Shri Ramakrishna Mills Ltd. And Ors. vs Assistant Collector Of Customs on 26 May, 1986

Equivalent citations: 1988(18)ECC75

JUDGMENT

Balakrishna Menon and Fathima Beevi, JJ.

1. A question of nicety concerning levy of import duty arises in this batch of writ peti

2. Developed maritime countries of importance had had similar and allied problems. Law a
whose father was a Customs Officer in Suffolk in the eighteenth century heyday
of smuggling, described how smugglers stood by the seashore:

Beneath yon cliff they stand,

To show the freighted pinnace where to land;

To load the ready stood with guilty haste;

To fly in terror o'er the pathless waste;

These lines were quoted by Mr. Williams in his book "Contraband Cargoes Seven Centuries

3. As for facts, they are neither too many nor too complicated.

4. As stated earlier, the petitioners are producing, among other goods, cotton viscose b

5. The import of goods into India is subjected to duty under various fiscal measures. Th

6. Section 25 of the Customs Act confers power on the Government in public interest to e

7. The vessel with viscose staple fibre reached Cochin after 31-12-1978 but before 5-1-1

8. It appears that the petitioners had expected the arrival of the ship much earlier. On
'India' includes the territorial waters of India.

The act of importation was thus complete when the vessel entered the territorial waters

9. This argument, understandably enough, did not appeal to the departmental authorities.

10. Is the importation really complete when the vessel crossed the territorial waters ar

11. The term "import" derived from the Latin word "importare", lexicologically does not

12. Judicial decisions have, as stated earlier, considered and construed the term under

13. Before referring to the statutory provisions, it may be of advantage to bear in mind

2. Definitions.--In this Act, unless the context otherwise requires,--
* * * *

(11) 'customs area' means the area of a customs station and includes any area in which i

(12) 'customs port' means any port appointed under Clause (a) of Section 7 to be customs

(13) 'customs station' means any customs port, customs airport or land customs station;
* * * *

(28) 'Indian customs waters' means the waters extending into the sea up to the limit of

Section 7 of the Act deals with notified ports. Section 12, which has been characterised

12. Dutiable goods.--Except as otherwise provided in this Act, or any other law for the

(2) The provisions of Sub-section (1) shall apply in respect of all goods belonging to G
* * * *

15. Date for determination of rate of duty and tariff valuation of imported goods.--(1)

(a) in the case of goods entered for home consumption under Section 46, on the date on w

(b) in the case of goods cleared from a warehouse under Section 68, on the date on which

(c) in the case of any other goods, on the date of payment of duty:

Provided that if a bill of entry has been presented before the date of entry inwards of

(2) The provisions of this section shall not apply to baggage and goods imported by post

Section 30 deals with the delivery of import manifest or import report. Thereunder an ob

14. It is perhaps desirable also to bear in mind the scheme of a customs legislation in
The scheme of the Act thus seems to be to control the due importation of goods by chann

15. As we are concerned with the question of levy of import duty, it is equally useful t

Similarly in the case of duties of customs including export duties though they are levie

(emphasis supplied)

16. Perhaps the essence of the concept of import was explained with commendable lucidity

(emphasis supplied)

17. That when goods are carried through the limits of harbour and then landed elsewhere
'imported into Canada' meant imported at the port of discharge and at no earlier port o

(emphasis supplied).

In the Australian decision, (1974) 48 ALJR 232, after referring to the wealth of judicia

However whether or not the sea within three nautical miles of the coast should be regard

However, in any case, it is to my mind a completely impractial concept that importation

The learned Chief Justice had earlier observed:
It seems to me that the conclusion that entry into the port with the intention of being

The necessity to have an ending of the carriage or the factual breaking of the continuit

18. As stated earlier, the contention of the petitioners is that the liability for duty

19. Imports generally take place as a result of transactions between traders, between tw

20. My conclusion, I feel, is in accord with the principles relating to the interpretati

21. The same reasoning will apply with equal force in the present case. If, as the petit

22. The facts of the present cases, bear close similarity to these in the decision Merse

23. The principles gatherable from the aforesaid decision of the Supreme Court have been
It is now settled by high authority that unless goods that are brought into the country

Reference had been made to other decisions also including that of the Delhi High Court i
(1) Goods can be said to be imported to the country only when they are incorporated in

These principles were approved of as accurate and correct in a later judgment of the Cal
162 and the decision of the Supreme Court in Prakash Cotton Mills (P) Ltd. v. B. Sen and

24. The decision of the Supreme Court in Prakash Cotton Mill's case, , however only deal

25. It now remains to that with a decision of the Bombay High Court on which much relian
and Ors., 1981 ELT 414. The later Division Bench, after a discussion of the case, indica

26. Almost a similar question had arisen before the Australian High Court, which had occ
It cannot, in my opinion, be maintained that the mere act of bringing goods into port c

(See Wilson v. Chambers & Co. Ply Ltd. (1926) 38 CLR 131.) It may incidentaly be pointed

27. The survey of the decisions referred to above appears to support the conclusion reac

28. No other contentions had been urged, though some others had been shadowed in the wri

29. Mr. T. C. Mohandas, counsel appearing in O.P. No. 928 of 1979, besides supporting an

The result is that the contentions in all cases except O.P. No. 928 of 1979 of the petit

The judgment of the Division Bench is printed below:

JUDGMENT

Balakrishna Menon, J.

