

(2009) 07 SC CK 0073

Supreme Court of India

Case No: Civil Appeal No. 4718 of 2009 (Arising out of SLP (C) No. 7853 of 2009)

State of Maharashtra and Others

APPELLANT

Vs

Swanstone Multiplex Cinema (P)
Ltd.

RESPONDENT

Date of Decision: July 27, 2009

Acts Referred:

- Bombay Entertainments Duty Act, 1923 - Section 11B, 2, 3, 3(1), 3(13)
- Bombay Entertainments Duty Rules, 1958 - Rule 15, 23, 7
- Bombay Sales Tax Act, 1959 - Section 37, 37(1), 37(4), 46, 64(1)
- Constitution of India

Citation: AIR 2009 SC 2750 : (2009) AIRSCW 5189 : (2010) 1 BomCR 463 : (2010) 3 BomCR 268 : (2009) 10 JT 157 : (2009) 10 SCALE 148 : (2009) 8 SCC 235 : (2009) 12 SCR 378 : (2009) 6 Supreme 2 : (2009) 24 VST 552

Hon'ble Judges: S. B. Sinha, J; Deepak Verma, J

Bench: Division Bench

Advocate: Shekhar Naphade, Sanjay V. Kharde, Chinmoy A. Khaladkar, Asha Gopalan Nair, for the Appellant; H.N. Salve Shyam Dewan, E.C. Agrawala, Mahesh Agarwal, Rishi Agrawala, Vineet Naik, Ameet Naik and Ravi Suryavanshi, for the Respondent

Final Decision: Allowed

Judgement

S.B. Sinha, J.
Leave granted.

Introduction:

2. Doctrine of unjust enrichment, as opposed to doctrine of retention, is the core question involved herein. It arises out of a judgment and order dated 21.10.2008 passed by a Division Bench of the Bombay High Court in Writ Petition No. 22 of 2006.

Background facts:

3. Respondent is a company registered and incorporated under the Companies Act. It inter alia is engaged in the business of operating a multiplex theatre, commonly known as Fame Adlabs in the town of Mumbai for screening of films in the said theatre. Indisputably, the provisions of the Bombay Entertainments Duty Act, 1923 (for short "the Act") are applicable to the said multiplex theatre. The State of Maharashtra, however, adopted a policy decision to provide certain exemptions in the matter of payment of entertainment duties. Entertainment duty is payable at the rate of 45% on payment for admission by the proprietors so far as the multiplex theatres constituted within the limits of the Brihan Mumbai Municipal Corporation are concerned.

4. Respondent availed the said exemption. It, however, even during the period for which it was not liable to pay any duty or duty at the rate of 25% only realized the entire duty. Appellants issued a notice dated 5.12.2005 demanding 75% of the entertainment tax reflected by the respondent on its tickets for the period between 24.06.2005 and 22.09.2005, i.e., Rs. 1,16,95,846/-. On or about 30.12.2005, the appellant issued another notice demanding Rs. 1,16,95,846/- within 48 hours. Further on 21.01.2006 issued a further demand notice to the respondent for a sum of Rs. 70,39,529/- for the period between 23.09.2005 and 5.01.2006.

5. The writ petition having been filed questioning the legality and/or validity of the said notices of demand, the High Court by reason of the impugned judgment directed:

To conclude, it cannot be said that merely because the proprietors printed full entertainment tax duty on the admission ticket though they were only liable to pay 25% of the entertainment tax duty for a period of 2 years for which they were eligible for 75% exemption of the entertainment tax, they are liable to pay 100% entertainment tax without there being any express authority of law created by the Statute. On the other hand, it would deprive them of the incentive which has been specifically offered under the scheme for which the Act came to be amended and would be in total conflict with the object and reasons with which the Government sought amendment of the Act nor this can be considered as a case of unjust enrichment as even, otherwise, the gross admission fee which the patron is supposed to pay minus the entertainment tax and other taxes (direct or indirect) would ultimately go in the pocket of the proprietors of the multiplex theaters.

