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**(2008) 02 KL CK 0054**

**In the High Court Of Kerala**

**Case No :** Writ Petition (C) No's. 19573, 19604 and 21235 of 2007 and 1408 of 2008 (P)

Mathew Varghese

APPELLANT

Vs

Commercial Tax Officer and Another

RESPONDENT

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**Date of Decision :** 19-02-2008

**Acts Referred:**

Constitution of India, 1950 — Article 14  
Kerala Value Added Tax Act, 2003 — Section 6(1)

**Citation :** (2008) 3 KLT 727 : (2008) 15 VST 493

**Hon'ble Judges :** C.N. Ramachandran Nair, J

**Bench :** Single Bench

**Advocate :** V.P. Sukumar, Kuryan Thomas and Jairam V. Menon, for the Appellant; K.P. Pradeep, Government Pleader, for the Respondent

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## **Judgement**

C.N. Ramachandran Nair, J.—The petitioners are dealers in cycle and cycle parts. Bicycles, tricycles and cycle rickshaws and specified parts are brought under four per cent tax under entry 13 of the Third Schedule to the Kerala Value Added Tax Act, 2003. During inspection of the business premises by the audit team, it was noticed that all items were accounted by the petitioners at four per cent tax. The assessing officer was of the view that cycle parts such as seat cover, dynamo, bell, carrier, cycle stand, handle bar, etc., which are not covered by entry 13 of the Third Schedule, are assessable at 12.5 per cent u/s 6(1)(d) of the Act. Since petitioners have not shown any turnover of those items separately, the assessing officer estimated the turnover of cycle parts which are not covered by entry 13(3) of the Third Schedule and assessed the same at 12.5 per cent. These assessments are challenged on the ground that the provisions of the KVAT Act authorising levy of sales tax on parts of bicycles not covered under entry 13(3) at 12.5 per cent are discriminatory and against the mandate of Article 14 of the Constitution of India.

2. I have heard the learned Counsel for the petitioners and Government Pleader for the respondents.

3. The petitioners have cited the decisions of the Supreme Court in *Arya Vaidya Pharmacy v. State of Tamil Nadu* reported in [1989] 73 STC 346, *Kerala Hotel and Restaurant Association and others Vs. State of Kerala and others*, and *State of U.P. v. Deepak Fertilizers & Petrochemical Corporation Ltd.* reported in [2007] 7 VST 535 in support of their contention that discriminatory legislation is liable to be declared unconstitutional under Article 14 of the Constitution of India. However, Government Pleader referred to the decision of the Supreme Court in *State of Karnataka and Another Vs. Hansa Corporation*, wherein Supreme Court held that the Legislature has wide discretion in regard to levy of tax including fixation of rate of tax. Government Pleader also relied on the decisions reported in *Ellel Hotels and Investments Ltd. v. Union of India* [1989] 74 STC 146, *Federation of Hotel & Restaurant Association of India v. Union of India* [1989] 74 STC 102 and *R.K. Garg and Others Vs. Union of India (UOI) and Others*, and contented that Legislature enjoys wide discretion in regard to levy of tax including fixation of rate of tax on various commodities.

4. On going through entry 13 of the Third Schedule to the KVAT Act, I find parts of bicycles, tricycles and cycle rickshaws covered by Sub-entry (3) are only bicycle rims, bicycle spokes, bicycle hubs, bicycle free-wheels, bicycle saddles, bicycle chain and bicycle wheels. The usual entry to include other parts namely, "other", is absent in entry 13(3) of the Third Schedule. This obviously means that the Legislature did not intend to cover other cycle parts in the said entry. Therefore, all cycle parts are not covered under entry 13(3) of the Third Schedule. In fact, bicycle has ever so many other parts such as head lamp, fork, pedal, chain-cover, brake, etc. The contention of the petitioner that these items are not different from the other items enumerated in entry 13(3) has some force. It is not known on what basis a classification of this nature is made. I doubt whether the items taxed by the assessing officer at the higher rate of 12.5 per cent u/s 6(1)(d) are really intended to be taxed by the Legislature at the said rate, more so because those items are not specifically included in notification, S.R.O. No. 82 of 2006. The Government Pleader rightly pointed out that by virtue of Section 6(1)(d) residuary items can be taxed at 12.5 per cent, without requirement of any notification. Even though I agree with this argument of the learned Government Pleader, I feel the matter requires to be considered by the Government and if they feel that higher rate of tax on some cycle parts are not intended, amendment has to be carried out. However, I do not find any discrimination in the levy of higher rate of tax on some parts while levying lower rate for other specified parts of the bicycle. There may be nothing wrong in charging higher rate on dynamo, headlight, seat cover, etc. However, items getting worn out by use and requiring replacements periodically, may deserve (sic) any case, it is for the Government and Legislature to consider classification on tax if, required. In any case, the decisions cited by the counsel for the petitioners do not offer sufficient justification to interfere with the provisions. The assessing officer, in my view has made assessments in accordance with the statute. However, since the items are not specified by the Government under

notification issued u/s 6(1)(d), I feel Government should consider the matter. The original petitions are accordingly disposed of directing the Government to consider the matter in the light of the observation made above. So far as the estimate of turnover at higher rate is concerned, if the petitioners have any grievance that the orders are adverse to them, after the Government reconsiders the matter, they are free to file appeals against the impugned orders on this issue.