
(2011) 07 RAJ CK 0016
In the Rajasthan High Court
Case No : Civil Writ Petition No. 11553 of 2009

Lucid Colloids Ltd.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-07-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 246(1), 246(3), 265
Finance Act, 1994 — Section 65

Citation : (2012) 1 RLW 438

Hon'ble Judges : Arun Mishra, C.J.; Kailash Chandra Jain, J

Bench : Division Bench

Advocate : Dinesh Mehta, Sanjeev Johri, Neeraj Kumar Jain, Pankaj Kumar Bohra and Ramit Mehta, for the Appellant; V.K. Mathur with Lokesh Mathur, Ravi Bhansali and Manoj Bhandari, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, C.J.—The petitioners have questioned the constitutionality of the provisions of Section 3B of the Rajasthan Electricity (Duty) Act, 1962 imposing water conservation cess on the energy consumed by the consumer or by the person other than supplier generating energy for his own use or consumption at the rate of ten paise per unit. Facts in short are that the Rajasthan Electricity (Duty) Act, 1962 (hereinafter referred to as "the Act of 1962") provides for levy and collection of electricity duty on energy consumed by the consumers at the rates prescribed by the State Government by way of Notification in Official Gazette. The State Government has inserted Section 3B in the Act of 1962 by way of Section 12 of the Rajasthan Finance Act, 2009 providing for levy of cess known as "Water Conservation Cess". The statement of objects and reasons for introduction of cess as given out by the Finance Minister while introducing the Finance Act of 2009 is that there is severe drinking water crisis and conservation of water has become essential. Construction of water harvesting structure is necessary. People at large are to be informed, educated and sensitized to initiate and sustain the habit of conserving water in day to day life. Hence, water

conservation cess has been proposed to provide financial resources to such activities. The petitioners contend that water is of course a subject matter of State under Entry 17 of List-II of Seventh Schedule of the constitution, but the State is not competent to impose tax under the said Entry. There is no specific Entry or source of power with the State to levy water cess. The fee can be realized under Entry 66 of List-II of Seventh Schedule for which it is necessary that quid pro quo must exist. The amendment is foreign to the powers conferred upon the State under Entry 53 of List-II of Seventh Schedule. The consumption of electricity has nothing to do with the water or its conservation. The cess levied under the provisions of Section 3B of the Act of 1962 is illegal and unconstitutional being violative of Articles 14 and 19(1)(g) of the Constitution. Tax or levy should have some nexus with the subject and in the instant case, as there is no nexus of consumption of electricity with water conservation, the provisions imposing cess are unconstitutional and violative of Article 265 of the Constitution. It is in fact a fee and could be realized only from the persons recipient of services relating to water conservation. It cannot be realized from the persons, who are not seeking any services in respect of conservation of water. They cannot be source of state exchequer.

2. It is also contended that it was necessary to consult the State Electricity Regulatory Commission (for short "the Commissioner") constituted under the Power Sector Reforms Act, 1999 (hereinafter referred to as "the Act of 1999") to determine the tariff for electricity in the manner provided in Section 26 of the Act of 1999 along with other matters. Since the Commission has not been consulted, as such, action of imposing water conservation cess is illegal.

3. In the reply filed by the respondents No. 2 and 3, it is contended that the State Government is empowered to impose tax and cess. Under Entry 17 of List-II of Seventh Schedule of the Constitution, the water is subject matter of the State. Entry 38 of List-III of Seventh Schedule is for the matters relating to electricity. The State Government has imposed cess on energy consumed by the consumer or by the person other than supplier generating energy for his own use or consumption at the rate of ten paise per unit. The ground water is pumped out with the help of electricity and therefore, the cess is tax on the consumption of electricity and not on the consumption of water. For the purpose of conservation of water, the water conservation cess has been imposed under Entry 53 of List II of Seventh Schedule. It is not a tax on the consumption of water, but on the energy consumed for the purpose of conserving water. The State Government has legislative competence to impose cess on consumption for the purpose of conserving water, the State Government has legislative competence to impose cess on consumption of electricity with the object of conserving water. There is no violation of Articles 14, 19(1)(g), 265 and 300A of the Constitution of India.

