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M/S. VIRLON TEXTILE MILLS LTD.

v.

COMMISSIONER OF CENTRAL EXCISE, MUMBAI

APRIL 17, 2007

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[S.H. KAPADIA AND B. SUDERSHAN REDDY, JJ.]

Customs Tariff Act, 1975; CSH 5402.33/Customs Act, 1962; S.12/Central Excise Act, 1944; S. 3(1); Notification No.2/95-CE/Export and Import Policy
C *1997-2002; Paras 9.9 and 9.10(b):*

Levy of customs duty, excise duty and special additional duty—Texturised Polyester Yarn and Dyed Polyester Yarn—Assessee selling against foreign exchange in Domestic Tariff Area (DTA) in terms of para 9.10(b) of Exim Policy—Applicability of exemption Notification No.2/95-CE—Held: In terms
D *of Exim Policy/rules every 100% Export Oriented Unit manufacturing capital goods/finished products from duty free imported raw materials obliged to export its entire production and earn foreign exchange—However, DTA sales is exempted under the rules—Since in the present appeal, law as stood prior to 11.5.2001 is concerned, DTA sales against foreign exchange was also covered by the proviso to s.3(1) of the 1944 Act—Hence the assessee is*
E *entitled to benefit of Notification No.2/95-CE—Tribunal erred in relying on para 9.9(b) of Exim Policy for limiting the benefits of exemption under the Notification by imposing a new condition to the effect that the benefit woula be admissible only in respect of 50% of such DTA sales—Since the benefit of the Notification allowed to DTA sales against rupees, DTA sales against*
F *foreign exchange which are at par with physical exports cannot be denied the same benefit and cannot be subjected to a higher duty—Under the circumstances, the matter is remanded to the Commissioner, Revenue for calculation of the duty afresh accordingly.*

Assessee is a 100% Export Oriented Unit (EOU) engaged in the
G **manufacture of Texturised Polyester Yarn and Dyed Polyester Yarn. The said yarn is solid against foreign exchange by the assessee in Domestic Tariff Area (DTA) subject tc permission given by the competent authority under para 9.10(b) of Export and Import Policy (Exim Policy) 1997-2002. A show cause notice was issued by the Revenue to the assessee demanding differential**

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amount of duty as it was not paying appropriate duties on the goods cleared as per the permission granted by the authorities; that the assessee had paid Countervailing duty (CVD) @ 30% on Texturised Polyester Yarn plus Rs. 9 per kg. on Dyed Polyester Yarn cleared under para 9.10(b) of Exim Policy against foreign exchange. In terms of the show cause notice, on clearance of the said yarns into DTA under para 9.10(b), assessee, being a 100% EOU, was required to pay duty of excise equal to the aggregate of duties of customs leviable on such yarns falling under Chapter Sub-Heading (CSH) 5402.33 of the Customs Tarriff Act 1975. Since the assessee had failed to pay the duty in respect of clearances of the yarns under para 9.10 (b), it was asked to pay Rs. 33.58 lacs additional amount of duty for certain period falling during 1997-2002. The demand of differential amount of duty had been confirmed by the Revenue authorities and on appeal by the Tribunal (CEGAT) rejecting the contention of the assessee that they were entitled to the benefit of exemption Notification No.2/95-CE dated 4.1.1995. Hence the present appeal filed by the assessee and cross appeal filed by the Revenue.

Allowing the appeal filed by the assessee and dismissing the appeal of the Revenue, the Court

HELD: 1.1. The Exim Policy as a rule stated that every 100% EOU was obliged to manufacture or produce from duty free imported raw materials capital goods etc., finished products/articles and as a rule every 100% EOU was obliged to export its entire production and earn foreign exchange. This was what was called as Physical Exports. However, this rule had certain exceptions. The appeal in question is concerned with DTA sales. As an exception, there existed two types of DTA sales under the Policy, namely, DTA sales against rupee and DTA sales against foreign exchange which was similar to physical exports. [Para 7] [276-E-F]

1.2. The general rule was physical exports and other supplies in DTA was equated to physical exports. This equation was necessary because other supplies in DTA gave certain benefits to the economy like preservation of foreign exchange, import substitution, savings of transportation costs and to provide competitiveness and level-playing field for Indian exporters. [Para 7] [276-G-H]

