

i.T.C. Ltd. and Another Vs. Union of India and Anothers

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SooperKanoon Citation : sooperkanoon.com/683298

Court : Delhi

Decided On : May-01-1986

Reported in : 1987(30)ELT321(Del)

Judge : S. Ranganathan and; Yogeshwar Dayal, JJ.

Acts : [Central Excise Act, 1944](#) - Sections 35A, 35E, 35F and 36; Central Excise Rules - Rule 9B; [Constitution of India](#) - Article 226; [Finance Act, 1982](#)

Appeal No. : Civil Writ Petition Nos. 399/1982, 77/82, 460/82, 1000/82, 1051/82, 2813/81 and 2814/81

Appellant : i.T.C. Ltd. and Another

Respondent : Union of India and Anothers

Judgement :

S. Ranganathan, J.

1. This is a batch of writ petition certain companies manufacturing cigarettes which can be disposed by a common order. They raise the same questions arising out of the levy of excise duty on cigarettes which can be considered in the back ground of the facts in C.W. 399/82 in which the petitioner is the Indian Tobacco Company Ltd. ('ITC', for short).

2. In order to appreciate the controversy between the parties, it is necessary to give a broad outline of the relevant provisions of the Central Excises and Salt Act, (Act 1 of) 1944 (hereinafter referred to as 'the Act'). Section 3 of the Act which is charging section, in so far as is relevant for our present purposes, reads thus :

'3(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 as, and at the rates; set forth in the First Schedule.'

3. 'Excisable goods' is defined by Section 2(d) to mean 'goods specified in the First Schedule as being subject to a duty of excise'. The First Schedule set out a list of excisable goods and the rate of duty livable in respect of each. A perusal of the First Schedule shows that the rate of excise duty is made to depend, sometimes on the weight of the goods, sometimes on their number, sometimes on the volume and sometimes on the value ('ad valorem'). 'Cigarettes' is one of the items in regard to which the levy of duty is ad valorem. Item 4 in this Schedule deals with the 'Tobacco' and consist of two sub-items : (I) unmanufactured tobacco; and (II) manufactured tobacco. The second sub-item includes a number of commodities of which 'cigarettes' is No. (2). The excise duty chargeable at the relevant time on cigarettes, as mentioned in the last column of the table, comprised of (i) a basic duty of three hundred per cent ad valorem plus rupees twenty per thousand; and (ii) and additional duty of one hundred and ten per cent ad valorem plus ten rupees per thousand.

4. In this type of cases, where the excise duty is based on the value of the goods it becomes necessary to know the 'value' on the basis of which the rates of duty have to be calculated. This is explained by Section 4 of the Act. Section 4 of the Act (as enacted in 1944) was a comparatively simple section. However, in view of certain decisions rendered by courts, it became necessary to modify it substantially. A new sub-section (4) was, therefore, substituted for the old one by Section 2 of the Central Excises and Salt (Amendment) Act, 1973 but this sub-section became effective only from 1-10-1975 on the issue of notification as envisaged by the amendment Act. This new section, as it stood at the time of the filing of these writ petitions, read thus :

'4(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value shall, subject to the other provisions of this section, be deemed to be -

(a) the normal price thereof, that is to say the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale.'

Or, to put it simply benefit of certain refinements, the excise duty is to be calculated on the basis of the wholesale sale price of the commodity concerned. But this definition creates a small difficulty for, usually, sale price fixed by manufacturers is 'cum-duty,' i.e., it includes the excise duty they will have to pay; for excise duty being an indirect tax, they can pass on the incidence of the duty to the purchaser. Again, there may be other additions (such as sales tax, cost of packing) to, or deductions (such as trade discount) from, what is ostensibly the sale price and these may create complications. Section 4(4)(d), therefore, provides a clarification. It reads (so far as is here relevant) :

'4(4)(d) 'Value', in relation to any excise goods :-

(i) ... includes the cost of packing

(ii) does not include the amount of the duty excise, sales tax or other taxes, if any, payable on such goods and the trade discount ... allowed'

5. To summarise again the effect of this provision for our present purposes, it says that where the wholesale price is a cum-duty price, the excise duty is to be levied on the sale price less the duty payable included therein. It will at once be seen that the computation of the 'value' for purpose of excise duty involves a process of excise duty involves a process of working back from the wholesale price. It may be convenient to give a simple example. Suppose, the rate of excise duty payable as per the schedule on a particular commodity is 20%, then if the manufacturing costs and profits thereon come to Rs. 100/-, the manufacturer, taking the excise duty also into account, will fix the wholesale selling price at Rs. 120/-. Per contra, if the

sale price is, say, Rs. 180/-, the 'value' for purposes of excise duty calculation will be Rs. $180 \times 100/120$ or Rs. 150/-. Thus, where the wholesale selling price and the ad valorem rate of duty are known, it is quite easy to calculate the 'value' on which the excise duty is to be charged.

6. A complication has, however, been introduced in the above situation because of the provisions of rule 8 of the Central Excise Rules, 1944. These rules have been framed in exercise of the powers conferred on the Central Government by Section 6, 12 and 37 of the Act. Section 37(2), which alone is relevant here, permits, inter alia : (a) the remission of the excise duty livable, only in certain circumstances - clause (ix); (b) the rebate of duty, in case of goods exported out of India - clause (xvi); and (c) the exemption of any goods from the whole or any part of the duty imposed by the Act - clause (xvii). Rule 8 is in the following terms :

'8. Power to authorise exemption from duty in special cases. -

(1) the Central Government may, from time to time, by notification in Official Gazette, exempt, (subject to such conditions as may be specified in the notification) any excisable goods from the whole or any part of (the) duty livable on such goods.

(2) the Central Board of Excise and Customs may, by special order in such cases, exempt from the payment of duty, under circumstances of an exceptional nature, any excisable goods.'

This rule gives effect to the well-established principle that there must be a good deal of flexibility in the incidence of taxation and that the State would be empowered to determine this incidence with a wide degree of latitude so long as there is no discrimination or unreasonable disparity in treatment. The reduction or exemption could of course be effected by an amendment of the schedule but, since the schedule is part of the Act, that can be effected only by the Legislature. To remove this rigidity and make relaxations and concessions possible at short notice and with less of rigidity, Section 37(2) empowers the making of rules by the Executive which can grant necessary concessions, exemptions and reductions in certain situation. The validity of this rule has been upheld in number of judicial

decisions.

