impropriety in the orders passed by the Assessing Authority. In our opinion, this is sufficient to draw a conclusion that respondent No. 2 had mechanically issued the impugned notices. In *Barium Chemicals Ltd. and another* V. *Company Law Board and others(5)* a Constitution Bench interpreted the expression if in the opinion of Central Government appearing in Section 237(b) of Companies Act, 1956 and held that for exercise of power under that Section, there must exist circumstances referable to the relevant statutory provisions. Their Lordships also held that an order passed in the printed proforma do not satisfy the requirement of formation of an objective opinion with reference to the relevant statutery provision.

(18) For the reasons mentioned above, we hold that orders annexures p3, p3/A and p3/B passed by respondent No. 2 are ultra vires to section 40 of the Act and liable to be quashed as such. Order Annexure p4 passed by the Tribunal is also liable to be quashed on that ground.

(19) In view of the above conclusion, we do not consider it necessary to deal with other grounds of challange raised by the petitioner.

(20) In the result, the writ petition is allowed. The impugned orders are declared illegal and quashed. The respondents are directed to refund the amount, if any, deposited by the petitioner in compliance of orders Annexures p3, p3/A and p3/B.

R.N.R.

Before G.S. Singhvi & Nirmal Singh, JJ

THE MAUR MANDI CO-OPERATIVE MARKETING-CUM-PROCESSING SOCIETY LTD.—*Petitioner*

versus

STATE OF PUNJAB & ANOTHER,—*Respondents*

C.W.P. No. 7311 of 2000

(5) AIR 1967 SC 295

28th May, 2001

Constitution of India, 1950—Art. 226—State Govt. imposing Urban Development cess on the sale & purchase of cotton, Narma & oil seeds—Challenge thereto—High Court as well as Supreme Court declaring the levy of Development Cess void & ordering refund of the amount collected by the respondents—Denial to refund—Petitioners failing to plead or produce any evidence to prove that the burden of development cess not transferred to the buyers/consumers—Unjust enrichment—Petitioners not entitled to seek refund of the amount of Development Cess.

Held, that a perusal of the averments made in the writ petitions show that the petitioners have no where pleaded that they have not transferred the element of Development Cess to the buyers and consumers. As against this, the Municipal Council has made a categorical averment that the petitioners have already transferred the burden of Development Cess to the purchasers and any direction for refund of the amount would amount to unjust enrichment. Therefore, the petitioners are not entitled to refund of Development Cess paid to the Municipal Council because they have neither pleaded nor any evidence has been produced by them to prove that the burden of Development Cess had not been passed to the buyers/consumers.

(Paras 9 & 11)

Rajiv Atma Ram, Advocate *for the Petitioners.*

Charu Tuli, Deputy Advocate General, Punjab *for Respondent No. 1*

Shri P.C. Goyal, Advocate, *for Respondent No. 2 (in CWP. 7311 of 2000)*

Shri S.C. Pathela, Advocate, *for Respondent No. 2 (in CWP Nos. 7312, 7313, 7315, 7316, 7319, 7320 and 7327 of 2000*

JUDGMENT

G.S. Singhvi, J.

(1) The above mentioned writ petitions are being disposed of by one order because the question of law which arises for determination by the Court is Common to all these cases.

(2) The facts necessary for deciding the writ petitions are that,—*vide* notification dated 30th November, 1990 (published in the Punjab Government Gazette (Extra ordinary) dated 3rd December, 1990) issued under Section 71(1) of the Punjab Municipal Act, 1911 (for short 'the Act'), the President of India (at that time, Punjab was under President's Rule) exempted 'Kapas' (Raw Cotton), Narma and Oil Seeds from payment of octroi with immediate effect. By another notification of the same date issued under Section 62-A of the Act, the President of India directed all the Municipal Committees/Councils if in the State to impose Urban Development Cess on the sale and purchase of Kapas (Raw Cotton), Narma and Oil Seeds at the rate of 0.25% advalorem with immediate effect. The second notification was challenged in a bunch of writ petitions which were allowed by a Division bench of this Court on 19th August, 1991. The operative part of that order reads as under:

> "For the reasons recorded above, writ petitions filed by the petitioners must succeed. The writ petitions are accordingly allowed and the notification Annexure P.2 is set aside. Consequent thereto, letters Annexures P-3 and P-4 are also quashed. The respondents are directed to refund the amount of tax collected by them alongwith 12% interest within one month from today."

