Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8593 OF 2003

M/s Colgate Palmolive (India) Ltd. ...Appellant(s)

Versus

Commissioner of Customs, Patna ...Respondent(s)

WITH

CIVIL APPEAL NO. OF 2016
(@ SLP (C) NO. 11487 OF 2006)

J U D G M E N T

Dipak Misra, J.

Leave granted in S.L.P. (Civil) No. 11487 of 2006.

2. Keeping in view the need to fortify the traditional connection and strengthen the economic cooperation for the purpose of development and mutual benefit, the Government of India had signed the Treaty of Trade with

His Majesty's Government of Nepal in July, 1996. Articles III, IV and V of the said Treaty read as follows:-

"**Article III**

Both the contracting parties shall accord unconditionally to each other treatment no less favourable than that accorded to any third country with respect to (a) customs duties and charges of any kind imposed on or in connection with importation and exportation and (b) import regulations including quantitative restrictions.

Article IV

The contracting parties agree, on a reciprocal basis, to exempt from basic customs duty as well as from quantitative restrictions the import of such primary products as may be mutually agreed upon, from each other.

Article V

Notwithstanding the provisions of Article III and subject to such exceptions as may be made after consultation with His Majesty's Government of Nepal, the government of India agree to promote the industrial development of Nepal through the grant on the basis of non-reciprocity of specially favourable treatment to imports into India of industrial products manufactured in Nepal in respect of customs duty and quantitative restrictions normally applicable to them".

3. The protocol to the Treaty with reference to Article V stipulated many clauses. With reference to Article V clauses which are relevant are reproduced below:-

"1. The Government of India will provide access to the Indian market free of customs duties and the quantitative restrictions for all articles manufactured in Nepal.

xxxx xxxx xxxx

3. On the basis of a Certificate issued, for each consignment of products manufactured in the small scale units in Nepal, by His Majesty's Government of Nepal, or by an agency designated by His Majesty's government of Nepal that the relevant conditions applicable to the products manufactured in similar small scale industrial units in India for relief in the levy of applicable Excise Duty rates are fulfilled for such a parity, Government of India will extend parity in the levy of Additional duty on such Nepalese products equal to the treatment provided in the levy of effective Excise Duty on similar Indian products under the Indian customs and Central Excise Tariff.

4. The "Additional Duty" rates equal to the effective Indian Excise duty rates applicable to similar Indian Products under the Indian Customs & Central Excise Tariff will continue to be levied on the imports into India of products manufactured in the medium and large scale units in Nepal.

4(i) In regard to "additional duty" collected by the Government of India in respect of manufactured articles other than those manufactured in "small" units: Wherever it is established that the cost of production of an articles is higher in Nepal than the cost of production in a corresponding unit in India, a sum representing such difference in the cost of production, but not exceeding 25 percent of the "additional duty" collected by the Government of

> India, will be paid of His Majesty's Government of Nepal provided. His Majesty's Government of Nepal have given assistance to the same extent to the (manufacturers) exporters".

4. Pursuant to the aforesaid Treaty, the Government of India issued a Notification No. 37 of 1996 dated 23.7.1996, in exercise of powers under Section 25 of the Customs Act, 1962 (for short, "the Customs Act") whereby specified goods in the notification when imported into India from Nepal were exempted "from the whole" of the customs duty leviable under the First Schedule to the Customs Tariff Act, 1975 (for brevity, "the Tariff Act") subject to the conditions, if any, specified in the corresponding entry in column (3) of the Table to the notification. There is no dispute that the appellant who was importing various dental hygiene products from Nepal was entitled to avail exemption under the notification. As the factual matrix would unveil, it was availing the exemption from the customs duty under the notification.

5. In the year 1998, Section 3A was introduced in the Tariff Act. To appreciate the scheme of the Tariff Act, it is desirable to refer to Section 2 of the Tariff Act, which reads

as follows:-

> "**Section 2** : **Duties specified in the Schedules to be levied**. The "rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules."

Schedule I to the Tariff Act incorporates the duties on the imports and Schedule II on the exports.

