

A AGRICULTURAL INCOME TAX OFFICER & ANR.

v.

GOODRICKE GROUP LTD. & ANR.

B (Civil Appeal No. 9043 of 2003)

MARCH 25, 2015

[A.K. SIKRI AND ROHINTON FALI NARIMAN, JJ.]

C *Cess – Refund – Entitlement to refund of cess paid*
with interest 12 % pa – Rural employment cess and education
cess – Levy of – High Court on basis of interim orders passed
in Buxa Dooars's case and Goodricke's case held that for
D *the period prior to the Amendment Act of 1989, respondent*
entitled to refund of cess paid by it with interest 12 % pa, and
interest would only be payable after assessment orders are
passed – However, interim order in Buxa's case was
substituted by the final order which held that the charging
E *Sections under the 1976 Act and the 1973 Act were invalid –*
Subsequently, two West Bengal Acts were amended in 1989
with retrospective effect, and the levy of the rural employment
cess and education cess which was levied under the principal
Acts on the basis of dispatch of manufactured tea was now
F *levied on the basis of production of tea leaves – Said 1989*
Amendment Act was upheld in Goodricke's case and
direction was issued to pay cesses stayed by the orders of
the court along with interest 12 % pa – On appeal, held: ss.
G *4B and 78C have changed the basis of the law as it existed*
when Buxa's case was decided and consequentially, the
judgment and interim order passed in Buxa's case will cease
to have any effect – What was payable under the unamended
Act, is now payable only under the 1989 Amendment Act
H *which has come into force with retrospective effect – The 1989*

Amendment Act expressly seeks to remove the basis of Buxa's judgment by retrospectively changing the basis of the levy of the cesses – Impugned judgment rightly held that with regard to the payment of interest by the petitioner on the amount of cess payable by virtue of the Goodricke's case, interest would only be payable from the respective dates of assessment for the various relevant periods till recovery – West Bengal Taxation Laws (Second Amendment) Act, 1989 – ss. 4B, 78C – West Bengal Rural Employment and Production Act, 1976 – West Bengal Primary Education Act, 1973.

Disposing of the appeal, the Court

HELD: 1.1 It is clear from a reading of Section 4B and Section 78C of the West Bengal Taxation Laws (Second Amendment) Act, 1989 that where any sum is paid by or collected from an owner of a tea estate during a period commencing from 01.04.1981 or 14.04.1984, as the case may be, up to the date of the Amendment Act as rural employment cess or as education cess, such portion of the said sum as may become payable under the provisions of the Amendment Act shall, notwithstanding any judgment, decree or order of any court, be deemed to have been validly levied, paid or collected under the Amendment Act. [Para 12] [624-E-F]

1.2 The purport of ss. 4B and 78C is clear. Whatever may have been the subject matter of *Buxa Dooars's* case, that is the subject matter of the two Acts- West Bengal Rural Employment and Production Act, 1976 and West Bengal Primary Education Act, 1973 as originally enacted, will now, notwithstanding the interim order or the final judgment in *Buxa Dooars's* case, be deemed to have been validly levied, collected and paid

A as rural employment cess and education cess under the
Amendment Act. This being the case, it is clear that
Section 4B and Section 78C have changed the basis of
the law as it existed when *Buxa Dooars's* case was
B decided and consequentially, the judgment and interim
order passed in *Buxa Dooars's* case will cease to have
any effect. Also, what would have been payable under
the Act as unamended, is now payable only under the
1989 Amendment Act which has come into force with
C retrospective effect. [Paras 13 and 14] [624-G-H; 625-A-
C]

1.3 Rural employment cess and education cess
continue to be the same cess whether before or after
the Amendment Act. What has been changed is the basis
D for the said levy so as to undo the defects that were found
in the *Buxa Dooars's* case. It is obvious that when the
basis of *Buxa Dooars's* case has gone, on a retrospective
amendment of these two Acts, the interim order and the
E judgment and order in *Buxa Dooars's* case can no longer
survive. In the instant case, the 1989 amendment Act
expressly seeks to remove the basis of *Buxa Dooars's*
judgment by retrospectively changing the basis of the
levy of the cesses mentioned above. What is done away
F with by the Amending Act of 1989 is a declaratory
judgment holding the cesses to be invalid. [Paras 15 and
17] [625-F-H; 628-C]