(3) The respondents challenged the High Court's order by filing Petitions for Special Leave to Appeal in the Supreme Court. While granting leave on 12th November, 1991, their Lordships of the Supreme Court stayed the operation of order dated 19th August, 1991. The Civil Appeals arising out of the Special Leave Petitioners filed by the respondents were dismissed by the Supreme Court on 25th November, 1997 with the direction for refund of the amount collected from the writ petitioners with interest at the rate of 12 percent per annum from the date of collection till its payment. After one year and about ten months from the decision of the Supreme Court, the petitioners served notices dated 13th September, 1999 upon the State Government and the Executive Officers of the concerned municipalities claiming refund of the Development Cess paid by them pursuant to the notification dated 30th November, 1990. They also demanded interest at the rate of 12 percent per annum. In the reply sent by their Advocate, the Municipal Committees/Councils took the stand that the petitioners are

not entitled to seek refund because ; (i) they were not parties in the writ petitions and appeals; (ii) they had transferred the burden of Development Cess to the buyers; (iii) the amount collected from, them had already been utilised for development works; and (iv) the claim for refund was time barred.

(4) In these petitions, the petitioners have prayed for issuance of a mandamus directing the respondents to refund the amount of Development Cess collected between 1st December, 1990 and 25th December, 1997 on the ground that the levy thereof has been declared void. They have averred that in view of the orders passed by the High Court and the Supreme Court, the respondents are under a legal as well as constitutional obligation to refund the amount of Development Cess illegally collected from them.

(5) Respondent No. 2 has controverted the petitioners claim on the ground of bar of limitation. It has also invoked the doctrine of unjust enrichment and averred that after having passed the burden of Development Cess to the buyers and consumers, the petitioners cannot claim refund. For the sake of convenience, the averments made in para 2 to 4 of the preliminary objections contained in the written statement filed on behalf of respondent no. 2 in C.W.P. No. 7311 of 2000 are reproduced bolow:

> 2. "That the writ petition is barred by time and, therefore, the writ petition deserves to be dismissed.
>
> 3. That there are no directions on behalf of Supreme Court of India to refund the amount in the case of present petitioners. The judgment of Hon'ble Supreme Court of India is in personal and no general orders were passed. The petitioners are not a party before Hon'ble Supreme Court of India.
>
> 4. That the petitioners want undue benefit of the orders of the Hon'ble Supreme Court of India as they had already passed on the burden of tax purchaser and refund amount to unjust enrichment."

(6) Shri Rajiv Atma Ram argued that in view of the order dated 19th August, 1991 passed by this Court declaring notification dated 30th November, 1990 to be void, the collection of Development Cess must also be treated as void and, therefore, the petitioners are entitled

to get refund of the amount collected by the respondents. He further argued that in view of the direction given by the Supreme Court, the petitioners are entitled to seek refund as of right and the respondents cannot refuse to repay the amount illegally collected from them by raising the plea of delay or by invoking the principle of unjust enrichment. In support of his arguments, Shri Rajiv Atma Ram relied on the decision of the Division Bench in *The Cotton Corporation of India Ltd., versus State of Punjab and others* (1) and the decisions of the Supreme Court in *M/s Shree Baidyanath Ayurved Bhawan Pvt. Ltd., versus State of Bihar and others* (2) *State of Orissa and others versus Mahanadi Coalfields Ltd., and others etc.* (3) *Bhandrachalam Paperboards Ltd. and another versus. Government of Andhra Pradesh and others* (4) *and U.P. Pollution Control Board and others versus Kanoria Induatrial Ltd. and another* (5) He further argued that respondents cannot invoke the doctrine of unjust enrichment for depriving the petitioners of their legitimate right to the refund of Development Cess illegally collected by the respondents. On the other hand, Mrs. Charu Tuli, learned Deputy Advocate General, Punjab and Shri P.C. Goyal and Shri S.C. Pathela, counsel appearing for respondent no. 2 argued that in view of the law laid down by the Supreme Court in *Mafatlal Industries Ltd. etc. versus Union of India etc.* (6) the petitioners cannot seek refund of the amount of Development Cess paid to respondent no. 2 because they had already passed the burden to the consumers. They referred to the replies sent by the Advocate of respondent no. 2 to the notices issued by the petitioners' council and the preliminary objections contained in the written statements and submitted that this should be treated as sufficient for recording a finding that the petitioners have already transferred the burden of Development Cess to their buyers/consumers because neither any replication had been filed to the written statement nor any evidence has been produced before the Court to prove to the contrary. Mrs. Charu Tuli made a pointed reference to the decision of the Supreme Court in *Union of India and others versus. Solar Pesticides Pvt. Ltd. and another* (7)

