M/S. BOMBAY OIL INDUSTRIES PVT. LTD. A

v.

UNION OF INDIA AND ORS.

DECEMBER 6, 1994

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

Customs Act, 1962/Customs Tariff Act 1975 :

Sections 25, 131 (3) Heading No. 15-01/06 of the First Schedule—Notification No. 141-CUS/76 dated 2.8.1976 granting partial exemption from Customs duty in respect of imported tallow subject to certain specifications—Subsequent Notification No.168/ F. No.370/24/78/Cus I dated 2.9.1978 deleting one of the specifications regarding colour—During the interregnum between the dates of the two notifications, duty attracted if the specification regarding colour did not conform to the requirements—Tests to be conducted—Indian Standard method as laid down by Indian Standard Institution since the tallow is utilised in India—American method not to be followed—Subsequent Notification—Not merely classificatory nor with retrospective effect—It is simply a fresh Notification deleting the condition about the colour specification. C D

The appellant imported bleachable mutton tallow, while the appellants in the connected appeals imported bleachable fancy tallow, which according to them was not mutton tallow. The imported tallow was liable to customs duty under the sub-heading No.15-01/06 at the rate of 35 % *ad valorem*. A partial exemption in excess of 15 % *ad valorem* from payment of customs duty was given as per Notification No. 141-CUS/ 76 dated 2nd August, 1976. The Notification further laid down the specifications of the exempted tallow. It was provided that the imported tallow meeting the specifications was entitle to partial customs duty. E F

Subsequently by another Notification dated 2nd September, 1978, one of the specifications mentioned under the earlier Notification *viz.* item (ii) and entries relating thereto were omitted. Thus the requirement that the imported tallow to stand the test of having colour not deeper than 20 in one inch cell on the lovibond scale as Y+5R was omitted. G H

A Before the Customs Authorities the appellants contended that they were entitled to get refund of customs duty paid by them in excess of 15% as their imported tallow satisfied the Notification dated 2.8.1976. The samples of imported tallow were examined by the Custom House and were found not meeting the colour test Specification as laid down in the Notification dated 2.8.1976. Therefore, their request was rejected
B by the Assistant Collector of Customs.

On appeal, the Collector took the view that the appellant in the main appeal imported tallow on 4.4.1978 when the Notification 141-CUS/76 was operative; but since the sample did not satisfy the colour specification, the appeal was dismissed. As regards the appeals of other
C appellants, the Collector allowed them and remanded to the Assistant Collector directing that the tallow being foreign tallow, the test should be done only after refining and bleaching the sample as prescribed in the American Oils Chemists' Society Official method Cc 8d-55 ; and that if it passed the colour test, the benefit of Notification 141/ CUS/76
D should be extended ; otherwise not.

The main appellant filed appeals before the Tribunal against the said order of the Appellate Collector. As regards the other appellants, the Central Government issued notices under Section 131 (3) of the Customs Act, 1962 calling upon them to show cause why the orders
E passed by the Appellate Collector should not be recalled. After the establishment of the Tribunal, these matters were transferred to the Tribunal as appeals taken out by the Collector of Customs.

The Tribunal dismissed the appeal of the main appellant and allowed the appeals of the other appellants on the ground that the test
F under the American method was not called for. Hence these appeals.

Dismissing the appeals, this Court

HELD : 1. It is obvious that whatever exemption is granted under Notification may be either absolute or subject to such conditions which
G have got to be fulfilled by the importers before earning such exemption. The Notification 141-CUS/76 does not grant such 30 per cent exemption in absolute terms but such exemption is based on fulfilment of condition mentioned therein about the specification of imported tallow and if the imported tallow does not meet the specification required it cannot earn the exemption. It is trite to say that in order to
H earn the exemption the person claiming the exemption must satisfy that

his imported item has fulfilled all the conditions of the exemption Notification as such exemptions are granted in public interest. A

[310 D,E]

Union of India and Ors v. *M/s Jalyan Udyog and Anr.*, A.I.R. (1994) SC 88 , relied on.

