

Doctrine of Unjust Enrichment

Concept

This is the moral rule of society that if the person who should get the benefit, but he is not get those benefit and that benefit is received by any other person, who is not eligible for this benefit, then the person who has gained this benefit has been or there is increase in his property. This increase is considered unfair or unethical. This is called the **principles of unethical sovereignty or unjust prosperity.**

This principle is applicable more deeply in those cases, where benefits are being given by the Government, because this becomes also a moral responsibility of the Government that the Government benefits are received by the real or eligible person. This principle was first recognized in the Central Excise Act, 1944 and the Custom Act, 1962 from September 20, 1991. The principle is kept intact even after the GST implementation.

Meaning

The word unjust enrichment is made up of two words. First is unjust, and second is enrichment. If we talk about unethical or injustice. An injustice is one that does not confirm with the standards of justification and justice and it is also unfair.

“Unjust can be defined as something which is not in accordance with the accepted standards of fairness or Justice and which is also unfair.”

On the other hand, if we talk about prosperity or enrichment, so when a person receives something from someone, it is said that he has enriched. This prosperity can also be both fair and unfair.

Now, if we talk of unjust enrichment, then we can say that unjust enrichment is which obtained by harming another person's share or the loss to someone else. This enrichment remains in the category of unjust, unless the loss of the other person is well compensated, that is to give something in return for its loss.

Main characteristics

The main characteristics of unjust enrichment are as follows: —

- (1) Unjust enrichment is a legal concept.
- (2) Unjust enrichment of one party improperly.
- (3) Other party has suffered loss.
- (4) It is more related to Government benefits or subsidies or reduction in prices etc.
- (5) It is unethical and illegal act in the eyes of society.
- (6) Unjust enrichment, however, is deliberately done, but it can also be inadvertently or without intentions.
- (7) The Government has the right to interfere in this matter.

UNJUST ENRICHMENT AND GST

Under GST the principle of unjust enrichment is applicable. This concept in GST, usually applies in cases of tax refund. In GST system, the burden of tax is transferred

from one trader to another. The burden of taxes has to be bear by the consumer at the end. So it became certain that a person handed over the burden of tax to another person. Now if the first person wants a "tax refund" paid to the Government for some reason, so this will be said unfair refund, because in fact if the refund is correct, then it should be given to the end consumer and not to a trader in the middle of the chain.

Suppose trader 'A' purchased goods from trader 'B'. In which he paid the GST of ₹ 10,000. Now when the trader is going to sell goods further, it is certain that he will recover this amount as ITC and reduce his output tax liability. Thus, it is transfer of GST of ₹ 10,000 to another person. A few days later, trader 'B' came to know that at the time of final assessment he has to refund a tax of ₹ 2,000. Trader 'B' claimed the tax refund. Here, if the trader 'B' gets ₹ 2,000 of the tax refunds, so this would be an unfair advantage because trader 'B' has already transferred its tax burden to another person.

Provision in GST

The GST provides that if the case of unjust enrichment is found and to get profit, real person is not recognized, then that money will be transferred to the Consumer Welfare Fund.

CONSUMER WELFARE FUND

Concept

The final burden of taxes under GST falls on the end consumer. By the amount of this tax Government schemes and programed are implemented. It is, thus, necessary that the interests of the consumers are protected by the Government. On the other hand, many such funds are available to the Government, that cannot be transferred to anyone else and the money cannot be kept with the Government. Because if such funds kept with Government, the principle of unjust enrichment is also applied to the 'Government'. Hence, a fund has been set up by the Government for the welfare of consumers to avoid this. In which this type of unclaimed and seized funds are deposited in this fund. The funds available in this fund are consumed only for the welfare of the consumers.

Establishment

The establishment of the Consumer Welfare Fund has been done under CGST Act, 2017 According to Section 2 (51) of the Act, the meaning of fund is taken from Consumer Welfare Fund established under section 57 of the Act.

