A M/S. SAHAKARI KHAND UDYOG MANDAL LTD.

v.

COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS

MARCH 9, 2005

B [RUMA PAL, ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

Central Excise and Salt Act, 1944; Item No. 1 of First Schedule to the Act, Section 11B; Exemption Notification Nos.257/76 and 108/78 :

C *Exemption Notification—Exemption from levy of excise duty on production of sugar in excess of average production in the preceding three years—Refund claim—Held : Benefit of exemption could be claimed only if levy sugar and free sale sugar are sold in certain prescribed proportion during prescribed period—But assessees sold it in different proportion—*
D *Revenue had rightly calculated the refund amount in consonance with the Notification—However, the claim is time barred.*

Doctrine of unjust enrichment—Applicability of—Held : Its applicability is based on equity—Since assessee had already recovered the amount from the customers, refund, if allowed, would result in unjust enrichment.

E

Appellant-assessees, manufacturer of sugar had claimed rebate on the basis of Exemption Notification No. 257/76. The Notification provides for exemption from payment of excise duty leviable thereon in excess of average production of sugar for the preceding three years. Revenue found that the assessees had sold levy sugar and free sale sugar in different proportion to
F **what was specified in the Notification and one of the requirements for claiming benefits under the Notification, therefore, reduced the claim in consonance with the Notification and also found that assessees had already collected the duty amount from customers, as such they were not entitled to claim the amount. Hence, the amount was transferred to customer's welfare fund.**
G **Appellate Authority and also the Tribunal affirmed the order. Hence the present appeals.**

Dismissing the appeals, the Court

HELD : 1.1. The appellant-assessee is not entitled to any relief. On

H

limitation, it is clear from the record that the claim was in respect of the production for the year 1976-77. The assessee ought to have filed the claim up to 31st March, 1978. But the claim was submitted on August 14, 1978. It was, hence, rightly held to be barred by limitation. However, regarding average production of sugar for three years in the connected appeal, the submission of the respondent is well founded that the average production of two years had to be considered in terms of Notification No. 108/78. [615-D-E-F]

Sidheshwar Sahakari Sakhar Karkhana Ltd. v. *Union of India and Ors.*, Civil Appeal No. 5866 of 1999 decided S.C. on 23rd February, 2005, relied on.

1.2. Both the Notifications are abundantly clear. The benefit of exemption under the said Notifications can be claimed only if sugar is sold in the proportion of 65:35 levy sugar and free sale sugar respectively. Since the assessee was claiming the benefit of exemption of 65:35, it was obligatory on the assessee to sell sugar in the ratio as specified in the Notifications and unless that condition is fulfilled, the benefit of exemption from duty could not be claimed by it. On the basis of actual sale by the assessee, the Revenue had calculated the amount of exemption from excise duty which was in consonance with the Notifications and no grievance can be made by the assessee against that decision. [616-F-G]

2.1. 'Unjust enrichment' means retention of a benefit by a person that is unjust or inequitable. 'Unjust enrichment' occurs when a person retains money or benefits which in justice, equity and good conscience, belong to someone else. The doctrine of 'unjust enrichment' is that no person can be allowed to enrich inequitably at the expense of another. A right of recovery under the doctrine of 'unjust enrichment' arises where retention of a benefit is considered contrary to justice or against equity. [618-B-C]

Mafatlal Industries Ltd. and Ors. v. *Union of India and Ors.*, [1977] 5 SCC 536 : (1997) 99 ELT 247; *Union of India* v. *Jain Spinners Ltd.*, [1992] 4 SCC 389 and *Union of India* v. *I.T.C. Ltd.*, [1993] Supp 4 SCC 326, relied on.

Hindustan Metal Pressing Works v. *Commissioner of Central Excise, Pune*, [2003] 3 SCC 559, distinguished.

2.2. The doctrine of 'unjust enrichment' is based on equity and has been accepted and applied in several cases. Therefore, irrespective of applicability

A of Section 11B of the Act, the doctrine can be invoked to deny the benefit to which a person is not otherwise entitled. Section 11B of the Act or similar provision merely gives legislative recognition to this doctrine. That, however, does not mean that in absence of statutory provision, a person can claim or retain undue benefit. Before claiming a relief of refund, it is necessary for the petitioner/assessee to show that he has paid the amount for which relief B is sought and if such relief is not granted, he would suffer loss.

