

(1997) 05 SHI CK 0019
In the High Court Of Himachal Pradesh
Case No : C.W. Ps. No"s. 353/94

J.D. Gupta and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 27-05-1997

Acts Referred:

Constitution of India, 1950 — Article 110(2), 266
Forest Act, 1927 — Section 2, 39, 41, 41(2), 42
Forest Produce Transit (Land Routes) Rules, 1978 — Rule 10, 11, 11(5), 13, 14
Himachal Pradesh Agricultural Produce Markets Rules, 1971 — Rule 81

Citation : (1997) 3 ShimLC 112

Hon'ble Judges : M. Srinivasan, C.J.;A.L. Vaidya, J

Bench : Division Bench

Advocate : K.D. Sood, in C.W.P. Nos. 353 and 415/94 and No. 5/97, Anand Sharma and T. Chauhan, in C.W.P. Nos. 386, 387, 424, 446 and 469/94 and 893/95, Ramakant, in C.W.P. No. 415/94, Ankush Sood, in C.W.P. Nos. 424, 446 and 469/94 and 893/95, M.M. Khanua, in C.W.P. No. 424/94 and C.B. Barowalia, in C.W.P. Nos. 440 and 538/94, H.K. Paul, in C.W.P. Nos. 911/94 and 545/95 and Rajiv Sharma, in C.W.P. No. 911/94, for the Appellant; Indar Singh, General, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—In these petitions a common question arises for consideration pertaining to the validity of Rule 11(5) as well as Annexure "D" of Forest Produce Transit (Land Routes) Rules, 1978, as amended in 1993.

2. The Petitioners are traders and they are dealing in the sale and purchase of numerous goods including minor forest produce like Morchela Asculemta (Guchhis) According to the Petitioners, "Guchhis" is a spontaneous and wild growth in the forest and it is collected by the farmers/right holders. Being a forest produce the right holders are required to obtain permits from the Forest Department of the 1st Respondent and the permits were issued by the concerned D.F.O. of the range in question within whose jurisdiction they are intended to be

collected.

3. The State Government has framed Himachal Pradesh Forest Produce Transit (Land Routes) Rules, 1978, in exercise of the powers vested in it under Sections 41 and 42 of the Indian Forest Act. They were published initially in the Rajpatra, Himachal Pradesh (Extraordinary) dated 5-3-1978. They have been amended from time to time and by No. FTS (A) 3-1/77, dated Shimla-2 17th August, 1993, Rules, 5, 10, 11, 18 and 20 were amended. We are concerned in this case only with the amendment to Rule 11(5) alongwith Annexure "D"

4. It is better that the entire Rule 11 is extracted herein as it stood before the amendment of 1993 excepting the tabular column mentioning the names of Barriers and the Districts in Rule 4:

11. (1) : No person shall transport or cause to be transported any forest produce by land routes, without obtaining pass (Annexure "A") from the concerned Divisional Forest Officer or any other officer so authorised.

(2) No person shall transport or cause to be transported any timber for conversion for sawing or for sale enroute.

(3) No person shall transport or cause to be transported any timber except fire-wood, pulpwood and bamboo's unless the timber is properly affixed with one export hammer mark by the forest officer authorised by the conservator of forests concerned.

(4) (a) The authority issuing the pass shall prescribe a route by which along the forest produce may be transported for export outside Himachal Pradesh in such a manner that the forest produce crosses through one of the following barriers established by the Excise and Taxation Department:

Provided that such authority shall also prescribe the check post (s) where the forest produce shall be compulsorily checked enroute.

(b) In case the produce is not to be exported outside the territory of Himachal Pradesh, the authority alone the forest produce may be transported and shall also determine the check post (s) where it shall be compulsorily checked.

5. The issuing authority shall also determine the other conditions subject to which the pass shall be issued and shall also determine the period for which the pass shall under no circumstances exceed a period of six months including any extension (s) allowed. A fee of Rs. 5 shall be leviable for the issue of such a pass.

