

(2013) 02 GUJ CK 0065

In the Gujarat High Court

Case No : Special Civil Application No. 17590 of 2003

Contemporary Packaging Technologies Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-02-2013

Acts Referred:

Citation : (2014) 299 ELT 439

Hon'ble Judges : Sonia Gokani, J; Akil Kureshi, J

Bench : Division Bench

Advocate : Paresh M. Dave, for the Appellant; Varun K. Patel and Mrs. Suman Khare, for the Respondent

Judgement

Sonia Gokani, J.—This petition is directed against the order of Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi passed in Appeal No. E/3075/02-NB-C on dated 29th May, 2003 2003 (88) ECC 510 , rejecting the refund claim of petitioners. Facts of the present petition in capsulized form are as follow. The petitioner No. 1 herein is a private limited company engaged in the business of producing cigarette shells and has factory for that purpose. The petitioner No. 2 is the director of the company. The petitioner company was receiving paperboard from M/s. ITC Limited and cigarette shells were produced on job work basis. The company classified these cigarette under SH No. 4901.90 of the Schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as "the Tariff Act"), whereas the revenue claimed classification of these goods under SH No. 4819.12 of the Tariff Act. There was a dispute with regard to price list of the goods as well. According to the revenue, the rate of duty was 20% adv. & the company paid it under the protest and filed a classification list No. 1/93-94 with effect from 1-7-1993 and intimated the respondent of such protest.

2. This dispute was adjudicated where the 3rd respondent passed the Order-in-Original No. CL/144/985 on dated 11-1-1996, classifying the goods under SH No. 4819.12, attracting duty at the rate of 20% adv., the value and price of these goods for the purpose of assessment of duties was also finalized and for the

period between July, 1993 to March, 1994, the duty was paid under protest.

3. The classification of goods made by the OIO was challenged before the Commissioner (Appeals), Vadodara and it rejected such appeal on the line of Order-in-Original on 30-10-1998.

4. The petitioner company filed further appeal before the Appellate Tribunal. The Tribunal held that cigarette shells were excisable goods more appropriately classifiable under SH No. 4823.90 of the Tariff Act. Thus, as against the claim of the petitioner company for classification the goods under SH No. 4901.90 and the Revenue's claim for classification under SH No. 4819.12, the Appellate Tribunal held that these goods were classifiable under SH No. 4823.90 of the Tariff Act vide its order dated 21-12-1999.

5. The petitioner company filed a refund claim for differential duties paid by it under protest inasmuch as the rate applicable under SH No. 4823.90 was lowered by 10%.

5.1 Such refund claim of the petitioner-company was rejected by the original authority on 4-9-2001 on the ground that the petitioner-company had passed on an excess amount being claimed as refund to the customers and the refund claim was hit by doctrine of unjust enrichment.

5.2 This was challenged before the Commissioner (Appeals) which concurred with the OIO & rejected such claim vide its order dated 11-12-2001.

5.3 When the petitioner approached the Appellate Tribunal against such order, Tribunal, on 29-5-2003, dismissed the petitioner's appeal on various grounds. One of which mainly is of unjust enrichment.

6. Aggrieved by such order in the present petition before this Court, the petitioner has challenged the said decision of decline of refund by way of writ petition seeking refund claim of Rs. 74.39 Lacs which includes Rs. 43.81 Lacs being the excess amount paid as duty, the amount of Rs. 27.80 Lacs being the Modvat Credit & Rs. 2.73 Lacs being the difference in the assessable value on input, by seeking following reliefs:

(A) That Your Lordships may be pleased to issue a Writ of Certiorari any other appropriate writ, direction or order, quashing and setting aside Final Order No. A-270/03-NB-C dated 29-5-2003 (Annexure-"D") passed by the Appellate Tribunal, New Delhi with a direction to the respondents to forth with, pay refund of Rs. 74.39 lacs with interest at the rate of 18% p.a. From the date of payment of the amounts till the actual restitution of this amount by the respondents in the petitioner's favour;

(B) That Your Lordships may be pleased to issue a Writ Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, direction or order, directing the respondents to forthwith allow petitioner's refund claim for Rs. 74.39 lacs with interest at the rate of 18% p.a. From the date of payment of the

amounts till the actual restitution of this amount by the respondents in the petitioner's favour;

(C) Pending hearing and final disposal of the present petition. Your Lordships may be pleased to direct the respondents to refund amount of Rs. 74.39 Lacs on the terms and conditions that may be deemed fit by this Hon"ble Court;

(D) An ex parte interim relief in terms of Para 9(C) above may kindly be granted;

(E) That Your Lordships may be pleased to pass appropriate Orders thereby dispensing with filing of certified copy of the Final Order No. A-270/03-NB-C, dated 29-5-2003 (Annexure-"D") passed by the Appellate Tribunal, New Delhi;

(F) Any other further relief as may be deemed fit in the facts and circumstances of the case may also please be granted.

