

(1977) 09 CAL CK 0017

In the Calcutta High Court

Case No : C.R. 6628 (W) of 1972 and 1386 (W) of 1974

Hindustan Pilkington Glass Works Limited

APPELLANT

Vs

Superintendent Central Excise, Asansole and Others

RESPONDENT

Date of Decision : 27-09-1977

Acts Referred:

Central Excise Rules, 1944 — Rule 11, 173

Central Excises and Salt Act, 1944 — Section 2(d), 37, 4, 4(a), 4(b)

Constitution of India, 1950 — Article 226

Citation : (1978) 2 ELT 229

Hon'ble Judges : A.K. Mookerji, J

Bench : Single Bench

Judgement

A.K. Mookerji J.

1. Common questions of law are involved in these two Rules. The facts and circumstances of these cases are also similar. Accordingly these two Rules are heard together and a common judgment shall govern these two cases.

2. C.R. No. 6628(W) of 1972 is directed against the orders dated March 15, 1972 and March 27, 1972 determining the assessable value of the glass products manufactured by the petitioner and the assessment of excise duty for the months of April, 1971 to August 1971 and demands totalling Rs. 46,227.92 on account of differential duty between the assessable value as approved by the impugned orders of the Respondent No. 1 and the assessable value as declared by the petitioner in its price list.

3. C.R. 1386(W) of 1974 is directed against the impugned orders determining the assessable value and order of assessment and demands on the basis thereof for the periods September, 1971 to September, 1973. In this Rule the petitioner further prays for a refund of Rs. 47,71,166.00 realised from the petitioner by way of excise duty in respect of the. selling cost and selling profits, the forwarding and special packing charges and discount in the assessable value of the goods in respect of the price list submitted by the petitioner.

4. The petitioner, M/s Hindustan Pilkington Glass Works Ltd., carries on business of manufacturing wire and figured glass of various qualities at its factory situate at G.T. Road, Asansole in the district of Burdwan, West Bengal. Excise duty is leviable under the Central Excise and Salt Act, 1944 (hereinafter referred to as the said Act), on the manufacture of wire and figured glass. Glass and Glass Wire are excisable goods falling under the Central Excise Tariff No. 23A. The duty is leviable ad valorem. Section 4 of the Act provides for determining the assessable value where an article is chargeable at a rate dependent on its value.

5. Provision of Chapter VII-A of the Central Excise Rules, 1944 consisting of Rules 173-A to 173-Q as framed u/s 37 of the said Act (introducing a scheme known as self removal procedure) have been extended to item 23-A of the first schedule to the said Act with effect from 1. 6. 68. Under the said self-removal procedure the assessee is free to clear the goods from the factory and receive them into the factory without asking for physical supervision or verification at any stage from any Central Excise Officer, but subject to observance of the formalities laid down therein.

6. The petitioner as a licenced manufacturer of excise goods filed with the proper officer of the Central Excise for his approval the price list showing the price of each of the excisable goods produced and manufactured by the petitioner and the discount, if any, allowed in respect thereof to the buyers. The said officer approved the said price list after making modifications as he considered necessary so as to bring the value shown in the said price list to the correct value for the purpose of assessment as provided u/s 4 of the said Act.

7. On or about 12-4-71 the petitioner filed with the respondent No. 1 a revised ex-factory price list for H.P.G. Brand White Figured Rough Cast and Wired Glasses, which the petitioner declared to be effective from 5-4-71 cancelling the previous prices for the said items. Again on or about 5-5-71 the petitioner filed another price list for the said items declaring them to be effective from 5-7-71. By virtue of an agreement dated 20-10-68 between the petitioner on the first part and M/s Window Glass Ltd., on the second part and M/s A.P. and W.G. (P) Ltd., on the third part, it was agreed that the white wired glass, white figured glass and plain roll glass manufactured by the petitioner and M/s Window Glass Ltd., would be sold through a joint sales organisation, known as M/s A.P. and W.G. (P) Ltd., Calcutta. The available market of the said products in the Indian Union will be shared equally between the petitioner and M/s Window Glass Ltd.