7. Under rule 8, various notification have been issued from time to time exempting certain goods from the excise duty livable to the extent specified in the notification. These notifications are of various types. Such notifications issued between 1941 and 1981 are collected in 'Central Excise Exemptions and Concessions' by P. D. Jain at pages 83 to 494. For our present purposes, it is enough if reference is made to some of these notifications which are relevant for our discussion. Notification No. 76/76-CE, dated 16-3-1976 pertained to straw board and mill board which is item 17(2) in the First Schedule. It exempted the aggregate manufacture of these two commodities cleared for whom consumption. The exemption was from 'so much of the duty of excise livable thereon as is in excess of' 15% ad valorem in respect of the first 500 metric tonnes and 25% on the next 500 metric tonnes. Notification No. 24/75, dated 1-3-1975, as subsequently amended on various dates up to 1984 exempted soaps and certain other commodities falling under item 15 of the First Schedule from so much of the duty of excise livable thereon as is equivalent to the amount of duty calculated at twenty two rupees and fifty paise per metric tonne of soap subject to certain condition. Notification No. 198/76, dated 16-6-76 gave an exemption where a manufacture of certain specified commodities - one of which was tyres and tubes falling under item 16 of the First Schedule - was able to clear from his factories, in the aggregate, goods in excess of certain 'base clearances' (i.e. similar clearances during a prescribed base period). The notification was a very involved one and dealt with a number of commodities the rate of excise duty on which was based on weight, volume, unit or value. Shorn of other details, the exemption in respect of the excess goods manufactured and cleared was 'from so much of the excise duty livable thereon... as is in excess of seventy five percent of such duty'. Likewise, notification No. 200/76, dated 17-6-1976 exempted parts of refrigerating appliances and machinery intended to be used for certain specified purposes from so much of the duty livable thereon 'as is in excess of twenty per cent ad valorem'. thereon, A similar notification No. 30/79, dated 1-3-1979 (and amendment by notification No. 140/79, dated 30-3-1979 and notification No. 25/81, dated 1-3-1982) granted an exemption in respect of cigarettes. Since this is the notification the effect of which has to be construed in the present batch of writ petitions, it may

be set out in extenso here. It reads :-

Partial exemption to cigarettes :- In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, read with sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) (hereinafter referred to as the additional duties of Excise Act), the Central Government hereby exempts cigarettes of the description specified in column (1) of the Table hereto annexed and falling under-sub-item II(2) of Item No. 4 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) (hereinafter referred to as 'the Central Excise Act), from so much of the duty of excise livable thereon both under the Central Excises Act and the Additional Duties of Excise Act, as is in excess of the duty specified in the corresponding entry in column (2) thereof.

TABLE

-----Description	Rate	of
Duty-----	(1)	
(2)-----Cigarettes		of which
thevalue per thousands.i) does not exceed rupees ten One hundred and fifty percent ad valorem plustwenty one rupees andtwenty five paise perone thousand.ii) exceeds rupees ten but does One hundred and fifty percentnot exceed rupees thirty five ad valorem plus tenper cent ad valorem fivefor every addition rupee orpart thereof in excess ofa value of rupees ten perone thousand, plus twenty onerupees and twenty fivepaise per one thousand.iii) exceeds rupees thirty five Hundred per cent advalorem plus twenty onerupees and twenty fivepaise per thousand.-----		
-----Provided that the duty so levied shall be apportioned in the ratio of 72.5 : 27.5 between the duty livable under the Central Excises Act and the Additional Duties of Excise Act, respectively.		

7. Another notification No. 33/79 was also issued on 1-3-1979 in respect of 'smoking mixtures for pipes and cigarettes' also covered by item 4. This exempted theses commodities from so much of the duty of excise and additional excise as is in excess of three hundred per cent ad valorem.

8. One would have thought that the scheme of the Act was fairly clear regarding the combined impact of Section 3 and 4 of the Act and Rule 8 of the Rules in regard to any particular item of excisable goods. One had to compute the duty payable or livable (these terms being understood to be synonymous) on the value of the goods as computed backwards from the wholesale selling price with reference to the rate of duty prescribed in Schedule I. The duty, thus, computed was, however, restricted to the amount specified, if any, in any notification issued under rule 8 in respect of the particular item in question, the amount in excess thereof being exempt under the notification. Let us take, for example, an item of excisable goods for which the normal rate of excise duty livable under the First Schedule is 20% but, under the notification, the duty is limited of 75% thereof. Then if the selling price of an item is Rs. 120/- its 'value' for purposes of duty is Rs. 100/- and the normal duty livable is Rs. 20/-. But, because of the notification, the duty which the assessed could be ultimately called upon to pay would be only Rs. 15/- and not Rs. 20/-. The department, however, interpreted the provision differently. Their stand was expressed in two ways. One argument urged by them was that, since, by the combined operation of Section 3 and 4, the First Schedule and the notification, the effective duty payable on such an item was only 15% the value for purposes of duty should be taken at Rs. 120/- x Rs. 100/Rs. 115 of Rs. 104.35 the duty payable on which would be 15% of Rs. 104.35 or Rs. 15.65 and not Rs. 15/- as urged by the assessed. The other aspect urged by the department to justify the above line of reasoning was by saying that where a benefit of excise duty is given to manufacturer, he is expected to pass it on to the consumer. Thus, in the above case, when the notification reduced the duty from Rs. 20/- to Rs. 15/- the manufacturer should have passed on the benefit to the consumer reduced the price from Rs. 120/- to Rs. 115/-. Had he done so, the 'value' of the goods could be taken at Rs. 100/- as before which, with the effective duty of 15%, would result in the selling price of Rs. 115/-. If, however, the manufacture sought to retain the price at Rs. 120/- as before, he is retaining for himself an element of profit and so the 'value' of the commodity for purposes of excise duty should be taken at Rs. 104.35 and the excise duty at Rs. 15.65 instead of at Rs. 15/-. The department, basing itself on the second line of reasoning indicated above, issued instructions to the effect that the benefit of the exemption granted under the notification should

be given only in cases where the manufacturers passed on the benefit of the exemption granted under the notification to their consumers. The correctness and validity of these instructions came up for consideration of this Court in *Modi Rubber v. Board of Central Excise & Customs* (2nd 1978-2 Delhi 352) = 1978 E.L.T. 127 (Del.) in the context of notification No. 198/76, dated 16-6-1976 referred to above. The Court by its judgment dated 8-2-1978 negated the department's contention. It was pointed out that the notification did not stipulate anywhere that the grant of the exemption granted by it was conditional on its being passed on to the consumer and that administrative instructions could not travel beyond this and deny a relief granted by the notification. On the first argument, the Court pointed out that the assessable value had already been determined at Rs. 100/- on the basis of the selling price with reference to the rate of duty prescribed in the First Schedule and the department's contention involved a computation of this assessable value once again after giving effect to the notification. Said the learned Judges :

'It is erroneous to suggest, as is done by the Government, that assessable value will have to be again determined after taking into consideration the relief and exemption granted under the notification dated 16th June, 1976. It is neither intended by the notification nor it is practicable that the assessable value should be determined after giving effect to the relief and the exemption contemplated under the said notification. This is effect would be the stand of the Government by its insistence that it is only when the benefit of the rebate in duty is passed on by the manufacturer to the consumer that the manufacturer becomes entitled to the benefit of exemption from duty. In other words, if the price to the consumer inclusive of duty remains the same and the duty livable thereon is calculated and thereafter the relief permissible under the notification is reduced, as the Government intends to do, then according to the suggestion in the show cause notices, the assessable value would thereafter have to be recalculated and it would be higher than the assessable value on which the excise duty was calculated in the first instance. Having arrived at this assessable value if the duty is there to be calculated, it would not be the same as before and in this manner the calculation would keep on changing. Such a procedure would lead to an absurd situation.'

