

(1979) 09 MAD CK 0013

In the Madras High Court

Case No : Writ Petition No's. 436, 550, 551 and 2467 of 1977, 1006, 1016, 1625 and 4513 of 1978 and 978, 1685 and 2483 of 1979

Sakthi Sugars Limited

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-09-1979

Acts Referred:

Central Excise Rules, 1944 — Rule 10, 10A, 173J, 8, 8(1)
Central Excises and Salt Act, 1944 — Section 3, 3(1), 35, 35A, 36
Constitution of India, 1950 — Article 226, 229
Evidence Act, 1872 — Section 115
Imports and Exports (Control) Act, 1947 — Section 3
Limitation Act, 1963 — Section 12, 12(2)

Citation : (1980) CENCUS 505 : (1983) 12 ELT 484

Hon'ble Judges : Varadarajan, J

Bench : Single Bench

Advocate : T.T. Vijayaraghavan and G. Gopinath, for the Appellant; U.N.R. Rao and K.N. Balasubramaniam, for the Respondent

Final Decision : Allowed

Judgement

Varadarajan, J.—These writ petitions have been filed by some manufacturers of sugar under Article 226 of the Constitution of India. W.P. No. 436 of 1977 has been filed by Messrs Sakthi Sugars Ltd, Coimbatore, for the issue of a writ of certiorified Mandamus calling for the records of the second respondent, the Superintendent of Central Excise, Bhovani, relating to his order dated 8-6-1976 in O.C. No. 2124 of 1976 in relation to the grant of excise duty rebate under the Government of India's notification dated 12-10-1974, for the sugar year 1974-75, and quashing that order and directing the second respondent and the first respondent, the Union of India, represented by the Collector of Central Excise, Madras, to give credit to a sum of Rs . 20,64,531-23 in the petitioner's account P.L.A. No. 29 (Sugar).

2. W.P. No. 550 of 1977 is by Messrs Aruna Sugars Ltd, Pennadar, South Arcot

district, for the issue of a writ of Mandamus or any other appropriate writ or order calling for the records relating to the application of the petitioners dated 20-3-1976 to the second respondent, the Assistant Collector of Central Excise, Pondicherry, relating to excise duty rebate of Rs. 11,10,828, granted under the Government of India's Notification dated 12-10-1974, for the sugar year 1974-75 and directing the second respondent to give credit for the said sum of Rs. 11,10,828, in the petitioners' account P.L.A. (Sugar).

3. W.P. No. 551 of 1977 is by the same Messrs. Aruna Sugars Ltd, for the issue of a certiorified Mandamus calling for the records of the respondents relating to the Chief Accounts Officer's Order dated 21-5-1976 in C. No. IV/16/ 236/76 RF refusing the grant of excise duty rebate under the Government of India's notification dated 12-10-1974 for the sugar year 1974-75 and quashing the said order dated 21-5-1976 and directing the second respondent and the first respondent, the Union of India represented by the Collector of Central Excise, Madras, to give credit to a sum of Rs. 2,00,308/- in the petitioners' account P.L.A. (Sugar).

4. W.P. No. 2467 of 1977 is by M/s. E.I.D. Parry (India) Limited, for the issue of a certiorified mandamus calling for the records of the respondents relating to the order of the second respondent, the Assistant Collector of Central Excise, Pondicherry, dated 28-5-1977 in C. No. V/I/18/29/75 M.P. II regarding the grant of excise duty rebate under the Government of India's notification dated 12-10-1974 for the sugar year 1974-75 and quashing that order and directing the second respondent and the first respondent, the Union of India represented by the Collector of Central Excise, Madras, to give credit in the petitioners' account P.L.A (Sugar) for an additional sum of Rs. 13,96,968.81.

5. W.P. No. 1006 of 1978 is by M/s. Deccan Sugar & Abkhari Company Limited, for the issue of a writ of certiorari or any other appropriate writ or order calling for the records relating to the order of the third respondent, the Assistant Collector of Central Excise, Trichirapalli, dated 28-2-1978 in C. No. V/I/3/3/77 demanding payment of Rs. 14,20,240.80 and quashing that order.

6. W.P. No. 1016 of 1978 is by M/s. Cauvery Sugars & Chemicals Limited, Madras, for the issue of a writ of certiorari or any other appropriate writ or order calling for the records relating to the order of the third respondent, the Assistant Collector of Central Excise, Trichirapalli, dated 1-3-1978 in C. No. V/I/3/2/77 demanding payment of a sum of Rs. 14,59,040/- and quashing the order.

7. W.P. No. 1625 of 1978 is by M/s. Deccan Sugar & Abkhari Company Limited, for the issue of a writ of certiorari or any other appropriate writ or order calling for the records of the second respondent, the Assistant Collector of Central Excise, Trichirapalli, relating to his order dated 23-4-1977 in C. No. V/I/30/12/73 Volume II to the effect that excise duty rebate to the extent of Rs. 6,46,192.32 has been credited in the petitioners' P.L.A. account erroneously and that the petitioners may show cause as to why that amount should not be recovered and

the order of the Appellate Collector of Central Excise dated 1-4- 1978 in Appeal No. 94/77/M.D. C. No. V/I/77 confirming the Assistant Collector's order dated 23-4-1977 and quashing those orders.

8.. W.P. No. 4513 of 1978 is by M/s. Kothari Sugars & Chemicals Limited, Madras, for the issue of a writ of certiorari or any other appropriate writ or order calling for the records of the Assistant Collector of Central Excise, Trichirapalli, the third respondent, relating to his order dated 18-2-1978 in C.A. No. V/I/3/177 for the sugar year 1972-73 and the order dated 17-8-1978 of the Appellate Collector of Central Excise, Madras, the second respondent, in A. No. 64/78/M.D.-C. No. V/I/11/78 and quashing those orders.

9. W.P. No. 978 of 1979 is by M/s. New Horizon Sugar Mills Private Limited, Pondicherry, for the issue of a certiorified mandamus or any other appropriate writ or order calling for the records relating to the order of the Assistant Collector of Central Excise, Pondicherry, the second respondent, dated 22-6-1977 in C. No. IV/16/134/76 M.P. II to the effect that excise duty rebate of Rs. 21,46,400 has been erroneously credited in the P.L.A. account of the petitioners and asking the petitioners to repay that amount, as confirmed by the Appellate Collector of Central Excise, Madras, the third respondent, by his order dated 16-1-1979 in A. No. 437/77(M)-7/1/35/77 and quashing those orders.

10. W.P. No. 1685 of 1979 is by M/s. South India Sugars Limited, Mundiypakkam, South Arcot District, for the issue of a writ of certiorari or any other appropriate writ or order calling for the records relating to the order of the Assistant Collector of Central Excise, Pondicherry, the second respondent, dated 22-6-1977 in C. No. C IV/16/134/76 M.P. II to the effect that excise duty rebate of Rs. 18,98,450.40 had been erroneously credited in the P.L.A. account of the petitioners and that the petitioners should repay that amount, as confirmed by the Appellate Collector of Central Excise, Madras, the third respondent, by his order dated 16-1-1979 in A. No. 549/77 (M) C.No. V/I/4/77 and quashing those orders.

11. W.P. No. 2483 of 1979 is by M/s. Maduranthakam Co-operative Sugar Mills Limited, Padalam, Chingleput District, for the issue of a writ of certiorari or any other appropriate writ or order calling for the records of the Assistant Collector of Central Excise, Vellore, the second respondent relating to his order dated 4-3-1977 in C. No V/I/2/3/76 to the effect that excise duty rebate of Rs. 6,00,840/- has been erroneously credited in the P.L.A. account of the petitioners and that the amount should be repaid by the petitioners as confirmed by the Appellate Collector, Central Excise, Madras, the third respondent, by his order dated 16-1-1979 in A. No. 142/77 and quashing those orders.

12. Mr. G. Gopinath appears for the writ petitioners in W.P. No. 1685 of 1979. Mr. T.T. Vijayaraghavan appears for the writ petitioners in all the other writ petitions. Mr. U.N. R. Rao, appears for the respondents in W.P. No. 436, 550 and 2467 of 1977. Mr. K.N. Balasubramanian appears for the respondents in all the other writ

petitions.

13. The petitioners are sugar factories producing sugar. u/s 3 of the Central Excises and Salt Act, 1944, hereinafter to be referred to as "the Act", duty is payable in respect of sugar manufactured by the producers. u/s 37 of the Act, the Government of India have power to frame Rules for working the provisions of the Act. Under Rule 8 of the Rules framed in exercise of that power, it is open to the Government to grant rebate either wholly or in part in respect of the excise duty payable in respect of the sugar manufactured. Sugar is produced between the period from 1st October of one year to 30th September of the subsequent year, known as "Sugar Year". During certain months of the sugar year, it is not possible to produce any sugar at all or as much sugar as could be produced in the other months of the sugar year. The Government of India gave rebate in excise duty to see that during those lean months sugar is produced in sufficient quantity. The Central Government has been issuing notification from time to time from the sugar year 1970-71 granting rebate in excise duty subject to certain terms and conditions. The Indian Sugar Manufacturers' Association, New Delhi, has its branch Associations in different States. According to the petitioners, in 1971 that Association, hereinafter referred to as "ISMA", obtained legal opinion and asked the Central Government about the correctness of that opinion in respect of the notification issued by the Central Government for granting rebate in excise duty and the Central Government replied that opinion was correct. In 1972 also, similar thing was done and the Central Government also stated that the opinion of the ISMA was correct. According to the petitioners, the factories worked hard and produced more sugar in the lean months of certain sugar years in view of those notifications and confirmation of the opinion obtained by ISMA in respect of the notification.

14. W.P. Nos. 436, 550 and 2467 of 1977 relate to the sugar year 1974-75 and concern item 2 of the Central Government's notification dated 12-10-1974. Item 2 of that notification reads thus:

"In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts sugar, described in column (2) of the Table below and falling under sub-item (1) of Item No. 1 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from so much of the duty of excise leviable thereon as is specified in the corresponding entry in columns (3) and (4) of the said Table.

TABLE

S. Description of sugar	Duty of excise	No. Free sale	Levy	Sugar
(1)	(2)	(3)	(4)	

2.	Sugar produced in a factory during the period commencing on the 1st day of December, 1974, and ending with the 30th day of September 1975, which is in excess of the average production of the corresponding period of the preceding five sugar years, that is-	(a)	on	
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excess production upto 7.5% Rs. 20/- per Rs. 5/- per quintal. quintal. (b) on excess production on the next Rs. 40/- per Rs. 10/- per 10% quintal quintal. (c) on excess production on the next Rs. 50/- per Rs. 14/- per 10% quintal. quintal. (d) on excess production on the next Rs. 60/- per Rs. 18/- per 10% quintal quintal. (e) on excess production beyond Rs. 82/- per Rs. 22/- per 37.5% quintal. quintal.

Explanation : In this notification

1. (a) "average production", in relation to sugar produced in a period by a factory which had gone into production for the first time in 1967-68 or earlier, means the simple average production during the corresponding period of the preceding five sugar years.

... .. 3. In the case of a factory which has gone into production for the first time after 1967-68, the first two years of production shall not be taken into account while computing average production of the preceding five sugar years."

