

(1989) 03 OHC CK 0028

In the Orissa High Court

Case No : Writ Petition No. 2490 of 1987

Straw Products Limited and Another

APPELLANT

Vs

Asstt. Collr. CE and Cus. and Another

RESPONDENT

Date of Decision : 29-03-1989

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B
Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 72

Citation : (1989) 24 ECR 630

Hon'ble Judges : V. Gopalswamy, J;G.B. Patnaik, J

Bench : Division Bench

Judgement

G.B. Patnaik, J.—The order of the Assistant Collector, Central Excise & Customs, Sambalpur Division, dated 1.6.1987 (Annexure-1) rejecting the application of the petitioner-company for refund, which it claims to be entitled pursuant to the judgment of this Court dated 17.10.1985, reported in Straw Products Limited and Another Vs. The Superintendent, Central Excise and Others, is under challenge in this writ application.

2. The petitioner No. 1 is the Company engaged in the business of manufacture and production of paper. It also manufactures several varieties of paper including wrapping paper which falls under Tariff Item No. 17 of the First Schedule to the Central Excises & Salt Act, 1944 (hereinafter referred to as the "Act"). The wrapping paper so manufactured by the Petitioner-Company is utilised in its factory for packing other varieties of paper and paper boards. From 1972 onwards the Central Excise authorities required the petitioner to pay the duty on the wrapping paper before using the same for wrapping other varieties of paper at the time of clearance and the petitioner did pay the duty thereon. From 16.3.1976 ad valorem duty was levied on paper. As a result of the aforesaid levy, the petitioner was required to pay the duty again on the wrapping paper which was used for packing the other varieties of paper. The petitioner, therefore, to avoid the burden that was being put twice so far as the wrapping paper was

concerned made a request to the Excise authorities for permission to remove the wrapping paper, in the first instance, without payment of duty to be allowed to avail the benefit of proforma credit under Rule 56-A of the Central Excise Rules, 1944 (hereinafter referred to as the "Rules"). The Assistant Collector of Central Excise & Customs by his order dated 21.11.1983 intimated the petitioner that the petitioner's request for availing proforma credit under Rule 56-A could not be acceded to since in his opinion the wrapping paper when used as a packing material could not be construed either as a raw material or a component. The petitioner, therefore, approached this Court in a writ petition being O.J.C. No. 1128 of 1984. In the said writ petition, the petitioner prayed that the order of the Assistant Collector rejecting its request to allow proforma credit in respect of duty paid on wrapping paper be quashed and a direction be issued to the opposite parties to allow the said proforma credit in respect of the duty already paid as provided under Rule 56-A of the Rules.

The stand of the Revenue in the writ application was that the process of packing was not a process of manufacture and in that view of the matter, Rule 56-A could not have any application to the packing materials. According to the Revenue, the said Rule would apply only to such of the raw materials or the component parts which are notified under the Rules. Since packing was a separate process different from the process of manufacture of core paper and as the wrapping paper was not used for its own convenient distribution but for the distribution of other varieties of paper, Rule 56-A could not have any application.

This Court by judgment dated 17.10.1985 came to the conclusion that Rule 56-A provided for allowing a rebate in respect of the duty-paid product when the same had been utilised for more convenient distribution of the finished product and since the Company manufactured wrapping paper and paid excise duty for it, when the same wrapping paper was utilised for more convenient distribution of the finished product or other varieties of paper, the petitioner was entitled to the relief as provided under Rule 56-A of the Rules. Accordingly, the orders of the excise authorities rejecting the petitioner's prayer were quashed and a writ of mandamus was issued to opposite party no. 2 to allow proforma credit in respect of duty paid on the wrapping paper at the earlier stage of its being taken for packing other varieties of paper under Rule 56-A of the Rules.

