
(1998) 11 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16909 of 1996

ITC Limited, Secunderabad and another

APPELLANT

Vs

State of Andhra Pradesh and others

RESPONDENT

Date of Decision : 12-11-1998

Acts Referred:

Andhra Pradesh Tax on Luxuries Act, 1987 — Section 10, 10(A), 10(B), 11, 12

Andhra Pradesh Tax on Luxuries Rules, 1987 — Rule 16

Central Sales Tax Act, 1956 — Section 14, 15, 3(1)

Coal Mines (Nationalisation) Act, 1973 — Section 69

Constitution Act — Section 100(1), 213

Mines and Minerals (Regulation and Development) (Amendment) Act, 1957 — Section 2

Tobacco Board Act, 1975 — Section 13, 14A

Citation : (1999) 1 ALD 28 : (1998) 6 ALT 318

Hon'ble Judges : T. Ranga Rao, J;S.V. Maruthi, J

Bench : Division Bench

Judgement

S.V. Maruthi, J.—These writ petitions are filed challenging the validity of the Andhra Pradesh Tax on Luxuries Act, 1987 as amended by Act No.28 of 1996 (hereinafter referred to as the impugned Act) on the ground that it is ultra vires Articles 14, 245, 246, 265, 269, 286, 301 and 304 of the Constitution of India and, therefore, unconstitutional and void as the purported levy of the tax is in effect and substance a tax on sales and, therefore, void, and ultra vires the Section 15 of the Central Sales Tax Act, 1956, and consequently the 1st respondent has forfeited its entitlement to "its proportionate share of additional excise duty collected by the 2nd respondent under the provisions of the Additional Duties of Excise (Goods of Special Importance) Act, 1957. WPNo.16909 of 1996 is filed by M/s. ITC Limited, WP No.16913 of 1996 is filed by M/s. VSR Industries Limited.

2. WP No.16914 of 1996 is filed by M/s. Godfrey Philip Limited and others and WP Nos.1560 of 1997 and 25071 of 1997 are filed by M/s. Purandas Ranchodas and Sons and others. The 1st respondent is the State of Andhra Pradesh and the 2nd respondent is the Union of India, the 3rd respondent is the Chairman,

Central Board of Excise and Customs and the 4th respondent is the Commissioner of Commercial Taxes. By WP No. 16909 of 1996, the petitioner is challenging the levy of luxury tax on cigarettes and tobacco products at a rate of 5% on manufacturers and importers of all forms of manufactured tobacco including cigarettes. Originally an ordinance was promulgated on 1-8-1996 amending the AP Tax on Luxuries Act 1987 (State Act 24 of 1987). The said ordinance later on became an Act (Act No.28 of 1996). The petitioners in other writ petitions also challenged the validity of the Act No.9 of 1997.

The Facts in Brief are as follows:

There was a meeting of the National Development Council in December, 1956 and in the said meeting, it was unanimously decided that sales tax levied inter alia on tobacco including manufactured tobacco should be replaced by a surcharge as Central Excise Duty levied on these articles and that the income derived from this measure should be distributed amongst the States. Pursuant to the said meeting there was an agreement between the State and the Centre and the Centre decided to levy an additional excise duty on the three goods viz., textiles, tobacco and sugar treating these goods as the goods of special importance. By virtue of the said agreement, the States were allowed to share the additional duties of excise collected under the Additional Duties of Excise (Goods of Special Importance) Act of 1957 in lieu of Sales Tax to be levied by the States on the three commodities, in other words, the States have agreed not to levy sales tax on tobacco as they were given a share in the additional excise duty collected by the Centre under the Additional Duties of Excise (Goods of Special Importance) Act, 1957. However, in spite of the said agreement, the impugned Act was passed levying luxury tax on tobacco. Though the Act imposes a tax on luxuries, it is a sales tax under the guise of luxuries tax. Tobacco cannot be regarded as a luxury as there are number of tobacco products like cigars, cigarettes, zarda, etc. Some of these are very cheap and used by the economically weaker sections of the Society. Therefore, under the original Act, luxury tax is levied on hotels and corporate hospitals only when the daily charge exceeded to Rs.500/- and Rs.600/- respectively. In the case of tobacco product, tax is imposed on all items without reference to price. Tobacco smoking may be a vice but it is not a luxury.

3. The Counsel submitted that the levy of tax on luxuries is in pith and substance a tax on sale for the following reasons:

That a tobacconist is subjected to pay a tax on supply of luxuries viz., tobacco products specified in the Schedule by way of sale or otherwise; that under the 1st proviso, a Tobacconist whose turnover receipt in a year is less than Rs.2.00 lakhs is exempted from tax, and, under the 2nd proviso, a tobacconist who sells the tobacco products in small bunk is also exempted from payment of tax and under the 3rd proviso a consignment sale, and an inter-State Sale is also exempted. Section 29 read with Section 3A of the impugned Act empowers the State Government to notify exemptions and deductions of tax or interest. Section

29 read with Section 3A indicates that the intention of the Legislature under the Act is to levy tax on sales of tobacco; that there is no distinction between the supply of luxury and sale of luxury as the supply of tobacco and sale of tobacco include transfer of goods i.e., property in goods is transferred for consideration. In other words, there is transfer of ownership in goods for a consideration. Therefore, the incidence of tax is on sale of tobacco products. If it is not a tax on sale of tobacco, there is no need to exempt a tobacconist whose turnover receipts are less than Rs.2.00 lakhs under the 1st proviso and the tobacconist who sells tobacco products in small bunks and the consignment of sale, and inter-state transactions under the 3rd proviso. The very fact that inter-state transaction of supply of tax is exempted from the levy of tax is a pointer to indicate that, in pith and substance, the levy is on the sale of tobacco. Article 286 of the Constitution provides restriction as to imposition of tax on the sale or purchase of goods. It imposes a prohibition prohibiting the State from imposing a tax on the sale or purchase of the goods. Under Sub-Article (3) of Article 286, the Parliament declared certain articles as articles of special importance, one of which is tobacco and enacted the CoBral Sales tax Act. u/s 14, it has declared tobacco as one of the goods of special importance and u/s 15 the maximum tax that is levied is 4%. Therefore, in view of the Central Sales Tax Act declaring tobacco as one of the goods of special importance and levying tax at 4% i.e., levy of 10 ps. on chewing tobacco preparations commonly known as Khara Masala, Kimam Zarda, Dokta, Sukha and Surti in every rupee is inconsistent with the said declaration. If the levy is a tax on luxuries, then there is no need to exempt inter-state transactions as Article 286(3) (a) and (b) will apply only to a tax on sale or purchase of goods by Parliament to be of special importance in interstate trade and commerce. The learned Counsels for the petitioners also submitted that in construing the scope of the Act the cumulative effect of all the provisions of the Act have to be taken into account by determining whether it is a tax on sale or not.

4. The tobacco industry is a declared industry. Under Entry 52 of List I, the Parliament enacted a comprehensive legislation on the subject and passed Tobacco Board Act 1975. The entire field of legislation in regard to the tobacco industry is thus occupied by the Tobacco Board Act of 1975. In other words, the Tobacco Board Act, 1975 has occupied the field and once the Parliament has occupied the field, the State cannot encroach upon the said field and, therefore, any enactment by the State will be without legislative competence.

5. The levy of tax on sale of tobacco directly impede the movement of goods and obstruct the free movement of trade and, therefore, it should be struck down as violative of Articles 301 and 302 as no assent of the President was obtained under Article 304(b) of the Constitution. Sri M. S. Murthy, learned Counsel appearing for the petitioners in WP No.25071 of 1996 in addition challenged the levy of 50 ps. on every rupee on chewing tobacco preparations commonly known as Khara Masala, Kimam, Zarda, Dokta, Sukhaand Surti by Amending Act of 1997 (Act 9 of 1997) as arbitrary, discriminatory and confiscatory and violative of

Article 14 of the Constitution of India. The learned Counsel for the petitioners strongly relied on the judgment of the Supreme Court in *I.T.C. Ltd. and Others Vs. State of Karnataka and Others*, wherein it was held that State of Karnataka is not competent to levy market fee in respect of tobacco under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 because that directly clash with the Tobacco Board Act of 1975, and contended that since the Tobacco Board of 1975, has occupied the field, the State Government is not competent to levy luxury tax on tobacco as it would amount to encroaching upon the field occupied by the Parliament.

6. While the learned Advocate-General contended that the impugned enactment is within the legislative competence of the State Legislature under Entry 62 of the Constitution. It is not a tax on sale of tobacco, but it is a tax on supply of luxury viz., tobacco; the concise Oxford Dictionary meaning of supply is to provide or furnish and, therefore, it is a tax on supply of luxuries viz., tobacco. The essential character of levy is a tax on supply of luxury viz., tobacco. It is, only, as a matter of convenience that sale is adopted as a yardstick or measure for assessing the tax. The fact that the incidentally it takes the sale as a measure for the levy of tax does not change the essential character of levy. In support of his contentions, he relied on: *re C.P. Motor Spirit Act* - Federal Court AIR 1939 FC 111; AIR 1949 81 (Federal Court); *R.R. Engineering Co. Vs. Zila Parishad, Bareilly and Another*, *A.B. Abdul Kadir and Others Vs. State of Kerala*, *Union of India (UOI) and Others Vs. Bombay Tyre International Ltd. and Others*, *State of Bihar v. Bihar Chambers of Commerce* : [1996]2SCR184 .

