

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.37 OF 2014

Balkrishna Industries Ltd.	... Petitioners
v/s	
The Union of India and others	... Respondents

Mr V. Sridharan, Sr. Counsel with Mr Prakash Shah, Mr Jas Sanghavi, Ms Sarah Maay Mathew and Ms Shilpi i/b M/s PDS Legal for Petitioner.

Mr Pradeep S. Jetly for the Respondents

**CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA JJ.**

Reserved On : 1st December, 2015.

Pronounced On : 23rd December, 2015.

Judgment [Per B.P.Colabawalla J.] :-

1. Rule. Respondents waive service. By consent of parties, rule made returnable forthwith and heard finally.

2. By this Petition under Article 226 of the Constitution of India, the Petitioner seeks a declaration that the China Specific

Safeguard Duty imposed under section 8C of the Customs Tariff Act, 1975 (for short, “**CTA, 1975**”) are exempted under Notification No.96/2009-Cus. dated 11th September, 2009 as well as for a writ of mandamus or any other appropriate writ, order or direction striking down the phrase “under section 8B” appearing in the opening portion of the said Notification. As a consequence, relief is also sought to quash and set aside the Show Cause Notice dated 3rd October, 2013 issued by Respondent No.3 herein.

3. In a nutshell, it is the case of the Petitioner that vide Notification No.96/2009-Cus. dated 11th September 2009, goods imported into India against Advanced Authorization issued in terms of paragraph 4.1.3 of the Foreign Trade Policy, are exempted from (1) whole of the Customs Duty leviable thereon; (2) whole of the Additional Duty under section 3 of the CTA, 1975; (3) Anti-Dumping Duty under section 9A of the CTA, 1975; and (4) Safeguard Duty under section 8B of the CTA, 1975 subject to the terms and conditions set out in the said Notification. However, no exemption is granted from the Transitional Product Specific Safeguard Duty leviable under section 8C which is imposed on goods imported into India specifically from the People’s Republic of

China. It is the case of the Petitioner that the nature of the Safeguard Duty imposed under section 8B as well as under section 8C is one and the same and there is no intelligible differentia for granting exemption from one and denying exemption from the other. It is in these circumstances that the reliefs and in the nature set out above, have been sought in this Writ Petition.

4. The brief facts to decide the present controversy are that the Petitioner is a Public Limited Company engaged in manufacturing Pneumatic Tyres mainly used for special applications such as agricultural tractors and their various attachments, industrial and construction equipments etc. Carbon Black is one of the essential inputs which goes into the manufacture of Automobile Tyres. This input (Carbon Black) is procured by the Petitioner either locally or is imported into India upon payment of duty or duty free, as the case may be. It is not in dispute that Carbon Black imported into India from the People's Republic of China is subjected to a Transitional Product Specific Safeguard Duty under section 8C of the CTA, 1975. Respondent No.1 is the Union of India through the Ministry of Law and Justice. Respondent No.2 is the Union of India through the Ministry of Finance, Department of Revenue. Respondent No.3 is the Officer of Respondent No.2

discharging his duties under the Customs Act, 1962 and is the officer who has issued the impugned Show Cause Notice dated 3rd October, 2013.

5. It is the case of the Petitioner that it has been importing Carbon Black into India from the People's Republic of China by availing the benefit of Notification No.96/2009-Cus. dated 11th September 2009, which according to the Petitioner, grants exemption to imports from (1) whole of the Customs Duty leviable thereon; (2) whole of the Additional Duty under section 3 of the CTA, 1975; (3) Anti-Dumping Duty under section 9A of the CTA, 1975; and (4) Safeguard Duty under section 8B the CTA, 1975.

6. It is the case of the Petitioner that despite the fact that the said Notification No.96/2009-Cus. did not specifically exempt import of goods from payment of Transitional Product Specific Safeguard Duty levied under section 8C of the CTA 1975, Carbon Black imported by the Petitioner from the People's Republic of China was allowed to be cleared by the authorities under the said Notification without the payment of any Safeguard Duty. Accordingly, the Petitioner was importing Carbon Black from the People's Republic of China without payment of customs duties

including Anti-dumping Duty under section 9A as well as the Transitional Product Specific Safeguard Duty under section 8C of the CTA, 1975. Annexure 'C' to the Petition are copies of the bills of entry showing the imports of Carbon Black from the People's Republic of China against Advance Authorisation by availing the benefit of the aforesaid Notification.

7. Despite the fact that the Petitioner was allowed to import Carbon Black from the People's Republic of China without the payment of Transitional Product Specific Safeguard Duty levied under section 8C of the CTA 1975, it appears that the Revenue is now taking a stand that the exemption in terms of Notification No.96/2009-Cus. is not available for Safeguard Duty imposed under section 8C of the said Act. According to the Revenue, exemption in terms of the said Notification is available only to Basic Customs Duty, Additional Duties of Customs, Special Additional Duties of Customs, Anti-dumping Duty levied under section 9A and Safeguard Duty levied under section 8B of the CTA, 1975. In other words, it is the stand of the Revenue that the benefit of the said Notification could not be extended to the Transitional Product Specific Safeguard Duty levied under section 8C of the CTA, 1975 which was a specific provision for imports from the People's

Republic of China. In view of the aforesaid stand of the Revenue, a Show Cause Notice dated 3rd October, 2013 was issued to the Petitioner by Respondent No.3 proposing to deny the benefit of the said Notification in respect of imports of Carbon Black made in the past from the People's Republic of China.

8. Being aggrieved by the aforesaid stand of the Revenue, the Petitioner is before us in our writ jurisdiction under Article 226 of the Constitution of India seeking the reliefs, and in the nature as set out earlier in the judgment.

9. In this factual background, Mr Sridharan, learned Senior Counsel appearing on behalf of the Petitioner, submitted that Safeguard Duty levied under sections 8B or 8C or Anti-dumping Duty levied under section 9A of the CTA, 1975 are really in the nature of a trade protection measure rather than a revenue measure. He submitted that Safeguard Duty or Safeguard measures are applied when import of a particular product in India increases to the extent that it causes or threatens to cause serious injury to domestic producers of like or directly competitive products. In other words, Safeguard Duty is only a temporary measure and is product specific unlike Anti-dumping Duty which is

country specific. He submitted that initially based on the WTO agreement on safeguards, India, w.e.f. 14th May, 1997, enacted the provisions relating to Safeguard Duty on products imported into India in terms of section 8B of the CTA, 1975. It was the submission of Mr Sridharan that section 8B is the general provision in terms of which the Central Government has the power to impose Safeguard Duty on any article, as specified, imported into India, if the import of the same into India is causing serious injury to the domestic industry.

10. After the People's Republic of China became a member of the WTO on 11th December 2001, section 8C was inserted in the CTA, 1975 with effect from 11th May, 2002. According to Mr Sridharan, section 8C empowers the Government to impose a Transitional Product Specific Safeguard Duty on specified goods imported from China. According to Mr Sridharan, under section 8B of the CTA, 1975 Safeguard Duty is imposable on particular goods imported from any country across the world including China. Under section 8C, Safeguard Duty is imposable only on those specified goods imported from China. The logic behind levying Safeguard Duty is to give time to the domestic producers to adjust to international competition, particularly when there is an increase

in the quantity of imports into India of a particular product. Mr Sridharan submitted that the amount of Safeguard Duty that is imposed on any specified product does not exceed the amount which has been found adequate to prevent a serious injury that is sought to be negated by virtue of such imposition. In support of this, Mr Sridharan placed reliance on the *Customs Tariff (Identification and Assessment of Safeguard Duty) Rules 1997*. In other words, it was the submission of Mr Sridharan that Safeguard Duty is leviable to the extent of the injury margin. This, according to Mr Sridharan, was the common underlining factor in sections 8B as well as 8C of the CTA, 1975.

11. Mr Sridharan submitted that imposing duties under sections 8B, 8C and/or 9A of the CTA, 1975 ensures that the domestic industry in India is protected. However, such imposition has the effect of prejudicially affecting the user industry. For example, manufacturers of pistons in India would be the domestic industry and manufacturers of engines using those pistons would be the user industry. If Safeguard Duties are imposed on imports of pistons, it protects the piston manufacturers in India but prejudices the engine manufacturers. This according to Mr Sridharan is a policy decision of the Government which is not under challenge in

the present Writ Petition. He submits that this policy is evolved by the Government after carefully weighing the competing interests of the domestic industry vis-a-vis the user industry and wherever the Government feels that the domestic industry ought to be protected, it takes remedial measures by imposing Safeguard Duties on specified products.