B

2.1 Once the appellants admittedly imported tallow into this country, on account of the charge by the Customs Act under Section 12, their imported tallow attracted customs duty. It is for them to show how instead of paying full duty they got exemption to the tune of 30 per cent pursuant to the Notification 141-Cus/76. For that purpose they have to show that the imported tallow has met colour specification as it C was a notification granting exemption on such conditions and did not grant exemption in absolute terms. It is not in dispute that out of seven specifications mentioned in the Notification, six were met by the them but only on colour specification No.2 they met their waterloo. The Custom House which tested the samples of imported tallow submitted by the appellants, found that the colour specification laid down in D condition No. 2 was not satisfied by these imported tallow and, therefore, on these imported tallow exemption could not be granted as claimed. If the appellants felt that the findings of the Custom House were not correct, it was open to them to get the sample cross tested through their experts and to lay evidence in that connection before the authorities as burden was entirely on them to show that they had E satisfied all the conditions of Notification with a view to earn to exemption to the extent of 30 per cent of import duty on their imported tallow. They did nothing of the kind. [311 E to H, 312 A]

2.2 There appears to be a common test prescribed by the Indian Standards Institution being IS 548 Part I for all types of animal tallows. F That was the test adopted by Custom House and it was found that none of the samples of imported tallow as submitted by the appellants fulfilled the requirement of condition No. 2 of the exemption Notification. In other words, their colour in one inch cell on lovibond scale, expressed as Y + 5R was deeper than 20. Consequently, the imported tallow whether mutton tallow or beef tallow or any other G tallow as covered by these consignments of the appellants did not satisfy condition No.2 of colour as laid down by Notification 141-Cus/76 dated 2.8. 1976. On these finding reached by the Custom House and when no effort to rebut the same was made by the appellants, the conclusion was inevitable that these imported consignment of tallow during the time the exemption Notification dated 2.8.1976 was holding H

A the field did not earn exemption under the said Notification from the Customs duty to the extent of 30 percent and they were liable to pay full customs duty. This finding is rightly reached by the Tribunal on facts and calls for no interference. [312 C to E]

3. The submission that only because the appellant in the main B appeal imported mutton tallow, IS 548 could not have been resorted to, cannot be accepted in view of the Indian Standards Institution's method for testing animal tallow which has to follow IS 548. The tribunal also observed in its judgement that the appellant did not question the test result. Consequently, it is too late to make a grievance about it in these proceedings. [312 F]

C

4. As for the remaining four appellants, the Tribunal rightly held that it was not open to the Appellate Collector to presume that for imported tallow which was not mutton tallow and which would be a mixture of beef and other tallows, the American method of testing should have been adopted by the Custom House. It is true that the D Notification did not specify as to which method should be followed. But it has to be appreciated that the imported tallow was to be utilised in India by Indian manufacturers and had ultimately to join the main stream of consumer goods either as such or after being utilised in production of consumer goods. When they are to be imported in India E and when they claim exemption under Notification issued by the Central Government under Section 25 of the Customs Act, the test for checking their colour as laid down by the exemption Notification has necessarily to be as per the Indian Standard method and test laid down by the Indian Standards Institution. [312 G, H, 313 A]

F *Union of India* v. *Delhi Cloth and General Mills*, [1963] Suppl. 1 SCR 586, relied on.

5. There was no occasion to test the appellants' samples of tallow after bleaching as that was not the method of IS 548 Part I which was holding the field and as such pre-bleaching and refining could not be G done pursuant to the American method which was not applicable to the facts of the present case and even by taking one inch cell testing on lovibond IS 548 method it would have resulted in the samples showing colour deepening to the extent of 34 to 36 on the basis of Y + 5R which would not satisfy condition No. 2. The appellants cannot have any real grievance in this connection. [314 C, D]

H

6. Even if the Central Government corrected its error about condition No. 2 from 2.9.1978 by issuing a fresh Notification, the earlier colour specification requirement remained operative for imports made by the concerned importers prior to 2.9.1978 when the earlier Notification dated 2.8.1976 was holding the field. The latter Notification cannot be said to the merely a clarificatory Notification nor can it have any retrospective effect. It is a fresh Notification laying down fresh condition deleting the earlier condition No. 2 about the colour specification. [314 G, H]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4013-13A of 1985.

From the Order dated 21. 11. 84 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in O. Nos.889-90/84.

