Supreme Court of India
Collector Of Central Excise, ... vs Parle Exports (P) Ltd on 22 November, 1988
Equivalent citations: 1989 AIR 644, 1988 SCR Supl. (3) 933
Author: S Mukharji
Bench: Mukharji, Sabyasachi (J)

PETITIONER:
COLLECTOR OF CENTRAL EXCISE, BOMBAY-I & ANR.

Vs.

RESPONDENT:
PARLE EXPORTS (P) LTD.

DATE OF JUDGMENT22/11/1988

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
RANGNATHAN, S.

CITATION:
1989 AIR 644 1988 SCR Supl. (3) 933
1989 SCC (1) 345 JT 1988 (4) 454
1988 SCALE (2)1381
CITATOR INFO :
R 1991 SC 754 (13)
R 1991 SC1028 (15)
E 1991 SC2049 (6)
RF 1992 SC 152 (10,12)

ACT:
Central Excises and Salt Act, 1944/Central Excise Rules, 1944: Sections 6 and 35L(b) First Schedule Tariff Item No. 68/Rules 8, 9(1), 53, 173 and 174 and Notification No. 55/75 dated March 1, 1975--Non-alcoholic beverages--Question of dutiability--Gold Spot base/Limca base/Thumps Up base--Not intended to be given exemption .
%
Statutory Interpretation: Courts to give weight to interpretation put upon statute at the time of its enactment.
Fiscal .Statute/Notification--Interpretation at time of enactment/issue--To be given due weight--Two views possible that in favour of assessee to be adopted.

HEADNOTE:
The respondent-company was engaged in the manufacture of nonalcoholic beverage bases falling under Tariff Item 68 of

Central Excise Tariff. According to the Revenue, the company manufactured the nonalcoholic beverage bases without holding proper Central Excise Licence, and had cleared the said goods without payment of the duty due thereon. The stand of the company was that the goods were exempt from duty under Notification No. 55/75 C.E. dated 1st March, 1975 which inter alia exempted "all kinds of food products and food preparations". The Customs and Excise Collector confirmed the demand of central excise duty against the company. In appeal, the Confirmed the demand of and Gold (Control) Appellate Tribunal accepted the contention of the company.

The Additional Solicitor General on behalf of the appellants contended that (i) non-alcoholic beverage base though having some food value, was not food product or food preparation. at any rate, in the context of the Act and notification as such; (ii) the expression "food products and food preparations" was used in contrast to "beverages" so far as the present Act and notifications thereunder were concerned; (iii) in ordinary common and commercial parlance also the goods in question were not known as food products and/or food preparations as such, and therefore these were

PG NO 933

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not to be treated as exempt under the notification; and (iv) how Government understood a matter at the time of the notification, was a relevant factor and that was a factor which one should bear in mind.

K.P. Verghese v. Income Tax Officer Ernakulam, [1982] 1 SCR 629 and Government of India's decision in Re: Asian Chemical Works, [1982] 10 ELT 609A, relied upon.

On behalf of the respondent it was contended that the Tribunal had acted on the varied materials, and therefore, such decision of the Tribunal should not be altered or deviated from.

Collector of Customs, Bombay v. Swastic Woollen (P) Ltd., [1988] 37 ELT 474, relied upon.

Allowing the appeals, it was,

HELD: (1) The word `Food' has no fixed definition of universal application and its meaning varies from statute to statute. But food is one which nourishes and sustains human body for the purposes of growth, work or repair and for the maintenance of the vital process.[939D]

Brooke Bond (India) Limited v. Union of India, [1980] ELT 65; Brooke Bond (India) Limited v. Union of India. 119%41 15 ELT 32 and The State of Bombay v. Virkumar Gulabchand Shah, [1952] SCR 877, referred to.

(2) The expression `food products' is not defined in the Act. The exemption includes food products and food preparations' and provides an inclusive definition of `food products' and food preparations'. [946E]

(3) The words used in the provision, imposing taxes or granting exemptions, should be understood in the same way in

which these are understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them. [947F]

(4) It is a well-settled principle of interpretation that courts in construing a statute or notification will give much weight to the interpretation put upon it at the time of enactment or issue, and since by those who have to construe, execute and apply the said enactments. l947E]

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(5) The notification should not only be confined to its grammatical or ordinary parlance but it should also be construed in the light of the context. The expression should be construed in a manner in which similar expressions have been employed by those who framed the relevant notification, [948E]

Hindustan Aluminium Corporation Ltd. v. State of Uttar Pradesh, [1982] 1 SCR 129, referred to.