9. The question was reconsidered, in the context of the same notification, by this Court in *Ceat Tyres v. UOI* 1981 ECR 584 . The Court, by its judgment dated 19-3-1980, (to which one of us, Ranganathan, J., was a party) discussed the issue at some length and reaffirmed the view taken in the *Modi Rubber Cases* (supra). It is unnecessary to set out detailed extracts from this judgment and it is sufficient, to say that the relevant discussion is contained in paras 11, 12, 15, 16, 17 and 18 of this judgment. Further decision to the same effect have been rendered by this Court in the cases of *Madras Rubber Factory Ltd.* (CW 501 of 1978, decided on 2-1-1978), *Indian Aluminium Ltd.* (CW 1006/79, decided on 24-5-1979), *Chemicals & Plastics India Ltd.* (CW 147/79, decided on 9-7-1979), and *Dhampur Sugar Mills Ltd.* (CW 1144 of 1979, decided on 19-3-1980) in the context of notification of exemption pertaining to tyres and tubes, aluminium Chemicals and plastics and paper respectively. Again, the Andhra Pradesh High Court, the Madras High Court and the Orissa High Court also expressed similar views in *Andhra Pradesh Paper Mills Ltd. Rajahmundry v. Assistant Collector of Central Excise, Rajahmundry and Another*, 1980 ELT 210, *Government of India v. Madras Aluminium Co. Ltd., Coimbatore*, 1981 ELT 892, and *M/s. Bizi Industries v. Superintendent of Central Excise, Cuttack and others*, 1982 ELT 109, respectively in the context of notification of exemption relating to papers, aluminium, soap and steel furniture respectively.

10. The ratio of the above decision was clear. On their interpretation, Section 4 of the Act and the notification had to be given effect to separately, one after the other. First, under Section 4, the excise duty payable or livable had first to be determined with reference to the rates of duty prescribed in the Schedule. This process necessarily involved a determination of the assessable value as a first step in the determination of duty. After this, as a second step, the notification of exemption was to be applied which directed that a part of the excise duty so computed as payable or livable should be exempted. The ultimate effect of this, no doubt, was that the 'effective duty' payable becomes less and if the assessable value were to be recomputed on the basis of such effective duty, it will be larger than the assessable value taken at the first stage of computation. But there was nothing in the stature or notification which spelt out or justified a repetition of this process of determination of the assessable value (which had already been gone

through) after the notification has been given effect to. There was no justification to read Section 4 and the notification as dovetailing into each other, to consider the effective duty payable as the excise duty 'payable' within the meaning of Section 4(4)(d) and to determine the assessable value and the excise duty payable as if a reduced rate of duty for these goods had been enacted in the First Schedule itself.

11. The above decisions notwithstanding, the department apparently continued to adhere to its own view which had not been accepted in these decisions. Departmental instructions and trade notices, earlier issued continued to be followed and the same view was also reiterated in a directive dated 23-2-1981. The result was that, when the ITC filed its price lists (effective from 29-1-1982 in respect of its factories at Saharanpur, Bombay, Calcutta, Monghyr and effective from 8-2-1980 in respect of its Bangalore factory) in which the assessable value was calculated on the principle of the above decisions, the department rejected the price lists and issued notices to show cause why the price lists should not be revised, inter alia, to arrive at the after applying the exemption notification issued under rule 8. The rejection order dated 29-1-1982 and the show cause notices issued on 2-2-1982, 3-2-1982 (which has, subsequent to the filing of the writ petition culminated in an order rejecting the price list submitted by the ITC) and 5-2-1982 by the officers at Calcutta, Patna, Bombay Saharanpur are annexures K.N.J. AND I respectively to the writ petition filed by the I.T.C. Thereupon the I.T.C. filed C.W. 399/82 praying that the these trade notices, notifications, orders and show cause notices be quashed in view of the decisions of this Court and the respondents directed to accept the price list submitted by the I.T.C. and prepared on the basis of the principle approved by these decisions. The other writ petitions were also filed in like circumstances and their facts need not be elaborated.

12. Had matters stood there, these writ petitions could, and perhaps would, have been disposed of by a short order following the earlier decisions of this Court. But, in 1982, the legislature intervened by retrospective amendment which has an impact in controversy in these petitions. It is, therefore, necessary to refer to the circumstances in which the amendment came to be made as well as the terms of the amendment in some detail.

13. Since the amendments were initially proposed in clause 47 of the Finance Bill, 1982, though subsequently enacted into the [Finance Act, 1982](#) we may refer to the provisions of the Finance Bill here. The amendment proposed by clause 47 was the insertion of an Explanationn to sub-clause (ii) of clause (d) in section 4(4) of the Act and this was to be with retrospective effect from 1-10-1975. This, as already mentioned, was the date from which the present section 4 has been substituted (for the section as it stood earlier) by the Amendment Act of 1973. In other words, the new section, ever since its insertion with effect from 1-10-1975, has to be read as if the proposed Explanationn had formed part of it from the very beginning. The proposed Explanationn is in these terms :

'For the purposes of this sub-clause, the amount of the duty of excise payable on any excisable goods shall be the sum total of -

(a) the effective duty of excise payable on such goods under this Act, and

(b) the aggregate of the effective duties of excise payable under other Central Acts, if any, providing for the levy of duties of excise on such goods, and the effective duty and excise on such goods under each Act referred to in clause (a) or clause (b) shall be, -

(i) in a case where a notification or order providing for any exemption (not being an exemption for giving credit with respect to, or reduction of duty of excise on such goods equal to, any duty of excise already paid on the raw material or component parts used in the production or manufacturer of such goods) from the duty of excise under such Act is for the time being in force, the duty of excise computed with reference to the rate specified in such Act in respect of such goods as reduced so as to give full and complete effect to such exemption; and

(ii) in any other case, the duty of excise computed with reference to the rate specified in such Act in respect of such goods.'

14. To render fully effective the retrospective operation intended by the proposed amendment, clause 47(2) also proposed a saving clause in the following terms :-

(2) Any action or thing taken or done or purporting to have been taken or done at any time during the period of commencing on the 1st day of October, 1975 and ending with the 27th day of February, 1982 (hereinafter in this sub-section referred to as the said period) under the Central Excises Act, shall be deemed to be and to have always been, for all purposes, as validity and effectively taken or done as if the amendment made by sub-section (1) had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any Court, tribunal or other authority, -

(a) all duties of excise levied, assessed or collected during the said period on any excisable goods under the Central Excises Act, shall be deemed to be and shall be deemed always to have been, as validity levied, assessed or collected as if the amendment made by sub-section (1) had been in force at all materials times;

(b) no suit or other proceeding, shall be maintained or continued in any Court for the refund of, and no enforcement shall be made by any Court of any decree or order directing the refund of, any such duties of excise which have been collected and which would have been validly collected if the amendment made by sub-section (1) had been in force at all material times;

(c) refund shall be made of all such duties of excise which have been collected but which would not have been so collected if the amendment made by sub-section (1) had been in force at all material times;

(d) recovery shall be made of all such duties of excise which have not been collected or, as the case may be, which have been refunded but which would have been refunded, if the amendment made by sub-section (1) had been in force at all material times.

Explanation - For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

15. The Statement of objects and reasons accompanying the Bill explained the object of this amendment thus :

'Clause 47 seeks to insert an Explanationn to sub-section 4(4)(d)(ii) of the Central Excises Act, to make it clear that in computing the amount of duty of excise deductible from the cum-duty price, the effective amount of duty of excise payable on the goods under assessment shall alone be taken into account. This Explanationn is being given effect to retrospectively from 1st October, 1975.'

