

**(1970) 10 KL CK 0009**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 934 of 1964**

Abdul Kadir

APPELLANT

Vs

State of Kerala

RESPONDENT

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**Date of Decision :** 15-10-1970

**Acts Referred:**

Constitution of India, 1950 — Article 14, 19, 19(1)(g), 19(6), 255

**Citation :** (1971) KLJ 4

**Hon'ble Judges :** P.T. Raman Nayar, C.J;K.K. Mathew, J

**Bench :** Division Bench

**Advocate :** C.K. Viswanatha Iyer, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

K.K. Mathew, J.—The petitioners are dealers in tobacco and tobacco preparations doing business at Mattancherry in the name and style of "A.S. Bava, Tobacconists, Mattancherry." They challenge the validity of the Luxury Tax on Tobacco (Validation) Act, 1964 (Act 9 of 1964, hereinafter called the Act) and pray for a declaration that the Act is ultra vires the powers of the Kerala Legislature, and for issuing appropriate directions prohibiting the respondent from enforcing the provisions of the Act against them. The system of collecting tobacco revenue under the Cochin Tobacco Act Act 7 of 1084 and the Travancore Tobacco Act, Act 1 of 1087 and the rules there under, upto August 1950 was to auction what are called "A" class and "B" class shops. In addition to these there were also "C" class shops for retail sale of tobacco. By the Finance Act 25 of 1950 the Central Excises and Salt Act, 1 of 1944, was extended to Travancore-Cochin State. Sec. 13(2) of the Finance Act of 1950 provided that if immediately before the 1st day of April 1950, there was in force any law in any State other than Jammu and Kashmir corresponding to, but other than, an Act referred to in sub-section (1) or (2) of section 11, such law was thereby repealed with effect from the said date. In consequence of this provision, the rules which were in force on 1-4-1950 were changed in Cochin and by a notification dated 3-8-1950

the system of auction sale of "A" and "B" class shops was abolished, and in its stead graded licence fees were introduced for various classes of licences including "C" class licence. Similar change was also made in the Travancore area by notification dated January 25, 1951. "A" class licensees were to pay a specified minimum fee for a specified maximum quantity of tobacco goods possessed by them and an additional fee for any additional quantity. The fee was to be levied only in respect of tobacco imported into the State, namely, the Cochin or the Travancore State, as the case may be. From 17-8-1950 to 31-12-1957 the State of Travancore-Cochin and its successor State, the State of Kerala, were collecting these licence fees from the petitioners.

2. The petitioners filed O.P. No. 70/1956 in the High Court of Kerala for refund of the licence fees collected from them for the reason that the Cochin Tobacco Act stood repealed by the Finance Act of 1950, which extended the Central Excises and Salt Act 1 of 1944 to the Part B State of Travancore-Cochin, and, in consequence, the notifications issued in August 1950 and January 1951 framing new rules for the issue of licences and prescribing fees therefor, under the powers conferred by the Travancore and Cochin Acts were ab initio void. The High Court held that the tax levied under the rules framed under the respective Acts was a luxury tax coming within Entry 62 of List II of the Seventh Schedule to the Constitution, and that the State was competent to levy it. The writ petition was accordingly dismissed. From this decision the petitioners took the matter in appeal to the Supreme Court. The Supreme Court held that the Travancore and Cochin Tobacco Acts and the rules framed thereunder stood repealed by the passing of the Finance Act 25 of 1950 and the extension of the Central Excises and Salt Act 1 of 1964 to the Part B State of Travancore-Cochin. (See A.B. Abdulkadir and Others Vs. The State of Kerala and Another, . According to the Supreme Court as the two Acts stood repealed on 1-4-1950 the framing of the new rules in August 1950 and in January 1951 was without authority, and there could be no question of their being sustained under Entry 62 of List II of the 7th Schedule, for that would only arise if the Acts were not repealed as corresponding law by the Sec. 13(2) of the Finance Act of 1950. The court did not pronounce upon the nature of the levy and left the question of legislative competence expressly open. And that being so, we are unable to accept the contention of counsel for the petitioners that by necessary implication the court found that the levy fell within the Union and not within the State List although we see considerable force in his argument that the competence of Parliament to repeal an existing law depended on that law falling within the Union or Concurrent List-indeed if that were the implication of the decision, the present petition could have been disposed of by the Supreme Court in the petitioners' favour on that short ground when it went up to it in appeal from an earlier decision of this court instead of being remanded to this court for rehearing. The Supreme Court allowed the appeal and set aside the order of the High Court.

After the decision of the Supreme Court the petitioners wrote to the respondent State government that a sum of Rs. 1,14,750/- was due to them by way of

licence fees collected from them and that it may be refunded. The respondent refunded a sum of Rs. 73,500/- on 29-4-1962, but did not pay the balance. Since the balance was not paid in spite of a demand dated 3-7-1963, the petitioners filed O.P. 1268/1963 for a direction compelling the respondent to refund the balance. On 16-12-1963 the Government of Kerala promulgated an Ordinance; Ordinance No. 1 of 1963, which was later replaced by the Act, which received the assent of the President on 3-3-1964.

3. The Act in effect provides for levy of a luxury tax on tobacco for the period from 17-8-1950 to 31-12-1957 and for validation of the levy and collection of fees for licences for the vend and stocking of tobacco for the aforesaid period. By sub-clause (2) of Sec. 1 it was enacted that the Act shall extend to the whole of the State of Kerala excluding the Malabar district. Sec. 3 is the charging section, and it enacts that for the period beginning from 17-8-1950 and ending with 31-12-1957 every person shall be liable and shall be deemed always to have been liable to pay a luxury tax on tobacco in the form of a fee for licence for the vend and stocking of tobacco by him within any area to which the Act extends at such rates as may be prescribed, not exceeding the rates specified in the schedule. Sec. 4(1) authorises the government to make rules to carry out the purpose of the Act. Sec. 4(2) provides for the content of the rules; and Sec. 4(3) states that the rules and notifications specified in the said sub-clause purported to have been issued under the Travancore Tobacco Act of 1087 or the Cochin Tobacco Act of 1084 as the case may be, for the levy and collection of fees for licence for the vend and stocking of tobacco shall be deemed to be issued under sub-section (1). Sec. 5 states that notwithstanding any judgment, decree or order of any court, all fees for licences for the vend or stocking of tobacco levied or collected or purported to have been levied or collected under any of the rules or notifications specified in sub-section (3) of section 4 for the period beginning with the 17th day of August 1950 and ending on the 31st day of December 1957, shall be deemed to have been validly levied or collected in accordance with law as if the Act were in force on and from the 17th day of August, 1950, and the fees for licence were a luxury tax on tobacco levied under the provisions of the Act, and accordingly, (a) no suit or other proceeding shall be maintained or continued in any court for the refund of any fees paid or purported to have been paid under any of the said rules or notifications; and (b) no court shall enforce a decree or order directing refund of any fees paid or purported to have been paid under any of the said rules or notifications. Sec. 6 provides that where any amount paid or purported to have been paid as a fee for licence under any of the rules or notifications specified in sub-section (3) of section 4 has been refunded after the 24th day of January 1962 and such amount would not have been liable to be refunded if the Act and had been, in force on the date of the refund, the person to whom the refund was made shall pay the amount so refunded to the credit of the government in any government treasury on or before the 16th day of April 1964, and where such amount is not so paid, the amount may be recovered from him as an arrear of land revenue under the Revenue Recovery