1.4 *Goodricke's* case made it clear that the
G petitioners shall pay cesses stayed by an order of this
Court along with interest at 12 % pa. The expression
"cesses stayed" has reference to the interim order which
had stated that there would be no enforcement of
demand under the Act or Rules and in the meanwhile,
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assessment may be made. Assessments were made with effect from July, 1993 onwards and consequential demands have been made with effect from 1995 onwards. Therefore, the impugned judgment is right in holding that with regard to the payment of interest by the petitioner on the amount of cess payable by virtue of the *Goodricke's* case, interest would only be payable from the respective dates of assessment for the various relevant periods till recovery. [Para 18] [628-H-G; 629-A]

Buxa Dooars Tea Company Ltd. and others v. State of West Bengal and others 1989 (3) SCR 293: (1989) 3 SCC 211; *Goodricke Group Ltd. and others v. State of W.B. and others* 1994 (6) Suppl. SCR 120: 1995 Supp. (1) SCC 707; *Indian Aluminium Company v. State of Kerala* 1996 (2) SCR 23: (1996) 7 SCC 637; *Kerala v. Peoples Union for Civil Liberties, Kerala State Unit & Ors.* 2009 (11) SCR 142: (2009) 8 SCC 46 – referred to.

Madan Mohan Pathak v. Union of India and other' 1978 (3) SCR 334 – distinguished.

Case Law Reference

1989 (3) SCR 293	referred to.	Paras 1, 14	F
1994 (6) Suppl. SCR 120	referred to.	Paras 1, 2	
1996 (2) SCR 23	referred to.	Para 15	
2009 (11) SCR 142	referred to.	Para 16	G
1978 (3) SCR 334	distinguished.	Para 18	

A From the Judgment and Order dated 08.05.2003 of the High Court of Calcutta in WPTT NO. 3 of 2003

Anip Sachthey and Shagun Malta, for the appellant.

B C. U. Singh, R. K. Tiwary, Priya Puri and R. K. Dubey, for the respondents.

The Judgment of the Court was delivered by

C **R. F. NARIMAN, J.** 1. An interesting question is raised in this appeal which arises out of two judgments of this Court, namely, 'Buxa Dooars Tea Company Ltd. and others v. State of West Bengal and others' [(1989) 3 SCC 211] and 'Goodricke Group Ltd. and others v. State of W.B. and others' [1995 Supp.(1) SCC 707].

D 2. In the present appeal, we are concerned with The West Bengal Rural Employment and Production Act, 1976 and The West Bengal Primary Education Act, 1973. The High Court has found, based on a reading of the interim orders passed in both Buxa Dooars Tea Company Ltd.'s case and Goodricke Group Ltd.'s case, that for the period prior to the Amendment Act of 1989, the respondent herein is entitled to a refund of the cess paid by it together with interest at 12 per cent per annum, and has further found that insofar as interest is payable after the Amendment Act is concerned, such interest would only be payable after assessment orders are passed (which on facts here, we are informed, were passed on 27.07.1993 and thereafter).

G 3. By an interim order dated 16.06.1983 in the Buxa Dooars Tea Company Ltd.'s case, this court held as hereunder: -

H "Rule NISI. There will be no order on stay application

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but if the petitioner succeeds in the writ petition, the State of West Bengal will refund the amount of cess collected with interest thereon @ 12% per annum from the date of collection.” A

4. By the judgment delivered in Buxa Dooars Tea Company Ltd.'s case in 1989, this Court held that the charging sections under both the aforesaid Acts were invalid both on the ground of legislative competence as well as violation of Article 301 inasmuch as the impugned legislative measures were outside Entry 49 in List II of the Seventh Schedule of the Constitution, which speaks of “taxes of lands and buildings”; and it was further held that the levy being on movement of goods, Article 301 of the Constitution would be attracted and these levies are not saved under Article 304(b) as no Presidential assent has been taken on either of these legislative measures. B C D

