
(1992) 05 CAL CK 0036
In the Calcutta High Court
Case No : Matter No. 3706 of 1991

Jindal Strips Ltd.

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision : 15-05-1992

Acts Referred:

Constitution of India, 1950 — Article 13(3), 19(1), 226
Customs Act, 1962 — Section 15, 15(1), 16, 18(2), 25

Citation : (1992) 62 ELT 301

Hon'ble Judges : Hazari, J

Bench : Single Bench

Advocate : Subrata Roychowdhury, Jatin Ghosh and D.N. Mehta, for the Appellant; Partha Behari Mukherjee and Prantosh Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

Hazari, J.—This is an application under Article 226 of the Constitution of India, inter alia, praying for an order that:

(a) A writ and/or in the nature of mandamus be issued commanding the respondents, their servants and agents

(i) To act in accordance with law;

(ii) To pass an order to finalise the assessment of basic Customs and auxiliary duty on the imported generating set at the rate of 30% (basic) plus 30% (auxiliary) in terms of Notification No. 59/89 dated 1-3-1989 and 144/90 dated 20-3-1990 and not at the rate of 35% plus 50% under the revised Notification No. 296/90 and 287/90;

(iii) To pass an order giving refund of the said sum of Rs. 73,22,500/- to the petitioner No. 1;

(iv) To refrain from giving effect to the said decision/order discharging the guarantee/bond as communicated to your petitioner No. 1 which was received on

30th September, 1991 pending finalisation of the assessment and for other reliefs.

2. The case of the petitioners is that the petitioner No. 1 Jindal Strips Ltd. is engaged in the manufacture and sale of steel strips and owns and operates several factories all over India including a large factory at Hissar in the State of Haryana. On 6th July, 1989 the said company placed an order for the generating set of Finish Make on an exporter in Bremen, East Germany and the said order was amended by an order dated 4th August, 1990 valued at Rs. 2,90,00,000/-. The Company was granted appropriate licence for the importation of the said generating set by the appropriate authority. The said generating set was required to be captively used in its factory at Hissar to generate electricity for running the factory at the time of power failure arising out of loadshedding. On 17th September, 1990 the foreign exporter shipped the said generating set from Bremen to Calcutta via Madras Port per M.V. "SUDA". Another identical generating set was also shipped in the same vessel which was imported by M/s. Chemicals & Plastics India Ltd., Madras. The relevant notification granting the benefit of exemption and fixing the effective rate of basic customs duty at 30% only, issued by the Central Government in exercise of power conferred by Section 25(1) of the Customs Act, 1962 is numbered 59/89 dated 1st March, 1989. Similarly substantial concession was also granted in respect of auxiliary customs duty by Notification No. 144/90 dated 20th March, 1990 fixing the effective rate of auxiliary duty at 30%. The condition for availing the benefit of exemption under the said notifications was to the effect that the benefit of exemption shall not apply to generating sets using motor spirit, kerosene, high speed diesel oil or diesel oil as fuel. The vessel M.V. SUDA entered the territorial waters of India and arrived at the Madras Port in the middle of November, 1990. The customs authorities at Madras cleared Heavy Fuel (LSHA/HPS) Engine Driven Electrical Power Generating Set of the type similar to one imported by the petitioner No. 1 by allowing duty at 30% basic duty and 30% auxiliary duty. The said vessel M.V. SUDA was expected to reach the port of Calcutta towards the end of November, 1990. The clearing agent of the petitioner No. 1 submitted the advance bill of entry on 11th November, 1990 which was noted by the Import Department of Calcutta Custom House on 14th November, 1990. The arrival of the vessel was delayed due to circumstances over which the petitioners had no control and final entry inward was recorded in the customs register on 18-12-1990. The advance bill of entry which was submitted on 11-11-1990 and noted on 14-11-1990 was taken up for processing only after the final entry inward of the vessel i.e. on 18-12-1990. There were two subsequent notifications. By Notification No. 296/90 the earlier Notification No. 59/89 was superseded and the effective rate of basic customs duty was made 35% instead of 30% and the Notification No. 287/90 rescinded the earlier Notification No. 144/90 making the effective rate of auxiliary duty at 50% - thus making the effective rate of customs and allied duty @ 35% plus 50% i.e. 85%. The dates printed on the said Notification Nos. 296/90 and 287/90 are 18-12-1990 and 15-12-1990 respectively.