1.3. In this civil appeal, the law as it stood prior to 11.5.2001 is being considered. DTA sale against foreign exchange was covered by the expression "allowed to be sold in India" and, therefore, such sale fell under the proviso to Section 3(1) of the Central Excise Act, 1944. In the circumstances, the

A duty liability of the assessee was required to be determined after allowing to it the benefit of notification No. 2/95-CE. That notification granted partial exemption to the assessee from duties in respect of goods manufactured in 100% EOU and allowed to be sold in India Under para 9.9(a), (b), (c) and (d) of the Exim Policy. [Para 7] [277-A-C]

B 1.4. Once DTA sales against foreign exchange are held to be covered by the proviso to Section 3(1) of the 1944 Act then the whole difference between DTA sales against rupee and DTA sales against foreign exchange, for the purpose of notification No.2/95-CE would stand eliminated. This would be, however, subject to the compliance of other conditions of notification No. 2/ C 95-CE. Therefore, the Tribunal had erred in relying on para 9.9(b) of the Policy for limiting the benefits of exemption under notification No.2/95-CE by imposing a new condition to the effect that the benefits would be admissible only in respect of 50% of such DTA sales against foreign exchange.

[Para 7] [277-C-D]

D 1.5. Once the permission was granted by the competent authority under the Exim Policy to make DTA sales against foreign exchange, the assessee was entitled to the benefit of concessional rate of duty under notification no. 2/95-CE. If DTA sales against rupee were allowed the benefit of notification No. 2/95-CE, then DTA supplies against foreign exchange, which were at par with physical exports, cannot be denied the same benefits and they cannot be E subjected to a higher duty. [Para 7; 277-D-E]

1.6. There is no fundamental difference, as far as the exemption notification No. 2/95-CE is concerned, between DTA sales against foreign exchange and DTA sales against rupee. Once DTA sales against foreign exchange fall within the expression "allowed to be sold in India", the F Department cannot deny to such sales the exemption under notification no. 2/95-CE, since DTA sales against foreign exchange will come under para 9.9. According to the Tribunal, the entire supply to DTA against foreign exchange was not entitled to the benefit of notification No. 2/95-CE but only 50% of the supply was eligible for the said relief. There is no basis for introduction of this condition in notification No. 2/95-CE. It appears that this G condition is brought in on the ground that para 9.9(b) refers to DTA sales up to 50% of the FOB value of exports. Thus, the Tribunal had erred in relying on para 9.9 (b) for limiting the benefits of exemption under notification No. 2/95-CE in respect of 50% of DTA sales (supplies) against foreign exchange. One cannot ignore the fact that DTA sales in foreign exchange H provides for better money value as compared to DTA sales in rupee. Therefore,

if DTA sales against rupee are allowed the benefits of notification No. 2/95-CE, DTA supplies, which are at par with physical exports, cannot be denied the same benefits. [Para 7] [277-G-H; 278-A-B]

1.7. Once DTA sales against foreign exchange are covered by the above expression "allowed to be sold in India", all issues relating to calculation of the duty payable in terms of notification No. 2/95-CE will have to be decided afresh by the adjudicating authority and hence, the matter is remanded back to the Commissioner for calculating the duties payable by the assessee in terms of notification No. 2/95. [Para 7] [277-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 570 of 2002.

From the Final Order No. C-1/3258/01-WZB dated 19.10.2001 in Appeal No. E/3528/2000-Mum passed by the Customs, Excise and Gold (Control) Appellate Tribunal, Mumbai.

WITH

C.A. No. 3237 of 2002.

S.K. Bagaria, Tarun Gulati, Jaiveer Shergill, Bina Gupta, Shweta Verma and Amrita Swarup for the Appellant.

R. Venkataramani, G. Prakash and B. Krishna Prasad for the Respondent.

The Judgment of the Court was delivered by

KAPADIA, J. *Civil Appeal No.570 of 2002:*

1. Appellant-M/s. Virlon Textile Mills Ltd. is a 100% Export Oriented Unit (EOU) engaged in the manufacture of Texturised Polyester Yarn and Dyed Polyester Yarn. The said yarn is sold against foreign exchange by the appellant in Domestic Tariff Area (DTA) subject to permission given by the competent authority under para 9.10(b) of Export and Import Policy (Exim Policy) 1997-2002. In this civil appeal, the question for consideration is the rate of duty applicable to sales falling under para 9.10 (b).

