A PRIYANKA OVERSEAS PVT. LTD. AND ANR.

v.

UNION OF INDIA AND ORS.

NOVEMBER 15, 1990

B [K.N. SINGH AND N.M. KASLIWAL, JJ.]

Customs Act, 1962—Sections 26, 60, 68, 112(a)—Palm Kernel—Import of—Whether permissible—Duty payable—What is.

The appellant company made a contract on 10.6.87 with the
C **foreign suppliers to import under Open General Licence 35,000 MT of "Palm Kernel". Under the above contract 10681.832 MT of palm kernel was shipped from Nigeria on 26.6.87 and 25.7.87 under different bills of lading. The goods arrived in the territorial waters of India on 2/3rd October, 1987.**

D **Prior to 27.7.1987 import of palm seeds was canalised under the Import Policy for the years 1985-88. On 27.7.1987 the Chief Controller of Imports & Exports issued a Public Notice canalising import of "any other material from which oil can be extracted" also.**

As the appellant was apprehending some dispute on the import of
E **palm kernel, it filed a writ petition in the High Court on 28.7.87, and the learned Single Judge passed two interim orders. On appeal against these orders, the Division Bench on 2.12.87 set aside the interim orders with the consent of the parties and expedited the proceedings already initiated under section 124 of the Customs Act, 1962 for confiscation of the goods.**

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The Collector of Customs by adjudication order passed on 7.12.1987 held that the item "Palm Kernel" was a prohibited item for import except through canalisation by the State Trading Corporation in terms of the Import Policy and, consequently its import without a valid licence was in contravention of the provisions of the Customs Act, 1962
G **read with the Imports and Exports (Control) Act, 1947. The Collector in these circumstances directed the confiscation of the entire goods but gave an option to the appellant company to redeem the goods on payment of fine of Rs.90 lacs. The Collector also imposed a personal penalty on the appellant.**

H **The customs duty as applicable on the date of the arrival of the**

ships, i.e. 2/3rd October, 1987 was 105%. The said customs duty was withdrawn on 4.12.87 and as such there was nil duty on palm Kernel, and this position remained upto 28.1.88. The exemption from customs duty was however withdrawn from 29.1.88 as a result of which the earlier duty of 105% came into effect. The customs duty was further increased from 1.3.88 and the new customs duty was at 245%.

The appellant company removed 3935.364 MT of Palm Kernel on 17.12.87 by paying proportionate amount of penalty and nil customs duty. The appellant then filed bills of entry for the remaining 6746.468 MT of Palm Kernel on 28.1.88 but did not depoit the redemption fine.

On merits, the learned Single Judge by his order dated 19.4.88 held that the Palm Kernel was an item different and distinguished from Palm seeds, and the same could be imported under OGL as it was covered under item no. 1, Appendix 4 of the Import Policy. Accordingly, the learned Judge ordered the goods to be cleared on payment of such duties as were leviable on 28.1.88, when the appellant had entered the bill of entry seeking clearance of the goods.

The Division Bench on appeal affirmed the order of the Trial Court in so far as the setting aside of the adjudication order was concerned. The Division Bench however held that the appellant shall be entitled to get delivery of the balance goods on payment of duty at the rate prevailing in October, 1987.

Both the parties preferred appeal before the Court by special leave,

Before the Court it was *inter alia* contended on behalf of the appellant company that (i) Palm seed and Palm Kernel were two different items as shown in the commercial transactions in the trading community and Palm seeds alone was a canalised item; (ii) a fiscal statute had to be construed strictly and in favour of a citizen especially when the question of imposing fine and penalties was involved, and (iii) the Palm Kernel having been shipped by the foreign seller from Nigeria on or before 27.7.87 the appellant was legally entitled to import the same under the OGL.

It was further contended that the rate of duty of the imported goods, as provided in section 15 of the Customs Act, 1962 shall be the rate and valuation in force, in the case of goods cleared from a warehouse under section 68, on the date on which the goods were actu-

A ally removed from the warehouse, and the Division Bench committed error in holding that the date for actual removal of the goods in the present case shall be considered as 2/3rd October, 1987 when the goods entered the territorial waters of India; that irrespective of the physical removal of the goods from the warehouse, the goods would be deemed to have been actually removed in law on 28.1.88 when the petitioner had B filed ex-bond bills of entry seeking clearance of the goods; in the facts and circumstances of this case the term 'actual removal' used in section 15(1)(b) could not mean physical removal as the same was made impossible by the wrongful act of the respondents; and it should be given a meaning in the juristic sense as deemed removal.

C On behalf of the Revenue, it was contended that (i) the distinction sought to be made between 'Palm Kernel' and 'Palm Seed' was artificial; (ii) the appellant had clearly understood the Import Policy and was fully aware of the fact that Palm Kernel was a canalised item and still it imported the same under the OGL; (iii) the appellant had let no evidence to show that the 'Palm Kernel' and 'Palm seed' were considered as two D different commodities in the popular sense in commerce or trade. As regards the question of levy of duty, it was contended that in the matter of taxation there was no question of applying any principles of equity or the deeming fiction in construing the provisions of section 15(1)(b) of the Customs Act; even if the appellant had entered the bill of entry on 28.1.88, admittedly the goods were not actually removed on that date E and the hiatus if any in actual removal, could not be extended to an artificial date.

In the alternative it was contended that the appellant fully knowing that the rate of duty in October, 1987 when the goods had arrived in India was 105% and even if the deeming provision for removal of the F goods was applied for the purpose of section 15(1)(b) of the Customs Act, then the date of actual removal should be 2/3rd October, 1987.

Dismissing the appeal filed by the Revenue and allowing the appeal filed by the appellant company the Court,

G HEID: (1) "Palm Kernel" is not included in the item "Palm Seeds", and the two commodities are different as understood in commerce or trade. [155H-156A]

(2) Prior to 27.7.87 'Palm Kernel' was not a canalised item, the High Court rightly held that 'Palm Kernel' was not included within the H entry of 'Palm seed'. The Government of India itself realised the dif-

ference in the two commodities, therefore it amended its previous policy. [156D] A

(3) As the Palm Kernel was not a canalised item before 27.7.87, it could have been imported under the OGL before that date. The crucial dates in this regard are 26.6.87 and 25.7.87 when the goods were actually loaded in the ship and not the date of arrival of the ship in the territorial waters of India. [156F] B

(4) Since 'Palm Kernel' was not included within 'Palm seed' the Customs authorities had no legal justification to confiscate or impose redemption fine or penalty. [156E]

(5) Section 15 of the Customs Act provides for determination of rate of duty on imported goods. The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force in the case of goods cleared from a warehouse under section 68, the date on which the goods are actually removed from the warehouse. [158C-D] C D

(6) One cannot introduce the concept of deeming provision while determining the question of actual removal of the goods from the warehouse. The rate has to be determined on the basis of the date on which goods are actually removed from the warehouse and thereafter the question would be examined as to how the relief is to be moulded in case it is found that the Customs authorities were themselves responsible in preventing the importer of goods from actually removing the goods from the warehouse. [158E-F] E

Duni Chand Rataria v. *Bhuwalka Brothers*, [1955] 1 S.C.R. 1071; *M/s. Bharat Surfactants Pvt. Ltd.* v. *Union of India*, [1989] 4 S.C.C. 21; distinguished. F

Commissioner of Sales Tax, Madhya Pradesh v. *Jaswant Singh Charan Singh*, [1967] 2 S.C.R. 720 referred to.