6. Section 3 of the Tariff Act specifies about the levy of additional duty equal to excise duty. It is as follows:-

> "**Section 3: Levy of additional duty equal to excise duty.** – (1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the Additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article.
>
> Provided that in case of any alcoholic liquor for human consumption imported into India, the Central Government may, by notification in the Official Gazette, specify the rate of additional duty having regard to the excise duty for the time being leviable on a like alcoholic liquor produced or manufactured in different States, or, if a like alcoholic liquor is not produced or manufactured in any State, then, having regard to the excise duty which would be leviable for the time being in different States on the class or description of alcoholic liquor to which such imported alcoholic

liquor belongs."

7. Section 3A which has been introduced in 1998 provides for imposition of special additional duty. The relevant portion of the said Section reads as follows:-

> "**3A. Special additional duty**. – (1) Any article which is imported into India shall in addition be liable to a duty (hereinafter referred to in this section as the special additional duty), which shall be levied at a rate to be specified by the Central Government, by notification in the Official Gazette, having regard to the maximum sales tax, local tax or any other charges for the time being leviable on a like article on its sale or purchase in India:
>
> Provided that until such rate is specified by the Central Government, the special additional duty shall be levied and collected at the rate of eight percent of the value of the article imported into India."

8. After the said provision came into force, Notification No. 18/2000-Customs was issued on 1st March, 2000. By the said notification the Central Government prescribed the rates of special duty. Relevant part of the notification is reproduced below:-

> "Notification No.18/2000-Customs
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> In exercise of the powers conferred by sub-section (1) of section 3A of the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred

to as the Customs Tariff Act), the Central Government, having regard to the maximum sales tax, local tax or any other charges for the time being leviable in the like goods on their sale of purchase in India, hereby specifies the rates of special additional duty as indicated in column (4) of the Table below in respect of goods, when imported into India, specified in corresponding entry in column (3) of the said Table and falling within the Chapter, Heading No. or Sub-Heading No. of the First Schedule to the Customs Tariff Act as are specified in the corresponding entry in column (2) of the said table:

Provided that in respect of the goods specified against S. Nos. 24, 25, 26, 31 and 32 of the said Table, "Nil" rate shall be subject to the conditions, if any, subject to which the goods are exempt either partially or wholly from the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act."

9. After the rates were prescribed, the appellant was asked to pay Special Additional Duty (SAD) and it paid under protest. Thereafter, Notification No. 124/2000-Customs was issued on 29.09.2000 amending the Notification No. 37/96-Customs dated 23rd July, 1996. For proper appreciation of the controversy, it is appropriate to reproduce the contents of the said notification:-

"Notification No. 124/2000-Customs

In exercise of powers conferred sub-section (4) of Section 3A of the Customs Tariff Act, 1975 (51 of

> 1975) read with sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 37/96-Customs, dated the 23rd July,1996, namely:-
>
> In the said notification, for the words and figures "from the whole of duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975", the words, figure and letter "from the whole of the duty of customs leviable thereon under the First Schedule to the said Customs Tariff Act, and special additional duty leviable under section 3A of the said Customs Tariff Act" shall be substituted."

10. After the said notification was issued, the appellant filed an application on 15.01.2001 for refund of Special Additional Duty (SAD) paid in respect of the imports made from Nepal during the period 01.03.2000 to 29.09.2000. The authority concerned rejected the said application preferred by the appellant. Eventually, the matter came up in appeal being Appeal No.C-216/02 before the Customs, Excise & Gold (Control) Appellate Tribunal, Kolkata (for short, "tribunal").

11. The stand of the appellant before the tribunal was that

Notification No. 124/2000 which amended the earlier Notification No. 37/96 and enlarged the scope of exemption from basic customs duty by including SAD, should be considered as retrospective in view of the language employed in the Treaty entered into between the two countries. It was urged that all goods manufactured in Nepal and imported into India would be exempted from customs duty and equal to the excise duty for the time being leviable on similar products manufactured in India and as per the said Treaty, no SAD was leviable and hence, the notification dated 29.09.2000 was clarificatory in nature. It was further contended that levy of SAD after the rates were fixed was contrary to the terms of the Treaty and, therefore, it was rectified by issuing the Notification No. 124/2000 and, therefore, the appellant was entitled to refund of the amount which was paid towards SAD. It was further argued that on the basis of the representations made by the appellant and others seeking clarification on the leviability of SAD Notification No. 124/2000 was issued and hence, it was retrospective in nature.

12. On behalf of the revenue, resisting the stand put forth by the assessee, it was submitted that prior to 29.09.2000 SAD was correctly levied in respect of the imports and there is no justification in treating the notification in question as retrospective, more so, when the notification has clearly stated about scope of its applicability.