(6) The question of interpretation involves determining the meaning of a text contained in one or more documents. Judges are often criticised for being tied too closely to the statutory words and for failing to give effect to the intention of the Parliament or the law-maker. [949C]

(7) According to the tradition of our law, primacy is to be given to the text in which the intention of the law-giver has been expressed. [949D]

(8) The principle is well-settled that when two views of a notification are possible, it should be construed in favour of the subject as notification is part of a fiscal enactment avoiding, however, as absurd meaning. [948F]

Coroline M. Armytage & Ors. v. Frederick Wilkinson, [1978] 3 A.C. 355, referred to.

(9) The notification must be read as a whole in the context of the other relevant provisions. When a notification is issued in accordance with power conferred by the statute, it has statutory force and validity and, therefore, the exemption under the notification is, as if it were contained in the Act itself- [947G-H]

Orient Weaving Mills (P) Ltd. v. Union of India, [1962] Supp.3 SCR 481 and Kailash Nath v. State of U.P., AIR 1975 SC 790, referred
to.

(10) The purpose of exemption is to encourage food production and also give boost to the production of goods in common use and need. After all, the purpose of exemption is to help production of food and food preparations at cheaper price and also help production of items which are in common use and need, like electric light and power. [949A-B]

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(11) Having regard to the language used it would not be in consonance with the spirit and the reason of law to give exemption for non-alcoholic beverage bases under the notification. Bearing the aforesaid purpose, it cannot be contended that expensive items like Gold spot-base, Limca-

base or Thumps up-base were intended to be given exemption at the cost of the public exchequer.[949E-F]

(12) Non-alcoholic beverage bases in India cannot be treated or understood as new 'nutritive material absorbed or taken into the body of an organism which serves for the purpose of growth, work or repair and for the maintenance of the vital process' and an average Indian will not treat non-alcoholic beverage bases as food products or food preparations in that light.[948G-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 379 1988 and 3660-82/1987.

From the Judgment and Order dated 26.10.87 of the Customs Excise and Gold (Control) Appellate Tribunal in Appeal Nos. ED/943/83-D Order No. 838/87-D ED(SB) A. No. 411 and 412/81-D' and 787/80-D in Order No. 786 to 788/6-D. Kuldip Singh, Additional Solicitor General, A.K. Srivastava and P.Parmeswaran and Mrs. Sushma Suri for the Appellants.

Soil J. Sorabjee, S. Ganesh, J.R. Gagrat, P.G. Gokhale, B.R. Agarwala and C.M. Mehta for the Respondents. The Judgment of the Court was delivered by SABYASACHI MUKHARJI,J. These appeals are under Section 35L(b) of the Central Excises and Salt Act, 1944(hereinafter to as 'the Act') against the decision of the Customs Excise and Gold (Control) Appellant Tribunal, New Delhi ('Tribunal' for short) dated 26the October,1987.

The respondent-company has its factory at Chakala Andheri and is engaged in the manufacture of non-alcoholic beverage bases falling under Tariff Item 68 of Central Excise Tariff. During the course of enquiry, it was found that the company had during the period from Ist March, 1975 to 18th April,1979 manufactured non-alcoholic beverage bases without holding proper Central Excise licence and had cleared the said goods without payment of the duty due thereon and had thereby evaded the duty amounting to PG NO 937 Rs.3,50,963.22. According to the revenue, prima facie it appeared that the respondent had contravened the provisions of Rules 9(1), 53, 173 pp(I), 173 pp(3),]73 pp(6) and 174 of the Central Excise Rules, 1944 (`Rules' for short) inasmuch as during the period from 1st March, 1975 to 18th April, 1979 the respondent-company had manufactured without valid licences required under Section 6 of the Act read with Rule 174 of the Rules, goods not elsewhere specified and falling under Tariff Item 68 of the First Schedule of the Act, viz., non-alcoholic beverage bases. The respondent- company had further cleared the said goods without filing list of goods manufactured as required by Rule 173 pp(3) of the Rules. The respondent had cleared the said goods without preparing gate passes as required under Rule 173 pp (6) of the Rules. and had further cleared the said goods without maintaining accounts as required under Rule 53 of the Rules. In the circumstances. notices were issued by the relevant officer asking the respondent-company to show cause for recovery of the dues and also for imposition of penalty. When the matter came up for consideration before the Collector, Central Excise, he found that non-alcoholic beverage bases were not themselves food or food products and accordingly did not