[621-H; 622-A-B]

Godfrey Phillips India Ltd. and Anr. v. *State of U.P. and Ors.*, Writ Petition (C) No. 567/94 decided by the Constitution Bench of the Supreme Court on C January 20, 2005, followed.

Mafatlal Industries Ltd. and Ors. v. *Union of India and Ors.*, [1977] 5 SCC 536 : (1997) 99 ELT 247; *Hindustan Metal Pressing Works* v. *Commissioner of Central Excise, Pune,* [2003] 3 SCC 559; *Nawabganj Sugar Mills Co. Ltd.* v. *Union of India,* [1976] 1 SCC 120: [1976] 1 SCR 803; *M/s. Shiv Shankar Dal* D *Mills* v. *State of Haryana,* [1980] 2 SCC 437; *Orient Paper Mills Ltd.* v. *State of Orissa,* [1962] 1 SCR 549 and *Amar Nath Om Prakash and Ors.* v. *State of Punjab and Ors.*, [1985] 1 SCC 345 : [1985] 2 SCR 72 , relied on.

Mulamchand v. *State of M.P.* AIR (1968) SC 1218, referred to.

E *Fibrosa* v. *Fairbairn,* [1942] 2 All ER 122 and *Nelson* v. *Larholt,* [1947] 2 All ER 751, referred to.

3. All the authorities below have expressly recorded a finding that the appellant has recovered the amount from consumers and as such excise duty is passed on to consumers/customers. In view of specific finding, the conclusion F is inescapable that the assessee is not entitled to claim any amount. Allowing exemption or refund of amount would result in 'unjust enrichment' by the assessee which cannot be permitted. Therefore, even on that count, orders passed by the authorities and refusal to grant benefit cannot be held arbitrary, unreasonable or inequitable. [622-C-D]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6832 and 6833 of 1999.

From the Judgment and Order dated 1.6.99/6.7.99 of the Central Excise, Customs and Gold (Control) Appellate Tribunal, West Regional Bench at Mumbai in F.O. No. C-I/1482-1483/WZB/1999 in A. No. E-704 and 717 of H 1994-Bom.

Ramesh Singh, Pratap Venugopal, P.S. Sudher and Amit Singh for K.J. John for the Appellant. A

A. Saran, Additional Solicitor General and Anuvrat Sharma for B. Krishna Prasad for the Respondent.

The Judgment of the Court was delivered by B

THAKKER, J. Both these appeals arise out of a common order passed by the Customs Excise and Gold (Control) Appellate Tribunal, Western Regional Bench at Bombay (hereinafter referred to as 'CEGAT') on 1st June, 1999 by which it confirmed the orders in original passed by Assistant Collector Central Excise, Valsad and affirmed by Collector of Central Excise (Appeals), C Ahmedabad.

Before dealing the points raised by the parties in the present appeals, relevant facts of both the cases may be stated in brief. Civil Appeal No. 6832 of 1999 is filed by M/s. Sahakari Khand Udyog Mandal Ltd. ('Mandal' for short). According to the Mandal, it is engaged in manufacturing sugar falling D under sub item (1) of Item No. 1 of the First Schedule to the Central Excise and Salt Act, 1944 (hereinafter referred to as 'the Act'). The appellant-Mandal vide its letter dated 14th August, 1978 addressed to the Range Forest Officer, Billimora, claimed rebate of Rs. 6,92,779.59 ps.. The refund was claimed on the basis of Notification No. 257/76 dated September 30, 1976. The E Notification was issued by the Government in exercise of the powers under sub-rule (1) of Rule 8 of Central Excise Rules, 1944 (hereinafter referred to as 'the Rules'). It *inter alia* provided for exemption from payment of excise duty leviable thereon in excess of average production of sugar of the corresponding period of preceding three years. The notification also provided that such exemption would be on sale of sugar as specified in columns 3 and F 4 as levy sugar and free sale sugar.

