

M/S HINDUSTAN PETROLEUM CORPORATION LTD.

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v.

THE COLLECTOR OF CENTRAL EXCISE

APRIL 27, 1995

[R.M. SAHAI AND S.B. MAJMUDAR, JJ.]

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Central Excises and Salt Act, 1944—Section 35(a)—Central Excise Rules—Rules 12 and 13—Interpretation—Payment of excise duty on goods exported outside India—Rules 12 & 13 are complementary to each other—Goods exported from bonded warehouse under a bond—Liability to pay duty—Claim of total exemption—Disallowed.

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The appellants filed a refund claim for a sum of Rs. 18,859.50 P being the duty paid by them on Light Diesel Oil supplied as Ship's stores for foreign going ships. The Diesel oil so supplied was charged to basic excise duty, that is, the duty payable under the First Schedule to the Central Excises and Salt Act read with any notification in force. The refund claim was made with respect to Rule 13 of the Central Excise Rules on the basis that no duty whatsoever was payable in respect of LDO and Furnace Oil supplied from bonded stock as ship's stores going to foreign countries in terms of Rule 13.

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The Assistant Collector rejected the claim holding that in the light of various notifications issued in connection with Rule 12 in respect of such supplies, additional excise duty was payable at the concessional rates in terms of Notification No. 232/67 dated 9.10.1967. On appeal, the Appellate Collector turned down the claim of the appellants that the case was governed by Rule 13 without reference to Rule 12. The appellant's claim for refund in connection with the furnace oil also was rejected. The appellants moved further appeals which were dismissed. These appeals had been filed against the decision of the Tribunal.

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The appellants contended that they were not liable to pay excise duty on goods which were exported outside India from a warehouse or registered factory; that as per Rule 13 of the rules such export could be made without payment of duty on the goods directly exported from bonded warehouse or registered factory; that Rule 13 is independent of Rule 12 which deals with only rebate of duty on excise duty paid goods which are

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A subsequently exported outside India; that, therefore, the duty paid under protest by the appellants was liable to be refunded. The respondent contended that the Tribunal was justified in rejecting all these claims of the appellants.

B The question raised for consideration was whether the appellant who exported the concerned excisable goods as ship's stores for consumption on board vessels bound for any foreign ports had to pay on these goods excise duty as per Rule 13 or Rule 12.

C Dismissing the appeals, this Court

C HELD : 1.1. Rules 12 and 13 of the Central Excise Rules deal with excisable goods which are exported from the country of their manufacture to outside countries. If the excisable goods are exported after payment of duty they may earn refund as per notification laid down by Rule 12. While D if these excisable goods are found in bonded warehouse covered by bond to pay excisable duty payable thereon, in case they are exported as laid down by Rule 13 they may earn exemption from payment of duty in the same manner as laid down by Rule 12. Therefore, both these rules are complementary to each other and cover the same topic of payment of appropriate excise duty on excisable goods which are exported outside E India. In case of Rule 12 the duty is to be paid first and on satisfying the condition of notification and proof of export appropriate refund can be earned in the light of the notification. While in case of Rule 13 no duty shall be paid in the first instance and on proof of export as laid down by Rule 13 the respondents could not demand any duty on those goods, in F excess of what was permissible. But if the proof of export is not available as required by Rule 13, full duty will have to be paid on these goods. However, so far as liability to pay excise duty under Rule 13 is concerned, it will have to be linked up with Rule 12, because that rule deals with rebate of duty paid on excisable goods manufactured in India which have ultimately been exported outside India. Even for applicability of Rule 13 the G excisable goods stored in the bonded warehouse have to be exported in the like manner under similar circumstances as mentioned in Rule 12 which is immediately preceding rule 13 and which deals with similar special concessional payment of duty on excisable goods manufactured in India and which are ultimately exported and which bring foreign exchange to the H country. It is not as if under Rule 13 excisable goods which are subjected

to export directly from the warehouse of licenced factory do not incur any excise duty. This is contra indicated by the requirement of Rule 13 itself calling upon the exporter to enter into a bond for payment of requisite full duty in case the situation arises for the same and that bond is not to be discharged and the obligation under the bond has to be continued for the benefit of revenue till proof of export is made available to the satisfaction of the Collector. [847-F to H, 848-A to E]

Hindustan Aluminum Corporation Ltd. v. Superintendent of Excise Mirzapur and Ors., [1981] ELT 642 (Del), affirmed.