13. The Member (Judicial) analysing the terms of the Treaty and the need for issuance of notification opined that:-

> "… If the terms of the Treaty by themselves were to be treated as law, then there was no need for the Government of India to even issue the notification exempting imports from the Basic Customs Duty. As rightly observed by the original adjudicating authority that undoubtedly, the Treaty provides the framework for the bilateral trade between the two countries; but the actual import and export is governed by the Customs and Central Excise Statutes and the provisions of the Treaty do not, *ipso facto*, translate into import and export procedures within India until a corresponding notification in Customs is issued to bring the same into effect. We are of the view that it may be lapse on the part of the Government of India not to issue the notification exempting the imports from SAD prior to 29.09.2000, but that lacuna cannot be filled by the judiciary and it is not our job to discuss as to what notifications the Government should have issued or not to further the cause of the Treaty between the two countries."

14. After stating so, the learned Member (Judicial) explaining the stand pertaining to clarificatory aspect of the notification observed that the exemption notification could not be considered to be having retrospective effect and any exemption provision which enlarges the scope of earlier notification cannot be considered to be clarificatory. The learned Member (Judicial) further opined that earlier notification did not even remotely suggest that exemption from basic customs duty also included the exemption from SAD. That apart, it was held by the learned Member (Judicial) that the earlier notification exempted from basic custom duty and the latter from the SAD. Being of this view, the learned Member (Judicial) dismissed the appeal.

15. The Member (Technical) expressed his dissent and opined that once a Treaty had been entered by the Central Government, the issue of notification under the provisions of the Customs Act, 1962 is a ministerial act. According to the learned Member (Technical), the notification dated 29.09.2000 was a belated response to effectuate the terms

of the Treaty. Elaborating further, the learned Member (Technical) observed that if it was a simplicitor amendment to exempt or reduce the rates on certain specified imports, then an amendment would have been required to be made to the Notification No. 18/2000-CUS dated 01.03.2000 and not to Notification No. 37/96 and that having been not done, it can be safely concluded that there was a belated reference and the real intention was to give retrospectivity to the notification.

16. It is apt to reproduce the observations made by the learned Member (Technical):-

> "... A Treaty entered into with a Sovereign State cannot be reneged, merely for want of an act of ministerial lapse or delay, the Treaties have to be given effect to. When such lapses are cured, subsequently by amendments, such amendment notifications have to be retrospective in operation. ..."

17. To come to such a conclusion, he placed reliance on ***UOI v. Yokasawa Blue Smart***[1] and ***Nestle India Ltd. v. State of Punjab***[2].

[1] 2001 (129) ELT 598 (KAR)
[2] 1999 (13) PHT 132 (P&H)

18. After so stating, the learned Member (Technical) opined that the matter should be referred to a larger Bench for a decision whether amendment in such cases could be read retrospectively or not. As there was difference of opinion, the matter was placed before the third Member who was a Member (Technical). He referred to the point of difference which is to the following effect:-

> "Whether the appeal is required to be rejected as held by Member (Judicial) or the matter needs to be referred to the Larger Bench as held by Member (Technical)."

19. The third Member referred to the views of the Member (Judicial) and Member (Technical) in extenso; noted the submissions advanced by the learned counsel for the parties; scanned the various clauses of the Treaty; analysed the language employed in the notification dated 29.09.2000; distinguished the authorities relied upon by the Member (Technical); declined to accept the submission pertaining to doctrine of promissory estoppel that was canvassed before him and eventually, came to hold that both the notifications are independent and both would be applicable from the date they had been issued and they do not remotely suggest any

retrospectivity. He further opined that there was no ambiguity in the earlier notification or in the subsequent Notification No.124/2000 and both the notifications operate in special fields – one granted exemption from basic customs duty and the other SAD of customs. Being of this view, he agreed with the Member (Judicial) and ultimately, the appeal stood dismissed.

20. We have heard Shri S. Ganesh, learned senior counsel for the appellant in Civil Appeal No. 8593 of 2003 and Shri A.K. Panda, learned senior counsel appearing for the respondents.

21. To appreciate the controversy in proper perspective, it is appropriate to understand the nature of the Treaty, the protocol appended thereto, the benefits extended thereunder, the impact of the two notifications and the nature of duty that was exempted.

