

(2023) 12 CAL CK 0042
In the Calcutta High Court
Case No : WPA No. 10379 Of 2021

Anglo India Jute & Textile Industries Private Limited & Anr.	APPELLANT
Vs	
Regional Provident Fund Commissioner-I & Ors.	RESPONDENT

Date of Decision : 12-12-2023

Acts Referred:

Employees' Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 5, 17, 17(1)(a), 17(4)

Citation : (2023) 12 CAL CK 0042

Hon'ble Judges : Raja Basu Chowdhury, J

Bench : Single Bench

Advocate : Shyamal Sarkar, Atish Ghosh, Antara Dey, Satyendra Agarwal, Bijoy Bag, Ravi Kumar Dubey

Final Decision : Disposed Of

Judgement

Raja Basu Chowdhury, J

1. The present writ petition has been filed, inter alia, questioning jurisdiction and authority of the Regional Provident Fund Commissioner to treat the jute mill owned by the petitioner no.1 as an unexempted establishment in terms of Clause 29, Appendix-A, paragraph 27AA to the Provident Fund Scheme, notwithstanding, the petitioners claiming that the jute mill which is owned by the petitioner no.1 continue to remain exempted from the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the said "Act"), in the light of the exemption granted under Section 17 of the said Act vide notification dated 7th March, 1960.

2. The petitioner no.1 claims to be a private company and is at present the owner of two separate jute mills originally owned by one Anglo India Jute Mills Company Limited, situated at Bhatpara, Police Station Jagatdal. According to the petitioners, by a registered Deed of Trust dated 31st August, 1951 entered into by and between the aforesaid Anglo India Jute Mills Company Limited and Jack Ronald Vernada and others a trust was created relating to the provident fund of

the Anglo India Jute Mills. Although, the trust was executed and registered on 21st August, 1951 yet the effect thereof, was given from 24th January, 1949 being the date of formation of the provident fund.

3. In the year 1952 the said Act came to be enacted. In terms of Section 1 of the said Act, the provisions of the said Act applies to every establishment which is a factory engaged in any industry specified in Schedule-I, while Section 5 of the said Act, empowers the Central Government to frame and enforce the Employees' Provident Fund Scheme. The Central Government had since, framed and enforced the Employees' Provident Fund Scheme, 1952 (hereinafter referred to as the "said Scheme"). Section 17 of the said Act, however, empowers the appropriate Government to exempt any establishment that is factory and to whom the Act applies, from the operation of all or any of the provisions of the said Scheme.

4. The petitioners claim that the Government of West Bengal being the appropriate Government vide a notification bearing No. 1581 dated 7th March, 1960 exempted, all three establishments/factories, namely, Upper Mill, Middle Mill and Lower Mill of the Anglo India Jute Mills Company Limited from the operation of all the provisions of the said Scheme subject to the conditions specified therein. According to the petitioners the said notification was published in the Official Calcutta Gazette on 17th March, 1960. As such, consequent upon grant of exemption as aforesaid the three factories of Anglo India Jute Mills stood exempted from the provisions of the said Scheme and the said Scheme could no longer be made applicable to them. In accordance with the terms of exemption, from time to time the Board of Trustees had been reconstituted. The Provident Fund department for its administrative convenience has, however, identified and allotted three code numbers, namely, WB/12, WB/21 and WB/34 to the said three establishments/factories of Anglo India Jute Mills Company Limited. Insofar as the Upper Mill is concerned, the establishment/factories of Anglo India Jute Mill (Upper Mill), an exempted establishment, was sold to one Jagatdal Jute & Industries Limited and accordingly the existing code no. WB/12, out of the aforesaid three code numbers was allotted to Jagatdal Jute & Industries Limited and the balance two codes numbers relating to the two factories, namely, Lower Mill and Middle Mill remained intact.