3. Since by the aforesaid judgment, this Court had not given any direction for refund of duties already paid without applying Rule 56-A of the Rules, the petitioner intimated the order of the High Court and claimed credit under Rule 56-A by letter dated 19.11.1985. Having not received any reply from the authorities thereto, the petitioner also filed an application for refund of duties for the period from 16th of March, 1976 to 20th of June, 1984 and the said application has been annexed as Annexure-2 to the writ petition. On 16.4.1986, the excise authority issued notice to the petitioner to show cause as to why the application for refund shall not be rejected. The said letter of the excise authority has been annexed as Annexure-3. It was stated in the said show cause notice that the

original duty-paying documents i.e. original copy of J.R. 6 challans or triplicate copy of P.L.A. had not been submitted along with the refund application and the proof of payment of duty under protest for the entire period i.e. from 1.2.1977 to 20.6.1984 was not submitted as required under Rule 233-B of the Rules without which a major portion of the claim became time barred as per Section 11B of the Act. The petitioner gave its reply along with all the documents complying with the requirements of the notice by letter dated 13.5.1986. On behalf of the Revenue, the Assistant Collector again intimated the petitioner by letter dated 26.9.1986, wherein the amount of claim as given in the earlier notice was modified and in place of Rs. 80,99,955.62 paise, it was mentioned as Rs. 83,99,509.37 paise. It was also stated that though the High Court of Orissa by judgment dated 17.10.1985 in O.J.C. No. 1128 of 1984 directed the Assistant Collector to allow proforma credit in respect of the duty paid on wrapping paper at the earlier stage of its being taken for packing of other varieties of paper under Rule 56-A of the Rules yet there is no such provision under Rule 56-A to allow refund in cheque or by cash as per Sub-clause (vi)(b) of Clause (3) of Rule 56-A and accordingly called upon the petitioner to show cause as to why the refund application should not be rejected. The petitioner furnished a further reply by its letter dated 18.10.1986. It was stated by the petitioner that the petitioner's claim for refund was not a claim under Rule 56-A since no part of the duty had been paid through RG-23 and in fact the entire duties on wrapping paper had been paid in PLA. It was further stated that since the full excise duty on wrapping paper had been paid and again the same wrapping paper became leviable to duty for use as cover for other varieties of paper, the petitioner was entitled to the refund in question. The petitioner then filed an additional memorandum before the Assistant Collector by letter dated 5.3.1987 indicating some case laws. Thereafter the Assistant Collector has passed the impugned order on 1.6.1987 (Annexure-1) rejecting the claim for refund. It is this order of the Assistant Collector which is being challenged in this writ petition.

4. The Assistant Collector has rejected the petitioner's prayer for refund on the following grounds:-

(i) The High Court in its earlier judgment has not ordered for any refund of duty paid by the Company under mistake of law or under protest though it was one of the prayers in the earlier writ application;

(ii) The proforma credit benefit which the High Court in its earlier judgment has granted is not with effect from 16th of March, 1976, and consequently, the petitioner's claim for refund with effect from that date, which is evident from the fact that such a prayer which was there in Clauses (b) and (c) of the prayer in the writ petition, has not been granted;

(iii) Rule 56-A of the Central Excise Rules does not provide for refund either by cheque or by cash; and

(iv) Section 11B of the Central Excises & Salt Act, 1944, cannot be made

applicable when the High Court did not permit such refund in the earlier writ application.

5. Mr. Mohanti, the learned Counsel for the petitioners, assails the validity of the order of the Assistant Collector on the ground that the Assistant Collector had thoroughly misconstrued the earlier judgment of this Court and in view of the stand of the Revenue in the Supreme Court while filing special leave against the judgment of this Court, they are estopped from taking a stand that the Revenue is not liable to refund the amount. The learned Counsel further contends that in view of the positive direction of the Orissa High Court in O.J.C. No. 1128 of 1984, requiring the Revenue to permit proforma credit to the petitioner on wrapping paper, which is used for wrapping other varieties of paper, it is wholly illogical and arbitrary on the part of the Revenue to hold that the petitioner is not entitled to refund since specifically refund has not been granted by the High Court in its earlier judgment. Mr. Mohanti, the learned Counsel for the petitioners, also urges that the Revenue having failed to assail the order of this Court in O.J.C. No. 1128 of 1984 in the Supreme Court, the duty paid by the petitioner on account of refusal by the Collector to permit proforma credit is not legally payable by the petitioner and, therefore, the Revenue is bound to refund such unauthorised levy and cannot reject an application for refund on some plea or the other which, on the face of it is inequitable and not in consonance with the judgment of this Court in O.J.C. No. 1128 of 1984. Repelling an argument of the learned Standing Counsel on the question of alternative remedy, Mr. Mohanti, the learned Counsel for the petitioners, contends that no disputed question of fact being involved and the order of the Assistant Collector being solely based on a misconstruction of an earlier judgment of this Court, existence of an alternative remedy cannot be held to be per se a bar for entertaining the writ application and granting the required relief to the petitioner particularly when the order in question is appealable to a departmental authority, which would be an act in futility and would not be an efficacious remedy.

