

1994 (95) STC 37

**GUJARAT HIGH COURT**

**Hon'ble Judges: M.B. Shah and M.R. Calla JJ.**

Guj-chem Distilleries India Limited Versus State Of Gujarat

Special Civil Application No. 951 of 1990 ; 1655 of 1990 ; \*J.Date :- AUGUST 8, 1994

- [CODE OF CIVIL PROCEDURE, 1908](#) Section - [144](#)

**CODE OF CIVIL PROCEDURE, 1908 - S.144 - APPLICATION FOR RESTITUTION  
- PETITION DISMISSED.**

**KeyWords:** Alcohol - Trusts - Interim order - Price Control - Public Trust -

**Cases Referred to :**

1. A.R.Antulay V/s. R.S.Nayak, AIR 1988 SC 1531
2. Binayak V/s. Ramesh, 1966 3 SCR 24
3. [Chinnammal V/s. Arumugham, AIR 1990 SC 1828 : 1990 \(1\) GLH 114 : 1990 \(1\) SCC 513 : 1990 \(1\) Scale 43 : JT 1990 \(1\) 51](#)
4. Grindlays Bank Ltd. V/s. Income-tax Officer, Calcutta, 1980 122 ITR 55
5. Jagendra Nath Singh V/s. Hira Sahu, AIR 1948 All 252
6. Jai Berham V/s. Kedar Nath Marwari, AIR 1922 PC 269
7. L.Guran Ditta V/s. T.R.Ditta, AIR 1935 PC 12
8. Ram Krishna Verma V/s. State Of U.P., AIR 1992 SC 1888
9. State Of U.P. V/s. Synthetics And Chemicals Ltd., 1992 87 STC 289
10. Synthetics & Chemicals Ltd. V/s. State Of U.P., 1991 80 STC 270
11. Union Carbide Corporation V/s. Union Of India, AIR 1992 SC 248

**Equivalent Citation(s):**

1994 (95) STC 37 : 1994 JX(Guj) 10

**JUDGMENT :-**

**M.B.Shah, J.**

**1** In these petitions, the petitioners have prayed that levy and collection of sales tax and additional sales tax on industrial alcohol be declared as illegal, unconstitutional and without jurisdiction and entry 94 of Schedule II, Part A, to the Gujarat Sales Tax Act, 1969, as amended by notifications at annexures "A", "B" and "C" be quashed and set aside.

**2** Special Civil Application No. 1655 of 1990 is filed by Gujarat Alcohol Based Industries Development Association which is an association registered under the Bombay Public Trusts Act, having its office at Ahmedabad, and its president. It is the say of the petitioners that petitioner No. 1 is an association of various industries consuming industrial alcohol as a raw

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material for their production activities. In paragraph 1, it is stated that this petition was filed by the petitioners on behalf of themselves and the members of the association and other similarly situated consumers of industrial alcohol who are being subjected to the illegal levy of sales tax and additional sales tax. It is contended that industrial alcohol which is used by the members of the petitioner-association as a raw material for manufacturing various chemical products is unfit for human consumption. It is also pointed out that, because of the Bombay Prohibition Act, 1949, there is no unit in the State of Gujarat which manufactures and sells potable alcohol fit for human consumption. The petitioners have further stated that, with regard to levy of sales tax on industrial alcohol, the Supreme Court in the case of Synthetics & Chemicals Ltd. V/s. State of U.P. [1991] 80 STC 270; AIR 1990 SC 1927, has held that the States have power to levy excise duty on potable alcohol for human consumption and as regards sales tax under entry 54 of List II, the State have no power to levy sales tax on industrial alcohol which is not for human consumption as it is within the exclusive legislative competence of the Central Government in the light of the relevant constitutional provisions read with provisions of the Industries (Development and Regulation) Act and the statutory orders issued thereunder. It is further pointed out that in the aforesaid matter before the Supreme Court, the State of Gujarat was a party to the said proceedings and was represented by the learned Advocate-General. The petitioners, therefore, contended that the respondents are bound to abide by the law laid down by the Supreme Court in the aforesaid matter and the State has no power to levy sales tax on industrial alcohol, as it is within the exclusive legislative competence of the Central Government.

