SUPREME COURT OF INDIA

Union of India

Vs.

Glaxo India Ltd. & Anr.

C.A.No.6497 of 2002

(R.V. Raveendran and H.L.Dattu,JJ.,)

30.03.2011

JUDGMENT

H.L.Dattu,J.,

1. The issues that arise for our consideration and decision in this appeal are :-

> "i) Whether the Central Govt. was justified in issuing a demand based on Drug Prices fixed on 02.01.1989, instead of drug prices fixed on 20.11.1986.
>
> ii) Whether the Central Government was justified in directing Glaxo India Ltd. (hereinafter referred to as, "Respondent- Company") to deposit an amount of `71.21 crores in the Drug Prices Equalization Account (in short, "DPEA").
>
> iii) What is the effect of `supersession' of a notification and when such supersession is made, would it have the prospective or retrospective effect."

Factual Background

2. The Respondent-Company is engaged in manufacture and sale of three bulk drugs, namely, Betamethasone Alcohol (B.A.), Betamethasone 17 valerate (B.V.) and Betamethasone di Sodium Phosphate (B.P.), and various formulations based on these bulk drugs. They were sold at the price that was declared by the Respondent-Company under the Drugs (Price Control) Order, 1970 [in short, "DPCO 1970"]. The Central Government promulgated the Drug (Price Control) Order, 1979, [in short, "DPCO 1979"], replacing DPCO 1970 which included the above mentioned bulk drugs in Schedule II to the order. The Central Government is vested with the power under Para 3(i) of DPCO 1979 to fix the maximum sale price of indigenously manufactured bulk drugs in First or Second Schedule by issuing a notification in the official gazette. Sub-Para 3(2) provides that while fixing the price of a bulk drug, the

Government may take into account the average cost of production of such bulk drug manufactured by an efficient manufacturer and allow a reasonable return on net worth. Sub-Para 3(3) prohibits any person from selling a bulk drug at a price exceeding the price fixed under sub-para(1) and other local taxes, if any, payable.

3. In exercise of the powers so conferred, the Central Government had fixed the maximum price of the above mentioned bulk drugs vide its order dated 12.05.1981.

4. The Respondent-Company had called in question the legality and validity of the price fixation order dated 12.05.1981 before the High Court of Delhi in C.W.P No. 1551 of 1981, mainly on the ground that the price fixation order did not take into account the cost of production of bulk drugs as was required to be done. On 27.08.1981, the High Court passed an interim order staying the implementation of the bulk drug prices fixed as per order dated 12.05.1981 as well as the prices of the formulations from the said bulk drug, in view of the undertaking of the respondent company to maintain the prices of both bulk drugs and its formulations prior to the notification dated 12.05.1981. During the pendency of the proceedings, the High Court, by order dated 13.05.1982, directed the parties to explore the possibilities of a settlement, when it was brought to the notice of the High Court that the Respondent-Company has filed a review petition for review of the price fixation order dated 12.05.1981 passed by the Central Government in exercise of its power under Para 3(1) of DPCO 1979.

5. Pursuant to the said direction, the Respondent-Company made available the actual cost of production of bulk drugs to the Central Government and also requested for an oral hearing. After considering the material available on the record and also the oral submissions made, the Central Government re-fixed the price of the three bulk drugs mentioned above by an Order dated 20.11.1986 with retrospective effect from 12.05.1981. Aggrieved by the same, the Respondent-Company amended the relief claimed in the pending proceedings before the High Court.

6. The Division Bench of the High Court, by its judgment and order dated 31.08.1987, disposed of the writ petition. While doing so, the Court did not quash the impugned price fixation order dated 20.11.1986 (made after the first review) passed by the Central Government, but directed the Respondent-Company to file another review petition before the Central Government for reconsideration of the price fixed by impugned price fixation order and the Central Government to condone the delay and consider the review petition on merits.

7. In the light of the said directions issued by the Delhi High Court in CWP No.1551 of 1981, the Central Government constituted the "Murthy Committee" consisting of experts in the field. The Committee conducted the review in accordance with directions issued by the High Court and submitted its report dated 12.10.1988 to the Central Government. The Government, vide its order dated 02.01.1989, issued price fixation order under DPCO 1989 fixing the price for three Bulk Drugs higher than the earlier price fixed vide order dated 20.11.1986. For convenience, we give below the price declared by the respondent company

under DPCO 1970 and the price fixed by the Government on 12.05.1981, on 20.11.1986 after first review and on 02.01.1989 after the second review.

Price Fixed by the Central Govt.

S. No.	Name	Declared price with DPCO	Vide Notification dt. 12.05.81	Vide Notification dt. 20.11.86 (first review)	Vide Notification dt. 02.01.1989 (second review)
		(`)	(`)	(`)	(`)
1.	Betamethasone Alcohol	134.28	113.34	127.70	144.19
2.	Betamethasone 17-Valerate	220.00	105.85	122.00	136.58
3.	Betamethasone D-Sodium Phosphate	225.00	126.23	135.00	144.58

Pursuant to the order so passed, the Union of India had issued tentative demand of `66.35 Crores, which was finally revised to `71.21 Crores (towards the difference between the formulation prices fixed in the price fixation orders and the actual prices charged by the respondent company for the period 12.05.1981 to 25.08.1987) to be deposited by the respondent-company in the DPEA, by their letters dated 18.06.1990 and 16.11.1990.

8. Aggrieved by the demand so made by the Central Government vide its letters dated 18.06.1990 and 16.11.1990, the Respondent-Company filed C.W.P. No. 2170 of 1990 before the High Court of Delhi, inter alia, questioning the legality and validity of the demands raised by the Central Government and for its deposit into DPEA. The main issues raised therein were that the demand was contrary to the directions issued by the High Court in CWP No.1551 of 1981. Secondly, the demands were in violation of para 7(2)(a) of the DPCO 1979 and further, the demands were not based on the difference in prices of "common selling

prices" and "retention prices" of bulk drugs, but were based on the difference between the "common selling prices" and the "price of formulations". The writ petition was contested by the Union of India, and it was contended that the prices were fixed after taking into consideration all the relevant data and the same was done in accordance with the judgment and order of the Division Bench of the High Court in C.W.P. No. 1551 of 1981.

