A CHEMICALS AND FIBRES OF INDIA LTD. ETC.

v.

UNION OF INDIA

FEBRUARY 11, 1991

B [S. RANGANATHAN, N.M. KASLIWAL AND S.C. AGRAWAL, JJ.]

Central Excises & Salt Act, 1944 & Customs Act, 1962—Customs and Central Excise Duties Drawback Rules, 1971—Section 37 and Sec. 75—Rules 3, 4, 6 and 7—Di-methyl-terephthalate—Import of—Whether assessee entitled to full 'drawback' of customs duty paid.

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The appellants are manufacturers of polyester fibre yarn. They obtained a contract from the Imperial Chemical Industries, Singapore for the supply of the said yarn and the said concern had agreed to supply to the appellants free of cost the di-methyl-terephthalate (DMT)
D **required for the manufacture of polyester staple fibre yarn. The DMT was required to be converted into polyester fibre, blended with viscose indigenously and shipped to a customer of the ICI in Sri Lanka. The appellant assessees obtained customs clearance permits for import of 392 tons of DMT and also of 178 tons of viscose stable fibre. The appellants also obtained permission to convert the imported DMT into**
E **polyester fibre under customs bond. The appellants imported the DMT and paid the customs duty in respect thereof Section 75 of the Customs Act, 1962 empowers the Central Government to allow the drawback of the duties of customs chargeable under the Act on any imported materials of a class or description used in the manufacture of such goods in accordance with and subject to the rules under sub-section (2). There is an**
F **identical provision in section 37 of the Central Excises & Salt Act, 1944 enabling grant of draw back of the excise duty paid in relation to such manufacture.**

The Central Government framed the Customs and Central Excise Duties Drawback Rules 1971 enabling drawback being availed of in
G **relation to customs as well as in relation to duties of central excise. Schedule II to the notification listed the items the export of which entitles an assessee to avail of the drawback facility. DMT as such was not included in the notification in respect of which drawback could have been availed of by the assessees. The assessee therefore made an application to the Ministry of Finance on 23.3.1977 requesting that since it**
H **had paid customs duty on DMT, it was entitled to its drawback, more**

particularly when its request for the manufacture of the polyester fibre under customs bond had seen declined by the customs authorities. The application filed by the appellants was rejected by the Central Government on 12.3.1978, though on a representation made by the Members of the Association of manufacturers of Polyester staple fabric a notification had been issued on 2.8.76 under Section 25 of the Customs Act exempting DMT from Customs duty. The appellant thereupon filed writ petition in the Delhi High Court which was dismissed by the High Court. Hence these appeals.

Dismissing the appeals, but recommending to the Central Government to consider the case of the appellants on equitable grounds whether the relief could be granted to it, this Court,

HELD: Though Section 75 of the Customs Act, 1962 and Section 37 of the Central Excises & Salt Act 1944 empower the Government to provide for the repayment of the customs and excise duties paid by individual manufacturers also, the rules as framed (rule 3 in particular) provide only for a refund of the 'average amount of duty paid on materials, of any particular class or description of goods used for the manufacture of export goods of that class or description by manufacturers generally, except to the extent prescribed under rule 7. [300A-B]

The rules do not envisage a refund of an amount arithmetically equal to the customs duty or central excise duty which may have been actually paid by an individual importer-cum-manufacturer. If that had been the statutory intendment, it would have been simple to provide that in all cases where imported raw materials are fully used in the manufacturers of goods which are exported, the assessee would be entitled to a draw back of the customs or excise duties paid by him for the import or on the manufacture. [300C]

There is no controversy that, in this case, the goods exported fall under item 25. It was sought to be contended that the goods fall under sub-item 2501, but this is clearly untenable. Sub-item 2501 represents a residuary category which will not be attracted to the goods which clearly fall under sub-item 2502. The notification prescribes different amounts of drawback under this item depending on the composition of the yarn and the nature of its contents. It specifies an amount of Rs.43.15 per kg. as the relief by way of drawback available against the goods with which we are concerned which fall under clause (b) of item 2502. [300H-301B]

The High Court was right in concluding that the rate of drawback in respect of the goods in question was fixed after taking into consideration the aspect of the customs duty payable in respect of DMT and that a conscious decision was taken that no relief in this respect should be granted as DMT was available in the country itself. It cannot therefore, be said that this is a case where the fixation is contrary to the terms of rule 3, and that the assessee's application for determination of a rate in his case should be taken as an application under rule 6. [303B]

Rule 6 is also inapplicable for the reason that an application under rule 6 should be made before the export of the manufacturer's goods which does not seem to be the case here. [303C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 692 & 693 of 1981.

