of the basic duty of excise livable under the Act but also the special duty (additional duty/auxiliary duty) of excise which has been levied in respect of the said goods under the [Finance Act, 1978](#). The relief in excise duty under the notifications is intended to cover in its scope both the basic duty of excise and the special duty (auxiliary duty/additional duty) of excise. The counsel invited our attention to the exemption notifications issued by the Government from time to time and the language employed to effectuate the purpose of exemption. One set of notifications mentions the exemption as from the whole of the duty of excise livable thereon under a specified sub-item of a particular item of the First Schedule to the Act. The notification No. 249/67-C.E. dated November 8, 1967 is of that specie, the subject matter of interpretation in C.W.P. 1773/79 which was frankly conceded at the time of hearing as restricting the exemption to the basic duty livable under Item 16 of the First Schedule to the Act as is in excess of 25% ad valorem in case of tyres for tractors other than those falling under Clause (b). A similar effect is given by the authorities by employing the language of exemption as in some other notifications 'as from the whole of the duty of excise livable thereon under Section 3 of the Act'. A second category of the exemption notifications grant exemption from so much of the special/additional/auxiliary duty livable thereon under stated sub-section of stated section of the Finance Act or Special Act as is in excess of the specified percentage of the duty of excise chargeable under that statutory provision read with any notification. Here again the exemption is restricted and confined. The third category of notifications grants

exemptions from the duty of excise livable thereon by mentioning both under the Act and under the Special Act or Finance Act. These set of notifications, therefore, restrict the exemption by the plain language of the notifications itself. The fourth class of the notifications is the notifications which are the subject matter of these petitions which exempt 'from so much of the duty of excise livable thereon as is in excess....' The counsel urged that these notifications be construed by giving to be words used their ordinary and natural meaning to spell out the legislative intent and to effectuate the same.

9. Rule 8 of the Rules authorises the Central Government by notifications in the Official Gazette to exempt excisable goods from 'duty' and this, according to the learned Solicitor General appearing for the respondents, is the duty that is payable under Section 3 of the Act and not the additional duty of excise or the special duty of excise or the auxiliary duty of excise livable under any other legislative enactment or the Finance Act enacted from year to year. The notifications in all these cases refer to and have been issued only in exercise of the powers conferred by Rule 8 and thus, urges the counsel, restrict the exemption to the duty payable under Section 3 of the Act. This becomes evident by a reading of Rule 2(v) also which defines duty to be as livable under Section 3. According to the counsel the subject matter of the exemption must be spelled out from the notifications itself and in all these cases no exemption is given or intended to be given in respect of duties of excise which are imposed later than the exemption notifications. Section 37(4) of the [Finance Act, 1978](#) makes the provision of the Act and the Rules made there under, including those relating to refunds and exemptions, applicable to the special duties, but, says the counsel, there is no exemption notification issued under the Finance Act to extend the exemption to special duty of excise which is in addition to the excise duty payable under Section 3 of the Act. Reference is invited to be exemption notifications which have been issued from time to time under the special enactments or under the Finance Act when the legislature or the Government intended to give the concessions. Reliance is placed on the speech of the Minister of Finance wherein he expressed the paramount need for mobilising the resources and to the proposed levy of a special duty and the resultant additional revenue. It was urged that the object would be frustrated if the exemption is extended beyond what was contemplated in

the [Finance Act, 1978](#). Relying upon the law laid down by the Supreme Court in 'K. P. Varghese v. I. T. O.', : [1981]131ITR597(SC) , it is urged that the speech made by the mover of the Bill explaining the reasons for the introduction of the Bill can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation was enacted. The real object and purpose of Section 37 of the [Finance Act, 1978](#) was to collect additional revenue by not increasing duties of excise but by the imposition of special duty. It is, therefore, logical that the exemption notifications could not be extended to the special duty, as otherwise the mischief sought to be remedied by the legislation is not removed. The interpretation of the exemption notification, urges the counsel, must fall in line with the advancement of the object and purpose of the [Finance Act, 1978](#) in imposing the additional levy of the special duty of excise.