7. The learned Advocate-General also submitted relying on *A. V. Abdul Kadir*'s case (supra), *Express Hotels Private Ltd. Vs. State of Gujarat and Another*, and *re C.P. Motor Spirit Act* (supra) that the Supreme Court have declared that tobacco is a luxury . and, therefore , it is not open to the petitioners now to raise a debate contending that tobacco is not luxury; the impugned enactment neither overlaps nor encroaches upon the field occupied by the Parliament; the levy is on luxury but not per se on sale of tobacco. Therefore, the Legislature is not making any inroads into the field occupied by the Parliament. Taxing power is not a part of regulation and judgment of the Supreme Court in *ITC Limited*'s case (supra) has no application to the facts of the present case; elaborating his argument he contended that a distinction should be drawn between tax and fee. Relying on *H.R.S. Murthy Vs. Collector of Chittoor and Another*, *Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another*, *Ishwari Khetan Sugar Mills v. State of V.P.* AIR 1980 SC 697, and *BR Engineering Co.*'s case (supra) emphasized that the power to levy a tax is an essential part of sovereignty itself and relied on the following passage in *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, wherein the learned Judges referred to the observations made in *Cooley*'s "Constitutional Limitations" on the power of taxation:

"The power to impose taxes" says the author is one so unlimited in force and so

searching in extent, that the Courts scarcely venture to declare that it is subject to any restriction whatever, except such as rest in the discretion of the authority which exercises it" (Cooley's "Constitutional Limitations". Vol.2.8th. Ed,, p.986).

8. The Advocate-General also relied on the following observations of the Chief Justice Marshal in *MC. Cullock v. Maryland*, (1879) 4 Whe316 which were referred by the learned Judges in *Atiabari's* case (*supra*):

""The power of taxing the people and their property is essential to the very existence of the Government, and may be legitimately exercised on the objects to which it is applicable to the utmost extent to which the Government may choose to carry it. The only security against the abuse of this power is found in the structure of the Government itself.""

9. The learned Advocate-General also relied on the following observations:

"Therefore the true position appears to be that, though the power of levying tax is essential for the very existence of the Government, its exercise just inevitably be controlled by the constitutional provisions made in that behalf. It cannot be said that the power of taxation per se is outside the purview of any constitutional limitations."

and contended that since the power of taxation is essential and a sovereign Government without it cannot function it stands on a different footing from that of a regulation. Therefore, the fact that the Tobacco Board Act has occupied the field under Entry 52 List I does not take away the legitimate power of the State Legislature to impose luxury tax under Entry 62 of list II.

10. From the respective arguments advanced by the learned Counsel for the petitioners as well as the learned Advocate-General, the following questions arise for consideration:

(1) Whether the Andhra Pradesh Tax on luxury Act (Act 28 of 1996) is in pith and substance a tax on sale of tobacco or is it a tax on supply of luxury- viz., tobacco?

(2) Whether the State Legislature in enacting Act 28 of 1996 encroached upon the field occupied by the Parliament under Entry 52 of List I by i.e, Tobacco Board Act, 1975?

(3) Whether levy of luxury tax on supply of tobacco impede free movement of goods and, therefore, violative of Articles 301, 302 and 304 of the Constitution of India?

(4) Whether the levy of 50 ps. in a rupee on chewing tobacco preparations commonly known as Khara Masala, Kimam, Zarda, Dokta, Sukha and Surti is violative of Article 14 and therefore, discriminatory and arbitrary?

11. On the construction of the provisions of the Act, if it is held that the levy of tax on the supply of tobacco is in pith and substance or the essential character of the levy is a tax on sale, then by virtue of the declaration made by the

Parliament under Article 286(3) of the Constitution of India declaring tobacco as one of the "goods of special importance" and imposing a levy of 4% on tobacco, the tax under the impugned enactment cannot exceed 4% otherwise, the impugned levy is valid. Therefore, it is necessary to consider at the first instance whether the impugned levy is in pith and substance a tax on sale or it is a tax on supply of luxury viz., tobacco. Before considering the arguments advanced by the learned Counsel for the petitioner and the learned Advocate-General, it is necessary to refer to the judgments of the Federal Court and the Supreme Court where they were considering what constitutes a luxury.

12. In *Re C.P. Motor Spirit Act* (supra), the Federal Court Chief Justice observed as follows:

"The primary meaning of excise duty or duty on excise has come to be that of a tax on certain articles of luxury (such as spirits, beer or tobacco) produced or manufactured in the United Kingdom,"

13. The Supreme Court in *Abdul Kadir v. State of Kerala* (supra) observed as follows:

"The word 'luxury' has not been used in the sense of something pertaining to the exclusive preserve of the rich. The fact that the use of an article is popular among the poor sections of the population would not detract from its description or nature of being an article of luxury. The connotation of the word 'luxury' is something which conduces enjoyment over and above the necessities of life. It denotes something which is superfluous and not indispensable and to which we take with a view to enjoy, amuse or entertain ourselves. An expenditure on something which is in excess of what is required for economic and personal well being would be expenditure on luxury although the expenditure may be of a nature which is incurred by a large number of people, including those not economically well off."

"The use of tobacco has been found to have deleterious effect upon health and a tax on tobacco has been recognised as a tax in the nature of a luxury tax."

"A number of factors may have to be taken into account in adjudging a commodity as an article of luxury. Any difficulty which may arise in borderline case would not be faced in case of an article like tobacco, which has been recognised to be an article of luxury and is harmful to health."

14. From the above, it is clear that it is a well settled proposition that tobacco is an article of luxury and it has deleterious effect on and harmful to health. Therefore, it does not warrant any debate on the question whether tobacco is an article of luxury or not and on its deleterious effect and its harmful character on health. In other words, it is judicially recognized that tobacco is an article of luxury, though it is not an exclusive preserve of the rich and it is popular among the poor sections of the population as luxury is something which conduces enjoyment over and above the necessities of life and it is superfluous and not

indispensable which is used with a view to enjoy, amuse or entertain ourselves. The fact that tobacco has deleterious effect upon health was also judicially recognised. According to the judgment, there cannot be any two opinions about tobacco having deleterious effect on health and its harmful character."

15. Before considering the 1st question whether the levy of tax in pith and substance is on sale of tobacco or it is a tax on supply of luxury viz., tobacco, it is necessary to refer to some of the decisions of the Federal Court and the Supreme Court which have laid down certain principles while construing/interpreting the Legislative Entries in Lists I and II of the Pre-Constitution Act and Constitution of India.

16. In *Re C.I". Motor Spirit Ad (supra)*, a special reference u/s 213 of the Constitution Act was made by his Excellency the Governor-General. The reference is in following terms:

"Is the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, or any of the provisions thereof, and in what particular or particulars, or to what extent, ultra vires the Legislature of the Central Provinces and Bcrar?"

17. Section 3(1) of the Provincial Act provides that "There shall be levied and collected from every retail dealer a tax on the retail sales of motor spirit and lubricants at the rate of five per cent on the value of such sales". Both motor spirit and lubricants are manufactured or produced in India. Motor spirit is subject to an excise duty imposed by the Motor Spirit (Duties) Act, 1917, an Act of the Central Legislature. u/s 100(1) of the Constitution Act, the Federal Legislature and the Provincial Legislature have no powers to make laws with respect to any of the matters enumerated in the Federal Legislative List i.e., List I in Schedule 7 of the Act. Entry (45) in the List is as follows:

"Duties of excise on tobacco and other goods manufactured or produced in India⁷". The Government of India said that the tax imposed by Section 3(1) of the impugned Act, in so far as it may fall on motor spirit and lubricants of Indian origin, is a duty of excise within Entry (45) and therefore an intrusion upon a field of taxation reserved by the Act exclusively for the Federal Legislature."

18. Repelling the said contention, lawyer held as follows:

"The power to make laws with respect to duties of excise given by the Constitution Act to the Federal Legislature is to be construed as a power to impose duties of excise upon the manufacture or producer of the excisable articles or atleast at the stage of, or in connection with, manufacture or production, and it extends no further. Thus the Central Legislature will have the power to impose duties on excisable articles before they become part of the general stock of the Province, that is to say, at the stage of manufacture or production, and the Provincial Legislature, an exclusive power to impose a tax on sales thereafter. Hence the CP and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, which levies tax on retail sales is not ultra vires the

Legislature of the Central Provinces and Berar."

Shri Jayakar, J., held as follows:

"Similarly, Item 50 (List 11) relates to "taxes on luxuries." These "luxuries" may be excisable under Item 45 (List I); yet, being objects of consumption with the province, they appear to have been taken out of the purview of Item 45 (List I) and allocated to the Provinces. It is not therefore unfair to infer from this grouping that the scheme of taxation was intended to be that an excisable commodity is subject to the legislation of the Centre in respect of all taxes on or connected with its production, manufacture, etc., etc., but when such commodity enters the precincts of a Province and a tax has to be imposed on its sale within the Province for purposes of consumption therein and the tax is in no way connected with its production, etc., but is imposed with respect to its sale merely as an existing article of trade and commerce, the power to do so is exclusively with the Province."

19. What follows from the above is that the juxta position of Legislative Lists I and II is such that the same commodities, object and thing and person can be subjected to tax both by the Central Legislature and the Provincial Legislature. On the facts of that case, it was held that Central Legislature can levy duty on production and manufacture, while the Provincial Legislature can levy duty on the sale of the existing articles of trade and commerce. Putting it in a different way, the Central Legislature will have the power to impose duties on excisable articles before they become part of the general stock of the Province, that is to say, at the stage of manufacture or production, and the Provincial Legislature, an exclusive power to impose a tax on sales thereafter,

20. In Ralla Ram's case (supra), the Federal Court was considering the question whether the provisions of the Punjab Urban Immovable Property Tax Act were beyond the powers of the Provincial Legislature which enacted it. The argument that was advanced was that the basis of the tax is the annual value of the property and since the same basis is used in the Income Tax Act for determining income from property, and generally sneaking the annual value is the fairest standard for measuring income and, in many cases, is indistinguishable from it, the tax levied by the impugned Act is in substance a tax on income and, therefore, beyond the legislative competence of the Provincial Legislature.

