(2019) 02 OHC CK 0015

In the Orissa High Court

Case No : O.J.C. Nos. 2061 Of 1994 ,1728, 1729, 1730 Of 1993, 2062, 2063, 2064, 2065, 2123 Of 1994

M/s. Orissa Forest Corporation — APPELLANT

Vs

Addl. Collector Of Central Excise And Customs, Bhubaneswar And Others — RESPONDENT

Date of Decision : 01-02-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Central Excises And Salt Act, 1944 — Section 5, 5A, 11A, 35A(2), 37
Orissa Sales Tax Act, 1947 — Section 2(c)

Citation : (2019) 02 OHC CK 0015

Hon'ble Judges : K. S. Jhaveri, CJ;K. R. Mohapatra, J

Bench : Division Bench

Advocate : B.K. Mahanti, Bibek Mohanti, B.K. Sahoo, Amitav Das

Final Decision : Disposed Of

Judgement

K.S. Jhaveri, CJ

1. By way of all these writ petitions, the petitioners have challenged the notification No.174/86, C.E., dated 01.03.1986 under Annexure-1 with regard

to â??Exemption to Small Scale Unitsâ?? in which Clause-4 provides as under:

â??4. The exemption contained in this notification shall be applicable only to a factory which is an undertaking registered with the Director of Industries in any State

or the Developmental Commissioner (Small Scale Industries) as a small scale industry under the provisions of the Industries (Development and Regulations) Act,

1951 (65 of 1951):

Provided that nothing contained in this paragraph shall be applicable, -

(a) In a case where the value of clearances from a factory during the preceding financial year or in the current financial year did not exceed or is not likely to exceed

rupees seven and a half lakhs; or

(b) In a case where a manufacture has been availing of the exemption under this notification or any of the notifications specified below, during the preceding financial

year:-â??

2. Learned Counsel for the petitioner contended that the action taken by the opposite parties is required to be viewed very seriously, inasmuch as, the

petitioner is a State owned Corporation to exploit forests in its mills at Raghunathpur, Nuapada and Bhanjanagar, converted timbers into rafters,

sleeper and other sawn timbers, where it manufactured â??wooden furniture without aid of power by artisans employed by itâ?. On 20.02.1981,

the Appellate Collector of Central Excise vacated demands for the period June 1977 to 31.12.1978 in respect of Railway sleeper and in regard to

furniture, by order dated 20th February, 1981 under Section 35-A (2) of the Central Excises & Salt Act, 1944 (for short â??the Actâ?) holding that no

levy was maintainable (Annexure-1).

3. From the order of the Collector, it was very clear that the opposite parties had full knowledge and were well aware that the petitioner was

manufacturing furniture, hence, the contumacity of non-levy, non-payment, short levy, erroneous refund by reason of fraud, collusion, any willful

misstatement, suppression facts made there under or contravention of the Act & rules, with an intent to evade payment of duty, will not arise under

Section 11-A of the Act as claimed by the Addl. Collector. The Assistant Collector of the Central Excise by order dated 07.11.1981 at Annexure-4

demanded payment of central excise duty on railway sleepers, sawn firewood and manufactured furniture for assessment period in question.

Learned counsel for the petitioner relies on Section 11-A of the Act, which reads as under:

â??11-A Recovery of duties not levied or not paid or short-levied or erroneously refunded â?" (1) when any duty of excise has not been levied or paid or has been

short-levied or short-paid or erroneously refunded, a central excise officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short paid or to whom the refund has erroneously been made, requiring him to show

cause why he should not pay the amount specified in the notice:

Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or

any willful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made there under with intent to evade payment

of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if for the words â??central excise officerâ?, the words â??Collector of

Central Exciseâ??, and for the words â??six monthsâ??, the words â??five yearsâ?? were substituted.

Explanation.â?" Where the service of the notice is stayed by an order of a Court, the period of such stay shall be excluded in computing the aforesaid period of six

months or five years, as the case may be.â??

4. Learned counsel for the petitioners has mainly taken us to the proviso to Section 11 and has raised the following questions of law:

(a) Whether the imposition of duty on manufacture of furniture and enumeration of furniture and its enumeration heading No.94.03 under Excise Tariff Act is such a

change of law to exclude the application res judicata ?

