
(2004) 04 GUJ CK 0039

In the Gujarat High Court

Case No : Special Civil Application No. 810 of 1987

Polyolefins Rubber Chemicals Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 01-04-2004

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A

Citation : (2004) 04 GUJ CK 0039

Hon'ble Judges : M.S. Shah, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : S.B. Vakil and P.P. Laheri, for the Appellant; Dhaval G. Nanavati, for Respondent Nos. 1-3, for the Respondent

Judgement

M.S. Shah, J.—This petition was initially filed in the year 1987 by the Mafatlal Spinning & Manufacturing Company Ltd. with its registered office at Bombay and having a factory and chemical division in the name and style of Navin Flourine Industries at Besthan in Surat district. After its amalgamation with the Mafatlal Industries Ltd. in 1993, it has demerged w.e.f. 1.3.2002 into the Polyolefins Rubbers Chemicals Ltd. (PRCL).

The petition, as originally constituted, challenged the show cause notice dated 23.9.1986 (Annexure "C") issued by the Superintendent (Tech), Central Excise, Division-III, Surat calling upon the petitioner to show cause why the total amount of Rs.40,90,972-47ps. erroneously refunded to the petitioner should not be recovered from the petitioner u/s 11A of the Central Excise & Salt Act, 1944 (hereinafter referred to as "the Act" or "the Excise Act").

Initially, while admitting the petition, the Court had granted ad-interim stay against the respondents restraining them from continuing the proceedings pursuant to the said show cause notice. Subsequently, by order dated 10.12.1991, the Court vacated the ex-parte ad-interim stay with a rider that while the authorities may proceed with the adjudication of the show cause notice, the order which may be passed shall not be implemented for 15 days in

order to enable the petitioner to move this Court for appropriate relief. The Court also clarified that the authorities shall proceed with the adjudication of the show cause notice without in any way influenced by pendency of the petition challenging the show cause notice.

Thereafter, the Assistant Collector heard the matter and passed the order-in-original dated 31.8.1992 (Annexure "H") confirming the demand of the aforesaid amount of Rs.40,90,972-47ps.. The petitioner moved this Court for amendment of the petition for challenging the said order dated 31.8.1992. The amendment was granted and that is how now the subject matter of the petition is challenge to the said order dated 31.8.1992 (Annexure "H") passed by the Assistant Collector of Central Excise, Division-I, Surat.

2. The facts leading to filing of this petition, briefly stated, are as under:-

2.1 On 14.9.1975, the petitioner filed a price list in accordance with Rule 173 of the Excise Act and declared the assessable value of the refrigerant gases as sold to one Hoechst Dyes and Chemicals Ltd. (hereinafter referred to as "the Hoechst"). By letter dated 23.9.1975, the Superintendent of the Central Excise, Surat alleged that the petitioner was "inter-connected" with the Hoechst and hence the assessable values claimed for approval were not acceptable. The petitioner thereupon filed a revised price list on 13.10.1975 under protest declaring the assessable values based on the price at which the Hoechst sold the goods in question to their customers. This was followed by the proceedings for declaring the petitioner as a "related person" to the Hoechst. The Collector of Central Excise & Customs, Baroda by letter dated 3.2.1977 held that the assessable value of the goods was to be determined by applying the relevant provisions of the Act for treating the petitioner as a related person to the Hoechst and accordingly excise duty was levied on the basis of the revised price list, that is, the duty was to be levied on the price at which the Hoechst sold the goods to their customers. The petitioner carried the matter in appeal before the Central Board of Excise and Customs which came to be transferred to the Customs, Excise & Gold (Control) Appellate Tribunal. By its order dated 26.11.1984 (Annexure "A"), the Tribunal held that the petitioner and the Hoechst were not related persons and further ordered "consequential relief to the petitioner". On the basis of the said order, on 17.12.1984 the petitioner applied for refund of duty "illegally levied and collected". In the meantime, the Department preferred an appeal before the Hon"ble Supreme Court being Civil Appeal No. 5022 of 1985, which came to be dismissed by order dated 6.12.1985 (Annexure "B"). Thereafter, on 31.3.1986 the petitioner was refunded the amount of duty to the tune of Rs.1,30,87,815-43 ps.. Within six months thereafter i.e. on 23.9.1986 by show cause notice (Annexure "C"), the Superintendent, Central Excise called upon the petitioner to show cause why the amount of Rs.40,98,972-47 ps. should not be recovered from the petitioner u/s 11A of the Excise Act on the following grounds:-

