

(2005) 09 AHC CK 0046

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 782 of 1982

Simbholi Sugar Mills Limited

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 07-09-2005

Acts Referred:

Central Excise Rules, 1944 — Rule 10, 10(1), 10A, 12, 12A
Central Excises and Salt Act, 1944 — Section 11A, 35A, 38A
Customs, Central Excises and Salt and Central Boards of Revenue (Amendment) Act, 1978 — Section 21
Finance Act, 2001 — Section 131, 132
General Clauses Act, 1897 — Section 6

Citation : (2005) 09 AHC CK 0046

Hon'ble Judges : Yatindra Singh, J; Sunil Ambwani, J; Devendra Pratap Singh, J

Bench : Full Bench

Advocate : S.D. Singh, Sudhir Chand and U.K. Sharma, for the Appellant; V.K. Singh and Jayant Banerji and S.S.C., for the Respondent

Judgement

Devendra Pratap Singh, J.—Heard Sri S.D. Singh, learned counsel for the petitioner and Sri Jayant Banerji for the Union of India.

2. Questioning the correctness of a Division Bench of this Court in the case of Ajanta Paper Products v. Collector, Central Excise Collectorate, Kanpur (1982 U.P.T.C. 105), another Division Bench framed the following two questions in the petition and referred it to the Full Bench for its opinion.

i. Whether proceedings initiated under Rule 10 of the Central Excise Rules, 1944 cannot be continued u/s 11A of the Act?

ii. Whether the proceedings initiated under Rule 10 lapsed on the date Rule 10 was omitted, namely 17.11.1980 as held by the Division Bench of this Court in Ajanta Paper Products v. Collector, Central Excise Collectors, Kanpur (1982 U.P.T.C. 105)?

3. The petitioner is a duly incorporated company engaged in the manufacture of

sugar which is a excisable good under item No. 1 of the First Scheduled to the Central Excise and Salt Act, 1944 (here-in-after referred to as the Act) where, at the relevant time, duty was payable at 37.5% ad valorem together with additional duty at 7.5% ad valorem. In order to spur sugar producing units to increase sugar production during the lean period, the Central Government issued notification No. 108 of 1978 on 28.4.1978 granting exemption from excise duty on so much of sugar produced in excess of the average of last three years for the period 1.5.1978 to 15 8.1978 to the extent of Rs. 54/- per quintal for free sale sugar and Rs. 9.60 per quintal for levy sugar. The petitioner allegedly produced 47314.98 quintal of excess sugar and thus claimed exemption to the extent of Rs. 25,55,008.90 and was permitted to credit it to its Personal Ledger Account as proforma credit in pursuance of the aforesaid exemption notification. However, vide show cause notice dated 5.10.1979 issued under Rule 10 (1) of the Rules framed under the Act, the Assistant Collector required the petitioner to show cause why refund of Rs. 11,09,012/- be not ordered as it was entitled to exemption of only Rs. 14,54,0098.30 on the ground that exemption could not exceed the duty actually paid. The petitioner filed his reply to the show cause raising several grounds, including, that of limitation.

4. The Assistant Collector confirmed the show cause holding that the petitioner was obliged to refund a sum of Rs. 11,09,012.60 vide its order dated 22.7.1982. This was subjected to an appeal u/s 35A of the Act but as no interim order was granted, the present writ petition was filed challenging the order of the Assistant Collector dated 22.7.1982.