12. Mr Sridharan would submit that however when it comes to export of goods manufactured in India, the Government of India has carved out an exception to the aforesaid principle and prefers the user industry over the domestic industry. It is in this light that exemptions are granted, and in the nature set out in the Notification No.96/2009-Cus. This Notification grants exemption to goods imported into India against Advance Authorisation from payment of Anti-dumping Duty and Safeguard Duty, amongst others, under sections 9A and 8B of the CTA, 1975 respectively. Mr. Sridharan would submit that looking to the nature of the Safeguard Duty imposed under section 8B and Section 8C and the object sought to be achieved thereby, there is no intelligible differentia in the said Notification for granting exemption from payment of Safeguard Duty under section 8B and denying the same under section 8C. According to Mr Sridharan, it has been the

consistent Foreign Trade Policy of Government of India that goods imported into India, when used in the manufacture of final products exported out of India, are exempted from payment of customs duties including Safeguard Duty as well as Anti-dumping Duty. In this regard, Mr Sridharan placed reliance on the Export Import Policy 1997-2002, Export Import Policy 2002-2007, Foreign Trade Policy 2004-2009, Foreign Trade Policy 2009-2014 and Foreign Trade Policy 2015-2020. Mr Sridharan, relying upon the aforesaid Policies submitted that it was clearly the intention of the Government to exempt Safeguard Duty on goods imported into India when they were used in the manufacture of the final product that was exported out of India. According to Mr Sridharan, the logic behind the aforesaid Policy was that only goods are to be exported out of India and not the taxes. This would give the Indian exporters a level playing field in the international market and the Indian origin goods would be competitive in today's global markets. To give effect to this Policy, the Ministry of Finance issued Notifications from time to time. Notification No.96/2009-Cus. dated 11th September, 2009 was one such Notification that was issued to implement this Policy. Mr Sridharan would submit that despite the Foreign Trade Policy taking within its sweep exemption of Safeguard Duty, the Notification issued to implement the said Policy

only exempted Safeguard Duty imposed under section 8B of the CTA, 1975. Looking to the Foreign Trade Policies of the Government and the object sought to be achieved thereby, Mr Sridharan submitted that the omission of section 8C from the said Notification was clearly a mistake or an oversight by the Government.

13. In the alternative, Mr Sridharan submitted that in any event the said Notification has been issued to give effect to the Foreign Trade Policy. The Foreign Trade Policy formulated from time to time by the Government of India exempts payment of all Safeguard Duties irrespective of whether they are imposed under sections 8B or 8C of the CTA, 1975. If this be the case and Notification No.96/2009-Cus. being issued to give effect to the said Policy, the same was clearly at variance with the Foreign Trade Policy as it sought to grant exemption from payment of Safeguard Duty imposed under section 8B whereas it sought to deny the exemption from payment of Safeguard Duty imposed under section 8C of the CTA, 1975.

14. Mr Sridharan would additionally submit that the Government, under Notification No.96/2009-Cus. dated 11th

September 2009, whilst exempting imported goods from Safeguard Duty imposed under section 8B and denying the exemption under section 8C for goods imported from the People's Republic China, was discriminating between the two types of imports and its actions were violative of Article 14 of the Constitution of India. Mr. Sridharan submitted that there is no justifiable basis for granting exemption from one and not the other. This argument proceeded on the basis that the object of both Safeguard Duties (imposed under sections 8B and 8C) was one and the same and that is to ensure that Safeguard Duty is imposed when any article is imported into India in such increased quantities and under such conditions so as to cause or threaten to cause serious injury to the domestic industry. The only difference was that whilst Safeguard Duty imposed under section 8B was on any article imported from any country in the world, Safeguard Duty imposed under section 8C was on any article that was specifically imported from the People's Republic of China. This being the case, it was the submission of the Mr Sridharan, that by not including the exemption from payment of Safeguard Duty levied under section 8C in Notification No.96/2009-Cus. dated 11th September 2009, the Government's actions suffered from the vice of discrimination and was thus violative of Article 14 of the Constitution of India. In support of this proposition, Mr

Sridharan relied upon the following judgments:-

- (i) Union of India v/s N.S. Rathnam and Sons,¹**
- (ii) Budhan Choudhry v. State of Bihar;²**
- (iii) Ram Krishna Dalmia v. Justice S.R. Tendolkar;³**
- (iv) Indian Express Newspapers v. Union of India;⁴**
- (v) State of U.P. v. Deepak Fertilizers & Petrochemical Corpn. Ltd.;⁵**
- (vi) State of Bihar v. Suprabhat Steel Ltd.;⁶ and**
- (vii) State of U.P. v. Renusagar Power Co.⁷**

15. Mr. Sridharan would therefore submit that this Court may issue a writ of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India striking out the phrase “under section 8B” appearing in the opening portion of Notification No.96/2009-Cus. dated 11th September, 2009 and for a declaration that the Transitional Product Specific Safeguard Duty imposed under section 8C for imports from the People’s Republic of China is also exempted / covered by Notification No.96/2009-Cus. dated 11th September, 2009.

1 2015 (322) E.L.T. 353 (S.C.)

2 AIR 1955 SC 191 : (1955) 1 SCR 1045

3 AIR 1958 SC 538 : 1959 SCR 279

4 (1985) 1 SCC 641

5 (2007) 10 SCC 242

6 (1999) 1 SCC 31 : 1999 (112) STC 258

7 (1988) 4 SCC 59 : AIR 1988 SC 1737

16. On the other hand, Mr Jetly, learned counsel appearing on behalf of the Revenue, submitted that Carbon Black imported by the Petitioner from China are admittedly subjected to a Safeguard Duty under section 8C of the CTA, 1975. In this regard, Mr Jetly brought to our attention Notification No.4/2012-Cus.(S.G.) dated 5th October, 2012 in which it is stated that in the matter of import of Carbon Black (for rubber application) from the People's Republic of China, the Director General (Safeguard) had come to the conclusion that the increased imports of Carbon Black (for rubber application) into India from the People's Republic of China had caused and threatened to cause market disruption to the domestic producers of Carbon Black and it had insisted for imposition of a definitive Safeguard Duty on imports of Carbon Black into India. Accordingly, the rates of Safeguard Duty were imposed on the import of Carbon Black as more particularly set out in the said Notification. Mr Jetly would submit that there is a distinction between the provisions of sections 8B and 8C inasmuch as section 8B applies to imports of specified products from any country whereas section 8C only deals with imports of specified products from the People's Republic of China. In fact, section 8C starts with a non-obstante clause and stipulates that notwithstanding anything contained in section 8B, if

the Central Government, after conducting such inquiry, as it deems fit, is satisfied that any article is imported in India, from the People's Republic of China, in such quantities so as to cause or threaten to cause market disruption to the domestic industry, then, it may, by Notification in the Official Gazette impose Safeguard Duty on that article. This being the case, Mr Jetly submitted that Safeguard Duties imposed under sections 8B and 8C of the CTA, 1975 operated in different fields. Merely because an exemption is granted from payment of duty imposed under section 8B, will not automatically also mean that an exemption ought to be granted from payment of duty imposed under section 8C. In the present case, Mr Jetly would submit that admittedly Notification No.96/2009-Cus. does not exempt goods imported under Advance Authorisation from payment of Safeguard Duty levied under section 8C. He would submit that section 8C was introduced on the statute-book with effect from 11th May, 2002. The Legislature, in its wisdom, and when it issued the Notification in 2009, deliberately chose not to exempt goods imported into India from Safeguard Duty levied under section 8C. He would submit that this was a policy decision of the Government of India which cannot be subjected to judicial review under Article 226 of the Constitution of India. These policy matters are decided after taking all factors into

consideration and by experts in the field, and unless it is shown that the decision of the Government is wholly arbitrary or capricious, no interference is called for in writ jurisdiction.

17. In addition thereto, Mr Jetly submitted that it is now settled law that whether to grant an exemption or not is entirely at the discretion of the Government and there is no vested right in any citizen to claim an exemption. If the Legislature in its wisdom and after taking into consideration all the relevant factors, chose to exempt a particular product from the imposition of duties whilst deciding not to grant an exemption to some other product, would not make the action of the Government arbitrary or capricious and/or violative of article 14 of the Constitution of India. On this ground also, Mr Jetly would submit that no interference is called for by us in our writ jurisdiction.