According to the appellant-Mandal, the production of sugar by the Mandal during the preceding three years was as under :

1973-74 - 1,68,636 quintals G

1974-75 - 1,65,308 quintals

1975-76 - 1,30,595 quintals

Thus, total production of three years was 4,64,539 quintals. The average H

A production of three years for the period of 1973-74, 1974-75 and 1975-76 was 1,54,846.33 quintals (4,64,539 - 3). Since production of sugar for the year 1976-77 was 2,09,982 quintals, the appellant-Mandal was entitled to benefit of exemption from *octroi* duty for excess production of 55,135.67 quintals. The appellant, therefore, submitted its claim for Rs. 6,92,779.59 ps.

B The Assistant Collector of Central Excise, by an order dated 29th March, 1993, held the claim to be time barred under Section 11B of the Act as it was filed after six months. He also held that for an amount of Rs.1,348.80 ps., the claimant was not entitled as the claim related to 48 kgs. of sugar which was re-processed sugar and hence not permissible. Regarding the amount of C Rs.6,92,779.59 ps., the Assistant Collector held that to get benefit of exemption, excess sugar was to be sold as levy sugar and free sale sugar in the ratio of 65 : 35 respectively. The appellant claimed the amount as under :

Excess Production	Ratio of Percentage	Kind of Sugar	Rate per Qtl	Total Rebate
D				
1. 55135.67	65% i.e. 35838.18	Levy	4.20	1,50,520.40
2. 55135.67	35% i.e. 19297.48	Free sale	28.10	5,42,259.19
E				Rs. 6,92,779.59

On going through actual sale by the appellant, however, it was found that out of excess production of 55,135.67 quintals sugar, the Mandal had sold sugar as levy sugar and free sale sugar as under:

F

42133 Qtl. Levy Sugar x Rs.4.20 = 1,76,1958.60
(Rate of rebate)

13003 Qtl. Free Sale x Rs.28.10 = 3,65,384.30
G Sugar (Rate of rebte)

Total Rs. 5,40,342.90

H The claimant, therefore, according to the Assistant Collector, could not have claimed Rs.6,92,779.59 ps., but only Rs. 5,42.342.90 ps., The Assistant

Collector further observed that the claimant had already charged and collected the duty amount from its customers and as such it was not entitled to claim the said amount. He, therefore, transferred the amount to Consumer Welfare Fund, set up by the Government of India.

Being aggrieved by the order passed by the Assistant Collector, the appellant preferred an appeal before the Collector of Central Excise (Appeals), Ahmedabad. Before the Appellant authority, it was contended that the Assistant Collector had committed an error of law in holding the claim to be barred by time; there was an error on the part of the adjudicating authority in reducing the claim of Rs.1,348.80 ps. on the ground that the sugar was re-processed goods and no rebate could be allowed and the working out of ratio of 65 : 35 of levy sugar and free sale sugar had not been correctly applied and the Assistant Collector ought not to have reduced the claim. He also erred in not paying the amount to the Mandal. As the order passed by the Assistant Collector was contrary to law, it was liable to be set aside by ordering the respondents to pay the amount claimed by the appellant - Mandal.

The Appellate Authority considered the submission regarding the claim of Rs.1,348.80 ps. and upheld it observing that in accordance with the Notification No. 257/76, the claimant was entitled to the said amount and the order disallowing the claim was not proper and accordingly it was set aside. Regarding the claim being barred by limitation, it was observed that since the sugar year was over on September 30, 1976, the claim was required to be submitted within six months. But the claim was submitted on 14th August, 1978, and hence, it was barred by limitation. It was contended by the Mandal that initially the claimant had claimed benefit of Notification No. 36 of 1976 but after the Directorate of Sugar informed the claimant on 19th July, 1978 that the claim of the Mandal was liable to be rejected, it filed the present claim on 14th August, 1978. The Appellate Authority, however, observed that the Assistant Collector could not go beyond the provision of law and when the time limit had been prescribed under Section 11B of the Act, the claim was rightly held to be time barred.

