by the executing Court that since no specific order was passed extending the time, nor any application had been made for extending the time, it could not be deemed that the Court had used its discretion for extending time for such deposit, is wholly misconceived. Admittedly, the Court had the power to extend the time and once the decree-holder was allowed to deposit the amount, on the facts and circumstances of this case, it will be presumed that the time was extended even though no application in that behalf was made.

(6) Consequently, this revision petition succeeds and is allowed, with costs. The impugned order is set aside and the case is sent back for proceeding with the execution application in accordance with law. The parties have been directed to appear in the executing Court on April 15, 1987. The records of the case be sent back forthwith.

S.C.K.

Before D. S. Tewatia and M. R. Agnihotri, JJ.

SHIV DAYAL SINGH RAMESH CHANDER AND OTHERS,
—*Petitioners.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Amended Civil Writ Petition No. 1105 *of* 1986

March 17, 1988.

Haryana Rural Development Act (VI of 1986)—Sections 5(3), 6(5) *and* 11—Ad valorem *fee/cess levied on actual sales of agricultural produce in notified market areas—Dealers made liable for recovery of such fee from next purchaser—Fee appropriated to the Haryana Rural Development Fund for the purpose of development of notified market areas—Vires of Act challenged on the ground of absence of element of quid-pro-quo and that fee is in fact a tax not leviable by the State—Element of quid pro quo—Whether necessary ingredient of fee,—Stated—Levy of fee—Whether justified—Whether has a rational nexus to services rendered—Act—Whether constitutional—Section* 11—*Validating retention of fee/cess recovered under*

the Haryana Rural Development Act, 1983—*Whether constitutional—Where burden of fee passed on to the next purchaser—Dealers—Whether should be denied refund of amounts deposited under the* 1983 *Act on the principle of unjust enrichment.*

Held, that :

(1) the object of the 1986 Act is only to levy fee for the services to be rendered to the dealers operating in the market areas;

(2) the fee levied is justified and bears a close relationship with the services rendered; and

(3) the test of element of quid *pro quo* is adequately satisfied as the 1986 Act provides for rendering of sufficient services to the dealers in particular and other public in general.

Therefore, it has to be held that the Haryana Rural Development Act, 1986 is constitutionally valid. (Para 15).

Held, that Section 11 of the Act is constitutionally valid and is not open to attack on the ground that it seeks to validate the retention of cess/fee recovered or recoverable under the 1983 Act.

(Para 18)

PETITION Under Article 226 *of the Constitution of India praying that the records relevant to this case be summoned and after perusing the same:—*

(*i*) *A writ order or direction in the nature of mandamus be issued declaring the impugned Act as unconstitutional and void;*

(*ii*) *Issue on appropriate Writ, Order or direction in the nature of mandamus directing the respondent to refund the amount deposited by the petitioners during the operation of the Fund Act alongwith interest;*

(*iii*) *Issue any other writ or order or direction as may be deemed fit and proper in the circumstances of the case;*

(*iv*) *Dispense with the requirement of serving advance notice as also filing of the certified copies of Annexures;*

(*v*) *Award the cost of this writ petition.*

FURTHER praying that during the pendency of this writ petition the operation of the impugned Act be stayed and the recovery under Section 5 *and* 11 *of the impugned Act be stayed in the interest of the justice.*

Kuldip Singh, Senior Advocate, Gobind Goel, Advocate with him, *for the Petitioners.*

M. S. Liberhan A.G., Haryana (I. D. Singla, Advocate with him), *for the Respondents.*

JUDGMENT

M. R. Agnihotri, J. :

(1) This judgment will dispose of C.W.P. No. 1105 of 1986 and thirty-eight other writ petitions (Nos. 900, 1315, 2146, 2227, 2231, 2247, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2370, 2371, 2372, 2373, 2374, 2375, 2409, 2410, 2411, 2412, 2413, 2414, 2619, 2807, 2836, 2845, 2957, 2976, 2977, 2978, 3458 and 3804 of 1986) as identical questions of fact and law are involved. All these cases have been heard together and are being disposed of by a common judgment. Since no additional point has been urged by the learned counsel in other writ petitions, it is agreed by them that the decision in this writ petition will decide the fate of the other writ petitions as well.