18. Mr Jetly also placed reliance on the Foreign Trade Policies referred to above and submitted that these policies never took within its sweep to exempt Safeguard Duty imposed under section 8C of the CTA, 1975. This introduction came for the first time in the Foreign Trade Policy 2015-2020. Mr Jetly was at pains to point out the difference in the language used in the Foreign Trade

Policy 2009-2014 and the Foreign Trade Policy 2015-2020. Mr Jetly would therefore submit that for the first time in the Foreign Trade Policy 2015-2020, the Government decided to exempt imposition of Safeguard Duty against Advance Authorisation on goods imported into India under section 8C. To implement this Policy, the Government has issued Notification No.21/2015-Cus. dated 1st April, 2015 which stipulates that the Central Government, being satisfied that it is necessary in the public interest so to do, exempts materials required for the manufacture of final goods when imported into India, inter alia from the whole of the duty of customs leviable thereon; the whole of the additional duty; Safeguard Duty under section 8B, Transitional Product Specific Duty under section 8C and Anti-dumping Duty under section 9A of the CTA, 1975 subject to the terms and conditions set out in the said Notification. Mr Jetly submitted that looking to the Foreign Trade Policy 2015-2020 alongwith the aforesaid Notification No.21/2015-Cus., it was clear that there was a shift in policy of the Government to even exempt goods imported into India from Safeguard Duty imposed under section 8C. There was no mistake or omission on the part of the Government not to include section 8C in Notification No.96/2009-Cus. and this was a deliberate act of the Government.

19. Mr Jetly submitted that it is not as if the Petitioner on paying the Safeguard Duty whilst importing its goods into India would not be entitled to a refund of the same if the Petitioners are able to establish that the same were used in the manufacture of final products that were eventually exported out of India. He submitted that the Petitioner in such a case would be entitled to a drawback of the Safeguard Duty paid to the extent they are used in the manufacture of exported goods under the provisions of sections 74 and/or 75 of the Customs Act, 1962. In other words, Mr Jetly submitted that no prejudice is caused to the Petitioner inasmuch as the Petitioner would be entitled to a refund / drawback to the extent of Safeguard Duty paid under section 8C provided they are able to establish that the goods imported by them were used in the manufacture of final products that were eventually exported. Looking to all these factors, Mr Jetly would submit that there is no merit in this Writ Petition and the same ought to be dismissed.

20. With help of learned counsel, we have gone through the papers and proceedings in the Writ Petition alongwith the annexures thereto. We have also perused the relevant provisions of law and the Notifications issued from time to time by the

Government of India on the subject. The short controversy that arises for our consideration is whether under Notification No.96/2009-Cus. dated 11th September 2009, there is any intelligible differentia for granting exemption from payment of Safeguard Duty imposed under section 8B whilst denying the exemption from payment of Safeguard Duty imposed under section 8C of the CTA, 1975. It is common ground before us that it has been the policy of the Government of India that as far as goods which are exported out of India are concerned, it is only the goods that are to be exported and not the taxes on the said goods. This is done in order to provide a level playing field to the goods manufactured in India for competing in the international market. This Policy has been framed because other countries across the world also export only the goods and not the taxes on the goods so exported. This Policy is to ensure that Indian origin goods are able to compete in the international market. In furtherance of the said Policy, the Government of India introduced the Advance License Scheme (now referred to as the Advance Authorization Scheme) under the Import Export Policy of India in the year 1976 to enable registered exporters to obtain inputs at international competitive prices and to ensure that the exported products are free from the incidence of taxation. Thus, under the said Scheme and subject to its terms and

conditions, it is possible for a manufacturer to procure inputs without the payment of customs duty provided the said inputs are used in the manufacture of the product exported out of India. Alternatively, it is also open to the manufacturers to import raw materials upon payment of customs duties and later on claim drawback of the same under sections 74 or 75 of the Customs Act, 1962. Where goods are procured indigenously upon payment of excise duty and used in the manufacture of goods exported, refund of the excise duty paid on the inputs as well as the final products can be claimed as rebate in terms of Rules 18 or 19 of the Central Excise Rules, 2002 as the case may be. Generally, on goods being imported into India, the following duties of customs are leviable:-

- (a) Basic Customs Duty (BCD) in terms of section 12 of the Customs Act, 1962 at such rates as may be specified under the first schedule to the Customs Tariff Act, 1975 or any other law for the time being in force;
- (b) Additional Duties of Customs (otherwise referred to as CVD) in terms of section 3(1) of the Customs Tariff Act, 1975 which is equal to the duty of excise leviable on like goods manufactured in India;

- (c) Special Additional Duty of Customs (otherwise referred to as SAD) in terms of Section 3(5) of the Customs Tariff Act, 1975 levied in order to counter-balance the sales-tax, value added tax, local taxes or any other charges leviable on any like article when sold, purchased or transported within India.

21. In addition to the said duties of customs, the following duties of customs are also leviable on goods imported into India as and when applicable :-

- (a) Anti-dumping Duty leviable on goods imported into India in terms of Section 9A of the Customs Tariff Act, 1975;
- (b) Safeguard Duty leviable on goods imported into India in terms of Section 8B of the Customs Tariff Act, 1975;
- (c) Transitional Product Specific Safeguard Duty leviable on goods imported into India in terms of section 8C of the Customs Tariff Act, 1975.

22. Anti-dumping Duty is leviable on goods imported into India in terms of section 9A upon a conclusion of the investigation

that the specified product imported into India from the specified country is being dumped into India. Anti-dumping duty is a measure resorted to for protecting the domestic industry when dumping is practiced by the country of export at a price lower than its normal value. The use of anti-dumping measure as an instrument of fair competition is permitted by the World Trade Organisation (WTO) and is in accordance with Article VI of the General Agreement on Trade and Tariffs (GATT). Anti-dumping duty is imposed only to neutralise the effect of unfair trade practices being resorted to by the country of export. Safeguard Duty is a form of temporary relief used when imports of a particular product, as a result of tariff concessions or other WTO obligations undertaken by the importing country, increase unexpectedly to a point that they cause or threaten to cause serious injury to domestic producers of the like or directly competitive products. The objective behind safeguards is to give domestic producers a period of grace to become more competitive vis-a-vis the imports. In India, Safeguard Duty is imposed on specified products imported into India in terms of either sections 8B or 8C of the CTA, 1975. Section 8B is the general safeguard provision in terms of which the Central Government has power to impose Safeguard Duty on any article, as specified, imported into India if the import of the same is

causing serious injury to the domestic industry. The import of the specified product on which Safeguard Duty is imposed under section 8B could be from any country. In other words, Safeguard Duty imposed under section 8B is article specific. Section 8B was brought into effect from 14th May, 1997 vide section 79 of the Finance Act, 1997 and reads as under:-

“Section 8B. Power of Central Government to impose safeguard duty - (1) If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantities and under such conditions so as to cause or threatening to cause serious injury to domestic industry, then, it may, by notification in the Official Gazette, impose a safeguard duty on that article;

Provided that no such duty shall be imposed on an article originating from a developing country so long as the share of imports of that article from that country does not exceed three per cent or where the article is originating from more than one developing countries, then, so long as the aggregate of the imports from (developing countries each with less than three per cent, import share), taken together does not exceed nine per cent of the total imports of that article into India;

Provided further that the Central Government may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from any country or territory into India, from payment of the whole or part of the safeguard duty leviable thereon;

(2) The Central Government may, pending the determination under sub-section (1), impose a provisional safeguard duty under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry;

Provided that where, on final determination, the Central Government is of the opinion that increased imports have not

caused or threatened to cause serious injury to a domestic industry, it shall refund the duty so collected;

Provided further that the provisional safeguard duty shall not remain in force for more than two hundred days from the date on which it was imposed.

(2A) *Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any safeguard duty imposed under sub-section (2), unless specifically made applicable in such notification or such imposition, as the case may be, shall not apply to articles imported by a hundred per cent export-oriented undertaking or a unit in a free trade zone or in a special economic zone.*

Explanation – For the purposes of this section, the expressions “hundred per cent export-oriented undertaking”, “free trade zone” and “special economic zone” shall have the meanings assigned to them in Explanation 2 to sub-section (1) of section 3 of Central Excise Act 1944 (1 of 1944);

(3) *The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.*

(4) *The duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such imposition;*

Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard duty should continue to be imposed, it may extend the period of such imposition;

Provided further that in no case the safeguard duty shall continue to be imposed beyond a period of ten years from the date on which such duty was first imposed.

(4A) *The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, refunds, interest, appeals, offences and penalties shall, as far as*

may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act;

(5) The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for safeguard duty may be identified and for the manner in which the causes of serious injury or causes of threat of serious injury in relation to such articles may be determined and for the assessment and collection of such safeguard duty.

(6) For the purposes of this section -

(a) “developing country” means a country notified by the Central Government in the Official Gazette for the purposes of this section;

(b) “domestic industry” means the producers -

(i) as a whole of the like article or a directly competitive article in India; or

(ii) whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India;

(c) “serious injury” means an injury causing significant overall impairment in the position of a domestic industry;

(d) “threat of serious injury” means a clear and imminent danger of serious injury.

