Apar Private Ltd. and others Vs Union of India and others

Court: Bombay High Court

Date of Decision: Oct. 17, 1985

Acts Referred: Central Excise Rules, 1944 â€" Rule 10
Customs Act, 1962 â€" Section 11, 110(1), 111, 12, 12(1)

Citation: (1986) 1 BomCR 196 : (1986) 88 BOMLR 355 : (1985) 6 ECC 241 : (1988) 19 ECR 514 : (1985) 22 ELT 644

Hon'ble Judges: K. Madhava Reddy, C.J; Sujata V. Manohar, J; Shah, J

Bench: Full Bench

Judgement

This Judgment has been overruled by : Union of India and others Vs. Apar Private Ltd. and Others, AIR 1999 SC 2515 : (1999) 65

ECC 727 : (1999) ECR 63 : (1999) 112 ELT 3 : (1999) 5 JT 161 : (1999) 4 SCALE 313 : (1999) 6 SCC 117 : (1999) 3 SCR 1056 :

(2000) 1 UJ 233 : (1999) AIRSCW 2676 : (1999) 6 Supreme 348

Madhava Reddy, C.J.
Four questions arising under the Customs Act, 1962 (52 of 1962) are referred to the Full Bench and they are :-

1. Under the Customs Act, 1962, when can the event of importation be said to occur ?

2. At what point of time or date the rate of Customs duty to which imported goods are liable was to be determined under the Customs Act, 1962

?

3. Whether it would make any difference to the answer to the second question in cases where at the date of import the goods were totally exempt

from duty, either basis or additional, as against being partially exempt from such duty ?

4. Whether the countervailing or additional duty payable u/s 2A of the Indian Tariff Act, 1934, or u/s 3 of the Customs Tariff Act, 1975, was

customs duty referred to in the charging section, namely, Section 12 of the Customs Act, 1962 ?

2. The facts leading to the filing of these two writ petitions are stated in the order of reference and we think it unnecessary to repeat the same.

Suffice to note that on the dates when the goods in question entered the ""territorial waters of India"" from the foreign country as also on the day they

were stored in the bonded warehouse, they were wholly exempt from payment of basic customs duty under a notification issued by the Central

Government (hereinafter referred to as ""Exemption Notification"") in exercise of its powers u/s 25(1) of the Customs Act, 1962 (hereinafter

referred to as ""the Customs Act""). But, by the time these goods were sought to be removed from the bonded warehouse, the Exemption

Notification was rescinded and the exemption granted thereunder was withdrawn. A Division Bench of this Court in Shawhney v. Sylvania &

Laxman (hereinafter referred to as ""Sylvania Laxman''s case"") 77 Bom. L.R. 380 after referring to the observations of their Lordships of the Privy

Council in Wallace Brother and Co., Ltd. v. Commr. of Income Tax 50 Bom. L.R. 482 , which were referred to with approval of the Supreme

Court in Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, held :

These observations fully justified the clear distinction that exists, inter alia, between the chargeability in respect of a tax or duty and the qualification

of the amount payable in respect thereof. The only charging section in respect of levy of customs duty is s. 12(1)..... such levy is subject to

other provisions of the Act or any other law for the time being in force. The chargeability in respect of levy 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 s. 12(1) of the Act

and that takes place only when the goods are imported into India i.e. into the territorial waters 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 entry is presented or thereafter.

That was a case in which the exemption notification dated 3rd September 1966 issued by the Government of India, Ministry of Finance,

Department of Revenue and Insurance, exempted glass tubes used in the manufacture of fluorescent lamps when imported into India from the

whole of that portion of the duty of customs leviable thereon which is specified in the First Schedule to the Indian Tariff Act, 1934 (hereinafter

referred to as ""the Tariff Act""). The exemption granted by the notification was to remain in force upto and inclusive of 31st March 1967. Order for

purchase of glass tubes was placed by the Respondents with Sylvania International of New York, U.S.A. The goods shipped by s.s. ""Steel

Fabricator"" on 2nd February 1967 arrived at the port of Bombay on 29th March 1967. On the same day the import manifest of the said vessel

was duly filed with the Customs Authorities and the Customs Authorities issued an order granting entry inwards for the said vessel. A bill of entry

for the clearance of these goods was presented by the Respondents on 27th April 1967. The goods were actually cleared on 6th June 1967.

Accepting the contention of the Respondents that the goods were imported before 31st March 1967 upto which date the exemption granted under

the said notification was operative, the Customs Authorities cleared the goods without levying any duty of customs. Later, on 23rd September

1967 the Assistant Collector of Customs issued a notice to the Respondents to show cause why customs duty amounting to Rs. 1,40,558.75 due

from them should not be levied. This demand was made on the footing that on the day when the bill of entry was presented and the goods were

cleared, the exemption notification was no longer in force and the goods were chargeable to duties of customs. The Court held that as the taxable

event occurs when the goods are imported into the territorial waters of India the chargeability of the goods to customs duty has to be determined

with reference to that date. As that event took place much prior to 31st March 1967 when the exemption notification was operative, the demand

made by the Assistant Collector was contrary to law. The Court accordingly quashed the said demand.

3. A later Division Bench of this Court in Synthetics and Chemicals v. S.C. Coutinho 1981 E.L.T. 414 (for short Synthetics and Chemicals'' case)

was dealing with a case of import of ""disproportionate Resin Acid"" which were chargeable to customs duty under item No. 87 of the Customs

Tariff Act at 60% ad valorem. The ship carrying these goods arrived at Bombay Port on 20th August 1968. On the same day the Appellants

presented a bill of entry for warehousing of these goods. After the formalities in that behalf were completed they were actually warehoused. The

Appellants claimed that on their representation the Government of India issued a notification dated 12th October 1968 u/s 25(1) exempting these

goods from all such customs duty as was in excess of 27.1/2%.

In other wards, customs duty leviable at 60% on item No. 87 was reduced to 27.1/2%. The Court held that Section 15(1)(b) applied to the facts

of that case and that (pate 417) :

..... The opening clause of sub-section (1) points out that the rate of duty as well as the rate of exchange applicable to imported goods shall be

the rate and valuation in force and u/s 68 it shall be on the date on which the goods were actually removed from the warehouse..... in this case the

goods arrived in the Indian Customs waters and were removed to the warehouse on 20th October 1966. They were cleared u/s 68 only from and

after December 1968 till June of 1969. ..... where the goods are cleared from a warehouse u/s 68, the date on which they were actually

removed is the relevant date. December 1968 onwards are, therefore, the relevant dates on which the goods have been actually removed.....''''.

Referring to the Division Bench Judgment in Sylvania Laxman''s case. The Court observed (page 420) :

..... what the Division Bench pointed out..... was that in the facts and circumstances of that case the primary investigation must relate to the

chargeability of goods on the date of importation. The actual importation here had been 29th March, 1967, when there was total exemption from

any duty so far as the fluorescent lamp tubes or glass tubes were concerned. The argument which is very logically presented is that in order to

work out the rate of duty on any particular date, the basis requirement is that the goods are dutiable in the first instance. In other wards, there must

be chargeability to duty on the date of importation. Section 12 is the only charging section, which says that subject to the provisions of this Act,

viz., the Customs Act, the rates of duty will be those mentioned in the Indian Tariff Act, 1934. Since the Tariff Act is subject to the provisions of

the Customs Act, one has to read the Notification u/s 25(1) as on the date of actual importation, viz., 29th March, 1967. On that date there was

total exemption, which means that the glass tubes in question were not dutiable goods at all on March 29, 1967, when actually imported. If that is

so, can we apply the subsequent rate which is now prevalent after the 1st April, 1967, to these goods. The learned Judges pointed out that this

cannot be done. The goods which were not liable to pay duty at all when imported cannot be subjected to the duty by the procedure to be

adopted u/s 15 for clearance.

On the basis of the judgment in Sylvania Laxman''s case when it was argued for the Customs Authorities that the rate of customs duty also should

be the rate which was in force on the date when the goods entered the territorial waters of India, the Bench pointed out (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 imports. Even if the operation of the Notification

ceases and a certain rate contemplated by the Indian Tariff Act become operative, it shall have no relevance to those imports for which initially

there was total exemption.

Proceeding on that basis the Court opined (page 421) :

..... Where there is initial chargeability, whether as per rates under the Tariff Act or the reduced rate under an exemption Notification u/s 25 of

the Customs Act, the Division Bench Judgment Sylvania Laxman''s case does not apply.

The Court then declared (page 420) :

..... 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 27 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 27.1/2% or 60%,

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 u/s 15(1)(b).

In that view, the court quashed the orders of the Assistant Collector of Customs refusing to give benefit of the exemption notification in force on the

date of clearance of the goods from the warehouse for home consumption and demanding duty at 60%.

4. Mr. Cooper, learned counsel for the Petitioners at the outset argues that the two Division Benches have not expressed divergent views and

therefore reference to the Full Bench is not called for. We agree with Mr. Cooper that the Division Bench in Synthetics'' case did not disagree with

the principle laid down in Sylvania Laxman''s case. In fact, in arriving at the conclusion that although importation into India is complete on the date

when the goods enter territorial waters, if they are not totally exempt from duty at that point of time and some customs duty is chargeable, those

goods would be liable to the levy of customs duty at the rates in force on the dates mentioned in Section 15 of the Customs Act. In the later case

the principle enunciated in Sylvania Laxman''s case that the chargeability to customs duty u/s 12(1) is to be determined with reference to the date

on which the goods enter territorial waters of India was accepted. On that footing the Division Bench found that on the date when the goods were

imported into territorial waters, were not wholly exempt from duty Customs duty but were chargeable to duty and therefore customs duty payable

was to be computed and quantified at the rate prevalent on the dates mentioned in Section 15(1), i.e. the date on which they are cleared for home

consumption. The Court pointed out that ""Section 15 permitted the goods for the purpose of home consumption to be charged to duty as on the

date on which a bill of entry in respect of such goods is presented, and in respect of goods warehoused (on completion of the certain formalities as

laid down u/s 69, the goods could be removed from the warehouse on payment of duty) as on the date of removal."" Only if the goods are

chargeable to duty on the date they enter territorial waters, the question of determining the rate at which goods are chargeable to duty, would arise.

Are they to be charged at the rate in force on the date on which they entered the territorial waters ? Or at the rate prevalent on the date on which

they are cleared for home consumption as laid down in Section 15(1) of the Customs Act ? On the question of chargeability to customs duty the

decision in Synthetics'' case does not express a view different from the one taken in Sylvania Laxman'' case. On the contrary, it adopts that view

and points out the distinction between chargeability and quantification of the duty and holds that the goods are chargeable to duty, the rate at which

the goods are to be assessed is the rate prevalent on the day on which the bill of entry is presented and if warehoused, on the date the goods are

cleared u/s 15, as the case may be.

5. That, however, is not the only reason for referring these questions to the Full Bench. As can be gathered from that what is stated in paragraph

19, the Division Bench making the reference appears to be of the opinion that the view taken in Sylvania Laxman''s case itself require

reconsideration. The Division Bench observed :

..... There would be a difference between chargeability of goods for Customs duty and they being temporarily exempted either wholly or

partially from the payment of Customs duty. Their chargeability would arise on their being put in the Schedule and merely because they are wholly

exempted from payment of Customs duty they cannot be considered to have cased to be chargeable to Customs duty. Effect of total exemption

from Customs duty only was that during the existence of the notification the goods were chargeable for ''nil'' Customs duty. In our view, therefore,

the said view of the Court in Synthetics'' case (must be Sylvania Laxman''s case) would require reconsideration.

That they were not in entire agreement with the view expressed in Sylvania Laxman''s case and that they were of the view that it required

reconsideration, in the light of the Supreme Court decisions in The Central India Spinning and Weaving and Manufacturing Company, Limited, The

Empress Mills, Nagpur Vs. The Municipal Committee, Wardha, . In Re : Sea Customs Act AIR 1963 SC 1760; Prabhat Cotton and Silk Mills v.

Union of India 1982 ELT 203; Shri Ramlinga Mills v. Assistant Collector of Customs 1983 ELT 65 and Union of India and Others Vs. Khalil

Kacherim, is further clear from what is stated in paragraph 20 of the order of reference extracted below :

..... the decision in Sylvania''s case (77 Bom. L.R. 380) followed by this Court in Synthetics'' case 1981 ELT 414 is primarily based on the

view that the event of importation takes place when the goods cross territorial waters and not when they come on the land and are either cleared

from the warehouse or the bill of entry presented as required u/s 15(1) of the Customs Act, 1962.

Inasmuch as the Bench in referring the case has observed that the view taken in Sylvania Laxman''s case has to be reconsidered in the light of the

above-mentioned decisions, we proceed to consider the same.

6. The Customs Act is an Act to consolidate and amend the law relating to customs. Chapter V thereof deals with levy of and exemption from

customs duty. Section 12, which is the charging section, is in the following words :

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, 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.

