

Vardhman Polytex Limited and Others Vs Union of India (UOI) and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 13, 2001

Acts Referred: Central Excises and Salt Act, 1944 â€” Section 3, 5A
Customs Act, 1962 â€” Section 12

Citation: (2001) 78 ECC 53

Hon'ble Judges: Nirmal Singh, J; G.S. Singhvi, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

G.S. Singhvi, J.

These petitions are directed against circular dated 19.10.2000 issued by the Central Board of Excise and Customs, New

Delhi (for short, "the Board") clarifying that Additional Excise Duty (for short "AED") under the Additional Duty of Excise (Textiles and Textile

Articles) Act, 1978 (for short, "the 1978 Act") would also be leviable on yarns manufactured by 100% Export Oriented Undertakings (for short

"EOU") from indigenous raw-material and cleared into Domestic Tariff Area (for short "DTA") in addition to Basic Excise Duty (for short "BED")

payable under the Central Excise Act, 1944 (for short "the 1944 Act"). The petitioners have also prayed for quashing of notices issued by the

authorities of the Central Excise Department on the allegation of evasion of Central Excise Duty/contravention of the provisions of the 1944 Act

and the rules made therein and/or for payment AED on yard cleared in DTA.

2. The petitioners are registered as 100% EOU engaged in the manufacture of cotton yarns out of indigenous raw-material attracting BED leviable

u/s 3 of the 1944 Act and AED leviable u/s 3 of the 1978 Act. They have been availing the exemptions granted by the Central Government from

time to time u/s 5A(1) of the 1944 Act. Their grievance is that by issuing the impugned circular, the Board has attempted to deprive them of the

benefit of exemptions available under Notification 8/97-CE dated 1.3.1997 read with Notification 55/91-CE dated 25.7.1991. The petitioners

have challenged circular dated 19.10.2000 by contending that it is ultra vires to the provisions of the 1944 and 1978 Acts and exemption

notifications dated 25.7.1991 and 1.3.1997. They have averred that in view of Notification 55/91-CE dated 25.7.1991, the goods produced and

manufactured by them are specifically exempted from levy of AED and, therefore, the Board cannot issue administrative circular for levy thereof.

The further case of the petitioners is that by issuing the impugned circular, the Board has brought EOUs at par with domestic manufacturers

ignoring the fact that BED and AED are chargeable under different statutes i.e. the 1944 Act and the 1978 Act and the exemption granted under

the latter enactment cannot be nullified by issuing an executive fiat. They have also averred that by virtue of the impugned circular, 100% EOUs will

be required to pay higher duty as compared to domestic manufactures and in this manner, they will be subjected to hostile discrimination.

3. The respondents have sought dismissal of the writ petitions as premature on the ground that the liability of the petitioners to pay the particular

amount of duty is yet to be determined. According to them, as and when orders adversely affecting the petitioners are passed, they can challenge

the same by filing appeal etc. under the 1944 Act. On merits, the respondents have averred that the impugned circular is only clarificatory in nature

and it does not create any additional burden on the petitioners. According to them, exemption granted vide Notification 55/91-CE dated

25.7.1991 was in respect of goods exported by EOU and not in respect of clearance of goods in DTA which was covered by Notification 8/97-

CE dated 1.3.1997 (unamended). They have averred that after the amendment made vide notification dated 1.3.2000, the exemption

contemplated by Notification 8/97-CE dated 1.3.1997 with respect to DTA clearance is available in excess of an amount equal to the aggregate of

duties of excise leviable u/s 3 of the 1994 Act under any law for the time being in force and, therefore, the petitioners are liable to pay duty

leviable not only u/s 3 of the 1944 Act but also under any other law including the 1978 Act. The respondents have denied the assertion made in the

petitions that the impugned circular takes away the benefit of exemption available under the 1978 Act. They have clarified this position by making

following statement in paragraph 26 (ii) and (iv) of the written statement filed in C.W. P. No. 16211 of 2000:

(ii) That the contents of ground (ii) of the writ petition are wrong and hence denied. It is, however, stated that duty liability in this case has not been

created by virtue of Board's circular referred to above. It is pertinent to mention here that Board's circular is only clarificatory in nature. The issue

regarding availability of specific exemption to DTA clearances is also incorrect. In fact, as already clarified in the foregoing paras, the exemption

available vide Notification No. 55/91 -CE dated 25.7.1991 was in respect of exports only and not for DTA clearances. An export-oriented unit,

while availing benefit of Notification No. 8/97-CE dated 1.3.1997 for DTA clearances, can also simultaneously avail Notification No. 55/91-CE

with regard to goods exported from India.