(7) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.”

23. On a plain reading of section 8B, it is clear that if the Central Government, after conducting such inquiry as it deems fit is satisfied that any article imported into India in such increased

quantities so as to cause or threaten to cause serious injury to the domestic industry, then, it may, by Notification in the Official Gazette, impose a Safeguard Duty on that article. This Safeguard Duty is imposed by the Central Government subject to the other sub-sections of section 8B. On a plain reading of section 8B, it is clear that Safeguard Duty can be imposed on any article imported from any country. In other words, the Safeguard Duty imposed under section 8B is article specific and not country specific.

24. When China decided to become a member of the WTO, an Accession Protocol was approved by the members of the WTO marking its entry into the Organisation. Section 16 of the Chinese Accession Protocol provided for the imposition of Transitional Product Specific Safeguard Duty on specified goods of Chinese origin imported from the People's Republic of China. It was pursuant to the said Accession of China into the WTO that India inserted section 8C in the CTA, 1975 in the year 2002. Section 8C of the CTA, 1975 reads thus:-

“Section 8C. Power of Central Government to impose transitional product specific safeguard duty on imports from the People's Republic of China – (1) Notwithstanding anything contained in section 8B, if the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India, from the People's Republic of China, in such increased quantities and under such conditions so as to cause or

threatening to cause market disruption to domestic industry, then, it may, by notification in the Official Gazette, impose a safeguard duty on that article;

Provided that the Central Government may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from the People's Republic of China into India, from payment of the whole or part of the safeguard duty leviable thereon.

(2) The Central Government may, pending the determination under sub-section (1), impose a provisional safeguard duty under the sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause market disruption to a domestic industry;

Provided that where, on final determination, the Central Government is of the opinion that increased imports have not caused or threatened to cause market disruption to a domestic industry, it shall refund the duty so collected;

Provided further that the provisional safeguard duty shall not remain in force for more than two hundred days from the date on which it was imposed.

(3) Notwithstanding anything contained in sub-sections (1) and (2), a notification issued under sub-section (1) or any safeguard duty imposed under sub-section (2), unless specifically made applicable in such notification or such imposition, as the case may be, shall not apply to articles imported by a hundred per cent export-oriented undertaking or a unit in a free trade zone or in a special economic zone.

Explanation – For the purposes of this section, the expressions “hundred per cent export-oriented undertaking”, “free trade zone” and “special economic zone” shall have the meanings respectively assigned to them in Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944 (1 of 1944);

(4) The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

(5) The duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such imposition;

Provided that if the Central Government is of the opinion that such article continues to be imported into India from the People's Republic of China so as to cause or threatening to cause market disruption to domestic industry, the Central Government may, notwithstanding the measures taken by the domestic industry towards adjustment to such market disruption or any threat arising thereof, if considers necessary that such duty should continue, extend the period of imposition of such safeguard duty for a period not beyond the period of ten years from the date on which the safeguard duty was first imposed;

(5A) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act;

(6) The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for safeguard duty may be identified and for the manner in which the causes of market disruption or causes of threat of market disruption in relation to such articles may be determined and for the assessment and collection of such safeguard duty;

(7) For the purposes of this section -

- (a) “domestic industry” means the producers -*
 - (i) as a whole of a like article or a directly competitive article in India; or*
 - (ii) whose collective output of a like article or a directly competitive article in India constitutes a major share of the total production of the said article in India;*

- (b) *“market disruption” shall be caused wherever imports of a like article or a directly competitive article produced by the domestic industry, increase rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury to the domestic industry;*
- (c) *“threat of market disruption” means a clear and imminent danger of market disruption.*

(8) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament).”

25. Section 8C on the other hand, starts with a non-obstante clause and stipulates that notwithstanding anything contained in section 8B, if the Central Government, after conducting such inquiry as it deems fit, is satisfied that any article is imported from the People's' Republic of China in such increased quantities so as to cause or threaten to cause market disruption to the domestic indutsry, then, it may, by Notification in the Official Gazette, impose a Safeguard Duty on that article. The Safeguard Duty imposed under section 8C therefore is the Safeguard Duty imposed on any article that is imported specifically from the People's Republic of China. As the section itself suggests, the duty imposed under section 8C is a Transitional Product Specific Safeguard Duty on imports from the People's Republic of China. In other words, the Safeguard Duty imposed under section 8C is only with reference to

articles that are imported into India from the People's Republic of China. For imposing Safeguard Duty on any article imported from any other country, the same would have to be levied under section 8B of the CTA, 1975. The other distinctive feature between section 8B and 8C is that Safeguard Duty under section 8B is imposed when any article is imported into India in such increased quantities and under such conditions so as to cause or threatening to cause serious injury to domestic industry, whereas Safeguard Duty under section 8C is imposed when any article is imported from China in such increased quantities and under such conditions so as to cause or threatening to cause a market disruption to domestic industry. This would clearly show that different parameters are applied whilst imposing Safeguard Duty under the two sections.

26. Having noted these distinctions, we shall now deal with the arguments advanced by Mr Sridharan, learned Senior Counsel appearing on behalf of the Petitioner. It was the submission of Mr Sridharan that it was the consistent Foreign Trade Policy of the Government of India that goods imported into India, when used in the manufacture of final products exported out of India are exempted from payment of Customs Duties including Anti-dumping Duty under section 9A of the CTA, 1975 as well as the Safeguard

Duties imposed under section 8B as well as section 8C of the CTA, 1975. In the Export Import Policy 1997-2002 (1999 Edition), paragraph 7.4A reads as under :-

“7.4A. Manufacturer exporter with export performance of Rs.1 cr. in the preceding year and registered with excise authorities, except for products which are not excisable for which no such registration is required, shall be entitled for Annual Advance Licence Export House, Trading House, Star Trading Houses and Super Star Trading Houses holding the certificate as merchant exporter where they agree to the endorsement of the name(s) of the supporting manufacturer(s) on the relevant annual advance licence shall also be entitled for the annual advance licence.

The Annual Advance Licence and/or material imported thereunder shall not be transferable even after completion of export obligation. Such annual advance licence shall be issued with positive value addition without stipulation of minimum value addition as prescribed in paragraph 7.9. The entitlement under the scheme shall be upto 125% of the (average) FOB value of export in the preceding licensing year.

Imports against Annual Advance Licence shall be exempted from payment of additional customs duty, special additional duty, anti-dumping Duty, safeguard duty, if any, in addition to basic customs duty and surcharge thereon.

The above scheme shall come into operation from 1st July 1999.”

27. Paragraph 7.4A inter alia stipulates that imports against Annual Advance Licence shall be exempted from payment of Additional Customs Duty, Special Additional Duty, Anti-dumping Duty, Safeguard Duty, if any, in addition to the Basic Customs Duty and surcharge thereon. This was brought into operation with effect

from 1st July 1999. This paragraph was inserted because section 8B of the CTA, 1975 was introduced only from 14th May, 1997 and it was to ensure that goods imported against an Annual Advance Licence were also exempted from payment of Safeguard Duty imposed under section 8B.

28. A similar provision can be found in the Export Import Policy 2002-2007 (2002 Edition) at paragraph 4.1.2 and which reads as under:-

“4.1.2. Advance Licence is issued for duty free import of inputs, as defined in paragraph 4.1.1 subject to actual user condition. Such licences (other than Advance Licence for deemed exports) are exempted from payment of basic customs duty, additional customs duty, anti dumping duty and safeguard duty, if any. However, Advance Licence for deemed export shall be exempted from basic customs duty and additional customs duty only.”

29. The Foreign Trade Policy 2004-2009 also exempts payment of Basic Customs Duty, Additional Customs Duty, Anti-dumping Duty and Safeguard Duty, if any, for import of inputs against Advance Licence as defined in paragraph 4.1.1 of the said Policy. Paragraph 4.1.4 of the Foreign Trade Policy 2004-2009 (September 2004 Edition) reads as under :-

“4.1.4. Advance Licence is issued for duty free import of inputs, as defined in paragraph 4.1.1 subject to actual user condition. Such licences (other than Advance Licence for deemed exports) are

exempted from payment of basic customs duty, additional customs duty, education cess, anti-dumping duty and safeguard duty, if any.

Advance Licence for deemed export shall be exempted from basic customs duty, additional customs duty and education cess only. However in case of supplies to EOU/EHTP/STP/BTP under such licences, anti-dumping duty and safeguard duty shall also be exempted.”

