

WavIn India Ltd. Vs. Union of India

WavIn India Ltd. Vs. Union of India

SooperKanoon Citation : sooperkanoon.com/811207

Court : Chennai

Decided On : Jul-01-1994

Reported in : 1994(73)ELT782(Mad)

Judge : R.R. Mishra, J.

Acts : [Customs Act,1962](#) - Sections 12, 14, 25 and 46; Central Excise Rules, 1944 - Rules 8 And 192; [Central Excise Act, 1944](#) - Sections 8 And 8(1); [Customs Tariff Act, 1975](#)

Appeal No. : Writ Petition Nos. 12251 and 12253 of 1984

Appellant : WavIn India Ltd.

Respondent : Union of India

Advocate for Def. : Shri C.A. Sundaran, A.C.G.S.C.

Advocate for Pet/Ap. : Shri C.S. Vaidhyanathan, Adv.

Judgement :

ORDER

1. The petitioner is a public limited company, having its registered office at Ambattur Industrial Estate, Madras. It has imported as per the bill of lading and the packing certificate dated 22-10-1984, on high sea sale basis, materials valued at Rs. 1,00,05,000/-. It has been assessed and accordingly subjected to a demand of

customs and other duties, according to it, in all Rs. 4,24,025/-. The duty, as listed by it, is :

(a) additional customs duty (countervailing duty) at 35% and surcharge at 8% (in all aggregating to 26.75%) under Section 3 of the [Customs Tariff Act, 1975](#);

(b) cost of packing material at Rs. 450/- per metric tonne for calculating the customs duty at 75%;

(c) landing and stevedoring charges for calculating the customs duty;

(d) cost of packing material, landing and stevedoring charges in the assessable value for the levy of additional customs duty and surcharge thereon;

(e) customs duty in the assessable value for the purpose of levy of additional customs duty and surcharge thereon.

It is acknowledged, however, by the petitioner that the materials that it has imported are chargeable to customs duty under Chapter 39.01/06 of the First Schedule of the Customs Tariff Act. According to him, however, in exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962, read with the relevant rules, the Central Government has exempted the duty on P.V.C. Resins, in these words :

'In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 30/82-Customs dated the 28th February, 1982, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods, falling under heading No. 39.01/06 of the First Schedule to the [Customs Tariff Act, 1975](#) (51 of 1975) specified in column (2) of the Table hereto annexed, when imported into India, from so much of that portion of the duty of Customs leviable thereon which is specified in the said First Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (3) of the said Table :

Provided that nothing contained in this notification shall affect the exemption granted under any other notification of the Government of India for the time being in force, from the duty of customs specified in the said First Schedule in respect of the goods referred to in this notification.

TABLE-----S. No. Description of			goods Rate of duty-----		(1) (2)	
(3)-----			1.2. Polyvinyl		3.4.	
Chloride	Resins	150	per	centad	valorem	

The Government, according to the petitioner, has also issued a notification bearing No. 342-Cus. dated 2-8-1976, which has been amended from time to time, to the effect that when the goods are imported into India from Romania, there is a further exemption equal to 50% of the standard duty of customs. According to it, the effective rate of duty of customs on P.V.C. Resins is 75% (i.e. 50% of 150% ad valorem).

2. The petitioner's main contention in the instant petition is that the notifications aforementioned make provisions for the levy of customs duty at 75% on P.V.C. Resins not only to basic customs duty, but also to the ancillary duty of customs under the provisions of Section 3 of the Customs Tariff Act and surcharge thereon. In the petition, as such, the petitioner has designed objections to the inclusion of the cost of packing materials, landing and stevedoring charges, etc. also. Learned counsel for the petitioner has, however, to concede that the issues in this behalf, are already settled and the only question that has survived in the instant case is the question, whether the afore-quoted exemption notifications make the petitioner eligible for getting exemption in the additional duty, as envisaged under Section 3(1) of the [Customs Tariff Act, 1975](#).