1.2. Rule 13 provided for the facility of deferred payment of excise duty and what will be the extent of duty ultimately payable on such goods covered by bond executed under Rule 13 will have to be determined independently of Rule 13 and that is why the liability to pay excise on such goods has to be ascertained before discharging the liability under the bond and for that purpose linkage with Rule 12 becomes relevant as per the phrase "may in the like manner be exported" as found in Rule 13. If Rules 12 and 13 are not read in conjunction with each other an anomalous and also discriminatory result will follow. [850-G, H]

1.3. When Rule 13 refers to the export to be made in the like manner, it would necessarily mean subject to the same conditions and requirements as laid down by the preceding Rule 12 which refers to the same topic, namely, export of excisable commodities and excise duty payable on them whether the manufacturer of articles has exported them after payment of duty or before payment of duty would make no difference on these aspects. [853-H, 854-A]

Indian Aluminium Company Limited v. Union of India, (1988) 36 E.L.T. 435 (Cal), overruled.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 971-72 of 1986 Etc. Etc.

From the Judgment and Order dated 19.12.85 of the Central Excise and Salt Act, 1944 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in A. No. ED (SB) 1470/82 C (Order No.192/85-C).

Soli J. Sorabji and Bhaskar Y. Kulkarni for the Appellant.

A.K. Ganguli, Dilip Tondon, Wasim Quadri, and V.K. Verma for the

A Respondent.

The Judgment of the Court was delivered by

MAJMUDAR, J. This group of civil appeals moved by the same appellant M/s. Hindustan Petroleum Corporation Limited under Section 35(A) of the Central Excises and Salt Act, 1944 (hereinafter referred to as 'the Act'), against the Union of India and the concerned authorities raise a common question of law for our consideration. That question is to the following effect - 'whether the appellant who exported the concerned excisable goods as ship's stores for consumption on board vessels bound for any foreign ports has to pay on these goods excise duty as per Rule 13 of the Central Excise Rules or whether the appellant's goods are liable to pay excise duty as per Rule 12 of these Rules'.

A few relevant introductory facts leading to these appeals are required to be noted at the outset.

D I. *Facts leading to Civil Appeal nos. 2855 and 2856 of 1985*

The appellants filed a refund claim for a sum of Rs. 18,859.50p being the duty paid by them on Light Diesel Oil (LDO) supplied as ship's stores for foreign going ships. The supplies were made on seven different occasions during the period from 15.2.77 to 20.4.78. The LDO so supplied was charged to basic excise duty, that is, the duty payable under the First Schedule to the Act read with any notification in force at Rs. 36.21 per kilo litre at 15 centigrade in terms of Central Excise Notification No. 349/77 dated 16.12.77. The refund claim was made with respect to Rule 13 of the rules. It is the case of the appellants that no duty whatsoever was payable in respect of LDO and Furnace Oil supplied from bonded stock as ship's stores going to foreign countries in terms of Central Excise Rule 13. That they are therefore entitled to refund of excise duty paid on these goods.

After holding adjudication proceedings the Assistant Collector rejected the claim. According to the Assistant Collector in the light of various notifications issued in connection with Rule 12 in respect of such supplies, additional excise duty was payable at the concessional rates in terms of Notification No. 232/67 dated 9.10.67. In short, the claim for refund was adjudicated in the light of Rule 12 and not under Rule 13.

H Aggrieved by this order the appellants went in appeal. The Appellate

Collector turned down the claim of the appellants that the case was governed by Rule 13 without reference to Rule 12. The appellants' claim for refund in connection with another item, namely, furnace oil also came to be rejected by the Assistant Collector and the appeal regarding the same was also dismissed by the appellate authority. Under these circumstances, the appellants moved two further appeals before the Customs, Excise & Gold (Control) Tribunal (hereinafter referred to as 'the Tribunal'). The Tribunal by its common order dismissed these appeals following the Delhi High Court's judgment in the case of *Hindustan Aluminium Corporation Ltd. v. Superintendent of Central Excise, Mirzapur and Ors.*, (1981) ELT 642. Against this judgment of the Tribunal the present two appeals are moved.