5. By the amendment of 1993, Rule 11(5) was substituted by the following:

(5). The issuing authority shall also determine the other conditions subject to which the pass shall be issued and shall also determine the period for which the pass remain valid. However, the validity of any pass shall under no circumstances exceed a period of six months including any extension(s) allowed. A fee of Rs. 25/- shall be leviable for the issue of such a pass except in case of medicinal

plants for which the fee shall be as per Annexure "D" .

It is not necessary to extract Annexure "D" which is also challenged here excepting to state that the said Annexure contains tabular statement giving area of the medicinal plant, local name of the medicinal plant and the proposed export permit fee (in Rs. per quintal).

6. The only change brought about by the amendment of 1993 in Rule 11(5) is in the last portion of the Rule. Previously, under the said rule a fee of Rs. 5/- was leviable for the issue of a pass while under the present Rule a fee of Rs 25/- shall be leviable for the issue of such a pass except in case of medicinal plant for which fee shall be as per Annexure "D".

7. These Petitioners have raised three contentions in support of their claim" that the Rule is not valid. The first contention is that what is imposed by the Rule is not a fee but in reality a tax as there is no quid pro quo whatever on the part of the State Government and no services are rendered which can be said to be commensurate with the amount charged. As a part of this contention it is also argued that even if any service is rendered with regard to the various forest produce dealt with under the said Rule, there can be no difference between the other Forest produce and the medicinal plant in so far as such services are concerned. Hence, according to the Petitioners, if at all, there can be only a fee uniformly levied with regard to all the forest produce dealt with under the said Rule and there cannot be a differentiation with reference to medicinal plant.

8. The second contention is that the State Government has no power to impose levy of export permit fee inasmuch as the subject falls within Section 39 of the Forest Act under which it is only the Central Government which is empowered to levy export duty. According to the learned Counsel the State Government has no jurisdiction to impose any levy with regard to goods which are to be exported outside the State.

9. The third contention is that the proposed levy falls outside the scope of Sections 41 and 42 of the Indian Forest Act and thus ultra vires the powers of the State Government.

10. Before considering the first contention which has been dealt with elaborately in the course of arguments on both sides, it is better if we dispose of the second and third contentions which shorter than the first one.

11. In so far as the power of the State Government is concerned, Section 41 enables the State Government to frame Rules to regulate the transit of forest produce Under Sub-section (1) the control of all Rivers and their banks as regards the floating of timber and other forest produce in transit by land or water, is vested in the State Government, and it may make Rules to regulate the transit of all timber and other forest produce. Under Sub-section (2), without prejudice to the generality of the powers under Sub-section (1) and in particular the State Government may make Rules:

- (a) to prescribe the routes by which along timber or other forest produce may be imported or exported or moved into, from or within the State;
- (b) prohibit the import or export or moving of such timber or other produce without a pass from an officer duly authorised to issue the same or otherwise than in accordance with the conditions of such pass;
- (c) provide for the issue, production and return of such passes and for the payment of fees therefor.

It is unnecessary for the purpose of this case to refer to the other part of the said section.

12. The expression "forest produce" has been defined in Section 2(a) as inclusive of:

(a) the following whether found in, or brought from, a forest or not, that is to say:

timber, charcoal, daoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds, kuth and myrabolams, and

(b) the following when found in, or brought from a forest, that is to say;

(i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,

(ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,

(iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey, and wax, and all other parts or produce of animals, and

(iv) peat surface soil, rock, and minerals (including lime-stone, latrite, mineral oil, and all products mines or quarries)

13. A look at the Rules framed by the State Government under Sections 41 and 42 which are entitled "Forest Produce Transit (Land Routes) Rules, 1978", shows that the Rules are intended for regulating the movement of Forest Produce by land routes into, "from and within the territorial limits of the Himachal Pradesh." Rule 5 provides for registration of property mark(s) and its use with regard to forest produce whenever a person wants to transport or cause to transport such forest produce. Rule 6 deals with registration of property and its use. Rule 8 provides for issue of certificate of registration. Rule 9 fixes the validity period of registration certificate. Rule 10 deals with issue of pass for export or transport of Forest Produce. It provides that no pass shall be issued for any unmarked timber or for such timber as bears the marks not registered as provided therein. Rule 11 deals with prohibition on transport of Forest Produce. We have already extracted the entirety of Rule 11. Rule 13 provides for setting-up of check-posts. Rule 14 provides for production of pass challan for examination. Rule 15 enables the concerned officials to detain the forest produce and other articles etc. Rule 16

provides for seizure of forest produce and other articles etc Rule 17 provides for exemption to right holders from obtaining a pass. Rule 18 imposes a bar on booking of forest produce by rail.