M.Chandrasekharan, Additional Solicitor General, M.A. Rangaswamy, Ms. Radha Rangaswamy, Ms. Samitha, P.H. Parekh, N.K. Bajpai, V.K.Verma and C.V.S. Rao for appearing Parties.

The Judgment of the Court was delivered by

MAJMUDAR, J. These appeals arise out a common judgement rendered by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi, by which it disposed of ten appeals in all. Civil Appeal Nos 4013-13A of 1985 challenge that part of the order of the Tribunal by which the appeals of the common appellants namely, M/s Bombay Oil Industries Pvt. Ltd. were dismissed by the Tribunal while the remaining four appellants seek to challenge the other part of the Tribunal's order by which four appeals moved by the Collector of Customs, Bombay, against the concerned present appellants came to be allowed by the Tribunal.

The facts leading to these appeals may be noted at the outset to appreciate the grievance of the appellants. All these appellants had imported tallow being bleachable fancy tallow from foreign countries between 2.8.1976 and 2.9.1978 by different consignments. So far as common appellant M/s Bombay Oil Industries Pvt. Ltd. in C.A. Nos. 4013-13A of 1985 is concerned, it imported bleachable mutton tallow while the rest of the appellants imported bleachable fancy tallow which according to them was not mutton tallow. These imports were subject to customs duty under the provisions of the Customs Act, 1962. As per the applicable customs tariff as laid down in the First Schedule to the Customs Tariff Act, 1975, the imported tallow was liable to customs duty under sub-heading of

Heading No. 15-01/06 at the rate of 35 per cent *ad valorem*. A partial exemption was given by the Central Government from the payment of customs duty so far as imported tallow was concerned by an exemption Notification dated 2nd August, 1976 being Notification No. 141-CUS/76 issued in exercise of powers conferred on the Central Government by sub-section (1) of Sections 25 of the Customs Act, 1962. The said Notification provided that the Central Government being satisfied that it is necessary in the public interest so to do, exempts tallow having the specifications mentioned hereunder and falling under sub-heading No. 2 of Heading No.15-01/06 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from payment of so much of that portion of duty of customs leviable thereon which is specified in the said First Schedule as is in excess of 15 per cent *ad valorem*. The Notification further laid down the specifications of the exempted tallow. It was provided that the imported tallow meeting the indicated specifications was entitled to partial exemption of customs duty to the extent of 30 per cent *ad valorem*. These specifications read as under :

"SPECIFICATIONS

1.	Moisture and Insoluble Impurities percent by weight, max.	1.0
ii.	Colour in a lin cell on the Lovibond scale expressed as Y + 5R not deeper than	20
iii.	Saponification value	192 to 202
iv.	Iodine Value (wijs)	32 to 50
v.	Acid Value, Max	10
vi.	Unsapponifiable matter percent by weight, Max	0.5
vii.	Titre of fatty acids °C	40 to 49"

The said Notification was amended later on by a Notification dated 2.9.1978 whereby specification No. 2 was deleted from the earlier Notification dated 2.8.1976 being Notification No.141-CUS-76. The said latter Notification dated 2nd September, 1978 being Notification No.168/F No. 370/24/78/Cus I provided that in exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government being satisfied that it is necessary in the public interest

so to do hereby makes the following amendment in the Notification of the Government of India in the Department of Revenue and Banking No.141 Customs dated the 2nd August, 1976, namely, "In the Specification mentioned under the said Notification, item (ii) and the entries relating thereto shall be omitted." A

