

STATE OF U.P. AND ORS.

A

v

VAM ORGANIC CHEMICALS LTD. AND ORS.

OCTOBER 18, 2006

[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

B

Taxation—Unjust enrichment—Supreme Court while dismissing appeals by the State, declined refund to assessee on ground that they made no payments—However certain payments were actually made—Citing such factual inaccuracy, assessee filed interlocutory applications claiming entitlement to refund—State contested the claim by relying upon principles of "Unjust Enrichment"—Disposing of the applications, Supreme Court directed assessee to move appropriate authority for refund of the amount deposited by them—While examining the claim, concerned authority directed to keep in view the principles of "Unjust Enrichment" in respect of all amounts which have been passed on to any customer.

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Certain appeals filed by the State were dismissed by this Court wherein it was noted that no payment had been made by the Respondents-assessee in view of various orders of stay passed by the High Court and this Court, but certain Bank Guarantees were furnished pursuant to the directions of the High Court and this Court. In that background this Court noted that there was no question of any refund as there was no levy permitted in law, and the question of realization of the amount did not arise.

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Respondents have filed the present interlocutory applications stating that certain factual inaccuracies have crept in, viz. that in fact certain payments were made and, therefore, they were entitled to refund.

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Appellant-State though admitting that certain payments were actually made, nevertheless contended that the Respondents were not entitled to any refund in view of the concept of unjust enrichment. It contended that for the amounts covered by the bank guarantees also, the Respondents had collected various amounts from the customers and by seeking a correction in respect of the cash payments, Respondents want to avoid the application of the unjust enrichment policy.

G

A Disposing of the applications, the Court

HELD: 1. Unjust enrichment is the retention of a benefit conferred by another, without offering compensation, in circumstances where compensation is reasonably expected. It is a benefit obtained from another, not intended as a gift and not legally justifiable, for which the beneficiary must make restitution or recompense. Keeping in view the principles of Unjust Enrichment as highlighted in *Mafatlal's* case and *Solar Pesticides'* case the inevitable conclusion is that whatever has been passed on to the customer by the respondents has to be tested on the touchstone of the principle of unjust enrichment. [296-D-F]

C *Mafatlal Industries Ltd. and Ors. v. Union of India and Ors.*, [1997] 5 SCC 536 and *Union of India v. Solar Pesticide Private Ltd.*, (2000) 116 ELT 401 (SC), relied on.

D *State of U.P. & Ors. v. Vam Organic Chemicals Ltd. and Ors.*, [2004] 1 SCC 225, referred to.

2. The I.A.s are therefore disposed of with the following directions:

E a. Within a period of four weeks, respondents shall file an application before the appropriate authority praying for refund of the amount deposited by them. [296-G]

b. While examining the claim the concerned authority shall keep in view the principles of "Unjust Enrichment" in respect of all amounts which have been passed on to any customer in essence that it has been collected from him. [296-G]

F c. Exemption shall not be extracted only in respect of cash payments and it shall also extend to the period for which the bank guarantees were furnished. If during the relevant period any collection has been made the authority shall examine whether by retention of the amount so collected by the respondent will there be unjust enrichment so far as the respondents are concerned. [296-H; 297-A]

CIVIL APPELLATE JURISDICTION : I.A. Nos. 4-12.

IN

H Civil Appeal Nos. 5416-5424 of 2000.

From the Final Judgment and Order dated 3.4.2000 of the High Court of Judicature at Allahabad in C.M.W.P. Nos. 297/2000, 331/1982, 625/1993, 696/1994, 537/1995, 299/1996, 198/1997, 221/1998 and 428/1999.

WITH

I.A. Nos. 2, 13-21 in C.A. No. 5425/2000, I.A. Nos. 29-46 in C.A. Nos. 5427-5435/2000 and I.A. No. 2 in C.A. No. 8382/2003.

Dinesh Dwivedi, R.N. Trivedi, S.W.A. Qadri, Rajeev Dubey, Kamendra Mishra, Ashok K. Srivastava, P. Vinay Kumar, Sneha Bhaskaran and D. Bharathi Reddy for the Appellants.

D.A. Dave, Sanjeev Sen, R.N. Karanjawala, Nandini Gore, Pragma Singh Baghel, Manik Karanjawala, Sunita Sharma, D.S. Mahra, S. Wasim A. Qadri, B.V. Balaram Das and Ravindra Kumar for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. These applications are filed by respondents, in the appeals filed by the State of Uttar Pradesh i.e. Civil Appeal Nos. 5416-5424 of 2000. State's appeals were dismissed by a judgment of this Court reported in *State of U.P. & Ors. v. Vam Organic Chemicals Ltd. and Ors.*, [2004] 1 SCC 225. In paragraph 46 of the judgment it was noted that no payment had been made by the respondents in view of various orders of stay passed by the High Court and this Court and in fact certain Bank Guarantees were furnished pursuant to the directions of the High Court and this Court, In that background this Court noted in the said paragraph that there was no question of any refund as there was no levy permitted in law, and the question of realization of the amount did not arise. These interlocutory applications have been filed stating that certain inaccuracies factually have crept in. In fact, certain payments were made and, therefore, the respondents in the Civil Appeals were entitled to refund.

In response, learned counsel for the appellant-State submitted that though it is factually correct that certain payments were made, but this Court has rightly held that the respondents were not entitled to any refund. The well known concept of unjust enrichment as highlighted by this Court in *Mafatlal Industries Ltd. and Ors. v. Union of India and Ors.*, [1997] 5 SCC 536 were pressed into service. It was also pointed out that though the prayer of the respondents appears to be innocuous, it is really not so. On the

A contrary, for the amounts covered by the bank guarantees also the respondents had collected various amounts from the customers. By seeking a correction in respect of the cash payments, respondents want to avoid the application of the unjust enrichment policy. Reliance was placed on a decision of this Court in *Union of India v. Solar Pesticide Private Limited*, [2000] 116 ELT 401 SC.

B

By way of reply learned counsel for the respondents-applicants submitted that correction is needed in respect of cash payment made and can in no way be related to collections, if any made, which were covered by the bank guarantees furnished.

C

Though respondents have no objection to adjudication of the issue of unjust enrichment so far as the deposits made in cash are concerned, it is stated that same cannot be a ground to reopen a closed issue relating to bank guarantees which were furnished, even if it is conceded for the sake of argument that for the concerned period certain collections were made.

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Unjust enrichment is the retention of a benefit conferred by another, without offering compensation, in circumstances where compensation is reasonably expected. It is a benefit obtained from another, not intended as a gift and not legally justifiable, for which the beneficiary must make restitution or recompense.

E

Keeping in view the principles of Unjust Enrichment as highlighted in *Mafatal's* case (supra) and *Solar Pesticides'* case (supra) the inevitable conclusion is that whatever has been passed on to the customer by the respondents has to be tested on the touchstone of the principle of unjust enrichment.

F

We, therefore, dispose of the I.As with the following directions:

1. Within a period of four weeks, respondents shall file an application before the appropriate authority praying for refund of the amount deposited by them;
2. While examining the claim the concerned authority shall keep in view the principles of "Unjust Enrichment" in respect of all amounts which have been passed on to any customer in essence that it has been collected from him;
3. Exemption shall not be extracted only in respect of cash payments

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and it shall also extend to the period for which the bank guarantees were furnished. If during the relevant period any collection has been made the authority shall examine whether by retention of the amount so collected by the respondents will there be unjust enrichment so far as the respondents are concerned. A

The applications are accordingly disposed of. B

B.B.B.

Applications disposed of.