8. M/s A.P. and W.G. (P) Ltd , would procure orders and on the terms and conditions of sales decided upon its Board and pass those on to the petitioner and Window Glass Ltd. These prices and the terms and conditions of sales shall be uniform regarding the said products whether manufactured by the petitioner or Window Glass Ltd. The respondent No. 1 approved the said price list effective from 15-4-71 and 7-5-71 on March 15, 1972 and March 27, 1972 respectively including the special packing and forwarding charges and freight up to Calcutta for the items of glass wire in the assessable value declared in the said price list

for determination of Central excise duty and disallowed the petitioner's claim for Regional Trade discounts on the ground that these discounts were not made available to independent buyers in all regions. All sales of white figured rough cast/wired glass are effected by the sole selling agent M/s A.P. and W.G. (P) Ltd. at Calcutta. According to the Respondents there is no open market at the factory gate for sale of those glass and the nearest market for these glass is at Calcutta. Therefore the special packing, forwarding charges and freights up to Calcutta were included in the assessable value. It is the case of the petitioner that before determining the said assessable value, the respondent No. 1 never afforded any opportunity whatsoever to the petitioner to make its representation in the matter. Petitioner was never required by the respondent No. 1 to explain as to why the said forwarding and special packing charges would not be included in the assessable value or as to the inclusion of assessment in the assessable value no notice was issued to the petitioner requiring to make its representation in the matter before passing the various impugned orders determining the assessable value for the different periods in respect of the different varieties of goods. It is alleged that those impugned orders were passed by the Central Excise Authorities in gross violation of the principles of natural justice and as such those are illegal, void and of no effect. According to petitioner, for the purpose of determining the assessable value, the special packing charges, forwarding charges, freight and trade discounts had to be excluded. It is further stated in the petition that the impugned orders determining the assessable value are contrary to the principles as laid down by the Supreme Court in the case of A.K. Roy v. Voltas Ltd.[1977 E.L.T.(J177)]. Although the selling cost and selling profits are not to be included for the purpose of computing the assessable value u/s 4 of the said Act, the petitioner did not exclude the same while submitting its price list under a bona fide mistake. The respondents also levied the duty on the selling cost and profits under the mistaken view of law and as such the petitioner is entitled to and the respondents are bound to refund the duty levied and paid in respect of selling cost and selling profits comprised in the price of the said goods. The petitioner being aggrieved by such determination of the assessable value u/s 4 of the Act, moved this court under Article 226 of the constitution and obtained the present Rules.

9. In C.R. 6628(W) of 1972 in pursuance to the order of this Court the petitioner furnished a security of Rs. 2,50,000/ by way of bank guarantee with the Registrar Appellate Side, High Court.

10. Mr. Dutt, appearing on behalf of the respondents raised a preliminary objection. It is contended that as there is a provision for appeal u/s 35 of the Central Excises and Salt Act, 1944 the petitions under Article 226 of the Constitution are not maintainable in view of the Clause (3) of Article 226 of the Constitution as amended.

11. Mr. Bajoria, appearing on behalf of the petitioner, contended that where the decision reached by the Central Excise Authorities in defiance of natural justice

was void, it could not be cured by any appellate proceedings. It is urged that the failure of natural justice in the trial body cannot be cured by sufficiency of natural justice in an appellate body.

12. Mr. Bajoria further contended that where any assessments have been made without any authority of law, such orders amounted to deprivation of the petitioner's property without any authority of law within the meaning of Article 31 of the Constitution and as such the present petition under Article 226 of the Constitution should be regarded as petition for enforcement of fundamental rights within Clause (1) of Article 226 of the Constitution as amended.

13. In *Spackmen v. Plumstead District Board of Works*-(1885) 10 IND App. Case 229, Lord Selborne said that there could be no decision within the meaning of the statute if there is any thing done contrary to the essence of justice.

14. In *Ridge v. Baldwin*-(1964) A.C. 40, Lord Reid and Lord Hodson held that a decision rendered contrary to the principle of natural justice and *audi alteram partem* was void and that in *Wood vs. Wood* (1874) 9 Exch. 190 it was expressly decided.

15. In *PONKUNNAM TRADERS Vs. ADDITIONAL Income Tax OFFICER, KOTTAYAM, AND ANOTHER.*, Mathew, J. (as he then was) said that failure to conform to the principle of natural justice of *audi alteram partem* would make a judicial or quasi-judicial order void. Where a decision is null by reason of want of jurisdiction, it cannot be cured by any appellate proceedings: failure to take advantage of this somewhat failure remedy does not affect the nullity inherent in the impugned decision.

