A COMMISSIONER OF CENTRAL EXCISE, CALCUTTA

v.

M/S. HINDUSTAN NATIONAL GLASS AND INDUSTRIES LTD.

MARCH 11, 2005

B [RUMA PAL, ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

Central Excises and Salt Act, 1944 :

Section 4(4)(d)(i)—Assessable value of glass bottles—Determination of—
C *Cost of packing, if inclusive—Assessee manufacturing glass bottles and buyer using the same for packing its products—Bottles delivered in loose condition at factory gate in course of wholesale trade—At option of buyer goods packed for safe transit by assessee and cost reimbursed to them and in some cases buyer supplying packing materials and assessee charging initial packing charges—Tribunal held that the packing charges collected by assessee not*
D *includible in the assessable value of glass bottles except initial packing charges towards packing of goods in durable and returnable containers—On appeal held : Decision of Tribunal based on factual finding that packing is not necessary for the articles in condition in which it is generally sold in the wholesale market at the factory gate and cannot be termed perverse—Hence,*
E *order of Tribunal upheld.*

Section 11A -Assessee challenging in Writ Petition demand of duty raised—Interim Order and subsequent extension thereof—Issue of show cause notices during pendency of Writ Petition, demand being subject to the decision of High Court—If barred by limitation—Held : Order of High Court stayed
F *only recovery/collection and not levy—There is difference between levy and collection—Moreover, Department issued notices as the interim order did not restrain issuance of notices—Thus, Tribunal rightly held that notices barred by limitation.*

Respondent-assessee is engaged in manufacturing of various types
G **of glass bottles and the buyers use the same for packing consumer products like milk, soft drinks, medicines, hair-oil, beer etc. manufactured by them. According to the assessee, these bottles are delivered by it in loose condition without packing at the factory-gate in the course of wholesale trade. In many cases at the option of the buyer goods are packed for safe**

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transit and the cost is reimbursed by the customer. In some cases buyers supply packing material and manufacturer charges ex-factory prices for goods along with extra initial packing charges for extra services rendered. In any event, the packing materials used by manufacturer are of durable and returnable nature and the buyers are entitled to refund of cost on return.

Assessee got price-lists approved without the inclusion of packing charges though these charges were reflected in the price list depending upon the type of packing used. Department issued show-cause notices totalling in all to 111, raising demand of duty on packing charges realised by the assessee. Assessee filed writ petition challenging the notices and subsequent demands raised. Interim order was passed which was further extended. High Court disposed of the writ petition. During the pendency of the writ petition, show cause notices were issued raising demand of duty on packing charges which was subject to the decision of High Court in the writ petition. Both the Adjudicating Authority and the Appellate Authority confirmed the demand of duty on packing charges. Thereafter, assessee filed appeals before the CEGAT contending that the packing expenses are not included in the assessable value; that 24 show cause notices were barred by limitation in terms of Section 11A of the Act; that interim orders passed by High Court had not restrained issuance of show-cause notice; that if Revenue understood that there was restraint on issuing show-cause notices, it could not have issued 77 notices; that the interim orders related to realization and not levy; that as regards nature of investment covered by show cause notice, Adjudicating Authority held that the assessment were final, but were provisional in certain aspects, and the Appellate Authority held it to be provisional and as such the notices were within time. Tribunal allowed the appeals filed by the respondent. It held that the packing charges except initial packing charges towards packing of goods in durable and returnable containers, collected by the assessee are not includible in the assessable value of glass and glassware; and that the 24 notices were barred by limitation. Hence the present appeals.

Appellant-Department contended that CEGAT's view that packing charges collected by the assessee are not includible in the assessable value of glass and glassware ran counter to the clear language of Section 4(4)(d)(i); that it is not a requirement in law that the goods at the factory gate should be on marketable stage; and that both the assessee and the

A **Department knew that the assessments were not final but were provisional, therefore, the Authorities had rightly held that only two notices were barred by limitation.**

Dismissing the appeals, the Court

B **HELD : 1.1. CEGAT with reference to the factual background has come to the conclusion that packing was not necessary for the glass bottles manufactured by the assessee in the condition in which it is generally sold in the wholesale market at the factory gate. The findings are factual and cannot be termed to be perverse in any manner to warrant** C **interference. [755-B]**

Commissioner of Central Excise, Allahabad, etc. **v.** *M/s Hindustan Safety Glass Works Ltd. etc,* **(2005) Scale 246, distinguished.**