16. In his Budget Speech, while introducing the Finance Bill, 1982, the Finance Minister had this to say apropos this amendment :-

'There have been some disputes in the recent past regarding the determination of assessable value of excise goods from a given cum-duty price, resulting in consideration litigation. This has resulted in blocking up substantial amounts of revenue. It is proposed to suitably amend Section 4 of the Central Excises and Salt Act to make it clear, that in computing the amount of duty of excise deductible from the cum-duty price, the effective amount of duty of excise payable on the goods under assessment shall alone be taken into account. This amendment is being given effect to retrospectively from 1st October 1975.'

These provisions now find place in Section 47 of the [Finance Act, 1982](#).

17. In view of the above retrospective amendment to the statute, the writ petitions have been amended to contend that, this amendment notwithstanding, the principles laid down in the Modi Rebber & Ceat Tyre Cases (supra) still continue to be applicable and that the petitioners are still entitled to the reliefs prayed for in the writ petitions. The point made on behalf of the petitioners is that the purpose of the amendment was totally different and that even if the intention of the legislature was to supersede the divisions of this and other Courts, such intention has not been properly carried out and the amendment has mis-fired, the wording of the amendment being inadequate and inappropriate to give effect to the intention. On the other hand, the Union of India contends that even the provisions as they originally stood, permitted the effective rate of duty being taken into account in determining the assessable value and it has been so held by the Bombay High Court in B. K. Paper Mills v. Union of India : 1984(18)ELT701(Bom) and the Karnataka High Court in Mangalore Chemicals v. Assistant Collector : 1986(23)ELT48(Kar) . The retrospective amendment not only intends to, but also

effectually does, make this perfectly clear. After the amendment, at any rate, it is urged it is not possible for the petitioners to legitimately contend that the effect of a notification under Rule 8 cannot be taken into account in determining the assessable value of a commodity in respect of which such a notification has been issued. Reliance is placed, in this regard, on the decision of the Andhra Pradesh High Court dated 1st August, 1985 in a batch of writ appeals in the cases of Andhra Pradesh Paper Mills Ltd., Sirpur Paper Mills Ltd., and Suryachandra Paper Mills Ltd. (WA Nos. 181/80, 5807/80 and 6371/83) reversing the judgment of the single Judge of that Court reported in 1980 ELT 210. The question to be considered now is, which of these two contentions is correct

18. It is quite common practice for the legislature to intervene and clarify the legislative intent when it finds that judicial decisions have given a statutory provisions an interpretation or effect that was not intended. Such legislations have been considered and interpreted in a number of decisions. The learned Attorney General, on the basis of the decisions in *Rai Ramakrishna v. State* : [1963]50ITR171(SC) *Arora v. State* : [1964]6SCR784 *Krishnamurthy & Co. v. State* : [1973]2SCR54 *Hira Lal Rattan Lal v. State* : [1973]2SCR502 *Dora v. Annamaidu* : [1974]2SCR655 *Government of Andhra Pradesh v. Hindustan Machine Tools* : AIR 1975 SC2037 and *Shetkkari Sahakari Sakhar Kharkhana v. Collector* : [1980]1SCR982 , formulated four characteristics of such legislation. These are : (a) the power of the legislature to enact even retrospective law is plenary so long as it is within the scope of its legislative competence subject to other constitutional limitations; (b) the amendment should address itself to the defect, lacuna or vice pointed out by the judgments and remove it; (c) the amendment is generally made retrospective as it is clarificatory in nature; and (d) the amendment usually contains a validating provision in respect of things already done.

19. There is no dispute that conditions (a), (c) and (d) are fulfilled in the present case. It only remains to be considered whether requirement (b) is also fulfilled. In this context, Shri Nariman wished to emphasise that in trying to determine whether a legislation of the nature presently in question has been successful in achieving its purpose, four basic principles of construction should not be lost sight

of. These, according to him, are as follows : (1) the first of these rules may be expressed thus, in the language of the Judicial Committee in *Abdur Rehman v Syed Abu* (AIR 1928 PC 16) :

'It is a sound of law of interpretation to taken the words of a statute as they stand and to interpret them ordinarily without any reference to the previous state of the law on the subject or the English law upon which it may be founded; but when it is contended that the legislature intended by any particular amendment to make substantial without considering what the law was previously to the particular enactment and to see whether the words use in the statute can be taken to effect the change that is suggested as intended.'

(2) There is a presumption applicable to such cases which has been approved of by the Supreme Court in *Ranaganathan v. Government* : [1955]2SCR374 . This is the presumption against implicit alteration of law enunciated in Maxwell (Interpretation of Statutes, 10th Edition, page 81) thus :

'One of these presumptions is that the legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares, either in express terms or by clear implication, or in other words, beyond the immediate scope and objection of the statute. It is in the last degree improbable that the legislature would over-throw fundamental principles, infringe rights or depart from the general system of law without expressing its intention with irresistible clearness.'

20. This principle has been approved by the Judicial Committee in *Murugiah v. Jainuddin* 1954 3 WLR 687. In *National Assistance Board v. Wilkinson* 1962 2 QB 648 Lord Goddard endorsed this principle, observing :

'A statute is not to be taken as effecting a fundamental alteration in the general law unless it uses words 'unmistakably pointing to that conclusion'.'

It was put in slightly different words by Sir John Romilly, M.R. in *Minet v. Lemon* (1885 - 20 Beav 269) :

'..... the general words of the act are not to be so construed as to alter the previous policy of the law, unless no sense or meaning can be applied to those

words consistently with the intention of preserving the existing policy untouched.'

Referring to the same principle, such Supreme Court in *Empress Mills v. Municipal Committee* : [1958]1SCR1102 observed :

'It is a recognised principle of construction that general words and phrases, however, wide and comprehensive must usually be construed as being limited to the actual objects of the Act.'

(3) Addressing himself to the task of interpreting a retrospective amendment of a taxing law, Lord Wilberforce, enunciated the following principle in *Wijesuriya v. Amit* 1965 3 ALL E.R. 701;

'The question is to be determined according to ordinary principles of construction which apply to a statute which is (a) retrospective (b) fiscal (c) in parts penal. It must be shown that the enacting words clearly cover the case to which it is sought to apply them. The Court will not doubt prefer an interpretation which gives effect to the amending Act, rather than the one which denies it any efficacy, but it will not strain the language used, nor will it rewrite or adopt it to cover cases other than those to which it clearly applies.'

(4) Finally, it is necessary for the Court to find out 'whether by validation, the legislature has removed the defect which the Courts had found in the previous law.' It is necessary to remember :

'If the legislature acting within the legislative competence, wants to neutralise or reopen a Court's decision, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to revising the decision in exercise of judicial power which the legislature does not possess or exercise. A Court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in altered circumstances.' (See *Shri Prithi Cotton Mills Ltd. v. Broach Borough Municipality*, : [1971]79ITR136(SC) *Municipal Corporation v. New Shorrock Spinning & Weaving Co. Ltd.* : [1971]1SCR288 *Janapada Sabha v. Central Provinces Syndicate Ltd.* : [1970]3SCR745 *Hari Singh v. Military Estates Officer* : [1973]1SCR515 *Dora v.*

Annamma Naidu : [1974]2SCR655 and Cawasji v. State : [1984]150ITR648(SC)).