6. The learned Standing Counsel appearing for the Revenue reiterates the grounds taken by the Assistant Collector in rejecting the petitioner's application for refund and vehemently urges that the prayer for refund having been made in the earlier application and not being specifically granted must be deemed to have been denied and, therefore, the petitioner cannot get the refund. He further urges that the petitioner itself having paid the duty in R.T. 12 returns and those returns having been made final and no appeal against the same having been preferred, this Court cannot order refund in exercise of its extraordinary jurisdiction. The learned Standing Counsel further contends that the duty which the petitioner claims by way of refund must have been collected by the petitioner from its customers and, therefore, refund cannot be allowed to the petitioner to enrich it at the cost of others which would, in effect, be a fortuitous benefit and would amount to unjust enrichment and, therefore, this Court would not permit such refund in exercise of its equitable extraordinary jurisdiction. The rival contentions require careful examination of the relevant provisions as well as the

earlier decision of this Court in O.J.C. No. 1128 of 1984 and also the several case laws cited at the Bar.

7. Let me now examine the points of dispute between the parties in the earlier writ application and as to what was decided and its effect. Annexure-1 to the earlier writ application was a letter of the Assistant Collector dated 21.11.1983 by which letter the Assistant Collector had communicated to the petitioner that wrapping paper when used as packing material could not be construed either as raw material or component, within the meaning of Rule 56-A of the Rules and when such paper is used as packing, the duty had to be levied on the cost of packing which is to be included in the assessable value. Annexure-2 was another letter from the Assistant Collector dated 30.1.1984 to the petitioner refusing proforma credit on wrapper used for packing other varieties of paper on the ground that wrapping paper when used as packing material is neither a raw material nor a component part of the finished excisable goods. These two letters of the Revenue have been quashed by this Court in its earlier judgment and a writ of mandamus was issued to the opposite parties and specifically to opposite party No. 2, the Assistant Collector of Customs and Central Excise, Sambalpur Division, to allow proforma credit in respect of duty paid on the wrapping paper when the same is utilised for packing other varieties of paper. After examining the provisions of Rule 56-A as well as considering the decision of the Madras High Court in the case of Seshasayee Paper and Boards Ltd., Erode Vs. Appellate Collector of Customs and Central Excise, Madras and Another, Madras the decision of the Karnataka High Court in the case of West Coast Paper Mills Ltd. v. Collector of Central Excise, Bangalore 1985 (2) E.L.T. 276 (Karnataka) : 1985 ECR 1228 Karnataka as well as the decision of the Andhra Pradesh High Court in the case of Bhadrachalam Paper Boards Ltd. Vs. Collector of Central Excise, Hyderabad, , this Court held that the duty having already been paid on the wrapping paper, and the said wrapping paper having been utilised by the manufacturer for wrapping other varieties of paper for more convenient distribution of the finished product, the petitioner was entitled for the proforma credit in question, and the stand of the Revenue that such wrapping paper cannot be construed as raw material of the finished excisable product was not sustainable. A careful reading of the judgment of this Court in O.J.C. No. 1128 of 1984 together with the points of dispute between the parties in the said case, leaves no room for doubt that this Court declared that the petitioner was entitled for proforma credit in respect of the wrapping paper on which duty had been paid and which was utilised for wrapping the other finished goods and the Revenue could not levy duty again on the same while determining the duty payable on the finished product. This is also clear from the fact that this Court specifically quashed the two letters of the Assistant Collector of Customs and Central Excise, which were annexed as Annexures-1 and 2 and which were also the basis for the stand of the Revenue in the earlier case in resisting the petitioner's claim.

8. At this stage it is worthwhile to notice that the Revenue while assailing the earlier judgment of this Court in O.J.C. No. 1128 of 1984 in special leave

application filed before the Supreme Court had also filed an application for stay and had clearly, stated in the said application:-

2. That the petitioners have a prima facie good case and are hopeful of succeeding before this Hon'ble Court and in case stay is not granted it will result in irreparable loss and injury as the petitioners will have to refund an amount of rupees eighty lakhs ninety-nine thousand, nine hundred fifty five and paise sixty two (Rs. 80,99,955.62P.) and this will cause great loss to public revenue.