(b) Whether under circumstances of this case, the fact of manufacture of furniture being known to the Revenue, the rule of limitation under Section 11A of the Central

Excise Act would give a greater period of limitation to 5 years in place of six months, and the empower Addl. Collector makes all orders in Annexure-2 in all writs

(except 2061/94) bad ?

(c) Whether an order passed beyond limitation and by non Collector billing nullifies are liable to be quashed ?

(d) Whether the Honâ??ble Court having admitted the matters in batches of cases in 1993 and 1994 would now be correct to direct taking an alternative remedy?

5. Learned counsel for the petitioners has relied upon the first decision of this Court in the case of the selfsame petitioner i.e. Orissa Forest

Corporation Ltd. vs. Asst Collector, Central Excise reported in 1982 (10) ELT 875 Orissa, para-3, 4 and 5 of the said decision are reproduced

hereunder:

â??3. We do not think this should be the attitude of the Union Government. The demand is under the Statute and the statutory appellate

authority, on the set of facts which are common both to the period when relief was granted and the period for which the impugned demand

has been made, has already determined that no levy is exigible. As long as the appellate order stands, it must be duly respected and only

when the revisional authority vaca-tes the order and holds that the decision of the appellate authority is wrong and the demand was

justified, no demand should be raised. It has been indicated on more than one occasions by the Supreme Court with reference to directions

of the Appellate Tribunal under the Income Tax Act that such directions are binding and decisions rendered by appellate authorities should

be respected by the subordinate revenue authorities and no attempt should be made to wriggle out of the binding decisions of higher

authorities as long as they remain in force. The same principle should be applied to the present set of facts and we are, therefore, inclined

to take the view that the demand under Annexure-4 should be set aside but we would make it clear that in the event of the appellate orders

being vacated, under the Statute the liability would revive and notwithstanding our quashing Annexure-4 the statutory authority would be

entitled to raise a demand in terms of the decision which may be ultimately sustained under the Statute.

4. The learned Standing Counsel points out that the demand under the Statute has to be raised within six months from the period when it becomes due and it is

quite possible that the revision may not be disposed of within the time and, therefore, in case the direction which we propose to make is given, the bar of

limitation may set in. While quashing Annexure-4, we leave it open to the statutory authorities to move the revisional authority to dispose of the revision

expeditiously. If even after such action has been taken, the revision be pending and is not disposed of within six months, it would be open to the Assistant

Collector, Opposite party No. 1, to raise a demand and notify the same to the petitioner, but the same would not at all be enforceable. Such demands would ultimately be disposed of in terms of the final decision that may be taken by the revisional authority.

5. In regard to the self removal procedure, counsel for the petitioner wants permission to collect the duty inasmuch as in the event of liability ultimately being

sustained, it would become difficult for it to collect the demand from the customers. The learned Standing Counsel says that if any amount is collected it should be

deposited with the Department and should not be permitted to be kept by the petitioner inasmuch as the collection would have the statutory colour. Mr. Mohanty

for the petitioner says that these amount so collected would be deposited with a Bank in a Fixed Deposit Account for a term bearing interest at the approved bank

rate and if the statutory liability is ultimately sustained the amount may be taken over. To meet such a contention, the learned Standing Counsel says that he is

also prepared that the amount may be made over to the Department but would not be appropriated towards general revenue and would be deposited in a special

account with a bank which would bear interest. He concedes that in the event of the petitioner's stand succeeding, the amount along with the interest accrued

thereon may be taken by the petitioner to be disbursed to the person from whom it may have been collected. The amount which would be in the Fixed Deposit

Account should be transferred to the petitioner within one month from the final disposal of the revision.â??

5.1. He also relied upon the decision of the Honâ??ble Supreme Court in the case of M/s. Radhasoami Satsang, Saomi Bagh, Agra vs.

Commissioner of Income Tax, reported in (1992) 1 SCC 659. In paras-16 and 17 of the said decision, the Honâ??ble Court has held as under:

â??16. We are aware of the fact that strictly speaking res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is

decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a

fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the

position to be changed in a subsequent year.

17. On these reasonings in the absence of any material change justifying the Revenue to take a different view of the matter - and if there was not change it was in

support of the assessee- we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income-Tax in

the earlier proceedings, a different and contradictory stand should have been taken. We are, therefore, of the view that these appeals should be allowed and the

question should be answered in the affirmative, namely, that the Tribunal was justified in holding that the income derived by the Radhasoami Satsang was

entitled to exemption under ss. 11 and 12 of the Income Tax Act of 1961.â??