1. This batch of writ appeals is against the decision of a learned Single Judge of this Court dismissing O.P. Nos. 404, 409, 410, 413, 517, 519 and 736 of 1979. The judgment is reported in M/s. Ramalinga Mills v. The Asst. Collector of Customs, 1982 KLJ 314 (printed at page 78 supra). The appellants had imported viscose staple fibre from Norway for the purpose of manufacturing viscose blended yarn. The steamer "M.V. Viswabandan" carrying the goods called on at the port of Bombay on 28-121978. The importers had submitted the requisite bills of entry on 21-12-1978. The vessel reached the Cochin Port on 4-1-1979 and the goods were discharged at Cochin on the same day. The customs authorities levied customs duty at 100 per cent of the value of the goods and an additional duty under the Customs Tariff Act. An auxiliary duty at 20 per cent was also levied under Section 32(1) of the Finance Act, 1978. The importers claimed exemption from the aforesaid duties as per notifications issued by the Government of India under Section 25(1) of the Customs Act, 1962 (hereinafter referred to as the Act) totally exempting viscose staple fibre from duty under the Act. The notifications exempting the goods from duty were in force till 31-12-1978. A further notification exempting the goods from duty for the period up to 31-12-1979 come into force on 5-1-1979. The relevant notifications are Exhibits P1 to P4 referred to in paragraph 6 of the judgment under appeal.

2. If the importation of goods in these cases is to be held as taken place on the date on which the ship entered the territorial waters of India, the importers are entitled to exemption from duty by virtue of the notifications in force till 31-12-1978. If, on the other hand, the goods can be said to have been imported only when the ship crossed the customs barriers at Cochin on 4-1-1979, there can be no exemption from duty as the subsequent notification extending the exemtion came into force only on 5-1-1979. The learned judge dismissed the original petitions in the view expressed as follows in paragraph 19 of his judgment:

> In this view of the matter, I am clearly of opinion that the mere entry of the vessel with the goods into the territorial waters or even berthing in the Port of Bombay will not, vis-a-vis the petitioners importers at Cochin, constitute a completed import of the goods at Bombay. That was a matter of mere transit. Importation took place only when the vessel crossed the customs barriers at the intended port of importation, namely, Cochin.

3. Customs duty is charged under Section 12 of the Act extracted below:--

> Dutiable goods:--(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from India.
>
> (2) The provisions of Sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

Clause (14) of Section 2 defines "dutiable goods" to mean any goods which are chargeable to duty and on which duty has not been paid. Clause (23) defines " import " to mean bringing into India from a place outside India. The expression " imported goods " is defined in Clause (25) to mean any goods brought into India from a place outside India, but does not include goods which have been cleared for home consumption. " India " is defined in Clause (27) to include the territorial waters of India. Clause (28) of Section 2 defines " Indian customs waters " to mean the waters extending into the sea up to the limit of contiguous zone of India under Section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 and includes any bay, gulf, harbour, creek or tidal river. " Land customs station " is a place appointed under Clause (b) of Section 7 for the clearance of goods imported or to be exported. Section 14 deals with the valuation of goods for the purpose of assessment. Section 15 relates to the determination of rate of duty and tariff valuation. The section reads:--

> The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force,--
>
> (a) in the case of goods entered for home consumption under Section 46, on the date on which a bill of entry in respect of such goods is presented under that section;
>
> (b) in the case of goods cleared from a warehouse under Section 68, on the date on which the goods are actually removed from the warehouse;
>
> (c) in the case of any other goods, on the date of payment of duty:
>
> Provided that if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards.
>
> (2) The provisions of this section shall not apply to baggage and goods imported by post.

Section 25 of the Act empowers the Central Government, by notification in the Official Gazette, to grant exemption from duty. The section reads:

> If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely

> or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.
>
> (2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from the payment of duty under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable.

There is no dispute that the notifications Exts. P1 to P4 are validly issued under Section 25(1) of the Act. Section 29 in Chapter VI prohibits vessels or air-crafts entering India to call or land at places other than Customs Ports or Customs Airports. Section 30 requires the person-in-charge of a conveyance carrying imported goods to deliver, within twenty-four hours of arrival at the customs port, an import manifest to, the proper officer. Section 31 prohibits the master of the vessel to permit the unloading of imported goods until an order has been given by the proper officer granting entry inwards to such vessel. Section 32 enacts that no imported goods, required to be mentioned in an import manifest or import report shall, except with the permission of the proper officer, be unloaded at any customs station unless they are specified in such manifest or report for being unloaded. Section 34 insists that unloading shall be under the supervision of the proper officer. Section 37 confers power on that officer to board any conveyance at any time. Sections 45 to 49 in Chapter VII deal with clearance of imported goods. Under Section 45 goods imported in a customs area shall remain in the custody of a person approved by the Collector of Customs until they are cleared for home consumption. Section 46 provides that the importer shall make entry of the goods by presenting a bill of entry for home consumption or for warehousing in the prescribed form; and normally the presentation shall be at any time after delivery of an import manifest. Section 47 authorises the proper officer to make an order permitting clearance for home consumption on satisfaction that the import duty had been paid. Chapter IX deals with warehousing and Section 68 in that chapter provides for clearance of warehoused goods for home consumption.

4. Section 12 as noticed above is the charging section; the taxable event is the import of goods into or export from India. Section 14 relates to the valuation of goods for the purpose of assessment and Section 15 relates to the date with respect to which the rate of duty is to be determined. It is not always necessary that the levy of duty should be imposed when the taxable event occurs; it can be postponed to any later date. The Supreme Court in Guruswamy & Co. v. State of Mysore (1967) I SCR 548, after considering the case law with respect to excise duty, stated the ratio thus:

> These cases establish that in order to be an excise duty (a) the levy must be upon ' goods ', and (b) the taxable event must be the manufacture or production of goods. Further the levy need not be imposed at the stage of production or manufacture but may be imposed later.
>
> The same view is expressed in the later decisions of the Supreme Court in Jullundur Rubber Goods Manufacturers' Association v. Union of India (1970) 2 SCR 68, A. B. Abdul Kadir v. State of Kerala (1975) 2 SCR 690 and Mc Dowell and Co. Ltd.. v.