(2) Shiv Dyal Singh Ramesh Chander and 168 other petitioners have filed C.W.P. No. 1105 of 1986 against the State of Haryana and others, wherein they have challenged the constitutionality of the Haryana Rural Development Act, 1986 (Haryana Act No. 6 of 1986), hereinafter referred to as the "1986 Act", and have prayed for the issuance of the writ of *mandamus* declaring the impugned Act as unconstitutional and for a direction to the respondent State and the Assessing Authorities to refund the amounts deposited by them along with interest. A copy of the 1986 Act has been annexed by the petitioners as Annexure P-2 with the writ petition.

(3) A brief history of the legislation of the 1986 Act would be necessary to be stated in order to appreciate the respective contentions of the parties. In 1983, the State of Haryana enacted the Haryana Rural Development Fund Act, 1983 (Haryana Act No. 12 of 1983), hereinafter called the 1983 Act. Under this Act, it was envisaged to levy a cess at the rate of 1 per cent on every sale and purchase of agricultural produce in the market area located in the State of Haryana. A number of writ petitions were filed in

the Punjab and Haryana High Court to challenge the constitutional validity of the 1983 Act which were accepted by the learned Single Judge of this Court by his judgment, dated 13th October, 1984, reported as *Om Parkash and others* vs. *Giri Raj Kishore and others,* (1). The learned Single Judge held that the 1983 Act purported to levy fee on the traders and that there was no provision for rendering any service to them. While declaring the 1983 Act unconstitutional, a further direction was also issued that the amounts deposited by the writ petitioners be refunded to them. Against the said judgment, the State of Haryana preferred a Letters Patent Appeal and by its judgment, dated 20th May, 1985, a Division Bench of this Court allowed the appeal, set aside the judgment of the learned Single Judge and thereby dismissed the writ petitions. The judgment of the Letters Patent Bench upholding the constitutionality of the 1983 Act is reported as *State of Haryana and another* vs. *Om Parkash and others,* (2) This judgment of the Letters Patent Bench was challenged in the Supreme Court and while allowing the appeal the Supreme Court by its judgment, dated 28th January, 1986 reported as *Om Parkash Agarwal, etc.* vs. *Giri Raj Kishore and others,* (3), set aside the judgment of the High Court, declared the 1983 Act as unconstitutional and void. The Supreme Court further held that the levy imposed by the State was not a fee as claimed by it but was a tax which was not leviable by the State. Consequently, levy of the cess under section 3 of the 1983 Act was quashed and section 3 being the charging section and the rest of the sections of the said Act being just machinery or incidental provisions, the whole of 1983 Act was declared unconstitutional on the ground that the State legislature was not competent to enact it. A writ was accordingly issued directing the State Government not to enforce the Act against the appellants.

(4) Immediately after the Supreme Court judgment declaring the 1983 Act as unconstitutional, the petitioners served the State of Haryana and its Assessing Authorities with notices demanding the refund of the amounts deposited by them under the 1983 Act and having failed to receive the refund of the amounts, they filed

(1) A.I.R. 1985 Pb. & Hry. 52.
(2) A.I.R. 1985 Pb. & Hry. 317.
(3) A.I.R. 1986 S.C. 726.

the present writ petition praying for a writ of *mandamus*. During the pendency of the writ petition, the State of Haryana has enacted the Haryana Rural Development Act, 1986. Thereupon, the petitioners amended their writ petition in order to challenge the constitutionality of the newly enacted 1986 Act.