14. Thus, a reading of all the Rules shows that it is a regulatory measure introduced by the State Government for the purpose of regulating movement of forest produce by land routes into, from and within the territorial limits of the Himachal Pradesh. This falls squarely within the scope of Section 41 the relevant portion of which we have already extracted. Section 42 deals only with penalty for breach of rules made u/s 41. Hence, there is no substance in the contention that the imposition by the Rules of a condition to obtain a pass and for payment of a fee on the said pass are outside the scope of Sections 41 and 42. A perusal of the sections side by side with the Rules will show that the Rules fall within the power of the State. On the other hand the power of the Central Government u/s 39 is to levy a duty in such manner, at such places and at such rates as it may declare by notification in the official Gazette on all timber or other forest-produce which is produced in the territories to which the Act extends, and in respect of which the Government has any right and which is brought from any place outside the territories to which the Act extends. Section 39 is in no way contradictory to Section 41 and the power of the Central Government does not come in conflict with the power of the State Government u/s 41. A reading of the two sections together shows that they can exist side by side. When the Central Government is empowered to regulate import, export etc, and also levy fees therefor. Thus, it cannot be said that the State Government has trespassed upon the field of the Central Government which is provided by Section 39 of the Act.

15. Learned Counsel for the Petitioners places reliance on the description of the fee as "proposed export permit fee." They contend that the Rules themselves describe this as export permit fee and that will bring the matter within the scope of Section 39 of the Act, We are unable to agree with this contention. We have already referred to Section 41(2) which speaks of import or export or moving into, from or within the State.

Thus, the expression "export permit fee" is well within the scope of Sections 41 and 42 and does not trespass on the field of the Central Government which is prescribed by Sections 39 of the Act, Thus, we have no hesitation to reject the second and third contentions advanced by the learned Counsel for the Petitioners.

16. Coming to the first contention, the question is whether the levy is a fee or a tax as contended by the learned Counsel for the Petitioners. Before referring to the relevant decisions cited by the counsel on both sides, it is necessary to refer to the factual statements found in the affidavit filed by the State Government. In the reply filed by the State Government in CWP No. 353/94 it is stated in paragraphs 7 and 8 as follows:

7. The averments made under this para are mis-conceived. It is not correct to say that Department of Forest Farming and Conservation render no service in the

matter of collection/export of forest produce i. e., Guchhi. In this connection, it is submitted that Forest Department ensures management protection and preservation of forest species which grow in wild, in such a way that their extraction is regulated on scientific lines. This ensures future regeneration and propogation of such species for collection from the forests, which is free of cost for the right holders. No royalty or export fee is realised from the right holders so long as the produce does not enter trade. In fact, export permit fee is Rs. 5 was in addition to the royalty rates fixed during 1962.

8. The assertions made under this para arc partly admitted but it is not collect to say that the export permit fee of Rs 10,000/- per (sic). is unwarranted and un-justified. In fact, this export permit fee is just 5% of the market price for Guchhi in Delhi market, where it is being sold at about Rs. 2700 to Rs. 3000 per kg i. e. about Rs, 2,70,000 per qtl. Therefore, the decision of the Government to levy export permit fee of Rs. 10,000/- per qtl. on Guchhi is legally justified.

It is also stated in paragraphs 9 (a) and 9 (c) as follows:

9. ...