21. There can be no doubt that these are well settled principles of statutory construction and we shall proceed to consider the question whether the amendment in the present case has resulted in the 'neutralisation' of the judgments referred to earlier or whether, for some reasons, it has failed to do so, in the light of these principles.

22. We have necessarily to start our discussion with the state of the law as it was prior to the amendment. In other words, we should look at the language of Section 4 in the form in which it had been introduced in 1975 and consider whether any ambiguities in its structure or difficulties in its interpretation had come to light that needed remedial action on the part of the legislature. As we see it, and insofar as is relevant for purposes of our present discussion, at least three ambiguities in the definition of 'value' in Sections 4(4)(d)(ii) were highlighted by judicial decisions : (a) Does excise duty payable and livable refer only to the excise duty payable under the First Schedule or does it also include additional and special and other excise duties that may be payable under other Acts (b) What is the scope of the expression 'excise duty payable' in the sub-clause Normally, of course, it means the duty payable at the rates specified in the First Schedule but what is the position where there is an exemption granted by a notification under rule 8 (c) Where a notification for exemption is issued under rule 8, is it permissible for the department to contend that the exemption will be available only in cases where the manufacturer passes on the benefit of the exemption to the consumer

23. The first of these issues came up for consideration by the Madras High Court in *Government of India v. Madras Aluminium* (1981) ELT 892 and by this Court in *Modi Rubber Ltd. v. UOI* : 1983(12)ELT24(Del) and earlier in CWP 1006/1978 decided on 24-5-1979. These decisions held that the term 'excise duty livable' in a notification issued under rule 8 will include all duties of excise whether it be the basic duty livable under the Central Excises and Salt Act, a special duty of excise livable under any special enactment, the additional duty livable under a Finance Act or an auxiliary duty levied under any statute though, earlier, in the context of a different enactment, contrary views had been expressed by the Court in

Associated Cements v. Director of Customs : [1972]84ITR811(Delhi) and Madras High Court in Seshasayee Paper & Boards Ltd. v. Deputy Director or Inspection : [1978]114ITR616(Mad) . The second and third questions came up for consideration in the Modi, Ceat and other cases already referred to where it was held that, even where a notification of exemption under rule 8 exists, the expressions excise duty 'payable' and 'livable' in Section 4(4)(d) and the notification respectively will only refer to the excise duty payable in accordance with the tariff in the First Schedule and that the notification of exemption should not be confined only to cases where the benefit of the exemption was passed on to the consumer by the manufacturer. The decision of this Court in Modi Rubber : 1983(12)ELT24(Del) led to the promulgation of Ordinance No. 1 of 1982 which has been replaced by the Central Excise Laws (Amendment and Validation) Act (58 of 1982). This is clear from the Statement of Objects and Reasons appended to the bill. The Ordinance and Act provided with full retrospective effect that a notification or order granting an exemption from excise duty should be construed as granting exemption only from such excise duty livable under the Act or any other Central law as it specifically or expressly refers to.

24. To avoid a like restrictive interpretation being imported into the interpretation of Section 4(4)(d)(ii), it became necessary to clarify that, for determining assessable value of an article, the market value should be reduced by the sum total all duties of excise, payable on such goods, whether so payable under the Act or under any other Central Law that levied such duty. This is the first clarification effected by the Explanationn.

25. The second of the issues related to the amount of such excise duty deductible from the market value : whether it is the amount of duty payable as specified in the tariff in the First Schedule or in the Central Act levying it or this amount as reduced after giving effect to an exemption notification (where one exists) in relation to the goods. The Explanationn clarifies that the amount to be deducted is the 'effective duty' payable and it proceeds to define this expression in the Second part of the Explanationn. This part is in two sub-clauses. Sub-clause (i) deals with the situation where there is an exemption notification of a type that exists in the cases presently under consideration. In such cases it says the 'effective duty' means -

'The duty of excise computed with reference to the rate specified in such Act in respect of such goods as reduced so as to give full and complete effect to such exemption.'

In case, however, there is no such exemption the reduction will be to the extent of excise duty computed with reference to the rate specified in the Act or Central Act in respect of such goods.

26. The last few words of the second para of the Explanationn which have been underlined above also took care of the third issue discussed earlier. The emphatic assertion that full and complete effect should be given to the exemption put paid to any argument on the lines of what the department and attempted in Modi and Ceat cases, viz., that the notification for exemption would be applicable not in all cases but only in some cases such for as eg. cases where the manufacturer had passed on the benefits of such exemption as is granted in respect of excise duty to his customer and does not profits by it.

27. An analysis of the language of the Explanationn introduced, with retrospective effect by the [Finance Act, 1982](#), thus shows that all the above three aspects on which doubts had arisen earlier were soug to be and were clarified by the amendment. The retrospectivity of the legislation coupled with the validating provision enacted under Section 4(2) of the Finance Act also makes it clear that the intendment and effect is to neutralise all judicial decisions to the contrary and make the amendments fully effective from 1-4-1975. In the face of this amendment, it seems quite clear that, after the [Finance Act, 1982](#), it is not longer possible to give effect inter alias to the rulings in Modi Rubber, Ceat Tyres and other like cases.

28. The petitioners, however, contend that the amendment does not at all effect their stand which has been approved in Modi Rubber & Ceat Tyres. The attempt to wriggle out of the tentacles of the amendment is based by different counsel on different arguments which may now be dealt with. But, before proceeding to do so, it may be well to clarify one aspect which is really not in dispute between the parties. As already mentioned, notifications under rule 8 assume various forms. The notification under consideration in Modi Rubber and Ceat Tyres cases was

different from the one we have to consider here in two respects : One is that it granted exemption only in respect of such part of the goods manufactured as exceeded the 'base clearance' while here the exemption operates on the entirety of the goods manufactured. Secondly, the exemption was in respect of so much of the duty payable as was in excess of 75 per cent thereof leading to the inference that the duty payable had to be first calculated before the exemption operated whereas here the notification exempts the duty in excess of certain prescribed amounts. We do not, however think that these points of distinction make any difference to the principle to be applied. For, as to the first point, it may be noted that in Modi Rubber and Ceat Tyres the controversy was not in respect of the entire production but only in respect of the goods produced in excess of the 'base clearance' and thus in both case the controversy arises in respect of the goods to which the notification applies. As to the second point, the distinction is of no relevance since the issue for decision turns on the meaning of the expression 'excise duty payable (or livable)' and the position will be the same whether the reduction in duty resulting from the exemption is expressed as a percentage of the tariff rate or as an amount to be calculated on the basis of a prescribed scale. We can, therefore, proceed on the basis that, had there been no statutory amendment, the decisions in Modi Rubber and Ceat Tyres would have been fully applicable in respect of the notification in this case. Now, to revert to the arguments put forward by the counsel for the petitioners.

29. Shri A. B. Diwan contends that the amendment proceeds on wrong lines inasmuch as instead of tackling the real issue by amending the terms of the notification issued under rule 8 which had been interpreted in the earlier decisions, it seeks to amend the provisions of Section 4 about which there was no ambiguity and which needed no amount at all. He submits that there was never any doubt that the expression 'excise duty payable' could also mean the 'effective excise duty' payable as contended for by the department and as now clarified by the amendment. The never was the bone of contention in the earlier cases. The assessed's stand in the earlier case had been upheld solely on the language of the notification on two grounds :-

(i) on a construction of the notification, it was held that it first postulated computation of the duty 'payable' or 'livable' as specified in the Act and then proceeded to exempt a part thereof. thereforee, the exemption has to be granted only on the basis of the rates specified in the Act and, having done this, there was no warrant for recalculating the assessable value which had already been once determined.