9. The High Court, by its order dated 19.10.2001, allowed the writ petition and quashed the demands made by the Central Government as illegal, arbitrary and contrary to the directions issued by the Division Bench of the High Court in C.W.P. No. 1551 of 1981. It was held that the price fixation order dated 02.01.1989 was retrospective in its operation and related back to the order dated 12.05.1981. It was also held that the demand raised by the Central Government was in violation of Para 7(2)(a) of the DPCO 1979, inasmuch as it is not based on the "common selling prices" and "retention prices of bulk drugs", but is based on the difference between the "common selling prices" and the "price of formulations". The Court further observed that even though the DPCO 1979 contained statutory provisions for fixation of formulation prices, even if it is violated, the respondent company would still be entitled to retain the excess amount over the statutory maximum price and the only option available to the Central Govt. was to initiate criminal proceedings. The High Court directed the appellants to raise demands on the basis of the revised prices of the bulk drugs as notified on 02.01.1989 and for the purpose of Para 7(2) (a) of DPCO 1979, determine the excess amount not on the basis of the prices of the formulations but on the basis of the prices of bulk drugs used by the respondent company in its formulations. The correctness of the said judgment and order is called in question by the Union of India in this appeal.

10. Since we will be referring to two Division Bench judgments and orders of the High Court of Delhi in the course of our judgment, we will refer to the judgment in C.W.P. 1551 of 1981 as the `first judgment' and the judgment in C.W.P. No. 2170 of 1990 as the `impugned judgment', to avoid any confusion.

Submissions of the Appellant - Union of India

11. The case of the learned Additional Solicitor General Shri. Parag P. Tripathi is that the Division Bench of the High Court erred in coming to the conclusion that the price fixed by the Central Government on the bulk drugs manufactured by the Respondent-Company is contrary to the statutory provision and the direction issued by the High Court in the first judgment. It is further argued that the Murthy Committee constituted to examine the review petition filed by the Respondent-Company considered the data between 1980-81 and 1984-85, which itself prima facie rules out that the price fixation order was to be applied retrospectively and should relate back to the order passed on 12.05.1981. It is further submitted that that the decision of the executive in the mechanics of price fixation is beyond the scope of judicial review as held by this Court in the case of . Our attention was also drawn to the affidavit of the Union of India filed before the Delhi High Court, and the file notings of Shri. R.N. Tandon. By placing reliance on these material, he would submit, that the recommendations of the Murthy Committee were to come into effect prospectively, and not retrospectively. Alternatively, it is submitted that the price fixation order dated 2.1.1989

in the Review Petition filed by the Respondent-Company was under the DPCO 1987 and had nothing to do with the price fixation order dated 20.11.1986 and therefore, it should be presumed that the Review Petition filed by the Respondent-Company was impliedly rejected. It is also submitted that the intention of the Central Government to fix the price of bulk drug and its formulations prospectively could be clearly inferred from the price fixation order itself. It is urged that the Review Petition was impliedly rejected and the prices that were fixed on 2.1.1989 were to be given effect prospectively and did not relate back to price fixation order dated 20.11.1986, which has been retrospectively applied with effect from 12.05.1981.

12. With regard to the finding of the Division Bench in the impugned judgment that the demands raised is in contravention of Para 7(2)(a) of the DPCO 1979, it is submitted that the Respondent-Company has already benefited from the stay order passed by the High Court, and the demand was based on the difference on the price of bulk drug prevalent prior to the stay order and the prices fixed on 2.1.1989. It is further submitted that the stand of the Respondent-Company that since there is no provision in the DPCO 1979 for the deposit of the excess amount in the DPEA, the Respondent-Company should be allowed to retain the same, is against the basic principles of `unjust enrichment' as held by this Court. In support of this contention, our attention was drawn to observations made by this Court in Mafatlal, (1997) 5 SCC 536; Concap Capacitators (2007) 8 SCC 658, Swanstone Multiplex Cinema, (2009) 10 SCALE 148]. It is argued that the Drugs (Prices Control) Order is a socio-economic measure, and the same has to be interpreted by this Court in the light of the object sought to be achieved, viz. to ensure that there is a proper availability of drugs at reasonable prices, which are fair to the consumer as well as to the industry. It is also contended that the phrase "excess amount to be determined by the Government" in Para 7(2)(a) of the DPCO 1979, gives a wide discretion to the Government to determine any amount to be recovered, and that the demand made as amount due is therefore justified. It is further submitted that it is incorrect to proceed on the basis that the DPCO 1979 permitted such retention of excess money that was in excess over the formulation price fixed under the price fixation order and such an interpretation will be contrary to the object of the provisions of the Essential Commodities Act and of the DPCO 1979. It is further argued that since Para 7(2)(a) dealt with DPEA only, and it is totally incorrect to interpret the same in a manner that would permit drug companies to violate price fixation order and get away with the same, by stating that the Respondent-Company was liable only to criminal proceedings, if any.

13. In the alternative, it is submitted that Para 14 of the DPCO 1987, provides for recovery of dues accrued under DPCO 1979 and deposit of the same into DPEA. In view of the said provision, the Central Government has the power to direct the drug companies to deposit such amounts in the DPEA. A further reference is also made to Para 15 of the DPCO 1987, which gives the power to the Central Government to recover dues accrued due to charging of prices higher than those fixed or notified by the Government as per the provisions of the DPCO 1987. Submissions of the Respondent-Company

14. Shri. T.R. Andhyarujina and Shri. S. Ganesh, learned senior counsel, submitted that there is a basic difference between `review' and `revision' under the DPCO 1979, and that a

`review' operates retrospectively from the date of fixation of the drug price under review, whereas, the order passed in a `revision' is prospective in its operation. It is brought to our notice that in Cyanamide's case, it was held that a review was in the nature of a post decisional hearing that is granted to the manufacturers of bulk drugs. It is argued that the review was filed by the Respondent- Company for review of the bulk drug price fixation order dated 12.05.1981 even before filing of the first writ petition and the same was considered by the Central Government by its order dated 20.11.1986, in which the price fixed were considerably higher than those in 1981. It is also submitted that this review was based on the Respondent-Company's cost of production for 5 years from 1981 to 1985. It is further submitted that the review conducted by the Government took the actual cost of production between 1981 and 1985, instead of the projected cost of production, as the normal practice was, in the review that was conducted in 1986. It is further argued that the Division Bench, in the first judgment, had directed the Respondent-Company to file a review of the price fixation order 1986, and, therefore, the same would necessarily relate back to the price fixation order dated 12.5.1981. It is further argued by the learned counsel that the price fixation order of 02.01.1989 had superseded the price fixation order dated 12.5.1981 and, therefore, the same is retrospective and not prospective as contended by the Revenue. It is contended that the Murthy Committee carried out the review strictly in conformity with the first decision of the High Court and on the same basis as conducted in 1986, i.e. the actual costs between 1981 and 1984-85 were considered by the Murthy Committee. It is also brought to our notice that though the Respondent-Company requested the Committee to consider the costs up to 1986-87, the same was not granted by the Committee, thereby bringing to our notice that the Committee followed the directions issued by the Division Bench of the High Court. It is further submitted that the price fixation order passed by the Committee in pursuance of the directions of the High Court in the first judgment, were significantly revised upwards, though based on the same data that was considered in the year 1986.