(1) 2000 (2) PLR 272
(2) AIR 1996 SC 2829
(3) AIR 1996 SC 3339
(4) AIR 1998 SC 2634
(5) 2001 (2) SCC 549
(6) J.T. 1996 (11) SC 283
(7) 2000 (2) SCC 705

and aruged that the principle of unjust enrichment is applicable even in the case of raw material which is consumed in manufacturing of finished goods which are sold in the market. She also referred to the decisions of the Supreme Court in *M/s Amar Nath Om Parkash and others versus State of Punjab and others* (8) and *Union of India and another versus Raj Industries and another* (9) and argued that the petitioner's claim for refund should be outrightly rejected because they have already transferred the burden of the Development Cess to the consumers.

(7) We have given our serious thought to the respective arguments.

(8) A reading of the judgement in *The Cotton Corporation of India Ltd. versus State of Punjab and others* (supra) shows that the question similar to the one raised in these petitions was considered by a coordinate Bench and answered in favour of the petitioners. In view of that decision, we may have accepted the prayer of the petitioners, but in view uncontroverted averments made in the written statements of respondent no. 2 that the petitioners have already passed on the burden of Development Cess to their buyers/consumers and the fact that attention of the Division Bench does not appear to have been invited to the judgment of the 9 Judges Bench in the case *Mafatlal Industries Ltd. etc. versus Union of India etc.* (supra), we are unable to issue direction for refund of the amount collected by respondent no. 2.

(9) A perusal of the averments made in the writ petitions show that the petitioners have no where pleaded that they have not transferred the element of Development Cess to the buyers and consumers. As against this, respondent no. 2 has made a categorical averment that the petitioners have already transferred the burden of Development Cess to the purchasers and any direction for refund of the amout would amount to unjust enrichment. This has not been controverted by the petitioners by filing

(8) AIR 1985 SC 218
(9) (2000) 2 SCC 172

replication. Therefore, we have no hesitation to hold that the petitioners have already passed on the burden of Development Cess to their consumers and therefore, they are not entitled to seek refund of the amount of Development Cess. In *Mafatlal Industries Ltd. etc. versus Union of India etc.* (supra), a nine Judges of the Supreme Court examined different facets of the doctrine of unjust enrichment in the light of the provisions contained in the Central Excise and Salt Act, 1944 and Customs act, 1962 and laid down many propositions of which proposition Nos. (ii), (iii) and (iv) are reproduced below :—

(ii) "Where, however, a refund is claimed on the ground that the provision of the Act under which it was levied is or has been held to be unconstitutional, such a claim, being a claim outside the purview of the enactment, can be made either by way of suit or by way of a writ petition. This priniciple is, however, subject to an exception; where a person approaches the High Court or Supreme Court challenging the constitutional validity of a provision but fails, he cannot take advantage of the declaration of unconstitutionality obtained by another person on another ground; this is for the reason that so far as he is concerned, the decision has become final and cannot be re-opened on the basis of a decision on another person's case; this is the ratio of the opinion of Hidayatullah, CJ in Tilokchand Motichand and we respectfully agree with it.

(iii) Such a claim is maintainable both by virtue of the declaration contained in Article 265 of the Constitution of India and also by virtue of Section 72 of the Contract Act. In such cases, period of limitation would naturally be calculated taking into account the principle underlying clause (c) of sub section (1) of Section 17 of the Limitation Act, 1963. A refund claim in such a situation cannot be governed by the provisions of Central Excise and Salt Act or the Customs Act, as the case may be, since the enactments do not contemplate any of the provisions being struck down and a refund claim arising on that account. In other words, a claim of this nature is not contemplated by the said enactments and is outside their purview.