63. Therefore, we find that the State was not entitled to claim more than what could be levied as entertainment duty during the two years period irrespective of the fact that the Exhibitors have shown on admission tickets issued to patrons 45% of the duty though they were liable to pay only 25% of 45% during the incentive period which was of 2 years. The impugned notices and order Exh A-1 and A-2 and H are quashed and set aside. Rule made absolute with no order as to costs.

Contentions

6. Mr. Shekhar Naphade, learned senior counsel appearing on behalf of the appellants, in support of this appeal, urged:

(i) Having regard to the provisions of the Act and the Bombay Entertainments Duty Rules, 1958 (for short "the Rules") in terms whereof entertainment duties were to be levied and collected, the High Court committed a serious error in opining that the State had not granted any exemption to the owners of the multiplex theatre, but the same were by way of retention benefit.

(ii) As admittedly from the tickets issued by the respondent, it would appear that they had realized full duties from the cinema-goers payable in terms of the Act for which they had no authority, the impugned judgment is wholly unsustainable.

(iii) Any amount of tax illegally realized by the assessee from the cinema-goers would be hit by Section 72 of the Indian Contract Act and, thus, the State would have right to recover the same in exercise of its power conferred on it under Article 296 of the Constitution of India.

7. Mr. H.N. Salve, learned senior counsel appearing on behalf of the respondent, on the other hand, would contend:

(i) u/s 3(13) of the Act read with Rule 15 of the Rules which is applicable in this case, the respondent was entitled to exemption from payment of the entire duty for a period of three years and duty at the rate of 25% for the next two years inter alia in the event it charged the same amount of duty which was being charged in the neighbouring theatres for which it used to issue computerized tickets.

(ii) Having regard to the change in economic scenario, the respondent was entitled and, thus, charged the entire amount; the total whereof came to Rs. 135/- at all stages. The State having granted exemption to the respondent for the first three years although it had charged a total sum of Rs. 135/- from the cinema-goers, it is estopped and precluded from demanding any sum when the respondent was required to pay only 25% of the duties.

(iii) The admission charges collected by the respondent being a matter of contract by and between it and the cinema-goers and the Act having not provided for any forfeiture clause, the question of the respondent's being unjustly enriched does not arise, particularly, when it is not a case where the amount of tax had been deposited which the State was entitled to keep with it having regard to the statutory provisions in this behalf.

Statutes

8. The State of Bombay enacted the Act to impose a duty in respect of admission to entertainment.

Section 2 of the Act is the interpretation section. "Payment for admission" has been defined in Section 2(b) to mean:

(b) "payment for admission" in relation to the levy of entertainments duty, includes-

(i) any payment made by a person who, having been admitted to one part of a place of entertainment, is subsequently admitted to another part thereof for admission to which a payment involving duty or more duty is required,

(ii) any payment for seats or other accommodation in a place of entertainment.

(iii) any payment for a programme or synopsis of an entertainment.

(iii-a) any payment made for the loan or use of any instrument or contrivance which enables a person to get a normal or better view or hearing, of the entertainment which, without the aid of such instrument or contrivance, such person would not get;

(iv) any payment, by whatever name called for any purpose whatsoever, connected with an entertainment, which a person is required to make, in any form as a condition of attending, or continuing to attend the entertainment, either in addition to the payment, if any, for admission to the entertainment or without any such payment for admissions;

(v) any payment made by a person for admission to a video exhibition irrespective of whether any eatables or beverages or both are or are not provided to him against such payment;

(vi) any payment made by a person by way of contribution or subscription or installation connection charges or any other charges collected in any manner whatsoever for television exhibition with the aid of any type of antenna with a cable network attached to it or cable television;

(vii) any payment made by a person to the proprietor of a Direct-to-Home (DTH) Broadcasting service by way of contribution, subscription, installation or connection charges, or any other charges collected in any manner whatsoever for Direct-to-Home (DTH) Broadcasting service with the aid of any type of set top box or any other instrument of like nature which connects television set at a residential or non-residential place of connection-holder directly to the Satellite; and

(viii) any payment made by way of sponsorship amount for a programme which is organised only for invitees, without selling tickets.