15. In the sugar year 1974-75, the petitioners in W.P. Nos. 436, 550 2467 of 1977 produced sugar in excess of the average produced in the corresponding period of the preceding five years and they applied for rebate on the basis that they are entitled to rebate at Rs. 20/- per quintal regarding free sugar and Rs. 5/- per quintal regarding levy sugar in respect of 7.5% of the excess produced and at the other rates specified in the notification for the other slabs of sugar produced in excess of the average production. Thus calculated the rebate to which the petitioners in these writ petitions will be entitled would be Rs. 53,00,335.68, Rs. 26,35,142.80 and Rs. 34,54,170.49 respectively and they applied for credit for these amounts in their P.L.A. accounts. But the Excise Authorities held that the rebate to which the petitioners will be entitled would be only Rs. 32,35,803.76, Rs. 15,24,314/- and Rs. 20,57,201.68 respectively on the basis of the interpretation on the notification put by the respondents, namely that the rebate was payable in respect of the different slabs on the basis of the percentage which the excess production bears to the average annual production in the preceding five years, and they were credited with these amounts in the accounts. The writs of mandamus prayed for in these three writ petitions are to direct the respondents to give credit in the P.L.A. accounts of the petitioners for the difference between the amounts, namely between Rs. 53,00,335.68 and 32,35,803.76 i.e. Rs. 20,64,531.93 in W.P. No. 436 of 1977, between Rs. 26,35,142.80 and Rs. 15,24,314 i.e., Rs. 11,10,828 in W.P. No. 550 of 1977 and between Rs. 34,54,170.49 and Rs. 20,57,201.68 i.e., Rs. 13,96,968.81 in W.P. No. 2467 of 1977.

16. In these three writ petitions, namely W.P. Nos. 436, 550 and 2467 of 1977, it is contended that the notification must be interpreted in the way in which it was originally interpreted by the Central Government itself, namely that the different slabs of rebate must be calculated on the excess produced over the average production of sugar in the preceding five years and not on the basis of the percentage which the excess bears on the average production in the preceding

five years.

17. In the counter affidavit in these three writ petitions, it is contended that the interpretation of the notification must be in the manner adopted by the respondents, that an appeal lies from the order of the Superintendent of Central Excise who passed the order revising the rebate as Rs. 32,350,803.76, Rs. 15,24,314 and Rs. 20,57,201.68 to the Appellate Collector, Central Excise, Madras, and that since the petitioners have not exhausted that alternative remedy, these writ petitions are not maintainable.

18. W.P. Nos. 551 of 1977 and 978 of 1979 are for the issue of writs of certiorarified mandamus and W.P. Nos. 1006, 1016, 1625 and 4513 of 1978 and 1685 and 2483 of 1979 are all for the issue of writs of certiorari. W.P. Nos. 551 of 1977 and 1625 of 1978 relate to item 1 of the notification dated 12-10-1974 ; W.P. Nos. 1006, 1016 and 4515 of 1978 relate to item 1 of the notification dated 28-9-1972 ; and W.P. Nos. 978, 1685 and 2483 of 1979 relate to item 3-A, item 4 and item 1 respectively of the notification dated 4-10-1973 as amended by notification dated 20-4-1974.

19. Item 1 of the notification dated 12-10-1974 relating to W.P. Nos. 551 of 1977 and 1685 of 1978 reads :

"In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts sugar, described in column (2) of the Table below and falling under sub-item (1) of Item No. 1 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) ,from so much of the duty of excise leviable thereon as is specified in the corresponding entry in columns (3) and (4) of the said Table.

TABLE

S.	Description of sugar	Duty of excise	Free Sale	Levy	Sugar
(1)	(2)	(3)	(4)		

1.	Sugar produced in a factory during	Rs. 60/-per	Rs.16/-per	the period commencing on the 1st day	quintal. quintal, of
	October, 1974, and ending with the 30th day of November, 1974, in excess of				
	the average production of the corresponding period of the preceding five years				
	in respect of which (a) the overall production of the factory for the entire, sugar				
	year does not equal the average pro- duction of the preceding five sugar				
	years, (b) the overall production of the Rs. 82/- per Rs. 22/- per factory for the				
	entire sugar year quintal. quintal, equals or exceeds the average pro- duction of				
	the preceding five sugar years.				

Explanation : In this notification

1, (a) "average production", in relation to sugar produced in a period by a factory which had gone into production for the first time in 1967-68 or earlier, means the simple average production during the corresponding period of the preceding five sugar years.

... .. 4. Where production in one or more sugar years among five sugar years was nil, the production in such sugar year or sugar years shall be ignored and the average production shall be the average of the production of the corresponding period of the remaining sugar years.

5. Nothing contained in this notification shall apply to a factory which has been producing sugar only for three years or less."

20. In W.P. Nos. 1006, 1016 and 4513 of 1978, we are concerned with item 1 of the notification dated 28-9-1972 which reads :

"In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts sugar, described in column (2) of the Table below and falling under sub-item (1) of item No. 1 of the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944), from so much of the duty of excise leviable thereon as is specified in the corresponding entry in column (3) of the said Table.

TABLE

S. Description of sugar	Duty of excise	No.	(1)	(2)	(3)
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1. Sugar produced in a factory during the period commencing from the first day of October, 1972 and ending with the 30th day of November 1972 which is in excess of the quantity of sugar produced during the corresponding period in 1971. Rs. 40/- per quintal. ... Provided that the exemption under this notification shall not be admissible to a factory : (a) which did not work during the base period, or (b) which had only a trial run in the base period, or (c) which commences production for the first time on or after the 1st day of October, 1972." ...

21. In W.P. Nos. 1685 and 2483 of 1979, we are concerned with items 4 and 1 respectively of the notification dated 4-10-1973 which reads :

"In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules 1944, the Central Government hereby exempts sugar, described in column (2) of the Table below and falling under sub-item (1) of Item No. 1 of the First Schedule to the Central Excises and Salt Act 1944 (1 of 1944), from so much of the duty of excise leviable thereon as is specified in the corresponding entry in column 3 of the said Table,

TABLE

S. Description of Sugar	Duty of excise	No.	(1)	(2)	(3)
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1. Sugar produced in a factory during Forty rupees per the period commencing from the 1st quintal. day of October, 1973 and ending with the 30th day of November, 1973, which is in excess of the quantity of sugar produced during

the corresponding period in 1972. 4. Sugar produced in a factory during Twenty rupees per the period commencing from the quintal. 1st day of July, 1974, and ending with the 30th day of September, 1974, which is in excess of the quantity of sugar produced during the corresponding period in 1973 : _____

Provided that the exemption mentioned against serial numbers 1 to 4 of the said Table shall not be admissible to a factory which did not work during the base period.

... Explanation :

In this notification, the expression, "base period" means the period commencing from the 1st day of October, 1972, and ending with the 30th day of September, 1973."

22. In W.P. No. 978 of 1979, we are concerned with item 3-A of the notification dated 4-10-1973 as amended by the notification dated 20-4-1974 which reads :

"In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules 1944, the Central Government hereby makes the following amendment to the notification of the Government of India in the Ministry of Finance (Department Revenue & Insurance) No. 189/73- Central Excise, dated the 4th October, 1973 namely :-

3.A Sugar produced in a factory during the period Forty rupees per quintal commencing from the 1st day of May 1974 and ending with the 30th day of June, 1974, which is in excess of 180% of the quantity of sugar produced during the corresponding period in 1973.

23. We are concerned in W.P. No. 551 of 1977 with item 1 of the notification dated 12-10-1974 which relates to sugar produced during October and November 1974 in excess of the average production in the corresponding period of the preceding five years. Excise duty rebate for Rs. 4,23,800/- under item I(a) of the notification was granted to the petitioners in that writ petition by credit being given therefore in their P.L.A. account, though there was no production during the corresponding period October and November during the preceding five years. The petitioners made a supplemental claim before the Assistant Collector, Central Excise, Pondicherry, for Rs. 2,00,308/- in respect of the excess sugar produced during October and November 1974 under item I(b) of the same notification dated 12-10-1974. But the Inspector of Central Excise, Vridhachalam, by his letter dated 19-8-1975 asked the petitioners to refund the sum of Rs. 4,23,800/- for which credit had already been given, on the ground that there was no production of sugar during the corresponding months of the previous five years. The petitioners requested the Collector of Central Excise, Madras, and the Central Board of Revenue, New Delhi, for the withdrawal of the said letter dated 19-8-1975 and to allow the supplemental claim for Rs. 2,00,308/-. Both the requests were turned down by the authorities.

24. In W.P. No. 1625 of 1978, we are concerned with item 1 of the notification dated 12-10-1974 which also relates to the sugar produced during October and November 1974 in excess of the average production of sugar during the corresponding period of preceding five years. There was no production in the factory of the petitioners in this writ petition during October and November of the sugar years 1969-70 and 1971-72. Excise duty rebate of Rs. 12,56,672.92 was originally granted to the petitioners in this writ petition for the excess production during October and November 1974 even though there was no production of sugar during October and November in some of the preceding five years. Subsequently, the Assistant Collector of Central Excise, Trichirapalli, issued a notice dated 15-7-1975 to the petitioners stating that the petitioners were entitled to a lesser sum on the basis of a different interpretation of the notification and that a sum of Rs. 6,46,192.32 had been paid in excess erroneously and asking the petitioners to repay the same by his order dated 23-4-1977 That order was confirmed on appeal by the Collector of Central Excise, Madras, by his order dated 1-4-1978.

25. We are concerned with item 1 of the notification dated 28-9-1972 in W.P No. 1006 of 1978 which relates to sugar produced during October- November 1972 in excess of the quantity of sugar produced during the corresponding period in 1971. Excise duty rebate of Rs. 14,20,240.80 was allowed to the petitioners in this writ petition by crediting the amount in their P.L.A. account for the excess sugar produced during October and November 1972. Subsequently, the Superintendent, Central Excise, Karur, issued a show-cause notice to the petitioners asking them to show cause why the amount should not be recovered, on the ground that it had been erroneously credited in the account of the petitioners, in the view that the petitioners were not entitled to the rebate because there was no production during October and November 1971. The Assistant Collector, Central Excise, Trichirapalli, confirmed that demand by his order dated 28-2-1978.

26. In W.P. No. 1016 of 1978 also, we are concerned with item 1 of the notification dated 28-9-1972 which relates to sugar produced during October and November 1972 in excess of the quantity of sugar produced during the corresponding period of 1971. The petitioners were credited with the excise duty rebate of Rs. 14,59,040/- in their P.L.A. account for the excess sugar produced during October and November 1972. Subsequently, the Superintendent of Central Excise, Trichirapalli, issued a notice dated 16-5-1977 asking the petitioners to show cause why the amount should not be recovered under Rule 10-A of the Rules on the ground that there was no production of sugar during October and November 1971 and the excise duty rebate had been erroneously credited in the account of the petitioners. The Assistant Collector of Central Excise, Trichirapalli, confirmed the demand by his order dated 1-3-1978.

27. In W.P. No. 4513 of 1978 also we are concerned with item 1 of the notification dated 28-9-1972 which relates to sugar produced during October and

November 1972 in excess of the quantity produced during the corresponding period in 1971. Excise duty rebate of Rs. 3,67,160/- was credited in the P.L.A. account of the petitioners, on 31-1-1973 in respect of the sugar produced in October and November 1972. Subsequently, the Superintendent of Centra Excise issued a show cause notice dated 16-5-1977 for recovery of the amount on the ground that it was erroneously credited and that they were not entitled to the rebate because there was no production during October and November 1971. The Assistant Collector of Central Excise, Trichirapalli, confirmed the demand by his order dated 18-2-1978 saying that the amount was liable to be recovered under Rule 10-A of the Rules. This order was confirmed in appeal by the Appellate Collector of Central Excise, Madras, by his order dated 17-8-1978.