30. Similar is the provision in Foreign Trade Policy 2009-2014 (September 2009 Edition). Paragraph 4.1.4 thereof reads thus:-

“4.1.4. Advance Authorisations are exempted from payment of basic customs duty, additional customs duty, education cess, anti-dumping duty and safeguard duty, if any. However, imports for supplies covered under paragraph 8.2(h) and (i) will not be exempted from payment of applicable anti-dumping and safeguard duty, if any.”

31. Thereafter comes the Foreign Trade Policy 2015-2020 (April 2015 Edition). Paragraph 4.14 of the said Policy sets out the duties that are exempted and reads as under :-

“4.14 Details of duties exempted

Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, wherever applicable. However, Import against supplies covered under paragraph 7.02(c), (d) and (g) of FTP will not be exempted from payment of applicable Anti-dumping Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, if any.”

(emphasis supplied)

32. As can be seen from the said reproduction, in the Foreign Trade Policy 2015-2020, the Government for the first time in its Policy decided to also exempt the Transitional Product Specific Safeguard Duty (imposed under section 8C), in addition to Safeguard Duty (imposed under section 8B). This Transitional Product Specific Safeguard Duty is the duty imposed under section 8C of the CTA, 1975 for imports from the People's Republic of China. In other words, for the first time in the Foreign Trade Policy 2015-2020, the Government, as a policy decision, decided that imports under Advance Authorisation would be exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty under section 9A of the CTA 1975, Safeguard Duty under section 8B of the CTA, 1975 and Transitional Product Specific Safeguard Duty imposed under section 8C of the CTA, 1975.

33. It is pertinent to note that section 8C was brought on the statute-book with effect from 11th May 2002, and yet all the Notifications issued by the Government thereafter only exempted Safeguard Duty under section 8B and not the Transitional Product

Specific Safeguard Duty under section 8C. This is clear from Notification No.93/2004-Cus. dated 10.09.2004 and Notification No.96/2009-Cus. dated 11.09.2009. This clearly goes to show the intention of the Government not to exempt Transitional Product Specific Safeguard Duty imposed under section 8C of the CTA, 1975 and we do not think that there was any mistake or omission on the part of the Government in not granting exemption from payment of Safeguard Duty imposed under section 8C. We have come to this conclusion because we are clear that even the Foreign Trade Policies upto and including the Foreign Trade Policy 2009-2014 did not contemplate exemption from payment of Transitional Product Specific Safeguard Duty under section 8C of the CTA, 1975. That exemption came for the first time in the Foreign Trade Policy 2015-2020. In fact, keeping in line with this new Policy, the Government issued Notification No.21/2015-Cus. dated 01.04.2015 which now also exempts the Transitional Product Specific Safeguard Duty imposed under section 8C for imports from the People's Republic of China. In this view of the matter, we are unable to agree with the submissions of Mr Sridharan that it has been the consistent Policy of the Government of India to exempt all Safeguard Duties whether falling under section 8B or 8C of the CTA, 1975.

34. Mr Sridharan placed heavy reliance on the Office Memorandum dated 31st May, 2013 (Annexure 'G' to the Petition) issued by the Tax Research Unit (TRU) [a wing of the Ministry of Finance, Department of Revenue], to contend that even the Government was of the view that all Safeguard Duties ought to be exempted for imports cleared under Advance Authorisation, irrespective of whether the Safeguard Duties were imposed / levied under sections 8B or 8C of the CTA, 1975. It is true that the aforesaid Office Memorandum would suggest that the TRU was of the opinion that when goods were imported into India against Advance Licence / Advance Authorisation for use in the manufacture of exported goods, the same would be exempted from payment of Safeguard Duty irrespective of whether it was levied under section 8B or 8C of the CTA, 1975. However, we find that this is merely an Office Memorandum being an interpretation of one Officer of the TRU of the Foreign Trade Policies issued by the Government of India from time to time. As held earlier, we have found that there is a marked distinction between the Foreign Trade Policies upto and including the Foreign Trade Policy 2009-2014 on the one hand and the Foreign Trade Policy 2015-2020 on the other. Despite the fact that section 8C (which empowers the Government to impose a Transitional Product Specific Safeguard Duty on

imports from the People's Republic of China) was brought into effect from 11th May 2002, we do not find a reference being made to the same in any of the Foreign Trade Policies prior to the Foreign Trade Policy 2015-2020. We therefore find that this Office Memorandum cannot carry the case of the Petitioners any further. It is pertinent to note that this Office Memorandum was issued pursuant to the representations of the Automotive Tyre Manufacturers' Association which sought issuance of a corrigendum with retrospective effect in respect of Notification No.96/2009-Cus. dated 11th September, 2009. This representation sought for exemption of Safeguard Duty imposed under section 8C on Carbon Black imported from the People's Republic of China. Despite the aforesaid representation, the Government in its wisdom chose not to issue any corrigendum or amend the aforesaid Notification. This clearly spells out the intention of the Government in not exempting the Transitional Product Specific Safeguard Duty imposed under section 8C on import of goods from the People's Republic of China. We must mention here that it is well settled that though Legislative measures dealing with economic regulations are not outside Article 14 of the Constitution of India, it is well recognised that the State enjoys the widest latitude where measures of economic regulations are concerned. These measures for fiscal and economic regulations

involve an evaluation of diverse and quite often conflicting economic criteria and it is for the State to decide what economic and social policy it should pursue and what discriminations advance those social and economic policies. It is in this context that a larger discretion is given to the Legislature in the matter of its preferences of economic and social policies and to effectuate the chosen system in all possible and reasonable ways. This settled position has been very succinctly set out by the Supreme Court in the case of **P.H. Ashwathanarayana Setty v/s State of Karnataka.**⁸ The Supreme Court, speaking through M.N. VENKATACHALIAH J, summarized as under:-

“79. The problem is, indeed, a complex one not free from its own peculiar difficulties. Though other legislative measures dealing with economic regulation are not outside Article 14, it is well recognised that the State enjoys the widest latitude where measures of economic regulation are concerned. These measures for fiscal and economic regulation involve an evaluation of diverse and quite often conflicting economic criteria and adjustment and balancing of various conflicting social and economic values and interests. It is for the State to decide what economic and social policy it should pursue and what discriminations advance those social and economic policies. In view of the inherent complexity of these fiscal adjustments, courts give a larger discretion to the legislature in the matter of its preferences of economic and social policies and effectuate the chosen system in all possible and reasonable ways. If two or more methods of adjustments of an economic measure are available, the legislative preference in favour of one of them cannot be questioned on the ground of lack of legislative wisdom or that the method adopted is not the best or that there were better ways of adjusting the competing interests and claims. The

⁸ 1989 Supp (1) SCC 696

legislature possesses the greatest freedom in such areas.

*81. The legislature has to reckon with practical difficulties of adjustments of conflicting interests. It has to bring to bear a pragmatic approach to the resolution of these conflicts and evolve a fiscal policy it thinks is best suited to the felt needs. The complexity of economic matters and the pragmatic solutions to be found for them defy and go beyond conceptual mental models. Social and economic problems of a policy do not accord with preconceived stereotypes so as to be amenable to predetermined solutions. In *State of Gujarat v. Ambica Mills Ltd.* [(1974) 4 SCC 656 : 1974 SCC (L&S) 381 : (1974) 3 SCR 760] this Court observed: (SCC pp. 679, 680, 677, 678—paras 71, 72, 65, 67 and 64 respectively)*

“...The court must be aware of its own remoteness and lack of familiarity with the local problems. Classification is dependent on the particular needs and specific difficulties of the community ... which are beyond the easy ken of the court, ... and which the legislature alone was competent to make. Consequently, lacking the capacity to inform itself fully about the peculiarities of a particular local situation, a court should hesitate to dub the legislative classification as irrational....

...The question whether, under Article 14, a classification is reasonable or unreasonable must, in the ultimate analysis depend upon the judicial approach to the problem.... The more complicated society becomes, the greater the diversity of its problems and the more does legislation direct itself to the diversities.... In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not official deference to legislative judgment. The courts have only the power to destroy but not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events, self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.

Laws regulating economic activity should be viewed differently from laws which touch and concern freedom of speech and religion, voting, procreation, rights with respect to criminal procedure, etc... judicial deference to legislative judgment in instances of economic regulation is explained by the argument that rationality of a classification depends upon local conditions about which local legislative or administrative bodies would be better informed than a court.”