Commercial Tax Officer [1985] 59 STC 277. It is therefore not necessary that the levy should be contemporaneous with the taxable event. In Shawhney v. Sylvania and Laxman, 77 Bom LR 380 the Bombay High Court held that the taxable event occurs when the goods are brought to the territorial waters of India and the chargeability of the goods to customs duty has to be determined with reference to that date. The case related to import of glass tubes for manufacture of fluorescent lamps. The goods were totally exempt from customs duty as per notification issued under Section 25(1) of the Act. The notification was in force till 31-3-1967. The goods purchased by the importer from U. S. A. arrived at the Bombay Port on 29-3-1967. An import manifest was filed on the same day and the customs authorities granted an order for entry inwards. The bill of entry for clearance was however, filed on 27-4-1967, after the period of exemption under the notification had expired, and the goods were actually cleared on 6-6-1967. It was on these facts that the Bombay High Court held that as the import was at a time when no duty was payable for the reason of the notification under Section 25(1) of the Act, the goods are wholly exempt from duty even though the bill of entry was filed and the goods were cleared subsequent to the date on which the notification exempting the goods from customs duty had expired. The Court after referring to the observations of the Privy Council in Wallace Brother and Co. Ltd. v. Commr. of Income Tax, 50 Bom LR 482 held as follows:

These observations fully justified the clear distinction that exists, inter alia, between the chargeability in respect of a tax or duty and the quantification of the amount payable in respect thereof. The only charging section in respect of levy of customs duty is Section 12(1) such levy subject to other provisions of the Act or any other law for the time being in force. The chargeability in respect of levy of customs duty arises when the goods are imported into India, i.e., when they cross the customs barriers as stated above. Chargeability arises simply by reason of Section 12(1) of the Act and that takes place only when the goods are imported into India, i.e., into the territorial water of India clearance of imported goods can take place only after the importation is complete...There is nothing in any of the provisions (of the Customs Act) to indicate that the chargeability in respect of levy of customs duty is postponed until a bill of entry is presented...it is impossible to accept the view that the taxable event in respect of levy of customs duty takes place only when a bill of entry is presented or thereafter.

A later Division Bench decision of the same High Court in Synthetics and Chemicals v. S.C. Coutinho 1981 ELT 414 was concerned with the rate of duty under Section 15 chargeable on the good imported. The import related to dis-proportionated Resin Acid chargeable to customs duty at 60 per cent ad valorem. The ship arrived at Bombay Port on 20-8-1968 and the importer on the same day presented the bill of entry for warehousing. The goods were accordingly warehoused. The Government of India on 12-10-1968 issued a notification under Section 25(1) of the Act reducing the duty to 271/2 per cent ad valorem. The Division Bench held that the duty payable is only at the reduced rate by virtue of the provisions contained in Section 15(1)(b) of

the Act. The Sylvania & Laxman's case was distinguished on the ground that the goods involved in that case were not liable to duty on the date of import and such goods cannot be subjected to duty by resort to the procedure under Section 15 of the Act. It was, however, held that if the goods are liable to duty under Section 12(1) and if the rates are varied after importation and prior to the clearance, duty at the rate prevalent on the date of clearance is payable under Section 15(1)(b) of the Act. The Division Bench observed at page 420:--

In order that any commodity should be made to pay duty, the primary or basic requirement, according to us, is that on the date of importation it must be chargeable to duty. The primary fact to be remembered is that if on the date of importation there was total exemption, which means that the entry was not there, then they were not liable to pay any duty whatsoever on imparts. Even if the operation of the notification ceases and a certain rate contemplated by the Indian Tariff Act becomes operative, it shall have no relevance to those imports for which initially there was total exemption." It is further observed at the same page:--

...There may be other cases where on the date of importation the goods are liable to duty. It must mean that they are chargeable to duty. At what rate must they be actually taxed on the date of removal? As an illustration, suppose a notification exempts certain goods from payment of a part of duty or whereby the duty payable is reduced to 271/2 per cent. If such a notification comes to be withdrawn or ceases to have operation on the date on which the goods are actually removed from the warehouse, what would be the effect? Should these goods pay 271/2 per cent or 60 per cent, which is the normal tariff rate. We have to answer in favour of determination of the rate of 60 per cent the reason being that the goods were not totally exempt. Once they are chargeable to duty on importation--the rate being irrelevant--the rate prevalent on the date of actual clearance will apply under Section 15(1)(b).

A Full Bench of the Bombay High Court in Apar Private Ltd. v. Union of India affirming the decision in Sylvania & Laxman's case came to the following conclusion at page 673 (page 272 of [1985] 6 ECC):--

What follows from the above discussion is that when goods from a place outside India are brought to India as defined under Section 2(27) of the Customs Act, that is, into the territorial waters of India, they become 'imported goods'. They continue to be imported goods until cleared for home consumption. The taxable event occurs upon the goods entering the territorial waters of India. If at that point of time, the imported goods are chargeable to duty, then the duty has to be assessed as per the valuation made under Section 14 and at rates specified under Section 15...While under Sub-section (1) of Section 25 goods themselves are exempt from the levy of duty, under Sub-section (2) (of Section 25) the goods continue to be chargeable to duty but the importer is only exempted from payment of such duty. If the notification

> under Sub-section (1) wholly exempting goods from duty subsists on the date of importation, that is, when they entered the territorial waters of India, then duty is not at all leviable. The subsequent withdrawal of the notification before the clearance of the goods does not render such goods chargeable to duty...If the goods are not chargeable to customs duty in view of any of the provisions of the Customs Act or the provisions of any other law, then neither their valuation under Section 14 nor calculation of the duty payable at the rates as mentioned in Section 15 of the Customs Act would be required. Same would be the position when a notification wholly exempting the goods from levy of customs duty is issued under Sub-section (1) of Section 25 of the Act Hon account of exemption granted under Section 25(1) the goods imported into India are not chargeable to duty and no duties of customs can be levied, obviously there is no occasion to ascertain the tariff valuation of the goods imported under Section 14 or the rate at which the duty is payable under Section 15. Sections 14 and 15 would apply only in a case where duties of customs are leviable under Section 12 and the Customs Act or any other Act does not provide otherwise. In other words, if the Customs Act read with the notification issued under Section 25(1) thereof provides otherwise, duties of customs shall not be levied under Section 12 and consequently, Section 15 does not come into operation in respect of these goods and the question of valuation of the goods under Section 14 does not arise for the purpose of assessment. That is what this Court held in Sylvania Laxman's case.

