that on account of matrimonial dispute he was to pay the maintenance to the wife. Under these circumstances every girl would like to stay in her matrimonial home as has been done by the appellant-wife. The allegations that she wanted to marry in a big city with a rich man are unfounded. The other allegations that appellant -wife insulted the respondent-husband and his family members; refused to prepare tea in the presence of relatives and friends; refused to cook meals or to bring a glass of water; are not of the nature so as to hold that the wife treated the husband with mental cruelty. In fact, no date, time or year of the incident finds mention in this regard. The other allegation that after few days of marriage when few relatives and friends of their family came to their house, the appellant-wife refused to make tea, is of vague nature. Names of relatives or friends have not been disclosed nor the date and time of the incident found mentioned. Even, thereafter, wife had gone to her matrimonial home and stayed for about two years in her matrimonial home as husband and wife with Ravinder Singh. Thereafter, now it cannot be said that on account of aforesaid facts, the wife treated the husband with cruelty.

(14) Even during the pendency of the petition, the wife had gone to the house of her husband on 27.04.2009 and stayed there uptill 13.05.2009. There is no dispute about this fact. This further goes to show that wife has never intended to desert her husband. At that time on 20.05.2009, statement of appellant-wife Surinder Kaur, her brother Nirmal Singh and her sister Satnam Kaur were recorded in the Court. The statement of Surinder Kaur is as follows:-

> "On 27.04.2009, I had accompanied my husband to my matrimonial house and stayed there till 13.05.2009. During this period, my husband and my in laws family treated me well and kept me with love and affection. I had returned back to my parental house on 13.05.2009 on the asking of my brother and did not go back to my matrimonial house till today on my own as I was mislead and influenced by my brother. I realised my mistake and repent the same and I shall not repeat my mistake in future. I also admit my mistake of threatening the petitioner of taking some drastic steps and implicating him in a false case and causing harm to myself and I shall not repeat such like threats or do any such act in future and in case, I do such drastic act, I shall be responsible for the same. I under take to give respect and love to my husband and to live peacefully with him at my matrimonial house."

(15) From the above statement, it is evident that this statement does not convey any meaning atleast in favour of husband. Her statement that "*I had returned back to my parental house on 13.05.2009 on the asking of my brother and did not go back to my matrimonial house till today on my own as I was mislead and influenced by my brother*" conveys no meaning. Last line of her statement that " *I undertake to give respect and love to my husband and to live peacefully with him at my matrimonial house*" goes to show that she intends to live with her husband at her matrimonial home, she is respectful wife and it is the compelling circumstances at the house of her husband, due to which she was unable to live there or was not allowed to live there in that house. These very lines further go to show that she has not deserted her husband at all.

(16) Desertion means intention to bring matrimonial ties to an end permanently. Even if husband and wife have been living separately for long, that would not constitute desertion. In the case in hand the intention of the wife to bring to an end matrimonial relations permanently, is missing. The learned trial court without discussing the ground of desertion simply concluded in one line that the wife had deserted the husband continuously for 2 years immediately preceding the presentation of the petition. Thus finding of the learned trial Court is unfounded on record and is not sustainable.

(17) Likewise without framing any issue regarding permanent alimony to wife and without taking any evidence on that point, the learned trial Court directed the husband to pay a sum of ₹2,15,000/- (gross amount) as permanent alimony to the wife. As such, for want of evidence, this finding of the learned trial Court is also not sustainable and is set aside with the observation that wife can move application for permanent alimony in accordance with law in the proper forum.

(18) For the reasons recorded above, we conclude to hold that Ravinder Singh husband has failed to prove that Surinder Kaur-wife has treated him with cruelty and further deserted him. Therefore, the findings recorded by the learned trial Court on issues No.1 and 2 are set aside and even the order of permanent alimony is also set aside as indicated above.

(19) This appeal is, accordingly, accepted giving the liberty to the wife to move for permanent alimony in the proper forum in accordance with law.