From the Judgment and Order dated 19.5.1980 of the Delhi High Court in W.P. Nos. 883 of 1978 and 1079 of 1979.

R.K. Habbu, R.B. Hathikhanwala and B.R. Aggarwala for the Appellants.

Soli J. Sorabjee, Attorney General (NP), Kapil Sibal, Additional Solicitor General, Ms. Indu Malhotra, P. Parmeshwaran and C.V. Subba Rao for the Respondent.

The Judgment of the Court was delivered by

RANGANATHAN J. These two appeals involve a common question and can be disposed of by a common judgment. The question is whether the appellant companies (hereinafter referred to as the 'assessees') are entitled to full "draw back" of the customs duty which they had paid on the import of di-methyl-terephthalate (shortly referred to as 'DMT') for manufacture of polyester staple fibre yarn. The assessees converted the DMT into polyester staple fibre in their factory at Thane and then sent it to Bhilwara in Rajasthan where the Rajasthan Spinning and Weaving Mills blended it with indigenous viscose staple fibre to spin out certain varieties of blended yarn. It is common ground that the product manufactured by this process was exported by the assessees to Imperial Chemical Industries Pvt. Ltd. Singapore, who had supplied the DMT free of charge to the assessees. The answer to the question revolves around the interpretation of Section 75 of the Customs Act, 1962 read with the Customs and Central Excise Duty Draw Back Rules, 1971.

Section 75 of the Customs Act, 1962 empowers the Central Government, by notification in the official gazette, to direct, in respect of goods of any class or description manufactured in India and exported to any place outside India, that draw back should be allowed of the duties of customs chargeable under the Act on any imported materials of a class or description used in the manufacture of such goods, in accordance with and subject to the rules framed under sub-section (2) of the said section. Sub-section 2, which confers a rule making power, enacts that such rules may, among other things, provide:

> "(a) for the payment of draw back equal to the amount of duty actually paid on the imported materials used in the manufacture of the goods or as is specified in the rules as the average amount of duty paid on the materials of that class or description used in the manufacture of export goods of that class or description either by manufacturers generally or by any particular manufacturer;"

There is a similar provision in section 37 of the Central Excises & Salt Act, 1944 enabling grant of draw back of the excise duty paid in relation to such manufacture.

The Central Government framed the Customs and Central Excise Duties Drawback Rules, 1971 (hereinafter referred to as 'the rules'), in exercise of the powers conferred on it under these two statutes. These are composite rules under the above two provisions and enable drawback being availed of in relation to customs duty as well as in relation to duties of central excise. Some relevant provisions of these rules may be quoted here. Rule 3, in so far as it is relevant for our present purposes, reads as follows:

> Rule 3: Drawback: (1) Subject to the provisions of—
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> (a) the Customs Act, 1962 (52 of 1962) and the rules made thereunder.
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> (b) the Central Excises and Salt Act, 1944 (1 of 1944) and the rules made thereunder, and
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> (c) these rules,
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> (a) drawback may be allowed on the export of goods specified in Schedule II at such amount, or at such rates, as

may be determined by the Central Government.

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(2) In determining the amount or rate of drawback under this rule, the Central Government shall have regard to:

(a) the average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India.

(b) the average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods.

(c) the average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components, and intermediate products which are used in the manufacture of goods.

(d) the average amount of duties paid on materials wasted in the process of manufacture and catalytic agents:

Provided that if any such waste or catalytic agent is used in any process of manufacture or is sold, the average amount of duties on the waste or catalytic agent so used or sold shall also be deducted.

(e) the average amount of duties paid on imported materials or excisable materials used for containing or packing the exported goods.

(f) the average amount of duties of excise paid on the goods specified in Schedule I: and

(g) any other information which the Central Government may consider relevant or useful for the purpose.

Rule 4. Revision of rates: The Central Government may revise the amounts or rates determined under rule 3.

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6. Cases where amount or rate of drawback has not been determined:

(1)(a) Where no amount or rate of drawback has been determined in respect of any goods, any manufacturer or exporter of such goods may, before exporting such goods, apply in writing to the Central Government for the determination of the amount or rate of drawback therefor stating all relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components.