4. Mr. Dinesh Mehta, Mr. Sanjeev Johri, Mr. Neeraj Kumar Jain, Mr. Pankaj Kumar Bohra and Mr. Ramit Mehta, learned counsel appearing for the petitioners have submitted that Entry 17 of List II of Seventh Schedule does not empower the

State Government to levy tax for conservation of water. In essence, the tax is on consumption of water. In fact, it is not a tax, but a fee for which Entry 66 of List II of Seventh Schedule comes into play. It is necessary to establish quid pro quo. No water is used by the petitioners and thus, in absence of quid pro quo, levy of cess is unconstitutional. Only Entries 45 to 65 of List II of Seventh Schedule enable the State Government to impose tax. Levy of cess in question cannot be said to be tax within the purview of Entry 53 of List-II of Seventh Schedule. It is further submitted that in view of the Act of 1999, it was necessary to consult with the Commission as the cess is in the nature of tax on consumption of electricity/energy and since no consultation has been made, therefore, provisions so enacted are ultra vires. Even otherwise the provisions imposing cess in question are illegal, arbitrary and violative of Articles 14, 19(1)(g), 265 and 300A of the Constitution, the State Government is not spending any amount for the purposes of conservation of water and thus, imposition of cess is illegal. It is further submitted that since there is enactment, namely, The Water (Prevention and Control of Pollution) Cess Act, 1977 (hereinafter referred to as "the Cess Act of 1977") and the field is occupied by the Central Legislation, it was not permissible for the State Government to make provisions imposing cess without obtaining the assent of the President of India.

5. Mr. V.K. Mathur with Mr. Lokesh Mathur, Mr. Ravi Bhansali and Mr. Manoj Bhandar, learned counsel appearing on behalf of the respondents have supported the imposition of water conservation cess by the State Government. They have submitted that it is in the nature of tax. The State Government is fully empowered to levy tax under Entry 53 of List-II of Seventh Schedule. Water is also covered under Entry 17 of List-II. Thus, the State has legislative competence to impose cess on consumption of electricity for the purpose of conservation of water. It is not a tax on consumption of water, but on consumption of energy. There is no necessity to establish quid pro quo in such a case and recovery is that of tax. Alternatively they have submitted that concept of fee has undergone a sea change and thus, quid pro quo need not be proved. They have further submitted that the Act of 1999 is not attracted for the purpose of imposing such cess. It is not a case of electricity tariff, but imposition of cess for conservation of water and thus, the Act of 1999 has no application. Hence, it was not necessary to consult the Commission before enacting the provisions imposing water conservation cess. The provisions are intra vires.

6. Before appreciating the rival submissions, it is necessary to have a look on the relevant provisions. Section 3B which was inserted in the Act of 1962 by way of Section 12 of the Finance Act of 2009 is as follows:-

3B. Levy of water conservation cess.--(1) There shall be levied for, and paid to, the State government on the energy consumed by a consumer or by a person other than a supplier generating energy for his own use or consumption, a cess to be called "water conservation cess" at the rate of ten paise per unit:

Provided that no cess under this section shall be levied on the energy-

- (a) consumed by the Government of India;
- (b) consumed in the construction, maintenance or operation of any Railway by the Government of India;
- (c) consumed in domestic category;
- (d) consumed by a cultivator in agriculture operations;
- (e) consumed by the following classes of institutions, namely:-
 - (i) hospitals or dispensaries, which are not maintained for private gain,
 - (ii) recognized educational institutions,
 - (iii) places of public worship.

Subject to the condition that the exemption under this sub-clause shall not be applicable to energy consumed in buildings or part of buildings, used for commercial purposes;

(f) is generated at voltage not exceeding 100 volts.

(2) The provisions of this Act or the rules made there under shall, so far as may be, apply in relation to levy, payment, interest, computation and recovery of the cess payable under sub-section (1) as they apply to levy, payment, interest, computation and recovery of electricity duty payable under this Act.

(3) The cess collected under this section shall be earmarked and utilized for the purpose of water conservation in the State.