Act for the time being in force. In the light of the provisions in the Act, the respondent made a demand by Ext. P-1 notice to the petitioners for refund of the amount already paid to them.

The petitioners then filed the present writ petition contending that the label given to the tax imposed by the charging section is only a cloak to disguise its real nature, that the tax is really excise duty, that the State legislature is incompetent to levy excise duty on tobacco as the power to levy excise duty on tobacco is vested in the Parliament under Entry 84 of List I in the Seventh Schedule, that the State legislature has no power to enact any provision for licensing the vend or stocking of tobacco as the field is already covered by the Central enactment, namely, Central Excises and Salt Act 1 of 1944, that Sec. 3 of the Act is violative of the provisions of Articles 14 and 301 of the Constitution, that when the Supreme Court has held the levy to be invalid, it is not open to the State legislature to pass a legislation denying the petitioners the benefit of that judgment, and that the imposition of the tax is unreasonable and violates the fundamental right of the petitioners to hold property.

4. The O.P. came up before a Division Bench of this court and the court allowed the petition on the short ground that there was no evidence of production of tobacco in the Travancore-Cochin State, & so the levy made on imported tobacco was an inroad into the freedom of trade, commerce and intercourse guaranteed by Article 301 and was not saved by article 304 (a). The court followed the decision of the Supreme Court in *Kalyani Stores Vs. The State of Orissa and Others*, . The respondent took up the matter in appeal to the Supreme Court. The Supreme Court reversed the decision holding that the ruling in *Kalyani Stores Vs. The State of Orissa and Others*, has no application to the facts of the case and directed this court to consider in the first instance whether the tax would offend article 301, and if it is found that the tax would offend article 301 to see whether the tax can be saved under article 304 (b) and also any other contentions raised by the Petitioners. This is how the matter has come before us.

5. The petitioners argued that the levy under the Act is not a luxury tax, but excise duty and the State legislature was not competent to impose it. The argument was that since by the extension of Central Act 1 of 1944 to the T.C. State by the Finance Act 25 of 1950 the Travancore and Cochin Tobacco Acts and the rules thereunder stood repealed from 1-4-1950, the State of Travancore-Cochin was incompetent to levy any excise duty upon tobacco. Sec. 6 of the Central Act 1 of 1944 prohibits any person except under the authority and in terms of a licence granted under that Act from engaging in whole-sale purchase, sale and storage of any excisable goods specified in schedule A (tobacco and other items). It is, therefore, contended that no corresponding provision in any State enactment for licence for vend or stocking of tobacco could be made, as that would be encroaching upon the field covered by the Central enactment. It is argued that the various provisions of the Central Act 1 of 1944 would indicate that the Central Government and the authorities under that Act are on the track

of the movement of tobacco from the time it is grown to the time it is manufactured and sold in the market and that the provision for licensing in Sec. 6 of the Central Act is intended for checking the due observance of the provisions of that Act, and that any corresponding provision in any State Act would be repugnant to the Central Act and would be bad. We do not think that there is any substance in this argument. The mere fact that the Central Act 1 of 1944 provides by Sec. 6 for taking out of licence for purchase, sale or storage of tobacco for the purpose of levying excise duty which is within the competence of the Union, does not mean that a State law passed within its legislative power cannot provide for taking out a licence for vend and stocking of tobacco for the purpose of imposing luxury tax, or any other tax which is within the competence of the State. The provision in the Act for taking out a licence is for the due administration of the State law. If under Sec. 6 of the Central Act 1 of 1944 a person engaged in whole-sale purchase, sale or storing of tobacco is obliged to take out a licence, that does not mean that he is not bound to take a licence under the Act passed in the exercise of the power of the State legislature. The requirement of a licence under the Act is for the purpose of enabling the authorities to collect the tax imposed under it at a convenient point.

6. Whether the tax levied under the Act is excise duty and is therefore a levy corresponding to the one under the Central Act 1 of 1944 can be decided only by ascertaining the nature of the levy under the Act. For that purpose it is necessary to have an idea as to what excise duty is.

Excise duty is a tax on the producer or manufacturer in respect of goods produced or manufactured in the taxing territory. It is not necessary that the tax should be imposed at the stage of production or manufacture. (See AIR 1939 1 (Federal Court) . In *Madras Province v. Boddu Paidanna* ILR 1942 FC 33 it was held that duties of Excise are levied on the manufacturer or producer in respect of the commodity manufactured or produced. See also AIR 1945 98 (Privy Council) . In *A.B. Abdulkadir and Others Vs. The State of Kerala and Another*, the Supreme Court said:

It may therefore be accepted that a duty of Excise is a tax on goods produced or manufactured in the taxing territory. It may also be accepted that generally speaking the tax is on the manufacturer or producer, though it cannot be denied that laws are to be found which impose a duty of Excise at stages subsequent to manufacture or production.