(b) On receipt of an application under clause (a) the Central Government shall after making or causing to be made such inquiry as it deems fit, determine the amount or rate of drawback in respect of such goods.

7. Cases where amount or rate of drawback determined is low—(1) Where in respect of any such goods, the manufacturer or exporter finds that the amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4 for that class of goods is less than three fourths of the duties paid on the materials or components used in the production or manufacture of the said goods, he may make an application in writing to the Central Government for fixation of the appropriate amount or rate of drawback stating all relevant facts including the proportion in which the materials or components are used in the production or manufacture of the goods and the duties paid on such materials or components.

(2) On receipt of the application referred to sub-rule (1) the Central Government may, after making or causing to be made such inquiry as it deems fit, allow payment of drawback to such exporter at such amount or at such rate as may be determined to be appropriate if the amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4, is in fact less than three fourth of such amount or rate determined under this sub-rule.

Schedule II to the notification by which the rules were promulgated listed the items the export of which entitles an assessee to avail of the drawback facility. Item 25 of the list reads thus:

"Synthetic and regenerated fibre, textile yarn, thread, twines, cords and ropes."

It is common ground that the goods exported by the assessees fall under item 25 above. There is also no controversy that the DMT imported by the assessees was used for the manufacture of the above commodity and that, on the import of the DMT, the assessees have paid customs duty.

The rates of drawback available in respect of various goods were notified by the Central Government in due course. Against serial no 25, the notification set out the rates of drawback as follows:

Serial No.	Sub Sl. No.	Description of goods	Rate of Drawback
25.		SYNTHETIC AND REGENERATED FIBRES AND/TEXTILE YARN/THREAD, TWINES, CORDS AND ROPES	
	2501	Synthetic and regenerated fibre and textile yarn, thread, twines, cords and ropes not elsewhere specified.	Brand rate to be fixed on an application from the individual manufacturer exporter.
	2502	(a) Yarn of above 21 BWS Counts or above 14 n.f. counts, spun wholly out of either viscose rayon fibre or acetate fibre or polyster fibre, polyamide fibre or acrylic fibre or wool, or from a combination of two and not more than two of the above mentioned fibres, or a combination of any one of the above mentioned fibres with either cotton or silk (but excluding yarn spun out of fibres obtained from fibre wastes, yarn waste or fabric wastes, by gernetting or by any other process:	
		(a) Cellulosic fibre content:	Rs.1.80 (Rupees one and paise eighty only) per kg.

(b) Polyester fibre content:	Rs.43.15 (Rupees forty three and paise fifteen only) per kg.
(c) Acrylic fibre content:	Rs.37.75 (Rupees thirty seven and paise seventy five only) per kg.
(d) Polyamide fibre content:	Rs.16.40 (Rupees Sixteen and paise forty only) per kg.
(e) Wool contents:	
(i) in the worsted yarn of Weaving quality made wool top.	Rs.18.95 (Rupees Eighteen and paise ninety five only) per kg.
(ii) in the worsted yarn of weaving quality not made from wool top.	Rs.13.55 (Rupees Thirteen and paise fifty five only) per kg.
(iii) in the worsted Hosiery yarn and worsted hand knitting yarn made from wool top.	Rs.16.65 (Rupees Sixteen and paise sixty five only) per kg.
(iv) in the worsted hosiery yarn and worsted hand knitting yarn not made from wool top.	Rs.11.25 (Rupees Eleven and Paise twenty five only) per kg.
(v) Bye content if the yarn is dyed	Rs.0.85 (Eighty five paise only) per kg.

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It will be seen from the above table that the assessees are entitled to a drawback of Rs.43.15 per kg. of the polyester fibre content of the yarn exported by them. We are informed that this is the rate of central excise duty payable in respect of the manufacture of yarn having polyester fibre content. For reasons to be stated presently, the assessees had to pay no central excise duty for the manufacture and hence there was admittedly no question of the assessee getting a drawback to this extent. The point raised by the assessee is that, having paid customs duty on the DMT, it was entitled to a drawback in respect of the customs duty paid by it on the DMT. Since this was not included in the notification of the Central Government, the assessees made an application to the Ministry of Finance on 23.3.1977 requesting that drawback of the entire customs duty may be sanctioned. This request,

however, was rejected by the Central Government by a communication dated 12.3.1978. This communication was in the following terms:

> "Under Rule 3 of the Customs and Central Excise Duties Drawback Rules 1971, all industry rates of drawback on polyester viscose blended yarn have been determined and announced under serial no. 2502 of the Drawback Schedule. The said rates have been determined at the material time, after taking into consideration:
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> (a) duty incidence of raw materials used in the manufacture of viscose fibre, plus the Central Excise duty on viscose fibre and
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> (b) the Central Excise duty on polyester fibre in respect of polyester yarn. However, no raw material duty for manufacture of polyester yarn was taken into account, as the same (DMT) is available indigenously and is exempted from Central Excise Duty. For the rates determined effective from 18.8.1977 however the duty incidence on DMT has also been taken into consideration on the basis of weighted average of imported and indigenous material."

The assessees, dissatisfied with this decision of the Central Government, preferred a writ petition in the Delhi High Court, which was dismissed by the High Court on 19.5.80. Hence the present appeals.

At this stage, it may be necessary to outline some facts which may be relevant for appreciating the background in which the assessees' counsel urged strongly the equitable, if not also legal, claims of the appellant for the drawback of the customs duty. Counsel claims that the assessees were almost the first group of entrepreneurs in India to manufacture polyester fibre yarn. They had been fortunate enough to obtain a contract from the Imperial Chemical Industries, Singapore. By a letter dated 2.4.75 this concern agreed to supply free of cost the DMT required for the manufacture of blended yarn consisting of 67 per cent polyester and 33 per cent viscose fibre. The DMT was to be converted in polyester fibre, blended with viscose indigenously and shipped to a customer of the ICI in Sri Lanka. Thereupon, on 2.6.75, the assessees obtained customs clearance permits for import of 392 tons of DMT and also of 178 tons of viscose staple fibre. Eventually, however, the viscose staple fibre was obtained indigenously and the import permit, to this extent, was not utilised by the assessee. At the

time of obtaining this permit, the assessees also obtained permission to convert the imported DMT into polyester fibre under customs bond. The condition attached to the Customs Clearance permit was in the following terms:

> "The firm will convert the imported DMT into polyester fibre under Customs bond. The firm will then move the polyester fibre so manufactured and the imported viscose staple fibre under bond to the bonded warehouse of Rajasthan Spinning and Weaving Mills, Bhilwara. Messrs. Rajasthan Spinning and Weaving Mills will then manufacture under bond polyester viscose yarn on behalf of the firm. The polyester viscose fibre yarn will then be exported by the firm to the overseas buyers who have supplied the DMT and viscose staple fibre on CCP basis or their nominees ....."

If these conditions had been fulfilled the assessees would have had no problems. The polyester fibre would have been manufactured under customs bond and this would have obviated payment of customs duty by the assessees. So also, the production of the blended yarn at the Rajasthan Spinning and Weaving Mills would have been under Central excise supervision and no excise duty would have been payable on the manufacture. Unfortunately, however, the customs authorities were not in a position to permit the conversion of the DMT into polyester fibre under customs bond for reasons which are not at present relevant and which are not being challenged in these proceedings. The assessees's request for the manufacture of polyester fibre under customs bond was declined by the customs authorities on 2.4.1976. Perhaps anticipating this difficulty, the Association of Polyester Staple Fibre Manufacturers at Bombay made an application to the Central Government on 26.3.1976 praying for exemption from customs duty on DMT required for the manufacture of polyester staple fibre. This letter points out:

> "Members of this Association manufacture polyester staple fibre. One of our members has received an advance licence for the import of DMT, a photostat copy of which we attach herewith. This DMT is to be used for manufacture in polyester fibre and the polyester fibre then converted into yarn to be supplied against export orders. Our members wish to explore possibility of larger export business in this manner. Indigenous supplies of both DMT and glycol are

A insufficient to meet the domestic market requirements and export business can only be done by import of the two materials. Fulfilling export orders by using advance licences as the one issued to our member poses certain problems because the licence stipulated manufacture under Customs Bond. You will appreciate the difficulty in B manufacturing under bond when the fibre for export constitutes only a portion of the total manufacture of the factory. If DMT and glycol could be included in the schedule to the customs Notification GSR 183, the procedural difficulties in manufacturing under Bond will not apply. Exports of yarn made from raw materials obtained against advance licences could earn considerable foreign C exchange because of the value added during processing."

