

# SUPREME COURT OF INDIA

Johnson & Johnson Ltd.

Vs.

Commissioner of Central Excise (Appeals)

(J Verma, B Kirpal and M Srinivasan JJ.)

26.09.1997

## ORDER

1. Leave granted.

2. The challenge in this appeal is to the direction of the High Court for restitution of the amount which was paid to the assessee-appellant in November 1987 pursuant to the order dated 12-10-1987 made by the High Court in a writ petition wherein the only controversy related to the liability of the assessee for payment of the duty extending up to the maximum of 12 1/2%/13%. The amount so refunded in 1987 was the amount which had been paid by the assessee in excess of that calculated amount @ 12 1/2%/13%. As earlier stated, the undisputed amount in excess of 12 1/2%/13% was duly paid to the assessee on 19-11-1987 and 7-12-1987 totalling Rs 39,15,236.89p. In view of the decision in Mafatlal Industries Ltd. v. Union of India, this dispute regarding the rate at which the duty is to be paid by the assessee extending to the maximum of 12 1/2%/13% is to be decided by the Tribunal but the amount paid in excess thereof which was refunded long back on 19-11-1987 and 7-12-1987 is obviously not the subject-matter of any pending proceeding or controversy since the department never laid any claim to that excess amount. Even in the writ petition, which was filed in the High Court, the department made no claim to retain that amount. On these facts, we have no doubt that finality was attained in respect of the amount of Rs 39,15,236.89p. paid to the assessee on 19-11-1987 and 7-12-1987 on that date itself and, therefore, there was no question of treating it as a pending claim for refund on the date of decision by this Court in Mafatlal Industries, or on the date on which the writ petition was decided by the High Court. Directing restitution of that amount paid ten years back in 1987, on these facts, would amount to reopening a claim for refund which had

been concluded with payment of that amount to the assessee in 1987.

3. Learned Additional Solicitor General placed strong reliance on certain observations in paragraphs 96 and 97 of the decision in Mafatlal Industries, to contend that this case also should be treated as one of a pending claim for refund proceedings which was not finally terminated. We are unable to accept this contention. There was no controversy relating to the refund of this amount raised by the department at any time even prior to the making of the order dated 12-10-1987 by the High Court, the dates of actual payment, i.e., 19-11-1987 and 7-12-1987 or thereafter even till now. We fail to see how, in these facts, it can be contended that the claim for refund is pending and, therefore, direction for restitution of the amount could be given because the payment was made on account of an interim order. It is clear that no order was needed for payment of that amount in excess of the amount calculated @ 12 1/2%/13% because the department never claimed that excess amount.

4. The decision in Mafatlal Industries, does not support the contention advanced by the learned Additional Solicitor General for the department in respect of this amount of Rs 39,15,236.89p., which has already been refunded. So far as the matter which is to be decided by the Tribunal is concerned, that would be decided and its final outcome would depend on the conclusion therein with advertence to the decision in Mafatlal Industries, .

5. Consequently, the appeal is allowed and the direction of the High Court to the assessee-appellant for making restitution of the amount of Rs 39,15,236.89p. and payment of interest thereon is set aside. The amount is said to have been deposited by the appellant in the High Court. The same would be refunded to them.

6. No costs.