1982 (10) ELT 203

GUJARAT HIGH COURT

Hon'ble Judges:M.P.Thakkar and V.V.Bedarkar JJ.

Prabhat Cotton And Silk Mills Limited Versus Union Of India

Special Civil Application No. 1640 of 1981 ; *J.Date :- MARCH 09, 1982

- CUSTOMS ACT, 1962 Section - 14, 12

CUSTOMS ACT, 1962 - S.14 - S.12 - VALUATION OF GOODS. - DUTIABLE GOODS.

KeyWords: Sanction - Assessable value - custom duty - Taxable event - Territorial Waters - Valuation of goods -

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1982 (10) ELT 203 : 1981 GLHEL_HC 225229
JUDGMENT :-
M.P.Thakkar, J.

1 Sometimes problems arise. Sometimes they are created. But for the fact that a customs official who was the father of a thesis which he had publicly propounded, namely, that inclusion of landing charges levied by the port authorities on the unloading of imported goods in the assessable value of such goods for the purpose of computation of customs duty being done since times immemorial (the expression is his) was invalid, chanced to come across as appeal in 1980 raising this point, which he understandably sustained, perhaps this group of 14 petitions might not have been the light of the day. And thus a levy not having a very significant impact on the importer individually and consignmentwise, but having a much larger significance and impact from the following stand point has come to be questioned. Insignificant in the sense that only 3/4% of C.I.F. value (by way of landing charges) is included in assessable value of a consignment imported into India for computing the customs duty payable thereon, significant in the sense that if the challenge succeeds, hundreds of thousands of importers who have imported goods in the past worth billions of rupees can come forward to claim refund and flood the courts with petitions or suits for refund on the ground that payment was made under a mistake of law discovered for the first time in 1980 and the levy being invalid limitation commenced to run in 1980.

2 Be that as it may the problem is this, does an export or import of goods take place when the vessel transporting the goods (1) leaves or enters the territorial waters of India or (2) when the goods are loaded from or unloaded on the landmass of India ? If first alternative provides

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the true answer, the petitioners might succeed. If the second alternative provides the true answer, they might not. The setting in which the problem arises will become clear in a short while.

3 The importers of goods in India since more than 35 years are being required to include in the assessable value of goods 3/4% of the C.I.F. value in connection with the charges known as `landing charges . The charges are payable to the port authorities upon the goods being unloaded on the dock before the same are cleared. The petitioners now contend that they are not bound to include the aforesaid items in making the computation of the assessable value. The relief claimed is a two-fold relief(1) to direct the custom authorities not to recover customs duty on the basis of the aforesaid computation to the extent it represents 3/4% factor of the duty and (2) to direct the custom authorities to refund the amount representing the aforesaid factor recovered in the course of several years in the past till the date of institution of the petition regardless of the fact that the amount was paid without demur or protest and regardless of the fact that both the sides have adjusted their affairs on the footing that the duty was lawfully payable and recoverable.

4 It will be a purposeless exercise to narrate the facts of each individual petition for nothing turns on the individual facts of the petitions which have been clubbed together and are being disposed of by this common judgment having regard to the fact that a common question of law is involved in the context of similar facts. The typical facts may be drawn from the main petition which has been argued viz. Special Civil Application No. 1640/81. Reference will be made to so much of the facts as are necessary in order to enable us to comprehend the problem which has been posed in this group of petitions.