15. The learned counsel submits that the contention of the Central Government that the Review Petition filed by the Respondent-Company was impliedly rejected by the Government is incorrect, since no such order was ever communicated to the Respondent-Company. It is submitted that the order passed in review petition necessarily operates retrospectively, and it is fallacious even to suggest that an order passed in review petition operates prospectively. It is further submitted that the Central Government, while issuing the letter dated 16.11.1990 by way of demand notice directing a particular amount to be paid to DPEA, considered only the first review dated 20.11.1986, and ignored the review of 02.01.1989 as though it never happened. Hence, it is argued that the demand of `71.21 crores made by the Central Govt. is illegal, arbitrary and in violation of the price control order.

16. According to the learned counsel for the Respondent-Company, the situation contemplated for deposit into the DPEA is the profit earned by the manufacturer between the formulation price that has been fixed on the basis of certain bulk drugs and the bulk drug price, if in case, the manufacturer of formulations procures and uses the bulk drug at a price which is lower than the prices fixed. It is urged that the same is clear from the combined reading of Para 7(2)(a) and Para 17 of the DPCO 1979. It is contended that this difference in

bulk drug prices can be recovered by the Central Government from the manufacturer by directing them to deposit the excess amount in the DPEA. It is further submitted that the phrase "excess amount" when read in the context can only mean the difference in the prices of bulk drugs and the same is clear from scheme of DPCO 1979.

17. It is further contended that the Central Government entered into agreements with other drug companies for recovery of the differential amounts, and no such agreement was entered into with the Respondent-Company. It is submitted that the doctrine of contemporaneous exposition demanded that the settled understanding of Para 7(2)(a) should be continued.

18. The learned counsel disputes that there was any unjust enrichment by the Respondent-Company, as contended by the learned counsel for the Revenue and to the contrary, the returns filed by the Respondent-Company would amply demonstrate that there was less margin of profit than what it is entitled to under the Fifth Schedule of the DPCO 1979. It is also stated that the Respondent-Company never charged prices higher than those that were fixed by the Central Government. It is also contended that the impugned demand made by the Central Government is without the authority of law and in total disregard to the directions contained in the first judgment. It is submitted that Para 7 of the DPCO 1987 did not give any authority to recover the difference in `notional' prices of formulation as the Central Government sought to do vide letter dated 16.11.1990. It is further argued that the only liability that the Respondent-Company had, was the liability that accrued in respect of actions taken prior to 25.08.1987, which was nothing but the difference in bulk drug prices. It is stated that only this amount could be recovered by virtue of Para 14 of the DPCO 1987, unlike what was claimed by the Central Government. It is also argued that the High Court, in the impugned judgment, had correctly decided the issue by quashing the demand for payment of `71.21 crores made by the Central Government. It is submitted that the demands made vide letter dated 16.11.1990 is liable to be set aside as the demand was made on the prices based on notional formulation prices worked out by the Bureau of Indian Standards, which were not revealed to the Respondent-Company, and that these notional formulation prices were in total disregard of the review of the bulk drug prices notified on 02.01.1989, which were in pursuance of the directions of the first judgment, but on the basis of the previously fixed bulk drug prices of 20.11.1986. In conclusion, it is argued that the Central Government should recalculate the amount based on the difference in bulk drug prices as reviewed and notified on 02.01.1989, in compliance of the directions of the High Court.

The First Judgment of the Delhi High Court

19. The submission of the learned Additional Solicitor General is in view of Para 17, 18 and 19 of the judgment in C.W.P. No. 1551 of 1981, it is clear that the Order dated 26-11-1986 was not quashed and the Central Government was only asked to consider the review petition filed by the Respondent-Company. At this stage, it is useful to extract Para 17 and 18 of the Judgment to understand the direction issued by the High Court:-

> "17. We have come to the conclusion that the interests of justice require that the respondents should give the petitioner once more an opportunity of being heard on the price fixation order of 1986. We, however, wish to make it clear that we are not

setting aside the order dt. 20-11- 1986 for this purpose; nor do we, in view of the categorical observations of the Supreme Court, consider it necessary, proper or appropriate to stay further implementation of the said order or to stay any proceedings for fixation of prices of various drug formulations of the petitioner which that respondents might wish to initiate. We would only direct the petitioner to file a formal application for review and the Government to deal with the same (condoning the delay in filing the same due to the pendency of this writ petition) after giving the petitioner a hearing on the lines indicated above and, in the light of such hearing, to affirm or revise the prices fixed by the order dt. 20-11-1986 and to make consequent changes, thereafter, in the prices for drug formulations, if fixed in the meanwhile.

18. We would also, as was done by the Supreme Court, indicate a time bound schedule for the course of action suggested above:

"(a) Within ten days from the date of receipt of this order, the applicants may request the department to furnish such specific information as it may need as to the basis on which the figures of net worth of assets, interest on borrowings and rate of return have been taken by them in respect of each of the drugs and the department should make the same available to the petitioner within ten days thereafter;

(b) Within ten days thereafter the petitioner may file a formal application for review of the order dt. 20-11-1986 with an application to condone delay. This application should not content itself with criticising the department's figures but should specifically set out petitioner's own detailed working out of the price to be fixed on the basis of the annual and cost audit reports of the Company for the period 1981 to 1985;

(c) The respondent should fix a hearing within a period of 15 days from the date of receipt of the application and the petitioner may be heard thereon;'

(d) Within two weeks thereafter, the respondents may dispose of the application as they deem fit. In case they allow it in whole or in part they should pass an order notifying the revised prices under para 3 of the 1979 DPCO.

19. The writ petition is disposed of accordingly with no order as to costs. It is made clear that the interim stay orders are vacated and the department will be free to implement the order dt. 20-11-1986 as well as to proceed to fix the prices for the petitioner's drug formulation, subject to the outcome of the procedure indicated in the previous para."