Union of India **v.** *Bombay Tyre International,* **(1983) 14 ELT 1896** D **and** *Government of India* **v.** *Madras Rubber Factory,* **(1995) 77 ELT 433, referred to.**

K. Radha Krishnaiah **v.** *Inspector of Central Excise and Ors.,* **[1987] 2 SCC 457;** *Mahalakshmi Glass Works' (P) Ltd.* **v.** *Collector of Central Excise,* **(1988) 36 ELT 727 SC and** *Triveni Glass Ltd. Allahabad* **v.** *Union of India* E *and Ors.,* **(2005) 2 Supreme 191, referred to.**

2.1. There is a conceptual difference between "levy" and "Collection". When the High Court had stayed only the recovery/collection there was no question of any stay on the levy. In any event, the Revenue itself issued 77 show-cause notices and, therefore, there was no question F **of reading the interim orders passed by the High Court that they restrained the issuance of show cause notice. [755-H; 756-B, E]**

Gokak Patel Volkart Limited **v.** *Collector of Central Excise, Belgaum,* **(1987) 28 ELT 53 SC;** *Sirajul Haq Khan and Ors.* **v.** *The Sunni Central* G *Board of Waqf, U.P. and Ors.,* **[1959] SCR 1287 and** *N.B. Sanjana, Assistant Collector of Central Excise, Bombay and Ors.* **v.** *Elphinstone Spinning and Weaving Mills Co. Ltd.,* **[1971] 3 SCR 506, referred to.**

2.2. The plea of the Revenue that the assessment orders were provisional in nature cannot be accepted. In order to establish that the H **clearances were on provisional basis an order under Rule 9B of the**

erstwhile Central Excise Rules, 1944 and clearances/payment of duty on provisional basis are essential. [756-F-G] A

Metal Forgings **v.** *Union of India,* **(2002) 146 ELT 241 SC, relied on.**

Coastal Gases and Chemicals Pvt. Ltd. **v.** *Assistant Commissioner of Central Excise, Visakhapatnam,* **(1997) 92 ELT 460 SC, referred to.** B

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7313-7421 of 1999.

From the Judgment and Order dated 4.8.99 of the Central Excise, Customs and Gold (Control Appellate Tribunal, Eastern Bench at Calcutta in F.O. Nos. A.747-855/CAL/99 in A. Nos. E(SB) 527 and 528/98, E/V-25 to 130/97 and E/185 of 1989A. C

A. Subba Rao and B. Krishna Prasad, for the Appellants.

S. Ganesh, Narendra M. Sharma, Ravi Prasad, R.K. Sayali and Rajesh Prasad Singh, for the Respondent. D

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. The Revenue is in appeal against the judgment rendered by the Customs Excise & Gold (Control) Appellate Tribunal, Bench, Calcutta (in short the 'CEGAT'). Since there was a difference of opinion between the Member (Judicial) and the Member (Technical), the matter was referred to a third member i.e. another Member (Technical). By majority 108 appeals filed by the respondent (hereinafter referred to as the 'assessee') were allowed. There were essentially two issues involved. The first related to the question as to whether packing charges realized by the assessee from its customers in different situations for different types of packing would form part of assessable value of the final product or not to attract duty under the Central Excise and Salt Act, 1944 (in short the 'Act'). Second question was whether some of the show-cause notices were issued beyond the period prescribed under Section 11A of the Act. The majority view was in favour of the assessee in respect of both the aforesaid issues. E F G

Dispute arose in the following background :

The assessee is engaged in the manufacture of various types of glass bottles for milk, soft drinks, medicines, hair-oil, beer etc. The bottles H

A manufactured by the assessee are used by the various manufacturers of the consumer products for packing of their goods. According to the assessee, these bottles are delivered by it in loose condition at the factory-gate in the course of wholesale trade. In a good number of cases its buyers want the goods to be packed in some sort of packing for safe transportation of the goods and to avoid the breakage etc. during transit, whereas in some cases, B the buyers send their own packing materials like gunny bags, wooden cartons, wooden crates etc. In some cases, it buys the packing materials on behalf of its customers who reimburse the cost of the same. Wherever the packing material is supplied by the buyers viz, cardboard boxes and wooden crates etc. at their own cost, only ex-factory prices for the sale of the goods is being C realized by it as the sale is in loose condition and it is the headache of the customers to provide any type of packing to ensure safe transportation of the goods. It only charges some extra sums termed as initial packing in lieu to the extra services rendered at the buyer's request by way of labour charges etc. after putting the bottles in the boxes/crates supplied by its customers and also towards the costs of stores material and other related expenditure such D as cost of pins, gum type, coir string and sutti etc. No initial packing charges were being realized by it prior to April, 1977 and also in those cases where the goods were delivered in loose condition without any packing whatsoever at the factory gate. It is also the assessee's contention that even where the packing materials are being provided by it at the behest of the buyer, the E same is invariably durable and returnable justifying its non-inclusion in the assessable value. Its price-lists were approved without the inclusion of packing charges, though these charges were reflected in the price-list depending upon the type of packing the customer opted for.