5. During the pendency of the proceedings before the Assistant Collector, Rule 10 was omitted with effect from 17.11.1980, by notification No. 177/80-CE dated 12.11.1980 and, simultaneously, new Section 11A was introduced in the Act with effect from 17.11.1980, vide Act No. 25 of 1978. Though, substantially, the power of recovery of duty-not levied, short levied or erroneously refunded, remained the same, but there was no saving clause in Section 11A for continuing the proceedings commenced under the omitted Rule 10. One of the main grounds raised in this petition is that since the proceedings initiated under Rule 10 were neither saved by Section 11A nor by virtue of Section 6 of the General Clauses Act, it could not continue and as such the demand was without any statutory support. At the hearing of this petition, the petitioner heavily relied upon the Division Bench of our court in Ajanta Paper's case (Supra). It was held therein that as there was no saving clause either in the notification omitting Rule 10 or in the Act 25 of 1978, which introduced Section 11A in the statute book, the proceedings could not continue and would lapse. Relying upon a five Judge Constitutional Bench of the Apex Court in Rayala Corporation v. Director of Enforcement (AIR 1974 SC 494), it went on to hold that as Section 6 of General Clauses Act does not apply to cases of omission or to repeal of a rule, the proceedings are not saved under the said Act, too.

6. As already observed, the Division Bench while hearing this petition, when

confronted by the decision in Ajanta Paper Products (Supra), did not agree with the ratio laid-down therein and after considering the decision of Madhya Pradesh High Court in the case of Gwalior Rayan Mfg. (Wrg.) Co. v. Union of India (1982 ELT 844) where a contrary view was taken, it referred the two questions to be answered by the Full Bench.

7. Before we proceed further, it would be convenient to note Rule 10 which provided for recovery of duties as follows:-

"Recovery of duties not levied or not paid, or short-levied or not paid in full or erroneously refunded.-(1) where any duty has not been levied or paid or has been short-levied or erroneously refunded or any duty assessed has not been paid in full, the proper officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid, or which has been short-levied, or to whom the refund has erroneously been made, or which has not been paid in full, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that: -

(a) where any duty has not been levied or paid, has been short-levied or has not been paid in full, by reason of fraud, collusion or any willful mis-statement or suppression of facts by such person or his agent, or

(b) where any person or his agent, contravenes any of the provisions of these rules with intent to evade payment of duty and has not paid the duty in full, or

(c) where any duty has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by such person or his agent, the provisions of this sub-Section shall, in any of the cases referred to above, have effect as if for the words "six months", the word "five years " were substituted.

Explanation- Where the service of the notice is strayed by an order of court the period of such stay shall be excluded in computing the period of six months, or five years, as the case may be.

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

For the purposes of this rule-

(i) "refund" includes rebate referred to in Rules 12 and 12A.

(ii) "relevant date" means-

" (a) in the case of excisable goods on which duty has not been levied or paid or on which duty has been short-levied or has not been paid in full, the date on which the duty was required to be paid under these rules;

(b) in the case of excisable goods on which the value or the rate of duty has been provisionally determined under these rules, the date on which the duty is adjusted after final determination of the value or the rate of the duty, as the case may be;

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

8. This rule was omitted by notification No. 177/80-CE dated 12.11.1980 w.e.f. from 17.11.1980 and simultaneously that power was introduced in the Act itself through Section 21 of Customs, Central Excise and Salt and Central Boards of Revenue (Amendment) Act, 1978 (Act No. 25 of 1978) by incorporating Section 11A which reads as under:-

SECTION 11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. - (1) When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made there-under with intent to evade payment of duty, by such person or his agent, the provisions of this Sub-section shall have effect, as if for the words "six months", the words "five years " were substituted.

Explanation- Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of six months or five years, as the case may be.

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

(3) For the purposes of this Section,-

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

(ii) "relevant date " means,-

(a) in the case of excisable goods on which duty of excise has not been levied or

paid or has been short-levied or short-paid-

(A) where under the rules made under this Act a monthly return, showing particulars of the duty paid on the excisable goods removed during the period to which the said return relates, is to be filed by a manufacturer or a producer or a licensee of a warehouse, as the case may be, the date on which such return is so filed;

(B) where no monthly return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(C) in any other case, the date on which the duty is to be paid under this Act or the rules made there-under;

(b) in case where duty of excise is provisionally assessed under this Act or the rules made there-under, the date of adjustment of duty after the final assessment thereof (c) in the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund.