quality for exemption under Notification No. 55/75 as amended. He accordingly confirmed the demand of central excise duty of Rs.3,50,963.22 under Rule 9(2) read with Rule 10 of the Rules. He also imposed a penalty of Rs.25,000 under Rule 173Q of the Rules. Aggrieved thereby,the respondent-company filed an appeal before the Tribunal and contended that the question of the dutiability of non-alcoholic beverage bases manufactured by the respondent had been settled by the Tribunal in its decision in the case of respondent itself, i.e.,Parle Exports (P)Ltd. v. Collector of Central Excise, Baroda, [1987] 27 ELT 349 which are the subject matter of the connected appeals, i.e. C.A. Nos. 3680-82 of 1987 The Tribunal following its earlier order allowed the appeal and hence the present appeal by the Revenue.

The First Schedule of the Act which provides for the dutiability and the rates of duty applicable to various goods mentioned therein contains the expressions "Food and Beverages It provides therein description of various types of goods and the rates of duties applicable thereto. In the said description "Food and Beverages" many items are included, viz., sugar produced in a factory ordinarily using power in the course of production of sugar, (1A) confectionery, cocoa powder and chocolates, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power namely. boiled sweets, toffees, caramels, candies, nuts (including almonds) and fruit kernels coated with sweetening agent, and PG NO 938 chewing gums, cocoa powder, drinking chocolates etc. It also includes items (1B) prepared or preserved foods put up in unit containers and ordinarily intended for sale, including preparations of vegetables, fruit, milk, cereals, etc., and as item (1C) food products, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power, namely, biscuits, pasteurised butter, pasteurised or processed cheese, aerated waters, whether or not flavoured or sweetened and whether or not containing vegetable or fruit juice or fruit pulp etc. Tariff Item 68 of the First Schedule of the Act provides for duty on "All other goods not elsewhere specified and manufactured in a factory" but excluding, inter alia alcohol, all sorts, including alcoholic liquor for human consumption and other items not necessary for our present purpose. The exemption Notification No. 55/75 C.E. dated 1st March, 1975 reads as follows: "In exercise of powers conferred by sub-rule (10) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts goods of the description specified in the q Schedule annexed hereto and falling under Item No. 68 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from the whole of the duty of excise leviable thereon .

THE SCHEDULE

1. All kinds of food products and food preparations,including-

(i) meat and meat products;

(ii) dairy products;

(iii) fruit and vegetable products;

(iv) fish and sea foods;

(v) bakery products; and

(vi) grain mill products.

2. Electric light and power."

PG NO 939 The question is, whether by the notification of exemption non-alcoholic beverage bases have been exempted from payment of duty. The only question, therefore, in other words, is whether non-alcoholic beverage bases are `food products' or `food preparations' covered by the exemption notification No. 55/75 CE of Ist March, 1975. We are not concerned with the question whether in a broad general sense non-alcoholic beverage base is food or not. In Brooke Bond (India) Limited v. Union of India, [1980] ELT 65 the question arose before a learned Single Judge of the High Court of Andhra Pradesh whether coffee-chicory blend was food product and is an item which fell under Tariff Item 68 of the Tariff. The identical notification involved herein came up for consideration in that case. The question was whether it was food product or food preparation, and as such exempt from excise duty. It was held by the learned Single Judge that what was exempt under the said notification was not food but food products and food preparations and it was further held that coffee-chicory blend was neither food nor food preparation. Therefore, it was not exempt from payment of excise duty under the said notification. The word food has no definition of universal application and it varied from statute to statute. In some cases the dividing line between the two might be thin and in some cases it might be varied but so far as coffee-chicory blend was concerned there was little doubt that it was beverage and not food.