5 Petitioner No. I in Special Civil Application No. 1640/81 is a Public Limited Company which is engaged in the business of manufacture of manmade fabrics. The Company has been importing Nylon and Polyster yarn from foreign countries since May, 1978. From May, 3, 1978, till July 18, 1980 the petitioner Company has imported Nylon yarn and Polyester yarn from foreign countries on as many as 231 occasions. In making computation of the assessable value of the yarn for the purpose of payment of custom duty 3/4% of the C.I.F. value was included in the computation in connection with the landing charges paid to the Port authorities upon the unloading of goods on the dock. The amount paid on each consignment in connection with the aforesaid factor or component of the assessable value ranges from Rs. 5.08 to Rs. 1124.10. In other words, on one occasion of importation Rs. 5.08 have been paid in connection with the landing charge component to which exception is being taken now whereas on another occasion Rs. 1124.10 have been paid. On the rest of the occasions the amount paid varies between these two figures (the particulars are specified in annexure A to the petition). By and large a few hundreds of rupees have been paid in connection with each consignment during these three years on 231 occasions. This payment according to the petitioners was made under a mistake of law that the amount was so includible. It may be stated that all over India all importers of goods have been making computation on this basis without protest or demur. It appears that M/s Kirloskar Oil Engines Ltd., for the first time raised such a contention in 1980 in connection with the importation of certain goods. The Collector of Customs did not uphold the plea of the petitioner Company. An appeal was preferred to the Appellate Collector of Customs at Bombay, which came to be decided on November 27, 1980 who allowed the appeal and upheld the plea urged in this behalf [see In re : M/s. Kirloskar Oil Engines Ltd. , 1981 E.L.T. 309 (Bombay)]. The Appellate Collector of Customs in the course of his order observed that the inclusion of landing charges to arrive at the assessable value was being done by the Indian Customs from almost times immemorial

(the reference is to the customs duties which were being collected under the Sea Customs Act, 1878 which held the field till it was replaced by the Customs Act of 1969 which holds the field at present). The Collector of Customs who decided the said appeal inter alia observed in paragraph 7 of the aforesaid order that the legality of inclusion of landing charges being collected in the assessable value was being challenged for the first time in the said appeal in India. He also observed therein that he was himself always of the view that landing charges could not be legally included and had expressed his view at several departmental meetings and forums and had raised a discussion but it had not borne any fruit on account of the presumptive approach that the well entrenched practice must obviously be correct. Thus, the Appellate Collector of Customs who had been advocating the proposition that it was illegal to include the landing charges in the computation of the assessable value for several years in departmental forums got an opportunity to decide the issue when such question was raised for the first time before him by the Kirloskar Oil Engines Ltd. in the course of the said appeal. It will, thus, be seen that the Appellate Collector had got an opportunity of rendering a decision in accordance with his own personal views when this question was raised for the first time in India before him. Till then, as observed by the said Officer himself, for innumerable years the importers (presumably tens of thousands in number) had been making without a demur. Since the view point canvassed by the appellant before him was a child of his own brain and a pet thesis of his own which he himself had been propounding for a number of years, he might as well have refrained from adjudicating upon the matter. He, however, perhaps felt no embarrassment and proceeded to decide the matter in favour of the importer thereby giving official imprimatur to his personal thesis. That is how the present petitioners have been inspired to approach this Court.

6 An important aspect requires to be highlighted so that the problem can be understood in the proper perspective and its proportions can be fully realised. If the contention of the petitioners is right, all those who have been paying customs duty on the landing charge component included in the assessable value would be entitled to refund of the amount paid so far in that context. Tens of thousands of importers who must have imported goods worth hundreds of crores of rupees in the last several years would be entitled to refund because payments under a mistake of law can be reclaimed irrespective of the length of time for the mistake could be said to have been discovered only in 1980. The recoveries can, therefore, go back to 1878 or atleast till 1950 when the Constitution of India came into force. All the importers can then come forward and contend that payments were made under a mistake of law which they discovered when the Appellate Collector of Customs gave legal shape to his pet theory by upholding the plea of M/s. Kirloskar Oil Engines Ltd. when he got an opportunity to do so in exercise of his official duties to decide the matter in the course of an appeal on November 27, 1980. The total amount involved may well run into several crores of rupees in connection with the hundreds of thousands of shipments of goods imported by hundreds of thousands of importers during all these years.