A show-cause notice dated 31.12.1970 was issued by the Department F raising demand of duty on packing undertaken by the assessee during the period from 1st January to 31st March, 1974. Thereafter further show-cause notices (111 in total) were issued on the allegation that the assessee had not included the packing charges in the assessable value of its final product. The show-cause notices covered period upto 14.11.1975. The show-cause notices and subsequent demands made on the assessment memorandum of RT-12 G Returns were the subject matter of challenge in Writ Petition no. 5002(W) of 1980 before the Calcutta High Court, wherein the assessee challenged the attachment of its goods by the Department by letter/order dated 9.4.1980. An interim order was passed on 30.4.1980 to which reference shall be made infra. Another interim order dated 14.5.1980 extending the application for H extension of the interim order was passed along with clarifications. The writ

petition was finally disposed of by the High Court on 3.4.1986 directing the concerned appellate/revisional authority to dispose of the matter in the light of the principles enunciated by this Court in several judgments. Matter was remanded with liberty to approach the High Court further in case it was warranted. The interim order was directed to be continued till disposal of the case by the concerned authorities. During the pendency of the writ petition before the High Court demands on various counts including packing charges were raised by the Revenue on the RT-12 Returns. In show-cause notices it was indicated that the demand was subject to the decision of the Calcutta High Court in the writ petition. The Assistant Commissioner, Central Excise (Calcutta) (hereinafter referred to as the 'adjudicating authority') adjudicated all the show-cause notices and by order-in-original dated 18.12.1986 confirmed the demand of duty amounting to Rs. 2,13,89,696.29 (subsequently corrected to Rs. 2,13,78,926.16) on the ground of packing charges and dropped the demands relatable to certain other aspects. Appeal was filed before the Commissioner (Appeals) (referred to as the 'appellate authority') by the assessee which was dismissed. Therefore, 108 appeals were filed before the CEGAT. Stand of the assessee before the CEGAT was two-fold. It was submitted that the moot question was whether the packing expenses are required to be added in the assessable value or not and secondly whether 24 show cause notices were barred by limitation. It was pointed out that 24 show-cause notices which were issued after the expiry of the stipulated period and subsequently confirmed by the authority were barred by limitation of six months in terms of Section 11A of the Act. It was pointed out that interim orders passed by the High Court had not restrained issuance of show-cause notice. There was some amount of confusion in the orders passed by the adjudicating authority and the appellate authority. While adjudicating authority categorically held that the assessments were final assessments, but were provisional in certain aspects, the appellate authority held that it was provisional and, therefore, concluded that the notices were within time. The conclusion of the appellate authority that the interim orders passed by the High Court were understood by the parties as if there was a restraint on issuance of the show-cause notice is clearly erroneous. As the factual situation shows, out of the total number of show-cause notices (111 notices) only 24 notices were barred by limitation and if revenue understood that there was restraint on issuing show-cause notices, it could not have issued 77 notices. The interim orders related to realization and not levy. On merits it was submitted that the goods are not generally sold in the packed condition at the factory gate. Packing of the bottles in straw, gunny bags, cardboards or wooden boxes/crates depend upon choice of the respective customers who

