Union Of India & Ors vs M/S. N.S. Rathnam & Sons on 29 July, 2015

Equivalent citations: AIR 2016 SUPREME COURT 1273, 2015 (10) SCC 681, 2016 (3) ADR 73, AIR 2016 SC (CIVIL) 1265, (2015) 6 MAD LJ 204, (2015) 8 SCALE 301, 2016 (116) ALR SOC 30 (SC), 2016 (161) AIC (SOC) 5 (SC), 2016 (2) KCCR SN 105 (SC)

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Bench: N.V. Ramana, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1795 OF 2005

UNION OF INDIA & ORS.	.....APPELLANT(S)	
VERSUS		
M/S N.S. RATHNAM & SONS	.....RESPONDENT(S)	

J U D G M E N T

A.K. SIKRI, J.

The respondent herein impugned the validity of Notifications Nos.102/87-CE and 103/87-CE, both dated 27.03.1987, whereby whole of the duty of excise was exempted in respect of iron and steel scrap obtained by breaking the ship subject to the condition that customs duty should have been levied at the rate of Rs.1400/- per Light Displacement Tonnage (LDT). With the stipulation of such a condition, giving the exemption of payment of excise duty only to those who had paid customs duty at Rs.1400/- per LDT, another class of persons who also paid custom duty under Section 3 of the Customs Tariff Act, 1975, albeit at a lesser rate, was excluded. The respondent who belonged to excluded category, had challenged the said Notification as arbitrary and violative of Article 14 of the Constitution. Though the learned Single Judge dismissed the writ petition, the Division Bench in appeal has accepted the aforesaid plea of the respondent and vide judgment dated 18.08.2003 held that the second category of persons shall also be entitled to the benefit of this Notification. It is this judgment which is impugned by the Union of India and is the subject matter of the instant appeal.

The facts which are relevant to the aforesaid controversy need to be traversed at this stage. These are as follows:

The respondent herein is engaged in the business of ship breaking activities. It had imported a foreign vessel "M.V. Gonong Mass" for the purpose of breaking it and selling it as scrap. This ship was purchased by the respondent as a successful tenderer for a sum of Rs.61 lakhs and at the time of import, the Collector of Customs, Cochin, assessed the custom duty and additional duty payable under Section 3 of the Customs Tariff Act, 1975 on this ship on ad-valorem basis and customs duty in the sum of Rs.62,16,796.55 was levied on the movable articles in the ship; body of the ship was assessed at 30% and 50% ad-valorem and additional custom duty i.e. countervailing duty at 12% ad-valorem. The respondent also paid a sum of Rs.5,68,660/- as sales tax.

After import of the ship, the same was dismantled and broken from which iron and steel scrap was taken out. This iron and steel scrap is exigible to excise duty. The respondent has registered itself under the Central Excise Act. The aforesaid iron and steel scrap which was obtained by breaking the ship was cleared by the respondent on payment of central excise duty at the rate of Rs.365/- per tonne as per Notification No.146/86- CE dated 01.03.1986. Upto this point, there is no dispute. The relevant period with which we are concerned is from 08.08.1986 to 27.07.1987. During this period, the following materials were cleared:

09.08.1986 to 26.03.1987	-	3058.49 MT
27.03.1987 to 30.06.1987	-	1249.715 MT
01.07.1987 to 27.07.1987	-	408.180 MT

There are certain exemption Notifications issued by the Government of India under sub-rule (1) of Rule 8 of the Central Excise Rules, 1944. The details of these Notifications are as under:

Notification No.146/86-CE dated 01.03.1986 which pertains to "iron and steel from breaking the ship". It provides for exemption of goods falling under Heading No.72.15 and 73.09 of the Schedule to the Central Excise Tariff Act, 1985, from so much of the duty or excise leviable thereon, which is specified in the said Schedule, as in excess of the amount calculated at the rate of Rs.305 per tonne. Proviso to the said Notification lays down the conditions which need to be fulfilled to avail the benefit of this Notification. This proviso reads as under: "Provided that the said goods have been obtained from breaking of ships, boats and other floating structures-

(i) On which duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) has been paid at the rate of Rs.1,400/- per Light Displacement tonnage; or