II. *Facts leading to Civil Appeal Nos. 5396 - 5398/85:*

The appellant during the period 7.2.78 to 4.5.78 exported Light Diesel Oil (LDO) and Furnace Oil. According to the appellants as per Rule 13 of the rules, no duty was payable on these exports. By an order dated 4.10.78, Superintendent of Central Excise, Calcutta II Division raised the demand for duty and therefore, the appellants paid the duty under protest. Thereafter, on 18th May, 1978 the appellants claimed refund of the duty paid under protest. By orders dated 1.9.78 and 7.9.78, the Assistant Collector rejected the refund claim of the appellants. The appellants preferred appeals before the Appellate Collector who allowed the appeals by order dated 17.3.81 and held that the refund claims were admissible as per Rule 13 of the rules.

A show cause notice was issued by the Government of India on 11th September, 1981 as per Section 36(2) of the Act calling upon the appellants to show cause as to why the order of the Appellate Collector should not be set aside. The appellants gave reply to the show cause notice on 14.10.81. Thereafter, the proceedings were transferred to the Tribunal. The Tribunal by its common order dated 2.5.85 disposed of the review proceedings by setting aside the order of the Appellate Collector and restoring the order of the Assistant Collector. That is how the present appeals are filed by the appellants against the order of the Tribunal dated 2.5.85.

III. *Facts leading to Civil Appeal Nos. 971-72/86:*

The appellants supplied Light Diesel Oil (LDO) and furnace oil during the period 26.12.77 to 22.8.78 from their bonded tanks in bunkers

- A to foreign going vessels. According to the appellants the said export of the aforesaid oil was covered by Rule 13 of the rules. On 29.4.78 the appellants paid the duty under protest because of the demand of the Superintendent, Central Excise, Calcutta II Division. Thereafter, on 5.4.79 the appellants preferred refund claims for the duty paid under protest. The Assistant Collector of Central Excise, Calcutta II Division by order dated 8.9.80
- B rejected the refund claims. The appellants preferred two appeals being Nos. 1524 & 1525 of 1981, against the adjudication order of the Assistant Collector to the Appellate Collector. The Appellate Collector by order dated 6.11.81 allowed the claim of the appellants. The Appellate Collector held that the refund claims were admissible as per Rule 13 of the rules.
- C On 27th August, 1982, respondent no. 1, Govt. of India issued a show cause notice under section 36(2) of the Act calling upon the appellants to show cause why the order of the Appellate Collector should not be set aside. The appellants filed their reply to the show cause notice on 29th September, 1982. The said proceedings were transferred to the Tribunal and were registered as Appeal No. ED(SB)(T) 1470/82-C. The said appeal was
- D allowed by the Tribunal on 19.2.85. The order of the Appellate Collector was set aside and the order of the Assistant Collector was restored. That is how the appellants preferred these appeals under Section 35(2) of the Act against the said decision of the Tribunal.

E *IV. Facts leading to Civil Appeal nos. 4176-96/86*

- The appellants supplied Aviation Turbine Fuel (ATF) during the period from 1.1.78 to 30.6.81 from bonded stock to foreign bound aircraft from the Palam depot. The above said supplies were made under Rule 13
- F of the rules. According to the appellants no excise duty was payable on these goods. However, the duty was paid under protest. The appellants filed twenty-one claims for refund of duty paid during that period. The Assistant Collector of Central Excise, MOD-I, New Delhi by separate orders dated 17.10.84/18.1.84 rejected the refund claims. The appellants preferred appeals before the Appellate Collector, Central Excise, New
- G Delhi during the period from 1979 and 1982. The appellants' twenty-one appeals against the Assistant Collector's orders were also dismissed by the Appellate Collector by orders dated 23.7.84 and 21.8.84. The appellants preferred 21 revision applications against the Appellate Collector's orders. The Govt. of India rejected these revision applications on 19.3.85 and that
- H is why the appellants preferred Special Leave Petitions against the im-

pugned judgment and order of the Tribunal in twenty-one revision applications. Having been granted leave to appeal under Article 136 of the Constitution by this Court, these appeals are registered as civil appeals. A