9. Learned counsel for the petitioner has raised those very arguments and has urged that on the omission of Rule 10, the proceedings fall and it cannot be continued u/s 11A as there was no saving clause. He has gone on to contend that proceedings are not saved even under the General Clauses Act. He has drawn support from the reasons given by this Court in the case of Ms. Ajanta Paper Products which reasons and decision have been affirmed by the Constitutional Bench decision in the case of Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others,

10. The Constitution Bench in the Kolhapur Sugarcane (Supra) was considering the same question as to whether proceedings under Rule 10 or 10A could continue after its omission without any saving clause in Rule 10 or in Section 11A on the omission of Rule 10 or whether they could be saved by Section 6 of General Clauses Act.

11. Let us consider the reasons given by the bench. In support of its conclusion in para 34 of the report it held...."It is not correct to say that in considering the question of maintainability of pending proceedings initiated under a particular provision of the rule after the said provision was omitted the court is not to look for a provision in the newly added rule for continuing the pending proceedings. It is also not correct to say that the test is whether there is any provision in the rules to the effect that pending proceedings will lapse on omission of the rule under which the notice was issued. It is our considered view that in such a case the court is to look to the provision in the rule which has been Introduced after omission of the previous rule to determine whether pending proceedings will continue or lapse. If there is a provision therein that pending proceedings shall continue and be disposed off under the old rule as if the rule has not been deleted or omitted then such proceedings will continue. If the case is covered by Section 6 of the General Clauses Act, or there is a pari materia provision in the

Statute under which the rule has been framed, in that case also the pending proceedings will not be affected by omission of the rule. In the absence of any such provision in the Statute or in the rule the pending proceedings would lapse on the rule under which the notice was issued or proceedings were initiated being deleted/omitted....(emphasis supplied)

12. After over ruling the Full Bench of the Gujarat High Court and the Division Bench of the Karnataka High Court, it went on to hold that since Rule 10 is neither a Central Act nor a Regulation, though it may be a rule u/s 3(51) of the Act, the General Clauses Act would not save the proceedings after its omission. It went on to reason out that since neither in Rule 10 or Section 11A nor there was any other provisions in the Act to save such proceedings, it held, in para 40, that "...There is also no provision in Section 11A or in any other Section of the Act saving the proceedings initiated under the deleted/omitted provision. The consequential position that follows is that the proceedings lapsed after 6.8.1977 and any order passed in the proceedings thereafter is to be treated as non est...."(emphasis supplied)

13. Having gone through the decision, there is no escape from the conclusion that the issue before us is fully covered on all fours.

14. But, there is a caveat of the Revenue.

15. It contends that in view of the insertion of Section 38A in the Act by the Finance Act 2001, which was inserted retrospectively on 11.5.2001, the petitioner cannot take any benefit of either the decision of A j ant a Paper Products or the Apex Court decision in Kolhapur Sugar (Supra).

16. It would be appropriate to consider Section 38-A as introduced by Section 131 of Finance Act, 2001.

"131. Insertion of new Section 38A- After Section 38 of the Central Excise Act, the following Section shall be inserted and shall be deemed to have" been inserted on and from the 28th day of February, 1944, namely:-

"38A. Effect of amendments, etc., of rules, notifications or order- Where any rule, notification or order made or issued under this Act or any notification or order issued under such rule, is amended, repealed, superseded or rescinded, then, unless a different intention appears, such amendment, repeal, supersession or rescinding shall not-

(a) revive anything not in force or existing at the time at which the amendment, repeal, supersession or rescinding takes effect; or

(b) affect the previous operation of any rule, notification or order so amended, repealed, superseded or rescinded or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any rule, notification or order so amended, repealed, superseded or

rescinded; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under or in violation of any rule, notification or order so amended, repealed, superseded or rescinded; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the rule, notification or order, as the case may be, had not been amended, repealed, superseded or rescinded"

17. Section 131 of the Finance Act, 2001 declares that Section 38-A shall be deemed to have been inserted on and from 28.2.1944. For the purposes of the present case it is apparent that Section 38A postulates that where any order is made or any investigation or legal proceedings are pending or liability created, they shall continue even if the rule or notification is amended, repealed, superseded or rescinded. The only rider provided is that the proceedings or liability so pending or created would not be saved, if, a different intention appears.

