

(1984) 04 GUJ CK 0022
In the Gujarat High Court

Union of India

APPELLANT

Vs

Bharat Vijay Mills Co. Ltd.

RESPONDENT

Date of Decision : 06-04-1984

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 37(1)(a)
Limitation Act, 1963 — Section 17(1)
Negotiable Instruments Act, 1881 (NI) — Section 80
Sales of Goods Act, 1930 — Section 64A

Citation : (1984) 2 GLR 1111

Hon'ble Judges : R.C. Mankad, J;A.S. Qureshi, J

Bench : Division Bench

Judgement

R.C. Mankad, J.—In this group of appeals filed by Union of India (hereinafter referred to as the "Revenue"), the principal question which arises for our consideration is whether the respondent Mills, original plaintiffs (hereinafter referred to as the "Mills") are entitled to refund of excise duty paid by them on blended yarn manufactured by them, which has been held to be illegal by a Division Bench of this Court in Special Civil Application No. 1058 of 1972 decided on 15th January 1976 (reported in CENCUS 1976 Volume-IV, P. 25-D).

2. The Mills produced blended yarn with the combination of certain percentage of synthetic staple fibre and certain percentage of cotton fibre. The proportion of blending was not uniform in all the Mills. It had also changed from time to time in different Mills. However, there is no dispute that the Mills manufactured or produced blended yarn with the combination of synthetic staple fibre and cotton fibre and blended yarn produced by the Mills was used by almost all the Mills themselves for manufacture of fabric popularly known as "art silk" fabric. The production of blended yarn was commenced by different Mills at different times. The claim for refund of excise duty, which is the subject-matter of these appeals, is confined to the period prior to 16/17th March, 1972. All the Mills paid excise duty on blended yarn manufactured by them for their own use under tariff item 18 or 18-A of the First Schedule to the Central Excises & Salt Act, 1944

(hereinafter referred as the "Excise Act"). By the Finance Act, 1972, the Excise Act was amended with effect from 16th March, 1972 and by the said amendment tariff item 18-E was introduced in the First Schedule. The said tariff item 18-E reads as follows:

18E. "Yarn all sorts of N. E. S." - It covers yarn containing partly synthetic staple fibre of non-cellulosic origin and partly wool or partly acrylic fibre or partly cotton fibre etc.

It is not disputed that with the introduction of tariff item 18E, blended yarn manufactured by the Mills was liable to excise duty. However, the controversy is with regard to the excise duty collected by the Revenue prior to March 16, 1972. As pointed out above, prior to that date, the excise duty was paid under tariff item 18 or 18A.

3. The Ahmedabad Manufacturing and Calico Printing Company Limited, Ahmedabad (hereinafter referred to as "Calico Mills") challenged the levy of excise duty on blended yarn by filing Special Civil Application No. 1058 of 1972 referred to above. The contention which was raised by the Calico Mills was that blended yarn produced by them did not fall under any of the tariff items and, therefore, no duty was leviable thereon. The Calico Mills is engaged in manufacture of fabric and was using blended yarn produced by it for manufacturing fabrics which as stated above is known as "art silk fabric". The Division Bench of this Court consisting of J. B. Mehta and S.H. Sheth, JJ. allowed the petition filed by the Calico Mills on January 15, 1976, holding that levy of excise duty on blended yarn prior to March 16/17, 1972. under tariff item 18 or 18A was clearly ultra vires. The Court directed refund of the excise duty levied for three years prior to the institution of the petition which was instituted on May 6, 1972. It is the case of the Mills that it was as a result of this declaration of law made by this Court that they came to know that they were not liable to pay excise duty on blended yarn upto March 16/17-1972 and that they had paid excise duty on blended yarn upto that date under mistake of law. The Mills, therefore, gave notices to the Revenue, calling upon it to refund the excise duty paid on blended yarn upto March 16/17, 1972, which was alleged to have been illegally recovered from them. Since the Revenue did not refund the excise duty as claimed in the notices, suits, out of which the present appeals arise were filed by the Mills for recovery of excise duty paid by them on blended yarn upto March 16/ 17, 1972. Each of the Mills has claimed refund of entire excise duty paid on blended yarn from the date it started manufacturing blended yarn to March 16/17, 1972. It is not disputed that all the suits are filed within three years from the date of the delivery of the judgment of this Court, which as stated above, was delivered on January 15, 1976. The Mills in addition to refund of excise duty, also claimed interest on the amount of refund. It may, however, be mentioned that the rate at which interest is claimed and the date from which it is claimed are not uniform. In other words, each of the Mills has claimed interest from different dates at different rates.

4. The suits were resisted by the Revenue on various grounds. The main grounds were as follows:

(i) The duty levied and recovered on blended yarn was legal. (It may be mentioned here that the decision of the Division Bench of this Court referred to above is under challenge before the Supreme Court).

(ii) The suits filed by the Mills are barred by limitation.

(iii) Even if the Mills are entitled to refund of the excise duty paid by them on blended yarn, they are not entitled to claim interest.

(iv) The excise duty having been passed on to the consumers the Mills are not entitled to restitution as claimed by them.

5. The suits which were filed by the Mills in different Courts have been decreed. The trial Courts have allowed the claims of the Mills for refund of excise duty in full. The Mills' claims for interest on refund of excise duty have also been allowed by the trial Courts but their decisions vary as regards the rate of interest and the date from which interest is awarded. Being aggrieved by the decrees passed by the trial Courts, the Revenue has preferred these appeals. In some cases, where interest claim has not been allowed in full the Mills have filed cross-objections. The contentions which are raised on behalf of the Revenue in these appeals have already been stated above.

6. Now, so far as the question of validity of the levy of excise duty on blended yarn prior to March 16/17, 1972 is concerned, it is no longer open to any debate as far as this Court is concerned. As already stated above, this question is concluded by the decision of the Division Bench of this Court in the Calico Mills' case. We will, therefore, have to proceed to decide the claims made by the Mills on the basis that the levy of excise duty on blended yarn prior to March 16/17, 1972, was illegal.