(i) The total refund amount of Rs.1,30,87,815-43 ps. (hereinafter referred to as

"Rs.1.30 crores") consisted of two components - Rs.12,56,977-64 ps. was the differential amount between the duty paid on the goods sold to the customers other than M/s. Hoechst and the duty finally payable by the petitioner as per the CEGAT order. The differential duty paid by the petitioner on the higher price charged by the petitioner from other customers is not refundable as the petitioner had paid the duty according to the approved price. The decision of the CEGAT was only in relation to the price between the petitioner and the Hoechst. Hence, the differential amount of duty pertaining to the other customers (other than Hoechst) worked out to Rs.12,56,977-64 ps. which was erroneously refunded to the petitioner. The work-sheet showing the details of the amount refunded in respect of the parties other than the Hoechst was enclosed as Annexure "A" to the show cause notice.

(ii) The show cause notice also called upon the petitioner to show cause why the amount of Rs.28,33,994-83 ps. erroneously refunded to the petitioner should not be recovered from the petitioner. This demand was made on the basis that the petitioner was refunded an amount of Rs.1,18,30,803-79 ps. pursuant to the decision of the CEGAT requiring the department to levy excise duty on the basis of the price at which the petitioner had sold the goods to the Hoechst and not on the basis of the price at which the Hoechst had sold the goods to the other customers. While stating that this was unjust enrichment, the show cause notice further proceeded on the basis that if the said refund amount of Rs.1.18 crores is treated as the additional price paid by the Hoechst to the petitioner, the duty element in the said sum worked out to Rs.28,33,994-83 ps.

Accordingly, aggregating Rs.12,53,977-64 and Rs.28,33,994-83 ps. the Department made a total demand of Rs.40,90,972-47 ps. as erroneously refunded to the petitioner and, therefore, sought to be recovered u/s 11A of the Act. The show cause notice also called upon the petitioner to produce all evidence on which the petitioner intended to rely in support of their defence.

2.2 As indicated above, initially the adjudication of the show cause notice was stayed by ex-parte stay order of this Court, and after it came to be vacated, the petitioner filed reply dated 28.1.1992 (Annexure "F") to the show cause notice raising preliminary contentions to the effect that the controversy was concluded by the decision of the CEGAT and also the final order of the Hon'ble Supreme Court which dismissed the Department's appeal against the CEGAT order and the refund was made as a consequential relief by such judicial orders. Therefore, refund cannot be considered as an erroneous refund within the meaning of Section 11A of the Act.

2.3 On merits, as regards the claim for Rs.12,56,977-64 ps., the petitioner stated as under:-

" the so-called "approved price" was a higher price than that ordinarily charged by the Noticee, only for the reason that the Noticee were compelled, during the relevant period, to show the said higher price in their price lists as forming the

basis for the assessable value in respect of the sales made even to customers other than M/s. Hoechst as they were compelled to file price list in Part IV by the Department on the basis that the Noticee and M/s. Hoechst were "related persons". The so-called "higher price" was in fact, the price charged by M/s. Hoechst to its customers. It is, therefore, submitted that in view of the said order of the Tribunal whereby the Noticees' Price to its customers was held as forming the correct basis for its assessable value, the Noticee were required to be granted and were correctly granted a refund of the entire differential duty amount paid on the basis of the said higher price of M/s. Hoechst, as the same price/assessable value even governed sales to the said other customers;