Mr. Soli J. Sorabjee, learned counsel appearing for the appellants, vehemently contended that the appellants are not liable to pay excise duty on goods which are exported outside India from a warehouse or registered factory. That as per Rule 13 of the rules such export can be made without payment of duty on the goods directly exported from bonded warehouse or registered factory. That Rule 13 is independent of Rule 12 which deals with only rebate of duty on excise duty paid goods which are subsequently exported outside India. That in all these cases, therefore, the duty paid under protest by the appellants was liable to be refunded. It was submitted by Shri Sorabjee, learned senior counsel for the appellants, that in the case of *Indian Aluminium Company Limited v. Union of India*, (1988) 36 E.L.T. 435 the High Court of Calcutta has taken the view that Rule 13 is independent of Rule 12 and a manufacturer exporter who has followed the provisions of Rule 13 was not liable to pay any duty on such goods and that the decision to the contrary rendered by Delhi High Court was rightly dissented from by the Calcutta High Court. In short, placing reliance on the said decision it was submitted that the appeals should be allowed. The learned standing counsel for revenue, on the other hand contended that the view propounded by the Delhi High Court in *Indian Aluminium Company Limited v. Union of India* (supra) is a correct view and the decision rendered by Calcutta High Court does not lay down correct law. That the Tribunal was justified in rejecting all these claims of the appellants following the decision of the Delhi High Court. B
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In view of these rival contentions, it becomes clear that the fate of these proceedings hinges round the correct interpretation of Rules 12 and 13 of the rules. These rules are part and parcel of the Central Excise Rules, 1944 made by the Central Government in exercise of its powers conferred by Section 36(2) of the Act. It will be appropriate to reproduce Rules 12 and 13 as they existed on the statute book at the material time for resolving the controversy between the parties. F
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"Rule 12. Rebate of duty on goods exported. - (1) The Central Government may, from time to time, by notification in the Official Gazette, grant rebate of duty paid on excisable goods, if exported H

A outside India, to such extent, and subject to such safeguards, conditions and limitations as regards the class of goods, destination, mode of transport, and other allied matters as may be specified therein.

B Provided that if the Collector is satisfied that the goods have in fact been exported, he may, for reasons to be recorded in writing, allow the whole or any part of the claim for such rebate even if all or any of the conditions laid down in any notification issued under this rule have not been complied with.

C Explanation. - For the purposes of this rule the term "Collector" includes the Collector of Central Excise at Madras, Bombay, Calcutta and Cochin and the Collector of Central Excise in whose territorial jurisdiction the airport or port of Visakhapatnam, Kakinda, Jamnagar, Mangalore, Bhavnagar, Veraval, Porbandar, Rameswaram, Tuticorin, Kandla, Cuddalore, Okha, Nagapatinam, D Pondicherry and Paradip is located.

E (2) Where the Central Government does not grant sub-rule(1) either wholly or partially and rebate of duty paid on excisable goods exported to a country outside India, it may, in order to promote exports or fulfil obligations arising out of any treaty entered into between India and the Government of that country provide for payment to the Government of that country an amount not exceeding the duty of excise paid on such goods which are exported out of India to that country.

F 13. Export under bond of goods on which duty has not been paid. - Goods other than salt, vegetable non-essential oils, and tea all varieties except package tea under T.C. (2) made from duty paid loose tea, may in like manner be exported without payment of duty from a warehouse or a licenced factory, provided that export is made in accordance with the procedure set out in the relevant provisions of Chapter IX of these Rules and the owner enters into a bond in the proper Form, with such surety or sufficient security, and under such conditions as the Collector approves, in a sum equal at least to the duty chargeable on the goods, for the due arrival thereof at the place of export and their export therefrom H under Customs or Postal supervision as the case may be, within

the period prescribed for goods exported under Rule 12; and such bond shall not be discharged unless the goods are duly exported, to satisfaction of the Collector, within the time allowed for such export or are otherwise accounted for to the satisfaction of such officer; nor until the full duty due upon any deficiency of goods, not so accounted for, has been paid.

Explanation. - For the purpose of this rule as well as rule 14, 14A and 14B, (i) the term "Collector" includes the Collectors of Central Excise at Bombay, Madras and Calcutta and (ii) the terms 'goods' includes excisable goods used in the manufacture of the goods which are exported."