Section 2(d) defines "admission to an entertainment" to include admission to any place in which the entertainment is held. Section 2(f) defines "entertainment duty" in respect of any entertainment to mean the entertainment duty levied u/s 3.

The Act distinguishes a multiplex theatre complex, on the one hand, and a permanent cinema, quasi-permanent cinema, on the other. "Multiplex Theatre

Complex" has been defined in Section 2(fa) of the Act to mean an entertainment - cum - cultural centre which provides:

- (i) within the limits of Municipal Corporation of Brihan Mumbai not less than four theatres in a complex with minimum total seating capacity of 1250 and
- (ii) anywhere else in the State, not less than three theatres in a complex with minimum total seating capacity of 1000,...

"Permanent cinema" or "quasi-permanent cinema" has been defined in Section 2(fl) to mean a cinema which is licensed as a permanent cinema or a quasi-permanent cinema, as the case may be, under the Maharashtra Cinemas (Regulation) Rules, 1966.

The charging section is Section 3 of the Act in terms whereof "there shall be levied and paid to the State Government all payments for admission to any entertainment" subject to the exceptions contained therein and the rates specified therefor.

The relevant portion of Section 3(13) of the Act reads as under:

(13) (a) Notwithstanding anything contained in any other provisions of this Act, but subject to the terms and conditions specified in Clause (b), on and with effect from the date of coming into force of the Bombay Entertainments Duty (Amendment) Act, 2001 (Mah. II of 2002), there shall be levied and collected by the State Government from the proprietor of a Multiplex Theatre Complex the duty in respect of any such complex as follows, namely:

- (i) for the first three years from the date of commencement of the Multiplex Theatre Complex, no duty;
- (ii) for the subsequent two years, at the rate of twenty-five per cent, of the rate of duty leviable under Clause (b) and Clause (c) of Sub-section (1) or, as the case may be, Sub-section (3);
- (iii) from the sixth year, full amount of duty leviable at the rate specified in Clause (b) and Clause (c) of Sub-section (1) or, as the case may be, Sub-section (3):

(b) The concession in duty as provided under Clause (a) shall be available to the proprietor of the Multiplex Theatre Complex subject to following terms and conditions, namely:

- (iii) during the period of concession covered by Clause (a) above, the minimum rates of admission in a multiplex shall be determined by the Collector. Such minimum rates of admission shall not be less than the prevailing highest rate, excluding the rates of the highest priced fifty seats, in any of the cinemas theatres in the district in which multiplex is situated and accordingly such minimum rates of admission may

be different for morning, matinee and other shows;

Section 4 of the Act reads as under:

4 - Method of levy

(1) Save as otherwise provided by this Act, no person other than a person who has to perform some duty in connection with an entertainment or a duty imposed upon him by any law, shall be admitted to any entertainment except with a valid printed ticket or complimentary ticket.

(2) Every proprietor of any entertainment in respect of which the entertainment duty is payable u/s 3, shall apply to the prescribed officer by the fifteenth days of January of every calendar year, to allow him to pay the entertainment duty due and payable, and the prescribed officer may, on receipt of such application, allow the proprietor, on such conditions as the State Government may specify by general or special order issued in that behalf, to pay the amount of entertainment duty due.

(a) by a consolidated payment of percentage, to be fixed by the State Government, of the gross sum received by the proprietor on account of payments for admission to the entertainment and on account of the duty;

(b) in accordance with returns of the payments for admission to the entertainment and on account of the duty;

(c) in accordance with the results recorded by any mechanical contrivance which automatically registers the number of persons admitted:

Provided that, the State Government may suo motu, by general or special order in the Official Gazette, direct the proprietor of any entertainment or class of entertainment to pay the amount of duty due, in accordance with the returns of the results recorded by any mechanical contrivance referred to in Clause (b) and (c), as the case may be.

Provided further that, the prescribed officer may, within fifteen days from the date of receipt of the application as aforesaid, reject the application after giving an opportunity of being heard to the applicant and recording reasons for such rejection.