It is further stated that Notification No. 55/91-CE does not exempt DTA clearances from additional duty of excise which indeed is done by

Notification No. 8/97-CE as it existed prior to 1.3.2000 by exempting DTA clearances from duties as in excess of the amount equal to the duty of

excise leviable u/s 3 of the Central Excise Act, 1944. However, Notification No. 11/ 2000-CE dated 1.3.2000, amended Notification No. 8/97-

CE under which the DTA clearances are exempt from duties as are in excess of an amount equal to the aggregate of the duties of excise leviable,

thereon u/s 3 of the Central Excise Act, 1944 or under any other law for the time being in force. It follows, therefore, that prior to 1.3.2000, DTA

clearances were eligible to duty payable only u/s 3 of the Central Excise Act, 1944, but now, thereafter have to pay in addition, duties leviable

under any other law as well.

(iv) That the contents of ground (iv) of the writ petition are wrong and hence denied. The notification which is being challenged by the petitioner is

neither unconstitutional nor arbitrary and deserves to be upheld by this Hon"ble Court. It has lucidly been clarified in ground (ii) above that

Notification No. 55/91-CE dated 25.7.1991 exempted goods manufactured in a 100% EOU from additional duty of excise leviable under

Additional Duty (Textiles & Textile Articles) Act, 1978 in respect of consignments to be exported from India. This notification did not specifically

cover clearances effected by a 100% EOU in Domestic Tariff Area. In fact, this exemption was available by virtue of Notification No. 8/97-CE

dated 1.3.1997. As such, the petitioner is still simultaneously availing benefit of two exemption notifications. One which exempts leviability of AED

on consignments exported from the country and the other for clearances effected within the country. As such, since 1.3.2000 the amending

Notification No.11/2000-CE clearly brought about rampant changes by virtue of which additional duty of excise was also levied on 100% EOU in

respect of clearances made on DTA.

4. Shri Balbir Singh and Shri Somesh Ojha argued that the objection raised on behalf of the respondents to the maintainability of the writ petitions

on the ground of the same being premature and also on the ground that the petitioners can avail alternative remedies after passing of the adverse

orders should be rejected because they have challenged the authority of the Board to issue the impugned circular and have also questioned its

vires. Learned Counsel submitted that the appellate and other adjudicating authorities appointed under the 1944 Act cannot go into the legality of

the circular issued by the Board and, therefore, the remedies of appeal etc. cannot be treated as effective alternative remedies. In support of this

argument, learned Counsel relied on the decisions in A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and

Another, and Goodyear India Ltd. v. Union of India 1990 (40) ELT 39. On merits, the learned Counsel argued that BED and AED are two

different types of duties chargeable under the 1944 Act and the 1978 Act respectively and, therefore, the exemption granted under one of these

enactments cannot be taken away in the garb of clarification issued by the Board with reference to the exemption granted under other enactment.

They referred to the language of Notifications 55/91-CE dated 25.7.1991 and 8/97-CE dated 1.3.1997 to show that while the first notification

relates to the exemption from payment of AED, the second relates to exemption from payment of BED and argued that any amendment made in

Notification 8/97-CE cannot affect the exemption granted under Notification 55/91-CE. Learned Counsel further argued that the circular issued by

the Board directing the levy and recovery of AED on the clearance of goods by EOUs in DTA should be declared ultra vires to Notification

55/91-CE dated 25.7.1991. In the end, they argued that the circular issued by the Board cannot, directly or indirectly, nullify the effect of

exemption notification issued Section 5A(1) of the 1944 Act and, therefore, the impugned circular should be quashed.

5. Shri Rajesh Gumber, learned Additional Central Government Standing Counsel defended the impugned circular by arguing that the same was

issued for implementation of the amendments made in Notification 8/97-CE vide Notification 11/2000-CE dated 1.3.2000. He relied on the

amended Section 3 of the 1944 Act and argued that in view of Notification 11/2000-CE dated 1.3.2000, 100% EOUs are liable to pay BED as

well as AED in respect of DTA clearances. Learned Counsel submitted that notification dated 25.7.1991 was confined to duty leviable under the

1978 Act in respect of the exports and not the clearance effected in DTA and, therefore, after issuance of Notification dated 1.3.2000, 100%

EOUs are liable to pay duties under the 1944 Act as well as the 1978 Act in respect of DTA clearances in the light of the amended Notification

8/97-CE.