A claim for refund, whether made under the provisions of the Act as contemplated in Proposition (i) above or in a suit or writ petition in the situations contemplated by Proposition (ii) above, can succeed only if the petitioner/plaintiff alleges and establishes that he has not passed on the burden of duty to another person/other persons. *His refund claim shall be allowed/decreed only when he establishes that he has not passed on the burden of the duty or to the extent he has not so passed on, as the case may be.* Whether the claim for restitution is treated as a constitutional imperative or as a statutory requirement, it is neither an absolute right nor an unconditional obligation but is subject to the above requirement, as explained in the body of the judgment. *Where the burden of the duty has been passed on, the claimant cannot say that he has suffered any real loss or prejudice. The real loss or prejudice is suffered in such a case by the person who has ultimately borne the burden and it is only that person who can legitimately claim its refund.* But where such person does not come forward or where it is not possible to refund the amount to him one or the other reason, it is just and appropriate that amount is retained by the State, i.e. by the people. There is no immorality or impropriety involved in such a proposition.

The doctrince of unjust enrichment is a just and salutary doctrine. No person can seek to collect the duty from both ends. In other words, he cannot collect the duty from his purchaser at one end and also collect the same duty from the State on the ground that it has been collected from him contrary to law. The power of the Court is not meant to be exercised for unjustly enriching a person. The doctrine of unjust enrichment is, however, inapplicable to the State. State represents the people of the country. No one can speak of the people being unjustly enriched.

(iv) It is not open to any person to make a refund claim on the basis of a decision of a Court or Tribunal rendered in the case of another person. He cannot also claim that the decision of the Court/Tribunal in another person's case has led him to discover the mistake of law under which he has

paid the tax nor can he claim that he is entitled to prefer a writ petition or to institute a suit within three years of such alleged discovery of mistake of law. A person, whether a manufacturer or importer, must fight his own battle and must succeed or fail in such proceedings. Once the assesment or levy has become final in his case, he cannot seek to reopen it nor can he claim refund without reopening such assessment/order on the ground of a decision in another person's case. Any proposition to the contrary not only results in substantial prejudice to public interest but is offensive to several well established principles of law. It also leads to grave public mischief. Section 72 of the Contract Act, or for that matter Section 17(1)(c) of the Limitation Act, 1963, has no application to such a claim for refund."

(10) In *Union of India and others vs. Solar Pesticides Pvt. Ltd. and another's case* (supra), a three Judges Bench of the Supreme Court considered the question as to whether the doctrine of unjust enrichment is applicable in respect of raw material imported and consumed in the manufacture of final product. The facts of that case were that the respondents imported copper scrap for use as a raw matrial in the manufacture of copper oxychloride. At the time of import of copper scrap, the respondents sought exemption from payment of additional customs duty. At the time of clearance, this duty was paid but subsequently, the respondents filed an application for refund, which was rejected by the Assistant Collector Customs and the writ petition filed by them was allowed by the high Court. Their Lordships of the Supreme Court relied on proposition no. (iii) laid down by a nine Judges Bench in the case of *Mafatlal Industries Ltd. etc.* vs. *Union of India etc.* (supra) and then observed as under :—

"We are of the opinion that the aforesaid observations would be applicable in the case of captive consumption as well. *To claim refund of duty it is immaterial whether the goods imported are used by the importer himself and the duty thereon passed on to the purchaser of the finished product or that the imported goods are sold as such with the incidence of tax being passed on to the buyer. In either case the principle of unjust enrichment will apply and the person responsible for paying the import duty would not be*

entitled to get the refund because of the plain language of Section 27 of the Act. Having passed on the burden of tax to another person, directly or indirectly, it would clearly be a case of unjust enrichment if the importer/seller is then able to get refund of the duty paid from the Government notwithstanding the incidence of tax having already been passed on to the purchaser."

(11) By applying the ratio of the aforementioned decisions to the facts of these cases, we hold that the pertitioner are not entitled to refund of Development Cess paid to respondent no. 2 because they have neither pleaded nor any evidence has been produced by them to prove that the burden of Development Cess had not been passed to the buyers/consumers.

(12) We may now refer to the judgments relied upon by Shri Rajiv Atma Ram. The decision of the Division Bench in *Cotton Corporation of India Ltd.* vs. *State of Punjab and others* (supra) is nearest to the case of the petitioners but, as already mentioned above, attention of the Division Bench which decided that case appears to have not been drawn to the proposition laid down in the majority judgment of *Mafatlal Industries Ltd. etc.* vs. *Union of India etc.* (supra) and in our opinion, the decision rendered by the High Court without considering the law laid down by the Supreme Court, which is to be treated as binding on all the Courts by virtue of Article 141 of the Constitution of India, cannot be made basis for granting relief to another party again ignoring the law laid down by the Supreme Court.