5. The argument that the effect of a notification under Section 25(1) wholly exempting the goods from duty does not affect the chargebility of the goods, but was assessable at nil rate on the date of importation and hence the rate applicable under Section 15 and the valuation to be effected under Section 14 are still relevant, was rejected on the ground that the goods on the date of the taxable event being exempt from duty, there is no question of subsequent levy unless specifically provided for in the Act. Sections 14 and 15 relating to valuation and the rate of duty were held as not applicable to a case where the goods are not chargeable to duty under Section 12(1) of the Act. The Full Bench held at page 674 (page 274 of [1985] 6 ECC 241):--

> The fact that the goods are still shown in the Schedule as chargeable under the Customs Tariff Act does not render the goods subject to levy of duty. Only if the goods are chargeable to duty under the Customs Act, the duty will be at the rates specified in the Schedule to the Customs Tariff Act. But, inasmuch as where the notification under Section 25(1) exempts imported goods covered by the notification from the levy of whole of the duty leviable thereon it cannot be said that 'nil' duty is chargeable on these goods. The Schedule to the Customs Tariff Act ceases to apply to the Customs Act, no sooner than the notification under Section 25(1) is issued. The link between the Customs Act and the Customs Tariff Act established by Section 12 is severed by the notification under Section 25(1) and the Schedule to the Customs Tariff Act ceases to apply and no notion of 'nil' duty can be imported where the goods are wholly excempt from duty under the notification. The metaphysical concept of 'nil duty' cannot be invoked so as to subject to duty goods, wholly exempt from levy when the taxable event occured, that is, when they entered the territorial waters of India

even if the exemption notification were withdrawn by the time these goods came to be cleared for home consumption.

6. In Sundaram Textiles Ltd., Madurai v. Assistant Collector of Customs, Madras 1983 ELT 909 a learned single Judge of the Madras High Court has taken the same view as was expressed by the Bombay High Court in Sylvania Laxman's case.

7. A contrary view is expressed in the judgment under appeal and the several decisions referred to therein. But for the general principles, the decisions of the English, American, and the Australian Courts referred to in the judgement under appeal are not of much assistance in deciding the case arising under the Indian Act where the expressions "import", "imported goods", "India", etc., are defined for the purpose of the Act. According to the learned Judge the concept of import posits as its essential ingredients an agreement of sale, a passing of consideration and delivery of the property and the words in the statutory provisions had to be linked with not only the goods, but also with the person who is a contracting party to the transaction of import. Thus, according to the learned Judge, the mere fact that the goods passed the customs frontiers of a port in which the importer has no intention to have the goods delivered from the ship will not amount to import for the simple reason that the importer had no intention to have access to the goods except at the port of destination which he had specified in the contract with the foreign seller. A ship which delivers goods intended for different importers may call on intermediate ports in India. But as regards an importer who contracted for the goods to be delivered at Cochin, the question of importation has to be determined in the light of the intention of the importer to have the goods delivered at the port of Cochin. The learned Judge relies on the decision in K.R. Ahmed Shah v. Additional Collector of Customs, Madras 1981 ELT 153 wherein it is held that unless the goods brought into the country for the purpose of use, enjoyment, consumption, sale or distribution are incorporated in and got mixed up in the totality of the property of the country, they cannot be said to have been imported. Reliance is also placed on the decisions in Union of India v. Kacherim 1970 Crl LJ 417, K.R. Ahmed Shah v. Asst. Collector of Customs 1975 LW (Crl) 127 and the unreported judgments of the Madras High Court in W.A. No. 84 of 1968 and in C.A. No. 712/1973. The principle deducible from these decisions is stated to be that goods can be said to be imported only when they are incorporated in and got mixed up with the mass of goods in the country. The same principle was followed by the Calcutta High Court in Shewbuxari Onkarmall v. Asst. Collector of Customs and Ors. 1981 ELT 298, and by the Madras High Court in K. Jamal & Co. v. Union of India 1981 ELT 162. The learned judge in paragraph 20 of the judgment under appeal follows the decision of the Supreme Court in Empress Mills v. Municipal Committee, Wardha where the expression "import" is interpreted with reference to Section 66(1)(o) of the C.P. and Berar Municipalities Act, 1922. Following the decision in Empress Mills' case the Gujarat High Court in Prabhat Cotton and Silk Mills Ltd. v. Union of India 1982 ELT 203 held that the expression "all goods imported into or exported from India" in Section 12 of the Act means goods imported into or exported from the landmass of India. The question in Prabhat Cotton and Silk Ltd.'s case was as to whether the landing charges of 3/4 percent of the C.I. F. value of the goods imported can be included in the total valuation of the goods for the purpose of levy of customs duty. If the valuation is as at the time the vessel eaters the territorial waters, the landing charges will not be included in the value of the goods, but if the valuation is as when the goods are unloaded on the land-mass of India, the landing charges will form part of the value of the goods. The answer to the

question of valuation depends on the interpretation of Section 14 of the Act and it has no direct reference to the taxable event of import under Section 12 of the Act. As per Section 14 for the purpose of the Customs Tariff Act, 1975 or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation in the course of international trade and where such price is not ascertainable, the nearest ascertainable equivalent thereof determined in accordance with the rules made in that behalf. The Gujarat High Court has not adverted to the distinction in the Customs Act itself between "imported goods" and "export goods". Under the Customs Act import goods do not attract duty until they become imported goods. Export goods, on the other hand, attract duty when they are sought to be taken across the customs barriers. As observed by the Full Bench of the Bombay High Court there is no principle of law which overrides the provisions of the Customs Act and the definitions therein which compel the Court to hold that if the import of goods occurs when the goods enter the territorial waters, the goods would not become export goods until they leave the territorial waters of India.