7. Next question to be considered is whether the suits filed by the Mills are barred by limitation. All the parties agree that the Mills' suits would be governed by Article 113 of the Schedule to the Limitation Act, 1963. This Article is a residuary Article and it prescribes a period of limitation of three years which would begin to run from the date the right to sue accrues. It is argued on behalf of the Revenue that assuming that excise duty levied on blended yarn was illegal, the right to recover it back would accrue on the same date on which the excise duty was paid. It is contended that all payments which were made beyond the period of three years next before filing of the suits would be barred by limitation. If what is contended on behalf of the Revenue is the true legal position, all the suits which are admittedly filed after January 15, 1976, for the recovery of excise duty paid prior to March 16/17, 1972 would be barred by limitation. It is, however, contended on behalf of the Mills that though they had a right to claim back the amount of excise duty illegally recovered from them from the date the duty was paid, the period of Limitation would begin to run only from the date

they discovered that the duty was paid under mistake of law. It is submitted that u/s 17(1) of the limitation Act, where suit is for relief from the consequences of a mistake, the period of limitation would not begin to run until the plaintiff has discovered the mistake or could, with reasonable diligence, have discovered the same. The Mills did not know that recovery of excise duty on blended yarn was illegal until this Court, by its decision rendered in the Calico Mills' case held it to be so. Therefore, according to the Mills, it was only on January 15, 1976, that they discovered that excise duty was paid on blended yam under a mistake. The period of limitation would, therefore, begin to run only from January 15, 1976, and the Mills are entitled to claim refund of the entire excise duty paid by them on blended yarn upto March 16/ 17, 1972 by filing suits within three years from January 15, 1976. As pointed out above, it is not disputed that all the suits are filed within three years from January 15, 1976, and, therefore, if the view canvassed on behalf of the Mills is correct, the suits cannot be dismissed as being barred by limitation.

8. Before the enactment of Limitation Act, 1963, suits of the nature filed by the Mills were governed by Article 96 of the First Schedule to the Indian Limitation Act, 1908. Article 96 related to suit for relief on the ground of mistake and it prescribed three years' period of limitation from the date the mistake became known to the plaintiff. In the 1963 Act, there is no Article corresponding to Article 96 of the 1908 Act. However, the effect of fraud or mistake is now dealt with by Section 17 of the 1963 Act. Provision corresponding to Section 17 of the 1963 Act was contained in Section 18 of 1908 Act which dealt with only the effect of fraud. Section 17 as pointed out above deals with the effect of fraud or mistake. Section 17(1) in so far as is relevant for our purpose reads as under:

17. (1) Where, in the case of any suit or application for which period of limitation is prescribed by this Act:

(a) x x x x x x x x

(b) x x x x x x x x

(c) the suit or application is for relief from the consequences of a mistake; or

(d) x x x x x x x x

the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production.

9. It is argued on behalf of the Revenue that the suits in question would not be covered by Section 17 inasmuch as mistake which has been referred to in or dealt with by that section, is a mistake of fact and not mistake of law. The suits are filed on the basis of mistake of law and, therefore, the Mills cannot claim the benefit of Section 17(1). It is submitted that once it is held that the suits are not

governed by Section 17(1), unless the suits are brought within three years from the accrual of the cause of action, they would be barred under Article 113 of the 1963 Act.

10. As pointed out above. Article 96 of the 1908 Act which provided for suit for relief on the ground of mistake does not find place in the 1963 Act. There is no separate Article prescribing the period of limitation for suit for relief on the ground of mistake and, therefore, such suit would be governed by residuary Article 113 of the Schedule to the 1963 Act. Under Article 96 of the 1908 Act period of limitation of three years commenced to run when the mistake became known to the plaintiff. This provision, it would appear, is now taken care of by Section 17(1) of the 1963 Act. If the suit for relief on the ground of mistake is covered by Section 17(1), the period of limitation would not begin to run until the plaintiff discovers the mistake or could with reasonable diligence have discovered it. This would be the position irrespective of the accrual of cause of action. In other words, although Article 113 provides that limitation period of three years would begin to run from the date of accrual of cause of action in view of the provision contained in Section 17, it would not so begin to run until the mistake is discovered or could with reasonable diligence have been discovered. Therefore, the crucial question is whether the suits filed by the Mills are covered by Section 17(1) of the 1963 Act. The Supreme Court in *K.S. Venkataraman and Co. Vs. State of Madras*, held that the suit of the nature filed by the Mills was governed by Article 96 of the 1908 Act. In that case also, the suit was filed for recovery of amounts paid to the State of Madras under a mistake of law. The plaintiffs in that case came to know of the mistake when decision in *Gannon Dunkerley & Co. (Madras) Ltd. v. The State of Madras* AIR 1954 Mad 1130, was pronounced by the High Court of Madras on 5th April, 1954. The suit for recovery of the amount paid on the ground of mistake was filed on 23rd March, 1955, which was within three years from the date of the said knowledge. The Supreme Court held that Article 96 of the Limitation Act applied and the suit which was filed within three years from the date of the knowledge was clearly within time under the said Article. It is, therefore, clear that the mistake referred to in Article 96 of the 1908 Act covered both mistake of fact as well as law. Since the provision contained in the said Article 96 is now substantially incorporated in Section 17(1) of the 1963 Act, in view of the above decision of the Supreme Court, it must be held that the mistake referred to in Section 17(1) is not confined to mistake of fact but it covers both mistake of fact as well as law. However, this question is now no longer open to doubt or debate in view of the pronouncement of the Supreme Court in *D. Cawasji and Co. and Others Vs. State of Mysore and Another*, In that case dealing with Section 17(1)(c) of the 1963 Act, the Supreme Court observed that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff has discovered the mistake or could, with reasonable diligence, have discovered it. It was farther observed that in a case where payment is made under a mistake of law, as contrasted with a mistake of fact, generally the mistake

becomes known to the party only when a Court makes a declaration as to the invalidity of the law. Though a party could, with reasonable diligence, discover a mistake of fact even before a Court makes a pronouncement, it is seldom that a person can, even with a reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law. The Supreme Court held:

Therefore, where a suit will lie to recover moneys paid under a mistake of law, a suit petition for refund of tax within the period of limitation prescribed i.e., within 3 years of the knowledge of the mistake, would also lie. For filing a writ petition to recover the money paid under a mistake of law, this Court has said that the starting point of limitation is from the date on which the judgment declaring as void the particular law under which the tax was paid was rendered, as that would normally be the date on which the mistake becomes known to the party.