7. On issuance of notice, the respondents have filed their affidavit-in-reply. It is contended by the respondents that in view of the CEGAT's decision dated 31-8-1995, the classification of the goods was made under heading/subheading 4818.90 up to 29-2-1988 and from 1-3-1988 onward under heading/subheading 4823.90. It is further contended that a refund claim of Rs. 43.81 lacs on 30-9-1996 for duty difference between sub-headings 4819.12 and 4823.90 for the period from 1-7-1993 to 31-3-1994 was preferred. The modvat credit of Rs. 27.80 lacs in respect of duty paid on paperboard used as input materials in relation to the manufacture of the said goods was claimed, however, no declarations under Rule 57G were filed nor the procedure as laid down under modvat rules has been observed.

Relying on the decision of Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, , it is contended that the doctrine of unjust enrichment would come into play. It is also contended that it is misconceived to say that when the duty was paid under protest, doctrine of unjust enrichment would not be attracted.

Respondents also sought to rely upon the decision of the Apex Court rendered in the case of Bombay Tyres International Ltd. Vs. Collector of Central Excise, Indore, , wherein the Supreme Court rejected the claim of the assessee on the ground that no material was produced to show that the duty was paid under protest and that the same was not passed on to the consumer.

7.1 The central emphasis of this affidavit reply thus is that at the time of clearance of excisable goods as the duty paid under protest is recovered from the customers, there is a clear bar u/s 11B(1) of the Central Excise Act & as provided in the decision of Mafatlal Industries Ltd. (supra), which prohibits unjust enrichment.

8. Upon hearing the learned counsel for the petitioners and the respondents and also on examination of entire materials on record, at the outset, the case of Mafatlal Industries Ltd. (supra), requires to be considered, wherein it is held by

the Bench of 9 Judges of the Apex Court that on finalization of provisional assessment, any recovery or refunds consequent upon the adjustment under sub-rule (5) of Rule 9B would not be governed by Section 11A or Section 11B, as the case may be. The Apex Court also observed thus:

Rule 9B provides for provisional assessment in situations specified in Clauses (a), (b) and (c) of sub-rule (1). The goods provisionally assessed under sub-rule (1) may be cleared for home consumption or export in the same manner as the goods which are finally assessed. Sub-rule (5) provides that "when the duty leviable on the goods is assessed finally in accordance with the provisions of these Rules, the duty provisionally assessed shall be adjusted against the duty finally assessed, and if the duty provisionally assessed falls short of or is in excess of the duty finally assessed, the assessee shall pay the deficiency or be entitled to a refund, as the case may be," Any recoveries or refunds consequent upon the adjustment under sub-rule (5) of Rule 9B will not be governed by Section 11A or Section 11B, as the case may be. However, if the final orders passed under sub-rule (5) are appealed against or questioned in a writ petition or suit, as the case may be, assuming that such a writ or suit is entertained is allowed/decreed then any refund claim arising as a consequence of the decision in such appeal or such other proceedings, as the same may be, would be governed by Section 11B. It is also made clear that if an independent refund claim is filed after the final decision under Rule 9B(5) re-agitating the issues already decided under Rule 9B assuming that such a refund claim lies and is allowed, it would obviously be governed by Section 11B. It follows logically that position would be the same in the converse situation.

What is depended upon heavily by the adjudicating authorities & the Tribunal are following observations from this decision:

The doctrine of unjust enrichment is a just and salutary doctrine. No person can seek to collect the duty from both ends. In other words, he cannot collect the duty from his purchaser at one end and also collect the same duty from the State on the ground that it has been collected from him contrary to law. The power of the Court is not meant to be exercised for unjustly enriching a person. The doctrine of unjust enrichment is, however, inapplicable to the State. State represents the people of the country. No one can speak of the people being unjustly enriched.