One of the assessees also made a similar request and, eventually, a notification was issued on 2nd August, 1976 under s. 25 of the Customs Act exempting DMT from customs duty. The Government of India D also wrote to one of the present appellants on 9.9.76 drawing attention to the said notification and stating that with the issue of this notification. The assessees' problem would appear to have been solved. This, however, was not correct. The notification exempted future imports of DMT from customs duty but the assessees, having imported the DMT earlier, had to clear the same after paying customs duty thereon. E Hence their request for a drawback of the customs duty already paid by them, the refusal of which has led to the present litigation.

On behalf of the appellants, it is contended that the Customs Act contains provisions enabling the Government either to exempt goods under section 25 from the levy of Customs duty at the time of import or F failing this, to permit a drawback of customs duty paid in the event of the conditions set out in section 75 being fulfilled. In the present case, an exemption under section 25 of the Customs Act was in fact notified but unfortunately this happened only in August, 1976. By this time, the assessees had already imported the DMT. This they were obliged to do because of a time-bound programme for export of the man- G ufactured fibre to Sri Lanka. Counsel states that, from the very outset, the assessees had proceeded on the footing that they would be obtaining exemption from customs and excise duty because, apart from getting some conversion charges from the ICI, their own margin of profit on the transaction was not substantial. That is why even at the time of obtaining the customs clearance permit they had sought for permission H to convert DMT into polyester under customs bond. If that had been

done, there would have been no necessity to pay customs duty at all. Unfortunately, because the department lacked facilities to supervise such an operation, the attempt of the assessees was only partially successful in that they were able to get only the production of the blended fibre done under Central Excise supervision. The initial stage of conversion from DMT to polyester fibre could not be done under customs bond. It is pointed out that the Government of India had exempted DMT from customs duty only on the basis of the representations made by the assessees and it is urged that the refusal to grant drawback of customs duty to assessees is wholly unjustified.

The object of S. 75 of the Customs Act, read with S. 27 of the Central Excise Act, is obviously to provide that in cases where certain goods are imported for complete utilisation in the manufacture of goods which are exported, the importer should be able to obtain relief in respect of customs and excise duties. In the present case there is no controversy that the D.M.T. imported by the assessee was utilised for the manufacture of polyester staple fibre and that the final product was fully exported to Sri Lanka. The notification made under the rules framed for this purpose, however, provides only for a drawback in respect of the excise duty involved in the manufacture of polyester staple fibre but not the customs duty on the raw material actually imported. Sri Habbu, learned counsel, contends that this notification, in fact, is contrary to the provision contained in rule 3 which obliges the Government, in determining the amount or rate of drawback, to have regard, among other things, to the amount of duties paid on imported or excisable material used in the manufacture of the exported goods. He submits that, in so far as the rates prescribed by the Central Government do not take into account the element of import duty on DMT, the fixation is not in accordance with the rule. According to him, therefore, this case falls under rule 6 which enables an assessee to apply to the Central Government to determine a drawback where none has been determined. The Central Government, he submits, was in error in rejecting the assessees' application as one falling under rule 7 and, therefore not maintainable both in law and equity.

Having heard the learned counsel for the assessees at some length, we are of opinion that the High Court was right in rejecting the assessee's contentions. We think that the assessees' arguments are based on a basic misapprehension that, under the Acts and rules, a manufacturer is automatically entitled to a drawback of the entire customs and excise duties paid by him if the terms and conditions of