10. Another contention of the learned Solicitor General is that the levy of the special duty is by the provisions of Section 37 of the [Finance Act, 1978](#) and sub-section (4) of Section 37 empowers the exemption by referring to the provisions of the Act and the Rules. Reliance is placed on 'Western Coalfield Ltd. v. Special Area Development Authority', : [1982]2SCR1 , which draws out a distinction between a mere reference to or a citation of one statute in another and an incorporation which in effect means bodily lifting of the provisions of one enactment and making them part of another. Sub-section (4) of Section 37, says the counsel, is not incorporated into the Act or the Rules to become a part and parcel of the later provisions with the result that any exemption notification issued under Rule 8 exempted the duty payable under Section 3 of the Act and not what is payable under the [Finance Act, 1978](#).

11. The learned Solicitor General relied upon 'Orient Paper Mills Ltd. v. D. D. A.', L.P.A. 27/76 decided on September 25, 1981 and Associated Cement Co. Ltd. v. D. D. A.', I.L.R. 1971 (1) Delhi 556 wherein the question arose as to whether the special duty imposed by the Finance Act of 1965 was a distinct duty imposed or was in the nature of a surcharge on excise duty livable under the Act. It was for the purpose of answering the question whether the amount of duty of excise payable by a manufacturer mentioned in Section 280-ZD for the purpose of tax credit

certificate postulated by that section and Section 280-ZD of the Income-Tax Act, 1961 meant excise duty actually paid or excise duty livable under the Act. We may express here that these cases do not advance the case of the respondents before us. Section 280-ZD(6)(b) of the Income-Tax Act, 1961 had specifically stated that in that section 'duty of excise means the duty livable under the Central Excises and Salt Act, 1944'. In view of the meaning assigned to the expression 'duty of excise' by clause (b) of sub-section (6) of Section 280-ZD, it was held in those cases that it is not permissible to include the special duty levied by Section 80 of the Finance Act, 1965 within the expression duty of excise for the purpose of the grant of tax credit certificate.

12. We may first clear the ground of some cobwebs. The duty of excise is a tax upon goods primarily levied upon a manufacturer or producer in respect of the commodity manufactured or produced. Entry 84 of List I of the VIIth Schedule to the Constitution of India empowers the Parliament to levy the duty of excise on tobacco and other goods manufactured or produced in India (except those specified therein). Section 3 of the Act is the charging section and empowers levy of duty of excise in respect of manufacture of goods. As observed in '*M/s. Chhotabhai Jethabhai Patel and Co. v. Union of India & Others*', : AIR 1962 SC1006 , there is no doubt that excise duties have been referred to by the economists and in the judgments of the Privy Council as well as in the Australian decisions as an instance of an 'indirect tax' but in construing the expression 'duty of excise' as it occurs in Entry 84 we are not concerned so much with whether the tax is 'direct' or 'indirect' as upon the transaction or activity on which it is imposed. 'A duty of excise is a tax levy on home-produced goods of a specified class or description, the duty being calculated according to the quantity or value of the goods and which is levied because of the mere fact of the goods having been produced or manufactured and unrelated to and not dependent on any commercial transactions in them. 'The taxable event is the manufacture or production of the goods which are subjected to the excise duty. As noticed in '*Indian Aluminium Co. Ltd.*' case (supra), Section 36(1) of the Finance Act, 1976 provides that in case of goods mentioned in the First Schedule to the Act there shall be levied and collected as an auxiliary duty of excise an amount equal to twenty per cent of the value of the goods as determined in accordance with the provisions of Section 4 of