(3) The provisions of Sub-section (1) of this section and of Section 5 shall not apply to any entertainment in respect of which the duty due is payable in accordance with the provisions of Sub-section (2).

Section 6 of the Act provides for entertainments for charitable or educational purposes exempted. Section 9 of the Act deals with recoveries.

9. The Rules framed by the State under the said Act, which are relevant for our purpose, are as under:

7. Price of admission, date and show to be shown on, and stamps affixed to ticket:--Except as provided in Rules 15 and 23, every dutiable ticket, not being a complimentary ticket, issued on payment for admission to entertainment shall be in three parts. One part shall remain on the ticket book and the remaining two parts shall be detached therefrom and issued to the purchaser. Every dutiable ticket shall have each part clearly marked with the price of admission, and with the date and show for which it is available and also with the book number and the serial numbers (being such series and numbers in respect of the ticket book and tickets as may be previously approved by the prescribed officer) and shall also have securely affixed to it a stamp of the value of the duty payable out of the said price of admission:

Provided that the prescribed officer may, upon such conditions and for such period as he thinks fit, exempt any proprietor from the operation of this rule or any part thereof.

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15. Unstamped tickets issued u/s 4(2)(a) and (b):--(1) Every ticket, not being a complimentary ticket, issued by a proprietor who has been allowed to pay the duty under the provisions of Clause (a) or Clause (b) of Sub-section (2) of Section 4, shall consist of three parts. One part shall remain on the ticket book and the remaining two parts shall be detached therefrom and issued to the purchaser; and shall bear on each part of such ticket the price of admission, the book number and the serial number (being such series and numbers in respect of the ticket book and tickets as may be previously approved by the prescribed officer) and the date on which, and the show for which it is issued.

(2) On admission of the purchaser, the proprietor shall cause to be collected one of the two parts sold to the purchaser and the other to be returned to him.

(3) The purchaser shall retain his part of the ticket till he leaves the place of entertainment, and the part retained by the proprietor shall be retained by him till the entertainment is over:

Provided that the prescribed officer may, upon such conditions and for such period as he thinks fit, exempt any proprietor from the operation of this rule or any part thereof.

16. Returns required u/s 4(2)(a) and (b):--Every proprietor making a consolidated payment under Clause (a) of Sub-section (2) of Section 4 or making payment in accordance with return of the payments for admission under Clause (b) of Sub-section (2) of Section 4, shall, within ten days of the date of entertainment, submit to the prescribed officer a return in Form "B", showing the number of tickets

(not being complimentary tickets) issued at each rate, the serial number of tickets issued, the gross amount received from the sale of tickets and the amount of duty payable to the State Government. He shall, if so required by the prescribed officer, also submit to the said officer, within ten days of the date of entertainment, a return in Form "C", showing the price of programme or synopsis including duty, the number of programme or synopsis issued, the gross amount received from the sale thereof and the amount of duty payable to the State Government.

Form "B" attached to the Rules read as under:

FORM "B"

(SEE RULE 16)

Statement of tickets not being complimentary tickets issued when duty is payable under Clause (a) or (b) of Sub-section (2) of Section 4

Name and place of entertainment:... Date of performance....

Number and time of show	Price of tickets including Duty	Number of tickets issued subject to duty	Serial numbers of tickets From to	Gross receipts Rs.	Amount of duty payable to Government Rs.	Remarks
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10. We may for the sake of completeness also place on record that the State had adopted two resolutions, viz., dated 21.09.2000 and 4.01.2003

The relevant portion of annexure attached to the resolution dated 21.09.2000 is as under:

1) The three parts of the ticket should be in the following order.

Portion remaining with the theatre owner (A Counter)	Portion remaining with the door keeper (D Counter)	Portion to be retained by the spectators (P Counter)
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8) Sale of tickets of the Movie which is exempted from Entertainment Tax, the tickets should have printed on it "Tax Free". And of ticket after deduction of tax should be printed on the ticket.