The party affected by the decision may appeal, but he is not bound to do so, because he is at liberty to treat the act as void.

16. In *Annamunthodo v. Oilfields Workers' Trade Union*(1961) All E.R. 621, the Judicial Committee of the Privy Council held that if the original order was invalid for violation of the rules of natural justice, a person could still complain of it notwithstanding there is a provision for an appeal.

17. In *Leary v. National Union of Vehicle Builders*- 2 All E.R. 713. (sic) could be cured by sufficiency of natural justice before an appellate tribunal. In that case a decision of the trial tribunal admittedly contravened the rules of natural justice but it was argued that such defect had been cured by the subsequent hearings at the appellate stage where the rules of natural justice had been complied with. Magarry, J. said that a decision made by an appellate court in such circumstances would equally be void. He asked the question if a man has never had a fair trial by an appropriate trial body, is it open to an appellate body to discard its appellate functions and itself give the man the fair trial that he has never had ?" And answered it by saying that no such doctrine exists. One of the reasons given by him for his conclusion was :

"If one accepts the contention that a defect of natural justice in the trial body can

be cured by the presence of natural justice in the appellate body, this has the result of depriving the member of his right of appeal from the expelling body. If the rules and the law combine give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal ? Even if the appeal is treated as a hearing de novo; the member is being stripped of his right to appeal to another body from the effective decision to expel him. I cannot think that natural justice is satisfied by a process whereby an unfair trial though not resulting in a valid expulsion, will nevertheless have the effect of depriving the member of his right of appeal when a valid decision to expel him is subsequently made. Such a deprivation , would be a powerful result to be achieved by what in law is a mere nullity; and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body ?

18. In *Barnard v. National Dock Labour Board*(1953) 2. Q B. 18, Denning L.J. observed that where a decision is null by reason of want of jurisdiction, it cannot be cured by any appellate proceedings; failure to take advantage of this somewhat futile remedy does not affect the nullity inherent in the challenged decision. The party affected by the decision may appeal but he is not bound to do so, because he is at liberty to treat the act as void.

19. In *Nepal Ch. Banerji v. Commercial Tax Officer, Jalpaiguri* 81 CWN 836. T.K. Basu, J. held that when a Taxing Authority acting under a statute makes a demand of tax which is not leviable under, the statute, Such a demand amounts to deprivation of property without any authority of law within the meaning of Article 31(1) of the Constitution and as such it comes under Article 226(1)(a) of the Constitution, secondly, the bar made by Article 226(3) of the Constitution, cannot be nullified by the respondents in the present case . challenging the maintainability of application against the order of assessment.

20. The Superintendent, Central Excise in determining the assessable values of the goods, for the purpose of determining the excise duty u/s 4 of the Act is performing quasi judicial functions. Such order affects the rights of the petitioner. Although in the Act there is no provision for giving a personal hearing to the petitioner before making such order of assessment, but in the instant case certain deductions claimed by the petitioner for the purpose of determining the assessable value of the products have been disallowed by the Superintendent of Central Excise without assigning any reason. The petitioner wanted to make a proper representation before such order had been passed and they wanted to know the reason for such disallowance but the petitioner's prayer had not been acceded to. Neither the petitioner was given any opportunity to make any representation nor the reasons for disallowance of such claims made by the petitioner were made known to the petitioner at any stage of the proceeding. In my view, it is incumbent upon the Central Excise Authorities to afford an

opportunity of being heard before such order were made. In the instant case, it is not disputed that natural justice of audi alteram partem has been violated. The breach of natural justice is itself a miscarriage of justice which cannot be cured by preferring an appeal as provided in the statute itself. So, in my view, it cannot be said that the petitioner's present application under Article 226 of the Constitution could not be maintainable inasmuch as a remedy by way of appeal has been provided in the statute. Moreover if it is found that the assessable value has been determined and the assessment has been made without any authority of law, in that case the present application is also maintainable as it comes under Clause (1) of Article 226 of the Constitution. Accordingly, the preliminary objection raised by Mr. Dutt is overruled.

21. Mr. Bajoria, appearing on behalf of the petitioner, contended that excise duty had been levied on special packing charges, forwarding charges and outward freight which were not assessable to duty according to Section 4(a) and (b) of the Act. It is further contended that under the explanation to Section 4 the deduction which was claimed in respect of trade discount has not been allowed by the Superintendent of Central Excise in determining the assessable excise duty of the glass manufactured by the petitioner.