the Act. This auxiliary duty of excise is in addition to any duties of excise chargeable on such goods under the Act or any other law for the time being in force. 'Auxiliary' in common parlance is understood as for augmenting a basic power, potential or ability. Auxiliary is one that functions or serves in a supplementary often subordinate position. Auxiliary duty of excise levied and collected under the Finance Act, 1976 is thus supplementary to the duties of excise chargeable on the goods under the Act. When sum total of the duty of excise chargeable on the goods is considered, then auxiliary duty of excise constitute one of its elements. Auxiliary duty of excise cannot be apart from or distinct from duty of excise. The additional duty of excise is something by way of addition to the basic duty of excise already levied. It would be something added to the one already levied. It would be by way of increase to the already existing duty. Thus, additional duty of excise would be in addition to that leviable under the Act and would be a tax on goods manufactured or produced relatable to Entry 84 of List I of VIIIth Schedule. Various statutory forms have been brought to our notice. Rule 54 provides the submission of a monthly return in the proper form showing the quantity of excisable goods manufactured during the month etc., and such other particulars as may be specified. The form is 'Form R.T. 3' which has to contain, inter alia, the information of payment of duty of excise under different heads, such as, 'basic', 'additional', 'auxiliary' and 'cess'. Rule 56-A provides for special procedure for movement of duty paid materials or component parts for use in the manufacture of finished excisable goods. 'Form R.G.-23-Part II' of the entry book of proforma credit contains the column for giving information as to the 'basic central excise duty', 'special excise duty' and 'additional excise duty'. Rule 173-G prescribes the procedure to be followed by the assessed in the removal of excisable goods on determination of duty by producers, manufacturers or private warehouse licensees. 'Form R.T. 12' again calls for information as to duty paid, and the information has to be separately furnished for 'basic', 'additional', 'auxiliary' and 'Cess'. All these termed differently are considered in the statutory forms as 'duty of excise' whether they were imposed at the time of issue of the Rules or later. The legislature can provide for future eventualities such as imposition of 'additional' or 'auxiliary' duty in addition to the basic duty. Chapter VIIB of the Rules provides for payment of duty on excisable goods in certain cases. Rule 173

R.M. says that the additional duty under Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 are to be determined and paid in accordance with the provisions of that Chapter, as if for the word 'duty' the words 'additional duty' were substituted. The Special Act may provide a similar procedure for collection of the additional duties. We may notice here with advantage that the expression 'duty of excise' has also been defined by the legislature under Clause (c) of the Explanation to Section 5 of the Central Excises and Salt Additional Duties of Excise (Amendment) Act, 1980 which is an act further to amend the Act and the Additional Duties of Excise (Goods of Special Importance) Act, 1957. The definition of the expression 'duty of excise' means duties of excise levied under any Central Act as such or as additional duties of excise or auxiliary duties of excise or special duties of excise or by any other name. In our opinion, the duty of excise may be referred to by different terms, such as basic duty of excise, special duty of excise or additional duty of excise or auxiliary duty of excise, but nature of all these duties of excise remains the same and these are all duties in respect of manufacture or production of goods known as 'duty of excise'.

13. The duty of excise may be levied either by a separate enactment or under the Finance Act enacted from year to year. Section 37 of the [Finance Act, 1978](#) says that there shall be levied and collected a special duty of excise equal to 5% of the amount so chargeable on such goods. The duty to be collected under Section 37 of the [Finance Act, 1978](#) is not any direct tax, but is a duty of excise. The duty of excise is levied on a manufacturer or producer of the commodity on manufacture or production. The excise duty is livable under Section 3 of the Act; the rate of the duty of excise is increased by Section 37 of the [Finance Act, 1978](#) by calling it a special duty of excise. Nevertheless, it is a specie of the excise duty livable under a Finance Act. A charge may be increased by amending the Act or by introducing it in the Finance Act. The additional surcharge livable under Clause (c) of paragraph A of Part I of the First Schedule to the Finance Act, 1963 read with Section 2(1)(a)(ii) of that Act was held by the Supreme Court in 'Madurai District Central Cooperative Bank Ltd. v. I. T. O.', : [1975]101ITR24(SC) as relatable to Article 271 of the Constitution of India by which the Parliament could increase any of the duties or taxes referred to in Articles 269 and 270 by a surcharge for the purpose of the Union, and could be levied by the Parliament through the medium

of a Finance Act. Additional tax revenue could be collected either by enhancing the rate or by levy of a fresh charge by the Parliament, through the medium of a Finance Act. If Parliament has the legislative competence to introduce a new charge or tax, it may exercise that power either by incorporating that charge in the Income-tax Act or by introducing it in the Finance Act or for that matter by enacting any other statute. The excise duty may thus be increased by amending the Act or by introducing in the Finance Act or enacting a Special Act but the nature of the duty remains the same. By adopting this interpretation, the legislation and the notifications can be held to be within the legislative competence of Parliament and the Central Government respectively.