5. In the year 1986 the respondent no.4 became owner of the aforesaid two establishments/factories being Middle Mill and Lower Mill. Subsequently, by an Indenture dated 4th May, 2016, the petitioner no.1 purchased the exempted establishment of the Middle Mill of the said Anglo India Jute Mills from the existing owner, the respondent no.4 herein. According to the petitioners as on the date of the purchase of the said exempted establishment, namely, Middle Mill by the petitioner no.1, no provident fund was due.

6. Consequent upon purchase of the Middle Mill, the petitioner no.1 had applied to the Provident Fund Authorities for allotment of the existing code no. WB/34 earmarked for the said Middle Mill and to segregate the same from the Lower

Mill, which was still owned by the respondent no.4. Although, in ordinary course the said code number ought to have been allotted to the petitioner no.1, however, by a communication in writing dated 6th December, 2016, the petitioner no.1 was called upon to comply as an unexempted establishment.

7. Mr. Sarkar, learned Senior Advocate representing the petitioners, submits that once, an exemption had been granted under Section 17 of the said Act, till such time such exemption is cancelled by the appropriate Government in the mode and manner as provided for under Section 17 of the said Act, the Provident Fund Authority cannot call upon the petitioners to comply as an unexempted establishment. By drawing attention of this Court to the notification dated 7th March, 1960, it is submitted that the exemption had been granted in favour of all the three mills of Anglo India Jute Mills Company Limited. On the grant of the exemption the provisions of the said Scheme cannot be made applicable. In the factual backdrop as aforesaid, the petitioners by a letter dated 12th May, 2017 had called upon the respondents while clarifying the position on the subject with a request to allot a separate code in terms of the notification dated 7th March, 1960. In response to the same by communication in writing dated 25th April, 2017 the Provident Fund Authorities by placing reliance on paragraph 27AA of the said Scheme, which had been inserted with effect from 6th January, 2001 has called upon the petitioners to comply as an unexempted establishment till fresh exemption is granted.

8. Since then, the Provident Fund Authorities have also been demanding a sum of Rs. 1.05 crores towards outstanding provident fund dues. According to the petitioners, the provisions of the said Scheme cannot be made applicable insofar as the petitioner no.1 is concerned. Once, an establishment is granted exemption under Section 17 of the said Act, the provisions of the said Scheme cannot and do not apply to the petitioner no.1 who is the owner of the exempted establishment. In support of his contention reliance has been placed on a judgment delivered by a Co-ordinate Bench of this Hon'ble Court in the case of Caledonian Jute & Industries Ltd. & Anr. v. Union of India & Ors. in W.P. 6138 (W) of 2009 on 14th November, 2011. Reliance has also been placed on the judgments delivered by the Division Bench of this Hon'ble Court in the case of M/s. Electric Lamp Manufactures (India) Ltd. & Anr. v. The Regional Provident Fund Commissioner & Ors., reported in 1996 (2) CHN 168. On the issue of the power to cancel the exemption under Section 17 of the said Act vests exclusively in the appropriate Government, and the exemption can only be cancelled by the authority which granted it namely the appropriate Government, reliance has also been placed on the judgment delivered by the Hon'ble Division Bench of this Court in the case of Delta Ltd. and another v. Regional Provident Fund Commissioner II, West Bengal, Sikkim and the Andaman and Nicobar Islands, and another, reported in (2005) 3 LLN 1008.

9. Per contra, Mr. Agarwal, learned advocate representing the respondents Provident Fund Authorities, submits that the exemption that was granted under

Section 17 of the said Act, was in favour of the Anglo India Jute & Textile Industries Private Limited which was a composite exemption, in respect of the three mills of Anglo India Jute Mills Company Limited being the Upper Mill, Middle Mill and Lower Mill. The aforesaid exemption was never granted to the petitioners' establishment/factory individually.