There is, therefore, no doubt whatsoever that Section 17(1)(c) covers both the mistake of fact as well as law. It was then urged on behalf of the Revenue that in any case the Mills could with reasonable diligence have discovered the mistake of law on the date on which they excise duty. It was submitted that no question of interpretation of the provisions of the Excise Act or tariff items of the Schedule was involved. All that the Mills had to do was to peruse the tariff items in the Schedule to find out whether any excise duty was payable on blended yarn. If they had carefully perused the tariff items, they would have known on the date they started paying the excise duty that there was no tariff item under which duty was payable on blended yarn. Therefore, according to the Revenue, the period of limitation of three years would begin to run from the date the excise duty was first paid and thereafter on every date on which such payment was made. In *D. Cawasji & Co.*'s case, the Supreme Court has clearly observed that though a party could with reasonable diligence discover a mistake of fact even before a Court makes a pronouncement, it is seldom that a person can, even with a reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law. It must, therefore, be held that even with reasonable diligence, the Mills could not have discovered the mistake of law prior to January 15, 1976 the date on which this Court held that excise duty levied on blended yarn prior to March 15/16, 1972, was ultra vires or illegal. The mistake of law was discovered by the Mills only on January 15, 1976 and the period of limitation prescribed by Article 113 read with Section 17 (1) (c) would, therefore, begin to run only from January 15, 1976. Since it is not disputed that all the suits are filed within three years from January 15, 1976, all the suits must be held to be within time.

11. It was next contended that even assuming that the Mills discovered the mistake under which payment of excise duty was made only on January 15, 1976, they could if at all claim refund of the excise duty paid within three years next before the date the mistake was discovered. In other words, they would claim refund of only that excise duty which was paid within three years before January 15, 1976. We are unable to find any substance in this contention. If the

above contention is accepted all the suits will have to be dismissed since refund of excise duty which is claimed relates to the period prior to March 16/17, 1972. If the Revenue is right in its above submission any payment made prior to January 15, 1973, would be barred by limitation. Consequently, since the claim for refund pertains to the period prior to March 16/17, 1972, the entire claim made in the suits will have to be rejected as time-barred. The above submission made on behalf of the Revenue completely ignores the provisions contained in Section 17(1)(c). If the period of limitation does not begin to run until the mistake is discovered, we fail to see how relief could be confined only to the payments made within three years next before the date on which the mistake is discovered. The period of limitation would begin to run subsequent to the discovery of the mistake. It would not end on discovery of mistake. In our opinion, whether or not the Mills succeed on merits, their claim cannot be rejected on the ground of limitation. In other words, the claim made in respect of the payment of excise duty on blended yarn prior to March 16/17, 1972, must be held to be within time. We, therefore, reject the Revenue's contention that the suits are barred by limitation.

12. We will now proceed to examine on merits the claims for refund of excise duty made by the Mills. The basis of their claim is that they had paid the excise duty on blended yarn under a mistake of law. Since the excise duty was paid under a mistake, the Revenue, which cannot retain it, is liable to repay it to them u/s 72 of the Contract Act. It would thus appear that the Mills base their claim on Section 72 of the Contract Act, which reads as under:

72. Liability of person to whom money is paid or thing delivered by mistake or under coercion. A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.

Illustrations

(a) A and B jointly owe 100 rupees to C. A alone pays the amount to C and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(b) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods, he is entitled to recover such of the charge as was illegally excessive.

It is argued on behalf of the Revenue that the term "mistake" which is used in Section 72 has a restricted meaning and it is confined to a mistake of fact. In view of the settled legal position, this contention cannot be accepted. This question raised by the Revenue is concluded by a decision of the Supreme Court in *Sales Tax Officer, Banaras and Others Vs. Kanhaiya Lal Mukundlal Saraf*, The Supreme Court held therein that term "mistake" used in Section 72 of the Contract Act has been used without any qualification or limitation whatever and comprises within its scope a mistake of law as well as a mistake of fact. There is

no warrant for ascribing any limited meaning to the word "mistake" as has been used therein. This view taken by the Supreme Court has been followed in its subsequent decisions. It is, therefore, not open to the Revenue to contend that the term "mistake" used in Section 72 is confined to mistake of fact and it does not include mistake of law.

13. Section 72 is one of the group of sections falling under Chapter-V of the Contract Act which deals with certain relations resembling those created by contracts. This section is not founded on contract but embodies equitable principle of "restitution". Meaning of the word "restitution" given in the Concise Oxford Dictionary is as follows:

restoring of money or of thing to proper owner, reparation for injury." According to Webster's Dictionary it means:

the act of making good any loss, injury or damage; compensation; amends.

The juristic basis of the obligation u/s 72 is not founded upon any contract or tort but upon a third category of law, namely, quasi-contract or restitution. The object with which Section 72 is enacted is on one hand to prevent unjust enrichment of person to whom money is paid or thing delivered by mistake or under coercion and on the other to restore money or a thing to its real or proper owner. In other words, the object of Section 72 is restoration of money or thing to the real or proper owner or reparation of injury or making good any loss which might have been occasioned to the person making payment or delivering thing on account of payment of money or delivery of thing by mistake or under coercion. No one can be allowed to enrich himself unjustly at the cost or the expense of another. And it is with this object in view that Section 72 is enacted. In *Bibrose v. Pairbarin* 1943 A.C. 32, Lord Wright has stated the legal position as follows:

...any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law which has been called quasi-contract or restitution.

In *Nelson v. Larhelt* (1948) 1 KB 339, Lord Denning has observed as follows:

It is no longer appropriate to draw a distinction between law and equity. Principles have not to be stated in the light of their combined effect. Nor it is necessary to canvass the niceties of the old forms of action. Remedies now depend on the substance of the right, not on whether they can be fitted into a particular frame work. The right here is not peculiar to equity or contract or tort, but falls naturally within the important category of cases where the court orders restitution if the justice of the case so requires.

In our opinion, therefore, the person claiming repayment or return of money or thing u/s 72 must establish that justice of the case requires such repayment or return of money or thing. What is important is the substance of the right conferred under that section. Therefore, the person raising his claim on that section has to prove that it would be against conscience to allow the person to whom money is paid or thing delivered to retain it. He must establish that the person to whom money has been paid or thing delivered by mistake or under coercion is retaining it at his expense. In other words, it must be established that it would be unjust to allow the person to whom money is paid or thing delivered by mistake or under coercion to retain it and to allow him to do so would result in any loss or injury to him. If there is no loss or injury to the person claiming restitution, the claim for restitution, cannot be sustained. As pointed out above, restitution postulates restoration to the real or proper owner or reparation of injury or making good loss. If the person claiming restitution is not the real owner of the money paid or thing delivered by mistake or undue coercion, or if no loss or injury is caused to him, he would not be entitled to restitution. In our opinion, therefore, in order to succeed in an action for restitution u/s 72 of the Contract Act it is absolutely essential for the person claiming restitution to establish ownership loss or injury.