6. For the purpose of deciding whether the circular dated 19.10.2000 is ultra vires to the provisions of the 1944 Act, it will be useful to refer to the

relevant portions of the unamended as well as amended Section 3 and Section 5A of the 1944 Act. The same read as under:

Section 3 (Unamended):

Duties specified in the Schedule to the Central Excise Tariff Act, 1985 to be levied -- (i) There shall be levied and collected in such manner as may

be prescribed duty of excise on all excisable goods (which are produced or manufactured in India) as, and at the rates, set forth in the (schedule to

the Central Excise Tariff Act, 1985):

(Provided that the duties of excise which shall be levied and collected on any (excisable goods which are produced or manufactured,--

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(ii) by a hundred percent export-oriented undertaking and allowed to be sold in India, shall be an amount equal to the aggregate of the duties of

customs which would be leviable u/s 12 of the Customs Act, 1962 (Act No. 52 of 1962), on like goods produced or manufactured outside India if

imported into India, and where the said duties of customs are excisable by reference to their value; the value of such excisable goods shall,

notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962

(52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975).

Explanation 1.-- Where in respect of any such like goods, any duty of customs leviable under the said Section 12 is leviable at different rates, the,

such duty shall, for the purposes of this proviso, be deemed to be leviable under the said Section 12 at the highest of those rates.

Explanation 2--In this proviso,

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(ii) "hundred per cent export-oriented undertaking" means an undertaking which has been approved as a hundred per cent export-oriented

undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by Section 14 of the Industries

(Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act.)

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Section 3 (as amended by Section 92 of the Finance Act, 2000)

Duties specified in the [(the First Schedule and the Second schedule) to the Central Excise Tariff Act, 1985] to be levied--(i) There shall be levied

and collected in such manner as may be prescribed,--

(a) a duty of excise on all excisable goods which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the

Central Excise Tariff Act, 1985 (Act No. 95 of 1986):

(b) a special duty of excise, in addition to the duty of excise specified in clause, (a) above, on excisable goods specified in the Second Schedule to

the Central Excise Tariff Act, 1985 (5 of 1986) which are produced or manufactured in India, as, and at the rates, set forth in the said Second

Schedule.]

(Provided that the duties of excise which shall be levied and collected on any excisable goods which are produced or manufactured,--

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(ii) by a hundred per cent export-oriented undertaking and allowed to be sold in India,

shall be an amount equal to the aggregate of the duties of customs which would be leviable u/s 12 of the Customs Act, 1962 (52 of 1962) or any

other law for the time being in force, on like goods produced or manufactured outside India if imported into India, and where the said excisable

goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs

Act, 1962 (52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975).

Explanation 1.-- Where in respect of any such like goods, any duty of customs leviable under the said Section 12 leviable at different rates, then,

such duty shall for the purposes of this proviso, be deemed to be leviable under the said Section 12 at the highest of those rates.

Explanation 2.-- In this proviso,

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(ii) "hundred per cent export-oriented undertaking" means an undertaking which has been approved as a hundred percent export-oriented

undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by Section 14 of the Industries.

(Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act.]

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Section 5A. Power to grant exemption from duty of excise. (1) If the Central Government is satisfied that it is necessary in the public interest so to

do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after

removal) as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of excise

leviable thereon:

Provided that, unless specifically provided in such notification, no exemption therein shall apply to excisable goods which are produced or

manufactured

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(ii) by a hundred per cent export-oriented undertaking and allowed to be sold in India.

Explanation.-- In this proviso, ""free trade zone"" and ""hundred per cent export-oriented undertaking shall have the same meanings as in Explanation

2 to Sub-section (1) of Section 3. [(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 payment of duty for reasons to be stated in such order, any excisable goods of strategic or secret nature, or for

charitable purpose, on which duty is leviable.]

(3) An exemption under Sub-section (1) or Sub-section (2) in respect of any excisable goods from any part of the duty of excise leviable thereon

(the duty of excise leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such

goods at a rate expressed in a leviable and any exemption granted in relation to any excisable goods in the manner provided in this sub-section

shall have effect subject to the condition that the duty of excise chargeable on such goods shall in no case exceed the statutory duty.

