A HIND PLASTICS AND ANR. ETC. ETC.

v.

THE COLLECTOR OF CUSTOMS, BOMBAY AND ANR. ETC. ETC.

APRIL 13, 1994

B

[B.P. JEEVAN REDDY AND B.L. HANSARIA, JJ.]

Constitution of India : Articles 32 and 226—Notification issued under rule 8 of Central Excise Rules, 1962—Writ petitions under Article 226 chal-
C *lenging Notification dismissed—Writ Petitions under Article 32 by some other importers—Held writ under Article 32 not maintainable—Petitioner cannot be said to be seeking enforcement of any of their fundamental rights—A view contrary to that of petitioners taken by High Court cannot be a ground for skipping that Court.*

D *Customs Act, 1962/Central Excise Rules 1962 : Sections 2(41), 314(1), 25/rule 8—Notification No. 184—CUS dated 2.8.1976—Import of P.V.C. in packages—Exemption from levy/additional duty in respect of packages sought—Held Notification does not contemplate deduction of value of packages from out of invoice value and exempt them from duty/additional duty—*
E *Notification is designed to exempt levy of duty/additional duty separately since in law there is an import of packages and such import too is subject to I.T.C. restrictions.*

Interpretation of statutes : Instrument, statutory or otherwise—Interpretation of—Intention of maker and significance of actual words used—Ex-
F *plained.*

Words and phrases : Expression 'Value' as occurring in sections 2(41) and 14(1) of Customs Act—Meaning of—Explained.

G **The Central Government, in exercise of its powers under section 25 of the Customs Act, 1962, issued Notification No. 184- CUS dated 2.8.1976, to the effect that where any goods were imported into India in 'packages or containers or the like', such packages etc. would be exempt from the whole of the customs duty as well as the additional duty provided that (a) the value of the packages in which the goods were packed was included in**
H **the invoice value of the imported goods; (b) the packages were not of a**

permanent character and not strong enough to be suitable for repeated use; and(c) the packages were such as were normally used in the trade for packing such goods.

The appellant-firm imported P.V.C. and paid custom duty and additional duty thereon, In 1983 the firm filed a writ petition in the High Court claiming refund of customs duty/additional duty in respect of packages in which the PVC had been imported, alleged to have been paid by it unaware of Notifications No. 184. It also prayed for a direction to the Revenue not to levy customs duty/additional duty on the item any further. Several other writ petitions involving similar controversy were also filed, and the matters were ultimately referred to a Division Bench of the High Court. The appellants contended that all the conditions prescribed in the Notification were satisfied inasmuch as the invoice value included the value of packages, the packages were neither of permanent character nor strong enough to be suitable for repeated use, and were also such as were normally used in the trade for packing P.V.C. The Revenue, on the other hand, contended that the Notification did not contemplate or permit deduction of any portion of the invoice value of the imported goods; it merely saved the packages from a separate levy if they satisfied the requirements prescribed; that the claim of the appellant could not be examined as the goods had been cleared long before and the packages were not available to determine whether they satisfied the requirements of the notifications. The High Court upholding the interpretation of the Notification as given by the Revenue, dismissed the writ petitions. Aggrieved, the appellants filed the appeal by special leave. Some other importers also filed the writ petitions under Article 32 of the Constitution.

Dismissing the appeal and the Writ Petitions, this Court

HELD : 1.1. The High Court has rightly held that Notification No. 184 does not contemplate or provide - either expressly or by necessary intendment - for the value of the packages being deducted from out of the invoice value and exempting them from duly/additional duty; there are no such words in the Notification; if that were really the intention, it would have said so expressly - more particularly when such an interpretation has the effect of modifying the value of imported goods determined under and

A in accordance with section 14 of the Customs Act, 1962. [519-F-H]