(a) It is admitted that the Respondents and their subordinate forest officers/officials staff are duty bound to issue export permit for the forest produce like Guchhi. At the same time these officers are also bound to enforce the regulatory provision provided under the relevant rules It is also not correct to say that the Petitioners are not entitled to derive the benefit of services rendered by the right holders/farmers. The Forest functionaries are properly protecting preserving and ensuring future re-generation of forest produce for their own domestic use and sale in the market. Therefore, the Petitioners in turn try to corner procurement of forest produce including Guchhi from the right holders/farmers at low price and take Guchhi out side the State to the markets where it fetches very high price. Thus, the Petitioners act as traders and the export permit fee of Rs. 10,000/- is charged just at about 5% of the market price from these traders/Petitioners is fully justified and to this extent they are not entitled for any concession. The Petitioners are rather required to be bound to pay remunerative price of Guchhies to the farmer/right holders who collect Guchhies by hard labour.

(b)...

(c) The submissions made by the Petitioners under this sub-para are totally wrong and mis-leading for the reason stated under reply to main para and sub-paras (a) and (b). The export permit fee Rs 10,000 per qtl is just about 3% of the market value and is very much reasonable. The Petitioners are traders and have got no intention to join hands in protecting and preserving the forest produce in the forests. Their sole objective is to derive maximum profit by getting the produce from right holders/farmers at low price and also by avoiding payment of legally leviable export permit fee hence Annexure PA cannot be struck down.

17. In the supplementary affidavit filed by the Principal Chief Conservator of Forests on 29-6-1995, the following averments are found:

3 The following amount has been realised as export permit fee, from the exporters during 1994-95:

-----		Name of District	Total Income
-----		1. Kinnaur	6,33,650
27,39,343	3. Sirmaur	5,600	4. Mandi 9,63,146
7,654	7. Lahaul	28,000	8. Chamba 9,60,787
-----		Total	: 58,45,497

The export permit fee realised is not directly spent It is deposited as revenue of the Department Budget is separately allotted under plan and Non Plan Schemes for regeneration protection and various allied activities mentioned herein in different paras.

Perusal of expenditure figures indicated under para 2 are far higher than the revenue realised in a particular financial year. This shows that the Respondent State is putting in sincere efforts and money in the proper management, protection and preservation of medicinal plants to ensure availability of substantial quantities every year for export for the sustenance of the Traders.

4. Local people/right holders have recorded rights to collect fruits, edible seeds, medicinal roots and leaves, roots for the preparation of dyes and honey for their own use and for sale free of cost as per the recorded rights given in various Settlement Reports. This means that the right holders can avail this facility only from the forests in which they have recorded rights and no fee is charged from them. In practice the traders purchase the medicinal herbs and plants from the right holders and transport the same to the Amritsar, Delhi and other markets of demand after obtaining export permits from the concerned Divisional Forest Officer under the H.P. Forest Produce Transit (Land Routes) Rules, 1978 by payment of rates as prescribed vide Annexure PA,

5. Regeneration operations include raising of nursery stock, planting, weeding and the maintenance etc. The area regenerated artificially are closed to grazing.

6. Besides the above operations, the Department is spending considerable amount of money in construction of roads and paths etc. to facilitate transportation of the forest produce.

7. Forest Check posts have been created at strategic places to exercise strict watch over the illicit export of forest produce including medicinal herbs, wireless sets are being provided at important Stations to keep vigil over movement of forest produce. Field staff of the Department keep strict vigil against any damage to the forest growth in any form and take action against the offenders in accordance with law. The Department has also to undertake extension work in the form of educating the general public about the importance of preserving the

forests including the minor forest produce, All this entails huge expenditure from the State exchequer.

8. The Department in order to avoid the chances of over exploitation by the traders has regulated the extraction of various medicinal plants by laying 4 years Collection Cycle as per instructions contained in Pr CCF HP letter No Ft. 12-306/57 (M), dated 8-2-1994 copy of which is attached as Annexure R-1.

18. With the above facts in mind, we will refer to the judgments of the Supreme Court placed before us by counsel on both sides. In *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, the Court pointed out the essential characteristics of a fee in the following terms:

44. Coming now to fees, a "fee" is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay vide Lutz on "Public Finance" P. 215. These are undoubtedly some of the general characteristics but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases.