3. Before any effort is made to examine the contentions of the learned counsel for the petitioner, a mention of the relevant provisions of the Act that appear to concern us in the instant case, is felt necessary. Chapter V of the Customs Act, 1962, contains provisions, which have recognised the positive role of the [Customs Tariff Act, 1975](#) and has given to the Central Government power to grant

exemption from duty in certain circumstances. Section 12 of this Act reads as follows :

'12. Dutiable goods. - (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the [Customs Tariff Act, 1975](#) (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.'

Duty thus to be levied at such rates, as may be specified in the Customs Tariff Act, are further subjected to a claim under Section 14 of the Act, which reads as follows :-

'14. Valuation of pilfered goods. -

(1) For the purposes of the [Customs Tariff Act, 1975](#) (51 of 1975), or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale :

Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under Section 46, or a shipping bill or bill of export, as the case may be, is presented under Section 50;

(1A) Subject to the provisions of sub-section (1), the price referred to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf;

(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A), if the Central Government is satisfied that it is necessary or expedient so to do, it

may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

(3) For the purposes of this section -

(a) 'rate of exchange' means the rate of exchange -

(i) determined by the Central Government, or

(ii) ascertained in such manner as the Central Government may direct,

for the conversion of Indian currency into foreign currency or foreign currency into Indian currency :

(b) 'foreign currency' and 'India currency' have the meanings respectively assigned to them in the Foreign Exchange Regulation Act, 1973 (46 of 1973).'

The power to grant exemption in the public interest is provided under Section 25 of the Act, which reads thus :-

'25. Power to grant exemption from duty. -

(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable.

(3) An exemption under sub-section (1) or sub-section (2) in respect of any goods from any part of the duty of customs leviable thereon (the duty of customs leviable

thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of customs chargeable on such goods shall in no case exceed the statutory duty.

Explanation. - 'Form or method', in relation to a rate of duty of customs, means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable.'

4. The two relevant provisions in the Customs Tariff Act are Sections 2 and 3 thereof, 2 generally as to the rates at which the duty of customs shall be levied under the Customs Act, 1962 as specified in the first and second schedules, and Section 3 as to duty in addition to the prescriptions in the first and second schedules on duties, in these words :

'3(1) Any article which is imported into India shall, in addition, be liable to a duty (hereinafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article.

Explanation. - In this section, the expression 'the excise duty for the time being leviable on a like article if produced or manufactured in India' means the excise duty for the time being in force which would be leviable on like article if produced or manufactured in India or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty.

(2) For the purpose of calculating under this section, the additional duty on any imported article, where such duty is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in Section

14 of the Customs Act, 1962, be the aggregate of -

(i) the value of the imported article determined under sub-section (1) of the said Section 14 or the tariff value of such article fixed under sub-section (2) of that Section, as the case may be, and

(ii) any duty of customs chargeable on that article under Section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but not including the duty referred to in sub-section (1).

(3) If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article (whether on such article duty is leviable under sub-section (1) or not) such additional duty as would counter-balance the excise duty leviable on any raw materials, components and ingredients of the same nature as, or similar to those, used in the production or manufacture of such article, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty representing such portion of the excise duty leviable on such raw materials, components and ingredients as, in either case, may be determined by rules made by the Central Government in this behalf.

(4) In making any rules for the purposes of sub-section (3), the Central Government shall have regard to the average quantum of the excise duty payable on the raw materials, components or ingredients used in the production or manufacture of such like article;

(5) The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

(6) The provisions of the Customs Act, 1962, and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties, shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act.'

According to the learned counsel for the petitioner, the duty as envisaged under Section 2 of the Customs Tariff Act as well as the duty in addition to the duty

envisaged under Section 2, for which a mention is made in Section 3 of the Customs Tariff Act, are nothing but customs duty on goods identified as dutiable under Section 12 of the Customs Act,. The words 'rates as may be specified under the [Customs Tariff Act, 1975](#) (51 of 1975)' fully cover the rates as contained in the two schedules under Section 2 of the Customs Tariff Act as well as the duty in addition, as envisaged in Section 3 of the Customs Tariff Act. According to him, therefore, when a notification, as one in the instant case, is issued by the Central Government, it is issued in respect of such items as are dutiable goods under Section 12 of the Customs Act and in respect of the customs duty as such, it must include both the duties as specified in the two schedules as under Section 2 of the Customs Tariff Act as well as the duty in addition, as envisaged under Section 3 of the Customs Tariff Act.