It, therefore, became clear that the importers of tallow after coming into operation of the latter Notification dated 2nd September, 1978 had not to satisfy the customs authorities that their imported tallow met the requirement of erstwhile item No. 2 in the earlier Notification of 2.8.1976. We have seen that the second condition of the Notification dated 2.8.1976 referred to the colour of imported tallow. The imported tallow under the earlier Notification was required to stand the test of having colour not deeper than 20 in one inch cell on the lovibond scale as Y + 5R. It is this requirement which the latter Notification gave up. It is not in dispute between the parties that import of tallow after the Notification dated 2.9.1978 having given partial exemption upto 30 % *ad valorem*, customs duty on imported tallow covered even that imported tallow which did not meet any colour requirement but so far as present proceedings are concerned as the appellants had imported tallow during the time the earlier Notification dated 2.8.1976 held the field, they had to meet the colour specification No. 2. The appellants contended before the Customs Authorities that they were entitled to get refund of customs duty paid by them in excess of 15 per cent as their imported tallow satisfied Notification of Customs dated 2.8.1976. The samples of imported tallow were examined by Custom House and were found not meeting the colour test specification as laid down by the Notification dated 2.8.1976. Consequently, their request was rejected by the Assistant Collector of Customs. They went in appeal to the Collector of Customs. The Collector of Customs, Bombay, took the view that so far as common appellant in Civil Appeal Nos. 4013-13A of 1985, namely, M/s Bombay Oil Industries Pvt. Ltd. was concerned, it had imported tallow on 4.4.1978 when the earlier Notification 141 Cus/76 was operative. The Custom House had tested the samples by applying the correct method of I.S. 548 and as it was found that the tallow imported by M/s Bombay Oil Industries Pvt. Ltd. did not satisfy the colour specification as per condition No. 2 of Notification of 1976, the appellants cannot be said to have earned any exemption under the said Notification on the imported tallow and accordingly the appeals of the appellant, M/s Bombay Oil Industries Pvt. Ltd., were dismissed. However, so far as appeals by the remaining four appellants in the present case are concerned, the Appellate Collector took the view that these appellants had imported tallow which were not mutton tallow but bleachable fancy tallow which was a mixture of B C D E F G H

A beef and other animal tallow and so far as these imports were concerned, proper tests were not carried out by the Custom House. The Appellate Collector noticed that the specifications given by Customs were word for word and figure for figure in IS 887 for Type No.1 and that referred to mutton tallow and that the method prescribed for mutton tallow as per IS 548 could not have been applied for testing colour of imported tallow of B these remaining four appellants and that the correct method for testing samples should have been the method recommended by American Oil Chemists' Society wherein samples should have been first bleached and then got tested. In view of the Appellate Collector as the goods imported by these four appellants were not Indian tallow for which the IS 887 and IS 548 were designed but foreign tallow and most probably beef tallow, it was C reasonable to say that the standard of the tallow should be gauged in accordance with the grades of standards prescribed by the American fats and Oil Association and if that was done the colour specification as found in condition No. 2 of the Notification was likely to be satisfied and for that purpose the samples were required to be re-tested by following the method recommended by American Oils Chemists' Society and accordingly the D remaining four respondents appeals were allowed and the proceedings were remanded to the Assistant Collector directing that the test should be done only after refining and bleaching the samples as prescribed in the said American Oils Chemist's Society Official methods Cc 8d-55. It was further observed that if it passes the colour test on such refining and bleaching, the benefit of Notification 141-Cus/76 shall be extended otherwise not.

E

The common appellant, M/s Bombay Oils Industries Pvt. Ltd., being aggrieved by the order of the Appellate Collector dismissing its appeal preferred further appeals to the Customs, Excise and Gold (Control) Appellate Tribunal. So far as remaining four appellants are concerned, the F Central Government issued notices under Section 131 (3) of the Customs Act, 1962, whereby all these appellants were called upon to show cause why the orders passed by the Appellate Collector should not be recalled and annuled. After the establishment of the Tribunal these proceedings were transferred to the Tribunal. They were registered as appeals as taken out by the Collector of Customs, Bombay. As noted earlier the two appeals of M/s G Bombay Oil Industries Pvt. Ltd. and the four appeals of the Collector of Customs against the remaining four present appellants were heard together by the Tribunal along with other four appeals. In all ten appeals were disposed of by the common judgement. The tribunal came to the conclusion that the colour specification as laid down by the Notification dated 2.8.1976 being No.141-Cus/76 was not fulfilled by the concerned imports of the H tallow of appellants herein and that therefore, these imports failed to earn

the partial exemption to the extent of 30 per cent as claimed by them on these imports under the said Notification. It was further found by the Tribunal that a common colour specification was laid down as condition No. 2 under the said Notification and it referred to all types of tallow whether mutton tallow, beef tallow or other animal tallow and a common test had to be resorted to for testing the samples of these imported tallow and all these imported tallow did not satisfy the colour specification of condition No.2 of the Exemption Notification. The Tribunal further observed that it was not open to the Assistant Collector to lay down a separate condition for the said Notification that the sample should be tested by American method and that the Indian Standard method as adopted by the Custom House for testing these samples cannot be found fault with, consequently, the appeals filed by M/s Bombay Oil Industries Pvt. Ltd., were dismissed and appeals filed by the Collector of Customs against the remaining four appellants were allowed. Being aggrieved by the aforesaid common order of the Tribunal in the respective appeals, the appellants have preferred appeals under Section 131 (3) of the Customs Act 1962.