21. The Federal Court referred to the following observations of the Lord Alkin in *Gallagher v. Lynn*, 1937 AC 863 , while construing the scope of the Punjab Act:

"It is well settled that you are to look at the true nature and character of the legislation, "*Russett v. the Queen*, the pith and substance of the legislation. If on the view of the statute as a whole, you find that the substance of the legislation is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorised field. The legislation must not under the guise of dealing with one matter in fact encroach upon the forbidden field."

22. It was also observed that:

"It is essential character of the particular tax charged that is to be regarded, and the nature of the machinery, often complicated, by which the tax is to be assessed is not of assistance except insofar as it may throw light on the general character of the tax.""

23. In conclusion, it was held as follows:

"In the first place, we have to look into the charging Section of the statute, because as was pointed out in *Provincial Treasurer of Alberta and another v. C.E. Kerr and another*, 1933 AC 710 : 102 LJPC 137, "the identification of the subject-matter of the tax is only to be found in that section." The charging Section in the present case is Section 3, which in clear terms levies not a tax on income but a tax on buildings and lands. It is true that we must look not to the mere form but to the substance of the levy, and the tax must be held to be invalid, if in the guise of a property tax it is really a tax on income.

While holding as above, a reference was made to the following observations in AIR 1941 47 (Federal Court) , where Sir Maurice Gwyer, Cj., observed as follows:

"It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind observance to a strictly verbal interpretation would result in a large number of statutes being declared invalid, because the Legislature enacting them may appear to have legislated in a forbidden sphere."

24. In *RR Engineering Co. 's case* (supra), the question that arose for consideration is whether the circumstance and property tax levied u/s 119 of the U.P. Kshetra Samithis and Zilla Parishads Act is a tax on status of an individual and not tax on income? Section 120 of that Act provides that where, before the appointed date, there was in force Circumstances and Property Tax under the District Boards Act, 1922, such tax may continue to be levied by the Zilla Parishad at the same rates and on the same conditions under which it was being levied under the District Boards Act. Section 131 provides that the total amount of the tax shall not exceed the amount as may be prescribed by rules framed under the Act. Rule framed u/s 172 of the District Board Acts, 1922, which provides for a maximum levy of Rs.2000/- on a single assessee, remains in force until the framing of rules under the Act of 1961. The appellant challenged the said Rule on the ground that the State Legislature cannot overreach its taxing power by making an artificial definition of words and expressions used in the legislative entries. Just as it cannot, by an artificial definition of sale of goods, exercise a power to legislate in respect of a subject matter outside its sphere, it cannot exercise the power to levy a tax on circumstances by an artificial and colourable understanding of that expression so as to acquire the power to impose a tax on income. Repelling the above arguments, it was held as follows;

" 16. It may be, and is often so, that the tax on circumstances and property is levied on the basis of income which the assessee receives from his profession trade, calling or property. That is, however, not conclusively on the nature of the tax. It is only as a matter of convenience that income is adopted as a yardstick or measure for assessing the tax. As pointed out in *Re a Reference under Government of Ireland Act, 1936* AC 352, the measure of the tax is not a true test of the nature of the tax. Therefore, while determining the nature of a tax, though the standard on which the tax is levied may be a relevant consideration, it is not a conclusive consideration. One must have regard in such matters, as stated by the Privy Council in *Governor-General in Council v. Province of Madras*, (1945) 72 Ind App. 91, not to the name of the tax but to its real nature, its pith and substance, which must determine into what category it falls. Applying these tests, the tax on circumstances will fall in the category" of a tax on "a man's financial position, his status taken as a whole and includes what may not properly be comprised under the term property and at the same time ought not to escape assessment,"

"23.....The mere name of a tax does not bear on legislative competence and the absence of express enumeration of a tax by a particular name will not justify the tracing of legislative authority to the residuary entry. What is true in other jurisdictions is true in this branch of law also, namely, that one must have regard to the substance of the matter and not to the form or label."

25. In *Abdul Khader* 's case (supra) the question that arose for consideration was whether the provisions in the *Luxury Tax on Tobacco (Validation) Act* (9 of 1964) enacted by the State Legislature of Kerala are void on the grounds that (1) The State Legislature lack in the legislative competence to enact the Act; and (2) the provisions of the Act were not protected by Article 301 of the Constitution of India. It is not necessary to refer to the history prior to the enactment of the *Luxury Tax on Tobacco (Validation) Act* (9 of 1964) by the Kerala State Legislature. Suffice it to point out that Section 3 is a charging Section and provides that "for the period beginning with the 17th day of August, 1950 and ending &n the 31st day of December, 1957, every person vending or stocking tobacco within any area to which this Act extends shall be liable and shall be deemed always to have been liable to pay a luxury tax on such tobacco in the form of a fee for licence for the vend and stocking of the tobacco, at such rates as may be prescribed, not exceeding the rates specified in the Schedule." The matter went upto the Supreme Court. The arguments that were advanced were that the tax levied u/s 3 of the Act in reality and substance is an excise duty even though described as luxury in the said charging Section and as such the State Legislature was not competent to enact the Act.

26. Repelling the said contention, the Supreme Court held that the levy of tax contemplated by the provisions of Section 3 of the Act has nothing to do with the manufacture or production of tobacco and, as such, cannot be deemed to be in the nature of excise duty. The argument that the tax on the vending and stocking

of tobacco cannot be considered to be luxury tax as contemplated by Entry 62 of List II of the Seventh Schedule to the Constitution was also repelled. While upholding the levy, the learned Judges referred to the following observations made by the Supreme Court in *State of Madras Vs. N.K. Nataraja Mudaliar*, :

"Not much argument, is needed to show that the power to tax is essential for the maintenance of any governmental system. Taxes are levied usually for the obvious purpose of raising revenue. Taxation is also resorted to as a form of regulation. In the words of Justice Stone," "every tax is in some measure regulatory" (*Sonzinsky v. United States*, (1937) 300 US 506). According to Roy Bloiigh, the taxing power "becomes an instrument available to Government for accomplishing objectives other than raising revenues."

27. To some extent every tax imposes an economic impediment, to the activity taxed as compared with others not taxed, but that fact by itself would not make it unreasonable. It is well-settled that when power is conferred upon the Legislature to levy tax, that power must be widely construed; it must include the power to impose a tax and select the articles or commodities for the exercise of such power; it must likewise include the power to fix the rate and prescribe the machinery for the recovery of tax. This power also gives jurisdiction to the Legislature to make such provisions as, in its opinion, would be necessary to prevent the evasion of the tax. As observed by Chief Justice Marshall in *M. Culloch v. Maryland*, (1819) 4 Law cd 579, "the power of taxing the people and their property is essential to the very existence of Government, and may be legitimately exercised on the objects to which it is applicable to the utmost extent to which the Government may choose to cany it. "There can also be no doubt that the law of taxation in the ultimate analysis is the result of the balancing of several complex considerations. The Legislatures have a wide discretion in the matter.""

28. It was also held:

Where a challenge to the validity of a legal enactment is made on the ground that it is a colourable piece of legislation, what has to be proved to the satisfaction of the Court is that though the Act ostensibly is within the legislative competence of the Legislature in question, in substance and reality it covers field which is outside its legislative competence. hi the present case we find that in enacting the impugned provisions, the State Legislature, as already pointed out above, has exercised a power of levying luxury tax in the shape of licence fee on the vend and stocking of tobacco. The enactment of a law for levying luxury tax is unquestionably within the legislative competence of the State Legislature in view of Entry 62 in List II of the Seventh Schedule to the Constitution. As such, it cannot be said that the impugned Act is a colourable piece of legislation.

29. In other words the Supreme Court upheld the power of State Legislature to levy luxury tax on the vending of luxury viz., tobacco.

30. The next decision to be considered is *Union of India versus Bombay Tyre*

Inlet-national Limited (supra) wherein the Supreme Court while considering the scope of Central Excise and Salt Act (1 of 1944) observed as follow"s:

"When excise was levied on a manufacture at the point of the first sale by him" that may be because the Taxation authority imposing a duty of excise finds it convenient to impose that duty at the moment when the excisable article leave the factory or workshop for the first time on the occasion of its sale. But the method of collecting the tax is an accident of administration, it is not of the essence of the duty of excise, which is attracted by the manufacture itself"

31. It was further observed that:

"Therefore, subject always to the legislative competence of the taxing authority, the said tax can be levied at a convenient stage so long as the character of the impost, that is, it is a duty on the manufacture or production, is not lost. The method of collection docs not affect the essence of the duty, but only relates to the machinery of collection for administrative convenience.""

32. It was also held that:

"While the levy is on the manufacture or production of goods, the stage of collection need not in point of time synchronize with the completion of the manufacturing process. While the levy in our country has the status of a constitutional concept, the point of collection is located where the statute declares it will be.

33. The learned Judges referred to the following passage from Seervai"s Constitutional Law, 2nd edition, Vol.2, page 1258:

"Another principle for reconciling apparently conflicting tax entries follows from the fact that a tax has two elements : the person, thing or activity on which the tax is imposed, and the amount of the tax. The amount may be measured in many ways; but decided cases establish a clear distinction between the subject-matter of a tax and the standard by which the amount of tax is measured. These two elements are described as the subject of a tax and the measure of a tax."

"It is, therefore, clear the levy of a tax is defined by its nature, while the measure of the tax may be assessed by its own standard. It is true that the standard adopted as the measure of the levy may indicate the nature of the tax but it docs not necessarily determine it."