5. Learned counsel for the Revenue, on the other hand, has contended, inter alia, that the duty, as such, as specified in the two schedules of the Customs Tariff Act as well as the duty in addition as contemplated under Sec. 3 of the Customs Tariff Act, may be identified as customs duty or duties for the reason that Section 12 of the Customs Act alone, except as otherwise provided in the Act, or any other law, has envisaged duties of customs. But the very fact that Section 12 of the Customs Act itself has recognised duties of customs, there can be more than one customs duty and thus, there can be more than one classes of duties, which can be imposed under the Customs Tariff Act. According to him, the rates specified in the first and the second schedules of the Customs Tariff Act take care of the duties generally, but Section 3, when says that 'any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty)' takes care to qualify this additional duty by the rule that such additional duty be 'equal to the excise duty for the time being leviable on a like article, if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article'. He has expanded this contention with the help of the Explanation to the above in Section 3(1) of the Customs Tariff Act, which reads as follows :-

3(1)

Explanation. - In this section, the expression 'the excise duty for the time being leviable on a like article if produced or manufactured in India' means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India, or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty.'

which has, according to him, deliberately given a meaning to the expression 'excise duty for the time being leviable on a like article, if produced or manufactured in India, the excise duty for the time being in force, which would be leviable on a like article if produced or manufactured in India, or, if a like article is not so produced or manufactured, it would be leviable on the class or description of article, to which the imported article belongs and where such duty is leviable at different rates, the highest duty. His contention in short is that the additional duty, though imposed as a duty on goods identified under Section 12 of the Customs Act, is one, which is determined only on the basis of the excise duty leviable upon like goods produced or manufactured in India or if not so produced or manufactured in India, then at the rate, as stated above.

6. There is no difficulty in accepting as a correct proposition, the view that the additional duty is also a customs duty and is chargeable as a duty under the Customs Tariff Act, because Section 12 of the Customs Act has so recognised the role of the Customs Tariff Act. Learned counsel for the petitioner has good support to the above argument, because even though the rate is referable to Section 3(1) and its Explanation, in the Customs Tariff Act, for the purpose of calculating the additional duty on any imported article, sub-section (2) of Section 3 takes care to state that 'notwithstanding anything contained in Section 14 of the Customs Act, 1962', the additional duty on any imported article shall be the aggregate of the value of the imported article determined under sub-section (1) of Section 14, or, the tariff value of such article fixed under sub-section (2) of Section 14 of the Customs Act, as the case may be, and it leaves no manner of doubt that the additional Duty is also a customs duty, when it says in Section 3(2)(ii), as 'any duty of customs chargeable on that article under Section 12 of the Customs Act, 1962

and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but not including the duty referred to in sub-section (1).

7. That the additional duty contemplated under Section 3(1) of the Tariff Act, is also a customs duty, is recognised by a learned Judge of the Kerala High Court in the case of Kamaraj Spinning Mills Ltd. Union of India - : 1983ECR1462D(Kerala) and doubt, if any about it, has been set at rest by the Supreme Court in its judgment, in the case of Khandelwal Metal and Engg. Works v. Union of India : 1985(20)ELT222(SC) . The Supreme Court has observed on this, as follows :