18. Section 132 thereof further provides for validation of action taken under such rule. It reads as follows:-

"132. Validation of certain action taken- Any action taken or anything done or omitted to be done or purporting to have been taken or done or omitted to be done under any rule, notification or order made or issued, under the Central Excise Act, or any notification or order issued under such rule at any time during the period commencing on and from the 2H" day of February, 1944 and ending with the day, the Finance Bill, 2001 receives the assent of the President, shall be deemed to be and to always have been, for all purposes, as validly and effectively taken or done or omitted to be done as if the amendment made by Section 131 of the Finance Act, 2001 had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority.

(a) any action taken or anything done or omitted to be done, during the said period in respect of any excisable goods under any of such rule, notification or order, shall be deemed to be and shall be deemed to always have been, as validly taken or done or omitted to be done as if the amendment made by Section 131 of the Finance Act, 2001 had been in force at all material times;

(b) no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for any action taken or anything done or omitted to be done, in respect of any excisable goods under any of such rule, notification or order, and no enforcement shall be made by any court, of any decree or order relating to such action taken or anything done or omitted to be done as if the

amendment made by Section 131 of the Finance Act, 2001 had been in force at all material times;

(c) recovery shall be made of all such amounts of duty or interest or penalty or fine or credit of duty in respect of inputs or capital goods or other charges which have not been collected or, as the case may be, which have been refunded, as if the amendment made by Section 131 of the Finance Act, 2001 had been in force at all material times;

Explanation- For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this Section had not come into force"

19. The Section validates any action taken under any such rule at any time between 28.2.1944 and 11.5.2001, when it received the assent of the President and Section 38A was for all purposes to be deemed to be on the Statute book, notwithstanding anything contained in any judgment or order of any court. It legalizes any action taken under any rule under the Act in spite of its amendment, supersession, repeal or rescission. A joint reading of Section 131 and 132 leads to the only conclusion that any proceedings initiated under Rule 10 would continue irrespective of the fact that it was omitted without any saving clause in either Rule 10 or Section 11A and also irrespective of the judgment of the Courts, as they are saved by Section 38A.

20. However, learned counsel for the petitioner contends that the legislature was conscious of the fact that there was appreciable difference between "repeal" and "omission" of a rule, therefore it purposely did not apply Section 38A to "omission" and thus it would not affect the ratio in Kolhapur Sugarcane (Supra).

21. Before we consider the applicability of Section 38A, let us examine the basic rules of interpretation. According to Cross (2nd Edition) "Interpretation is a process by which the courts determine the meaning of a statutory provision for the purpose of applying it to the situation before them " and thereby ascertain the intention of the legislature enacting it. Justice Chinnappa Reddy, in Reserve Bank of India v. Peerless General Finance and Investment Company [AIR 1987 SCC 1023], said for the court, "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A Statute is best interpreted when we know why it was enacted.... " A correct construction can only be attained if the whole scope and object together with an analysis of the words used and circumstances when it was enacted, are considered together. No doubt, when interpreting a Taxing Statute, the more literal meaning assigned, the better. Stricter still when it tends to unsettle a Constitutional Bench decision. But, even then, when the intention is clear, it is not open to speculate and a close meaning may not be attributed. Once intention is clear, mere defects in phraseology would not entitle the courts

