

W.P.Nos.28380 & 28388 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.Nos.28380 & 28388 of 2018

&

W.M.P.Nos.33089, 33091 & 33100 of 2018

Transasia Bio-Medicals Ltd.
Rep. by Ashok Suthar
(General Manager-Taxations & Legal)
Transasia House
No.8, Chandivali Studio Road
Mumbai 400 072.

.. Petitioner in
both W.Ps.

Vs.

1. Union of India
Rep. by its Secretary
Ministry of Finance
Department of Revenue
North Block, New Delhi 110 001.

2. Deputy Commissioner of Customs (Group-5B)
Custom House
No.60, Rajaji Salai
Chennai 600 001.

.. Respondents in
both W.Ps.



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Prayer : Petitions filed under Article 226 of the Constitution of India seeking

- (i) a writ of Declaration holding that Notification No.24/2005-Cus dated 01.03.2005 is ultra vires the provisions of Section 25 of the Customs Act, 1962, to the extent it seeks to exempt goods falling under tariff heading 9027 80 of the First Schedule of the Customs Tariff Act, 1975; and
- (ii) a writ of Certiorari calling for the records pertaining to the assessments made in the bills of entry Nos.896356 dated 21.10.2005 and 940189 dated 05.01.2006 seeking to levy 4% additional duty in terms of Notification No.19/2005-Cus dated 01.03.2005 and quash the same.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

(Order of the Court was made
by the Hon'ble Chief Justice)

Petitioner has come up with an ingenious petition to avoid payment of duties payable to the State.

2. Petitioner is a public limited company engaged in the business of import and manufacture of medical equipments and sale of such



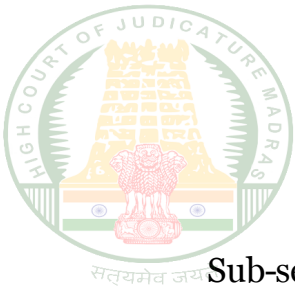
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equipments in India. Petitioner had imported and warehoused one consignment of Hemato Analyser with standard accessories and filed bills of entry. Respondent No.2, i.e. Commissioner of Customs assessed the bills of entry and demanded additional duty at 4% in terms of Notification No.19/2005-Cus dated 01.03.2005 issued by respondent No.1, i.e. Union of India.

3. Respondent No.2 demanded additional duty on the ground that as per the Notification No.19/2005-Cus dated 01.03.2005, the goods covered under the exemption Notification No.24/2005-Cus dated 01.03.2005 are liable to pay additional duty at the rate of 4%. The goods imported by petitioner fell under the Customs Tariff (9027 80), which is found in the Customs Exemption Notification No.24/2005-Cus. The tariff rate of the said product is free as per the Customs Tariff Act, 1975.

4. Notification No.19/2005 has been issued under Sub-section (5) of Section 3 of the Customs Tariff Act, 1975, as amended by Clause 72 of the Finance Bill, 2005, whereas Notification No.24/2005 has been issued under



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Sub-section (1) of Section 25 of the Customs Act, 1962.

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5. According to petitioner and that is the only case that when the Customs Tariff and imported goods says rate of duty to be free, the question of exempting it under Section 25 of the Customs Act does not arise. Therefore, the Notification No.24/2005 is bad in law.

6. Shri Hari Radhakrishnan submitted that consequently, the reference to that notification in the Notification No.19/2005 would also go. Therefore, the goods imported will not be liable to pay additional duty at 4%.

7. Before we proceed further, the Customs Tariff Act, in Section XVIII, while dealing with Tariff item 9027 80, provides that the rate of duty would be free. The Notification No.24/2005 reads as under:

“In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the following goods, falling under the heading, sub-heading or tariff-item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table below, when imported into India, from the whole of the duty of customs leviable thereon under the said



First Schedule, namely:-

Table

S.No.	Goods falling under the Heading, Sub-heading of Tariff item
(1)	(2)
...	
4	... 9027 80 ...
...	

The Notification No.19/2005 reads as under:

“In exercise of the powers conferred by sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975), as amended by clause 72 of the Finance Bill, 2005, the clause which has, by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), the force of law, the Central Government, on being satisfied that it is necessary in the public interest so to do and having regard to sales tax, value added tax, local tax and other taxes or charges leviable on sale or purchase or transportation of such or like goods in India, hereby directs that the goods specified in column (2) of the Table below, when imported into India, shall be liable to an additional duty at the rate of four per cent ad valorem.

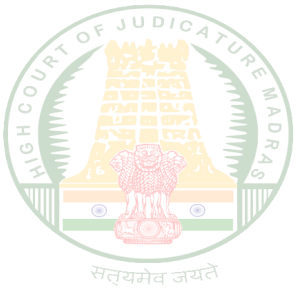
Table

S.No.	Description of goods
(1)	(2)
...	
5	Goods specified in notification No.24/205-Customs, dated the 1 st March, 2005
...	

Section 12 of the Customs Act, 1962 reads as under:

“12. Dutiable goods.-

(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on



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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.”