82. The lack of perfection in a legislative measure does not necessarily imply its unconstitutionality. It is rightly said that no economic measure has yet been devised which is free from all discriminatory impact and that in such a complex arena in which no perfect alternatives exist, the court does well not to impose too rigorous a standard of criticism, under the equal protection clause, reviewing fiscal services. In G.K. Krishnan v. State of Tamil Nadu [(1975) 1 SCC 375 : (1975) 2 SCR 715, 730] this Court referred to, with approval, the majority view in San Antonio Independent School District v. Rodriguez [411 US 1, 41, 109 : 36 L Ed 2d 16, 48, 87] speaking through Justice Stewart: (SCC p. 389, para 38)

“No scheme of taxation, whether the tax is imposed on property, income or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection clause.”

and also to the dissent of Marshall, J. who summed up his conclusion thus: (SCC p. 389, para 38)

“In summary, it seems to me inescapably clear that this Court has consistently adjusted the care with which it will review State discrimination in light of the constitutional significance of the interests affected and the invidiousness of the particular classification. In the context of economic interests, we find that discriminatory State action is almost always sustained, for such interests are generally far removed from constitutional guarantees. Moreover, (t)he extremes to which the court has gone in dreaming up rational bases for State regulation in that area may in many instances be ascribed to a healthy revulsion from the court's earlier excesses in using the Constitution to protect interests that have more than enough power to protect themselves in the legislative halls [Darbridge v. Williams, 397 US 471, 520 : 25 Law Ed 2d 491] .”

83. The observations of this Court in ITO v. K.N. Takim Roy Rymbai [(1976) 1 SCC 916 : 1976 SCC (Tax) 143 : (1976) 3 SCR 413] made in the context of taxation laws are worth recalling: (SCC p. 923)

“(T)he mere fact that a tax falls more heavily on some in the same category is not by itself a ground to render the law invalid. It is only when within the range of its selection, the law operates

unequally and cannot be justified on the basis of a valid classification, that there would be a violation of Article 14.” ”

(emphasis supplied)

35. There is yet another reason why no relief and in the nature sought in this Writ Petition can be granted in favour of the Petitioner. In the present case, it is common ground before us that up until 2015 no exemption was ever granted from payment of Safeguard Duty levied under section 8C of the CTA, 1975. Notification No.96/2009-Cus. dated 11th September, 2009 only granted exemption from payment of Safeguard Duty imposed under section 8B. This being the case, we, in our jurisdiction under Article 226 of the Constitution of India, cannot direct the Government to grant an exemption that was never granted earlier. No person has a vested right in the grant of an exemption. An exemption by its very nature is a freedom from an obligation which the exemptee is otherwise liable to discharge. It is a privilege granting an advantage not available to others. An exemption under a statutory provision in a taxing statute is by its nature a concession granted by the Government so that the beneficiaries of such a concession are not required to pay tax or duty they were otherwise liable to pay under such statute. The recipient of the concession has no legally enforceable right against the Government to grant of such a

concession, save and except to enjoy the benefits thereof during the period of its grant. In other words, this right to enjoy the concession is a defeasible one, in the sense that it may be taken away in exercise of the very power under which the exemption was granted. This principle has been very succinctly set out by the Supreme Court in the case of **State of Rajasthan v/s J.K. Udaipur**

Udyog Ltd.⁹ Paragraph 25 of the aforesaid decision reads thus:-

*“25. An exemption is by definition a freedom from an obligation which the exemptee is otherwise liable to discharge. It is a privilege granting an advantage not available to others. An exemption granted under a statutory provision in a fiscal statute has been held to be a concession granted by the State Government so that the beneficiaries of such concession are not required to pay the tax or duty they are otherwise liable to pay under such statute. The recipient of a concession has no legally enforceable right against the Government to grant of a concession except to enjoy the benefits of the concession during the period of its grant. This right to enjoy is a defeasible one in the sense that it may be taken away in exercise of the very power under which the exemption was granted. (See *Shri Bakul Oil Industries v. State of Gujarat* [(1987) 1 SCC 31 : 1987 SCC (Tax) 74] , *Kasinka Trading v. Union of India* [(1995) 1 SCC 274] and *Shrijee Sales Corpn. v. Union of India* [(1997) 3 SCC 398].”*

(emphasis supplied)

36. The aforesaid principle of law laid down by the Supreme Court clearly stipulates that no party has a vested right in claiming an exemption. An exemption by its very nature is a defeasible right and may be taken away in exercise of the very power under

⁹ (2004) 7 SCC 673

which the exemption was granted. In the present case, under Notification No.96/2009-Cus. dated 11th September 2009, admittedly no exemption was ever granted from payment of Safeguard Duty imposed under section 8C of the CTA, 1975. It is for this very reason that the Automotive Tyre Manufacturers' Association made a representation for issuing a corrigendum and/or amendment to the aforesaid Notification seeking exemption from payment of Safeguard Duty imposed under section 8C. This corrigendum obviously was never issued. This being the case and applying the principles laid down by the Supreme Court in **J.K. Udaipur Udyog Ltd.'s case**,⁹ we are afraid we cannot, exercising our equitable jurisdiction under Article 226 of the Constitution of India, direct the Government to grant an exemption which was even otherwise never granted under the aforesaid Notification.

37. In any event, we do not think that this is a fit case to exercise our extraordinary, equitable and discretionary jurisdiction under Article 226 of the Constitution of India. In the present case, challenge is laid to the Show Cause Notice dated 3rd October, 2013 issued by Respondent No.3. The said Show Cause Notice has yet not been adjudicated. It is really to circumvent or prejudice the

⁹ (2004) 7 SCC 673

adjudication of the aforesaid Notice that these arguments have been advanced on behalf of the Petitioner. As stated earlier, the Show Cause Notice is yet to be adjudicated and thereafter the Petitioner has several other remedies under the Act to challenge the adjudication order, if it is aggrieved by it. We, therefore, do not think that this is a fit case where we ought to exercise our extraordinary, equitable and discretionary jurisdiction under Article 226 of the Constitution of India in favour of the Petitioner.

38. There is yet another reason why we are not inclined to exercise our equitable jurisdiction. We are in agreement with Mr Sridharan that it has always been the policy of the Government that only goods are to be exported and not the taxes that are levied on those goods. This being the case, even assuming for the sake of argument that the Show Cause Notice is adjudicated against the Petitioner and they are called upon to pay the Safeguard Duty imposed under section 8C on imports of Carbon Black from the People's Republic of China, the Petitioner, under sections 74 or 75 of the Customs Act, 1962 would be entitled to a drawback of the said duty, on them establishing that the Carbon Black imported by them and on which Safeguard Duty under section 8C was levied, was used in the manufacture of final products that were ultimately

exported out of India. In other words, even if the Petitioner is called upon to pay the Safeguard Duty levied under section 8C on Carbon Black imported by it from the People's Republic of China, no prejudice would be caused to the Petitioner because the Petitioner could always claim a drawback of the same on establishing that the very same product imported on payment of Safeguard Duty was ultimately used in the manufacture of final products that were exported out of India. In fact, to be fair to the Respondents, this is also the stand taken by them in their affidavit in reply to this Writ Petition. We therefore do not think that in these circumstances, this is a fit case where we ought to exercise our equitable, extraordinary and discretionary jurisdiction under Article 226 of the Constitution of India in favour of the Petitioner.

39. Having said this, now we shall deal with the judgments relied upon by Mr Sridharan. The first judgment relied upon by Mr Sridharan was the decision of the Supreme Court in the case of **Union of India v/s N.S. Rathnam and Sons.**¹ The facts in this case would reveal that the Respondent therein was engaged in the business of ship breaking activities. It had imported a foreign vessel for the purpose of breaking it and selling it as scrap. This

¹ 2015 (322) E.L.T. 353 (S.C.)

ship was purchased by the Respondent as a successful tenderer for a sum of Rs.61 lakhs and at the time of import, the Collector of Customs, Cochin, assessed the customs duty and additional duty payable under section 3 of the CTA, 1975 on this ship on an ad valorem basis and customs duty in the sum of Rs.62,16,796.55 was levied on the movable articles in the ship. The body of the ship was assessed at 30% and 50% ad valorem and additional customs duty i.e. countervailing duty at 12% ad valorem. The Respondent paid a sum of Rs.5,68,660/- as sales tax. After the import of the ship, the same was dismantled and broken from which iron and steel scrap was taken out. This iron and steel scrap was exigible to excise duty. This scrap which was obtained by breaking the ship was cleared by the Respondent on payment of central excise duty at the rate of Rs.365/- per tonne as per Notification No.146/86-C.E. dated 01-03-1986. Up to this point, there was no dispute. However, the dispute arose for the material that was cleared for the period starting from 09-08-1986 to 27-07-1987. During this time, there were certain other Notifications that were issued. The Notification dated 01-03-1986, as referred to above, was superseded by another Notification dated 20-08-1986. A few months thereafter, another Notification dated 27-03-1987 was issued which superseded the Notification dated 20-08-1986 as well. In this Notification, again partial

exemption was provided. On the very same day (i.e. 27-03-1987) the Government issued another Notification under which goods were exempted from the whole of the duty of excise leviable thereon as specified in the Schedule to the Act falling under Heading Nos.72.15 and 73.09 of the Schedule to the Central Excise Tariff Act, 1985 on the fulfillment of the condition contained in the proviso to this Notification. The proviso stipulated that goods obtained from breaking of ships, boats and other floating structures and on which duty of customs leviable thereon under the First Schedule to the CTA, 1975 had been paid at the rate of Rs.1,400/- per Light Displacement Tonnage (LDT) were exempted from whole of the duty of excise leviable thereon. The Supreme Court opined that the two Notifications both dated 27-03-1987 pertained to the same goods viz. those falling under Heading Nos.72.15 and 73.09 of the Schedule to the Act. However, vide the first Notification, if the customs duty leviable on import of the ship for the purpose of breaking was paid at the rate of 1,035/- per LDT alongwith additional duty leviable thereon under section 3 of the CTA 1975, the excise duty payable was at the rate of Rs.365/- per LDT. The remainder of the excise duty was exempted as specified in the Schedule. On the other hand, as per the second Notification of the same date, if the Customs Duty had been paid at the rate of