The learned Judge referred to paragraph 109 of Volume 18 of Halsbury's Laws of England (4th Edn). In that paragraph, coffee-chicory products are mentioned under the general heading `Food, Dairies and Salaughter Houses' and sub- heading `Food generally. Coffee-chicory blend is also mentioned in that paragraph. But the coffee and coffee products under the heading `Food generally- were in the context of the law of Food Adulteration and the Coffee and Coffee-Produce Regulations, q1967 in force in England. Reference was also made by the learned Judge to Corpus Juris Secundum, Volume 36 at page 1041. The learned Judge, in our opinion, rightly observed that the aforesaid passage from the Halsbury's Laws of England and Corpus Juris Secundum could not be mechanically imported into the present case more particularly when we are concerned with the situation under the Tariff Schedule. `Food', as has been noted, has no fixed definition of universal application and its meaning varies from statute to statute. The dividing line, the learned Judge observed, between the beverage and food might be thin and in some case it might overlap. The learned Judge,, however, observed that it was beverage rather than food. The accordingly held that the notification exempted not food but food products and food preparations and as such coffee-chicory blend did not come within the purview of the exemption. The said decision was affirmed by the Division PG NO 940 Bench of that Court in Brooke Bond (lndia) Limited v. Union of India & Ors., [1984] 15 ELT 32. The Division Bench after exhaustively discussing the points in controversy and after referring to several authorities referred to the decision of Justice Vivian Bose of this Court in The State of Bombay v. Vir

Kumar Gulabchand Shah, [1982] SCR/877, wherein he had observed in his own and inimitable language at pages 880-883 of the report as under:

"Much learned judicial thought has been expended upon this problem--what is and what is not food and what is and what is not a foodstuff, and the only conclusion I can draw from a careful consideration of all the available material is that the term 'foodstuff is ambiguous. In one sense it has a narrow meaning and is limited to articles which are eaten as food for purposes of nutrition and nourishment and so would exclude condiments and spices such as yeast, salt, pepper, baking powder and turmeric. In a wider sense, it includes everything that goes into the preparation of food proper (as understood in the narrow sense) to make it more palatable and digestible. In my opinion, the problem posed cannot be answered in the abstract and must be viewed in relation to its background and context. But before I dilate on this, l will examine the dictionary meaning of the words The Oxford English Dictionary defines foodstuff a follows: "that which is taken into the system to maintain life and growth and to supply waste to tissue".

In Webster's international Dictionary `food is defined as:

"nutritive material absorbed or taken into the body of an organism which serves, for purposes of growth. work repair and for the maintenance of the vital processes".

Then follows this explanation:

"Animals differ greatly from plants in their nutritive processes and require in addition to certain inorganic substances (water, salts etc.) and organic. substances of unknown composition (vitamins) not ordinarily' classed as food 'though absolutely indispensable to life, and contained in greater of less quantities in the substances eaten) complex organic substances which fall into three principal groups, Proteins, Carbohydrates and Fats."

PG NO 941 Next is given a special definition for legal purposes, namely--

"As used in laws prohibiting adulteration etc., `food' is generally held to mean any article used as food or drink by man, whether simple, mixed or compound, including adjuncts such as condiments, etc., and often excluding drugs and natural water."

The definition given of `foodstuff' is-- "1. Anything used as food,

2. Any substance of food value as protein, fat etc.

entering into the composition of a food."

It will be seen from these definitions that "foodstuff" has no special meaning of its own. It merely carries us back to the definition of "food" because "food stuff" is anything which is used as "food".

So far as "food" is concerned, it can be used in a wide as well as a narrow sense and, in my opinion, must depend upon the context and background. Even in a popular sense, when one asks another "Have you had your food?", one means the composite preparations which normally go to constitute a meal-curry and rice, sweetmeats, pudding, cooked vegetables and so forth. One does not usually think separately of the different preparations which enter into their making, of the various condiments and spices and vitamins, any more than one would think of separating in his mind the purely nutritive elements of what is eaten from their non-nutritive adjuncts.

So also, looked at from another point of view, the various adjuncts of what I may term food proper which enter into its preparation for human consumption in order to make it palatable and nutritive, can hardly be separated from the purely nutritive elements if the effect of their absence would be to render the particular commodity in its finished state unsavoury and indigestible to a whole class of persons PG NO 942 whose stomachs are accustomed to a more spicely prepared product. The proof of the pudding is, as it were, in the eating, and if the effect of eating what would otherwise be palatable and digestible and therefore nutritive is to bring on indigestion to a stomach unaccustomed to such unspiced fare, the answer must, I think, be that however nutritive a product may be in one form it can scarcely be classed as nutritive if the only result of eating it is to produce the opposite effect; and if the essence of the definition is the nutritive element, then the commodity in question must cease to be food, within the strict meaning of the definition to that particular class of persons, without the addition of the spices which make it nutritive. Put more colloguially, "one man's food is another man's poison". I refer to this not for the sake of splitting hairs but to show the undesirability of such a mode of approach. The problem must, I think, be solved in a commonsense way."