A mere look at Rule 12 shows that it will cover those excisable goods which have already been subjected to payment of excise duty but which are subsequently exported outside India. On proof of fulfilment of conditions laid down by Rule 12, the concerned exporter of such goods will be able to get rebate as per the terms and conditions laid down by the notification issued by Central Govt. under sub-rule (1) of Rule 12. So far as Rule 13 is concerned, other excisable goods mentioned in the rule may in the like manner meaning thereby as prescribed by Rule 12, can be exported without payment of duty from warehouse or licensed factory, provided that export is made in accordance with the procedure set out in the relevant provisions of Chapter IX of these Rules and the owner enters into a bond in the proper form, with such surety or sufficient security under such conditions in the sum equivalent to that chargeable on the goods for the due arrival at the port of the export. And such bond shall not be discharged unless the goods are duly exported to the satisfaction of the Collector. It therefore, appears clear that Rules 12 and 13 deal with excisable goods which are exported from the country of their manufacture to outside countries. If the excisable goods are exported after payment of duty they may earn refund as per notification laid down by Rule 12, While if these excisable goods are found in bonded warehouse covered by bond to pay excisable duty payable thereon, in case they are exported as laid down by Rule 13 they may earn exemption from payment of duty in the same manner as laid down by Rule 12. Therefore, both these rules are complementary to each other and cover the same topic of payment of appropriate excise duty on excisable goods which are exported outside India. In case of Rule 12 the duty is to be paid first and on satisfying the condition of notification and

- A proof of export appropriate refund can be earned in the light of the notification. While in case of Rule 13 no duty shall be paid in the first instance and on proof of export as laid down by Rule 13 the respondents cannot demand any duty on those goods, in excess of what is permissible. But if the proof of export is not available as required by Rule 13, full duty will have to be paid on these goods. However, so far as liability to pay excise duty under Rule 13 is concerned, it will have to be linked up with Rule 12, because that rule deals with rebate of duty paid on excisable goods manufactured in India which have ultimately been exported outside India. It is also pertinent to note that even for applicability of Rule 13 the excisable goods stored in the bonded warehouse have to be exported in the like manner meaning thereby under similar circumstances as mentioned in Rule 12 which is immediately preceding Rule 13 and which deals with similar special concessional payment of duty on excisable goods manufactured in India and which are ultimately exported and which bring foreign exchange to the country. It is not as if under Rule 13 excisable goods which are subjected to export directly from the warehouse of licenced factory do not incur any excise duty. That is contra indicated by the requirement of Rule 13 itself calling upon the exporter to enter into a bond for payment of requisite full duty in case the situation arises for the same and that bond is not to be discharged and the obligation under the bond has to continue for the benefit of revenue till proof of export is made available to the satisfaction of the Collector. The appellants' contention that Rule 13 is independent of Rule 12, therefore, cannot be accepted.

- This very view was taken by the Delhi High Court in the case of *Hindustan Aluminium Corporation Ltd. v. Superintendent of Excise, Mirzapur and Ors.* (supra). An identical question was posed for consideration of the Delhi High Court. It was answered by the Division Bench of the Delhi High Court speaking through Sachar, J. The Delhi High Court held that the quantum of duty or rebate has to be determined in the light of the notification issued under Rule 12. Under Rule 13 without first payment of duty goods can be exported but that does not mean that the goods are not liable to pay duty. Since Rule 13 contemplates release of goods under bond the petitioner can claim postponement of payment of duty but cannot claim total exemption. Referring to rule 9 and Rule 140 of the rules it was held that though Rule 9 provided that no excisable goods shall be removed from where they are manufactured without payment of duty, Rule 13 allows such removal for export without payment of duty. Rule 140 empowers the