10. By referring to paragraph 8 of the affidavit filed on behalf of the respondents, it is submitted that Anglo India Jute Mills Company Limited which was the owner of the Anglo India Jute Mills Company Limited, the Upper Mill, the Middle Mill and the Lower Mill, were accorded exemption. Such exemption by no stretch of imagination could have been extended in favour of the petitioner no.1s' factory being the Middle Mill. He submits that the exemption can only be granted when the appropriate Government is of the opinion that the exempted establishment has made provisions of Provident Fund and the same is not less favourable than the terms of the Provident Fund Scheme. By referring to the notification, he submits that the notification contains conditions for grant of exemption and not the scheme. The said notification and the creation of trust fund has to be considered and read in its proper perspective. Neither did the notification contemplate of a situation where not only the mills would be separated but the trust fund itself would require to be bifurcated having regard to change in ownership of the respective mills. Admittedly, a notification contemplates a particular trust fund and not separate or individual trust funds for separate mills. In the event, if the individually sold mills are continued to be treated as exempted establishment, the object of the said Act would stand frustrated. In support of his contention, he has placed reliance on the following judgments delivered by the Hon'ble Supreme Court in the case of Jiyajeerao Cotton Mills Employees' Provident Fund Institution v. Dev Kumar Holani & Ors., reported in (1998) 6 SCC 35, and in the case of Mohmedalli & Ors. v. Union of India & Ors., reported in AIR 1964 SC 980 and in the case of N. K. Jain & Ors. v. C. K. Shah & Ors., reported in (1991) 2 SCC 495. According to Mr. Agarwal the Hon'ble Supreme Court while interpreting the provisions of Section 17 of the said Act, although, was of the view that the statutory scheme may not apply to an unexempted establishment, however, the same does not take away the power or authority of the appropriate Government to make amendments to the statutory scheme. This power to amend had been exercised by the Central Government by amending the statutory scheme. Upon introduction of paragraph 27AA with effect from 6th January, 2001 and with the revision of the condition for grant of exemption as provided in Appendix-A, Clause 29, the exemption already granted by reason of change in ownership, stands revoked. This aspect according to Mr. Agarwal was not considered by the Co-ordinate Bench in the case of Caledonian Jute & Industries Ltd. (supra). Having regard to the aforesaid, it is submitted that there is no irregularity on the part of the respondents in directing the petitioner no.1 to file returns or to comply as an unexempted establishment till such time fresh exemption is not granted in its favour.

11. Heard the learned advocates appearing for the respective parties and

considered the materials on record.

12. In this case, it is noticed that originally Anglo India Jute Mills Company Limited was the owner in respect of three mills/establishments, namely, Upper Mill, Middle Mill and the Lower Mill of the Anglo India Jute Mills Company Limited. It is also noticed that even prior to enactment of the said Act, a trust was created relating to the provident fund of the Anglo India Jute Mills, which though executed and registered on 21st August, 1951, the effect thereof, was given from 24th January, 1949 being the date of formation of provident fund. Later when the said Act was notified, all establishments including that of Anglo India Jute Mills Company Limited came to be covered by the Provisions of the said Act. The Central Government since then, in terms of the powers vested in it under Section 5 of the said Act had framed a statutory scheme in the year 1952. Although, the Anglo India Jute Mills Company Limited as an owner of the establishment was bound to comply with the provisions of the said Act, however, the appropriate Government in terms of Section 17 of the said Act being empowered to exempt an establishment from the operation of the said Scheme, had by an order dated 7th March, 1960 exempted all three establishments, namely, three factories being Upper Mill, Middle Mill and Lower Mill of the Anglo India Jute Mill Company Limited from the operation of all the provisions of the said Scheme, subject to the conditions specified therein.