1.2. Duty/additional duty is charged on the entire invoice value of P.V.C. It cannot be said that the proper officer should separate the value of packages, calculate the duty/additional duty leviable thereon at the rate applicable to packages separately and give deduction of such amount from
B the total amount; this 'two rates' theory is inconsistent with the rule of valuation in Section 14(1). However, in the instant case the value of the packages was not separately shown and the duty/additional duty was levied upon the total invoice value at the rate applicable to P.V.C. [521-A-C]

C 1.3. The expression 'value' as defined by clause (41) in section 2 of the Customs Act means the value of the goods determined in accordance with the provisions of sub-section(1) of section 14. That the invoice of packages whether it is shown separately as such or not, is an incontrovertible and universal fact. Clause(a) of proviso to the Notification assumes significance in view of section 14(1) which speaks of "the price at which
D such of like goods are sold, or offered for sale for delivery at the time and place of importation in the course of international trade", meaning thereby, the goods as they are ordinarily sold; P.V.C. cannot be sold except in packages. The invoice value of imported P.V.C. include several factors, cost of packages being one of them. Levy of duty/additional duty is on the entire
E invoice value including cost of packages, at the rate applicable to the P.V.C. For the purpose of valuation and rate, the P.V.C. in packages is one goods and not two. But in law there is also import of packages and such import being subject to I.T.C. restrictions, the State is entitled to levy duty/additional duty under the appropriate entry and at the appropriate rate. The Notification is designed to exempt this levy of duty/additional duty on
F packages separately. [pp. 516-C-D; 519-B-H; 521-D]

1.4. It may, however, be that taxing of packing material twice, once at the rates applicable to the contents and then at the rate applicable to the container, in the event of levy of duty on packing material not ex-
G empted, may appear harsh, but it cannot be said to be illegal. What should be taxed is a matter not to be decided by the Court, but by the appropriate instrumentalities or functionaries. [520-F-G]

1.5. Clauses(b) and (c) of the proviso to the Notification are questions of fact with respect to which proper officer must be satisfied at the
H relevant time. In the instant case, even these requirements cannot be said

to have been satisfied as the packages are not available for test. The appellants did not raise the question of applicability of the Notification at the time of import of the goods. [518-B-C] A

Barium Chemicals v. *Union of India,* (1988) 37 E.LT. 327, disapproved. B

Union of india and Ors. v. *M/s Jalyan Udyog and Anr.*, [1994] 1 SCC 318, refrred to.

2. Every instrument, statutory or otherwise, has to be so interpreted as to accord with the intention of its maker having regard to the language used. Actual words used cannot be ignored in question of the supposed intention of the maker, since that would anount to entering the arena of speculation, but all the same the principle is unexceptionable that whether it is statute, statutory instrument or an ordinary instrument, the interpertation placed has to accord with the intention of the maker as evidenced by the words/language used. [521-E-G] C D

Hanraj Gordhandas v. *H.H. Dave, Assistant Collector of Central Excise and Customs, Surat and Ors.*, [1969] 2 SCR 253, reiterated.

3.1. The writ petitions filed under Article 32 of the Constitution are misconceived and are not maintainable in law. The controversy is about the interpretation or a notification issued under rule 8 of the Central Excise Rules, 1962. In such a case it cannot be said that the petitioners are seeking to enforce any of the fundamental rights guaranteed to them by Part III of the Constitution. The mere fact that the Bombay High Court has been taken the view contrary to the petitioner's contention is no ground for skipping that court or for approaching this Court directly under Article 32. [522-B-C] E F

Smt. Ujjan Bai v. *State of Uttar Pradesh and Anr.*. [1963] 1 SCR 778, relied on. G

3.2. The writ petitions were filed long after the event i.e. after the import. At such a late stage, the authorities do not have any means to verify whether the packages concerned in each writ petition - and each consignment - satisfy the requirements of the proviso in the Notification. [522-D] H

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2589 (NM) of 1985.

From the Judgment and Order dated 22.1.85/25.1.85 of the Bombay High Court in W.P. No. 42 of 1983.

B WITH

W.P.(C) Nos. 227, 312, 229, 228, 220, 215 and 219 of 1988.