(7) The statutory principle is that if a party discharges its liability by complying with the requirement of law, and presents papers for clearance of goods, it is obligatory on the Revenue authorities to pass the order immediately thereon. If the Revenue authorities either refuse to pass the order on some erroneous or imaginary grounds or on account of any misconception of law, the Department cannot take advantage of its own wrong in demanding higher rate of duty from the importer. [162D-E] G H

(8) Admittedly, the appellant had done its part of legal duty by presenting bills of entry and complying with section 68(a) of the Act on 28.1.88. But the Customs Officer refused to release the goods on erroneous assumption that the appellant was liable to pay redemption fine and since it had not paid the said amount, the goods were not liable to be released. In the circumstances, the Department cannot be allowed to take advantage of its own wrongful act. [162F-G]

(9) In moulding relief, the Court has always applied principles of equity in order to do complete justice between the parties. The appellant is therefore entitled to the delivery of goods without paying any duty as on 28.1.88 no duty was payable on the goods. [162H, 164E]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 5333-34 of 1990.

From the Judgment and Order dated 20.5.1988 of the Calcutta High Court in Appeal No. 303 of 1988.

Ashok H. Desai, Solicitor General, A.K. Sen & Vijay Bahuguna, D.K. Garg, G.L. Rawal, Neerja Mehra, A. Subba Rao, C.V. Subba Rao and Ms. Sushma Suri for the appearing parties.

The Judgment of the Court was delivered by

KASLIWAL, J. Special leave granted.

Two important questions are involved in the case out of which one is relating to Import Policy and the other is regarding the duty payable under the Customs Act, 1962.

Facts relating to the question of Import Policy are that the Government of India framed Import Policy for the years 1985-88 under which import of items under Open General Licence (in short OGL) have been mentioned under Appendix 6 Entry No. 1 as under:

(1) Raw materials, components and consumables (non iron and steel items) other than those included in the Appendices 2, 3 Part (a), 5 & 8.

Appendix 5 Part-B provides for petroleum products, fertilizers, drugs, feature films, video films, oil/seeds, cement, cereals, newsprint, photo assistance etc. under the head oils/seeds item No. 5 reads as under:

"In the case of the following items, whether edible or non edible, import will be made by the State Trading Corporation (STC)/Hindustan Vegetables Oil Corporation, New Delhi (A Govt. of India Undertaking) under Open General Licence on the basis of foreign exchange released by the Government in its favour, imports, distribution and their pricing will be made by the State Trading Corp./Hindustan Vegetables Oil Corp., New Delhi as per the connected policy of the Government in the Ministry of Food & Civil Supplies, Deptt. of Civil Supplies."

Out of the 9 items under this head, we are concerned with Sl. No. 4 which provides as under:

Palm Oil (all types including Palmolein and other fractions)/ Palm seeds."

Thus according to the above provision palm seeds were canalised items falling under Appendix 5-B of the said Policy. The Import & Exports (Control) Act, 1947 empowers the Central Government to prohibit, restrict or otherwise control imports and exports. In exercise of the powers conferred in the above Act, the Imports (Control) Order, 1955 has been issued. Schedule I(1) to the said Order contains the list of articles of which imports are controlled. The import of such items is prohibited except: (i) under and in accordance with a licence or a customs clearance permit issued under the said Order, or (ii) if they are covered by an OGL (subject to such conditions as may be stipulated) or (iii) if they are covered by the semi-clause (ii) of the Imports (Control) Order.

Open General Licence No. 1/87 dated 1.4.1987 provided as follows:

"Import Trade Control Orders Nos. 68/85-88, OGL No. 1/87 dated 1.4.87 in exercise of the powers conferred by Sec. 3 of the Import & Export (Control) Act, 1947, the Central Government hereby gives general permission to import into India from any country, except the Union of South Africa/South-West Africa, raw materials, components and consumables by actual users (industrial) subject to the following conditions:

The item to be imported are not covered by Appendices 2,

A 3, 5 & 8 of Import & Export Policy for the year 1985-88 Vol. I as amended from time to time by issue of a Public Notice in the Official Gazette."

Clause 32 with which we are concerned, reads as under:

B *Clause 32;—*

"Such goods are shipped on through consignment to India on or before 31st March on the licensing Order or, in the case of actual users (industrial), on or before 30th June of the following licensing year against firm order for which irrevocable letters of credit are opened and established on
C or before last date of February of the licensing year, without any grace period whatsoever."

M/s. Priyanka Overseas Private Limited (hereinafter referred to as the appellant) made a contract for import of 35,000 MT of "Palm
D Kernel" on 10.6.87 with the foreign suppliers. The contract was entered as an agent on behalf of various actual users. On 27.7.87 the Chief Controller of Imports & Exports issued a Public Notice No. 205-ITC (PN)/85-88 canalising import of "any other material from which oil can be extracted." Under the above contract 11,570.570 MT of Palm Kernel was shipped by the foreign seller from Nigeria to the
E appellant company under different Mills of Lading on 26.6.87 and 25.7.87. As regards the above quantity of goods the Collector Customs in his adjudication order No. 1/87 dated 7.12.87 has observed as under:

"Further, as reported by the Assistant Collector, Kaki-
F nada, the actual quantity landed and bonded, as per the share weighment under customs supervision as well as under the supervision of the surveyor was only 10681.832 MT involving a short landing to the extent of 886.738 MT."

Thus we take this figure of 10681.832 MT as correct.

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Since the Customs authorities professed to the appellant not to clear the goods it filed a Writ Petition No. 3265 of 1987 before a Single Judge of the Calcutta High Court. Learned Single Judge passed an interim order in favour of the appellant on 28.7.87. The interim order was granted in terms of prayers (e) & (f) of the petition, on certain
H conditions. The above order dated 28.7.87 was modified on 3.8.87 to

the extent that the interim order was granted on the condition that the appellant shall pay the entire customs duty as may be determined and demanded by the respondents in cash and shall furnish a bond for the entire value of the goods. The Order for furnishing bank guarantee was recalled. It was made clear that the Customs authority shall not release the goods unless the entire customs duty as may be determined and demanded by them was fully paid by the appellant in cash. The Collector of Customs filed an appeal before the Division Bench against the aforesaid order.