A B C

These appeals were set down for final hearing before us. We have heard learned counsel for the contesting parties in support of their respective cases.

D

Learned counsel for the appellant, M/s Bombay Oil Industries Pvt. Ltd., submitted that the Tribunal had committed a patent error in taking the view that the imported mutton tallow of the appellant did not meet the colour specification of the exemption Notification that the Custom House had wrongly followed the IS 548 for testing the appellant's samples and it should have followed the official method Cc 8d-55. In any case the matters were required to be remanded as the appellant had been denied the principle of natural justice and fair play. Learned counsel appearing for remaining appellants submitted that the tallow which they imported was bleachable fancy tallow and was not mutton tallow and, therefore, as rightly held by the Appellate Collector the IS 548 meant for mutton tallow testing could not have been adopted by the Custom House for testing their samples of imported tallow and that the correct method which should have been adopted was method prescribed by the American Oil Chemist's Society and if that was done in all probabilities their samples would have satisfied the colour test of being not deeper than 20. It was next contended that exemption Notification of 1976 nowhere lays down any particular method for testing colour of samples of imported tallow and especially when imported tallow came from foreign countries specially America and Australia, the American method of testing colour specification should have

E F G H

A been adopted as Appellate Collector had done. It was further submitted that even if Indian testing method was adopted by following IS 548, the testing should have been done on one inch cell and not on half inch cell as was done by Custom House so far as their samples were concerned. In these circumstances the tribunal was not justified in allowing the appeals. These appeals should have been dismissed.

B

Having given our anxious consideration to the rival contentions, we have reached the conclusion that there is no substance in any of the appeals.

It has to be kept in view that as per Section 12 of the Customs Act, duties of customs shall be levied as specified in the Customs Tariff Act for C goods imported in or exported out of India. It is not in dispute between the parties that the imported tallow attracted the customs duty as per the Customs Tariff Act, 1975 at the rate of 45 per cent *ad valorem* but the appellants staked their claim on the basis of the Notification issued by the Central Government under Section 25 of the Act granting partial exemption from duty on such imported talllow. It is obvious that whatever exemption D is granted under Notification may be either absolute or subject to such conditions which have got to be fulfilled by the importers before earning such exemption. The Notification 141-Cus/76 which we have earlier referred does not grant such 30 percent exemption in absolute terms but such exemption is based on fulfilment of conditions mentioned therein about the specification of imported tallow and if the imported tallow does E not meet the specification required it cannot earn the exemption. It is trite to say that in order to earn the exemption to person claiming the exemption must satisfy that his imported item has fulfiled all the conditions of the exemption Notification as such exemptions are granted in public interest. In connection with such exemption Notification issued under Section 25 of the F customs Act, a Bench of this Court in case *Union of India and Ors.* v. *M/s Jalyan Udog and Anr.*, A.I.R. (1994) SC 88, speaking through B. P. Jeevan Reddy, J., has made the following observations :—

> "An exemption granted may be an absolute one or subject to such conditions, as may be specified in the notification and G further that the conditions specified may relate to a stage before the clearance of goods or to a stage subsequent to the clearance of goods. S. 25 (1) is a part of the enactment and must be construed harmoniously with the other provisions of the Act. The power of exemption is variously described as conditional legislation and also as species of delegated H legislation. Whether it is one or the other, it is a power given

to the Central Government to be exercised in public interest. Such a provision has become a standard feature in several enactments and in particular, taxing enactments. It is equally well settled by now that the power of taxation can be used not merely for raising revenue but also to regulate the economy, to encourage or discourage as the situation may call for the import and export of certain goods as also for serving the social objectives of the State. Since the Parliament cannot constantly monitor the needs of and the emerging trends in the economy and is in no position to engage itself in day-to-day regulation and adjustment, of import-export trade accordingly, power is conferred upon the Central Government to provide for exemption from duty of goods, either wholly or partly, and with or without conditions, as may be called for in public interest. Reading any limitation into this power is not warranted. If the public interest demands that the exemption should be absolute the Central Government can do so. Similarly if the public interest demands that exemption should be granted only subject to certain conditions it can provide such conditions. Then again if the public interest demands that conditions specified should relate to a stage subsequent to the date of clearance it can do so. The guiding factor is the public interest."