13. Upon grant of exemption, the provisions of the said Scheme no longer applied to the aforesaid establishments. Consequent upon grant of exemption as aforesaid, the Board of Trustees (BOT) of the trust was reconstituted. Be it noted here that for Administrative convenience the Provident Fund Authority had identified and allotted three separate code numbers to the three establishments of Anglo India Jute Mills Company Limited. With the passage of time, the ownership and control of the three mills changed. First the Upper Mill appears to have been sold to one Jagatdal Jute & Industries Limited and one of the existing code numbers being WB/12, out of the three code numbers as aforesaid, was allotted to the same and the balance two codes remained intact. Later, in the year 1986 the respondent no.4 became the owner of two establishments being the Middle Mill and Lower Mill. Subsequently, by an indenture dated 4th May, 2016, the petitioner no.1 purchased one of the exempted establishments being the Middle Mill of the said Anglo India Jute Mills Company Limited from the existing owner being respondent no.4 herein. It is when the petitioner no.1 applied for allotment of the existing code number of the Middle Mill, for it to comply with the provisions of the said Act, as an exempted establishment that the issues forming subject matter of the present petition has cropped up. It appears that pursuant to the request made by the petitioners by their letter dated 8th July, 2015 the provident fund authorities by communication in writing dated 6th December, 2016 by placing reliance on the provisions of paragraph 27AA of the said Scheme had insisted that the petitioners should now comply as an unexempted establishment. This had prompted the petitioners to cause the letter dated 12th May, 2017 to be issued highlighting therein that exemption

granted by the appropriate Government was still in existence.

14. Records reveal that the PF Authorities had in response to the petitioners communication by once again placing reliance on paragraph 27AA of the said Scheme had insisted that the petitioners should comply as an unexempted establishment till fresh exemption is granted in its favour having regard to the change in its status and had also called upon the petitioners to clear all its dues. The same would appear from the letter dated 25th July, 2017. Subsequently, by a communication in writing dated 11th March, 2021 the Provident Fund Authorities by taking note of the subsequent change of ownership and the provisions of Clause 29 of Appendix-A referred to in paragraph 27AA of the said Scheme and by returning a finding that the notification for exemption granted by the appropriate Government vide notification dated 7th March, 1960 having automatically stood cancelled and was no longer in existence had called upon the petitioner no.1 to comply as an unexempted establishment with effect from 1st April, 2021 and to submit post accumulation dues and statement up to 31st March, 2021 within 15th April, 2021, failing which appropriate action would be taken. The relevant portion of the aforesaid letter is extracted herein below:-

"2. In this regard it has been observed that M/s. A.I. Champdany Industries Ltd. (Unit: Anglo India Jute Mill) has been bifurcated into M/s. A.I. Champdany Industries Ltd., (Unit: Anglo India Jute Mill) and M/s Anglo India Jute & Textiles Industries Pvt. Ltd. and thereby the Trust Fund, i.e. Anglo India Jute Mills Limited Workers Provident Fund consists of the Trust Fund of (i) Anglo India Jute & Textile Industries Pvt. Ltd. and (ii) Anglo India Champdani Industries Ltd. but both the Units are complying under the PF Code of WB/21, that clearly means that the legal status of the original establishment (legal entity) which was granted exemption, has been changed and hence, in view of the conditions for grant of exemption each unit is required to start compliance as Un-Exempted till fresh exemption is granted to each such units which has become a separate legal entity.

Further no action has been taken on the direction as given in the year 2017 for separate Code Number and compliance as Un-Exempted establishment which is a severe violation of the rule provision and make the authorized persons liable for prosecution.

In view of the same, the exemption granted vide Govt. of WB Notification no. 1581-LW/LW/1A-187/58 dated 07/03/1960 automatically stands cancelled since the original legal entity which has been granted Exemption vide Govt. of WB Notification no. 1581-LW/LW/1A-187/58 dated 07/03/1960 is no longer in existence as of now.

Hence, you are directed to start compliance as Un-Exempted w.e.f. 1st April, 2021 and submit Past Accumulation dues and Statement upto 31st March, 2021 within 15th of April, 2021 failing which this office shall be constrained to take legal action against all the responsible persons of the establishment as well as

the Trustees.”