3. The said generating set was allowed to be cleared by the Calcutta Customs Authority on provisional assessment on production of fresh certificate from D.G.T.D. recommending benefit of Notification No. 296/90 and execution of personal bond for Rs. 2,90,00,000/- supported by a bank guarantee of Rs. 13,61,9857- furnished by State Bank of India. The provisional assessment was made @ 35% basic customs duty and 50% auxiliary duty in terms of the revised notifications which according to the respondents came into effect on 18-12-1990 i.e. the day the vessel entered into Calcutta Port. The case of the petitioners is that though the notifications are dated 18-12-1990 and 15-12-1990, they were published on 10-1-1991 and 14-1-1991. It is also the case of the petitioners that the said notification dated 18-12-1990 is not applicable in the case of importation of the said generating set and the petitioners are liable to pay 30% plus 30% i.e. total 60% duty and not 85% duty as assessed provisionally by the respondents. As per provisional assessment Rs. 2,48,96,500/- (Rs. 1,02,51,500/- basic plus Rs. 1,46,45,000/-auxiliary) was payable by the petitioners. Thus, according to the petitioners, an excess amount of Rs. 73,22,5007- was paid and/or the same was realised by the respondents as otherwise the goods could have incurred further demurrage. The further case of the petitioners is that the petitioners had no option but to make payment of the aforesaid sum of Rs. 2,48,96,500/- as provisionally assessed under protest on 31-1-1991 and the petitioners had to pay to the Port Trust Authorities a sum of Rs. 1,68,5407- as demurrage charges. On 15-2-1991 the petitioner No. 1 made a representation to the Assistant Collector, Calcutta, contending that the effective rate prescribed by the Notification No. 59/89 and 144/89 should be made applicable in the matter of assessment and as such the duty lawfully payable should be 60% (30% basic and 30% auxiliary) and not 85% (35% basic and 50% auxiliary) as collected by the authorities. The petitioners claimed refund of the sum of Rs. 73,22,5007- which was realised in excess and for an interim order restraining the respondents and their servants and agents from treating the order/decision communicated in the letter of the Assistant Collector discharging the bond/guarantee and received on 30-9-1991 as finalisation of provisional assessment.

4. The respondents have filed affidavit-in-opposition affirmed by one Ajit Kumar Mondal, Assistant Collector of Customs. The case of the respondents is that the vessel entered into the Calcutta Port on 18-12-1990 and as per notifications dated 18-12-1990 and 15-12-1990 the duty was payable @ 35% and 50%. The further case of the respondents is that the moment the subsequent notifications were made, the earlier notifications were superseded and the rate of duty was enhanced to 35% basic plus 50% auxiliary and the benefit of the earlier notifications was no more available to the petitioners because of the subsequent notifications. The bill of entry was filed on 14-11-1990 and the processing work was taken up and since the vessel reached on 18-12-1990 the duty is payable which was determined by the Notification dated 18-12-1990. It is further stated that the Govt. of India, Ministry of Finance, Department of Revenue in exercise of

the power conferred by Sub-section (1) of Section 25 of the Customs Act issued the notification in supersession of the earlier notification on being satisfied that it was necessary in the public interest to do so. The effective date of notification shall be the date when the notification was actually made and not the date when the notification was made available to the public. The provisional assessment was done since the petitioners could not satisfy the department as to the nature of the fuel that the set could use.

5. The main question for determination in the present writ application is whether the rate mentioned in Notification Nos. 59/89 and 144/89 would be applicable in the instant case as the rate in force on 18-12-1990 or the subsequent Notification Nos. 296/90 and 287/90 would be applicable which were made on 18-12-1990 and 15-12-1990 though the Gazette publishing the notification were released for public sale on 14-1-1991 and 10-1-1991.