The Division Bench of the Calcutta High Court on 18.9.87 passed the following order:

> "We direct that in case the writ petitioner-respondent chooses to import the Palm Kernel pursuant to the order of the learned Trial Judge under appeal, the imported goods will be kept in a bonded warehouse or any other warehouses availed by the Customs authorities and until further orders the respondent being the writ petitioner in the above matter, would not take delivery of the same."

On 2/3rd October, 1987 the imported goods entered into the territorial waters of India and arrived at the port of Kakinada. On the application moved by the appellant on 15th October, 1987, to the Assistant Collector of Customs, Kakinada for allowing it to keep the Palm Kernel cargo in a bonded warehouse or any other warehouse approved by the Customs authorities till the final disposal of the case before the High Court, the Assistant Collector passed an order on 18.10.87 for allowing warehousing of the goods under Sec. 60 of the Customs Act, 1982 (hereinafter referred to as the Act) on the appellant executing a general bond to that effect. The appellant accordingly executed the bond.

Since the Collector of Customs had already issued notice under Sec. 124 of the Customs Act initiating proceedings for confiscation of the goods, the appellant approached the Collector and filed representation against the proposed confiscation. In view of these circumstances the parties were heard on 2.12.87 by the Division Bench of the High Court and with the consent of the parties the interim orders of the Single Judge were set aside and the proceedings initiated under Sec. 124 of the Customs Act, before the Collector of Customs were expedited, without prejudice to the rights and contentions of the parties in the pending writ petition before the learned Single Judge.

A The Division Bench, further issued the following direction for the expeditious disposal of the writ petition pending before the Single Judge.

> "Affidavit in opposition to the writ petition to be filed by 22.12.87, affidavit in reply if any to be filed by 10.1.88. Liberty is given to the parties to apply before the first Court for early disposal of the writ petition. It is expected that the matter will be disposed of expeditiously by the first Court. We make it clear that we have not adjudicated on the merits of the disputes and the parties will be at liberty to adjust all their claims and contentions before the Collector of Customs and in the pending writ petition"

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The Collector of Customs by adjudication order passed on 7.12.87 held that the item "Palm Kernel" was prohibited item for import except through canalisation by the State Trading Corporation in terms of the Import Policy, and, consequently the import of D 11,570.570 MT of Palm Kernel of Nigeria origin valued at Rs.2,88,88,414/cif value without a valid licence was in contravention of the provisions of Sec. 3(i)(a) of the Customs Act read with Sec. 3(ii) of the Imports & Exports (Control) Act, 1947. The Collector in these circumstances directed the confiscation of the entire goods and gave the importer an option to redeem the goods on payment of a fine of E Rs.90 lacs. The option was to be exercised within one month of the order. The Collector also imposed on the importer i.e. the appellant a personal penalty of Rs.10 lacs in terms of Sec. 112(a) of the Customs Act. On 17.12.87 the appellant exercised its option within the aforesaid period of one month and took delivery of part of the goods of 3935.360 MT on payment or personal penalty of Rs.10 lacs and also F part payment of the redemption fine to the tune of Rs.35 lacs. On 28.1.88 the appellant filed the bills of entries before the authority concerned. It may also be mentioned that the customs duty as applicable on the date of the arrival of the ships i.e. 2/3rd October, 1987 was 105%. The said customs duty was withdrawn by a notification dated 4.12.87 and as such there was nil duty on Palm Kernel and this position G remained upto 28.1.88. By a notification dated 29.1.88, the exemption from customs duty was withdrawn and as a result of which the earlier duty of 105% came into operation. The customs duty was further increased in the Budget submitted on 29.2.88 and as such from 1.3.88 the new customs duty was levied at 245%. The appellant removed the balance of the goods also on 17.6.88 under the orders of this Court H dated 2.6.88.

Learned Single Judge by order dated 19.4.88 held that the Palm Kernel was an item different and distinguished from Palm seeds and the same could be imported under OGL as the same was covered under item No. 1, Appendix 4 of the Import Policy. Learned Single Judge also directed the Customs authorities to clear the goods immediately which were imported pursuant to the contract dated 10.6.87 and to allow the appellant (petitioner in the High Court) to import the goods, already arrived or likely to arrive pursuant to the contract dated 10.6.87. The goods were ordered to be allowed to be cleared on payment of such duties as leviable on 28.1.88. The Orders of adjudication dated 7.12.87 passed by the Collector of Customs, Guntur including the showcause notices were quashed. The Customs authorities were further prohibited from giving effect or taking any steps pursuant to the adjudication proceeding or in pursuance to the showcause notices or putting any impediment or obstruction in the matter of release of Palm Kernel imported on the basis of agreement dated 10.6.87.

The Collector Customs aggrieved against the judgment of the Single Judge dated 19.4.88 filed a Letters Patent Appeal before the Division Bench of the Calcutta High Court. The Division Bench by order dated 20.5.88 also affirmed the order of the Trial Court so far as the setting aside of the adjudication order was concerned. The appellant was allowed the refund of the sum of Rs.90 lacks as redemption fine and Rs. 10 lacs as penalty subject to the following condition:

> "They have already cleared three thousand tons approximately without payment of duty. We have held that they are liable to pay duty. This amount of duty to be paid is to be ascertained and the said sum is to be adjusted against Rs.90 lacs and Rs. 10 lacs respectively. The balance amount shall be held by them for a period of two months from this date. The writ petitioner shall be entitled to get delivery of the balance goods on payment of duty at the rate prevailing in October, 1987 or upon adjustment with the balance of the month. But, if they do not do so within a period of two months, then respondents shall be entitled to proceed in accordance with law.
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> We make it clear that the goods must be cleared by the Customs authorities and allowed to be taken delivery of, within 72 hours from the time of depositing of the amount of duty in respect of the goods to be cleared along-

A with payment of charges and expenses in accordance with law.

So far as the question of interest is concerned, in the facts and circumstances of the case we are not inclined to grant any interest.

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We also make it clear that in respect of the balance goods allowing, the writ petitioner shall be entitled to clear the same at one time or from time to time."

The above judgment was given on May 17, 19 & 20, 1988 and as already mentioned above the petitioner removed the remaining goods C also on 17.6.88 by paying nil duty.

Both the parties had come in appeal before this Court by Special leave, aggrieved against the Order of the High Court.

