Kolhapur Canesugar Works Ltd. Etc. Etc vs Union Of India on 1 February, 2000

Equivalent citations: AIR 2000 SUPREME COURT 811, 2000 AIR SCW 364, (2000) 3 LAB LN 319, (2000) 86 FACLR 69, (2000) 4 SCT 952, 2000 (1) SCALE 369, 2000 (1) LRI 648, 2000 (2) SCC 536, (2000) 1 JT 453 (SC), 2000 (2) SRJ 391, (2000) 2 LABLJ 942, (2000) 119 ELT 257, (2000) 89 ECR 22, (2001) 1 GUJ LR 1, (2000) 2 MAD LJ 141, (2000) 1 SUPREME 412, (2000) 2 RECCIVR 674, (2000) 1 SCALE 369, (2000) WLC(SC)CVL 293, (2001) 1 CALLT 18

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Bench: S.P. Bharucha, B.N. Kirpal, V.N. Khare, N. Santosh Hegde, D.P. Mohapatra

CASE NO.:
Appeal (civil) 2132 of 1994

PETITIONER:
KOLHAPUR CANESUGAR WORKS LTD. ETC. ETC.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT: 01/02/2000

BENCH:
S.P. BHARUCHA & B.N. KIRPAL & V.N. KHARE & D.P. MOHAPTRA & N. SANTOSH HEGDE

JUDGMENT:

JUDGMENT 2000 (1) SCR 518 The Judgment of the Court was delivered by D.P. MOHAPATRA, J. Leave granted in S.L.P. (Civil) No. 16223/1985.

The common question raised in all these cases relates to the ap-plicability of Rules 10 and 10-A of the Central Excise Rules. The cases were heard together with the consent of learned counsel for parties and they are being disposed of by this common judgment. For the sake of brevity the relevant facts are stated with reference to Civil Appeal No. 2132 of 1994 :

> M/s. Kolhapur Sugar Mills Limited, a holding company, had been in the business of production of sugar at Kolhapur since the year 1933-34. The appellant M/s. Kolhapur Canesugar Works Ltd. was registered as a subsidiary of the said holding company in the year 1972. The holding company bifurcated their activities whereby the activity pertaining to manufacture and sale of sugar was transferred to the appellant

company by a Resolution passed in their Extra-ordinary General Meeting held on 19th October, 1972. Consequent upon this change the appealant, on 9th October 1973 applied to the Assistant Collector, Central Excise Kolhapur for L-4 licence for manufacture of sugar. In the covering letter the appel-lant had stated that they had taken the sugar undertaking from the holding company. It was also stated in the latter that the holding company was having L-4 licence during the year 1972- 73 and that they had manufactured sugar during that season and were having their sugar stocks in the godowns now belonging to the appellant. On receipt of the letter necessary certifi-cate was issued to the appellant to start business on 15.11.1973 pending issue of L-4 licence. A fresh L-4 licence authorising the appellant to manufacture sugar during the year-ending 31st December, 1973 was issued on 6th December, 1973 in pursuance of their application.

On 9th August, 1974 the appellant sent a letter to the Superintendent, Central Excise, Kolhapur asking him whether the company were entitled for a rebate of excise duty on sugar admissible for the season 1973-74 on the ground that they had commenced manufacture of sugar for the first time during the season 1973-74. They were informed by the Superintendent, Central Excise, Kolhapur by letter 23.9.1974 that their factory did not figure in the list of new factories; therefore; they did not come within the scope of the Notification No. 189/73 and they would not be entitled for the sugar incentive rebate on excise duty on account of excess production of sugar for the year 1973-74 season.

On 7th December, 1974, the appellant applied for rebate on excess production for the year 1974-75 on the basis of the Notification'No. 146/74 dated 12th October, 1974. This claim of rebate was for the amount Rs. 6,53,472 on excess production of sugar within two months, October and November, 1974. The Superintendent, Central Excise, Kolhapur by his letter dated 26th May, 1975 informed the appellants that since a fresh L-4 licence was issued to them, their factory will have to be treated as a new unit, and therefore, the rebate claim filed as an old unit could not be entertained.