**3** Special Civil Application No. 951 of 1990 is filed by the Guj-Chem Distilleries India Limited, a public limited company, having its registered office at Ahmedabad. In that petition, it is contended that levy and collection of sales tax and additional sales tax on industrial alcohol by the State Government is in utter violation of the directions given by the Supreme Court in the case of Synthetics & Chemicals Ltd. [1991] 80 STC 270; AIR 1990 SC 1927 as the Supreme Court has held that the States have no authority to levy any tax on industrial alcohol (special denatured spirit - SDS). It is also stated that the petitioner-company is engaged in the business of manufacturing various chemicals and other products and the distillery of petitioner No. 1-company is in operation since May, 1970. The company is manufacturing rectified spirit and the same is covered into specially denatured spirit by addition of approval denaturants. In the petition, various other contentions are raised to point out that levy and collection of sales tax and additional sales tax is illegal.

**4** Special Civil Application No. 951 of 1990 came up for admission hearing on March 5, 1990. After hearing the parties, this Court (Coram : S. B. Majmudar and B. S. Kapadia, JJ.) passed an interim order, which reads as under :

"We have heard the learned Advocates of parties on interim relief. Interim relief prayed for in para 21 reads as under :

'Pending admission and final hearing and disposal of this petition, Your Lordships may be pleased to grant interim relief by way of injunction order restraining the respondent-authorities from collecting any sales tax or additional tax pursuant to entry 94 of Schedule II, Part A of Sales Tax Act as amended by notifications at annexures B, C and E.'

**5** This interim relief is based on the Constitution Bench decision of the Supreme Court in Writ Petition No. 182 of 1980 decided on October 25, 1989. [Reported as Synthetics &

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Sr. Advocate

Chemicals Ltd. V/s. State of U.P. [1991] 80 STC 270 (SC)] The Constitution Bench has taken the view that sales tax cannot be charged on industrial alcohol because under the Ethyl Alcohol (Price Control) Orders, sales tax cannot be charged by the State on industrial alcohol, and that State may charge excise duty on potable alcohol and sales tax under entry 54 of List II. Therefore, as the Constitution Bench decision of the Supreme Court stands today, no defence is available to the respondents in connection with collection of sales tax on industrial alcohol manufactured by the petitioners. It has to be kept in view that before the Constitution Bench, the State of Gujarat was represented through the learned Advocate-General and he had argued the matter amongst others. However, a review petition is already moved before the Constitution Bench of reconsidering the said decision and though the review petition is moved by the State of Uttar Pradesh, if the Constitution Bench decision is reviewed, then the basis of the present claim of the petitioners would disappear. It was further stated that even the State of Gujarat is desirous of moving a separate review petition before the Supreme Court. It is, therefore, submitted that if review petition is entertained and allowed, then there would be no occasion to restrain the respondents from collecting the sales tax. This is neither here nor there. At present, the Constitution Bench decision operates and it is binding on this Court under article 141 of the Constitution. We have, therefore, to follow the said decision of the Supreme Court and give relief in terms of para 21 to the petition limited to recovery of sales tax on industrial alcohol manufactured by the petitioners. This interim relief will operate from March 6, 1990. However, at the request of the learned Advocate for the respondents, operation of this order is stayed for four weeks from today to enable him to file special leave petition against the present order before the Supreme Court and to obtain appropriate orders, if any. This order will operate from March 6, 1990 onwards, after four weeks' period is over if within that time, any other order of the Supreme Court is not obtained by the respondents. It is clarified that in case no other order is obtained from the Supreme Court and our present order operates from March 6, 1990, whatever amount is collected by the respondents from March 6, 1990, onwards till recovery is actually stopped, pursuant to the present order will have to be refunded to the petitioners by the respondents without putting forward the contention of unjust enrichment as it is because of stay of our interim order that they will be permitted to collect the amount awaiting further orders from the Supreme Court. Orders accordingly."