V. Suri

Before S. J. Vazifdar, ACJ & G.S. Sandhawalia, J

RIBA TEXTILES LIMITED—*Appellant*

versus

THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI AND ANOTHER — *Respondents*

CEA Nos. 62-64 of 2013

April 21, 2015

Central Excise Act, 1944 — Ss. 5-A(1) & 35(G) — Finance Act, 1999 — S.133 — Exemption from additional excise duty — Central Excise Notification no.22 dated 31.03.2003 — Appellant was 100 percent export oriented unit — It procured high speed diesel (HSD) free of basic excise duty — Appellant had to pay additional excise duty (AED) at various rates along with education cess with effect from 09.07.2004 under section 133 of Finance Act, 1999 — Appellant filed application for refund of duty paid on various items in respect of HSD on ground that exemption notification issued on 31.03.2003 also exempted AED levied on HSD — Held, that in Central Excise notification dated 31.03.2003, Government had exempted duty of excise leviable thereon under provisions specified therein, namely, Central Excise Act, 1944, Additional Duties of Excise (Goods of Special Importance) Act, 1957 and Additional Duties of Excise (Textile and Textile Articles) Act, 1978 — Intention was clear in notification that exemption was not to operate in respect of additional excise duty levied under Finance Act, 1999 — Exemption could not be granted.

Held, that in the case before us, it is equally clear that in the notification under section 5-A(1) of the Central Excise Act, 1944,the Government exempted the duty of excise leviable thereon under the provisions specified therein, namely, Central Excise Act, 1944,Additional Duties of Excise (Goods of Special Importance) Act, 1957 and the Additional Duties of Excise (Textile and Textile Articles) Act, 1978. The intention was clearly to limit the exemption only in respect of the enactments specified in the notification. The Finance Act of 1999 was not one of them.

(Para 12)

Further held, that A plain reading of the notification itself makes it clear that the exemption was not to operate in respect of the additional excise duty levied under the Finance Act, 1999.

(Para 13)

Further held, that the question of law is, therefore, answered in favour of the respondents. The appeals are dismissed. There shall, however, be no order as to costs.

(Para 16)

Akshay Bhan, Senior Advacate with Alok Mittal, Advocate
for the assessee/appellant

Kamal Sehgal, Advocate for the revenue/respondents

S. J. VAZIFDAR, ACJ.

(1) These appeals raise a common question of law and are, therefore, disposed of by a common judgment. We will refer to the facts from CEA No.62 of 2013 for convenience.

(2) The appeals are filed under Section 35G of the Central Excise Act, 1944 to set aside an order dated 08.05.2012 passed by the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) confirming the order of the first appellate authority rejecting the appellant's application for refund of amounts paid as additional duty of excise under the Finance Act, 1999.

(3) The appeal is filed contending the following substantial questions of law arise:-

> "(a) Whether the Courts below have erred in their orders dated 28.03.2007 and 08.05.2012, in as much as the provisions of the Notification No.22/2003 exempts the excise duty so imposed upon the appellant.
>
> (b) Whether the impugned orders are not supported by law and are thus illegal, arbitrary and void."

(4) We, however, admit the appeal on the following substantial question of law framed as under:-

> Whether the appellant is entitled to exemption from additional duty of excise under the Finance Act, 1999 in view of a notification dated 31.03.2003 issued under Section 5A(1) of the Central Excise Act, 1944.

(5) The appellant is a 100% export oriented unit (EOU). It

procured goods free of excide duty under an exemption notification dated 31.03.2003 which itself was preceded by similar notifications issued since the year 1994. From April, 1999 to March, 2006, the appellant procured free of basic excise duty high speed diesel (HSD) from the Indian Oil Corporation under the said notification.

(6) The notification dated 31.03.2003, in so far as it is relevant, reads as under:-

> "In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act 1944 (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and sub-section (3) of section 3 of Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978), the Central Government being satisfied, that it is necessary in the public interest so to do, hereby exempts,- …. …. ….
>
> (b) all goods specified in Annexure II to this notification, when brought in connection with production, manufacture or packaging of goods as specified in Annexure-III for export, into export oriented undertaking in horticulture, agriculture and animal husbandry sector (hereinafter referred to as the user industry; or …. …. ….
>
> (e) ……. from the whole of,
>
> (i) the duty of excise leviable thereon under section 3 of Central Excise Act, 1944 (1 of 1944);
>
> (ii) the additional duty of excise, if any, leviable thereon under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957); and
>
> (iii) the additional duty of excise, if any, leviable thereon under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), subject to following conditions, namely:- …. …. ….
>
> 21. High Speed Diesel oil for power generating sets as approved by the Board of Approval."

(7) The appellant paid additional excise duty (AED) in respect of HSD at various rates along with education cess with effect from 09.07.2004 under Section 133 of the Finance Act, 1999. The appellant thereafter filed an application o 07.09.2006 for refund of the duty paid

at various times in respect of the HSD. The appellant based the application for refund on the ground that the said notification issued on 31.03.2003 also exempted the AED levied on HSD under Section 133 of the Finance Act, 1999. The appellant contended that it paid the AED by mistake. The appellant was afforded a hearing in respect of the application. The application was rejected. The rejection was confirmed by the first appellate authority and by the impugned order of the CESTAT.