It was also held that:

"It was always open to the Legislature to specify the measure for assessing the levy. The Legislature has done so. In both the old Section 4 and new Section 4, the price charged by the manufacturer on a sale by him represents the measure. Price and sale arc related concepts, and price has a definite connotation. The "value" of the excisable article has to be computed with reference to the price charged by the manufacturer, the computation being made in accordance with the terms of Section 4."

34. From the above, it follows that the power to tax is essential for the maintenance of any Governmental system and are levied for the obvious purpose of raising revenue; and resorted to as a form of regulation; the taxing power becomes an instrument available to the Government for accomplishing objectives other than raising revenues. Every tax imposes an economic impediment to the activity taxed as compared with others not taxed, but that fact by itself would not make it unreasonable. Taxing power of the Legislature must be widely construed. It must include the power to impose a tax and select the articles or commodities for the exercise of such power. It must like wise include to fix the rate and prescribe the machinery for the recovery of tax. The Legislature has wide discretion in the matter of taxing the people. When a challenge to the validity of an enactment is made on the ground that it is a colourable piece of Legislature, what has to be proved to the satisfaction of the Court is that though the Act is ostensibly within the legislative competence of the Legislature in question, in substance and reality it covers field which is outside the legislative competence.

35. Therefore, the proper approach is to look at the true nature and character of the legislation, the pith and substance of the legislation. If on the view of the statute as a whole, the substance of the legislation is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorised field. Same standard may be employed as a measure for levy of different taxes. It is the essential character of the particular tax charged that is to be regarded and the nature of the machinery by which the tax is to be assessed is not of assistance except in so far as it may throw light on the general character of the tax.

36. Further we have to look into the charging section of the statute because the identification of the subject matter of the tax is only to be found in that Section. We must look not to the mere form but to the substance of the levy, and the tax must be held to be invalid, if in the guise of a levy it really encroaches upon a forbidden field. Further, the Legislature though purported to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind observance to a strictly verbal interpretation would result in a large number of statutes being declared invalid. Therefore, the impugned legislation should be examined to ascertain its pith and substance or its true nature and character for the purpose of determining whether it is legislation with respect to matters in this list or in that.

37. Further the measure or yardstick, or standard for levy of tax may be the same for different types of taxes. The same yardstick or standard or measure may be adopted for levy of different types or nature of tax. The measure of tax is not a conclusive test in determining the nature of the tax. The legislation may adopt any measure, standard or yardstick according to its convenience for the purpose of levy of tax. The fact that the very same measure, standard, or yardstick is adopted for two different types of taxes does not make the tax levied

a tax on a person, or thing, or activity, or product which it is not competent to impose. We have to ascertain from the Charging Section the real character and nature of the tax. The method of collection of tax is an accident of administration. It is not the essence of the nature-of the imposition or levy. Therefore subject always to the legislative competence of the Taxing Authority, the impost can be levied at a convenient stage as long as the character of the impost is not lost. The method of calculation does not affect the essence of the duty but only relates to the machinery of collection for administrative convenience. The levy has the status of Constitutional Status, the point of collection is located where the Statute declares it will be. A clear distinction should be made between the subject matter of tax and the standard by which the amount of tax is measured.

38. In the light of the above principles, we will now examine the provisions of the Act. Section 34 is the Charging Section. It reads as follows:

"3-A. Tax on Tobacconist :~(1) Subject to the provisions of this Act, there shall be levied and collected a tax, on the turnover of receipts of a tobacconist relating to the supply of luxuries, namely, tobacco products, specified in the schedule by way of sale or otherwise, at the rate of tax and at the point of levy specified in the schedule:

Provided that a tobacconist whose turnover of receipts in a year is less than rupees two lakhs shall be exempt from tax: Provided further that a tobacconist who sells tobacco products in a small bunk shall be exempt from payment of tax on his turnover of receipts irrespective of the quantum of the turnover of receipts in a year;

Provided also that no tax under this sub-section shall be payable on that part of the turnover of receipts which relates to-

(i) the tobacco products which are supplied by way of consignment to another State, whether the consignment is to himself or to any other person and in support of such claim, the proprietor produces on demand a certificate as may be prescribed; and

(ii) the tobacco products which are supplied by way of sale in the course of inter-state trade or commerce by way of sale in the course of export outside the territory of India and in support thereof the proprietor produces such proof of such sale or export as may be prescribed.

(2) The net turnover of which a tobacconist shall be liable to tax shall be determined after making such deductions from his turnover of receipts and in such manner as may be prescribed.

(3) For the purpose of sub-clauses (i) and (ii) of sub-section (1), a sale shall be deemed to have taken place-

(i) in the course of inter-state trade, if such sale has occasioned the movement

of tobacco products from Andhra Pradesh to any other State; and

(ii) in the course of export outside the territory of India if the supply of luxuries occasions such export.

(4) The tax levied under this Section shall be payable by the proprietor in such period and such manner as may be prescribed."

Section 2(ggg): Luxuries include luxuries provided in a hotel, and corporate hospitals, and any commodities as specified in the Schedule for enjoyment over and above the necessities of life.

Section 2(kk) defines "turnover of receipts" in the following "terms: turnover of receipts in the case of a tobacconist means the aggregate of the amounts of receipts of a tobacconist in a year in respect of the supply of luxuries relating to tobacco products whether such supply is by way of sale or otherwise;

Section 2(kkk) defines Tobacconist as under:

Tobacconist means a person who supplies whether by way of sale or otherwise luxuries, like, tobacco products manufactured by him or purchased from other States or from other persons in this State and includes any person who for the purpose of Business gets the manufacturing done from any person whether or not on job work basis.

Section 2(kkkk) defines Tobacco products in the following manner:

Tobacco products means all goods and preparations made of tobacco or tobacco substitutes including cigarettes, cigars, cheroots and chewing tobacco commonly known as Khara Masala Kimam, Zarda, Dokta, Suklia and Surti.

39. Section 4 of the Act provides for the appointment of the Commissioner Assessing or Appellate Authority and their powers and functions of assessing authorities. Section 4A provides for registration of tobacconist for the purpose of carrying on business of supply of luxuries, viz., tobacco. Section 5 provides for mode of collection of tax. Section 6 provides for Returns. Section 7 deals with assessment and collection of tax while Section 7A provides for provisional assessment. Section 8 provides for assessment of escaped or under assessed tax. Section 9 deals with imposition of penalty in certain cases. Section 10 provides for payment of tax, penalty and other dues payable under the Act in instalments while Section 10A provides for attachment of property and Section 10B deals with the powers of the Deputy Commissioner. Section 11 provides for Appeal. Section 12 provides for Revision and Section 12A provides for Appeal and Revision. Section 13 provides for Court fee on appeal an application for revision while Section 14 provides for refund of tax. Section 15 deals with offences while Section 16 deals with offences by Companies. Section 17 deals with compounding of offences. Sections 18, 19 and 20 deal with maintenance of accounts and powers of inspection. Section 20B provides for inspection of goods while in transit. Section 29 confers power on the State Government to notify

exemptions and reductions of tax or interest. Schedule appended to the Act reads as under:

Sl. No.	Description	Point of levy	Rate of tax
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1.

Chewing tobacco preparations commonly known as Khara Masala, Kimam, Dokla, Zarda, Sukha and Surti.

At the first point of supply of luxuries in the State by sale or otherwise.

10 paise in every rupee

2. Cigarettes

At the first point of supply of luxuries in the State by sale or otherwise.

5 paise in every rupee

The statement of Objects appended to the Act declare that-

"The object of the original A.P. Tax on Luxuries Act, 1987 is to mobilise additional resources and to compensate the loss of revenue due to exemption from payment of sales tax by hotels upto a total turnover of Rs.2 lakhs in a year and also to levy tax on the richer income group of the society, a tax at a rate of 10% on the charges in respect of any luxury provided in a hotel to every person when the rate of charge per person per day is Rs.60/- or more was levied. While the object of Act 28 of 1996 is declaration by the Supreme Court of India declaring tobacco products as luxuries and in order to raise not only additional revenue but also to prevent public from using the tobacco products as they are harmful to health and since "tax on luxuries" is covered by Entry 62 of the State List 2 in the seventh Schedule and hence Luxury Tax on tobacco products like Khara Masala, Kimam, Dokta Zarda, Sukha and Surti at the rate of 10 paise in a rupee and Cigarettes at the rate of 5 paise in a rupee are proposed to subjected to tax at the point of first supply in the State. Exemption from payment of Luxury Tax for small dealers whose turnover is below Rs.2 lakhs a year is also proposed.

40. From a reading of the Statement of Objects and Reasons, it is clear that the provocation for the levy of Luxury Tax. on the supply of tobacco is the judgment of the Supreme Court in Ahdul Khader's case (supra),

41. Coming to the provisions of the Act, under the Act a "Luxury" is defined as the commodities specified in the schedule for enjoyment over and above the necessities of life. We have already extracted the contents of the schedule in the earlier paragraph. According to Charging Section 3A there shall be levied and collected a tax on the supply of luxuries namely tobacco products.

42. According to the Concise Oxford Dictionary, supply means provide or furnish a thing needed. From the charging section it is clear that the essential character of levy is on the supply of luxury viz., tobacco products. It is true that the tax is

levied on the supply of luxury viz., tobacco product by way of sale or otherwise. The argument advanced by the learned Counsel for the petitioners is that the levy is on sale of tobacco and, therefore, by virtue of Article 286(3) of the Constitution of India, levy should not exceed 4% in view of Sections 14 and 15 of the Central Sales Tax Act. While the argument of the learned Advocate-General is that since it is a levy on supply of luxury, it is not a tax on sale. Further, the sale in Section 3A of the Act represents the measure for tax and it is open to the Legislature to specify the measure for assessing the levy. The Legislature thought fit that the price charged by the tobacconists on sale by himself should represent the measure. Therefore, the argument of the learned Counsel for the petitioners that it is in effect a tax on sale cannot be countenanced.