7 So far as the present petition is concerned, total amount claimed by way of refund is Rs. 84,000 and odd. The total amount of refund claimed by the petitioners concerned in the allied petitions will be a sizeable one though the amount is not specified. Such will be the impact of the decision so far as the claim for refund is concerned. Besides, the importers will not have to pay this tiny duty on the landing charge component included in the assessable value of the imported goods hereafter. Though this is not a representative petition on behalf of all the importers, such would be the outcome if the petitioners were to succeed. The purpose of emphasizing this aspect is merely to stress the need for a close and careful examination of the question. So also the mere circumstance that for more than 100 years none of the hundreds of

thousands of importers has objected to this relatively tiny impost is no good ground for presuming that the duty must be valid if on a true interpretation of the relevant provisions it were to appear to us plain that it is not lawful. All the same the circumstance that all connected have adjusted their affairs on the basis that the payment of duty on the aforesaid basis was in accordance with law, is a circumstance which cannot be brushed aside in a cavatier fashion. The following factors must be flashed on the mental screen in this context: (1) The annual budget of the Central Government has been moulded on the assumption that this duty can be lawfully levied for more than 30 years, not to speak of the formulation of the budget by the appropriate Government prior to the enforcement of the Constitution of India upon the attainment of Independence, (2) Income-tax must have been collected from tens of thousands of assessees on this footing, (3) The importers must have marketed the goods on this premise, (4) The Consumer must have been made to pay the price on this assumption, (5) and while the real losers, the consumers, cannot be identified and compensated, the importers will be enabled to make windfall profits and unjust enrichment, (6) The Central budget will have to bear an unanticipated outflow which will have to be passed on to the tax-payer, and (7) the consumer, the original and real sufferer, will again have to suffer as the burden will have to be again borne by him. He will have to pay the price for his pocket having been picked in the past instead of being compensated for it. Thus insult will be added to injury. While, therefore, the Court will not be deterred from upholding the plea if this was the only interpretation which was possible, it will not be in too great a hurry to do so without examining the matter closely, carefully and in depth. In such circumstances, upholding such a plea is not the first thing that the Court will do. The Court will do so only provided it appears that the other view is not equally possible. More so since the Court in exercising its high prerogative-jurisdiction under Article 226 of the Constitution of India will not exercise it in such a manner that everything settled becomes unsettled and hundreds of crores of rupees are required to be refunded at the cost of the much exploited consumer or the majority of the populace who bear more than 75% of the tax-burden by way of indirect taxes and only in order to benefit those importers who have marketed their goods on the footing that the duty was payable and have sustained no loss or detriment on that account and for no other purpose. One may then be tempted to quip "not in order to rob Peter to pay Paul" but in order to "rob the poor in order to pay the rich" (Robinhood in reverse). The Court will not, therefore without due deliberation create a situation where the decision of the Court will result in such unwholesome and unpalatable consequences and perhaps create a situation where the exercise in the Courts of law may well become a paper exercise by inviting a validating legislation. And all this at the time-cost of thousands of litigants who are waiting in the queues for the removal of the injustice being suffered by them for many many years. Pragmatism and commonsense approach need not therefore be outlawed in favour of unduly sophisticated unduly refined, disingenuous approach, if two views are possible and what is reasonable, but may also accord with reason. Just and reasonable may well prevail instead of just and unreasonable when both sides are equally able to call into aid good reasons in support of their respective pleas.

8 And now we come to the problem. The petitioner-Company imports yarn in bulk mainly at Bombay Port. The price of the yarn is charged at C.I.F. value which includes cost, insurance and freight. The petitioner-Company generally imports the goods by steamer and has, therefore, to incur charges for unloading the goods at the Port (see paragraph 2 of the petition). The petitioner Company upon the unloading of goods in the dock area has to pay the Port Authority certain charges which are known as landing and wharfage charges (see paragraph 8 of the petition). These landing charges are included in making computation of the assessable value of the goods in accordance with the provisions of the Customs Act of

1962. The charge so levied are relatively speaking trifling in the sense that only 3/4% of the total C.I.F. value is charged as the landing charges (see paragraphs 9 & 10 of the petition). As we pointed out earlier, depending on the value of the consignment imported on each occasion, the landing charges would vary. It would be a very small amount in relation to the value of the imported goods having regard to the fact that the landing charge component is so tiny. As pointed out earlier, in the case of the petitioner in Special Civil Application No. 1640/81 the levy was of the order of Rs. 5.08 and the maximum that was paid during the last year was of the order of Rs. 1000.