(5) In order to appreciate the need of the new legislation, the mischief it sought to remedy and the objective to be achieved by the legislature, it is necessary to detail the salient features of the 1986 Act. To start with, the very preamble of the 1986 Act provides for the establishment of the Haryana Rural Development Fund Administration Board for augmenting agricultural production and improving its marketing and sale. Under Section 3 of the 1986 Act, the State Government is empowered to establish and constitute the Haryana Rural Development Fund Administration Board, which shall consist of a Chairman and other official and non-official members. The Board shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property. The term of office of the non-official members of the Board has been fixed as three years and the State Government shall exercise superintendence and control over the Board and its officers. The Board has also been given the powers to frame by-laws for regulating the transaction of its business and other matters to be specified. According to section 5, there shall be levied on the dealers a fee on *ad valorem* basis at the rate of one percentum of the sale-proceeds of agricultural produce bought or sold or brought for processing in the notified market area. The expression "dealer" has been defined to mean any person who within the notified market area sets up, establishes or continues or allows to be continued any place for the purchase, sale, storage or processing of agricultural produce, etc. It has also been provided that no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made. Sub-section (3) of section 5 further provides that since the burden of fee imposed is not intended to be put on the dealer, the dealer shall be under a statutory obligation to add the amount of fee in the purchase price recoverable by him from the next purchaser of agricultural produce or the goods processed or manufactured out of it. Section 6 of the said Act provides for the constitution of a fund called the Haryana Rural Development Fund which shall

vest in the Board. The amount of fee paid under section 5 and grants from the State Government and local authorities shall be credited to the Haryana Rural Development Fund. According to sub-section (1) of section 6, the fund shall be applied by the Board to meet the expenditure incurred in the rural areas in connection with the development of roads, establishment of dispensaries, making arrangements for water supply, sanitation and other public facilities, welfare of agricultural labour, conversion of the notified market areas falling in rural area as defined under the 1986 Act into model market areas by utilising technical know-how thereto and bringing about other necessary improvements therein, construction of godowns and other places of storage, for the agricultural produce brought in the market area for sale/purchase and the construction of rest houses, equipped with all modern amenities, to make the stay of visitors (both sellers and purchasers) in the market area comfortable and for any other purpose which may be considered by the Board to be in the interest of and for the benefit of the person paying the fee; the fund may also be utilised by the Board to meet the cost of administering it. According to section 11 of the 1986 Act, the cess/fee levied and collected under the provisions of the 1983 Act (which Act has been declared as unconstitutional by the Supreme Court in its judgments in *Om Parkash Agarwal's case* (supra) shall be deemed to have been levied and collected under the 1986 Act, and notwithstanding anything contained in any judgment, decree or order of any Court, it shall be lawful for the State Government to retain the cess so levied and collected from the dealer if the burden of such cess was passed on by the dealer to the next purchaser of the agricultural produce or the goods processed or manufactured out of it in respect whereof such cess was levied or collected. According to sub-section (3) of this section, if any dispute arises as to the refund of any cess retained by the Government by virtue of sub-section (1) and the question is whether the burden of such cess was passed on by the dealer to the next purchaser, it shall be presumed that such burden was passed on by the dealer. Sub-section (4) of this section empowers the State Government that if the amount of cess retainable by the Government under sub-section (1), has not been paid by, or has been refunded to, any dealer, the same shall be recoverable by the Government as arrears of land revenue.

(6) Mr. Kuldip Singh, Bar-at-Law, learned Senior Advocate, appearing on behalf of the petitioners, has challenged the constitutionality of the aforesaid provisions of the 1986 Act, and his submissions can be broadly classified in the following contentions:—

(1) That the 1986 Act suffers from the same vice, that is, the lack of element of *quid pro quo*, as was the position under the 1983 Act, which was declared unconstitutional by the Supreme Court, as the 1986 Act too does not make any provision for the spending of the levy on the dealers of the market area. The 1986 Act does not provide for any specific service to be rendered to a particular dealer of the area upon whom the levy is sought to be imposed. Therefore, the 1986 Act is also unconstitutional as the levy is not a fee but a tax.

(2) That section 11 of the 1986 Act is in any case bad in law inasmuch as it provides for the retention of the cess/fee levied and collected under the 1983 Act even though the same has been declared unconstitutional by the Supreme Court in *Om Parkash Agarwal's case* (supra).

In support of his first contention, Mr. Kuldip Singh has made a detailed reference to the judgment of the Supreme Court in *Om Parkash Agarwal's case* (supra).