"Fund" means the consumer welfare fund established u/s 57,

—[Sec. 2 (51), CGST Act, 2017]

According to Section 57 of the Act, the Government will establish a fund called *Consumer Welfare Fund*.

"The Government shall constitute a fund to be called the consumer welfare fund and there shall be credited to the fund:—

- (a) amount referred to in sub-section (5) of section 54,
- (b) any income from investment of the amount credited to the fund, and
- (C) such other monies received by it. In such manner as may be prescribed.

—[Sec. 57, CGST Act, 2017]

Deposited amount

The following funds are deposited in this fund:—

- (1) The amount of CGST, IGST, UTGST and Cess and duty will be deposited in this fund.

- (2) Income generated from appropriating the funds.
- (3) The amount mentioned in sub-section (2) of section 12 of the Central Excise Tax Act, 1944.
- (4) The funds mentioned in Section 57 of CGST ACT, 2017.
- (5) Amount described in accordance with Section 20 of the IGST Act, 2017.
- (6) Section 21 of the UTGST Act, 2017, and
- (7) The funds shall be deposited in accordance with section 12 of the GST (Compensation to States) Act, 2017.

There is a restriction in there, set up in section 54 (5) of IGST and the CESS will be deposited only 50% of the amount in this fund. The remaining 50% will be deposited in the Consumer Welfare Fund opened by concerned State Governments.

Account and Audit

The accounts and books of this account will be maintained by the Central Government, and these accounts will be audited by the Comptroller and Auditor General of India.

Formation of standing committee

There will be a standing committee for conducting this fund and taking decisions etc. from time to time, which will include:—

1. Chairman
2. Vice President
3. Member Secretary
4. Other Members nominated by the Government

Note : This committee has been constituted by the Government of India, which has nine members in total.

Functions of committee

The main features of the Standing Committee are as follows:—

(A) Meetings

- (1) The committee will meet in accordance with its requirements, but generally there will be four meetings in a year.
- (2) The committee will meet in the place and time as the President will decide.
- (3) The chairman of the committee will chair the meeting, but in his absence the Vice President will chair the meeting.
- (4) Each member of the committee will be given a 10-day notice in writing for the meeting.
- (5) The notice of the meeting will mention the location, time, hours and considerable points.
- (6) Any proceeding of the meeting of the Committee will be valid only when the Chairman or Vice President will chair the meeting and at least three other members will be present in the meeting.

(B) Powers of committee

The committee shall have the following powers:—

- (1) Compulsion to register the applicant before the authority nominated by the Central Government.

- (2) To investigate the correctness of claim, compel the applicant to produce books, evidence etc. to the Government official,
 - (3) Authorized to Government officers for admission and examination at the site of the applicant.
 - (4) Order for audit the applicant's accounts.
 - (5) If any fact gets hide or incorrect presented before then order to the applicant to return the money with interest.
 - (6) To recover any money from the applicant under the provisions of this Act.
 - (7) It is made necessary to present the report as per the relevant time period of the utilization of the grants.
 - (8) Reject the application.
 - (9) To recommend minimum financial assistance for the applicant.
 - (10) Identify beneficial options for investment of fund and invest accordingly.
 - (11) Loosen the conditions.
 - (12) To prepare guidelines for management and administration of funds.
- (C) No application will be entertained by the committee unless it is recommended by member secretary to check its merits.

(D) Recommendations

The committee can make the following recommendations:—

- (1) Providing grants for an applicant.
- (2) Investing the amount available in the fund.
- (3) Providing grants for legal expenses.
- (4) On the recommendation of the Central Consumer Protection Council, recommend the grant for other works.
- (5) To increase consumer awareness, recommendation to spend 50% of the funds in the publicity per year.

Utility of fund

The funds available in this fund are used by the Government for consumer welfare only. —[Section 58 (1), CGST Act, 2017]

The accounts and other necessary records of this fund are maintained by the Government or its nominated authority and an annual statement is prepared on the format prescribed by the Accountant General. —[Section 58 (2), CGST Act, 2017]