Justice Bose noted that a comparison of war-time measure in English and Indian Statutes might not be safe. But food is one which nourishes and sustains human body for the purposes of growth, work or repair and for the maintenance of the vital process. In the Brooke Bond Ltd.'s case (supra), the Division Bench considered the meaning of the expression "coffee-chickory blend" and upheld the decision of the learned Single Judge as mentioned hereinbefore.

Mr. Sorabjee, learned counsel appearing for the respondent, drew our attention to several items including Item 68 and the Central Excise Trade Notice dated 18th June 1975 which deals with exemption. The said Trade Notice, inter alia, reads as follows:

"A number of doubts have been raised about the general scope of the terms `food products/preparations' vide Entry No. I in the Schedule to Notification No. 55/75 dated 1.3.75. Specific queries have also been raised as to whether items like oil cakes, rice bran. scented chunam, katna, starch, quargum, gur, flour, ice cream and ice candy, ice, supari, groundnut kernels, and cashew kernels could be regarded as covered under the above entry as claimed by the manufacturers of these goods.

2. The matter has been examined and the following clarifications are used for the information of the trade.

PG NO 943 The word `food' is a general term and applies to all that is eaten by men for nourishment and takes in subsidiaries, further;

(i) preparations for use, either directly or after processing such as cooking, dissolving or oiling in water, milk etc. for human consumption; and

(ii) preparations used because of their nutritional or flavouring properties in the making of beverages or food stuffs for human consumption, are classiable as food preparations. But such preparations which because of their ingredients and small proportion in which they are normally used, are clearly added for other purposes, or not classiable as food preparations."

(underlined by us).

Mr. Sorabjee also drew our attention to the explanatory note in Heading No. 21.07 of CCCN which states, inter alis as follows:

"21.07--FOOD PREPARATIONS NOT ELSEWHERE SPECIFIED OR lNCLUDED.

Provided that they are not covered by any other heading of the Nomenclature the present heading covers:

(A) Preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, lecithin etc.) with food stuffs (flour, sugar, milk, milk powder, etc.) for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance keeping qualities etc.)"

Clause (2) of the said explanatory notes in heading No. 20.17 of CCCN contains the following:

"(2) Flavouring powders for making beverages, whether or not sweetened with a basis of bicarbonate of soda and glycyrrhizin or liquorice extract (sold on the Continent as "Cocoa powder")."

PG NO 944 Our attention was also drawn to Item (12) of the same which runs as follows:

"(12). Non-alcoholic compound preparations (often known as "concentrated extracts") used for making beverages (liqueurs, etc.) unless they are included elsewhere in the Nomenclature. These preparations are obtained by compounding vegetable extracts of heading 13.03-with lactic acid, tartaric acid, citric acid, phosphoric acid, preserving agents, foaming agents, fruit juices, etc., and sometimes with essential oils. Alcoholic preparations of this type are excluded (heading 22.09)"

Mr. Sorabjee further drew our attention to the Appendix 17 of Import Policy of 1981-82 which was relied upon by the Tribunal in the second decision, i.e. the Parle Exports (P) Ltd. case which is the subject matter of the connected appeals, i.e. C.A. Nos. 3680-82 of 1987. It was pleaded that it was

always understood and treated as a part of the food product. Reliance was also placed on the reports of the Chief Chemist of the Central Excise Regional Laboratory, Baroda to which Mr. Sorabjee drew our attention. The reports dealing inter alia with some items stated as follow:

"Gold Spot Base:

S.R.No. 1 Base-A (Lab. No.10) The sample is in the form of orange coloured liquid containing flavouring agents free from Alcohol. (Please see note attached).

S.R. No 2 Base (Lab. No. 11) The sample is in the form of white powder. It is sodium Benzoate-a-chemical known to be used as a preservative.

S.R. No.3 . Base-C (Lab. No. 12) The sample is in the form of white powder. It is vitamin `C'(ascorbic acid) an organic chemical.

Limca Base:

PG NO 945 S.R. No. 4 Base-A (Lab. No. 13) The sample is in the form of white liquid containing flavouring agents. It is free from Alcohol. (Please see note attached.) S.R. No. 5 Base-B (Lab. No. 14) The sample is in the form of white powder. It is sodium Benvonate-a-chemical known to be used as a preservative."