8. A Division Bench of the Delhi High Court in Jain Shudh Vanaspati Ltd. v.

Union of India 1983 ELT 1688 disagreed with the view taken by the Bombay High Court in Sylvania Laxman's case and held that Section 12 is subject to Sections 14 and 15 of the Customs Act for the reason that the section begins with the expression "except as otherwise provided in this Act." Rajinder Sacher, J. observed at page 1697 (page 59 of [1984] 1 ECC):--

> In our opinion it would be wrong to read that Section 15 covers only the quantification but the date with reference to which quantification is to be done could relate back to the earlier period of time when the ship had entered the territorial waters. Statute is clear that irrespective of the date when ship enters the territorial waters calculation for the purpose of rate of duty must be done with reference to the date mentioned in Section 15 in various circumstances. Now if at that date there is no exemption notification under Section 25 of the Act the goods imported by the importer would bear a rate of duty as mentioned in the First Schedule.
>
> There is no justification for the assumption that the chargeability to duty and its quantification under the Act should be with reference to same date. Section 15 itself indicates that even in regard to goods imported on the same day the rate of duty will have to be determined with reference to different dates on which they are cleared for home consumption, whether immediately or after warehousing. If imported goods are kept in a warehouse, the rates vary in accordance with the dates on which the goods are removed wholly or in part from the warehouse. Khanna, J. by a separate judgment agreed with the view expressed by Sachar, J. Sachar, J., however, concluded at paragraph 49 of his judgment at page 1708 (page 71 of [1984] 1 ECC) thus:--

We are of the view that the time of import of goods and the time for taxability of goods must not be taken to be co-extensive and to coalesce at the same time. It may be that the goods are imported in the sense of bringing them within India which included territorial waters of India. It is true that the moment ship with goods enters the territorial waters of India it would be subject to the control of the customs authorities and would also be subject to the provisions of the Customs Act and the provisions of prohibition and other restrictions placed on the import and the manner of import of those goods. But entry in the territorial waters, though amounting to import, yet will not, for fiscal purposes, determine the date and the time for the purpose of calculating the rate of duty which is leviable under the Customs Act and for which we have to look to Section 15 of the Act.

Since the taxable event is the import of goods into India, it is difficult to accept the conclusion that merely because the rate of duty has to be determined under Section 15, its chargeability should also be determined under Section 15. The Delhi High Court also follows the decision of the Supreme Court in Empress Mills' case.

9. The learned judge in the judgment under appeal observes at paragraph 18:--

What would be the position if ship with goods intended for an importer at Cochin, but with other merchandise too dischargeable at other ports in India and intended for other importers in India, called on some such ports in India before it reaches the Cochin Port for discharging cargo in respect of which importation was contemplated at Cochin by the persons intending import? Could it be said that every time the vessel entered a Port in India, there has been an importation and consequently a liability for import duty? The absurd and disastorus consequences of the result, prima facie, are such as that that could not have been intended by the statute at all.

In making the above observation the learned Judge has lost sight of the provisions contained in Section 56 in Chapter VIII relating to goods in transit. Specific provision is made in respect of the transportation of such goods from one customs station to another without payment of customs duty. It is reasonable to hold that such a provision in regard to goods in transit was necessitated only because under Section 12 all goods brought from countries outside India on entering its territorial waters become imported goods and become subject to levy of customs duty. There are also other provisions in the Act which would indicate that the taxable event occurs when the goods enter the Indian territorial waters. These provisions are dealt with at pp. 670 and 671 (pp. 269 to 271 of 6 ECC) in the Apar Private Ltd's case . Section 13 of the Act absolves the importer of the liability to pay duty if the goods are pilfered before an order for clearance for home consumption or deposit in a warehouse is made. The question of liability of the importer to pay duty on pilfered goods would not have arisen if the goods become liable to duty only when they are sought to be cleared for home consumption. Section 21 makes provision for goods derelict, wreck, etc., to be dealt with as imported goods. When the legislature declares that such goods are liable

> to duty, it can only be on the footing that they become imported goods as soon as they enter the territorial waters and before they are brought on the landmass and cleared for home consumption. Section 22 makes provision for abatement of duty on damaged or deteriorated goods. Section 23 makes provision for remission of duty on goods lost, destroyed or abandoned at any time before clearance for home consumption. Such provisions would not have been necessary unless the goods have become imported goods before clearance. Sections 31 and 32 prohibit imported goods from being unloaded until entry inwards is granted of the goods mentioned in an import manifest or import report. The goods are required to be unloaded at approved places and under the supervision of the customs officer. These provisions indicate that the goods become imported goods even before they are unloaded. Section 37 empowers the proper officer to board any conveyance carrying imported goods and that postulates a period before unloading. Section 48 authorizes disposal of goods not cleared for home consumption or warehoused transhipped within two months after unloading. It speaks of such goods also as imported goods. Chapter VIII dealing with goods in transit would indicate that the goods become imported goods when they enter the territorial waters of India. Section 53 makes provision for exemption from duty of goods imported in a vessel or aircraft and mentioned in the import manifest as for transit in the same vessel or aircraft to any port or airport outside India. If the goods become imported goods only when unloaded on the landmass of India, such a provision for goods in transit would have been wholly unnecessary. The legislative intention appears to be clear that goods brought from outside India become imported goods as soon as they enter the territorial waters of the country. Similar provision is made in Section 54 in respect of goods imported into a customs port or customs airport and intended for transhipment. If the goods become imported goods only when they are sought to be cleared for home consumption or placed in such a position as to be mixed with the goods on the landmass, all these provisions would have been unnecessary. These provisions as held by the Full Bench of the Bombay High Court in Apar Private Ltd's case made the legislative intent clear that the goods become imported goods as soon as they enter the territorial waters of India.