D The first question to be considered is as to whether Palm Kernel at the relevant time could be imported under OGL as done by the appellant or it could not be done as the same was canalised item which could have been imported through STC or Hindustan Vegetables Oil Corp., New Delhi (A. Govt. of India Undertakings). The contention in this regard by Mr. Ashok Sen on behalf of the appellant company is E that Palm seeds and Palm Kernel were two different items as shown in the commercial transactions in the trading community in such goods, as well as interpreted by the Central Plantation Crops Research Institute, Trivandrum by letter dated 21.1.87 and by a reply of the Customs Authorities themselves dated 19.2.87 that Palm Kernel would not be covered under Notification No. 127-CUS dated 1.7.77. M/s. Oil Palm F India Limited, a Public Sector Corporation also wrote on 27.7.87 to the appellant that Palm Kernel and Palm seeds were two different items in trade.

It was also pointed out that the Chief Controller of Imports & Exports had to issue an amendment notification on 27.7.87 canalising G the import of "any other material from which oil can be extracted." It has thus been submitted that before 27.7.87 there was no question of importing Palm Kernel through canalisation and the appellant was perfectly justified and in its right to import the Palm Kernel under the OGL admittedly issued in its favour. It was thus submitted that Palm seeds alone was a canalised item and Palm Kernel cannot be con- H sidered as Palm seed. According to Mr. Sen Palm seeds had the quality

of germination while Palm Kernel could not germinate. Oil was extracted from the pulp and Palm Kernel was prepared after putting Palm seeds to a process of manufacturing. A fiscal statute is to be construed strictly and in favour of a citizen especially when the question of imposing fine and penalties is involved. It was further argued that both learned Single Judge as well as the Division Bench of the Calcutta High Court have rightly taken the view that Palm seeds and Palm Kernel were different items and 11,570.570 MT of Palm Kernel having been shipped by the foreign seller from Nigeria on or before 27.7.87, the appellant was legally entitled to import the same under the OGL. Mr Sen frankly conceded that so far as the balance of Palm Kernel now to be imported by the appellant even under the original contract dated 10.6.87, can only be made by the State Trading Corp. or Hindustan Vegetables Oil Corp., New Delhi as already made clear vide notification dated 27.7.87.

Mr. Sen further contended that Sec. 15 of the Customs Act, 1962 provides for the date for determination of rate of duty and tariff valuation of imported goods. Sec. 15 reads as under:

> (1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force,—
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> (a) in the case of goods entered for home consumption under Sec, 46, on the date on which a bill of entry in respect of scuh goods is presented under that section;
>
> (b) in the case of goods cleared from a warehouse under Sec. 68, on the date on which the goods are actually removed from the warehouse;
>
> (c) in the case of any other goods, on the date of payment of duty:
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> Provided that if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards.
>
> (2) The provisions of this section shall not apply to baggage and goods imported by post.

A On the basis of the above provision it is contended that the rate of duty of the imported goods shall be the rate and valuation in force in the case of goods cleared from a warehouse under Sec. 68, on the date on which the goods are actually removed from the warehouse. It has been submitted that the High Court committed error in holding that the date for actual removal of the goods in the present case shall be B considered as 2/3rd October, 1987 when the goods entered in the territorial waters of India. On the other hand it was contended that once it is held that the Customs authorities wrongly confiscated the goods and wrongly imposed the redemption fine and penalty and the appellant with no fault on its part had to keep the goods in a bonded warehouse under the orders of the Division Bench of the High Court dated 18.9.87, the date of actual removal from the warehouse be C treated as 28.1.88 when the appellant had filed Ex-bonds bills of entries seeking the clearance of the balance quantity of Palm Kernel.

While considering the sequence of dates with regard to the levy of duty it was an admitted position that there was an *ad valorem* duty of D 105% upto 3.12.87. On 4.12.87 a notification was issued by the Finance Ministry under Sec. 25(1) of the Customs Act so as to include Palm Kernel within the scope of notification No. 127 dated 1.7.77 as a result of which Palm Kernel became liable for clearance on nil duty. This position remained upto 28.1.88 and on 29.1.88 the notification exempting Palm Kernel from Customs duty was withdrawn. There- E fore, from 29.1.88 Palm Kernel became liable for payment of 105% *ad valorem* import duty. It has thus been contended by Mr. Sen that irrespective of the physical removal of the goods from the warehouse, the goods would be deemed to have been actually removed in law on 28.1.88 when the petitioner had filed ex-bond bills of entry seeking clearance of the balance goods. As regards the quantity of 3335.864 F MT of Palm Kernel are concerned, the same were rightly cleared on payment of nil duty on 15.12.87 as no duty was leviable on that day of Palm Kernel.

It was further argrued by Mr. Sen that Sec. 68 of the Act which reads as under will not apply in the present case.

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Sec. 68:-

"The importer of any Warehoused goods may clear them for home consumption, if—

H (a) a bill of entry for home consumption in respect of such

goods has been presented in the prescribed form; A

(b) the import duty leviable on such goods and all penalties, rent, interest, and other charges payable in respect of such goods have been paid; and

(c) an order for clearance of such goods for home consumption has been made by the proper officer. B

It has been contended that clause (b) of Sec. 68 only speaks of the import duty leviable on such goods and all penalties, rent, interest and other charges payable in respect of such goods. It has been submitted that the redemption fine does not come within the meaning of C penalties, rent, interest and other charges mentioned in Clause (b) of Sec. 68. The appellant being an importer of the warehoused goods was thus entitled to clear them without any payment of redemption fine or penalty as neither any rent nor interest or any other charges were payable and in this view of the matter, such goods should have been allowed to be taken away by the appellant on 28.1.88 itself when he D had filed the ex-bond bills of entry.

It has been further submitted by Mr. Sen that in the facts and circumstances of this case the term actual removal used in Sec. 15(1)(b) cannot mean physical removal as the same was made impossible by the wrongful act of the respondents, it should be given a meaning in E the juristic sense as deemed removal. Reliance was placed on the following passage in volume 35 para 1154 and Volume 41 Para 757 of Halsbury's Laws of England, Fourth Edition.

Para 1154. *Methods of Delivery:*

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"Possession of ponderous goods and chattels in large quantities which cannot readily be transferred from hand to hand may be transferred by any transaction which effectually passes the control to the new possessor, for example by handing over the key of a warehouse or of a plate chest in which the goods are stored, with the intention of trans- G ferring possession; but, as has been repeatedly observed, the delivery of a key does not have this effect unless it actually gives full control of the goods in question. Hence, where it operates as delivery it is, strictly speaking, not symbolic but actual delivery of the goods. The mere transfer of a document representing goods does not or- H

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dinarily change the possession of the goods, save that possession of goods at sea can be transferred by indorsement and delivery of the bill of lading."