'The question which we must first examine is as to what is the true nature of the duty mentioned in Section 3(1) of the Tariff Act. It has to be appreciated at the threshold that the charging section is Section 12 of the Customs Act and not Section 3(1) of the Tariff Act. Section 12 of the Customs Act incorporates the different ingredients embodied in the concept of a fiscal imposition. It levies a charge, it indicates the taxable event (the import or export of the goods) and it indicates the rate of the levy. The rates are such 'as may be specified under the [Customs Tariff Act, 1975](#)'. The last ingredient takes us to Section 2 of the Tariff Act, which lays down that 'the rates at which the duties of customs shall be levied under the Customs Act are specified in the First or Second Schedule'. Nothing more would be ordinarily required to complete the scope of Section 12, Customs Act. The Scheme incorporated in that Section read with Section 2 of the Tariff Act is analogous to the scheme embodied in Section 4, Income Tax Act, read with the relevant provisions of the Finance Act. The levy specified in Section 3(1) of the Tariff Act is a supplementary levy, in enhancement of the levy charged by Section 12 of the Customs Act and with a different base constituting the measure of the impost. In other words, the scheme embodied in Section 12 is amplified by what is provided in Section 3(1). The Customs duty charged under Section 12 is extended by an additional duty confined to imported articles in the measure set forth in Section 3(1). Thus, the additional duty which is mentioned in Section 3(1) of the Tariff Act is not in the nature of countervailing duty. In Ashok Service Centre v. State of Orissa : [1983]2SCR363 which considered the nature of levy of additional sales tax under an Orissa Act, this Court observed :

'This construction receives support from the use of the word 'additional' in section 3(1) which involves the idea of joining or uniting one thing to another so as thereby to form one aggregate. (see Black's Law Dictionary). The gross turnover referred to therein should therefore be understood as that part of the gross turnover which is taxable under the Principal Act.' (page 380) : (at pp. 401.02 of AIR).' After the above observations (the Supreme Court in this judgment has not found the presence of the purpose of counterbalancing or countervailing in the additional impost in Section 3(1) of the Act), it has said as follows :-

'We cannot treat the additional duty referred to therein as countervailing duty. Nor, indeed, can we regard that provision as a charging section merely because the Statement says that Section 3' provides for the levy'. The Statement of Objects and Reasons errs in being common to sub-sections (1) and (3) of Section 3. It is more opposed to sub-section 3 though, even there, it may not be correct to say that it is a charging provision. Sub-section (3) confers powers on the Central Government, in public interest, to levy on any imported article 'such additional duty as would counterbalance the excise duty leviable on any raw materials, components and ingredients of the same nature as, 'or' similar to those, used in the production or manufacture of such article', whether on such article, duty is leviable under sub-section (1) or not. Since we are not concerned directly with sub-section (3), we will not pronounce upon its meaning and implications.'

'In this view of the matter, it is unnecessary to consider the various decisions cited at the Bar on the nature and connotation of 'countervailing duty'. We are unable to accept the argument of the appellants that Section 3(1) of the Tariff Act is an independent charging section or that, the 'additional duty', which it speaks of is not a duty of customs, but is a countervailing duty.'

The Supreme Court in this judgment has also said clearly that the Explanation to Section 3(1) of the Tariff Act furnishes a dictionary for the interpretation of Section 3(1) and provides a clue to its understanding. The Explanation, in the words of the Supreme Court, in this judgment, provides in so many words that the expression 'excise duty for the time being leviable on a like article if produced or manufactured in India 'means' the excise duty for the time being in force which would be leviable

on a like article if produced or manufactured in India. The Supreme Court has further stated that :

'The Explanation even goes further and provides that if a like article is not so produced or manufactured, then, the duty leviable means the duty which would be leviable on the class or description of articles to which the imported article belongs. These provisions leave no doubt that the duty referred to in Section 3(1) of the Tariff Act does not bear any nexus with the nature and quality of goods imported into India.' In this case, the Supreme Court has categorically rejected the argument based on the reading of the words implied in Section 3(5) of the Tariff Act that 'the duty chargeable under this section, shall be in addition to any other duty imposed under the Act' will mean that Section 3(1) is in the nature of a charging section. In the words of the Supreme Court, again, :

'Section 2 of the Tariff Act does not charge a duty but only prescribes the rates of duty leviable under Section 12 of the Customs Act. Besides, Section 3(5) of the Tariff Act refers not merely to any other duty imposed under the Tariff Act but also 'under any other law for the time being in force', which could include Section 12 of the Customs Act. For these reasons, we must reject the argument of Mr. Sorabjee and of the other learned counsel for the appellants that Section 3(1) of the Tariff Act is not attracted because the damaged articles, which are in the nature of brass scrap are outside the scope of that Act since such articles are not and cannot be produced or manufactured.'