9. It would be worthwhile to refer to the decision of the Delhi High Court pressed into service by the petitioner rendered in the case of Commissioner of Customs v. Indian Oil Corporation reported in Commissioner of Customs Vs. Indian Oil Corporation, , where the substantial question of law was whether the refund u/s 18 of the Customs Act should have been granted without any application where excess duty was paid on provisional basis for refund and whether Section 18 was applicable and not Section 27 of the Customs Act.

Reference in the said decision is made of the decision of this Court rendered in

the case of Commissioner of Customs v. Hindalco Industries Ltd. reported in 2008 (231) E.L.T. 36 (Guj.). Reliance is also placed on the decision of the Supreme Court rendered in the case of Mafatlal Industries Ltd. (supra).

9.1 Sub-section (2) of Section 27 concerning unjust enrichment was inserted from 23-12-1991 by Section 2 of the Customs (Amendment) Act, 1991. It was argued before the Delhi High Court that only if the assessee satisfies the requirements of this position and can establish that the incidence of duty was not passed on, they would be entitled to refund under the said Section. Otherwise, the amount of duty refundable has to be transferred to the Consumer Welfare Fund.

9.2 The Delhi High Court after considering the case of Mafatlal Industries Ltd. (supra), as also considering the decision of the Supreme Court in the case of Commissioner of Central Excise, Chennai Vs. T.V.S. Suzuki Limited, Hosur, , & also the decision of the Apex Court rendered in the case of Commissioner of Central Excise, Mumbai-II Vs. Allied Photographics India Ltd., , held thus:

17. In a similar matter, the Commissioner of Customs had filed an appeal before the Supreme Court against the decision of the tribunal in the case of 2001 (73) ECC 553 . The Supreme Court by their order dated 27-4-2006 dismissed the Civil Appeal No. 4231/2001 (2006 (200) E.L.T. A138 (S.C.)) after referring to the judgment of the Supreme Court in Mafatlal Industries Ltd. (supra), TVS Suzuki Ltd. and Allied Photographic India Ltd. (supra) and held as under:

These appeals have been filed by the Revenue.

The Tribunal, in the impugned order, following its earlier decision, in Messrs Needle Industries Ltd. v. CCE (1996 (101) E.L.T. 286 (T)) has taken the view that the doctrine of unjust enrichment is not applicable to provisional assessment in terms of Section 18 of the Customs Act which is similar to Rule 9B of the Central Excise Rules.

A two Judge Bench of this Court in Commissioner of C. Ex., Mumbai Vs. Allied Photographics India Ltd., noticing the inconsistency, doubted the correctness of two decisions rendered by three judge Bench of this Court in, i.e. (i) Sinkhai Synthetics and Chemicals Pvt. Ltd. Vs. Collector of Central Excise, and (ii) Commissioner of Central Excise, Chennai Vs. T.V.S. Suzuki Limited, Hosur, as contrasted to the Constitution Bench decision in Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, .

The three Judge Bench which considered the correctness of the aforesaid two decision (of three Judge Bench) has in Commissioner of Central Excise, Mumbai-II Vs. Allied Photographics India Ltd., held that the judgment in Sinkhai Synthetics's case (supra) was per incuriam [para 14 at page 52] and approved the decision in the later case, i.e. TVS Suzuki's case (supra). The Three Judge Bench has also taken the same view, as was taken by the Tribunal, to the effect that the doctrine of unjust enrichment is not applicable to the provisional

assessment even after the finalization thereof.

The point in issue in the present case is, thus, squarely covered by the three judge Bench decision in Commissioner of Central Excise, Mumbai-II Vs. Allied Photographics India Ltd., In view of this, the appeals are dismissed and the order passed by the Tribunal is affirmed. No costs.

18. We may notice here that Gujarat High Court in the case of Hindalco Industries (supra) has specifically referred to decision in the case of Allied Photographics India Ltd., (supra) but the said case has not been noticed by the Bombay High Court in the case of Bussa Overseas and Properties Pvt. Ltd. (supra). The decision of the Gujarat High Court in the case of Hindalco Industries Ltd. (supra) has been followed by Orissa High Court in CCE C. & ST, Bhubaneswar-I v. Paradeep Phosphates Ltd. - 2010 (252) E.L.T. 502 (Ori). The said decision has also referred to the three earlier judgments of the Supreme Court mentioned above.