22. Mr. Dutt, appearing on behalf of the respondents, contended that there was no open market condition at the factory gate for sale of those glass without going through the agency of M/s A.P.W.G. and (P) Ltd. The nearest market of the glass was at Calcutta. The Glass and Glass Ware are very sophisticated and delicate in nature and are likely to be damaged in transit. For those reasons the goods are sold only in packed condition. Cost of packing is recovered by the petitioner from the customers, Such packing constitutes a process incidental to the completion of the manufactured article and as such cost of packing is required to be included in the assessable value. Forwarding charges at specific rates according to the thickness of the articles are charged by the petitioner in the invoices uniformly from all customers irrespective of destination. Such forwarding charges also form a part of the assessable value. The regional discounts claimed by the petitioner were inadmissible as the same were not made available to all the independent buyers in all regions.

23. Before dealing with the arguments of learned counsel for the parties it is necessary to refer to some of the relevant provisions of the Act of 1944. Section 2(d) of the Act of 1944 defines "excisable goods" to mean goods specified in the First Schedule as being subject to a duty of excise and includes salt;

Section 2 defines "manufacture" which includes any process incidental or ancillary to the completion of a manufactured product. In sub-clause (iii) of Section 2(F) there is a provision that in relation to patent or proprietary medicine as defined in item No. 14E of First Schedule and in relation to cosmetics and toilet preparations as defined in item No. 14F of that schedule, includes labelling or relabelling of containers intended for consumers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the

product marketable to the consumer. Section 3 is the charging section. It provides that. . . . There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods . . . which are produced or manufactured in India. The duties specified in the Ist Schedule are duties leviable only on excisable goods. The duty may be levied on the basis of weight or at a fixed tariff or ad valorem. Section 4 of the Act provided for determination of value of article on the basis of several factors enumerated therein viz. (a) wholesale cash price (b) when the article is removed from the factory (c) the place at which the market exists. Explanation to Section 4 provides that in determining the price of article under this section no abatement or deduction shall be allowed except in respect of trade discount and the amount of duty payable at the time of the removal of the article chargeable with duty from the factory or other premises aforesaid.

24. In *A.K. Roy v. Voltas Limited*[1917 E.L.T. (J177)], the Supreme Court observed that excise duty is a tax on production and manufacture of goods. Section 4 of the Act, therefore, provides that the real value should be found after deducting the selling costs and selling profits and that the real value can include only the manufacturing profit. The section makes it clear that excise duty is levied only on the amount representing the manufacturing cost plus the manufacturing profit and excludes post manufacturing cost and the profit arising from post manufacturing operation, viz. selling profit. The section postulates that the wholesale price should be taken on the basis of cash payment thus eliminating the interests involved in wholesale price which gives credit to the wholesale buyer for a period of time and that the price has to be fixed for delivery at the factory gate thereby eliminating freight, octroi and other charges involved in the transport of the article. The Supreme Court further observed that wholesale market does not always mean that there should be an actual place where articles are sold and brought on a wholesale basis. So, even if there is no market in the physical sense of the term at or near the place of manufacture where the articles of a like kind and quality are or could be sold, that would not in any way affect the existence of a market in proper sense of the term provided the articles themselves could be sold wholesale to traders even though the articles are sold to them on the basis of agreements which conferred certain commercial advantages open to them. In other words, the sales to the wholesale dealers did not cease to be wholesale sales merely because the wholesale dealers had entered into agreement with the respondents under which certain commercial benefits were conferred upon them in consideration of their undertaking to do service of the articles sold, because of the fact that no other person could purchase the articles wholesale from the respondents. . . . If there is an actual price for the goods themselves at the time and place of sale and that that is a "wholesale cash price" the Clause (a) of Section 4 is not applicable for want of sale of other goods of a like kind and quality.

25. In *Piari Lal Vs. Union of India (UOI) and Others*, , the Supreme Court referring to the *Voltas* case said : the value of the goods for the purpose of

excise must take into account only the manufacturing cost and the manufacturing profit and it must not be loaded with post manufacturing operations.