22. Article 3 states that the contracting parties shall accord unconditionally to each other treatment not less favourable than what was accorded to a third country in

respect of the customs duties and other charges relating to import and export including quantitative restrictions. Article 4 relates to reciprocal arrangement between the two contracting parties to exempt basic customs duty and quantitative restrictions on import as would be mutually agreed. Having referred to Articles 3 and 4, it is necessary to focus on Article 5. The said Article begins with non-obstante expression and would apply notwithstanding to Article 3. It is non-reciprocal. This Article states that the Government of India had agreed to promote industrial development of Nepal and further agreed to grant special favourable treatment to imports into India of industrial products manufactured in Nepal in respect of customs duty and quantitative restrictions normally applicable to them. The words used in Article 5 are "customs duties". The non-reciprocal grant would be subject to exceptions as may be made after consultation with the Government of Nepal. As is evident, the Treaty was to be operative for a period of five years from 5th December, 2001.

23. We have already reproduced certain paragraphs from the Protocol. To have the correct perspective it is required

to be quoted in entirety. It reads as follows:-

> "1. The Government of India will provide access to the Indian market free of customs duties and the quantitative restrictions for all articles manufactured in Nepal.
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> 2. (i) Import of articles in accordance with the para "I" above shall be allowed by the Indian customs authorities on the basis of a certificate of Origin to be issued by the agency designated by His Majesty's Government of Nepal in the format prescribed at Annexure 'B' for each consignment of articles exported from Nepal to India. However, this facility shall not be available for the articles listed at Annexure 'C'.
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> (ii) In the event of the above facility leading to a surge in the import generally or in the import of any particular article, the two Governments shall enter into consultation with a view to taking appropriate measure.
>
> (iii) In the case of other articles made in Nepal which do not fulfill the conditions required by the Certificate of Origin prescribed at Annexure 'B' including those Articles listed at Annexure 'C' for the purpose of Preferential treatment into India, the Government of India will provide normal access to the Indian market consistent with its MFN treatment.
>
> 3. On the basis of a Certificate issued, for each consignment of products manufactured in the small scale units in Nepal, by His Majesty's Government of Nepal, or by an agency designated by His Majesty's Government of Nepal that the relevant conditions applicable to the products manufactured in similar small scale industrial units in India for relief in the levy of applicable Excise Duty rates are fulfilled

for such a parity, Government of India will extend parity in the levy of Additional duty on such Nepalese products equal to the treatment provided in the levy of effective Excise Duty on similar Indian products under the Indian customs and Central Excise Tariff.

4. The "Additional Duty" rates equal to the effective Indian Excise duty rates applicable to similar Indian Products under the Indian Customs & Central Excise Tariff will continue to be levied on the imports into India of product manufactured in the medium and large scale units in Nepal.

4(i) In regard to "additional duty" collected by the Government of India in respect of manufactured articles other than those manufactured in "small" units: Wherever it is established that the cost of production of an articles is higher in Nepal than the cost of production in a corresponding unit in India, a sum representing such difference in the cost of production, but not exceeding 25 percent of the "additional duty" collected by the Government of India, will be paid of His Majesty's Government of Nepal provided. His Majesty's Government of Nepal have given assistance to the same extent to the (manufacturers) exporters.

5. Export of consignments from Nepal accompanied by the Certificate of Origin will normally not be subjected to any detention/delays at the Indian Customs border, border check posts and other places enroute. In case any need for clarification arises, this will be obtained expeditiously, by the Indian border customs authorities from the Indian and Nepalese authorities, as the case may be.

> 6. Where for social and economic reasons, the import of an item into India is permitted only through public sector agencies or where the import of an item is prohibited under the Indian Trade control regulations, the Government of India will consider any request of His Majesty's Government of Nepal for relaxation and will permit the import of such an item from Nepal in such a manner as may be found to be suitable.
>
> 7. For the purpose of calculation of import duties customs valuation procedures, as prescribed under the prevailing custom law, will be followed."