5.2.Â The Honâ??ble Supreme Court in the case of Collector of Central Excise, Hyderabad vs. M/s. Chempha Drugs and Liniments, Hyderabad,

reported in (1989) 2 SCC 127, in para- 9, has held as under:

â??9. Aggrieved thereby, the revenue has come up in appeal to this Court. In our opinion, the order of the Tribunal must be sustained. In order to make the

demand for duty sustain- able beyond a period of six months and up to a period of 5 years in view of the proviso to subsection 11A of the Act, it has to be

established that the duty of excise has not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or

wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something

positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the

manufacturer knew otherwise, is required before it is saddled with any liability, beyond the period of six months. Whether in a particular set of facts and

circumstances there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending

upon the facts and circumstances of a particular case. The Tribunal came to the conclusion that the facts referred to hereinbefore do not warrant any inference of

fraud. The assessee declared the goods on the basis of their belief of the interpretation of the provisions of the law that the exempted goods were not required to be

included and these did not include the value of the exempted goods which they manufactured at the relevant time. The Tribunal found that the explanation was

plausible, and also noted that the Depart- ment had full knowledge of the facts about manufacture of all the goods manufactured by the respondent when the declaration was filed by the respondent. The respondent did not include the value of the product other than those falling under Tariff Item 14E manufactured by the respondent and this was in the knowledge, according to the Tribunal, of the authorities. These findings of the Tribunal have not been challenged before us or before the Tribunal itself as being based on no evidence.â??

5.3. In Geo Tech Foundations and Construction vs. Commissioner of Central Excise, Pune, reported in (2008) 11 SCC 678, wherein para-12, the Honâ??ble Supreme Court has held as under:

â??12. One further aspect cannot be lost sight of. The appellant as well as the Konkan Railways raised a definite plea of bona fide. Such a plea had not been rejected. On the contrary, as noted above, there was diversion of views and the issue was answered by different Benches of CESTAT. That being so, the extended period of limitation could not have been invoked. As the facts alleged to have been suppressed by the appellant were known to the Department, in that view of the matter the extended period of limitation under Section 11-A of the Act has no application. Invocation of Section 11-A, was impermissible, and therefore, we set aside the order of CESTAT which is the subject matter of challenge in Civil Appeal No.5305 of 2005. The appeal is allowed.â??

5.4. In another decision in the case of Commissioner of Central Excise, Pune vs. Hindustan National Glass and Industries Limited decided in Civil Appeal No.1829 of 2008, in Para-15, the Honâ??ble Supreme Court has held as under:

â??15. In our considered opinion, in the present case, there has to be application of mind by the tribunal regard being had to the amount of money paid by purchasers, namely, M/s. Coca Cola India and M/s. Pepsico India Holdings Pvt. Ltd. and what is the effect of the sales made to the two companies in percentile terms, whether this had the effect of depressing the sale price. The onus would be on the revenue. That being the thrust of the matter, liberty is granted to the revenue to produce the documents in this regard to discharge the onus. As we are remitting the matter, we may note one submission of the respondent-assessee. It is urged by the learned counsel that when the entire activities were within the knowledge of the excise authorities, penalty is not leviable. Needless to emphasize, the tribunal shall advert to the said submission, if required, in the ultimate eventuate, in proper perspective.â??

5.5. In the case of L. Hriday Narain vs. Income Tax Officer, Bareilley, reported in 1970 (2) SCC 355, the Honâ??ble Supreme Court, in paras-15 &

16, has observed as under:

â??15. Exercise of power to rectify an error apparent from the re- cord is conferred upon the Income-tax Officer in aid of enforcement of a right. The Income-tax

Officer is an officer concerned with assessment and collection of revenue, and the power to rectify the order of assessment conferred upon him to ensure that

injustice to the assessee or to the Revenue may be avoided. It is implicit in the nature of the power and its entrustment to the authority invested with quasi-judicial

functions under the Act, that exercise of the power was discretionary and the Income-tax from the record is brought to his notice by a person concerned with or

interested in the proceeding.