Collector to approve a private warehouse for storage of excisable goods on which duty has not been paid and also empowers that he may require the licensed warehouse holder to execute bond to pay the duty on goods when necessary. Reliance was also placed on Rule 47 which enables the manufacturer to provide store room other place of storage at his premises for depositing goods manufactured on the same premises without payment of duty. Such store room or place has to be approved by the Collector. Of course, in such a case the manufacturer has to enter into a bond for payment as mentioned in Rule 48. Referring to Rule 13 it was observed that as per the said rule goods can be exported without payment of duty from a warehouse or a licensed factory, provided the owner enters into a bond as contemplated therein. It is possible both for the manufacturer or any other owner to enter into a bond under rule 13. Even under Rule 140 the warehouse to which goods may be removed without payment of duty, may not necessarily belong to the manufacturer. Reliance was also placed on the provision of Rule 13 to the effect that goods without payment of duty can be exported as per the provisions of Chapter IX of the rules which would include Rule 185. Therefore, the conditions laid down by notification issued on 17.5.1969 under Rule 12 will automatically be applicable to goods exported under Rule 13. It was also observed that it was not as if goods exported under Rule 13 were exempted from payment of excise duty. In para 14 of the report it was observed that the facility of removing without payment of duty cannot be equated with a substantive right of exemption from payment of duty as was the contention of Mr. Sorabjee. Rule 8 empowers the Central Government by notification in the Official Gazette to exempt subject to such conditions as may be specified in the notification excisable goods from the whole or any part of duty leviable thereon. It was not the case of the appellants that there was any notification issued exempting the goods exported under bond under Rule 13 from payment of duty.

Repelling the arguments of the learned counsel for the petitioner that reference in Rule 13 to the provisions regarding the goods being exported in the like manner refers to only the procedure for export as contemplated by Rule 12 and had nothing to do with the rate of excisable duty prescribed under notification issued under Rule 12, it was observed that procedure for exporting such goods was already laid down by Chapter IX of the Rules and it was expressly mentioned in Rule 13. Therefore, the phrase 'may in the like manner be exported' as found in Rule 13 has a clear linkage with

- A the liability to pay duty as laid down by Rule 12 and accordingly the contention of the appellants before the Delhi High Court that Rule 13 was independent of Rule 12 was rejected and it was held that even goods exported from bonded warehouse under Rule 13 under a bond will have to bear duty to the extent indicated by notification issued under Rule 12 as applicable at the relevant time.
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- In our view the aforesaid decision of Delhi High Court correctly laid down the scheme of Rules 12 and 13 in the light of other relevant rules holding the field at the relevant time. All that Rule 13 provides for is a facility given to the concerned manufacturer of excisable goods of not paying excise duty when such goods are taken out of bonded warehouse or licensed factory under a bond duly executed under Rule 13 which defers payment of excise duty but at the same time guarantee to the revenue payment of full excise duty thereon if they are not ultimately exported. Thus the liability to pay excise duty does not vanish and the goods do not become
- D totally exempt from payment of excise duty as the charge of the duty attaches moment they are manufactured as laid down by the Act. When we turn to Chapter IX of the rules we find that it deals with export under rebate of duty or under bond. Thus a common procedure has been provided under Chapter IX, both for the claim for rebate of duty on export of goods as envisaged by Rule 12 and also under bond executed under Rule 13 in connection with export of excisable goods. As per rule 13 exporter of excise goods on which duty had not been paid has also to follow the same procedure under Chapter IX as has to be followed for exports under Rule 12. Thus an exporter of excisable goods on which duty is not paid in the first instance but which are covered under the bond duly executed in
- F favour of the revenue by the owner of the goods has also to follow the procedure of Rule 185 found in Chapter IX. All that Rule 13 therefore seeks to do is that it provides for the facility of deferred payment of excise duty and what will be the extent of duty ultimately payable on such goods covered by bond executed under Rule 13 will have to be determined
- G independently of Rule 13 and that is the reason why the liability to pay excise on such goods has to be ascertained before discharging the liability under the bond and for that purpose linkage with Rule 12 become relevant as per the phrase "may in the like manner be exported" as found in Rule 13. If Rules 12 & 13 are not read in conjunction with each other an
- H anomalous and also discriminatory result will follow. This can be

demonstrated by taking a simple example.