(7) By a close study of the aforesaid judgment in *Om Parkash Agarwal's case*, it would be evident that what weighed predominantly with the Hon'ble Judges of the Supreme Court while declaring the levy as unconstitutional was that the 1983 Act did not make a provision for rendering any service to the dealer who was the cess payer and in order to justify the imposition of the levy by way of fee, the amount so levied should truly be a fee and not a tax with the mask of a fee. Reliance was placed on the famous statement of Latham, C.J. of the High Court of Australia in *Matthews* v. *Chicory Marketing Board* (4), as under :—

> "A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not a payment for services rendered."

For distinguishing tax from fee, their Lordships of the Supreme Court relied upon their earlier judgment in the *Commissioner*,

(4) 60 C.L.R. 263.

Hindu Religious Endowments, Madras vs. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt,* (5), in which B. K. Mukherjee, J. observed as under :—

> "Coming now to fees, a 'fee' is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed, ...
>
> * * * *
>
> If, as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should on the face of the legislative provision, be correlated to the expenses incurred by Government in rendering the services."

The second reason which weighed with the Hon'ble Judges of the Supreme Court while striking down the 1983 Act was that there did not exist any correlation between the amount paid by way of cess and the services rendered to the person from whom it was collected.

(8) Refuting the aforesaid contention of Mr. Kuldip Singh, the learned Advocate-General, Haryana, appearing on behalf of the State, has elaborately referred to the various provisions of the 1983 Act as well as of the 1986 Act. By a comparison of the various provisions of the two Acts, he has sought to canvass that the legislative infirmities in the 1983 Act and the deficiencies, which were highlighted by the Supreme Court in its judgment, due to which the cess imposed by the 1983 Act could not satisfy the test of fee have been completely removed by the State legislature while re-enacting the 1986 Act. According to the learned Advocate-General, scrupulous care has been taken to specify the purposes for which the amount of fee, which in the earlier Act was called as cess, has to be spent.

(5) A.I.R. 1954 S.C. 282.

(9) Tracing the history of judicial pronouncements on the question involved, the learned Advocate-General, Haryana, has started from the seven Judges' judgment of the Supreme Court in the case reported as *the Commissioner, Hindu Religious Endowments, Madras* (supra). The distinction was drawn between tax and fee in the following terms :—

> "A careful examination reveals that the element of compulsion or coerciveness is present in all kinds of imposition, though in different degrees and it is not totally absent in fees. This, therefore, cannot be made the sole or even a material criterion for distinguishing a tax from fee.
>
> The distinction between a tax and a fee lies primarly in the fact that a tax is levied as a part of a common burden while a fee is a payment for a special benefit or privilege .....
>
> There is really no generic difference between the tax and fees and the taxing power of a State may manifest itself in three different forms known respectively as special assessments, fees and taxes."

To the same effect are two other judgments of the Supreme Court, of five Judges' Bench in *Ratilal Panachand Gandhi and others* vs. *State of Bombay and others* (6), and in *Sri Jagannath Ramanuj Das and another* vs. *State of Orissa and another* (7), in which the position of law laid down by earlier judgment in *the Commissioner, Hindu Religious Endowments, Madras's case* (supra), was reiterated. Reliance has further been placed by the learned Advocate-General on another judgment of five Judges of the Supreme Court in the case reported as *The Hingir-Rampur Coal Co. Ltd., and others* vs. *The State of Orissa and others* (8), wherein the Hon'ble Judges while reiterating their earlier decisions proceeded to add as under:—

> "It is true that when the Legislature levies a fee for rendering specific services to a specified area or to a specified class of persons or trade or business, in the last analysis such services may indirectly form part of services to the public in general. If the special service

(6) A.I.R. 1954 S.C. 388.
(7) A.I.R. 1954 S.C. 400.
(8) A.I.R. 1961 S.C. 459.

rendered is distinctly and primarily meant for the benefit of a specific class or area the fact that in benefiting the specified class or area the State as a whole may ultimately and indirectly be benefited would not detract from the character of the levy as a fee. Where, however, the specific service is indistinguishable from public service, and in essence is directly a part of it, different considerations may arise. In such a case, it is necessary to enquire what is the primary object of the levy and the essential purpose which it is intended to achieve. Its primary object and the essential purpose must be distinguished from its ultimate or incidental results or consequences. That is the true test in determining the character of the levy : 1950 AC 87, Ref. to."