In *In re, Sea Customs Act*, S. 20(2) AIR 1963 SC 1760 the court said that Excise duty is not a duty on an article but is duty in respect of and in relation to an article. Tax or fees for licence to stock or sell may well come within excise duty if they are so connected with production or manufacture of the article produced or manufactured or are otherwise imposed as in effect to be a method of taxing the production or manufacture of the article. But if, in fact, unconnected with production or manufacture, and imposed on goods as existing articles of trade stocked or sold, independently of production or manufacture, the tax is not an

excise duty. See per Issac J., in *The Commonwealth and Commonwealth Oil Refineries Ltd., v. South Australia* 38 CLR 408. We do not think that the tax imposed under the Act is in respect of production or manufacture of tobacco. In fact, it cannot possibly be, since the goods in respect of which the tax is levied are produced outside the State, and there can be no question of the State levying an excise duty on them.

Entry No. 62 in List II of the Seventh Schedule reads:

Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

The nature and character of a luxury tax as given in the *Encyclopaedia Britannica*, 14th Edn., Vol. 14, page 507 is as follows:

The imposition of taxes on articles which are deemed to be luxuries may spring from one of two motives, or frequently, from a combination of both. In the first place, the tax may be intended to restrict the expenditure of money in certain directions. Here it forms a part of sumptuary legislation designed to repress the ostentation and extravagance of private persons.....In the second place, luxury taxes are imposed for revenue purposes as a method of taxation of the rich or as a tax on that part of the expenditure of all classes that is regarded either as socially undesirable or as a superfluity over and above all necessary expenditure and therefore a specially appropriate object of taxation.....In modern times there has been a strong tendency for governments to place taxes on certain classes of expenditure which fall rather within the category of what Marshall has termed "conventional necessities" than of what are ordinarily regarded as luxuries. Most expenditure upon alcohol, tobacco, articles of silk, entertainments, private motor-cars etc. is clearly superfluous in the sense that a large part of it is in excess of what is required for economic efficiency and personal well-being

In *The Western India Theatres Ltd. Vs. The Cantonment Board, Poona*, Cantonment, the Supreme Court had to consider whether a tax levied on each show of a film in a theatre is a tax on entertainment or whether it is a tax on trade, business or calling. The court held that the scope of the corresponding Entry in the Government of India Act, 1935, said:

The entry contemplated luxuries, entertainments, and amusements as objects on which the tax is to be imposed.

The court further said that the tax in question there cannot be regarded as a tax imposed on the privilege of carrying on any trade, business or calling as the tax is imposed on every show, that is to say, on every instance of the exercise of the particular trade, calling or employment, and the tax can only be regarded as a tax on entertainment. A luxury tax also is not a tax on the privilege of carrying on a trade or business in articles of luxury. It is a tax on goods or properties as objects of luxury. Sec. 3 of the Act makes it clear that the tax is imposed on

tobacco, as an article of luxury.

The petitioners' counsel relied on the ruling in *Hyderabad Chemical and Pharmaceutical Works Ltd. etc. Vs. State of Andhra Pradesh and Others*, to support the contention that the levy is bad as it is excise duty. The appellant there, manufactured medicinal preparations after taking out a licence under the Medicinal and Toilet Preparations (Duties) Act 1955 and the rules there under. The State of Andhra Pradesh required it to take out a licence and pay licence fee under the Hyderabad Medicinal preparations and Spirituous Rules. The court held that after the coming into force of the Central Act no tax could be levied on the manufacture of medicinal preparations except under that Act the petitioners argued on the analogy of that case that the field being covered by the Central Act 1 of 1944, the State cannot levy a corresponding tax. The ruling does not say that a State cannot levy a tax provided in List II of the Seventh Schedule to the Constitution, merely because of a different levy under a Central enactment. The rulings *M.B.S. Oushadhalaya v. Union of India* AIR 1963 SC 322 and *Indu Bhushan Bose Vs. Rama Sundari Debi and Another*, do not advance the case of the petitioners, as they only lay down the same principle as laid down in *Hyderabad Chemical and Pharmaceutical Works Ltd. etc. Vs. State of Andhra Pradesh and Others*, . The fallacy in the argument of the petitioners is the assumption that what is imposed by the Act is excise duty and not a luxury tax. There are a large number of taxes on goods with reference to the different aspects of goods. Thus a duty of excise, as already said, is in respect of their production or manufacture. A luxury tax is a tax on goods or property in their character as luxury. And, as we have already remarked, if the tax levied by the Act was excise duty, we do not think that the Supreme Court would have remanded the case.

7. Now, let us see whether the levy under the Act directly and immediately impedes freedom of trade, commerce and intercourse. Article 301 provides as follows:

Subject to the other provisions of this Part, trade, commerce and intercourse through out the territory of India shall be free.

In *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, the court observed that the content of freedom under article 301 certainly includes the movement part of trade, as that is the very essence of all trade, and that if goods are taxed solely on the basis that the goods are carried or transported, that would directly affect the freedom of trade guaranteed by article 301. The court further said that it would be reasonable and proper to hold that the restrictions upon freedom which are prohibited by article 301 are such restrictions as directly and immediately restrict or impede the free flow or movement of trade. The court came to the conclusion that since the very purpose and object of the provisions of the statute in question there was to collect tax on goods solely on the ground that they were carried by road or by inland Waterways within the area of the State, there was direct impediment on the very movement of goods. The