10. Chief Justice Marshall interpreting the word " importation " said in Brown v. State of Maryland (1827) 12 Wheat 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 sea-stores, goods imported and re-exported in the same vessel, goods lauded and carried over land for the purpose of being re-exported from some other port, goods forced in by stress 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.

The learned Chief Justice further observes at page 447:--

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, then, as importation itself .

The decision was followed by the Supreme Court in Empress Mill's case. The question for consideration before the Supreme Court was whether goods in transit neither loaded nor unloaded within the Municipal limits of Wardha attracted terminal tax under Section 66(1)(o) of the C. P. and Berar Municipalities Act. The aforesaid provision of the Act authorises the imposition of " a terminal tax on goods or animals imported into or exported from the limits of a municipality". It is in that context that the word " import " was required to be construed by the Supreme Court in relation to goods in transit through the municipal limits. The words " import " and " export" were not defined and those expressions had to be interpreted in the light of the nature of the levy of a tax which was terminal in character. The Supreme Court following the dictum of Chief Justice Marshall referred to above observed at page 347:--

This supports the contension 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 area." Construing the nature of a terminal tax it was held at page 347:--

If 'terminal' besides the above meaning has an additional meaning also and that meaning signifies the termini or the jurisdictional limits of the municipal area even then the construction to be placed on the term should be the one that favours the tax-payer, in accordance with the principle of construction of taxing statutes, which must be strictly construed and in case of doubt must be construed against the taxing authorities and doubt resolved in favour of the tax-payer.

It is thus clear that the decision of the Supreme Court in Empress Mill's case rested on the language of the statute that the Court was called upon to construe. This decision of the Supreme Court is followed by the learned single Judge for interpreting the word " import " in the Customs Act. Most of the decisions of the Indian Courts referred to by the learned single Judge in support of this view also follow the decision in Empress Mill's case. The Gujarat High Court in Prabhat Cotton and Silk Mills Ltd.'s case and the Delhi High Court in Jain Shudh Vanaspathi Ltd.'s case also follow the decision in Empress Mill's case to understand the scope of " import " without reference to its definition in Section 2(23) of the Customs Act. The decision in Empress Mill's case was confined to the peculiar facts of that case in a later decision of the Supreme Court in Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey . The question for consideration in the Gramophone Co.'s case related to the interpretation of the word " import " in Section 53 of the Copyright Act 14 of 1957. Pirated cassettes were brought in a ship from Singapore for consignment to Nepal. The ship with the cassettes were berthed at the port of Calcutta. The Gramophone

Company of India filed a writ petition in the Calcutta High Court to direct the Registrar of Copyrights to pass an order under Section 53 of the Copyright Act as otherwise the customs authorities were likely to release the goods for transportation to Nepal. The Calcutta High Court dismissed the writ petition holding that there was no import of the pirated cassettes into India as the cassettes were intended for transportation to Nepal. It was on appeal by the Gramophone Company of India that the Supreme Court had to construe the expression " import " occurring in Section 53 of the Copyright Act. Section 53 authorises the Registrar of Copyrights on application by the owner of the copyright in any work and on payment of the prescribed fee to order the copies made outside India of the work which if made in India would infringe the copyright shall not be imported. The Supreme Court held that " import " within the meaning of Section 53 included also import for the purpose of transit and is not limited to import for the purpose of commerce. The Supreme Court distinguishing the decision in Empress Mill's case stated at page 679 (page 158 of [1984] 2 ECC):--

25. The Calcutta High Court thought that goods may be said to be imported into the country only if there is an incorporation or mixing up of the goods imported with the mass of the property in the local area. In other words the High Court relied on the 'original package doctrine' as enunciated by the American Court. Reliance was placed by the High Court upon the decision of this Court in the Central India Spinning and Weaving and Manufacturing Co. Ltd., The Empress Mills, Nagpur v. Municipal Committee, Wardha . That was a case which arose under the C.P. and Berar Municipalities Act and the question was whether the power to impose 'a terminal tax on goods or animals imported into or exported from the limits of a municipality' included the right to levy tax on goods which 'were neither loaded or unloaded at Wardha but were merely carried across through the municipal area'. This Court said that it did not. The word 'import', it was thought meant not merely the bringing into but comprised something more, that is 'incorporating and mixing up of the goods with the mass of the property in the local area', thus accepting the enunciation of the 'original package doctrine' by Chief Justice Marshall in Brown v. State of Maryland 6 L Ed 678. Another reason given by the learned Judges to arrive at the conclusion that they did, was that the very levy was a 'terminal tax' and therefore the words 'import and export', in the given context, had something to do with the idea of a terminus and not an intermediate stage of a journey. We are afraid the case is really not of any guidence to us since in the context of a 'terminal tax' the words 'imported and exported' could be construed in no other manner than was done by the Court. We must however say that the 'original package doctrine' as enunciated by Chief Justice Marshall on which reliance was placed was expressly disapproved first by the Federal Court in the Province of Madras v. Boddu Paidanna 1942 FCR 90 : [1942] 1 STC 104 (FC) and again by the Supreme Court in State of Bombay v, F. N. Balsara 1951 SCR 682. Apparently, these decisions were not brought to the notice of the Court which decided the case of Central India Spinning and Weaving and Manufacturing Co. Ltd., The Empress Mills, Nagpur v. Municipal Committee, Wardha. So we derive no help

> from this case. As we said, we prefer to interpret the word 'import' as it is found in the Copyright Act rather than search for its meaning by referring to other statutes where it has been used.