2. On 4.11.1999 a show cause notice was issued by the Joint Commissioner of Central Excise, Mumbai to the appellant stating that the appellant was not paying appropriate duties on the goods cleared as per the permission granted by the Development Commissioner. According to the show cause notice, the appellant had paid Countervailing duty (CVD) @ 30%

A on Texturised Polyester Yarn plus Rs. 9 per kg. on Dyed Polyester Yarn cleared under para 9.10 (b) of Exim Policy against foreign exchange. According to the show cause notice, under the proviso to sub-section (1) of Section 3 of the Central Excise Act, 1944, (the "1944 Act") duty of excise was leviable on excisable goods produced by 100% EOU and allowed to be sold in India, equal to the aggregate of the duties of customs leviable under Section 12 of B the Customs Act, 1962, on like goods produced or manufactured outside India if imported into India, and where the said duty of customs is chargeable by reference to value; the value of such goods shall be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975. According to the said show cause notice, in the present matter, on C clearance of the said yarns into DTA under para 9.10(b), appellant, being a 100% EOU, was required to pay duty of excise equal to the aggregate of duties of customs leviable on such yarns falling under Chapter Sub-Heading (CSH) 5402.33 of the Customs Tariff Act 1975 as follows:

"A. Basic Customs duty - @ 35% ad valorem.

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B. Additional Duty equal to excise duty under Section 3 of the Customs Tariff (also known as Countervailing Duty or CVD) minus 24% + 6%.

C. Special Additional Duty of Customs under Sec. 3A of Customs Tariff Act, 1975 - @ 4%.

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D. Cess @ 0.05% under Textile Committee Act, 1963."

According to the show cause notice, the appellant had failed to pay the duty in respect of clearances of the above yarns under para 9.10 (b), as indicated hereinabove, and accordingly, it was asked to pay Rs. 33.58 lacs (rounded off F figure) on their clearances during the period 8.4.1999 to 20.10.1999 falling during the Exim Policy period 1997-2002.

3. This demand had been confirmed by all the authorities and the Tribunal (CEGAT) *vide* impugned judgment dated 19.10.2001. In the impugned judgment, the Tribunal took the view that the entire supplies of yarns to DTA G against foreign exchange earned by the appellant was liable to duty payment on clearance in accordance with the proviso under sub-section (1) to Section 3 of the 1944 Act equal to the customs duty leviable under Section 12 of the Customs Act, 1962 on like goods produced by a manufacturer outside India. In other words, the Tribunal has upheld the order of the Commissioner (A). H The Tribunal has also rejected the contention raised on behalf of the appellant

saying that even if the supplies of the yarn under para 9.10(b) was comparable to the DTA sales in para 9.9 of the said Exim Policy, still the appellant was entitled to the benefit of exemption under notification No. 2/95-CE dated 4.1.1995. The Tribunal also rejected the contention of the appellant that, in any event, it was entitled to exemption under notification No. 53/97-Cus. Dated 3.6.1997. According to the Tribunal, the said notification No. 53/97 exempted specified goods from customs duty which were imported into India for manufacture of articles for export out of India or for being used to produce final products for export in cases where the final products/articles stood produced or manufactured by 100% EOU approved by the Commissioner. According to the Tribunal, para 7 of notification No. 53/97 was not applicable to the present case since para 7 applied only to goods (raw materials) which were imported for the manufacture of articles allowed to be sold in India on payment of duty under Section 3(1) of the said 1944 Act. According to the Tribunal, para 7 applied only to DTA sales falling under para 9.9 and it did not apply to DTA sales (supplies) falling under para 9.10 (b) and if they are equated still the appellant was not entitled to the benefit, in full, of the exemption notification no. 2/95-CE. According to the Tribunal, the appellant was also not entitled to the benefit of exemption under notification No. 2/95-CE because that notification was applicable to goods allowed to be sold in India in accordance with the provisions of para 9.9 of Exim Policy 1997-2002. According to the Tribunal, notification bearing no. 2/95-CE had the effect of fixing a value or the amount of which 50% of the duty leviable under Section 12 of the Customs Act, 1962 stood payable. But Section 12 of the Customs Act, 1962 only applied to goods sold to domestic tariff at the rate of duty leviable on like goods when imported into India. According to the Tribunal, in terms of notification No. 2/95-CE the rate of duty applicable was 50% of the amount of duty. According to the Tribunal, the appellant herein was not entitled to the benefit of exemption under notification No. 2/95-CE since the goods have not been sold in DTA in terms of para 9.9. The Tribunal came to the conclusion that, there was no merit in the contention of the appellant that even supplies made to DTA against payment in foreign exchange should be counted towards fulfilment of export obligations and, therefore, all sales made to DTA whether against payment in foreign exchange or payment in rupees should be treated as DTA sales and, in that event, the assessee-appellant would also be entitled to the benefit of exemption notification No. 2/95-CE.