majority emphasised that article 301 is mainly concerned with the "movement part of the trade." In *Automobile Transport Ltd. v. State of Rajasthan* AIR 1962 SC 140 Das J., speaking for the majority summarised the effect of articles 301, 302, 303 and 304 as follows: Article 301 imposes a general limitation on all legislative power in order to secure that all trade, commerce and intercourse throughout the territory of India shall be free. That general limitation is relaxed by article 302 in favour of Parliament. But a restriction is put on this relaxation by article 303(1) which prohibits Parliament from giving preference to one State over another or discriminating between one state and another by virtue of the entries there referred to. Similar restrictions are placed also on the States. Article 303 (2) carves out an exception to the restriction placed by article 303(1). Each of the clauses in article 304 operates as a proviso to articles 301 and 303. Article 304(a) places goods imported from sister States on a par with similar goods manufactured or produced inside the State in regard to State taxation within the allocated field. Article 304(b) is the State counter-part to article 302, with the difference specified therein. The learned Judge further said that for a tax to become a prohibited tax it has to be a direct tax the effect of which is to hinder the movement part of the trade, that if the impact of tax on movement part of the trade is indirect and remote it would be unobjectionable, and that the court will have to ascertain whether the law imposing the tax in a given case affects directly the said movement or only indirectly and remotely. In *Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another*, the Supreme Court struck down the levy of tax on sales of tanned hides and skins imported from outside the State of Madras at a rate higher than the rate of tax on sales of hides and skins tanned and sold within the State of Madras in infringing article 304 (a). By Rule 16 framed u/s 19 of the Madras General Sales Tax Act, it was provided that in the case of untanned hides and skins the tax under section. 3(1) of the Madras General Sales-tax Act shall be levied from the dealer who is the last purchaser in the State not exempt from tax u/s 3(3) on the amount for which they are bought by him. By Rule 16(2) it was provided that--(1) in the case of hides or skins which had been tanned outside the State the tax u/s 3(1) shall be levied from the dealer who in the State is the first dealer in such hides or skins not exempt from tax u/s 3(3) on the amount for which they are sold by him; and (ii) in the case of tanned hides or skins which had been tanned within the State, the tax u/s 3(1) shall be levied from a person who is the first dealer in such hides or skins not exempt from tax u/s 3(3) on the amount for which they are sold by him. The tax-payer contended that the tanned hides and skins imported from outside and sold inside the State were under Rule 16 of the Rules subject to a higher rate of tax than the rate imposed on hides and skins tanned and sold within the State and this discriminatory system of taxation offended article 301 and was not saved by article 304(a) of the Constitution. The court accepted the contention and held that Rule 16(2) discriminated against imported hides or skins which had been purchased or tanned outside and therefore contravened article 304(a) of the Constitution. Similarly in *A. Hajee Abdul Shakoor and Company Vs. State of Madras*, the assesseees who were dealers in skins in the

State of Madras, purchased raw skins from places both within and outside the State of Madras. They were assessed to sales-tax in accordance with the revisions of the Madras General Sales Tax (Turnover and Assessment) Rules, on the turnover of hides and skins purchased in the untanned condition outside the State and tanned within the State with respect to the assessment years 1955-56, 1956-57 and 1957-58. The tax was assessed at 3 pies per rupee on the price of tanned hides and skins for the years 1955-56 and 1956-57 and at the rate of 2 per cent on the turnover for the year 1957-58. In petitions filed by the assesses before the Supreme Court under article 32 of the Constitution it was held that section 2(1) of the Madras General Sales Tax (Special Provisions) Act, 1963, discriminated against imported hides and skins which were sold upto August 1, 1957, upto which date the tax on sale of raw hides and skins was at the rate of 3 pies per rupee and was therefore void.

In the two cases the differential treatment violated article 304(a) of the Constitution, which authorises the legislature of a State notwithstanding anything in articles 301 and 303 by law to "impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced". Imposition of differential rates of tax by the same State on goods manufactured or produced in the State and similar goods imported into the State is a direct impediment to the free flow of goods into the State, and is not saved by that clause. But where the taxing State is not imposing rates of tax on imported goods different from tax on goods manufactured or produced, article 304(a) has no application. Article 304(a) has been inserted not because it was necessary to give power to tax goods to a State, for that power was given by the legislative entries, but because it was necessary to limit that power so as to prevent discrimination against imported goods by imposing taxes on such goods at a higher rate than is borne by domestic goods, since the difference between the two taxes would be a barrier against imported goods, and thus offend article 301. In substance article 304(a) affirmatively permits taxes to be levied on goods notwithstanding that the levy offends article 301, but negatively prevents such taxes being discriminatory against outside goods by leaving such levies within the prohibition of article 301. In *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, the sales-tax imposed on tobacco imported into Madhya Pradesh was really a discriminatory tax, as no sales-tax was imposed on the sale of tobacco manufactured or produced in that State. A tax on intrastate sale of goods imported from another State would not per se offend article 301 if there is no manufacture or production of similar goods in the State and therefore no sale of such goods.

In *Andhra Sugars Ltd. and Another etc. Vs. State of Andhra Pradesh and Others*, the court held that if the tax is essentially a tax on the purchase of goods it will not affect in any way the incidental movement of the goods, that a nondiscriminatory tax on goods will not offend article 301 unless it directly impedes the free movement or transport of goods, that it is the free movement

or the transport of goods from one part of the country to another that is intended to be saved, and that if any Act imposes any direct impositions on the very movement of such goods it would offend the provisions of article 301. The court further said that normally a tax on sale of goods does not directly impede the free movement or transport of goods and is not violative of article 301. The court after referring to the observations made by Gajendragadkar J., in *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, said:

Normally a tax on sale of goods does not directly impede free movement or transport of goods.

In *Som Datt Datta Vs. Union of India (UOI) and Others*, the court said that the freedom of trade declared by article 301 is against the imposition of barriers or obstructions within the State as well as inter-state, and all restrictions which directly and immediately affect the movement of trade would offend article 301. Shah J., after quoting with approval the observations of Bachawat J., in *Andhra Sugars Ltd. and Another etc. Vs. State of Andhra Pradesh and Others*, that normally a tax on sale of goods does not directly impede the free movement of trade, said that the tax under the Central sales-tax Act on inter-state sale is in essence a tax which encumbers the movement of trade or commerce, since by the definition in section 3 of that Act a sale or purchase of goods is deemed to take place in the course of inter-state trade or commerce if it (a) occasions the movement of goods from one State, to another; (b) is effected by a transfer of the documents of title during their movement from one State to another. The court held in that case that the provision of the Central Sales Tax Act which permitted levy of tax at varying rates on sale of goods of the same commodity in different States would not offend article 303. Bachawat J., was of opinion that article 301 makes no distinction between movement from one part of the State to another of the same State and movement from one State to another, that if a tax on intrastate sale does not offend article 301, logically, a tax on interstate sale cannot do so, that on principle there is no distinction between a tax on intrastate sale and tax on inter-state sale, and that an intrastate sale may occasion the movement of goods from one part of the State to another part of the State just as an interstate sale would occasion the movement of goods from one State to another. He quoted with approval the following observations of Jagannatha Das J., in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, :

Now it is not disputed that a tax on a purely internal sale which occurs as a result of the transportation of goods from a manufacturing centre within the State to a purchasing market within the same State is clearly permissible and not hit by anything in the Constitution. If a sale in that kind of trade can bear the tax and is not a burden on the freedom of trade, it is difficult to see why a single point tax on the same kind of sale where a State boundary intervenes between the manufacturing centre and the consuming centre need be treated as a burden, especially where that tax is ultimately to come out of the residents of

the very State by which such sale is taxable. Freedom of trade and commerce applies as much within a State as outside it. It appears to me again, with great respect, that there is no warrant for treating such a tax as in any way contrary either to the letter or the spirit of the freedom of trade, commerce and intercourse provided under article 301.