9 The question will have to be examined in the light of the relevant provisions which spell out the manner in which the customs duty is required to be computed. Section 12 of the Customs Act of 1962 provides that duties of customs shall be levied at such rates as may be specified under the Indian Tariff Act of 1934 or any other law being in force for the time being unless it is provided otherwise, we are not concerned with the rates at which the customs duties are required to be levied. Our immediate concern is with regard to the mode of computation of assessable value for the purposes of working out the impost as per the prescribed rates. The provision which is relevant from this stand point is section 14(1) which reads as under :-

> 14. Valuation of goods for purposes of assessment.- (1) For the purposes of the Indian Tariff Act 1934 (32 of 1934) or any other law for the time being in force whereunder and duty of customs is chargeable on any goods by reference, to their value, the value of such goods shall be deemed to be (a) 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; Thus, for the purposes of charging of customs duties in connection with the import of goods the value of such goods is required to be computed in accordance with section 14(1)(a). The anatomy of section 14 reveals that the value has to be determined in the following manner :- (1) The price at which goods are ordinarily sold or offered for sale. (2) Such price is required to be determined with reference to the "time" of importation of goods, as also with reference to the "place" of importation of goods. (3) The price at which the goods are ordinarily sold or offered for sale in accordance with the international trade. (4) Such price is to be determined in the course of a transaction where the seller and buyer have no interest in the business of each other (i.e., genuine price between two businessmen and not a price which is more or less than the genuine price, the difference in price being on account of the fact that the buyer and seller are interested in the business of each other) and the price is sole consideration for the same. (5) In case the price cannot be determined in accordance with section 14(1)(a) in the aforesaid manner, the price has to be determined as per section 14(1)(b) on the basis of the nearest ascertainable equivalent thereof determined in accordance with the rules made in that behalf

10 The factor which requires to be brought into focus is as regards the "time" and "place" of importation of the goods in question. The goods have to be valued as at the time of importation and as at the place of importation. It is in this context that the question arises as to what is exactly the connotation of the expression "time and place of the importation" in the context of the goods which are imported on a ship or a sailing vessel by sea at a sea port. If one were not to look at any provisions and one were to make a commonsense approach, one

would be tempted to hold that the valuation is required to be made having regard to the date on which the goods are landed at the Port at the place where the goods are unloaded. For instance, if the goods are landed at Bombay on 1st January, 1980, the valuation has to be made on the basis of the price at which such goods are ordinarily sold or offered for sale at Bombay Port on 1st January, 1980. But the petitioner contends that having regard to the provisions of the Customs Act of 1962 the place of importation would have a different connotation. It is contended that importation in India means importation in Indian territorial waters. Therefore, the taxable event, such is the submission, occurs at the point of time when the goods enter the Indian territorial waters and the price of the goods has to be determined in the context of the said circumstance. Councel for the petitioner concedes that since importation occurs when the goods are introduced into India , which expression has been defined in section 2(27) as including the territorial waters of India, and since that is the time and place when the taxable event occurs, valuation must be made on that basis. It would mean that the goods would have to be valued at the point of time when the vessels enter the "Indian customs waters" as defined in section 2(28) of the Customs Act of 1962. So also the valuation is to be made on the basis of the price at which the same would be sold and offered for sale on the vessel before the goods are unloaded on the port. Since the valuation will have to be made on the basis of the valuation as on board of the ship at the point of time when the ship enters the Indian customs waters much before the goods are unloaded on the book of the Port, the charges payable to the Port authorities upon the unloading of the goods on the dock known as the landing charges cannot be included in the assessable value. This is the core of the submissions urged on behalf of the petitioner. The landing charges, argues Counsel for the petitioner, would be charges, incurred "subsequent" to the "importation" and would, therefore, fall outside the price of the goods as on the ship as at the time of entry in the Indian customs waters.