16. The High Court was, in our judgment, in error in assuming that exercise of the power was discretionary and the Income- tax Officer could, even if the

conditions for its exercise were shown to exist, decline to exercise the power.â??

5.6. In the case of State of Orissa and others vs. Titaghur Paper Mills Company Limited and another, reported in 1985 (Supp) SCC 280, the

Honâ??ble Supreme Court, in paras-87 to

92, has observed as under:

â??87. Having seen how the different High Courts have dealt with this question, we will now ascertain the true position for ourselves. In Ganesh Trading Co.,

Karnal v. State of Haryana and another, Hedge, J., speaking for this Count, said:

â??This Court has firmly ruled that in finding out the true meaning of the entries in a Sales Tax Act, what is relevant is not the dictionary meaning, but how those

entries are understood in common parlance, specially in commercial circles"".

Applying this principle, the Court held that although rice was produced out of paddy, paddy did not continue to be paddy after dehusking and that when paddy

was dehusked and rice produced, there was a change in the identity of the goods and, therefore, rice and paddy were two different things in ordinary parlance. A

careful reading of the judgment in that case shows that there was no evidence before the court to show how ""paddy"" and ""rice"" were understood in commercial

circles or what these words meant in commercial or trade parlance and that what the Court did was to refer to various authorities dealing not with rice or paddy

but with other goods and the meaning in ordinary parlance of the words ""paddy"" and ' rice"" in order to ascertain the meaning of these words in the sense stated

by it above.

88. So far as the case before us is concerned, there is material on the record to show what the word ""timber"" and ""logs"" mean in commercial or trade parlance nor

do the pleadings of the parties filed in the Orissa High Court throw any light on the matter. The averment of the Respondent Firm in this behalf is to be found in

paragraph 13 of its writ petition in the High Court and all that is stated therein is that under the impugned provisions it would be required to pay purchase tax

on ""timber agreed to be severed"" and after savering the timber while effecting sales of timber would be liable to pay sales tax on such sales. In the counter

affidavit of the Law Officer in the office of the Commissioner of Commercial Taxes, Orissa, filed on behalf of the Commissioner of Commercial Taxes and the Sales

Tax Officer, Sambalpur Circle, while replying to the said paragraph 13 all that is stated is that timber commercially does not remain the same after being cut,

sized and shaped, and, therefore, there was no legal obstruction to tax an altogether different commercial commodity at sale-point.

89. In view of this state of the record we must seek to ascertain the meaning of these two terms in common parlance with such aid as is available to the Court. It is

now well settled that the dictionary meaning of a word cannot be looked at where that word has been statutorily defined or judicially interpreted but where there

is no such definition or interpretation, the court may take the aid of dictionaries to ascertain the meaning of a word in common 1 parlance. In doing so the court

must bear in mind that a word is used in different senses according to its context and a dictionary gives all the meanings of a word and the court, therefore have to

select the particular meaning which would be relevant to the context in which it has to interpret that word. The Orissa Act does not define the term ''timber"" or logs"". Orissa is, however, a State which is rich in natural wealth and mostly all, if not all, forests in the State of Orissa are protected or reserved forests and come

within the purview of the Orissa Forest Act, 1972, which was an Act passed to consolidate and amend the laws relating to the protection and management of

forests in the State of Orissa. The real object behind the issue of impugned provisions was to levy purchase tax on standing trees agreed to be severed and

bamboos agreed to be servered in view of the judgment of the Orissa High Court in Straw Products Ltd, v. State of Orissa in which it was held that a Divisional

Forest Officer was not a dealer and, therefore, not liable to pay sales tax and hence could not call upon forest contractors to reimburse him in respect thereof. In

view of this background, it would be relevant for our purpose to look at the statutory definition of the term ""timber"". given in the Orissa Forest' Act, 1972. That

term is defined in clause (n) of section 2 of that Act, which reads as follows.

(n) 'timber' includes trees fallen or felled and all wood cut-up or sawn.