(10) Next in chronological order is the five Judges' judgment of the Supreme Court in *Kewal Krishan Puri and another* vs. *State of Punjab and others,* (9), in which the validity of certain provisions of the Punjab Agricultural Produce Markets Act, 1961 (Punjab Act No. 23 of 1961) was challenged. Giving a broad meaning to the term "fee" and widening its scope further, the Supreme Court held as under :—

"Generally speaking a fee is defined to be a charge for a special service rendered to individuals by some governmental agency. A question arises—"special service" rendered to whom, which kind of individuals? The argument that service rendered must be correlated to those on whom the ultimate burden of the fee falls is neither logical nor sound.* * * *

The element of *quid pro quo* must be established between the payer of the fee and the authority charging it. It may not be the exact equivalent of the fee by a mathematical precision, yet, by and large, or predominantly, the authority collecting the fee must show that the service which they are rendering in lieu of fee is for some special benefit of the payer of the fee. It may be so intimately

(9) A.I.R. 1980 S.C. 1008.

connected or interwoven with the service rendered to others that it may not be possible to do a complete dichotomy and analysis as to what amount of special services was rendered to the payer of the fee and what proportion went to others. But generally and broadly speaking it must be shown with some amount of certainty, reasonableness or preponderance of probability that quite a substantial portion of the amount of fee realised is spent for the special benefit of its payers."

(11) Placing reliance on another judgment of the Supreme Court (three Judges' judgment) in *Southern Pharmaceuticals and Chemicals, Trichur and others* vs. *State of Kerala and others,* (10), the learned Advocate-General, Haryana, has taken the argument further to contend that the element of *quid pro quo stricto senso* is not always *sine qua non* of fee and the element of *quid pro quo* is not necessarily absent in every tax. Our particular attention has been drawn by the learned Advocate-General to the following words of the aforesaid judgment :—

"The traditional concept of *quid pro quo* is undergoing a transformation."

(12) Advancing his argument further, the learned Advocate-General, Haryana, places reliance on another judgment of the Supreme Court in *Municipal Corporation of Delhi and others* v. *Mohd. Yasin* (11), in which enhancement of fee for slaughtering animals in slaughter houses was challenged on the ground that it was in fact a tax and not a fee as there was no correlation between the costs of the services rendered and the amount of fee collected. Repelling the contention, O. Chinnappa Reddy, J., speaking for the Court, held as under :—

"Compulsion is not the hall-mark of the distinction between a tax and a fee. That the money collected does not go into a separate fund but goes into the consolidated fund does not also necessarily make a levy a tax. Though a fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct,

(10) A.I.R. 1981 S.C. 1863.
(11) A.I.R. 1983 S.C. 617.

a mere casual relation may be enough. Further, neither the incidence of the fee nor the service rendered need be uniform. That others besides those paying the fees are also benefited does not detract from the character of the fee. In fact, the special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest. Nor is the Court to assume the role of a cost accountant. It is neither necessary nor expedient to weigh too meticulously the cost of the services rendered etc., against the amount of fees collected so as to evenly balance the two. A broad correlationship is all that is necessary. *Quid pro quo* in the strict sense is not the one and only true index of a fee; nor is it necessarily absent in a tax."

(13) Taking his argument still further, the learned Advocate-General, Haryana, has taken the stand that a fee will not become a tax even if the element of *quid pro quo* is absent in the levy. To substantiate his contention, reliance has been placed by him on the judgment of the Supreme Court in *Sreenivasa General Traders and others, etc.* v. *State of Andhra Pradesh and others* (12), wherein their Lordships have held as under :—

"The traditional view that there must be actual *quid pro quo* for a fee has undergone a sea change in the subsequent decisions. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. If the element of revenue for general purpose of the State predominates, the levy becomes a tax. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered.....There is no generic difference between a tax and a fee. Both are compulsory exactions of money by public authorities."