Once the appellants admittedly imported tallow into this country, on account of the charge by the Customs Act under Section 12, their imported tallow attracted customs duty. It is for them to show how instead of paying full duty they got exemption to the tune of 30 per cent pursuant to the Notification 141-Cus/76. For that purpose they have to show that the imported tallow have met colour specification as it was a notification granting exemption on conditions did not grant exemption in absolute terms. It is not in dispute that out of seven specifications mentioned in the Notification , six were met by them but only on colour specification No. 2 they met their waterloo. The Custom House which tested the samples on imported tallow, submitted by the appellants, found that the colour specification laid down in condition No. 2 was not satisfied by these imported tallow and, therefore, on these imported tallow exemption could not be granted as claimed. If the appellants felt that the findings of the Custom House were not correct it was open to them to get the samples cross tested through their experts and to lay evidence in that connection before the authorities as burden was entirely on them to show that they had satisfied all the conditions of Notification with a view to earning the

A exemption to the extent of 30 per cent of import duty on their imported tallow. They did nothing of the kind. The Custom House followed the method of Indian Standards Institution for testing these samples. Our attention was invited to booklet "Indian Standard, Methods of Sampling and Test for Oils and Fats" as well as booklet of "Indian Standards Specification for Animal Tallow" issued by the Indian Standards
B Institution. So far as animal tallow is concerned, the booklet dealing with text IS 887-1977 in paragraph 8.1 lays down that the test shall be carried out according to IS 548 Part I 1964. IS 548 Part I 1964 deals with method of sampling and test for oils and fats. Thus there appears to be a common test prescribed by the Indian Standards Institution being IS 548 Part I for all types of animal tallows. That was the test adopted by Custom House and it
C was found that none of the samples of imported tallow as submitted by the appellants fulfilled the requirement of condition No. 2 of the exemption Notification. In other words, their colour in one inch cell on lovibond scale, expressed as Y + 5R was deeper than 20. Consequently, the imported tallow whether mutton tallow or beef tallow or any other tallow as covered by these consignments of the appellants did not satisfy condition No. 2 of
D colour as laid down by Notification 141-Cus/76 dated 2.8.1976. On these finding reached by the Custom House and when no effort to rebut the same was made by the appellants, the conclusion was inevitable that these imported consignments of tallow during the time exemption Notification dated 2.8.1976 was holding the field did not earn the exemption under the said Notification from the customs duty to the extent of 30 per cent they
E were liable to pay full customs duty. This finding is rightly reached by the tribunal on facts and calls for no interference. So far as submission of learned counsel for appellant, M/s Bombay Oil Industries Pvt. Ltd., is concerned to the effect that only because the appellant imported mutton tallow, IS 548 could not have been resorted to cannot be accepted in view
F of the Indian Standards Institution's method for testing animal tallow which has to follow IS 548 as seen earlier. It may also be noted that the Tribunal has observed in paragraph 25 of its judgement that M/s. Bombay Oil Industries Pvt. Ltd. did not question the test result. Consequently, it is too late for it to make a grievance about it in these proceedings. So far as the remaining four appellants are concerned, the Tribunal rightly held that it
G was not open to the Appellate Collector to presume that for imported tallow which was not mutton tallow and which would be a mixture of beef and other tallows, the American method of testing should have been adopted by the Custom House. It is true that the Notification did not specify as to which method should be followed. But it has to be appreciated that the imported tallow was to be utilised in India by Indian manufacturers and had
H ultimately to join the main stream of consumer goods either as such or after