6. It is submitted by Mr. Roychowdhury that in the Notification dated 18th December, 1990 it is mentioned "to be published". So, it is apparent that the Notification was not published prior to 18th December, 1990 and as such, the Duty which was payable was 30% plus 30% and not 35% plus 50%. Mr. Roychowdhury refers to Section 15 of the Customs Act, 1962 which reads as follows :-

"15. Date for determination of rate of duty and tariff valuation of imported goods. - (1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, -

(a) in the case of goods entered for home consumption u/s 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared for a warehouse u/s 68, on the date on which the goods are actually removed from the warehouse;

(c) in the case of any other goods, on the date of payment of duty :

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill on entry shall be deemed to have been presented on the date of such entry inwards.

(2) The provisions of this section shall not apply to baggage and goods imported by post."

It is submitted by Mr. Roychowdhury that the date of determination of duty and tariff would be in accordance with the proviso to Section 15(a) of the Customs Act, 1962.

7. Mr. Roychowdhury also refers to Section 18(2) and submits that after provisional assessment it is the duty of the Customs Authorities to make assessment finally in accordance with the provisions of the Customs Act. But, the Customs Authorities have failed to do so. No final assessment has been made but guarantee was discharged illegally by a letter sent by the Assistant Collector of

Customs and addressed to the Branch Manager, State Bank of India, being Annexure "O" to the writ petition.

8. Mr. Roychowdhury relies upon a decision, reported in Mahamed Sayeed Vs. Union of India and others, and submits that the material date of operation of the Notification is when the Official Gazette in which it is published is made available for circulation. Mr. Roychowdhury also refers to paragraph 24 of the said judgment which is set out hereinbelow :-

"Mere printing of the Official Gazette containing the said Public Notice cannot and would not amount to an effective publication of the said Public Notice. Until the Official Gazette in which any such Public Notice has been printed is published, that is to say, made available to the public by circulation or by putting it on sale to the public, there is no effective Public Notice in the Official Gazette.

The date on which such Official Gazette is made available to the public by placing it for sale to the public is the material date on which the said Public Notice can be said to have been effectively made in exercise of powers conferred upon the concerned authority."

9. Mr. Roychowdhury also refers to a decision reported in AIR 1963 SC 895, "Bachittar Singh v. State of Punjab and Anr." and submits that unless an order is communicated to the person concerned, no action could be taken against the person. It is submitted by Mr. Roychowdhury that it is the essence that order has to be communicated to the person who would be affected by the order before the State and that person could be bound by that order. Until that order is not communicated to the person affected by it, the person concerned is not bound by that order.

10. Mr. Roychowdhury refers to a decision reported in Union of India Vs. Asia Tobacco Co. Ltd., and submits that the order published means it should be known to the public and unless publication is made, the Notification will not be applicable. Mr. Roychowdhury also relied upon another decision reported in 1990 (50) ELT 127 and submitted that a Notification will be applicable and effective only when it is made available to the public.

11. Mr. Roychowdhury further referred to Jai Hind Oil Mills Co. Vs. Union of India, 1990 (47) ELT 93 and submitted that a Gazette Notification having a particular date is presumed to be published on the date indicated therein unless provided otherwise. If it can be shown that it was actually published on a date subsequent to the one indicated in it, then it is the date of actual publication, that is, acting or making it public, which will be the relevant date with effect from which it could come into force.

12. It is submitted by Mr. Roychowdhury that u/s 25 of the Customs Act the publication in the Gazette is mandatory and if it is not published, the notification cannot be given effect to. The condition laid down u/s 25, as submitted by Mr. Roychowdhury, is that the Central Government should be satisfied that it is

necessary in the public interest to do so. It may by notification in the Official Gazette notify the duty payable. It is also submitted by Mr. Roychowdhury that unless there is a publication of the Gazette, the notification cannot be given effect to. Mr. Roychowdhury relied upon 1918 King's Bench Division 101, "Johnson v. Sargant and Sons" and submitted that order comes into effect only when it becomes known to the parties and not before that.