Subsequently, the appellants made an application for grant of incen-

tive rebate on the sugar manufactured by them in terms of the Notification No. 189/73 dated 4th October, 1973. This rebate claim was scrutinised and after pre-audit a sum of Rs. 61,14,930 was sanctioned by the Superinten- dent, Central Excise, Kolhapur, vide latter dated 23rd July, 1976. It was stated in the order sanctioning the rebate that the amount sanctioned should be credited in the personal ledger account of the appellants and utilised for payment of Central Excise duty.

In the meanwhile the petitioner had also filed an appeal against the order dated 26th May, 1975, rejecting the application for rebate under Notification No. 146/74 dated 12th October, 1974. This appeal was later on withdrawn by the appellants on or about 29th July, 1976.

As the matter stood thus the notice dated 27th April, 1977 was issued by the Superintendent, Central Excise, A.G. - I Kolhapur, which reads as follows :

"NOTE TO SHOW CAUSE To, M/s. Kolhapur Canesugar Works Ltd.

Kashba Savada, Kolhapur Whereas the Kolhapur Cane Sugar Works Ltd., Kolhapur Holder of L4 No. 2/Sug./93 had presented their claim on 12.7.76 for rebate of Central Excise duty on sugar produced in excess during the season 1973-74 by them as new factory commencing production for the first time after 1.10.1973 as per provision of S. No. 6 of the table of notification No. 189/73 dated 4.10.1973 and that they were granted a rebate of Rs. 61,14,930 by the Superintendent Central Excise AG1 Kolhapur vide his letter No. Rebate KCW/73-74/76, dated 23.7.76 and that they had accordingly taken credit of the said amount in their PLA. Whereas now on re-examination of the facts and circumstances connected with the said rebate claim, it appears that M/s. The Kolhapur Canesugar Works Ltd. Kolhapur are merely a subsidiary of the holding Company viz. M/s. The Kolhapur Sugar Mills Ltd., Kolhapur, are the owners of the subsidiary, since all the share issued by the subsidiary company are purchased by them. M/s. Kolhapur Cane Sugar Works Ltd., Kolhapur, after formation, have continued the manufacturing of sugar at and with the existing and running factory of M/s. Kolhapur Sugar Mills Ltd., Kolhapur. Though M/s. Kolhapur Cane Sugar Works Ltd., Kolhapur obtained a new licence for the manufacture of sugar, they have not installed and commissioned working the new factory. It appears that only the existing factory has change hands and that the receiving firm is fully owned by transferring firm. Therefore, M/s. Kolhapur Cane Sugar Works Ltd., Kolhapur cannot be considered as a new factory and that they commenced manufacturing of sugar for the first time after 1.10.1973. M/s. Kolhapur Cane Sugar Works Ltd., Kolhapur, do not thus appear to be entitled to the rebate sanctioned to him as a new factory.

Whereas it appears that M/s. Kolhapur Cane Sugar Works Ltd., Kolhapur are not eligible to rebate for the season 73-74 under any other provisions of the notification No. 189/73 dated 4.10.73.

2. Now therefore M/s. Kolhapur Cane Sugar Works Ltd., Kolhapur are hereby required to show cause the Assistant Collector, Central Excise Kolhapur, why the rebate of Rs. 61,14,930 erroneously sanctioned and allowed to the credited to then- PLA by the Superintendent under his letter No. Rebate/KCW/73-74/76 dated 23.7.73, should not be recovered from them under Rule 10A of the Central Excise Rules, 1944.

3. M/s. the Kolhapur Cane Sugar Works Ltd., Kolhapur, are further directed to produce at the time of showing cause all the evidence upon which they intend to rely in support of their defence.

4. M/s. Kolhapur Cane Sugar Works Ltd., Kolhapur should indi-cate in the written explanation whether they wish to be heard in person before the case is decided. If no mention is made about this

in their written explanation, it would be presumed that they do not desire a personal hearing.

5. If no cause is shown against the action proposed to be taken within ten days of the receipt of this notice, or they do not appear before the Assistant Collector, Central Excise, Kolhapur, when the case posted for hearing, the case will be decided on ex-parte.