7. The statement of objects and reasons for introduction of water conservation cess is as follows:

the State is facing severe drinking water crisis in almost all parts of the State. Due to intensive use of ground water, the ground water level is depleting at a faster rate. Therefore, judicious use of water along with water conservation has become essential. Construction of water harvesting structure both for collecting the run off as well as for ground water recharge, are required at a large scale to ensure more water availability in the State. People at large, are to be informed, educated and sensitized to initiate and sustain the habit of conserving water in day to day life. All these activities need financial resources, which at present, amidst pressure of recession is not easily affordable. The proposed water conservation cess is intended to provide financial resources to such activities.

The Bill seeks to achieve the aforesaid object.

Hence, the Bill.

8. The Entries 17, 53 and 66 of List-II of Seventh Schedule of the Constitution are quoted below:

Entry. 17--water, that is to say water supplies irrigation and canals, drainage and

embankments, water storage and water power subject to the provisions of entry 56 of List-I.

Entry. 53--Taxes on the consumption or sale of electricity.

Entry. 66--Fee in respect of any of the matters in this list, but not including fees taken in any Court.

9. A bare reading of Section 3B of the Act of 1962 makes it clear that cess has been imposed on the energy consumed by the consumer or by the person other than supplier generating energy for his own use or consumption at the rate of ten paise per unit and such cess is called "water conservation cess". It is not a tax on consumption of water, but on consumption of electricity. The State is empowered to impose tax on the consumption or sale of electricity within the ken of Entry 53 of List-II of Seventh Schedule. A plain reading of the provisions of Section 3B of the Act of 1962 makes it clear that submission of the petitioners that tax is on consumption of water cannot be accepted. Under Entry 17, water is also subject matter of the State. The word "water" has to be given widest amplitude so as to cover water conservation also. The State has thus imposed cess and it is in the nature of tax on the consumption of electricity/energy under Entry 53 of List II of Seventh Schedule for the purpose of conservation of water and both are subject matters of List-II of Seventh Schedule.

10. Much was tried to be made out by the statement of objects and reasons for introduction of cess. The aforesaid statement of objects and reasons for introduction of provisions imposing cess provides that there is severe drinking water crisis in almost all part of the State and conservation of water has become essential. People are required to be educated and sensitized to initiate and sustain the habit of conserving water in day to day life. All these activities need financial resources, which at present amidst pressure of recession. Hence, water conservation cess was proposed to provide financial resources to such activities. Merely by the fact that it is water conservation cess, the cess cannot be said to be on consumption of water as suggested by the petitioners, but it is on consumption of electricity for conservation of water, it is open to the State Government to realize the tax or cess on consumption of electricity/energy for conservation of water as intended in the aforesaid statement of objects and reasons for introduction of provisions imposing cess by way of Section 12 of the Finance Act of 2009.

11. In the Commissioner, The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., , the Apex Court has laid down that tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered. This definition brings out the essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense, are included within it. The essence of taxation is compulsion, that is to say, it is imposed under statutory power without the tax payer's consent and the payment is enforced

by law. The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is no element of "quid pro quo" between the tax payer and the public authority. Another feature of taxation is that it is a part of the common burden. The 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. Ordinarily the fees are uniform and no account is taken of the varying abilities of different recipients to pay. 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.

12. In *Krishi Upaj Mandi Samiti and Others Vs. Orient Paper and Industries Ltd.*, , the apex Court has laid down that fee has been placed under separate category for the purposes of legislation. 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.

13. In *Vijayalashmi Rice Mill and Others Vs. The Commercial Tax Officers, Palakol and Others*, , the question came up for consideration was whether levy of cess u/s 7(1) of the Andhra Pradesh Rural Development Act, 1996 at the rate of 5% on the ad valorem on the quantum of purchase of goods was tax or fee. Section 8 of the said Act provides for establishment of the Andhra Pradesh Rural Development Fund. Section 9 deals with the purposes of the Fund. The impost in question does not come in any of the Entries in List-II of the Seventh Schedule of the Constitution. The Apex Court has observed that ordinarily, a cess means a tax which raises revenue, which is applied to a specific purpose. Ordinarily, cess is also a tax. Health cess, education cess, road cess etc. are in the nature of tax. Nomenclature in such case is not very matter. The Apex Court has laid down thus:

12. Ordinarily, a cess means a tax which raises revenue, which is applied to a specific purpose. Thus in *Guruswamy and Co. vs. State of Mysore* (AIR 1967 SC 1512), Hidayatullah, J., in his dissenting judgment observed:

The word "cess" is used in Ireland and is still in use in India although the word rate has replaced it in England. It means a tax and is generally used when the levy is for some special administrative expense which the name (health cess, education cess, road cess, etc.) indicates. When levied as an increment to an existing tax, the name matters not, for the validity of the cess must be judged of in the same way as the validity of the tax to which it is an increment.