28. In W.P. No. 978 of 1979, we are concerned with item 3-A of the notification dated 4-10-1973 introduced in that notification by the amendment notification dated 20-4-1974 which relates to sugar produced during May and June 1974 in excess of 180% of the quantity of sugar produced in the corresponding period of 1973. Excise duty rebate of Rs. 21,46,400/- was granted to the petitioners by the Chief Accounts Officer, Central Excise, Madras, on 1-1-1975, though in the particulars produced by the petitioners along with their claim for rebate, it was clearly stated by the petitioners that there was no production of sugar during May and June 1973. Subsequently, the Assistant Collector, Central Excise, Pondicherry, issued a notice dated 30-6-1976 calling upon the petitioners to show cause why the amount should not be recovered, on the ground that it had been erroneously credited and that the petitioners were not entitled to the same because there was no production during May and June 1973. Rule 10 of the Rules relied upon in that notice dated 30-6-1976 was subsequently substituted by Rule 10-A in the letter dated 26-3-1977 of the Assistant Collector, Central Excise, Pondicherry. The Assistant Collector, Central Excise, Pondicherry, rejected the petitioners' contention that they were entitled to the rebate notwithstanding the fact that there was no production of sugar during May and June 1973, by his order dated 22-6-1977 which has been confirmed by the Collector of Central Excise, Madras, by his order dated 16-1-1979 on appeal.

29. In W.P. No. 1685 of 1979, we are concerned with item 4 of the notification dated 4-10-1973 which relates to sugar produced during August and September 1974 in excess of the sugar produced during the corresponding period in 1973. Excise duty rebate of Rs. 18,98,450.40 was credited in the P.L.A. account of the petitioners on 8-11-1974 in respect of the sugar produced in August and September 1974 though the particulars produced by the petitioners with their claim for the rebate showed that the quantity of sugar produced during the corresponding period in 1973 was "nil". Subsequently the Assistant Collector, Central Excise, Pondichcricy, issued a notice dated 30-6-1976 calling upon the petitioners to show cause why the amount should not be recovered on the ground that the rebate has been erroneously allowed and that the petitioners are not entitled to any rebate because there was no production of sugar in the corresponding period in 1973. On 26-3-1977, the Assistant Collector, Central

Excise, Pondicherry, substituted Rule 10-A for Rule 10 mentioned in the notice dated 30-6-1976. The Assistant Collector, Central Excise, Pondicherry, directed repayment of the entire amount by his order dated 22-6-1977 which, was confirmed, on appeal, by the Appellate Collector of Central Excise, Madras, by his order dated 16-1-1979.

30. We are concerned with item 1 of the notification dated 4-10-1973 in W.P. No. 2483 of 1979 which relates to the sugar produced during October and November 1973 in excess of the sugar produced during the corresponding period in 1972. Excise duty rebate of Rs. 6,00,840/- was granted to the petitioners by the Assistant Collector, Central Excise, Vellore, by his order dated 11-11-1974 by crediting the same in their P.L.A. account, even though the petitioners had stated in the particulars furnished by them along with their claim for rebate that there was no production of sugar during October and November 1972. The Superintendent of Central Excise, Kancheepuram, demanded repayment of the entire rebate of Rs. 6,00,849/- by his letter dated 26-8-1976 on the ground that credit had been given for that amount erroneously and that the petitioners are not entitled to any rebate because there was no production of sugar during October and November 1972. The Assistant Collector of Central Excise, Vellore, issued a notice dated 26-11-1976 calling upon the petitioners to show cause why the demand made by the Superintendent of Central Excise, Kancheepuram, should not be confirmed and confirmed the same by his order dated 4-3-1977 which was in turn confirmed on appeal by the Appellate Collector, Central Excise, Madras, by his order dated 16-1-1979.

31. The ground urged in W.P. No. 551 of 1977 is that even if there was no production of sugar during October and November in each of the preceding five years, the petitioners will be entitled to claim excise duty rebate on the excess sugar produced during October and November 1974 on the basis that the average production during those two months in the previous five years was "nil".

32. The ground urged in W.P. No. 1625 of 1978 is that the average production during October and November of the previous five years must be worked out treating the production during October and November of 1969 and 1971 as "nil", that in the previous sugar years 1971-72 and 1972-73 the Government of India interpreted somewhat similar notifications saying that "nil" production in the months of October and November in some of the preceding five years should be taken into account for arriving at the production, that the petitioners proceeded on the basis of that interpretation and produced excess sugar during October and November, 1974 and that the respondents are not entitled to go back upon that interpretation and give a different interpretation to item 1 of the notification dated 12-10-1974 and call upon the petitioners to repay the sum of Rs. 6,46,192.32.

33. The grounds urged in W.P. Nos. 1006, 1016 and 4513 of 1978 and 978, 1685 and 2483 of 1979 are (i) the subsequent interpretation of the notifications by the Central Excise authorities is unwarranted and even if there was no production in

the corresponding previous year or years, the petitioners will be entitled to rebate if there was production in the other months in the previous year or years and there was no production in the corresponding months of the previous year or years; (ii) in respect of the notification dated 28-9-1972, ISMA wrote a letter dated 14-10-1972 to the Central Board of Excise and Customs seeking confirmation of the presumption that the clarification given by the Central Board, Central Excise and Customs in the previous year would apply to the notification dated 28-9-1972 also, that if the factory worked in the base period (1st October, 1971 to 30th September, 1972) it will be entitled to the full rebate on its entire production during the various periods mentioned in the notification although during the corresponding periods in the last season, the production might have been "nil". The Central Board of Excise and Customs informed the ISMA by letter No. 14/24/72-CX-I dated 1-11-1972 that the presumption is confirmed in respect of established factories and not in respect of factories which had only a trial run during the base period. Even in the previous year in respect of the Government of India's notification dated 13-10-1971, ISMA wrote a letter dated 27-10-1971 to the Government of India, Ministry of Finance, seeking a similar confirmation of the presumption that a factory which had worked during the base period i.e., 1st day of October 1970 and ending with 30th September 1971, would be entitled to the excise duty rebate as per that notification, though it had not worked during the corresponding period in the previous year and the production during that period was "nil". The Under Secretary to the Government of India, Ministry of Finance, informed the ISMA by letter No. F. No. 14/33/71/CX-I dated 26-11-1971, that the presumption mentioned in ISMA's letter dated 27-10-1971 is correct. In view of these interpretations of the notifications of the previous years, viz., the notifications dated 28-9-1972 and 13-10-1971, by these two letters of the Government of India, the petitioners had acted on the basis of the various notifications to their detriment and produced sugar in excess for which rebate was originally granted and the respondents are estopped from adopting a different interpretation of the notifications and demanding repayment of the amounts. The plea of estoppel has been raised not only by the petitioners in W.P. Nos. 1006, 1016, 1625 and 4513 of 1978 and 978, 1685 and 2483 of 1979, but also by the petitioners in W.P. No. 551 of 1977. (iii) The third ground urged by the petitioners is one of limitation. The petitioners in W.P. Nos. 1006, 1016 and 4513 of 1978 and 978 and 2483 of 1979 contend that in any event the rights of the respondents are barred by limitation under Rule 10 read with Rule 173-J of the Central Excise Rules and that the residuary Rule 10-A has no application. The petitioners in W.P. Nos. 1625 of 1978 and 1685 of 1979 contended that the right of the respondents is barred by Rule 10 of the Central Excise Rules. The petitioners in W.P. Nos. 1006, 1016 and 1625 of 1978 have not mentioned the date on which credit was originally given to them for the excise duty rebate in their P.L.A. accounts, but have given the dates of the show cause notices as 10-3-1977, 16-5-1977 and 15-7-1975 respectively. The dates on which credit has been originally given had been mentioned by the petitioners in W.P. Nos. 4513 of 1978, 978, 1685 and 2483 of 1979 as 31-1-1973, 1-1-1974,

8-11-1974 and 11-11-1974 respectively. The dates of show cause notices have been mentioned in these four writ petitions as 16-5-1977, 30-6-1976, 30-6-1976 and 26-8-1976 respectively.

34. In W.P. No. 436 of 1977, the respondents have admitted that the claim originally made by the petitioners for excise duty rebate of Rs. 32,35,803.75 was admitted by the Chief Accounts Officer and the petitioners were authorised to take credit for this amount in their P.L.A. account and that the petitioners made a supplemental claim on 16-3-1976 for an additional excise duty rebate of Rs. 20,64,531.93 and it was turned down by the Superintendent of Central Excise, Bhavani, by his letter dated 8-6-1976. In W.P. Nos. 436, 550 and 2467 of 1977 which relate to item 2 of the notification dated 12-10-1974 the contention of the respondents is that the different slabs of rebate allowed on the excess production during the period 1st December 1974 to 30th September 1975 are on the different percentage mentioned in that item with reference to the average production in the corresponding period in the preceding five years and not on the percentage of the excess production itself,

35. W.P. Nos. 551 of 1977 and 1625 of 1978 relate to item 1 of the notification dated 12-10-1974. The respondents in W.P. No. 551 of 1977 have admitted that the petitioners' claim for rebate was in respect of the excess sugar produced during October and November 1974 and it was allowed to the extent of Rs. 4,23,800/- by credit being given for that amount on 28-1-1975 in the P.L.A. account and that the petitioners in that writ petition preferred a supplemental claim for Rs. 2,00,308/- as per item 1 (b) for the notification dated 12-10-1974 on the ground that the overall production of the factory in the incentive period, namely October and November 1974, exceeded the average production of the preceding five years, and it was not allowed by the excise authorities. The respondents contend in these writ petitions that since there was no production at all in the factory of the petitioners in these two writ petitions, W.P. Nos. 551 of 1977 and 1625 of 1978 during October and November of the preceding five years, they are not entitled to any incentive rebate at all.

36. W.P. Nos. 1006 and 4513 of 1978 relate to item 1 of the notification dated 28-9-1972 which concerns sugar produced in the factory during October and November 1972 which is in excess of the quantity produced during the corresponding period in 1971. In the counter affidavit filed in W.P. No 1016 of 1977 which is adopted in W.P. Nos. 1006 and 4513 of 1978 it is stated that a reading of item 1 of the notification dated 28-9-1972 will show that there should have been some production during the corresponding period in the baseyear and that since there was no production in the factory of the petitioners in the base sugar year 1971-72, the petitioners are not entitled to any incentive excise duty rebate.

37. W.P. No. 978 of 1979 relates to item 3-A of the notification dated 4-10-1973 as amended by notification dated 20-4-1974 and concerns sugar produced in the factory during the period May and June 1974 which is in excess of 180% of the

quantity of sugar produced during the corresponding period in 1973. The contention of the respondents is that originally the entire 53,660 quintals of sugar produced during the incentive months May and June 1974 was treated as excess production and excise duty rebate of Rs. 21,46,400/- at Rs. 40/- per quintal was allowed and that as the petitioners did not produce any sugar during the corresponding period, May and June 1973, they are not entitled to any excise duty rebate at all as per the proviso to the notification dated 4-10-1973 which says that the exemption mentioned against serial numbers 1 to 4 of the Table shall not be admissible to a factory which did not work during the base period, and, therefore, a show cause notice was issued calling upon the petitioners to explain why the sum of Rs. 21,46,400/- should not be repaid to the department and that the demand is in accordance with law.