19. We have considered Explanation II to Section 27(1) and whether in view of the said Explanation, the respondent assessee was required to move an application u/s 27 of the Act and accordingly, the conditions stipulated in sub-section (2) of the act are applicable. We may now notice here that two situations, which have been specifically referred to by the Gujarat High Court in the case of Hindalco Industries (supra). Two situations are as under:

9.1 Referring to Explanation II to Section 27 of the Act it was submitted that the same would apply to a case where after the final assessment and the adjustment, if still the Assessee is not satisfied with the adjustment and claims excess amount as refund. Explanation II will have no application in cases where admittedly after final assessment, refund is due to the assessee. This is explained with the following illustration.

Duty paid provisionally Rs. 100

Duty finally assessed Rs. 60

Duty to be refunded Rs. 40.

In this case Explanation II will have no application since no claim for refund is made and Rs. 40, is to be refunded since the same is admittedly due.

Duty paid provisionally Rs. 100

Duty finally assessed Rs. 70

According to assessee correct duty payable Rs. 60.

In this case, admitted amount of refund of Rs. 30 would be returned and if the assessee seeks to claim Rs. 10 also (Rs. 70-Rs. 60) as refund, then Explanation II would apply and the said claim is to be preferred within six months from the date of adjustment of duty. This position is precisely dealt with and explained in the second portion of paragraph No. 104 of Judgment in case of Mafatlal

Industries (supra).

20. The two situations are relevant and important. In the first assessment the assessee has paid provisional duty which gets reduced on final assessment. The assessee, therefore, becomes entitled to refund which is payable in terms of Rule 9B of the Excise Act [(sic) Rules], 1944 or Section 18 of the Act. For refund on this account, no application is required to be filed u/s 27 of the Act and therefore, sub-section (2) is not applicable. In the second situation, the assessee becomes entitled to additional refund on account of appellate orders or orders passed by a court. In this situation, the assessee is under an obligation to file an application u/s 27 of the Act, the limitation period accordingly applies and doctrine of unjust enrichment is also applicable. Explanation II to Section 27 of the Act deals with the 3rd category of situations. Such situations may occur after the passing of the final assessment, on account of rectification u/s 154 of the Act or because of any other reason, as a result of which the final order suffers an amendment or change and some amount becomes refundable. As far as Section 18 of the Act is concerned, when an amount becomes refundable after a final order is passed, the same has to be refunded immediately and for this purpose the assessee is not required to move an application u/s 27 and accordingly sub-section (2) to Section 27 would not apply. It is in this situation that the Legislature has intervened and has now inserted sub-sections (3), (4) and (5) to Section 18 w.e.f. 13-7-2006. These insertions obviously are not applicable to the case in hand as they do not have retrospective effect. It was so held in TVS Suzuki Ltd. (supra) when similar amendments were made in Rule 9B of the Rules passed under the Central Excise Act w.e.f. 25-6-1999. However, in 1999, the Legislature did not make corresponding amendment in Section 18 of the Customs Act. These amendments were made w.e.f. 13-7-2006.

10. The case of Commissioner of Customs v. Hindalco Industries Ltd. reported in 2008 (231) E.L.T. 36 (Guj.) is needed to be referred to at this stage, where this Court has considered the effect of amendment of Section 18 of the Central Excise Act where sub-sections (3), (4) and (5) of Section 18 have been inserted from 13-7-2006 and holding as under:

18. On a plain reading it becomes apparent that sub-sections (3) & (4) relate to liability to pay interest or entitlement to claim interest consequent upon final assessment order. However, sub-section (5) is the material amendment which indicates that the proviso appearing below sub-section (2) of Section 27 of the Act has now been incorporated as a part of Section 18 of the Act. On a plain reading the distinction between Section 18 as it stood prior to amendment, i.e. upto 12th July, 2006 and subsequent to the amendment i.e. with effect from 13th July, 2006 becomes apparent. The difference is stark and revealing and it is not possible to agree with the contention of Revenue that such amendment has to be understood as clarificatory in nature. This is more so, when one reads the amendments made in 1998 and the amendment made in Rule 9B of the Central Excise Rules in 1999 considering the pronouncement of the Apex Court as to the

distinction between making of a refund and claiming of a refund; the amendment cannot be considered to be retrospective in nature; and cannot be made applicable to pending proceedings.

