IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Civil Writ Petition No.15218 of 2000
Date of Decision: July 06, 2017

M/s Harji Ram Balwant Singh Oil Mills

…Petitioner

Versus

The State of Punjab & another

…Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL, JUDGE
HON'BLE MR. JUSTICE AMIT RAWAL, JUDGE

Present:- Mr.Sandeep Khunger, Advocate,
for the petitioner.
Mr.Pawan Sharda, Sr.DAG, Punjab,
for respondent No.1-State.
Mr.Sanjeev Sharma, Advocate,
for respondent No.2.

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AMIT RAWAL, J.

The petitioner, through its partner Balwant Singh, has approached this Court by invoking extraordinary writ jurisdiction seeking writ in the nature of mandamus issuing a direction to the Municipal Council, Abohar-respondent No.2 to comply with the judgment of this Court Annexure P-4 dated 19.8.1991 rendered in **Civil Writ Petition No.838 of 1991 (M/s Naranjan Dass Doomra Rice and General Mills & others Versus The State of Punjab & others)** on the premise that the levy of Urban Development Cess had been quashed and the appeals filed against the said judgment were also dismissed by the Hon'ble Supreme Court of India vide order dated 25.11.1997 (Annexure P-5).

Mr.Sandeep Khunger, learned counsel representing the petitioner submitted that the levy of the cess on the purchase of Raw Cotton, Narma and Oil Seeds at the rate of Rs.0.25 per cent had been held to be illegal and the collection of the same by the Municipal Council had been ordered to be refunded along with the interest at the rate of 12% per annum. The petitioner had also made a request through letter dated 18.12.1997 (Annexure P-6) for claiming the refund of the cess already paid and when no steps were taken, petitioner served a legal notice dated 12.5.1998 (Annexure P-7). Though the aforementioned notice was not specifically replied, but orally the petitioner was apprised that the relief sought would not be available to the petitioner being not a party to the litigation either before this Court or in the Hon'ble Supreme Court and, therefore, direction may be issued to the respondents to refund the amount of levy of Urban Development Cess, illegally collected by respondent No.2.

Mr.Sanjeev Sharma, learned counsel appearing on behalf of contesting respondent No.2 submitted that the matter in issue is squarely covered by the order dated 2.5.2006 of the Hon'ble Supreme Court rendered in **Civil Appeal No.2558 of 2001 (Municipal Council, Gidderbaha Versus Cotton Corporation of India Ltd. & Anr.).** It was urged that similarly situated persons, like the petitioner filed a writ petition claiming the aforementioned relief, where refund of the cess was denied not being party to the litigation in the writ petition. The said petition was dismissed by the High Court by relying upon the decision rendered by the Hon'ble Supreme Court in **Mafatlal Industries Ltd. Versus Union of India, 1997 (5) SCC 536.** The Apex Court had upheld in the aforementioned order and, therefore, the claim of the petitioner is not sustainable and liable to be rejected. In this regard, a copy of the order of the Apex Court has been produced during the course of the hearing, which has been taken on record.

We have heard the learned counsel for the parties, appraised the paper book, as well as the order produced during the course of the hearing.

On consideration of the matter and on going through the aforementioned order, as the benefit of refund of levy of Urban Development Cess has been confined only to the petitioners in the writ petition bearing No.838 of 1991 and not to other persons, the petitioner is not entitled to any relief as claimed. For the sake of brevity, the relevant findings rendered by the Hon'ble Supreme Court read as under:-

> "*The factual finding of the High Court on the first ground clearly shows that this case is squarely covered by the decision in Mafatlal Industries and the High Court was right in disallowing the writ petition. As far as the direction regarding refund was concerned, although the finding in the decision of State of Punjab Vs. Naranjan Dass Doomra Rice & General Mills & Ors. (supra) as to the unconstitutionality of the cess was one which benefited the appellant, nevertheless the direction for refund of the amounts collected was limited strictly to the writ petitioners therein. The appellant cannot take advantage of that particular direction without crossing the hurdle of Mafatlal Industries.*
>
> *The appeals are, accordingly, dismissed but without any order as to costs.*
>
> *C.A.Nos.2558/2001, CA Nos.2559/2001 & CA Nos.2660/2001:*
>
> *In view of the decision in C.A.Nos.4451-68/1991 these appeals are allowed. No order as to costs.*
>
> *SLP(C) Nos.797-798/2002:*
>
> *Leave granted.*
>
> *The appeals are disposed of in terms of the decision in CA Nos.4451-68 of 1991.*"

In view of the aforenoted fact, the claim of the petitioner for refund of the amount of Urban Development Cess is devoid of merit, wholly misconceived and untenable, thus, not sustainable. We do not find any merit in the writ petition.

As an upshot of our findings, the writ petition stands dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

July 06, 2017
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Whether speaking/reasoned	**Yes/No**
Whether Reportable:	**Yes/No**