7. Under this Section all goods imported into or exported from India are liable to customs duty unless the Customs Act itself or any other law for

the time being in force provides otherwise. Customs duty shall be levied at such rates as are specified under the Customs Tariff Act or any other

law for the time being in force. The Customs Tariff Act or any other law for the time being in force is relevant only for the purpose of determining

the rate at which the duty is leviable and not for the purpose of determining when the goods become imported goods and whether they are exempt

from duty. Although Section 12 provides that the duty shall be leviable on all goods imported, it itself envisages that some other provision of the

Customs Act or any other law may make an exception. Such a provision is made in Section 25 which authorises Central Government to

exempt..... goods from the whole or any part of duty of customs leviable thereon."" It is important to note that the power vested in Central

Government u/s 25(1) is not merely one of granting any exemption from payment of customs duty, but is one of exempting generally ""goods of any

specified description from the whole or any part of duty of customs leviable thereon"". It is only under sub-section (2) of Section 25 that while the

goods may be dutiable and may not be exempted under sub-section (1) of section 25, that the Central Government may be ""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."" Once goods are exempted from levy of duty under sub-section (1) of section 25, question of payment of duty does not arise and no

special order granting exemption from payment is necessary. Only where goods are not exempt under sub-section (1) of section 25 and the

Central Government having regard to special circumstances deems it necessary exempt from payment of duty on goods on which duty is leviable

would it be necessary to make a special order under sub-section (2) of section 25. Once exemption is granted u/s 25(1) it would mean that as

envisaged by section 12 of Customs Act, the exemption notification ""provides otherwise"" and the goods are not chargeable to duty u/s 12. Thus

section 25(1) of the Customs Act empowers the Central Government to exempt goods from levy of duty generally and u/s 25(2) from payment of

duty by a special order. If as provided u/s 25(1) exemption is granted from the whole of the duty leviable on certain goods, customs duty itself is

not leviable on such imported goods, no question of calculating the customs duty leviable at any particular rate specified either under the Customs

Tariff Act or any other law for the time being in force arises.

The crucial question, therefore, would be : When can the goods be said to be ""imported into India"" and at what stage do they become chargeable

to customs duty ? That must depend upon what exactly does the expression ""goods imported into India"" occurring in section 12 mean ? The

chargeability of goods to customs duty arises when goods are ""imported"" and only when such import is ""into India"". Both the words ""import"" and

India"" have been defined under the Customs Act. The word ""import"" is defined in section 2(23) of the Customs Act as under :

import with its grammatical variations and cognate expression means bringing into India from a place outside India"".

The word ""India"" itself may mean geographically defined land mass or extend to either ""territorial waters"" or ""continental shelf"" or ""exclusive

economic zone"" or ""other maritime zones"". Each of these expressions extends the territory of India beyond the land mass into the sea to varying

extents. In order to give certainty to what is meant by ""India"" in the context of the Customs Act and chargeability of goods to customs duty, the

Parliament thought it expedient to also define ""India"" in Section 2(27) as under :

''India'' includes the territorial waters of India"";

The expression ""imported goods"" is also defined in section 2(25) in the following words :

''imported goods'' means any goods brought into India from a place outside India but does not include goods which have been cleared for home

consumption"".

8. The definitions of these crucial words to not however put the issue beyond controversy. In fact what is the scope and extent of these definitions

and how far they must give way to the context has to be ascertained for the interpretation clause in section 2 opens with the words : ""unless the

context otherwise requires.

9. It is argued for the customs authorities that the definitions do not take away the ordinary meaning of the words and hence the word ""India

occurring in the Customs Act need not always include its ""territorial waters"" as well. They contend that as ordinarily understood India means only

its ""land mass"" and not ""the territorial waters"". Reliance is placed in this regard to the statement in Craise ""On Statute Law"", Seventh Edition, at

pages 212 to 214 :

In most modern Acts of Parliament, there is an "interpretation clause" enacting that certain words when found in the Act are to be understood as

regards that Act in a certain sense, or are to include certain things which, but for the interpretation clause, they would not include.....

* * * *

An interpretation clause which extends the meaning of a word does not take away its ordinary meaning..... An interpretation clause of

this kind is not meant to prevent the word receiving its ordinary, popular and natural sense whenever that would be properly applicable, but to

enable the word as used in the Act when there is nothing in the context or the subject-matter to the contrary, to be applied to some things to which

it would not ordinarily be applicable.

* * * *

10. It is true that in ascertaining the intention of the legislature in using a particular word, how the word is commonly understood must undoubtedly

be given weight. If the word is used with reference to or in the context of a particular trade or business, it must receive the same meaning in which

the particular trade or business understands it.

In other words, the ordinary meaning of the word should be given effect to for the legislature could not have had the intention to mean otherwise.

Where the Parliament being aware of the ordinary meaning of a word, expressly defines it in the interpretation clause of an enactment, differently

from its ordinary meaning it makes its intention manifest that the particular word or expression defined by it should be ordinarily understood in that

Act in the manner defined and not as generally understood. Otherwise the very purpose of defining a particular word or expression, the ordinary

meaning of which is clear, would be defeated; the definition itself would become redundant. The definition clause makes the intention of the

Parliament explicit. That the Parliament intended the word ""India"" employed in the Customs Act should be understood as defined is further

emphasized by employing the expression ""in this Act unless the context otherwise requires"" the word shall mean or include as stated therein.

11. Francis Bennion in his treaties ""Statutory Interpretation"", 1984 edition, at page 278 states :

..... Whether the defining enactment says so or not, a definition applies only where the contrary intention does not appear. This is because the

legislator is always free to misapply a definition, whether expressly or by implication.....

* * * *

Richard Robinson said :

In stipulating a meaning for a word, a writer demands that his reader shall understand the word in that sense whenever it occurs in that work. The

writer thereby lays upon himself the duty of using the word only in that sense, and tacitly promises to do so, and tacitly prophesies that he will do

so. But sometimes a writer does not use the word only in the sense he has stipulated. Then his stipulation implied a false promise and a false

prediction.

Where it is clear that the draftsman has forgotten his definition, the Court may need to give the term its ordinary meaning.

It is precisely to meet such a contingency the definition clauses invariably limit the scope of the definition by using the expression ""unless the subject

or context otherwise requires"" or some such qualifying words. As laid down in Meux v. Jacobs (1875) LR 7 HL 481 at page 493, the

interpretation clause should not be understood as requiring extended meaning in all circumstances, for the definition clause itself says ""unless the

context otherwise require"". However, even where such an expression is employed it is only where the contrary intention appears from the context

that the definition clause may be given a go by and the word understood as is understood in common parlance. But then, as stated above, when the

definition clause employs the word ""includes"" and enjoins that ""unless the context requires otherwise, it shall include"" as stated therein, the Court

cannot, unless there are compelling circumstances and reasons having regard to the context in which the word defined is used, the interpretation

clause cannot give a go by to the definition. The effort of the Court should be to give effect to the meaning intended by the Parliament as made

clear by defining the words employed by it in the enactment ""unless the context otherwise requires"".

12. Mr. Talyarkhan, learned counsel for one of the petitioners-interveners placed reliance upon the decision of the Supreme Court in The

Vanguard Fire and General Insurance Co. Ltd., Madras Vs. Fraser and Ross and Another, where their Lordships have laid down (pages 974-

975) :

..... It is well settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition

clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing,

it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is

why all definitions in statutes generally begin with the qualifying words similar to the words used in the present case, namely, unless there is anything

repugnant in the subject or context. Therefore, in finding out the meaning of the word "insurer" in various sections of the Act (Insurance Act), the

meaning to be ordinarily given to it is that given in the definition clause. But this is not inflexible and there may be sections in the Act where the

meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the

opening sentence in the definition section, namely, unless there is anything repugnant in the subject or context. In view of this qualification, the Court

has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret

the meaning intended to be conveyed by the use of the words under the circumstances. Therefore, though ordinarily the word "insurer" as used in

the Act would mean a person or body corporate actually carrying on the business of insurance it may be that in certain sections the word may have

a somewhat different meaning.

* * * *

* * * *

..... the word may also refer in the context of certain provisions of the Act to any intending insurer or quondam insurer.

In this decision their Lordships were concerned with a case where the opening words of the definition clause declared ""unless there is anything

repugnant in the subject or context"". Even there it was laid down that the meaning to be given to a word is that given in the definition clause itself,

unless there is anything repugnant in the subject or context.

13. Reliance was also placed on the judgment of the Supreme Court in The Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar, in which

the Supreme Court took a view similar to the one taken in Vanguard Fire and General Insurance Company''s case AIR 1960 SC 972. Thus as

discussed above, ordinarily, the special meaning given to the interpretation clause should be given effect to. Where a word is defined in a Statute to

mean a certain thing, wherever that word is used in that statute, it shall mean what is stated in the definition unless the context otherwise requires.

14. In our view having regard to the definition of the word ""India"" under the Customs Act with which we are presently concerned which is an

inclusive definition and which is prefaced by the clause ""unless the context otherwise requires"", the more appropriate principle that would apply is

the one laid down by the Supreme Court. In S.K. Gupta and Another Vs. K.P. Jain and Another, . In that case the Supreme Court considered the

definition in section 2 of the Companies Act, 1956, which reads as follows :

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

(29) "modify" and "modification" shall include the making of additions and omissions.

That definition which is an inclusive definitions also employs the qualifying expression ""unless the context otherwise requires just as the Customs

Act does in defining the word ""India"". The Supreme Court observed (page 68) :

The noticeable feature of this definition is that it is an inclusive definition and, where in a definition clause, the word "include" is used, it is so done

in order to enlarge the meaning of the words or phrases occurring in the body of the statute and when it is so used, these words or phrases must be

construed as comprehending not only such things which they signify according to their natural import, but also those things which the interpretation

clause declares that they shall include ..... wherein a word is defined to mean a certain things, wherever that word is used in that statute, it shall

mean that as is stated in the definitions unless the context otherwise requires. But where the definition is an inclusive definition, the word not only

bears its ordinary, popular and natural sense whenever that would be applicable but it also bears its extended statutory meaning. At any rate, such

expansive definition should be so construed as not cutting down the enacting provisions of an Act unless the phrase is absolutely clear in having

opposite effect..... where the definition of an expression in a definition clause is preceded by the words "unless the context otherwise

requires", normally the definition given in the section should be applied and given effect to but this normal rule may, however, be departed from it

there be something in the context to show that definition should not be applied..... it would thus appear that ordinarily one has to adhere to

the definition and if it is an expansive definition the same should be adhered to.....

In our view where the definition itself says that a particular word shall mean or a particular word shall include certain things and such a clause is

preceded by the expression ""unless the context otherwise requires"", it shall mean or include those things or situations, it is not open to the Court to

give any other meaning to those words except when the context requires otherwise. The expression ""unless the context otherwise requires

excludes all situations except those for compelling reasons the intended definition has to be abandoned. Section 2 directs that in this Act, ""unless

the context otherwise requires"", the words occurring in the Act shall be understood as defined therein. In other words, ""India"" commonly

understood is the geographical entry comprising only of the land mass. For certain purpose the country referred to as ""India"" may extend into the

sea upto the limit of ""territorial waters"" or ""contiguous zone"" or ""continental shelf"" or ""exclusive economic zone"" or ""other maritime zones"". Section

3(2) of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, provides that a distance of

twelve nautical miles from the nearest point of low tide along the baseline of India constitute territorial waters of India. Whatever the word ""India

may mean in common parlance and under other enactments, for the purpose of the Customs Act it is made clear under the definition clause 27 of

section 2 of Customs Act that, ""India"" includes territorial waters of India. Reading the two definitions together it would be manifest that if goods are

brought into India, meaning thereby into the territorial waters of India from outside India, that is, from outside the territorial waters of India there is

import of goods and the goods become ""imported goods"". These definitions thus make it clear that no sooner than the goods are brought from

outside the territorial waters of India into the territorial waters of India, they become imported goods and become chargeable to duty and upto the

moment they are cleared for home consumption, they constitute imported goods for the purpose of the Customs Act. No sooner than they are

cleared for home consumption they cease to be imported goods. That ""India"" includes the territorial waters and wherever the word ""India"" occurs

in the Customs Act that meaning should be given or so understood, is enjoined by Section 2 using the expression ""unless the context otherwise

required"". Hence for the purpose of the Customs Act, ordinarily ""India"" must be understood as including its territorial waters. There must be

something in the context of Section 12 or other provisions of the Customs Act read with Section 12 which must compel us to give the word ""India

a different meaning and as not ""including the territorial waters of India"". We may, therefore, now examine the provisions of the Customs Act to see

if there is anything therein which requires us to hold that the words ""import"" or ""import into India"" do not mean bringing goods from outside into

territorial waters of India but that it would mean bringing them to the land mass of India. In other words, could it be said that there is no ""impact"" of

goods into India when they enter the territorial waters but these would be import only after they are unloaded on the land mass of India.

15. Mr. Dalal, learned counsel appearing for the Customs authorities, contends that not only definitions of the words, India and Import into India

but also the various connotations of the word ""levied"" occurring in section 12 must be kept in view in deciding when the ""import into India"" occurs.

According to him, the word ""levied"" in Section 12 of the Customs Act which declares that duties of customs shall be levied, in the context means

not merely chargeability but also quantification of the duty, that is the valuation of goods for the purpose of levy of duty, the rate at which the duty

should be levied and also recovery of such duty. According to him, the expression ""imported into India"" occurring in Section 12 must therefore be

interpreted not only keeping in view when the goods became chargeable to duty but also the dates with reference to which the goods are to be

valued and the event with reference to which the rate at which duty is to be levied and quantified.