The Impugned Judgment

20.The issue decided by the Division Bench in the impugned judgment is whether the demands made by the Central Government for deposit of `71.21 crores was on the basis of

the prices notified vide Order dated 2.1.1989 or Order dated 20.11.1986. The High Court, apart from others, has concluded that from a combined reading of paragraphs 15 to 19 of the directions of the Division Bench in the first judgment, it is clear that the High Court has neither upheld the Order dated 26.11.1986 nor given any finality to the same; that the Central Government, for the purpose of considering the Review Petition filed, pursuant to the directions issued in the first judgment, the matter was referred to the Murthy Committee and that the Murthy Committee has conducted the price re-fixation of bulk drugs in accordance with the directions that was issued by the High Court. The Murthy Committee has taken into consideration the weighted average figures from 1980-81 to 1984- 85 and refused the request of the Respondent-Company to consider the cost of production for the later years, which clearly shows that the Committee focused only on the Order dated 26.11.1986 and not thereafter; that it was apparent that the prices fixed by the order dated 20.11.1986 were based on the costing of the year 1981 only, whereas the one dated 2.1.1989 was based on the weighted average cost figures from the year 1981 to 1985; that the notings on the file and the statements of the Hon'ble Minster on the floor of Parliament indicate that the prices that were re-fixed by the Murthy Committee were accepted.

21. The High Court has also rejected the contention of the Central Government that there was an implied rejection of the review as there was no notification to that effect. It is also noted that there was no communication from the Central Government to the Respondent-Company expressing that the review had been rejected at any stage. The Court has also observed that there was a letter dated 20.3.1989 by the Central Government to the Respondent- Company informing them that the revised prices of bulk drugs was with effect from 12.5.1981, and this was enough to show that the Respondent-Company was notified that the order dated 2.1.1989 held the field in place of the order dated 26.11.1986. It was also noted by the High Court that even though the word `retrospective' was not mentioned in the notification dated 02.01.1989, if it were not construed retrospectively, the order impugned would be in violation of the directions of the Division Bench in the first judgment.

22. The High Court, after considering the language of para 3 to 17 of the DPCO 1979, has taken the view that the Central Government was not justified in considering the prices of the formulations under Para 7(2)(a) of the DPCO 1979 for determining the excess amount. The reasons and conclusion so reached by the Delhi High Court is the subject matter of this appeal.

Our Conclusion

23. To our mind, after hearing the learned counsel, the undisputed facts appears to be that the Respondent-Company, as required under para 5 and 14 of DPCO 1970, had informed the Central Government the selling prices/notional prices of their bulk drugs manufactured and sold and also the retail prices of the formulation of these drugs. The maximum selling prices of these drugs so informed/proposed by the respondent-company was approved by the Central Government. The Central Government, in exercise of the powers conferred under para 3(1) of the Price Control Order 1979 by its order dated 12.05.1981 had fixed the maximum selling prices of these bulk drugs manufactured and sold by Respondent

Company. After receipt of the said order, the Respondent-Company had filed a Review Petition dated 23.06.1981. May be prior to or after the receipt of this representation, the Central Government, by its letter dated 29.06.1981, had informed the Respondent-Company of its liability to pay into DPEA the difference between the prices that the company was enjoying under Prices Control Order 1970 and the prices as notified by the Central Government with effect from 12.05.1981. The Respondent-Company filed CWP 1551 of 1981 before the High Court of Delhi, inter alia, seeking a writ of certiorari of the notification issued by the Central Government on the ground that the notification issued by the Central Government fixing the maximum selling prices of the three bulk drugs manufactured and sold by them as illegal, arbitrary and unconstitutional. The High Court, while issuing notice of the petition to the Respondents therein, granted the interim order dated 01.07.1981, inter alia, staying the implementation of any formulation prices for the three bulk drugs. On a later date, the High Court, after recalling its earlier order dated 01.07.1981, granted stay of the implementation of the bulk drug prices notified by the Central Government by its order dated 12.05.1981. Since the Central Government passed yet another order dated 20.11.1986, the Respondent-Company by way of amendment of the relief sought in the writ petition, questioned the said order also. The High Court, by its order dated 31.08.1987, disposed of the petition with certain observations and directions, which we have already noticed in extenso. Pursuant to the directions so issued, the Respondent- Company filed review petition dated 09.03.1988 to review the order dated 20.11.1986. The Central Government, by its order dated 02.01.1989, in exercise of its power conferred by Sub-para (1) of para 3 of the Control Order 1987 and in supersession of the order dated 12.05.1981 in so far as the three bulk drugs, has fixed the maximum price at which the indigenously manufactured drugs should be sold. After issuing the aforesaid notification, the Government by its letter dated 18.06.1990, after referring to the Judgment of Delhi High Court dated 31.08.1987, has stated that the Respondent-Company has not been authorized to retain the amounts over charged by the company. It is also stated that the prices of the bulk drugs fixed on 20.11.1986 based on the direction issued by the High Court is also not disturbed and the Court is also authorized to fix the prices of the formulations. Accordingly, the Central Government, vide their letters dated 18.06.1990 and 16.11.1990, made a tentative demand of `66.35 crores, which was subsequently revised based on the data made available by the Respondent Company to `71.21 crores payable by the Respondent- Company to be deposited into DPEA. These were those orders/letters which were impugned by the Respondent-Company by filing CWP 2170 of 1990 before the High Court.

24. The Central Government, exercising its powers under the Essential Commodities Act, 1955, had promulgated DPCO 1970. Para 3 of this order empowered the Central Government to fix the maximum selling price of an essential bulk drug specified in Schedule-I appended to the order. However, the three bulk drugs manufactured by the Respondent-Company were covered under DPCO 1979, and empowered the Central Government to fix the maximum prices thereof. Para 17 authorized the Central Government to maintain a Drug Prices Equalization Account comprised of the Grants as may be made by the manufacturers, importers and distributors of the drugs. The purpose and object of this account was to control and maintain the prices of drugs by getting the amounts determined under Para 7(2) and the excess of the common selling price over retention price deposited into this account from

those manufacturers who were selling or utilizing the bulk drug in their formulations. This provision appears to be a beneficial provision. The reason being, if the "common selling price" happens to be less than the "retention price", the manufacturer could be paid out of DPEA. This provision applies equally both to indigenously manufactured drugs as well as the drugs imported, so as to maintain uniformity in the price of bulk drugs.