14. The notifications in these cases mention the source of power as being in exercise of the powers conferred by sub-rule (1) of Rule 8 of the Act and do not mention of source of power under the Finance Act or Special Act. In our opinion, if the source of power is not mentioned in the notification, it can be traced and notification upheld. The validity of the notification can be tested by reference to the question whether the Government had the power to issue the notification. If the power is established, then absence or incorrect indication in the notification would not make the notification invalid. No reference need specifically be made to sub-section (4) of Section 37 or similar provision of the Finance Act. 'If the exercise of power can be traced to a legitimate source, the fact that the same was purported to have been exercised under a different power does not vitiate the exercise of the power in question. This is a well-settled proposition of law' (See *P. Balakoti v. Union of India*, : [1958]1SCR1052 , *Afzal Ullah v. State of Uttar Pradesh & Another*, : [1964]4SCR991 and *N. B. Sanjana v. E. S. & W. Mills*, : 1973ECR6(SC) . It will, therefore, make no material difference whether the provisions conferring the power of exemption under Section 37(4) of the [Finance Act, 1978](#) are incorporated or not in the Act. The two statutory provisions exist and the source of power can be traced to a legitimate source, even if not mentioned in the notification.

15. C.W.P. 1006/73 - '*Indian Aluminium Co. Ltd. & Another v. Union of India and Others*' decided on May 24, 1979 by one of us (Chadha, J.) clearly supports the case of the petitioners. In that case, the issue considered and decided was

whether the exemptions contemplated under notification No. 198/76 dated June 16, 1976 which provided for exemptions of duty from excise in respect of various products mentioned in the schedule thereto, apply to auxiliary duty also. That notification indicated the source of power as under Rule 8 only. It related to aluminium produced with which Indian Aluminium Co. was concerned. On an interpretation of the exemption notification and the inbuilt guidance available in that notification it was held that exemption under the notification covered the auxiliary duty of excise livable under Section 36 of the Finance Act, 1976. In 'Government of India v. Madras Aluminium Co. Ltd., Coimbatore', 1981 E.L.T. 892 decided by a Division Bench of the Madras High Court on April 30, 1981 it was held that the regular duty which is in the form of surcharge on excise duty should be treated as part of the excise duty and, therefore, the duty livable thereon referred to in the notification dated May 24, 1971 in that case took within it the regulatory duty and the additional regulatory duty livable in respect of aluminium products manufactured. In that case on December 13, 1971, the Government of India imposed a regulatory duty at the rate of 25% B.E.D. on aluminium, and this was subsequent to the exemption notification which was issued in exercise of the powers conferred under Rule 8(1). The contention of the Government that the exemption notification would apply only to the basic duty payable by the manufacturers and not to the regulatory duty or increased regulatory duty was not accepted. In 'Commissioner of Income-tax v. K. Srinivasan', : [1972]83ITR346(SC) the Supreme Court had ruled that the term income-tax occurring in Section 2 of the Finance Act, 1964 included surcharge, special surcharge and additional surcharge wherever provided as they form part of the income-tax. Under the Finance Act of 1963, income-tax was increased by a special surcharge and additional surcharge while super-tax was increased by a surcharge and a special surcharge in the manner provided in the said Act. But sub-section (2) of Section 2 of Finance Act, 1964 did not mention any of these surcharges. The assessed there, whose total income included Rs. 42,900/- under the head 'salaries' contended that the salary portion of his total income was chargeable to only income-tax and super-tax and not to any of the surcharges. The Supreme Court held that in assessing income-tax and super-tax, on salary received by the assessed in accordance with Section 2(2) of the Finance Act of 1964, not merely

the income-tax and the super tax at the rates applicable under the Finance Act, 1963, but the surcharges prescribed there under had to be charged. Applying the ratio of these cases, it has to be held that the nature of the duties in respect of manufacture or production of goods remains the same i.e. the 'duty of excise', whether termed as the basic duty of excise or special duty of excise or additional duty of excise or auxiliary duty of excise. The exemption notifications which exempt 'from so much of the duty of excise livable thereon as is in excess.....' are to be construed in their ordinary and natural meaning. The exemption is dependent on the duty of excise livable on the manufacture or production of goods. This would be sum total of the duty of excise livable under all statutory provisions and the exemption would be to the extent indicated.