In the circumstances, it is submitted that the allegation that the "higher price" charged by the Noticee to other Customers was not refundable as the Noticee had paid duty according "approved prices" is completely misconceived as the said "higher price" was in fact "the approved price" as aforesaid. It is, therefore, submitted that the demand for Rs.12,56,977-65 is unsustainable and is required to be withdrawn in its entirety;"

2.4 As regards the demand for Rs.28,33,994-83, the petitioner submitted that the theory of undue or unjust enrichment would apply only when the assessee has claimed refund u/s 11B of the Act and not to a case where the duty has been paid under protest and has been ordered to be refunded as a consequential relief in view of the assessee having succeeded on merits before the appellate authority.

2.5 After hearing the petitioner's representative, the Assistant Collector of Central Excise, Surat passed the impugned order dated 31.8.1992 (Annexure "H"), which is under challenge in this petition.

3. While permitting amendment of the petition to challenge the said order dated 31.8.1992 confirming the demand of Rs.12,56,977-64 plus Rs.28,33,994-83, total Rs.40,90,972-47 as erroneously refunded to the petitioner u/s 11A of the Act, this Court required the petitioner to deposit an amount of Rs.12 lakhs and granted interim stay against recovery of the balance amount.

Affidavit-in-reply has been filed by the Deputy Collector of Central Excise, Division-I, Surat-I opposing the petition.

4. At the hearing of this petition, Mr SB Vakil, learned Senior Counsel with Ms PP Laheri have raised the following contentions:-

(i) The provisions of Section 11B of the Excise Act prohibiting refund of illegally recovered excise duty on the ground of unjust enrichment were inserted in the year 1991 and since the refund was already given to the petitioner in the year 1986, the said provisions were not applicable.

It is submitted that the doctrine of 'unjust enrichment' was a mere doctrine or a concept which had not attained the status of any binding legal rule and, therefore, the respondents were not justified in invoking such a doctrine for the

purpose of demanding any portion of the refund amount already paid by the Department to the petitioner on 31.3.1986.

The learned counsel has relied upon the decision of the Apex Court in *Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others*, and on the decision in *Hindustan Metal Pressing Works Vs. Commissioner of Central Excise, Pune*, in support of the contention that past finalised transactions could not be re-opened by holding that refund was erroneously granted as there was unjust enrichment.

(ii) The amount was refunded to the petitioner on 31.3.1986 without any condition and it was pursuant to the orders of the CEGAT and the Hon'ble Supreme Court. Hence, there was no question of any erroneous refund.

5. On the other hand, Mr Dhaval G Nanavati, learned Additional Standing Counsel for the Central Government has opposed the petition and made the following submissions:-

(i) The doctrine of unjust enrichment was applicable even before insertion of amended Section 11B by Amendment Act of 1991. The learned counsel has heavily relied on the principles laid down by the Apex Court as enumerated in paragraphs 52 to 56, 73 and 74 of the decision in *Mafatlal Industries Ltd. (supra)* and has submitted that the doctrine of unjust enrichment was applicable for long even prior to the 1991 (Amendment) Act.

It is submitted that the decisions relied upon by the majority in *Mafatlal Industries Ltd.* dated back to 1976 onwards. The learned counsel has also relied upon the principles enunciated in paragraph 108 of the judgment and the specific directions contained paragraph 109 of the majority judgment that the principles laid down in the judgment are applicable to all writ petitions, writ appeals or suits pending as on the date of the judgment i.e. 19.12.1996.

(ii) Although the amount of Rs.1.30 Crores was refunded to the petitioner on 31.3.1986, even as per the law which is applicable, the Department had the power u/s 11A to serve the show cause notice on the concerned person to show cause why he should not pay the amount of refund erroneously made. In the facts of the instant case, since the show cause notice was issued on 23.9.1986, it was well within the six month period provided by Section 11A and, therefore, the demand was in accordance with law.