19. This can be considered from a slightly different angle. While introducing the Taxation Laws (Amendment) Bill, 2005 (Bill No. 74 of 2005) the Notes on Clauses in relation to Section 18 of the Act indicate that subsections (3), (4) and (5) to Section 18 of the Act, have been inserted to provide for a mechanism to regularise the payment of duty short levied and interest thereon and duties that are to be refunded on finalization of provisional assessment and in this context in the report of the Standing Committee on Finance it has specifically been noted that this amendment became necessary because Section 18 of the Act which provides for provisional assessment of duty presently (i.e. upto 12th July, 2006) does not provide for various issues arising from the finalization of provisional assessment. Thus it becomes apparent that the amendment in question is substantive in nature when one finds that various provisions have been inserted which were not forming part of the original Section 18 of the Act as it stood upto 12th July, 2006. It is not possible to state that the provisions for payment of interest on duty short levied or entitlement to interest on duty paid in excess of the finally assessed duty can be considered to be clarificatory provisions and in the same vein the newly inserted sub-section (5) deserves consideration. Thus in effect upto 12th July, 2006 no provision existed in Section 18 of the Act which would permit Revenue to invoke principles of unjust enrichment in relation to duty paid in excess, found to be so, upon finalization of provisional assessment u/s 18 of the Act.

20. Hence the reference to provisions of Section 27 of the Act which generally deals with claim for refund of duty cannot be of any assistance to the Revenue. Similarly the definition of the term assessment u/s 2(2) of the Act also cannot help the Revenue in light of the specific provisions of Section 18 of the Act which override all other provisions of the Act. The contention that the Court should not permit a person to derive unjust benefit also does not merit acceptance. The Court can only read the provisions and the statute as they stand, and if necessary, interpret the same but the Court cannot legislate. This is a salutary principle of interpretation. Furthermore, as noticed hereinbefore, the Apex Court has in no uncertain terms drawn the distinction between making of refund and claiming of refund. The High Court equate the two in light of the authoritative pronouncement of law by the Apex Court.

21. Therefore, on both courts, in light of the authorities referred to hereinbefore, and on interpretation of provision of Section 18 of the Act, on finalization of assessment if any excess duty is found to have been paid at the time of provisional assessment Revenue is bound in law to make the refund without any claim being required to be made by an assessee. This would be the position in law upto 12th July, 2006 and not thereafter.

11. In the decision of the Apex Court in the case of Commissioner of Central

Excise, Chennai Vs. T.V.S. Suzuki Limited, Hosur, , it is held that "provisions of sub-rule (5) of Rule 9B of erstwhile Central Excise Rules, 1944 are not retrospective in operation and merely because the departmental authorities took a long time to process the application for refund, the right of the appellant does not get defeated by subsequent amendment made in Rule 9B(5)."

12. Heavy reliance is placed on the judgment of the Apex Court rendered in the case of Sinkhai Synthetics and Chemicals Pvt. Ltd. Vs. Collector of Central Excise, , which, of course, held is per incuriam as mentioned hereinabove in the subsequent judgment of the Apex Court of Commissioner of Central Excise, Mumbai-II Vs. Allied Photographics India Ltd., , wherein approval is given to the decision of TVS Suzuki (Supra).

13. Reiteratively, reference is also made of the decision of the Tribunal rendered in the cases of 2002 (84) ECC 871 , where they have delivered the judgment in identical set up of circumstances in favour of the assessee following the Supreme Court and holding that where original payment of duties were made under protest, the bar of unjust enrichment would not apply to such payments.

14. Reliance is placed on the decision of this Court rendered in the case of Dhanlaxmi Texturisers Vs. Union of India (UOI), . The same is with regard to the insistence on following its earlier decision by the Tribunal on identical issue and to depart only on giving cogent and convincing reasons for differing from its earlier views.

This has been pressed into service as it is averred that Tribunal earlier granted refund in similar circumstances.

15. In light of the aforesaid legal background, facts of the instant case shall need to be examined to decide whether the Tribunal was justified in concurring with both the authorities below in denying the claim of refund to the petitioner. In the case on hand, all the three authorities have admittedly denied the refund to the present petitioner. The excise duty, in the instant case, was paid on the goods. The appellant herein, as noted above, was manufacturing cigarette shells for ITC. There was a dispute with regard to classification. Petitioner desired it under Chapter 49. The Revenue had desired classification under Chapter 48 (Sub-heading 4819.12). Therefore, the assessment was made provisionally under Rule 9B of the Central Excise Rules. Pending the final assessment and classification list, under protest, the duty was paid and in the final assessment order, the classification of goods was held not under Heading 4819.12 but under 4823.90.