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11. Each ticket should be printed in the format shown below:

Alphabet of series	Roll No.	Six digit Ticket
Code No. of		Number
Theatre		
Sale Centre		
	Name of Theatre	
	Address	
Show Time		Entrance Fee
Show Date/day		Entertainment Tax
Seat Group		Service Charges
Row No. Seat No.	A/D/P Counter	Total Entrance
		Fee Rs.

Clause 3 of the resolution dated 4.01.2003 reads as under:

3. It was declared by the Government Resolution dated the 20th September, 2000 that the concessions to be granted in the Entertainment Tax to the Multi purpose Cinema Theatres complexes would be implemented during the period from the 17th August, 2001 to 16th August, 2002. There was very good response to the said scheme in the State. Total 221 applications were received by Government in the State for grant of availing concession in the entertainment tax available to the Multi purpose cinema theaters complexes Government had decided that all the applications should be properly scrutinized from the point of view of getting concessions in the Entertainment Tax only to the appropriate Multi purpose Cinema Theatre and all the facilities will be definitely reached upto the public/audience as expected by Government and the Cinema industry will be developed healthy.

In the said resolution, it was further stated:

(i) The applicant will be eligible to get the exemption from paying entire Entertainment Tax for period of First 3 initial years from the date of commencement of the Complex, whereas, he will be admissible exemption (sic) from paying 75 per cent of the Entertainment Tax due for the fourth and fifth years. The applicant must pay the Entertainment Tax at the prescribed rate from the sixth year.

11. Section 72 of the Indian Contract Act, 1872 reads as under:

72 - Liability of person to whom money is paid or thing delivered by mistake or under coercion

A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

12. Article 296 of the Constitution of India reads as under:

296 - Property accruing by escheat or lapse or as bona vacantia

Subject as hereinafter provided any property in the territory of India which, if this Constitution had not come into operation, would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as bona vacantia for want of a rightful owner, shall, if it is property situate in a State, vest in such State, and shall, in any other case, vest in the Union:

Provided that any property which at the date when it would have so accrued to His Majesty or to the Ruler of an Indian State was in the possession or under the control of the Government of India or the Government of a State shall, according as the purposes for which it was then used or held were purposes of the Union or a State, vest in the Union or in that State.

Explanation.--In the article, the expressions "Ruler" and "Indian State" have the same meanings as in Article 363.

Statutory Interpretation

13. A statute, as is well-known, must be read in its entirety, then chapter by chapter and section by section. It is also well-settled that the rules validly made forms part of the Act.

14. Entertainment duty is a tax. Tax, as is well-known, is a compulsory exaction. There is, it is trite, no equity about tax. It is a common burden. The State levied the duty in exercise of its statutory power. Sub-section (1) of Section 3 of the Act talks in imperative terms. Sub-section (13) of Section 3 of the Act, wherewith we are concerned, provides, for an exemption. It contains a non-obstante clause. Such exemption is granted wholly or partly and spread out over a period of five years. It is to be granted to the owner of the multiplex theatre complexes subject to the terms and conditions specified in Clause (b) of Section 3(13) of the Act. The crucial words are "there shall be levied and collected by the State Government. Such levy and collection is to be made from the proprietor of a multiplex theatre complex. By reason of the said provision, no duty is to be paid. If no duty is to be paid by the multiplex theatre complex, the question of the same being levied and collected would not arise for a period of three years. Similarly, for subsequent period of two years, the levy and collection would be at the rate of 25% of the rate of duty leviable under Clauses (b) and (c) of Sub-section (1) of Section 3 of the Act. Indisputably, in terms of Clause (c) of Sub-section (1) of Section 3 of the Act, as noted hereinbefore,

the rate of entertainment duty on payment of admission fixed by the proprietor within the limits of Brihan Mumbai Municipal Corporation would be 45% which amount would become payable from the sixth year.