26. In *Alembic Glass Industries Ltd. v. Union of India* 1975 (3) C J 67, a Division Bench of the Karnataka High Court held the packing is not incidental or ancillary to the process of manufacture of bottles. Similar view was taken by a Division Bench of the Maharashtra High Court in *Ogle Glass Works Ltd. v. Union of India* 1975 (3) C J 115, that wholesale cash price u/s 4 of the Central Excise and Salt Act, 1944 could not include cost of package in which the glass articles were sold.

27. In *Madras Rubber Factory v. Assistant Collector, Central Excise*-1976. T.L.R. 1263, a Single Judge of the Kerala High Court held that excise authorities are not entitled to levy duty on the billing price which are the price at which the goods are sold to the depot to dealer, which is the same all over India, without making of allowance for all the items of operation subsequent to manufacture.

28. In *Union of India v. Mansingka Industries Pvt. Ltd.*-(1976) T.L.R. 1791, a Division Bench of the Bombay High Court held that cost of the tin-container must be treated as post manufacturing cost and excluded from the value of the exciseable product on which duty of excise is to be levied. Similarly, incurring freight charges for transporting of the relevant exciseable goods could not form part of the value for the purpose of levying excise duty.

29. In *Union of India v. I.T.C. Ltd.*(1976) T.L.R. 2003, a Division Bench of the Karnataka High Court held that wholesale price must be determined on the basis of cash payment representing only the manufacturing cost and manufacturing profit, but excluding the selling cost and selling profit, and that the price has to be fixed for delivery at the factory gate.

30. In *I.T.C. Ltd. v. Union of India* (1977) T.L.R. 2060, the wholesale market for the manufactured articles exists at some other places and not at the factory gate. For purpose of transporting those articles to those places the petitioner has to incur certain expenses like freight and octroi. To sell the goods at each of those places the petitioner has to maintain an establishment and incur expenses thereon. Following the decision of the Supreme Court in *Voltas and Atic's* cases a Division Bench of the Allahabad High Court held that such expenses should be regarded as post-manufacturing expenses.

31. The points decided by the Supreme Court in *Voltas Case* may be summarised as follows :-

(a) A wholesale market does not mean physical existence of a market where articles are sold and bought on a wholesale basis. The potentiality of the articles being sold on a wholesale basis would be enough.

(b) An agreement between the manufacturer and any wholesale dealer under which certain obligations are undertaken by them shall not render the price other

than "wholesale cash price".

(c) Where the transactions between the manufacturer and the wholesale dealer shows that it is not at arms length the price charged would not be the wholesale cash price.

(d) Once wholesale dealings at arms length are established, the number of such wholesale dealings would be irrelevant in determining the wholesale cash price.

(e) The real value u/s 4 should be found after deducting the selling costs and selling profit. The real value would include only the manufacturing cost and manufacturing profit, eliminating freight, octroi and other charges involved in the transport of the articles.

Thus it is clearly established in view of the decisions referred to herein above that the cost of packing, freight and transport charges are post manufacturing cost and cannot be included in determining the assessable value of the excise duty of the goods.

32. Mr. Dutt drew my attention to certain passages in *Atic Industries Ltd. Vs. H.H. Dewa, Asstt. Collector of Central Excise and Others*, wherein the Supreme Court observed "It may be noted that the wholesale market in a particular type of goods may be in several tiers and the goods may reach the consumers after a series of wholesale transactions The only relevant price for assessment of value of the goods for the purpose of excise in such case would be the wholesale cash price which the manufacturer receives from sale to the first wholesale dealer, i.e. when the goods first enter the stream of trade. . . . It is the first immediate contact between the manufacturer and the trade i.e. made decisive for determining the wholesale cash price which the manufacturer receives from sale to the first wholesale dealer, i.e. when the goods first enter the stream of trade It is the first immediate contact between the manufacturer and the trade i.e. made decisive for determining the wholesale cash price which is to be the major of the value of the goods for the purpose of excise.

33. It is argued by Mr. Dutt that in cases where there are series of transactions originating with the manufacturer ending with the ultimate consumer the assessable value is to be determined on the basis of the price at the first point of wholesale from the manufacturer to the wholesale dealer, eliminating, packing charges and transport charges has not been indicated by the Supreme Court in *Atic's* case.