The aforesaid observation has been referred to by the Constitution Bench decision of this Court in *India Cement Ltd. and Others Vs. State Of Tamil Nadu*

and Others, vide para 19.

14. Based upon the aforesaid decision, we are of the opinion that the cess is question is in the nature of tax and it is not a fee.

15. The learned counsel for the petitioners have relied upon the said decision to contend that it is a free as the cess was not falling in any of the Entries of List-II of Seven Schedule. The case of the petitioners is that it is a fee under Entry 66 of List-II of the Seventh Schedule, the facts of the instant case are different. The cess is in the nature of tax which is clearly within the purview of Entry 53 of List-II of Seventh Schedule. The Apex Court has also laid down in the said decision that traditional view that there must be actual quid pro quo for a fee has undergone a sea change. If the element of revenue for general purpose of the State pre-dominates, the levy becomes a tax. The Apex Court has thus laid down:-

16. The earlier view of the Supreme Court was that to sustain the validity of a fee some specific service must be rendered to the particular individual from whom the fee is sought to be realized. However, subsequently in Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others, , the Supreme Court observed: (SCC p. 380, paras 31-32)

31. The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. If the element of revenue for general purpose of the State predominates, the levy becomes a tax. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered...

32. There is no generic difference between a tax and a fee. Both are compulsory exactions of money by public authorities.

17. Similarly in City City Corporation of Calicut Vs. Thachambalath Sadasivan and Others, , which has placed reliance on an earlier decision of the Supreme Court in Amar Nath Om Prakash and Others Vs. State of Punjab and Others, , it was held that: (SCC p. 115, para 7)

7. It is thus well settled by numerous recent decisions of this Court that the traditional concept in a fee of quid pro quo is undergoing a transformation and that though the fee must have relation to the services rendered, or a the advantages conferred, such relation need not be direct, a mere causal relation may be enough. It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay receives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit of

advantage for payment of the fee.

18. Subsequently also, the same view has been reiterated that there has been a sea change in the concept of a fee and now it is no longer regarded necessary that (i) some specific service must be rendered to the particular individual or individuals from whom the fee is being realized, and what has to be seen is whether there is a broad and general correlationship between the totality of the expenses of the services on the other, vide *State of Himachal Pradesh and Others Vs. Shivalik Agro Poly Products and Others*, ; (ii) there need not be an exact or mathematical correlation between the amount realized as a fee and the value of the services rendered. A broad correlation between the two is sufficient to sustain the levy.

16. In *Om Parkash Agarwal and Others Vs. Giri Raj Kishori and Others*, , the Apex Court has held the Haryana Rural Development Fund act, 1983 unconstitutional on the ground of legislative incompetence. The levy of cess u/s 3 of the said act was held to be in the nature of tax and not fees, quid pro quo being absent. Remaining sections being incidental to section 3, the entire Act was struck down. Their Lordships also considered the difference between tax and fee and restated the nature and characteristics of tax and held that if legislature, in the garb of fees, seeks to enact levy of tax on a subject on which it is not competent to enact such levy, the Court, on examination of the real nature of the enactment, would strike down the same.

17. In the instant case, we find that there is specific Entry which empowers the State to impose cess in question. Thus, the above decision has no application to the facts of the instant case.