Sd/ 27.4.77 Superintendent, Central Excise AGI, Kolhapur"

After considering the submissions of the appellant in reply to the show cause notice the Assistant Collector of Central Excise, by his order dated 15/27 October, 1977 confirmed the demand for recredit of the aforesaid amount of Rs. 61,14,930 that was taken into credit by the appellants in their personal ledger account. Before the order dated 15/27th October, 1977 could be passed by the Assistant Collector, Central Excise, the then existing Rules 10 and 10-A of the Central Excise Rules (for short 'the Rules') were deleted/omitted. A new provision was introduced as Rule 10. The appellants went in appeal to the Appellate Collector who dismissed the appeal by order dated 23rd August, 1979. The appellant thereafter filed a revision application before the Central Government and the Central Government dismissed the revision vide order dated 25th September, 1980. Thus being unsuccessful before the statutory authorities the appellants filed Civil Writ No. 1804/80 in the High Court of Delhi. The Division Bench of the High Court by the Judgment dated 19.11.1984 dismissed the writ petition. The said judgment is under challenge in this appeal.

Before the High Court one of the contentions raised on behalf of the appellants was that Rules 10 and 10-A of the Rules stood deleted and the new Rule 10 was introduced by the Notification dated 6th August, 1977; the effect of such deletion introduction of new provision was that the old rules under which the show cause notice was issued ceased to exist; thereafter further piroceedings were without jurisdiction since the Notifica-tion of 6th August, 1977 did not contain any saving clause. It was also contended on behalf of the appellant that Section 6 of the General Clauses Act has no application in the case because it does not apply to repeal of statutory rules and also because it applies only where there is a repeal by a Central Act whereas in the present case the repeal was by a notification. According to the appellant the order passed after August, 1977 could not invoke the old rule 10 which had been omitted. The High Court repelled these contentions and dismissed the petition.

When this appeal and the connected appeals came up for hearing before a bench of two learned judges of this Court the Bench considering the submissions made by the counsel appearing for the appellants took the view that having regard to the importance of the questions involved the matter should be considered by a Constitution Bench. The relevant portion of the Reference Order dated 11.9.1997 is quoted hereunder :

> "Shri F.S. Nariman, the learned senior counsel appearing for the appellants in Civil Appeal No. 2132/94, has placed reliance on the decision of the Constitution Bench of this Court in Rayala Cor-poration (P) Ltd. & Ors. v. Director of Enforcement, New Delhi, [1970] 1 SCR 639. In that case this Court was dealing with the provisions of Rule 132A of the Defence of India Rules, 1962 and it was held that the provisions of Section 6 of General Clauses Act could not be made applicable to the repeal of the Rules and that the said provisions are applicable only to the repeal of a Central Act or Regulation. The said decision in Rayala Corporation (supra) has been considered and explained by various Benches in various High Courts. The said decisions are under challenge in this group of matters. Having regard to the importance of the question, we consider it appropriate that this matter is considered by the Constitution Bench. It is therefore, directed that the matter be placed before the Hon'ble Chief Justice of India for appropriate directions in this regard."

In the factual backdrop of the case discussed earlier the question that arises for determination is whether after omission of the old Rule 10 and 10-A and its substitution by the new Rule 10 by the Notification No 267/77 dated 6.8.77 the proceedings initiated by the notice dated 27.4.77 could be continued in law. If the question is answered in the affirmative then the order dated 15/27th October, 1977 of the Asstt. Collector of Central Excise confirming the demand for re-credit of the amount of Rs. 61,41,930 cannot be interfered with. On the other hand, if the question is answered in the negative then the said order is to be taken as non-est. As noted earlier, prior to 6th August, 1977 the relevant provisions in the rules 10 and 10-A. In Rule 10 a provision was made for recovery of duties or charges short- levied or erroneously refunded. It was laid down therein that when duties or charges have been short-levied through inad-vertence, error, collusion, or mis-construction on the part of an officer, or through mis-statement as to the quantity, description or value of such goods on the part of the owners, or when any such duty or charge, after having been levied, has been owing to any such cause, erroneously refunded, the proper officer may, within three months from the date on which the duty or charge was paid or adjusted in the owner's account-cur-rent, if any, or from the date of making the refund, serve a notice on the person from whom such deficiency in duty or charges is or are recoverable requiring him to show cause to the Assistant Collector of Central Excise why he should not pay the amount specified in the notice. In sub-rule (2) of Rule 10 the Assistant Collector of Central Excise was vested with the power to pass appropriate order determining the amount of duty or charges due from such person and thereupon such person was to pay the amount so determined within 10 days from the date on which he is required to pay within the period specified.