(Under Article 32 of the Constitution of India)

C Yashank Adheru, S. Fazl and P.H. Parekh for the Appellants/ Petitioners.

Joseph Valli Palli, Ashok K. Srivastava and C.V. Subba Rao for the Respondents.

D The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. *IN CIVIL APPEAL NO. 2589 OF 1985.*

The appellant-firm, Hind Plastics, is engaged in the manufacture of certain plastic goods. For that purpose, it has been importing P.V.C. from E time to time, paying the customs duty and additional duty leviable thereon. In the year 1983, it filed a writ petition in the Bombay High Court, being W.P. (C) No. 906 of 1983, stating that it had been paying the duty on packages (in) which the P.V.C. was imported, being unaware of the Notification No. 184- CUS dated 2nd August, 1976 providing for their F exemption from duty/additional duty. It complained that though the respondents were aware of the Notification and ought to have given the benefit thereunder to the appellant, they did not do so. It prayed for refund of the amount of customs duty and additional duty relatable to packages, besides asking for a direction restraining the customs authorities from levying the duty/additional duty on P.V.C. which may be imported by it G thereafter. It appears, a large number of writ petitions raising similar contentions were filed in the Bombay High Court, all of which have been heard and dismissed by a Division Bench. The Division Bench held that the Notification does not provide for deduction of the value of packages from the invoice value of imported P.V.C. and that the Notification merely H saves the duty/additional duty leviable separately on the said packages,

which too are deemed in law to have been imported. The correctness of the said view is questioned in this appeal.

Notification No. 184 dated 2nd August, 1976 has been issued by the Central Government under section 25 of the Customs Act. It is necessary to read the Notification in full :

"184/76-Cus dt.2.8.76 G.S.R. 553(E)--

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 directs that where any goods are imported into or exported from India, in packages or containers or the like, such packages or containers or the like shall be exempt--

(1) from the whole of the duty of customs leviable thereon under the First or the Second Schedule to the Customs Tariff Act, 1975 (51 of 1975), as the case may be, and

(ii) from the whole of the additional duty leviable thereon under section 3 of the Customs Tariff Act, 1975 (51 of 1975), in the case of imports :

Provided that--

(a) the value of the packages or containers or the like in which the goods are packed is included in the value for which the goods contained therein have been invoiced;

(b) the goods are not packed in packages or containers or the like which are of a permanent character and accordingly strong enough to be suitable for repeated use; and

(c) the packages or containers or the like in which the goods are packed are such as are normally used in the trade for packing such goods."

This Notification is preceded by similar Notifications, which are found referred to in the Judgment of Pendse, J. in Writ Petition No. 1099 of 1978 *Kirloskar Cummins* v. *Union of India and Ors.*, delivered on 14/15th

A October, 1981. The first Notification is No. 114 dated November 25, 1967. The Notification provided that where the goods are imported into india packed in any material, the material in which the goods are so packed would be exempt from the whole of the duty of customs including counter-vailing duty provided that the goods are packed in materials normally used in trade for packing such goods and the packing is not suitable for repeated B use. In other words, the conditions prescribed in Notification No. 114 broadly corresponded to clauses (b) and (c) of the proviso in Notification No. 184 of 1976 concerned herein. On June 10, 1972, a Notification was issued in suppression of Notification No. 114, dated November 25, 1967 wherein an additional condition was provided to the effect that the value C of the packing material should have been included in the invoice value of the goods imported. It is evident that the additional condition imposed by this Notification corresponded to clause (a) of the proviso in Notification No. 184. Then came the Notification No. 184 of 1976 with the aforesaid three conditions.