Thus it was the positive stand of the Revenue itself before the Supreme Court that the natural consequence of the judgment of this Court in O.J.C. No. 1128 of 1984 was that the Revenue would refund the amount of Rs. 80,99,955.62 paise. In the aforesaid premises, we shall now examine the correctness of the rival submissions.

9. While considering the legality of the order of the Assistant Collector that is being impugned in the present writ application, if the grounds on which the Assistant Collector has refused the petitioner's prayer for refund are found to be not sustainable, then the said order must be quashed and a direction for refund of the amount can be ordered. Therefore, it is necessary to first examine the several grounds on which the Assistant Collector has refused to grant refund of the duty in question.

10. So far as the first ground taken by the Assistant Collector in refusing the petitioner's prayer is concerned, undisputedly the High Court in its earlier judgment had not directed for any refund of excess excise duty. But in view of the clear and unambiguous declaration made by this Court and the mandamus to the Assistant Collector to permit proforma credit to the petitioner as well as the quashing of Annexures 1 and 2, the two letters of the Assistant Collector, which were the sole ground for resisting the petitioner's claim, there cannot be any manner of doubt that the duty collected from the petitioner on wrapping paper while being used for packing other varieties of paper and for which the petitioner had already paid duty qua wrapping paper, is wholly illegal and impermissible under law. If the Revenue has collected some duty which it is not entitled to collect under law, there can be hardly any justification for retaining the said unauthorised collection and the Revenue owes a duty to refund the said illegal collection. That apart, quashing of Annexures 1 and 2 in the earlier judgment and issuing a mandamus to the appropriate authority for giving proforma credit in respect of the wrapping paper would bring within its sweep a direction to the appropriate authority for such consequential relief and the claim of refund made by the petitioner is merely a consequential relief which the petitioner is entitled to in view of the law laid down by this Court in its judgment in the earlier writ application. In this view of the matter, the Assistant Collector was wholly unjustified in rejecting the petitioner's claim on an erroneous interpretation of the said judgment of this Court. Having given the necessary declaration in favour of the petitioner, merely because a specific direction to refund has not been ordered, it cannot be construed that the prayer for refund was rejected.

11. So far as the second ground is concerned, that relates to the claim of refund with effect from 16th of March, 1976. According to the Assistant Collector, the judgment of this Court means only grant of proforma credit subsequent to the date of the judgment and not with effect from 16th of March, 1976, as claimed by the petitioner. This ground, in our opinion, also cannot be held to be legally sound and tenable. It is with effect from 16th of March, 1976, when levy of excise duty on paper was made ad valorem on the value, and the value of the wrapping paper on which duty has already been paid was also taken into account for determining the value of the finished product that was being wrapped by the wrapping paper, the petitioner claimed the relief of credit and it is in that context the Assistant Collector in the two letters which were Annexures 1 and 2 to the earlier writ application had negated. But ultimately this Court granted that relief after quashing Annexures 1 and 2. Consequently, it is wholly erroneous on the part of the Assistant Collector to come to a conclusion that the High Court had not granted the relief of proforma credit with effect from 16th of March, 1976. In view of the real dispute between the parties in the earlier writ application and the decision of this Court as well as the fact that duty on paper was levied ad valorem with effect from 16th of March, 1976, it must be concluded that this Court did grant the relief of proforma credit in respect of wrapping paper to the petitioner with effect from 16th of March, 1976. The conclusion of the Assistant Collector on this score, in our opinion, is based on a misconstruction of the earlier judgment.

12. Coming to the third ground of the Assistant Collector, which is also a corollary of the first ground and which we have already held to be untenable in law, in view of our construction with regard to the earlier judgment of this Court and in view of our finding that refund is merely consequential and effect of the earlier declaration, the stand of the Assistant Collector that refund cannot be granted since that has not been specifically directed in the earlier judgment, is wholly unsustainable and must be quashed. In our opinion, in view of the mandamus issued to the Assistant Collector to permit proforma credit in respect of the wrapping paper on which the petitioner has already paid the excise duty, and which is thereafter used as a packing material for other finished products, refusal on the part of the Assistant Collector to grant refund would tantamount to refusal to carry out the mandamus issued by this Court.