A either provide the packing materials themselves or ask the assessee to do the job on their behalf. Packing suggested by the customers was to ensure safe transportation of goods and to avoid loss of damage during transit. Different rates were quoted for different modes of packing on the basis of the orders placed by the customers specifying the mode of packing. The price-list filed specified wholesale ex-factory prices and different charges for the different B modes. Wherever packing had been ordered by the customers, packing charges were shown separately in the invoice. Wherever the buyers had not asked for any packing goods were delivered in loose condition without any packing. In any event, the packing used was of durable and returnable in nature, and the buyers were entitled to the refund of cost on return. In a number of cases, C such packing had been returned by the buyers and the same had been also re-used by the assessee and adjustment towards the cost of the same has been made. Though the authorities accepted the factum of return of packing material, it ignored the same on the ground that number was very small. The Revenue on the other hand submitted that in view of the categorical language of Section 4(4)(d)(i) there was no scope for excluding the packing charges on D the artificial distinction of primary/specific packing charges. Even if there were some cases of return it was insignificant when compared to the volume of transactions. On the question of limitation, it was submitted that the assessee had in fact understood the order of the High Court to mean that the notices were not to be issued awaiting decision and, therefore, all the notices were E within time. As noted above, the Member (Judicial) and second Member (Technical) decided both the issues after referring to the factual aspects in favour of the assessee. It was held that there was no question of any provisional assessment as projected by the Revenue and, in fact, the adjudicating authority himself had held that there was final assessment, but it was provisional for some purposes. A different view was taken by the Member (Technical). F Another Member (Technical) concurred with the Member (Judicial) and the appeals were allowed. The conclusions of the majority members of the Tribunal were as follows : -

(1) Packing charges collected by the assessee are not includible in the assessable value of glass and glassware.

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(2) 'Initial packing charges' towards packing of the goods in durable and returnable containers is includible in the assessable value.

(3) 24 show cause notices involving duty of Rs. 66,34,680.27 are barred by limitation.

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In support of the appeals, Mr. A Subba Rao, learned counsel submitted that the CEGAT's view on the question of inclusion of packing charges runs counter to the clear language of Section 4(4)(d)(i) and various decisions of this Court. It is not a requirement in law that the goods at the factory gate should be on marketable stage. It clearly provides that where under the Act duty is chargeable on any excisable goods, the normal price is deemed to be the price at which such goods are ordinarily sold by the assessee to buyers in the course of wholesale trade for delivery at the time of removal, where the buyer is not a related person and price is the sole consideration of the sale, where the goods are delivered at the time of removal in a packed condition includes the cost of such packing except the cost of packing which is of a durable nature and is returnable by the buyer to the assessee. The minority view of CEGAT was that the goods to be marketable is not a part of the requirement of the relevant provision. That is the correct view. Further, onus is on the assessee to prove that the packing is of a durable and returnable nature and have to be returned by the buyer to the assessee. There are only a few instances where it has been returned. Further, for adjustment in the value and that the goods were sold in loose condition, few instances were shown. They have been rightly discarded by the authorities below. Reliance was placed on a decision of this Court in *Serai Kella Glass Works Pvt.Ltd.* v. *Collector of Central Excise, Patna,* [1997] 4 SCC 641 to contend that if a provisional assessment is followed by final assessment, there is no requirement for issuing show-cause notice in terms of Section 11A. Where the self assessment scheme is in operation, limitation starts from the date of final assessment. In any event, both the assessee and the Department knew that the assessments were not final but were provisional. Therefore, the authorities had rightly held that only two show-cause notices i.e. 1/78 and 2/78 were barred by limitation.

The agreements referred to by the assessee only show the possibility of return but not actual return. Reliance was also placed on a decision of this Court in *Commissioner of Central Excise, Allahabad, etc.* v. *M/s Hindustan Safety Glass Works Ltd., etc.,* (2005) 2 SCALE 246 to contend that the fact situation therein is identical to the one involved in these appeals and, therefore, the appeals deserve to be allowed.

In response, learned counsel for the assessee submitted that the CEGAT's conclusions were arrived at after analyzing the factual position. Contradictory stands were taken by the adjudicating authority and the appellate authority as regards the nature of assessment covered by the show-cause notices. The

A interim orders passed by the High Court clearly show that the authorities were blowing hot and cold as was observed by the CEGAT. The Member (Judicial) noted that 77 show-cause notices were issued and 24 were not issued during the relevant period. If the Department's view was that there was no final assessment and only provisional assessment had been made and/ or that the High Court's order restrained issue of show-cause notice, there B was no reason as to why 77 show-cause notices were issued.

On merits, it was submitted that by a series of decisions this Court has explained the scope and ambit of Section 4(4)(d)(i) and, therefore, the view taken by CEGAT is irreversible, particularly, when findings of fact were C recorded. The fact situation in *M/s Hindustan Safety Glass Works Ltd.* case (supra) was entirely different. It was noted in that case that even for movement inside the factory of the assessee the requirement of packing the articles in question was there. Reliance was placed on three orders passed by the Government of India in which the revisional authority held that articles were marketable in the loose condition. Though they related to periods prior to D amendment of Section 4(4) the factual position did not change. The crucial expression used in Section 4(4)(d)(i) is "returnable" and not "returned". Large number of documents by way of illustration were pressed before the CEGAT to show that the articles were of durable nature and were returnable. The CEGAT has rightly placed reliance on them to conclude in favour of the E assessee.