14. In this connection we may with advantage refer to a decision Supreme Court in *Mulamchand Vs. State of Madhya Pradesh*, which was a case which arose out of a claim for compensation made u/s 70 of the Contract Act. Section 70 is one of the sections falling under Chapter V of the Contract Act and it lays down that where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore the thing so done or delivered. One of the questions which arose before the Supreme Court was whether the appellant was entitled to claim refund of Rs. 10,000/- which he was required to deposit towards the right to collect lac from the forests under the contract which were not valid as the provisions of Article 299 of the Constitution was not complied with and the contract was void. In other words, the refund was claimed on the basis that there was no valid contract. The trial Court held that the appellant was not entitled to refund of Rs. 10,000/- firstly on the ground that the contract was good even though not in conformity with Article 299 of the Constitution and secondly, because the appellant was allowed to enjoy the right of collecting lac and the appellant actually availed himself of that right. The High Court of Madhya Pradesh, however, allowed the appeal filed by the State of Madhya Pradesh and set aside the decree passed by the trial Court. The finding of the trial Court was affirmed by the High Court in the appeal preferred by the State of Madhya Pradesh and it came to the conclusion that the appellant had worked for some time on the basis of the contract granted to him, but the appellant had abandoned the contract of his own accord and State cannot, therefore, be held liable for the refund of the amount of deposit. The appellant went in appeal

before the Supreme Court. The Supreme Court held that as there was no compliance with the provisions of Article 299 of the Constitution, the contract in question was not valid. Examining the appellant's claim that he was entitled to refund of deposit u/s 70 of the Contract Act, the Supreme Court observed that if money is deposited and goods are supplied, or if services are rendered in terms of void contract, the provisions of Section 70 of the Contract Act may be applicable. In other words, if the conditions imposed by Section 70 of the Act are satisfied then the provisions of that section can be invoked by the aggrieved party to the void contract. The first condition is that a person should lawfully do something for another person or deliver something to him; the second condition is that in doing or delivering the said thing he must not intend to act gratuitously and the third condition is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. If these conditions are satisfied, Section 70 imposed upon the latter person the liability to make compensation to the former in respect of, or to restore the thing so done or delivered. It was observed that where a claim for compensation is made by one person against another u/s 70, it is not on the basis of any subsisting contract between the parties but on a different kind of obligation. The juristic basis of the obligation in such a case is not founded upon any contract or tort but upon a third category of law namely, quasi-contract or restitution. After making the above observations, the Supreme Court referred to the case of *Bibroose v. Pairbarin* and the case of *Nelson v. Larhelt* (supra). After quoting the passages which are already reproduced above, the Supreme Court observed:

Applying the principles to the present case, it is manifest that the appellant would have been entitled to compensation u/s 70 of the Indian Contract Act if he has adduced evidence in support of his claim, but the trial Court has examined the evidence on this point and reached the conclusion that the appellant did collect lac in the jungles in the year 1951 but later on abandoned the working of his own accord. It is well established that a person who seeks restitution has a duty to account to the defendant for what he has received in the transaction from which his right to restitution arises. In other words, accounting by the plaintiff is a condition of restitution from the defendant (See "Restatement of the Law of Restitution", American Law Institute 1937 Edn. p. 634). The appellant did not produce sufficient evidence to show to what extent he worked the contract and what was the profit made by him in the year 1951 and the succeeding years. In the absence of reliable evidence on this, point the appellant was not entitled to restitution or refund of the deposit he had made. The case of the appellant with regard to this part of his claim was, therefore, rightly disallowed both by the trial Court and the High Court and the respondent is, therefore not, liable to refund the amount of deposit.

In our opinion the above principles will apply with equal force to a case arising u/s 72 of the Contract Act. As held by the Supreme Court, a person who seeks restitution has a duty to account to the defendant what he received in the transaction in which his right to restitution arises. In other words, accounting by

the plaintiff is a condition of restitution. It is, therefore, that we have taken the view that in order to successfully claim restitution u/s 72, it is necessary for the person claiming restitution to prove loss or injury to him. If a person who has paid money or delivered thing by mistake to another has received some benefit on account of or in consequence of such payment or delivery, he is liable to account for it before claiming restitution from the person to whom money has been paid or thing has been delivered.

15. It is not in dispute that excise duty paid by the Mills went into the cost structure of blended yarn manufactured by them. The sale price of the fabric manufactured with the use of blended yarn included the cost of blended yarn in which was embedded the excise duty. In other words, one of the components of the cost of fabric was the excise duty paid on blended yarn. It would thus appear that while fixing or determining the sale price of the fabric, the excise duty paid on blended yarn was taken care of. In no case before us the sale price of fabric was less than its cost. The excise duty paid on blended yarn was thus ultimately passed on to the buyer of the fabric. It is true that the Mills initially paid the excise duty on blended yarn but they did not bear its burden and threw on their customers to whom the finished product namely fabric or art-silk was sold. It is in the background of these undisputed facts that we are called upon to decide the question whether the Mills are entitled to claim refund of the excise duty paid on blended yarn from the Revenue. Having regard to the above facts, can it be said that they have suffered any loss or injury as a result of the transaction in question ? The answer has to be in the negative. If that be so, how can the Mills be said to be the real owners of the money in the form of excise duty which is alleged to have been retained by the Revenue ? If no loss or injury is caused to the Mills of what they are claiming restitution ? If there is any loss or injury, it is to the ultimate buyers of fabric to whom the burden of excise duty paid on blended yarn has been passed on. Therefore, if anybody is entitled to restitution, it is the buyer of fabric and not the Mills. If the claims made by the Mills were to be allowed or granted, that would undoubtedly result in unjust enrichment of the Mills for though they have not suffered any loss or injury they would get the refund of excise duty paid by them to the Revenue. That is not the object, with which Section 72 of the Contract Act is enacted.

16. Our view that money paid in the form of excise duty to the Revenue does not belong to the Mills derives support from the provisions contained in Section 64A of the Sale of Goods Act, 1930. This section reads as follows:

64A. (1) Unless a different intention appears from the terms of the contract, in the event of any tax of the nature described in Sub-section (2) being imposed, increased, decreased or remitted in respect of any goods after the making of any contract for the sale or purchase of such goods without stipulation as to the payment of tax where tax was not chargeable at the time of the making of the contract or for the sale or purchase of such goods tax paid where tax was chargeable at that time:

(a) if such imposition or increase so takes effect that the tax or increased tax, as the case may be, or any part of such tax is paid or is payable, the seller may add so much to the contract price as will be equivalent to the amount paid or payable in respect of such tax or increase of tax, and he shall be entitled to be paid and to sue for and recover such addition ; and

(b) if such decrease or remission so takes effect that the decreased tax only, or no tax, as the case may be, is paid or is payable, the buyer may deduct so much from the contract price as will be equivalent to the decrease of tax or remitted tax, and he shall not be liable to pay, or be sued for, or in respect of such deduction.