5. The West Bengal legislature was swift to act after the judgment of this court. By the West Bengal Taxation Laws (Second Amendment) Act of 1989 amending the provisions of both the aforesaid Acts, the charging sections were substituted with retrospective effect, and the levy of the rural employment cess and education cess (which was levied under the earlier principal Acts on the basis of despatch of manufactured tea) was now levied on the basis of production of tea leaves. A challenge to this Amendment Act was made before this Court which challenge failed in the second judgment referred to hereinabove (in Goodricke Group Ltd.'s case). E F G

6. The 1989 Amendment Act was upheld in the following terms:

“Lastly, the learned counsel for the petitioners questioned H

A the validity of the retrospective effect given to the
impugned enactment. We fail to see any substance in
this submission. If the Act is good, it is good both
prospectively and retrospectively. Retrospective effect
is given for the period covered by the anterior
B provisions which were struck down in Buxa Dooars.
Once we hold that the defect pointed out in Buxa
Dooars is rectified and remedied in the impugned
enactment, it can certainly be given retrospective effect
C to cover the period covered by the earlier enactment
which is not only a well-known but a frequently adopted
measure by all the legislatures.

For the above reasons, the writ petitions fail and
are accordingly dismissed. The interim orders made
D in these writ petitions shall also come to an end. The
petitioners shall pay the cesses stayed by the orders
of this Court along with interest @ 12% p.a. There
shall no order as to costs."

E 7. It is a little important to note that before the final
judgment in Goodricke Group Ltd.'s case , an interim order
was passed dated 25.01.1990 in the following terms:

F "Issue notice. In the meantime the assessment may
be made as usual but there will be no enforcement
of demand under the Act or Rules. Status quo to
be maintained as far as refund of Cess is
concerned."

G 8. Learned counsel for the appellant Shri Anip Sachthey
has argued before us that the impugned judgment should be
set aside on the ground that the interim order dated 16.06.1983
in the Buxa Dooars Tea Company Ltd.'s case did not survive
H as it was substituted by the final order in the Buxa Dooars

Tea Company Ltd.'s case, which is to be found in Para 16 thereof, which stated that the two West Bengal Acts were declared void and consequential refund ordered. There was no separate order as to payment of interest in the final judgment and therefore the interim order which merges with the final judgment had no independent existence. He has also urged that since the two West Bengal Acts were amended in 1989 with retrospective effect from 1981 and 1984 respectively, the basis of the judgment in Buxa Dooars Tea Company Ltd.'s case was removed and as a result, it is clear that no refund at all is payable.

9. Mr. C. U. Singh, learned senior counsel appearing on behalf of the respondent, on the other hand, supported the judgment on both counts and submitted that the levy under the original Act no longer remained the same, so that the levy under the 1989 amendment was a separate and new levy of rural employment cess and education cess, and this being the position, the interim order as well as the final judgment in Buxa Dooars Tea Company Ltd.'s case still remain intact. He further submitted that the interim order was self operative inasmuch as interest became payable at the rate of 12 per cent the moment the writ petitions were finally decided in the petitioner's favour. He also supported the second portion of the impugned judgment saying that the final order in Goodricke Group Ltd.'s case is to be read with the interim order thereof and if so read, the result is that interest is only payable under the new Act with effect from the date of assessment and not before.

10. We have heard learned counsel for the parties. In our opinion, Mr. C. U. Singh, learned counsel appearing on behalf of the respondents, is right in saying that the interim order dated 16.06.1983 is self operative. In any case, the

A final order in Buxa Dooars Tea Company Ltd.'s case did not say anything to the contrary, and when both the judgment and the interim order are read together, it is clear that the refund will have to be made together with 12 per cent interest.

B 11. But the matter does not end here. The Amendment Act contains two very important provisions, namely, Section 4B of the West Bengal Rural Employment and Production Act and Section 78C of the West Bengal Primary Education Act. Both the sections are set out hereinbelow: -

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“4B. (1) Where any sum has been paid by, or collected from, any owner of a tea estate during the period commencing on the 1st day of April, 1981 and ending on the day immediately preceding the date of coming into force of the West Bengal Taxation Laws (Second Amendment) Act, 1989 as rural employment cess in respect of any period prior to the coming into force of the said Act, such portion of the said sum as may become payable in accordance with the provisions of this Act after the coming into force of the said Act shall, notwithstanding any judgment, decree or order of any court, be deemed to have been validly levied, paid or collected under this Act, and where after assessment or fresh assessment any portion of such sum is found to have been levied, paid or collected in excess of the rural employment cess payable for the said period shall be refunded to such owner in accordance with the provisions of this Act and the rules made thereunder.