16. In order to appreciate this contention, it is necessary to notice the various steps required to be taken under the Customs Act for levy of duty on

goods imported into India. As stated above, Section 12 declares that duties of customs shall be levied on all goods imported into India. The goods

imported shall have to be valued u/s 14 and the duty payable shall have to be determined according to the rates specified u/s 15 of the Customs

Act read with the Tariff Act. Every importer of goods is required u/s 46(1) of the Customs Act to make an entry with the proper officer by

presenting a bill of entry for home consumption or warehousing in the prescribed form. The goods may be unloaded only at the approved place

and under the supervision of the Customs Officer as laid down in Section 31 to 34 of the Customs Act. Section 29 prohibits the person-in-charge

of a vessel or aircraft entering India from any place outside India from permitting the vessel or aircraft to call or land at any place other customs

port or a customs airport. Within twenty-four hours of arrival the person-in-charge is required by Section 30 to deliver an import manifest or an

import report. The person-in-charge of a conveyance which has brought any imported goods or has loaded any export goods is prohibited by

Section 42 from leaving the customs station without authority. Section 45 enjoys that all imported goods unloaded in customs area shall remain in

the custody of such person as may be approved by the Collector of Customs until they are cleared for home consumption or are warehoused or

are transhipped in accordance with the provisions of Chapter VIII. Only the proper officer may clear the imported goods for home consumption

after he is satisfied that they are not prohibited goods and the importer has paid the import duty, if any, assessed thereon. Irrespective of whether

the goods are dutiable or not the goods may be cleared only after an order permitting clearance of goods for home consumption is made. If the

Assistant Collector of Customs is satisfied that the goods cannot be so cleared within a reasonable time, he may permit the storage of imported

goods in a warehouse pending clearance.

17. Goods refereed to in Section 14 are goods on which duty of customs in chargeable by reference to their value. It would be clear that Section

14 by itself does not lay down when or what goods are chargeable to customs duty. It only deals with valuation of the goods imported which are

chargeable to customs duty. If they are chargeable to customs duty and are chargeable by reference to their value, then the value has to be

determined as laid down in Section 14. It does not lay down at what point of time the goods became imported goods. Whether they are

chargeable at all to duty and if so, when they become chargeable must be determined with reference to the other provisions of the Customs Act.

That other provisions is only Section 12.

18. So too section 15 only lays down the date for determination of rate of duty and tariff valuation of imported goods. The expression ""the rate of

duty and tariff valuation, if any, applicable"" occurring in section 15 is significant. Section 15 itself envisages that in respect of certain goods, no rate

of duty or tariff valuation may be applicable. The customs duty would be payable only if they are chargeable to duty. What is enjoined by Section

15 would become relevant only if goods are chargeable to duty. Only then for the purpose of determining the amount of duty payable on imported

goods the rate at which the duty has to be levied has to be determined as envisaged by section 15.

19. Under all taxing statutes, whether Customs Act, Central Excise and Salt Act, Income Tax or Gift Tax or Estate Duty Act what has to be first

determined is when exactly did the taxable event occur ? It is with reference to that point of time, that the chargeability or leviability of the tax or

duty, as the case may be, has to be determined. That is the crucial date. In Wallace Brothers and Company Ltd. v. Commissioner of Income Tax

16 ITR 240 the Privy Council held (page 244) :

The general nature of the charging section is clear. First, the charge for tax at the rate fixed for the year of assessment is a charge in respect of the

income of the "previous year", not a charge in respect of the income of the year of assessment as measured by the income of the previous

year..... .....

Second, the rate of tax for the year of assessment may be fixed after the close of the previous year and the assessment will necessarily be made

after the close of that year. But the liability to tax arises by virtue of the charging section alone, and it arises not later than the close of the previous

year, though quantification of the amount payable is postponed.

20. In Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, the Supreme Court declared that the

liability to pay Income Tax was a present liability though the tax became payable after it was quantified in accordance with ascertainable data. In

that case, reference was made to the earlier decision of the Supreme Court in Chatturam Horilram Ltd. Vs. Commissioner of Income Tax, Bihar

and Orissa, wherein it was held (page 783) :

..... Thus income is chargeable to tax independently of the passing of the Finance Act but until the Finance Act is passed no tax can be actually

levied.

..... according to the scheme of the Act the quality of chargeability of any income is independent of the passing of the Finance Act.

The Supreme Court declared (page 783) :

This Court, therefore, accepted the principle that the liability to pay tax arose under the Income Tax Act, though its quantification dependent upon

the passing of the Finance Act. If there was no liability under the Income Tax Act during the relevant accounting year, no question of escaped

assessment during that year would have arisen in that case.

21. In Kalwa Devadattam and Others Vs. The Union of India (UOI) and Others, Shah, J., speaking for the Court held (page 784) :

Under the Indian Income Tax Act liability to pay Income Tax arises on the accrual of the income, and not from the computation made by the

taxing authorities in the course of assessment proceedings; it arises at a point of time not later than the close of the year of account.

In this behalf reference is made to the discussion in Supreme Court in Re Sea Customs Act (AIR 1963 SC 1760) regarding duties of Excise and

Customs wherein it was declared :

..... subject always to the legislative competence of the taxing authority, the said tax can be levied at a convenient stage so long as the character

of the impost (that is, it is a duty on the manufacture or production) is not lost. The method of collection does not affect the essence of the duty, but

only relates to the machinery of collection for administrative convenience.

That decision further laid down (at page 1775) :

Similarly in the case of duties of customs including export duties though they are levied with reference to goods, the taxable event is either the

import of goods within the customs barriers or their export outside the customs barriers.

All these decisions make it clear that a taxing statute does not envisage that the taxable event, valuation of goods, income or estate as the case may

be, rate of duty or tax and quantification of duty or tax should be completed at any single point of time, or with reference to one and only one point

of time, nor that they must be necessarily postponed until all the stages are completed; nor that each of these events could not occur or each of

these steps could not be taken at different points of time. Parliament taking cognizance of the fact and having regard to the nature of the levy of

customs duty that the word ""levied"" occurring in section 12 has several connotations appears to have advisedly specified under different provisions

of the enactment the different stages i.e. the stage when goods become chargeable to duty, the stage when the goods have to be valued and the

stage when the duty has to be quantified. Under the Customs Act, chargeability is u/s 12, valuation of goods u/s 14 and the rate at which the duty

should be assessed is u/s 15. As discussed above, these different events may occur at different points of time, but unless the goods are chargeable

to duty and the taxable event occurs, the question of valuation of goods and quantification of duty payable at any particular rate obviously cannot

arise. The taxable event has to occur at some particular point of time and cannot in respect of the goods imported at one and the same time occur

at different points of time for some when they were unloaded, for some on the different dates as and when they are cleared from the warehouse.

That would create confusion and it would be impossible to ascertain which point of time should be taken for the purpose of determining the

chargeability of the goods to customs duty. May be, the legislature has the power to fix in respect of goods imported at one and the same time

different dates as the dates when the taxable event occurred having regard to the different dates on which they are actually cleared for home

consumption. But the question is, has it so fixed under the Customs Act. We have only Sections 12, 14 and 15 with reference to which we have to

determine, in the light of the scheme of the Act, as to when the taxable event occurs.

22. Strong reliance is placed by Mr. Dalal, learned counsel for Customs, on the decision of the Supreme Court in Re Sea Customs Act (AIR 1963

SC 1760) to contend that the taxable event occurs in the case of import of goods into India only when the stage for paying the import duty is

reached and without paying which the goods cannot be allowed to cross the customs barrier :

in the case of duties of customs including export duties though they are levied with reference to goods, the taxable event is either the import of

goods within the customs barriers or their export outside the customs barriers..... Now, what is the true matter of an import or export duty ?

Truly speaking, the imposition of an import duty, by and large, results in a condition which must be fulfilled before the goods can be brought inside

the customs barriers, i.e., before they form part of the mass of goods within the country. Such a condition is imposed by way of exercise of the

power of the Union to regulate the manner and terms on which the goods may be brought into the country from a foreign land. Similarly an export

duty is a condition precedent to other lands. It is not a duty on property in the sense of Art. 289(1).

In that case the Supreme Court was discussing as to whether imposition of customs duty on import of goods is a tax on property, that is, on the

goods or on the act of import of goods. The Court held that the taxable event is the act of import of goods into India and the duty is not on

property as such, but on the act of importation of goods. The Court was not concerned in that case as to when the goods can be said to have been

imported; nor did the Supreme Court, lay down that taxable event does not occur when the goods enter the territorial waters. What all the

Supreme Court said was that the importer cannot take the goods beyond the customs barrier without first fulfilling the condition of payment of

import duty. The Court was not required to consider sections 12, 14 or 15 of the Customs Act, 1962, and determine when the taxable event

occurred. There can be no doubt that unless the duty is paid, dutiable goods cannot be carried across the customs barrier but that is not

necessarily the time when the goods become chargeable and no opinion on that aspect was expressed on that aspect in that case. The Court only

held that the payment of duty is a condition without fulfilling which goods imported into India cannot be taken beyond the customs barrier. In our

view, in the context of Section 12 import into India, which includes its territorial waters, must mean that for the purpose of chargeability u/s 12,

taxable event occurs when the goods enter the territorial waters.

23. In R.C. Jall Vs. Union of India (UOI), considering the nature of Excise duty the Supreme Court held (page 1287) :

..... Excise duty is primarily a duty on the production or manufacture of goods produced or manufactured within the country ..... Therefore,

subject always to the legislative competence of the taxing authority, the said tax can be levied at a convenient stage so long as the character of the

impost, that is, it is a duty on the manufacture or production, is not lost. The method of collection does not affect the essence of the duty, but only

relates to the machinery of collection for administrative convenience.

24. In Shinde Brothers etc. Vs. Deputy Commissioner and Others, etc.,

..... 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.

25. The same principle is reiterated in Union of India (UOI) and Others Vs. Bombay Tyre International Ltd. and Others, . Dealing with the

question, whether certain heads of post-manufacturing expenses are also included in the assessment of duty under the statute the Supreme Court

declared ""the stage of collection need not in point of time synchronize with the completion of the manufacturing process..... the point of time of

collection is to be located where the statute declares it. Collection of duty and levy of duty are two different things.

The Supreme Court further observed :

..... while the nature of an excise is indicated by the fact that it is imposed in respect of the manufacture or production of an article, the point at

which it is collected is not determined by the point of time when its manufacture is completed but will rest on consideration of administrative

convenience, and that generally it is collected when the article leaves the factory of the first time.

26. In our view, the above decisions also make it clear that the taxable event may occur at one time and the duty chargeable upon that event

occurring, may be quantified and collected at a later date but there is nothing in the Customs Act which indicates that the chargeability itself is

postponed to a later date. What is postponed is quantification and collection and not chargeability. These decisions though rendered in the context

of levy of excise duty lend support to the view we have taken, namely, while import duty is on the act of importation which is complete when the

goods enter the territorial waters of India, the goods may be valued and the duty quantified and collected later as laid down in section 14 and 15 of

the Customs Act. The rate itself can be fixed at a later date. But, what is crucial to be determined is : When was the act of importation complete ?

And were the goods chargeable to duty at that point of time ? Once they are chargeable, they may be subject to duty on such value and at such

rate as is laid in Sections 14 and 15 respectively and recovered in such manner as is laid down in the other provisions of the Customs Act.

27. If this essential distinction between chargeability and quantification is kept in view then, the position would immediately become clear. For

determining when the taxable event occurs under the Customs Act reference to other enactments and to the decisions thereunder would not be of

much help for those decisions would term upon the context of that particular enactment and the wording of the charging Sections.

28. In Gramophone Company of India Ltd. Vs. Birendra Bahadur Pandey and Others, the Supreme Court observed (page 678) :

..... the same word may mean different things indifferent 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.

Proceeding to consider the meaning of the word "import" in section 2(23) of the Customs Act, the Court observed (page 680) :

..... "bringing into India from out of India", that it is not limited to importation for commerce only but includes importation for transit across the

country..... interpretation far from being inconsistent with any principle of International Law, is entirely in accord with International Conventions

and the Treaties between India and Nepal.

Keeping this in view we may examine the several theories that were propounded as to when goods brought from a foreign country become

imported goods. One such theory is the theory of original package. The Supreme Court in State of Bombay v. F. H. Balsara (AIR 1951 SC 318),

observed that according to the doctrine of original package evolved in America with doctrine was applied not only to commodities imported from

foreign countries but also to commodities which were the subject of inter-state commerce, importation was not complete so long as the goods

were in the original package and hence the State had no power to tax imports until the original package was broken or there was one sale while

the goods were still in the original package. The Supreme Court declared that having regard to scheme of legislation that has been outlined in the

Government of India Act and in the present Constitution, in which the various entries in the legislative Lists have been expressed in clear and

precise language, this doctrine has no place.

29. Another theory propounded is that only upon the goods forming part of the land mass they become imported goods.

30. Reference to the theory that goods become imported goods only when they form part of the land mass and not until then, made in In Re Sea

Customs Act (AIR 1963 SC 1760) may now be examined in the context of the Customs Act, 1962. The Supreme Court in the said case was

dealing with the Sea Customs - Act, on a comparison of the provisions in the Canadian and Australian Constitution with the provisions in the

Constitution of India and considering the nature of the customs duty the Supreme Court observed : (page 1776) :

..... Now, what is the true nature of an import or export duty ? Truly speaking, the imposition of an import duty, by and large, results in a

condition which must be fulfilled before the goods can be brought inside the customs barriers, i.e. before they form part of the mass of goods within

the country.