**6** Similar order was passed on March 23, 1990, by this Court in Special Civil Application No. 1655 of 1990.

**7** In view of the judgement rendered by the Supreme Court in the case of State of U.P. V/s. Synthetics and Chemicals Ltd. [1992] 87 STC 289 (SC); (1991) 4 SCC 139, the aforesaid interim order was vacated by this Court on October 22, 1991. Further, it is an admitted fact that the dealers had not collected sales tax from March 6, 1990 till October 21, 1991. Re : Constitutional validity of the Act :

**8** With regard to constitutional validity of the Act, the learned Advocates for the petitioners are not in a position to substantiate their contentions in view of the judgement and order passed by the Supreme Court in the case of State of U.P. V/s. Synthetics and Chemicals Ltd. [1992] 87 STC 289; (1991) 4 SCC 139. In that case, the court has held that the State Governments have power to levy and collect sales tax on the industrial alcohol. The court has specifically held as under :

"The power of regulation and control is separate and distinct from the power of taxation. Legislative exercise of regulation or control referable to entry 52 of List I or

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Sr. Advocate

entry 8 of List II is distinct and different from a taxing power attributable to entry 54 of List II or entry 92-A or 92-B of List I. The power to levy taxes on sale or purchase or consignment is referable to these entries, and subject to the other provisions of the Constitution, the taxing power of the State is not cut down by the general legislative control vested in Parliament and referable to the general topics of legislation."

In the concluding part, it is held as under :

"We are firmly of the view that the decision of this Court in Synthetics case [1991] 80 STC 270; (1990) 1 SCC 109 is not an authority for the proposition canvassed by the assessee in challenging the provision. This Court has not, and could not have, intended to say that the Price Control Orders made by the Central Government under the IDR Act imposed a fetter on the legislative power of the State under entry 54 of List II to levy taxes on the sale or purchase of goods. The reference to sales tax in paragraph 86 (at page 315 of STC) of that judgement was merely accidental or per incuriam and has, therefore, no effect on the impugned levy."

**9** In view of the aforesaid judgement, it is clear that the State has full legislative competence in levying tax on the sale or purchase of goods other than newspapers under entry 54 of List II of the Seventh Schedule to the Constitution. Hence, there is no substance in these petitions.

**10** Whether the petitioners should be directed to reimburse the respondents the amount of sales tax for the period during which the interim relief was in operation :

For this purpose, respondents Nos. 8 and 9 have filed civil applications praying that because of the interim order passed by this Court, they were restrained from recovering the sales tax from the petitioners and the members of the petitioner-association as well as from the consumers. Now the Sales Tax Department has started recovering the sales tax amount from the respondents, therefore, the petitioners be directed to pay the said amount. It is also submitted that the petitioners should not be permitted to take undue advantage of the interim order passed by this Court and that the respondents should not be made to suffer because of the orders passed by this Court.

**11** As against this, Mr. Raval, learned counsel appearing on behalf of the petitioners, submitted that -

- (i) in the petition filed by the petitioners, no relief against them could be granted;
- (ii) as this petition was filed by the association, no relief against the members of the association can be granted without serving them independently;
- (iii) in any case, the respondents have recovered the sales tax because they were charging more than the controlled price.

**12** Civil Application No. 1554 of 1994 is filed by Shree Chalthan Vibhag Khand Udyog Sahakari Mandali Limited (respondent No. 8 in Special Civil Application No. 1655 of 1990) wherein it is pointed out that, because the petitioners had obtained interim relief from this Court, the applicant did not collect sales tax on the sales of the industrial alcohol from March 24, 1990. The applicant has produced at annexure "B" a statement showing that the applicant

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has not recovered sales tax to the tune of Rs. 39,61,281.70 from 46 dealers. Because the interim relief was vacated by this Court on the basis of the judgement rendered by the Supreme Court, the Sales Tax Department assessed the returns filed by the applicant and raised a demand for an amount of sales tax, inter alia, for the period between April 20, 1990 and October 21, 1991, during which period the applicant was restrained from collecting sales tax from the consumers on account of the stay order of this Court. Thereafter the Sales Tax Department has issued two notices dated April 21, 1994 for Rs. 30,81,053 and Rs. 3,28,454 for assessment years 1990-91 and 1991-92 respectively. It is further contended by the applicant that solely on account of the interim stay order of this Court, the applicant was prevented from collecting the amount of sales tax from the consumers and, therefore, it is submitted that it is absolutely necessary to direct the original petitioners to make necessary payment of sales tax for the period between March 24, 1990 and October 20, 1991.