Earlier in the judgment the Supreme Court observed that the word "import" in Section 53 of the Copyright Act has the same meaning as it has as per its definition in Section 2(23) of the Customs Act. But the Court preferred to interpret the expression occuring in Section 53 of the Copyright Act without recourse to the Customs Act. It is stated at page 678 (pages 157-158 of [1984] 2 ECC):--

> 22. The question is what does the word 'import' mean in Section 53 of the Copyright Act? The word is not defined in the Copyright Act though it is defined in the Customs Act. But the same word may mean different things in different enactments and in different contexts. It may even mean different things at different places in the same statute. It all depends on the sense of the provisions where it occurs. Reference to dictionaries is hardly of any avail, particularly in the case of words of ordinary parlance with a variety of well-known meanings. Such words take colour from the context. Appeal to the Latin root won't help. The appeal must be to the sense of the statute. Hidayatullah J. in Burmah Shell v. Commercial Tax Officer has illustrated how the contextual meanings of the very words 'import' and export may vary.
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> 23. We may look at Section 53 rather than elsewhere to discover the meaning of the word 'import'. We find that the meaning is stated in that provision itself. If we ask what is not to be imported, we find that the answer is copies made out of India which if made in India would infringe copyright. So it follows that 'import' in the provision means bringing into India from out of India. That, we see is precisely how import is defined under the Customs Act.

11. It was accordingly held that the word "import" in Sections 51 and 53 of the Copyright Act means bringing into India from outside India that it is not limited to importation for commerce only, but includes importation for transit across the country. In the light of the decision of the Supreme Court in Gramophone Company's case it should be held that the decisions, taking the view that unless the goods concerned form part of the goods in the landmass of India there is no import, cannot be accepted as laying down the correct law in regard to the concept of import under the Customs Act.

12. Reliance was placed by counsel for the Department on the decision of M.P. Menon, J. in Aluminium Industries Ltd. v. Union of India 1984 KLT 599. The question related to the validity of the levy of customs duty for aluminium ingots imported. The vessel carrying the cargo entered the territorial waters near the Cochin Port on 25-3-1981 and it was berthed at the Port on 26-3-1981. A bill of entry was filed on 28-3-1981. There was a notification under Section 25(1) of the Customs Act in force till 26-3-1981 as per which the goods were liable only to additional duty at 121/2 percent. By a subsequent notification dated 27-3-1981 the additional duty was enhanced to 40 percent and an auxiliary duty was imposed at 5 per cent of the value of the goods. According to the importer the assessment should be at the rate in force prior to 27-3-1981. The Department did not accept the plea and assessed the goods to duty at the revised rates as per the notification dated 27-3-1981. Referring

to the decisions in Sylvania Laxman's case 77 Bom LR 380, Synthetics and Chemicals' case 1981 ELT 414 and Sundaram Textiles Ltd.'s case 1983 ELT 909 the learned Judge observed at page 602 (page 168 of [1984] 2 ECC 164):--

> 9. Explained as above, the approach in the three decisions is easy enough to understand. It is somewhat like this. The charge is created by Section 12. But the section also says that the rate of the charge is to be found in the Customs Tariff Act or other law in force. Therefore, if there is no rate prevalent under the Tariff Act or any other law on the material date, no question of quantification under Section 15 arises. The material date is the date on which the conveyance enters the territorial waters of India. If at that time there is a total exemption from duty, there is no charge or rate at all, and in such a case, Section 15 will not apply.
>
> 10. But the petitioner's contention is unsustainable even if the above view is applied to the facts on hand. Aluminium ingots were not totally exempt from duty at the time when the vessel reached Cochin on the 25th or 26th of March, 1981. There was a rate applicable at that time. It was 12 1/2 per cent in the case of additional duty payable under Section 3 of the Customs Tariff Act. The notification dated 27-3-1981 only increased the rate to 40 per cent. On the authority of Synthetics and Chemicals 1981 ELT 414 and Sundaram Textiles 1983 ELT 909, therefore, duty at 40 per cent was payable in view of the fact that the bill of entry was presented on 28-3-1981. It is difficult to see how the principles of the aforesaid decisions could be pressed into service to contend that a partial exemption should be equated to a total exemption.

The learned Judge further proceeds to consider a different approach to the question and states that the charge is on the "imported goods" though the section uses the expression "goods imported into India". Since the goods retain the character of "imported goods" until cleared for home consumption under Sections 46 to 68, the provisions of Section 12, according to the learned Judge, would continue to apply until such clearance for home consumption. The learned Judge, however, observes after referring to the decision of the Supreme Court in Union of India and Ors. v. Bombay Tyre International C.A. No. 2369/80 relating to the levy of excise duty:--

> Applying the above principles, it is possible to say that though the taxing event under the Customs Act, 1962 occurs when the goods arrive in the territorial waters, collection of the charge is postponed to the time when the bill of entry is presented. And if the charge attaches to the goods at any time before such presentation, by reason of the fact that the goods retain the character of imported goods, the circumstance that there was an exemption at an earlier point of time would be immaterial.
>
> It is true that the goods continue to be imported goods from the moment they enter the territorial water and until cleared for home consumption. But duty is leviable only with reference to the time when the taxable event occurred. This position is clear from the observations of the Supreme Court in Bombay Tyre International's case, Mc