4. In this matter, appellant seeks equation of para 9.10 (b) sales with para 9.9 sales for the purposes of claiming benefit of exemption under notification

A No. 2/95-CE which has been denied by the Tribunal. Hence this civil appeal.

5. We quote hereinbelow Section 3(1) of the Central Excise Act, 1944:

"*SECTION 3. Duties specified in the Schedule to the Central Excise Tariff Act, 1985 to be levied.* (1) There shall be levied and collected

B in such manner as may be prescribed duties of excise on all excisable goods which are produced or manufactured in India as, and at the rates, set forth in the Schedule to the Central Excise Tariff Act, 1985:

Provided that the duties of excise which shall be levied and collected on any excisable goods which are produced or manufactured,-

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(i) in a free trade zone and brought to any other place in India; or

(ii) by a hundred per cent export-oriented undertaking and allowed to be sold in India.

shall be an amount equal to the aggregate of the duties of customs

D which would be leviable under section 12 of the Customs Act, 1962 (52 of 1962), on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value; the value of such excisable goods shall, notwithstanding anything contained in any other

E provisions of this Act, be determined in accordance with the provisions of the Customs Act, 1962 (52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975).

Explanation 1. Where in respect of any such like goods, any duty of customs leviable under the said section 12 is leviable at different

F rates, then, such duty shall, for the purposes of this proviso, be deemed to be leviable under the said section 12 at the highest of those rates.

Explanation 2. In this proviso, -

(i) "free trade zone" means the Kandla Free Trade Zone and the

G Santa Cruz Electronics Export Processing Zone and includes any other free trade zone which the Central Government may, by notification in the Official Gazette, specify in this behalf;

(ii) "hundred per cent export-oriented undertaking" means an undertaking which has been approved as a hundred per cent

H export-oriented undertaking by the Board appointed in this behalf

by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act. A

6. We also quote hereinbelow the exemption notification No. 2/95-CE:

"*GENERAL EXEMPTION NO. 55* B

Exemption to all excisable goods produced in 100% EOU, FTZ, EHTP or STP units when sold in India- In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise and Salt Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts all C excisable goods (hereinafter referred to as the said goods) specified in the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and produced or manufactured in a hundred percent export oriented undertaking or a free trade zone or an Electronic Hardware Technology Park (EHTP) unit or a Software Technology Parks (STP) unit *and* D *allowed to be sold in India under and in accordance with the provisions of sub-paragraphs (a), (b), (c) and (d) of paragraph 9.9* or of paragraph 9.20 of the Export and Import Policy, 1 April 1997 - 31 March 2002, from so much of the duty of excise leviable thereon under section 3 of the said Central Excise Act *as is in excess of the amount calculated at the rate of fifty per cent of each of the duties* E *of customs*, which would be leviable under section 12 of the Customs Act, 1962 (52 of 1962) read with any other notification for the time being in force issued under sub-section (1) of section 25 of the said Customs Act on the like goods produced or manufactured outside India if imported into India: F

Provided that the amount of duty payable in accordance with this notification in respect of the said goods shall not be less than the duty of excise leviable on *the like goods produced or manufactured outside the hundred per cent export-oriented* undertaking or free trade zone or Electronic Hardware Technology Park (EHTP) unit or G Software Technology Parks (STP) unit which is specified in the said Schedule read with any other relevant notification issued under sub-rule(1) of rule 8 of the Central Excise Rules, 1944 or sub-section (1) of section 5A of the said Central Excise Act, as the case may be:

Provided further that nothing contained in the above proviso shall H

A apply to the goods which are chargeable to nil rate of duty leviable under section 12 of the Customs Act read with any other notification for the time being in force issued under sub-section (1) of section 25 of the said Customs Act.