Regarding non-payment of amount to the claimant, the Appellate Authority observed that the Assistant Collector was right in transferring the refund to the Consumer Welfare Fund. The claimant no doubt objected to invoking the doctrine of unjust enrichment under Section 11B of the Act contending that the rebate was in the nature of incentive to the factories to encourage them to produce more sugar and such rebate was not intended to

A benefit the consumers. But it was observed that with the amendment of Section 11B, the new provision would apply to all claims including those filed before the amendment. The Collector also observed that the Notification No. 257/76 did not use the word "rebate" but provided for exemption from payment of duty on levy sugar and free sale sugar at the rate specified in the table appended thereto. Section 11B provided for refund of excise duty in B certain cases to the applicant under sub-section (2) of Section 11B of the Act. Since the case in hand was not covered by the said provision as the Mandal had not paid the said amount, the Mandal could not get such amount. He, therefore, dismissed the appeals.

C The aggrieved appellant approached the CEGAT. Before the CEGAT, the arguments advanced before the lower Authorities were reiterated. The CEGAT, however, confirmed the order passed by the Assistant Collector as well as by the Collector. According to the CEGAT, the claim was "clearly barred by limitation". The CEGAT also observed that even if the claim was not barred by limitation, it would come within the judgment of this Court in D *Mafatlal Industries Ltd. and Ors.* v. *Union of India and Ors.*, [1977] 5 SCC 536 : (1997) 99 ELT 247. The appeal was accordingly dismissed.

In Civil Appeal No. 6833 of 1999, the appellant had claimed rebate of Rs. 6,44,841 vide its letter dated 1st September, 1978 lodged with Range Forest Officer, Billimora. The rebate was claimed on the basis of Notification E No. 108/78 dated 28th April, 1978. Under the said Notification, a sugar factory was entitled to exemption from excise duty on excess production of sugar of the corresponding period of preceding three years. The notification also provided that such exemption would be on sale of sugar as specified in columns (3) and (4) as levy sugar and free sale sugar. According to the F Mandal, the production of sugar by the appellant Mandal for preceding three years was as under :

1975 – 15,573 quintals
1976 – Nil
1977 – 24,817 quintals

G

Total – 40,390 quintals

1978 – 45,845 quintals.

According to the appellant, the average of earlier three years came to H 13,466.67 quintals and hence the appellant was entitled to rebate on excess

production of 32,378.33 quintals. The Authority, however, held that since there was 'nil' production of sugar by the appellant for one year (1976), as per the policy of the Government, the said year was required to be ignored. The Authority, in the circumstances, held that average production of the appellant was 20,195 quintals (40,390 - 2). On that basis, the appellant was entitled to claim rebate on the excess production of 25,650 quintals. The Assistant Collector also observed that ratio of levy sugar and free sale sugar had to be maintained as 65 : 35.

The appellant ought to have sold sugar as under :

16672.50 Qt. x Rs. 9.60 = Rs. 1,60,056.00
8,977.50 Qt. x Rs.54.00 = Rs. 4,84,785.00

Grand total Rs. 6,44,841.00

The appellant however, cleared levy sugar and free sale sugar in the following ratio :

21,261 Qt. x Rs. 9.60 = Rs. 2,04,105.60
4,389 Qt. x Rs. 54.00 = Rs. 2,37,006.00

Total = Rs. 4,41,111.60

The appellant, therefore, could not claim Rs.6,44,841 but only Rs.4,41,111.60 ps. Taking note of the fact that the sugar factory had "already" charged and collected duty amount from the customers to whom the free sale sugar as well as levy sugar has been released", the Assistant Collector held that under Section 11B of the Act, the Mandal could not claim the said amount from the Government. He in the circumstances reduced the claim to Rs.4,44,111.60 ps. but transferred the amount to Consumer Welfare Fund set up by the Government of India.

Being aggrieved by the said order passed by the Assistant Collector, the appellant preferred an appeal but the appeal was dismissed by the Collector of Customs. The aggrieved appellant then approached the CEGAT as already noted earlier. The CEGAT also dismissed the appeal. The common order passed by the CEGAT in both the matters have been challenged by the Mandal in the present appeals.