Section 4 (4)(d)(i) which is the relevant provision reads as under :

"*Section 4* : *Valuation of excisable goods for purposes of charging of duty of excise* : - Where under this act, the duty of excise is F chargeable on any excisable goods with reference to value, such value, shall subject to the other provisions of this section, be deemed to be-

(a) the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where G the buyer is not a related person and the price is the sole consideration for the sale :

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H (4) For the purposes of this section-

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(d)''value'' in relation to any excisable goods,-

(i) Where the goods are delivered at the time of removal in a packed condition, includes the cost of such packing except the B cost of packing which is of a durable nature and is returnable by the buyer to the assessee.

Explanation : In this sub-clause ''packing'' means the wrapper, container, bobbin, pirn, spool, reel or wrap beam or any other thing in which or on which the excisable goods are wrapped, contained or C wound.

Xx xx xx xx

Xx xx xx xx''

The scope and ambit of the provision has been referred to in various D cases. In *M/s Hindustan Safety Glass Works' Ltd.* case (supra) reference was made to almost all the decisions on the point and it was, *inter alia*, held as follows :

''6. Thus under Section 4(4)(d)(i) the cost of packing is to be included in working out the value of goods, unless the packing is of a durable E nature and is returnable by the buyer to the assessee. The Explanation indicates the various types of packing whose costs have to be included. A wrapper and/or a container is packing whose cost has to be included. The words ''wrapper'' and ''container'' are wide enough to include all types of wrappers and containers. The further words ''any other F thing in which or on which the excisable goods are wrapped, contained, or wound'' also show that the term ''Packing'' has a very wide connotation and includes anything used for wrapping and/ or containing the excisable goods.''

Even though the statutory provision is clear and unambiguous a concept G of primary and secondary packing was developed by this Court in the case of *Union of India* v. *Bombay Tyre International Ltd.*, (1983) 14 ELT 1896. In this case, it was recognized that the degree of packing would vary from one class of excisable goods to another. It was held that packing may be necessary to make an article marketable. It was held that by including the H

A cost of packing the legislature has sought to extend levy beyond the manufactured article itself. It was held that thus a strict construction must be put upon the said provision. It was held that only the cost of packing which was required to make the goods marketable would be includible in the value of goods. It was held that if any additional or special packing is provided, which packing is not generally required or provided as a normal feature, then B the cost of such packing need not be included in the value of goods. The test which was laid down was that it is only the cost of packing ordinarily required for selling the goods in the course of wholesale trade to a whole buyer which would be includible and not the cost of any additional or special packing.

C Aforesaid position was noted in *M/s Hindustan Safety Glass Works Ltd.* case (supra).

In *Government of India* v. *Madras Rubber Factory,* (1995) 77 ELT 433, it was, *inter alia,* held as follows :

D "The test is : whether packing, the cost whereof is sought to be included is the packing in which it is ordinarily sold in the course of a wholesale trade to the wholesale buyer. In other words, whether such packing is necessary for putting the excisable article in the condition in which it is generally sold in the wholesale market at the factory gate. If it is, then its cost is liable to be included in the value E of the goods; and if it is not, the cost of such packing has to be excluded. Further, even if the packing is 'necessary' in the above sense, its value will not be included if the packing is of a durable nature and is returnable by the buyer to the assessee. We must also emphasize that whether in a given case the packing is of such a F nature as is contemplated by the aforesaid test or not, is always a question of fact to be decided having regard to the facts and circumstances of a given case."

After analyzing various decisions, the position was succinctly summed up by this Court in *Hindustan Safety Glass Works'* case (supra) as follows :

G "We are in complete agreement with the above conclusions. The question is not for what purpose the packing is done. The test is whether the packing is done in order to put the goods in a marketable condition. Another way of testing would be to see whether the goods are capable of reaching the market without the type of packing H concerned. Each case would have to be decided on its own facts. It

must also be remembered that Section 4(4)(d)(i) specifies that the cost of packing is includible when the packing is not of a durable nature and returnable to the buyer. Thus, the burden to show that the costs of packing is not includible is always on the assessee."

