

**(1992) 04 MAD CK 0026**

**In the Madras High Court**

**Case No : Writ Petition No. 4346 of 1984**

Indrol Lubricants and Specialities Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision : 22-04-1992**

**Acts Referred:**

Central Excise Rules, 1944 — Rule 11, 173J

**Citation : (1992) 61 ELT 434**

**Hon'ble Judges : Raju, J**

**Bench : Single Bench**

**Advocate : Shri Suresh for M/s. King and Patridge, for the Appellant; Shri K. Jayachandran, Additional Central Govt. Standing Counsel, for the Respondent**

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## **Judgement**

1. The above writ petition has been filed for a Writ of Certiorarified Mandamus calling for the records of first respondent in A. No. 899/80 and set

aside the order dated 23-1-1984, quash the same and consequentially direct the respondents to refund the amount of Rs. 2,13,107.13 being the

amount said to have been paid under a mistake by the petitioner to the respondents as if it was excise duty.

2. Though the petitioner has impleaded the Union of India as the first respondent the order that is sought to be quashed as the offending order is

that of the Customs, Excise and Gold (Control) Appellate Tribunal, Delhi, dated 23-1-1984. The claim of the petitioner has been rejected on the

ground that the same could not be sustained having regard to Rule 11 read with Rule 173(J) of the Central Excise Rules, 1944.

3. I consider it unnecessary to proceed further into the merits of the contention having regard to certain subsequent developments and the coming

into force of the Central Excises and Customs Laws (Amendment) Act, (Act 40 of

1991) which came into effect from 20-9-1991. The impact of the said Act on matters of the nature pending before this Court in the form of writ petition after the claim for refund was rejected by the authorities

had been considered by me at length in W.P. Nos. 10775/83 to 10777/83 and by the learned Judge (S. Govindasamy, J.) in W.P. No. 9346/83.

In my order dated 25-11-1991 in W.P. Nos. 10775 to 10777/83 I have ordered as hereunder :

9. In the above circumstances without entering into an adjudication of the merits and the claim for refund made by the petitioner or the legality or

correctness of the stand taken by the respondents to deny the same, the impugned orders are hereby quashed to facilitate the concerned and

competent authorities to consider the claims of the petitioner on merits including any plea of limitation in accordance with the provisions contained

in the Amendment Act 40 of 1991. The petitioner, in addition to the representations and claims made already which culminated in the impugned

proceedings shall be liberty to make such further or other representations to the concerned and competent authorities in the light of the amended

provisions within eight weeks from today and as and when such representations are made, the concerned and competent authorities shall also

consider the same in accordance with law including the question of delay in making the claim and pass appropriate orders regarding the claim of

the petitioner. The writ petitions are partly allowed to the extent indicated above, but in the circumstances, there will be no order as to costs.

I am of the view that the ratio of the decision squarely applies to this case also and what is required to be done is to quash the impugned order with

liberty to the petitioner, if so advised, to move the authorities. Consequently, the impugned order is quashed to facilitate the concerned and

competent authorities to consider the claim of the petitioner on merits if the petitioner moves them present to this order.

4. The writ petitioner shall be at liberty to make his claim or representation for review to the concerned and competent authorities in the light of the

amended provisions of the Act referred to supra within ten weeks from today and as and when such representations are made the concerned and

competent authorities shall also consider the same in accordance with law including the question of delay in making the claim and pass appropriate

orders regarding the claim of the petitioner. To this extent the writ petition shall stand partly allowed and in other respects, the writ petition shall dismissed. But in the circumstances, there will be no order as to costs.