(12) A.I.R. 1983 S.C. 1246.

(14) In order to reiterate his submissions further, the learned Advocate-General, has invoked to his aid another judgment of the Supreme Court in the case, *The City Corporation of Calicut* vs. *Thachambalath Sadasivan and others* (13), which in turn has placed reliance on an earlier judgment in *M/s Amar Nath Om Parkash and others* v. *State of Punjab and others* (14). In that case, their Lordships held that :—

> "It is thus well-settled by numerous recent decisions of this Court that the traditional concept in a fee of *quid pro quo* is undergoing a transformation and that though the fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere casual relation may be enough. It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay receives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee.
>
> Applying the ratio of these decisions it is incontrovertible that the appellant-Corporation is rendering numerous services to the persons within its areas of operation and that therefore the levy of the licence fee as fee is fully justified. Soaking coconut husk emits foul odour and contaminates environment. The Corporation by rendering scavenging services. carrying on operations for cleanliness of city, to make habitation tolerable is rendering general service of which amongst others appellants are beneficiaries. Levy as a fee is thus justified."

(15) Applying the ratio of the aforesaid judgments of the Supreme Court to the facts of the present case and the various provisions of the 1986 Act, it becomes crystal clear that—

(1) the object of the 1986 Act is only to levy fee for the services to be rendered to the dealers operating in the market areas;

---

(13) A.I.R. 1985 S.C. 756.

(14) A.I.R. 1985 S.C. 218.

(2) the fee levied is justified and bears a close relationship with the services rendered; and

(3) the test of element of *quid pro quo* is adequately satisfied as the 1986 Act provides for rendering of sufficient services to the dealers in particular and other public in general.

Thus, the requirements laid down in the Supreme Court judgment in *Om Parkash Agarwal's case* (supra) are fully satisfied. Therefore, there is no difficulty in holding that the 1986 Act is constitutionally valid and the challenge against the same is wholly devoid of force. Consequently, the first contention of the learned counsel for the petitioners is rejected.

(16) Refuting the second contention of the petitioners, that is, section 11 of the 1986 Act is in any case bad in law inasmuch as it provides for the retention of the cess/fee levied and collected under the 1983 Act even though the same has been declared unconstitutional by the Supreme Court, the learned Advocate-General, Haryana, has strongly relied on the three Judges' judgment of the Supreme Court reported as *M/s Amar Nath Om Parkash* (supra). It is noticeable that the judgment in *Om Parkash Agarwal's case* (supra), which declared the 1983 Act as unconstitutional, was rendered by O. Chinnappa Reddy and E. S. Venkataramiah, JJ. The same two Hon'ble Judges and A. P. Sen, J. constituted the Bench which rendered the judgment in *M/s Amar Nath Om Parkash's case* (supra). However, quite surprisingly, this judgment of three Hon'ble Judges of the Supreme Court in *M/s Amar Nath Om Parkash's case* (supra) was not brought to the notice of the Hon'ble Judges while deciding later on *Om Parkash Agarwal's case* (supra).

(17) In *M/s Amar Nath Om Parkash's case,* which is being relied upon by the learned Advocate-General, Haryana, almost identical situation fell for consideration of the Court, because in a case under the Punjab Agricultural Produce Markets Act, 1961, the enhancement of fee from 2 per cent to 3 per cent had been declared illegal by the Supreme Court in *Kewal Krishan Puri's case* (supra). However, the State legislature amended the Punjab Agricultural Produce Markets Act by inserting section 23-A, which is almost

identical to the provisions of section 11 of the 1986 Act, the subject-matter of challenge in the present writ petition. Section 11 of the 1986 Act and section 23-A *ibid* read as under :—