to deflect. Justice G.P. Singh in his Principle of Statutory Interpretation (9th Ed.) has succinctly summed up, at page 30, that "Any book for example, will tell that the text of a statute should not be sacrificed by lofty references to purpose or spirit which is not discernible, but when the purpose or object of a Statute is clear it should not be defeated by a mechanical construction even if there is some ineptness in language. " In a yet to be reported decision, the Apex Court, while considering the effect of a substitution in an exemption notification, though not expressly retrospective, relied upon its object and purpose to give it retrospectivity after observing - "An exemption notification, it is trite, must be construed having regard to the object and purport which the same seeks to achieve. It is also well settled that an expression used in a Statute should be given its ordinary meaning unless it leads to an anomalous or absurd situation."- Government of India and Ors. v. Indian Tobacco Association (Civil Appeal No. 5196 of 2005 decided on 23.8.2005). Where words of comprehensive import are used, courts cannot restrict the meaning to defeat the avowed object of the legislature. Where words of both comprehensive and restrictive import are used, the courts do apply "abundant caution" principle. In such situation the courts do resort to "mischief rule" or "purposive construction" which enables it to consider the four criteria, (a) what was the law before making the Act, (b) what was the defect or mischief for which the law did not provide, (c) what is the remedy that this Act has provided, and (d) what is the reason of the remedy. Once that is done, none can take recourse to "equity" and "fair play" to contend arbitrariness. In interpreting a provision inserted to remove defects in the Principle Act, a construction which will defeat its purpose should, normally, be avoided and a construction which preserve its work-ability and efficacy should be preferred. The courts, normally, propound or declare the law as inked by the legislature and it is not their wont to legislate.

22. Let us examine, in brief, the background in which the amendment was introduced and the scope and object as stated. We have already traversed the background leading to the pronouncement in Kolhapur Sugarcane case. Thereafter, several cases of repeal and omission of rules pending before various Tribunals and Courts led to quashing of refunds and also to the grant of interim orders against deposit of revenue. At least a couple have been brought on record:- 2001 (128) ELT 398 [2001 (128) ELT 400] This led to the Finance Bill 2001, where in the notes on clauses, it was stated as follows:-

"Clause 125 seeks to insert new Section 38A in the Central Excise Act so as to make provision with retrospective effect to save any rule, notification or order made or issued under the Central Excise Act which were later on amended, repealed, superceded or rescinded. Thus, has become necessary as in some judicial pronouncement it has been held that Section 6 of the General Clauses Act is not applicable in respect of subordinate legislation.

23. The aforesaid note, which is in the nature of the object which is sought to be achieved by the insertion, has some significance to help us to decipher the

intention sought to be achieved by the insertion. Rule 10 which laid down the procedure for refund of duty erroneously refunded was omitted without any saving clause. Some High Courts, including our, held that proceedings stood lapsed, while the Madhya Pradesh High Court held that the proceedings would not lapse and could continue u/s 11A. The authoritative pronouncement in Kolhapur Sugarcane case (Supra) approved the Allahabad view and held that neither the proceedings were saved by the General Clauses Act nor by any other provision in the Act. This reflected directly on the revenue of the State and under these circumstances Section 38A was introduced to cure the defect of the deletion and provide the remedy by enacting the Section which, to an extent, is in pari materia with Section 6 of the General Clauses Act. In a way, the deficiency found in notification omitting Rule 10 and Act 25 of 1978 introducing Section 11A are sought to be remedied. The intention of the legislature is crystal clear that proceedings initiated under Rule 10 would not lapse but could be taken to its logical conclusion for which Section 38A has been introduced.

24. Section 38A uses the words "amendment", "repealed", "superseded" and "rescinded" with regard to such rule. "Amendment" has come up for consideration before various courts, its implication was also considered by the Apex Court in the case of Bhagat Ram Sharma Vs. Union of India (UOI) and Others, after noting with approval the statement of law made in Sutherland's Statutory Construction, (3rd Edition Vol. 1 at page 477) while considering the distinction between "repeal" and "amendment", speaking through Sen J, it held in para 18 thus ""Amendment is, in fact a wider term and it includes abrogation or deletion of a provision in a existing Statute. If the amendment of an existing law is small, the Act professes to amend; if it is extensive, it repeals a law and re-enacts it...." Black's Law Dictionary (6th Ed.) defines amendment to mean - to change or modify for the better, by removing defects, or to correct or revise. The Random House Dictionary defines it as - to alter, modify, rephrase for the better.