19. In *Indian Mica Micanite Industries Vs. The State of Bihar and Others*, the Court observed that the correlation-ship between the services rendered and the fee levied is essentially a* question of fact and prima facie the levy appeared to be excessive in that case even if the State can be said to be rendering some service to the licensees. It was also pointed out that the State Government which ought to be in possession of the material from which the correlationship between the levy and the services rendered could be established at least in a general way had not chosen to place those materials before the Court and the Court held in that case that the levy under the impugned Rule could not be justified.

20. In *Shri Krishna Das Vs. Town Area Committee, Chirgaon*, the Court stated the law thus:

24. We have seen that a fee is a payment levied by an authority in respect of services performed by it for the benefit of the payer, while a tax is payable for the common benefits conferred by the authority on all tax payers. A fee is a payment made for some special benefit enjoyed by the payer and the payment is proportional to such benefit. Money raised by fee is appropriated for the performance of the service and does not merge in the general revenue. Where, however, the service is indistinguishable from the public services and forms part of the latter it is necessary to inquire what is the primary object of the levy and the essential purpose which it is intended to achieve. While there is no quid pro quo between a tax payer and the authority in case of a tax, there is a necessary correlation between fee collected and the service intended to be rendered. Of

course the quid pro quo need not be understood in mathematical equivalence but only in a fair correspondence between the two. A broad relationship is all that is necessary.

25. Where it appears that under the guise of levying a fee the authority is attempting to impose a tax, the Court has to scrutinise the scheme to find out whether there is a real correlation between the services and the levy whether it is so coextensive as to be a pretence of a fee but in reality a tax, and whether a substantial portion of the fee collected is spent in rendering the service.

It should be noted that in that judgment, the Court has taken care to state that the quid pro quo need not be understood in mathematical equivalence but only in a fair correspondence between the two and a broad relationship is all that is necessary.

21. Our attention has been drawn to *S. Veneer and Saw Mills, Nagaland Vs. State of Nagaland and Others*, in which a Division Bench of that Court held that a royalty on timber used by timber mills without taking into account the actual timber used as basis for fixation of royalty but on the basis of the installed capacity of mill was a tax and not royalty and therefore the State Government had no power to levy tax as such. In that judgment the Court had held that though the levy purported to be and imposed on royalty was really a tax. The facts of the case are entirely different from the facts of the present case.

22. The Supreme Court had occasion to consider the question once again in *Krishi Upaj Mandi Samiti and Ors. v. Orient Paper and Industries Ltd.* (1955) 1 SCC 655. After considering the earlier judgments, the Court held that the conspectus of the decisions referred to therein emerged as follows:

21. Thus what emerges from the conspectus of the aforesaid decisions is as follows:

(1) Though levying of fee is only a particular form of the exercise of the taxing power of the State, our Constitution has placed fee under a separate category for purpose of legislation. At the end of each one of the three Legislative Lists, it has given power to the particular legislature to legislate on the "imposition of fee in respect of every one of the items dealt with in the (sic) itself, except fees taken in Court.

(2) The tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered. There is no quid pro quo between the tax payer and the public authority. It is a part of the common burden and the quantum of imposition upon the tax payer depends generally upon his capacity to pay

(3) Fee is a charge for a special service rendered to individuals or a class by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service though in some cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform

and no account is taken of the varying abilities of different recipients to pay. These are various kinds of fees and it is not possible to formulate a definition that would be applicable to all cases.