6. Before dealing with the rival submissions, we may set out the relevant statutory provisions as applicable in 1986-87:-

11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. -

(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:

Explanation - 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.

(2) The Assistant Collector of Central Excise or, as the case may be, the Collector of Central Excise shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of duty of excise due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(3) For the purposes of this section -

(i) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used, in the manufacture of goods which are exported out of India ;

(ii) "relevant date" means, -

(a) (b)..... (c) in the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund.

11B. Claim for refund of duty -

(1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Collector of Central Excise before the expiry of six months from the relevant date.

Provided that limitation of six months shall not apply where any duty has been paid under protest.

(2) If on receipt of any such application, the Assistant Collector of Central Excise is satisfied that the whole or any part of the duty of excise paid by the applicant should be refunded to him, he may make an order accordingly.

(3) Where as a result of any order passed in appeal or revision under this Act refund of any duty of excise becomes due to any person, the Assistant Collector of Central Excise may refund the amount to such person without his having to make any claim in that behalf.

(4) Save as otherwise provided by or under this Act, no claim for refund of any duty of excise shall be entertained.

... Since amendment to the provisions of Section 11B was made in 1991, the amended provisions are not set out.

7. In *Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others*, the Apex Court has held that the principle of unjust enrichment was applicable even

before amendment of Section 11B in 1991 and that such principle was recognized as a legal principle in several decisions. In paragraphs 52 to 56 of the majority judgment rendered by Hon''ble Mr Justice Jeevan Reddy, the Apex Court has approved the principles enunciated in Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others, Amar Nath Om Prakash and Others Vs. State of Punjab and Others, and in State of Madhya Pradesh Vs. Vyankatlal and Another, The Court approved the principle laid down in Shiv Shankar Dal Mills case that though the refund of fee illegally collected may be legally due to the traders, the traders may be repaid amounts only to the extent they have not passed on the burden to their customers. To the extent they have passed on the burden to the customers, they were not entitled to get refund. This principle was deduced from the concept of distributive justice underlying Articles 38 and 39 of the Constitution of India as also from the discretionary nature of the power under Article 226 of the Constitution.

In paragraph 64 of the judgment, the majority also quoted with approval the following observations from the majority judgment of the Constitutional Court in Canada:-

"While it will take some time for the courts to work out the limits of the developing law of restitution, it is useful on this point to examine the American experience. Professor George C. Palmer, in his work, The Law of Restitution, makes the following comment (1986 Supplement, at p.255):

There is no doubt that if the tax authority retains a payment to which it was not entitled, it has been unjustly enriched. It has not been enriched at the taxpayer''s expense, however, if he has shifted the economic burden of the tax to others. Unless restitution for their benefit can be worked out, it seems preferable to leave the enrichment with the tax authority instead of putting the judicial machinery in motion for the purpose of shifting the same enrichment to the taxpayer."

The Hon''ble Supreme Court has accordingly held in Mafatlal Industries Ltd. (supra) as a matter of legal principle that the tax payer will not be entitled to be unjustly enriched by refunding to him the tax illegally recovered if he has shifted the economic burden of the tax to others and it seems preferable to leave the enrichment with the tax authorities instead of putting the judicial machinery in motion for the purpose of shifting the same enrichment to the tax payer.

8. At this stage, reference may be made to Section 12B inserted w.e.f. 20.9.1991, which reads as under:-

"12-B Presumption that incidence of duty has been passed on to the buyer.- Every person who has paid the duty of excise on any goods under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such goods."

The larger Bench has held in para 97 of the judgment in Mafatlal Industries" case

(supra) that Section 12B does not create a new presumption unknown till then; it merely gives statutory shape to an existing situation and even without Section 12B, the true position is the same that is the obligation to prove that duty has not been passed on to another person is always there as a precondition to claim of refund. The manufacturer has already collected the duty from his purchaser and has thus reimbursed himself. By applying for refund yet, he is trying to reap a windfall; deprivation of that cannot be said to be real or substantial prejudice or loss. A manufacturer had no vested legal right to get refund even when he had passed on the burden of duty to others. No law conferred such a right in him - not Article 265, nor Section 11B.