15. The legal challenge in the present writ petition is primarily directed against the claim made by the respondents that consequent upon change of ownership of the Middle Mill of Anglo India Jute Mills Company Limited whether in terms of Clause no.29 of Appendix-A to paragraph 27AA of the said Scheme, the exemption granted by the appropriate Government vide notification dated 7th March, 1960, automatically stands revoked. In order to appropriately appreciate the aforesaid challenge Section 17 of the said Act and paragraph 27AA, which was introduced by GSR 18 dated 22nd December, 2000 and its relevant clauses from Appendix-A are extracted herein below:-

“17. Power to exempt.— (1) The appropriate Government may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt from the operation of all or any of the provisions of any Scheme -

(a) any establishment to which this Act applies if, in the opinion of the appropriate Government, the rules of its provident fund with respect to the rates of contribution are not less favourable than those specified in Section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under this Act or any Scheme in relation to the employees in any other establishment of a similar character; or

(b) and establishment if the employees of such establishment are in enjoyment of benefits in the nature of provident fund, pension or gratuity and the appropriate Government is of opinion that such benefits, separately or jointly are on the whole not less favourable to such employees than the benefits provided under this Act or any Scheme in relation to employees in any other establishment of a similar character:”

“27AA. Terms and conditions of exemption. – All exemptions already granted or to be granted hereafter under section 17 of the Act or under paragraph 27A of the Scheme shall be subject to the terms and conditions as given in the Appendix A.”

The following are the revised conditions for grant of exemption under Section 17 of Act, 1952:-

“Appendix-A:

Relevant clauses

7. Any deficiency in the interest declared by the Board of Trustees is to be made good by the employer to bring it up to the statutory limit.

9. The rate of contributions payable, the conditions and quantum of advances and other matters laid down under the provident fund rules of the establishment and the interest credited to the account of each member, calculated on the

monthly running balance of the member and declared by the Board of Trustees shall not be lower than those declared by the Central Government under the various provisions prescribed in the Act and the Scheme framed thereunder.

29. In case of any change of legal status of the establishment, which has been granted exemption, as a result of merger, demerger, acquisition, sale, amalgamation, formation of a subsidiary, whether wholly owned or not , etc., the exemption granted shall stand revoked and the establishment should promptly report the matter to the RPFC concerned for grant of fresh exemption."

16. It appears that the validity of paragraph 27AA was challenged in a batch of writ petitions before this Hon'ble Court. It is while considering the said issue the Co-ordinate Bench of this Hon'ble Court in the case of Caledonian Jute & Industries Ltd. (supra) while taking into consideration the object and reasons of such amendment and the judgment delivered by the Hon'ble Supreme Court in the case of Jiyajeerao Cotton Mills Employees' Provident Fund Institution (supra) and the judgment delivered by another Co-ordinate Bench in the case of Loomtex Engineering Pvt. Ltd. & Ors. v. Chief Provident Fund Commissioner & Ors. In Re. WP 12477(W) of 2007, including the judgment delivered in the case of Binny Limited Bangalore v. Regional Provident Fund Commissioner, Bangalore & Ors., reported in 1988 ILR (Kar) 2709, which also considers the case of Mohmedalli & Ors. (supra), and the case of N. K. Jain (supra) had accepted in paragraph 16 of the said judgment, the submissions made by the advocates that the exemption granted is not absolute and the exempted establishment does not enjoy immunity from all obligations to pay provident fund dues in respect of its employees under the Act. However, at the same time in paragraph 18 and 19 of the said judgment the Co-ordinate Bench upon analysing the aforesaid judgments had returned a finding, inter alia, as follows:-

"18. Contention of the respondents is that the amendment, which in the opinion of the Supreme Court would have justified recovery of the differential rate from an exempted establishment has already been effected by introduction of paragraph 27AA to the statutory scheme and the consequential actions against the establishments were in tune with the observation of the Supreme Court. I am unable to accept this submission. What has been observed by the Supreme Court in Jiyajeerao is that the exempted scheme is required to be amended to impose obligation on the exempted establishments to ensure return in terms of paragraph 60 of the statutory scheme. In the statute, there is no specific reference to any exempted scheme but it appears that what was referred to as such scheme was the scheme of the trust fund of an exempted establishment as an alternative to the statutory scheme. This would be clear from the following observation of the Supreme Court in the said decision contained in paragraph 8 of the Report :-

"The revised terms and conditions did not and could not have become applicable automatically, and in order to make them applicable, they were required to be incorporated by the appropriate Governments in the notification granting

exemption under Section 17(1)(a).”