B Provided also that the exemption under this notification shall not be availed until the Assistant Commissioner is satisfied that,-

(i) in the case of the said goods other than software, rejects, scrap, waste or remnants:-

C (a) such goods being cleared for home consumption are similar to the goods which are exported or expected to be exported from the unit during the specified period of such clearances in terms of the Export-Import Policy, 1st April, 1997 31st March, 2002;

D (b) the value of such goods being cleared for home consumption from the unit specified in column (2) of the Table hereto annexed, does not exceed the percentage limit of the entitlement as specified in the corresponding entry in column (3) of the said Table for such clearance, calculated with reference to the total value of production of goods which are identical in all respects to those under clearance;

E (c) The balance of the production of the goods which is identical to such goods under clearance of home consumption, is exported out of India or disposed of in terms of paragraph 9.10 of the said Export and Import Policy,

F (ii) In the case of the said goods being software cleared for home consumption:-

(a) the value of such software cleared during the period specified does not exceed twenty-five per cent of the total value of production of the software in the unit;

G (b) the balance of the production excluding the value cleared as referred to in sub-clause (a) is exported out of India or disposed of in terms of para 9.10 of the said Export and Import Policy,

H (iii) in the case of the said goods in the nature of rejects, scrap, waste or remnant being cleared for home consumption, the value of such goods is within the percentage limits fixed for the unit in terms of the Export and Import Policy 1.4.1997 31.3.2002.

Explanation. For the purpose of this notification, the expression, - A

(1) "Export and import Policy, 1 April, 1997 31st March, 2002" means the Export and Import Policy, 1 April, 1997 31 March, 2002 published by the Government of India under the Ministry of Commerce notification No. 1/1997-2002, dated 31st March, 1997.

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(2) "Electronic Hardware Technology Park (EHTP) unit" means a unit established under and in accordance with Electronic Hardware Technology Park (EHTP) Scheme notified by the notification of the Government of India in the Ministry of Commerce No. 5 (RE-95) 92-97, dated 30th April, 1995 and approved by an Inter-Ministerial Standing Committee appointed by the notification of the Government of India in the Ministry of Industry (Department of Industrial Development) No. S.O. 117(E), dated the 22nd February, 1993; C

(3) "Software Technology Parks (STP) unit" means a unit established under and in accordance with Software Technology Parks (STP) Scheme notified by the notification of the Government of India in the Ministry of Commerce No. 4/(RE-95)/92-95, dated 30th April, 1995 and approved by an Inter-Ministerial Standing Committee appointed by the notification of the Government of India in the Ministry of Industry (Department of Industrial Development) No. S.O.117(E), dated the 22nd February, 1993. D

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S. No.	Unit	Percentage limit of entitlement for clearances for home consumption
(1)	(2)	(3)
1.	Units in the agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry and sericulture sectors	50 per cent
2.	Units engaged in the manufacture of electronic hardware products which achieves,-	
	(a) net foreign exchange	NIL

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	earnings as a percentage of exports less than ten per cent	
	(b) net foreign exchange earnings as a percentage of exports of ten per cent or more but not exceeding twenty five per cent	Upto thirty per cent of the production in value terms of the electronic items, including components manufactured in the unit.
	(c) net foreign exchange earnings as a percentage of exports exceeding twenty five per cent	Upto forty per cent of the production in value terms of electronic items, including components manufactured in the unit.
3.	Other Units	25 per cent"

(emphasis supplied)

7. For the following reasons, we find merit in this civil appeal. Firstly, on examination of the Exim Policy we find that the said Policy as a rule stated that every 100% EOU was obliged to manufacture or produce from duty free imported raw materials capital goods etc., finished products/ articles and as a rule every 100% EOU was obliged to export its entire production and earn foreign exchange. This was what was called as Physical Exports. However, this rule had certain exceptions. In this civil appeal, we are concerned with DTA sales. As an exception, there existed two types of DTA sales under the said Policy, namely, DTA sales against rupee and DTA sales against foreign exchange which was similar to physical exports. This latter category was known as "Other Supplies in DTA". Therefore, to put it in brief, "Other Supplies in DTA" was equated with physical exports which, as stated above, was the general rule for 100% EOU. In other words, the general rule was physical exports and other supplies in DTA was equated to physical exports. This equation was necessary because other supplies in DTA gave certain benefits to the economy like preservation of foreign exchange, import substitution, savings of transportation costs and to provide competitiveness and level-playing field for Indian exporters. According to the Revenue, the expression occurring in the second proviso to Section 3(1), namely, "allowed to be sold in India" was applicable only to DTA sales against rupee and not