Rule 10-A contained the provision regarding residuary powers for recovery of sums due to Government where the Rules do not make any specific provision for the collection of any duty, or of any deficiency in duty or of any other sum of any kind payable to the Central Government under the Act. The procedure laid down in this rule was similar to Rule 10 i.e. issue of a show-cause notice for determination of the amount due, etc. Rules 10 and 10-A were omitted and a new provision was introduced by Rule 10 with effect from 6th August 1977. In the said Rule a period of 6 months was prescribed for initiating action for realisation of the duty which has not been levied or paid or has been short- levied, erroneously refunded or any duty assessed has not been paid in full. No provision

regarding residuary power was made in the Rules.

Section 11A which was inserted with effect from 17.11.1980 vide Notification No. 182/80 CE, dated 15.11.1980, by Section 21 of the Customs, Central Excise and Salt and Central Board of Revenue (Amendment) Act, 1978 (25 of 1978) reads as follows :

> "11-A. Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded. (1) When any duty of excise has not been levied or paid or has been short- levied or short-paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person charge-able with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has er-roneously been made, requiring him to show cause why he should not pay the amount specified in the notice :
>
> Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, for the words "six months", the words "five years" were substituted.
>
> Explanation : Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of six months or five years, as the case may be.
>
> (2) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1) determine the amount of duty of excise due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.
>
> (3) For the purposes of this section, -
>
> (i) "refund" includes rebate of duty of excise on excise goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;
>
> (ii) "relevant date" means -
>
> (a) in the case of excisable goods on which duty of excise has not been levied or paid or has been short - levied or short-paid -

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

Since the proceeding initiated by the show-cause notice and the order passed on it are sought to be supported on the basis of the provisions in section 6 of the General Clauses Act it will be convenient to quote the said section :

> 6. Effect of repeal - Where this Act, or any (Central Act) or Regulation made after the commencement of this Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -
>
> (a) revive anything not in force or existing at the tune at which the repeal takes effect; or
>
> (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
>
> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
>
> (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
>
> (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability penalty, for-feiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regula-tion had not been passed.

The term 'Central Act' has been defined in section 3(7) which shall mean an Act of Parliament; and shall include -

(a) an Act of the Dominion Legislature or of the Indian Legis-lature passed before the commencement of the Constitution, and

(b) an Act made before such commencement by the Governor-General- in-Council or the Governor General, acting in a legislative capacity.

The term "enactment" is defined in Section 3(19) as "enactment" shall include a Regulation (as hereinafter defined and any Regulation of the Bengal, Madras or Bombay Code and shall also include any provision contained in any Act or in any such Regulation as aforesaid).

The term "Regulation" as defined in Section 3(50) of the Act means a Regulation made by the President under Article 240 of the Constitution and shall include a Regulation made by the president under Article 243 thereof and a Regulation made by the Central Government under the Government of India Act 1870 or the Government of India Act 1915 or the Government of India Act, 1935.

At this stage we may also note the definition of "Rule" in section 3(51) of the Act wherein it is provided that the term "Rule" shall mean a Rule made in exercise of a power conferred by an enactment and shall include a Regulation made as a Rule under any enactment.

The applicability of Section 6 of the Act in similar fact situations came up for consideration in the case of M/s. Rayala Corporation P. Ltd. [1969] 2 SCC 412. There this Court observed as follows : (Para 15) :

> "15. Reference was next to a decision of the Madhya Pradesh High Court in State of Madhya Pradesh v. Hiralal Sutwala, AIR (1959) M.P. 93, but, there again, the accused was sought to be prosecuted for an offence punishable under an Act on the repeal of which Section 6 of the General Clauses Act had been made applicable. In the case before us, Section 6 of the General Clauses Act cannot obviously apply on the omission of Rule 132-A of the D.I.Rs. for the two obvious reasons that Section 6 only applies to repeals and not to omissions, and applies when the repeal is of a Central Act or Regulation and not of a Rule. If Section 6 of the General Clauses Act had been applied, no doubt this compliant against the two accused for the offence punishable under R. 132-A of the D.I.Rs. could have been instituted even after the repeal of that rule."