24. No doubt paragraph 1 states that the Government of India would provide access to Indian market free from customs duties and quantitative restrictions of all articles manufactured in Nepal, but this would be subject to other paragraphs, for paragraph 2 would indicate that the access to Indian market free from customs duty was subject to conditionalities and also restrictions. Paragraph 2 stipulates, the requirement of certificate of origin which should be as per the proforma prescribed by Annexure B and would not be applicable to Articles listed in Annexure – C for which normal access consistent with most favourable nations' Treaty would be provided. Clause 3 deals with

products manufactured by small-scale units in Nepal for which certificate would be issued by the Government of Nepal or agency designated by them. For the said imported products, "reliefs" in the levy of excise duty applicable to products manufactured by similar small-scale industrial units in India, while fulfilled by the Nepalese small scale manufacture would apply. This clause, as we notice, gave parity and equal treatment to goods/products manufactured by small scale industrial units in Nepal as was applicable to small-scale industrial units in India, who had been granted relief in relation to applicable to Indian customs and Central Excise Tariff.

25. It is pertinent to note here that the relief agreed related to duty chargeable under the head of "additional duty". Clause 4 dealt with "additional duty applicable" on products manufactured by medium or large-scale units in Nepal in which case they were liable to pay additional duty equal to the effective Indian excise duty rates applicable to similar Indian products. A reading of paragraphs 1, 3 and 4 would indicate that a distinction was made between the "basic

customs duty" and "additional duty" leviable under the Customs Act and Excise Act on import. "Additional duty" had reference to excise duty payable on the said products when manufactured in India.

26. The aforesaid clauses oblige us to read the relevant portion of the first exemption Notification No. 37/96-COS dated 23rd July, 1996. It is as under:-

"Notification No. 37/96-Customs

> In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in column (2) of the Table below and falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India from Nepal, from the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975, subject to the conditions, if any, specified in the corresponding entry in column (3) of the said Table".

The table contains description of goods and enumerates certain conditions. What we are concerned with is the nature of exemption. As is noticeable, what was exempted under the notification were the goods specified in column 2 in the First Schedule to the Tariff Act from the

customs duty leviable thereon under the First Schedule to the Tariff Act. It was also subject to the conditions specified therein.

27. It is apt to note here that Section 3A of the Tariff Act was enacted in the year 1998. This was a new provision and had stipulated that in addition to the customs duty and additional customs duty, special additional customs duty would be payable on the goods imported into India, having regard to the maximum sales-tax, local tax or other charges for the time being leviable on the like article on the sale and purchase in India. The proviso stipulated that until such rates were specified by the Central Government, special additional duty shall be leviable and collected @ 8% on the imported product. In terms of said proviso, the Notification No.18/2000-Customs was issued on 1st March, 2000 and the same has been quoted above.

28. It is vivid that the protocol to the Treaty of Trade had made a distinction between the "basic customs duty" and "additional customs duty". The basic customs duty was granted exemption. However, in respect of "additional duty"

provisions of paragraph 3 or 4 were applicable. But, it is significant that the said protocol did not deal with special additional duty. Thus, *per se* and *ex facie* it is not possible to accept the position that "special additional duty" was itself exempted under the protocol. Paragraph 1 would not cover the "special additional duty", which was specific and limited as was clear from the exemption notification dated 23rd July, 1996. It was restricted to the goods specified in column 2 of the First Schedule from the customs duty leviable under the First Schedule to the Tariff Act. In fact, special additional duty was not leviable and enforced when the Treaty of Trade was signed and the protocol was executed. Under these circumstances, it is not possible to accept the position that Clause 1 of the protocol had included and had embraced the "special additional duty", which was introduced in the form of Section 3A enacted in 1998.

29. The exemption which was granted by notification dated 29th September, 2000 was, therefore, in the nature of specific and new exemption from payment of special

additional duty, which was otherwise payable in view of the introduction of Section 3A to the Tariff Act. It is difficult to appreciate that the exemption granted vide notification dated 20th September, 2000 to special additional duty was clarificatory or to give effect to the existing protocol. We think so as protocol appended to the Treaty could not have conceived of future levy by way of proposition. In any case, factually it does not. Therefore, the notification of 20th September, 2000 conferred a new benefit which was not earlier stipulated or the subject matter of protocol.