> Dowell & Co. Ltd.'s case and other cases referred to earlier in this judgment. Unless the legislature otherwise provides, duty is leviable under Section 12 on the goods imported at the time when the taxable event occurs. The goods acquire the character of imported goods at that point of time. The fact that they continue to be imported goods until cleared does not mean that the taxable event occurs at any subsequent point of time, or as and when they are sought to be cleared. The Full Bench of the Bombay High Court in Apar Private Ltd.,'s case referring to the decision in Aluminium Industries' case stated at page 686 (page 288 of [1985] 6 ECC):-
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> We do not see any contradiction in fixing chargeability of goods to duty with reference to the time when the goods acquired the character of imported goods, that is, when the taxable event occurred and the rate of duty with reference to date of clearance. In so construing, the question of taxability is neither being viewed in isolation nor in the abstract without reference to goods or the importer who has to pay the charge. Even while keeping those factors in view, we are only giving effect to the principle that tax or duty is attached when the taxable event occurs. May be, the legisalature has power to fix different dates of taxable events; but when the Customs Act does not do so fix, chargeability has to be determined with reference to the point of time at which the goods become imported goods and that as discussed above occurs when the goods enter the territorial waters of India. Apart from Section 12, we are unable to see which other section is the charging section. The rest of the provisions merely deal with assessment and quantification.

13. The learned Judge in Aluminium Industries' case relies on the decision of Sukumaran J. in Shri Ramalinga Mills v. Asst. Collector 1982 KLJ 314 (printed at page 78 supra) in making the observation that the concept of the charge attaching to the goods the moment they reach the territorial waters of India breaks down when, as happens on some occasions, the vessel enters the waters and then sails away, without unloading goods in a customs port.

We have already adverted to the provisions of Chapter VIII with regard to goods in transit. It cannot, therefore, be assumed that unless the goods, are so placed as to enter the main stream of trade and mixed with the good on the landmass, there is no import. There are express provisions in the Act for warehousing of goods and the goods warehoused can also be sold before clearance for home consumption and before they become part of the goods on the landmass. If such goods could be treated as imported even before clearance for home consumption, there cannot be any difficulty in treating the goods as imported as soon as they enter the territorial waters of India even though the object of importation is not sale, consumption or use. Unless the goods are cleared for home consumption, they do not mix with the goods on the landmass. The taxable event having occured at the time when the goods entered the territorial waters, it has to be determined whether the goods are exempt from duty or not on that date. If the goods are exempt, no question of calculating the duty arises at any later point of time. If, however, the goods are chargeable to duty and are not wholly exempt, a question would arise as to the duty payable with reference to Sections 14 and 15 of the Act.

14. In the concluding portion of the judgment in Aluminum Industries' case the learned Judge observes:--

> It is possible to think that an exemption only suspends or eclipses charge-ability, which can revive the moment it is lifted. Alternatively, exemption can also be construed as chargeability at nil rate, if 'rate' in Section 12 is the whole basis for chargeability.
>
> Section 12 itself is subject to the exception "as otherwise provided in the Act or any other law for the time being in force". Section 25(1) expressly empowers the Central Government, by notification in the official Gazette to exempt goods of any specified description from whole or any part of the duty of customs leviable thereon. The charging provision in Section 12 is subject to Section 25 and hence subject also to the notification issued by the Central Government exempting the goods wholly from duty of customs leviable under the Act. On the date on which the taxable event occurred, there was such a total exemption from duty under Section 25(1) of the Act. Since the levy is subject to Section 25(1), there is no question of a "nil" assessment nor can the exemption be treated as merely suspending or eclipsing the chargeability to duty under the Act.

15. In the light of the decision of the Supreme Court in Gramophone Company of India Lid's., case and on an anxious consideration of the question involved, we are clearly of the view that the expression "import" in the Customs Act is not susceptible to the restricted interpretation placed by the learned Judge in the judgment under appeal. We prefer to follow the Full Bench decision of the Bombay High Court in Apar Private Lid's case . We agree with the reasoning and conclusion of the Full Bench that the taxable event occurs when the vessel carrying the goods enters the territorial waters of India and if at that point of time the goods are wholly exempt from duty by virtue of a notification issued under Sub-section (1) of Section 25 of the Act, no duty can be levied at a subsequent stage on the expiry or withdrawal of the notification. We, therefore, hold that the goods involved in this batch of cases were totally exempt from duty under the Customs Act at the time when the taxable event occurred and is, therefore, not chargeable to duty on any subsequent date. As adverted to in the earlier part of this judgment the notification wholly exempting the goods from duty was in force till 31-12-1978. The exemption was extended till 31-12-1979 even though the extension took effect only from 5-1-1979. The exemption was extended as the Central Government was satisfied under Section 25(1) of the Act that it was necessary in the public interest to exempt the goods from duty of customs leviable under the Act. Notwithstanding the short delay in the discharge of goods at the Port of Cochin, the importers in these cases are entitled to the benefit of exemption from customs duty under the notification that was in force till 31-12-1978 as the taxable event had occurred on 28-12-1978 when the vessel carrying the goods had entered the territorial waters of India, and was berthed at the Port of Bombay. We, therefore, declare that no duty of customs is payable under the Customs Act, 1962 on the goods involved in these cases. We set aside the judgment of the learned single Judge and allow these appeals. There will, however, be no order as to costs.

Immediately on pronouncement of judgment, Counsel for the respondents made an oral application for leave to appeal to the Supreme Court against the judgment in all these cases. Different High Courts have taken conflicting views in regard to the question involved in these cases. We are satisfied and we certify that these cases involve a substantial question of law of general importance which, in our opinion, needs to be decided by the Supreme Court.