Rs.1,400/- per LDT, the scrap obtained from breaking of such ship was exempted from the entire excise duty. It is in these facts that the Supreme Court came to the conclusion that when an exemption is granted to a particular class of persons, then the benefit thereof is to be extended to all similarly situated persons. The Notification has to apply to the entire class and the Government cannot create sub-classification thereby excluding one sub-category, even when both the sub-categories are of the same genus. If that is done, it would be considered as violating the equality clause enshrined in Article 14 of the Constitution of India. It is in this light that the Supreme Court at paragraph 15 held thus:-

“15. The judgment of this Court in Kasinka Trading's case [1994 (74) E.L.T. 782 (S.C.)], no doubt, lays down the principle that there is wide discretion available to the Government in the matter of granting, curtailing, withholding, modifying or repealing the exemptions granted by earlier notifications. It is also correct that the Government is not bound to grant exemption to anyone to which it so desires. When the duty is payable under the provisions of the act, grant of exemption from payment of the said duty to particular class of persons or products etc. is entirely within the discretion of the Government. This discretion rests on various factors which are to be considered by the Government as these are policy decisions. In the present case, however, the issue is not of granting or not granting the exemption. When the exemption is granted to a particular class of persons, then the benefit thereof is to be extended to all similarly situated person. The notification has to apply to the entire class and the Government cannot create sub-classification thereby excluding one sub-category, even when both the sub-categories are of the same genus. If that is done, it would be considered as violating the equality clause enshrined in Article 14 of the Constitution.”

40. In the facts of the present case, we find this judgment to be wholly inapplicable. As held earlier, the provisions of sections 8B and 8C of the CTA, 1975 operate in two different fields. The Safeguard Duty imposed under section 8B is on a specific article that may be imported from any country. On the other hand, the Transitional Product Specific Safeguard Duty under section 8C is not only article specific but also country specific. In other words, the Safeguard Duty imposed under section 8C is on a particular article specifically imported only from the People's Republic of China. There is therefore a clear distinction between the Safeguard Duty imposed under section 8B and under section 8C. The two sections operate in a totally different fields and are a category by themselves. It is not as if by granting exemption from payment of Safeguard Duty imposed under section 8B and denying the exemption from payment of Transitional Product Specific Safeguard Duty imposed under section 8C, the Government has created any sub-classification excluding one sub-category even when both the sub-categories are of same genus. The Safeguard Duty imposed under section 8B and 8C fall in separate categories by themselves and can never be classified as sub-categories of the same genus. In this view of the matter, we find that the reliance

placed on the aforesaid decision is wholly misplaced. In fact, as set out in paragraph 15 of the said decision, the Supreme Court has noted its earlier decision in Kasinka Trading's case and held that there is a wide discretion available to the Government in the matter of granting, curtailing, withholding, modifying or repealing the exemption granted by earlier notifications. The Government is not bound to grant exemption to anyone who desires it. When the duty is payable under the provisions of the Act, grant of an exemption from payment of the said duty to a particular class of persons or products etc. is entirely within the discretion of the Government. This discretion rests on various factors that are to be considered by the Government as these are policy decisions. As noted by the Supreme Court itself, in the facts before it, the issue was not of granting or not granting exemption. The facts before us clearly show that despite the fact that section 8C was brought on the statute-book with effect from 11-05-2002, the Government in its wisdom and as a policy decision chose not to exempt the payment of Transitional Product Specific Safeguard Duty under section 8C. This, to our mind, was also keeping in tune with the foreign trade policies of India upto and including the Foreign Trade Policy 2009-2014. It is only in the Foreign Trade Policy 2015-2020 that the Government decided to even exempt the Transitional Product

Specific Safeguard Duty imposed under section 8C provided the import of those goods was used against advance authorisation and the goods were used in the manufacture of final products that were ultimately exported out of India. This was a shift in the Policy of the Government and keeping in line with this new Policy, that the Government issued a Notification on 01-04-2015 which also exempted a party importing goods against advance authorisation from the payment of Transitional Product Specific Safeguard Duty imposed under section 8C of the CTA, 1975. In these facts, we find that the decision of the Supreme Court in the case of **Union of India v/s N.S. Rathnam and Sons.**¹ is wholly inapplicable to the factual matrix before us.

41. The next judgment relied upon by Mr Sridharan was in the case of **Budhan Choudhry**² and more particularly, paragraph 7 thereof. The proposition laid down by the Supreme Court in the aforesaid decision is that while Article 14 does not forbid reasonable classification for the purposes of a Legislation, in order to pass the test of permissible classification, two conditions must be fulfilled, viz. (i) that the classification must be founded on an

¹ 2015 (322) E.L.T. 353 (S.C.)

² AIR 1955 SC 191 : (1955) 1 SCR 1045

intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. What is necessary is that there must be a nexus between the basis of the classification and the object of the Act under consideration. There is no dispute with the aforesaid proposition but we fail to see how the same would apply to the facts of the present case. Firstly, as stated earlier, no party has a vested right in claiming an exemption. Secondly, as held earlier, the Foreign Trade Policies upto and including 2009-2014 did not exempt the Transitional Product Specific Safeguard Duty imposed under section 8C of the CTA, 1975. It is only for the first time in the Foreign Trade Policy 2015-2020 that the Government, as a policy decision, decided to exempt even payment of Transitional Product Specific Safeguard Duty imposed under section 8C of the CTA, 1975. There was clearly an intelligible differentia in granting exemption from payment of Safeguard Duty imposed under section 8B whilst not granting exemption from payment of Transitional Product Specific Safeguard Duty under section 8C. As noted earlier, the two sections clearly operate in two different fields. Whilst section 8B is article specific, section 8C is article specific and country specific inasmuch as imposition of Transitional Product

Specific Safeguard Duty under section 8C comes into play only with reference to a specific article that is imported from the People's Republic of China. Furthermore, as noted earlier, different parameters are applied whilst imposing Safeguard Duty under the two sections. Therefore, there is a clear distinction between the two sections and if the Government, as a policy, decides to exempt one and not the other, the same cannot be termed as an unreasonable classification requiring our interference. This being purely a policy matter decided by experts in the field, cannot be subjected to a judicial review in this fashion.

42. The next judgment relied upon by Mr Sridharan was in the case of **Ram Krishna Dalmia**³ and more particularly paragraph 11 thereof. After relying upon its earlier judgment in **Budhan Choudhry's case**,² at paragraph 11 the Supreme Court very succinctly set out the principles that would have to be borne in mind by the Court when it is called upon to judge the constitutionality of any particular law attacked as discriminatory and violative of equal protection of the laws. The principles set out by the Supreme Court at paragraph 11 read as under:-

3 AIR 1958 SC 538 : 1959 SCR 279

2 AIR 1955 SC 191 : (1955) 1 SCR 1045

“11. The principal ground urged in support of the contention as to the invalidity of the Act and/or the notification is founded on Article 14 of the Constitution. In Budhan Choudhry v. State of Bihar [(1955) 1 SCR 1045] a Constitution Bench of seven Judges of this Court at p. 1048-49 explained the true meaning and scope of Article 14 as follows;

“The provisions of Article 14 of the Constitution have come up for discussion before this Court in a number of cases, namely, Chiranjit Lal Choudhuri v. Union of India [(1950) SCR 869] , State of Bombay v. F.N. Balsara [(1951) SCR 682] , State of West Bengal v. Anwar Ali Sarkar [(1952) SCR 284] , Kathi Raning Rawat v. State of Saurashtra [(1952) SCR 435], Lachmandas Kewalram Ahuja v. State of Bombay [(1952) SCR 710], Qasim Razvi v. State of Hyderabad [(1953) SCR 581] and Habeeb Mohamad v. State of Hyderabad [(1953) SCR 661]. It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. It is now well established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.”