We have heard learned counsel for the parties. The learned counsel for

A the appellant-Mandal contended that the Authorities below committed an error of law in holding the claim of the appellant as time barred. He also contended that the Authorities were wrong in reducing the claim of the appellant in Civil Appeal No. 6833 of 1999 by improperly interpreting Notification No. 108/78 dated 28th April, 1978 and in calculating the average production as per the said Notification. According to the learned counsel, B production of sugar by the appellant in three years was required to be divided in three years ignoring the fact that there was no production for one year. The appellant in that case would be entitled to benefit of excess production of 32,378.33 quintals and not 25,650 quintals. The counsel vehemently contended that the decision of the Authorities on application of the doctrine of unjust C enrichment was unwarranted and ill-founded and the ratio laid down in the *Mafatlal Industries Ltd.* would not apply. According to the counsel, sub-section (2) of Section 11B could not be invoked by the Authorities and the appellant was entitled to rebate as claimed. It was submitted that the object of granting rebate was to encourage sugar factories to have more and more sugar production and it was intended to be given to factories and not to D consumers. It was, therefore, not open to the Authorities to take into account extraneous ground for refusing relief to the appellant. The amount hence could not have been diverted to the Consumer Welfare Fund set up by the Government of India but ought to have been given to the claimant. The counsel also submitted that there was an error on the part of the Authorities E in reducing the claim of the appellant on the ground of actual sale of sugar on quota fixed for levy sugar and free sale sugar. Sugar was sold according to the policy of the Government and, hence, reduction of rebate was improper. He, therefore, submitted that both the appeals should be allowed with an appropriate direction to the respondents to pay the amount to the appellant-Mandal.

F

Learned counsel for the respondent, on the other hand, supported the orders passed by the Authorities. According to him, one claim was clearly barred by limitation. A finding of fact has been recorded that the claim was submitted after a period of six months. The Authorities were, therefore, right in rejecting the claim. Regarding average production, the counsel submitted G that Clause 3 of Notification No. 108/78 is clear and it states that the average production for the period in the preceding three sugar years shall be worked out in which the factory has actually worked during the said period. The period for which it had not worked had to be ignored. He also submitted that the calculation of average was as per the policy of the Government and H Clause 3 of the Notification and no grievance could be made against such an

action. On merits, the counsel submitted that for claiming benefit of exemption of excess production of sugar, sale of sugar must be as per the policy of the Government for levy sugar and free sale sugar. From the record, it is clear and a finding has been recorded by the Authorities that sale of sugar was not in the ratio of 65 : 35 for levy sugar and free sale sugar respectively and, hence, the benefit was calculated on the basis of actual sale of sugar and the action was legal, valid and proper. Regarding the grievance of the appellant of transferring the amount of exemption from octroi duty to Consumer Welfare Fund, it was submitted that admittedly the appellant has not suffered. The octroi amount has been passed on to customers and has already been recovered by the appellant. Hence, under sub-section (2) of Section 11B of the Act, the Mandal cannot claim such amount. But even if it is assumed that Section 11B has no application, on general principle also, the appellant has no right to claim such amount as it would result in 'unjust enrichment' by the appellant. Hence, by not extending the said benefit, the Authorities have committed no error of law. He, therefore, submitted that the appeals deserve to be dismissed.

Having heard learned counsel for the parties, in our opinion, the appellant is not entitled to any relief. On limitation, it is clear from the record that in Civil Appeal No. 6832 of 1999, the claim was in respect of the production for the year 1976-77. It related to a claim up to 30th September, 1977 and the appellant ought to have filed the claim within six months i.e. on or before 31st March, 1978. Admittedly, the claim was submitted on August 14, 1978. It was, hence, rightly held to be barred by limitation.

Regarding average production of sugar for three years in Civil Appeal No. 6833 of 1999, in our opinion, the submission of the learned counsel for the respondent is well founded that the average production of two years had to be considered. Clause 3 of Notification No. 108/78 dated 28th April, 1978 reads as under:

> "3. Where during the period mentioned in column (1) of the said Table production in any of the preceding three sugar years was *nil*, the average production shall be determined as under :-
>
> The average production for the said period in the preceding three sugar years shall be worked out on the basis of the period or periods in which the factory had actually worked during the said period and *the period or periods in which it did not work during the said period shall be ignored while arriving at the average.*" (emphasis supplied)