D

Now what does Notification No. 184 of 1976 say? Insofar as it is relevant it says : (1) where any goods are imported into India in packages (we are using the expression 'package' as short-form of the words 'packages, containers or the like') (2) such packages shall be exempt from the whole of the customs duty as well as the additional duty; *provided* (a) the E value of the packages in which the goods are packed is included in the invoice value of the imported goods; (b) the packages are not of a permanent character and not strong enough to be suitable for repeated use; (c) the packages are such are normally used in the trade for packing such goods. It is evident that all the aforesaid three conditions mentioned in F clauses (a), (b) and (c) of the proviso have to be satisfied to avail of the benefit of exemption provided by the Notification.

Now in the case of imports made by the appellant the value of packages was included in the invoice value of the P.V.C. imported. *The invoice did not separately mention the value of the P.V.C. and the value of* G *the packages.* The authorities levied customs duty and additional duty on the total invoice value *at the rate applicable to P.V.C.*

On the above facts, the appellant's case is this : the invoice value includes the value of packages; the packages are not of a permanent H character and are not strong enough to be suitable for repeated use; the

packages are also such as are normally used in the trade for packing P.V.C.; the appellant thus satisfies all the conditions prescribed in Notification No. 184 and therefore, he is entitled to the reliefs asked for in the writ petition. The Revenue's case on the other hand (as set cut in the common counter-affidavit filed in the Bombay High Court) is this: the C.I.F. price of the goods imported means cost + insurance + freight; the word 'cost' includes and does not exclude the cost of packing; the packing materials like any other goods are subject to I.T.C. restrictions and are leviable to duty at the appropriate rate; 'in order to avoid separate assessment in each and every importation, the normal trade packing cost is included in assessable value of the goods which is charged to duty and as such no deduction in respect of the value of packing material is admissible;" the appellant did not claim any relief in respect of the value of the packages in terms of the said Notification in the Bills of Entry filed by him; the authorities, therefore, had no opportunity to examine the claim now made by the appellants long after the goods have been cleared; the packages are not available for determining whether they satisfy the requirements of Notification No. 184; the Notification does not contemplates or permit deduction of any portion of the invoice value of the imported goods; it merely saves the packages from a separate levy, provided of course that they satisfy the requirements prescribed.

Before we proceed to deal with the merits of the contentions urged by the counsel on both sides, it would be appropriate to briefly refer to the circumstances in which the batch of writ petitions (including the writ petition filed by the appellant) came to be referred to a Division Bench in the Bombay High Court. On 14/15th October, 1981 a learned Single Judge of the Bombay High Court, Pendse, J. allowed writ petition No. 1099 of 1978 filed by Kirloskar Cummins Limited. The learned Judge considered the Notification dated June 10, 1972 - and not the Notification No. 184 of 1976. In the invoice relating to the imports concerned therein, the value of the goods and the value of the packing charges were separately shown. The value of the packages was stated to be 4 per cent of the value of the machinery packed therein. Pendse, J. held that no duty/additional duty can be levied on the said value of packages inasmuch as they satisfied all the three requirements prescribed in the Notification dated 10th June, 1972 The learned Judge reiterated the said view in two other subsequent writ petitions being W.P. 164; of 1982 disposed of on 10th October, 1983 *Finolex Pipes Private Limited* v. *Union of India*, and W.P. No. 2053 of 1982 disposed

of on 16th April, 1984 *(Milton Plastics* v. *Collector of Customs, Bombay)*. The present batch of writ petitions (including the writ petition filed by the appellants herein), however, came up before another learned Judge Smt. Sujata V. Manohar, J. The learned Judge disagreed with the view taken and the interpretation placed by Pendse. J. in the aforesaid decisions and referred the matter to a Division Bench. The Division Bench agreed with the view expressed by Smt. Sujata Manohar, J. and dismissed the writ petitions.

We have heard the learned counsel for both the parties. While Mr. Adhyaru, learned counsel for the appellant, commended the view taken by Pendse, J., Shri Vellapalli, learned counsel for the Revenue, commended for our acceptance the view taken by the Division Bench and Smt. Sujata Manohar, J. - which is indeed the stand taken by the Revenue in its counter-affidavit.