Very strong reliance was placed on these observations of the Supreme Court to contend that only when the goods form part of the goods on the

land mass the condition of payment of duty has to be fulfilled. According to the Revenue it is at that point of time that the goods become imported

goods and the taxable event occurs and not until then. The Court there was concerned mainly with the question whether the customs duty was a

tax on goods and opined that customs duty is not a tax on the goods as such but on the act of importation of goods into India. But whether ""India

in that context included territorial waters or not was not required to be considered. The opinion was rendered in the context of the Sea Customs

Act which did not contain a definition such as the one in S. 2(25) of Customs Act, 1962. In our view, the observations of the Supreme Court are

torn out of their context to seek support for the contention that the goods become imported goods only when they form part of the land mass. A

reading of the entire discussion makes it clear that the Supreme Court recognises that the taxable event may occur earlier and the tax itself may be

collected or recovered at any later stage; but nonetheless what attracts the tax is the taxable event. In making the above observations the Supreme

Court merely declared that imposition of an import duty ""results in a condition which must be fulfilled before the goods can be brought inside the

customs barriers"". It did not lay down that import itself occurred at that point of time or that they become imported goods only when they were

sought to be removed for home consumption or formed part of the goods on the land mass of the country. The Supreme Court merely declared

that payment of duty is a condition precedent for bringing the goods inside the custom barrier. It did not determine at what point of time or at what

point of time prior to the goods reaching the customs barriers or prior to the goods being cleared for home consumption after crossing the customs

barriers, became imported goods.

31. Another contention raised is that unless the goods are brought to port there is no import. Very strong reliance was placed by Mr. Dalal learned

Counsel for this contention upon the decision of the High Court of Australia in Wilson v. Chambers & Co. Pvt. Ltd. 38 C.L.R. 131. That was a

case in which a certain quantity of paint was shipped from England to a consignee in Melbourne, Sydnev, Australia. The paint would have been

dutiable under the Customs Tariff Act if imported into the Commonwealth. The ship did not go to Sydney but entered another port in New South

Wales. The ship was about to discharge the paint there, and the consignee was willing to take delivery. While the ship was in the port, an

arrangement was made between a person C, acting on behalf of the consignee, and the captain of the ship, whereby the paint was taken over for

the use of the ship. No Customs entry was made in respect of the paint and it was not landed. By permission of the Customs Officer at the port,

guarantee having been given by the captain to furnish a list of all dutiable stores consumed on the voyage to Melbourne, the next port of call, the

ship left the port with the paint on board. No duty was paid in respect of this paint. In that case, the learned Judges construing a provision of the

statute which did not define the word "imported", held :

..... that goods are imported whenever they are brought into port for the purpose of being discharged there. So far as the ship is concerned the

goods have at that time arrived at their destination, and their character as goods imported into Australia cannot, I think, be effected by an

agreement subsequently made under which they are not in fact landed at the port at which the ship arrived. In the circumstances of this case I think

it is clear that the paint in question was imported when the ship arrived in port Kembla, and that the obligation to make an entry arose at that time.

32. What is laid down therein cannot be applied to a situation arising under the Customs Act, 1962, which defines the words "Import" and

"Imported into India".

33. We may at this stage take note of the fact that while Mr. Dalal contended that the taxable event occurred and the goods must be deemed to

have been imported when they are sought to be cleared, Mr. Talyarkhan contended that they would be deemed to have been imported when the

goods arrived at the port in the ship and are set for off leading on the terra firma or the land mass of India.

34. Reliance was then placed by Mr. Dalal on a decision of the Privy Council in Canada Sugar Refinery Company v. The Queen 1898 A.C. 735,

where the Court had to decide whether Her Majesty"s Government was entitled to recover from the applicants a sum of 39,937 dollars as duty

payable by the appellants on raw sugar imported by them from Hamburg into Canada in the s.s. Cynthiana in which their Lordships were required

to consider two related questions and they were :-

(a) Was the sugar ""imported into Canada within the meaning of the Customs Tariff Act before May 3, 1895, on which day the statute 58 and 59

Vict. C. 23, imposing the said duty, came into force ?

(b) Does the fact that an entry of the said sugar was, under the circumstances detailed, made at the Customs on May 2, 1895, as if the said sugar

were free from duty, in the circumstances of this case prevent the Crown from subsequently claiming the duty ?

The undisputed fact in that case was that when the entry of sugar was made on May 2, 1895, it was wholly exempt from duty, but the very next

day, before the sugar was cleared, it was subject to duty. The question with which we are now concerned squarely arose for decision in that case

and the question was, what is the date of importation of the sugar. The Court observed :

The real question..... is whether the sugar was "imported" within the meaning of S. 4 of the Tariff Act, 1894, before or after May 3, because

it is by that Section as amended by the Act of 1895, that duty is imposed.

The Court was of the view :

..... that question depends on the construction and effect to be given to the Customs Tariff Act and certain sections of the Customs Act,

and proceeded to consider Section 4 of the Customs Tariff Act, 1894, which reads as follows :

Sec. 4. Subject to the provisions of this Act and to the requirements of the Customs Act, S. 32 of the Revised Statutes as amended there shall be

levied, collected and paid upon all goods enumerated or referred to as not enumerated in Sched. A to this Act the several rates of duties of

customs forth and described in the said schedule and act opposite to each class respectively or charged thereon as not enumerated when such

goods are imported into Canada or taken out of warehouse for the consumption therein.

Section 34 of the Customs Act, 1886 (49 Vict. C. 32) with which the Court was concerned in that case laid down that every importer of goods by

sea or from any place out of Canada shall within three days after the arrival of the importing vessel make due entry inwards of such goods and land

the same. The importers of sugar made entry at the Montreal Customs House of the goods on May 2, 1895, when the goods were not subject to

duty. The Court held (Page 740) :

(1) The imposition of the duties is contained only in the direction for their payment. There are no words which render the goods liable for the duty

or make the duty (as it is said) attach at date prior to the date of payment. (2) The words "when such goods are imported into Canada" express

the time at which the duties are to be paid. If, therefore, the goods are imported into Canada when the vessel enters a port of call on her way to

her ultimate destination, the duties would be payable at that date, which is highly improbable, and contrary to the express provisions of S. 31. (3)

The duties are payable at one of two dates - either the date of importation or the date when they are taken out of warehouse. There is no real

contrast between the date of arrival at a port of call and the date when the goods are taken out of warehouse, because if the words mean in the

first case that the duty attaches when the vessel arrives at the port of discharge they are delivered to the importer or warehouse in bond. The true

contrast is that which their Lordships have just indicated, and the words appear to them to mean when the goods are landed and delivered to the

importer or to his order, or when they are taken out of warehouse, if instead of being delivered they have been placed in bond. (4) The result is

that, in the opinion of their Lordships, the words "imported into Canada" must, in order to give any rational sense to the clause, mean imported at

the port of discharge, and cannot be used in the sense attributed to the word "imported" by the appellants, in accordance with the construction

placed by them on the definition in S. 150 of the Customs Act. (5) If the goods were "imported", within the meaning of the Tariff Act, on or after

May 3, (in other words) if the duty became payable after that date, the Crown was entitled to it.

But their Lordships do not find it necessary to adopt the appellants" constructions of S. 150. Every clause of a statute should be construed with

reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute or series of

statutes relating to the subject-matter.

Dismissing the appeal the Court held (Page 741) :

..... According to this construction, the port spoken of in S. 150 would be the port at which the goods are to be landed mentioned in S. 31. And

this construction appears to their Lordships to place a consistent, rational, and probable meaning on the whole of the sections referred to when

read together..... The object of the definition in S. 150 is not to define the port of importation, or the meaning of "imported", but the time when

the goods are to be deemed to be first imported.

It would be seen that that decision turned on the interpretation of Section 150 of the Customs Act, 1886, which was in the following words :

Sec. 150 (as amended by 52 Vict. C. 14, S. 12).

Whenever, on the levying of any duty, or for any other purpose, it becomes necessary to determine the precise time to the importation of any

goods, or of the arrival or departure of any vessel, such importation, if made by sea, coastwise or by inland navigation in any decked vessel, shall

be deemed to have been completed from the time the vessel in which such goods were imported came within the limits of the port at which they

ought to be reported, (underlined to draw attention to the distinction) by land or by inland navigation in any undocked vessel, then, from the time

such goods were brought within the limits of Canada.

That decision which turned on the specific provision of the Statutes in force in Canada cannot affect the view we have taken on a construction of

the various provisions of the Customs Act and especially the specific definitions in the context of the Act. In our view as the enactment specially

defines the words "import", "India" and "imported goods", when there is nothing in the context of Section 12 or even Sections 14 and 15 which

suggests to the contrary, these definitions cannot be brushed aside in interpreting Section 12.

35. If according to the contention of the customs authorities goods do not become imported goods when they enter the territorial waters of India,

apart from the fact that would be contrary to the definition of ""imported goods"", then at what point of time do these goods become imported goods

? One contention is that they become imported goods when they are sought to be removed for home consumption. If they are not imported goods

merely because they are sought to be removed for home consumption, how do they become imported goods ? After all the goods sought to be

removed for home consumption would have by then not only entered the territorial waters of India but would have been unloaded on to the land

mass of India. But then, even according to the learned Counsel for the Customs when the goods are brought to the land mass they do become

imported goods. It is common knowledge, goods unloaded on the land mass are not immediately cleared for home consumption. The Customs Act

itself gives two options to an Importer. The importer may clear the goods forthwith or lodge them in a warehouse for clearance from time to time.

In the latter event when do they become imported goods ? Is it only when they are cleared from the warehouse for home consumption. The goods

lodged in the warehouse need not be cleared in one lot; they could be cleared in instalments. Even in respect of goods unloaded on the land mass

on the same day or even at the same time, Section 15 of the Customs Act clearly envisages different rates of duties with reference to the date of

clearance. Then there will be different dates of importation for the goods unloaded on the land mass on the same day but removed from the

warehouse for home consumption on different dates. That being so at what point of time anterior to the actual clearance do the goods become

imported goods ? Is it when they enter the territorial waters of India ? Or is it when the vessel carrying the goods calls at any port in India ? Or is it

when the goods are unloaded on the land mass of India ? If it could be any of these, then, in our view, the definition of the word ""India"" for the

purpose of the Customs Act must clinch the issue. After all, words and expressions are defined in a statute to make the intention of the legislature

explicit and precise where such words and expressions are susceptible of several meanings. The combined effect of the definitions of the words

import"" and ""India"" under Sections 2(23) and 2(27) of the Customs Act, to our mind, is that import can be said to take place as soon as goods

are brought into the territorial waters of India. The taxable event occurs, when, as laid down by Section 12, goods are imported into India and

since ""India"" includes its territorial waters, the taxable event occurs no sooner than the goods enter the territorial waters of India and does not

postpone till they are actually off loaded on the land mass or till the goods are valued u/s 14 or till the date for determining the rate at which the

customs duty should be levied u/s 15 arrives. Even though as contended by Mr. Dalal, learned Counsel for the Customs, the word ""levied"" has

several meanings viz. chargeability, valuation, determination of duty or tax and/or recovery of the same, there is nothing in the Customs Act which

indicates that the chargeability stands suspended until a bill of entry is presented or until the goods are valued and duty payable is ascertained. It

would be pertinent to note that Section 12 uses the words ""shall be levied"". The taxable event occurs u/s 12 when the goods are brought into the

territorial waters of India. From that moment the goods are imported goods and continue to be imported goods, as defined in Section 2(25), until

they are cleared for home consumption. In other words, they acquire the character of imported goods within the meaning of Section 12 no sooner

than they enter the territorial waters of India and thus become subject to the levy of customs duty. The chargeability does not remain suspended

until they are cleared for home consumption. In fact, the moment they are cleared for home consumption and they become part of the goods on the

land mass, they cease to be imported goods for the purpose of levy of customs duty; of course, they are cleared for home consumption only on

payment of duty. Even on a reading of Section 12 in the context of the scheme of the Customs Act and in particular in conjunction with Sections

14 and 15, we find nothing which requires a different meaning to be given to the expression ""imported into India"". We, therefore, hold that goods

from outside India, no sooner than they enter the ""territorial waters of India"" become ""goods imported into India"" and acquire the character of

imported goods.

36. That they become imported goods no sooner than they enter the territorial waters of India would be further clear from the several provisions of

the Customs Act, to which we will presently refer.

37. As rightly contended, the provisions of an Act have to be construed in the light of the scheme of the Act more especially if a particular

provision is susceptible of several interpretations. In fact, both the learned Counsel far from disputing this position relied upon several provisions, to

which we will presently refer to contend that those provisions give an indication of the legislative intent, which, according to the importers, clearly

point out that the goods are imported into India no sooner than they enter the territorial waters of India, and according to the learned Counsel for

the Customs authorities, only when they are sought to be cleared for home consumption. The provisions referred to in this regard are Sections 13,

21, 23, 31, 32, 33, 34, 37, 45, 46, 48, 49 and 53 and we may proceed to examine them.

38. Section 13 of the Customs Act, which deals with duty on pilfered goods, reads as follows :

13. Duty on pilfered goods. - If any imported goods are pilfered after the unloading thereof and before proper officer has made an order for

clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where

such goods are restored to the importer after pilferage.

This provision 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. In our view, the question of liability of the importer to pay duty on pilfered goods would not have arisen if the

goods become liable for duty only when they were sought to be cleared for home consumption; only such goods as were then available would

have been subject to duty and no provision declaring that the goods pilfered ""shall not be liable"" for duty was necessary and would have been

made. This provision clearly postulates that the goods become imported goods and are subject to duty if not on entering territorial waters of India,

at least after that they are landed and before they are cleared. But the words ""If any imported goods are pilfered after the unloading"" in Section 13

are very significant and are not to be ignored. It would be explicit from these words that the goods become imported goods even before they are

unloaded. If they became imported goods earlier to unloading that could happen either when the ship carrying the goods entered the territorial

waters or when the ship called at the port. Having regard to the definition of the words ""imported"" and ""India"", we must hold that the legislature in

enacting Section 13 further disclosed its intention that the goods become imported goods on their entering the territorial waters of India. There is

nothing to indicate that the goods did not become imported goods even after entering the territorial waters until the ship called at the port of

unloading.