18. The petitioners have also pressed into service the decision of the Apex Court in *Tamil Nadu Kalyana Mandapam am Assn. Vs. Union of India (UOI) and Others*, wherein imposition of tax on services provided by mandap keepers in relation to the use of mandap was questioned and it was held by the Apex Court that the service tax does not amount to a tax on land and it was within legislative competence of the Parliament. The Apex Court has laid down that the tax on services rendered by mandap keepers is in pith and substance, a tax on services and not a tax on sale of goods or on hire-purchase activities. The Apex Court emphasized that so long as the legislation is in substance, on a matter assigned to a legislature enacting that statute, it must be held valid in its entirety even though it may trench upon matters beyond its competence. Incidental encroachment does not invalidate such a statute on the grounds that it is beyond the competence of the legislature. The Apex Court thus laid down:-

58. A tax on services rendered by mandap-keepers and outdoor caterers is in pith and substance, a tax on services and not a tax on sale of goods or on hire-purchase activities. Section 65 clause (41) sub-clause (p) of the Finance Act, 1994, defines taxable service (which is the subject matter of levy of service tax) as any service provided to a customer

by a mandap-keeper in relation to the use of a mandap in any manner including the facilities provided to (a customer) in relation to such use and also the services, if any, rendered as a caterer.

The nature and character of this service tax is evident from the fact that the transaction between a mandap keeper and his customer is definitely not in the nature of a sale or hire purchase of goods. It is essentially that of providing a service. In fact, as pointed out earlier, the manner of service provided assumes predominance over the providing of food in such situations which is a definite indicator of the supremacy of the service aspect. The legislature in its wisdom noticed the said supremacy and identified the same as a potential region to collect indirect taxes. Moreover, it has been a well established judicial principle that so long as the legislation is in substance, on a matter assigned to a legislature enacting that statute, it must be held valid in its entirety even though it may trench upon matters beyond its competence. Incidental encroachment does not invalidate such a statute on the grounds that it is beyond the competence of the legislature AIR 1947 60 (Privy Council). Article 246(1) of the Constitution specifies that Parliament has exclusive powers to make laws with respect to any of the matters enumerated in List-I in the Seventh Schedule to the Constitution. As per Article 246(3), the State Government has exclusive powers to make laws with respect to matters enumerated in List-II (State List). In respect of matters enumerated in List-III (concurrent List) both Parliament and State Government have powers to make laws. The Service tax is made by Parliament under the above residuary powers.

59. The impugned Act was challenged on the ground that it infringed on the State's power to levy tax on luxury vide Entry 62 of the State List.

60. It would be appropriate to quote Mr. Justice Venkatachaliah Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others, , who ruled that: (SCC pp. 652-653, para 31)

... the law "with respect to" a subject might incidentally "affect" another subject in some way, but that is not the same thing as the law being on the latter subject. There might be overlapping, but the overlapping must be in law. The same transaction may involve two or more taxable events in its different aspects. But the fact that there is an overlapping does not detract from distinctiveness of the aspects.

The consequences and facts of the legislation are not the same thing as legislative subject-matter.

19. In the The State of West Bengal Vs. Kesoram Industries Ltd. and Others, , the Apex Court held that power to legislate as to the principal matter specifically mentioned in an entry also includes within its expanse legislation touching incidental and ancillary matters. The power to tax cannot be deduced from a general legislative entry as an ancillary power. Entries in Lists I and II classified into two groups: (a) those that dealt with the main subject of legislation and (b)

those that conferred the power to tax in relation to the subjects of legislation comprised in (a). There is difference between power of regulation and control and power to tax. Power of regulation and control is separate and distinct from the power of taxation and so are the two fields for purposes of legislation. However, the power to tax may be exercised for the purpose of regulating an industry commerce or any other activity. It may not be necessary to delve deep into the matter as to whether power of regulation and control is separate and distinct from the power of taxation. The regulatory license fee has also been held to be a tax. The primary object and essential purpose of legislation must be distinguished from its ultimate or incidental results or consequences, for determining the character of the levy. A levy essentially in the nature of a tax and within the power of the State Legislature cannot be annulled as unconstitutional merely because it may have an effect on the price of the commodity. Under Article 265, no tax shall be levied or collected except by authority of law. If any power to tax is clearly mentioned in List-II, the same would not be available to be exercised by Parliament based on the assumption of residuary power in Entry 97 of List-I. The Court has to determine the field of legislation wherein the impugned legislation falls by applying the doctrine of pith and substance. Every effort should be made as far as possible to reconcile the seeming conflict between the provisions of the State Legislation and the Union legislation. In determining the legislative competence the taxing event/point of taxation also plays an important role. The legislation in the field of taxation and economic activities need special consideration and are to be viewed with larger flexibility in approach. A greater latitude like play in the joints being allowed to the legislature is necessary because it has to deal with complex problems which do not admit of solutions through any doctrinaire or strait jacket formula. In this field the Court should feel more inclined to give judicial deference to legislative judgment. The Courts ought to adopt a pragmatic approach in solving problems rather than measuring the propositions by abstract symmetry. The exact wisdom and nice adaptations of remedies may not be possible. Even crudities and inequalities have to be accommodated in complicated tax and economic legislations. It has been long recognized that the measure/mode/machinery employed for assessing a tax must not be confused with the nature of the tax. A tax has two elements; first, the person, thing or activity on which the tax is imposed (the subject of tax) and second, the amount of tax. The amount may be measured in many ways, but a distinction between the subject matter of a tax and the standard by which the amount of tax is measured must not be lost sight of.