13. Mr. Roychowdhury also relied upon a decision reported in Harla Vs. The State of Rajasthan, wherein it has been held,

"The principle underlying this question has been judicially considered in England. For example, on a somewhat lower plane, it was held in "Johnson v. Sargant"-1918 (1) K.B. 101 : 87 L.J. K.B. 122 that an order of the Food Controller under the Beans, Peas and Pulse (Requisition) Order, 1917, does not become operative until it is made known to the public, and the difference between an Order of that kind and an Act of the British Parliament is stressed. The difference is obvious. Acts of the British Parliament are publicly enacted. The debates are open to the public and the Acts are passed by the accredited representatives of the people who in theory can be trusted to see that their constituents know what has been done. They also receive wide publicity in papers and, now, over the wireless. Not so Royal Proclamations and Orders of a Food Controller and so forth. There must, therefore, be promulgation and publication in their cases. The mode of publication can vary; what is a good method in one country may not necessarily be the best in another. But reasonable publication of some sort there must be."

14. Mr. Roychowdhury also relied upon 1991 (53) E.L.T. A 61 wherein it has been held.

"The Appellate Tribunal in its order in question had held that the effect of the exemption notification is the date on which it was made known to the public and not the date of its publication in the Gazette."

15. It is further submitted by Mr. Roychowdhury that the Customs Authorities should be directed to refund the excess amount of Rs. 73,22,5007-, collected without any authority of law, with interest. Mr. Roychowdhury also relied upon the following cases :-

1. Radheshyam Tulsian Vs. Collector of Customs and Others,
2. Neeraj Newspapers Association (P) Ltd. Vs. Assistant Collector of Customs, Air Cargo Complex (Import) and Others,
3. 1989 (23) ECR 81

16. It is submitted by Mr. Roychowdhury that the issue involved in this case is the rate at which customs and allied duties were to be levied on the generating sets imported by the petitioner in terms of Section 15 of the Customs Act, 1962. Sub-section (1) of Section 15 of the Customs Act provides that the rate of duty applicable for levying of duty is the rate which is enforced on the date of the

presentation of the Bill of Entry. The proviso to Section 15(1) further provides that, "if a Bill of Entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the Bill of Entry shall be deemed to have been presented on the date of such entry inwards."

17. It is submitted by Mr. Roychowdhury that the Bill of Entry was filed by the Clearing Agent of the importer on 14-11-1990 and the vessel "M.V. SUDA" carrying the imported generator set entered on 18-12-1990. The only question is to determine what was the rate of duty enforced on 18-12-1990. Whether the rate mentioned in the Notifications 15/89 and 144/90 would be applicable in the instant case as the rate enforced on 18-12-1990 or the subsequent Notifications numbered 296 of 1990 and 287 of 1990 would be applicable, though the said notifications were published for sale on 14-1-1991 and 10-1-1991. It is also submitted by Mr. Roychowdhury that under Article 13(3)(a) of the Constitution of India, the definition of "Law" is as follows :-

"Law". 1. Law, in this Article, means the law made by the Legislature and includes intra vires statutory orders and orders made in exercise of power conferred by statutory rules, but not administrative orders having no statutory sanction. A statutory scheme is a "law", but not the bye-laws made by a co-operative society, which are in the nature of articles of association, unless such bye-laws have been made in exercise of statutory power or the society acts as an agency of the Government.

and unless the Notification is made known to the public and/or persons upon whom the Notification would be applicable, the same does not become law and, as such, the duty should be the duty which was prevailing on 18-12-1990 on the basis of the previous Notification as the subsequent Notification was published sometime in January, 1991.

18. Mr. Partha Behari Mukherji, appearing with Mr. Prantosh Mukherjee, for the respondents submits that the Notification was placed before the Parliament and it was approved by the Parliament and the said fact has not been challenged by the writ-petitioner.

19. The learned Advocate for the respondents relied upon the provisions of Section 25(1) of the Customs Act, 1962, which is set out hereinbelow :-

25(1) - If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.