He also observed that the tax is on the sale, and that the movement is only incidental to and a consequence of the sale, that a remote and incidental impact on movement is insufficient to hold that article 301 has been contravened and that in the very nature of things, it is difficult to ascertain the various factors that impede the free flow of trade or to assess their importance.

Although the petitioners contended that there was large scale cultivation and production of tobacco in the area of the erstwhile Travancore State there is no evidence to show that tobacco cultivation was carried on in large scale in that area. In the original counter affidavit filed by the State it was alleged that there was no tobacco cultivations in the erstwhile Travancore or Cochin State. But in a supplementary affidavit it is stated that in the Kanyakumari district which formed part of the erstwhile Travancore State there was tobacco cultivation in small areas on an experimental basis. We do not think that cultivation of tobacco in small areas on an experimental basis need be taken into account as it was very nominal. There is no evidence that cultivation of tobacco in the small areas was successful. Therefore, the luxury tax on tobacco imposed by the Act is a non-discriminatory tax.

8. Article 301 guarantees no immunity from taxation, even though the tax may be burdensome because of its amount, unless of course, it is proved that it operated as a direct impediment on the movement of trade which can seldom be the case when the tax is on the goods themselves, as distinguished from their movement from one place to another, or that the tax is so arbitrary and exorbitant as to compel the conclusion that it is not the result of an exertion of taxing power, but constitute-in substance and effect the exertion of a different and forbidden power, as for example of the confiscation of property. A discriminatory tax on goods imported from outside the State is indirectly tabooed by article 304 (a). A statute may show on its face that it is aimed at suppressing or placing at a disadvantage out-of-state business brought into competition with competing local business. In that situation, the court has no difficulty in making a summary condemnation of the tax on the ground that it discriminates against inter-state commerce. Even if a tax is nondiscriminatory in form, if in its practical operation, the tax gives the local business a competitive advantage over inter-state business, it is discriminatory. We do not think it necessary to deal at length, with the concept of tax discrimination introduced by Justice Stone in *Gwin, White & Prince v. Henneford* 305 US 434. He said that inter-state commerce is discriminated against if it is subjected because of its multifarious aspects to the risk of cumulative tax burden not borne by local business, even though the taxing State has in no sense purported to play

favourites with its own business. A tax does not discriminate against interstate commerce? if other related taxes impose equal burden on local commerce.

The distinction between direct and indirect burden is, however, very difficult to make. In deciding whether a State law directly affects trade and commerce one approach has been simply to balance the State and national interests. Thus in *Cities Service Co. v. Peerless* 340 US 179 the Supreme Court of the United States of America said:

The only requirements consistently recognised have been that the (State) regulation not discriminate against, or place an embargo on inter-state commerce, and that local interest at stake outweigh whatever national interest there might be in the prevention of state restrictions.

The problem, according to the decisions of the American Supreme Court, is that of determining the extent of the burden on trade and commerce which may be regarded as burdening it directly. As already indicated, those taxes which directly impede the movement part of trade and those which discriminate between different regions, would be regarded as imposing direct burdens on trade and commerce. Possibly those taxes which do not discriminate but subject the inter-state commerce to the risk of multiple taxation not borne by the intra-state commerce might also be held as direct burdens. It has been observed by an American writer:

If, in fact, a heavier burden happens in some cases to fall on interstate than on local commerce, this is merely the accidental incident of interstate commerce being subject to two different taxing jurisdictions. Such inequality is inevitable under our federal system, and is just as likely to work to the advantage of interstate commerce as to its disadvantage. To condemn all taxes affecting interstate commerce because of the possibility of such inequality would be utterly impractical, and would result in condemning most of the current taxation by which interstate commerce pays its fair share of the local tax burden. (See 57 Harvard Law Review 40).

Very often the discrimination may be in a disguise which will be revealed by a little probing. Similarly a tax may be operating exclusively on interstate commerce yet in fact it may not be discriminatory, which also may be revealed by a little examination. This requires economic expertise on the part of the judiciary. In the tax area, probably because of greater difficulty in evaluating complicated economic factors involved, the courts have remained content with formal discriminations.

Where economic evaluation can readily be undertaken by a non-expert judicial body, the American courts have been willing to look beyond an apparent discrimination.....Where the economic calculations have been more complicated and less susceptible of judicial analysis, the court has refrained from this kind of enquiry and has struck down the formal discriminations even though urged by the state to undertake a comprehensive evaluation of the tax in the

context of the entire range of state taxes imposed on local business. (See. the passage quoted in 10 J.I.L. 1968 at page 566--"Restrictions on State Power in Interstate Trade" by S.N. Jain.)

In *State of Madras v. Nataraja Mudaliar* AIR 1969 SC. 147 the Supreme Court went behind the apparent discrimination involved in the differential levy of sales-tax in the various States and held the levy to be non-discriminatory.

We have already indicated that although the tax is levied in the form of a licence fee, the tax is not on the privilege of carrying on the business of stocking or sale of tobacco. An exaction for the privilege of engaging in inter-state commercial activity is always suspect. Generally such a levy would be considered to burden inter-state commerce directly, whatever be its measure or amount. A State cannot normally have the power to tax the privilege of carrying on inter-state commerce because it is a privilege guaranteed by article 301 of the Constitution. In *Commonwealth of Australia v. Bank of New South Wales* 1950 AC 235 at 305 the Privy Council said that section 92 of the Australian Constitution "gives the citizens of the State or Commonwealth as the case may be the right to ignore and if necessary to call upon the judicial power to help him to resist, legislative or executive action which offends against the section". (See the passage quoted with approval by the Supreme Court in *Dist. Collector of Hyderabad and Ors. v. Ibrahim and Co. Etc.* 1970 2 SCWR 267 at 274. Even here the authorities are not uniform. The decision in *Interstate Oil Pipe Line Co. v. Stone* 337 US 662 would support the proposition that a tax may be imposed for the privilege of carrying on a local activity which is inseparable from inter-state commerce. In that case the court observed:

The statute is not invalidated by the commerce clause of the Federal Constitution merely because, unlike the statute attacked in *Memphis Natural Gas Co. v. Stone* (US) supra, it imposes a "direct" tax on the privilege of engaging in interstate commerce. Any notions to the contrary should not have survived *Maine v. Grand Trunk R. Co.* 142 US 217.....which flatly rules the case at bar. That case sustained a state statute which imposed upon an interstate railroad corporation "an annual excise tax (measured by apportioned gross receipts), for the privilege of exercising its franchises in this State".