A S. 75 are fulfilled. Though S. 75 of the Customs Act and S. 37 of the Central Excises & Salt Act empower the Government to provide for the repayment of the customs and excise duties paid by individual manufacturers also, the rules as framed (rule 3 in particular) provides only for a refund of the "average amount of duty paid on materials" of any particular class or description of goods used for the manufacture of B export goods of that class or description by manufacturers generally, except to the extent prescribed under rule 7 (to be noticed presently). The rules do not envisage a refund of an amount arithmetically equa to the customs duty or central excise duty which may have been actually paid by an individual importer-cum-manufacturer. If that hac been the statutory intendment, it would have been simple to provide C that in all cases where imported raw materials are fully used in the manufacture of goods which are exported, the assessee would be entitled to a drawback of the customs or excise duties paid by him for the import or on the manufacture. On the other hand, S. 75(2) requires the amount of drawback to be determined on a consideration of all the circumstances prevalent in a particular trade and the fact D situation relevant in respect of each of various classes of goods imported and manufactured. The need for providing an elaborate process of determination as envisaged in rule 3 is this. There may be different manufacturers of a particular manufactured item. Some of them may be using indigenous material and some may be importing some of the raw material. Similarly, in the process of manufacture E also, there may be difference between manufacturer and manufacturer. That is why the drawback rules provide for a determination of the drawback after taking into account the "average" amount i respect of each of the various items specified in rule 3 in relation t each type of goods listed in Schedule II. The notification issued al determines the composite drawback available in respect of bot F customs and excise duties to importers-cum-manufacturers in respe of various categories of goods. In other words, the amount of draw back is not intended to be the amount of the duties that may have be paid by individual manufacturers; it is to be determined by consideri the overall position prevalent in the country in respect of each of th categories of trade in the goods specified in Schedule II. We think G that, if this basic principle is understood, the decision of the Government would become intelligible and rational.

There is no controversy that, in this case, the goods exported fa under item 25. Learned counsel sought to contend that the goods her fall under sub-item 2501 but this is clearly untenable. Sub-item 250 H represents a residuary category which will not be attracted to th

goods here which clearly fall under sub-item 2502. The notification prescribes different amounts of drawback under this item depending on the composition of the yarn and the nature of its contents. It specifies an amount of Rs.43.15 per Kg. as the relief by way of drawback available against the goods with which we are concerned which fall under clause (b) of item 2502. This much indeed, was conceded before the High Court.

Once we understand the principles on which and the scheme according to which the rates of drawback are to be and are determined as explained earlier, the plea of the appellants, that the amount of drawback determined is nothing more than the excise duty payable on manufacture of blended fibre with ployester fibre, content and that the notification has erred in overlooking the customs duty paid on imported DMT, is wholly untenable. We say this for two reasons. First, the rates prescribed constitute a composite rate of drawback fixed having regard to the liabilities under the Customs Act as well as the Central Excises & Salt Act. It would not be correct, in principle, to bifurcate the amount so fixed into its two constituents and to say, merely because the amount fixed is equal to one of the duties, that the other has not been taken into account. In theory, the drawback determined could have taken into account both sets of duties in part only. It cannot be said to be merely the customs duty drawback or central excise duty drawback. Though it does appear that the various rates of drawback prescribed under item 2502 are equal to the rates of excise duty payable on the manufacture of the various items referred to therein, the nature of exemption granted is one of relief under both enactments. It is immaterial whether this quantum of relief benefits the assessee in respect of one or other or both of the levies which he has to discharge. The attempt to identify and correlate the rebate granted to the central excise duty paid does not therefore appear to be correct in principle.

But, this ground apart, we think there is force in the point made by the learned counsel for the Union of India and accepted by the High Court that at the time when these drawback rates were fixed, the Government of India took into account both the import duty as well as the excise duties which would be payable on the manufacture of the goods the export of which was intended to be encouraged. After examining the condition in the trade, it was found that D.M.T. was easily available in India at that time and that, therefore, it would not be necessary to grant any relief in respect of drawback of customs duty on the imported material because that would only result in assessees

A attempting unnecessarily to import a raw material which was available in the country itself. In fact, this is the aspect on which the Delhi High Court has laid considerable emphasis. Learned counsel for the appellants contends that this is factually incorrect and that this is clearly shown by the very fact that the Government of India itself, in August, 1976, decided to grant exemption in respect of customs duty for the B import of D.M.T. He submits that if D.M.T. had been easily available indigenously at that time, the question of granting exemption under S. 25 would not have appealed to the Government at all. He, therefore, submits that, in fixing the rate of drawback the Central Government had proceeded on the footing that no import duty would be payable on the DMT and that it will be sufficient to grant relief in respect of Central excise duty alone. We find that, on this aspect, the position is C not so simple as submitted by the learned counsel for the appellants. We have already extracted reply of the Government of India to the assessees' representation which clearly mentions that DMT is available indigenously and that, therefore, no duty in manufacture of polyester yarn was taken into account. This is a statement of fact and there is no D material placed before us to contradict the same except for the correspondence referred to earlier. If one looks carefully at the correspondence, one will find that it does not support the assessees' case. For one thing the memorandum submitted by the Association of March 1976 itself proceeds on the footing that DMT is available locally but not sufficient to meet the domestic market requirements. This, E clearly, is a reference to something which happened after the present appellants had imported their goods and started the manufacture. Indeed, it is their claim that they were fore-runners in this field. Following up on the assessees' attempt to obtain imports of DMT and exporting the goods manufactured, other polyester staple fibre manufacturers also proposed to explore the possibilities of such F imports and exports and what the letter says would only appear to be that the indigenous supplies of DMT and Glycol may not be enough to meet the domestic market requirements if the business is so expanded. By the time the notification fixing the rates was issued, import duty on DMT had been removed and, therefore, there was no purpose in granting a drawback of customs duty. In these circumstances, the G customs duty was rightly not taken into account in fixing the rate of drawback. The letter of the Government dated 9.9.76 is only an answer to the assessees' prayer that its problem may be solved by granting an exemption for DMT from customs duty and refers only to the position after the notification of exemption. It is not a reply to the assessees' representation in respect of the past which was filed only H much later in 1977. The correspondence in the case is, therefore, of no