Para 757. *Meaning of "delivery"*:

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"Delivery means voluntary transfer of possession from one person to another. It includes symbolic delivery and is not restricted to the physical transfer of the goods themselves, but covers also transfer of possession of documents of title to goods. Where the buyer takes possession pursuant to the leave of the seller, whether concurrent or antecedent, that is a voluntary transfer of possession."

C

It was contended that the learned Single Judge had taken a correct view that the crucial date for levy of duty would be 28.1.88 and the Division Bench of the High Court committed a clear error in

D holding that the actual date of delivery for the entire lot of goods should be considered as 2/3rd October, 1987 when the goods actually arrived in the territorial waters of India. In support of the above contention reliance was also placed on *Duni Chand Rataria* v. *Bhuwalka Brothers Ltd.*, [1955] 1 SCR, P. 1071.

E Mr. Sen support of his contention that Palm Kernel and Palm seeds are different and distinguished, placed reliance on the same authorities which were cited before the High Court. By Public Notice No. 205/27-7-87 Appendix 5 Part-B Item No. 5 "Oil/seeds" was amended to bring within the canalised list "all other materials from which oil is extracted". He argued that it was not merely a clarificatory

F notification but it was in fact a notification by which the Government added the words "all other materials from which oil is extracted" in order to include Palm Kernel within the canalised list.

Mr. Desai, Ld. Solicitor General appearing on behalf of the Union of India and Custom authorities urged that the distinction

G sought to be mere between 'Palm Kernel' and 'Palm seed' was artificial. The term 'Palm seed' includes 'Palm Kernel' within the Import Policy of the Government. It was contended that 'Kernel' means the seed of a fruit enclosed within a hard shell as defined in the dictionary. The Import Policy applicable to seed would apply to Kernel also, and the import of Palm Kernel by the appellant under the OGL was illegal.

H The importation of the Palm Kernel by taking out the outer shell must

be considered only as an ingenuous act on the part of the importers to take shelter under the plea that what has been imported was different than seed as it did not have the capacity to germinate. The appellant had clearly understood the Import Policy and was fully aware of the fact that Palm Kernel was a canalised item and still it imported the same illegally under the OGL. He drew our attention to the definition of the word 'Kernel' in the Shorter Oxford English Dictionary 3rd Edn., Vol. I, Page 1081 which is as under:

> Kernel : (1) A seed; especially the seeds contained with in any fruit
>
> (2) The softer part within the hard shell of a nut or stone-fruit
>
> (3) The body of a seed within its husk

He pointed out that Brushel Tariff Nomenclature in Chapter 12 which consists of oil seeds and oleaginous fruit; miscellaneous grains, seeds and fruits; industrial and medical plants; straw and fodder, at item No. 12.01 the list of oil seeds and oleaginous fruit are broken as under:

A. Ground-nuts.

B. Copra.

C. Palm nuts and Kernels.

D. Soya beans.

E. Linseed.

F. Cotton seeds.

G. Caster oil seeds.

H. Other.

He contended that Palm nuts and Kernels under clause (c) have been included in the category of oil seeds. He emphasised that the appellant had led no evidence to show that the 'palm kernel' and 'palm seed' are considered as two different commodities in its popular sense in commerce or trade. He further submitted that Sec. 21 under Chapter 2(1) of the Import and Export Policy Vol. I issued by the Government, Ministry of Commerce lays down the principles applying to the *inter se* interpretation of the entries in the various Appendices as well as imports under OGL. Clause (f) of Sec. 21 reads as under:

A "any item in Appendices 2, 3, 5 or 8 with a specific or a generic description, will preclude the eligbility to its import under Open General Licence, except where the policy allows this clearly."

Reliance was also placed on Sec. 24 of the above Policy which B provides that actual users may also seek clarification on any itemwise entry applicable to them, from the Regional Licensing Authorities at Bombay, Madras and Calcutta, who will secure technical advice in the atter.

M/s. Ganesh Dass Bhoj Raj had sought a clarification and the Chief Controller of Imports and Exports by their letter dated 12.6.87 C had clarified that Palm Kernel is a part of the palm seed and therefore the policy applicable to palm seed was applicable to its part as well and as such its import is canalised through the STC. The appellant M/s. Priyanka Overseas Pvt. Ltd. was also aware about the aforesaid reply given to M/s. Ganesh Dass Bhoj Raj as it itself relied upon various D correspondences between the Customs authorities and M/s. Ganesh Dass Bhoj Raj. The appellant, Mr. Desai contended had no justification to get the goods shipped between 26.6.87 and 25.7.87. In any event, nothing prevented the appellant to seek clarification from the Chief Controller of Imports & Exports and then proceed in the matter, particularly when the appellant was importing goods valued nearly 3 E crores of rupees. Seeking clarification from other agencies as to justify distinction between 'Palm kernel' and 'palm seed' was of no consequence under Sec. 24 of the Import Policy. The clarification could have been sought from the Regional Licensing Authorities at Bombay, Madras and Calcutta who could have given technical advice in the matter. He thus contended that Palm Kernel was a canalised item and F the appellant had no right to import Palm Kernel under the OGL and as such the Customs authorities were perfectly justified in confiscating the goods and imposing the penalty as well as redemption fine.

As regards the question of levy of duty it was contended by the learned Solicitor General that 6746.472 MT of goods were actually G removed the 17.6.88 and on that date the duty was 245% and the petitioners are liable to pay difference in duty on the aforesaid quantity of the goods. He urged that in the matter of taxation there was no question of applying any principles of equity and there was no question of applying the deeming fiction in construing the provisions of Sec. 15(1)(b) of the Customs Act. Even if the appellant had entered H the bill of entry on 28.1.88, admittedly the goods were not actually

removed on that date and the hiatus if any in actual removal, cannot be extended to an artificial date. It was submitted that this Court's decision in *Duni Chand Rataria* v. *Bhuwalka Brothers Ltd.* (supra) cited by the learned counsel for the appellant supports his contention. He further contended that it was a well settled proposition that in construing the words of one Statute, no help can be sought from the interpretation put to such words in another Statute, and to support his contention he placed reliance on *Comm. of Sales Tax, Madhya Pradesh* v. *Jaswant Singh Charan Singh,* [1967] 2 SCR P. 720 and *M/s. Bharat Surfactants (Private) Ltd. & Anr.* v. *Union of India and Anr.*, [1989] 4 SCC p. 21.

Ld. Solicitor General in the alternative contended that even if this Court comes to the conclusion that Palm Kernel was not a canalised item and the Customs authorities had no justification to consficate and impose redemption fine and penalty, the appellant is liable to pay the customs duty at the rate of 105% on the entire goods as held by the Division Bench of the High Court. The appellant fully knowing that the rate of duty in October, 17 when the goods had arrived in India was 105% and even if the deeming provision for removal of the goods is applied for the purpose of Sec. 15(1)(b) of the Customs Act, then it should be 2/3rd October, 87.

