State of U.P. and others

Vs

Delhi Cloth Mills and another

Civil Appeal No. 4297 of 1983

(K. N. Sailia, S. C. Agarwal JJ)

09.10.1990

JUDGMENT

K.N. SAIKIA J

1.The State of U. P. by special leave appeals from the judgment of the High Court of Allahabad dated 26-10-19791 allowing the respondents' writ petition and holding that the State of U. P. and the Excise authorities were not entitled to levy excise duty on the wastage of liquor in transit. The repsondents are manufacturers of high strength spirit classified as 'other sorts of spirit not otherwise specified' under S. 28 of the United Provinces Excise Act, 1910, hereinafter referred to as 'the Act'. After manufacture they transport those spirits in big containers from the distilleries to their warehouses, transporting them on passes issued under S. 16 of the Act. In the bonded warehouses the same are sometimes diluted, separately bottled and sold. They also used to manufacture and bottle military rum under a licence and supply the same to the defence personnel inside and outside the State of U. P. The Officer Commanding Rail Head Depot A,S.C., Pathankot having obtained permits from the State of Punjab for the import of 'litary rum, against those permits the respondents exported military rum from their distillery, under different passes. The excise duty on military rum for export was Rs. 7 / per L. P. Litre while the rate for consumption within the State was Rs. 21 / - per L. P. Litre. If the exported military rum was under bond thereupon duty was realised by the importing State from the importer thereof. The respondents bottled the rum according to rules and supplied the same to the consignees at the distillery premises and the consignments were taken by the consignees under the seal of the railway authorities to their respective destinations.

2. It appears by Notification dated March 26, 1979 in exercise of the powers under Ss. 28 and 29 of the Act, read with S. 21 of the U. P. General Clauses Act, 1904, and in supersession of the earlier Government Notification the Governor was pleased to direct that with effect from April 1, 1979 duty shall be imposed on country spirit at the rates specified in the schedule thereto and the duty was payable "before the issue from the distillery or bonded warehouse concerned save in the case of issued under bond". By order dated 13-10-1970 notice was issued to the respondents demanding Rs. 4,295.55 p. on the wastage which was termed as "excess transit wastage" of rum calculated at the maximum rate of Rs. 21 / - per L. P. Litre. A representation of the respondents dated November 9, 1970 was rejected by order dated 15-1-1972. Another representation through the All India Distillers Association was also rejected by order dated August 28, 1972.

3. Several writ petitions challenging simifar orders were filed by others before the Allahabad High Court for quashing the orders. The respondents also filed Civil Miscellaneous Writ No. 7168 of

1972 under Art. 226 of the Constitution of India praying for appropriate writ, order or direction quashing the impugned orders dated 13-10-1970, 9-11-1970, 15-1-1972 and 28-8-1972 and for a mandamus commanding the State of U. P. not to realise or adjust an amount of duty towards wastage from the respondents' advance duty account otherwise than in accordance with law and restraining them from giving effect to the impugned orders. The High Court by the impugned judgment dated 26-10-1979 relying on an earlier Division Bench decision of the same High Court in M/ s. Mohan Meakin Breweries Ltd. v. State of' Uttar Pradesh. (Writ Petition No. 2604 of 1973, decided on 11-9-1979) allowed the writ petition and quashed the impugned orders thereby holding that no excise duty could legally be levied on the excess wastage that occurred during the transport of liquor in course of export, that is, taking of U. P. otherwise than across a customs frontier as defined by the Central Government.

4. Mr. Raja Ram Agarwal, the Learned counsel for the appellants, submits that the duty has been levied keeping in mind the fact that in U.P. excise duty is levied at two different rates - at a higher rate when the liquor is sold inside the State, and at a lower rate when it is exported outside the State. Countervailing duty is paid by the importer on the quantity actually received in the importing State. If there is excess wastage on transit the result is that the quantity actually received by the destination State is less than the quantity on which the State of U. P. charged the lower rate and, therefore, on the quantity shown as wastage the State of U. P. ought to recoup its differential duty by charging excise duty at the higher rate; and that this is clearly envisaged by the Act and the United Provinces Excise-Manual Rules, hereinafter referred to as 'the Rules'. Counsel further submits that it has a wholesome purpose, namely, to discourage evasion of duty and that there is no question of levying excise duty twice on the same article inasmuch as the amount of export duty actually paid is always deducted from the demand; and that it is a duty of regulatory character meant to guard against perpetration of fraud or deception on excise revenue which the State is entitled to receive. It is said to be a realisation of escaped duty justified by the implied presumption.