30. We would now refer to the decision of the High Court of Patna in ***Kaur Sain Traders v. Union of India***[3]**.** The said decision rightly observes and highlights the distinction between the basic customs duty i.e. the import duty, the additional duty equal to the excise duty, and special additional duty which has reference to sales-tax, local-tax and other charges leviable on the articles of sale and purchase in India. The said distinction is clear from Sections 2, 3 and 3A of the Tariff Act. Section 12 of the Customs Act, no doubt a charging Section, has to be read

[3] 2005 (2) PLJR 744

along with the Tariff Act. In fact, the Tariff Act also provides for further duties in the form of safeguarding duty under Section 8B, countervailing duty under Section 9 and anti-dumping duty under Section 9A. Section 25 of the Customs Act stipulates that the Government may exempt certain goods from all duties of customs under Section 12 of the Customs Act or Sections 3 or 3A of the Tariff Act. It was observed that incidence of duty in the two Acts, i.e., the Customs Act and the Tariff Act are independent to each other and one duty can be levied without the other. Decision in ***Associated Cement Companies Limited v. Commissioner***[4], was distinguished. The ratio and finding in ***Associated Cement Companies Limited*** (supra) has to be read in the context of the issue involved in the said case as drawing, designs of those goods were not chargeable to duty and were designated as free under the Tariff Act. In ***Hyderabad Industries Limited v. Union of India***[5], the difference in import under the Customs Act and the Tariff Act was noticed with reference to duty of customs chargeable under Section 12 of the Customs Act, the

[4] 2001 (128) ELT 21 SC
[5] 1999 (108) ELT 321 SC

additional duty chargeable under Section 3(1) of the Tariff Act and additional levied on raw-materials, components and ingredients under Section 3(3) of the Tariff Act. It was elucidated that the two Acts are independent statutes and merely because instance of tax under Section 3 of the Tariff Act arises on import of articles in India, it does not mean that the Tariff Act cannot provide for charging of duty which was/is independent of customs duty leviable under the Customs Act. The Patna High Court has appropriately referred and relied on the view taken by the Bombay High Court in ***Apas Private Limited v. Union of India***[6].

31. At this stage, we would also deal with the judgments relied by the respondents and the circular No.112/2003.COS.31/12/2003 dated 31.03.2003. This circular was issued pursuant to tariff conference of the Chief Commissioners of Customs and the discussions held. Divergence of practice on implementation of exemption under Central Excise Notification No. 6/2002-CE dated 01.03.2002 was noticed. Pertinently, the exemption was granted to a manufacturer of copper goods from

[6] 1985 (22) ELT 644 Bombay

raw-material, other than the copper-ore or copper concentrate. The exemption was restricted and applicable upon verification that the manufacture was from raw-material, other than the copper-ore or copper concentrate. The doubt had arisen whether exemption should be granted when the manufacturer was located in Nepal. In the said context the Board had accepted the recommendations of the conference that in the light of the Indo-Nepal Treaty, verification could be undertaken by the Indian customs in Nepal and accordingly there was no reason not to extend the benefit in case of imports made from Nepal under Notification No.6/2002 dated 1st March, 2002.

32. Decisions in the case of ***W.P.I.L. Limited v. Commissioner, Central Excise***[7] and ***Ralson India Limited v. Commissioner of Central Excise, Chandigarh***[8] do not assist the appellant. In the said authorities, the contention of the assessee was accepted on the ground that both power driven pumps as well as parts of power driven pump had for long remained exempt.

[7] 2005 (181) ELT 259 SC
[8] 2015 (319) ELT 234 SC

However, when earlier notifications were rescinded in order to consolidate and reduce the number of notifications and then the new notification was issued on 1st March, 1994 then by mistake and erroneously parts of power driven pump were not included, whereas manufacture of power driven pumps was included. In this context, it was held that the subsequent notification including parts of power driven pump was merely clarificatory and when clarificatory notifications are issued, they have retrospective effect. The instant case is not suggestive of any mistake or error or even inadvertence. The plea that there was delay in issue of notification, exempting special additional duty is not acceptable. It is because, what was earlier exempted under the protocol was basic customs duty and also additional customs duty equal to the duty of excise in some cases and on satisfying the conditions stipulated and it did not deal and relate to special additional duty chargeable under Section 3A of the Tariff Act, which had introduced a new duty altogether. Therefore, we repel the submission that the exemption notification issued on 29th September, 2000 is clarificatory. It was intended to be applied prospectively.

That apart, it cannot be also said the issue of notification was a formal ministerial act which got delayed for administrative reasons. It was a conscious act and a deliberate decision which came into existence after due deliberation when it was decided to grant exemption under Section 3A of the Tariff Act.

33. In view of our foregoing analysis, we find no merit in the appeals preferred by the assessee and accordingly dismiss them without any order as to costs.

.....J.
[Dipak Misra]

.....J.
[Prafulla C. Pant]

New Delhi
August 24, 2016.