38. W.P. No. 1685 of 1979 relates to item 4 of the notification dated 4-10-1973 and concerns sugar produced in the factory during July to September 1974 which is in excess of 110% of the quantity of sugar produced during the corresponding period in 1973. The contention of the respondents in this Writ Petition is that originally the entire 47,461.26 quintals of sugar produced during the incentive months July to September 1974 was treated as excess sugar produced and excise duty rebate of Rs. 18,98,450.40 at Rs. 40/- per quintal was allowed and that since it was found that as per the proviso the factory should have produced some quantity of sugar during the period July to September 1973 and since there was no production of sugar in the petitioners' factory in the period, a notice was issued to the petitioners calling... upon them to show cause why the said sum of Rs. 18,98,450.40 should not be repaid by the petitioners and that having regard to the proviso to the notification dated 4-10-1973, the Assistant Collector of Central Excise, Pondicherry, passed the order dated 22-6-1977 directing the petitioners to repay the amount and the Appellate Collector, Central Excise, rightly confirmed that order by his order dated 16-1-1979 in the appeal.

39. In W.P. 2483 of 1979 which relates to item No. 1 of the notification dated 4-10-1973 and concerns sugar produced in the factory during the period 1st October to 30th November, 1973, which is in excess of the quantity of sugar produced during the corresponding period in 1972, the contention of the respondents is that originally the entire 15021 quintals of sugar produced during the incentive months October and November 1973, was treated as excess sugar produced and excise duty rebate of Rs. 6,00,840/- at Rs. 40/- per quintals was allowed and that since it was found subsequently that as per the proviso to the notification dated 4-10-1973 the petitioners were not entitled to any excise duty rebate as there was no production of sugar during October-November 1972, a notice was issued to the petitioners on 26-8-1976 calling upon them to show cause why the amount should not be repaid by the petitioners and that the demand was rightly confirmed by the Assistant Collector of Central Excise, Vellore, by his order dated 4-3-1977 and the Appellate Collector, Central Excise, Madras on 16-1-1979 in the appeal preferred to him.

40. In the counter affidavit relating to the writ petitions in which the plea of estoppel and bar of limitation under Rule 10 read with Rule 173-J of the Central Excise Rules are taken, it has been contended that there is no estoppel against law and any clarification made by the officers in the Government of India in respect of any of the notifications is not binding on the respondents who are statutory bodies and that Rule 10-A of the Central Excise Rules applied and not Rule 10 and the claims for repayment of the amounts are not barred by limitation- It has also been contended in the counter affidavit in some of the writ petitions that the petitioners have not exhausted the alternative remedies available by way of an appeal or revision before coming to this Court by way of petitions under Article 226 of the Constitution of India and that those writ petitions are not maintainable.

41. In W.P. Nos. 436, 550 and 2467 of 1977, the question for consideration is as to how item 2 of the notification dated 12-10-1974 has to be interpreted, namely whether the percentages mentioned in that item have to be worked out on the basis of the average production, as contended by the respondents or whether they have to be worked out on the basis of the excess production itself over the average of the preceding five sugar years as contended by the petitioners. In this contention, my attention was invited to the decision of Chinnappa Reddy, J. in W.P. Nos. 3502 and 4039 of 1976 on the file of the Andhra Pradesh High Court. The learned Judge had to interpret the very same notification, dated 12-10-1974 in those two writ petitions and he has observed thus :

"A fair reading of the notification, appears to show that production of excess over the average production of the previous five years entitled the manufacturer to a rebate of excise duty on the excess production at specified rates. Excess production up to 7.5% that is to say, excess production up to 7.5% of the average production of the previous five years is entitled to a rebate of Rs. 20/- per quintal in the case of free sale sugar and Rs. 5/- per quintal in the case of levy sugar. On the excess production on the next 10%, that is to say, on the next 10% of the average production of the previous five years the manufacturer is entitled to rebate at the rate of Rs. 40/- per quintal in the case of free sale sugar and Rs. 10/- per quintal in the case of levy sugar To illustrate, if the average production in the previous 5 years was 1,000 quintals and if the excess production is 175 quintals the manufacturer would be entitled to rebate of Rs. 20/-per quintal on 75 quintals and Rs. 40/- per quintal on 100 quintals."

42. Another possible but, in my view, not a reasonable interpretation of the notification, and that is how the petitioners (M/s. Chellapalli Sugars Limited having its Administrative Office at Lakshmipuram, Chellapalli, Krishna District) want it, is that the manufacturer would be entitled to rebate at the rate of Rs. 20/- per quintal on the first 7.5% of the excess production, at the rate of Rs. 40/- per quintal on the next 10% of the excess production and so on. In the illustration given, the manufacturer would be entitled to rebate at the rate of Rs. 20/- per quintal on $7.5 \times 175/100$ i.e., 13.125 quintals, at the rate of Rs. 40/-per

quintal on 17.5. X 10/100 i.e., 17.5 quintals, at the rate of Rs. 50/- per quintal on 17.5 quintals, at the rate of Rs. 60/- per quintal on 17.5 quintals and at the rate of Rs. 82/- per quintal on 109.375 quintals. If the alternate interpretation mentioned above is accepted it would mean that even if a manufacturer produced one quintal of sugar in excess of the average production of sugar for the previous five years, rebate will have to be given at the lowest rate of Rs. 20/- per quintal for .075 quintals and at the highest rate of Rs. 32/- per quintal for .62 quintal. That in "my view, could never have been the intention of the rule making authority. It is to be noticed that the notification mentions that rebate will be granted "on excess production "upto 7.5%" etc. The notification does not say "upto 7.5% of excess production" or upto 7.5% of average production". Since excess production is reckoned in relation to average production it is reasonable to hold that, "on excess production upto 7.5%" means "on excess production upto 7.5% of average production". The first interpretation appears to be more reasonable".

43. Mr. U.N.R. Rao appearing for respondents in these three writ petitions submitted that the interpretation of the notification dated 12-10- 1974 accepted by Chinnappa Reddy, J. in those two writ petitions is the reasonable interpretation, whereas Mr. T.T. Vijayaraghavan submitted that the other interpretation of the notification is the only one and reasonable interpretation.

43A. The charging Section 3(1) of the Act lays down that:

"There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in, or imported by land into any part of India as, and at the rates, set forth in the First Schedule".

Sugar produced in a factory ordinarily using power in the course of production is one of the articles mentioned in the First Schedule of the Act. Therefore, excise duty is leviable on sugar produced or manufactured by the petitioners in all the writ petitions. Section 37 of the Act empowers the Central Government to make Rules for carrying into effect the purpose of the Act. Rule 8 of the Rules framed under the Act provides for the Central Government, from time to time by notification in the Official Gazette, exempting, subject to such conditions as may be prescribed in the notification, any excisable goods from the whole or any part of the duty leviable on such goods. The various notifications with which we are concerned in these writ petitions have been issued under Rule 8 (1) of the Rules and, therefore, they are statutory in character.

44. The learned Judges of the Supreme Court in Uayan Chinubhai v. R.C. Bali AIR 1977 S.C. 2319 interpreted Section 12(2) and the explanation to Section 12 of the Limitation Act which read : -

"Section 12(1)...

(2) In computing the period of limitation for an appeal or for revision or for

review of a Judgement the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

" Explanation : In computing under this Section the time requisite for obtaining a copy of a decree or an order, any time taken by the Court to prepare the decree or order before an application for a copy thereof is made shall not be excluded".

Their Lordships of the Supreme Court observed :-

"We have seen that there may be scope for two views on the Explanation and that would inevitably forbid a mere grammatical construction of the same on the touchstone of the plain texts divorced from the object of the provision. The real intent will have to be discovered from the scheme of the provisions. It is by following that rule of construction, we have gone into the history and background of the provision together with the recommendation of the Law Commission as also the objects and reasons of the Bill in order to arrive at the proper intent of the Explanation.

In interpreting the provisions of a statute the courts have to give effect to the actual words used whether couched in the positive or in the negative. It is not permissible to alter the cohesive underlying thought process of the legislature by reading in positive sense what has been set out in negative sense. The courts will try to discover the real intent by keeping the decision of the statute intact. This is another cardinal rule of construction."

Bearing in view the principle laid down by Their Lordships of the Supreme Court in this decision, it is necessary to consider which of the two interpretations of the notification dated 12-10-1974 considered by Chinnappa Reddy, J. in the aforesaid two writ petitions, has to be applied in these three writ petitions.

45. The object of giving rebate in excise duty in these and other cases is to encourage increased production of sugar in the lean months of the year. Certain basis has been adopted in each of the modification for giving the rebate. The earliest notification dated 13-10-1971 available in the records produced before me provides for grant of rebate at Rs. 17/- per quintal in respect of sugar produced in a factory during the period commencing from the 1st day of October, 1971, and ending with 30th day of November 1971, which is in excess of 80% of the quantity of sugar produced during the corresponding period in 1970 and at Rs. 16/-per quintal in respect of sugar produced in a factory during the period commencing from 1st day of December 1971, and ending with the 30th day of September, 1972, which is in excess of 80% of the quantity of sugar produced during the period commencing from the 1st day of December, 1970 and ending with 30th day of September 1971. Item 1 of the notification dated 28-9-1972 provides for the grant of excise duty rebate at Rs. 40/- per quintal in respect of sugar produced in a factory during the period October and November 1972 which is in excess of the quantity of sugar produced during the corresponding period in 1971. Item 1 of the notification dated 4-10-1973 provides for the grant of excise

duty rebate at Rs. 40/-per quintal in respect of sugar produced in a factory during the period October and November 1973 which is in excess of the quantity of sugar produced during the corresponding period in 1972. Item 4 of the same notification provides for the grant of excise duty rebate at Rs. 20/- per quintal for sugar produced in a factory during the period commencing from 1st July, 1974 and ending with 30th September 1974 which is in excess of 110% of the quantity of sugar produced during the corresponding period in 1973. Item 3- of the notification dated 20-4-1974 provides for the grant of excise duty rebate at Rs. 40/- per quintal in respect of sugar produced in a factory during the period May and June 1974 which is in excess of 180% of the quantity of sugar produced during the corresponding period in 1973. A look at these notifications shows that the intention of the Government of India was to grant rebate in excise duty in respect of sugar produced in a factory during a particular period of a particular year in excess of the whole or certain percentage of the sugar produced by the factory in a corresponding period in the previous year or years. In the circumstances of the case, I am of the opinion that the intention of the Government of India with reference to the notification dated 12-10-1974 must also have been as originally interpreted by the Government of India itself to grant rebate at the different rates provided for in the notification dated 12-10-1974 in respect of different slabs of excess production without reference to the percentage which each of the slabs bears to the average production in the preceding five years. The words "on excess production upto 7.5%". "on excess production on the next 10%" "on excess production on the next 10%," etc., without anything more would mean 7.5% of the excess production, the next 10% of the excess production, the next 10% of the excess production etc. and not upto 7.5% with reference to the average production of the preceding five years, the next 10% of the average production of the preceding five years etc. In the aforesaid decision, Their Lordships of the Supreme Court have laid down that in interpreting provisions of a statute inclusive of a statutory provision like the notification in the present case, the Courts have to give effect to the actual words used in the statutes or statutory provisions. The interpretation adopted by Chinnappa Reddy, J., in the aforesaid two writ petitions is possible only if the words "of the average production" are added to the different percentages mentioned in item 2 of the notification dated 12-10-1974 as has been done by the learned Judge and made clear in his observation in the passage extracted above, namely :-

"On the excess production on the next 10%, that is to say, on the next 10% of the average production of the previous five years, the manufacturer is entitled to rebate at the rate of Rs. 40/- per quintal in the case of free sale sugar and Rs. 10/- per quintal in the case of levy sugar".

