

**(1992) 01 BOM CK 0070**

**Bombay High Court**

**Case No:** Writ Petition No. 1918 of 1982

Indian Tool Manufacturers Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

**Date of Decision:** Jan. 6, 1992

**Acts Referred:**

- Central Excises and Salt Act, 1944 - Section 11B

**Citation:** (1992) 59 ELT 379

**Hon'ble Judges:** K. Sukumaran, J; B.P. Saraf, J

**Bench:** Division Bench

**Advocate:** Shri E.P. Bharucha and Miss. S.V. Khed, instructed by M/s. Mulla and Mulla and Graigie Blunt and Caroe, for the Appellant; Shri J.P. Devadhar, for the Respondent

### **Judgement**

K. Sukumaran, J.

The petitioners had imported the goods i.e. alloy steel described in Item 4 mentioned in Notification Exhibit A dated 28-2-1982. That notification was repealed on 20-8-1982. In respect of goods imported during the period between 28-2-1982 and 20-8-1982 authorities sought to levy auxiliary duty. The petitioners protested against the same. Interim relief permitting the petitioners to release the goods on furnishing Bank Guarantee was granted.

2. The question involved in this Writ Petition is similar to the one considered by the Full Bench of this Court in [Apar Private Ltd. and others Vs. Union of India and others,](#)

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3. In the light of the principle laid down therein, the exemption from duty enjoyed by the goods imported by the petitioners during the period of operation of Notification dated 20-2-1982, cannot be disturbed or deprived of by operation of later Notification. The said principle has equal application in relation to auxiliary duty. In that view of the matter, the claim of the petitioners not to be burdened by duty cast on the basis of Notification dated 28-2-1982 is justified. It has only to be

allowed.

4. A portion of goods was cleared on payment of duty and the balance was cleared on furnishing the Bank Guarantee. The Bank Guarantee shall stand discharged in the light of the observation and conclusion as indicated above.

5. Counsel for the Respondents contends that the question of refund is subject to the Central Excises and Customs Laws (Amendment) Act, 1991. It is unnecessary for us to make any observations in regard to the claim of the petitioners for refund or the stand of the respondents to resist the same. As and when the claim is made the authorities will adjudicate upon the same in accordance with law.

6. Counsel prayed for a direction to the Prothonotary to return the Bank Guarantee. We find that such a direction is superfluous. In the light of the observations in the judgment, we are sure that in such cases, without specific direction, the Prothonotary would take action for return of the Bank Guarantee.

7. We allow the Writ Petition granting the above reliefs.

8. Certified copy will be furnished expeditiously.