11 The first answer to this argument is that as per section 12(1) duties of customs are levied on goods imported into or exported from India and the expression India in so far as section 12 is concerned refers to the Indian landmass and not the Indian territorial waters . This becames evident on a true reading of section 12(1) which reads as under :-

> "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 Indian Tariff Act, 1934 (32 of 1934), or any other law for the time being in force, on goods imported into, or exported from, India." What requires to be underlined is a reference to "goods imported into, or exported from, India". Surely the expression goods exported from India cannot mean goods exported from the territorial waters of India. It cannot mean goods exported from the hypothetical line drawn on the boundary of the Indian territorial waters. It is susceptible to only one interpretation viz., the goods exported from the landmass of India. Once this view is taken in the context of exportation from India, the expression imported into which forms a part of the expression imported into or exported from India cannot carry any other meaning; the expression India must mean landmass of India whether it is in the context of exportation from India or importation into India of goods within the meaning of dutiable goods in the context of section 12(1) of the Act. To construe the expression goods exported from India to mean goods exported from the landmass of India on the one hand and to interpret the expression following on its heels the goods imported into India to mean goods imported into territorial waters of India and not the landmass of India would introduce an anachronism and so incongruity. Section 12 must, therefore, be read in a consistent manner so that the same meaning can be assigned to

the expression India when it is used in the context of exportation of goods from India as also when it is used in the next breath in the context of importation of goods into India. We have, therefore, no hesitation in holding that section 12 refers to exportation from, or importation into, of goods with reference to the landmass of India and not with reference to the territorial waters of India. Once we reach this conclusion the main plank of the submission urged on behalf of the petitioners must collapse. In paragraph 6 of the petition (Special Civil Application No. 1640/81) the argument has been structured in the following manner : "The petitioner says that the duty which is imposed under the Customs Act is a tax charged on the entry of the goods into India. The petitioner states that taxable event occurs at the time when the goods enters into Indian territorial water and the duty becomes leviable at that stage."

The basis of the argument that the landing charges cannot be included in the assessable value is the premise that the taxable event occurs when the vessel carrying the goods for importation enters in the territorial waters of India. If the very basis of premise assumed by the petitioners is fallacious, the entire structure of the argument must fall to the ground. Landing charges of course cannot be included if the valuation of the goods were to be made as at the point of time when the ship enters terrtorial waters. In that event the goods must be valued on the "where and when basis" at the point of time of entry into territorial waters. Since the goods are being valued at the point of time when they are still on the ship, the question of including landing charges in the assessable value cannot arise. For the reasons indicated by us a short while ago, we are of the opinion that the valuation of the goods has to be made not at the point of time or place when the ship carrying the goods for importation enters the waters but it has to be made at the point of time when the goods are landed on the landmass of India. If the goods are valued as and when they are landed on the landmass, the petitioners cannot succeed. The goods have to be valued not when they are in the ship and not when they are being unloaded from the ship or are suspended in the air on the hook or the unloading crane. They are to be valued at the point of time when they are landed on the landmass of India both from the time point of view as well as the place point of view. We may take a quick look backwards and recall the discussion made in the context of the analysis of section 14 of the Customs Act pertaining to valuation of goods for the purposes of assessment. As per the analysis made by us, the price of the goods has to be determined (1) on the basis of the price at which ordinarily such goods are offered for sale, (2) such price is required to be determined with reference to the time and place of importation of goods (i.e., when they are unloaded on the landmass of India), (3) the price must be the price at which the goods are ordinarily sold or offered for sale in accordance with the international trade, and (4) the price must be genuine price between a commercial seller and a commercial buyer unrelated to each other. Such being the position, proposition Nos. (2) & (3) must be called into aid for the purpose of determination of assessable value of the goods. And the goods will have to be valued at the point of time of being unloaded on the landmass of India and at the place where they are unloaded. Since the landing charges have to be paid to the Port authorities as soon as the goods are landed, and the sale can take place only after they are landed, the price at which the goods are sold or offered for sale would of necessity include the landing, charges payable before the transaction of same is effected. An argument as regards the post-importation charges was advanced in the Privy Council in Ford Motor Company of India Ltd. V/s. Secretary of State, A.I.R.] 938 Privy Council 15 = 1978 ELT J 265. The Privy Council has expressed the opinion : "That the Legislature intended to exclude post-importation expenses need not be