(ii) Imported on or before the 28th day of February, 1986 and on which appropriate additional duty leviable thereon under Section 3 of the Customs Tariff Act, 1975 (51 of 1975), has been paid." The aforesaid Notification was superseded by another

Notification No.386/86-

CE dated 20.08.1986. Under this Notification, whole of the duty of excise stood exempted on meeting the conditions mentioned in proviso thereto, provided that the said goods have been obtained from breaking of ships, boats and other floating structures-

on which duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) has been paid at the rate of Rs.1,400/- per LDT; or

(ii) imported on or before the 28th day of February, 1986 and on which appropriate additional duty leviable thereon under Section 3 of the Customs Tariff Act, 1975 (51 of 1975), has been paid.

Within few months, another Notification No.102/87-CE dated 27.03.1987 was issued which superseded Notification No.386/86-CE dated 20.08.1986 as well. In this Notification, again partial exemption was provided. This exemption was from so much of the duty of excise leviable thereon, which is specified in the Schedule to the Central Excise Tariff Act, as in excess of the amount calculated at the rate of Rs.365 per tonne. However, in the proviso, the condition that was stipulated which had to be met to avail the exemption, reads as under:

> "Provided that the said goods have been obtained from breaking of ships, boats and other floating structures on which has been paid the duty of customs leviable under the First Schedule to the customs Tariff Act, 1975 (51 of 1975) at the rate of Rs.1,035/- per Light Displacement Tonnage and also the additional duty leviable thereon under Section 3 of the said Customs Tariff Act at the rate of Rs.365 per Light Displacement Tonnage." On the same day, another Notification No.103/87-CE dated 27.03.1987 was also issued. Vide this Notification, goods were exempted from whole of the duty or excise leviable thereon as specified in the Schedule to the Act falling under the same Heading Nos. i.e. 72.15 and 73.09 on the fulfillment of the condition contained in proviso to this Notification, which reads as follows:
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> "Provided that the said goods have been obtained from breaking of ships, boats and other floating structures on which the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) has been paid at the rate of Rs.1,400/- per Light Displacement Tonnage." These two Notifications, both dated 27.03.1987, pertain to same goods, namely, those falling under Headings 72.15 and 73.09 of the said Schedule to the Act. However, vide first Notification No.102/87-CE, if the customs duty leviable on the import of ship for the purpose of breaking is paid at the rate of Rs.1,035/- per LDT along with additional duty leviable thereon under Section 3 of the Customs Tariff Act, the excise duty payable is at the rate of Rs.365/- per tonne, exempting the remainder as specified in the Schedule. On the other hand, as per Notification No.103/87-CE, if the customs duty has been paid at the rate of Rs.1400/- per LDT, the scrap obtained from breaking of such ships is exempted from the entire excise duty.

The respondent herein had paid the duty at the rate of Rs.1035/- per LDT, albeit, as leviable under the first Schedule to the Customs Tariff Act. However, as the respondent had cleared the goods without payment of any excise duty on the assumption that there was exemption of payment of entire excise duty, appellant herein issued show cause notice dated 28.07.1987 calling upon the respondent to show cause as to why an amount of Rs.25,73,487/- towards excise duty be not demanded under Section 11 A of the Central Excise Act. Receipt of the aforesaid show cause notice prompted the respondent to file the writ petition in the High Court of Madras and challenge the validity of Notification dated 27.03.1987 on the ground that by this Notification, total exemption was granted only to those persons who had paid customs duty at the rate of Rs.1400/- LDT. It was pleaded that by a Notification dated 20.08.1986, the whole of the duty of excise levied was exempted if the two conditions as set out above are satisfied. The limited exemption in excess of Rs.365/- per tonne was restored by the third Notification dated 27.03.1987. However, by the impugned Notifications issued on the very same day, total exemption was granted only to those persons who have paid customs duty at Rs.1,400/- per LDT. According to the respondent, it has resulted in a distinction between two categories of persons who have paid customs duty, viz. one set of persons who have paid customs duty at the rate of Rs.1,400/- per LDT and the second set of persons who have paid customs duty of lesser amount though as per Section 3 of the Customs Tariff Act, 1975. This distinction, pleaded the respondent, was arbitrary, artificial and has no nexus with the object that is sought to be achieved. When customs duty is payable under either of the two methods, it is not understood why exemption is granted only to one set of persons paying customs duty in a particular method of assessment.