(4) The element of compulsion or coerciveness is present in all kinds of impositions though in different degrees and it is not totally absent in fees. Hence it cannot be the sole or even a material criterion for distinguishing a tax from fee. Compulsion lies in the fact that payment is enforceable by law against an individual in spite of his unwillingness or want of consent and this element is present in taxes as well as in fees

(5) The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of the common burden while a fee is a payment for a special benefit or privilege. Fees confer a special advantage although the special advantage is secondary to the primary motive of regulation in the public interest. Public interest seems to be at the basis of all impositions but in a fee it is some special benefit which is conferred and accruing which is the reason for imposition of the levy. In the case of a tax, the particular advantage if it exists at all, is an incidental result of State action. A fee is a sort of return or consideration for services rendered and hence it is primarily necessary that the levy of fee should on the face of the legislative provision be correlated to the expenses incurred by Government in rendering the services. As indicated in Article 110(2) of the Constitution ordinarily there are two classes of cases" where Government imposes fees upon persons. The first is of grant of permission or privilege and the second for services rendered. In the first class of cases, the cost incurred by the Government for granting of permission or privilege may be very small and the amount of imposition levied is based not necessarily upon the costs incurred by the Government but upon the benefit that the individual receives. In such cases, the tax element is predominant. If the money paid by privilege holders goes entirely for the expenses of matters of general public utility, the fee cannot but be regarded as a tax. In the other class of cases, the Government does some positive work for the benefit of persons and the money is taken as the return for the work done or services rendered.

(6) There is really no generic difference between tax and fee and the taxing power of the State may manifest itself in three different forms, viz.. special assessments, fees and taxes. Whether a cess is tax or fee, would depend upon the facts of each case. If in the guise of fee, the legislature imposes a tax it is for the Court on a scrutiny of the scheme of the levy, to determine its real character. In determining whether the levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specific area or classes. It is of no consequence that the State may ultimately and indirectly be benefited by it. The amount of the levy must depend upon the extent of the service sought to be rendered and if they are proportionate it would be unreasonable to say that since the impost is high it must be a tax. Nor can the method prescribed by the legislature for recovering the levy by itself alter its

character. The method is a matter of convenience and though relevant has to be tested in the light of other relevant circumstances

(7) It is not a postulate of a fee that it must have relation to the actual service rendered. However, the rendering of service has to be established. The service, further, cannot be remote. The test of quid pro quo is not to be satisfied with close or proximate relationship in all kinds of fees. A good substantial portion of the fee must, however, be shown to be expended for the purpose for which the fee is levied. It is not necessary to confer the whole of the benefit on the payers of the fee but some special benefit must be conferred on them which has a direct and reasonable correlation to the fee. While conferring some special benefits on the payers of the fees, it is permissible to render service in the general interest of all concerned. The element of quid pro quo is not possible, or even necessary to be established with arithmetical exactitude. But it must be established broadly and reasonably that the amount is being spent for rendering services of those on whom the burden of the fee falls. There is no postulate of a fee that it must have a direct relation to the actual services rendered by the authorities to each individual to obtain the benefit of the service. The element of quid pro quo in the strict sense is not always a sine qua non for a fee. The element of quid pro quo is not necessarily absent in every tax. It is enough if there is a broad, reasonable and general correlation between the levy and the resultant benefit to the class of people on which the fee is levied though no single payer of the fee receives direct or personal benefit from those services. It is immaterial that the general public may also be benefited from some of the services if the primary service intended is for the payers of the fees.

(8) Absence of uniformity is not a criterion on which alone it can be said that the levy is of the nature of a tax. The legislature has power to enact appropriate retrospective legislation declaring levies as fees by denuding them of the characteristics of tax.

(9) It is not necessary that the amount of fees collected by the Government should be kept separately. In view of the provisions Article 266, all amounts received by the Governments have to be credited to the Consolidated Funds and to the public accounts of the respective Governments.