A A similar question came up for consideration recently before us in *Sidheshwar Sahakari Sakhar Karkhana Ltd.* v. *Union of India and Ors.*, Civil Appeal No. 5866 of 1999 decided on 23rd February, 2005. In that case also, the appellant *Karkhana* did not produce any sugar for one year. The Authorities, therefore, ignored the said year while calculating average production of the *Karkhana*. A grievance was made by the *Karkhana* that the B action of the Authorities was illegal and production of sugar ought to have been divided in three years ignoring non-production for one year. Interpreting the Notification and the language used in Clause 3 thereof, this Court negatived the contention and held that when there was no production by *Karkanha* for one year, the said period was required to be ignored and was rightly ignored C by the Government. In our opinion, the ratio laid down in the said case applies to the case in hand also and the action of respondent cannot be held illegal or contrary to law.

It was then contended that the authorities were not right in reducing the amount of rebate on the basis of sale of levy sugar and free sale sugar. D According to the appellant-Mandal, sugar was sold by the Mandal, the authorities were made aware of that fact, and nothing was suppressed. When the authorities were aware and yet no objection was taken by them at any time, it was not open to them to reduce the amount on the ground that sale of sugar by the appellant Mandal was not as per so called policy of the E Government of 65 per cent levy sugar and 35 per cent free sale sugar. Reduction of amount on that ground was illegal and unlawful.

We are unable to uphold the argument. In our opinion, both the notifications are abundantly clear. The benefit under the said notifications can be claimed only if sugar is sold in the proportion of 65 : 35 levy sugar F and free sale sugar respectively. Since the appellant was claiming the benefit of exemption from excise duty, it was obligatory on the appellant-Mandal to sell sugar in the ratio of 65 : 35 as specified in the notifications and unless that condition is fulfilled, the benefit of exemption from duty could not be claimed by it. On the basis of actual sale by the appellant, the respondent had calculated the amount of exemption from excise duty which was in consonance G with the notifications and no grievance can be made by the appellant against that decision.

It was also argued that the authorities below could not have invoked the provisions of Section 11B of the Act for denial of the benefit of notifications. Section 11B was inserted in the Act by the Amendment Act of 1978 (Act 25 H

of 1978) with effect from November 17, 1980. It provided for refund of duties in certain cases of excess payment. The section was further amended by the Amendment Act of 1991 (Act 14 of 1991) with effect from September 19, 1991. A

In *Union of India* v. *Jain Spinners Ltd.,* [1992] 4 SCC 389 and in *Union of India* v. *I.T.C. Ltd.,* [1993] Supp 4 SCC 326, this Court held that so long as the refund proceedings are pending and not finalized, the amended provisions get attracted and may disentitle the manufacturer from claiming any refund contrary to the amended provisions. To put it differently, the provisions of Section 11B as amended by the Amendment Act of 1991 would also apply to claims of refund which are pending. It was held that the Court is bound to take notice of change in law governing refund and can call upon the manufacturer to furnish evidence to prove that the amount of duty of excise in relation to which refund was claimed was not passed on by him to customers. B C

In *Mafatlal Industries Ltd.,* this Court reiterated the law laid down in Jain Spinners Ltd. and I.T.C. Ltd. Speaking for the majority, B.P. Jeevan Reddy, J., observed that the Court should have due regard to the legislative intent evidenced in the Act and must exercise jurisdiction consistent with the provisions of law. D

The learned counsel for the appellant referred to a decision of this Court in *Hindustan Metal Pressing Works* v. *Commissioner of Central Excise, Pune,* [2003] 3 SCC 559, and submitted that principles contained in Section 11B of the Act would not apply to past cases. It may, however, be stated that in that case, the proceedings were finalized, transaction was over and the amount was refunded to assessee in 1989. In that fact- situation, this Court held that past finalized transactions could not be reopened on the ground that refund was erroneously granted and there was unjust enrichment. The fact-situation in the present case is totally different. The amount has been passed on to consumers and the claim is made by the Mandal to refund the amount. The ratio laid down in *Hindustan Metal Pressing Works,* therefore, does not help the appellant. E F G

Finally, it was submitted that the doctrine of 'unjust enrichment' has no application. The said doctrine, therefore, could not have been invoked by the authorities for denying the benefit of exemption from payment of excise duty and in refusing to pay the amount to which the appellant was held entitled by diverting it to Consumers Welfare Fund set up by the Government. H

A We are not impressed by that argument also. In our view, the submission is not well founded and cannot be accepted.