(ii) The notification did not affect the rate of duty payable under the Act which under Section 3 was charged at the rate fixed in the Schedule. It did not and could not reduce the duty as fixed in the Statute. The rule making power did not extend to reduction of rates of duty. The intention and effect of the notifications framed under Section 37(2)(xvii) of the Act was only to grant an exemption from payment of the amount of duty payable as per the tariff, in certain circumstances which, in effect, only meant that the duty payable, to that extent, will not be recovered or collected.

30. Shri Diwan contended that, so long as the notifications continued to remain unamended in their language, the ratio underlying the earlier decisions would remain unaffected and since it is well settled that the legislature cannot 'neutralise' earlier decisions by merely declaring them to be wrong without touching their line of reasoning or rectifying the effect pointed out, the amendment has not succeeded in what may have been the object it sought to achieve. Shri S. S. Ray also adopted this line of reasoning, particularly on the second ground of decision set out above and in this context, invoked the principle of the leading decisions set out above and in this context, invoked the principle of the following leading decisions under the Income Tax Act drawing a distinction between the three stages of charge, levy and collection of Tax : *Kalwa Devadattam v. Union of India* : [1963]49ITR165(SC) , *Kesoram Industries & Cotton Mills Ltd. v. Commissioner of Wealth Tax (Central) Calcutta* : [1966]59ITR767(SC) and *H.M. Setu Parvati Bayi v. Commissioner of Wealth Tax, Kerala* : [1968]69ITR864(SC) .

31. The learned Attorney General met this argument in two ways. He contended firstly, the amendment, though effected in the statute should also be treated as an amendment of the notification issued under the statute and he referred to the

decision of the Supreme Court in Krishnamurthy v. State of Orissa : [1964]7SCR185 . We are unable to accept this argument. As pointed out rightly by the learned counsel for the petitioners, in Krishnamurthy's case (supra), an amendment had been made to the notification concerned and it was the cope of that amendment which was under consideration by the Supreme Court. We think that the learned counsel for the petitioners are correct in their contention that in this case no amendment has been effected in the notification under rule 8 that the amendment effected is only to the language of Section 4(4)(d) and that the effect of the amendment has to be construed accordingly. On this aspect, the contention of the learned Attorney General is that the amendment effected to the Section is itself wide, comprehensive and far-reaching enough to effectuate the object sought to be achieved and that the contentions urged on behalf of the petitioners in this respect overlook the contentions urged on behalf of the petitioners in this respect overlook the real scope of the earlier decisions as also the full significance of the amendments effected in Section 4 of the Act. We think this contention of the learned Attorney General has to be accepted. At the time of the earlier decisions, the Act and the notification were in two watertight compartments : the Act was first applied and, from the duty computed, an exemption was granted. This involved three stages : One, the determination of the assessable value; two the computation of the amount of duty payable under the Act; and three, the calculation of the amount of exemption. Once the exemption operated the duty payable in effect smaller and this may have an impact on the assessable value if it could be redetermined but there was no statutory language which authorised the authorities to go back again to redetermine the assessable value and that had been determined already. The statute and notification operated successfully in three different stages of calculation and the High Court could find no reason to intertwine them into one another so as to make such a redetermination of the assessable value possible or necessary. The amendment has altered the position by expressly integrating and incorporating the effect of the notification in the statute. The assessable value can no longer be computed by reference only to the Act and Schedule without taking into consideration the effect of a notification under rule 8, where it exists. This is made doubly clear by amending the definition of assessable 'value' and clarifying that, for this purpose the duty payable would be

the 'effective duty' payable after taking the notification into account. This amendment vitally alters the first stage of computation which was easily done under the Act earlier without any reference to the notification. Though the terms of the notifications under rule 8 remain unaltered, the inclusion of a reference to the notification in Section which can no longer be interpreted without reference to the notification. In this context, it is also necessary to point out that one of the arguments addressed in the earlier cases was that the terms of the notification had an impact on the interpretation of Section 4. This argument was rejected on the ground that Section 4 having been applied one earlier to determine the assessable value and the duty payable without considering the notification, there was no scope for a second recourse to Section 4. In other words, one of the points of decision was also based on the interpretation of Section 4 and the amendment of Section 4 removes the obstacle indicated in the earlier decision. It changes the meaning of the assessable value by reference to which the excise duty payable at the specified rates is to be calculated and against which the amount of exemption is to be given. To illustrate by means of the concrete instance given in the earlier decisions, under the old section the assessable value was Rs. 100/-, the excise duty payable Rs. 20/- and the exemption Rs. 5/-. But under the new section the assessable value would be Rs. 104.35, the duty payable Rs. 20.87 and the deduction there from Rs. 5.22, the sale price in either case being Rs. 120/-. The second part of the argument based on the income tax decisions and the distinction between charge, levy and collection is also no longer tenable in view of the amendment which has rendered irrelevant an emphasis on the word 'payable' in the definition of value. The amendment has defined 'excise duty payable' as meaning the aggregate of the 'effective duties of excise payable' under the Act and other Central Acts and such effective duty has further been defined as the duty at the rate specified under the Act reduced by the extent exemption granted. This part of the amendment has also rendered inevitable the application of the notification also at the first stage of calculations referred to earlier.

32. Much emphasis has been placed on the language of the relevant notification under rule 8. It is pointed out that they either can, nor do, effect a reduction in the rate of duty specified in the Act. Whatever may be the effect of a notification, if one exists, which specifies an exemption by way of a reduction in the rate of duty

specified in the Act, it is said the notifications under consideration in the earlier cases and the present one do not effect such reduction. They should not be interpreted, it is argued, as if they do indirectly something which they cannot and do not, do directly. This argument is also effectively forestalled by the amendment. It undoubtedly envisages that there may be many kinds of notifications under rule 8. Some may grant an exemption based on a percentage of the prescribed duty (as for e.g. the notifications in the case of paper board and tyres). Some may be more involved and calculated at an ad valorem percentage plus a flat amount (as in the case of the notification relating to cigarettes) or a flat amount (as in the case of the notification relating to soaps). The new section also appreciates that notifications, in form at least, would be granting only an exemption from the duty calculated under the Act. But it clearly indicates that the wording of the notification is not important. What is important is that when one applies the notification the effect will be a reduction in the duty payable as specified in the relevant Acts. The new section specifically requires that it is the amount of duty payable under the relevant Acts less the reduction therein which results from the application of the notification that should be taken to account for calculating the assessable value. Thus it appears to us clear that, the statute has, without any specific or direct reference to the earlier decisions, neutralised all the steps of logic on which the earlier judicial decisions were based and has effectively rendered those decisions no longer applicable.