(13) In *State of Orissa* vs. *Mahanadi Coalfields Ltd.* (supra), a three Judges Bench of the Supreme Court considered the question of refund of tax in the background of the fact that by an interim order dated 3rd January, 1994, the Supreme Court had directed (i) furnishing of Bank guarantee for the amounts in respect of the difference in regard to pass dues; (ii) payment of duty for the period subsequent to 1st January, 1994 on condition that the said amount shall be kept in a separate bank account in interest-earning deposits; and (iii) if the respondents succeed in the writ petitions the amount together with

interest should be refunded to the respondents. It was argued on behalf of the appellant that the applicant was not entitled to seek refund because on 21st April, 1995, the Supreme Court had contemplated refund of the amount to the persons entitled to the same. Their Lordships of the Supreme Court rejected that objection with the following observations:—

> "We see no merit in the objection raised. We consider it to be frivolous. The submission that the refund must be refunded because it would amount to unjust enrichment cannot be countenanced since this Court's order dated 3rd January, 1994 is in uncertain words provided that on the respondents succeeding in the writ petitions, they shall, without any other condition or stipulation, be granted refund together with accrued interest. By our order of 11th August, 1995, we secured the amount by directing Mahanadi to deposit the amount in this Court subject to their contentions. Accordingly, the amount of Rs. 49, 22, 68, 098.89 came to be deposited on 31st August, 1995.
>
> Now it is clear from this Court's order of 3rd January, 1994 that on a certain event happening, namely, the respondent succeeding in the writ petitions, the amount was to be refunded to them together with interest accrued thereon. The words used were 'shall be refunded' and the High Court was requested to dispose of the writ petitions. Indisputably the writ petitions have been finally disposed of in favour of the respondents. The condition precedent of the order of 3rd January, 1994 has since been satisfied. The subsequent order dated 21st April, 1995 extracted hereinbefore merely said that the refund may be allowed to those entitled to the same. By the use of the expression 'entitled' the Court did not and could not have intended to depart from or modify the order of 3rd January, 1994. And the question of entitlement in relation to unjust enrichment was far from the Court's mind. It is only another attempt on the part of the State to retain the money. Besides, this, the position has also been clarified in this behalf in the subsequent

affidavits dated 4th August, 1995. The allegation that the tax liability had been passed on and collected from the consumers has been specifically and emphatically denied. We, therefore, see no merit in the contention."

(14) It is, thus, clear that the decision of the case turned on its own facts and directions for refund had been given keeping in view the interim arrangement ordered by the Supreme Court and the question of passing on the burden to the consumers was not, at all, considered. Therefore, that decision cannot be treated as precedent for holding that order of refund must be issued by the Court despite the fact that the burden of tax has been transferred to the consumer.

(15) In *M/s Shree Baidyanath Ayurved Bhawan Pvt. Ltd.*, vs *State of Bihar* (supra), their Lordships of the Supreme Court held that the application made by the petitioners for refund of the amount in pursuant to the directions given by the Apex Court could not have been rejected without assigning reasons. The facts of that case were that in *Adhyaksha Mathgur Babu's Sakti Oushdhalaya Dacca (P) Ltd.* vs. *Union of India (10)* the levy of tax on Mritasanjibani, Mritasanjibani Sudha and Mritasanjibani Sura was declared illegal with liberty to the petitioners to take up the issue of refund with the State Governments in accordance with law. The application for refund by the appellant in the year 1962 was rejected by the State Government in November, 1973. The writ petition was dismissed by the High Court. Their Lordships of the Supreme Court while reversing the order of the High Court held as under :

"But we proceed upon the basis that the writ petition was only to claim the refund. It cannot be forgotten that this Court had held the levy in respect of which the refund was claimed to be bad in law. This Court's judgment clearly contemplated consequential refund but made no order in that behalf, leaving it to the writ petitioners to approach their State Governments. The refund application made by the appellants accordingly was rejected, and that without giving any reasons. Even in the counter filed by the respondent-State to the writ petition, it is difficult to read

(10) (1963) 3 SCR 957

any defence other than the defence that the writ petition was not maintainable and that it was barred by limitation and a reiteration of the stand which had been rejected by this Court. The writ petition was filed within two months of this Court's decision; it was well within time. A reiteration of what had been rejected by this Court carried the case of the respondent-State on the writ petition no further. The only case, in reality, was that the appellants should be relegated to a civil suit. No defence upon facts being disclosed, the object was to buy time."