5. Mr. K. K. Venugopal, the learned counsel for the respondents, submits that in this case while the exporting State, that is, U. P., levied export duty at a concessional rate the importing State levied countervailing duty on the quantity of rum imported; and the quantity exported and subjected to excise duty by the exporting State being the same as the quantity whereupon countervailin duty was imposed by the importing State, there could be no question of collecting differential duty on the excess wastage by the exporting State and,lf that was done it would amount to doubt taxation. Explaining the procedure for export-from U.P. counsel States that after export duty is paid, the exporter gets the alcohol released and transport it to the importing States in bottles or casks. In the importing State countervalling duty is paid on full consignment at its destination and the seals of the bottles transported are intact. So the entire consignment is taxed less the astage. The impugned demand notices have, submits counsel, rightly been quashed by the High Court and the appellants have rightly been restrained from levying such differential duty on excess wastage on transit in course of export.

6. The only question to be decided, therefore, is whether the differential duty is leviable under the Act and the Rules. For answering the question we may refer to the Act and the Rules. Included in Chapter V of the Act, which deals with duties and fees, S. 28 of the Act provides that an excise duty or a countervailing duty, as the case may be, at such rate or rates as the State Government shall direct may be imposed either generally or for any specified local area on any excis-able article stated in that section.

7. "Excise duty" and "countervailing duty" as defined in S. 3(3a) of the Act means any such excise

duty or countervailing duty, as the case may be, as is mentioned in entry 51 of List II in the Seventh Schedule to the Constitution. That entry reads as follows

> "51.- Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:
>
> (a) alcoholic liquors for human consumption;
>
> (b) opium, Indian hemp and other narcotic drugs and narcotics; but not including medicinal and toilet preparations containing alcohol or any substance included in subparagraph (b) of this entry."

8. The original S. 28 of the Act now renumbered as sub-sec. (1) thereof, and sub-secs. (2) and (3) inserted by S.2 of theU.P. Act 7 of 1970 clearly covers Indian made foreign liquors. There could be no dispute as to military rum being one of the Indian made foreign liquors excisable under the Act. A duty of excise under S. 28 is primarily levied upon a manufacturer or producer in respect of the excisable commodity manufactured or produced irrespective of its sale. Firstly, it is a duty upon excisable goods, not upon sale or proceeds of sale of the goods. It is related to production or manufacture of excisable goods. The taxable event is the production or manufacture of the liquor. Secondly, as was held in A. B. Abdulkadir v. State of Kerala, reported in 1962 Supple. (2). SCR 741 : AIR 1962 SC 922, an excise duty imposed on the manufacture and production of excisable goods does not cease to be so merely because the duty is levied at a stage subsequent to manufacture or production. That was a case on Central Excise, but the principle is equally applicable here. It does not cease to be excise duty because it is collected at the stage of issue of the liquor out of the distillery or at the subsequent stage of declaration of excess wastage. Legislative competence under entry 51 of List 11 on levy of excise duty relates only to goods manufactured or produced in the State as was held in Bimal Chandra Banerjee v. State of Madhya Pradesh (1970) 2 SCC 467 : (AIR 1971 SC 517). In the instant case there is no dispute that the military rum exported was produced in the State of U.P. In State of Mysore v. D. Cawasji & Co. (1970) 3 SCC 710 : (AIR 1971 SC 152), which was on Mysore Excise Act, it was held that the excise duty must be closely related to production or manufacture of excisable goods and it did not matter if the levy was made not at the moment of production or manufacture but at a later stage and even if it was collected from retailer. The differential duty in the instant case, therefore, did not cease to be an excise duty even it was levied on the exporter after declaration of excess wastage. The taxable event was still the production or manufacture.

9. It is settled law as was held in Bimal Chandra Banerjee v. State of Madhya Pradesh (AIR 1971 SC 5I7) (supra), a case under the Madhya Pradesh Excise Act, that no tax can be levied by the State Government in the absence of specific authorisation by statute. In that case the levy of duty on liquor which the contractors failed to lift was held to have been an attempt to exercise a power which the State Government did not possess.