The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this Court further establish—

(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the

constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and un-known reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

The above principles will have to be constantly borne in mind by the court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws.”

43. As per the principles laid down in the aforesaid decision, there is always a presumption in favour of constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles; it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws

are directed to problems made manifest by experience and that its discriminations are based on adequate grounds; the Legislature is free to recognize degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest; that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of the legislation; while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating Legislation. Again, we fail to see how this judgment would carry the case of the Petitioner any further. In fact, the aforesaid judgment clearly lays down that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon the person who attacks it to show that there has been a clear transgression of the constitutional principles. In fact,

the said judgment clearly lays down that in order to sustain the presumption of constitutionality the Court can take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived as existing at the time of the legislation. Far from supporting the case of the Petitioner, we find that the principles laid down in the aforesaid decision, would support the view that we have taken earlier in this judgment. In this view of the matter, we find that the reliance placed on the aforesaid decision by Mr Sridharan is wholly misplaced.

44. The next judgment relied upon by Mr Sridharan is a decision of the Supreme Court in the case of **Indian Express Newspaper**⁴ and more particularly paragraphs 77 to 83 thereof. The facts of this case would reveal that the Petitioners being publishers of daily newspapers and periodicals had challenged the imposition of import duty and auxiliary duty on newsprint on the ground of infringement of the freedom of the press by imposing a burden beyond the capacity of the industry and also affecting the circulation of the newspaper and periodicals. The facts of that case would reveal that Notifications were issued by the Government on

4 (1985) 1 SCC 641

1st March, 1981 and 28th February, 1982 under Section 25 of the Customs Act, 1962 which granted exemption from payment of certain duty beyond what was mentioned in them. These Notifications were issued in substitution of earlier Notifications which had granted a total exemption. It is in these circumstances that the Supreme Court opined that such Notifications had to be issued by the Government after taking into consideration all relevant factors which have a bearing on the reasonableness of the levy on newsprint. The Supreme Court opined that the Government should strike a just and reasonable balance between the need for ensuring the right to freedom of speech and expression on the one hand, and the need to impose social control on the business of publication of a newspaper, on the other. In deciding the reasonableness of restrictions imposed on any fundamental right the Court should take into consideration the nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the disproportion of the imposition and the prevailing conditions at the relevant time including the social values whose needs are sought to be satisfied by means of the restrictions. We find that this judgment is totally inapplicable to the facts of the present case. In the facts before the Supreme Court, initially, the Notifications were issued granting a total exemption

on the import of newsprint. Subsequently, those Notifications were substituted by the Notifications dated 1st March, 1981 and 28th February, 1982 granting the exemption from payment of certain duty beyond what was mentioned therein. It is in light of this withdrawal of exemption and considering the fact that the freedom of the press was very much involved in the facts of that case that the Supreme Court sought to interfere with the decision of the Government to withdraw its earlier Notifications. This is also clear from paragraph 111 of the said decision wherein it is stated that in view of the peculiar features of the cases before it and having regard to Article 32 of the Constitution of India which casts an obligation on the Supreme Court to enforce the fundamental rights read with Article 142 which enables the Supreme Court to make such orders as is necessary for doing complete justice, that the Supreme Court gave the directions contained in paragraph 111. To our mind, the aforesaid decision is clearly distinguishable on facts and has no application to the factual matrix before us. In the present case, it is not as if the payment of Transitional Product Specific Safeguard Duty imposed under Section 8C was exempted under the Notification No.96/2009-Cus. dated 11st September, 2009 and the same was thereafter retracted without any justification. As stated earlier, this exemption was never granted by the

Government. In fact, it is the case of the Petitioner that by not granting this exemption the Government has committed an error or mistake. A party can never have a vested right in claiming an exemption that was never granted in the first place as held by the Supreme Court in the case of **J. K. Udyog**.⁹ In this view of the matter, we find that the reliance placed by Mr. Sridharan on the decision of the Supreme Court in the **Indian Express Newspaper's case**⁴ is of no assistance to the Petitioner.

45. Equally, we find that the reliance placed by Mr Sridharan on a decision of the Supreme Court in the case of **Deepak Fertilizers**⁵ is also wholly misplaced. In the facts before the Supreme Court, a Notification issued on 2nd November, 1994 provided for exemption from payment of tax on the sale of all potassium phosphatic fertilisers including NPK (20:20:0) and NPK (23:23:0), for a specified period. However, this Notification was superceded by another Notification dated 10th April, 1995 wherein the exemption to NPK 23:23:0 was withdrawn with retrospective effect. It is in these circumstances the Supreme Court held that there must be rational basis of discrimination between one

9 (2004) 7 SCC 763

4 (1985) 1 SCC 641

5 (2007) 10 SCC 342

commodity and another for the purpose of imposing or not imposing the tax. As stated earlier, in the present case, any Transitional Product Specific Safeguard Duty imposed under section 8C of the CTA, 1975 was never exempted under Notification No.96/2009-Cus. dated 11th September, 2009. It is not as if the exemption was initially granted and was thereafter withdrawn without any justification. In the case before us, the Petitioner seeks a mandamus, which in effect, would be to direct the Government to grant an exemption which was never granted earlier. In these facts, we find that the judgment of the Supreme Court in the case of **Deepak Fertilizers**⁵ has no application to the facts of the present case and the reliance placed thereon is also wholly misplaced.

46. The next judgment relied upon by Mr Sridharan was in the case of **Suprabhat Steel Ltd.**⁶ to contend that in case there is a conflict between the Policy of the Government and the Notification issued to implement the said Policy, the Government Policy would prevail and the Notification, to the extent of conflict with the Government Policy, would be struck down. Even this judgment is wholly inapplicable to the facts before us. In the present case, after

⁵ (2007) 10 SCC 342

⁶ (1999) 1 SCC 31 : 1999 (112) STC 258

perusing and interpreting the Foreign Trade Policies from 1997-2002 to 2015-2020, we have come to the conclusion that there is no conflict between the Foreign Trade Policies issued by the Government of India from time to time and the corresponding Notifications issued to implement the said Policies. As mentioned earlier, it was only in the Foreign Trade Policy 2015-2020 that Transitional Product Specific Safeguard Duty imposed under section 8C of CTA, 1975 was sought to be exempted so long as the goods imported were used in the manufacture of final products that were exported out of India. Keeping in tune with this Foreign Trade Policy, a Notification was issued on 1st April, 2015 whereby apart from the Safeguard Duty imposed under section 8B, Transitional Product Specific Safeguard Duty imposed under section 8C was also exempted. It is in this light that we have come to the conclusion that there was no conflict between the Foreign Trade Policies framed by the Government of India from time to time and the corresponding Notifications issued to implement the said Policies. Therefore, we find that the decision of the Supreme Court in the case of **Suprabhat Steel Ltd.**⁶ would not carry the case of the Petitioner any further.

6 (1999) 1 SCC 31 : 1999 (112) STC 258

47. The last judgment relied upon by Mr Sridharan was in the case of **Renusagar Power Co.**⁷ and more particularly paragraph 84 which reads as under:-

“84. In this connection reference may be made to S.D.Hotop 'Principles of Australian Administrative Law 6th Edition, Pages 210-212, Cases and Materials on Review of Administrative Action (2nd Edition) by S.D. Hotop, Wade on Administrative Law, 5th Edition, pages 506/507 and Bennion on Statutory Interpretation, 1984 Edition, pages 140-141. The exercise of power whether legislature or administrative will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. Similarly, if the power has been exercised on a non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of acts which do not exist and which are patently erroneous, such exercise of power will stand vitiated.”

48. We fail to see how this judgment can be of any assistance to the Petitioner in the facts of the present case. There is no doubt that the exercise of power, whether legislative or administrative, would be set aside if there is a manifest error in exercise of such power or the exercise of the power is manifestly arbitrary. We do not find any such case before us. In fact, in the present case, the Petitioner in effect wants us to direct the Government to grant an exemption which was never granted in the first place until it framed the Foreign Trade Policy 2015-2020. We

7 (1988) 4 SCC 59 : AIR 1988 SC 1737

therefore find that the reliance placed on the aforesaid decision is also wholly misplaced.

49. For the reasons discussed earlier in this judgment, we find no merit in this Writ Petition. Rule is accordingly discharged and the Writ Petition is dismissed. However, in the fact sand circumstances of the case, we leave the parties to bear their own costs.

(B.P. COLABAWALLA J.)

(S.C. DHARMADHIKARI J.)