Prior to the enactment of the Orissa Forest Act, 1972, there were two Forest Acts in force in the State of Orissa, namely, the Madras Forest Act, 1882 (Madras Act

V of 1882), and the Indian Forest Act, 1927 (Act XVI of 1927). The Madras Forest Act applied to the districts of Koraput and Ganjam and part of Phulbani

District, namely, Baliguda and G. Udaygiri Taluks. The Indian Forest Act applied to the rest of the State. Both these Acts were repealed in their application to the

State Of H Orissa by the Orissa Forest Act but as prior to the enactment of the Orissa Forest Act, these were the two Acts which provided for the protection and

management of forests in the State of Orissa, we may also refer to the definition of the word ""timber"" given in those Acts. Section 2 of the Madras Forest Act defines

timber"" as including trees when they have fallen or have been fallen, and all wood, whether cut up or fashioned or hollowed out for any purpose or not"". Clause

(6) of section 2 of the Indian Forest Act defines ""timber"" in identical terms. Though none of these definitions is an exhaustive one since each of them uses the word

includes'` and not ""means"", there is a large and substantial measure of identity in these definitions and it will be apparent from these definitions that the word

timber"" is not confined merely to felled trees in forestry in the State of Orissa.

In this connection, it would not be out of place to see how this word has been

defined in subsequent legislation In August 1981 trade in certain forest produce in Orissa was made a State monopoly and the Orissa Forest Produce (Control of

Trade) Act, 1981 (Orissa Act No. 22 of 1981), was passed to achieve that purpose. The list of forest produce set out in the definition of that term given in clause (c)

of section 2 of that Act includes timber of any species specified in clause (j) of that section. Clause (j) of section 2 defines ""timber "" as meaning ""marketable wood,

round, sawn or fashioned, straight piece of and above two metres in length, standing or felled (excluding fuel) of the following categories, namely:â?¦"". The

portion of the definition omitted above lists the different species of timber. The definition of ""timber given in the Orissa Forest Produce (Control of Trade) Act is

an exhaustive definition inasmuch as the object of that Act was to create a State monopoly of trade in specified forest produce and therefore such forest produce

had to be particularized. What is, however, pertinent is that even in subsequent legislation the cardinal concept that timber is not merely felled trees has been

underlined and emphasized.

90. On turning to various dictionaries, we find that the dictionary meaning largely coincides with the statutory meaning of the word ""timber"". While discussing

the question of the subject-matter of the impugned provisions we have set out the definition of the word ""timber"" contained in the Webster Collegiate Dictionary

occurring ring in the passage from the judgment of Vivian Bose, J, in Shrimati Shantabai v State of Bombay The relevant meanings of the term ""timber"" given in

the Shorter Oxford Dictionary, Third Edition, are ""building material generally; wood used for the building of houses, ships, etc., or for the use of the carpenter,

joiner, or other artisan"". This definition also states that the word is ""applied to the wood of growing trees capable of being used for structural purposes; hence

collectively to the trees themselves"". Amongst the meanings given in the Concise Oxford Dictionary, Sixth Edition, are ""wood prepared for building, carpentry,

etc;. trees suitable for this; woods, forests, piece of wood, beam"". One of the meanings of the word ""timber"" given in Webester's Third New International

Dictionary, is ""wood used for or suitable for building (as a house or boat) for carpentry or joinery"". A ""log"" according to the Shorter Oxford English Dictionary

means ""a bulky mass of wood; now usually an unhewn portion of a felled tree, or a length cut off for firewood"" and according to the Concise Oxford Dictionary it

means ""unhewn piece of felled tree, or similar rough mass of wood especially cut for firewood"". Thus, logs will be nothing more than wood cut up or sawn and

would be timber.

91. A question which remains is whether beams, rafters and planks would also be logs or timber. The Shorters Oxford English Dictionary defines ""beam"" inter alia

as a large piece of squared timber, long in proportional to its breadth and thickness and the Concise Oxford Dictionary defines it as a ' long piece of squared

timber supported at both ends, used in houses, ships, etc."" and according to Webester's Third New International Dictionary, it means ""a long piece of heavy often

squared timber suitable for use in house construction."" A beam is thus timber sawn in a particular way. ""Rafter"" as shown by the Shorter Oxford English

Dictionary is nothing but ""one of the beams which give shape and form to a roof, and bear the outer covering of slates, tiles, thatch, etc."" The Concise Oxford