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(2) Where any assessment is purported to have been made, or any order is purported to have been passed on appeal, revision or review, by any authority, or any appeal or application for revision or review has been made before such authority under this Act, or any order

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has been passed by a court or where any sum has been paid or collected as rural employment cess, before the coming into force of the West Bengal Taxation Laws (Second Amendment) Act, 1989, in respect of any period prior to the coming into force of the said Act, assessment or fresh assessment shall, notwithstanding such order on appeal, revision or review, or the pendency of such appeal or application for revision or review, or any order passed by a court, be made in accordance with the provisions of this Act within four years from the date of coming into force of the said Act.

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(3) Notwithstanding anything contained in this Act, any default by an owner of a tea estate to make payment of the rural employment cess or to apply for registration or to file return in accordance with the provisions of this Act after the coming into force of the West Bengal Taxation Laws (Second Amendment) Act, 1989 in respect of any period prior to the coming into force of the said Act shall not be deemed to be a contravention of such provisions if such owner makes payment of such rural employment cess within one month or files return within six months, as the case may be, from the date of coming into force of the said Act.

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(4) The amount of the rural employment cess payable by any owner of a tea estate under sub-section (2A) of section 4 of this Act in respect of any period prior to the coming into force of the West Bengal Taxation Laws (Second Amendment) Act, 1989, shall, notwithstanding anything contained in this Act, be reduced by such amount of rural employment cess payable in respect of such tea estate on such quantity of green tea leaves produced therein during the said

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A period as may be equivalent to the quantity of any tea
despatched for which such owner has purported to have
enjoyed or would have enjoyed exemption from payment
of the rural employment cess during such period, and
B it is hereby declared that for determining the amount of
the rural employment cess to be reduced, each kilogram
of tea despatched during such period shall be equivalent
to four and a half kilograms of green tea leaves
produced in such tea estate.”

C “78C. “Validation and exemption. (1) Where any sum
has been paid by, or collected from, any owner of a
tea estate during the period commencing on the 14th
D day of April, 1984 and ending on the day immediately
preceding the date of coming into force of the West
Bengal Taxation Laws (Second Amendment) Act, 1989
as education cess in respect of any period prior to the
coming into force of the said Act, such portion of the
said sum as may become payable in accordance with
E the provisions of this Act after the coming into force
of the said Act shall be deemed to have been validly
levied, paid or collected under this Act, and where after
assessment any portion of such sum is found to have
been levied, paid or collected in excess of the amount
F payable as education cess for the said period shall be
refunded to such owner in accordance with the provisions
of this Act and the rules made thereunder.

(2) Where any assessment is purported to have been
G made, or any order is purported to have been passed
on appeal, revision or review, by any authority, or any
appeal or application for revision or review has been
made before such authority under this Act, or any order
has been passed by a court, or where any sum has
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been paid or collected as education cess, before the coming into force of the West Bengal Taxation Laws (Second Amendment) Act, 1989, in respect of any period prior to the coming into force of the said Act, assessment or fresh assessment shall, notwithstanding such order on appeal, revision or review or the pendency of such appeal or application for revision or review or any order passed by any court, be made in accordance with the provisions of this Act within four years from the date of coming into force of the said Act.

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(3) Notwithstanding anything contained in this Act, any default by an owner of a tea estate to make payment of the education cess or to apply for registration or to file return in accordance with the provisions of this Act after the coming into force of the West Bengal Taxation Laws (Second Amendment) Act, 1989 in respect of any period prior to the coming into force of the said Act shall not be deemed to be a contravention of such provisions if such owner makes payment of such education cess within three months or applies for registration within one month or files return within six months, as the case may be, from the date of coming into force of the said Act.