To take an illustration, if the average production in the previous five years was 1000 quintals and the excess production in the particular year over that average production is 2000 quintals, according to the interpretation of item 2 of the notification dated 12-10-1974 adopted by Chinnappa Reddy, J, 7.5% of the

average, namely 75 quintals will be entitled to rebate at Rs. 20/- per quintal in respect of free sale sugar and at Rs. 5/- per quintal in respect of levy sugar, the next 10% namely 100 quintals will be entitled to rebate at Rs. 40/- per quintal in respect of free sale sugar and Rs. 10/- per quintal in respect of levy sugar, the next 10% namely 100 quintals, will be entitled to rebate at Rs. 50/- per quintal in respect of free sale sugar and at Rs. 14/- per quintal in respect of levy sugar, the next 10% namely 100 quintals will be entitled to rebate at Rs. 60/- per quintal in respect of free sale sugar and Rs. 18/- per quintal in respect of levy sugar and the remaining excess over the average, namely 1625 quintals will be entitled to rebate at Rs. 82/- per quintal in respect of free sale sugar and Rs. 22/- per quintal in respect of levy sugar. If this interpretation is to be adopted, it has to be contended that rebate at Rs. 82/- per quintal in respect of free sale sugar and Rs. 22/- per quintal in respect of levy sugar would have to be allowed only for 625 quintals, if the Excise Authorities are to avoid paying excise duty rebate at the largest rate at Rs. 82/- per quintal in respect of free sale sugar and at Rs. 22/- per quintal in respect of levy sugar on the large balance, namely 1625 quintals of the excess production and deny any rebate for the remaining 1000 quintals or pay rebate for the entire balance of 1635 quintals at the highest rates, namely Rs. 82/- per quintal in respect of free sale sugar and at Rs. 22/- per quintal in respect of levy sugar. But if the interpretation rejected by Chinnappa Reddy, J., is adopted, 7.5% of 2000 quintals of excess sugar produced namely 150 quintals will be entitled to rebate at Rs. 20/- per quintal in respect of free sale sugar and at Rs 5/- per quintal in respect of levy sugar, the next 10%, namely 200 quintals will be entitled to excise duty rebate at Rs. 40/- per quintal in respect of free sale sugar and at Rs. 10/- per quintals in respect of levy sugar, the next 10%, namely 200 quintals will be entitled to excise duty rebate at Rs. 50/- per quintal in respect of free sale sugar and at Rs. 14/- per quintal in respect of levy sugar, the next 10%, namely 200 quintal will be entitled to excise duty rebate at Rs. 60/- per quintal in respect of free sale sugar and at Rs. 18/- per quintal in respect of levy sugar and the remaining excess, namely 1250 quintals alone would be entitled to excise duty rebate at the highest rate of 82% per quintal in respect of free sale sugar and at Rs. 22/- per quintal in respect of levy sugar. The excise duty rebate for the excess production of 2000 quintals over the average production of 1000 quintals would be Rs. 1,49,750 on the basis of the interpretation of item 2 of the notification dated 12-10-1974 accepted by Chinnappa Reddy, J., in respect of free sale sugar and only Rs. 35,500/- on the basis of the interpretation of that item of the notification rejected by the learned Judge. It would not have been the intention of the Government of India to grant excise duty rebate at the largest rate to be larger slab of the excess production than what would be the case if the interpretation rejected by the learned Judge is adopted.

46. With respect to the learned Judge, I am of the opinion that it is not permissible to add any words to the notification and that the notification has to be interpreted by giving effect to the actual words used in the notification and

not by adding any words thereto. In my view "on excess production upto 7,5%", "on excess production on the next 10%," "on excess production on the next 10%", "on excess production on the next 10%" and "on excess production beyond 37.5%" mentioned in item 2 of the notification dated 12-10-1974 would only mean one rate of rebate on the excess sugar produced over the average production of the corresponding period of preceding five years upto 7.5% of the excess, at another rate on that excess produced on the next 10% of the excess produced, at another rate on the next 10% of the excess produced, at another rate on the next 10% of the excess produced and at another rate on the remaining portion of the excess produced. As already stated, this was the interpretation that was originally adopted by the Central Board of Excise and Customs in their letter dated 1-11-1972 in No. 14/24/72-C-I written in response to ISMA's letter dated 14-10-1972. In these circumstances, I agree with Mr. T.T. Vijayaraghavan, the learned counsel for the petitioners in these three writ petitions that the interpretation of item 2 of the notification dated 12-10-1974 given by the Central Board of Excise and Customs in their letter referred to above, is the only and correct interpretation and that the petitioners in these three cases are entitled to the larger amounts of excise duty rebate, namely Rs. 53,00,335.68, Rs. 26,35,142.80 and Rs. 34,54,170.49 respectively and not to the smaller amounts, namely, Rs. 32,35,803.76, Rs. 15,24,314 and Rs. 20,57,201.68 respectively which alone were granted to them by the excise authorities.

47. In W.P. Nos. 551 of 1977 and 1625 of 1978, we are concerned with item 1 of the notification dated 12-10-1974 ; in W.P. Nos. 1006, 1016 and 4513 of 1978, we are concerned with item 1 of the notification dated 28-9-1972 and in W.P. Nos. 978, 1685 and 2483 of 1979, we are concerned with item 3-A, item 4 arwi item 1 respectively of the notification dated 4-10-1973. Admittedly there was no production in the factories of the petitioners in W.P. Nos. 551 of 1977 and 1625 of 1978 during October and November of the five years preceding 1974, in, the factories of the petitioners in W.P. Nos. 1006,1016 and 4513 of 1978 during October and November 1971, in the factory of the petitioners in W.P. No. 978 of 1979 during May and June 1973, in the factory of the petitioners in W.P. No. 1685 of 1979 during August and September 1973 and in the factory of the petitioners in W.P. No. 2483 of 1979 during October and November 1972, whereas the claim for rebate made is in respect of excess sugar produced during October and November 1974 in W.P. Nos. 551 of 1977 and 1625 of 1978, in respect of excess sugar produced in October and November 1972 in W.P. Nos. 1006, 1016 and 4513 of 1978, in respect of excess sugar produced in May and June 1974 in W.P. No. 978 of 1979, in respect of excess sugar produced in August and September 1974 in W.P. Nos. 1685 of 1979 and in respect of excess sugar produced in October and November 1973 in W.P. No. 2483 of 1979.

48. In Etikoppaka Co-operative Agricultural Society Ltd. v. Union of India 1978 A.W.R. 106, Chinnappa Reddy, J., had to interpret the very same notification dated 4-10-1973 with which we are concerned in W.P. Nos. 978, 1685, and 2483

of 1979. Subsequent to the date of the notification, the Collector of Central Excise, Guntur, issued a trade notice dated 28-7-1976 saying that the notification was examined in detail at the highest level as to how the rebate is to be allowed for the production in a particular slab of the incentive period in cases where there was no production in the corresponding base period, that after a thorough examination and consideration it was decided by the Government of India that the correct interpretation of the notification is that the incentive rebate would not be available in a case where there was nil production in the corresponding period of the base year and that accordingly the exemption admissible under serial Nos. 1 to 4 of the notification shall not be admissible in cases where there was a production during the corresponding base period as per the decision now taken at the highest level. The writ petition before Chinnappa Reddy, J. was filed to declare the said interpretation of the notification by the Government of India as illegal and to restrain the Central Excise Authorities from taking further action pursuant to the trade notice of the Collector. The learned Judge has observed : -

"The first submission of the learned counsel for the petitioners was that the interpretation placed by the Government of India in the notice dated 28th July 1976 was wrong and that the earlier interpretation of the Government of India was correct. I am inclined to agree with this submission. The object of the notification was to provide an incentive to manufacturers of sugar so as to induce them to produce greater quantities of sugar particularly during certain lean periods every year. Therefore it was said if the sugar produced during certain periods in the "sugar year" 1st October 1973 to 30th September 1974 was in excess of the sugar produced during the corresponding periods in the previous year called the base period, that is, 1st October 1972 to 30th September 1973, the manufacturer was to be entitled to certain rebate of excise duty on the excess sugar produced.

"Therefore if the manufacturer had not produced any sugar during the relevant period in the base year 1st October 1972 to 30th September 1973, he would be entitled to rebate of certain excise duty on the whole of the sugar period during the relevant period in the year 1st October 1973 to 30th September 1974. The argument of the counsel for the Central Government was that in order to enable the manufacturer to the rebate of excise duty, he must have produced "some" sugar during the relevant periods in the base year. According to him, it was only when some sugar was produced during the relevant period in the year 1972-73, sugar produced in the relevant period in the year 1973-74 could be said to have exceeded the sugar produced during the corresponding period in 1972-73. He drew my attention to the fact that the notification referred to "quantity" of sugar produced during the corresponding period in 1972-73. If no sugar was produced during the corresponding period in the year 1972-73, his argument was that the notification was inapplicable. This interpretation appears to me to be prima facie unreasonable. If no sugar was produced in the relevant period in the year 1972-73, it must be said that the production during the relevant period was nil and the excess sugar produced in the year 1973-74 should be calculated on that

basis. The interpretation of the Central Government would also lead to absurd results. It would mean that if a manufacturer produced even one ounce of sugar during the relevant period in 1972-1973 he would be entitled to rebate, but not if he produced "nil" sugar. The proviso to the notification, in my opinion makes matters clear. It says that the exemption mentioned against serial Nos. 1 to 4 shall not be admissible to a factory which did not work during the base period. In the face of the proviso I find it difficult to accept the argument of the learned counsel for the Central Government."

49. An argument similar to the one advanced before Chinnappa Reddy, J., was advanced before me by Mr. K.N. Balasubramanian who stated that it was only when some sugar is produced during the relevant period, it could be stated that in the year in question the sugar produced was in excess and if no sugar was produced during the corresponding period in the previous year or years, the notification was inapplicable. When his attention was drawn to the intention of the Government, namely to encourage production of sugar in the lean months of the year and he was asked whether that intention should not be attributed to a case where there was even "nil" production in the lean months of the previous year or years, the learned counsel submitted that the intention of the Government to give rebate was only to benefit the factory which had produced some sugar in the lean months of the previous year or years and not to grant any benefit to a factory which had not produced any sugar at all during the lean months of the previous year or years. It is not possible to accept this submission of Mr. Balasubramanian. In my view, the benefit has to be held to have been considered by the Government to be available even to a factory which did not produce any sugar at all during the lean months of the previous year or years.