In Mehendra Mills Ltd. v. Union of India, (1988) 36 E.L.T. 563 (Gujarat) it was held that when old Rules 10 and 10-A were omitted on 6.8.1977 and new Rule 10 was brought in force on that very day and as there was no saving clause in the notification deleting and introducing these rules, and as Section 6 of the General Clauses Act did not help as this is a case of the omission of rules and not of their repeal, the pending proceedings under old Rule 10 could not be continued and could not be adjudicated upon under new Rule 10 by the departmental authorities. Consequently, the proceedings pending for adjudication under show cause notices under old rule prior to 6.8.1977. became incompetent after 6.8.77. Reliance was placed on the decision in Rayala Corporation (supra). The High Court after considering the effect of omission of Rules 10 and 10-A with effect from 6.8.77 and the subsequent enactment of Section 11-A of the Central Excise and Salt Act, 1944 observed that it is pertinent to note that while enacting new Rule 10, sub-rule (2) was enacted which in terms provided that the Assistant Collector shall, after considering the repre-sentation, if any, made by the person on whom notice is served under sub-rule (1) determine the amount of duty due from such person; it, therefore, clearly contemplates that the Assistant Collector under new rule 10 had to adjudicate upon the notice served under sub-rule (1) of new Rule 10; no power is conferred under sub- rule (2) of new Rule 10 on the Assistant Collector to adjudicate upon pending notices issued under sub-stituted Rule 10, and in that view of the matter, on principle, no difference can be found between the scheme of new Rule 10 as envisaged by Notifica-tion No. 267 of 1977 and the

later scheme adopted by the rule making authority when the said rule was omitted and Section 11-A was enacted on the very same day by the Parliament. The Court rejected the contention that it is not a case of omission of Rules 10 and 10-A and of enactment of new Rule 10 but a case of substitution.

A similar view was taken by the High Court of Gujarat in Amit Processors Pvt. Ltd. v. Union of India & Others, (1985) 21 ELT 24 (Guj.).

In Saurashtra Cement and Chemical Industries Limited v. Union of India, (1993) 42 ECC 126 (Guj.) a Full Bench of the Gujarat High Court considered the question of maintainability of a proceeding initiated on a notice issued under Rule 10 of the Central Excise, Rules 1944, after the said Rule was omitted and the provision in Rule 10-A was introduced. The Full Bench held that the notices issued or actions taken under the sub-stituted Rule 10 and 10-A or omitted Rule 10 would not stand discharged or terminated upon substitution or omission as the case may be and the proceedings initiated on the basis of the said rules would not come to an end or lapse. The Full Bench overruled the decision in Amit Processors Pvt. Ltd. (supra) and Mahendra Mills (supra).

A similar view was taken by a Division Bench of the Karnataka High Court in Falcon Tyres Ltd. v. Union of India, (1992) 60 E.L.T. 116 (Kar-nataka).

In the case of Commissioner of Income Tax, Bangalore v. R. Sharadamma (Smt.), [1996] 8 SCC 388, the effect of change in law on the jurisdiction to impose penalty under Section 274(2) requiring the Income Tax Officer to refer such type of cases to Inspecting Assistant Commis-sioner (IAC) and empowering the LAC to impose penalty in such case which was omitted w.e.f. 1.4.1976, arose for consideration. In the facts of the case this Court held that where a reference was made to the IAC in accordance with the law in force on the date of reference and the IAC was thus seized of the matter, he did not cease thereof on account of the deletion of sub-section (2) of Section 274. The principle underlying Section 6 of the General Clauses Act was relied in support of the view. This Court summed up the finding in these words (Para 11) :

> "We are, therefore, of the view that the Inspecting Assistant Com-missioner did not lose the jurisdiction to continue with the proceedings pending before him on 31.3.1976 by virtue of the deletion of sub-section (2) of Section 274 by the Taxation Laws (Amendment) Act, 1970 with effect from 1.4.1976. He was entitled to continue with those proceedings and pass appropriate orders according to law."

The applicability of Section 6 of the Act to the case was not ques-tioned in the case. Therefore, the decision should be read in the context of the facts of the case. It has no general application.