15. Clause (b) of Sub-section (13) of Section 3 of the Act uses the words ""concession in duty". It becomes available to the proprietor of the multiplex theatre complex only in the event the terms and conditions specified therein are fulfilled. Sub-clause (i) of Clause (b) of Sub-section (13) of Section 3 provides that the proprietor shall not charge less payment for admission than the prevailing highest rate of admission at any given time in any of the cinema theatres in the district in which the complex is situated till the period of concession under Clause (a) is over. Section 2(b) of the Act provides for an inclusive provision. The provision is not exhaustive although expansive. The payment for admission must be in relation to the levy of entertainment duty. The words "in relation to" are of great significance. The payment for admission being in relation to the levy of entertainment duty, there cannot be any composite price for the tickets.

Mr. Salve may be correct that Rule 7 of the Rules would not be applicable in the instant case but we are not concerned therewith. But except for complementary tickets, all other tickets are required to be in three parts. They must fulfill the other criteria laid down therein including the price for admission, the ticket number, the serial number, the date and the show for which it is issued. Respondent from the very inception had been charging Rs. 135/- from each of the cinema-goers.

We may heretobelow notice the method of computation which the respondent themselves showed vis-a-vis the correct method of computation and entertainment duty as per the State:

Particulars of Tickets	Ticket rate as per ticket issued by the Petitioner	Corrected method of computation of entertainment duty as per G.R.
A) Net rate of tickets	93.05	93.05
B) Entertainment Duty	41.95	10.46
C) Service Charges	Nil	Nil
D) Gross rate of ticket	135.00	103.51"

16. In view of the aforementioned admitted situation, the State is entitled to raise a contention that whether the respondent was entitled to keep the entire gross receipt for the first three years and 75% of the tax payable for the next two years

thereafter is the question. Respondent itself has shown the net rate of tickets which they charged by way of admission charges, entertainment duty separately. Respondent had indisputably been collecting 45% of the amount of admission fee by way of entertainment duty, i.e., the full duty payable in terms of the provisions of the said Act and the Rules.

17. The contention of Mr. Salve that the entire amount of Rs. 135/- became chargeable from the cinema-goers as a price is fallacious. If the sum of Rs. 135/- is the amount which the owner of a multiplex theatre complex becomes entitled to appropriate, the rate of admission would come down from the sixth year in so far as that, whereas for the first three years, the respondent would be entitled to keep a sum of Rs. 135/- with it; for the next two years, it would become entitled to Rs. 124.54 only and Rs. 93.05 from the sixth year.

18. Section 3(13)(a) of the Act uses two different terms, viz., duty and admission. They must be held to have different meanings. It is one thing to say that in terms of the Rules they were not liable to show the rate of tax collected from the cinema-goers but it is another thing to say that although they had collected the full rate of tax from the cinema-goers, they would be entitled to retain the benefit thereof. Whether a statute expressly confers power on an assessee to realize the amount of tax payable to the State from its customers or not, in our opinion, is wholly immaterial. The fact remains that it has to collect such taxes which are to be collected from the consumers and are required to be levied. Once the taxes are levied, Section 3 of the Act entitles the State to collect the same from the owner of the multiplex theatre complex, subject, of course, to the concession which had been given to them.

The term "concession" is a form of privilege. {See [V. Pechimuthu v. Gowrammal \(2001\) 7 SCC 617](#)]; P. Ramanatha Aiyar, Advanced Law Lexicon (New Delhi: Wadhwa & Company, Nagpur, 2005) Vol. 1 p. 944]. The term "exemption" is also a form of privilege. When a statute confers a privilege, the same must be confined only to the extent provided for therein.

19. A proprietor of a multiplex cinema theatre when collects tax by way of entertainment duty from the cinema-goers, it would be entitled to collect such tax which is subject to levy and collection by the State. The authority in this behalf is implicit. For the aforementioned purpose, only the statute provides for the mode and manner in which the tax is to be collected. Once it is held that the amount realizable from the cinema-goers by way of entertainment duty comes within the purview of the definition of "tax", we see no reason to justify the conclusion of the High Court that the State Government for all intent and purport conferred the retention benefit. If the State intended to provide for a grant, the same should have expressly been stated. Respondent cannot be granted a huge amount by a welfare state indirectly which it cannot do directly.