The learned Single Judge was not convinced with the aforesaid case set up by the respondent. He reasoned that the Court could not direct the Central Government to extend the Notification to a class to whom it has not been extended as that was a matter which was entirely within the discretion of the Central Government. Sustenance was drawn from the judgment of this Court in Kasinka Trading and Another v. Union of India and Another[1] wherein this Court has held that wide discretion is available to the Government in the matter of granting, curtailing, withholding, modifying or repealing the exemptions granted by earlier notifications and the Government was not bound to grant exemption to anyone if it so desires.

The respondent preferred writ appeal against the said judgment. The Division Bench vide impugned judgment has reversed the decision of the learned Single Judge finding sufficient merit in the case set up and pleaded by the respondent. It is held by the Division Bench that when the benefit of concessional right is restored by a notification, there cannot be any discriminatory treatment to some persons who fall in the same category. According to the Division Bench, both the categories of importers paid the duty as leviable under Customs Tariff Act. Once a choice is given under the said Act and the duty is paid accordingly, merely because the rate of duty arrived at is different would not be rational basis for excluding the other class. This reasoning of the High Court can be found in paras 10 and 11 of the impugned judgment which are reproduced hereinbelow:

> "10. From the notification or from the Counter Affidavit, we are unable to find any rational basis for treating two categories of persons who have paid the customs duty differently and hence, the failure to consider the duty already paid by the appellants

on ad valorem basis, on the face of it, is illegal and therefore, the impugned notifications, which did not make any provision for such of those remittance made under the second category, are clearly arbitrary. As rightly pointed out, the exemption from excise duty is to avoid double taxation and the withdrawal of exemption would mean that the persons would be paying additional duty under the Customs Act as well as the excise duty. It is further seen that the person who had paid the customs duty at the rate of Rs.1,400/- per Light Displacement Tonnage would have been totally exempted from the payment of excise duty. In the light of this clear and palpable discrimination without any rational basis, we are of the view that the appellants have made out a case and that the impugned notifications are liable to be quashed in so far as the appellants is concerned.

11. The Supreme Court, in Government of India Vs. Dhanalakshmi Paper and Board Mills, Tiruchirappalli, A.I.R. 1989 S.C. 665, has held that the benefit of concessional right was bestowed upon the entire group of assesses. The division of two classes without adopting any differentia, having a rational relation to the object of the notification and the withdrawal of the benefit to one class, while retaining it in favour of the other is ultra vires. In Thermax Private Limited Vs. Collector of Customs (Bombay), A.I.R. 1993 S.C. 1339, the Supreme Court held that if the person using the goods is entitled to remission, the importer will be entitled to say that C.V.D. should only be the amount of concessional duty and if he has paid more, he will be entitled to ask for refund. Section 3(1) of the Customs Tariff Act, 1975 mandates that the C.A.V. will be equal to the excise duty for the time being leviable on a like article if produced or manufactured in India." Mr. Panda, learned senior counsel appearing for the appellants, submitted that it was entirely within the domain of the Government to give exemption to particular class of assessees and it being a policy decision, it would not be open to the High Court to tinker with the same. For this purpose, he relied on the judgment of this Court in Kasinka Trading's case, and in particular paras 8 and 21 thereof, which are as follows:

8. Section 12 of the Customs Act, which is the charging section, provides that duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force on the goods imported into India. Section 2 of the Customs Tariff Act, 1975 read with the First and Second Schedules thereto lays down the rates at which duties of customs shall be levied under the Customs Act on various goods imported into India. Section 25 of the Act, with which we are primarily concerned in this batch of appeals, confers powers on the Central Government to grant exemptions from levy of duty in "public interest". Sub-

sections (1) and (2) of Section 25 which are relevant for our purposes provide as under:

"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 therein. (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." The power to grant exemption from duty, wholly or in part, on the plain language of Section 25 (supra) is contingent upon the satisfaction of the Government that it would be in "public interest" to do so. Thus, "public interest" is the guiding criterion for exercising the power under Section 25 (supra).
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> 21. The power to grant exemption from payment of duty, additional duty etc. under the Act, as already noticed, flows from the provisions of Section 25(1) of the Act. The power to exempt includes the power to modify or withdraw the same. The liability to pay customs duty or additional duty under the Act arises when the taxable event occurs. They are then subject to the payment of duty as prevalent on the date of the entry of the goods.