39. Section 21 makes provision for goods derelict, wreck etc. It reads as follows :

21. Goods derelict, wreck, etc. - All goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were

imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.

When the legislature declared that such goods are liable to duty, it could be only on the footing that thy become imported goods no sooner than

they entered the territorial waters and before they are brought on to the land mass and cleared for home consumption. So too, Section 22, which

makes provision for abatement of duty on damaged or deteriorated goods, could have been enacted only on the basis that the goods become

imported goods and such goods were damaged or deteriorated during or after unloading but before clearance. Such a provision would not have

been necessary if the goods were not subject to duty until unloaded and sought to be cleared. Similar provision is made in Section 23 for remission

of duty on goods lost, destroyed or abandoned at any time before clearance for home consumption, which again would not have been necessary

unless the goods had become imported goods earlier and became liable to duty. Sections 31, 32, 33 and 34 prohibit imported goods from being

unloaded from vessel until entry inwards is granted and mentioned in import manifest or import report. They require goods to be unloaded at

approved places only and under supervision of Customs officer. The legislature evidently made these provisions and placed restriction on these

goods only because as per the definitions in the Act, the goods become imported goods even before they are unloaded; certainly much before the

goods are sought to be cleared for home consumption and before they are unloaded. So, when does import occur ? Let us examine the Scheme of

the Act to see at what point of time they acquire that character of ""imported goods"". Section 37 empowers the proper officer to board any

conveyance carrying ""imported goods"", that is, even when the conveyance is afloat and even before the goods are unloaded. That would indicate

that the goods become imported goods even while they are in the ship or the vessel. That is made further clear by what is contained in Chapters

VII and VIII of the Customs Act. Section 45 refers to all imported goods unloaded in a customs area and directs that they shall remain there until

they are cleared for home consumption or are warehoused or are transhipped in accordance with the provisions of Chapter VIII. Section 46

requires the importer of any goods other than goods intended for transit or transhipment to make an entry thereof by presenting a bill of entry for

home consumption or warehousing. Section 48 authorises disposal of goods not cleared for home consumption or warehoused or transhipped

within two months after unloading. It speaks of such goods also as imported goods. It is the imported goods that are permitted to be stored for

warehousing u/s 49. Chapter VIII, which deals with goods in transit, makes the position much more clear that the goods become imported goods

when they enter the territorial waters of India and exempts the same from complying with certain provisions. Section 53 makes provision for transit

of goods in the same vessel or aircraft in the following terms :

53. Transit of goods in same vessel or aircraft. - Subject to the provisions of Sec. 11, any 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 or any customs port or customs airport may be

allowed to be so transited without payment of duty.

If on entering the territorial waters of India the goods did not become imported goods and would not so become until unloaded on the land mass

and were not subject to levy of customs duty u/s 12, such a provision would have been wholly unnecessary. The legislature obviously intended,

that primarily goods brought from outside the country, no sooner than they entered the territorial waters of India were to be regarded as ""imported

goods"" and duty was leviable thereon, but thought it advisable to exempt goods which are not intended to be unloaded on the land mass and are

merely in transit for being unloaded elsewhere and accordingly made provisions exempting them from payment of duty. It is thus manifest that

under the Act goods on entering the territorial waters of India became imported goods and chargeable to duty u/s 12, but if not unloaded are

exempt from payment of duty by virtue of the specific provisions. It is significant to note that such goods are not exempted from the operation of

Section 12, but by virtue of this and the other provisions of the Act are allowed to be transited without payment of duty. Similar provision is made

in Section 54 in respect of goods imported into a customs port or customs airport but are intended for transhipment. It, as contended for the

Customs authorities, 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 land mass, all the provisions referred to above would be rendered wholly redundant. They would not

be imported goods and would not be liable to customs duty until they are actually cleared or sought to be cleared after being lodged in the

warehouse. These provisions, in our view, make the legislative intent abundantly clear that the goods become imported goods no sooner than they

enter the territorial waters of India, which provisions would have been wholly unnecessary if goods become liable to customs duty only at the time

of clearance.

40. If the contention of Mr. Dalal that taxable event occur only when the goods are sought to be cleared is accepted, it would lead to some absurd

results. What would happen if the goods are brought not only into territorial waters but off-loaded on the land mass of India but are not cleared

through Customs but smuggled across the customs barrier ? If the goods become imported goods only on landing, then before they are unloaded

on the land mass, no goods could ever be treated as smuggled goods. There would have been no necessity for making any provision in this behalf

as is made in Section 38 of the Act.

41. It is argued that if the goods become imported goods as soon as they enter territorial waters of India, the goods cannot become export goods

until they are removed from the land mass and pass out of the territorial waters of India. We do not see how that follows. In the case of import, the

words used are ""imported goods"" and in the case of export, they are ""export goods"" and not ""exported goods"". The duty in the case of export

goods has to be paid before they are exported; in the case of imported goods they become liable to duty no sooner than they are imported. While

in the case of import the duty is attracted if the goods become imported goods, in the case of goods sought to be exported, duty has to be paid

when they are still ""export"" goods and not after they are exported. This distinction has been made and maintained throughout the Customs Act. An

examination of these provisions further fortifies our conclusion that the goods become imported goods no sooner than they are brought from

outside the country into the territorial waters of India and the taxable event is not postponed till a bill of entry is filed or till they are sought to be

cleared for home consumption.

42. What follows from the above discussion is that when goods from a place outside India are brought to India as defined u/s 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 u/s 14 and at rates specified u/s 15. Except as otherwise provided

in the Customs Act or other law in force for the time being, all such goods would be chargeable to customs duty as laid down u/s 12 of the

Customs Act. But by virtue of some of the provisions referred to above, duty may not be leviable or remission or abatement of duty may be

granted on these imported goods either because they are damaged, pilfered or not unloaded at the port or cleared for home consumption but

transited. The goods may not be chargeable to customs duty also because the Central Government chooses to exempt from duty by issuing a

notification u/s 25 of the Customs Act. In this context, it is necessary to note the distinction between the notification under sub-section (1) of

Section 25 of the Customs Act and an exemption notification issued under sub-section (2) of Section 25 thereof. Under sub-section (1) the

Government may exempt absolutely or subject to conditions goods of any specified description from the whole or any part of duty of customs

leviable thereon. Duty is leviable u/s 12 of the Customs Act and not under the Schedules of the Tariff Act. If duty is leviable u/s 12, then only for

the calculation of the duty the Schedules of the Tariff Act become relevant and have to be looked into. A notification u/s 25(1) of the Customs Act

exempts goods themselves from the levy of duty u/s 12. A notification under sub-section (2) of Section 25 does not exempt goods from levy of the

tariff. A notification thereunder only exempts by special order in each case from payment of duty under circumstances of exceptional nature. While

under sub-section (1) of Section 25 goods themselves are exempt from the levy of duty, under sub-section (2) of 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. But where notification under sub-

section (2) is issued and is in force on the date when goods are imported, that is, when the goods enter territorial waters of India, as those goods

continue to be chargeable to duty and the importer is only exempted from paying it, if any the time they are removed for home consumption that

notification is withdrawn, duty would be payable at the time of removal of goods as laid down in Sections 14 and 15 read with Section 12. 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 u/s 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.

The observation in the order of reference that chargeability of the goods to customs duty arises on account of the goods being listed in the

Schedule ignores the opening words ""Except as otherwise provided in this Act or any other law for the time being in force"" occurring in Section 12.

We are unable to agree with that observation. If on account of exemption granted u/s 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 u/s 14 or the rate

at which the duty is payable u/s 15. Sections 14 and 15 would apply only in a case where duties of customs are leviable u/s 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 u/s 25(1) thereof provides

otherwise, duties of customs shall not be levied u/s 12 and consequently, Section 15 does not come into operation in respect of these goods and

the question of valuation of the goods u/s 14 does not arise for the purpose of assessment. That is what this Court held in Sylvania Laxman''s case.

43. It was, however, contended that when goods are exempted from duty by a notification issued u/s 25, they are still chargeable to duty u/s 12,

but at nil rate. It was argued that the effect of granting exemption u/s 25 from payment of the whole of customs duty leviable, the Customs Act

does not render the imported goods free from chargeability. According to the learned Counsel, when the goods are wholly exempted from duty, in

law, ""nil duty"" is still chargeable. The goods are chargeable to duty so long as they are shown in the Schedule to the Customs Tariff Act as

chargeable to duty is not payable in view of the exemption notification u/s 25 of the Customs Act. The argument for the Customs authorities

proceeds on the footing that u/s 12 ""nil"" duty is payable in view of the exemption notification and, therefore, at that point of time no rate of duty

need be calculated; but if by the time they are sought to be cleared for home consumption, the exemption notification is withdrawn, the goods

which were chargeable to ""nil"" duty would then become chargeable at the rate in force when they are sought to be so cleared. This assumption of

nil"" duty being chargeable is a concept difficult to accept. Goods imported into India would be chargeable according to the rates specified in the

Schedule to the Customs Tariff Act. The power vested u/s 25(1) is exercised by the Central Government and that is to exempt the goods from the

levy of duty itself and not merely from the rate of duty. What is levied u/s 12 is wholly exempted in exercise of the power u/s 25. 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 u/s 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 u/s 25(1) is issued. The link between the Customs Act and the Customs Tariff Act established by Section 12 is

severed by the notification u/s 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 exempt 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 occurred, 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.

44. Two other decisions of this Court (i) Synthetics and Chemicals Ltd. v. S. C. Coutinho and others 1981 ELT 414, discussed above and (ii)

New Chemiscal Industries Pvt. Ltd. and another v. Union of India and others (1981 ELT 920) have concurred with the view taken in Sylvania

Laxman''s case. The latter case was of imported goods which were partially exempt from duty on the date when the ship carrying them entered the

territorial waters and that partial exemption was withdrawn subsequently. The learned Single Judge rejecting the claim of the importer for partial

exemption from payment of customs duty on goods imported, referring to the decision in Synthetics and Chemicals Ltd. v. S. C. Coutinho and

others observed :

The Division Bench held that if the goods were totally exempted on the date of its entry, within the custom''s barrier, then duty cannot be

recovered merely because such total exemption was withdrawn on the date of the clearance, but in cases where there is only partial exemption

available on the date of entry in the custom''s barrier, then withdrawal of such partial exemption would make the importer liable to pay the normal

duty, if on the date of clearance of the goods exemption stands withdrawn.

45. In Sundaram Textiles Ltd., Madurai v. Assistant Collector of Customs, Madras and another (1983 E.L.T. 909) a learned Single Judge of the

Madras High Court, after considering the judgment of the Bombay High Court in Sylvania''s Laxman''s case, discussed the matter at length in the

light of the Supreme Court decision in Prakash Cotton Mills (P) Ltd. Vs. B. Sen and Others, and concurred with the view expressed in Sylvania

Laxman''s case.

46. Even on a reconsideration of the question decided in Sylvania Laxman''s case 77 Bom. L.R. 380 we see no reason to take a view different

from the view expressed therein.

47. In the order of reference, Rege, J., speaking for the Bench observed that the view in Sylvania Laxman''s case may require reconsideration in

the light of the decisions of the Supreme Court in Express Mills v. Municipal Committee, Wardha AIR 1963 S.C. 1760; Prabhat Cotton and Silk

Mills Ltd. v. Union of India 1982 E.L.T. 203; Shri Ramlinga Mills Private Ltd. and others v. Assistant Collector of Customs and another 1983

E.L.T. 65 (Kerala) and Union of India and Others Vs. Khalil Kacherim, We, therefore, proceed to consider if these and some other decisions

relied upon for the respondents, in any way militate against the view we have taken.

48. The first Supreme Court case, The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur

Vs. The Municipal Committee, Wardha, dealt with terminal tax on goods imported into and exported from the Municipal limits of Wardha imposed

under the C.P. and Berar Municipalities Act. The question that arose for consideration was whether the goods in transit that were neither loaded or

unloaded within the Municipal Limits attracted terminal tax u/s 66(1)(o). In that context, the Court held :

By giving to the words ''imported into or exported from'' their derivative meaning without any reference to the ordinary connotation of these words

as used in the commercial sense, the decided cases in India have ascribed too general a meaning to these words which it appears from the setting,

context and history of the clause was not intended. The effect of the construction of ''import'' or ''export'' in the manner insisted upon by the

respondent would made rail-borne goods passing through a railway station within the limits of a Municipality liable to the imposition of the tax on

their arrival at the railway station or departure therefrom or both which result in inordinate delays and unbearable burden on trade both inter State

and intra State. It is hardly likely that that was the intention of the legislature. Such an interpretation would lead to absurdity which has, according to

the rules of interpretation, to be avoided.

It must be noticed that that was a case arising under an enactment in which the words ''import'' and ''export'' were not defined and it was a case of

terminal tax leviable u/s 66(1)(o). That provision authorised the imposition of ""a terminal tax on goods or animals imported into or exported from

the limits of a Municipality"". It is in the context of such a tax that the words ""import into or within the Municipal limits"" were required to be

construed by the Supreme Court in relation to goods in transit through the Municipal limits. The Supreme Court construing such a provision,

observed :

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. The concept of import as implying something brought for the purpose of sale of being kept is supported by the

observations of Kelly C.B. in Harvey v. Corporation of Lyme Regis, (1869) 4 Ex. 260 at p. 262 (B). There the claim for a toll was made under

the Harbour Act and the words for construction were ''goods landed or shipped within the same cobb or harbour''. Considering these words Kelly

C.B. said :

''The ordinary meaning and purport of the words is perfectly clear, namely that tolls are to be paid on goods substantially imported; that is, in fact,

carried into the port for the purpose of the town and neighbourhood."