Explanation.-- ""From or method"", in relation to a rate of duty of excise means the basis namely, valuation, weight/number, length, area, volume or

other measure with reference to which the duty is leviable:

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7. In exercise of power vested in it u/s 5A of the 1944 Act read with Sub-section (3) of Section 3 of the 1978 Act, the Central Government issued

Notification 55/91-CE dated 25.7.1991 vide which it exempted all excisable goods produced or manufactured in a 100% EOU from the whole of

the duty of excise leviable thereon under the 1978 Act. Thereafter, vide Notification 8/97-CE dated 1.3.1997 issued u/s 5A(1) of 1944 Act, the

Central Government exempted the goods produced or manufactured in a 100% EOU from BED in excess of the amount equal to BED leviable u/s

3 on like goods produced or manufactured by domestic units. For the purpose of giving effect to these notifications, the Board issued Circular No.

384/17/98-CX dated 20.3.1998 clarifying that notification dated 25.7.1991 exempts excisable goods produced or manufactured in EOU from

whole of AED leviable u/s 3 of the 1978 Act and the assessee claiming benefit of notification dated 1.3.1997 will also be eligible to claim benefit

under notification dated 25.7.1991.

8. For the sake of convenience, notifications dated 25.7.1991 and 1.3.1997 (unamended and amended) and circulars dated 20.3.1978 and

19.10.2000 are reproduced below:

Notification dated 25.7.1991:

In exercise of the powers conferred by Sub-section (1) of Section 5A of the Central Excise and Salt Act, 1944 (1 of 1944), read with Sub-

section (3) of Section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), the Central Government, being

satisfied that it is necessary in the public interest so to do, hereby exempts all excisable goods produced or manufactured in a hundred per cent

Export Oriented Undertaking from the whole of the duty of excise leviable thereon under the second mentioned Act.

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Notification dated 1.3.1997: (unamended)

In exercise of the powers conferred by Sub-section (1) of Section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, being

satisfied that it is necessary in the public interest so to do, hereby exempts the finished products, rejects and waste or scrap specified in the

Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and produced or manufactured, in a hundred per cent export oriented undertaking or

a free trade zone wholly from the raw materials produced or manufactured in India, and allowed to be sold in India under and in, accordance with

the provisions of paragraphs 102 and 114 of the Export and Import Policy 1 April 1992--31 March 1997 from so much of the duty of excise

leviable thereon u/s 3 of the Central Excise Act, 1944 (1 of 1944), as is in excess in an amount equal to the duty of excise leviable under the said

Section 3 of the Central Excise Act, on like goods, produced or manufactured in India other than in a hundred per cent export-oriented

undertaking or a free trade zone, if sold in India.

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Notification dated 1.3.1997 (As amended vide Notification 11/2000-CE dated 1.3.2000).

In exercise of the powers conferred by Sub-section (1) of Section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, being

satisfied that it is necessary in the public interest so to do, hereby exempts the finished products, rejects and waste or scrap specified in the

Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and produced or manufactured, in a hundred per cent export-oriented undertaking or

a free trade zone wholly from the raw materials produced or manufactured in India, and allowed to be sold in India under and in accordance with

the provisions of sub-paragraphs (a),(b),(c),(d) and (f) of paragraph 9.9 or of paragraph 9.20 of the Export and Import policy, 1st April, 1997-31

st March, 2000 from so much of the duty of excise leviable thereon u/s 3 of the Central Excise Act, 1944 (1 of 1944), as is in excess of an amount

equal to the aggregate of the duties of excise leviable under the said Section 3 of the Central Excise Act or under any other law for the time being

in force on like goods, produced or manufactured in India other than in a hundred per cent export-oriented undertaking or a free trade zone, if sold

in India:

Provided that nothing contained in this notification shall apply where such finished products, if manufactured and cleared by a unit other than a

hundred per cent export-oriented undertaking or a unit in a free trade zone, are wholly exempt from the duties of excise or are chargeable to Nil

rate of duty.

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Circular No. 384/17/98-CX dated 20.3.1998:

Government of India

Ministry of Finance (Department of Revenue)

New Delhi

Subject: Central Excise- Whether Additional Duties of Excise are leviable under 100% EOU is claiming exemption under Notification No. 8/ 97-

C.E., dated 1.3.1997--Clarification regarding.