43. The relevant entry in List II of the 7th Schedule of the Constitution reads as follows:

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

44. If the tax levied under the charging section is on the supply of a luxury, it is within Entry 62 of List II. Therefore, it is within the legislative competence of the State Legislature to impose a tax on luxury. The fact that the tobacco is a luxury as pointed out in the earlier paragraphs is judicially recognised. In our view the essential character of the levy is on the supply of luxury viz., tobacco. In order to determine the essential character of the tax, we have to look to the charging Section of the statute because identification of the subject matter of the tax is only to be found in that Section. It is also true that while looking into the charging Section we must look not to the mere form but to the substance of the levy. It is also now well established that we are to look at the true nature and character of the Legislature i.e., the pith and substance of the levy. It is also now well settled that same standard may be employed as a measure for levy of different taxes. It is the essential character of particular tax charged that is to be regarded, and the nature of machinery by which the tax is to be assessed is not of assistance except in so far as it may throw light on the general character of tax.

45. If we look to the charging section, it is clear that levy is on the supply of luxury viz., tobacco product. It is not a tax on sale. The mere fact that the sale is adopted as a measure for the purpose of assessment, it does not alter the essential character of the levy. As pointed out in the earlier paragraph, in pith and substance, the true nature and character of the levy is on the supply of luxury viz., tobacco. The incidence of sale is adopted as a measure for collecting the tax and it is because the taxing authority finds it convenient administratively, it has adopted the measure of sale for the purpose of assessment. Therefore, we are of the view that the impugned legislation is within the legislative competence of the State Legislature. It is true under the 1st and 2nd provisos, a tobacconist whose turnover is less than Rs.2.00 lakhs and a tobacconist who sells tobacco products in a small bunk are exempted from payment of tax. It is also true in

proviso 3, the inter-state transaction are exempted from the provisions of the Act. It is now well settled that power to tax is essential for the maintenance of any governmental system. Taxes are levied usually for the obvious purpose of raising revenue. Taxation is also resorted to as a form of regulation. The taxing power becomes an instrument available to Government for accomplishing objectives other than raising revenues.

46. It is also well settled that when power is conferred upon the Legislature to levy tax, that power must be widely construed; it must include the power to impose a tax and select the articles or commodities or persons for the exercise of such power; it must likewise include the power to fix the rate and prescribe the machinery for the recovery of tax. In imposing tax, the Legislature has a wide discretion. Therefore, since the Legislature has wide discretion in selecting the articles or commodities or persons for imposing a tax, in exercise of that power, it has exempted a tobacconist whose turnover of receipts is less than Rupees two lakhs and a tobacconist who sells tobacco products in a small bunk and the inter-state transactions. It is also well settled that the power to impose taxes is one so unlimited in force and so searching in extent, that the Courts scarcely venture to declare that it is subject to any restriction whatever, except such as rest in the discretion of the authority which exercises it. Therefore, the fact that the tobacconist whose turnover of receipts is less than Rs.2.00 lakhs and the tobacconist who sells the tobacco in a small bunk and the inter-state transactions are exempted from the provisions of the Act, does not in any way change or alter the essential character or nature of the tax. As pointed out in the earlier paragraph, the essential character of the levy in this case is on the supply of luxury viz., tobacco products.

47. Further there is a reason for exempting the Tobacconists whose turnover of receipts is less than Rs.2-00 lakhs and a Tobacconist who sells tobacco products in a small bunk, as these are small traders and they should not be burdened with tax on luxury, as the income from the supply of tobacco is necessary for their survival.

48. While the reason for exemption of inter-state transaction of supply of tobacco products is the limitation upon the exercise of legislative power under Article 301 which declares freedom of trade, commerce and intercourse, to ensure the economic unity of India and in Abdul Khader 's case (supra) the imposition was held violative of Article 301, however protected under Article 304 proviso of the Constitution of India in that case. Therefore, the exemptions are based on valid reasons.

49. There was a controversy at the Bar that the expression otherwise used in Section 3A of the Act has no meaning. Sri Ananta Bakti contended that the only meaning that can be attributed to the expression "otherwise" is to supply by way of gift. The power to levy a gift tax is on the Central Government and, therefore, the State Legislature is incompetent to levy tax. Sri Ananta Babu is right in his contention that the expression otherwise does not convey any meaning.

Therefore, Section 3A of the Act is to be read omitting the expression "otherwise". The relevant portion of Section 3A should be read as ".....specified in the schedule by way of sale, at the rate of tax and at the point of levy specified in the schedule."

50. It is also true that the machinery provisions under the Sales Tax Act have been bodily inducted into the impugned legislation. The fact that the machinery provisions have been bodily inducted into the impugned legislation, does not alter the nature of the levy. As pointed out earlier, we have to look to the charging Section of the statute as identification of the subject matter of the tax is only to be found in that Section. The charging Section says the tax is levied on the supply of luxury viz., tobacco.

51. Sri Ananta Babu contended that for determining the true intention of the legislation whether it is a legislation in respect of sale of tobacco or in respect of supply of a luxury viz., tobacco, we must take all the relevant provisions of the legislation into account and ascertain the essential substance of it. It is true we have to take all the relevant provisions of the legislation and ascertain the essential substance of it. By doing so, we cannot ignore the meaning and purpose behind other provisions of the Act. As pointed out in the earlier paragraphs, it is for the Legislature to select the objects which are to be subjected to the tax and which are not subjected to the tax. If the intention of the Legislature is to exclude certain commodities from the purview of the tax, for valid reasons that does not alter the nature of the tax.

52. The same reasoning is applicable to Section 29 of the impugned legislation. It is true that it empowers the State Government by notification, exemption and reduction of tax or interest payable under the Act on sale or supply of tobacco. It is true that the expression sale is also used in the said section. It is also true that if the essential character of levy is on the supply of a luxury it is not necessary to use the expression sale in Section 29 of the Act. The reasons perhaps may be that the Legislature have incorporated the provisions of the Sales Tax Act in toto in the impugned legislation. Hence, the expression sale was also occurred in Section 29. It is on account of defect in drafting the legislation the expression sale also crept in. However, that does not change the essential character of the levy. The other provisions relate to the machinery for collection of tax. The scheme of machinery provisions in taxing legislations would be by and large similar. Therefore, the fact that machinery provisions similar to the Sales Tax are incorporated in the Act does not change the character of the tax as it does not determine the essential character of the tax.

53. Therefore, we are of the view that the essential character of the tax is within the legislative competence of the State as it is a tax on the supply of luxury, viz., tobacco.

54. The argument of the learned Counsel for the petitioners relying on Buxa Dooars Tea Company Ltd. and Others Vs. State of West Bengal and Others, , is of

no assistance to them. That was a case where u/s 4 of the W.B. Rural levy of cess on Immovable properties. West Bengal Taxation Laws (Amendment) Act, 1981 levied cess in respect each kilogram of tea on the despatches from such tea estate of tea grown therein as the State Government may, by notification in the Official Gazette, fix in that behalf. It was contended by the petitioner that Section 4(2)(aa) is ultra vires of Articles 14 and 301 of the Constitution of India. It was held that "When the provisions before us are examined in their totality, we find no such relationship or nexus between the tea estate and the varied treatment accorded in respect of despatches of different kinds of tea. It seems to us that having regard to all the relevant provisions of the statute, including Section 4(2) (aa) and Section 4(4), in substance, the impugned levy is a levy in respect of despatches of tea and not in respect of tea estates." In other words, on a consideration of the charging Section, the learned Judges were of the view that in effect the levy is not an tea estates which is referable to entry 49 of List 2 of 7th Schedule which speaks of title on lands and buildings, but the legislation in substance is a legislation in respect of despatches of tea. Therefore, neither the legislation is based on Entry 49 in List II or List III and consequently the West Bengal State. Legislature was not competent to impose the levy. From the above, it is clear that on a consideration of the charging Section, the learned Judges were of the view that the essential character of the levy is on despatches of tea and not taxes on lands and buildings which is within its legislative competence. The judgment, *dicreforc*, has no application to the present situation.

55. The next question that arise for consideration is whether the impugned legislation is within the competence of the State Legislature in view of the occupation of the field by the Centre under Entry 52 of List I of Schedule VII of the Constitution?

56. Entry 52 of List I of Schedule VII reads as follows:

"Industries, the control of which by the Union is declared by Parliament by law to be expedient in public interest." In exercise of the power conferred under Articles 245 and 246 read with Entry 52 of List I of Schedule VII of the Constitution the Parliament enacted the Tobacco Board Act of 1975. The object of the Tobacco Board Act is to regulate Tobacco Industry particularly Virginia tobacco industry and for maintaining and improving exports and thereby augmenting the Country's foreign exchange resources. In order to achieve that object the production of tobacco was to be planned carefully to suit the specified needs of the market by ensuring the requisite standards of quality and the fluctuations in production and prices have to be minimised. The object of the Act also says that the services and facilities for research, marketing, warehousing, publicity and propaganda abroad and market intelligence in competing countries should be extended to the important export-oriented industry in an integrated manner. Therefore, it is provided for the development of the Tobacco Industry under the control of the Union and for the establishment of a Board to be known as Tobacco Board. u/s 13 of the Tobacco Board Act, Virginia Tobacco is to be sold at

registered auction platforms. Section 14A provides for levy of fees for the services rendered by the Board in relation to such sale at such rate not exceeding 2% of the value on such tobacco as the Central Government may from time to time by Notification and Official Gazette specify. The fee shall be collected from the seller of the Virginia tobacco and the purchaser of such tobacco by the Board. The other provisions relate to import and export of tobacco, levy of penalties and constitution of the tobacco fund.