(8) The appellant's contention that the exemption notification dated 31.03.2003 issued under the Central Excise Act also exempted it from payment of duty levied by Section 133 of the Finance Act, 1999, was rightly rejected by the Tribunal as not being well-founded.

(9) Section 133 of the Finance Act reads as under:-

> "Section 133—(1) In the case of goods specified in the Second Schedule, being goods manufactured in India, there shall be levied and collected as an additional duty of excise an amount calculated at the rate set forth in the said Schedule.
>
> (2) The additional duty of excise referred to in sub- section (1), shall be in addition to any other duties of excise chargeable on such goods under the Central Excise Act, or any other law for the time being in force.
>
> (3) The provisions of the Central Excise Act and the rules made thereunder, including those relating to refunds and exemptions from duties, shall, as far as may be, apply in relation to the levy and collection of the additional duty of excise leviable under this section in respect of any goods as they apply in relation to the levy and collection of the duties of excise on such goods under that Act or those rules, as the case may be.
>
> (4) The additional duty of excise leviable under sub- section (1), shall be for the purposes of the Union and the proceeds thereof shall not be distributed among the States."

The Second Schedule referred to in sub-section (1) includes HSD and stipulates the rate of duty at Rs.1 per litre.

(10) The question is answered against the appellant by the judgment of the Supreme Court in ***Union of India and others versus M/s Modi Rubber Ltd***.[1] The facts and the legal provisions of that case

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[1] 1986(4) SCC 66

are similar to those in the case before us. The question in that case related to the construction of the expression "duty of excise" in two notifications issued under Rule8 of the Central Excise Rules, 1944. Rule 8 is similar to Section 5(A) of the Excise Act, 1944. The said notification in the case before us uses the same expression. Under Rule 8, the Central Government was entitled by notification to exempt any excisable goods from the whole or any part of duty leviable thereon. The word "duty" was defined in Rule 2(v) to mean duty payable under Section 3 of the Act. The Supreme Court held that the exemption issued under Rule 8(1) of the Central Excise Rules, 1944, can only be from the whole or any part of the duty of excise payable under Section 3 of the Central Excise and Salt Act, 1944. The Central Government issued a notification under Rule 8(1) exempting tyres for motor vehicles from so much of the duty of excise leviable thereon as was in excess of 55% *ad valorem*. It is the words in this notification "duty of excise" that fell for consideration of the Supreme Court. A further notification was issued in respect of other type of tyres as well which also used the same expression "duty of excise". Since 1963 special duty of excise was levied *inter alia* on tyres by various Finance Acts passed from time to time. The question was whether the expression was limited only to basic duty of excise under the Central Excise and Salt Act, 1944 or whether it also covered special duty of excise levied under various Finance Bills and Acts, additional duty of excise levied under the Additional Duty of Excise (Goods of Special importance) Act, 1957 and any other kind of duty of excise levied under a central enactment. Section 32 of the Finance Act, 1979, which was relevant in that case, read as under:-

> "32. *Special Duties of Excise.*— (1) In the case of goods chargeable with a duty of excise under the Central Excises Act as amended from time to time, read with any notification for the time being in force issued by the Central Government in relation to the duty so chargeable there shall be levied and collected a special duty of excise equal to five per cent of the amount so chargeable on such goods.
>
> (2) Sub-section (1) shall cease to have effect after the 31st day of March, 1980, except as respects things done or omitted to be done before such cesser; and Section 6 of the General Clauses Act, 1897, shall apply upon such cesser as if the said sub-section had then been repealed by a Central Act.
>
> (3) The Special duties of excise referred to in sub- section

> (1) shall be in addition to any duties of excise chargeable on such goods under the Central Excises Act, or any other law for the time being in force.
>
> (4) The provisions of the Central Excises Act and the rules made thereunder, including those relating to refunds and exemptions from duties, shall, as far as may be, apply in relation to the levy and collection of the special duties of excise leviable under this section in respect of any goods as they apply in relation to the levy and collection of the duties of excise on such goods under that Act or those rules as the case may be."

Sub-sections (3) and (4) are similar to sub-sections (2) and (3) of Section 133 of the Finance Act, 1999, which are relevant in the matter before us.

