

(2001) 02 MAD CK 0128

In the Madras High Court

Case No : T.C. Rev. Case No's. 1446 to 1448 of 1987

State of Tamil Nadu

APPELLANT

Vs

Sakthi Sugars Ltd.

RESPONDENT

Date of Decision : 01-02-2001

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B, 12A
Tamil Nadu General Sales Tax Act, 1959 — Section 22(2)

Citation : (2004) 137 STC 218

Hon'ble Judges : R. Jayasimha Babu, J;K. Gnanaprakasam, J

Bench : Division Bench

Advocate : Haja Naziruddin, Special Government Pleader, for the Appellant; N. Inbarajan, for the Respondent

Final Decision : Dismissed

Judgement

R. Jayasimha Babu, J.—Counsel for the State contends that the doctrine of unjust enrichment should be invoked in these cases to sustain the order which had been set aside by the Tribunal. The Tribunal had set aside the order by which penalty had been levied on the dealer, the penalty so levied being due to the fact that the assessee had treated gallonage fee as a part of its turnover and had collected tax from its buyers which it had, admittedly, remitted to the State, although at the time of the collection, by reason of the judgment rendered by this Court in the case of E.I.D. Parry (India) Ltd. [1979] 44 STC 352 gallonage fee was not liable to be included. That judgment of this Court was made on November 14, 1978 and is reported in [1979] 44 STC 352 [E.I.D. Parry (India) Ltd. v. State of Tamil Nadu]. However, an appeal had been preferred against that judgment and that appeal was apparently pending during the assessment years in question, viz., 1979-80 and 1980-81,

2. It is the submission of the State's counsel that by permitting the dealer to obtain refund of those sums, the State would, in effect, be allowing the unjust enrichment of the dealer as those amounts are not likely to be passed on to the

persons from whom it had been collected. In order to offset the effect of the refund, the authority had imposed a penalty with a condition that if satisfactory arrangements are made by the dealer to refund the amount that the dealer had collected from its customers within 30 days, the amount of tax recovered as penalty would be refunded.

3. While the good intentions of the officer who made the order is evident and is worthy of appreciation, nevertheless, an order of that kind is not permissible under the provisions of the Act. The concept that was apparently in view of the authority has been developed and has found place in the Central Excise Act which incorporates the doctrine of unjust enrichment. The State here, however, even while being aware of that concept and while making attempts to sustain the order made by its officers way back in the year 1983, has not chosen to give legislative content to that concept by making the necessary amendments to the sales tax legislation. As rightly pointed out by the counsel for the Revenue, the concept of unjust enrichment is now part of the established law in this country after the decision of the nine Judges Bench of the apex Court in the case of *Mafatlal Industries Ltd. v. Union of India* [1998] 111 STC 467 wherein the majority of the learned Judges, who decided that case, held that the doctrine of unjust enrichment is a just and salutary doctrine ; that no person can seek to collect the tax or duty both ways, that a person cannot collect the duty from the purchaser at one end and also collect the same from the State on the ground that it has been collected from him contrary to law. The apex Court also held that, that doctrine however, is not applicable to the State as the State represents the country and no one can speak of the people being unjustly enriched. In the case of *Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others*, the court upheld the Sections 11-B and 12-A of the Central Excises and Salt Act, 1944 which provisions were introduced by the amending Act of 1991.

4. In the absence of any provision corresponding to Sections 11-B and 12-A of the Central Excises and Salt Act, 1944 in the Tamil Nadu General Sales Tax Act, 1959, it is not permissible for the authorities under the Act to impose a penalty on the sole ground that it is meant to offset a refund, the result of making which would result in unjust enrichment to the dealer.

5. Moreover, in this case, the State has yet another hurdle. Section 22(2) of the Act has been interpreted by this Court in the case of *State of Tamil Nadu v. K. Mohammed Ibrahim Sahib* [1991] 83 STC 402 to mean that the section would have no application to cases where a dealer receives the amount of the tax from his buyers and remits the same to the State. Such action on the part of the dealer cannot, it has been held, bring him within the mischief of the provisions, as he cannot be said to have "collected" by way of tax or purporting to be by way of tax under the Act, amounts, not payable as such. The case of the dealer here falls squarely within the ratio of that judgment.

6. We, therefore, do not find any error in the order of the Tribunal holding that the dealer is not liable to pay penalty and that the penalty that had been

imposed on the dealer was required to be set aside. The tax revisions are dismissed.