10. Mr. Agarwal refers us to Rule 636 of the Rules which at the relevant time said:

> "636. A distiller holding licences for bottling Indian-made foreign liquor of his own manufacture and for selling it by wholesale may export such foreign liquor bottled on his wholesale premises, to any other State or Union territory in India subject to the following conditions:-

(1) The exporter shall obtain from the importer a permit authorising the import signed by the Chief, Revenue Authority of the importing State or Union Territory or by an officer duly authorised in this behalf.

(2) The permit shall specify:-

(a) the name and address of the person or firm authorised to import,

(b) the description and quantity of the foreign liquor to be imported,

(c) the rate of duty chargeable in the importing State or Union Territory in case the Indian-made foreign liquor is imported in State or Union territory with which the State of Uttar Pradesh has entered into reciprocal arrangements for the adjustment of the excise duty by book transfer.

(d) the rate of duty charged in the important State or Union Territory and the fact that has been realised in advance in cases of import other than those covered by Cl. (c).

(3) On receipt of the permit the exporter shall deposit into the treasury;

(a) Export duty on the total quantity of liquor to be exported; and

(b) Where the export is made to a State or Union Territory with which the State of Uttar Pradesh has entered into a reciprocal arrangement for the adjustment of the excise udty by book transfer, and the rate of duty in the importing State or Union Territory is higher than that enforced in the State of Uttar Pradesh, and that payable in the importing State or Union Territory on the total quantity of liquor to be exported.

(4) On receipt of the permit and the treasury receipt . the wholesale vendor shall prepare a pass in Form F.L. 23 in quadruplicate and submit it to the Excise Inspector, in charge of the distillery. The Excise Inspector shall after satisfying himself that duty has been correctly realised, affix his signature to the pass. The exporter shall then send one copy of the pass to the Collector of the district of export, one copy to the Chief Revenue Authority of the place of import or such other officer as may be authorised in this behalf. One copy to the consignee and shall retain the fourth copy. The treasury receipt shall always accompany the copy af the pass sent to the Collector of the exporting districts.

(5) The pass in form F.L. 23 shall state clearly:--

(a) the name and address of the consignor,

(b) the name and address of the consignee,

(c) the exact description and quantity of each kind of foreign liquor despatched under the pass,

(d) the route by which it is despatched,

(e) the date of despatch, and

(f) in case of export against duty paid permit, the fact that the duty has been prepaid in the State of import.

(6) A separate pass ini formF.L.23 shall be issued in respect of each consignment. The Chief Revenue Authority or other officer of the place of import should send the ocpy of the pass received by him, duly countersigned, to the Excise Commissioner, Uttar Pradesh, in support of the claim for refund of duty annually after the close of the excise year.

(7) Should the rate of duty in the importing State be lower than that in force in Uttar Pradesh, exporter shall be entitled to a refund of the difference in duty. If the duty has been prepaid in the State of import at the rate in force at the time of issuing import permit, the exporter shall be entitled to a refund of duty deposited by him in the State of export on verification of the claim by the Excise Inspector in charge of the distillery on the basis of export passes in form F.L. 23 duly countersigned by the Chief Revenue Authority of the State on Union Territory of import or the officer appointed in this behalf in token of receipt of the consignment of Indian-made foreign liquor."

11. Rule 637 provided that the duty, other than export duty, on foreign liquor mantifactured at any distillery in Uttar Pradesh and exported therefrom on prepayment of duty to any State or Union Territorv of India shall be credited by book transfer to the Government of the importing State or Union Territory after the close of the excise year. Rule 637-A provided for registration of claims for refund or export of Indian-made foreign liquor and provided that every distiller making exports of Indian-made foreign liquor to other States, shall submit a statement showing all such exports made during the preceding quarter, in form P.D. 31 to the Excise Commissioner, duly verified by the officer incharge, distillery, despatching simultaneously a copy thereof to the Assistant Excise Commissioner of the charge. Rule 37-B provided for maintenance of register of refunds against exports of Indian-made foreign liquor and said that the Excise Inspector in charge of the distillery shall enter all the details iven by the distiller in the statement in form P. D. 3 1, in a register to be maintained by hint in form P. D. 3 1 -A. As and when refunds are allowed by the Excise Commissioner, he shall make entries about refund in this registet in relevant columns under his signature. Similar entries shall also be made by the office of the Assistant Excise Commissioner concerned, on the copies of P.D. 31 statement received from the exporters, and be initiated by the Assistant Excise Commissioner after verification.