The expression 'value' is defined by clause (41) in section 2 of the Customs Act in the following words : "Value in relation to any goods means the value thereof determined in accordance with the provisions of sub-section (1) of section 14". Section 14 prescribes the manner in which the value of the imported goods is to be determined. It reads :

> "14. (1) For the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be–
>
> (a) the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale;
>
> Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a Bill of Entry is presented under section 46, or a shipping bill or bill of export, as the case may be, is presented under section 50;
>
> (b) where such price is not ascertainable, the nearest ascer-

tainable, the nearest ascertainable equivalent thereof determined in accordance with the rules made in this behalf. A

(2) Notwithstanding anything contained in sub-section (1), if the Central Government is satisfied that it is necessary or expedient so to do it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having B regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

(Sub-section (3) omitted as unnecessary.) C

(Clause (b) in sub-section (1) has been omitted by Act 27 of 1988 with effect from 16th August, 1988. We are, however, concerned with the position obtaining prior to the said omission.)

Sub-section (1) of Section 14 prescribed two bases for determining D the value, viz., (a) the price at which such or like goods are ordinarily sold or offered for sale, for delivery at the time and place of importation in the course of international trade, provided the seller and buyer have no interest in the business of each other and the price is the sole consideration for the sale/offer for sale; and (b) where the price cannot be ascertained under clause (a), the nearest ascertainable equivalent thereof determined in E accordance with the rules made in that behalf. Sub-section (2) empowers the Central Government to notify, if it is satisfied that it is necessary or expedient so to do, the tariff value for any class of imported goods having regard to relevant circumstances. In such a case the duty has to be charged with reference to such tariff value This power under sub-section (2) is *de* F *hors* the provision in sub-section (1). Sub-section (4) of section 46 requires that the importer while presenting a Bill of Entry shall also produce the invoice, if any, relating to the imported goods before the proper officer in proof of the truth of the contents of Bill of Entry. Section 25 empowers the Central Government to "exempt generally, either absolutely or subject to such conditions (to be fulfilled before or after clearance), as may be G specified in the Notification, goods of any specified description from the whole or any part of duty of customs leviable thereon", if it is satisfied that if is necessary in the public interest so to do. The nature and scope of the power under section 25 has been dealt with by this Court in *Union of India and Ors.* v. *M/s Jalyan Udyog and Another*, [1994] 1 SCC 318 and need not H

be set out in detail over again here, inasmuch as the question at issue herein is not with respect to the scope of the power under section 25 but one relating to the proper interpretation of Notification No. 184 dated 2nd August, 1976.

Clauses (b) and (c) of the proviso in the said Notification do not present any difficulty. They are really question of fact with respect to which proper officer must be satisfied at the relevant time. In the present case, no doubt, even these requirements cannot be said to have been satisfied. The appellant did not raise the question of applicability of the Notification at the time of import of the goods but long after the event. The respondent-authorities have rightly taken the objection that inasmuch as the packages are not now available, it cannot now be said whether they did indeed satisfy the requirements of clauses (b) and (c) of the proviso or not. For the moment, however, we shall keep these two clauses aside and proceed to deal with the main issue which turns on the meaning and purport of clause (a) of the proviso.

The appellants' contention looks appealing at the first sight and we were indeed attracted by it. The submission is this; where the goods are imported in a package, the value of the imported goods does include the value of the package as well, whatever may be the value. It is immaterial whether the value of the package is separately mentioned in the invoice or not since it cannot be denied that every package has some or other value. In other wards, clause (a) of the proviso is satisfied in every case where the goods are imported in packages. The only verification to be done by the proper officer in such a case is to ascertain whether clauses (b) and (c) of the proviso are satisfied. If they are satisfied, no duty/additional duty can be levied on the value of the packages. The value of the packages, whatever that may be, must have to be deducted from the invoice value and duty/additional duty levied only upon the value of the contents properly in this case on the net value of the P.V.C. (excluding the value of packages).