(11) On the assumption that the notification issued under Rule 8(1) granted partial exemption only in respect of basic excise duty levied under the Central Excise and Salt Act, 1944, the assessee did not claim any exemption in respect of the special duty of excise. Subsequently, the assessee contended that by reason of the notification under Rule 8(1), it was exempted from payment not only in respect of basic excise duty levied under the Central Excise Act, 1944, but also in respect of the special duty of excise levied under the Finance Act. Rejecting the contention, the Supreme Court held in paragraphs 7 and 9 of the judgment in *Union of India and others vs. M/s Modi Rubber Ltd.* (*supra*) as under:-

> "**7.** Both these notifications, as the opening part shows, are issued under Rule 8(1) of the Central Excise Rules, 1944 and since the definition of 'duty' in Rule 2, clause (*v*) must necessarily be projected in Rule 8(1) and the expression "duty of excise" in Rule 8(1) must be read in the light of that definition, the same expression used in these two notifications issued under Rule 8(1) must also be interpreted in the same sense, namely, duty of excise payable under the Central Excises and Salt Act, 1944 and the exemption granted under both these notifications must be regarded as limited only to such duty of excise. But the respondents contended that the expression "duty of excise" was one of large amplitude and in the absence of any restrictive or limitative words indicating that it was intended to refer only to duty of excise leviable under the Central Excises and Salt Act, 1944, it must be held to cover all duties of excise whether

leviable under the Central Excises and Salt Act, 1944 or under any other enactment. The respondents sought to support this contention by pointing out that whenever the Central Government wanted to confine the exemption granted under a notification to the duty of excise leviable under the Central Excises and Salt Act, 1944, the Central Government made its intention abundantly clear by using appropriate words of limitation such as "duty of excise leviable ... under Section 3 of the Central Excises and Salt Act, 1944" or "duty of excise leviable ... under the Central Excises and Salt Act, 1944" or "duty of excise leviable ... under the said Act" as in the Notification No. CER-8(3)/55-C.E. dated September 17, 1955, Notification No. 255/77-C.E. dated July 20, 1977, Notification No. CER-8(1)/55-C.E. dated September 2, 1955, Notification No. CER-8(9)/55-C.E. dated December 31, 1955, Notification No. 95/61-C.E. dated April 1, 1961, Notification No. 23/55-C.E. dated April 29, 1955 and similar other notifications. But, here said the respondents, no such words of limitation are used in the two notifications in question and the expression "duty of excise" must, therefore, be read according to its plain natural meaning as including all duties of excise, including special duty of excise and auxiliary duty of excise. Now, it is no doubt true that in these various notifications referred to above, the Central Government has, while granting exemption under Rule 8(1), used specified language indicating that the exemption, total or partial, granted under each such notification is in respect of excise duty leviable under the Central Excises and Salt Act, 1944. But, merely because, as a matter of drafting, the Central Government has in some notifications specifically referred to the excise duty in respect of which exemption is granted as "duty of excise" leviable under the Central Excises and Salt Act, 1944, it does not follow that in the absence of such words of specificity, the expression "duty of excise" standing by itself must be read as referring to all duties of excise. It is not uncommon to find that the legislature sometimes, with a view to making its intention clear beyond doubt, uses language *ex abundanti cautela* though it may not be strictly necessary and even without it the same intention can be spelt out as a matter of judicial construction and this would be more so in case of subordinate legislation by the executive. The officer drafting a particular piece of subordinate legislation in the Executive Department

may employ words with a view to leaving no scope for possible doubt as to its intention or sometimes even for greater completeness, though these words may not add anything to the meaning and scope of the subordinate legislation. Here, in the present notifications, the words duty of excise leviable under the Central Excises and Salt Act, 1944' do not find a place as in the other notifications relied upon by the respondents. But, that does not necessarily lead to the inference that the expression "duty of excise" in these notifications was intended to refer to all duties of excise including special and auxiliary duties of excise. The absence of these words does not absolve us from the obligation to interpret the expression "duty of excise" in these notifications. We have still to construe this expression — what is its meaning and import — and that has to be done bearing in mind the context in which it occurs. We have already pointed out that these notifications having been issued under Rule 8(1), the expression "duty of excise" in these notifications must bear the same meaning which it has in Rule 8(1) and that meaning clearly is — excise duty payable under the Central Excises and Salt Act, 1944 as envisaged in Rule 2 clause (*v*). It cannot in the circumstances bear an extended meaning so as to include special excise duty and auxiliary excise duty.

……. …… ……. …….