doubted but it had to do this in a practicable manner without undue refinement, and it must be taken to have regarded the phrase which it employed as sufficient for the purpose if taken in a reasonable sense". (Emphasis added) If this principle were to be applied, the only manner in which the interpretation can be made in the reasonable sense or commonsense manner is to apply the test of valuation of goods after they are unloaded on the Port on payment of landing charges incidental to the unloading of the goods on the wharf. In the said decision the phrase ``at the place of importation'' came up for consideration and an argument was urged as to whether the valuation had to be made on the ex-ship basis. This argument was negatived by the Privy Council. Ultimately, the learned Counsel for the importer could not even contend that the valuation should be on the ex-ship basis but suggested that it should be on ex-wharf basis and that in any case place of imporation would not extend beyond the limits of the Port. It was in that context that the Privy Council made the aforesaid observation. We have, therefore, no hesitation in reaching the conclusion that the inclusion of landing charges in the assessable value cannot be regarded as inclusion of post-importation charges and that introduction of such undue refinement is not called for. When interpreted in a sensible and commonsense manner the view which commands to us appears to be the correct view. It is futile to contend that landing charges cannot be included in determining the asessable value of the imported goods for the purpose of computation of the customs duty. And that is how the provisions have been construed for more than 40 years. That is the interpretation which has prevailed in all quarters, namely, the revenue, the importer, the exporter and all concerned. All transactions have been made on this basis for all these years. We have already brought into focus innumerable complications which would arise if this construction which has come to be accepted by all concerned for such a long time is thrown overboard and a new and revolutionary construction which unsettles every settled position is accepted on the basis of a fancy or disingenuous argument. There is authority for the proposition that a different interpretation should not be placed on the words of a provision which disturbs the course of construction which has continued unchallenged for a considerable length of time and has acquired the sanction of the continued decisions over a very long period [Empress Mills V/s. Municipal Committee, Wardha , A.l.R. 1958 Supreme Court 341 (pare 19)]. No doubt the proposition is adverted to in the context of sanction of continued decisions over a long period. So also no doubt the Supreme Court came to the conclusion that the said principle was not attracted in the case before the Court because the interpretation in question had not been acquisced in for a long time. All the same this principle can be extended to a situation like the present one as well where sanctity must be accorded to an interpretation which has found acceptance by all concerned over such a long time without making any one unhappy (let alone considerations regarding desirability for pragmatism and undesirability for undue refinement and other weighty factors outlined earlier). We have therefore, no hesitation in repelling the contention urged on behalf of the petitioners in this behalf.

12 If the argument of the Counsel for the petitioners were right, customs duty would be payable even if the ship were to stray in the territorial waters of India for it would amount to importation of goods into India. So also customs duty would be payable even when the ship which enters the territorial waters changes its course, turns back, and leaves the territorial waters before landing the goods on the landmass. Such a construction leading to absurdity should be avoided as observed in Meras Docks and Harbour Board V/s. Twigge, (1898) 67 LJQB 604. It would be difficult to countenance an interpretation which would lead to such

results. So also it would be futile to contend that in the course of international trade the goods are being sold or being offered for sale on the basis of "where and when" formula at the point of time when the ship enters the territorial waters of India. It would be extremely unrealistic to accept a construction which would lead to such conclusion. Importation of goods is an integrated process which culminates when the goods are landed on the landmass of India and are so placed that the same can be introduced in the stream of supplies. We have, therefore, no doubt that the interpretation which has prevailed for numerous years and which commends itself to us is the only interpretation which can be legitimately placed on sections 12 and 14 and that there is no illegality in including the landing charges payable to the Port authorities in the assessable value of the goods for the purpose of computation of customs duty. Learned Standing Counsel has called our attention to two decisions of English Courts which tend to support the view convassed by the revenue. These two decisions are quoted with approval by the Supreme Court in Empress Mills V/s. Municipal Committee, Wardha A.I.R. 1958 Supreme Court 341. Paragraph 23 extracted from the said decision may be quoted :-

> (23) Chief Justice Marshall dealing with the word "importation" said in Brown V/s. State of Maryland , (1927) 12 419 at p. 442: 6 Law Ed. 678: (at p. 686) : "The practice of most commercial nations conforms to this idea. Duties, according to that practice are charged on those articles only which are intended for sale or consumption in the country. Thus seastores goods imported and re- exported in the same vessel, goods landed and carried over land for the purpose of being re-exported from some other port, goods forced in by strees of weather and landed, but not for sale are exempted from the payment of duties. The whole course of legislation on the subject shows that in the opinion of the legislature the right to sell is connected with the payment of the duties."