**13** Yeast Alco Enzymes Limited (respondent No. 9) has filed Civil Application No. 1573 of 1994 for similar prayer and also for a direction that the State Government and its officers be restrained from recovering sales tax from the applicant in respect of sale of alcohol effected during the operation of interim relief granted by this Court. The prayer against the State Government was not pressed at the time of hearing of this matter. Along with civil application, the applicant has also filed a statement showing that, because of the interim order passed by this Court, the applicant has not collected an amount of Rs. 32,24,300.40 from its consumers.

**14** Therefore, the question which requires consideration is whether the petitioners should be directed to pay (reimburse) the amount of sales tax levied on industrial alcohol for the period during which the interim relief was obtained by them, as they had not paid sales tax to the concerned dealers from whom they had purchased industrial alcohol.

**15** In our view, there is much substance in the contentions raised by respondent No. 8 and respondent No. 9. In the present case, the respondents have acted as per the directions of this Court of not recovering the amount of sales tax. Hence, the petitioners are required to be directed to reimburse the respondents for the said amount. It is well-settled that, -

- (i) a litigant should not suffer because of the judicial process;
- (ii) it is the duty of the court to see that no litigant goes back with a feeling that he was prejudiced by the act which he did on the faith of the court's order;
- (iii) if a person is harmed by a mistake of the court, he should be restored to the position he would have occupied but for that mistake; and
- (iv) a litigant should not be permitted to retain the undeserved advantage gained by him because of orders passed by the court.

**16** It is an undisputed fact that, because of interim order passed by this Court, the respondents have not recovered sales tax till the interim order was in operation. Once, that order is set aside or vacated, this Court under article 226 would have inherent jurisdiction to make restitution to the other party for what he has lost, and this obligation on the part of the court arises automatically on the reversal or modification of its order. This inherent jurisdiction is based upon the principle of doctrine of restitution which is embodied in sec. 144 of the Code of Civil Procedure. The court in making restitution is bound to restore the parties so far as

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they can be restored to the same position they were in at the time when the court by its erroneous action has displaced them from.

**17** In the case of Union Carbide Corporation V/s. Union of India AIR 1992 SC 248, the Supreme Court has dealt with this aspect in detail and, in paragraph 76, it is held as under :

"76. But, in the present case, sec. 144, C.P.C., does not in terms apply. There is always an inherent jurisdiction to order restitution a fortiori where a party has acted on the faith of an order of the court. A litigant should not go back with the impression that the judicial process so operated as to weaken his position and whatever it did on the faith of the court's order operated to its disadvantage. It is the duty of the court to ensure that no litigant goes back with a feeling that he was prejudiced by an act which he did on the faith of the court's order. Both on principle and authority it becomes the duty of the court - as much moral as it is legal - to order refund and restitution of the amount to the UCC - if the settlement is set aside. In Binayak V/s. Ramesh [1966] 3 SCR 24; AIR 1966 SC 948, this Court dealing with scope of sec. 144, C.P.C. observed :

'..... The principle of the doctrine of restitution is that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of the erroneous decree to make restitution to the other party for what he has lost. This obligation arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the erroneous decree; and the court in making restitution is bound to restore the parties, so far as they can be restored, to the same position they were in at the time when the court by its erroneous action had displaced them from .....

(page 27 of SCR); (at page 950 of AIR)

In Jai Berham V/s. Kedar Nath Marwari AIR 1922 PC 269 at page 271, the Judicial Committee noticed that :

'The auction-purchasers have parted with their purchase-money which they paid into court on the faith of the order of confirmation and certificate of sale already referred to .....

and said :

'..... and it would be inequitable and contrary to justice that the judgement debtor should be restored to this property without making good to the auction-purchaser the moneys which have been applied for his benefit.'

In L. Guran Ditta V/s. T. R. Ditta AIR 1935 PC 12, Lord Atkin said :

'... The duty of the court when awarding restitution under sec. 144 of the Code is imperative. It shall place the applicant in the position in which he would have been if the order had not been made; and for this purpose the court is armed with powers (the 'may' is empowering, not discretionary) as to mesne profits, interest and so forth. As long ago as 1871 the Judicial Committee in (1871) 3 PC 465 (Rodger V/s. Comptoir D' Escompte Paris) made it clear that interest was part of the normal relief given in

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restitution; and this decision seems right to have grounded the practice in India in such cases ...' (page 13)

In Jagendra Nath Singh V/s. Hira Sahu AIR 1948 All. 252 (FB) Mootham, J. observed :

'Every court has a paramount duty to ensure that it does no injury to any litigant and the provisions of sec. 144 lay down a procedure where effect can be given to that general provision of the law. The court should be slow so to construe this section as to impose a restriction upon its obligation to act right and fairly according to the circumstances towards all parties involved.' (page 253)"

**18** It is also established principle that no act of court should harm a litigant and it is the bounden duty of courts to see that if a person is harmed by a mistake of the court, he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim : "Actus curiae neminem gravabit".