13. Coming to the last ground of rejection in the order of the Assistant Collector, it is of course true that Rule 56-A nowhere makes a provision for refund of the duty already paid and Section 11B of the Central Excises & Salt Act deals with claim for refund of duty. But the question for consideration is that this Court having held that the Revenue is not entitled to levy duty on wrapping paper and must grant proforma credit as prayed for by the petitioner in accordance with Rule 56-A of the Rules, can the Revenue resist an application for refund of the duty which a manufacturer has been forced to pay and which has been illegally collected by the Revenue? In our considered opinion, if the Revenue is not authorised to levy a particular duty under law, then such collection of

unauthorised levy must be refunded to the person concerned, as otherwise it would amount to permit the Revenue to retain an illegal collection of levy. In this connection, it is also to be noticed that the returns filed by the petitioner in R.T. 12 and assessments thereon are all on provisional basis and the petitioner has made a positive assertion while giving reply to the show cause issued by the Assistant Collector on petitioner's application for refund, which has been annexed as Annexure-3, that all payments of duty have been made under protest. It would be appropriate to extract the petitioner's assertion in said Annexure-3:

We may however state that since 16th March, 1976, all our price lists are provisionally approved and all payments of duty are being made under protest....

This assertion of the petitioner has not been disputed by the Assistant Collector in his order while rejecting the application for refund and accordingly remains uncontroverted. Consequently, we are not in a position to accept the last ground of the Assistant Collector in refusing the petitioner's claim for refund and in our view, therefore, all the grounds on which the Assistant Collector has rejected the petitioner's application for refund do not stand the scrutiny of legality and must be held to be illegal, untenable and unjust.

14. In support of the stand taken by the learned Standing Counsel that the assessments on the basis of R.T. 12 returns having been made and the said assessments not having been challenged, the question of refund does not arise, reliance has been placed on the decision of the Supreme Court in the case of Collector of Central Excise, Chandigarh v. Doaba Co-Operative Sugar Mills Ltd. Jalandhar Civil Appeal No. 283 of 1988, disposed of on August 16, 1988 : 1988 (19) ECR 273 S.C. In the said case what has been held by the Supreme Court is that where duty has been levied without the authority of law or without reference to any statutory authority or the specific provisions of the Act or the Rules framed thereunder have no application, the decision will be guided by the general law and the date of limitation would be the starting point when the mistake or the error comes to light. We fail to understand how that decision will be of any assistance to the Revenue in the present case, where in the earlier writ application there is a positive command on the opposite parties to give the benefit of proforma credit since the duty on wrapping paper had already been paid and the subsequent application for refund is merely consequential upon the implementation of the command issued by this Court in the said writ application, by the Revenue authorities. Therefore, the aforesaid decision is of no assistance to the Revenue.

15. The learned Standing Counsel in support of his contention that the petitioner should not be permitted refund of the amount as that would amount to unjust enrichment, relies on the decision of the Madras High Court in the case of Madras Aluminium Co. Ltd. and Anr. v. Union of India 1981 E.L.T. 478 : 1980 AC 50; the decision of the Delhi High Court in the case of Hyderabad Asbestos Cement Products Limited and Anr. v. Union of India and Ors. 1980 E.L.T. 735 (DELHI.) ;

and the decision of the Supreme Court in the case of State of Orissa Vs. Orissa Cement Ltd. and Others, . In the Supreme Court case, the validity of Section 9B(3) and Section 14-A of the Orissa Sales Tax Act had been challenged. Under the aforesaid provisions, the trader had been directed to make over illegal collections by him to the State and the State was obliged to refund the same to the persons concerned from whom such collections have been made. Such a provision was held to be intra vires and within the legislative competence of the State Legislature, following the Constitution Bench decision in the case of R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another, . In the present case, however, the aforesaid problem does not arise and in our opinion, this decision is of no assistance for the point in issue. In the Madras case 1981 ELT 478 (Mad.) : 1980 CC 50, referred to supra, on which the learned Standing Counsel for the Central Government relies, on the other hand, it has been held that where a duty has been illegally collected, the High Court can direct refund of the same. But if the petitioner has not suffered any loss, the duty having been collected from the consumer, prayer for refund by the manufacturer can be rejected since the petitioner (manufacturer) has not suffered any loss. The Delhi High Court in Hyderabad Asbestos Cement Products Ltd.'s case (referred to supra) also held that the benefit of refund of duty illegally levied and collected should in fairness belong to the consumer, or on the equitable plea should be disbursed to the buyer from whom the duty was realised and not to be appropriated by the manufacturer who, in equity, was not entitled to the same.