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(4) The amount of the education cess payable by any owner of a tea estate under sub-section (2A) of Section 78 of this Act in respect of any period prior to the coming into force of the West Bengal Taxation Laws (Second Amendment) Act, 1989, shall notwithstanding anything contained in this Act, be reduced by such amount of education cess payable in respect of such tea estate on such quantity of green tea leaves produced

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A therein during the said period as may be equivalent to
the quantity of any tea despatched for which such owner
has purported to have enjoyed or would have enjoyed
exemption from payment of the education cess during
such period, and it is hereby declared that for
B determining the amount of the education cess to be
reduced, each kilogram of tea despatched during
such period shall be equivalent to four and a half
kilograms of green tea leaves produced in such tea
estate.

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(5) The provisions of this section shall have
effect, notwithstanding any judgment, decree or order
of any court, tribunal or other authority to the
contrary.”

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12. It is clear from a reading of Section 4B and 78C
that where any sum is paid by or collected from an owner of a
tea estate during a period commencing from 01.04.1981 or
14.04.1984, as the case may be, up to the date of the
E Amendment Act as rural employment cess or as education
cess, such portion of the said sum as may become payable
under the provisions of the Amendment Act shall,
notwithstanding any judgment, decree or order of any court,
F be deemed to have been validly levied, paid or collected
under the Amendment Act.

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13. In our view, the purport of these two sections is
clear. Whatever may have been the subject matter of Buxa
Dooars Tea Company Ltd.'s case, that is the subject matter
of the two Acts as originally enacted, will now, notwithstanding
the interim order or the final judgment in Buxa Dooars Tea
Company Ltd.'s case, be deemed to have been validly
levied, collected and paid as rural employment cess and
H education cess under the Amendment Act.

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14. This being the case, it is clear that Section 4B and Section 78C have changed the basis of the law as it existed when Buxa Dooars Tea Company Ltd.'s case was decided and consequentially, the judgment and interim order passed in Buxa Dooars Tea Company Ltd.'s case will cease to have any effect. Also, what would have been payable under the Act as unamended, is now payable only under the 1989 Amendment Act which has come into force with retrospective effect.

15. Mr. C. U. Singh, however, referred us to 'Madan Mohan Pathak v. Union of India and others' [1978 (3) SCR 334] and in particular to Justice P. N. Bhagwati's judgment thereof, in which it has been decided by this Court that a Legislative Act cannot directly undo a writ of mandamus that is granted by an order of a superior court. We are of the view that Madan Mohan Pathak's case would not apply to the facts in the present case for the simple reason that what has been undone by Section 4B and Section 78C is not a mandamus issued by a superior court. What is undone is the very basis of the judgment in Buxa Dooars Tea Company Ltd.'s case by retrospectively changing the levy of rural employment cess and education cess. It must be understood that rural employment cess and education cess continue to be the same cess whether before or after the Amendment Act. What has been changed is the basis for the said levy so as to undo the defects that were found in the Buxa Dooars Tea Company Ltd.'s case judgment. It is obvious that when the basis of Buxa Dooars Tea Company Ltd.'s case has gone, on a retrospective amendment of these two acts, the interim order and the judgment and order in Buxa Dooars Tea Company Ltd.'s case can no longer survive. For this reason, we are of the view that the impugned judgment needs to be set aside on this score. In fact, Madan Mohan Pathak has

A been explained in *Indian Aluminium Company v. State of Kerala*, [(1996) 7 SCC 637] as follows:

B “49. In *Madan Mohan Pathak v. Union of India* [(1978) 2
C SCC 50 : 1978 SCC (L&S) 103], on the basis of a
D settlement, bonus became payable by LIC to its Class
E III and Class IV employees. In a writ, a Single Judge of
F the Calcutta High Court issued mandamus directing
G payment of bonus as provided in the settlement. During
H the pendency of letters patent appeal, LIC (Modification
of Settlements) Act, 1976 was enacted denying bonus
payable to the employees. The appeal was withdrawn.
The validity of 1976 Act was challenged in this Court
under Article 32 of the Constitution. A Bench of seven
Judges had held that Parliament was not aware of the
mandamus issued by the court and it was declared that
the 1976 Act was void and writ of mandamus was
issued to obey the mandamus by implementing or
enforcing the provisions of that Act and directed
payment of bonus in terms of the settlement. It was
pointed out that there was no reference to the judgment
of the High Court in the Statement of Objects and
Reasons, nor any non obstante clause referring to the
judgment of the Court was made in Section 3 of the Act.
Attention of Parliament was not drawn to the mandamus
issued by the High Court. When the mandamus issued
by the High Court became final, the 1976 Act was held
invalid. Shri R.F. Nariman laid special emphasis on the
observations of learned Chief Justice Beg who in a
separate judgment had pointed out that the basis of the
mandamus issued by the court could not be taken
away by indirect fashion as observed at p. 743c to f. From
the observations made by Bhagwati, J. per majority, it is
clear that this Court did not intend to lay down that