20. In [R.S. Joshi, Sales Tax Officer, Gujarat and Others v. Ajit Mills Limited and Another \[\(1974\) 4 SCC 98\]](#) , while interpreting the Bombay Sales Tax Act providing for terms "collected" and "shall be forfeited", this Court held that the terms "fine", "forfeiture" and "penalty" are often used loosely. Recourse to forfeiture can be taken by way of breach of prohibitory direction.

Krishna Iyer, J. opined as under:

38. The apparent apprehension that the financial burden of forfeiture can be avoided if the dealer is prosecuted is also not correct. The criminal Court can punish only to the extent specified in Section 64(1). Section 37(4), properly read forbids penalty plus prosecution, but permits forfeiture plus prosecution. The word "penalty" in its limited sense in Section 37(1) and Section 37(4) does not include forfeiture which is a different punitive category. Forfeiture is a penalty, in its generic sense, but not a penalty in the specific signification in Section 37(1) and (4). After all, the functionary is exercising quasi-judicial powers and not insisting on maximum exactions. Every consideration which is just and relevant must enter his verdict lest the order itself be vitiated for being unreasonable or perverse exercise of discretion. The fulfilment of the undertaking must be ensured by necessary guarantees so that the dealer may not play a double game and the purchaser stand betrayed. We are not giving any hidebound prescriptions but stating guidelines for taxing-authorities who exercise these quasi-judicial powers. There is a tendency for valiant tax executives clothed with judicial powers to remember their former capacity at the expense of the latter. In a welfare state and in appreciation of the nature of the judicial process, such an attitude, motivated by various reasons, cannot be commended. The penalty for deviance from these norms is the peril to the order passed. The effect of mala fides on exercise of administrative power is well-established.

Kailasam, J. observed as under:

63. ..It was submitted that where the assessee innocently collected amounts on the impression that tax was leviable, the amounts so collected were forfeited while his obligation to the purchasers to refund the amounts continued. If the assessee by a mistake failed to collect tax, from the purchasers, tax was levied and collected from the assessee making him suffer in any event. When after a costly litigation, the assessee succeeded in establishing that sales tax cannot be collected on the railway freight on cement bags or inter-State sales, the Government promptly forfeited such amounts. We agree these are instances of hardship to the assessees and deserve Government attention. But for that reason the Courts cannot say that the act is beyond the legislative competence. The fact that in some cases the dealers are prejudiced would not affect the validity of the legislation which is the question we are called upon to decide. On a careful consideration of the points raised, I am satisfied that the provisions of Section 37(1) are within the competence of the State Legislature.

21. This Court in [Mafatlal Industries Ltd. v. Union of India \[\(1997\) 5 SCC 536\]](#) noticed Ajit Mills (supra) in the following words:

50. We may at this juncture refer to a very significant decision in R.S. Joshi v. Ajit Mills Ltd. rendered by a seven-Judge Constitution Bench. Section 46 of the Bombay Sales tax Act, 1959 provided that no person shall collect any sum by way of sales tax which is not exigible according to law. Section 37 provided for penalties in case of violation of the provisions of Section 46. Not only the person so collecting was liable to pay a penalty not exceeding Rupees two thousand but in addition thereto, any sum collected by the person by way of tax in contravention of Section 46 was also liable to be forfeited to the State Government.

22. The Act also contains a penal clause in Sections 5 and 5A of the Act. Section 5 of the Act provides for punishment for non-compliance with Section 4 and Section 5A provides for punishment for non-compliance with other provisions.

23. The High Court, however, opined that had the State provided for an exemption, it could have invoked Section 6 of the Act but before us Mr. Salve conceded that that part of the judgment is not correct as Section 6 has no application in a case of this nature.