Continuing, the learned Chief Justice at p. 447 observed :

> "Sale is the object of importation, and is an essential ingredient of that intercourse, of which importation constitutes a part. It is as essential an ingredient, as indispensable to the existence of the entire thing, than, as importation itself..... This supports the contention raised that import is not merely the bringing into but comprises something more i.e., incorporating and mixing up of the goods imported with the mass of the property in the local areas. The concept of import as implying something brought for the purpose of sale or being kept is supported by the observations of Kalley C.B. in Harvey V/s. Corporation of Lyme toll was made under the Harbour Act and the words for construction were "goods landed or shipped within the same cobb or harbour." Construing these words Kally C.F. said:
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> "The ordinary meaning and purport of the words is perfectly clear, namely, that tolls are to be paid on goods substantially imported, that is, in fact, carried into the port for the purpose of the town and neighbourhood. (underlined added) This very position has been reiterated by the Supreme Court In Re : Sea Customs Act , A.I.R. 1963 Supreme Court 1760, wherein Sinha, C J. Speaking for the majority has observed in paragraph 26 of the judgment as under :- "Similarly in the case of duties of customs including export duties though they are levied with reference to goods, the taxable event is either the import of goods within the customs barriers of their export outside the customs barriers. They are also indirect taxes like excise and cannot in our opinion be equated with direct taxes on goods themselves. Now, what is the true nature of an import or export duty ? Truly speaking, the imposition of an import duty, by and

large, results in a condition which must be fulfilled before the goods can be brought inside the customs barriers, i.e. before they form part of the mass of goods within the country. Such a condition is imposed by way of the exercise of the power of the Union to regulate the manner and terms on which goods may be brought into the country from a foreign land." It would, thus, mean that the valuation has to be made at the point of time and place where the goods are brought from foreign land and are so placed that they can form a part of the mass of the goods within the country.

13 The Counsel for the petitioners has however, sought support from M.S. Shawhney V/s. Messrs Sylvania and Laxman Ltd., 77 B.L.R. 380. The Bombay High Court in that case was concerned with the question as to when the importation of goods took place in the context of the fact that the ship carrying the goods for importation had crossed the territorial waters before March 31, 1967 which was the last date up to which the notification exempting the goods from customs duty was operative. The Bombay High Court has taken the view that the importation took place when the goods entered the territorial waters before March 31, 1967 and, therefore, the customs duty was not payable on the goods. The question arose in a different context and the question as to whether the landing charges were includible in the assessable value was not before the Bombay High Court. Besides, the considerations which we have outlined in the earlier part as our judgment were not highlighted before the Bombay High Court. We are not prepared to uphold the contention of the petitioners on the basis of the aforesaid decision rendered by the Bombay High Court. The learned Standing Counsel for the Union of India in this context called our attention to the decision in Prakash Cotton Mills (P.) Ltd. vB. Sen, A.I.R. 1979 Supreme Court 75= 1979 E.L.T. (J 241), wherein the Supreme Court has taken the view that the rate and valuation of goods for the purpose of section 15(1) (b) of the Customs Act was the rate and valuation in force on the date on which the warehoused goods were actually cleared from the warehouse. It was contended that the ratio of this decision lends support to the view point canvassed by the revenue. Since the question before us was not directly before the Supreme Court, we do not propose to dwell at length on the question which was posed before the Supreme Court in order to call out the ratio of the said decision for the purpose of the present discussion.

14 Under the circumstances, we are of the view that the customs authorities are justified in including the landing charges in the assessable value of the goods imported into India for the purpose of computation of the customs duty. The petitions must, therefore, fail.

15 The petitions are rejected. Rule is discharged in each matter. There will be no order regarding costs. Interim orders will stand vacated.

16 Learned Counsel for petitioner in each matter applies for a certificate of fitness for appeal to the Supreme Court of India under Article 133(1)(c) of the Constitution of India. We are of the opinion that the question involved in these matters is not a substantial question of law of general importance which this High Court needs to be decided by the Supreme Court of India. Certificate is therefore refused.