8. A learned single Judge of this Court, in *Tata Oil Mills Company Ltd. v. Union of India* : 1991ECR645(Madras) , has read the law in the same way as I have found and understood and applied the judgment of the Supreme Court in the case of *Khandelwal Metal & Engg. Works v. Union of India* : 1985(20)ELT222(SC) , to say :

'The Supreme Court has held in *Khandelwal Metal & Engg. Works v. Union of India* : 1985(20)ELT222(SC) that the additional duty mentioned in Section 3(1) of the Customs Tariff Act is not in the nature of countervailing duty. The contention advanced in that case was that Section 3(1) of the Customs Tariff Act is the charging Section. Repelling that, the court held that Section 3(1) of the Customs

Tariff Act is not an independent charging section and the charging section is only Section 12 of the Customs Act. It was also held that for the purposes of levying additional duty, the taxable event is not the manufacture of the goods. Under Section 3(1) of the Customs Tariff Act, the excise duty for the time being leviable on a like article if produced or manufactured in India is only the measure of the duty leviable on the imported articles. While referring to the explanation to Section 3 of the Customs Tariff Act, it was held that the explanation furnishes a dictionary for the interpretation of Section 3(1) of the Customs Tariff Act and it provides a clue to its understanding.'

In a recent judgment of the Supreme Court in the case of *Thermax Pvt. Ltd. v. Collector of Customs, Bombay*, : 1992(61)ELT352(SC) , there are certain words, which, according to learned counsel for the petitioner, appear to support him. When however, I read the judgment of the Supreme Court, with the understanding I have of the scheme of the law on the subject, do not see any support, to the stand of the learned counsel for the petitioner in this judgment. The *Thermax* case (supra) involved two notifications issued under Section 8 of the Central Excises and Salt Act and the assessee contended that he was entitled to exemption from the additional duty of customs leviable under Section 3(1) of the Tariff Act. The contention before the Supreme Court was that the notifications of exemption from Central Excise duty issued from time to time, under Section 8(1) of the Act, would be applicable in the case of imported goods for determining the levy of additional duty under Section 3(1) of the Tariff Act. The contention before the Supreme Court was, if any goods are entitled to full or partial exemption from payment of Central Excise under any such notification, the exemption or concession would also extend to the additional duty payable under Section 3(1) of the Customs Tariff Act, subject, of course, to the fulfilment of any conditions of the requirement that may have to be complied with for availing the exemption. The Supreme Court was confronted, however, by the provisions of Chapter 10 of the Central Excise Rules, 1944, and the argument that the conditions, as envisaged under these Rules, were not fulfilled and thus, the assessee was not entitled to exemption claimed by him. Answering this, the Supreme Court, has said as follows :-

'It will at once be seen that there is nothing in the scheme of the rule which makes it inapplicable to an importer of goods. The assessee here has imported the goods and is selling them for use in a factory, a use which qualifies for the concession under the S. 8 notifications. The types of use specified in the concessions notified could be of any kind and even in the notifications under our consideration, they are many and varied. In respect of items falling under Section Nos. 3 and 8, in particular, the actual users may be private individuals or authorities and need not necessarily be manufacturers using the goods in question in an 'industrial process' in a narrow sense of that term. ' For instance, any computer room, hospital or factory purchasing parts of refrigerating and air-conditioning appliances and machinery for use in the computer room, hospital or factory would be entitled to claim the concession by following the prescribed procedure. Only, for claiming a concession in excise duty the user should be the manufacturer himself or he must have made the purchase from a manufacturer liable to pay excise duty on the item whereas in regard to a claim for CVD concession, the supplier will be an importer. The latter will be entitled to sell the goods at the concessional rate of duty (or nil rate if there is an exemption) if the purchaser from him who puts the goods to the specified use (whether a manufacturer or not) fulfils the requirements of Rule 192. Since the concession under Rule 192 turns only on the nature and use to which the goods are put by the user or purchaser thereof and on whether he has gone through the procedure outlined in chapter X, it would not be correct to deny it to a supplier of such goods on the ground that he is an importer and not a manufacturer. That aspect is provided for by Section 3(1) of C.T. Act which specifically mandates that the CVD will be equal to the excise duty for the time being leviable on a like article if produced or manufactured in India. In other words, we have to forget that the goods are imported, imagine that the importer had manufactured the goods in India and determine the amount of excise duty that he would have been called upon to pay in that event. Thus, if the person using the goods is entitled to the remission, the importer will be entitled to say that the CVD should only be the amount of concessional duty and, if he has paid more, will be entitled to ask for a refund. In our opinion, the Tribunal was in error in holding that the assessee could not get a refund because the procedure of Chapter X of the rules is inapplicable to importers as such.