20. It is submitted by Mr. Prantosh Mukherjee, learned Advocate for the respondents, that there is no provision for publication and the Gazette mentioned in this Sub-section (1) of Section 25 means periodical publication giving current events, and the publication is not necessary. The moment the Notification was

issued, the same became applicable upon the petitioner. Mr. Prantosh Mukherjee relied on a decision reported in *B.K. Srinivasan and Others Vs. State of Karnataka and Others*, wherein it was held :

"There can be no doubt about the proposition that where a law, whether Parliamentary or Subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. Whether law is viewed from the standpoint of the "conscientious good man" seeking to abide by the law or from the standpoint of Justice Holmes's "Unconscientious bad man" seeking to avoid the law, law must be known, that it to say, it must be so made that it can be known. We know that delegated or subordinate legislation is all pervasive and that there is hardly any field of activity where governance by delegated or subordinate legislative powers is not as important if not more important, than governance by Parliamentary legislation. But unlike Parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the Chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed. Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subrodinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette or some other reasonable mode of publication. There may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases, publication or promulgation by other means may be sufficient. See *Narayana Reddy v. State of Andhra Pradesh* 1969 (1) Andh. W.R. 77 ."

21. Mr. Mukherjee also refers to the decision reported in *Bombay Conductors and Electricals Ltd. and another Vs. K. Chandramouli, Under Secretary to the Govt. of India and others*, wherein it was held as follows :-

"(i) that the power to fix the rate of tax is a legislative power. The statutory notifications issued u/s 25(1) of the Act are from first to last legislative in character. The author of the notifications is the Central Government, no doubt, but the power that it wields is legislative in character. Notifications issued u/s 25(1) are an exercise of "sovereignty", i.e., of authority to legislate. The customs duties are compulsory contributions imposed by the sovereign authority. The error resides in the assertion that it is an executive action. The Judiciary can not restrain the taxes, however great the hardship may appear to the judicial mind

to be. All that it can enquire into is the legislative competence in a Federal written constitution. Therefore, to the Notification issued u/s 25(1) of the Act, the doctrine of promissory estoppel has no application. It can not be held that the withdrawal of exemption was such action as interfered with the petitioner's right to carry on business or trade. The Government was competent to withdraw the exemptions once granted, whether the notification granting the exemption was time-bound or not. The exemption was withdrawn in public interest and the withdrawal notifications are valid; and

(ii) that imposing restrictions upon business such as import or export of good will be in the interest of the general public. The system of tariffs and licensing for imports and exports was a reasonable restrictions on the right to carry on trade. It could not be held in the instant cases that the petitioners' right under Article 19(1)(g) of the Constitution had been infringed."

22. Mr. Mukherjee also relied upon a decision reported in General Fibre Dealers Ltd. and Another Vs. Union of India (UOI) and Others, and submitted that the publication of a notification in the Official Gazette was sufficient to make it operative and its availability to the public cannot be made a condition precedent for the same.

23. Mr. Mukherjee also relied on reported decision reported in State of Maharashtra Vs. Hans George, wherein it has been held as follows :-

"The test to find out effective publication would be publication in India, not outside India so as to bring it to the notice of everyone who intends to pass through India. Even on the narrowest view of the law the notification of the Reserve Bank must be deemed to have been published in the sense of having been brought to the notice of the relevant public at least by November 25, 1962 and hence the plea by the respondent that he was ignorant of the law cannot afford him any defence in his prosecution."

Where there is a statutory requirement as to the mode or form of publication and they are such that, in the circumstances, the Court holds to be mandatory, a failure to comply with those requirements might result in there being no effective order the contravention of which could be the subject of prosecution but where there is no such statutory requirement, it is necessary that it should be published in the usual form, i.e., by publication within the country in such media as generally adopted to notify to all the persons concerned the making of rules.

In most of the Indian Statutes, including the Act now under consideration, there is provision for the rules made being published in the Official Gazette. It, therefore, stands to reason that publication in the Official Gazette, viz., the Gazette of India is the ordinary method of bringing a rule or subordinate legislation to the notice of the persons concerned.