20. Considering on the anvil of the aforesaid decision, we are of the considered opinion that cess in question, which is in the nature of tax, is on the consumption of electricity for conservation of water and it is not on the consumption of water. The cess has been imposed under Entry 53 of List-II of Seventh Schedule.

21. In Ahmedabad Manufacturing and Calico Printing Co. Ltd., Ahmedabad and Others Vs. State of Gujarat and Others, validity of the Gujarat Education Cess

Act, 1962 came up for consideration before the Apex Court. Section 3 of the said act provides for levy and collection of education cess which shall consist of surcharge on all lands except lands which are included in the village site and not assessed to land revenue and the tax on lands and buildings in urban areas. The Apex Court has upheld the validity of the provisions.

22. In *Ramchand Maroti Mandwale Vs. Malkapur Municipal Council, Malkapur and Another*, the Bombay High Court has laid down that levying and collecting cess for the purpose of promoting education will be covered by the term "education". Incidence of this tax falls on lands and buildings. State legislature is competent to impose this tax under Entry 49, even assuming tax is not covered by Entry-11.

23. In the instant case, we are of the opinion that it is pen to the State Government to levy cess on consumption of energy for conservation of water and it is within the purview of Entry 53 of List II of Seventh Schedule.

24. Reliance has been placed by the petitioners on the decision of the Apex Court in *Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others*, in which proposition has been laid down that under the constitutional scheme of division of powers under legislative lists, there are separate entries pertaining to taxation and other law and tax cannot be levied under a general entry. There is no dispute on the above proposition. However, in the instant case, the cess is on consumption of electricity for conservation of water and the same has been imposed under Entry 53 of List-II of Seventh Schedule.

25. Reliance has also been placed by the petitioners on the decision of the Apex Court in *State of Rajasthan and Another Vs. Rajasthan Chemists Association*, to contend that all the four components of a particular concept of tax has to be inter related having nexus with each other. Having identified tax event, tax cannot be levied on a person unconnected with event, nor the measure or value to which rate of tax can be applied can be altogether unconnected with the subject of tax, though the contours of the same may not be identified.

26. In the instant case, subject of tax is clearly. It is on consumption to energy. There is clear communication of the person on whom levy is imposed and who is obliged to pay tax, the rate of tax is also clear. Measure or value to which rate is applied for computing the tax liability is also clear. Thus, all the four components are having nexus with each other, hence, the above decision in the case of *Rajasthan Chemists Association (supra)* has not been violated in the instant case. The Apex Court has laid down:-

20. This Court in *Govind Saran Ganga Saran Vs. Commissioner of Sales Tax and Others*, on analyzing Article 265 noted as follows:

The components which entered into tax are well known. The first is the character of the imposition known by its nature which transpires attracting the levy. The second is a clear communication of the person on whom the levy is imposed and which is obliged to pay the tax. The third is rate at which the tax is imposed and

the fourth is the measure or value to which the rate is applied for computing the tax liability.

Obviously, all the four components of a particular concept of tax has to be inter related having nexus with each other. Having identified tax event, tax cannot be levied on a person unconnected with event, nor the measure or value to which rate of tax, can be applied can be altogether unconnected with the subject of tax, though the contours of the same may not be identified.