Learned Counsel for the assessee however, contended that, even if the conclusion of the Tribunal that the procedure of Chapter X of the rules cannot be complied with in such cases is correct, the exemption under the Notification cannot be denied. He relied, in support of this submission, on a letter of the Central Board of Excise and Customs (F. No 332/65/86 TRU dated 27-7-1987) the relevant portion of which runs as under :-

'The Board is of the view that it would legally not be correct to levy additional (countervailing) duty as actually payable in respect of such goods when manufactured in India (sic). It follows, therefore, that when there is no excise duty, there can be no additional (countervailing) duty. The condition in the relevant Central Excise Notifications that in respect of use of the material elsewhere than in the factory of manufacture, the procedure set out in Chapter X of the Central Excise Rules should be followed is condition relating to procedural requirement which obviously cannot be satisfied by the imported goods.

In view of the above, it would not be correct to deny the benefit of exemption notification to imported goods only because the procedural condition in the notification is not satisfied by the imported goods. It has, therefore, been decided that wherever the intended use of the material can be established by the importer who may be the manufacturer of chemicals or from other evidence, the benefit of exemption under the exemption notification should not be denied to imported goods only because the procedural condition of following Chapter X procedure is not complied with.

It will be seen that this letter also proceeds on the same view as that of the Tribunal that Chapter X procedure cannot be satisfied in the case of imported goods. This is at variance with the interpretation which we have placed on Rule 192. We, however, agree with the observation of the Board that the benefit of exemption or concession should be granted wherever the intended use of the material can be established by the importer or by other evidence.'

9. The words 'levy of additional duty equal to excise duty' in Section 3 of the Tariff Act, should not detain us for any elaborate discussion to treat the levy under Section 3(1) of the Tariff Act as an independent tax. The answer in this behalf is

categoric in the judgment of the Supreme Court in the case of Additional Collector, C.E. v. National Tobacco Co. of India Ltd. : 1978(2)ELT416(SC) , wherein the meaning to the expression 'levy' as received by the Supreme Court as well as the High Courts, has been given as :-

'The term 'levy' is wider in its import than the term 'assessment'. It may include both 'imposition' of a tax as well as assessment, the term 'imposition' is generally used for the levy of a tax or duty by legislative provisions indicating the subject matter of the tax and the rates at which it has to be taxed. The term 'assessment' on the other hand, is generally used in this country for the actual procedure adopted in fixing the liability to pay a tax on account of particular goods or property or whatever may be the object of the tax in a particular case and determining its amount.'

It will thus be not difficult to appreciate that the word levy in Section 3(1) of the Tariff Act, has been used to signify the procedure for the determination of the rate of tax called 'additional duty' as well as the procedure adopted in fixing the liability to pay the additional duty.