It would immediately be seen that this interpretation has the effect of rendering clause (a) of the proviso otiose and superfluous, since it would merely be satating the obvious. That the value of packages would be included in the invoice value is an obvious fact, whether it is separately shown or not. If so, why was it made a condition - the first condition- to

be satisfied for availing the benefit of exemption. It may be recalled that this condition was not there in the first Notification dated November 25, 1967. It was introduced for the first time in the Notification dated 10th June, 1972 and reiterated in Notification No. 184 issued in the year 1976. The said fact militates against an interpretation which renders it superfluous and of no significance. It cannot be presumed that the Central Government introduced the said clause without any meaning, significance or purpose. The invoice value of all imported goods which are imported in packages, necessarily includes the value of packages whether it is shown separately as such or not. This is an incontrovertible and universal fact. If so, the question arises, what does the said clause mean and what does it signify? The answer according to the Revenue is this; when section 14(1) speaks of "the price at which such or like goods are ordinarily sold, or offered for sale for delivery at the time and place of importation in the course of international trade", it means the goods as they are ordinarily sold; P.V.C. cannot be sold except in packages; delivery of P.V.C. at the place of importation means delivery in packages. The invoice value of the imported P.V.C. includes several factors including the cost of packages : it includes freight, it inlcludes the labour charge for packing and transporting and many other items; the duty/additional duty is levied upon such invoice value (which *inter alia* includes the cost of packaging, *at the rate prescribed for P.V.C.;* while levying or calculating the duty/additional duty, the invoice value is not split up into two components, viz., value of P.V.C. proper and value of packages as such and the duty/additional duty is not separately calculated applying the rates applicable to P.V.C. and packages separately: levy of duty/additional duty is on the entire invoice value at the rate applicable to the P.V.C.; for the purpose of valuation and rate, it is one goods and not two; but in law there is also an import of packages upon which the State is entitled to levy duty/ additional duty under the appropriate entry and at the appropriate rate; it is this levy which is exempted by the exemption Notification; the Notification does not contemplate or provide - either expressly or by necessary intendment - for the value of the packages being deducted from out of the invoice value and exempting them from duty/additional duty; there are no such words in the Notification; if that were really the intention, it would have said so expressly - more particularly when such an interpretation has the effect of modifying the value of imported goods determined under and in accordance with Section 14. This interpretation of Revenue has been accepted and affirmed by the

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A Division Bench of the Bombay High Court.

According to the assessee, however, the difficulty with the above reasoning is that it is premised upon the assumption that the law provides for double impost of duty/additional duty on packages - one as part of P.V.C. at the rate applicable to P.V.C. and the other as packages inde-
B pendently to P.V.C. and the other as packages independently at the rate applicable to packages· and then bring in the Notification to exempt the second levy, i.e., the independent levy on the value of packages at the rate applicable to packages. Let us take another situation to test the correctness of the Revenue's theory, says the assessee: take a case where P.V.C. is
C imported in steel containers, permanent in character and suitable for repeated use. In such a case, duty/additional duty will first be charged on the invoice value of the P.V.C. (which includes the value of the steel containers) at the rate applicable to P.V.C. and again another levy or duty/additional duty on the value of steel containers at the rate applicable
D to steel containers, inasmuch the containers do not satisfy clauses (b) and (c) of the proviso in the Notification. This cold never have been contemplated by law, says the assessees' counsel. Of course, the counsel for the Revenue says that there is nothing abhorent or unusual in the above situation and that it is as it ought to be. The learned counsel refers to the case of oil being imported in stainless steel containers, where the value of
E the containers is several times the value of the oil contained therein. Such a situation can be met only if the Revenue's interpretation is accepted, says the learned counsel for the Revenue.