25. As of now, we have three notifications. The first one is dated 12.05.1981, wherein the Central Government fixed the maximum sale prices of the aforesaid three bulk drugs. The second notification is dated 21.11.1986, whereby the Central Government has fixed the revised prices of the aforesaid three bulk drugs. These notifications were subject matters of the writ petitions filed before the Delhi High Court. Pursuant to the directions issued in the aforesaid writ petition, the Central Government has now issued the notification dated 02.01.1989. It is this notification which the Central Government contends is prospective in its operation but the Respondent-Company claims that it relates back to the notification dated 12.05.1981.

26. To appreciate the controversy raised in this appeal, it would be useful to extract the Gazette Notification dated 02.01.1989 issued by the Central Government under Drugs (Prices Control) Order 1987 :-

> "S.O.6(E) - In exercise of the powers conferred by sub paragraph (1) of paragraph 3 of the Drugs (Prices Control) Order, 1987, and in supersession of the order of the Government of India in the erstwhile Ministry of Petroleum, Chemicals and Fertilizers (Department of Chemicals and Fertilizers) No. S.O. 373 (E) dated the 12th May, 1981, in so far as it relates to the drugs `Betamethesone Alcbhol', `Betamethasone' '17-Valerate' and `Betamethasone Di-sodium Phosphate' against serial numbers 1 to 3, the Central Government hereby fixes the prices specified in column (3) of the Table below as the maximum price at which the indigenously manufactured bulk drug specified in the corresponding entry column (2) thereof shall be sold :-
>
> TABLE S.No Name of the Bulk Drug Maximum price (Rs. Per gramme)
>
> 1. Betamethasone Alcohol 144.19
>
> 2. Betamethasone Valerate 136.50
>
> 3. Batemethasone Di-Sodium 144.58"

Phosphate

27. The aforesaid notification is issued by the Central Government in supersession of the earlier Notification issued by the Government of India No. S.O. 373(E) dated the 12th May, 1981. By this notification, the Government has fixed the maximum price at which

indigenously manufactured bulk drugs shall be sold by the Respondent-Company and others. According to the Revenue, the notification is prospective and the notification issued earlier would hold the field till the impugned notification is issued. However, it is the stand of the Respondent-Company that the notification dated 02.01.1989 is retrospective in its operation and relates back to first notification issued by the Central Government dated 12.05.1981.

28. The impugned notification uses the expression "supersession" of the earlier notification. Therefore, the first question that requires to be considered and answered by us is, what is the meaning of the expression "supersession" and what is its effect. Webster's Third New International Dictionary defines the word "supersession" to mean `the State of being superseded', `removal' and `replacement'. P. Ramanathan Aiyar's Advanced Law Lexicon defines `superseded' as `set aside' and `replaced by'. The view of this Court in some of the decisions is that the expression "supersession" has to be understood to amount `to repeal' and when notification is repealed, the provisions of Section 6 of the General Clauses Act would not apply to notifications. The question whether statutory obligations subsist in respect of a period prior to repeal of a provision of a Statute or any subordinate legislation promulgated thereunder has to be ascertained on legal considerations apposite to the particular context. The matter is essentially one of construction. Such problems do not admit of being answered on the basis of any single principle or legal consideration. When the fresh notification was issued on 02.01.1989, the earlier notifications were superseded, could it be said that they became non est for all purposes and were unable to support the proceedings for the enforcement of liability incurred for the period prior to 1989. To hold so, would produce the anomalous results. The answer, in our opinion, must depend on proper construction to be placed on the notification themselves. The point to be noted is that the notification dated 26.11.1986 became effective from 12th day of May, 1981. This notification, fictionally must be held to have subsisted and were operative from such points of time of their commencement upto the date it was superseded. The position here is somewhat analogous to the one considered in the case of State of Orissa Vs. Titaghur Paper Mills Company Ltd. AIR 1980 SC 1293. In the said decision, the effect of supersession of notifications under Orissa Sales Tax Act came up for consideration. Referring to the effect of supersession of the notification, this Court observed :-

> "The word "supersession" in the notifications dated December 29, 1977 is used in the same sense as the words "repeal and replacement' and therefore, does not have the effect of wiping out the tax liability under the previous notifications. All that was done by using the words in supersession of all previous notifications in the notifications dated December 29, 1977, was to repeal and replace previous notifications and not to wipe out any liability incurred under the previous notifications."

29. In Titaghur's case, the specific question whether on "supersession" of a notification, the liability to tax for a period prior to the supersession was wiped out or not, directly arose and was considered. This Court came to the conclusion that the previous liability to tax for a period prior to the supersession was not wiped out. In our view, the results that flow from changes in the law by way of amendment, `repeal', `substitution' or `supersession' on the

earlier rights and obligations cannot be decided on any set formulae. It is essentially a matter for construction and depends on the intendment of the law as could be gathered from the provisions in accordance with accepted cannons of construction. The question whether the liability for payment of difference amount incurred by the respondent-company could be enforced after the order dated 02.01.1989 passed under DPCO 1987, when the notification was superseded clearly falls within the principles laid down in Titaghur Mills case. It is no doubt true that in some cases, there are statements which admit the construction that once a notification is `superseded', it amounts to repeal and that Section 6 of the General Clauses Act has no application to such cases. If that principle is applied, then after 12th day of May, 1981, the notification becomes unavailable to Central Govt. to give effect to the notification issued under DPCO 1979, even in respect of the period when the notification must be deemed to have been in force. The notification in this case is close to the consequences arising out of repeal without the benefit of a saving clause in respect of the obligations previously incurred, but for saving principle in the Titaghur's case. We may also usefully refer to the observations made by Kaul, J. in *Nand Kishore Vs. Emperor*[1],. It is stated "that the effect of an Act or an order which is superseded is not to obliterate it altogether. An Act or order is said to be superseded where a later enactment or order effects the same purpose as an earlier one by repetition of its terms or otherwise. In *Syeda Mustafa Mohamed Gouse Vs. State of Mysore*[2] the Sugar (Movement Control) Order 1959, of 6th November, 1959 was passed in supersession of the Sugar (Movement Control) Order, 1959, dated 27th July, 1959. It was held that in law `supersession' has not the same effect as repeal and proceedings of a superseded order can be commenced. In *R.S. Anand Behari Lal Vs. Government of U.P.*[3] it was held that in case of supersession of a notification, the objections and liabilities accrued and incurred under the earlier notification remain unaffected, since the supersession will be effected from the date of second notification and not retrospectively, so as to abrogate the earlier notification from the date of its commencement. In view of the above discussion, we are of the view that the appellants are well within their rights to raise demands for making deposit into DPEA on the basis of the prices notified by their notification dated 20.11.1986.