Dictionary and Webster's New International Dictionary define ""rafter"" in very much the same way; the first defines it as ""one of the sloping beams forming

framework of a roof"" and the seconds as ""one of the often sloping beams that sup-port a roof."" Rafter would also, therefore, be timber or log put to a particular

use.A ""plank"" is defined in Shorter Oxford English Dictionary as ""a long flat piece of smoothed timber, thicker than a board, specially a length of timber sawn to

a thickness of from two to six inches, a width of nine inches or more, and eight feet or H upwards in length."" According to the Concise Oxford Dictionary it is a

long wide piece of timber, a few inches thick"" and according to Webster's Third New International Dictionary, it is ""a heavy thick board that in technical

specifications usually has a thickness of 2 to 4 inches and a width of at least 8 inches."" The exact thickness and width of a plank may be of importance in

technical specifications but in ordinary parlance planks would be flattened and smoothed timber. Such flatness and smoothness can only be achieved by using a

saw and other implements required for that purpose. The same would be the case when timber is rounded or shaped. The statutory definitions of timber extracted

above read along with the meaning of the word ""timber"" given in different dictionaries would show that the conclusion reached by the Madhya Pradesh High

Court in Mohanlal Vishram v. Commissioner of Sales Tax, Madhya Pradesh, Indore, and by the Andhra Pradesh High Court in G. Ramaswamy and others v. The

State of Andhra Pradesh and others is more germane to our purpose than the two Orissa cases neither of which has referred to the statutory definition of the word

timber"" in the relevant statutes. The observations of the Orissa High Court in the case of Krupasindhu Sahu & Sons v. State of Orissa that timber in common

parlance in Orissa takes within its ambit only long and big sized logs of wood ordinarily used in house construction as beams and pillars but not when timber is

converted into planks, rafters and other wood products like tables and chairs cannot, therefore, be said to be correct so far as planks and rafters are concerned.

In our opinion, planks and rafters would also be timber.

92. The result is that sales of dressed or sized logs by the Respondent Firm having already been assessed to sales tax, the sales to the First Respondent Firm of

timber by the State Government from which logs were made by the Respondent Firm cannot be made liable to sales tax as it would amount to levying tax at two

points in the same series of sales by successive dealers assuming without deciding that the retrospectively substituted definition of ""dealer"" in clause (c) of section

2 of Orissa Sales Tax Act, 1947, is valid.â??

6. Taking into consideration the above, we are of the opinion that the demand or the order passed by the Addl. Collector after period of limitation is not

only time barred but also without authority of law.

7. Learned counsel for the petitioner has fairly contended that if he succeeds on the point of limitation and other points, it may not be necessary to

press the first prayer in respect of Clause-4 of Annexure-1.

8. Learned counsel for the opposite parties has relied upon Sections 5 and 37 of the Act 1944 and also taken us to Annexure-A-2 of the counter

affidavit filed by the opposite parties in a connected writ petition i.e. OJC No.1728 of 1993, wherein wood and articles of wood were defined under entry 44.02 and 44.03 of Chapter 44 and contended that in view of the reply/counter affidavit, the delay has been properly explained and the demand

in question will not be barred by limitation.

9. From the above, it is very clear that the period of limitation start from the day the assessing authority has made the assessment, which in the instant

case was in 1990 and the present order seems to have been passed and notification came to be issued after a period of six months. The proviso to

Section 5A was amended with effect from 14.05.1992. Therefore, the prayer of limitation five years will not apply to the present case and the action

taken by the authority is not within the period of limitation.

10. In that view of the matter, we are accepting the contention of the petitioners, inasmuch as, in view of the observation made by the Supreme Court

in the case of Titaghur Paper Mills Company Limited (supra), the department does not come out successful in the test in terms of the ratio decided.

As such, it is not excisable.

10.1 In that view of the matter, only on the ground of limitation and authority of law, the writ petitions deserves to be allowed. However, on the point

of alternative remedy, it is well settled law and as contended by the learned counsel for the petitioner relying upon the Supreme Court judgment

referred to supra, when the matter is admitted it will not be appropriate for this Court to relegate the party to avail alternative remedy after twenty six

years. Therefore, this Court has no other option, but to exercise the power under Article 226 of Constitution of India.

11. Consequently, the issue is required to be answered in favour of petitioners. The writ petitions deserve to be allowed and, the same are allowed. It

is made clear that if the authorities are required to refund the amount, the same will be refunded to the petitioners within a period of four months from

the date of receipt of certified copy of this judgment.

12. The writ petitions are disposed of. All the connected Misc. Cases/I.As are disposed of accordingly. No order as to costs.

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