The meaning of word "import" or "importation" under the C.P. and Berar Municipalities Act was so construed by the Supreme Court in that

manner only having regard to the provision in Section 66(1)(o) and the nature of the terminal tax. In fact, the observations in paragraph 15 of the

judgment would lead to the inference that if the word "import" were defined in a particular statute the general meaning of the words "import" or

"importation" drawn by the Supreme Court, in the absence of such a definition would not apply. Referring to the cases of Nek Mohammad and

Others Vs. Emperor, and Hardwari Mal Harnath Das Firm Vs. Municipal Board, both of which related to goods in transit, the Supreme Court

itself observed :

The word "import" was there given the meaning "carried into". But the decision was based on the definitions given in the Statutory Rules to the

word "import" which was "bringing into the terminal tax limits from outside those limits". In none of these cases was the argument as to the

qualification stemming from the use of the words "terminal tax" considered nor was the signification of the word "terminal" as a prefix to the word

tax discussed.

This makes it abundantly clear that where the words "import" and "importation" are defined, they have to be given full effect. When the word

"India" is also defined under Customs Act, in deciding when the goods could be deemed to have been imported into India, we cannot ignore this

definition and apply the general notions as to import and importation. Though what was laid down in this judgment by the Supreme Court was not

considered in Sylvania Laxman"s case decided later, in our view that does not in any way affect the conclusion reached therein.

49. The next case referred to is In Re : Sea Customs Act AIR 1963 S.C. 1760 in which the Supreme Court gave its opinion on special reference.

As already noticed the Supreme Court held that the imposition of an import duty by and large results in a condition which must be fulfilled before

the goods can be brought inside the customs barrier; duties of customs though they are levied with reference to goods, the taxable event is import

of goods within the customs barriers. The Supreme Court was not concerned with the question whether the customs barrier lay at the outer limit of

the territorial waters of India or at the point where the goods are cleared for home consumption on payment of duty. The Supreme Court was

concerned with the question whether the duties of customs were on the goods or on the act of import and it was held that they were on import and

not on the property, i.e. the goods.

50. In Prabhat Cotton and Silk Mills Ltd. v. Union of India 1982 E.L.T. 203 a Division Bench of the Gujarat High Court while considering the

question whether landing charges are includible in the assessable value of the goods u/s 14 of the Customs Act held (Page 209) :

..... as per Section 12(1) duties of customs are levied on goods imported into or exported from India and the expression "India" in so far as

Section 12 is concerned refers to the India land mass and not the Indian territorial waters. .....

* * * *

What requires to be underlined is a reference to "goods imported into, or exported from, India". Surely the expression "goods exported from

India" cannot mean goods exported from the territorial waters of India.

If this hypothesis is correct, perhaps the rest follows as argued therein; but the whole point is, is this correct ? Proceeding on that basis, the Court

proceeded to conclude (Page 209) :

..... Once this view is taken in the context of exportation from India, the expression "imported into" which forms a part of the expression

"imported into or exported from India" cannot carry any other meaning; the expression "India" must mean land mass of India whether it is in the

context of "exportation from India" or "importation into India" of goods within the meaning of dutiable goods in the context of Section 12(1) of the

Act.

The Division Bench further observed (Page 210) :

..... To construe the expression "goods exported from India" to mean goods exported from land mass of India on the one hand and to interpret

the expression following on its heels the "goods imported into India" to mean goods imported into territorial waters of India and not the land mass

of India would introduce an anachronism and so incongruity.

In our view, this reasoning ignores the distinction made by the Customs Act itself between the ""Imported goods"" and ""export"" goods. Under the

Customs Act, while ""import"" goods do not attract duty until they are ""imported goods"", goods sought to be exported attract duty when they are

export"" goods and are sought to be taken across the customs barrier. There is nothing inconsistent in so reading the two expressions which deal

with totally different activities, one an act of import of goods and the other an act of export of goods. No anachronism or incongruity arises by so

reading the expressions. There is no principle of law which overrides the provisions of the Customs Act and the definitions therein which compels

the Court to hold that if the import of goods occurs when the goods enter territorial waters, the goods would not become ""export"" goods until they

leave the territorial waters of India. We are unable to agree with the conclusion of the Gujarat High Court that Section 12 in using the expression

goods ""imported into India"" has reference to the land mass of India and not to the territorial waters of India. In that case the Court proceeded on

that basis to consider as to how the assessable value of the goods should be arrived at u/s 14 and held (Page 210) :

..... As per the analysis made by us, the price of the goods has to be determined (1) on the basis of the price at which ordinarily such goods are

offered for sale, (2) such price is required to be determined with reference to the time and place of importation of goods (i.e. when they are

unloaded on the land mass of India), (3) the price must be the price at which the goods are ordinarily sold or offered for sale in accordance with

the international trade, and (4) the price must be genuine price between a commercial seller and a commercial buyer unrelated to each other

..... And the goods will have to be valued at the point of time of being unloaded on the land mass of India and at the place where they are

unloaded.

It would be seen that the Division Bench failed to take into consideration that chargeability is one thing and ascertaining the assessable value of the

goods is another and further that the statute can expressly or by implication lay down different points of time at which the goods may become

chargeable and at which the assessable value of the goods may be arrived at. Referring to the judgments of the Supreme Court in The Central

India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur Vs. The Municipal Committee, Wardha, and In

Re : Sea Customs Act AIR 1963 S.C. 1760 the Court proceeded to hold that the valuation has to be made at the point of time and place where

the goods are brought from foreign land and are so placed as to form part of the mass of the goods within the country. Merely because the

valuation of the goods has to be so made, we do not see how it necessarily leads to the conclusion that the goods do not become goods

imported"" into India when they enter the territorial waters of India and would become imported goods only when they are placed on the land

mass. We are unable to see what difficulty there is in accepting that chargeability should be with reference to the entry into the territorial waters and

the valuation of goods should be made with reference to the point of time when they are so placed that they can form a part of the mass of the

goods in the country. Referring to Sections 12, 14 and 15, which we have discussed above, the Division Bench observed (Page 212) :

If the argument of the counsel for the petitioners were right, customs duty would be payable even if the ship were to stray into the territorial waters

of India for it would amount to importation of goods into India. So also customs duty would be payable even when the ship which enters the

territorial waters changes its course, turns back and leave the territorial waters before landing the goods on the land mass. Such a construction

leading to absurdity should be avoided as observed in Mercy Docks and Harbour Board v. Twigge, (1898) 67 LJQB 604. It would be difficult to

countenance an interpretation which would lead to such results.

This difficulty would not have been countenanced if only the provisions contained in Sections 52 to 56 of the Act relating to goods in transit were

brought to the notice of the Court as also the other provisions relating to remission of duty on pilfered goods, goods derelict, jetsam, floatsam and

wreck or goods lost, destroyed or abandoned, which we have referred to in detail and discussed above. The Gujarat High Court expressly

referred to Sylvania Laxman''s case (77 BOML R 380) and observed (Page 213) :

Besides, the considerations which we have outlined in the earlier part of our judgment were not highlighted before the Bombay High Court. We

are not prepared to uphold the contention of the petitioners on the basis of the aforesaid decision rendered by the Bombay High Court.

It would be seen that while not expressly disagreeing with the judgment of this Court, the Court refused to apply that rule so far as the valuation of

goods for the purpose of determining the duty payable was concerned. As noticed at the outset, the Division Bench of the Gujarat High Court was

concerned with the point of time with reference to which the assessable value of the goods imported was to be arrived at and not with the question

at which point of time the goods became imported goods and chargeable to duty. We must observe that the point of time with reference to which

the assessable value of the goods envisaged by Section 14 has to be arrived at need not necessarily coincide with the time and place when the

goods become imported goods and become chargeable to duty. They become chargeable to duty u/s 12 when they enter the territorial waters of

India but they have to be valued u/s 14 for the purpose of determining the duty payable and the rate at which the duty is payable must be

determined u/s 15 of the Customs Act. Even for arriving at the assessable value of the goods it is not always the price at which such or like goods

are ordinarily sold or offered for sale for delivery at the time and place of importation, as laid down in Section 14(1)(a) that would govern. Where

such price is not ascertainable, the nearest ascertainable equivalent thereof in accordance with the rules made in this behalf as directed u/s 14(1)(b)

would be the assessable value of the imported goods for the purpose of determining the customs duty payable. There is yet a third mode of

ascertaining the value of the goods and that is u/s 14(2) under which the Government is vested with the power to fix by notification, tariff values for

any class of imported goods or export goods having regard to the trend of value of such or like goods. Thus the valuation of goods for the purpose

of assessment of duty is the price at which such goods or the like are ordinarily sold, or offered for sale, for delivery at the time and place of

importation in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole

consideration for the sale or offer for sale. That is only for the purpose of valuation of goods and not for determining the chargeability of goods to

duty. Since valuation has to be made u/s 14 full effects has to be given to what is contained in that section. If in international trade the price has to

be ascertained with reference to the time and place when the goods are so placed as to become part of the land mass, it does not mean that the

goods become ""goods imported into India"" at that point of time; the goods become goods imported into India and become chargeable to duty u/s

12 when they enter the territorial waters of India. In adopting this distinction we are only giving effect to the provisions of the Customs Act and the

several meanings of the word ""levied"" employed in Section 12 which word takes within its ambit the chargeability, the assessment of the value of

the goods dealt with by Section 14, the determination and calculation of rate of duty dealt with u/s 15 and the recovery of duty for which provision

is made under several other sections of the Customs Act. In our view, such an interpretation far from leading to any anachronism or incongruity

gives full effect to all the relevant provisions of the Customs Act.

51. In Prakash Cotton Mills (P) Ltd. Vs. B. Sen and Others, the Supreme Court was dealing with a case arising u/s 15(1)(b) of the Customs Act

and in view of the devaluation of the rupee the Court had to decide at what rate the customs duty was to be calculated. Was it to be at the rate

prevalent on the date of removal from warehouse or was it to be at the rate in force on the date when the goods were unloaded on the land mass ?

The Court held :

It is thus the clear requirement of cl. (b) of sub-sec. (1) of S. 15 of the Act that the rate of duty, rate or exchange and tariff valuation applicable to

any imported goods shall be the rate and valuation in force on the date on which the warehoused goods are actually removed from the

warehouse..... The Central Government were quite right in taking the view that the rate of duty applicable to the imported goods had to

be determined according to the law which was prevalent on the date they were actually removed from the warehouse, namely, the amended Ss. 14

and 15 of the Act. There is therefore no force in the argument that the requirement of the amended S. 15 should have been ignored simply because

the goods were imported before it came into force, or that their bills of lading or bills of entry were lodged before that date.

It must be noticed that this was not a case of goods which were totally exempt from customs duty. They were chargeable to customs duty u/s 12

and only the rate of duty at which they were chargeable was in question. Are they to be charged at the rate prevalent on the date they were

imported or at the rate in force when they were sought to be removed from the warehouse ? As discussed above, on the day the goods were

imported, that is, when they entered the territorial waters of India, the taxable event occurred and if on that day the goods were wholly exempt

from duty, the question of calculating the rate does not arise at all and, therefore, the further question whether the rate prevalent on the date of

importation, i.e. when they entered the territorial waters or when they are sought to be removed from the warehouse for home consumption also

does not arise. There is nothing in this decision which warrants a different conclusion than the one we have reached in respect of goods which were

totally exempt from duty on the date they were imported into India.

52. In K. Jamel Co. v. Union of India 1981 ELT162 a learned Single Judge of the Madras High Court, in a very short judgment in which there is

not much of discussion, was of the view that the definition of ""import"" as contained in Section 2(23) of the Customs Act stating :

''Import'' with its grammatical variations and cognate expression, means bringing into India from a place outside India. ''Bringing into India''

obviously would mean the clearance of the goods and Section 15, which reads as under puts the matter beyond doubt :

* * * *

Therefore, the relevant date is the date of the presentation of the bill of entry,

* * * *.

That was a case where the goods were wholly exempt from duty when the ship arrived and the total exemption was withdrawn and partial

exemption was allowed before they were cleared for home consumption. The Court repelled the contention that the goods were imported into

India no sooner than they entered the Indian territorial waters and the notification totally exempting them was in force. We do not think it necessary

to discuss this judgment at length for it overlooks the definition of the word ""India"" in Section 2(27) and equates import into India with presentation

of the bill of entry. We do not think this view is sustainable. It is enough to note that the learned Judge himself on a more exhaustive consideration

of the matter in Sundaram Textiles Ltd., Madurai v. Assistant Collector of Customs, Madras and another (1983 ELT909), to which reference has

been made above, conferred with the view expressed in Sylvania Laxman''s case (1983 Mah. Law Journal 909) unhesitatingly declared :

I do not think, I can stick to my old view which was arrived at without reference to these decisions, all of which fully bring about the distinction

between the chargeability under Sec. 12 and the assessment u/s 15.