If an excisable commodity like Sewing machine is exported from a bonded warehouse under Rule 13 under a bond it may not have to bear excise duty till it is exported. But if the same commodity namely, sewing machine is cleared ex-factory gate on payment of full excise duty and thereafter it is exported and if it is covered by a notification under Rule 12(1) granting rebate then only because the same commodity is first cleared from factory gate on payment of full duty, it will have to bear a reduced excise duty as per the notification on proof of export while the same commodity if placed in a bonded warehouse and then exported may get totally exempted from duty. If say for such a sewing machine the excise duty is Rs. 100 per machine, and on proof of export if 20% rebate is to be available then proof of export of such machine after payment of Rs. 100 excise duty would entitle the exporter to get refund of Rs. 20 and such machine may have to bear the excise duty of Rs. 80. While if the same sewing machine which otherwise is liable to pay Rs. 100 excise duty is placed in a bonded warehouse by availing the facility of deferred payment of duty under bond as per Rule 13 and if Rule 13 is to be read independently of Rule 12, then export of such a machine from bonded warehouse would entitle the exporter to claim full exemption of Rs. 100 by way of duty on the same machine. Thus a person who first pays excise duty and then exports the commodity would pay Rs.80 by way of reduced duty, while a person who enjoys the facility of non-payment of duty at the stage of taking out the commodity from bonded warehouse and getting it exported would enjoy on the same commodity total exemption from duty when it is otherwise liable to bear the same rate of excise duty. Such a result, would be discriminatory and arbitrary. To avoid such an anomalous result Rule 13 will have to be read in conjunction with Rule 12 and as complementary to Rule 12. If Rule 13 is read independently of Rule 12 as contended by senior standing counsel for appellants. Sh. Sorabjee an exporter of such a sewing machine who is prompt in paying full duty of Rs. 100 and then exports it will have to suffer as he will have to pay Rs. 80 as duty ultimately but one who does not pay duty shall in the first instance after satisfying conditions of Rule 13 will pay nil duty. It would put premium on non-payment of duty and result in treating equals inequally. On the other hand an equitable result would follow if Rules 12 and 13 are read as complementary to each other dealing as they do with the same subject of remission of duty on export of excisable goods. It is obvious that interpretation of these rules

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- A must be made in such a manner as to avoid inequitable result and to ensure an equitable result. According to us the view taken by the Delhi High Court is quite justified and unexceptionable as it avoids such an inequitable result. On the contrary, the view expressed by Calcutta High Court in the case of *Indian Aluminium Company Limited v. Union of India* (supra)
- B wherein it is held that Rule 13 is to be applied independently of Rule 12, would obviously result in the aforesaid inequitable consequences which can not be countenanced. Turning to the Division Bench judgment of the Calcutta High Court, we find that the Calcutta High Court has placed emphasis on the words used in these rules, namely, "rebate on duty of excise paid" as found in Rule 12 as contra distinguished from the words
- C used in Rule 13 to the effect "export under bond of commodities on which duties have not been paid". In our view if the common scheme of both these rules is appreciated in its proper perspective, mere difference of phraseology contained in these rules regarding the time and mode of payment of excise duty would pale into insignificance. It is true as observed by Calcutta
- D High Court that Rule 12 talks of a notification, while rule 13 does not refer to any notification. But once, it is kept in view that the burden of duty which has to be borne by the concerned commodity, whether it is exported from a bonded warehouse or from open market has to be the same to avoid any inequitable result, the difference in phraseology employed these rules
- E cannot have any impact on the true construction of these rules. This should be for the simple reason that ultimately the exact burden of the excise duty to be borne by an exported commodity will have to be governed by the notification issued under Rule 12. Equally unjustified is the reasoning adopted by the Calcutta High Court in para 14 of the report that as per Rule 13
- F the export is made from bonded warehouse and therefore manufacture may not earn profit which he may earn if first the goods are cleared on payment of excise duty and then they are exported. In our view this distinction is without any real difference. It has to be kept in view that if the excisable goods are cleared for home consumption and then exported within the time prescribed under Rule 12, refund would be claimed by the exporter who
- G may not be the manufacturer of such commodity. Such a manufacturer when he sells the goods for home consumption may get profit out of the transaction but ultimately the burden of the excise duty paid by him on the cleared commodity will be passed on to the purchaser and such a purchaser if he exports the commodity within the time limit prescribed by Rule 12
- H can claim refund of duty paid to the extent permissible under the notifica-