(16) The above extracted portion of the decision shows that the issue of unjust entrichment was not, at all, raised by the respondents. Therefore, that decision does not, in any manner, help the petitioners' case.

(17) In *Bhadrachalam Paperboards Ltd. and another* vs. *Government of Andhra Pradesh and Others* (supra) the appellant had challenged the demand and collection of sales tax on the royalty/ extraction charges paid for the supply of bamboo and hardwood from the forest. As per the agreement entered into with the State Government, the appellant had agreed to reimburse to the Forest Department the amount of sales tax payable on the supply of bamboo and hardwood. This was done under the mistaken impression that the supply of bamboo and hardwood from the governement forest was exigible to tax. Such levy was declared illegal by the Supreme Court in *State of Orissa* vs. *Titaghur Paper Mills Co. Ltd.* (11). The High Court upheld the plea of the appellant against levy of tax, but declined to grant refund by observing that in the absence of clear allegation and proof to the contrary, the appellant would be deemed to have passed on the burden of tax to the consumers. The Supreme Court reversed that part of the High Court's order and held as under:

"We find that the High Court was not right in so presuming in the light of the case put forward by the Government Pleader as extracted above. The appllants have reimbursed a tax liability which was on the Forest Department and the

(11) AIR 1985 SC 1293

appellants have consumed the goods for manufacturing paper boards etc. Therefore, the question of the appellants passing on the tax liability to the consumer, on the facts of this case, would not arise. Consequent, the appellants are entitled for refund of the tax collected from them, not for the entire period but for the period commencing three years prior to the date of filing of the writ petition."

(18) In *U.P. Pollution Control Board and others* vs. *Kanoria Industrial Ltd. and another (supra),* the Supreme Court considered the controversy relating to the claim of refund of amount paid by the respondents under the Water (Prevention and Control of Pollution) Cess Act, 1977. The respondents had challenged the levy of cess but the writ petitions filed by them were dismissed by the High Court. Special Leave Petitions filed by them were disposed of by the Supreme Court with a finding that the sugar manufacturing industries do not fall within Entry 15 of Schedule I of the Act. Therefore, the respondents claimed refund of the amount collected by the authorities of the appellant in the form of Water Cess. The appellant resisted their claim by contending that the amount collected from them had been paid to the State Government which, in turn, was paid to the Government of India. The High Court accepted the plea of the respondents and directed the refund of the amount of Water Cess. Their Loarships of the Supreme Court relied on the decision of *H.M.M. Ltd.* vs. *Administrator, Banglore City Corp* (12)*; Salonah Tea Co. Ltd.* vs. *Supdt. of Tax Nowgong* (13) and *Shree Vaidyanath Ayurved Bhawan (P) Ltd.* vs. *State of Bihar* (14) and upheld the decision of the High Court by making the following observations :—

"It is one thing to say that the High Court has no power under Article 226 of the Constitution to issue a writ of mandamus for making refund of the money illegally collected. It is yet another thing to say that such power can be exercised sparingly depending on facts and circumstances of each case. For instance, in the case on hand where facts are not in dispute, collection of money as cess was itself without the authority of law; no case of undue enrichment was made

(12) (1989) 4 SCC 640
(13) (1988) 1 SCC 401
(14) (1996) 6 SCC 86

out and the amount of cess was paid under protest; the writ petitions were filed within a reasonable time from the date of the declaration that the law under which tax/cess was collected was unconstitutional. There is no good reason to deny a relief of refund to the citizens in such cases on the principles of public interest and equity in the light of the cases cited above. *However, it must not be understood that in all cases where collection of cess, levy or tax is held to be unconstitutional or invalid, the refund should necessarily follow. We wish to add that even in cases where collection of cess, levy or tax is held to be unconstitutional but may be refused on several grounds depending on facts and circumstances of a given case."*

(19) Referring to the facts of that particular case, their lordships observed as under :—

"The respondents had specifically pleaded that they did not pass on the liability of the water cess on their customers; it appears this contention was not denied by the petitioners before the High Court. On the other hand the only plea taken by the petitioners was that money had been passed to the Central Government under Section 8 of the Act. It was brought to the notice of the Court by the respondents that 65% of the sugar was sold by the respondents through public distribution system under the Essential Commodities Act. Hence there was no question of unjust enrichment also in these cases."