53. We may now refer to the decisions relied upon by the learned Counsel for the Customs which have taken a contrary view. A Single Judge of

the Calcutta High Court in Shewbuxrai Onkarmall Vs. Asstt. Collector of Customs and Others, concurred with the view taken by the Madras High

Court in K. Jamal C. v. Union of India 1981 ELT 162 . In coming to that conclusion, the learned Judge referred to the decision of the Supreme

Court in The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur Vs. The Municipal

Committee, Wardha, and the decision of the Supreme Court in Prakash Cotton Mills (P) Ltd. Vs. B. Sen and Others, all of which we have

discussed above. In this case too, the meaning of the expression ""import into India"" has not been considered in the light of the definitions contained

in Section 2(23), 2(25) and 2(27) of the Customs Act. It was observed :

..... to give the words their literal meaning would lead to an absurdity because a person may bring goods into India by a ship and may not clear

the goods in India and may re-export it. In that case, would Customs duty be chargeable as soon as the vessel arrives in India ? Take another case

of an Aircraft landing in any Air Port in this country in course of transit. Would Customs Duty be chargeable for any goods being carried in the

Aircraft although no Customs clearance is sought for ?

In so observing, we must respectfully note that the provisions contained in Chapter VIII relating to goods in transit were wholly lost sight of.

Specific provision is made in respect of such goods and they are declared not liable for customs duty and in our opinion that was necessitated only

because u/s 12 all goods brought from foreign countries on entering the territorial waters of India'' become imported goods and become subject to

levy of customs duty. In observing that the words ""imported into India"" have a wider meaning and that would be apparent on a reference to

Section 111(d) of the Act, it was overlooked that ""Indian Customs Waters"" as defined in Section 2(28) of the Act territorial waters of India are

not co-extensive. Customs waters extend beyond territorial waters as defined in Section 5 of the Territorial Waters, ContinentalShelf, Exclusive

Economic Zone and other Maritime Zones Act, 1976 (Act No. 80 of 1976); they may change from time to time just as territorial waters. Section

111(d) which authorises confiscation of goods and conveyances and imposition of penalties in respect of any goods which are imported or

attempted to be imported or are brought within the Indian Customs Waters for the purpose of being imported contrary to any prohibition imposed

by or under the Customs Act or any other law for the time being in force, in our view, does not in any way support the contention that the import is

not complete until goods are unloaded on the land mass. It only lays down that no sooner than the goods are brought into the customs waters for

the purpose of being imported, the provisions of the Customs Act are attracted and if they are not complied with would become liable to the

penalties mentioned in Section 111(d). It does not throw light on when the act of import of goods is completed, much less does it lead to the

conclusion that import is not complete when the goods enter territorial waters of India. That provision does not militate against the conclusion we

have reached that goods become imported goods when they enter territorial waters of India.

54. In Jain Shudh Vanaspati Ltd. v. Union of India 1983 E.L.T. 1688 the Division Bench of the Delhi High Court was considering a case of

exemption from the whole of the customs duty leviable on PVC Resin classified under Chapter 39 of First Schedule to the Tariff Act under Item

No. 39.01/0.6. Expressly disagreeing with the view taken by this Court in Sylvania Laxman''s case 77 Bom. L.R. 380, the Court observed :

Section 12(1) specifically provides that ""Except as otherwise provided in this Act,..... duties of customs shall be levied at such rates as may

be specified under the Customs Tariff Act, 1975.

The Division Bench felt that it was otherwise provided by Sections 14 and 15 of the Customs Act. With great respect, we are unable to share this

view.

Sachar, J. further observed (Page 1697) :

..... it would be wrong to read that Section 15 covers only the quantification but the date with referenced 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 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.

These observations, in our view, assume that chargeability to duty and quantification of duty payable under the Customs Act should be with

reference to the same date. For this assumption there is no justification when Section 15 itself gives an indication that even in regard to goods

imported on the same day (whether importation means, importation into the territorial waters or on to the land mass) the rate of duty will have to

be determined u/s 15 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 quantum of duty leviable will further vary having regard to the rate of duty in force on the date on

which each consignment is cleared from the warehouse.

In conclusion, Sachar, J. Held (Page 1708) :

..... 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.

The learned Judge further observed (Page 1708) :

..... It may be that the goods are imported in the sense of bringing them within India which includes 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 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.

We also agree with this view, but we find it difficult to accept that merely because the rate of duty has to be determined u/s 15 the question of

chargeability of the goods to duty also should be determined with reference to the dates mentioned in Section 15. Chargeability is different from

assessing the duty payable which has to be done with reference to the dates mentioned in Section 15 having regard to Section 14. Even as Sachar,

J. has observed, ""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."" The taxability is determined on the date when the goods enter the territorial waters and amount of duty payable with reference to the dates

mentioned in Section 15. Sachar, J. did not accept the distinction sought to be made in regard to the meaning of the word ""import"" on the basis of

the definitions of the words ""import"" and ""India"" contained in Section 2(23) and 2(27) of the Customs Act, and held that the connotation of the

word ""import"" as stated in The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur Vs. The

Municipal Committee, Wardha, in the context of octroi duty and the opinion of the Supreme Court In Re : Sea Customs Act''s case (AIR 1963

S.C. 1760) as explained by the Supreme Court, was applicable as regards chargeability of goods to the customs duty also and that import would

be complete only when there is ""incorporating and mixing up the goods imported with the mass of property in the local area."" It may be recalled

that the Sea Customs Act, 1878 did not define the words ""import"" or ""India"" occurring in Section 20 of that Act with which the Supreme Court

was mainly concerned and with reference to which the opinion was expressed in, In Re : Sea Customs Act. It was concerned with the goods

imported or exported by sea into or from any ""customs port"" from or to any foreign port. The expression ""foreign port"" was defined in Section 3(e)

of the Sea Customs Act as meaning any place not within the territory of India. Section 20 of the Sea Customs Act was recast and amended by Act

XLV of 1951 and the Supreme Court observed that sub-section (2) thereof has borrowed most of its words from the provisions of clause (2) of

Art. 259. In the absence of any special definition of the word ""import"" and in the face of Section 20 which dealt with goods imported by sea into

any customs port, the meaning of importation explained in paragraph 26 of the judgment in In Re : Sea Customs Act''s case (AIR 1963 S.C.

1760) (at page 1776) cannot be bodily lifted and applied to a situation required to be considered u/s 12 of the Customs Act. To hold that that

view will prevail would be ignoring the special definition contained in the Customs Act. If it is borne in mind that the question of rate of customs

duty comes only when the goods are chargeable to duty and while chargeability is determined u/s 12, the duty payable is determined having regard

to the rates mentioned in Section 15 on the value of the goods assessed u/s 14, the whole scheme of the Act unfolds itself and everything would fall

into its place. In observing that ""Synthetics Chemicals'' case (1981 E.L.T. 414) came to the correct conclusion that the rate prevalent on the day of

clearance will apply u/s 15(1)(b) of the Customs Act and having come to above conclusion the Bench could not still have distinguished Sylvania

Laxman''s case and should have held it to be wrongly decided"", we are afraid again the distinction between chargeability of goods to customs duty

and the rate at which duty is leviable, was ignored. If the goods were wholly exempt from duty at the time when, they became imported goods and

they so became no sooner than they entered the territorial waters of India, the question of the rate at which the duty payable should be calculated

and collected would not arise; consequently no question of quantifying the duty with reference to the date of clearance for home consumption

would arise in such a case. But, if they were only partially exempt from duty on that date, quantifying the amount of duty payable thereon would

arise. The duty would have to be calculated u/s 15 with reference to the rates prevalent on the date goods are sought to be cleared fro home

consumption. It is this distinction that was appreciated by Synthetics Chemicals'' case in holding that Sylvania''s case was correctly decided. In

fact, Synthetics and Chemicals'' Case accepted the dicta laid down by Sylvania''s case that the goods become imported into India as soon as they

enter the territorial waters of India. Sachar, J. referred to Section 22 of the Customs Act which provides for abatement of duty on damaged or

deteriorated goods. We are unable to comprehend how the learned Judge could hold that it supports the contention of the Customs authorities. It

is precisely because such goods constitute imported goods, they became liable to duty even though damaged and not cleared for home

consumption, the legislature thought it inequitable to impose duty on such goods and provided for abatement of duty. If the goods were not liable

to payment of duty until they are cleared, provision for abatement of duty would not have been necessary. Such a provision was made in Section

22 only on the footing that even before they are cleared for home consumption these goods became liable to duty. Section 22, as discussed above,

is a provision clearly disclosing the legislative intent that the goods which have entered the territorial waters become imported goods and though not

cleared for home consumption would be liable to duty. We are, therefore, unable to agree with the view taken by Sachar, J. that import is when

the goods are unloaded from the ship and so placed as to form part of the mass of goods in the country for consumption. The compelling reason

for reaching that conclusion according to the learned Judge is that if the goods in a ship entering the territorial waters of India were deemed to be

imported goods and the ship was only on the onward journey to another country, customs duty would be payable. But that totally overlooks the

provisions contained in Chapter VIII of the Customs Act.

Sachar, J. further observed (page 1704) :

..... Where there is total exemption it amounts to nothing more than saying that ''nil'' rate of duty is payable. This does not in any manner make

Section 15 of the Act inapplicable.

To lay down that proposition support was sought to be gained from the observation of the Supreme Court in N.B. Sanjana, Assistant Collector of

Central Excise, Bombay and Others Vs. The Elphinstone Spinning and Weaving Mills Company Ltd., made with reference to Rule 10 of the

Central Excise Rules which provides that where duties or charges have been short-levied through inadvertance the persons chargeable with the

duty or charge so short-levied shall pay the deficiency on a written demand by the officer being made within three months. The observation of the

Supreme Court relied upon is (page 1704) :

That provision will apply even to cases where there has been a nil assessment in which case the entire duty later on assessed must be considered

to be the duty originally short-levied.

It must be noticed that the Supreme Court was making that observation with regard to goods which were dutiable goods and through inadvertance

no duty was levied at all. Non-levying of duty on dutiable goods was also treated as short-levy. The Delhi High Court tears the observation of the

Supreme Court from its context to hold that even after the goods are exempted u/s 25(1) they should be deemed and to be subject to ""nil"" duty.

55. The Delhi High Court further observed that in Sylvania Laxman''s case the Bombay High Court ""Miss appreciated the position in law, for as

we have pointed out above, notwithstanding the total exemption, goods remain chargeable by virtue of Section 12(1) of the Act (the entry in Tariff

Act is not deleted). Only effect is that duty is not payable because of total exemption. Goods can be said to be not chargeable only when the said

goods do not fall within the entry in the Tariff Act."" The Delhi High Court is thus of the view that where goods are exempted from duty by

notification u/s 25 such exemption would be only from the rate of duty and are in fact chargeable at ''Nil Rate'' and when that notification is

withdrawn or modified and a certain rate is fixed it would be chargeable to duty at that rate. We are unable to agree with either of these

propositions. These observations overlook the distinction pointed out by us earlier between an exemption under sub-section (1) of Section 25

which exempts goods from the levy of duty itself, and the exemption under sub-section (2) which only exempts from payment of duty. In the

former case goods cease to be dutiable goods u/s 12 and in the latter case while the goods remain dutiable u/s 12, they are only exempt from

payment of duty. As discussed above, the effect of exemption notification under sub-section (1) of Section 25 is that the goods are not chargeable

at all to any duty. In Union of India and Others Vs. Khalil Kacherim, a Division Bench of the Delhi High Court held (page 420) :

.... there is no import within the meaning of the Customs Act in a case where the goods are entrusted u/s 80 and are not carried by the passenger

beyond the customs barrier.

The case turned upon the construction of the term ""baggage"" as used in Sections 77 and 80 of the Act and the Tourist Baggage Rules, 1958. On

the question whether provisions of Sections 111(d) and 110(1) of the Act which deal with confiscation of improperly imported goods was

attracted, the court held that Sections 79 and 80 were not confined merely to bona fide baggage within the meaning of Section 79 of the Act or to

personal effects as defined by clause (3) of the Tourist Baggage Rules but also includes any article contained in the baggage even though it be in

commercial quantities. Section 79 exempts bona fide baggage of a passenger from levy of duty. Section 79 authorises the officer to allow such

baggage to pass free of duty if he is satisfied that it has been in use for such minimum period as may be specified in the rules. He may also allow it

to pass free of duty if he is satisfied that it is for the use of the passenger or his family. Section 80 further provides that where the baggage of a

passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made u/s

77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India. In the

context of these provisions it was held that unless the goods are brought into the country for the purpose of use, enjoyment, consumption, sale or

distribution so that they are incorporated in and mixed up with the mass of the property in the country, they cannot be said to have been imported

or brought into the country. This decision, in our view, is with reference to the special provisions contained in Sections 79 and 80 of the Act and

does not, in any way, limit the ambit of Section 12, which deals with goods which are intended to be brought to the land mass of India and become

imported goods the moment they enter the territorial waters of India. That decision merely lays down that goods which form part of the personal

baggage of a passenger, are not liable for confiscation as imported goods before they pass the customs barrier, it does not declare that taxable

event does not occur at the moment the goods enter the territorial waters of India. The subject and context of Sections 79 and 80 required such a

construction.

56. A Single Judge of the Kerala High Court in Aluminium Industries Ltd. Vs. Union of India (UOI), after considering the decisions in Sylvania

Laxman"s case 77 Bom. L.R. 380 and Sundaram Textiles v. Assistant Collector 1983 E.L.T. 909 differed with the view taken in Sylvania

Laxman"s case. Dealing with a case of total exemption from duty on the date when the ship entered the territorial waters the learned Judge

observed (page 188) :

As there is no decision of this Court or of the Supreme Court to bind me, I would venture to suggest that a different approach is possible in the

case of total exemption also.