**19** With regard to the principle underlying restitution, the Supreme Court has also considered it in the case of Chinnammal V/s. Arumugham AIR 1990 SC 1828, and has emphasised that there is one other aspect which is more important than one of the first and highest duties of all courts is to take care that the act of the court" is used, it does not mean merely the act of the primary court, or of any intermediate court of appeal, but the act of the court as a whole from the lowest court which entertains jurisdiction over the matter up to the highest court which finally disposes of the case. Further, in paragraph 16, the court has quoted a passage from A. R. Antulay V/s. R. S. Nayak AIR 1988 SC 1531, wherein it is observed :

"No man should suffer because of the mistake of the court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the handmaids of justice and not the mistress of the justice. Ex debito justitiae, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied."

**20** This question can also be considered from another principle that a litigant should not be permitted to retain the undeserved advantage gained by him because of orders passed by the court or that institution of litigation should not be permitted to confer an advantage on the party. While considering the jurisdiction of a High Court under article 226, the Supreme Court in the case of Grindlays Bank Ltd. V/s. Income-tax Officer, Calcutta [1980] 122 ITR 55; AIR 1980 SC 656, observed that while passing final order the court has power to pass such further orders as the interests of justice require and the High Court draws on its inherent power to make such orders as are necessary for doing complete justice between the parties; the interests of justice require that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court, must be neutralised. The aforesaid observations were relied upon by the Supreme Court in the case of Ram Krishna Verma V/s. State of U.P. AIR 1992 SC 1888. In that case, the court observed that, in the light of the law and in view of the power under article 142(1) of the Constitution, for doing complete justice, and neutralizing the unfair advantage gained in dragging the litigation, an appropriate order was required to be passed.

**21** From the aforesaid settled law, it can be said that the petitioners cannot be permitted to retain the undue advantage gained by them of not paying sales tax on industrial alcohol for

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the period from March 24, 1990 to October 21, 1991. The petitioners and the members of petitioner No. 1-association are required to reimburse the dealers from whom they had purchased industrial alcohol, the sales tax levied on the industrial alcohol for the period from March 24, 1990 to October 21, 1991. Hence, in our view, there is no substance in the contention raised by the learned counsel Mr. Raval that no relief can be granted against the petitioners in their petition. Further, when the members of the petitioner No. 1-association had obtained interim relief by filing petition through its association, which according to them is a registered association and is also registered under the Bombay Public Trusts Act, it would hardly lie in their mouth to contend that petitioner No. 1-association does not represent its members. Lastly, there is also no substance in the contention raised by the learned advocate for the petitioners that the respondents have recovered sales tax because they have charged more than the controlled price. Whether or not the respondents have charged more than the controlled price cannot be decided in these petitions nor can it be held that the so-called "additional price" is recovered towards the amount of sales tax.

**22 Special Civil Application No. 951 of 1990 :**

In the result, this petition is rejected. Rule discharged with costs. The petitioners are directed to pay and reimburse the respondents from whom they had purchased industrial alcohol the sales tax amount levied on the industrial alcohol for the period from March 24, 1990 to October 21, 1991, which was payable by them, but for the interim order passed by this Court on March 5, 1990. The petitioners are directed to pay and reimburse the respondents the amount of sales tax for the said period on or before December 31, 1994.

**Special Civil Application No. 1655 of 1990 :**

In the result, this petition is rejected. Rule discharged with costs. The members of the first petitioner-association are directed to pay and reimburse the respondents from whom they had purchased industrial alcohol, the sales tax amount levied on the industrial alcohol for the period from March 24, 1990 to October 21, 1991, which was payable by them, but for the interim order passed by this Court. The petitioners are directed to pay and reimburse the respondents the amount of sales tax for the said period on or before December 31, 1994.

**23 Petitions dismissed.**