Dicta: "There is undoubtedly a certain amount of uncertainty in the law except in cases where specific provisions in that behalf is made in individual statutes as to

(a) when a subordinate legislation could be said to have been passed and (b) when it comes into effect. The position in England has been clarified by the Statutory Instruments Act of 1946, though there is a slight ambiguity in the language employed in it, which has given rise to disputed questions of construction as regards certain expressions used in the Act. We consider that it would be conducive to clarity as well as to the avoidance of unnecessary technical objections giving occasion for litigation. If an enactment on the lines of the U.K. Statutory Instruments Act, 1946, were made in India, either by an amendment of the General Clauses Act or by independent legislation keeping in mind the difficulties of construction to which the U.K. enactment has given rise."

24. Mr. Mukherjee also relied upon a decision reported in E.C.R. C. (S.C.) 147." It was claimed that the retrospective operation given to Section 7(1) by Sub-section (2) was illegal, ultra vires, and unconstitutional; also that the provision in Rule 10 which contained the machinery for enforcing the demand was not adequate to meet the situation arising out of the change in the law from the provisions of the Bill to those of the Act. The Nagpur High Court had repelled the contention disputing the constitutionality of Section 7(2) but upheld the objection relating to the adequacy of Rule 10. Thereafter, Rule 10A was added and challenge to the adequacy of Rule 10A was also rejected by a Full Bench of the Nagpur High Court. The appeals were directed against these judgments.

"1. In construing the expression "duty of excise" we are not concerned so much with whether the tax is direct or indirect as upon the transaction or activity on which it is imposed. "There is no doubt that excise duties have been referred to by the Economists and in the judgments of the Privy Council as well as in the Australian decisions as an instance of an "indirect tax", but in construing the expression "duty of excise" as it occurs in Entry 84, we are not concerned so much with whether the tax is "direct" or "indirect" as upon the transaction or activity on which it is imposed.... It would seem to be rather a strange result to achieve that the tax imposed satisfied every requirement of a "duty of excise" in so far as the tax operates from and after April 28, 1951, but is not a "duty of excise" for the duration of two months before that date".

25. Mr. Mukherjee also has relied upon the decision reported in Bharat Surfactants (Private) Ltd. and Another Vs. Union of India (UOI) and Another, wherein it was held -

"The provisions of Section 15 are clear in themselves. The date on which a Bill of Entry is presented u/s 46 is, in the case of goods entered for home consumption, the date relevant for determining the rate of duty and tariff valuation. Where the Bill of Entry is presented before the date of Entry Inwards of the vessel, the Bill of Entry is deemed to have been presented on the date of such Entry Inwards. The amendment made in Section 16 appears to have been made by way of clarification and does not detract from the conclusion that "the date of entry inwards of the vessel" is the date recorded as such in the Customs register".

26. Mr. Mukherjee submits that u/s 38 of the Central Excise Law & Procedure publication in the Official Gazette is specifically mentioned and prescribed whereas u/s 25 of the Customs Act there is no mention that the Notification got to be published which clearly shows that the Notification when issued the same comes into effect, and in the instant case the Notification was made on 18th December, 1990 and as such the Notification came into operation and effective from the said date.

27. Considering the facts and circumstances of the case and considering the judgments referred by the learned Advocates appearing for the petitioners and the respondents I hold that the rate mentioned in the notification dated 18-12-1990 would be applicable only from the date of publication of the said notification in the present case. This is a case where the importation of the generator set was done for the own use of the writ petitioners and the ship reached Madras Port long before 18-12-1990, that is, in the middle of November, 1990, and the ship should have reached Calcutta before 18-12-1990; but for the reasons beyond the control of the petitioners the ship reached Calcutta on 18-12-1990 and it is a mere coincidence that on the same day the notification was published enhancing the customs duty at 85% (35% basic and 50% auxiliary). I, accordingly, hold that the duty payable by the petitioner would be 60% i.e. 30% basic and 30% auxiliary and not 85%, i.e. 35% basic and 50% auxiliary.

28. Accordingly, the petition succeeds. Rule is made absolute. The petitioner is entitled to the refund of Rs. 73,22,5007- within six weeks from this date. I do not allow any interest on the said amount considering the special facts and circumstances of the case and I hold that this will not be considered to be precedent for other cases.

29. The learned Advocate appearing for the Respondents prays for stay of operation of this order. The prayer is considered and rejected.

30. All parties are to act on a signed copy of the operative part of this judgment on the usual undertaking.