34. In *Atic's* case the Supreme Court said that the assessable value must be taken to be the price at which the manufacturer sold the articles to the first wholesale dealer. The reference to price means the wholesale cash price charged by the manufacturer at the first point of sale. Accordingly one has to go back to rely upon the *Voltas* decision to find out what is the wholesale cash price. In *Atic industries'* case the manufacturers did not contend that in the price so determined elements other than manufacturing cost and manufacturing profit

were included. The Atic's decision is an authority for the proposition that where there are series of transactions between the manufacturer and the subsequent wholesale dealer before the goods reached the ultimate consumer, the assessable value will have to be determined on the basis of the wholesale cash price at the first point of sale. The said decision is no authority for the proposition that the price charged by the manufacturer at the first point of sale would be the assessable value even if such price included elements other than manufacturing cost and manufacturing profit.

35. Mr. Dutt drew my attention to an unreported decision of a Division Bench of Gujrat High Court in *Golden Tobacco Co. Ltd., Bombay v. Union of India*. 1977 E.L.T (J113). In that case the petitioner claimed certain deduction under Chartered Accounts Certificates by Way of market expenses. The division Bench held that ratio of *Voltas* and *Atic*'s decision has never laid down any such apportionment which would be against plain terms of the Explanation to Section 4.

36. In my view, that decision has got no hearing on the facts and circumstances of the present case.

37. It is next contended by Mr. Bajoria that under Explanation to Section 4 of the Act the deduction shall be allowed with respect to trade discount. But in the instant case Such trade discount has been disallowed by the Superintendent of Central Excise. In the impugned order it is stated that no regional discount is admissible.

38. The reason for such disallowance has been disclosed in the affidavit-in-opposition wherein it is stated that it was disallowed as the same was not made available to all independent buyers in all regions.

39. Obviously trade discounts are allowed to the traders and not to the independent buyers. So, if the trade discounts are given by the petitioner at different rate to traders at different regions, then, in such a case an average rate is to be computed and on such average rate trade discounts are to be allowed.

40. In Civil Rule 1386(W) of 1974 the petitioner claimed a refund in respect of "selling cost" and "selling profit" for the period from September, 1971 to September, 1973. It is not disputed that the selling cost and the selling profit were not included by the petitioner and in their price list they did not show that amount separately. According to their case it was a mistake on their part and in view of the decision of the Supreme Court in *Voltas*" case they discovered their mistake for the first time in 1971.

41. It is argued that bar of Rule 11 read with Rule 173J cannot stand in the way of the petitioner to get the refund inasmuch as the moneys collected from the petitioner by the Excise Authorities and paid by them were money which could not be described as "excise duty" as they were contrary to law.

42. it appears from the records that the petitioner never raised the issue of

refund nor ever submitted any price list showing separately the manufacturing cost and manufacturing profit and/or selling cost and/or selling profit involved in the said prices. Even after the Supreme Court's judgement the petitioner has been clearing goods and paying duties according to the price list which did not specify whether the price referred to therein included the post manufacturing expenses and/or profits and if so, to what extent.

43. In *Ogle Glass Works v. Union of India* 1975 CJ 115, before the Division Bench of the Maharashtra High Court a similar question arose ; where a person has paid the tax, under a mistake whether he was entitled to get it back, where the Court found that the assessment was void. In that case the Division Bench observed that justice did not lie on the side of the petitioner and that the Court would be doing justice in ordering the respondent to refund the amount of Rs. 12 lakhs to the petitioner when, to begin with that money never came from the petitioner's pocket. It is true that the respondents may not have legal right to retain that money, but in the circumstances of the case justice does not require that this money should be transferred from the respondents (who have no right to it), to the petitioner who also have no right to it.

44. Considering the facts and circumstances of this case, in my view, as the petitioner did not claim that money at any stage and the duty has already been paid and credited to the Government, at this stage, the petitioner cannot claim for any refund.

45. In the result, this Rule is made absolute in Article The order of assessment for the months of April, 1971 to September, 1973 and demand of Rs. 46277.92 are quashed. The petitioner's claim for refund of Rs. 47,71,166 is rejected. This order, however, shall not prevent the Central Excise Authorities to make a fresh assessment with respect to the aforesaid periods in the light of the observations made hereinabove after affording the petitioner an opportunity of being heard and in accordance with law. There will be no order as to costs.

Let the operation of the order be stayed till two weeks after the long vacation.