30. We now deal with the concept of `review' that finds a place in para 27 of the DPCO 1979. What is contemplated in this provision is that any person aggrieved by any notification or order under paragraphs 3,4,5,6,7,9,12,13,14,15 or 16, may apply to the Government for a review of the notification or order within fifteen days of the date of the notification in the Official Gazette. After receipt of the application/review petition, the Government may make such order on the application as it may consider necessary. What is the scope of the review that is contemplated under Drugs (Prices Control Order) is explained by this Court in Cyanamide's case (supra). It is observed that the review in para 27 of DPCO 1979 is in the form of a post decisional hearing which is sometimes afforded after the making of some of the administrative orders, but not truly so. "It is a curious amalgam of a hearing which occasionally precedes a subordinate legislative activity such as the fixing of municipal rates etc. that we mentioned earlier and a post- decision hearing after the making of an administrative or quasi- judicial order. It is a hearing which follows a subordinate legislative activity intended to provide an opportunity to affected persons such as the manufacturers, the industry and the consumer to bring to the notice of the subordinate legislative body the difficulties or problems experienced or likely to be experienced by them consequent on the

price fixation, whereupon the government may make appropriate orders. Any decision taken by the Government cannot be confined to the individual manufacturer seeking review but must necessarily affect all manufacturers of the bulk drug as well as the consumer. Since the maximum price of a bulk drug is required by Para 3 to be notified, any fresh decision taken in the proceeding for review by way of modification of the maximum price has to be made by a fresh notification fixing the new maximum price of the bulk drug. In other words, the review, if it is fruitful, must result in fresh subordinate legislative activity. The true nature of the review provided by Para 27 insofar as it relates to the fixation of maximum price of bulk drugs under Para 3 and leader price and prices of formulations under Paras 12 and 13 is hard to define. It is difficult to give it a label and to fit it into a pigeonhole, legislative, administrative or quasi-judicial. Nor is it desirable to seek analogies and look to distant cousins for guidance. From the scheme of the Control Order and the context and content of Para 27, the review insofar as it concerns the orders under Paras 3, 12 and 13 appears to be in the nature of a legislative review of legislation, or more precisely a review of subordinate legislation by a subordinate legislative body at the instance of an aggrieved person."

31. In the present case, the Central Government was directed by the High Court in the first judgment to consider certain grievances of the Respondent-Company regarding working out of certain weighted averages, such as rate of income tax being taken low, the packaging and distribution expenses taken lower than the actual cost, etc., by the Central Government while the prices of the bulk drugs were being fixed. The Court specifically observed that in the interest of justice, the Respondent-Company should be given one more opportunity of being heard on the price fixation order of 1986. The Court further made it clear that they are not setting aside the order dated 20.11.1986 or staying further implementation of the said order or stay any proceedings for fixation of prices of various drug formulation of the Respondent-Company of which the appellants - Central Government may wish to initiate. The Court had permitted the Respondent-Company to file review petition, if they so desire and further had directed the Central Government to pass an order as they deem fit, that is, either affirming or reviewing the prices fixed by order dated 20.11.1986 and to make consequent changes in the prices for drug formulations, if fixed in the meanwhile.

32. In our view, a reading of the observations made by the Court, would indicate that it had reserved liberty to the Central Government either to affirm or review the prices of the bulk drugs fixed by order dated 20.11.1986 and to make consequent changes in the prices for drug formulations. The Central Govt., taking clue from the directions issued by the Court, which order has become final, has passed the impugned Notification dated 02.01.1989, by refixing the prices of drug formulations by applying the provisions contained in DPCO 1989. In view of the above, it is difficult for us to find fault with the exercise done by Central Government while notifying the impugned notification. In our considered view, the notification so issued is in accordance with the observations made by this Court in Cyanamide case (supra) wherein it is stated :-

> ".....since the maximum price of a bulk drug is required by paragraph 3 to be notified any fresh decision taken in the proceeding for review by way of modification of the maximum price has to be made by a fresh notification fixing the new maximum

price of the bulk drug. In other words, the review if it is fruitful it must result in fresh subordinate legislative activity."

These observations of this Court in Cyanamide case, in our view, supports the stand of the Revenue, that once a review petition filed by the manufacturer of a bulk drug is considered and a fresh notification is issued, the same would be prospective and it does not relate back to the notification fixing the prices of bulk drugs issued earlier.

33. It is no doubt true that the Murthy Committee was constituted pursuant to the direction issued by the High Court to look into the data that may be furnished by the Respondent-Company and give its report for the purpose of fixing the prices of the bulk drugs manufactured by the Respondent-Company. It is also not in dispute that the prices fixed by the Murthy Committee was much higher than those notified by the Central Government, while issuing the notification dated 20.11.1986. In our view, that itself will not make any difference for the reason, the Central Government, after taking into consideration the report and the recommendations made by the Murthy Committee, has issued a notification which we have already said is only prospective and not retrospective as contended by learned counsel for the Respondent-Company. Hence, we are of the view that there was no implied rejection of the recommendations of the Murthy Committee.

34. Therefore, firstly, it cannot be said that the Central Government while considering the review petition filed by the Respondent-Company had disregarded the direction issued by the Delhi High Court in its first judgment. Secondly, the contention of the respondent-company that the price fixation order of 02.01.1989 was the result of decision taken by the Central Govt. on the review petition filed by the respondent-company and therefore, the demands raised as per the price fixation order dated 20.11.1986 had to be revised according to the price fixation order dated 02.01.1989, cannot be accepted. We also add, since the notification dated 02.01.1989 fixing prices of bulk drugs is prospective, the earlier notification would operate during the intervening period.

To sum up, our findings in regard to the first and third issues are as under :-

"i) The demand to be raised on the respondent-company for the period 12.05.1981 to 25.08.1987 is to be based on the prices fixed under the notification dated 20.11.1986 and not on the drug prices fixed on 02.01.1989.

ii) The supersession of a notification does not obliterate the liability incurred under the earlier notification.