The note appended to these reports stated inter alia the following:

"NOTE"

"The term "food" as defined in the Prevention of Food Adulteration Act, 1954 meant any article used as food or drink for human consumption other than drugs and water and includes:

(a) Any article which ordinarily enters into, or is used in the composition or preparation of human foods; and

(b) any flavouring matter or condiments. Food products which are excluded from item (C) would fall under Item 68 of Central Excise, Tariff read with the Notification 62/78 dated 1.3.78 excluded as amended. The term "Food preparations" on the other hand would cover;

(a) Preparation for use either directly or after processing (such as cooking, dissolving or boiling in water, milk etc.) for human consumption.

(b) Preparation consisting wholly or partly of food stuffs used in making of Beverages or food preparation for human consumption.

This would also include concentrated extract for making non-alcoholic beverages.

(Ref. B.T.N. heading 21.07) PG NO 946 In this connection attention is also invited to Bangalore Collectorate trade notice No. 103/75 dated 18.6.75.

In view of that has been stated above samples at Sl. No. 1, 4, 8, 9, 13 and 15 may be deemed to fall in the category of food preparations. However, before finalising the assessment, it may be worthwhile ascertaining whether the above products are also known as food preparations in common parlance and trade. The views of the Director. Drugs & Food Laboratory, Baroda may also sought, if necessary."

Mr. Sorabjee submitted that the Tribunal has relied on the Bangalore Collectorate Trade Notice as referred hereinbefore, order of the Appellate Collector in the case of Bush Boake Allan (India) Limited, and Heading No. 21.07 of CCCN, Import Policy of the Government of India for 1981- 82 as well as the observations in Encyclopaedia Britannica, Volume 13 at pages 420-421. It was submitted that the said orders of the Tribunal had considered and taken into consideration all the relevant factors. The Tribunal has acted on the varied materials, and therefore, such decision of the Tribunal should not be altered or deviated from. Reliance was placed on the observations of this Court in Collector of Customs, Bombay v, Swastic Woollen (P) Ltd. and Ors., [1988] 37 ELT 474 at paragraph 9. The expression "food products" is not defined in the Act The product exemption includes `food and food preparations' and provides an inclusive definition of `food products' and 'food preparations'. But the correct and the appropriate meaning of the expressions covered in the said notification has to be found out.

The question is whether non-alcoholic beverage base is either `food product' or `food preparation' in terms of the notification in question. Mr. Sorabjee tried to suggest that fruit and vegetable juice might become fruit or vegetable products to come under Item 1(iii) of the Schedule to the exemption notification.

Learned Additional Solicitor General, Mr. Kuldip Singh, on the other hand submitted that non-alcoholic beverage base though having some food value, is not food product or food preparation, at any rate, in the context of the Act and notification as such. lle drew our attention to the first heading in the First Schedule to the Act dealing with "Food and Beverages" and pointed out that items 1 to IC deal with Food and Food Products while item 1D deals with beverages separately. He submitted before us that this indicates that PG NO 947 the expression "food products and food preparations" are used in contrast to "beverages" so far as the present Act and notifications thereunder are concerned. There is force in the submissions of the learned Additional Solicitor General.

Our attention was drawn to a decision of the Government of India in Re: Asian Chemical Works, [1982] 10 ELT 609A where the Government of India opined that `Food flavours' and `food preparations, might improve taste or appearance of food products and/or food preparations, but by themselves could not be legitimately consumed directly or after processing such as cooking, dissolving, or boiling in water for human consumption independently. Mr. Singh submitted that in ordinary common and commercial parlance also the goods in question are not known as food products and/or food preparations as such, therefore, these are not to be treated as exempt under

the notification. Mr. Singh submitted that when a person says "I have consumed food" he does not mean or says that he has consumed non-alcoholic beverage bases. Therefore, those goods cannot be understood as covered by the notification of exemption. It was submitted that how Government understood a matter at the time of the notification, is a relevant factor and that is a factor which one should bear in mind in view of the principles enunciated by this Court in K.P. Verghese v. Income Tax Officer, Ernakulam & Anr., [1982] 1 SCR 629. It is a well- settled principle of interpretation that courts in construing a statute or notification will give much weight to the interpretation put up on it at the time of enactment or issue, and since by those who have to construe. execute and apply the said enactments.