DTA sale against foreign exchange. In this civil appeal, we are concerned with the law as it stood prior to 11.5.2001. In our view, DTA sale against foreign exchange was covered by the expression "allowed to be sold in India" and, therefore, such sale fell under the proviso to Section 3(1) of the 1944 Act. In the circumstances, the duty liability of the assessee (appellant herein) was required to be determined after allowing to it the benefit of notification No. 2/95-CE. That notification granted partial exemption to the assessee from duties in respect of goods manufactured in 100% EOU and allowed to be sold in India under para 9.9 (a), (b), (c) and (d). Once DTA sales against foreign exchange are held to be covered by the proviso to Section 3(1) of the 1944 Act then the whole difference between DTA sales against rupee and DTA sales against foreign exchange, for the purposes of notification No. 2/95-CE would stand eliminated. This would be, however, subject to the compliance of other conditions of notification No. 2/95-CE. Therefore, in our view, the Tribunal had erred in relying on para 9.9(b) for limiting the benefits of exemption under notification No. 2/95-CE by imposing a new condition to the effect that the benefits would be admissible only in respect of 50% of such DTA sales against foreign exchange. Secondly, once the permission was granted by the competent authority under the Exim Policy to make DTA sales against foreign exchange, the assessee (appellant herein) was entitled to the benefit of concessional rate of duty under notification no. 2/95-CE. If DTA sales against rupee were allowed the benefit of notification No. 2/95-CE, then DTA supplies against foreign exchange, which were at par with physical exports, cannot be denied the same benefits and they cannot be subjected to a higher duty. Thirdly, once DTA sales against foreign exchange are covered by the above expression "allowed to be sold in India", all issues relating to calculation of the duty payable in terms of notification No. 2/95-CE will have to be decided afresh by the adjudicating authority and accordingly, we hereby remand the matter back to the Commissioner for calculating the duties payable by the assessee in terms of notification No. 2/95. The Commissioner will calculate the duties accordingly as hereinabove mentioned. Lastly, we are of the view that there is no fundamental difference, as far as the exemption notification No. 2/95-CE is concerned, between DTA sales against foreign exchange and DTA sales against rupee. Once DTA sales against foreign exchange fall within the expression "allowed to be sold in India", the Department cannot deny to such sales the exemption under notification no. 2/95-CE, since DTA sales against foreign exchange will come under para 9.9. According to the Tribunal, the entire supply to DTA against foreign exchange was not entitled to the benefit of notification No. 2/95-CE but only 50% of the supply was eligible for the said relief. We do not see any basis for introduction of this condition in

A notification No. 2/95-CE. It appears that this condition is brought in on the ground that para 9.9 (b) refers to DTA sales up to 50% of the FOB value of exports. In our view, the Tribunal had erred in relying on the said para 9.9 (b) for limiting the benefits of exemption under notification No. 2/95-CE in respect of 50% of DTA sales (supplies) against foreign exchange. One cannot ignore the fact that DTA sales in foreign exchange provides for better money value B as compared to DTA sales in rupee. Therefore, if DTA sales against rupee are allowed the benefits of notification No. 2/95-CE, DTA supplies, which are at par with physical exports, cannot be denied the same benefits.

8. For the above reasons, we do not wish to examine the larger issue C canvassed before us on behalf of the assessee (appellant herein). We are confining this judgment to the arguments which were advanced by the appellant herein before the Tribunal.

9. Accordingly, the civil appeal filed by the appellant herein stands allowed. The impugned judgment of the Tribunal is set aside and the matter D is remitted to the Commissioner for calculation of duties payable in terms of notification no. 2/95-CE, as interpreted hereinabove.

10. The appeal stands allowed with no order as to costs.

Civil Appeal No. 3237 of 2002

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[*Commissioner of Central Excise* v. *M/s. Virlon Textile Mills.*]

11. In view of our judgment in Civil Appeal No.570 of 2002 (supra), this civil appeal filed by the Department stands dismissed with no order as to costs.

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S.K.S. C.A. No. 570 of 2002 allowed.
C.A. No. 3237 of 2002 dismissed.