Stated simply, 'Unjust enrichment' means retention of a benefit by a person that is unjust or inequitable. 'Unjust enrichment' occurs when a person retains money or benefits which in justice, equity and good conscience, belong B to someone else.

The doctrine of 'unjust enrichment', therefore, is that no person can be allowed to enrich inequitably at the expense of another. A right of recovery under the doctrine of 'unjust enrichment' arises where retention of a benefit is considered contrary to justice or against equity. C

The juristic basis of the obligation is not founded upon any contract or tort but upon a third category of law, namely, quasi-contract or the *doctrine of restitution.*

D In the leading case of *Fibrosa* v. *Fairbairn,* [1942] 2 All ER 122, Lord Wright stated the principle thus :

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

F Lord Denning also stated in *Nelson* v. *Larholt,* [1947] 2 All ER 751;

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

The above principle has been accepted in India. This Court in several H cases has applied the doctrine of unjust enrichment.

In *Orient Paper Mills Ltd.* v. *State of Orissa,* [1962] 1 SCR 549, this Court did not grant refund to a dealer since he had already passed on the burden to the purchaser. It was observed that it was open to the Legislature to make a provision that an amount of illegal tax paid by the persons could be claimed only by them and not by the dealer and such restriction on the right of the dealer to obtain refund could lawfully be imposed in the interests of general public.

In *Mulamchand* v. *State of M.P.,* AIR (1968) SC 1218, a contract was entered into between the plaintiff and the Government for removal of forest produce. The plaintiff deposited an amount of Rs. 10,000 and collected forest produce. It was, however, turned out that the provisions of Article 299 of the Constitution were not complied with and the contract was void. The plaintiff claimed refund of Rs. 10,000.

Applying the provision of Section 70 of the Contract Act, 1872 and referring to *Fibrosa* and *Nelson,* this Court said :

> "....It is well established that a person who seeks restitution has a duty to account to the defendant for what he has received in the accounting by the plaintiff is a condition of restitution from the defendant".

In *M/s. Amar Nath Om Prakash and Ors.* v. *State of Punjab and Ors.,* [1985] 1 SCC 345 : [1985] 2 SCR 72, Section 23A of the Punjab Agricultural Produce Markets Act, 1961 enabled the market committees to retain the fee levied and collected by them from licensees in excess of the leviable amount if the burden of such fee was passed on by the licensees to purchasers. The validity of the said provision was challenged and refund was claimed. The Court, however, relying on *Orient Paper Mills* held that consumer public who had borne the ultimate burden were the persons really entitled to refund and since the market committees represented their interests, they were entitled to retain the amount and the licensees who had levied and collected the amount from consumers could not claim the benefit.

The Court said;

> "The primary purpose of Section 23-A is seen on the face of it; it prevents the refund of license fee by the market committee to dealers, who have already passed on the burden of such fee to the next purchaser of the agricultural produce and who want to unjustly enrich

A themselves by obtaining the refund from the market committee, Section 23-A, in truth, recognizes the consumer-public who have borne the ultimate burden as the persons who have really paid the amount and so entitled to refund of any excess fee collected and therefore directs the market committee representing their interest to retain the amount. It has to be in this form because it would, in practice, be a difficult B and futile exercise to attempt to trace the individual purchasers and consumers who ultimately bore the burden. It is really a law returning to the public what it has taken from the public, by enabling the committee to utilize the amount for the performance of services required of it under the Act. Instead of allowing middlemen to profiteer C by ill-gotten gains, the Legislature has devised a procedure to undo the wrong item that has been done by the excessive levy by allowing the committees to retain the amount to be utilized hereafter for the benefit of the very persons for whose benefit the marketing legislation was enacted."

D This Court held that the provision gave to the public through market committees what they had taken from the public and due to it. It rendered unto Caesar what was Caeser's.