This was challenged before the Tribunal under sub-rule (5) of Rule 9B. Classification was held favourably on adjudications for assessee and undisputedly, therefore, the question arose of refund of duty.

16. It is the say of all the three authorities that this petitioner had recovered the duty, paid under protest to the department, from ITC to whom the goods had been supplied and therefore, the claim of refund of excess duty paid when made,

they relied on the case of Mafatlal Industries Ltd. (supra), for denying such refund claim.

17. As can be noted from the record that, in the instant case, the petitioner-company has paid higher rate of duty on goods under protest for the period from July, 1993 to March, 1994 undisputedly provisionally.

The assessment came to be finalized by the Tribunal on 29-12-1996 in the proceedings where classification dispute was put at rest. Admittedly, no duty was paid for which the refund claim has been preferred by the petitioner after the final assessment was ordered under Rule 9B(5) of the Rules and the entire refund claim was for the period during which the assessment was admittedly provisional. Therefore, any excess duty paid at the time of provisional assessment needed to be refunded without even any claim being required to be made by petitioner-assessee, on finalization of assessment.

17.1 The Tribunal in its order insisted that if a claim for refund of duty is to be accepted, it is required to be established by the petitioner that it has not passed the burden of duty to others. Reiteratively, it is emphasized that duty has been collected from ITC to whom the goods had been supplied and therefore, there was no sustainable claim for refund of duty. The Tribunal also refused to accept the contention of the appellant that since the duty was paid under protest and was received from ITC, that aspect does not fall under doctrine of unjust enrichment. It is needed to be noted for clarity at this juncture that Section 18 and Section 27(2) of the Customs Act are *pari materia* and similar to Section 11B and Rule 9B of the Central Excise Act & Rules as subsequent rulings of this Court and of Delhi High Court are sought to be relied upon.

17.2 Going by the decisions of the Apex Court in the case of Mafatlal (supra) and the decision given in case of Hindalco Industries Ltd. (supra) and all other subsequent decisions on the issue, the refund claim of the petitioner-assessee would not be governed by the Section 11A or Section 11B of the Central Excise Act as the case may be.

18. It can be held that the assessee had paid provisional duty which got reduced on finalizing assessment, entitling the petitioner to get the refund which is payable in terms of Rule 9B of Central Excise Rules, 1944. It is not disputed by either side that the assessee is entitled to refund on account of appellate order passed by Tribunal under sub-rule (5) of Rule 9B of Excise Rules.

Thus, any recovery or refund consequent upon adjustment under sub-rule (5) of Rule 9B is not to be governed by Sections 11A and 11B of the Central Excise Act. Neither the final decision under Rule 9B(5) was appealed against nor the issue was re-agitated once again after such claim was finalized. Therefore, the issue of unjust enrichment was not required to be considered.

19. Even going by the premise of all three authorities that the petitioner has recovered such excess amount of duty from ITC whose job work it was

undertaking, which, of course, is disputed by the petitioner to contend that as the payment was made under protest to the respondent, against the future adjustment, such payment was made by ITC. It, therefore, also cannot fall under the unjust enrichment. However, when excess duty payment was to be refunded without considering the provision of Section 11B of the Central Excise Act as under the provisional assessment, duty payment was made under protest and hence, the very base of decline would not survive.

20. Refund on the Modvat credit input has been denied to the petitioner as it resorted to the Kar Vivad Samadhan Scheme where it admitted that the real manufacturer is M/s. ITC Ltd. and Rs. 2.78 Lacs, being the duty on differential assessable value on account of Modvat credit on input is denied on the ground of doctrine of unjust enrichment. Non-receipt of goods has not been contended. Once the Revenue does not dispute the receipt of paperboards used as input material under the cover of invoices for preparing shells by the petitioner which contained duty paying particulars, the Modvat credit cannot be denied to the petitioner. Even if the petitioner has agreed later on that M/s. ITC Ltd. was the real manufacturer, that ipso facto would not take away its right to avail refund claim when duties were recovered from the assessee, treating it as the manufacturer at the time of recovery. Of course, the petitioner has established due payment of such duties. Non-maintenance of procedure is since not the ground contested, further dwelling on that subject is unnecessary. Resultantly, this petition succeeds. Respondents are directed to refund the entire amount within 12 weeks of the receipt of this judgment with 9% interest thereon. Rule is made absolute to the extent above.