35. Now to answer the second issue, viz. whether the demand raised under para 7(2)(a) of DPCO 1979, should be computed on the basis of difference in bulk drug prices or on the basis of difference in formulation prices, it is necessary to extract para 7 of DPCO 1979 and the other relevant paras in DPCO 1979. Para 7 reads:

"7. Power to fix retention price and pooled price for the sale of bulk drugs specified in First Schedule or Second Schedule indigenously manufactured as well as imported - (1) Where a bulk drug specified in the First Schedule or the Second Schedule is manufactured indigenously and is also imported, the Government may, having regard to the sale prices prevailing from time to time in respect of indigenously manufactured bulk drugs and those of imported bulk drugs, by order, fix, with such adjustments as the Government may consider necessary –

(a) retention prices for individual manufacturers, importers, or distributors of such bulk drugs;

(b) a pooled price for the sale of such bulk drugs (2) Where a manufacturer of formulations utilises in the formulations any bulk drug, either from his own production or procured by him from any other source, the price of such bulk drug being lower than the price allowed to him in the price of his formulations the Government may require such manufacturer –

(a) to deposit into the Drug Prices Equalisation Account referred to in paragraph 17 the excess amount to be determined by the Government; or

(b) to sell the formulations at such prices as may be fixed by the Government".

36. Para 8 speaks of prices of bulk drugs produced through indigenous research and development, Para 9 authorises the Central Government to direct manufacturer of bulk drugs to sell bulk drugs to manufacturers of formulations, Para 10 provides for the calculation of retail prices of the formulations, Para 12 authorises the Central Government to fix retail prices of formulations specified in Category III of Third Schedule, Para 14 provides for general provisions regarding prices of formulations, Para 15 speaks of power of the Central Government to revise prices of formulations, Para 17 speaks of Drug Prices Equalisation Account (DPEA). The other paras may not be relevant to be noticed for the purposes of this case.

37. Para 7 of the DPCO, 1979 is in two parts. Sub-para (1) of Para-7 authorises the Central Government to fix retention price and pooled price for the sale of Bulk drugs specified in First Schedule or Second Schedule indigenously manufactured and those of imported bulk drugs. Sub-Para (2) of Para 7 speaks of a situation where a manufacturer of formulations sells the formulations of any bulk drug, either manufactured by him or procured by him from other sources, being lower than the price allowed to him in the price of his formulations, the Government may require such manufacturer of formulations to deposit into DPEA the excess amount as determined by the Central Government. Sub Para 7(2)(b) mandates the manufacturer of the formulations to sell such formulations as fixed by the Central Government. Para 7 of DPCO 1979 provides two different situations, one based on the difference in the common selling prices of bulk drugs and the second the difference based on common selling prices of the formulations. Para 17 of DPCO 1979, as we have already stated, authorizes the Central Government to maintain DPEA comprised of the grants made

by the Government, deposits to be made by the manufacturers, importers and distributors of the drugs.

38. The Respondent-Company in the month of June, 1990 and November, 1990 received a demand on the allegations that the Respondent-Company had over charged for the bulk drugs as well as formulations being manufactured by it. These demands are based on the prices fixed by order dated 20.11.1986. The Respondent-Company had questioned this demand before the High Court primarily on the ground that the sale prices of the formulations cannot not be taken into consideration and only the cost of bulk drugs consumed in those formulations could be taken into consideration for making calculations. The prayer in the writ petition was to direct the Central Government to reassess and calculate the demand on the basis of the revised bulk drug prices fixed on 02.01.1989, instead of taking into consideration the prices of the formulations and to consider the excess amount on the basis of prices of bulk drugs used in the formulations. The stand of the Central Government in the affidavit filed before the High Court was that the prices of the bulk drugs had been fixed vide their order dated 12.05.1981 and 20.11.1986, but the prices of the formulation could not be fixed because of the stay granted by the Court and as such the Respondent-Company was bound to charge only prices as were liable to be fixed under the DPCO 1979. They had also stated that the Respondent-Company was entitled to charge such prices for its bulk drug as was fixed by the price fixation order dated 20.11.1986 or liable to be fixed for formulations under DPCO of 1979 and was bound to deposit the over charged amounts to DPEA.

39. The learned senior counsel Shri. Andhyarujina submits that Para 7(2)(a) read with Para 17 of DPCO 1979 makes it clear that the Scheme of the DPCO 1979 was to encourage domestic production of bulk drugs through a system of retention and pooled pricing. It is also submitted that para 17(2) and (3) sets out the manner in which the DPEA was to be utilized and how a manufacturer of bulk drugs could make a claim in respect of bulk drugs manufactured by it from DPEA. Therefore, para 7(2)(a)was never intended to cover prices of formulation but only the differences in the price of bulk drugs used in formulations which the manufacturer can be asked to deposit into the DPEA under para 7(2)(a). However, it is argued by learned counsel for the Central Government that the expression "excess amount to be determined by the Government" in para 7(2)(a) of DPCO 1979 gives a wide discretion to the Government in the matter of determining the amount recoverable under the para and, therefore, the Government was justified in raising the demand taking into consideration the difference between the common selling prices and the price of the formulations.

40. It is a cardinal principle of interpretation that a statute must be read as a whole. Lord Herschell in the case of *Colguhoun v. Brooks*[4], aptly pointed out:

> "It is beyond dispute, too, that we are entitled, and indeed bound, when construing the terms of any provision found in a statute, to consider any other parts of the Act which throw light on the intention of the legislature, and which may serve to show that the particular provision ought not to be construed as it would be alone and apart from the rest of the Act."

41. This Court in the case of *Phillips India Ltd. v. Labour Court*[5], has observed :

> "15. No canon of statutory construction is more firmly established that the statue must be read as a whole. This is a general rule of construction applicable to all statutes alike which is spoken of as construction ex visceribus actus.....The only recognized exception to the well-laid principle is that it cannot be called in aid to alter the meaning of what is of itself clear and explicit. Lord Coke laid down that: "it is the most natural and genuine exposition of a statute, to construe one part of a statute by another part of the same statute, for that best expresseth meaning of the makers" (Quoted with approval in Punjab Beverages Pvt. Ltd. v. Suresh Chand, [(1978) 2 SCC 144])"

42. To our mind, the grievance of the respondent- company which was projected before the High Court and also before us is that the impugned demands were in violation of Para 7(2)(a) of DPCO 1979, mainly for the reason that they were not computed on the basis of difference in the prices of bulk drugs but on the difference between the prices of bulk drugs and the prices of formulations in which the company had used those bulk drugs. The appellants/Central Government while justifying the impugned demand had contended before the High Court and even before us, that the prices of bulk drugs were fixed vide orders dated 12.05.1981, which were revised by order dated 20.11.1986, but the formulations could not be fixed because of the interim order granted by the High Court and, ergo, the respondent-company is liable to deposit into DPEA the over charged amount in respect of their formulations also.