But the Supreme Court in the case of State of Madhya Pradesh Vs. Bhailal Bhai and Others, , considered a case where sales tax, assessed and paid by the dealer, was declared by a competent court to be invalid in law and held that the payment of tax already made was made under a mistake within the ambit of Section 72 of the Contract Act and, therefore, the Government to whom the payment has been made must in law repay the same. It was also held that the High Court in its exercise of jurisdiction under Article 226 could enforce the rights of the applicant and give consequential relief by ordering repayment of money realised by the Government without the authority of law. In the case of The State of Kerala v. Aluminium Industries Ltd. (1965) 16 S.T.C. 689 (S.C.), the Supreme Court also considered the question of refund and rejecting the plea of the State with regard to estoppel, held that where the duty has been paid under mistake of law, it was the ordinary duty of the State to refund the same and if no refund was made, the remedy through court was open. In the case of Durga Shankar Industries v. Govt. of India. 1979 E.L.T. 227 (Mad.) a Bench of the Madras High Court held that if the excise duty collected from the petitioner was without the authority of law, the same was refundable. In the case of D. Cawasji and Co. and Others Vs. State of Mysore and Another, , their Lordships categorically held:

Nor is there any provision under which the court could deny refund of tax even if the person who paid it has collected it from his customers and has no subsisting liability or intention to refund it to them, or, for any reason, it is impracticable to

do so.

In view of the aforesaid authoritative pronouncements of the Supreme Court with regard to the duty of the State to refund a tax collected unauthorisedly, the decisions cited by the learned Standing Counsel on the ground of unjust enrichment cannot be accepted as laying down the correct law and the petitioner's right to get refund cannot be whittled down.

16. The only other submission which survives for our consideration is the point urged by the learned Standing Counsel with regard to the availability of an alternative remedy. In the earlier judgment of this Court reported in *Straw Products Limited and Another Vs. The Superintendent, Central Excise and Others*, , the question of alternative remedy was considered and after quoting a passage from the judgment of the Supreme Court in the case of *A. Venkateswaran, Collector of Customs, Bombay v. Ram Chand Sobharaj Wadhwani and Anr.* 1983 E.L.T. 1327 (S.C.), the contention was negated. It is worthwhile to extract the passage from the Supreme Court judgment referred to supra:

It is true that existence of an alternative remedy is a bar to the maintainability of a petition under Article 226 of the Constitution unless there is a complete lack of jurisdiction in the officer or authority concerned, or where the order has been passed in violation of the principles of natural justice, but this rule is a rule of policy, convenience and discretion rather than that of law. Therefore, where the order levying duty at the higher rate is based on an incorrect interpretation of the tariff entry and that too on the Boards ruling, the alternative remedy being facility, would not operate as a bar in exercising writ jurisdiction under Article 226 of the Constitution of India.

Here in the present case, the dispute essentially centres round an interpretation of an earlier judgment of this Court and no disputed questions of fact are involved and, therefore, existence of an alternative remedy cannot be pleaded as a bar for maintainability of the writ application. As has been said by the Supreme Court itself, an alternative remedy does not oust the jurisdiction of the High Court under Article 226, but is a self-imposed restriction and a court may not exercise the discretionary jurisdiction depending upon the facts and circumstances of the case. But in the present case, we cannot decline to invoke our extraordinary jurisdiction under Article 226 on the ground of availability of an alternative remedy available under the statute to a departmental authority where the question involved is one as to whether in view of the earlier judgment of this Court, the petitioner is entitled to the refund of the duty illegally collected by the revenue. It would also be appropriate to extract a passage from the judgment of the Supreme Court in the case of *Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others*, .

...where public bodies, under colour of public laws, recover people's money, later discovered to be erroneous levies, the Dharma of the situation admits of no equivocation. There is no law of limitation, especially for public bodies, on the

virtue of returning what was wrongly recovered to whom it belongs. Nor is it palatable to our jurisprudence to turn down the prayer for high prerogative writs, on the negative plea of "alternative remedy" since the root principle of law married to justice, is ubi jus ibi remedium....

In view of the matter, we do not find any substance in the contention of the learned Standing Counsel for the Department.

17. In the net result, therefore, we would allow this writ application and direct the Assistant Collector to adjust the excess duties illegally collected from the petitioner on wrapping paper from 16th of March, 1976, which wrapping paper was subjected to duty once and again became subjected to duty when was used for wrapping other varieties of paper. Instead of granting refund we make this direction since Rule 56-A does not make any provision for payment of refund in cash. There will, however, be no order as to costs.