9. As we have already indicated, since the tax is on tobacco as an article of luxury, and the fee for licence for vend or stocking is really a tax imposed on tobacco on the occasion of stocking or vending tobacco and is geared to the quantity of tobacco stocked or sold, the tax is really upon property within the State, after the inter-state journey is over. Property or goods brought into a State, after the inter state movement is over, is not immune from local tax. Things acquired or transported in inter-state channel may be subjected to a tax, non-discriminatory in operation when they have become part of the common property within the State of destination. This is true even though the goods taxed are in original packages. The tax is upheld on the familiar ground that the effect on inter-state commerce is too indirect. See *Sonneborn Brothers v.*

Cureton. The inter-state character of the trade or commerce once begun does not last for ever. The point at which it ceases and trade in goods assume true intra-state character must depend upon the facts and circumstances. Whether a sale which if taken by itself would purely be domestic in operation is to be so regarded notwithstanding the previous interstate movement of goods, is a business question, and is determined by its connection or want of connection with the other circumstances as then understood from business standpoint. See *The Commonwealth and Commonwealth Oil Refineries Ltd. v. South Australia*. Therefore, even if tobacco imported into the state is in original package when stocked or sold, the tax will be tax on goods which have become part of the goods of the State. One should not avoid tax upon a taxable business by also going into non-taxable aspects of the business. To give complete freedom from taxation under such circumstances would result in an area of tax immunity that would virtually dry up the needed revenue for the State. Certainly one cannot avoid a tax on goods as objects of luxury, merely on the ground that the goods have been previously transported to the State from another State. For, it is not the purpose of article 301 to relieve those engaged in inter-state commerce from their just share of State tax burden even though it increases the cost of doing business. A luxury tax on tobacco imported into the State on the local event of stocking and sale in the State, whether the event is part of inter-state, or intra-state trade, must be sustained if it is non-discriminatory. There is no reason why inter-state trade should have a preference when it engages in intra-state activity or why it should not "pay its way". Justice Holmes in *Galveston H. & S. A. Ry. v. Texas* 210 US 217, 225:

Not every law that affects commerce among the States is a regulation of it in a constitutional sense and nice distinctions are to be expected. Regulation and commerce among the States both are practical rather than technical conceptions, and naturally, their limits must be fixed by practical lines.

Inter-state Commerce should bear its just and fair share of tax burden of the State under whose protection it is carried on. The tax is levied under the power conferred on the State legislature by a specific legislative entry, namely entry 62 in List II of the seventh Schedule; and freedom of trade and commerce guaranteed by article 301 must be subject to the normal power of taxation for revenue purposes. Taxation per se under the authorised heads in List II would not be a burden on the freedom of trade and commerce, if the taxation is not confiscatory so as to kill the trade or commerce, or discriminatory in character. This is not a case where the tax is levied on tobacco on the sole ground that tobacco has come from another State or with a view to prohibit or restrict the flow of trade in the goods taxed, or that the tax had actually that effect. The tax is imposed in respect of goods that have become part of the goods of the State and are stocked to be sold in the State. The inter-state journey has ended. The goods have reached the State of destination. There is no further inter-state journey or movement. A tax on goods by the State of destination at the conclusion of this inter-state journey is not a burden on inter-state trade or

commerce. See *J.D. Adams Manufacturing Co. v. William Storen*. 304 US 307, 311.

In *Wragg v. New South Wales* 1953 88 CLR 353 the plaintiffs in the case who imported potatoes grown in Tasmania to New South Wales, prayed for a declaration that the legislation fixing the price of potatoes in New South Wales affected their freedom of trade and commerce, and was, therefore, bad. The substance of the plaintiffs' argument was that the prescription of maximum prices at any stage of the marketing in New South Wales of Tasmanian potatoes directly burdened or interfered with interstate trade as such.

Dixon J., observed:

It is, I think, undeniable that once the potatoes imported from Tasmania in the course of business which it described in the case stated have been delivered from the wharf in Sydney and further dealing with them by sale or other disposition forms part of the domestic trade of New South Wales. If any such sale is brought within the protection of s. 92, so that it cannot be governed by State legislation fixing the maximum price, it can only be on the ground that the fixing of the maximum price for the domestic sale produces economic consequences prejudicing importation because it affects the domestic price which an importer can afford to pay. This cannot, in my opinion justify the application of S. 92 to the transactions. The law restricting the price is not one operating in reference to or in consequence of any matter or thing itself forming part of trade, commerce or intercourse among the States. It does not limit the legal freedom to import potatoes or buy for shipment from Tasmania. Its operation is to create conditions of trade in potatoes within New South Wales which react on the economic, not the legal capacity of the trader desiring to import Tasmanian potatoes. The economic consequences which it may have upon inter state trade may well be serious, but that is a different thing from interference by law or government action with the freedom which s. 92 confers. When it is said that s. 92 gives protection against restrictions upon trade, commerce and intercourse among the States which are direct as distinguished from laws or governmental acts which involve some indirect or consequential prejudice, it is this kind of thing that is contemplated. On the other hand if the operation of the law is upon acts, matters or things which in themselves form part of inter-state trade I do not suppose that it matters that it is done by circuitous or devious means.

This case, in short, expresses the principle as regards the imposition of restrictions on domestic trade which might well have serious economic effect upon inter-state trade and commerce by raising the price of the commodity in question.