50. Item I of the notification dated 12-10-1974 with which we are concerned in W.P. Nos. 551 of 1977 and 1625 of 1978 in this batch of cases, came up for consideration before Gokulakrishnan, J. in W.P. No. 7257 of 1975 in which the learned Judge had to consider the claim for excise duty rebate in respect of excess sugar produced during October-November 1974. In that case, during the period October-November 1969, October-November 1970, October-November 1971, October 1972 and October 1973 there was no production of sugar at all in the factory, which produced 31,435 quintals of sugar during November 1972, and 10,925 quintals of sugar during November 1973. The average production during October-November of the preceding five years was worked out as 8,472 quintals by dividing the total production during October and November of the previous five years, namely 42,360 quintals by five, and since the production during October and November 1974 was 23,800 quintals, the petitioners before Gokulakrishnan, J., claimed to have been entitled to excise duty rebate of Rs. 6,59,104/- at the rates mentioned in item 1 of the notification dated 12-10-1974. The Assistant Collector of Central Excise instructed the factory in that case to revise the claim for rebate on the ground that as there was no production during the corresponding period in three of the preceding five years and there was production only in the remaining two years, the average

production should be arrived at by dividing the total production of 42,360 quintals by 2, and treating 21.180 quintals as the average production. On that basis, the Assistant Collector held that the factory would be eligible for a rebate of only Rs. 1,12,250/- on the excess production of 2620 quintals and accordingly instructed the factory to revise its claim for rebate. Gokulakrishnan, J., in his judgment has observed thus:-

"No doubt the petitioner had not produced sugar in the months of October-November 1969, October-November 1970 and October-November 1971. Since as per Clause (1) of the notification it is mentioned the average production of the corresponding period of the preceding five sugar years, I am of the view that the average should be calculated in this case by dividing the total production by five, even though there was no production during the period October and November in certain of the years. This is the intention of the notification and that is why two different types of rebate have been provided one for the mills which started production in 1967-68 or before and the other for the mills which started production after 1967-68".

In that view, the learned Judge held that the interpretation of Clause 1 of the notification dated 12-10-1974 put by the petitioner-factory before him was correct. I respectfully agree with Chinnappa Reddy, J., and Gokulakrishnan, J., and hold that the average production of the preceding five years in the case of the notification dated 12-10-1974 has to be worked out by dividing the total production during October and November of any of the preceding five years by five and that the petitioners in W.P. Nos. 551 of 1977 and 1628 of 1978 would be entitled to rebate under item 1 of the notification dated 12-10-1974, notwithstanding the fact that there was no production of sugar at all during October and November of any of the preceding five years, that the petitioners in W.P. Nos. 1006, 1016 and 4513 of 1978 would be entitled to excise duty rebate under item 1 of the notification dated 28-9-1972 notwithstanding the fact that there was no production of sugar at all during October and November 1971, that the petitioners in W.P. No. 978 of 1979 would be entitled to excise duty rebate under item 3-A of the notification dated 4-10-1973 as amended by notification dated 20-4-1974 notwithstanding the fact that there was no production of sugar at all during May and June 1973, that the petitioners in W.P. 1685 of 1979 would be entitled to excise duty rebate under item 4 of the notification dated 4-10-1973 notwithstanding the fact that there was no production of sugar at all during August and September 1973, and that the petitioners in W.P. No. 2483 of 1979 would be entitled to excise duty rebate under item 1 of the notification dated 4-10-1973 notwithstanding the fact that there was no production of sugar at all during October-November 1972.

51. A plea of promissory estoppel has been raised by the petitioners in W.P. Nos. 551 of 1977 and 1006, 1016, 1625 and 4513 of 1978 and 978, 1685 and 2483 of 1979, In W.P. 551 of 1977, it is contended in the affidavit filed in support of the writ petition that it was not economical to produce sugar in October and

November and it was to encourage production during such period, the notification dated 12-10-1974 was issued and that induced by that notification and the prior interpretation of the Government of a similar previous notification, the petitioners exerted themselves and produced sugar during October and November 1974. In W.P. 1006 of 1978 it has been contended in the affidavit filed in support of the writ petition that the grant of rebate mentioned in the letter dated 22-1-1973 of the Superintendent of Central Excise, Karur, was on the correct interpretation of the notification dated 28-9-1972 and as per the clarification made by the Secretary, Government of India, that even if there was no production in the previous year, the factory would be entitled to excise duty rebate at the notified rate on the entire production during October and November 1972 and that having interpreted the notification correctly, it will not be open to the respondents to give a different interpretation now and direct the petitioners to pay back the amounts on the basis that the petitioners are not entitled to any excise duty rebate at all. It is further stated that the first respondent is estopped from revising its own order and interpretation having regard to the fact that the petitioners have acted in pursuance of the notification in finalising their accounts which could not be reopened after the lapse of so many years.

52. In W.P. No. 1016 of 1978, the petitioners have stated in the affidavit filed in support of the writ petition that based on the earlier interpretation of the notification by the Government, the petitioners were granted excise duty rebate of Rs. 14,59,040/- by credit being given for that amount in their P.L.A. account for the sugar produced during October and November 1972, that on the basis of the sanction of the rebate, the petitioners finalized their accounts and the liabilities of the factory had been determined and an additional cane price amounting to Rs. 8.84 lakhs was paid to the growers for the cane supplied during the season of 1972-73 and that as the petitioners had acted in pursuance of the notification, the respondents are estopped from attempting to give a different interpretation.

53. In W.P. 1625 of 1978, the petitioners have stated in the affidavit filed in support of the writ petition that they understood that the Government of India have issued a circular on the basis of the notification dated 12-10-1974 and that having regard to the Government of India's interpretation of the earlier notification of the years 1971, 1972 and 1973 the petitioners exerted themselves and produced larger quantities of sugar by undergoing various difficulties and incurring extra expenditure during the lean period and that it is therefore not open to the Government of India to issue a corrigendum to the notification long after the notification had worked itself out. They have also stated that they had worked out their profit and loss account on the basis of the excise duty rebate and paid higher cane price, bonus and taxes and acted to their detriment and that the Government of India is estopped from raising the demand for repayment of the rebate on a different interpretation of the notification.

54. In W.P. 4513 of 1978, the petitioners have stated in the affidavit filed in

support of the writ petition that the grant of rebate allowed by the Superintendent of Central Excise on 31-1-1973 was on the basis of the correct interpretation of the notification of the first respondent dated 28-9-1972 and as per the clarification given by the Secretary, Government of India, that having interpreted their own notification correctly, it is not open to the respondents to give a different interpretation now and direct the petitioners to pay back the amount and that the first respondent should be estopped[^] from revising their own orders and interpretations having regard to the fact that the petitioners have acted to their detriment in pursuance of such orders in finalizing their accounts which cannot be reopened now after the lapse of so many years.

55. In W.P. No. 4513 of 1978 it has been contended in the affidavit filed in Support of the writ petition that the excise duty rebate granted by the Superintendent of Central Excise by his letter dated 31-1-1973 was on a correct interpretation of the notification dated 28-9-1972 and as per the clarification made-by the Secretary, Government of India, Ministry of Finance (Department of Revenue and Insurance) New Delhi in the letter No. 14/24/72-Cx. 1 dated 1-11-1972 to the effect that even if production during the base period was "nil" in the previous years, the factory will be entitled to excise duty rebate at the rate notified on the entire production during the months of October and November, 1972, that having interpreted their own notification correctly, it is not open to the respondents to give a different interpretation now and direct the petitioners to repay the rebate as if the petitioners are not entitled thereto and that the first respondent is estopped from revising the notification and interpretation having regard to the fact that the petitioners have acted to their detriment in pursuance of the notification in finalising their accounts which could not be reopened after the lapse of so many years.

56. In W.P. No. 978 of 1979, the petitioners have stated in the affidavit filed in support of the writ petition that it was not economical to produce sugar during the period in question and, therefore, the notification dated 4-10-1973 was issued to encourage production during such period, that induced by the said notification, the petitioners exerted themselves for producing sugar in the lean months and paid for the cane and closed their accounts on the basis of the rebate granted to them and that the respondents are estopped by the principle of promissory estoppel and they are not entitled to recover the sum of Rs. 21,46,400/- from the petitioners.

57. In W.P. No. 1685 of 1979, the petitioners have stated in the affidavit filed in support of the writ petition that the clarification issued by the Government of India on 26-11-1971 and 1-11-1972 made it very clear that even if there was nil production in the previous corresponding months, the producer will be entitled to excise duty rebate on the entire production during the incentive period and that having regard to the above clarification and the fact that credit had been given for excise duty rebate by the letter dated 8-11-1974, the petitioners have acted to their detriment and, therefore, the respondents are estopped from attempting

to give a different interpretation of the notification dated 4-10-1973.

58. In the affidavit filed in support of Writ Petition 2483 of 1979, it is contended that it is not economical to produce sugar during October and November, and the notification dated 12-10-1973 was issued to encourage production of sugar during that period, that on the basis of the interpretation of the notification by the Government of India and induced thereby, the petitioners exerted themselves in producing sugar in the said lean months and to pay for the cane and close their accounts on the basis of the rebate granted to them and that the principle of promissory estoppel would apply and the respondents are not entitled to recover the rebate of Rs. 6,00,840/- credited to the petitioners.

59. In the counter affidavit it has been contended, as already stated, that there is no estoppel against law and that any clarification of the notifications made by any of the officers of the Government is not binding on the respondents who are statutory bodies.

60. Mr. K.N. Balasubramanian submitted that the notifications have been issued under Rule 8 of the Rules framed in exercise of the power conferred by Section 37 of the Act and are therefore statutory, that there is no alteration of the provisions of any of the notifications, but only there is interpretation of the notifications, and that any clarification by Government Officers is not binding on the Government, and there is no estoppel against law. In this connection, he relied upon the decision of a Bench of the Punjab and Haryana High Court in *State of Punjab and Others Vs. Amrit Banaspati Co., Ltd. and Others*, . The learned Judges have held on the facts and in the circumstances of that case that there was no equitable estoppel operating against the Government entitling the Company to refund of sales tax for three reasons, firstly because the rights of the Company, if any, came into existence on 16-6-1969 by which time the revised policy of the Government came into effect, secondly because even if it could be said that the company acted in pursuance of the earlier representations, such representations were contrary to the decision dated 15-12-1966 of the Cabinet Sub- Committee and thirdly because it would be opposed to the scheme and purpose of the Punjab General Sales Tax Act, as well as general social and public policy. This decision will not apply to the facts of the present case, for, the learned Judges have found in paragraph 48 of their judgment that clearly there was no definite commitment on the part of Smt. Grewal who represented the Government in the preliminary correspondence which was followed by a meeting on 16-10-1968 between Shri Khaitan representing the Company and Smt. Grewal representing the Government. The learned Judges have observed in that paragraph :-

"We do not think that any final decision was taken at the meeting between Shri Khaitan and Smt. Grewal. As already pointed out by us, there is no contemporaneous record of what took place at the meeting. But we have the note prepared by Smt. Grewal on 1-4-1969 for the consideration of the Industries Minister and the Finance Minister. One thing which clearly emerges

from her note is that she did not assure the Company either on 16-10-1968 or thereafter that the Company would be entitled to the concessions if they set up the factory at Rajpura. She could not have given any such assurance since no plot of the extent required by the Company was available within the area already acquired by the Government. All that she did, according to the note, was to encourage the Company to purchase land for setting up the industry at Rajpura, with perhaps an implied promise that a way would be found for favourably considering the claim of the Company for the concessions. Clearly there was no definite commitment on her part. That is why we find her pleading with the Ministers as late as on 1-4-1969 for an early settlement of the question. It is also obvious that she was not competent to take any final decision in the matter and she was, therefore, seeking the orders of the Ministers. The subsequent letters and telegrams from the Company to the Secretary, Industries Department also show that there was no final commitment on the part of the Government on 16-10-1968 as claimed by the Company."

The facts are entirely different. In this batch of cases before me, it could not be stated that no definite promise was made by the Government by the several notifications with which we are concerned in these writ petitions that excise duty rebate would be given to the manufacturers of sugar during the lean months of the year at the specified rates on the excess production.