8. Under the Customs Act, duties of custom shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 on goods imported into or exported from India. Therefore, the Customs Tariff Act specifies the rate at which duties of customs shall be levied. For the goods imported by petitioner in 2004 and 2005, the duty was 5%. In 2005-06, the goods were made free of customs duty. Therefore, what the Customs Tariff Act only signifies is what is the rate of duty that will be levied on goods imported into India. Section 2 of the Customs Tariff Act, 1975 provides the rates at which duties of customs shall be levied under the Customs Act, 1962 and are specified in the First and Second Schedules. Notification No.19/2005 has been issued in exercise of the powers conferred by Sub-section (5) of Section 3 of the Customs Tariff Act, 1975 and in the table it only indicates the description of goods that shall be liable to additional duty at 4% ad valorem. That has nothing to do with Section 25 of the Customs Act. It does not mean that where goods are allowed to be imported free of



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customs duty, Government of India is not empowered under Section 25 of the Customs Act, 1962 to exempt the goods from the whole of the customs duty leviable thereon under the First Schedule.

9. Both the Acts, i.e., the Customs Act as well as the Customs Tariff Act, are independent to each other and one duty can be levied without the other. We find support for this view in ***Colgate Palmolive (India) Limited v. Commissioner of Customs, Patna***.

10. We would also add that Section 3(1) of the Customs Tariff Act provides for levy of additional duty. The duty is, in other words, in addition to the customs duty leviable under Section 12 of the Customs Act and Section 2 of the Customs Tariff Act. Therefore, even if under the Customs Act the duty leviable is stated to be “free”, still this additional duty can be levied under the Customs Tariff Act and that has been levied in exercise of powers conferred by Sub-section 5 of Section 3 of the Customs Tariff Act. This is because the charging section for the additional duty is Section 3 of the Customs Tariff Act and not Section 12 of the Customs Act, because Sub-

¹ (2016) 15 SCC 144



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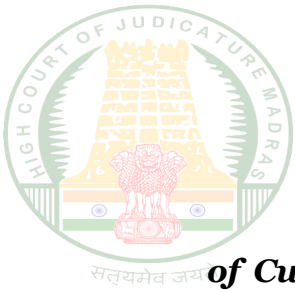
section 5 of Section 3 of the Customs Tariff Act clearly states that duty chargeable under Section 3 shall be in addition to any other duty imposed under this Act or any other law for the time being in force [Vide ***Hyderabad Industries Ltd v. Union of India***²].

11. Further, here is not a case where the notification says 4% of the customs duty leviable on the goods imported, in which case 4% of “free” would have been “nil”. It only says the identified goods when imported into India shall be liable to an additional duty at 4% ad valorem.

12. In our view, the goods imported, even though exempted from basic customs duty, may still be subject to levy of additional duty under the respective enactments and they would be so subject unless and until they are specifically exempted by the competent authority in exercise of the powers vested under those respective enactments from such additional duty.

13. Shri Hari Radhakrishnan relied upon a judgment of the Apex Court in the case of ***Associated Cement Companies Ltd. v. Commissioner***

² (1999) 5 SCC 15



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of Customs³. In our view, this judgment is of no help because it does not apply to the facts of this case. In that case, the Court held that goods are allowed to be imported free those goods cannot be added to dutiable articles and customs duty will be levied thereon.

14. There is a judgment of the Co-ordinate Bench of this Court in ***Century Floor Mills Ltd. v. Union of India⁴***, in which, similar situation arose. There also, counsel for petitioner submitted that unless a duty is either levied or leviable, then alone the question of increase or decreasing the rate of duty will arise and the entry “free” denotes that “no duty” is leviable and therefore, the impugned notification which provided for imposition of 50% of the customs duty on imported wheat is ultra vires of Section 12 of the Customs Act and Section 8A of the Customs Tariff Act. The Division Bench held that under Section 25 of the Customs Act, the Government has authority to grant exemption from duty only conditionally or in absolute terms and in which event, the power under Section 25 of the Customs Act will only go for exempting generally and in absolute terms,

3 2001 (128 ELT 21 (SC)

4 2013 SCC OnLine Mad 3049



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thus making import free of any liability under the Act or permit import subject to other conditions as it may deem fit in the given circumstances.

The Court held that there could not be much of difference in an item being notified under the Customs Tariff Act as nil or free, which matters very little.

In the circumstances, we find no merit. Petitions are dismissed. There shall be no order as to costs. Consequently, all the interim applications also stand dismissed.

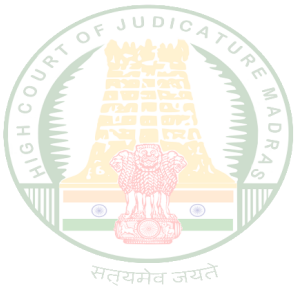
(K.R.SHRIRAM, CJ)

(MOHAMMED SHAFFIQ.J.)

01.04.2025

Index : Yes
Neutral Citation : Yes

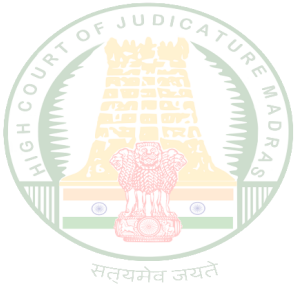
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- To
1. The Secretary
Ministry of Finance
Department of Revenue
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 2. Deputy Commissioner of Customs (Group-5B)
Custom House
No.60, Rajaji Salai
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THE HON'BLE CHIEF JUSTICE
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