9A. The argument in substance of the learned counsel for the petitioner is based thus on his reading of the additional duty as a customs duty, as imposed fully by Section 12 of the Customs Act and reading accordingly the notification afore-quoted extending exemption from duty of customs leviable on the goods imported by the petitioner. The duty levied, for the reason of the identification of the goods imported into, or, exported from, India, in terms of Section 12 of the Customs Act, cannot, however, make the charge in accordance with Section 2 of the Tariff Act and the charge in accordance with Section 3(1) of the Tariff Act, as a common levy. The procedure in this behalf, is simple, in so far as the position in regard to the rate specified in the two Schedules of the Tariff Act, as envisaged under Section 2 of the Tariff Act is concerned. The additional imposition under Section 3(1), has been made dependent upon the excise duty for the time being leviable on a like article, if produced or manufactured in India. The duty can be realised if there is an imposition in regard to what is specified in the first and the second Schedules, and once such an imposition is made in accordance with Section 2 of

the Tariff Act, it will be necessary to see whether the article concerned shall also be liable to the additional duty, because there is excise duty leviable on the imported or exported articles, if produced or manufactured in India. It is not necessary that all items subject to a levy under sub-section (2) of Section 3 of the Tariff Act, are found subject to an excise duty, if produced or manufactured in India. Thus, there is a good reason to take the view that the exemption in full or in part of the duty of customs leviable on the goods specified in the first or the second schedule may not touch the additional duty under Section 3(1) of the Tariff Act. In the instant case, it is not in dispute that the petitioner's items, which are specified in the First Schedule of the Tariff Act, shall not automatically qualify for exemption of the additional duty as well. The reasons, which impel me to take this view are found in the cause of the additional imposition as contemplated under Section 3(1) and (2) of the Tariff Act. The purpose that emerges from it is clearly imposition of a customs duty on imported or exported goods, so that the price level of the imported goods and goods manufactured in India is maintained at par. If there is exemption in excise duty for an Indian manufacturer, that will be only under Rule 8 of the Excise Rules, as duty is primarily a duty on the production or manufacture of goods produced or manufactured within the Country. There is thus no basis to suggest that exemption notification under Section 25 of the Customs Act shall also cover the levy under Section 3(1) of the Tariff Act. The entire scheme under Section 3(1) of the Tariff Act shall fall to the ground and there shall be nothing available to balance the pricing of goods if the purpose of Section 3(1) of the Tariff Act is ignored. The view that I have taken takes me to the irresistible conclusion that notwithstanding the exemption by a notification under Section 25 of the Customs Act, unless there is a conscious decision to exempt from the additional duty on par with the exemption given to an Indian manufacturer or producer under Rule 8 of the Central Excise Rules, 1944, otherwise any exemption under Section 25 of the Customs Act shall not touch the additional duty as per Section 3(1) of the Tariff Act. I am supported in my view by the judgment of the Supreme Court in the case of *Thermax Pvt. Ltd.* (supra) : 1992(61)ELT352(SC) wherein on the finding that the local manufacturer/producer of the goods enjoyed exemption from excise duty, the Supreme Court has said that the importer would get the benefit of the same in the additional duty under

Section 3(1) of the Tariff Act and the judgment of the Supreme Court in the case of Khandelwal Metal & Engg. Works (supra) : 1985(20)ELT222(SC) , in which it has been clearly indicated that the additional duty shall vary, not on the basis of any variation in the rate of the customs duty, but in the rate of excise duty.

10. To sum up thus, I hold unhesitatingly that the exemption in the case of the petitioner will remain confined to the duty as calculated on the basis of the rate in the First Schedule of the Tariff Act and shall not touch or affect the additional duty leviable under Section 3(1) of the Tariff Act. It is not necessary to dilate in the case of the petitioner on the other issues in the instant petition, for, I find that they are substantially covered by a Division Bench judgment of this Court in Shriram Fibres Ltd. v. Union of India : 1994(69)ELT4(Mad) . Learned Counsel for the petitioner has, however, expressed before me that the petitioner has until now proceeded only on the basis that exemption from the customs duty under the afore-mentioned notification, shall also extend to the additional duty, but he has not yet examined or found what is leviable as excise duty on the goods involved in the instant case and whether there is any exemption from excise duty notified for this kind of goods or not. It is obvious, if there is any exemption consciously saying about excise duty on the goods that the petitioner has imported, in case such goods are produced or manufactured or are deemed to be produced or manufactured in India, it (the petitioner) may apply to the Appropriate Authority and the Authority, in his turn, shall examine the same in accordance with law.

11. In the result, these petitions are dismissed. On the facts of the case, however, there will be no order as to costs.