We have given our careful consideration to the arguments advanced by the learned counsel for the parties and have thoroughly perused the record. We have to first consider whether 'Palm Kernel' and 'palm seed' were two different commodities or 'Palm Kernel' was included in 'Palm seed' for the purposes of import. The difference between 'palm seed' and 'Palm Kernel' has been explained in the letter of the Central Plantation Cross Research Institute dated 21.1.87 (placed on record), it reads as under:

> "The difference between Palm Kernel and Palm seeds has also been pointed out in the aforesaid letter according to which Palm seed is specially extracted from fruits while kernel is a product obtained after sterilisation, digestion at 95 degree Celsius, pressing, decarping, shelling etc. The Palm Kernel will loose its viability due to the above processes and cannot be used for germination."

Under Appendix 5 para (b)(5) of the Import Policy under the heading Oils/seeds only Palm Oil/Palm seeds have been mentioned. We agree with the view taken by the High Court in this regard that Palm Kernel

A cannot be included under the item palm seeds and the two commodities were different as understood in commerce or trade. We do not want to burden this judgment by citing those authorities which have already been considered for deciding this controversy by the High Court. We do not see any force in the contention of the learned Solicitor General in this regard that the Government had only made a B clarification vide notification dated 27.7.87 by introducing in Appendix 5 para (b) Item No. 5 "all other oils/seeds/any other material from which oil can be extracted." It is significant that in the aforesaid notification published in the Gazette of India Extraordinary para (1) Sec. 121, it was clearly mentioned that the same was issued as an amendment to the earlier notice No. 1-ITC(PN)/85-88 dated the 12.4.85. The C notification stated that the following amendment shall be made in the Policy at proper places indicated below and then under the head 'amendment' the new provision which included "all other seeds from which oil can be extracted" was mentioned. It is therefore evident that the Govt. of India itself, realised the difference in the two commodities therefore it amended its previous policy. We are therefore of the D opinion that prior to 27.7.87 'Palm Kernel' was not a canalised item and the High Court rightly held that 'Palm Kernel' was not included within the entry of 'Palm seed'.

Since 'Palm Kernel' was not included within 'Palm seed' the Customs authorities had no legal justification to confiscate or impose E redemption fine, or penalty, as the goods had already been shipped on various dated i.e. on 26.6.87 and 25.7.87. It is no longer in dispute that if the Palm Kernel was not a canalised item before 27.7.87 then it could have been imported under the OGL before that date. The crucial dates in this regard are 26.6.87 and 25.7.87 when the goods were actually loaded in the ship and not the date of arrival of the ship in the territo- F rial waters of India.

The next question which falls for consideration is as to what duty could be imposed in the facts and circumstances of the present case. The admitted facts of the case are that 10681.832 MT of Palm Kernel arrived in the territorial waters of India on 2/3rd October, 1987. As the G appellant was apprehending some dispute on the import of the same under OGL from the Customs authorities, it filed writ petition in the High Court on 28.7.87 and obtained an interim order from the learned Single Judge to the effect that the goods shall be released to the party on furnishing bank guarantee for a value equivalent to 1/4th value of the goods and on the strength of a bond for the remaining 3/4th value H of the goods. That order was clarified by another Order on 3.8.87 by

which the Court directed that the appellant shall pay the entire customs duty as may be determined and demanded by the Customs authorities in cash and it shall furnish a bond for the entire value of the goods. It was further made clear that the Customs authorities shall not release the goods unless the entire Customs duty as determined and demanded by them was fully paid in cash by the appellant. The Union of India filed an appeal against the aforesaid Order before the Division Bench of the High Court. The Division Bench passed an Order on 18.9.87 to the effect that the imported goods should be kept in a bonded warehouse or in any other warehouse approved by the Customs authorities and until further orders M/s. Priyanka Overseas Pvt. Ltd. will not take delivery of the same. In the light of the directions of the Court the petitioners filed 16 bills of lading for bonding the entire cargo of Palm Kernel and the goods were allowed to be bonded in terms of the Court's order in a private warehouse. Meanwhile proceedings were continuing for adjudication before the Customs authorities. The Division Bench of the High Court on 2.12.87 directed the Collector to adjudicated the matter within 10 days. The Collector by his order dated 7.12.87 held that the Palm Kernel was a canalised item and as such he gave an order to confiscate the entire quantity of Palm Kernel but gave an option to the appellant to redeem the goods on payment of a fine of Rs.90 lacs. The option was to be exercised within one month and the appellant was directed to pay penalty of Rs. 10 lacs. The appellant deposited the amount of Rs. 10 lacs imposed as penalty and a proportionate amount of Rs.35 lacs for redeeming 3935.364 MT of Palm Kernel and removed the goods on 17.12.87. The petitioners then filed bills of entry for the remaining 6746.468 MT of Palm Kernel on 28.1.88 but did not deposit the redemption fine. The Govt. issued a notification on 29.1.88 withdrawing the exemption duty on Palm Kernel and as a result of which the earlier duty of 105% came into effect. The petitioners then deposited the balance amount of Rs.55 lacs as redemption fine on 30.1.88, but the goods could not be released as again controversy arose regarding the amount of duty on the goods. The Govt. increased the duty from 105% to 245% in its budget which came to be applied on 1.3.88. The petitioner then approached this Court by filing a SLP. The Court on 2.6.68 passed the following order:

A B C D E F G

> "Issue notice.
> Issue notice on the stay application.
>
> Meanwhile the operation of the order of the Division Bench of the High Court directing payment of duty in

H

A respect of the goods to the extent of 3935.364 MT which had already been released to the petitioner is stayed. The respondents are further directed to release the remaining goods to the petitioner in respect of which Bills of Entry were filed on 28th January 1988 on payment of such duty as was leviable on 28th January 1988. The respondents shall B refund a sum of Rs.50 lacs to the petitioners out of the sum of Rs.1 crore which has been directed by the High Court to be refunded within two weeks and the remaining amount of Rs.50 lacs shall be retained by the respondents towards the duty payable on goods, which are to be released to the petitioners within two weeks."