57. The argument of the learned Counsel for the petitioners is that since the Parliament by enacting the Tobacco Board Act, 1975 under Entry 52 List I has occupied the field, the State Legislature is not competent to levy the luxury tax under Entry 62 of List II. In support of their contention, they relied on ITC Limited's case (supra). The facts in brief of the said case are as follows:

State of Karnataka enacted Karnataka Agricultural Produce Marketing (Regulation) Act, 1966. Under the Act, Market Committees are directed in the State to levy and collect market fee from buyers in respect of specified agricultural produce at a rate which may not be more than 30 paise per 100 rupees of the price of the agricultural produce in such manner and at such time as may be specified. Under the Act, all notified agricultural produce leaving a yard shall, unless the contrary is proved, be presumed to have been bought within such yard by the person in possession of such produce. Pursuant to the said Act, the market fee has been fixed by the State of Karnataka at 30 paise per one hundred rupees of the price of such produce sold. 30 paise has been substituted by Re.1/- by an amendment Act. The fees leviable was enhanced from time to time. The said levy was challenged. The matter went up to the Supreme Court. The argument of the petitioners was that since the field was occupied by the Parliament in enacting the Tobacco Board Act, the State Legislature is incompetent to levy the fee under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966. Justice FazlAli with whom Justice Vamdamjan had agreed dissenting with Justice S.S. Mukharji held as follows:

".....When the Parliament took over the tobacco industry without any pre-conditions or permutations and combinations and established a Tobacco Board for regulating the sale and purchase of tobacco under Entry 52 of List I the entire field of tobacco industry was fully occupied and nothing remained for the States to do, and thus neither the doctrine of entrenchment nor that of pith and substance would have any substance."

".....The doctrine of occupied field has a great place in the interpretation as to whether or not a particular Legislature is competent to legislate on a particular entry. Thus means that when the field is completely occupied by List I, as in this case, then the State Legislature is wholly incompetent to legislate and no entrenchment or encroachment, minimal or otherwise, by a State Legislature is permitted. In other words, where the field is not wholly occupied, then a mere minimal encroachment or entrenchment would not affect the validity of the State Legislation."

".....Thus, indeed if I accept the argument of the Kanataka Government, which seems to have found favour with Brother Mukharji, J., I would really be robbing the 1975 Act of its entire content and essential import by handing over the power of legislation to the State Government which per se has been taken over by Parliament under Article 246 by the 1975 Act."

".....Thus, it would appear that in view of the recent decisions, once the Centre takes over an industry under Entry 52 of List I and passes an Act to regulate the legislation, the State Legislature ceases to have any jurisdiction to legislate in that field and if it does so, that legislation would be ultra vires the powers of the State Legislature."

"This being the position, I, therefore, strike down that part of the Karnataka Act which takes in itself the power to levy market fee on tobacco or its products. Even if the products may be sold in the markets in Karnataka or near about the same place situated in that State, the power to levy fees will not belong to that State: it will remain with Centre which would regulate the sale and purchase of tobacco. It may be reiterated at the risk of repetition that an application for registration with the Tobacco Board was made by the Karnataka Government which was, however, rejected by the Board. This indirectly shows that the Government of Karnataka was aware that it could not encroach on the field which was fully occupied by the Centre by virtue of the 1975 Act."

58. It is true in the above judgment, it was held that when once the Parliament in exercise of the power conferred under Entry 52 of List I of VII Schedule of the Constitution has occupied the field, the State Legislature cannot encroach upon that field even if it legislates in respect of an Entry in the State List. The field is occupied by the Parliament. However, it is pointed out that the Karnataka Agricultural Produce Marketing (Regulation) Act empowered the market committees for the levy and collection of fees from the auctioners who auction the agricultural produce on the platforms constructed by the Committee. In other words, it has empowered the market committee to collect the fees for allowing the traders to auction the agricultural produce on the platforms of the market committees. This provision is exactly in conflict with Section 14A of the Tobacco Board Act, 1975. Section 14A of the Tobacco Board Act provides for the levy of fee for the services rendered by the Board in relation to the sale or auction of tobacco on the platforms established by the Board under the Act. In other words, under the Tobacco Board Act, 1975, the tobacco is to be sold on a registered auction platform established by the Board and the Board is competent to levy fees on the auctioners and the fees is to be collected both from the sellers as well as the purchasers. The market committee under the Karnataka Agricultural Produce Marketing (Regulation) Act is also empowered to collect fees from the sellers and purchasers who auction their agricultural produce on the market yards established by the market committees. Since the Parliament has already occupied the field empowering the Board to collect fees from the purchasers and sellers, it is a clear encroachment by the State of Karnataka on the field occupied

by the Parliament though the levy of fee is within its legislative competence. Therefore, the learned Judges have held that the Kamataka Act is without legislative competence. It is also true that the said Judgment was followed by a Bench of this Court in WA No.4561 of 1994 by Justice Jayachandra Reddy (as he then was) alongwith another learned Judge. However, in our view, the Judgment in ITC 's case (supra) has no relevance to the situation confronted by us, the reason being that the scope of Tobacco Board's Act is to regulate and control production, export and import of tobacco which is a commercial product. In order to maintain the standards, the Tobacco Board was constituted which was empowered to deal with the maintenance of standard of production, export and import of the tobacco. The scope of the Act is limited only to the three subjects covered by the Act. It cannot travel beyond the three subjects covered by the Act. In this context, we may refer to some of the judgments of the Supreme Court where they have considered and construed the relation between the legislation under the entries in List I and the entries in List II. The earliest judgment is in HRS Murthy's (supra). It was argued that the provision in Section 78 of Madras District Boards Act imposing the land cess quoad royalty under mining leases must be held to be repealed by the Mines and Minerals (Regulation and Development) Act, 1948 (Central Act LIE of 1948) or in any event, by the Mines and Minerals Regulation and Development Act, 1957 (Central Act LXVII of 1957) so that after the date when these Central enactments came into force the land cess that could be levied u/s 78 must be exclusive of royalty under a mining lease. It was held by the Supreme Court that:

"Sections 78 and 79 have nothing to do and are not concerned with the development of mines and minerals or their regulation. It will be seen from Sections 92 and 112 of the Madras Act that there is no connection between the regulation and development of mines and minerals dealt with in the Central Acts and the levy and collection of land cess for which provision is made by Sections 78 and 79 of the Act. There is therefore no scope, at all for the argument that there is anything in common between the Act and the Central Acts of 1948 and 1957 so as to require any detailed examination of these enactments for discovering whether there is any overlapping."

59. It was further held that:

"When a question arises as to the precise head of legislative power under which a taxing statute has been passed, the subject for enquiry is what in truth and substance is the nature of the tax. No doubt, in a sense, but in a very remote sense it has relationship to mining as also to the mineral won from the mine under a contract by which royalty is payable on the quantity of mineral extracted. But that does not stamp it as a tax on either the extraction of the mineral or on the mineral right. It is unnecessary for the purpose of this case to examine the question as to what exactly is a tax on mineral rights seeing that such a tax is not leviable by Parliament but only by the State and the sole limitation on the State's power to levy the tax is that it must not interfere with a law made by

Parliament as regards mineral development. Our attention was not invited to the provision of any such law enacted by Parliament. In the contest of Sections 78 and 79 and the scheme of those provisions it is clear that the land cess is in truth a "tax on lands" within Entry 49 of the State List."

60. In *Western Coalfields*'s case (supra), the M.P. Legislature has passed an Act known as M.P. Nagar Tatha Gram Nivesh Adhiniyam (23 of 1973) under which the Special Area Development Authority empowered the Municipal Corporation to impose tax for the purpose of municipal administration. The said enactment was in challenge before the Supreme Court.

61. The arguments advanced by the learned Attorney-General on behalf of the petitioners were that the lands and buildings on which the Special Area Development Authority has imposed the property tax are used for the purposes of and are covered by coal mines, that by virtue of declaration contained in Section 2 of the Mines and Minerals (Development and Regulation) Act, 1957, the legislative field covered by Entry 23, List II passed on to the Parliament by virtue of Entry 54, List I, that the Parliament enacted the Coal Mines Nationalisation Act, 1973 for acquisition of coal mines with a view to reorganising and reconstructing such coal mines so as to ensure the rational, co-ordinated and scientific development and utilisation of coal resources as best to subserve the common good; that the taxing power of the State Legislature must be construed as limited in its scope so as not to come in conflict with the power and function of the Union to regulate and develop the mines as envisaged by the Nationalisation Act; and that the impugned tax is manifestly an impediment in the discharge of the aforesaid function since it substantially increases the cost of the development activities.

62. The said arguments were repelled by the Supreme Court and observed that:

".....It is true that on account of the declaration contained in Section 2 of the Mines Minerals (Development and Regulation) Act, 1957 the legislative field covered by Entry 23 of List II will pass on to Parliament by virtue of Entry 54 List I. But in order to judge whether on that account, the State Legislature loses its competence to pass the Act of 1973, it is necessary to have regard to the object and purpose of that Act and to the relevant provisions thereof, under which Special Area Development Authorities are given the power to tax lands and buildings within their jurisdiction. We have set out the objects of the Act at the commencement of this judgment, one of which is to provide for the development and administration of Special Areas through Special Area Development Authority.....Surely the functions, powers and duties of Municipalities do not become an occupied field by reason of the declaration contained in Section 2 of the Mines and Minerals (Development and Regulation) Act, 1957. Though, therefore, on account of that declaration, the legislative field covered by Entry 23 List II may pass on to the Parliament by virtue of Entry 54, List I, the competence of the State Government to enact laws for municipal administration will remain unaffected by that declaration."