How then should the courts proceed? The expressions in the Schedule and in the notification for exemption should be understood by the language employed therein bearing in mind the context in which the expressions occur. The words used in the provision, imposing taxes or granting exemption should be understood in the same way in which these are understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them. It is, however, necessary to bear in mind certain principles. The notification in this case was issued under Rule 8 of the Central Excise Rules and should be read along with the Act. The notification must be read as a whole in the context of the other relevant provisions. When a notification is issued in accordance with power conferred by the statute, it has statutory force and validity and, therefore, the exemption under the notification is, as if it were contained in the Act itself. See in this connection the PG NO 948 observations of this Court in Orient Weaving Mills (P) Ltd. v. The Union of India, [1962] Supp. 3 SCR 481. See also Kailash Nath v. State of U.P., AIR 1957 SCR 790. The principle is well-settled that when two views of a notification are possible, it should be construed in favour of the subject as notification is part of a fiscal enactment. But in this connection, it is well to remember the observations of the Judicial Committee in Coroline M. Armytage & Ors. v. Federick Wilkinson, [1878] 3 A.C. 355 at 370 that it is only, however, in the event of there being a real difficulty in ascertaining the meaning of a particular enactment that the question of strictness or of liberality of construction arises. The Judicial Committee reiterated in the said decision at page 369 of the report that in a taxing Act provisions establishing an exception to the general rule of taxation are to be construed strictly against those who invoke its benefit. While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided.

In Hindustan Aluminium Corporation Ltd. v. State of Uttar Pradesh & Anr., [1982] l SCR 129 this Court emphasised that the notification should not only be confined to its grammatical or ordinary parlance but it should also be construed in the light of the context. This Court reiterated that the expression should be construed in a manner in which similar expressions have been employed by those who framed relevant notification. The Court emphasised the need to derive the intent from a contextual scheme. In this case therefore, it is necessary to endeavour to find out the true intent of the expressions "food products and food preparations" having regard to the object and the purpose for which the exemption is granted bearing in mind the context and also taking note of the literal or common parlance meaning by those who deal with those goods, of course bearing in mind. that in case of doubt only it should be resolved in favour of the assessee or the dealer avoiding, however. an

absurd meaning. Bearing the aforesaid principles in mind, in our opinion, the revenue is right that the nonalcoholic beverage bases in India cannot be treated or understood as new `nutritive material absorbed or taken into the body of an organism which serves for the purpose of growth, work or repair and for the maintenance of the vital process' and an average Indian will not treat non-alcoholic beverage bases as food products or food preparations in that light.

PG NO 949 We have also noted how these goods were treated by the Government as mentioned hereinbefore. There is no direct evidence as such as to how in commercial parlance unlike in ordinary parlance, non-alcoholic beverage bases are treated or whether they are treated as food products or food preparations. The purpose of exemption is to encourage food production and also give boost to the production of goods in common use and need. After all the purpose of exemption is to help production of food and food preparations at cheaper price and also help production of items which are in common use and need, like electric light and power.

The question of interpretation involves determining the meaning of a text contained in one or more documents. Judges are often criticised for being tied too closely to the statutory words and for failing to give effect to the intention of the Parliament or the lawmaker. Such language, it has been said, in Cross's "Statutory Interpretation" (Second Edn.) at page 21, appears to suggest that there are two units of enquiry in statutory interpretation--the statutory text and the intention of the Parliament--and the Judge must seek to harmonise the two. This, however, is not correct. According to the tradition of our law, primacy is to be given to the text in which the intention of the law- giver has been expressed. Cross refers to Blackstone's observations that the fairest and most rational method to interpret the will of the law-maker is by exploring his intentions at the time when the law was made, by signs the most natural and probable. And these signs are either the words, the context, the subject matter, the effects and consequences, or the spirit and reason of the law. We have no doubt, in our opinion, that having regard to the language used it would not be in consonance with the spirit and the reason of law to give exemption for non-alcoholic beverage bases under the notification in question. Bearing the aforesaid purpose, in our opinion, it cannot be contended that expensive items like Gold-Spot base, Limca-base or Thumps up-base were intended to be given exemption at the cost of public exchequer.

For the aforesaid reasons, the appeals have to be allowed and the decision of the Tribunal reversed. We, however. need not go into the question of penalty as well as the question of limitation which have been left open by the Tribunal in its order. It will be open for the parties to urge these points afresh before the Tribunal. We express no opinion on these aspects. The appeals to the extent indicated above are allowed. There will, however, be no order as to costs.

R.S.S. Appeals allowed.