23. In *Secretary to Government of Madras and another Vs. P.R. Sriramulu and another*, the Court quoted in extenso passages from the earlier judgment of the Court in *P.M. Ashwathanarayana Setty v. State of Karnataka* 1989 Sapp (1) SCC 696. After referring to some other earlier decisions of the Court, the proposition of law was laid down in the following terms:

14. Having regard to the decisions and various pronouncements cited above it is difficult to accept the reasoning the view taken by the High Court in the impugned judgment. As discussed above if the essential character of the levy is that some special service is intended as quid pro quo to the class of citizens which is intended to be benefited by the service and a broad and general

correlation between the amount so collected and the expenses incurred in providing the services is found to exist, then such levy would partake the character of a "fee", irrespective of the fact that such special services for which the amount by levy of fee is collected incidentally and indirectly benefit the general public also. In order to establish the correlation between the amount recovered by way of "fee" and the expenses incurred in providing the service they should not be examined so minutely or be weighed in golden scale to discern any difference between the two. It is not necessary to ascertain the same with any mathematical exactitude for finding the correlation but the test would be satisfied if a broad and general correlation is found to exist and once such a broad correlation between the totality of the expenses on services rendered as a whole on the one hand and totality of the amount so raised by way of the fee on the other is established, it would be no part of the legitimate exercise in the examination of the constitutionality of the concept of the impost to embark upon its effect in the individual cases. If the aforesaid relation is found to exist in the levy of the fee, the levy cannot be said to be wanting in its essential character of a fee on the ground that the measure of its distribution on the persons or incidence is disproportionate to the actual services made available to them. In view of this position of law the view expressed by the High Court that ad valorem levy of court fee in an individual case far exceeds the maximum value, in terms of money, qua that contributor and hence the concept of correlation fails and renders the levy invalid and illegal cannot be accepted for the simple reason that the correlation is not in the context of individual contributors, the test being its ascertainment on a comprehensive basis keeping in view the value of the totality of the service, qua the totality of receipts. According to D. D. Marco, the author of the First Principles of Public Finance, page 33:

the fee must be equal in the aggregate to the cost of production of the services. That is the aggregate amount of the fees which the State collects from individual customers must equal the aggregate expenses of production.

Thus the test of the correlation is to be reckoned at the aggregate level and not at the individual level as is also the view taken in *Aswathanarayana Setty* case.

15. As pointed out earlier with reference to the decisions of this Court, the State enjoys the widest latitude where measure of economic regulations are concerned. These measures for fiscal and economic regulation involve an evaluation of diverse and quite often conflicting economic criteria, adjustment and balancing of various conflicting social and economic values and interests. It is for the State to decide what economic and social policy it should pursue. It is settled law that in view of the inherent complexity of the fiscal adjustments, the Courts give a large discretion to the legislature in the matter of its preferences of economic and social policies and effectuate the chosen system in all possible and reasonable ways. If two or more methods of adjustment of an economic measure are available, the legislative preference in favour of one of them cannot be questioned on the ground of lack of legislative wisdom or that the method

adopted is not the best or there are better ways of adjusting the competing interests and the claims as the legislature possesses the greatest freedom in such areas, It is also well settled that lack of perfection in a legislative measure does not necessarily imply its constitutionality as no economic measure has so far been discovered which is free from all discriminatory impact and that in such a complex area in which no foolproof device exists, the Court: should be slow in imposing strict and rigorous standard of scrutiny by reason of which all local fiscal schemes may be subjected to criticism under the Equal Protection clause. Having regard to these settled principles the impugned judgment of the High Court could no be sustained.

It is to be noted that the Court has emphasised on the test of correlation to be reckoned at the aggregate level and not at the individual level as already laid down in Aswathanarayana Setty case.

24. In Bhagwan Dass Sood Vs. State of Himachal Pradesh and others, Rule 81 of Himachal Pradesh Agricultural Produce Market Rules, 1971, came in for consideration. The Court observed that levy of market fee being essentially a fee and not a tax, such imposition of levy of market fee necessarily inheres in it the essence of quid pro quo between the fees levied and services returned to the payer of such fees The Court also said that what should be the extent of service rendered to the payers of levy of market fees so as to keep such levy of fees within the bounds of accepted principle of fee involving existence of reasonable quid pro quo has been a vexed question agitated before various High Courts including the Supreme Court from time to time. The legal position was summarised by the Court as follows:

36. ...

(i) Existence of quid pro quo is essential for retaining the character of "fee" in the matter of levy of market fees.