9. In view of the aforesaid legal principles, no fault can be found with the Collector in taking the view that since the petitioner had recovered the tax from its purchasers, the refund of the differential duty to the petitioner on the ground that it was illegally recovered was erroneous. Since the show cause notice u/s 11A calling upon the petitioner to show cause why the erroneously refunded amount of duty should not be recovered was issued within six months from the date of refund, the show cause notice was squarely covered by the provisions of Section 11A of the Excise Act even as it stood when the show cause notice was issued.

As indicated earlier in Mafatlal Industries case (supra), the Apex Court has held in no unmistakable terms that Section 12B raising a presumption that the manufacturer had passed on the burden of duty to the purchaser is not a new presumption and that the said presumption was available even earlier. The Apex Court has held in paragraph 97 of the majority judgment that, "the obligation to prove that duty has not been passed on to another person is always there as precondition to claim of refund".

Since the said presumption was, therefore, applicable even when the refund was given to the petitioner on 31.3.1986, the Collector was justified in issuing the show cause notice within six months from the date of refund u/s 11A that the petitioner had not led evidence to show that it had not passed on the burden to the purchaser/customer.

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10. Coming to the details about the amounts, the respondent-authorities required the petitioner to refund the amount of Rs.12,56,977-64ps. which was the amount of excise duty erroneously refunded to the petitioner in respect of the parties other than the Hoechst. The details of such amounts were given in Annexure "A" to the show cause notice dated 23.9.1986. This was the differential amount of duty which the petitioner-Company had already recovered from its purchasers other than the Hoechst and, therefore, having already passed on the incidence of excise duty to such purchasers, even if the differential duty was illegally recovered from the petitioner, the petitioner was not entitled to get the refund thereof. A perusal of the judgment dated 26.11.1984 (Annexure "A") of

the CEGAT indicates that the controversy which the CEGAT considered was whether the Collector had rightly held in his impugned order dated 3.2.1977 that sales of the goods manufactured by the petitioner and sold to the Hoechst were to be treated as sales to a "related person" within the meaning of clause (c) of sub-section (4) of Section 4 of the Excise Act and accordingly the assessable value should be determined with reference to the prices charged by Hoechst to its wholesale buyers and not at the prices at which the petitioner sold the said goods to Hoechst. However, after elaborately setting out the submissions made by the learned counsel for the petitioner-Company (the appellant before the Tribunal) in paragraphs 3 to 5 of its order, the Tribunal referred to the submissions of the learned Departmental Representative in one sentence, "Shri Jain, the learned SDR has not been able to refute any of the arguments advanced by Shri Engineer" (for the appellant). Thereafter, the Tribunal gave the following reasons and finding and passed the order:-

"We find substance in the submissions made by the learned counsel for the appellants which are principally based on the Supreme Court decision, reported in 1984 ECR 1237 (Union of India and others vs. Atic Industries Ltd.). For these reasons

7. In the result, we accept this appeal and set aside the impugned order passed by the Collector. The consequential relief which flows as a result of the decision be given to the appellants."

The Tribunal, thus, set aside the order dated 3.2.1977 of the Collector and accordingly all that can be said is that the Tribunal held that the sales of the goods manufactured by the petitioner and sold to Hoechst were not to be treated as sales to a related person and accordingly the assessable value of such sales to Hoechst should be determined with reference to the prices at which the petitioner sold the said goods to Hoechst and not with reference to the prices charged by Hoechst to its wholesale buyers. In view of the above, the only consequential relief which flowed as a result of the Tribunal's decision was refund of the differential excise duty paid by the petitioner on the goods sold by the petitioner to Hoechst. The Tribunal had not given any finding about the differential duty paid on the goods sold by the petitioner to other parties (that is parties other than Hoechst).