The law laid down in *Orient Paper Mills Ltd.* and *Amar Nath Om Prakash* was quoted with approval by this Court in *Mafatlal Industries Ltd.* E

In *M/s. Shiv Shankar Dal Mills* v. *State of Haryana*, [1980] 2 SCC 437, market fee was collected under a provision which was struck down by this Court in an earlier case. A prayer was, therefore, made by the traders to refund the amount collected from them. This Court held that though collection of market fee from the traders was illegal but traders could demand only such F amount that had not passed on to the customers. For that view, the Court referred to Articles 38 and 39 of the Constitution as also discretionary nature of the power under Article 226 of the Constitution. Following *Nawabganj Sugar Mills Co. Ltd.* v. *Union of India*, [1976] 1 SCC 120 : [1976] 1 SCR 803, the Court devised a scheme providing for refund of amounts to those G from whom illegal collections had been made by traders.

In *Mafatlal Industries Ltd.* also, this Court held that refund of tax/duty wrongfully paid can be claimed on the basis of doctrine of equity and a person demanding such restitution must plead and prove that he had paid such tax/duty and had suffered loss/injury. The burden is on the petitioner to H prove that the tax/duty paid by him is not passed on to customers or third

party and that he is entitled to restitution. A

A reference may also be made to a recent decision of the Constitution Bench in *Godfrey Phillips India Ltd. and Anr.* v. *State of U.P. and Ors.*, Writ Petition © No. 567 of 1994, dated January 20, 2005. In that case, constitutional validity of Uttar Pradesh Tax on Luxuries Act, 1995 as also other State Acts was challenged *inter alia* on the ground of legislative competence by the B State Legislature. The Court allowed the petition and held that the State Legislature were not competent to impose luxury tax on tobacco and tobacco products and the Acts were declared *ultra vires* and unconstitutional. In the intervening period, however, tax was collected by the appellants from consumers and also paid to the State Government. In certain cases, interim C relief was obtained by the appellants from this Court against recovery of tax and as alleged by the State Government, the appellants continued to charge tax from consumers/customers.

In the circumstances, speaking through Constitution Bench, one of us, (Ruma Pal, J.) stated; D

> "(F)ollowing the principles in *Somalya Organics (India) Ltd.* v. *State of U.P.* [2001] 5 SCC 519 while striking down the impugned Acts we do not think it appropriate to allow any refund of taxes already paid under the impugned Acts. Bank guarantees if any furnished by the assessees will stand discharged. E
>
> It was stated on behalf of the State Governments that after obtaining interim orders from this Court against recovery of luxury tax, the appellants continued to charge such tax from consumers/ customers. It is alleged that they did not pay such tax to respective State Governments. It was, therefore, submitted that if the appellants F are allowed to retain the amounts collected by them towards luxury tax from consumers, it would amount to "unjust enrichment" by them.
>
> In our opinion, the submission is well founded and deserves to be upheld. If the appellants have collected any amount towards luxury tax from consumers/customers after obtaining interim orders from G this Court, they will pay the said amounts to the respective State Governments."

From the above discussion, it is clear that the doctrine of 'unjust enrichment' is based on equity and has been accepted and applied in several H

A cases. In our opinion, therefore, irrespective of applicability of Section 11B of the Act, the doctrine can be invoked to deny the benefit to which a person is not otherwise entitled. Section 11B of the Act or similar provision merely gives legislative recognition to this doctrine. That, however, does not mean that in absence of statutory provision, a person can claim or retain undue benefit. Before claiming a relief of refund, it is necessary for the petitioner/ B appellant to show that he has paid the amount for which relief is sought he has not passed on the burden on consumers and if such relief is not granted, he would suffer loss.

In the present case, not only no such case has been made out by the C appellant-Mandal, the position is just contrary. All the authorities below have expressly recorded a finding that the appellant-Mandal has recovered the amount from consumers and as such excise duty is passed on to consumers/ customers. In view of specific finding, in our opinion, the conclusion is inescapable that the appellant-Mandal is not entitled to claim any amount. Allowing exemption or refund of amount would result in 'unjust enrichment' D by the appellant which cannot be permitted. In our opinion, therefore, even on that count, orders passed by the authorities and refusal to grant benefit cannot be held arbitrary, unreasonable or inequitable. The said ground also, therefore, has to be rejected.

For the foregoing reasons, both the appeals deserve to be dismissed and E are accordingly dismissed. There shall be no order as to costs.

S.K.S. Appeals dismissed.