(2) The provisions of Sub-section (1) apply to the following taxes, namely:

(a) any duty of customs or excise on goods;

(b) any tax on the sale or purchase of goods.

Sub-section (2) of Section 64A makes it clear that Sub-section (1) applies to excise duty on goods. Under Sub-section (1) of Section 64A unless a different intention appears from the terms of the contract, in the event of any tax, i.e. excise duty being remitted in respect of any goods after the making of any contract or the sale or purchase of such goods if such remission so takes effect that the decreased tax only, or no tax is paid or payable, the buyer may deduct so much from the contract price as may be equivalent to the decrease of tax or remitted tax and he shall not be liable to pay in respect of such deduction. In our opinion the term "remission" used in Section 64A must be understood in the wider sense so as to include refund or repayment of tax or duty not legally recoverable or due. If it is given a restricted meaning and its scope is confined - to only that refund or repayment which is voluntary or made under administrative or legislative authority, object in enacting Section 64A would be partly defeated for in case of refund or repayment of illegal recovery of tax or duty, the buyer would be denied the benefit of deduction under the said section. No contract disclosing intention to the contrary as contemplated by Section 64A is produced before us. As already pointed out above, it is an admitted position that the Mills have passed on the burden of excise duty paid on blended yarn to the buyers of the fabric. That being the position, it is the buyers of the finished goods who are entitled to remission in the shape of refund of excise duty not legally recoverable. As pointed out above, if the excise duty legally recoverable is to be refunded or repaid, it would amount to remission within the meaning of Section 64A(1) of the Sale of Goods Act. Therefore, it would be the buyer of the fabric to whom the burden of excise duty paid on blended yarn is passed on would be entitled to the remission and not the Mills. Under these circumstances, it is impossible to hold that the money which is to be refunded on the ground that the excise duty is illegally recovered can be said to belong to the Mills. It belongs to the buyers of the fabric. Since the money does not belong to the Mills, they cannot claim restitution u/s 72 of the Contract Act. It is, however, argued on

behalf of the Mills that levy of excise duty is on the manufacture or on production of goods and therefore, it is the liability of the manufacturer to pay the excise duty on the goods manufactured. It was having regard to this liability of the manufacturer that u/s 11B of the Excise Act, right has been conferred on the manufacturer who has paid the duty to claim refund of duty. u/s 11B the person who has paid duty is entitled to make application for refund within six months from the date of payment. Relying on this provision, it was argued that it is the right of the manufacturer to claim the refund. Answer to the above contention is in the decision of the Supreme Court in Chhotabhai Jethabhai Patel and Co. Vs. The Union of India and Another, The Supreme Court observed therein that Section 64A of the Sale of Goods Act refers in express terms to "duties of excise" and has, therefore, to be read as part and parcel of every legislation imposing a duty of excise. Therefore, the provision of Section 11B of the Excise Act will have to be read subject to the provisions contained in Section 64A of the Sale of Goods Act. If the provisions of Section 11B are so read, it is clear that it would be the ultimate buyer who would be entitled to remission or refund of the excise duty paid on blended yarn.

17. It was argued on behalf of the Mills that the commodity namely blended yarn on which excise duty was illegally imposed or recovered was raw material for the manufacture of fabric or cloth and when cloth was manufactured, blended yarn was consumed. As already indicated above, most of the Mills which are before us manufacture blended yarn for their own use that is for captive consumption. It was, therefore, urged that so far as blended yarn was concerned, the Mills themselves were the consumers. The Mills being consumers of blended yarn, the burden of excise duty paid on blended yarn was borne by them. The mere fact that excise duty paid on blended yarn had gone into the cost structure of the fabric does not mean that the excise duty paid on blended yarn was recovered from the buyers of cloth. There was a separate excise duty on fabric and it is that excise duty alone which was separately paid on fabric which could be said to have been recovered from the buyers of fabric. It was, therefore, urged that so far as the excise duty paid on blended yarn was concerned, the buyers of fabric had nothing to do with it and since the Mills were the consumers of the yarn they themselves were entitled to the refund of the excise duty illegally recovered from them. If we accept the arguments advanced on behalf of the Mills, we would be shutting our eyes to the realities of the situation. Separate excise duty was no doubt paid on blended yarn, which is an intermediate product for the manufacture of fabric under the provisions of law. However, the said excise duty was admittedly one of the components of cost structure of the fabric manufactured by the Mills. It is also not disputed "that while fixing the sale price of the fabric the cost of blended yarn including the excise duty paid thereon was taken into account. The cost of yarn including the excise duty paid thereon and the profit formed the basis for determining the sale price of fabric. The Mills had to pay excise duty on fabric but that was added to the sale price when fabric was sold to the buyer. The Mills paid excise duty on the yarn as well as the fabric

manufactured by them as per their liability to do so under the Excise Act. It, therefore, cannot be gainsaid that excise duty paid on blended yarn as well as fabric had been passed on to the buyer of the fabric. It is immaterial that blended yarn was consumed by the Mills themselves.

18. It was urged on behalf of some of the Mills that some times the manufacturer has to sell his goods at a price which may be less than the cost. In such cases, burden of excise duty may not be passed on to the buyer or customer of the goods. It would, therefore, not be correct to say that in no case manufacturer would be entitled to refund of the excise duty. We are not concerned with hypothetical cases. But in any case, we are not suggesting that in no case manufacturer can receive the refund of excise duty. It would depend upon the facts of each case whether or not the manufacturer would be entitled to refund of excise duty. It is, therefore, that we have emphasised that in order to claim restitution, the person claiming restitution has to prove loss or injury to him. If he proves loss or injury, he would be entitled to restitution to the extent of loss or injury suffered by him. However, it is absolutely essential to plead and prove loss or injury to successfully claim restitution u/s 72 of the Contract Act. In the cases before us, it is not disputed that burden of excise duty has been passed on to the buyers of the fabrics. It is not the case of the Mills that they were required to sell fabric at a price less than its cost. No case of any loss or injury has been pleaded or proved by any of the Mills. The sole basis of the claim is that the excise duty which was not legally recoverable was paid on blended yarn and, therefore, they are entitled to refund of the excise duty paid by them. It is not the case of the Mills that any part of the burden of the excise duty was borne by them. In a given case it may be open to a manufacturer to himself claim refund of excise duty, but such would be the case where either wholly or partly burden of excise duty has fallen on his shoulders. It was further urged that when the Mills sell their fabrics, they generally sell them at a certain price plus excise duty payable on the fabric. Therefore, when the fabric is sold, only representation which is made to the buyer of the fabric is that he is being charged price plus excise duty payable on the fabric. There is no representation that he is required to pay excise duty on blended yarn. It was submitted that if the excise duty payable on the fabric is held to be bad, it would be the buyer of the fabric alone who would be entitled to refund. The question of refunding him excise duty paid on blended yarn, would, however, never arise. We see no force in this argument also. The right to recover refund of excise duty paid illegally, would not depend upon the representation made to the buyer of the fabric. If in fact burden of excise duty paid on blended yarn is passed on to the buyer of the fabric, it is the buyer alone, who would be entitled to the refund of excise duty paid on the yarn. And to permit the Mills to receive refund of excise duty, which they have already passed on to or recovered from the buyer of the fabric, would undoubtedly result in unjust enrichment of the Mills.