24. In absence of any express statutory provision, allowing the proprietors of the multiplex theatre to retain the benefit, it is difficult for us to arrive at such an inference. The State has power to impose tax. The State has a power to grant exemption or concession in respect of payment of tax. It has no power in terms of the provisions of the Constitution or otherwise to allow an assessee to collect the tax and retain the same. We will assume that to that effect the provisions are not very clear but the superior courts will not interpret the statute in such a way which will confer an unjust benefit to any of the parties, i.e., either the taxpayer or tax collector or the State. The statute must be interpreted reasonably. It must be so interpreted so that it becomes workable. Interpretation of a statute must subserve a constitutional goal.

25. A statute of this nature, in our considered opinion, cannot be interpreted in such a manner so as to enable an entrepreneur to get undue advantage to the effect that he would collect tax from the cinema-goers and appropriate the same. When a person collects tax illegally, he has to refund it to the taxpayers. If the taxpayers cannot be found, the court would either direct the same to be paid and/ or appropriated by the State. In a given case, this Court in exercise of its jurisdiction under Article 142 of the Constitution of India may also issue other directions, as has been done in [Indian Banks' Association, Bombay and Others v. Devkala Consultancy Service and Others \[\(2004\) 11 SCC 1\]](#) in a similar situation where it was difficult for the court to direct refund of a huge amount to a large number of depositors from whom the bank had illegally collected, this Court directed that the amount be spent for the benefit of the disabled in terms of the provisions of the Persons with

Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

This Court may take recourse to such a procedure as the State also having granted exemption was not entitled to collect the duty. In other words, it having granted an exemption, was not legally entitled thereto.

26. We think that it would be better course, as strict sensu, Article 296 of the Constitution is not applicable.

We are passing this order keeping in view the peculiar situation as in either event it was cinema-goers who had lost a huge amount. It would be travesty of justice if the owners of the cinema theatre become eligible to appropriate such a huge amount for its own benefit. To the aforementioned extent, doctrine of unjust enrichment may be held to be applicable. A person who unjustly enriches himself cannot be permitted to retain the same for its benefit except enrichment. Where it becomes entitled thereto the doctrine of unjust enrichment can be invoked irrespective of any statutory provisions.

27. In *Mafatlal Industries Ltd. (supra)*, Section 72 of the Contract Act providing for restitution may be taken recourse to. Doctrine of "unjust enrichment" was resorted to, observing:

(iii) 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 for one or the other reason, it is just and appropriate that that amount is retained by the State, i.e., by the people. There is no immorality or impropriety involved in such a proposition.

The doctrine 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.

{See Union of India and Ors. v. Solar Pesticides Pvt. Ltd. and Ors. (2000) 2 SCC 703}.

In [Sahakari Khand Udyog Mandal Ltd. v. Commissioner of Central Excise & Customs \[\(2005\) 3 SCC 738\]](#) , this Court has held:

45. From the above discussion, it is clear that the doctrine of "unjust enrichment" is based on equity and has been accepted and applied in several cases. In our opinion, therefore, irrespective of applicability of Section 11B of the Act, the doctrine can be invoked to deny the benefit to which a person is not otherwise entitled. Section 11B of the Act or similar provision merely gives legislative recognition to this doctrine. That, however, does not mean that in the absence of statutory provision, a person can claim or retain undue benefit. Before claiming a relief of refund, it is necessary for the petitioner-appellant to show that he has paid the amount for which relief is sought, he has not passed on the burden on consumers and if such relief is not granted, he would suffer loss.

28. It may be true that hereat we are not concerned with refund of tax but then for enforcement of legal principles, this Court may direct a party to divest itself of the money or benefits, which in justice, equity and good conscience belongs to someone else. It must be directed to restitute that part of the benefit to which it was not entitled to.

29. We, therefore, direct that the State shall realize the amount to the extent the respondent had unjustly enriched itself and pay the same to a voluntary or a charitable organization, which according to it is a reputed civil society organization and had been rendering good services to any section of the disadvantaged people and in particular women and children.

We would request Hon"ble the Chief Minister of the State to take up the responsibility in this behalf so that full, proper and effective utilization of the amount in question is ensured.

30. For the reasons aforementioned, the appeal is allowed with the aforementioned directions with costs. Counsel's fee assessed at Rs. 50,000/.