But for one aspect of the levy which we shall presently consider, we do not think that the tax in question can be said to offend article 301 of the Constitution. The imposition of a non-discriminatory tax on tobacco cannot normally impede the free movement of goods. Except that the Price of tobacco would be raised by the

amount of tax, and to that extent, operate as a deterrent on the consumption of tobacco in the area of the State to which it was imported, we do not think, that the imposition of the tax do not directly and immediately impeded the free movement of tobacco into the area even if a diminution in sale might be an economic consequence. The aspect we have in mind is this. Here the tax is in respect of goods brought into the taxing territory--in fact, as we have found, there are no similar goods produced within the territory--and it is levied in the shape of a fee for a licence which has to be taken before the goods are brought in. Now, whatever be the nature of the tax whatever be the taxable event, whether or not it be the movement of the goods, would not the levy of as a condition precedent to the entry of goods to a place directly impede the flow of trade to that place even if the taxable event be something that happens after the goods have come to rest therein and the levy as a condition precedent to entry is only for convenience of collection. We are inclined to the view that it would, but we think it unnecessary to decide the question since we have come to the conclusion that, in any event the levy we are here considering is saved by article 304(b)...

10. The next question for consideration is whether, assuming that the tax in question would offend article 301, it would be saved by article 403 (b) which provides.

Notwithstanding any thing in article 301 or article 303 the Legislature of a State may by law--

(b) impose such reasonable restrictions on the freedom of trade, commerce or inter-course with or within that State as may be required in the public interest.....

The exercise of the power of taxation is normally presumed to be in the public interest. See *State of Madras v. Nataraja Mudaliar* AIR 1969 SC. 147. We see no reason to hold that the imposition of luxury tax on tobacco for regulating the consumption of tobacco and for raising revenue for the State is not in the public interest.

The expression reasonable restrictions.....in the public interest, in article 304 (b) has the same connotation as the like expression in article 19 (6). In *Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam*, the court in considering whether retrospective imposition of the tax in question there would be reasonable restriction in public interest within the meaning of article 304 (b), said:

It is not disputed by Mr. Pathak that a taxing statute can be passed retrospectively, and it is conceded that if such a statute is passed in it would not be possible for any person to challenge its validity on the ground that it affects the citizens' fundamental right under article 19(1)(g). If such a challenge is made, it would be easily met by the plea that a taxing statute, though retrospective in its operation, can be reasonable and in the public interest within

the meaning of clause (6) of Art. 19. Therefore, if a taxing statute can, in a given case, operate retrospectively and its validity cannot be successfully challenged under Art. 19, we do not see how a similar challenge could be sustained against a taxing statute which has been passed under Art. 304 (b).

See also *Virajlal Manilal and Co. and Others Vs. State of Madhya Pradesh and Others*, . When article 304 (b) speaks of restrictions on freedom of trade and commerce with or within that State, the idea of the restrictions having impact both on domestic and interstate trade is explicit. In this connection it may be remembered that the State legislature has no power to legislate upon inter-state commerce, as the subject is within the jurisdiction of the Parliament. See entry 42 in List I. The power of the State legislature is confined to "trade and commerce within the State". See entry 26 of List II. But a State law passed in the exercise of its power under any of the entries in List II might in some aspect deal with inter-state commerce. Though that legislation might in pith and substance deal with topics in the State List, its provisions might place direct burdens on inter-state commerce and would operate as ? restrictions on the freedom of trade or commerce with that State. Article 304(b) authorises the State to impose such burdens or restrictions.

In America the power to regulate inter-state commerce vests in the Congress. In *Brown v. Maryland* 4 Wheat 316 US 1819 Chief Justice Marshall committed the court to the view that the commerce clause impliedly prohibited all State regulations of inter-state commerce. He, however, recognised that there are matters primarily of local concern, the regulation of which would unavoidably affect inter-state commerce, and notwithstanding the commerce clause, he would leave the regulation of such matters to the States. In *Cooley v. Port of Warden* 12 How. 299 US 1851 the court propounded a new principle. That principle was to divide the possible subject of regulation of inter-state commerce into two clauses: (a) those national in character and requiring uniform rules of regulation as to which the power of Congress was exclusive, and (b) those local in character permitting or adapted to diversity of regulation as to which the power of the State was said to be concurrent. In *California v. Zook* 336 US 725 the Court has accepted the broad delineation of the areas of State and national power over inter-state commerce indicated in *Cooley v. Port of Warden* 12 How. 299 US 1851. The court said:

Absent congressional action, the familiar test is that of uniformity versus locality. If a case falls within an area in commerce thought to demand a uniform national rule, state action is struck down. If the activity is one of predominantly local interest, state action is sustained. More accurately, the question is whether the state interest is outweighed by a national interest in the unhampered operation of inter-state commerce.

In *Cities Service Gas Co. v. Peerless Oil & Gas Co.* 340 US 179 the Court said that it "is now well settled that a state may regulate matters of local concern over which federal authority has not been exercised, even though the regulation

has some impact, on inter-state commerce". The position, therefore, is clear that a State can regulate some aspects of inter-state commerce. But whether it can under this concurrent power impose tax on inter-state commerce has been doubted. May it has been denied in some cases. See *Freeman v. Hewitt* 329 US 249.

Whatever that might be, in the Indian Constitution the matter is not left to implication. The States are given power to impose restrictions on the freedom of trade commerce and intercourse with or within that State, provided the previous sanction of the President or his subsequent assent which by virtue of article 255 would be equivalent to previous sanction to the legislation imposing the restriction is obtained. Whatever doubt might exist as to the extent of the power of a State to impose restriction upon trade, commerce or intercourse with that State, there can be no doubt that the restriction ex-hypothesi assumed to be implied in the imposition of a luxury tax on goods imported into the T.C. State or that part of the Kerala State in the form of a licence fee and making the payment of the tax even a condition precedent to the importation of the goods into that State or that part of the Kerala State, is a restriction upon the freedom of trade and commerce with the T.C. State or the Kerala State as the case may be, coming within the purview of article 304(b), and that the imposition would be saved if the previous sanction or subsequent assent of the President is obtained.

11. In *Commonwealth and Commonwealth Oil Refineries Ltd. v. South Australia* 38 CLR 408 one question was whether the imposition of the tax in question there would violate section 92 of the Australian Constitution. Issac J., said:

There is a tax of three, pence per gallon imposed on "vendors" of motor spirit in respect of certain sales and deliveries in South Australia. A sale and delivery which renders the vendor liable to pay the tax is described in a way which, to my mind, includes cases that come very plainly within the ambit, not only of foreign commerce but also of that national species of trade and commerce called in the Constitution "trade and commerce among the States".

Starke J., observed:

Another attack upon secs. 2, 4, and 7 of the South Australian Act was based upon sec. 92 of the Constitution: "On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free., The prohibition by a State of inter-state sale of commodities, either absolutely or subject to conditions imposed by State law, is a contravention of sec. 92. (*W & A. McArthur Ltd., v. Queensland*--28 CLR 555).