19. It was, however, strongly urged on behalf of the Mills that in cases similar to those before us, where tax or duty was paid under a mistake, the Supreme Court

has allowed refund to the persons who have paid tax or duty. In case where excise duty was paid by mistake, the manufacturer of the goods on which such excise duty was paid had been allowed to receive refund. In all those cases, it is submitted, refunds have been allowed u/s 72 of the Contract Act. It was urged that in view of the decisions of the Supreme Court, it is not open to us to hold that in order to claim restitution u/s 72, it is necessary to prove injury or loss. Decision of the Supreme Court in *Sales Tax Officer v. Kanhaiyalal* (supra), is one of the decisions on which reliance was placed in support of the above argument. In that case, mainly two questions arose before the Supreme Court, namely, (i) whether term "mistake" used in Section 72 of the Contract Act comprises within its scope "mistake of law" as well as "mistake of fact;" and (ii) whether tax paid under a mistake of law can be recovered u/s 72. As pointed out above, the Supreme Court held that the term "mistake" used in Section 72, has been used without any qualification or limitation whatever and comprises within its scope a mistake of law as well as a mistake of fact. So far as the second question is concerned, the Supreme Court held that where it is once established that the payment, even though it be of a tax, has been made by the party labouring under a mistake of law, the party is entitled to recover the same and the party receiving the same is bound to repay or return it. No distinction can be made in respect of a tax liability and any other liability on a plain reading of the terms of Section 72 of the Contract Act. To hold that tax paid by mistake of law cannot be recovered u/s 72 will be not to interpret the law but to make a law by adding some such words as "otherwise than by ways of taxes" after the word "paid." Therefore, what the Supreme Court held was that even a tax which is paid under mistake can be recovered back u/s 72 of the Contract Act. Except with reference to the two questions stated above, the scope and ambit of Section 72 did not come up for consideration before the Supreme Court. No question was raised before the Supreme Court that in order to claim restitution u/s 72, it was necessary to prove loss or injury. Since no such question was raised, the Supreme Court did not render any decision thereon. We are, therefore, unable to accept the argument that it should be presumed that the Supreme Court had impliedly negated the contention that for claiming restitution u/s 72, it was necessary to prove loss or injury.

20. Next decision of the Supreme Court on which reliance is placed is in *R. Abdul Quader and Co. Vs. Sales Tax Officer, Hyderabad*. In that case the question which came up for consideration before the Supreme Court was whether the State Legislature was competent to enact Section 11(2) and 20(c) of the Hyderabad General Sales Tax Act (14 of 1940). It was clear from the words "otherwise than in accordance with the provisions of this Act" in Section 11(2) of the Act that though the amount might have been collected by the dealers by way of tax, it was not eligible as tax under the Act. Section 11(2) provided that amounts collected by way of tax though not eligible as tax under the Act, should be paid over to Government, and if not paid over, they should be recovered from such person as if they were arrears of land revenue. The Supreme Court held that

unless the money collected by the dealers was due as tax, the State cannot by law, make it recoverable simply because it had been wrongly collected by the dealer. That could not be done directly, for it was not a tax at all within the meaning of Entry 54 of List II, nor could the State Legislature under the guise of incidental or ancillary powers do indirectly what it could not do directly. Section 11(2) was not, therefore, within the competence of the State Legislature under Entry 54 of List II. The provision contained in Section 20(c) being consequential to Section 11(2) would also fall along with it. While taking the above view, the Supreme Court observed that if a dealer had collected anything from a purchaser which is not authorised by the taxing law, that is a matter between him and the purchaser and the purchaser may be entitled to recover the amount from the dealers, Relying on this observation, it was urged that even if tax is recovered by way of excise duty from the buyer of fabric, it was a matter between the Mills and the buyers and it may be open to the buyer to recover the amount collected from the Mills. However, that is no ground why the Mills cannot recover money paid by them by way of excise duty to the Revenue. We are unable to see how the above decision of the Supreme Court can be of any assistance to the Mills. The question, as already stated above, which arises before us is whether the Mills are entitled to restitution u/s 72 of the Contract Act. As held by us, the Mills would not be entitled to restitution unless injury or loss was pleaded and proved. Since the excise duty was passed on to the ultimate buyers of fabric, the excise duty which was paid to the Revenue will be refundable to the buyers and not to the Mills. Under these circumstances, the Mills have no right to claim restitution. We are concerned with the right of the Mills to claim restitution and not whether the buyers can proceed against the Mills in case they succeed in recovering the amount from the Revenue. But apart from that, decision of the Supreme Court in *Abdul Quader & Co.*'s case was later on explained by the Supreme Court in the case of *Joshi, Sales Tax Officer v. Ajit Mills Ltd.* (1977) 40 S.T.C. 497. That was a case in which the Supreme Court considered the vires of Section 37(1)(a) and 46(2) of the Bombay Sales Tax Act, 1959. Section 37(1) contained a forfeiture clause. It was held that forfeiture clause in Section 37(1) was a punitive measure to protect public interest in the enforcement of the fiscal legislation and it fell squarely within the area of implied powers. All real punitive measures, including the dissuasive penalty of confiscating the excess collections, are valid, being within the range of ancillary powers of the legislature competent to exact a sales tax levy. It was further observed that the fact that there is arithmetical identity between the figures of the illegal collections made by the dealers and the amounts forfeited to the State cannot create a conceptual confusion that what is provided is not punishment but a transference of funds. It was observed that the notion that a penalty cannot be cast in the form of an absolute or no-fault liability but must be preceded by mens rea is not correct. The Supreme Court held that Section 37(1)(a) and Section 46(2) of the said Act were not ultra vires the State Legislature. It would, therefore, be clear that if the dealers had wrongly collected moneys from the customers, the said moneys can be forfeited by the Government. Therefore, the above argument which was advanced on behalf of

the Mills relying on the observations made by the Supreme Court in *Abdal Quader & Co.*'s case is of no avail to them.