43. To resolve the controversy on this issue, it is necessary to notice the impugned demands raised by the appellants/Central Government dated 16th November, 1990. The relevant portion is extracted by omitting what is not necessary for the purpose of considering the issue before us. They are as under:- "Subject: Recovery into the Drug prices Equalisation Account in respect of Betamethasone and its formulations. Dear Sirs, I am directed to refer to your letter dated the 17th September, 1990 on the above subject and to say that the liability of your company upto 25th August, 1987 has since been determined based on the available data. The details are as under:-

> (i) Bulk drugs sold to others
>
> (a) Attached statement at Annexure-I gives the details of your liability of Rs.23.62 lakhs in respect of the bulk drug.
>
> (ii) Formulations and bulk drug captively used.
>
> (b) The liability in respect of 16th packs of formulations has been determined at Rs.7121.03 lakhs as per details annexed.
>
> (c) Liability in respect of 8 packs of formulations have been worked out at Rs.33.53 lakhs subject to your company making available the details of the packs produced and

sold during 12th May, 1981 and 30th June, 1981. The liability in respect of these 8 packs would be finalized after these details are received.

2. While determining the liability the prices charged by your company based on the stay granted by the Hon'ble Delhi High Court and the prices to which your company would have been entitled had the stay not been granted have been taken into consideration. The prices to which your company was entitled to are shown in column 5 of the statement and these prices have been worked out by the Expert Body, namely, Bureau (sic.) of Industrial Costs and prices based on the price of the bulk drug as upheld by the High Court and other parameters like conversion cost, packing charges, packing materials excipients (sic.) etc. As prevalent in May, 1981, the norms of conversion cost and packing charges for formulations have also been upheld by the Hon'ble Supreme Court.

3. Liability in respect of two packs of formulations indicated at S.No.17 and 18 (sic.) would be communicated to you after the details of the price prevailing on 12th May, 1981 and the basis thereof are communicated to the Government.

4. The liability in respect of 6 packs of formulations would be finalized after the details of packs produced/sold during 12th May, 1981 to 30th June, 1981 are made available. It is brought to your notice once again that as already advised in this Ministry's letter of even number dated the 20th September, 1990 and as directed by the Hon'ble High
Court vide its orders dated the 9th August, 1990 your company is still to make available the details in respect of bulk drug Betamathasone and its formulations after 25th August, 1987. Please expedite these details also so that your liability can be finalized for this period as well.

Yours faithfully, Sd./-

(J.L. Sharma) UNDER SECRETARY TO THE GOVERNMENT OF INDIA"

44. Now let us see how the High Court has decided this issue. The Court after noticing elaborately the intent, object and the possible construction that could be placed on paras 3 to 9 and para 17 has observed that:

"Neither paras 3 to 9 nor para 17 of DPCO 1979 suggest that the amount to be deposited in DPEA had anything to do with the prices of the formulations which were being fixed in terms of paras 10 and 11 of the said order. Para 7(2) of the order, which speaks of utilization of bulk drugs in the formulations, makes it abundantly clear that the amount to be deposited into DPEA in this regard related only to the common selling price of bulk drug which was lower than the price allowed to him in the price of his formulations. As a natural consequence, therefore, the demand for the amount to be deposited in DPEA account could be based and calculated only on the basis of the prices of the bulk drugs consumed in the formulations and not on the basis of

notional prices of formulations. The prices of the formulations, therefore, were not at all relevant for the purpose. Thus the impugned demands, which were based on the formulations prices suffer from the vice of considering the formulations prices and not the quantity and the price of the bulk drugs consumed therein."

(Emphasis supplied)

45. In our view, the fallacy in the impugned judgment appears to be in not properly analyzing the clear meaning of the expressions used in para 7(2)(b) of DPCO 1979.

46. A plain reading of Para 7(2)(a) of the DPCO 1979 shows what can be directed by the Central Government to be deposited into DPEA by the manufacturer of bulk drugs and any formulations using those drugs or procured from outside, as in the present case. Firstly, Para 7(2)(a) applies to a manufacturer of formulations. The manufacturer must utilize in the formulation(s) any bulk drug. The bulk drug could be either from his own production or procured from any other sources. If the price of such bulk drugs is notified as lower than the price allowed to him in the price of his formulations, the Central Government may require the manufacturer of formulation the excess amount determined to be deposited into DPEA. Under Para 7(2)(b), the Central Government may direct the manufacturer of formulations to sell the formulations at such prices as may be fixed by the Government.

47. The Central Government, while issuing the letters/demand dated 18.06.1990 and 16.11.1990, has specifically bifurcated the differential amount that requires to be paid by the respondent-company on the bulk drugs and their formulations. In the letter, it is made clear that in view of the notification dated 20.11.1986, the respondent-company has to deposit into DPEA the difference between the retention price and pooled price for the sale of bulk drugs. Similarly, since the respondent-company manufactures drug formulations by captive consumption of the bulk drugs, the Central Government initially could not fix the retention price of the formulations in view of the interim orders passed by the High Court while admitting the writ petition filed by the respondent-company. After disposal of the writ petitions filed and in view of the specific liberty that was granted by the High Court in the petitions filed by the respondent-company, the Central Government directed the company to pay not only the difference amount payable for the price of bulk drugs but also those drugs which are utilized in their formulations over and above the prices fixed by the Central Government. In our view, since the para 7(2)(a) of DPCO 1979 does not admit a construction which the respondent-company suggests, it is difficult to hold that under para 7(2)(a) of DPCO 1979, the Central Government could issue demand on the basis of bulk drugs only and not on the basis of difference between the prices of bulk drugs and the prices of the formulations in which the company had used those bulk drugs.

48. Before we conclude, it is important to mention that the respondent company (and similar companies) not only manufacture bulk drugs but also use them for their drug formulations for its supply in retail vending and thereby, the ordinary consumer is burdened with a higher price than what they could have got at a lesser price. Since that is taken care of in para 17 of

DPCO 1979, it may not be necessary to lean towards the submissions made by learned counsel for the respondent-company.

49. In conclusion, we would only say that none of the submissions made by learned counsel for the respondent- company were worth accepting. Accordingly, we allow this appeal and set aside the order passed by the High Court and thereby, we confirm the demands raised by the Central Government. In the facts and circumstances of the case, we deem it proper that the parties will bear their own costs.

Judgment Referred.

[1]*AIR 1945 Oudh 0214*
[2]*(1963) 1 Crl.L.J. 0372 (Mys)*
[3]*AIR 1955 NUC 2769 All*
[4]*(1889) 14 AC 0493*
[5]*(1985) 3 SCC 0103*