I am directed to say that representations have been received by the Board to the effect that if the EOU is claiming exemption under Notification

8/97-CE dated 1.3.1997, the Central Excise Authorities are insisting on payment of additional duties of excise leviable u/s 3 of the Additional Duty

of Excise (Textiles and Textile Articles) Act, 1978.

2. The matter has been examined by the Board.

3. Under Notification 8/97-C.E. , dated 1.3.1997 finished goods, wastes and scraps if manufactured in 100% EOUs wholly indigenous raw

material and is allowed to be sold in India, then the same is exempted from so much duty of excise leviable u/s 3 of the Central Excise Act, 1944

as is in excess of an amount equal to the duty of excise leviable u/s 3 of the Act on like goods produced or manufactured in India other than in a

100% EOU.

4. Notification 55/91-C.E. , dated 25.7.1991 exempts excisable goods produced or manufactured in 100% EOUs from the whole of the duty of

excise leviable u/s 3 of the Additional Duty of Excise (Textile and Textile Articles) Act, 1978.

5. In view of the above it is clarified that above-mentioned two Notifications give specific exemption from payment of excise duty under two

different Acts. Hence, the assessee who is claiming benefit of the Notification 8/97-C.E. dated 1.3.1997 will be eligible to claim benefit under

Notification 55/91-C.E. dated 25.7.1991 and the same should not be denied to them.

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Circular No. 554/50/2000-CX. dated 19.10.2000

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

Subject: Levability of Additional Excise Duty (Textile and Textile Articles) Act, 1970 in respect of DPA clearances of Yarns made by 100%

EOUs--Reg.

I am directed to state that representations have received in regard seeking clarifications as to whether ""Additional Excise Duty under Textile and

Textile Articles Act, 1978 hereinafter referred to as AED (T&TA) is leviable or not on cotton/man made yarns manufactured and cleared into

DTA by a 100% EOU using indigenous raw materials. It has been represented that some field formations are demanding additional duty under the

above-mentioned Act on goods manufactured and cleared into DTA though there is specific exemption for such goods vide Notification No.

55/91-CE, dated 25.7.1991 and hence no Additional Duty will be attracted.

2. The matter has been examined. It is observed that as per proviso to Section 3(1) of the Central Excise Act, 1944, goods produced in a 100%

EOU and allowed to be sold in India are liable to excise duty which is equal to the aggregate of duties of customs leviable on like goods when

imported into India. On import of textile yarns, apart from Basic Customs duty, goods will also be subject to Additional Duty of Customs

(countervailing duty) which will be equivalent to total duties leviable as duty of excise on like goods produced in the country. (This CV duty will

thus include basic Central Excise Duty under Central Excise Act + Additional Duty of Excise under T &TA Act).

3. Notification No. 8/97-CE, dated 1.3.1997, as amended by Notification No. 11/2000-CE, dated 1.3.2000, provides, that the excise duty

payable by a 100% EOU under Central Excise Act in respect of the finished goods manufactured exclusively from indigenous raw materials and

cleared into the DTA would be restricted to the ""aggregate of the duties of excise leviable under the said Section 3 of the Central Excise Act or

under any other law for the time being in force, on like goods produced or manufactured in India other than in a hundred percent export oriented

undertaking or a free trade zone."" In other words, such yarns produced and cleared from 100% EOU to DTA are required to suffer under Central

Excise Act itself, by virtue of this exemption, duty which is equal to Basic Excise duty on yarn + AED (T &TA) leviable on yarn produced.

4. Since over and above the duty leviable under Central Excise Act, goods produced in a 100% EOU and cleared into DTA, would also be

leviable to Additional Excise duty under Textile & Textile Articles Act. Notification No. 55/91-CE, dated 25.7.1991 was issued which exempted

all excisable goods produced or manufactured in a 100% EOU from the whole of duty of excise leviable thereon under AED (T&TA). Thus, effect

of Notification No. 8/97-CE as amended and 55/91-CE is to restrict the yarn stage duty to Basic duty under Central Excise Act + AED leviable

under Textiles & Textile Articles Act.

5. The amendment to the Notification No. 8/97-CE, dated 1.3.1997, as mentioned in para 2 above, wherein ""or under any other law for the time

being in force"" has been inserted, is significant and brings parity in the excise duties payable by a 100% EOU on yarns produced exclusively from

indigenous materials on their domestic clearances and a domestic manufacturer manufacturing similar goods from indigenous materials.