21. The next case on which reliance was placed on behalf of the Mills was the case of *D. Cawasji & Co.* (supra). In that case, the Supreme Court held that a writ petition for recovery of money paid under mistake would lie within the period of limitation prescribed, that is, within three years of the knowledge of the mistake. The Supreme Court then proceeded to observe:

We are aware that the result of this view would be to enable a person to recover the amount paid as tax even after several years of the date of payment, if some other party could successfully challenge the validity of the law under which the payment was made and if only a suit or writ petition is filed for refund by the person within three years from the date of declaration of the invalidity of the law. That might both be inexpedient and unjust so far as the State is concerned. A tax is intended for immediate expenditure for the common good and it would be unjust to require its repayment after it has been in whole or in part expended, which would often be the case, if the suit or application could be brought at any time within three years of a court declaring the law under which it was paid to be invalid, be it a hundred years after the date of payment. Nor is there any provision under which the court could deny refund of tax even if the person who paid it has collected it from his customers and has no subsisting liability or intention to refund it to them, or, for any reason, it is impracticable to do so.

Relying on the above observations made by the Supreme Court it was urged that even if the Mills have collected the excise duty from the buyers, they cannot be prevented from recovering refund thereof from the Revenue. It was urged that in view of the above decision of the Supreme Court, it is not necessary for the Mills to prove any loss or injury. Now, in this case also, the question of loss or injury while claiming restitution u/s 72 of the Contract Act was not raised. Since the question was not raised, the Supreme Court has not expressed any opinion thereon. We, therefore, find ourselves unable to agree with the submission that in view of the above decision of the Supreme Court the Mills are not required to prove injury or loss to them.

22. It was further pointed out that even in the recent past, the Supreme Court had allowed refund of excise duty paid by *Shri Vallabh Glass Works Limited* in Civil Appeal No. 3338 of 1979. This decision was rendered by the Supreme Court on March 14, 1984. In that case also, the question whether the person claiming restitution u/s 72 of the Contract Act was required to prove loss or injury to himself was not raised. Therefore, this decision also does not advance the case of the Mills any further. In none of the decisions cited before us on behalf of the Mills, the dimension of the question which we have discussed above has been discussed or dealt with.

23. In *Union of India v. New India Industries* 24(2) G.L.R. 1108, the question similar to the one, which has arisen before us had come up for consideration

before a Division Bench of this Court consisting of V.V. Bedarkar & A.P. Ravani, JJ. The Division Bench was dealing with an appeal arising out of a suit for refund of excise duty. The Bench observed : "We ourselves also believe that in a situation the plaintiff himself has not suffered injury and simply on legal, grounds claims refund and wishes to be compensated without expressing slightest intention or desire to refund the amount to the consumers who have ultimately suffered the incidence of the tax it would be quite just and proper for the court to refuse the relief of refund of the amount so claimed." In our opinion, as pointed out above, since the Mills have not suffered any injury, they are not entitled to claim refund of excise duty and the suits filed by them must, therefore, fail.

24. In the view which we are taking, it is not necessary for us to consider the claim for interest on the amounts of excise duty of which refund is sought. However, since the Learned Counsel for the parties have addressed us at length on this question, we propose to briefly deal with it. Broadly speaking, claim for interest is made on either of the following two grounds, namely, (i) that the amounts illegally collected were illegally retained; and (ii) the amounts were held in trust by the Revenue. None of the Mills has based its claim for interest on the Interest Act. They have also not stated that they are entitled to interest on the ground of equity. The rate at which and the date from which interest is claimed are also not uniform. In some cases, interest is claimed from the date of payment, while in some other cases it is claimed from the date of notice. Some Mills have claimed interest from the date of the suit. The rate at which interest is claimed also varies between 6 per cent and 16 per cent. The basis on which interest at particular rate is claimed is not stated by any of the Mills. It is in the background of the above facts that we now proceed to consider the claim for interest made by the Mills.

25. It is urged on behalf of the Mills that they are entitled to claim interest u/s 1 of the Interest Act, 1839. Section 1 of the Interest Act reads as under:

1. Power of Court to allow interest - It is, therefore, hereby enacted that, upon all debts or sums certain payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, than from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the terms of payment : provided that interest shall be payable in all cases in which it is now payable by law.

It was urged that since the sums which the Mills had claimed were certain, they were entitled to claim interest under the aforesaid provision. In the alternative, it was urged that in any case, the Mills were entitled to interest under the proviso to the aforesaid section. The aforesaid Section 1 of the Interest Act has been interpreted by the Privy Council in AIR 1938 67 (Privy Council) The Privy Council

held that under the said section, interest for the period prior to the date of the suit may be awarded, if there is an agreement for the payment of interest at a fixed rate, or it is payable by usage of trade having the force of law, or under the provision of any substantive law entitling the plaintiff to recover interest as for instance the Court may award interest at the rate of 6 per cent per annum, when no rate of interest is specified in a promissory note or bill of exchange u/s 80 of the Negotiable Instruments Act. So far as the proviso is concerned, the Privy Council held that the proviso to Section 1 applies to a case in which the Court of equity exercises jurisdiction to allow interest. But in order to invoke a rule of equity, it is necessary in the first instance to establish the existence of a state of circumstances which attracts the equitable jurisdiction.

26. The above decision of the Privy Council was relied upon by the Supreme Court in Seth Thawardas Pherumal Vs. The Union of India (UOI), The Supreme Court held that Interest Act applies where interest is not otherwise payable by law. It further held that following among other conditions must be fulfilled before interest can be awarded under the Act : (i) there must be a debt or a sum certain; (ii) it must be payable at a certain time or otherwise, (iii) these debts or sums must be payable by virtue of some written contract at a certain time, and (iv) there must have been a demand in writing stating that interest will be demanded from the date of the demand. Where not one of these elements is present, the Court cannot allow interest simply because it thought the demand was reasonable. In the instant case, claim for interest is not based on any agreement. Claim for interest does not arise out of any trading transactions and, therefore, there is no question of any usage of the trade having the force of law. There is no statute under which the Mills are entitled to claim interest. Therefore, the only basis on which interest can be claimed is that there was a certain sum due to them and that they had made a demand for the same by a notice in writing. It was, however, urged that the claim for interest would be covered by the proviso to Section 1. In other words, the Mills are entitled to claim interest as claimed by them under the proviso to Section 1 of the Interest Act. Now, as pointed out by the Privy Council, the proviso to Section 1 applied to a Case in which the Court of equity exercises jurisdiction to allow interest. But in order to invoke equitable jurisdiction, it is necessary in the first instance to establish existence of state of circumstances which attracts equitable jurisdiction. Now, besides submitting that the Mills are entitled to claim interest on equitable grounds, it is not established that in similar case the Court of equity would exercise jurisdiction to award interest. In other words, existence of state of circumstances which attracts equitable jurisdiction is not established. But apart from that in paragraph 9 of Section 2 of Part 1 of Volume 227 of Halsbury's Laws of England, Third Edition, under the caption "Equitable right to interest" cases where equity interest may be recovered are enumerated as follows:

Equitable right to interest.- In equity interest may be recovered in certain cases where a particular relationship exists between the creditor and the debtor, such as mortgagor and mortgagee; obligor and obligee on a bond; personal

representative and beneficiary; principal and surety; vendor and purchaser, principal and agent; solicitor and client; trustee and cestui qua trust, where the debtor is in a fiduciary position to the creditor. Interest is also allowed on pecuniary legacies not paid within a certain time; on the dissolution of a partnership; on the arrears of an annuity where there has been misconduct or improper dealing in payment: or in the case of money obtained or retained by fraud. It may also be allowed where the defendant ought to have done something which have entitled the plaintiff to interest at common law, or has wrongfully prevented the plaintiff, from doing something which would have so entitled him.

The Mills' claim does not fall under any of the aforesaid categories. Therefore, in our opinion, they are not entitled to claim interest on the ground of equity. At the best, the Mills can claim interest from the date demand was made in writing for refund of the amount. However, there is no evidence to prove as to what was the current rate of interest at which the Mills can claim interest from the date of demand made in writing. Under the circumstances, in our opinion, the Mills cannot claim interest at the rate of 18 or 15 per cent per annum as urged on their behalf. However, since the Mills fail on merit, the question of computing interest in this case does not arise.

27. Now, although the Mills are not entitled to claim refund of the excise duty paid on blended yarn, it cannot be gainsaid that the amount of duty which was not legally recoverable is retained by the Revenue. In the case of *The Nawabganj Sugar Mills Co. Ltd. and Others Vs. The Union of India (UOI) and Others*, the Supreme Court considered the question as to how the excess amount recovered by the Mills in the form of market price of sugar may be refunded. The Supreme Court held that the money charged in excess by the millers should go to the buyers. The Court observed that though there are limitations on the powers of the Court, it cannot abandon its inherent powers. The inherent power has its roots in necessity and its breadth is coextensive with the necessity. The Supreme Court issued complex of directions to ensure that the money charged went to the numerous buyers through Court process. Similar directions were given by the Supreme Court in *Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others*, The decision of the Supreme Court in *Nawabganj Sugar Mills Co. Ltd.* (supra) was followed by this Court in *Union of India v. New India Industries* (supra) and certain directions were given with regard to moulding of relief. We may at this stage point out that it was urged on behalf of the Mills that the observations made by this Court in *New India Industries*" case were obiter inasmuch as the Court had rejected the claim for refund on the ground that there was no plea that payment was made through mistake of law or under coercion and there was no issue regarding payment having been made through mistake or under coercion. The Court held that the plaintiff-Company had failed to establish the case regarding payment made either under mistake or under coercion. It was urged that the Court having taken this view, the other observations made by it were obiter. We, however, do not consider it necessary to examine the question

Whether or not the observations were obiter since we do not propose to give any relief as directed in that decision. In view of the course we propose to adopt as stated below, we also do not consider it necessary to examine the question whether relief can be moulded as laid down in New India Industries" case in exercise of ordinary civil jurisdiction and not extraordinary jurisdiction under Article 226 of the Constitution. We may, however, observe that there cannot be any strait-jacket formula for moulding relief to meet all situations. We do not think that in New India Industries" case, the Court intended to lay down any rigid rules while formulating directions for moulding relief. It, however, cannot be gainsaid that the Revenue was not entitled to levy or recover the excise duty on blended yarn prior to March 16/17, 1972, in view of the decision of this Court in Calico Mill's case. Blended yarn on which excise duty was paid was woven into fabric and fabric must have been purchased by a large number of consumers whom it would be difficult, if not impossible, to identify or locate. In other words, the buyers of fabric to whom excise duty has been passed on by the Mills are innumerable and unidentifiable. Under the circumstances, we do not think it practicable to give directions of the nature given by the Supreme Court in Nawabganj Sugar Mills" case. In Nawabganj Sugar Mills" case, the Supreme Court was dealing with a private party who had illegally recovered moneys from the customers to whom sugar was sold at a higher or excessive rate. In the cases before us, the excise duty which was not recoverable was paid to the Government. The Government in a democratic State represents the people. In other words, all citizens including buyers of fabric woven out of blended yarn are represented by the Government. We, therefore, think that interest of the buyers of the said fabric would be best protected by the Government. We, therefore, do not consider it necessary or advisable to create a trust or a separate fund for the benefit of large number of consumers on whom the burden of the excise duty illegally recovered has been passed on. We have no doubt that the Government would utilise the amount which they have recovered by way of excise duty on blended yarn as aforesaid for the benefit of the aforesaid buyers. The Government can give benefit to these buyers in numerous ways. For example, it can reduce excise duty on blended yarn or it may not raise excise duty on such yarn if such raise is contemplated. We, however, do not consider it necessary or expedient to give any detailed directions to the Government. We hope and trust that the Government will utilise the amount which they have recovered by way of excise duty on blended yarn for the benefit of the consumers or buyers of fabric in the best way it thinks proper.

28. In the result, all these appeals are allowed with costs. The decrees passed by the trial Court are set aside and the suits of the Mills are dismissed with costs. Cross appeal and Cross objections shall also stand dismissed with costs.

29. At this stage, it is prayed on behalf of the Mills that as they desire to approach the Supreme Court by way of appeal, a certificate as required by Article 133(1) Of the Constitution be issued. As in our opinion, the cases do not involve substantial question of law of general importance which needs "to be decided by

the Supreme Court, we reject the prayer made on behalf of the Mills.

30. Operation of the judgment is stayed until expiry of six weeks from the date certified copy of the judgment is ready for delivery.

The Mills are directed to pay back to the Revenue decretal amount together with interest and costs, which was deposited by the Revenue and withdrawn by them under the orders of this Court with interest at the rate of 12 per cent per annum from the date of withdrawal of the amount to the date of repayment thereof.