being utilised in production of consumer goods. When they are to be imported in India and when they claim exemption for the condition of Notification issued by the Central Government under Section 25 of the Customs Act, the test for checking their colour as laid down by the exemption Notification has necessarily to be as per the Indian Standard method and test laid down by the Indian Standards Institution. In this connection, we may refer to the decision in the case *Union of India* v. *Delhi Cloth and General Mills*, [1963] Suppl. 1 SCR 586 which has taken the view that if method of testing any item of Central excise tariff is not mentioned, then Indian Standards Institution's method should be applied. Learned Counsel for the appellants submitted that strictly speaking this judgement may not apply to the facts of the present case as we are not concerned with any central excise tariff. Be that as it may, the fact remains that the imported goods on which the appellants claim exemption from customs duty have to be ultimately disposed of in India and when the Indian Government Grants exemption on condition, the method to test whether the exemption is earned or not by these imported goods would obviously be the Indian method. Learned counsel for the respondents submitted that if a converse case is taken into consideration and if Indian goods are exported to foreign countries and if they have to earn any exemption from duty imposed by foreign countries on such imports in their countries and if colour specification of such imported material is to be found out, the country of import, namely the foreign country would insist that the method to be adopted for testing the imported goods should be the method of testing adopted by the country and it would be no ground to say that the Indian goods imported in foreign countries met the requirement of the Indian specification though they may not meet the requirement of specification laid down by the importing countries, for the simple reason that they have to meet the requirements of the importing country and not of India which is the exporting country. In the present case also, therefore, when the importers are Indian they have to meet the requirement of exemption Notification issued by the Central Government. These imports must satisfy the test as laid down by the exemption Notification issued in India and when the Notification is silent about the method for testing the colour of imported items, then the testing method adopted by the Indian Standards Institution would of necessity be applicable. It was then contended by the learned counsel for the appellants in these remaining four appeals that IS 548 Part I was to be applied for testing the colour of tallow. The colour specification by the Notification was required to be tested on one inch cell on the lovibond scale expressed as Y + 5R. While in the present case the samples were tested on one half inch cell and, therefore, the Custom House results should not be relied upon. It is not possible to

A B C D E F G H

A agree with this contention. As we have discussed earlier as the appellants wanted refund of duty on their imported goods, they should have made efforts to rebut the result of Custom House. That they did not do but even that apart as noted in paragraph 38 of the impugned judgement the Tribunal found that even when lovibond one inch cell was adopted, if the imported tallow was tested in unbleached form in which it was imported then its B colour deepening would be 34 to 36 which would be more than 20 as required by the second condition of the colour specification. The main argument of the appellants was that American method should have been followed as observed by the Appellate Collector when the exemption Notification is silent about the said method. We, therefore, concur with the view of the Tribunal that there was no occasion to test the appellants' C samples of tallow after bleaching as that was not the method of IS 548 Part I which was holding the field and as such pre-bleaching and refining could not be done pursuant to the American method which was not applicable to the facts of the present case and even by taking one inch cell testing on lovibond IS 548 method would have resulted in the samples showing colour deepening to the extent of 34 to 36 on the basis of Y + 5R which would not D satisfy condition No. 2. The appellants cannot have any real grievance in this connection.

Before parting we may note one submission of the learned counsel. They submitted that laying down of condition No. 2 in Notification dated, 2.8.1976 was a clear error on the part of the Central Government which was E corrected by them by the latter Notification dated 2.9.1978 and, therefore, the latter Notification be treated as clarificatory Notification read with above Notification of 2.8.1976. It is not possible to agree as the disputed imports with which we concerned are prior to 2.9.1978. They are, therefore, covered by the earlier Notification of 1976. It is true that the Tribunal by noting these submissions has observed in paragraph 35 of the judgement F that the colour specification was an error and that the error be removed but for that reason it could not ignore the colour specification when it was the part of the law. We entirely agree with the view of the Tribunal that even if the Central Government corrected its error about condition No. 2 from 2.9.1978 by issuing a fresh Notification, the earlier color specification G requirement remained operative for imports made by the concerned importers prior to 2.9.1978 when the earlier Notification dated 2.8.1976 was holding the field. The latter Notification cannot be said to be merely clarificatory Notification nor can it have any retrospective effect. It is a fresh Notification laying down fresh condition deleting the earlier condition No. 2 about the colour specification. Hence this submission is of no avail to H the learned counsel for the appellants.

For all these reasons, there is no substance in these appeals and they are accordingly dismissed. In the facts and circumstances of the case, there will be no order as to costs. A

G.N. Appeals dismissed.