An exemption notification issued under Section 25 of the Act had the effect of suspending the collection of customs duty. It does not make items which are subject to levy of customs duty etc. as items not leviable to such duty. It only suspends the levy and collection of customs duty, etc., wholly or partially and subject to such conditions as may be laid down in the notification by the Government in "public interest". Such an exemption by its very nature is susceptible of being revoked or modified or subjected to other conditions. The supersession or revocation of an exemption notification in the "public interest" is an exercise of the statutory power of the State under the law itself as is obvious from the language of Section 25 of the Act. Under the General Clauses Act an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in a like manner. From the very nature of power of exemption granted to the Government under Section 25 of the Act, it follows that the same is with a view to enabling the Government to regulate, control and promote the industries and industrial production in the country. Notification No. 66 of 1979 in our opinion, was not designed or issued to induce the appellants to import PVC resin. Admittedly, the said notification was not even intended as an incentive for import. The notification on the plain language of it was conceived and issued on the Central Government "being satisfied that it is necessary in the public interest so to do". Strictly speaking, therefore, the notification cannot be said to have extended any 'representation' much less a 'promise' to a party getting the benefit of it to enable it to invoke the doctrine of promissory estoppel against the State. It would bear repetition that in order to invoke the doctrine of promissory estoppel, it is necessary that the promise which is sought to be enforced must be shown to be an unequivocal promise to the other party intended to create a legal relationship and that it was acted upon as such by the party to whom the same was made. A notification issued under Section 25 of the Act cannot be said to be holding out of any such unequivocal promise by the Government which was intended to create any legal relationship between the Government and the party drawing benefit flowing from of the said notification. It is, therefore, futile to contend that

even if the public interest so demanded and the Central Government was satisfied that the exemption did not require to be extended any further, it could still not withdraw the exemption.

He stated that the principle laid down in the aforesaid judgment is followed and reiterated in Shrijee Sales Corporation and Another v. Union of India[2] and Reliance Industries Ltd. v. Pravinbhai Jasbhai Patel and Others[3].

He also referred to Ground A in the writ petition and submitted that the plea of the respondent was that the duty already paid by the respondent should have been taken into account and only the balance out of it should have been the rate of duty. He, thus, submitted that this aspect has not been taken into consideration by the High Court in the impugned judgment.

Learned counsel for the respondent, on the other hand, argued that all those who paid excise duty as per the provisions of the Act constitute one single class and, therefore, by restricting the benefit to only those who had paid custom duty at the rate of Rs.1,400/- per LDT and excluding other sets of persons like appellants amounted to hostile discrimination and, therefore, the High Court rightly held the Notification to be violative of Article 14 of the Constitution.

The judgment of this Court in Kasinka Trading's case, no doubt, lays down the principle that there is wide discretion available to the Government in the matter of granting, curtailing, withholding, modifying or repealing the exemptions granted by earlier Notifications. It is also correct that the Government is not bound to grant exemption to anyone to which it so desires. When the duty is payable under the provisions of the Act, grant of exemption from payment of the said duty to particular class of persons or products etc. is entirely within the discretion of the Government. This discretion rests on various factors which are to be considered by the Government as these are policy decisions. In the present case, however, the issue is not of granting or not granting the exemption. When the exemption is granted to a particular class of persons, then the benefit thereof is to be extended to all similarly situated person. The Notification has to apply to the entire class and the Government cannot create sub- classification thereby excluding one sub-category, even when both the sub- categories are of same genus. If that is done, it would be considered as violating the equality clause enshrined in Article 14 of the Constitution. Therefore, judicial review of such Notifications is permissible in order to undertake the scrutiny as to whether the Notification results in invidious discrimination between two persons though they belong to the same class. In Aashirwad Films v. Union of India and Others[4], this aspect has been articulated in the following manner:

> 9. The State undoubtedly enjoys greater latitude in the matter of a taxing statute. It may impose a tax on a class of people, whereas it may not do so in respect of the other class.
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> 10. A taxing statute, however, as is well known, is not beyond the pale of challenge under Article 14 of the Constitution of India.
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> 11. In Chhotabhai Jethabhai Patel & Co. v. Union of India, AIR 1962 SC 1006 it was stated: (AIR p. 1021, para 37) “37. But it does not follow that every other article of

> Part III is inapplicable to tax laws. Leaving aside Article 31(2) that the provisions of a tax law within legislative competence could be impugned as offending Article 14 is exemplified by such decisions of this Court as Suraj Mall Mohta & Co. v. A.V. Vishvanatha Sastri (AIR 1954 SC 545 : (1955) 1 SCR 448) and Meenakshi Mills Ltd. v. A.V. Visvanatha Sastri (AIR 1955 SC 13 : (1955) 1 SCR 787). In K.T. Moopil Nair v. State of Kerala (AIR 1961 SC 552) the Kerala Land Tax Act was struck down as unconstitutional as violating the freedom guaranteed by Article 14. It also goes without saying that if the imposition of the tax was discriminatory as contrary to Article 15, the levy would be invalid."
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> 12. A taxing statute, however, enjoys a greater latitude. An inference in regard to contravention of Article 14 would, however, ordinarily be drawn if it seeks to impose on the same class of persons or occupations similarly situated or an instance of taxation which leads to inequality. The taxing event under the Andhra Pradesh State Entertainment Tax Act is on the entertainment of a person. Rate of entertainment tax is determined on the basis of the amount collected from the visitor of a cinema theatre in terms of the entry fee charged from a viewer by the owner thereof.

It is, thus, beyond any pale of doubt that the justiciability of particular Notification can be tested on the touchstone of Article 14 of the Constitution. Article 14, which is treated as basic feature of the Constitution, ensures equality before the law or equal protection of laws. Equal protection means the right to equal treatment in similar circumstances, both in the priviliges conferred and in the liabilities imposed. Therefore, if the two persons or two sets of persons are similarly situated/placed, they have to be treated equally. At the same time, the principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position. It would mean that the State has the power to classify persons for legitimate purposes. The legislature is competent to exercise its discretion and make classification. Thus, every classification is in some degree likely to produce some inequality but mere production of inequality is not enough. Article 14 would be treated as violated only when equal protection is denied even when the two persons belong to same class/category. Therefore, the person challenging the act of the State as violative of Article 14 has to show that there is no reasonable basis for the differentiation between the two classes created by the State. Article 14 prohibits class legislation and not reasonable classification. What follows from the above is that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group and (ii) that, that differential must have a rational relation to the object sought to be achieved by the statute in question. If the government fails to support its action of classification on the touchstone of the principle whether the classification is reasonable having an intelligible differentia and a rational basis germane to the purpose, the classification has to be held as arbitrary and discriminatory. In Sube Singh v. State of Haryana[5], this aspect is highlighted by the Court in the following manner:

> 10. In the counter and the note of submission filed on behalf of the appellants it is averred, inter alia, that the Land Acquisition Collector on considering the objections

> filed by the appellants had recommended to the State Government for exclusion of the properties of appellants 1 and 3 to 6 and the State Government had not accepted such recommendations only on the ground that the constructions made by the appellants were of 'B' or 'C' class and could not be easily amalgamated into the developed colony which was proposed to be built. There is no averment in the pleadings of the respondents stating the basis of classification of structures as 'A' 'B' and 'C' class, nor is it stated how the amalgamation of all 'A' class structures was feasible and possible while those of 'B' and 'C' class structures was not possible. It is not the case of the State Government and also not argued before us that there is no policy decision of the Government for excluding the lands having structures thereon from acquisition under the Act. Indeed, as noted earlier, in these cases the State Government has accepted the request of some land owners for exclusion of their properties on this very ground. It remains to be seen whether the purported classification of existing structures into 'A', 'B' and 'C' class is a reasonable classification having an intelligible differential and a rational basis germane to the purpose. If the State Government fails to support its action on the touchstone of the above principle then this decision has to be held as arbitrary and discriminatory. It is relevant to note here that the acquisition of the lands is for the purpose of planned development of the area which includes both residential and commercial purposes. That being the purpose of acquisition it is difficult to accept the case of the State Government that certain types of structures which according to its own classification are of 'A' class can be allowed to remain while other structures situated in close vicinity and being used for same purposes (residential or commercial) should be demolished. At the cost of repetition, it may be stated here that no material was placed before us to show the basis of classification of the existing structures on the land proposed to be acquired. This assumes importance in view of the specific contention raised on behalf of the appellants that they have pucca structures with R.C. roofing, Mozaic flooring etc. No attempt was also made from the side of the State Government to place any architectural plan of different types of structures proposed to be constructed on the land notified for acquisition in support of its contention that the structures which exist on the lands of the appellants could not be amalgamated into the plan.