A three Judge Bench in State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another, while examining the implication of the word "supersede" and "supersession" occurring in a notification issued under Orissa Sales Tax Act, after examining several dictionaries held it to signify "repeal and replacement". Black's Law Dictionary and Random House Dictionary also define it as such. The word "delete" has been used interchangeably with "omit" in Kolhapur Sugarcane (Supra), and has been defined in Black's Law Dictionary as to erase, remove or strike out, while Random House Dictionary defines it as - strike out, remove, erase or expunge. "Rescind" has been defined in Black's Law Dictionary as - annul, cancel or abrogate from the beginning, revoke, while Random House Dictionary describes it as - to abrogate, revoke or repeal. It is oft repeated and applied that " words take their colour from the company they keep" this broad linguistic rule or practice applies even when no general words are used. They should be understood together, as Stamp J. observed in Bourne V. Norwich Crematorium Ltd. [1967] 2 All E.R. 576, at P.578. "English words derive colour from those which surround them. Sentences are not mere collection of

words to be taken out of the sentence, defined separately by reference to the dictionary or decided cases, and then put back into the sentence with the meaning, which you have assigned to them as separate words... "

25. Considering the entire gamut of different meaning assigned to the words used in Section 38A, it would be apparent that though the Legislature has used the word "amendment", which is a word of very wide import, yet it goes on to use the word "repeal", "rescind" and "superseded" which all are genre of amendment, therefore, it would be safe to say that the legislature has purposely used all the words together to further enlarge the scope of the Section, or as "abundant caution". Even otherwise the exercise of omission of Rule 10 and enacting Section 11A would squarely fall within "supersession" as used in Section 38A.

26. Though a faint effort was made that insertion is colorable exercise and tends to indirectly offset a Constitutional Bench pronouncement, the argument does not appear to be correct. The power of validating acts have been recognized by courts and doctrine of colorable exercise of power does not involve motive, the only question to be asked is - whether there is legislative competence? But legislative competence has been challenged. As already observed hereinabove, insertion of Section 38A was to remove the defect as pointed out in Kolhapur Sugarcane case. The Apex Court in the case of Welfare Asscn. A.R.P., Maharashtra and Another Vs. Ranjit P. Gohil and Others, when confronted with similar facts and argument, after considering several Constitutional Bench decisions has held in paragraph 46 that "Thus, it is permissible for the Legislature, subject to its legislative competence otherwise, to enact a law which will withdraw or fundamentally alter the very basis on which a judicial pronouncement has proceeded and create a situation which if it had existed earlier, the Court would not have made the pronouncement".

27. Let us examine the issue from another angle, and consider the effect of Section 38A at the time when the Rule 10 was omitted. It would be worthy of note that Rule 10 was omitted with effect from 17.11.1980 and Section 11A was introduced on the same day and both the provisions are in pan materia providing the same power and procedure for recovery. The clarification provided in Section 38A comes into play as the intention of legislature cannot be said to be different while enacting Section 11A, and such repeal or rescission would not affect any proceedings initiated. The purpose, power and object of Rule 10 finds place in Section 11A and the intention is also to save the proceedings, therefore, there is no escape from the conclusion that the proceedings initiated under Rule 10; do not fall or are not wiped out or removed from the scene, because of its omission.

28. Thus, for the reasons given above, the answer to the first question is that proceedings would continue in view of Section 38A.

29. The answer to the second question is that the proceedings under Rule 10 would not lapse in view of Section 38A.

30. We wish to clarify here and now that neither any argument has been advanced nor have we considered whether fresh proceedings can be initiated u/s 38A.

31. Since, apart from aforesaid question, the writ petition raises other questions also which have not been referred to us, we remit the petition to be placed before the Division Bench for determination of the other issues.