C Sec. 15 of the Act provides for determination of rate of duty on imported goods. The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force in the case of goods cleared from a warehouse under Sec. 58, the date on which the goods are *actually removed* (emphasis added) from the D warehouse. There can be no manner of doubt that the term 'actual removal' is even more stronger than the term 'physical removal' and the intention of the Legislature in using these words clearly stipulates the actual removal of the goods from the warehouse. The rate of duty and tariff valuation on the imported goods may be changed from time to time and as such the Legislature has clearly expressed its intention E under Sec. 15 as to on what date the rate of duty and tariff valuation is to be determined. We cannot introduce the concept of deeming provision while determining the question of actual removal of the goods from the warehouse. The rate has to be determined on the basis of the date on which the goods are actually removed from the warehouse and thereafter the question would be examined as to how the relief is to be F moulded in case it is found that the Customs authorities were themselves responsible in preventing the importer of goods from actually removing the goods from the warehouse. In a case of the present kind where there is no ambiguity in the expressed intention of the Legislature in determining the date for applying the rate of duty, no juristic principle of deemed removal of the goods, can be applied as contended G by Mr. Sen. (Many contingencies may happen in between the filing of bill of entry and actual removal of the goods from the warehouse for which sometimes the importer of goods may himself be responsible, in some cases the responsibility may lie on the Customs authorities and there may also be contingencies beyond the control of both the parties. In any case the intention of the Legislature being clear, rate of duty is H to be applied, as may be in force on the date of actual removal of goods

from the warehouse under Sec. 15(1)(b) of the Customs Act. A

Learned counsel for both the parties have placed reliance on *Duni Chand Rataria's* case (supra) on the question of actual removal of goods. In that case the question arose regarding the expression "actual delivery of possession" in Sec. 2(1)(b)(i) of the West Bengal Jute Goods Future Ordinance, 1949. It was held that the expression meant B actual delivery as contrasted with mere dealing in itself within the intendment of the Ordinance and such actual delivery of possession included within its scope symbolical as well as constructive delivery of possession. The above case in our view lends no assistance to either of the parties in determining the controversy raised before us in the present case. In *Duni Chand Rataria's* case, the appellant Duni Chand C entered into three contracts with the respondent agreeing to purchase jute bags on the terms and conditions contained in the relative contract forms of the Indian Jute Mills Association. The respondent expressed its inability to deliver the goods under the said contracts and requested the appellant to settle the same by selling back the goods. Three settlement contracts were accordingly entered into between the parties D whereby the appellant agreed to sell the goods under the original contracts to the respondent. The appellant therein then submitted to the respondent his bills for the amounts due at the foot of the said contracts aggregating to Rs.1,15,650 which the respondent accepted but neglected to pay. The appellant therefore filed suit for the recovery of the said sum with interest and costs. The defendant-respondent E contested the appellant's claim on the main ground that the three settlement contracts were illegal and prohibited by the West Bengal Jute Goods Future Ordinance, 1949. The respondent contended that it never dealt in sale and purchase of jute goods involving actual delivery and possession thereof, nor did it possess or have control over any godown and other means and equipments necessary for the storage F and supply of jute goods and therefore said settlement contracts were void and not binding on it. The Trial Court decreed the suit. The learned Judges of the Appeal Court however held that the settlement contracts were contracts relating to the purchase of jute goods made on a forward basis by the respondent not being a person who habitually dealt with in the sale and purchase of jute goods involving the G actual delivery and possession thereof and were therefore void and unenforceable. In view of these findings the Appeal Court allowed the appeal and dismissed the suit. The Plaintiff Duni Chand then filed an appeal before this Court. This Court observed that the only point at issue was whether the respondent was a person who habitually dealt in the sale or purchase of jute goods involving the actual delivery and H

A possession thereof and the contention which was vehemently urged on behalf of the respondents in the Courts below was that the transactions were purely speculative, that mere delivery orders did not represent the goods and the transfer, thereof did not involve as between the intermediate parties actual delivery or possesson of the goods but differences in rates were only paid or received by the parties. While B dealing with the above question, it was held as under:

> "The learned Judges of the Appeal Court also laid unwarranted emphasis on the words "actual delivery or possession" and contrasted actual delivery with symbolical or constructive delivery and held that only actual delivery or C possession meaning thereby physical or manual delivery was within the intendment of the Ordinance. Delivery has been defined in Sec. 2(2) of the Indian sale of Goods Act as meaning voluntary transfer of possession from one person to another and if nothing more was said delivery would not only include actual delivery but also symbolic or construc- D tive delivery within the meaning of the term. The use of the word "actual" in Sec; 2(1)(b)(i) of the Ordinance was considered by the Appeal Court as indicative of the intention of the Government to include within the scope of the exemption only cases of actual delivery of possession as contrasted with symbolical or constructive delivery. This construc- E tion in our opinion is too narrow. Even if regard be had to the mischief which was sought to be averted by the promulgation of the Ordinance, the Government intended to prevent persons who dealt in differences only and never intended to take delivery under any circumstances, from entering into the market. Provided a person habitually F dealt in the sale or purchase of jute goods involving delivery of the goods, he was not to be included in the ban. This could be the only intendment of the Ordinance, because otherwise having regard to the ordinary course of business, business, in jute goods would become absolutely impossible. The manufacturer of jute goods does not come G normally into direct contact with the shipper. It is only through a chain of contracting parties that the shipper obtains the goods from the manufacturer and if only actual delivery of possession as contrasted with symbolical or constructive delivery were contemplated it would be impossible to carry on the business. If the narrow construction H which was put by the Appeal Court on the expression

"actual delivery of possession" was accepted it would involve each one of the intermediate parties actually taking phsical or manual delivery of the goods from their sellers and again in their turn giving physical or manual delivery of the goods which they had thus obtained to their immediate buyers. Such an eventuality could never have been contemplated by the Government and the only reasonable interpretation of the expression "actual delivery of possession" can be that actual delivery as contrasted with mere dealings in differences was within the intendment of the Ordinance and such actual delivery of possession included within its scope symbolical as well as constructive delivery of possession."

Thus the above case dealt with the meaning of "actual delivery of possession" in the background and context of its meaning as laid down in the West Bengal Jute Goods Future Ordinance, 1949 and it can render no assistance in determining the question of actual removal of goods as mentioned in Sec. 15(1)(b) of the Customs Act.

M/s. Bharat Surfactants (Private) Ltd. & Anr. v. *Union of India and Anr.* case (supra) relied by the learned Solicitor General was a case of Sec. 15(1)(a) of the Customs Act. Under the above provision the criteria for determining the rate of duty and tariff valuation is the rate in force in the case of goods entered for home consumption under Sec. 46, on the date on which a bill of entry in respect of such goods is presented. The Section provides that if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry shall be deemdd to have been presented on the date of such entry inwards. While interpreting the words 'date of entry inwards of the vessel' it was held that it would be the date of entry recorded in Customs register. Where vessel arrived and bill of entry was presented at a prior date to the date of berth given by Port authorities and entry inwards registered by the Customs authorities at a later date then it was held that the rate of import duty and tariff valuation would be that in force on the later date. This decision is also of no assistance in interpreting the provisions of sec. 19(1)(b) of the Act.