The question, therefore, that arises is as to whether the two categories, one mentioned in Notification No.386/86-CE dated 20.08.1986, which is given the benefit and removal of the second category, which was initially granted same benefit vide Notification No.102/87-CE dated 27.03.1987, is discriminatory. To put it otherwise, we have to see as to whether the two categories are identical or there is a reasonable classification based on intelligible differentia which has nexus with some objective that is sought to be achieved. The test in this behalf that is to be applied can again be culled out from the judgment in Aashirwad's case. It is summarized in para 14, after taking note of various earlier judgments. This para reads as under:

> 14. It has been accepted without dispute that taxation laws must also pass the test of Article 14 of the Constitution of India. It has been laid down in a large number of

> decisions of this Court that a taxation statute for the reasons of functional expediency and even otherwise, can pick and choose to tax some. Importantly, there is a rider operating on this wide power to tax and even discriminate in taxation that the classification thus chosen must be reasonable. The extent of reasonability of any taxation statute lies in its efficiency to achieve the object sought to be achieved by the statute. Thus, the classification must bear a nexus with the object sought to be achieved. (See Moopil Nair v. State of Kerala, AIR 1961 SC 552, East India Tobacco Co. v. State of A.P., AIR 1962 SC 1733, N. Venugopala Ravi Varma Rajah v. Union of India (1969) 1 SCC 681 : AIR 1969 SC 1094, Asstt. Director of Inspection Investigation v. A.B. Shanthi, (2002) 6 SCC 259 : AIR 2002 SC 2188 and Associated Cement Companies Ltd. v.

Govt. of A.P., (2006) 1 SCC 597 : AIR 2006 SC 928).

In the present case, we find that the two Notifications both dated 27.03.1987 pertain to same goods namely those falling under Heading 72.15 and 73.09 of the second Schedule to the Act. Customs duty is leviable on these goods under Section 3 of the Customs Tariff Act. The said duty can be paid under any of the two methods. When two methods are permissible under the statutory scheme itself, obviously option is that of the assessee to choose in all those methods to pay the custom duty. Duty, thus, paid is to be naturally treated as validly paid. Merely because with the adoption of one particular method the duty that becomes payable is lesser would not mean that two such persons belong to different categories. The important factors for the purposes of parity are same in the instant case, viz. the goods are same; they fall under the same Heading and the custom duty is leviable as per the Act which has been paid. Therefore, the impugned Notification giving exemption only to those persons who paid a particular amount of duty, namely Rs.1,400/- per LDT, would not mean that such persons belong to a different category and would be entitled to exemption and not other persons like the respondent herein who paid the duty on the same goods under the same Act but on the formula which he opted and which is permissible, which rate of duty comes to Rs.1,035/- per LDT.

It is also important to bear in mind that the appellants have not supported the withdrawal of exemption by any cogent explanation. The High Court has noted, and rightly so, that Ground C was taken by the respondent in the writ petition specifically urging that no rational policy is mentioned for creating two different classes and no reply to this was given by the appellants even in the counter affidavit filed to the said petition. On the other hand, the specific case made out by the respondent was that the purpose behind Notification No.146/86-CE dated 01.03.1986 and Notification No.386/86-CE dated 20.08.1986 was to treat the ships imported on or before 28.02.1986 differently and to avoid double taxation and additional duty equivalent to excise duty. For this reason, exemption Notification became necessary which provided exemption from excise duty. It was argued that the withdrawal of the exemption duty in the cases like that of the respondent amounted to double taxation. Even this could not be refuted by the appellants.