tion issued under Rule 12. Therefore, the benefit of such exporter is only to the extent of the lessor duty which he ultimately pays while in case of rule 13 if the manufacturer directly exports the commodity he directly gets the benefit which he will have no occasion to pass to the foreign imported buyer. He will load the export price to the extent of the duty which ultimately the exported commodity is to bear. In either case the burden of duty borne by the exporter under Rule 13 or the manufacturer of goods cleared for home consumption would be nil as he would pass on the burden to the foreign importer under Rule 13 or to the purchaser for home consumption under Rule 12 who may earn in his turn rebate on duty paid if goods are exported as per Rule 12. Thus the duty of excise will have no real impact on the extent of profit earned by the manufacturer on goods cleared for home consumption or on goods exported. Profit on such goods will be the difference between market price in home or foreign market and cost price. In home market the margin may be less as excise duty will form part of cost. In foreign market may be more if goods are exported under Rule 13 without payment of duty. Consequently, it is not possible to agree with the view of the Calcutta High Court that because under Rule 12 the manufacturer earns more profit by selling in local market for home consumption, the exporter under Rule 12 may bear a larger burden of excise duty as compared to the exporter, manufacturer of the same type of goods under Rule 13. Similarly, it is not possible to appreciate the reasoning adopted by the Calcutta High Court in para 28 of the report to the effect that under Rule 13 what is sought to be secured is the proper exportation of goods and not duty to be borne by the exporter. It has to be kept in view that excise duties have nothing to do with the exports as such or with the charging of custom duty on export. They are only concerned with charging and recovery of excise duties which are attached to the manufacture of the goods and their clearance either for home consumption or for export as the case may be. The Calcutta High Court is also in error in taking the view that the words "in the like manner be exported" as found in Rule 13 deal with the procedure for export, as the procedure is already provided in the same rule by making an express provision that such an export will be made in accordance with the procedure laid down in Chapter IX of these rules. Consequently, the meaning assigned to the phrase, "may in the like manner be exported" by the Calcutta High Court as found in Rule 13 would on the reasoning of the High Court become tautologous. It must therefore be held that when the rule 13 refers to the export to be made in

A the like manner, it would necessarily mean subject to the same conditions and requirements as laid down by the preceding Rule 12 which refers to the same topic, namely, export of excisable commodities and excise duty payable on them whether the manufacturer of articles has exported them after payment of duty or before payment of duty would make no difference on these aspects. The Calcutta High Court has found fault with the reasoning of the Delhi High Court in *Hindustan Aluminium Corporation Limited v. Superintendent, Central Excise* (supra) by taking the view that the Delhi High Court had wrongly assumed that the exported goods are not exempted from payment of excise duty under Rule 8 and that the provisions of Section 37 of the Act were over-looked by the High Court. Now it cannot be gainsaid that no exemption notification covering the goods in question is issued under Rule 8. So far as Section 37 is concerned, all that it provides is that the Central Govt. may make rules for providing exemption in whole or part from duties imposed by the Act. In this connection, it is necessary to note that the Central Excise rules are made by the Central Govt. in exercise of its powers under Section 37. Rule 8 relating to exemption is also a part and parcel of these rules and it has a linkage with Section 37 of the Rules. Rule 13 has nothing to do with exemption as wrongly assumed by the Calcutta High Court. If Rule 13 was dealing with total exemption from payment of excise duty on excisable goods exported from bonded warehouse, there would have been no occasion for the rule making authority for providing execution of bonds for covering the entire duty payable on such excisable goods. Even apart from all these reasons, it is obvious that the conclusion to which the Calcutta High Court reached that Rule 12 is independent of Rule 13 would result in an anomalous and discriminatory situation as already discussed earlier such an interpretation cannot be countenanced on the tough stone of Article 14 of the Constitution of India. It must therefore be held that the decision of Calcutta High Court cannot be treated to be laying down correct law. On the contrary as seen earlier the decision of the Delhi High in *Hindustan Aluminium Corporation Ltd. v. Superintendent, Central Excise* has correctly interpreted Rules 12 and 13. The Tribunal was therefore right in following the decision of Delhi High Court and coming to its conclusion in that light. In the result these appeals fail and are dismissed. In the facts and circumstances of the case there will be no order as to costs.

R.A.

Appeals dismissed.