In the case of S. Krishnan v. State of Madras, AIR (1951) SC 301 this Court held that the general rule in regard to a temporary statute is that in the absence of special provision to the contrary, proceedings which are being taken against a persan under it will ipso-facto terminate as soon as the statute expires. The Constitution Bench of this Court considering the provision of the Preventive Detention (Amendment) Act, 1951, the con- stitutional validity of Sections 9(2) and 12(1), held thus :

> "The combined effect of Ss. 9(2)(a) & 12(1) is to provide, in a certain class of cases, namely, where detention orders were in force at the commencement of the new Act, that the persons concerned could be detained for a period longer than three months if an Advisory Board reports that there are sufficient grounds for deten-tion within ten weeks from the commencement of the new Act, that is to say, without obtaining the opinion of an Advisory Board before the expiration of the three months from the commencement of the detention as provided in sub-Cl. (a) of cl. (4). And, although the new Act does not in express terms prescribe in a separate provision any maximum period as such for which any person may in any class or classes of cases be detained, it fixes, by extending the duration of the old Act till 1.4.1952, an over-all time-limit beyond which preventive detention under the Act cannot be con-tinued. The general rule in regard to a temporary statute is that, in the absence of special provision to the contrary, proceedings which are being taken against a person under it will ipso facto terminate as soon as the statute expires (Craies on Statutes, Edn. 4 p.437). Preventive detention which would but for the Act authorising it, be a continuing wrong, cannot, therefore, be con-tinued beyond the expiry of the Act itself. The new Act thus in substance prescribes a maximum period of detention under it by providing that it shall cease to have effect on a specified date. It seems to me, therefore, that S. 9(2)(a) & section 12(1) of the new Act substantially satisfy the requirements of sub-cl. (b) of Cl. (4) of Art. 22, & cannot be declared unconstitutional & void."

In the case of Nagammai Cotton Mills v. Regional Director, Employees State Insurance Corporation Madras, [1994] Supp. 2 SCC 142, this Court considered the provision of Section 73-A and 73-D of the Employees State Insurance Act, 1948, which were added by Amendment, Act, 1951 in the statute for the period 1960 - 1973. The said provisions were repealed in 1973. A contention was raised that the provisions of the Act having been repealed in 1973 the opposite parties could not have initiated proceedings in 1976. The contention was repelled by the High Court relying on Section 6 of the General Clauses Act. This Court referring to Section 6 observed that the learned counsel for the appellant could not show any provision from which it could be gathered that the provision in the Act at the time of repeal indicate that the legislature intended otherwise than what is provided in the Section 6 of the General Clauses Act. In that case the applicability of Section 6 to the case was not in question as the relevant provisions of the statute were omitted by a Central enactment. The decision is distinguishable.

The Allahabad High Court in the case of Ajanta Paper products, Ratanpura, Agra v. Collector of Central Excise, Kanpur, (1982) ELT 201 All. also took a similar view.

We have carefully considered the decisions in Saurashtra Cement and Chemical Industries (supra) and Falcon Tyres case (supra). Though the judgments in these cases were rendered after the decision of the Constitu- tion Bench in Rayala Corporation Pvt. Ltd. (supra) a different view has been taken by the High Courts for the reasons stated in the judgments. The Full Bench of the Gujarat High Court in Saurashtra Cement and Chemical Industries (supra), as it appears from the discussions in the judgment, tried to distinguish the decision of the Constitution Bench in M/s.

Rayala Cor-poration (supra) for reasons, we are constrained to say not sound in law The decision of the Constitution Bench is directly on the question of applicability of Section 6 of the General Clauses Act in a case where a rule is deleted or omitted by a notification and the question was answered in the negative. The Constitution Bench said that "Section 6 only applies to repeals and not to omissions, and applies when the repeal is of a Central Act or Regulation and not of a Rule" (page 656 of the Supreme Court Report).

The Full Bench appears to have lost sight of the position that all the relevant terms i.e. 'Central Act', 'Enactment' 'Regulation', and 'Rule' are defined in Sub-section 3(7), 3(19), 3(5), 3(50) and 3(51) respectively of the General Clauses Act. When the term Central Act or Regulation or Rule is used in that Act reference has to be made to the definition of that term in the statute. It is not possible nor permissible to give a meaning to any of the terms different from the definition. It is manifest that each term has a distinct and separate, meaning attributed to it for the purpose of the Act. Therefore, when the question to be considered is whether a particular provision of the Act applies in a case then the clear and unambiguous language of that provision has to be given its true meaning and import. The Full Bench has equated a 'rule' with 'statute'. In our considered view this is impermissible in view of the specific provisions in the Act. When the legislature by clear and unambiguous language has extended the provision of section 6 to cases of repeal of a 'Central Act' or 'Regulation', it is not possible to apply the provision to a case of repeal of a 'Rule'. The position will not be different even if the rule has been framed by virtue of the power vested under an enactment; it remains a 'rule' and takes its colour from the definition of the term in the Act (General Clauses Act). At the cost of repetition we may say that the omissions in the judgment in M/s. Rayala Corporation (supra) pointed out in paragraph 17 of the judgment of the Full Bench have no substance as they are not relevant for determination of the question raised for the reasons stated herein.