We are conscious of the principle that the difference which will warrant a reasonable classification need not be great. However, it has to be shown that the difference is real and substantial and there

must be some just and reasonable relation to the object of legislation or notification. Classification having regard to microscopic differences is not good. To borrow the phrase from the judgment in Roopchand Adlakha v. D.D.A.[6]: "To overdo classification is to undo equality." We are also conscious of the principle that in the field of taxation, the Legislature has an extremely wide discretion to classify items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes (See Secretary to Govt. of Madras v. P.R. Sriramulu[7]). However, at the same time, when a substantive unreasonableness is to be found in a taxing statute/notification, it may have to be declared unconstitutional. Although the Court may not go into the question of a hardship which may be occasioned to the tax payers but where a fair procedure has not been laid down, the validity thereof cannot be upheld. A statute which provides for civil or evil consequences must conform to the test of reasonableness, fairness and non-arbitrariness.

In State of U.P. v. Deepak Fertilizers & Petrochemical Corporation Ltd.[8], this aspect is succinctly brought about as is apparent from the following passages in that judgment:

> "15. The learned counsel appearing for the State relying heavily on Kerala Hotel and Restaurant Assn. v. State of Kerala, (1990) 2 SCC 502, contended that the State has widest latitude where measures of economic and fiscal regulation are concerned. There is no dispute on this principle of law as enumerated in the aforesaid decision of this Court. However, this same law must not be repugnant to Article 14 of the Constitution i.e. it must not violate the right to equality of the people of India, and if such repugnancy prevails then, it shall stand void up to the level of such repugnancy under Article 13(2) of the Constitution of India. Therefore, every law has to pass through the test of constitutionality, which is nothing but a formal name of the test of rationality. We understand that whenever there is to be made any type of law for the purpose of levying taxes on a particular commodity or exempting some other commodity from taxation, a sought of classification is to be made. Certainly, this classification cannot be a product of blind approach by the administrative authorities on which the responsibility of delegated legislations is vested by the Constitution. In a nutshell, the notifications issued by the Trade Tax Department of the State of U.P., dated 10.04.1995 and 15.05.1995 lack the sense of reasonability because it is not able to strike a rational balance of classification between the items of the same category. As a result of this, NPK 23:23:0 is not given exemption from taxation whereas all other NPK fertilisers of the same category like that of NPK 20:20:0 are provided with the exemption from taxation.
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> 16. The reasonableness of this classification must be examined on the basis, that when the object of the taxing provision is not to tax the sale of certain chemical fertilisers included in the list, which clearly points out that all the fertilisers with the similar compositions must be included without excluding any other chemical fertiliser which has the same elements and compositions. Thus, there is no reasonable nexus of such classification among various chemical fertilisers of the same class by the state. This court in Ayurveda Pharmacy [(1989) 2 SCC 285], held that two

> items of the same category cannot be discriminated and where such a distinction is made between items falling in the same category it should be done on a reasonable basis, in order to save such a classification being in contravention of Article 14 of the Constitution of India." It was contended by the learned senior counsel for the appellants that purpose was to give exemption only to those who paid custom duty at Rs.1,400/- per LDT and since the duty paid by the respondent herein was lesser in amount, respondent could not ask for exemption. That may be so.

In such a case, the only option to bring parity was to demand duty on differential amount, which was even contended by the respondent herein. That provision should have been incorporated to save the impugned Notification from the vice of arbitrariness. In fact, that would bring both the sub-categories completely at par. Thus, while upholding the view taken by the High Court, we modify the same only to the extent that the respondent herein shall also be entitled to the benefit of the exemption Notification subject to the condition that the duty already paid by the respondent herein on LDT, would be taken into account and only the balance out of it would be subject to excise duty.

The appeal is disposed of in the aforesaid terms without any order as to cost.

.....J. (A.K. SIKRI) .....J. (N.V. RAMANA) NEW DELHI JULY 29, 2015.

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[1] (1995) 1 SCC 274 [2] (1997) 3 SCC 398 [3] (1997) 7 SCC 300 [4] (2007) 6 SCC 624 [5] (2001) 7 SCC 545 [6] (1989) 1 Supp. SCC 116 [7] (1996) 1 SCC 345 [8] (2007) 10 SCC 342