19. The appropriate government in these cases however has not varied the conditions of exemption but on the other hand the statutory scheme itself has been amended, from following which the concerned establishments have been exempted. It is the admitted position that in none of these cases the conditions of exemption contain any clause to the effect that the petitioners would be required to follow the rate of interest in accordance with paragraph 60 of the statutory scheme. Since the establishments of the petitioners have been exempted from operation of the scheme itself by the appropriate government, I do not think it would be permissible under the Act to saddle the petitioners with additional obligation to meet the differential rate by amending the statutory scheme itself. As I have discussed earlier, once an exemption is granted, the same does not terminate automatically if the benefits under the establishments’ own scheme become less favorable vis-à-vis the statutory scheme as held by a Division Bench of this Court in the case of Electric Lamp Manufactures (supra).”

17. However, the Co-ordinate Bench taking into consideration an unreported judgment dated 14th September, 2007 passed by a Co-ordinate Bench of this Court in Loomtex Engineering Pvt. Ltd. (supra), wherein the obligation of the establishment to pay the differential amount in terms of the provisions of Appendix-A to paragraph 27AA of the said Scheme was upheld and while differing with the ratio of the judgment as laid down in the case of Loomtex Engineering Pvt. Ltd. (supra) referred the matter to His Lordship, the Hon’ble the Chief Justice, for appropriate direction by, inter alia, framing the following reference:-

”I accordingly refer the matter His Lordship The Hon’ble Chief Justice for appropriate direction as I am not in agreement with views taken by His Lordship in W.P. No. 12477(W) of 2002. The question on which I am respectfully differing with the judgment of an Hon’ble Single Judge of this Court in W.P. No. 12477(W) of 2002 is :-

Whether the provisions of paragraph 27AA of the Employees Provident Fund Scheme read with clauses 7 and 9 of Appendix A of the said scheme can be imposed on establishments exempted under the provisions of Section 17 of the Act from following the said scheme?”

18. In terms of the aforesaid, the matter was referred by the Hon’ble the Chief Justice to a Division Bench. The Hon’ble Division Bench took note of the factual position and the arguments advanced by the parties and by judgment dated 5th February, 2018 reported in 2018 SCC OnLine Cal 3462, was pleased to conclude that the judgment delivered in the case of Loomtex Engineering Pvt. Ltd. (supra) and those of the petitioners in the bunch of writ petitions referred to it were not similar, so far as the question of exempted category and/or unexempted category were concerned and as such was of the opinion that it was not required for the Hon’ble Division Bench to give reply to the terms of reference as indicated

therein and observed that the learned judge is free to grant relief to the petitioners on the basis of his independent findings with regard to applicability of the provisions of Clauses 7, 9 and 28 of Appendix-A read with paragraph 27AA of the Employees' Provident Fund Scheme in respect of the establishments of the petitioners, which have been enjoying exemption under the Provisions of Section 17 of the Employees' provident Funds and Miscellaneous Provisions Act, 1952 by, inter alia, observing as follows

"14. After careful scrutiny of the subject matter of challenge of the writ application of Loomtex Engineering Pvt. Ltd. & Ors., which is produced before us by the department on requisition as also after considering the judgment dated September 14, 2007 delivered by the learned Single Judge in the above writ application, we find that admittedly the exemption of the above establishment from the provisions of the said Scheme, was cancelled as far back as in the month of September, 2003. The above writ application was filed challenging the summons issued to them on subsequent date, i.e. on May 9, 2007. Taking into the aforesaid facts and circumstances of the case, the learned Single Judge framed the two issues as recorded hereinabove for decision taking into consideration the admitted fact of enjoying exemption by the establishment till 2003 as also the fact that no restraining order was in force on the date of delivery of the judgment.

15. Therefore, the judgment delivered in case of an establishment, which was not of an exempted category, was considered by the learned Single Judge with further observation that exemption from applying the provisions of Appendix A of the said Scheme did not arise merely because of pendency of the writ petition challenging the order of cancellation of exemption.