After giving anxious consideration to the rival points of view, we are
F inclined to agree with the view taken by the Division Bench of the Bombay High Court. It may, however, be that taxing of packing material twice, once at the rate applicable to the contents and then at the rate applicable to container, which would be the result if levy of duty on packing material were not to be exempted, may appear harsh, duty it cannot be said to be
G illegal. What *should* be taxed is a matter not to be decided by the courts, but by appropriate instrumentalities or functionaries. The opposite viewpoint adopted by Pendse, J. In his orders aforementioned) has the effect of deducting the value of packages from the value of the imported goods, i.e. P.V.C. in this case, which is not proved either by the Act or by the Notification. Such an approach presupposes that while levying duty, proper
H officer will separate the values, of the contents and the packages and levy

the duty separately at the rates applicable thereto. The Act however does not contemplate such a course and that does not also appear to be the practice. There appears another difficulty in the ways of accepting the assessee's contention: as stated above, duty/additional duty is charged on the entire invoice value of P.V.C. (imported goods) at the rate applicable to P.V.C.; now if the assessee's contention is accepted, it means that the proper officer should separate the value of packages, calculate the duty/additional duty leviable thereon at the rate applicable to packages separately and give deduction (exemption) of such amount from the total amount; this 'two-rates' theory is inconsistent with the rule of valuation in section 14 (1). As a matter of fact, in the case of imports of P.V.C. concerned herein, the value of the packages was not separately shown. Duty/additional duty was levied upon the total invoice at the rate applicable to P.V.C. in sum, we must say while there is force in both the view points, we are inclined, on a balance of several factors, to accept the interpretation placed by the Revenue. The Notification is designed to exempt levy of duty/additional duty on the packages separately since in law there is also an import of packages and such import too is subject to I.T.C. restrictions.

For the same reasons, the decision of Andhra Pradesh High Court in *Barium Chemicals* v. *Union of India*, (1988) 37 E.L.T. 387 has to be held to be wrongly decided insofar as it goes against the decision herein.

In this connection, it is well remind ourselves that every instrument, statutory or otherwise, has to be so interpreted as to accord with the intention of its make having regard to the language used. True, one cannot ignore the actual words used and go after the supposed intention of the maker - as pointed out in *Hansraj Gordhandas* v. *H.H. Dave, Assistant Collector of Central Excise and Customs, Surat and Others*, [1969] 2 S.C.R. 253 - since that would amount to entering the arena of speculation but all the same the principle is unexceptionable that whether it is statute, statutory instrument or an ordinary instrument, the interpretation placed has to accord with the intention of the maker as evidenced by the words/language used. The decision in *Hansraj Gordhandas* does not lay down any contrary proposition.

We are, therefore, of the opinion that the interpretation placed by the Division Bench of the Bombay High Court on Notification No. 184 is the correct one and warrants no interference, at our hands. The appeal is

A accordingly dismissed. No. costs.

IN WRIT PETITION (CIVIL) NOS. 227/88, 312/88, 229/88, 228/88 220/88,215/88 and 219/88

There writ petitions are filed under Article 32 and the point raised
B is the same as the one raised in the Civil Appeal No. 2589 of 1985. Since we have dismissed the civil appeal, these writ petitions must fail. We are also of the opinion that the writ petitions filed under Article 32 are misconceived and are not maintainable in law. The controversy is about the interpretation of a Notification issued under Rule 8 of the Central Excise
C Rules. In such a case it cannot be said that the petitioners are seeking to enforce any of the fundamental rights guaranteed to them by part III of the Constitution. *Smt. Ujjam Bai* v. *State of Uttar Pradesh and Another*, [1963] 1 S.C.R. 778. The mere fact the the Bombay High Court has taken the view contrary to the petitioners' contention is no ground for skipping that Court or for approaching this Court directly under Article 32. It may
D also be noticed that these writ petitions were filed long after the event i.e., after the import. Today the authorities do not have any means to verify whether the packages concerned in each writ petition - and each consignment - satisfy the requirements of the proviso in the Notification. The writ petitions are accordingly dismissed with costs. The costs of respondents are
E assessed as Rs. 2,000 in each writ petition.

R.P. Appeal and Writ Petitions dismissed.