33. Shri Nariman, for one of the petitioners was prepared to concede that Section 4 had succeeded in dovetailing into itself the effect of a notification under rule 8 but he contended that the effect of such incorporation was limited in scope and effect. He submitted that the purpose of including the reference to the notification in the definition of 'effective duty' was only to neutralise the department's contention in earlier case that the notification would be given effect to only in cases where the benefit thereof was extended to the consumer. By the amendment, he says, the statute has only affirmed the view of this Court that no such limitation could be read into the applicability of the notification. He says that his argument is reinforced by requiring that 'full and complete effect' should be given to the exemption and also by the terms of clause (c) of Section 47(2) of the Finance Act which envisages a possibility of there being refunds of excise duty on

giving effect to the amendment retrospectively. He points out that these words and clause will have no meaning at all if the amendment was intended to counter the earlier decisions which were entirely in favor of the tax payer. We do not think that these contentions are tenable. The use of the words 'full and complete effect' as already explained, is because the wordings of the notifications usually provide for no reduction in duty and it is necessary to emphasise that the reduction that results from giving 'full and complete' effect thereto is to be taken into account in computing the assessable value. These words are not merely intended to counter the department's arguments referred to in the earlier cases. That argument was only another face of the department's contention that assessable value gets automatically altered in case to which a notification applies unless the sale price is also scaled down and this amendment takes care of both the facts of the argument addressed by the department in these cases.

34. In our opinion, again, not too much significance can be attached to the inclusion of clause (c) in Section 47(2) of the Finance Act. Section 47(2) is couched in the usual phraseology of a validating sub-section necessitated by a retrospective legislation. We need not travel far beyond the [Finance Act, 1982](#) itself to appreciate this. Besides Section 47, Sections 51 and 52 also contain provisions in identical terms. When the legislature introduces such a retrospective amendment, it wishes to ensure that past actions are brought into line therewith. Since an amendment may involve consequences in favor of both parties, the standard validation clause usually incorporates provisions to ensure that the consequences to both parties flowing from the retrospective amendment should be given effect to. For instance, in a taxing statute, if the amendment involves a higher tax, the State should be able to collect. Likewise, if it involves a smaller tax, the excess should be refunded to or allowed to be retained by the assessed. Section 47(2) repeats this usual validation formula. From the mere fact that it contains a provision for refund, it does not necessarily follow that the amendment proposed contains some element favorable to the tax payer which may give rise to a refund. When the legislature enacts an amending legislation, it may not and - indeed may not be able to - assess all the repercussions of the retrospective amendment, all the questions that may arise thereon or all the possible interpretations that may be contended for or rendered thereon in future. It,

therefore, enacts provisions to cover all possible contingencies and to provide for all eventualities that may follow on a retrospective legislation. The best that can be said is that, in an amendment of this type, clause (c) may never be invoked. But we think it is not proper to interpret the clear words of the amendment restrictively to ensure that clause (c) also becomes applicable. If, on the one hand, a strained interpretation of the language of the statute so as to read into it an effect which is not expressed in its words should be avoided it is equally imperative, on the other hand, that the clear and intended meaning of the words used should not be denied their full pay but interpreted in a narrow and restricted manner only because the former may not, possibly, lead to a situation in which clause (c) could be applied.

35. We have dealt with the arguments on the proper interpretation of the amendment. We may now turn to two arguments addressed before us to buttress the petitioners' stand on the interpretation of the amending provision by pointing out the anomalies and impracticalities that will follow if the interpretation contended for by the department is accepted. The first of these arguments is based on the notification pertaining to certain kinds of soap which have been referred to earlier. By these notifications, so much of the excise duty payable as exceeds the amount of duty calculated at the rate of Rs. 22.50 per metric tonne is exempt from duty. The point made is, that if the section and notification are interpreted as contended for by the department, assessable values will emerge at different stages. To illustrate, the tariff rate being 20% ad valorem, on a cum-duty price of Rs. 400/- per metric tonne, the calculation will be as follows :-

(I) Cum-duty price Rs. 400.00 Assessable value Rs. 333.33 Excise duty at tariff rate Rs. 66.67 Exemption Rs. 22.50-----Net duty Rs. 44.17-----

(II) Cum-duty price Rs. 400.00 E.D. Rs. 44.17-----Assessable value redetermined Rs. 355.83 E.D. livable thereon Rs. 71.00 Less exemption Rs. 22.50-----Net duty Rs. 48.50-----

(III) Cum-duty price Rs. 400.00 Duty payable Rs. 48.50-----Assessable value Rs. 351.50 E.D. thereon Rs. 70.30 Less exemption Rs. 22.50-----Net duty Rs. 47.80-----

(IV) Cum-duty price Rs. 400.00 E.D. payable Rs. 47.80-----Assessable value Rs. 352.20 Duty thereon Rs. 70.44 Less exemption Rs. 22.50-----Net duty Rs. 47.94-----

The process, it is said, thus can go on ad infinitum. The amounts of duty payable would work out differently and though at Stage I, the total of the assessable value and the duty will be Rs. 400/-, it will be Rs. 404.53, Rs. 399.30 and Rs. 400.14 in Stages II, III and IV. It is, therefore, contended that the department's formula is unworkable as has been rightly held in the Modi Rubber & Ceat Tyres cases. This contention is repelled by the department as proceeding on wrong premises. It is pointed out that the difficulty has arisen because, in the first step in the calculation, the assessable value has been worked out on the footing that the duty is 20% instead of taking the effective duty. It is pointed out that the calculation, as per the department's formula is very simple. If the assessable value is x, the effective duty is $(x/5 - 22.50)$. The cum-duty sale price will then be $x + x/5 - 22.50$ or $6x/5 - 22.50$. Reversing the process, if the cum-duty sale is Rs. 400/-, the formula is :

$$6x - 22.50 = 400 \quad 56x - 22.50 = 400 \quad 56x = 422.50 \quad 55x = 422.50 - 22.50 = 400 \quad 55x = 400 \quad x = 400 / 55 = 7.2727$$

On this assessable value the duty payable will be Rs. 70.42 - Rs. 22.50 or Rs. 47.92. Thus the assessable value will be Rs. 352.08, the duty payable Rs. 47.92 and the sale price cum-duty Rs. 400/-. There is, therefore, no difficulty or indefinite repetition involved in applying the formula contended for by the department.

36. The second difficulty pointed out is based on the notification which comes up for consideration in the present case. In order to appreciate it, it is necessary to set out in some detail an extract from the table of calculations placed before us. It may be mentioned that, in respect of cigarettes, the excise duty is split up into two portions (a basic duty and an additional duty) and then there is a special excise duty equal to 10% of the basic duty. Thus where the assessable value of a broad of cigarettes is Rs. 10/- per thousand (falling in category (i) of the tariff table, the duty per thousand will be Rs. 15/- (consisting of a basic duty of Rs. 10.875 and an additional duty of Rs. 4.125) plus Rs. 21.25 (consisting of a basic duty of Rs. 15.41 plus an additional duty to Rs. 5.84), increased by special duty of Rs. 1.0875 and Rs. 1.541 respectively.

37. In other words the sale price will work out to Rs. 10/- plus Rs. 16.0875 plus Rs. 22.791 or Rs. 48.88. For assessable values or price will range from Rs. 0 to Rs.