In view of the above, the Assistant Collector was justified in holding, after issuing show cause notice within six months from the date of refund, that the amount of Rs.12,56,977-64ps. was erroneously refunded to the petitioner although the burden was passed on by the petitioner to those other parties and, therefore, there was unjust enrichment.

11. Coming to the second component of the demand under challenge i.e. Rs.28,33,994-83 ps. the factual position is as under:-

Since the CEGAT had held in favour of the petitioner that the assessable value was required to be determined with reference to the price at which the petitioner

sold the goods to Hoechst and not with reference to the price charged by Hoechst to its wholesale customers and consequential relief flowing out of the said decision was required to be given to the petitioner, the respondent-authorities refunded the differential duty of Rs.1,18,30,803-79ps. (Rs.1.18 Crores) to the petitioner on 31.3.1986. Within six months thereafter, the respondent-authorities realized that since the burden of such differential duty was already passed on or was presumed to have been passed on by the petitioner to Hoechst, what the petitioner h..R of goods (Rs. x) but also such differential amount of Rs.1.18 Crores and, therefore, the actual price received by the petitioner from Hoechst was Rs.x + Rs.1.18 Crores. Hence, the petitioner was required to pay excise duty on the said amount of Rs.1.18 Crores also. The Department's case can be better appreciated by considering the following illustration with small rounded off figures:-

Duty	Refund	charged	Sale price Excise by petitioner to Hoechst	Rate of Excise Duty
(a) Rs.100	30%	Rs.30	-----	by Hoechst to its wholesale buyers Rs.
Rs Rs	(b) Rs.140	30%	Rs.42	42 - 30 = 12

The petitioner had not led any evidence to show that the burden of excise duty was not passed on to Hoechst.

Contractual price Excise Duty

Hence, what the petitioner Rs.100 + Rs.42 received from Hoechst was

Since the petitioner had not produced any evidence to show that the burden of excise duty of Rs.42/- was not passed on to Hoechst, the excise duty of Rs.42/- was paid by Hoechst, out of which, the petitioner received refund of Rs.12/- from the Department and, therefore, what the petitioner effectively received from Hoechst was Rs.100/- + Rs.12/- = Rs.112/-. Hence, at the 30% rate, excise duty payable on the goods in question was Rs.33.60 (Rs.30 + Rs.3.60). Since the duty of Rs.30/- was already received by the Revenue (Rs.42 received earlier and Rs.12 refunded), the Revenue is now demanding excise duty of Rs.3.60 ps. on the component of Rs.12/-.

Once the aforesaid illustration is appreciated, it is clear that what the Revenue has claimed from the petitioner is much less than what the Revenue could have claimed from the petitioner by way of unjust enrichment but the Revenue confined its demand to excise duty on the differential amount of Rs. 1.18 Crores which the petitioner had unjustly received. The demand of Rs. 28,33,994-83 ps. in the impugned show cause notice and the impugned order is thus relatable to the demand of Rs. 3.60 in the aforesaid illustration.

12. Having carefully considered the submissions urged by the learned counsel for

the petitioner, we are unable to find any fault with the revenue's case that all that it has charged from the petitioner is the excise duty on the amount of Rs.1.18 Crores which the petitioner received over and above the contractual sale price which the petitioner had received from Hoechst.