16. Mr. Sorabjee is right that there is no equity in a taxing statute and either the subject is within it or not on the words of enactment or rule or notifications issued there under. In 'Innamuri Gopalan and others v. State of Andhra Pradesh and another', : [1964]2SCR888 wherein it was held :-

'.... No doubt, statutes have to be construed as a whole so as to avoid any inconsistency or repugnancy among its several provisions, but if there is nothing to modify, nothing to alter, or nothing to qualify the language of a statute, the words and sentences have to be construed in their ordinary and natural meaning [vide 36 Hals s. 585. What we are now concerned with is a fiscal provision and it has often been said that there is no equity in a taxing statute and either the subject is within it or not, on the words of the enactment or the rules validly made there under. In a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the words of the provision. If the tax payer is within the plain terms of the exemption he cannot be denied its benefit by calling in aid any supposed intention of the exempting authority.....'.

17. In Hansraj Gordhandas v. H. H. Dave, Assistant Collector of Central Excise and Customs, Surat and Others, : [1969]2SCR253 wherein it was held :-

'.... It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is

governed wholly by the language of the notification. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication there from, the matter is different but that is not the case here. In this connection we may refer to the observations of Lord Watson in *Salomon v. Salomon and Co.*, 1897 AC 22 :

'Intention of the legislature is a common but very slippery phrase, which, popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication.'

18. The notification in this case exempts tyres of motor vehicles falling under sub-item (1) of Item No. 16 of the First Schedule to the Act from so much of the duty of excise leviable thereon as is in excess of fifty-five per cent ad valorem. The object of granting exemption is to give relief on the excise duty leviable to the extent indicated therein. The policy in the exemption notification is that the excise duty as is in excess of fifty-five per cent ad valorem is not recoverable. What weighed with the authority to issue this exemption notification is not on record and need not be gone into. The entitlement to the exemption is from the payment of duty of excise leviable. This is the clear meaning of the words employed. We cannot aid the competent authority by adding to or by amending or by construction making up the deficiencies in the language by going to the object which the authority had in his mind. The scope, effect and the operation of the notification has to be judged by the words employed in exemption notification of excise duty. The exemption notification grants exemption in respect of excise without any specification whether it is the basic duty of excise leviable under the Act, or Special duty under the Special enactment or Additional duty under a Finance Act, or Auxiliary duty under a Statute. In such case the exemption is in respect of all duties of excise and no duty of excise in excess of the amounts mentioned in the exemption notification

can be levied. The petitioners are within the plain terms of the exemption and they cannot be denied its benefit by calling in aid the advancement of the object and purpose of the [Finance Act, 1978](#) in imposing the additional levy or the special duty of excise. The Courts cannot balance the policy of the relief in excise duty by grant of exemption against the additional levy of the excise duty, except from the language of the two provisions. The legislative intent can only be ascertained from either the express words employed or by reasonable and necessary implication. The express words clearly support the operation of the exemption in respect of duty of excise and that means all duties of excise leviable. By necessary implication, the exemption is to the duty of excise leviable which would include the levy under the Act as well as the Finance Act. The duty of excise leviable cannot be limited by the language of the notification to the basic duty of excise leviable only under the Act, for that would be adding words to the exemption notification which is not permissible in construction of a fiscal notification. As noticed by Lord Watson (supra) the intention of the legislature is a common but very slippery phrase. It would be a speculative opinion if we go into and compare the objects of the exemption notification and the additional levy of the excise duty to ascertain the supposed intention of the legislature. The proper course would be to ascertain the legislative intent from what it has chosen to enact. On a plain reading of the exemption notification, the petitioners are entitled to the benefit of exemption and the total duty of excise leviable including basic duty under the Act plus additional duty under the [Finance Act, 1978](#) could not exceed the effective duty leviable in terms of the said notification dated August 1, 1974 i.e. fifty-five per cent.

19. The result of the above discussion is that C.W.P. 1773 of 1979 succeeds and is allowed. It is declared that notification No. 123/74-C.E., dated August, 1, 1974 allows exemption and the total duty of excise leviable including basic duty under the Act plus additional duty under the [Finance Act, 1978](#) does not exceed the effective duty leviable in terms of the said notification i.e. fifty-five per cent. The petitioner is entitled to avail of the exemption under the said notification accordingly. The impugned orders dated November 23, 1979 passed by the Assistant Collector, Respondent No. 2 are quashed. On the facts and circumstances of this case, the parties are left to bear their own costs.