9. We have already pointed out, and this is one of the principal arguments against the contention of the respondents, that by reason of the definition of "duty" in clause (*v*) of Rule 2 which must be read in Rule 8(1), the expression "duty of excise" in the notifications dated August 1, 1974 and March 1, 1981 must be construed as duty of excise payable under the Central Excises and Salt Act, 1944. The respondents sought to combat this conclusion by relying on sub-section (4) of Section 32 of the Finance Act, 1979 — there being an identical provision in each Finance Act levying special duty of excise — which provided that the provisions of the Central Excises and Salt Act, 1944 and the rules made thereunder including those relating to refunds and exemptions from duties shall, as far as may be, apply in relation to the levy and collection of special duty of excise as they apply in relation to the levy and collection of the duty of excise under the Central Excises and Salt Act, 1944. It was urged on behalf of the respondents that by reason of this provision, Rule 8(1) relating to exemption from duty of excise became applicable in

relation to the levy and collection of special duty of excise and exemption from payment of special duty of excise could therefore be granted by the Central Government under Rule 8(1) in the same manner in which it could be granted in relation to the duty of excise payable under the Central Excises and Salt Act, 1944. The argument of the respondents based on this premise was that the reference to Rule 8(1) as the source of the power under which the notifications dated August 1, 1974 and March 1, 1981 were issued could not therefore be relied upon as indicating that the duty of excise from which exemption was granted under these two notifications was limited only to the duty of excise payable under the Central Excises and Salt Act, 1944 and the expression "duty of excise" in these two notifications could legitimately be construed as comprehending special duty of excise. This argument is, in our opinion, not well founded and cannot be sustained. It is obvious that when a notification granting exemption from duty of excise is issued by the Central Government in exercise of the power under Rule 8(1) simpliciter, without anything more, it must, by reason of the definition of 'duty' contained in Rule 2 clause (*v*) which according to the well recognised canons of construction would be projected in Rule 8(1), be read as granting exemption only in respect of duty of excise payable under the Central Excises and Salt Act, 1944. Undoubtedly, by reason of sub- section (4) of Section 32 of the Finance Act, 1979 and similar provision in the other Finance Acts, Rule 8(1) would become applicable empowering the Central Government to grant exemption from payment of special duty of excise, but when the Central Government exercises this power, it would be doing so under Rule 8(1) read with sub-section (4) of Section 32 or other similar provision. The reference to the source of power in such a case would not be just to Rule 8(1), since it does not of its own force and on its own language apply to granting of exemption in respect of special duty of excise, but the reference would have to be to Rule 8(1) read with sub-section (4) of Section 32 or other similar provision. It is significant to note that during all these years, whenever exemption is sought to be granted by the Central Government from payment of special duty of excise or additional duty of excise, the recital of the source of power in the notification granting exemption has invariably been to Rule 8(1) read with the relevant provision of the statute levying

special duty of excise or additional duty of excise, by which the provisions of the Central Excises and Salt Act, 1944 and the rules made thereunder including those relating to exemption from duty are made applicable. Take for example, the Notification bearing No. 63/78 dated August 1, 1978 where exemption is granted in respect of certain excisable goods "from the whole of the special duty of excise leviable thereon under sub- clause (1) of clause 37 of the Finance Bill, 1978". The source of the power recited in this notification is "sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 read with sub-clause (5) of clause 37 of the Finance Bill, 1978". So also in the Notification bearing No. 29/79 dated March 1, 1979 exempting unmanufactured tobacco "from the whole of the duty of excise leviable thereon both under the Central Excises and Salt Act, 1944 and Additional Duties of Excise (Goods of Special Importance) Act, 1957", the reference to the source of power mentioned in the opening part of the notification is "sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 read with sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957". The respondents have in fact produced several notifications granting exemption in respect of special duty of excise or additional duty of excise and in each of these notifications, we find that the source of power is described as sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 *read with* the relevant provision of the statute levying special duty of excise or additional duty of excise by which the provisions of the Central Excises and Salt Act, 1944 and the Rules made thereunder including those relating to exemption from duty are made applicable. Moreover the exemption granted under all these notifications specifically refers to special duty of excise or additional duty of excise, as the case may be. It is, therefore, clear that where a notification granting exemption is issued only under sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 without reference to any other statute making the provisions of the Central Excises and Salt Act, 1944 and the Rules made thereunder applicable to the levy and collection of special, auxiliary or any other kind of excise duty levied under such statute, the exemption must be read as limited to the duty of excise payable under the Central Excises and Salt Act, 1944 and cannot cover such special, auxiliary or other kind of duty of excise. The notifications in the present case were issued under