(20) While dealing with the plea that the amount had been passed on to the Government, their Lordships made following comments :

"The stand of the petitioners that the respondents were not entitled for refund on the ground that the amount of cess collected was passed on to the State Government, which in turn gave it to the Central Government and the Central Government has appropriated the same by passing on the money back to various State Pollution Control Boards, does not help them. Before the High Court, they only stated

that they made reference to the Government in regard to the claim made by the respondents for refund and they were waiting for response. It was also not made out by the petitioners as to how they had difficulties in making the refund to the respondents. It may also be kept in view that immediately after the notices were issued demanding water cess they were challenged. Even in some cases interim orders were also passed in the High Court; the amount of water cess was paid under protest. So, in this situation when finally this Court held that the very collection of water cess was without the authority of law, the claim of the respondents for refund cannot be denied merely on the ground that the petitioners passed on the money to the State Government and in turn the money was sent to the Central Government and later the Central Government appropriated the same by passing it back to the various state Pollution Control Boards."

(21) The decision of the nine Judges Bench in the case of *Mafatlal Industries Ltd. etc.* vs. *Union of India etc.* (supra) finds reference in para 15 of the aforementioned judgment but that is only in the context of maintainability of a petition under Article 226 of the Constitution of India and the proposition relating to unjust enrichment has not, at all, been considered by the two Judges Bench. Thus, that decision cannot be made a ground for granting relief to the petitioners. That apart, a careful reading of the above noted decisions shows that their Lordships of the Supreme Court upheld the order of refund of Water Cess because the appellant had not denied the assertion made by the writ petitioners that they had not passed on the liability of Water Cess on their customers. Rather, in the context of the plea taken by the appellant that the money had been passed to the Central Government under Section 8 of the Act, the Supreme Court observed that there was no question of unjust enrichment and there was no difficulty in refunding the amount to the respondents. The observations made in earlier part of the decision also shows that refund of tax illegally collected by public authorities cannot be ordered as a matter of course, but it would depend upon the facts and circumstances of each case.

(22) In our opinion, the observations made in the cases relied upon by Shri Rajiv Atma Ram will have to be read subject to the

declaration of law made by nine Judges Bench in *Mafat Lal Industries Ltd. etc.* vs. *Union of India etc.* (supra) and if they are so read, it is not possible to discover any conflict of opinion in the various decisions of the Apex Court and even if, there is one, the decision of the smaller Bench will have to be read as confined to the facts of these cases.

(23) For the reasons mentioned above, we hold that the petitioners are not entitled to the refund of Development Cess paid to respondent no. 2. The writ petitions are liable to be dismissed. Ordered accordingly.

R.N.R.

Before Jawahar Lal Gupta & Bakhshish Kaur, JJ.

DR. SHARANJIT KAUR,—*Petitioner*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

C.W.P. No. 15824 of 2000

30th May, 2001

Constitution of India, 1950—Art. 226—Administration of Punjab War Heroes Families Relief Fund Rules, 1999 — Rls. 2(d), 3 & 10(b)— Death of a member of Armed Force in an accident in the course of performance of official duty— 1999 Rules provide for the grant of benefit to the families of the defence personnel who die while performing their duties— Army authorities describing the death as a 'Physical casualty' and not a 'battle casualty'— Denial of benefits— Rules do not recognise the expression 'Battle' or 'Physical' casualty—Provisions of the rules fully applicable— Family entitled to the grant of benefits admissible under the rules.

Held, that the 1999 Rules have been promulgated to provide relief to the families of those who die in the performance of their duties. These rules embody provisions calculated to confer certain benefits on the family of persons who shed their blood for the nation and die while discharging their duties. These rules have to be construed liberally. In any way, a death due to accident is clearly covered by the provision of rule 2(d). The rules do not recognise the expression 'Battle' or 'Physical Casualty'. These only provide for the grant of benefit to the families of persons who die while performing their duties. Petitioner's husband