It was further observed that:

"The reasoning adopted in this decision shows that it is not correct to say that the property tax provided for in the Act of 1973 is beyond the legislative competence of the State Legislature; that tax has nothing to do with the development of mines. The power conferred by the State Legislature on Special Area Development authorities to impose the property tax on lands and buildings is therefore not in conflict with the power conferred by the Coal Mines Nationalisation Act in the Union Government to regulate and develop the Coal Mines Nationalisation Act in the Union Government to regulate and develop the coal mines so as to ensure rational and scientific utilisation of coal resources. The paramount purpose behind the declaration contained in Section 2 of the Mines and Minerals (Regulation and Development) Act, 1957 is not in any manner defeated by the legitimate exercise of taxing power u/s 69(d) of the Act of 1973."

63. What follows from the above is that in order to judge whether the State Legislature loses its competence to pass the Act under Entry 62 of List II it is necessary to have regard to the object and purpose of that Act and to the relevant provisions thereof. The purpose of the impugned legislation is not only to raise additional revenue but also to tax the luxuries. It is true that the Parliament has enacted the Tobacco Board Act, pointed out in the earlier paragraphs, but the scope and object for enacting the Tobacco Board's Act is to regulate and control the production, export and import of tobacco. Whereas the impugned legislation is not only to raise additional revenue by subjecting the luxuries to tax, one of the luxury being tobacco, but also to prevent and regulate the use of tobacco products which are harmful to health. Surely the field of raising revenue by taxing luxuries cannot be said to be occupied by the Tobacco Board's Act of 1975 which is limited only to control and regulate the production, export and import of tobacco. Further, before State Legislature is denuded of power to legislate under Entry 62 List 2 in respect of a declared industry, the scope of declaration and consequent control assumed by the Union must be demarcated with precision and then to ascertain whether the impugned State legislation trenches upon the excepted field. In our view, the scope of the Tobacco Board Act, 1975 is entirely different and it does not denude the field of the State Legislature to tax luxuries under Entry 62 List 2 of the 7th Schedule. It follows from the above that the fact that the Parliament had enacted the Tobacco Board's Act under Entry 52 of List I of the VII Schedule of the Constitution does not make the field of taxation by the State Legislature under Entry 62 List n of the Constitution an occupied field. Further a distinction is to be drawn between the tax and fee. Fees is distinguishable from taxes, in that, the chief purpose of tax is to raise funds for the support of the Government or for public purposes. While a fee may be charged for the privilege or benefit conferred or service rendered to meet the expenses connected thereof. Thus, fees is nothing but payment for some special privilege granted or service rendered. *Municipal Corporation of the City of Baroda Vs. Babubhai Himatlal*, . Therefore, the levy of fees stands on a different footing than the tax. As pointed out in the earlier paragraphs, the power to tax is a

sovereign power and while dealing with the Entry in the Legislative list, it was held by the Supreme Court in *Express Hotels Pvt. Ltd. v. State of Gujarat* (supra) as follows:

"6. We are dealing with an Entry in a Legislative List. The entries should not be read in a narrow or pedantic sense but must be given their fullest meaning and the widest amplitude and be held to extend to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in them."

64. In *Ishwari Khetan Sugar Mill's* case (supra), the question that arose for consideration is whether the State Legislature is competent to enact U.P. Sugar Undertakings (Acquisition) Act (23 of 1971) under which all the sugar undertakings set out in the schedule vested in the U.P. State Sugar Corporation Limited. The main thrust of the attack was that sugar was a declared industry by virtue of Industries (Development and Regulation) Act, 1951 enacted by the Parliament under Entry 52 List I and hence the U.P. Legislature was denuded of all the legislative powers to legislate in respect of sugar industry and, therefore, the impugned legislation is void on account of legislative incompetence.

65. Repelling the said arguments, it was held that "it is not correct to say that once a declaration is made in respect of an Industry, that Industry as a whole is taken out of Entry 24, List II, Schedule 7 of the Constitution of India. It was further held that before State Legislature is denuded of power to legislate under Entry 24, the scope of declaration and consequent control assumed by the Union must be demarcated with precision and then to ascertain whether the impugned State legislation trenches upon the excepted field."

66. On a comprehensive examination of all the provisions of U.P. Sugar Undertakings (Acquisition) Act, it was held that "in pith and substance the Act is one for acquisition of scheduled undertakings and such acquisition by transfer of ownership of the scheduled undertakings to the Corporation would in no way come in conflict with any of the provisions of the Industries (Development and Regulation) Act, 1951 or would trench upon any control exercised by the Union under the various provisions of the IDR Act."

67. It was further held that "in fact the IDR Act, generally speaking does not deal with the ownership of industrial undertakings in declared industries. The Act is primarily concerned with development and regulation of the declared industries."

68. It was further observed that "while making the declaration the Parliament did use the further expression "to the extent herein provided" while assuming control, the absence of such words in the declaration in Section 2 would not lead to the conclusion that the control assumed was to be something in abstract, total and unfettered and not as per various provisions of the IDR Act." It was also held that "the legislative power of the States under Entry 24, List II is eroded only to the extent control is assumed by the Union pursuant to a declaration made by the Parliament in respect of declared industry as spelt out by legislative enactment and the field occupied by such enactment is the measure of erosion."

Subject to such erosion, on the remainder the State Legislature will have power to legislate in respect of declared industry without in any way trenching upon the occupied field. State Legislature which is otherwise competent to deal with industry under Entry 24 List II, can deal with that industry in exercise of other powers enabling it to legislate under different heads set out in Lists 11 and III and the power cannot be denied to the State."

69. In other words when once Parliament occupied the field by enacting a legislation under Entry 52 of List I the Legislative power of the State to legislate in respect of entry in List II does not automatically come to an end, it depends on the scope of the legislation and consequent control assumed by the Parliament.

70. We have already analysed the provisions of the Tobacco Boards Act, 1975 and the impugned legislation. Tobacco Boards Act, as pointed out in the earlier paragraph, only deals with regulations of export and import of tobacco and maintenance of standards of tobacco for the purpose of export, while the impugned legislation provides for levy of luxury tax on a luxury viz., supply of tobacco. The impugned legislation, in pith and substance, falls under Entry 62 of List II and there is no conflict between the impugned legislation and the Tobacco Boards Act. It does not either directly or incidentally trenches upon the field occupied by the Tobacco Boards Act. Therefore, there is no substance in the arguments of the learned Counsel for the petitioners that the State legislature is not competent to legislate under Entry 62 of List II of Schedule VII by virtue of the field occupied by the Tobacco Boards Act enacted by the Parliament under Entry 52 of List I.

71. The next question that arises for consideration is whether levy of luxury tax on supply of tobacco impedes free movement of goods and, therefore, violative of Articles 301, 302 and 304 of the Constitution of India.

72. It is necessary to refer to the principles laid down by the Supreme Court in various decisions construing the scope of Articles 301, 302 and 304 of the Constitution of India.

73. Article 301 provides for free trade and commerce and intercourse throughout the territory of India. Article 302 empowers the Parliament by law to impose such restriction for the freedom of trade, commerce or intercourse between one State or another or between any part of the territory of India as may be required in the public interest. Article 303 is not relevant for the purpose of this case. Article 304 enables the State Legislature 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 and under clause (b) imposes such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest. However no bill or amendment for the purpose of clause (b) shall

be introduced or moved in the Legislature of a State without the previous sanction of the President.

74. Construing the scope of Articles 301 to 304, the Supreme Court in *Atiabari* "s case (supra) held that" "though the power of levying tax is essential for the very existence of the Government, its exercise must inevitably be controlled by the Constitutional provisions made in that behalf. It cannot be said that the power of taxation per se is outside the purview of any constitutional limitations."

75. It was further held that "it seems to us that Article 301 read in its proper context and subject to the limitations prescribed by the other relevant Articles in Part XIII must be regarded as imposing a constitutional limitation on the legislative power of Parliament and the Legislatures of the States. What entries in the legislative lists will attract the provisions of 301 is another matter; that will depend upon the content of the freedom guaranteed; but wherever it is held that Article 301 applies, the legislative competence of the Legislature in question will have to be judged in the light of the relevant Articles of Part XIII; this position appears to us to be inescapable."

76. It was also held that "At this stage we would content ourselves with the statement that the freedom of trade guaranteed by Article 301 is freedom from all restrictions except those which are provided by the other Articles in Part XIII.....the effect of Article is to provide for an exception to the general rule prescribed by Article 301. Restrictions on the freedom of trade can be imposed by Parliament if they are required in the public interest so that the generality of freedom guaranteed by Article 301 is subject to the exception provided by Article 302."

77. Commenting on the scope of Article 304 it was held by the Supreme Court that ".....there are three conditions which must be satisfied in passing an Act under Article 304(b),the previous sanction of the President must be obtained, the legislation must be in the public interest, and it must impose restrictions which are reasonable. It is of course true that if the previous sanction of the President is not obtained that infirmity may be cured by adopting the course authorised by Article 255. The result of reading Article 304 (a) and (b) together appears to be that a tax can be levied by a State Legislature on goods manufactured or produced or imported in the State and thereby reasonable restrictions can be placed on the freedom of trade either with another State or between different areas of the same State."

78. Holding as above, the Supreme Court observed that "taxing laws are not excluded from the operation of Article 301; which means that tax laws can and do amount to restrictions freedom from which is guaranteed to trade under the said Part..... It would be reasonable and proper to hold that restrictions freedom from which is guaranteed by Article 301, would be such restrictions as directly and immediately restrict or impede the free flow or movement of trade. Taxes may and do amount to restrictions; but is is only such taxes as directly and

immediately restrict trade that would fall within the purview of Article 301. The argument that all taxes should be governed by Article 301 whether or not their impact on trade is immediate or mediate, direct or remote, adopts, in our opinion, an extreme approach which cannot be upheld."