"11. Retention of cess.— (1) The cess/fee levied and collected under the provisions of the Haryana Rural Development Fund Act, 1983, for the period commencing from the 30th September, 1983, to the date of notification issued under sub-section (1) of section 5 of this Act, shall be deemed to have been levied and collected under this Act and notwithstanding anything contained in any judgment, decree or order of any court, it shall be lawful, for the State Government to retain the cess so levied and collected from the dealer if the burden of such cess was passed on by the dealer to the next purchaser of the agricultural produce or the goods processed or manufactured out of it in respect where of such cess was levied or collected.	23-A. (1) Notwithstanding anything contained in any judgment, decree or order of any court, it shall be lawful for a Committee to retain the fee levied and collected by it from a licensee in excess of that leviable under section 23, if the burden of such fee was passed on by the licensee to the next purchaser of the Agricultural Produce in respect, whereof such fee was levied and collected.
"(2) No suit or other proceedings shall be instituted. maintained or continued in any court for the refund of whole or any part of the cess retained by the Government under sub-section (1) and no court shall enforce any decree or order directing the refund of whole or any part of uch cess.	(2) No suit or other proceeding shall be instituted. maintained or continued in any court for the refund of whole or any part of the fee retained by a Committee under sub-section (1) and no court shall enforce any decree or order directing the refund of whole or any part of such fee.

(3) If any dispute arises as to the refund of any cess retained by the Government by virtue of sub-section (1) and the question is whether the burden of such cess was passed on by the dealer to the next purchaser it shall be presumed that such burden was passed on by the dealer.	(3) If any dispute arises as to the refund of any fee retained by a Committee by virtue of sub-section (1) and the question is whether the burden of such fee was passed on by the licensee to the next purchaser of the concerned agricultural produce, it shall be presumed unless proved otherwise that such burden was so passed on by the licensee.
(4) If the amount of cess retainable by the Government under sub-section (1), has not been paid by, or has been refunded to any dealer the same shall be recoverable by the Government as arrears of land revenue.	(4) If any amount of fee retainable by a Committee under sub-section (1) has been refunded to any licensee, the same shall be recoverable by the Committee in the manner indicated in sub-section (2) of Section 41.
(No sub-section (5) in the 1986 Act.)	(5) The provisions of this section shall not effect the operation of Section 6 of the Punjab Agricultural Produce Markets (Amendment and Validation) Act, 1976."

While upholding the validity of Section 23-A, their Lordships of the Supreme Court held as under :—

> "The submission of the learned counsel was that Section 23-A was a blatant attempt to validate a levy which had been declared invalid by this Court and this, according to the learned counsel, was not permissible. We entirely disagree with the submission that Section 23-A is an attempt at validating an illegal levy. Section 23-A does not permit any recovery of fee at the rate of Rs. 3 per 100 in respect of any sales of agricultural produce before or after the coming into force of that provision. There is no attempt at retrospective validation of excess

collection nor any attempt at providing for future collection at the rate of Rs 3 per 100. All that Section 23-A does is to prevent unjust enrichment by those dealers who have already passed on the burden of the fee to the next purchaser and so reimbursed themselves by also claiming a refund from the Market Committees. We have already explained the true purpose of Section 23-A. It gives to the public through the market committee what it has taken from the public and is due to it. It renders unto Caesar what is Caesar's. We do not see any justification for characterising a provision like Section 23-A as one aimed at validating an illegal levy."

(18) The reasoning adopted by the Supreme Court in upholding the validity of Section 23-A of the Punjab Agricultural Produce Market Act, 1961, squarely applies for upholding Section 11 of the 1986 Act in the present case. The ratio of the aforesaid judgment, therefore, fully covers the stand taken by the learned Advocate-General and there is no difficulty in holding that section 11 of the 1986 Act is constitutionally valid and is not open to attack on the ground that it seeks to validate the retention of cess/fee recovered/recoverable under the 1983 Act.

(19) No other point has been urged before us.

(20) In the result, all these thirty-nine writ petitions are dismissed and it is held that the Haryana Rural Development Act, 1986 is constitutionally valid. There is no order as to costs.

R. N. R.

Before I. S. Tiwana, J.

KARAM SINGH,—*Appellant.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Appeal No. 557/SB of 1986.

March 20, 1987.

Code of Criminal Procedure (II of 1974)—Sections 4 and 41—Narcotic Drugs and Psychotropic Substances Act (LXI of 1985)—Sections 37, 41, 42, 43, 50 and 55—Offence under Narcotic Drugs