We do not think that the tax here, is on the importer in his capacity as importer. The tax is on goods in the State of destination after the inter-state movement is over and imposed on the occasion of the local event of stocking or sale. That apart, article 304(b) authorises a State to impose restrictions on the freedom of trade, commerce and intercourse with or within that State. So even if the tax in

question operates as a restriction on trade and commerce with or within the State, article 304 (b) would save it. We also think that there is no scope so far as article 304(b) is concerned for making a distinction between restrictions in the form of a tax another restrictions as held in the American case referred to above (Freeman v. Hewitt 329 US 249) for our Supreme Court has in Automobile Transport Ltd. v. State of Rajasthan AIR 1962 SC 140 held that though a "tax" is specifically mentioned in clause (a) but not in clause (b) of article 304, the expression "reasonable restriction" in clause (b) includes "taxing laws". To sum up this part of the case:

- (1) The levy being in respect of goods produced outside the State, cannot be, and is not, an excise duty falling within entry 84 of the Union List.
- (2) The tax is on tobacco, an article of luxury consumed within the taxing territory, levied on the occasion of its stocking and vending by the importers into the taxing territory. It clearly answers the description of luxury tax falling within entry 62 of the State List.
- (3) There being no competing internal goods, the mere fact that the levy is only on imported goods can only have, like any other tax, the economic effect or reducing the demand by reason of increasing the price. The consequent diminution in the quantity of goods imported into the taxing territory is too remote an effect to be a direct impediment to the free flow of trade offending article 301 of the Constitution.
- (4) However, the payment of the tax in the shape of a licence fee being a condition precedent to bringing the goods into the taxing territory, there would appear to be a direct impediment on the free flow of goods and therefore of trade into that territory notwithstanding that the taxable event is not the movement of the goods but their stocking after completing their journey and reaching their destination, the levy in advance being only for convenience of collection.
- (5) Even assuming that the levy offends article 301, it is saved by article 304 (b) being a reasonable tax levied in the public interest, the condition in the proviso there to being satisfied by the assent of the President on view of article 255.
- (6) The guarantee in article 301 and the saving in article 304 (b) being in respect of both inter-state and intra-state trade, the fact that the taxing territory is only a part of the State is no consequence.

12. The next question is whether the imposition of the tax in the particular geographical area alone of the State would Violate the provisions of article 14. The contention is that the law has been made applicable only to that part of the Kerala State which once formed the State of Travancore and Cochin and that it has been made applicable even to this area only for the period from 17-8-1950 to 31-12-1957. In "Willis on Constitutional Law" at 587, it is stated: The Supreme Court permits a wider discretion in classification under power of

taxation, if possible, than it does under the police power. One reason for this undoubtedly is the urgent need for revenue by the various governmental agencies. A state does not have to tax everything in order to tax something. It is allowed to pick and chose districts, objects, persons, methods and even rates for taxation if it does so reasonably.

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The equality clause does not forbid geographical classification. A state, if it desires may levy taxes over the entire state and thus make the state the unit; but if the state desires, it, may establish taxing districts or other sub-divisions, like a city or territory within a city. In such cases all that is required is the same basis of classification within the district or subdivision.

The geographical classification he is sought to be justified on the basis of historical reasons. That the laws that were in existence in the areas which went to from the Kerala State were distinct and hard different implications is not denied. Nor is it possible to say that there were not two enactments which allowed impost and collection of licence fees for the vend and stocking of tobacco. Although these statutes stood repealed on April 1, 1950, the collection was going on as if they were still in existence till the Supreme Court clarified the position in the decision reported in A.B. Abdulkadir and Others Vs. The State of Kerala and Another, . That was in January 1962. Due to these historical reasons, if the legislature decided to make a geographical classification and limited the impost for the duration when collections were originally and actually made, it is certainly not for this court to say that the classification is unwarranted or that it infringes article 14 of the Constitution. See the decision in Nazeeria Motor Service case 969--21 SCC 576. The contention has, therefore, to be rejected.

The last contention was that the provisions of sections 5 and 6 of the Act are bad as they envisage a direct usurpation of judicial function by the State legislature. When a legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition is that the legislature must posses the power to impose the tax. "Granted legislative competence, it is not sufficient to declare merely that the decision of the court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not posses or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometime this is done by re-enacting

retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Some times the legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon courts. The legislature may follow any one method or all of them and while it does so it any neutralise the effect of the earlier, decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the legislature and legal and adequate to attain the object of validation if the legislature has the power to make a valid law, it can at any time make such a valid law, and make it retrospectively so to bind even past transactions. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the validating law for a valid imposition of the tax" (See the headnote of *Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others*, . See also *R.L. Arora Vs. State of Uttar Pradesh and Others*, and *Jaora Sugar Mills (P) Ltd. Vs. State of Madhya Pradesh and Others*, . What was held in *A.B. Abdulkadir and Others Vs. The State of Kerala and Another*, was that excise duty on tobacco can be levied only under the Central Act 1 of 1944 after it was extended to the Part B State of Travancore-Cochin on 1-4-1950, and so the collection of licence fees from the petitioners under the provisions of the Travancore and Cochin Tobacco Acts and the rules thereunder was invalid. The cause of the ineffectiveness or invalidity of the collection has been removed by the Act. The levy of luxury tax under the Act is within the legislative jurisdiction of the State. The levy is made with retrospective effect, in short, what the legislature has done is to impose a tax within its competence with retrospective effect with a provision to appropriate collection made under the Travancore and Cochin Tobacco Acts and the rule thereunder towards tax due under the Act. The rulings in *Municipal Corporation v. Ahmedabad Etc. v. State of Gujarat Etc.*) 1970 1 SCWR 775 and *Janapada Sabha v. C.P. Syndicate Ltd. & Ors* 1970 1 SCWR 820 are irrelevant in this context, as in those cases the cause of invalidity of the C levy was not removed by the legislature." In those cases the directions in the enactments in question there not to refund the tax made in the judgments or orders of the courts were held to be invalid as they amounted to usurpation of judicial function by the legislature. In those cases the cause of invalidity of the law imposing the tax was not removed by the legislature in the validating Acts.

We dismiss the writ petition, but in the circumstances, without any order as to costs.