help to the assessees. It may also be pointed out that the assessees appear to have imported DMT not because it was not locally available but only because it was able to get it free of cost from the ICI which was a benefit which other manufacturers, if any, could not have enjoyed. We are, therefore, of opinion that High Court was right in concluding that the rate of drawback in respect of the goods in question was fixed after taking into consideration the aspect of customs duty payable in respect of DMT and that a conscious decision was taken that no relief in this respect should be granted as DMT was available in the country itself. It cannot, therefore, be said that this is a case where the fixation is contrary to the terms of rule 3 and that the assessees' application for determination of a rate in his case should be taken as an application under rule 6. Rule 6 is also inapplicable for the reason that an application under rule 6 should be made before the export of the manufactured goods which does not seem to be the case here. The assessees' reliance on rule 6, therefore, fails.

It is true that the fixation of rates of drawback on the average basis indicated in rule 3 could work hardship in individual cases. Provision for this contingency is made in rule 7. The assessees' application was rightly treated as one made under this rule and they could, if at all seek relief only if their case fell within its terms. This rule, unfortunately does not provide for relief in every case where an individual manufacturer has to pay customs and excise duty to a larger extent than that determined for his class of goods. Relief is restricted only to cases when the margin of difference is substantial and to the extent specified in rule 7. The High Court has discussed this point at length and demonstrated, by giving necessary figures, how the assessees' case does not fulfill the terms of the rule and this conclusion is not, in fact, challenged by the learned counsel for the appellants. The Government was, therefore, right in rejecting the appellants' request made under section 7 of the Drawback Rules.

For the reasons above mentioned, we agree with the High Court that the order of the Central Government rejecting the assessees' application was well founded and cannot be interfered with. Learned counsel for the appellants brings to our notice a manual published by the Directorate of Publications. Ministry of Finance, Department of Revenue explaining the scope of the rules as well as two notifications issued by the Government on 9.6.1978 and 1.2.1982 respectively and submits that the present case falls within the terms of these notifications. We are constrained to point out that these are notifications issued subsequent to the period of the controversy before us: also this

A is material which was not placed before the authorities or the High Court. We, therefore, find ourselves unable to permit the assessee to rely upon them at this late stage. However, having regard to the circumstances and the subsequent policy in the above rules, we think it is a fit case in which the Central Government could consider whether, on equitable grounds, the assessee can be given relief in respect of the B customs duty on DMT paid by it. In this context, it is worthwhile noting that the assessee saved foreign exchange for the country by importing DMT free of cost. The entire manufactured product has also been exported and earned foreign exchange. The appellants also apparently gave impetus to other manufacturers for the export of blended fibre on large scale. If only the appellants had imported the DMT a few C months later, they would have been entitled to exemption from customs duty and would not have suffered the present handicap. They also did obtain the permission of the Government to convert DMT into polyester fibre under customs bond but this could not be implemented for reasons beyond their control. Having regard to all these circumstances, it would seem only just and fair that the assessees D should not be denied a benefit of which all other persons have since availed of. We, therefore, think that this is a fit case in which the Government should consider, in case the assessees make an application within two months from today, whether the assessees could be granted the relief prayed for, if only on equitable grounds, and pass appropriate orders on such applications.

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With the above observations, these appeals are dismissed. But in the circumstances, we make no order as to costs.

Y. Lal Appeals dismissed.