61. Mr. Balasubramanian relied also upon the decision in *Etikoppakq Co-operative Agricultural Society Ltd. v. Union of India* 1978 A.W.R. 196 rendered by Chinnappa Reddy, J., who is a party to the aforesaid. decision in *State of Punjab and Others Vs. Amrit Banaspati Co., Ltd. and Others*, . In that judgment, Chinnappa Reddy, J., has observed : -

"It was also argued by the learned counsel for the petitioners that pursuant to the exemption that was granted by the Central Excise Authorities the petitioners had paid bonus, dividends, taxes etc., and have so altered their position that the Government of India should be equitably estopped from putting a different interpretation on the notification at a later stage. Reliance was placed on the decision of the Supreme Court in *Union of India v. Anglo-Afghan Agencies*. AIR 1968 S.C. 718. There is no force in this submission. There can be no estoppel against a statute. The notification issued by the Government of India under Rule 8 of the Central Excise Rules is "law" owning its source of power to statute. If the Central Government had placed an incorrect interpretation over the notification at one stage it does not give rise to an estoppel so as to prevent the Government from interpreting the notification correctly at a later stage. It is unnecessary to refer to the case law on this point. I may mention that most of the cases on the subject were considered by me in *State of Punjab and Others Vs. Amrit Banaspati Co., Ltd. and Others*, "

62. On the other hand, the learned counsel for the petitioners, in this batch of writ petitions submitted that the notifications amount to representations and assurances on the part of the Government to grant excise duty rebate on sugar

produced in excess during the lean months of the several years, that the petitioners in this batch of writ petitions have acted upon these representations and assurances and exerted themselves for producing sugar in the lean months and have thus acted to their detriment and that the respondents are estopped from giving different interpretations to the notifications and attempting to deny the rebate or asking for repayment of the rebate already granted, as the case may be, on a different interpretation. In this connection the very same decision of the Supreme Court in *Union of India v. Anglo-Afghan Agencies* AIR 1968 S.C. 718 referred to in the judgment of Chinnappa Reddy, J., in *Etikoppaka Co-operative Agricultural Society Ltd., v. Union of India* 1978 A.W.R. 106 was strongly relied upon by the learned counsel for the petitioners-In the case before their Lordships of the Supreme Court, the Textile Commissioner published on October 10, 1962, a scheme called the Export Promotion Scheme providing incentives to exporters of woollen goods. By the scheme as extended to Afghanistan, the exporters were invited to get themselves registered with the Textile Commissioner for exporting woollen goods, and it was represented that the exporters will be entitled to import raw materials of the total amount equal to 100 per cent of the f.o b. value of the exports. Under Clause 10 of the scheme the Textile Commissioner had authority, if it was found that a fraudulent attempt was made to secure an import certificate in excess of the true value of the goods exported, to reduce the import certificate. Their Lordships have observed in their judgment :-

"The orders which the Central Government may issue in exercise of the power conferred by Section 3 of the Imports and Exports Control Act may be executive or legislative...

It cannot be assumed merely because the Imports Trade Policy is general in items and deals with the grant of licences for import of goods and related matters, it is statutory in character. The Imports and Exports (Control) Act, 1947, authorises the Central Government to make provisions prohibiting, restricting or otherwise controlling import, export, carriage etc. of the goods and by the Imports (Control) Order, 1955, dated December 7, 1955, and by the provisions which were sought to be repealed restrictions already imposed. The order was clearly legislative in character. The Import Trade Policy was evolved to facilitate the mechanism of the Act and the orders issued thereunder. Even granting that the Import Trade Policy notifications were issued in exercise of the power u/s 3 of the Imports and Exports (Control) Act, 1947, the order as already observed authorised the making of executive or administrative instructions as well as legislative directions. It is not the form of the order, the method of its publication or the source of its authority, but its substance, which determines its true character...

It was somewhat faintly urged that if the Government is held bound by every representation made by it regarding its intention, when the exporters have acted in the manner they were invited to act, the Government would be held bound by

a contractual obligation even though no formal contract in the manner required by Article 299 of the Constitution was executed, and the exporter would be entitled to claim damages contrary to that provision for breach of the contract even though no formal written contract had been executed in the manner provided by that Article. But the respondents are not seeking to enforce any contractual right : they are seeking to enforce compliance with the obligation which is laid upon the Textile Commissioner by the terms of the scheme, and we are of the view that even if the scheme is executive in character, the respondents who were aggrieved because of the failure to carry out the terms of the scheme were entitled to seek resort to the Court and claim that the obligation imposed upon the Textile Commissioner by the scheme be ordered to be carried out.

We hold that the claim of the respondents is appropriately founded upon the equity which arises in their favour as result of the representation made on behalf of the Union of India in the Export promotion scheme, and the action taken by the respondents acting upon that representation under the belief that the Government would carry out the representation made by it. On the facts proved in this case, no ground has been suggested before the court for exempting the Government from the equity arising out of the acts done by the exporters to their prejudice relying upon the representation. This principle has been recognised by the Courts in India and by the Judicial committee of the Privy Council in several cases....

Jenkins, C.J. delivering the Judgment of the Court observed :

"The doctrine involved in this phase of case is often treated as one of estoppel, but I doubt whether it is a correct, though it may be a convenient name to apply.

It differs essentially from the doctrine embodied in Section 115 of the Evidence Act, which is not a rule of equity but is a rule of evidence that was formulated and applied in Courts of law; while the doctrine with which I am now dealing, takes its origin from the Jurisdiction assumed by Courts of equity to intervene in the case of, or to prevent fraud."

This case, is in our judgment, a clear authority that even though the case does not fall within the terms of Section 115 of the Evidence Act, it is still open to a party who has acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it, even though the promise is not recorded in the form of a formal contract as required by the Constitution.

63. The learned counsel for the petitioners relied upon another subsequent decision of the Supreme Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, where their Lordships have observed : -

"We do not think that in order to invoke the doctrine of promissory estoppel it is necessary for the promisee to show that he suffered detriment as a result of acting in reliance on the promise. But we may make it clear that if by detriment

we mean injustice to the promisee which would result if the promisor were to recede from his promise, then detriment would certainly come in as a necessary ingredient. The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise. The classic Exposition of detriment in this sense is to be found in the following passage from the judgment of Dixon, J. in the Australian case of *Grundt v. Great Boulder Pty Gold Mines Ltd.* (1938) 59 CIR 641.

"...It is often said simply that the party asserting the estoppel must have been induced to act to his detriment. Although substantially such a statement is correct and leads to no misunderstanding, it does not bring out clearly the basal purpose of the doctrine. That purpose is to avoid or prevent a detriment to the party asserting the estoppel by compelling the opposite party to adhere to the assumption upon which the former acted or abstained from acting. This means that the real detriment or harm from which the law seeks to give protection is that which would flow from the change of position if the assumption were deserted that led to it. So long as the assumption is adhered to, the party who altered his situation upon the faith of it cannot complain. His complaint is that when afterwards the other party makes a different state of affairs the basis of an assertion of right against him then, if it is allowed, his own original change of position will operate as a detriment. His action or inaction must be such that, if the assumption upon which he proceeded were shown to be wrong, and an inconsistent state of affairs were accepted as the foundation of the rights and duties of himself and the opposite party, the consequence would be to make his original act or failure to act a source of prejudice. If this is the kind of detriment contemplated, it would necessarily be present in every case of promissory estoppel, because it is on account of such detriment which the promisee would suffer if the promisor were to act differently from his promise, that the court would consider it inequitable to allow the promisor to go back upon his promise. It would, therefore, be correct to say that in order to invoke the doctrine of promissory estoppel it is enough to show that the promisee has, acting in reliance on the promise, altered his position and it is not necessary for him to further show that he has acted to his detriment. Here, the appellant clearly altered its position by borrowing moneys from various financial institutions, purchasing plant and machinery from M/s. Desmet (India) Pvt. Ltd., and setting up a vanaspati plant, in the belief induced by the representation of the Government that sales tax exemption would be granted for a period of three years from the date of commencement of the production. The Government was, therefore, bound on the principle of promissory estoppel to make good the representation made by it."

64. The petitioners in this batch of writ petitions had been induced by the various notifications to produce sugar in the lean months of certain sugar years in order that the production of sugar in the country may increase. In respect of the notification dated 13-10-1971, ISM A had written a letter requesting the

Government of India, Ministry of Finance, to confirm the presumption, namely that a. factory which had worked during the base period; i.e., during the period commencing from the first day of October 1970, and ending with 30th day of September, 1971, though it has not worked during the period from 1st October, 1970, the 30th November 1970, and the production during this period was "nil" will also be entitled to excise rebate at the rate mentioned in the notification dated 13-10-1971. The Under Secretary to the Government of India, Ministry of Finance, had confirmed the presumption by his letter dated 26-11-1971. In respect of the notification dated 28-9-1972, ISMA wrote a letter dated 14-10-1972 to the Central Board of Excise and Customs referring to the said letter dated 26-11-1971 of the Under Secretary to the Government of India, Ministry of Finance, and saying that as the notification issued in 1972 was also on similar lines, the committee presumed that the clarification given by the Board in the previous year would apply to the notification issued in 1972 also i.e., where a factory has worked in the base period (1st October, 1971 to 30th September, 1972) it will be entitled to the full rebate on its entire production during the various periods mentioned in the notification although during the corresponding periods for the last season, the production: may be "nil" and the Central Board of Excise and Customs informed ISMA by letter dated 1-11-1972 confirming the presumption set out in the letter dated 14-10-1972 of ISMA. These letters of ISMA to the Under Secretary to the Government of India, Ministry of Finance and the Central Board of Excise and Customs, have been referred in detail in the earlier portion of the Judgment. In view of this correspondence between ISMA and the Government of India and the Central Board of Excise and Customs, the petitioners in this batch of writ petitions are certainly entitled to contend that they were led to believe that excise duty 28-9-1972, 4-10-1973 and 12-10-1974 would be granted to them for production of excess sugar in the relevant period even though there had been no production of sugar at all during the period base period. The credit for the excise duty rebate, as anticipated by the petitioners in this batch of writ petitions, had been originally given in their P.L. A. accounts. It has not been disputed that the petitioners had finalised their accounts on the basis of the grant of excise duty rebate for the production of sugar in the periods in question and paid bonus to their employees, additional price for the cane etc., and thus acted to their detriment. Under these circumstances, I agree with the learned counsel for the petitioners in this batch of writ petitions that the principle of promissory estoppel applies and that it is not open to the respondents to go back upon their representation and contend that the petitioners are not entitled to excise duty rebate merely because there was no production of sugar at all during the base period in the previous year or years.

65. As stated earlier, the bar of limitation under Rule 10 has been raised by the petitioners in W.P. Nos. 1625 of 1978 and 1685 of 1979 and under Rule 10 read with Rule 173-J by the petitioners in W.P. Nos. 1006, 1016 and 4513 of 1978 and 978 and 2483 of 1979. The dates on which credit was given for the excise duty

rebate had not been mentioned in the affidavits filed in support of W.P. Nos. 1006, 1016 and 1625 of 1978. The dates on which credit for excise duty rebate has been given are mentioned in W.P. Nos. 4513 of 1978, 978, 1685 and 2483 of 1979 as 31-1-1973, 1-1-1975, 8-11-1974 and 11-11-1974 respectively. The dates of demand for repayment of the amounts have been mentioned in W.P. Nos. 1006, 1016, 1625 and 4513 of 1978, 978, 1685 and 2483 of 1979 as 10-3-1977, 16-5-1977, 15-7-1975, 16-5-1977, 30-6-1976, 30-6-1976 and 26-8-1976 respectively.