6. Thus, it is clarified that w.e. f. 1.3.2000, AED (T&TA) would also be leviable on yarns manufactured by a 100% EOU from indigenous raw

materials and cleared into DTA, in addition to the Basic duties under Central Excise Act. Wherever, such AED (T&TA) are not being collected,

suitable steps for recovery may be taken expeditiously.

7. Field formations may be suitably informed.

8. Hindi version will follow.

9. In our opinion, the two-fold objection raised by the respondents to the maintainability of the writ petitions deserves to be rejected. Admittedly,

the petitioners have challenged the vires of circular dated 19.10.2000 on the ground that the Board does not have the power under the 1944 Act

to issue such circulars and the same is ultra vires to the statutory notifications issued u/s 5A(1) of the said Act. If the Court upholds their plea, then

the action for recovery of AED in respect of clearances made in DTA cannot be taken against the petitioners. Therefore, the writ petitions cannot

be termed as premature. As regards the plea of alternative remedies, it is sufficient to observe that neither the appellate authority nor any other

adjudicating authority appointed under the 1944 Act can grant a declaration that the circular issued by the Board is ultra vires to the provisions of

the 1944 Act or the exemption notifications issued u/s 5A(1) thereof. In view of this, the petitioners cannot be non-suited on the ground that after

passing of the adverse orders, they can avail remedies of appeal etc.

10. Having disposed of the preliminary objection raised by the respondents, we shall now deal with the main issue as to whether the impugned

circular is ultra vires to the powers of the Board and exemption notifications issued u/s 5A(1) of the 1944 Act. A careful reading of the provisions

of Sections 3 and 5A(1) of the 1944 Act along with Notifications 55/91-CE and 8/97-CE shows that duties specified in the Schedule of the

Central Excise Tariff Act, 1985 are leviable on all excisable goods produced or manufactured in India including those manufactured by 100%

EOUs, but with a view to encourage exports, the goods manufactured by 100% EOUs have been granted exemptions from payment of BED and

AED. Notification 55/91-CE dated 25.7.1991 is directly relatable to the goods manufactured by 100% EOUs and exported out of India and

Notification 8/97-CE dated 1.3.1997 pertains to exemption in respect of duties leviable on goods cleared by 100% EOUs in DTA. By virtue of

amendment made in Notification 8/97-CE, the Central Government exempted the finished products, rejects and waste or scrap specified in the

Schedule to the Central Excise Tariff Act, 1985 and produced or manufactured in 100% EOU wholly from the raw materials produced or

manufactured in India and allowed to be sold in India in accordance with the provisions of the Export and Import Policy from so much of the duty

of excise leviable thereon u/s 3 of the 1944 Act as is in excess of an (sic) leviable under the said section or any other law for the time being in force

on like goods produced or manufactured in India other than in 100% EOUs. The object of amendment made in Notification 8/97-CE dated

1.3.1997 appears to be to bring a parity between 100% EOUs and other manufacturers in the matter of payment of duties in respect of goods

produced or manufactured and allowed to be sold in India. The impugned circular has been issued in order to clear the doubts raised in the context

of Notification 11/2000-CE dated 1.3.2000. In our opinion, the use of the expression ""or any other law for the time being in force"" in that

notification did not create any doubt about the implication of the exemption notification. However, as an abandon caution, the Board has issued the

impugned circular which cannot, but be treated as a mere clarification of the existing position. Therefore, we are unable to agree with the learned

Counsel for the petitioners that the impugned circular is ultra vires to the powers of the Board and the notifications issued by the Central

Government u/s 5A(1) of the 1944 Act. A reading of the plain language of Notification dated 25.7.1991 shows that the exemption granted to

100% EOUs was confined to the goods manufactured and exported by EOUs and it did not deal with the exemption in relation to the goods

manufactured and sold in India, which was covered by notification dated 1.3.1997. The amendment made in the second notification dated

1.3.1997 is intended to bring about parity between two types of manufacture in respect of the goods sold in India. In our opinion the expression

any other law for the time being in force"" used in Notification 11/2000-CE is of wide amplitude and, therefore, it would take within its fold the

1978 Act and the logical consequence of issuance of Notification dated 1.3.2000 is that the petitioners are liable to pay BED along with AED in

respect of clearances made in DTA.

11. In view of the above conclusion, we do not find any valid ground to quash the notices issued by the concerned authorities for levy and

recovery of AED in respect of goods cleared by the petitioners in DTA.

12. For the reasons mentioned-above, the writ petitions are dismissed.