The CEGAT with reference to the factual background has come to the conclusion that the packing was not necessary for the concerned excisable articles in the condition in which it is generally sold in the wholesale market at the factory gate. The findings are factual and cannot be termed to be perverse in any manner to warrant interference. The decision in *Hindustan Safety Glass Works'* case (supra) does not help the revenue as the fact situation is clearly distinguishable. In that case admittedly for movement inside the factory, packing was necessary. That makes a gulf of difference. That would be for dismissing the appeals filed by the Revenue but there are certain aspects which need to be highlighted in view of the recurring nature of controversy.

Section 4(4)(d)(i) uses the expression 'returnable'. As was observed by this Court in *K. Radha Krishnaiah* v. *Inspector of Central Excise and Ors.*, [1987] 2 SCC 457, it is not physical capability of the packing to be returned which is the determining factor because in that event, the words "by the buyer to the assessee" need not have been used and would be superfluous. What is required for attracting applicability of the exclusion clause in Section 4(4)(d)(i) is that the packing must be returnable by the buyer to the assessee on the basis of an arrangement between the buyer and assessee under which packing is returned by the buyer to the assessee.

In *Mahalakshmi Glass Works (P) Ltd.* v. *Collector of Central Excise,* (1988) 36 ELT 727 SC it has been held that under Section 4(4)(d)(i) the costs of packing which is of durable and returnable nature is to be excluded. There must be an arrangement between the buyer and the assessee that the packing be returned to the assessee. The question whether the packing is actually returned or not has no relevance. The view in *Mahalakshmi Glass Works'* case (supra) was affirmed in a recent case by this Court. (See *Triveni Glass Ltd., Allahabad* v. *Union of India and Ors.*, (2005) 2 Supreme 191)

Coming to the question of limitation it is to be noted that there is a conceptual difference between "levy" and "collection". This point was highlighted by this Court in *Gokak Patel Volkart Limited* v. *Collector of Central Excise, Belgaum,* (1987) 28 ELT 53 SC. Referring to the earlier

A decision in *Sirajul Haq Khan and Ors.* v. *The Sunni Central Board of Waqf, U.P. and Ors.*, [1959] SCR 1287 and *N.B. Sanjana, Assistant Collector of Central Excise, Bombay and Ors.* v. *Elphinstone Spinning and Weaving Mills Co. Ltd.*, [1971] 3 SCR 506, the difference between levy and collection was noticed with reference to Section 3 of the Act which is the charging provision. It was held that levy and collection are two distinct and separate steps. When
B the High Court had stayed only the recovery/collection there was no question of any stay on the levy.

The two orders of the High Court, so far as relevant read as follows :

C "*Order dated 9.4.1980-* In the meanwhile the petitioners will be at liberty to pay the duties as claimed by the respondents in respect of the goods which the petitioners want to deliver and if such payment is made, the respondents shall allow the petitioners to deliver the goods to its customers without prejudice to the rights and contentions of the parties to this Rule.

D *Order dated 14.5.1980-* The interim order will continue till the disposal of the application for extension of the interim order with the clarification to this effect that the petitioners shall only pay the Central Excise duties before removing the goods but not any amount that may be claimed by the respondents for packing and transport charges."

E In any event, the Revenue itself issued 77 show-cause notices and, therefore, there was no question of reading the interim orders passed by the High Court in a particular way.

There is one other point which needs to be noted i.e. plea of the Revenue
F that the assessment orders were provisional in nature. This plea is equally untenable, in view of what has been stated by this Court in *Metal Forgings* v. *Union of India,* (2002) 146 ELT 241 SC. It was held that in order to establish that the clearances were on provisional basis an order under Rule 9B of the erstwhile Central Excise Rules, 1944 (in short the 'Rules') and
G clearances/payment of duty on provisional basis are essential. Reliance was placed on an earlier decision of this Court in *Coastal Gases and Chemicals Pvt. Ltd.* v. *Assistant Commissioner of Central Excise, Visakhapatnam,* (1997) 92 ELT 460 SC.

CEGAT's conclusions in these aspects are also in order.

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Learned counsel for the Revenue lastly submitted that since the assessee has collected the amounts and passed on the burden to the customers, it is not entitled to any relief. This is an aspect which may be relevant for the purpose of Section 11B of the Act and not for the purpose of adjudicating the controversy in these appeals. We express no opinion on that aspect. A

The appeals fail but in the circumstances without any order as to costs. B

N.J. Appeals dismissed.