(ii) Such quid pro quo is not to be reckoned with any mathematical precision with reference to quantum of fees realised by imposition of levy and the percentage of such fees spent for establishing market yards, construction of various infrastructures etc and providing various amenities as envisaged under the Marketing Act and the Rules framed thereunder for effective implementation of aims and objectives under the Act.

(iii) The service to be rendered to the payers of market fee must be real and no illusory.

(iv) Such service must have an objective basis and have a direct link and not be remote in its effect.

(v) It is not necessary that imposition of levy is to be effected only on establishment of principal and sub-market yards by completing the infrastructures required for such establishment of market and sub market yards. Such construction being time-consuming and expenditure-oriented, it will be

sufficient to justify valid imposition of levy if it is demonstrable that after notifying market area, effective steps not in contemplation but in reality have been taken to identify market and sub-market yards have in fact beta pat to action and the market fees levied and realised are being ploughed back for the advancement of the purpose for which market fees have been levied and realised.

(vi) In deciding the question of rendering of a real and not illusory service in discharging the obligation emanating from quid pro quo, to levy of market fee, no strait-jacket formulae can be evolved. Fact situation in the matter of establishment of principal and sub-market yards and the practical feasibility of construction of infrastructures, roads, pathways etc. for establishment of such market yards within a time-frame and in the light of financial constraints is bound to vary depending on various factors including imponderables. It is, therefore, essentially necessary to take a pragmatic approach to the problems associated with establishing market and sub-market yards with necessary infrastructures etc. and producers coming to such yards, in order to decide whether concrete steps have been translated into action with reasonable sincerity in implementing the schemes envisaged under the Marketing Act and the Rules framed thereunder.

25. The latest judgment on the subject is that of the Supreme Court in State of Tripura and others Vs. Sudhir Ranjan Nath, After discussing the case law on the subject the Court held that Sub-rule (5) of Rule 3 of the Transit Rules framed by the State Government of Tripura was not valid as it levied export duty extending upto 100% of the market value of timber/firewood The judgment of the High Court in that regard was affirmed and it was held that there was nothing in Section 41 which empowered the State Government to levy export duty, as such. However the Court went on to hold that the other rules which were challenged were valid and fell within the scope of Section 41(2) of the Forest Act and reversed the judgment of the High Court in that respect. In paragraph 14 the Court said as follows:

14. ...

It is regulatory fee and not compensatory fee. The distinction between compensatory fee and regulatory fee is well established by several decisions of this Court.

After referring to the various judgments of the Courts it was ultimately held that the State Government was well within its limits in framing the other Rules which were challenged before them and it is to be noted that those Rules are similar to the Rules which we are now considering in the present case.

26. An analysis of the aforesaid judgments of the Supreme Court shows that it is not necessary for imposing a fee that the State Government should render service of the same value of the levy. It is also not necessary that the person who is made to pay the levy should have the benefit of such service It is also not necessary that the State Government should have a separate fund for such

collection and utilize them only for the purpose of rendering service to the persons who are made to pay the said amounts. It has also been held that the amount imposed by way of fee can be dis-proportionate and at times it can also be discriminatory.

27. We have already pointed out that the Rules are regulatory in nature and the entire subordinate legislation is a regulatory measure. The particulars contained in the reply and the supplementary affidavit filed by the State Government show that there is sufficient warrant for imposing the fee as has been done in this case. Hence, the impost is only a fee and not a tax.

28. We do not find any merit whatever in any of the contentions urged by learned Counsel for the Petitioners. Consequently, we hold that the impugned Rule and the Annexure are valid in law.

29. In the result, the writ petitions are dismissed. C.M.Ps., if any, in the petitions are also dismissed. There will be no order as to costs.

30. During the pendency of the writ petitions when the Petitioners sought for stay of collection of the fee imposed, this Court directed the Petitioners to furnish bank guarantees to the concerned Divisional Forest Officers before they sought issue of permits from the said Officer. It is represented that such bank guarantees have been furnished and permits have been obtained, Now tint the writ petitions are dismissed, it is open to the concerned officers/officials to enforce the bank guarantees and realise the amounts in accordance with law.