48.88; or reversing the position where the cum-duty selling price is between Rs. 0 and Rs. 48.88, the assessable value can be worked back to some figures between Rs. 0 and Rs. 10/-. If the 'value' is between Rs. 10.01 and Rs. 11/- the duty will be as per column (ii) of the tariff schedule. For assessable value of Rs. 10.01, the duty per thousand will be Rs. 15/- plus 1 or Rs. 16/-, comprising of a basic duty of Rs. 11.60 and an additional duty of Rs. 4.40. The specific duty provided in the tariff schedule is Rs. 21.25, comprising of a basic duty of Rs. 15.41 and an additional duty of Rs. 5.84 as in category (i). The special duty will be Rs. 1.16 plus Rs. 1.54. Thus the total excise duty payable will be Rs. 11.60 plus Rs. 4.40 plus Rs. 1.16 plus Rs. 15.41 plus Rs. 5.84 plus Rs. 1.54, or in all, Rs. 39.97. In like manner the cum-duty price has been calculated as ranging between Rs. 49.98 and Rs. 52.67 where the assessable value varies between Rs. 10/- and Rs. 11/- per thousand. Similar ranges have been worked out for assessable values up to Rs. 35/- as contained in the following statement :

-----Range of assessable value	
Cum-duty price range-----	Rs.(i)
Does not exceed Rs. 10/- .0 -, 48.88(ii) 10-11 49.98 -52.67	11-12 53.88 -56.67
12-13 57.99 -60.89	x - x xx - xx20-21 98.6 -102.35
21-22 104.65 -108.80	x - x xx - xx34-35
202.71	-207.94(iii) 35
208-----	

38. Now the point that is made is that, on the method contended for by the department, the assessable value cannot be worked out where the sale price cum-duty falls in between two ranges. Thus, while it will be possible to work out the assessable value for any cum-duty price which is less than Rs. 48.88 or more than Rs. 208/-, or which falls within the ranges shown above, no assessable value can at all be worked out where it falls between two sets of ranges such as for e.g. between Rs. 48.88 and Rs. 49.98, between Rs. 52.67 and Rs. 53.88, between Rs. 56.67 and Rs. 57.99 and so on. As a concrete example, it is pointed out, the cum-duty selling price of 'scissors' cigarettes is Rs. 104.27 which falls in between the cum-duty price ranges calculated for assessable values falling in ranges of Rs. 20.21 and Rs. 21.22. Its assessable value must, therefore, fall between Rs. 20/- and Rs. 22/-. If it is taken as falling in range of Rs. 20-21 and the assessable value

worked out on the table applicable thereto, it comes to Rs. 21.507 which falls beyond this range. If, on the other hand, it is taken as falling in the range of Rs. 21.22 and worked back on the basis of the table for this range, it works out to Rs. 20.915 i.e., it now falls below this range. The cum-duty price worked out for assessable values of Rs. 20.915 and Rs. 20.07 are also Rs. 102.02 and Rs. 106.576 and not Rs. 104.27. In other words, the formula contended for by the department becomes unworkable when the cum-duty price falls between any two of the ranges set out in the table.

39. The department does not deny that there are ranges of cum-duty selling price for which an assessable value cannot be determined in the manner suggested by it. But there are two answers given to this contention. the first is that, in such cases, the assessable value should be determined by applying the well known canon of construction of taxing statutes that where there is a doubt, it should be resolved in favor of the assessed. For instance, in the case of scissors, cigarettes, assuming the correctness of the assessed's calculation, the assessable value could either be Rs. 21.507 or Rs. 20.915. It is said that, applying the above principle, the assessable value will be taken at Rs. 20.915 though in fact it is one pertaining to a much smaller cum-duty price, on the other hand, in our opinion the correct answer to the contention of the petitioners is that the anomaly pointed out is not at all one that flows from the present disputed views regarding the construction of the statutory provisions and the notifications but is a difficulty really attributable to the infelicity and lack of care in drawing up the rate structure set out in the notification. As the learned Attorney General rightly pointed, the situation would have been exactly the same even where no question of any exemption at all was involved but the main tariff itself is couched in the same way as the present notification. In this context, the learned Attorney General, by way of illustration, invited our attention to the tariff in the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) as substituted by an amendment Act of 1986. Under sub-heading 52.06, the rates of duty prescribed hereunder as follows :-

-----	Value	Rate	of additional
duty-----	Less than Rs. 5 Nil	Rs.	

5-6 1.5%Rs. 6-7 2%Rs. 7-8 3%Rs. 8-9 3.50%Rs. 9-10 5%Rs. 10-11 6.50%Rs. 11-12 7.50%Above Rs. 12 8%-----

Thus where the value is Rs. 9/- the duty will be Rs. .315 but where it is Rs. 9.01 it will be Rs. .4505. For cum-duty prices ranging between Rs. 9.315 and Rs. 9.4605 no assessable value can be worked out and so on in respect of other ranges as well. We think this point is well taken. We are not called upon, in these writ petitions, to decide how the assessable value should be worked out in the various ranges pointed out in the tabular statement filed before us and we express no opinion thereon. It is sufficient for our purpose to point out that the problem highlighted arises not due to any difficulties in giving effect to the construction contended for by the department but due to a failure in certain cases to provide for marginal adjustments where the excise duty is made to vary from range to range of the assessable value.

40. It only remains to make a reference to the Bata case : 1985(21)ELT9(SC) referred to by counsel for the petitioners. That decision relates to excise duty on footwear and parts of footwear which was being levied at 10% and 15% respectively. An exemption notification was issued on 18-2-1965 exempting footwear the value of which did not exceed Rs. 5 per pair from the whole of the excise duty livable thereon. During the years 1967 and 1968 the company was manufacturing certain footwear which was being sold at Rs. 6.25 per pair. The company contended that since the assessable value of such footwear, calculated in accordance with the provisions of Section 4 of the Act, as they stood at the relevant time, was only Rs. 4.94 and hence less than Rs. 5 per pair, they qualified for the exemption. This stand was upheld by the Supreme Court, settling a difference of opinion that existed between the Patna and Calcutta High Courts on the issue. The Supreme Court held that the expression 'for the purposes of duty' in Section 4 had a very wide import for all purposes connected with the determination of chargeability and levy of duty.

41. This decision of the Supreme Court, it seems to us, really reinforces the principle which this court laid down in Modi Rubber & Ceat Tyres that, for purposes of the exemption notification, we have to start with the assessable value

calculated with reference to the tariff rate of duty. The Supreme Court was not concerned with the effect of the Amendment of 1982.

42. This disposes of all the contentions urged before us. For the reasons stated by us, we are of the opinion that the assessable values of the petitioners' goods cannot be determined on the basis of the earlier decisions of this Court but will have to be determined on the basis of the effective duty payable after taking the exemption notification into account. The writ petitions fail. The rule in each of these cases is, therefore, discharged and the writ petitions stand dismissed. There will, however, be no order as to costs as the department's success is attributable to a subsequent, but retrospective, amendment.

43. After announcement of judgment learned counsel for the petitioner, Mr. A. B. Dewan, prays for certificate of fitness for leave to appeal to the Supreme Court and also seeks stay of implementation of the judgment to enable the petitioner to take steps for filing an appeal and seek directions from the Supreme Court. It is submitted that the question of validity of the amendment is involved. We may say at the outset that none of the three counsels, who argued the case before us for number of days ever adverted to the validity of the amendment. The only question argued was the nature and effect of the amended provision i.e., as to its interpretation. On interpretation we find no difficulty and we, therefore, consider that it is not a fit case for grant of certificate of fitness for leave to appeal in the Supreme Court. Since no certificate of fitness is being granted we also find no reason to stay the implementation of judgment.