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Parliament, under no circumstance, has power to amend the law removing the vice pointed out by the court. Equally, the observation of Chief Justice Beg is to be understood in the context that as long as the effect of mandamus issued by the court is not legally and constitutionally made ineffective, the State is bound to obey the directions. Thus understood, it is unexceptionable. But it does not mean that the learned Chief Justice intended to lay down the law that mandamus issued by court cannot at all be made ineffective by a valid law made by the legislature, removing the defect pointed out by the court.”

This statement of law has been accepted in yet another judgment of this Court. (See: State of Kerala v. Peoples Union for Civil Liberties, Kerala State Unit & Ors., [(2009) 8 SCC 46 at paragraph 65].

16. Bhagwati, J.'s judgment in Madan Mohan Pathak also makes it clear that Section 3 of the impugned Act in that case sought to modify a settlement dated 24th January, 1974 arrived at between the LIC and its employees. There was no reference to a Mandamus issued by the Calcutta High Court in the Statement of Objects and Reasons as a result of which Section 3 of the impugned Act did not contain a non-obstante clause referring to any judgment of any court. The right given under the said judgment was therefore not sought to be taken away by the impugned Act. Further, inexplicably, the Letters Patent Appeal filed by the LIC was not pressed as otherwise e Section 3 of the impugned Act would only have to be applied to the facts in that case to upset the Single Judge judgment that had issued the Writ of Mandamus. Bhagwati, J. also went on to state that the judgment given by the Calcutta High Court was not a mere declaratory judgment holding

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A an impost or tax to be invalid, so that a validation statute can remove the defect pointed out by the judgment and amend the law with retrospective effect to validate such impost or tax - See: Madan Mohan Pathak v. Union of India, [(1978) 3 SCR 334 at 352 to 355].

B.

17. In the present case, the 1989 amendment Act expressly seeks to remove the basis of Buxa dooars's judgment by retrospectively changing the basis of the levy of the cesses mentioned above. In the present case, what is done away with by the Amending Act of 1989 is a declaratory judgment holding the above cesses to be invalid. On all these grounds also the judgment in Madan Mohan Pathak's case is distinguishable.

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18. However, insofar as interest is concerned, post Goodricke Group Ltd.'s case, we are of the view that Mr. C. U. Singh is correct in supporting the impugned judgment. Goodricke Group Ltd.'s case made it clear that the petitioners shall pay cesses stayed by an order of this Court along with interest at 12 per cent per annum. The expression "cesses stayed" has reference to the interim order dated 25.01.1990 which had stated that there would be no enforcement of demand under the Act or Rules and in the meanwhile, assessment may be made. We have been informed that assessments were made with effect from July, 1993 onwards and consequential demands have been made with effect from 1995 onwards. It is clear, therefore, that the impugned judgment is right in holding that with regard to the payment of interest by the petitioner on the amount of cess payable by virtue of the Goodricke Group Ltd.'s case, interest would only be payable from the respective dates of assessment for the various relevant periods till recovery. On facts here, no question arises as to whether interest would

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become payable from the date of demand or from the date of the assessments inasmuch as counsel for the respondents supports the impugned judgment on this score and is not aggrieved thereby. A

19. The respondents here have made payment of interest from time to time to the State. These payments will be adjusted against any sum that would become payable as a result of this judgment. B

20. The appeal is disposed of accordingly. C

Nidhi Jain

Appeal disposed of.

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