Rule 10 of the Rules relates to recovery of duties or charges short levied or erroneously refunded. Sub-rule (1) of that rule reads : -

"When duties or charges have been short levied through inadvertence, error, collusion or misconstruction on the part of an officer, or through mis-statement as to the quantity, description or value of such goods on the part of the owner, or when any such duty or charge, after having been levied has been owing to any such cause, erroneously refunded, the proper officer may, within three months from the date on which the duty or charge was paid or adjusted in the owner's account-current, if any, or from the date of making the refund, serve a notice on the person from whom such deficiency in duty or charges are recoverable requiring him to show cause to the Assistant Collector of Central Excise why he should not pay the amount specified in the notice."

The period of three months mentioned in this Sub-rule has been amended as one year"by Rule 173-J. Rule 10-A relates to residuary powers for recovery of sums due to Government. Sub-rule (1) of Rule 10-A reads:-

"Where these Rules do not make any specific provision for the collection of any duty, or of any deficiency in duty if the duty has for any reason been short levied, or of any other sum of any kind payable to the Central Government under the Act or these Rules, the proper officer may serve a notice on the person from whom such duty, deficiency in duty or sum is recoverable requiring him to show cause to the Assistant Collector of Central Excise why he should not pay the amount specified in the notice."

66. The learned counsel for the respondents invited my attention to the decision of the Supreme Court in Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd., where their Lordships have observed :

"Undoubtedly, a mechanical adjustment and ostensible settlement of accounts, by making debit entries, was gone through in the case before us. But, we could not equate such an adjustment with an assessment, a quasi-judicial process which involves due application of mind to the facts as well as to the requirements of law, unless we were bound by law to give such an unusual interpretation to the term "assessment"...

Rules 10 and 10A, placed side by side, do raise difficulties of interpretation. Rule 10 seems to be so widely worded as to cover any "inadvertence, error, collusion

or misconception on the part of an officer" as well as any "mis-statement as to the quantity, description or value of such goods on the part of the owner" as causes of short levy.

Rule 10A would appear to cover any "deficiency in duty if the duty has for any reason been short levied", except that it would be outside the purview of Rule 10-A if its collection is expressly provided for by any rule. Both the Rules, as they stood at the relevant time, dealt with collection and not with assessment. They have to be harmonised. In *N.B. Sanjana v. Elphinstone Spg. & Wvg. Mills Co. Ltd.* AIR 1972 S.C. 2039 this court harmonised them by indicating that Rule 10-A, which was residuary in character, would be inapplicable if a case fell within a specified category of cases mentioned in Rule 10...."

We think that Rule 10 should be confined to cases where the demand is being made for a short levy caused wholly by one of the reasons given in that rule so that an assessment has to be reopened. On the other hand, Rule 10A indicates that there are residuary powers of making a demand in special circumstances not foreseen by the framers of the Act or the Rules."

The learned Judges have held that the case like the one before them falls more properly within the residuary class of unforeseen cases. In this batch of cases before me, credit for excise duty rebate had not been given mechanically.

67. On the other hand, the learned counsel for the petitioners in this batch of writ petitions contend that these cases fall squarely within Rule 10 which read with Rule 173 J as already stated, relates to recovery of duties or charges short levied or erroneously refunded, for, it is the case of the respondents in these cases that credit was given erroneously for a larger sum of Excise duty rebate than the one to which the petitioners were entitled, which would mean that the duties were originally short levied falling within the ambit of Rule 10. In this connection, the learned counsel for the petitioners relied upon the decision of Chinnappa Reddy, J. in *Etikoppaka Co-operative Agricultural Society Ltd. v. Union of India* 1978 A.W.R. 106 referred to above. There, the learned Judge has observed :-

"The petitioner also raised a question of limitation. They argued that under Rule 10 of the Central Excise Rules read with Rule 173-J the period of limitation prescribed was one year from the date on which the duty was adjusted in the owner's account-current and therefore the impugned notices were time barred. The argument of the learned counsel for the Central Government was that the case did not fall within Rule 10 but fell within Rule 10-A. Rule 10(1) and Rule 10-A(1) may be usefully extracted. They are as follows :-

... .. One of the arguments of the learned counsel for the Central Government which was backed by a decision of the Patna High Court in *Rohtas Industries Ltd. v. Superintendent, Central Excise* was that Rule 10 had no application at all to cases of adjustment under the "self-removal procedure" prescribed in Chapter VII-A of the Rules. This submission is without substance

since Rule 173-J occurring in chapter VIII-A expressly states that the provisions of Rules 10 and 11 shall apply to the assessee as if for the expression "three months", the expression "one year" were substituted in those Rules. In view of Rule 175-J, which I find was not noticed by the Patna High Court, I am unable to say that Rule 10 will not apply to cases coming under chapter VII-A....

In *N.B. Sanjana, Assistant Collector of Central Excise, Bombay and Others Vs. The Elphinstone Spinning and Weaving Mills Company Ltd.*, it was pointed out by the Supreme Court that Rule 10-A was residuary in character and that it would apply only to the cases not covered by Rule 10.... It is seen that Rule 10 expressly refers to a case where the short levy is due to a misconstruction and provides a period of three months from the date of payment of the duty or adjustments in the account-current, for the issuance of a notice to shew cause why the short levy should not be made good. All the instant cases are clearly covered by Rule 10 and, therefore, there is no occasion for the applicability of Rule 10-A. Rule 10 read with Rule 173-J(i) prescribes one year as the period of limitation but it is not disputed that all the assessments and adjustments were made more than one year prior to the date of the trade notice i.e., 28th July, 1976. The impugned demands must therefore, be held to be barred by limitation." I am of the opinion that the demands for repayment of the amounts on the basis that they had been erroneously credited to the petitioners could only be on the basis that the excise duty had been short levied and, therefore, Rule 10 would apply to these cases and not the residuary Rule 10-A. The demand had been made in W.P. Nos. 4513 of 1978 and 978, 1685 and 2483 of 1979 more than one year after the amounts had been credited and would be barred by limitation under Rule 10 read with Rule 173-J. If credit had been given in W.P. Nos. 1006, 1016 and 1625 of 1978 more than one year prior to the date of demands in those cases, namely 10-3-1977, 16-5-1977 and 15-7-1975 the demand in those cases also would be barred by limitation.

68. The petitioners in W.P No. 436 of 1977 had not filed any appeal against the order dated 8-6-1976 of the Superintendent of Central Excise, Bhavani, impugned in that petition. The petitioners in W.P. 550 of 1977 had filed the writ petition after filing only an application dated 20-3-1976 before the Assistant Collector of Central Excise, Pondicherry claiming the differential amount of Rs. 11,10,828/-. The petitioners in W.P. 2467 of 1977 had not filed any appeal against the order of the second respondent dated 28-5-1977 impugned in that writ petition. The respondents contend in their counter affidavits that the petitioners in these three writ petitions have not exhausted the alternative remedy and that the writ petitions are therefore not maintainable. The petitioners in W.P No. 551 of 1977 had not filed any revision against the order dated 19-6-1976 of the Appellate Collector of Central Excise, directing them to move the Assistant Collector, Central Excise, Pondicherry. On the ground that the Chief Accounts Officer who passed the impugned order dated 21-5-1976 is not the proper authority. It is seen from the counter " affidavit filed in that writ petition that the petitioners had sent a letter dated 15-7-1976 to the Assistant

Collector of Fondicheny, requesting him to with- draw the demand made by the Chief Accounts Officer for payment of Rs. 423800/- and also for payment of additional rebate of Rs. 2,00,308/- and that the petitioners have filed the writ petition before a final decision had been taken by the Assistant Collector, Central Excise, Pondicherry on that application. But it has not been contended in that counter affidavit that the writ petition is not maintainable.

69. In W.P. Nos. 1006 and 1016 of 1978, the petitioners have contended that since the impugned action had been taken only in pursuance of the decision of the Government of India and the excise department was adopting the same attitude all over India, any appeal to the appellate authority would be only illusory and of no avail and that the petitioners have therefore no other option except to approach this court under Article 226 of the Constitution of India. In W.P. No. 1625 of 1978, an appeal had been filed before the Appellate Collector, Central Excise, Madras, but no revision against his order. The respondents have contended in the counter affidavit filed in these W.P. Nos. 1006, 1016 and 1625 of 1978 that the petitioners have not exhausted the departmental remedies. But it has not been contended that these writ petitions are not maintainable.

70. In W.P. 4513 of 1978, the petitioners had filed an appeal before the Appellate Collector of Central Excise, Madras. In the counter affidavit filed in W.P. No. 1016 of 1978 which has been adopted by the respondents in W.P. No. 4513 of 1978, it has been contended that the alternative remedy has not been exhausted. In W.P. Nos. 978, 1625 and 2483 of 1979, appeals had been filed by the petitioners before the Appellate Collector, Central Excise, Madras. In the counter affidavits filed in these writ petitions, it has been contended that the petitioners have not filed any revision petition against the orders of the Appellate Collector, Central Excise, Madras, and that the writ petitions are not maintainable.

71. The learned counsel for the respondents in these petitions contended that Section 35-A of the Act provides for revision by the Central Board of Excise and Central Government which are statutory bodies and that it is not open to the" petitioners to contend that revisions to those statutory bodies will be of no avail merely because the Government had taken another view about the notifications. But the learned counsel for the petitioners in these petitions submitted that these are not cases where the Government had not already taken a view as to how the notifications under which relief has been claimed in these writ petitions have to be interpreted and therefore any appeal or revision to the Appellate Collector, the Central Board of Excise and Customs or the Central Government, as the case may be, will be futile and consequently it is open to the petitioners to file these writ petitions without resorting to those remedies.

72. It is seen from the judgment of Chinnappa Reddy, J. in Etikoppaka Co-operative Agricultural Society Ltd. v. Union of India 1978 A.W.R. 106 referred to above that the collector of Guntur had stated in his trade notice dated 28-7-1976 that the notification dated 4-10-1973 was examined in detail at the highest level as to how the rebate is to be allowed for the production of sugar in a particular

slab of the incentive period in cases where there was no production in the corresponding base period and that the subsequent interpretation has been given as per the decision now taken at the highest level. The learned Judge had observed in that judgment :-

"In the counters filed in the several writ petitions a point was raised that the petitioners had an alternate remedy by way of an appeal u/s 35 of the Central Excise Act, and a revision to the Central Government u/s 36. In my view, the pursuit of the remedy provided by the Act, in the circumstances of the case, having regard to the instructions issued by the Central Government, the highest authority under the Act, would only be an exercise in futility. The highest authority constituted under the Act having already pre-determined the question and directed all the subordinate tribunals constituted under the Act to interpret the notifications in a particular manner, the statutory remedy has ceased to be a remedy. There can, therefore, be no bar to the maintainability of these writ petitions."

I respectfully agree with Chinnappa Reddy, J., and uphold the contention of the learned counsel for the petitioners that any remedy by way of any appeal to the Appellate Collector or the Central Board of Excise and Customs or the Central Government, as the case may be, would be of no avail, though they are quasi-judicial authorities, as it could not be stated that those authorities who also function as executive authorities will not be influenced by the view taken at the highest level as to how the Notification should be interpreted and that any approach to them would be only futile. In these circumstances, I hold that these writ petitions which have been filed without exhausting the alternative remedies by way of appeals in some cases and revisions in some other cases are maintainable.

73. For the foregoing reasons, all the writ petitions, are allowed as prayed for with costs. Counsel's fee Rs. 500, in each of the petitions.