12. Thus it is seen that though not specifically mentioning charging up of differential export duty on excess wastage, the above rules definitely envisaged refund of excise duty of countervailing or equalising nature,

13. Mr.Agarwal also brings to our notice Rule 814 which substituted the old Rule by the Excise Commissioner's Notification No. 10909/IX.241-A, dated February 8, 1978. It provided as under:

"Allowance for loss in transit.- An allowance up to 0.5 per cent will be made for the actual loss in transit by leakage, evaporation or other unavoidable cause, or spirit transported or exported under bond in wooden casks or metal vessels. The allowance to be made under this rule will be determined by deducting from the quantity of spirit

despatched from the distillery, the quantity received at the place of destination, both quantities being stated in terms of alcohol. The allowance will be calculated on the quantity contained in each wooden cask metal vessels comprised in a consignment.

If the report of the officer by whom the consignment of spirit has been gauged and proved at its destination shows that the wastage has occurred above the limit allowable the person executing the bond shall be liable to pay duty on so much of the deficiency as in excess of the allowance. The rate of duty leviable shall be the highest rate of duty leviable on such spirit in this State.

When the wastage does not exceed the prescribed limit, no action need be taken by the Officer-in-charge of the Distillery or bonded warehouse, as the case may be, but when the wastage exceeds the allowable limit, the Officer in-charge of the Distillery shall obtain the explanation of the Distillers or the person executing the bond and forward the same together with a full report of the circumstances to the Assistant Excise Commissioner or the 'Deputy Excise Commissioner of the charge in which the Distillery is situated. The Assistant Excise Commissioner or the Deputy Excise Commissioner shall charge duty on excess wastge provided that when the total wastage in a consignment is within the allowable limit. Deputy/ Assistant Excise Commissioner of the charge may write off the excess wastage in any particular wooden cask or metal vessel:

Provided further that the Deputy Excise Commissioner may write off the duty up to Rs. 500, if he is satisfied that the excess wastage in a consignment was on account of an accident or other unavoidable cause but in other cases, the matter shall be referred to the Excise Commissioner for orders. Cases in which the Deputy Excise Commissioner writes off duty shall be reported by him to the Excise Commissioner."

It is emphasised by Mr. Agarwal that this provision is meant to discourage evasion of duty. If any part of the lower export duty charged liquor is not in fact exported it should be made to pay the higher excise duty as payable on home consumed liquor. It does not impose any new duty. We are inclined to agree. This rule does not authorise imposition of any new tax but only authorises charging up excise duty on the excess wastage of liquor in course of export which was charged at concessional rate. The old Rule 814 of the Rules was made by B.O. No. 423/V-284-B, dated September 6, 1910 and No.20/ 8 V-E 980B, dated May 28, 1918 providing for allowance for loss in transit. It said

An allowance will be made for the actual loss in transit, by leakage, evaporation or other unavoidable cause, of spirit transported or exported under bond. The allowance is subject to the following maximum limits."

Limits were prescribed differently for wooden casks and metal vessels, keeping in mind the duration of transport.

14. Thus, we find that the minimum limits of wastage in transit was prescribed even under the old rule. This by implication enjoined that the excess wastage would be taxed as if not wasted.

15. The question may arise as to the date of the new Rule 814, to decide whether the impugned

notices would be covered by it or by the old Rule. S. 77 of the Act provides the answer. It says:

> "77. Publication of rules and notifications.- All rules made and notifications issued under the Act shall be published in the Official Gazette, and shall, have effect as if enacted in this Act from the date of such Publication or from such other date as may be specified in that behalf."

(The two provisos are not relevant for the purpose of this case)

16. Both the old and the new Rule 814 must, therefore, have effect from the date of publication in the Official Gazette or from such other date as may be specified in that behalf as if enacted in the Act. The object of this ancient formula, namely, "as if enacted in this Act" was to emphasise the fact that the'f'cat'ons were to be as effective as the Actnoti itself. Its validity could be questioned in the same way as the validity of the Act could be qirestioned. It is an ancient form of rule making still to be found in the Act. Thus, the Act having provided for fixed wastage allowance also in effect provided that the excess above the allowable wastage will be taxed. It cannot, therefore, be said that no such charging up of excise duty on the excess wastage in transit could be validly made. The validity of Rule 814 had not been questioned before the High Court. Absolute equality and justice is not attainable in taxing laws. Legislature must be left to decide the State policy within constitutional limitations.