21. In *Union of India (UOI) and Others Vs. Bombay Tyre International Ltd. and Others*, the expressions subject of tax, the measure of tax and nexus between the two have been succinctly analysed. The decision arose in the context of Central Excise and Salt Act, 1944 (in short "Excise Act"). The controversy was what should be included in the measure of computation of liability and what fell outside the scope of measure to be excluded from consideration. Referring to a large number of decisions of different courts, including some of the decisions we have referred to above, the principle succinctly stated in *Seervai's Constitutional Law* was approved by observing as follows:-

Another principle for reconciling apparently conflicting tax entries follows from the fact that a tax has two elements, the person things 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.

27. In *Jaika Automobiles (Private) Limited and another Vs. State of Maharashtra and another (And Other Cases)*, , it has been observed by the Bombay High Court in the matter of taxing statute, the primary guide is the charging section in which it is to be identified the subject matter of levy. Measure of assessment of tax, machinery by which it is assessed and collected or the motive for impost is not a criterion for judging the nature of the tax.

28. The submission of the petitioners is that before imposing cess in question, the Commission constituted under the Act of 1999 ought to have been consulted and since the Commission was not consulted, the action of imposing cess is invalid. There is no force in the said submission. The Commission is required to be consulted with respect to the matters enumerated in Section 9, which provides the functions, proceedings and powers of the Commission, Section 9(1) (a) empowers the Commission to determinate the tariff for electricity in the manner provided in Section 26. Section 26 deals with the determination of tariff by the Commission. The Commission has power to determine the tariff in accordance with the provisions of the Act of 1999. However, in our opinion, cess in question is levy of tax on consumption of energy and not a tariff of electricity. Consequently, there is no encroachment on the power of the Commission.

29. It is also submitted relying upon the Water Cess Act of 1977 that field is occupied by the Central legislation and thus, the provisions of Section 3B of the

Act of 1962 imposing cess could not have been enacted by the State legislature without obtaining the assent of the President of India. The Cess Act of 1977 is an Act to provide for the levy and collection of the cess on water consumed by the persons carrying on certain industries and by local authorities with a view to augment the resources of the Central Board and State Boards for the Prevention and Control of Water Pollution constituted under the Water (Prevention and Control of Pollution) Act, 1974. The Cess Act of 1977 has totally a different role to play. It occupies a totally different field. The State Legislature has clearly inserted Section 3B in the Act of 1962 by way of Section 12 of the Finance Act of 2009. The levy of cess is covered under Entry 53 of List-II of Seventh Schedule. It is a cess on consumption of electricity for conservation of water. It is not a cess on water consumption. Thus, in the light of applying the doctrine of pith and substance laid down by the Apex Court in the case of Keshoram Industries Ltd. (supra), we are of the considered opinion that there is no encroachment on the Cess Act of 1977. The Cess Act of 1977 has totally a different field to operate and that was not a tax imposed upon the consumption of water. By mere fact that the State proposed to augment its revenue for the purpose of conservation of water, it cannot be said that there is any encroachment on the Cess Act of 1977 or field reserved to the Union List in any manner whatsoever.

30. Thus, we are of the considered opinion that provisions of Section 3B inserted in the Rajasthan Electricity (Duty) Act, 1962 by virtue of Section 12 of the Rajasthan Finance Act, 2009 imposing water conservation cess cannot be any manner be said to be arbitrary or illegal or violative of Articles 14, 19(1)(g), 265 and 300A of the Constitution. It is open to the State government to augment its revenue by imposing tax as provided under various entries in List-II of the Seventh Schedule. We are not impressed by the submission raised by the petitioners that there is no co-relation of consumption of energy with the water conservation and hence, provisions are arbitrary. There is water crisis and conservation of water is need of the day. The water conservation is necessary for existence of human being and various activities which are taking place. Thus, imposition of cess on consumption of electricity for conservation of water cannot be said to be arbitrary. It is within the legislative competence of the State. The cess in question is in the nature of tax and not a fee as suggested by the petitioners.

31. Submission was also raised by one of the learned counsel for the petitioners that provisions imposing cess were caused for the temporary measure for the Financial Year 2009 and thus, provisions have now come to an end. There is no force in the said submission. The provisions of Section 3B inserted in the Act of 1962 by virtue of Section 12 of the Finance Act, 2009 are not temporary one. They are not confined to the year in question. Merely by the fact that decision was taken in the finance policy introduced in 2009, it does not become temporary in nature. For the reasons stated above, there is no merits in the writ petitions and the same are hereby dismissed. No costs.