Sec. 15(1)(b) provides that the rate of duty would be the rate, as applicable on the date of actual removal of the goods from the warehouse. There can be no manner of doubt that the actual removal of goods "or 3935.364 MT was 17.12.87 and for 6746.468 MT of goods

A was 17.6.88. Admittedly the quantity of 3935.364 MT of Palm Kernel were allowed to be cleared by the Customs authorities itself on payment of nil duty and rightly so as there was no duty on Palm Kernel on that date. So far as the balance quantity of 6746.468 MT of Palm Kernel is concerned, the contention of Mr. Sen, Ld. counsel for the petitioners is that the Customs authorities had wrongfully detained the B goods and had not permitted the appellant to remove the same by imposing a redemption fine and penalty in an illegal manner and the appellant had to approach the Court for quashing the same and it was only thereafter that it filed the bill of entry on 28.1.88 and thereby it became entitled to remove the goods on that very day and there being no duty on that day, the customs authorities were not entitled to C charge any duty.

The question is whether the appellant is liable to pay duty on the balance quantity of 6746.468 MT of Palm Kernel and if so, what should be the rate of duty. In determining this question it must be D borne in mind the statutory principle that if a party discharges its liability by complying with the requirement of law, and presents papers for clearance of goods, it is obligatory on the Revenue authorities to pass the order immediately thereon. If the Revenue authorities either refuse to pass the order on some erroneous or imaginary grounds or on account of any misconception of law, the depart- E ment cannot take advantage of its own wrong in demanding higher rate of duty from the importer. Under Secs. 68 and 71 of the Act, goods placed in a warehouse can be taken out only after clearance for home consumption. Admittedly, the appellant had done its part of legal duty by presenting bills of entry and complying with Sec. 68(a) of the Act on 28.1.88. But the Customs Officer refused to release the goods on an F erroneous assumption that the appellant was liable to pay redemption fine and since it had not paid the said amount, the goods were not liable to be released. The High Court held that the imposition of redemption fine was honest and the petitioner was within its right to claim release of goods without paying any redemption fine, on the day it complied with the formalities under Sec. 68 of the Act. Sec. 68(c) of G the Act prescribes an official function which was not performed by the Customs authorities due to entertainment of a wrong and illegal notion regarding the payment of redemption fine which resulted into a wrong order by the department. In the circumstances the department cannot be allowed to take advantage of its own wrongful and illegal act. In moulding relief, this Court has always applied principles of equity in H order to do complete justice between the parties.

The High Court has overlooked that on 15.10.87 the petitioner had only applied for warehousing of the goods on the direction of Division Bench of High Court. The Single Judge had passed an interim order for clearing the goods after payment of customs duty, but the department went in appeal and the Division Bench by its order dated 18.9.87 directed the imported goods to be kept in a bonded warehouse or any other warehouse approved by the Customs authorities and until further orders the appellant was directed not to take delivery of the same. The appellant submitted the bills of entry on 28.1.88 and admittedly no duty was payable on that date. Moreover where goods imported are kept in a warehouse under a bond, the date of arrival of such goods in India is not relevant for determining the duty, therefore the High Court committed error in holding the appellant was liable to pay duty as in force on the date of arrival of goods.

On the question of actual removal of goods for the purposes of determining the rate of duty payable by the importer under Sec. 15(1)(b) of the Act it is necessary to bear in mind that the Act provides for two classes of warehouses, under Chapter IX of the Act. Sec. 58 provides for licensing of private warehouses. Sec. 59 requires an importer to execute a warehousing bond. Sec. 68 provides for clearance of warehoused goods for home consumption. Sec. 73 provides for cancellation and return of warehousing bond. Whenever, the Customs authorities permit the storage of imported goods in a private warehouse, these provisions would be applicable. The appellant filed bills of entry for home consumption as required by Sec. 68 of the Act with a prayer for debonding the goods of 3935.364 MT on 17.12.87 which were stored in a private warehouse. The Customs authorities on that very day namely 17.12.87 cancelled the licence for warehousing the quantity of goods in respect of which the bills of entry were filed by cancelling the bond and deleting the said godown from the relevant licence issued for the quantity of 11500 MT. Endorsement to that effect was made on the licence of warehouse and keys of the godown were also handed over to the appellant simultaneously, as a result of which though the goods remained in the said godown but not as a warehouse, instead it was treated to be a private godown of the appellant, and it was allowed to remove the goods without payment of any duty.

There is no dispute that the remaining goods were also stored in a private warehouse and the appellant had filed the bills of entry and complied with all the required formalities for debonding and clearance of the goods on 28.1.88, therefore the appellant was entitled to an

A order cancelling the licence of the private warehouse enabling it to remove the goods. Had the Customs authorities passed order in accordance with law the same result would have followed as had been done on 17.12.87. The Central Manual published by the Director of Publications, Customs and Central Excise contains directions for determining the actual date of removal of goods from warehouse in terms
B of Sec. 19(1)(b) of the Act. The functioning of private warehousing has been elaborated therein. Clause 10 of the Manual prescribed the type of buildings which can be approved as private warehouses under Sec. 58 of the Act. Para 15 of the Manual provides for purposes of Sec. 15(1)(b) of the Act, that if the goods are in private warehouse the date of cancellation of the licence of the private warehouse should be taken
C as the actual removal of the goods for the purposes of Sec. 15(1)(b) of the Act. Para 15 as already stated was followed in the appellant's own case on 17.12.87 in releasing the goods. There is no valid reason as to why the same procedure should not have been followed in respect of the remaining goods in respect of which the bills of entry were filed on 28.1.88 for debonding and clearance of goods. Merely because the
D Officer failed to discharge his duties by marking illegal demand for deposit of redemption fine, the appellant could not be held liable to pay duty. The appellant is therefore entitled to the delivery of goods without paying any duty as on 28.1.88 no duty was payable on the goods.

E In the result the appeal filed by the Union of India is dismissed and the appeal filed by M/s. Priyanka Overseas Pvt. Ltd. & Anr. is allowed in the manner indicated above.

The respondents are therefore directed to refund the amount of Rs.50 lacs lying in deposit towards redemption fine and personal
F penalty within one month from today. It is made clear the appellant is not entitled to any interest on the aforesaid amount, but if the amount is not returned within one month as directed, the respondents will be liable to pay interest @ 15% per annum from today till, the date of payment to the appellant.

G In the facts and circumstances the parties shall bear their own costs throughout.

R.S.S. Appeal by Union of India dismissed.
Appeal by Priyanka Overseas allowed.