13. At this stage, we may refer to the decision of the Apex Court in Hindustan Metal Pressing Works Vs. Commissioner of Central Excise, Pune, which is strongly relied upon by Mr Vakil for the petitioner. That was a case where the refund of excise duty paid in excess was granted in 1988-89. When the Revenue sought to recover that excess amount, after referring to the fact that refund was paid in 1989 before the amendment came into force, the Apex Court gave the following reasons:-

(i) Considering Rules 173-F and 173-I of the Rules and Section 11A of the Act, the Apex Court in Serai Kella Glass Works (P) Ltd. vs. CCE (1997 (4) SCC 641, paras 15-16) held that the assessee is entitled under Rule 173-F to determine his liability for duty on the excisable goods manufactured by him and to remove such goods on payment of duty on self-assessment in accordance with the provisions laid down in the Rules. But this is only the first step in making of the assessment. The proper officer is empowered to assess the duty on the goods so removed by the assessee and complete the assessment on the return filed by the assessee. A copy of the return so computed by the proper officer has to be sent to the assessee. The duty assessed and paid by the assessee on self-assessment will be set off against the duty assessed by the proper officer. If the duty on final assessment payable by the assessee is less than what he has actually paid, the assessee is entitled to take credit in the account-current for the excess payment. No question of any show-cause notice u/s 11A arises at this stage.

(ii) Further, similar contention was specifically dealt with in Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, in the following terms (in SCC p.1630, para 104) :-

"104. Rule 9-B provides for provisional assessment in situations specified in clauses (a), (b) and (c) of sub-rule (1). The goods provisionally assessed under sub-rule (1) may be cleared for home consumption or export in the same manner as the goods which are finally assessed. Sub-rule (5) provides that 'when the duty leviable on the goods is assessed finally in accordance with the provisions of these Rules, the duty provisionally assessed shall be adjusted against the duty finally assessed, and if the duty provisionally assessed falls short of or is in excess of the duty finally assessed, the assessee shall pay the deficiency or be entitled to a refund, as the case may be'. Any recoveries or refunds consequent upon the adjustment under sub-rule (5) of Rule 9-B will not be governed by Section 11A or Section 11B, as the case may be."

14. In the facts of the instant case, the petitioner is not invoking Rule 9B or Rules 173F and 173I. The refund was not granted on final assessment reducing the duty determined under provisional assessment. The amount erroneously

refunded on 31.3.1986 was demanded by a show cause notice issued within six months i.e. by 23.9.1986. Even as per the provisions of Section 11A as they stood at the relevant time in the year 1986, it was open to the revenue within six months from the date of refund, to serve notice on the petitioner to whom the refund was erroneously made on 31.3.1986, requiring the petitioner to show cause why the petitioner should not pay the amount erroneously refunded to the petitioner. We have already held in paras 7 and 8 hereinabove that in the Mafatlal Industries" case (supra), the Apex Court has already held that the principle of unjust enrichment was applicable even before the amendment of Section 11-B in 1991.

15. We have also noticed the caveat sounded by the Apex Court that the principle laid down in a decision is to be read in the context of the facts of that case.

In Union of India (UOI) Vs. Chajju Ram (Dead) by Lrs. and Others, the Apex Court has laid down that - "it is now well settled that a decision is an authority for what it decides and not what can logically be deduced therefrom. It is equally well settled that a little difference in facts or additional facts may lead to a different conclusion."

In Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, the Apex Court has made the following pertinent observations:-

"19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of Courts are not to be construed as statutes."

16. In view of the above discussion, we find no merit in any of the submissions urged on behalf of the petitioner.

17. The petition is, therefore, dismissed. Rule is discharged.

The amount of Rs.12 lakhs deposited by the petitioner pursuant to the interim order dated 21.12.1993 shall be adjusted against the amount of Rs.40,90,972-47 ps. as adjudicated under the impugned order dated 31.8.1992.

The interim order granting stay against recovery of the balance amount is hereby vacated and the petitioner shall pay the balance amount by 31st July 2004.

18. At this stage, Ms Archana Acharya, learned advocate appearing for Mr Vakil and Ms Laheri for the petitioner-Company requests that the interim relief granted earlier may be continued for some time in order to enable the petitioner-Company to have further recourse in accordance with law.

Since we have already granted adequate time to the petitioner to pay the balance amount to the respondents, it is not necessary to continue the interim

relief. Hence the said request is declined.