In paragraph 21 of the judgment the Full Bench has noted the decision of a Constitution Bench of this Court in Chief Inspector of Mines v. ICC. Thapar, AIR (1961) SC 838 and has relied upon the principles laid down therein. The Full Bench overlooked the position that that was a case under section 24 of the General Clauses Act which makes provision for continuation of orders, notification, scheme, rule, form or bye-law, issued under the repealed Act or Regulation under an Act after its repeal and re- enactment. In that case section 6 did not come up for consideration. Therefore the ratio of that case is not applicable to the present case. With respect we agree with the principles laid down by the Constitution Bench in M/s. Rayala Corporation case (supra). In our considered view the ratio of the said decision squarely applies to the case on hand.

For the reasons set forth above we do not accept the view taken in Saurashtra Cement and Chemical Industries Ltd. (supra), in Falcon Tyres Ltd. (supra) and the other decisions taking similar view. It is not correct to say that in considering the question of maintainability of pending proceedings initiated under a particular provision of the rule after the said provision was omitted the Court is not to look for a provision in the newly added rule for continuing the pending proceedings. It is also not correct to say that the test is whether there is any provision in the rules to the effect that pending proceedings will lapse on omission of the rule under which the notice was issued. It is our considered view that in such a case the Court is to look to the provisions in the rule which has been introduced after omission of the previous rule to determine whether a pending proceeding will

continue or lapse. If there is a provision therein that pending proceedings shall continue and be disposed of under the old rule as if the rule has not been deleted or omitted then such a proceeding will continue. If the case is covered by Section 6 of the General Clauses Act or there is a pari-materia provision in the statute under which the rule has been framed in that case also the pending proceeding will not be affected by omission of the rule. In the absence of any such provision in the statute or in the rule the pending proceedings would lapse on the rule under which the notice was issued or proceeding was initiated being deleted/omitted. It is relevant to note here that in the present case the question of divesting the Revenue of a vested right does not arise since no order directing refund of the amount had been passed on the date when Rule 10 was omitted.

We, therefore, hold that the decisions of the Full Bench of the . Gujarat High court and the Division Bench of the Karnataka High Court noted above were not correctly decided. The said decisions are overruled.

In the case in hand Rule 10 or Rule 10-A is neither a "Central Act" nor a "Regulation" as defined in the Act. It may be a Rule under Section 3(51) of the Act. Section 6 is applicable where any Central Act or Regula-tion made after commencement of the General Clauses Act repeals any enactment. It is not applicable hi the case of omission of a "Rule".

The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in Section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is] introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceeding shall not continue but a fresh proceeding for the same purpose may be initiated under the new provision.

In the present case, as noted earlier, Section 6 of the General Clauses Act has no application. There is no saving provision in favour of pending proceeding. Therefore action for realisation of the amount refunded can only be taken under the new provision in accordance with the terms thereof.

The further question that arises for consideration in this connection is whether the notification No. 267/77 dated 6.8.77 by which Rule 10 was deleted contained any provision for continuance of the proceedings already initiated and whether Act 25 of 78 which introduced Section 11-A of the Central Excise Act, adopted the legal device of creating a fiction by virtue of which a proceeding under Rule 10 could be deemed to be a proceeding under section 11-A of the Act. If such was the position then it could be argued that the proceeding initiated when old Rule 10 was in force could be continued on the strength of the clause of the notification by which the said Rule was omitted and substituted by a

new Rule which in turn was substituted by section 11-A of the Act.

From the contents of the provisions in the Rules it is clear that it did not contain any saving clause for continuance of the proceeding initiated under the rule which was deleted/omitted. There is also no provision in Section 11-A or in any other Section of the Act saving the proceedings initiated under the deleted/omitted provision. The consequential position that follows is that the proceeding lapsed after 6th August 1977 and any order passed in the proceeding thereafter is to be treated as non-erf. In case the notice was issued after Section 11-A was introduced in the Act, the proceeding will continue and will not be affected by this decision. All the cases are disposed of on the terms aforesaid. No costs.

S.M. Appeals disposed of.