The learned Judge proceeded to hold on an examination of Section 2 read with sections 12, 14, 15, 17, 25, 30, 32, 33, 34, 37 and 45 to 49 and

the relevant definitions as under (page 188) :

.... The charge u/s 12 is on "imported goods". Though the Section uses the expression "goods imported into India" Sections 13, 15, 17 and many

other relevant provisions show that the legislative intention is to impose customs duty on "imported goods", as defined in Section 2(25). Under the

definition clause, the goods retain the character of imported goods till they are cleared for home consumption u/s 46 or 68. The provisions of

Section 12 would, therefore, continue to apply to them until they are cleared. Even if they were totally exempt from duty at the time they entered

the territorial waters, a rate of duty could still fasten on them u/s 12, so long as they retain the character of imported goods, if an appropriate

notification is issued in the meanwhile. And if a rate becomes applicable at any time before clearance, that will be a rate for the purpose of Section

12, the determination of which will have to be done u/s 15. In other words, the circumstance that there was no duty at the point of time when the

vessel entered the territorial waters, does not altogether take the goods from out of the provisions of Section 12 the charge under the Section can

arise and operate at a "rate" at any time after such entry and before the goods are cleared.

While we agree that the goods continue to be imported goods from the moment they enter the territorial waters and until they are cleared for home

consumption as defined in Section 2 of the Customs Act, the taxable event must occur at some particular point of time. We have to ascertain if

duty was leviable with reference to the time when the taxable event occurred. Unless the legislature expressly provided otherwise, duty is leviable

u/s 12 on goods imported at that point of time the duty is not imposed on the goods as such but on the act of importation. In our view if the goods

acquire the character of imported goods as soon as they enter territorial waters of India, even as accepted in that judgment, the taxable event

occurs, at that moment. The fact that they continue to be imported goods until they are cleared does not mean that taxable event occurs once again

at any subsequent point of time or as and when they are sought to be cleared. The learned Single Judge also held (page 189) :

It is not easy to imagine that the policy of the Act is to impose a duty on the more act of bringing goods into the territorial waters of India, without

regard to the question whether they are unloaded, cleared and allowed to become part of the mass of the goods within the country. Chargeability

cannot be considered in isolation or in the abstract, without reference to the goods on which the charge falls, and the importer who has to meet the

charge..... ..... The inclusive definition in Section 2(27) is not designed to pinpoint the only point of time at which

chargeability u/s 12 could attach to the goods; at the most, the definition specifies only the earliest point of time from which the goods could be

treated as dutiable. It does not preclude a charge being imposed at any subsequent point of time, so long as the goods continue to be ""imported

goods"" for the purpose of Section 12.

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 even occurs. May be, the

legislature 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.

57. The observation in paragraph 14 of the judgment in Aluminium Industries Ltd. Vs. Union of India (UOI), ""as pointed out by Sukumaran, J. in

Shri Ramalinga Mills v. Assistant Collector (1982 K.L.J. 314) 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 a way without unloading

goods in a customs port"" also overlooks the specific provisions contained in Chapter VIII with regard to goods in transit. In all these cases, it is

assumed that unless goods are so placed as to enter the main stream of trade and mix with the goods on the land mass, import is not complete.

That, in our view, is not justified, having regard to the express provisions for warehousing of goods under the Customs Act. Even after the goods

are kept in the warehouse and before they are cleared for home consumption, they could still be sold though in fact they would not become part of

the goods on the land mass. If such goods could be treated as imported goods even though they are not cleared for home consumption and they

ought to be so treated, as per the definition, there is no reason why any difficulty should be experienced in treating the goods as imported into

India, no sooner than they enter the territorial waters of India. Sale, consumption or use is, no doubt, the object of importation and unless they are

cleared for home consumption they do not mix with the goods on the land mass. But since they are imported goods the moment they enter the

territorial waters, customs duty become leviable on them. The taxable event having occurred at that point of time, it has to be determined whether

they are exempt from duty or not on that date. If they are exempt from duty, no question of calculating the duty payable arises at any later point of

time; if they are chargeable to some duty and are not wholly exempt then only the question arises as to what duty is payable.

58. If the goods are wholly exempt from duty as against being partially exempt from such duty, when the goods enter the territorial waters, they

cannot be subjected to duty even if the exemption notification is withdrawn or modified before the bill of entry is presented or the goods are

cleared for home consumption, as the case may be. But, if the goods, when they enter the territorial waters of India are subject to levy of some

customs duty by virtue of partial exemption from duty granted u/s 25(1) of the Customs Act, the goods being chargeable to customs duty, it will be

charged at the rates in force on the date when the bill of entry was presented or on the date when the goods are sought to be cleared for home

consumption, as the case may be. Having considered the matter in the light of the several decisions referred to above, we are of the opinion that

the opinion expressed in Sylvania Laxman"s case 77 Bom. L.R. 380 still holds goods. In view of the foregoing discussion our answers to question

Nos. 1 and 2 are as follows.

59. Question No. 1 : Under the Customs Act the event of importation occurs when the goods from a place outside India enter the territorial waters

of India.

60. Question No. 2 : The rate at which imported goods are chargeable to customs duty has to be determined u/s 15 of the Customs Act, provided

such goods were not wholly exempt from customs duty when they entered the territorial waters of India. Customs duty has to be charged on

imported goods if they are being cleared immediately at the rate in force on the date of presentation of Bill of Entry, and if warehoused, at the rate

in force on the date when the goods are sought to be cleared for home consumption. If, however, the goods were wholly exempt from customs

duty by virtue of a Notification u/s 25(1) of the Customs Act on the date when the goods entered the territorial waters of India, no customs duty

would be levied even if the exemption were withdrawn before the goods are cleared for home consumption; hence the question as to at what rate

the customs duty should be levied on such goods, does not arise.

61. Question No. 3 : The Customs Act is an Act to consolidate and amend the law relating to customs. Section 12 of the Customs Act envisages

only levy of duties of customs and no other duties. It makes provision for levy of duties of customs at such rates as may be specified under the

Customs Tariff Act, 1975 or any other law for the time being in force. Reference to the Customs Tariff Act, 1975 or any other law for the time

being in force in Section 12 of the Customs Act is only for the purpose of rates at which duties of customs envisaged by the Customs Act are to be

levied. Any other duty mentioned in the Customs Tariff Act or any other law for the time being in force would not be customs duty; those would be

such other duties as are leviable under those enactments. The countervailing duty envisaged u/s 2A of the Tariff Act on any article imported into

India is in addition to the customs duty leviable thereon u/s 12 of the Customs Act. The provisions of the Customs Act, 1962 and the rules and

regulations made thereunder are made applicable to the duty chargeable u/s 2A of the Tariff Act by sub-Section (5) thereof. Likewise, u/s 3 of the

Customs Tariff Act additional duty is leviable on goods imported, that is, in addition to the customs duty chargeable u/s 12 of the Customs Act.

Countervailing duty or additional duty may partake the same character as basic customs duty which is admittedly leviable u/s 12 of the Customs

Act. Such additional duty is still distinct from basic customs duty as such. Whether the charging section for the levy of countervailing duty and

additional duty is Sections 2A and 3 respectively of the Tariff Act and the Customs Tariff Act or Section 12 of the Customs Act, it is only u/s

25(1) of the Customs Act that the Central Government may exempt goods from the whole or any part of the duty leviable thereon. As basic

customs duty is distinct from countervailing duty and additional duty, a notification u/s 25(1) of the Customs Act may exempt goods of any

description from the whole or any part of basic customs duty and likewise from the whole or any part of countervailing duty or additional duty. A

notification under sub-section (1) of Section 25 may exempt the imported goods from the whole or any part of the duty of customs leviable thereon

or by a special order under sub-section (2) of Section 25 from the payment of such duty.

Under sub-section (5) of Section 2A of the Tariff Act the provisions of the Customs Act, 1962 and the rules and regulations made thereunder

including those relating to refunds and exemptions from duties are made applicable to duties chargeable u/s 2A of the Tariff Act. So is the position

with respect to additional duties envisaged by Section 3 of the Customs Tariff Act and the exemptions from the said levy. Sub-section (6) of

Section 3 of the Customs Tariff Act provides as under :

The provisions of the Customs Act, 1962 (52 of 1962), and the rules and regulations made thereunder, including those relating to drawbacks,

refunds and exemption from duties, shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties

leviable under that Act.

As the provisions of the Customs Act are thus made applicable to the respective enactments in regard to grant of any exemptions, any exemption

from the levy of countervailing duty or additional duty would be an exemption granted by Central Government in exercise of the powers conferred

under sub-section (1) of Section 25 of the Customs Act read with the provisions of the respective enactments.

A notification u/s 25(1) of the Customs Act read with Section 3(6) of the Customs Tariff Act may exempt such goods wholly or partially from the

levy of additional duty as well. When exemption is granted by the Central Government u/s 25(1) of the Customs Act, that can operate only in

respect of such duty as is specifically mentioned in the particular notification. A notification u/s 25(1) exempting goods from levy of basic customs

duty cannot by itself exempt such goods from the levy of countervailing duty or additional duty leviable under the Tariff Act or the Customs Tariff

Act, 1975. Merely because goods are exempted from levy of basic customs duty leviable u/s 12 of the Customs Act, it does not follow that they

are also exempt from levy of countervailing duty or additional duty; nor does exemption from levy of countervailing duty or additional duty, wholly

or partially, result in exemption of the goods from the levy of basic customs duty, wholly or partially. As exemption granted from the levy of basic

customs duty u/s 25(1) read with Section 12 of the Customs Act does not by itself operate as exemption from the levy of countervailing duty or

additional duty under the Tariff Act or the Customs Tariff Act, goods imported, even though exempted from basic customs duty, may still be

subject to the 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. In fact, a reference to

the notifications issued from time to time show that the Central Government in exercise of this power of exemption u/s 25(1) of the Customs Act in

some cases exempted the goods only from levy of basic customs duty, wholly or partially, and in some cases only from the levy of additional duty,

wholly or partially. Some notifications may have even exempted the goods wholly or partially from the levy of both basic customs duty and

additional duty.

Our answer to the third question, therefore, is : If the goods were wholly exempt from basic customs duty leviable under the Customs Act, when

they entered the territorial waters of India, no basic duty of customs would be leviable thereon even if such exemption were withdrawn u/s 25(1) of

the Customs Act before the goods are released for home consumption. Even if such goods were not exempt from the levy of countervailing duty

u/s 2A of the Tariff Act or additional duty u/s 2 of the Customs Tariff Act, they would still be treated as goods wholly exempt from customs duty

for the purpose of the levy of basic customs duty. Only if the goods were chargeable to some basic customs duty under the Customs Act, when

they entered the territorial waters of India, then the rates in force at the time when the bill of entry is presented or at the time when the goods are

sought to be cleared for home consumption, as the case may be, would be applicable and the basic duty would be quantified and demanded at

those rates. If the goods were wholly exempt from the levy of basic customs duty as well as additional duty and the exemption from additional duty

is withdrawn before the goods are cleared for home consumption, even then, it would have no effect in regard to the exemption from levy of basic

customs duty. Basic customs duty would not be leviable thereon.

If the goods partially exempt from the levy of basic customs duty and additional duty are sought to be cleared after the partial exemption was

withdrawn in respect of only basic customs duty, then the basic customs duty will be chargeable under Sections 14 and 15 of the Customs Act at

the value and the rates prevalent on the date of clearance. Likewise, if partial exemption from the levy of additional customs duty is withdrawn

before the date of clearance of the goods they would be chargeable on the value and at the rates mentioned in sections 14 and 15 of the Customs

Act.

In short, if the goods are wholly exempt from basic customs duty irrespective of whether they are exempt from the levy of additional duty, wholly

or partially, they would still be exempt from the levy of basic customs duty, even if the exemption notification were withdrawn before the date of

clearance of the goods. The crucial date for determining whether basic customs duty was leviable is the date on which the goods were imported,

that is, when they entered the territorial waters of India. If on that date they were wholly exempt from the levy of basic customs duty they would

not be liable for such duty even if they were liable for levy of additional duty. Withdrawal of exemption from levy of additional duty will not affect

the levy of basic customs duty. Likewise, withdrawal of exemption from the charge of basic customs duty after the goods are imported and before

they are cleared for home consumption will not affect levy of additional duty. If the goods were wholly exempt from the levy of customs duty on

the date when they were imported, it would not make any difference to our answer to the second question even if such goods were chargeable to

countervailing duty or additional duty on that date and the notification exempting the goods from basic customs duty is withdrawn before those

goods were released for home consumption.

The answer to the second question would also not be affected in any way by the fact that additional duty or countervailing duty was leviable on the

date of import of the goods or the goods were wholly exempt or partially exempt from such levy. It would also not make any difference to our

answer whether countervailing duty or additional duty is held to be a duty chargeable u/s 2A of the Tariff Act and u/s 3 of the Customs Tariff Act

respectively or those duties are chargeable u/s 12 of the Customs Act. In other words, whether Section 12 of the Customs Act is the charging

section or Section 2A of the Tariff Act or Section 3 of the Customs Tariff Act respectively are the charging sections in respect of countervailing

duty or additional duty, our answer to the second question would remain unaffected.

62. Question No. 4 : In view of our answer to the third question, it is unnecessary to answer the fourth question.

63. Matters may now be placed before the Division Bench along with the answers to the questions referred to the Full Bench.

64. Ordered accordingly.

65. Costs in this matter will be costs in the writ petitions.