17. In M/s. Mohan Meakin Breweries Ltd. v. Excise and Taxation Commissioner, Chandigarh, reported in 1976 Supple. SCR 510: (1976) 3 SCC 421 : (AIR 1976 SC 2020), the appellant company carried on the business of manufacture, storage and sale of liquors. Between June, 1967 and April 1969, it transported various quantities of liquor from its distilleries in U. P. to its bonded warehouse at Chandigarh. On arrival, the consignments were examined by the Officer-in-Charge of the warehouse, and a shortage was found, exceeding the wastage allowance permissible under Rule 8 of the Punjab Bonded Warehouse Rules, 1957. The Excise and Taxation Commissioner, exercising the powers of the Financial Commissioner, issued a show cause notice and then ordered the appellant to pay duty on the wastage in excess. The show cause notice required the appellant to pay duty on excess wastage in course of import of liquor from U.P. and the rules governing the appellant's licence provided for a wastage allowance not exceeding 1 % of the actual loss in transit by leakage or breakage of vessels or bottles containing liquor, and if the wastage exceeded the prescribed limit the licensee should be liable to pay duty at the prescribed rate as if the wastage in excess of the prescribed limit had actually been removed from the warehouse, and it was also provided that the Financial Commissioner could in his discretion on good cause being shown remit the whole or part of the duty leviable on such wastage, and these provisions wear challenged. This Court held that the impugned rules did not impose any new duty or create any liability and that they were in essence and substance of a regulatory character meant to guard against perpetration of fraud or deception on the revenue. "They provided for and regulate the storage and subsequently she removal of liquor from the bonded warehouse, on payment or otherwise of the duty which is chargeable under the Fiscal Rules of 1937." We agree with Mr. Agarwal that the instant Rules 636 and 614 are also of regulatory character and they are precautionary against perpetration of fraud on the excise revenue of the exporting State. If out of the quantity of military rum in a consignment, a part or portion is claimed to have been wastage in transit and to that extent did not result in export, the State would, in the absence of reasonable explanation, have reason to presume that the same have been disposed of otherwise than by export and impose on it the differential excise duty. A statute has to be construed in light of the mischief it was designed to remedy. There is no dispute that excise duty is a single point duty and may be levied at one of the points mentioned in S. 28.

18. The submission of the respondent, of that they paid duty on the entire quantity of rum to be exported under excise passes issued to the importer and that after payment of the export duty the rum bottled under the conditions enumerated in the Rules was supplied to the consignee at the distillery premises and the consignments were taken by the consignees under their seals and under the seal of the Railway authorities and the consignments reached their destination with seals intact would not go to support the contention that the State Government was not competent to levy any duty on the excess wastage that is shown to have occurred during transit inasmuch as only a concessional rate of duty was levied on the liquor which was supposed to be exported outside the State of U. P. and if the entire quantity on which such concessional duty was paid did not reach its destination, and the shortage is shown as wastage in transit, it surely meant that the short delivery provisions were was not exported. The reason of the wastage would not be material so far as this conclusion is concerned. Had this quantity been not exported but consumed locally the State would have derived higher duty of which it has been deprived.

19. The argument that countervailing duty is paid by the importers in the importing State on the quantity actually received, would also be immaterial for this conclusion though that may be of some importance for the purpose of revenue of the importing State as well as the consignee. In case countervailing duty has been paid on the entire quantity of the -consignment in the importing State there may be room for adjustment in accordance with the provisions of Rules 636, 637, 637-A and 637-B of the Rules. The only material question may be whether the wastage was caused while the bottles were on transit but still within the territory of the exporting State or in transit inside the importing State. If as a matter of fact it is found that the exported liquor actually crossed the territory of the exporting State intact there may not be any justification for demanding differential duty. That will of course be a question of fact in no way affecting the right to demand the differential duty. The decision in M/s. Ajudhia Distillery Rajaka, Sahaspur v. State of Uttar radesh reported in 1980 TLR, 2262 (All),quashing such a demand and holding that the exporting State had no jurisdiction to charge dut\ on tle liquor wastage in transit cannot be said to have been correctly decided and the limptigned Judgement in the instant case suffers from the same infirmity, and has to be se aside. Rule 814 envisages the levy of such differential, duty. There is no question of double charging or multiple point charging in this cse. It is only a question of recovery of the difference on proof of the purposes for which ower duty was earlier levied having failed to be achived entailing liability to make good the difference. The Rules 636, 637-A and 637 are also relevant to this extent.