79. In other words, according to the Supreme Court, only such type of taxes which directly or immediately restrict the trade would fall within the purview of Article 301.

80. In *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, , while reiterating the principles laid down in *Atiabari's* case (supra), the Supreme Court held that "Regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by Article 301 and such measures need not comply with the requirements of the Proviso to Article 304(b) of the Constitution." It was also held that "for the tax to become a prohibited tax it has to be a direct tax the effect of which is to hinder the movement part of trade. So long as a tax remains compensatory or regulatory it cannot operate as a hinderance."''

81. In *State of Madras v. N.K. Nataraja Mudaliar* 1968 (3) SCR 1029 , the question that arose for consideration was that whether a part of the turnover of assessee's business in matches arose out of inter-State sale transactions at the assessee's depot at Ongole (in the State of Andhra Pradesh) to which depot the goods were despatched by him from his place of business in the State of Madras. The Deputy Commercial Tax Officer subjected the turnover to tax. The assessee contended that the provisions of the Central Sales Tax Act which permitted levy of tax at varying rates in different States were invalid, and that the transactions brought to tax were not in truth inter-State transactions. In that context, the Supreme Court observed that "the flow of trade does not necessarily depend upon the rates of sales tax: it depends upon variety of factors, such as the source of supply, place of consumption, existence of trade channels, the rates of freight, trading facilities, availability of efficient transport and other facilities for carrying on trade. Instances can easily be imagined of cases in which notwithstanding the lower rate of tax in a particular part of the country goods may be purchased from another part, where a higher rate of tax prevails. Supposing in a particular State in respect of a particular commodity, the rate of tax is 2% but if the benefit of that low rate is offset by the freight which a merchant in another State may have to pay for carrying that commodity over a long distance, the merchant would be willing to purchase the goods from a nearer State, even though the rate of tax in that State may be higher. Existence of longstanding business relations, availability of communications, credit facilities and a host of other factors - natural and business - enter into the maintenance of trade relations and the free flow of trade cannot necessarily be deemed to have been obstructed merely because in a particular State the rate of tax on sales is higher than the rates prevailing in other States Prevalence of differential

rates of tax on sales of the same commodity cannot be regarded in isolation as determinative of the object to discriminate between one State and another."

82. The view expressed by the Supreme Court in *Nataraj Mudaliar*'s case (supra) was referred with approval in *Shree Mahavir Oil Mills and Another Vs. State of Jammu & Kashmir and Others*, .

83. Let us examine the provisions of the impugned legislation in the light of the above principles. Under the Act, inter-State transactions are exempt from the levy of luxury tax. In spite of repeatedly pointing out that when once the inter-state transactions are exempt from the levy of luxury tax, the question of violation of Article 301 does not arise, the learned Counsel for the petitioners could not point out how Article 301 is violated on the facts of the present case. Shri N.S. Murthy and Anantha Babu pointed out that by virtue of luxury tax, the tobacco products in Andhra Pradesh would cost more than the tobacco products in other States. That exactly is the situation where the Supreme Court considered in *Nataraja Mudaliar*'s case (supra) and held that the different rates of tax in different States do not ipso facto violate Article 301 of the Constitution as the flow of trade does not depend on the rates of sales tax and depends on variety of other factors which were enumerated in the said decision.

84. Sri N.S. Murthy also contended that it was held in *Abdul Kader*'s case (supra) that the levy of tax on tobacco was to impede free flow of trade and is violative of Article 301, but in view of the sanction obtained from the President, the validity was upheld. It is true that in *Abdul Kader*'s case (supra) it was held that the levy of tax directly impedes the free flow of trade and as such it is violative of Article 301 of the Constitution of India. It is, therefore, necessary at this stage to find out the nature of levy in the said decision. Under Rule 16 of the relevant Rules, "A" class licensees are entitled to purchase tobacco from any dealer within or without the State without any quantitative restriction. This class of licensees could sell only to other "A class" licensees or "B class licensees". It was also mentioned in that Rule that the licence fee would be realised only for the quantities brought in from outside. Perusal of the rules shows that it was imperative for the A class licensees to pay the licence fee in advance before they could bring tobacco within the taxable territory. In other words, before A class licensee brings the tobacco bought in another State he has to pay licence fee.

85. Rule 16 imposes a prohibition prohibiting the A class licensees from bringing the tobacco produced in another State without paying the fees and, therefore, it directly impedes the free flow of goods. It is a case where the imposition of tax is before the goods produced outside the territory are brought into the territory and such levy directly impedes the free flow of trade. Whereas in the present case, there is no levy of luxury tax on inter-State transactions. Therefore, the observations made in the judgment in *Abdul Kadir*'s case (supra) to that extent are not relevant.

86. In view of the above, we are of the view that levy of luxury tax under Entry

62 of List II by the State Government does not in any way violate Articles 301 to 304 of the Constitution of India.

87. The learned Counsel for the petitioners further argued that by enacting the Additional Duty of Excise (Goods of Special Importance) Act (Act 58 of 1957), the Parliament levies additional duties of excise and distributes a part of the proceeds among the States provided the States do not levy taxes on sale or purchase of the scheduled commodities, that the Parliament has also provided the consequence that follows if any State levy tax on sale or purchase of scheduled commodities and, therefore, by virtue of the impugned legislation, the State would not be deprived of its share in the proceeds of additional duties of excise, but also takes away the legislative competence.

88. It is pointed out, in the present case, it is not a tax on sale, but it is a tax on supply of luxury. Therefore, in our view, the question of depriving the State of their share in the additional duties of excise under the Additional Duty of Excise (Goods of Special Importance) Act (Act 58 of 1957) does not arise. Further by enacting the Additional Duty of Excise (Goods of Special Importance) Act, the Parliament did not prohibit any State from making any law or levying any tax which a State can levy by virtue of Entries in List II. Therefore, the arguments of the learned Counsel for the petitioners are rejected.

89. It is also argued by Sri Murthy that the levy of 50 paise in every rupee under Act 9 of 1997 on chewing tobacco preparations commonly known as Khara, Masala, Kimam, Dokta, Zarda Sukha and Surti is arbitrary and violative of Article 14 of the Constitution. While the learned Advocate-General argued that the object of the Act is not only to raise additional revenues, but is also to prevent the use of the tobacco products mentioned above as they are health hazards. If the price of the product is enhanced, automatically the use of the product will be reduced which results in achieving the object of protecting the public interest.

90. We agree with the arguments of the learned Advocate-General that the levy of 50 paise in every rupee on the tobacco products mentioned above is not discriminatory and violative of Article 14 as the object of the levy is to prevent the use of the product by the public in order to safeguard the public health as it is now well recognised by the Courts that the use of the above products results in hazards to the health. We, therefore, reject the argument of the learned Counsel for the petitioners. We also reject the contention of the learned Counsel of the petitioners that imposing 50 paise is confiscatory as the object of the levy at 50 paise in a rupee is to prevent the public from using it and there is nexus between the levy of 50 paise in a rupee and the object sought to be achieved.

91. Sri Krishna Murthy, learned Counsel for the petitioners argued that the impugned legislation provides for discounts whereas the question of discount does not arise unless it is a sale and, therefore, evidently it is a tax on sale and not a tax on luxury and the State has no legislative competence to levy tax. He relied on the judgment of the Bombay High Court in Hindustan Petroleum Corpn.

Ltd, v. State of Maharashtra (1976) 37 STC 432, and the judgment of the Supreme Court in Dy. Commissioner of Sales Tax v. Aysha Hosiery Factory (P) Ltd., 85 ITR 106. In the light of the view that we have taken that a reading of the Charging Section indicates that the levy of tax is on supply of luxuries viz., tobacco, it is not necessary to refer to this argument and the judgments relied on by the learned Counsel.

92. Allahabad High Court in Kamadgiri Agencies v. State of Uttar Pradesh, unreported, upheld the levy of luxury tax on tobacco on the ground that it is within the legislative competency of the State. In other words, the Uttar Pradesh Tax on Luxuries Ordinance 1994 (U.P. Ordinance No.8 of 1994) upheld as within the legislative competence of the U.P. Legislature. The learned Judges have held that the said Ordinance is violative of Article 301 of the Constitution of India and, therefore, violative of Article 304(b) of the Constitution of India and hence it is ultra vires. The learned Judges also held that the impugned Ordinance is not void on account of passing of the Tobacco Boards Act, 1975 by the Parliament.

93. The question of violation of Article 301 of the Constitution of India does not arise in this case as the - inter-State transactions are exempted from the levy of luxury tax. Therefore, the judgment of the U.P. High Court is not relevant to that extent.

94. The Kerala High Court in Hallmark Tobacco Company Limited v. State of Kerala, 1988 (108) STC 539, held that the Kerala Tax on Luxuries Act is within the legislative competence of the State Legislature under Entry 62 of List II of the VII Schedule to the Constitution. The Kerala High Court however held "that the levy is in violation of Article 301 of the Constitution and are not saved under Article 304(b) of the Constitution.

95. The same reasoning which we have given while considering the judgment of the Allahabad High Court in Kamadgiri Agencies" case (supra) applies as the interstate transactions of supply of tobacco is exempt from the provisions of the Luxury Tax Act.

96. In the light of the above, we uphold the validity of the Luxury Tax Act as amended by Act No.28 of 1996 and Act No.9 of 1997 as the A.P. State Legislature is competent to enact Luxury Tax Act Nos.28 of 1996 and 9 of 1997 under Entry 62 of List II of Schedule VII to the Constitution of India. The writ petitions are, therefore, have no merits and they are dismissed. No costs.