16. We find that the status of Loomtex Engineering Pvt. Ltd. and those of the petitioners in this bunch of writ petitions, were not similar so far as the question of exempted category and/or unexempted category was concerned. Therefore, the Loomtex Engineering Pvt. Ltd. (supra) was neither the decision on the issue involved in this bunch of writ petitions nor there was any scope to arrive at a conclusion with regard to the issues involved in this bunch of writ petitions, as discussed hereinabove."

19. Although, Mr. Agarwal, learned advocate representing the respondents, has submitted that the issue raised in the case of Caledonian Jute & Industries Ltd. (supra) has never been decided, however, in the light of the observations made by the by the Co-ordinate Bench in the case of Caledonian Jute & Industries Ltd. (supra) and the disposal of terms of reference by the Hon'ble Division Bench, I am of the view that the original observations and the finding reached by the Co-ordinate Bench in the case of Caledonian Jute & Industries Ltd. (supra) in paragraph 19 of such judgment cannot be overlooked and is binding on this Court. Admittedly, in this case the exemption had been granted, which has not been cancelled. The appropriate Government in this case has also not varied the conditions of exemption, despite there being change in ownership of the three

mills. When admittedly, the provisions of Section 17(4) of the said Act, which are inbuilt safeguards, have not been invoked, paragraph 27AA of the said Scheme despite having statutory force, cannot have the effect of overriding the exemption already granted. Nor can clause 29 of the Appendix-A be resorted to, for the respondents to contend that the exemption earlier granted stands revoked or any fresh grant is necessary. Admittedly, the aforesaid conditions has not been inserted by way of amendment to the original terms of exemption granted vide order dated 7th March, 1960. Having regard to the aforesaid and based on the observations made by the Co-ordinate Bench in paragraph 19 of the judgment delivered in the case of Caledonian Jute & Industries Ltd. (supra), I am of the view since, the Middle Mill/establishment had been exempted from the operation of the Scheme itself by the appropriate Government, it is not permissible under the amended provisions of the statutory scheme to saddle the petitioner no.1 with the obligation to comply as an unexempted establishment, by placing reliance on Clause 29 of Appendix-A under paragraph 27AA of the said Scheme. It would be apparent and clear from the above that neither the said scheme nor its amendment can be made applicable to the petitioner no.1 especially when, the appropriate Government did not think it fit to cancel or amend the terms of the exemption, by exercising its powers under Section 17 and its sub-section under the said Act. Although, it has been strenuously argued by Mr. Agarwal that the original notification for exemption contemplate a particular trust and does not stipulate individual trust fund, for separate mills and if the individually sold mills are continued to be treated as unexempted establishments, the object of the said Act would stand frustrated, I am afraid and I am unable to accept the same. It is well settled that what cannot be done directly cannot be permitted to be done indirectly. Since, substantial safeguards have been provided for and inbuilt in Section 17 and its various sub-sections under the said Act, there is no reason to conclude that the appropriate Government shall not exercise such power, if necessary.

20. Having regard to the aforesaid, I am also of the view that there cannot be any automatic cancellation or termination of the exemption granted, nor can it be said that the original exemption granted in the year 1960 is no longer in existence or stands revoked by reasons of insertion of Clause 29 of Appendix-A to paragraph 27AA of the said Scheme. Since, the basis for making the Provisions of Clause 29, Appendix-A to paragraph 27AA of the said Scheme applicable on the petitioner no.1 cannot be sustained, as a sequel thereto, the consequential directions issued by the respondents calling upon the petitioner no.1 to comply as an unexempted establishment with effect from 1st April, 2021 also cannot also be sustained. The demand made by the respondents for not only complying as an unexempted establishment from 1st April, 2021 is set aside and quashed. This order, however, shall not stand in the way of the appropriate Government to reconsider the continuance of the grant of exemption in the changed circumstances as noted hereinabove.

21. With the aforesaid observations/directions, the writ petition stands disposed

of.

22. There shall, however, be no order as to costs.

23. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.