20. It. was reiterated in M/s. McDowell and Co. Ltd. v. Commercial Tax Officer, VII Circle, Hyderabad (1977) 1 SCR 914 : AIR 1977 SC 1459, following Abdul Kadir (AIR 1962 SC 922) (supra) that excise duty is a duty on the production of manufacture of goods produced or manufactured within the country though laws are to be found which impose a duty of excise at stages subsequent to the manufacture or production. Similarly what was stated in Kalyan' Stores v. State of Orissa (1966) 1 SCR 865: (AIR 1966 SC 1686), was reiterated in M/s. Mohan Meakin Breweries Ltd. (AIR 1976 SC 2020) (supra) that a countervailing duty is meant "to counter balance; to avail against with equal force or virtue; to compensate for something or service as equivalent or substitute for". A countervailing duty is "meant to equalise the burden on alcoholic liquors manufactured or produced in the State." They may be imposed at the same rate as excise duty or at a lower rate so as to equalise the burden after taking into account the cost of transport from' the place of manufacturing to the taxing State. Countervailing duties are meant to equalise burden on alcoholic liquors imported from outside the State and the burden placed by excise duties on alcoholic liquors manufactured or produced in the State. Countervailing duties can only be levied if similar goods are actually produced or manufactured in the State on which excise duties are being levied. Thus, countervailing duty paid in the importing State does not ipso facto affect the excise

revenue of the exporting State.

21. The fact that the importer is required to pay countervailing duty on the imported military rum could, therefore, ipso facto be no ground for opposing the levy of differential duty on the excess wastage of exported rum that duty being levied with a view to safeguard the excise revenue of the exporting State. If the excess wastage was actually lost to consumers while in the importing State no justification of such a duty may arise, that,however, would be an entirely different question without in any way affecting the competence of the legislature of the exprting State to impose such a duty. The fact that the exported rum was on payment of export duty or on bond would not again be material inasmuch as when the rum meant for export failed to be exported, there may be a presumption, may be rebuttable one, that what is shown as the excess has merged in mass of rum consumed within the State and was not separated from such a mass. The imposition of differential duty was only deferred to this moment and it still continued to be a duty on production or manufacture of rum. It could not be regarded as a duty not connected with the taxable event of manufacture or production.

22. There is also no similarity with the excise duty sought to be levied only on the unlifted quantity of liquor by contractors which was held to be impermissible under Ss. 28 and 29 of the Act in Excise Commissioner, U.P. v. Ram Kumar (1976) 3 SCC 540 : (AIR 1976 SC 2237) and State of Madhya Pradesh v. Firm Gappulal, AIR 1976 SC 633 : (1976) 2 SCR 1041. In the instant case the military rum was obtained for the purpose of export and the lower export duty was paid and only when the rum did not result in export the question of imposing the differential duty arose. The notion of the excise duty being changed or cancelled on account of what transpires-later is not foreign to excise law. Generally speaking the imposing of the differential duty i.e. charging up the duty on the report of the excess wastage is the opposite of the sytem of drawback prevalent in some systems. Drawback means the repayment of duties or taxes previously charged on commodities, from which they are relieved on exportation. For example, in the customs laws of some countries an allowance is made by the Government upon the duties due on imported merchanise when the importer, instead of selling, it within the country reexports it, and then the difference of duty is refunded, if already paid. Similarly, in England there is a provision of refund of duties on British wine when the wine incidentally is spoilt or otherwise unfit for use or when delivered to another person has been returned to the maker as so spoilt or unfit. The system of charging up the duty on the subsequent event of non-export cannot, therefore, be said to be irrespective of production or manufacture.

23. In the instant ease if it is proved to the satisfaction of the appropriate authorities the countervailing duty had been paid on the entire consignment irrespective of the wastage then the question would arise as to whether the wastage could be ignored altogether by the exporting State as was done by the importing State. Counsel for the parties had no objection to the idea that if the explanation for wastage was satisfactory and the countervailing duty was paid in the importing State on the entire consignment irrespective of the wastage, there would be room for adjustment by reducing the duty to similar extent.

24. For the foregoing reasons, the impugned judgment is set aside and the appeal is allowed, but under the facts and circumstances of the case, without any order as to costs.

Appeal allowed.

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