
(2014) 08 KL CK 0112
In the High Court Of Kerala
Case No : WP(C). No. 4555 of 2014 (T)

Thara Jayakumar

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Constitution of India, 1950 — Article 246

Citation : (2014) 4 ILR 160 : (2014) 4 KHC 5 : (2014) 4 KLJ 172 : (2014) 4 KLT 333 : (2015) 77 VST 325

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : K.P. Pradeep and V. Renjith Kumar, Advocate for the Appellant;
Sebastian Champappilly, Spl. Govt. Pleader, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The above writ petitions challenge the imposition and levy of a "cess" on every wedding and connected celebrations conducted in hotels, having classification of "Three Star" and above and in auditoriums which have a seating capacity, including that of dining halls, above 500. The levy has been purportedly made with the avowed object of raising the required revenue to form a "matrimony fund" for girls, from economically weaker sections. The petitioners, who are the owners of such hotels and auditoriums, challenge the levy as impermissible under Article 246 of the Constitution of India and impugn it further on the grounds of discrimination and arbitrariness. The petitioners also bring to focus the fact of the specific activity being covered under the Finance Act, 1994 and the Kerala Tax on Luxuries Act, 1976 [for brevity "Act of 1976"], which levies tax in the nature of "tax on luxuries".

2. Essentially one of the oldest and most sanctified social institutions, often referred to in a lighter vein; as an "essential evil" by nature of the cess, at least for certain persons, is made out to be an "avoidable luxury". I have heard the learned counsel appearing in the various writ petitions as also the learned Special Government Pleader (Taxes). Both have placed decisions before this Court, which

would be discussed in the course of the judgment and the minimal facts, which are necessary for the disposal of these writ petitions, are referred to from W.P. (C). No. 4555 of 2014.

3. The petitioners are all owners of auditoriums/hotels and the individuals who conducted marriages of their wards; obliged to pay the cess brought out by the Kerala Finance Act, 2013. The extract of the Act, with the impugned provisions, is produced as Exhibit P8. The Rules prescribed, much later, are produced at Exhibit P9. The petitioners also raise a contention in so far as the collection and levy of cess being not operative during the interregnum, when there were no rules; for lack of machinery provisions to levy and collect the cess. The main challenge, however, is with respect to the constitutionality of the levy and the same being not within the competence of the State Legislature as also the blatant arbitrariness and the obvious discrimination.

4. It is contended by the learned counsel for the petitioners that, most of the auditorium owners and hotels are "service providers", coming within the definition of "taxable service" under Chapter V of the Finance Act, 1994 and are registered under the said enactment. Those of the petitioners who have total turnover beyond the taxable limit pays "service tax" to the Union Government. The State having thought it fit to tax the aspect of luxury, which is enjoyed within the premises of a hotel/auditorium, also is a liability on the petitioners for the very same activity. This Court is not concerned with such taxation made by the Union Government and the State Government; levied on different aspects of "service" and "luxury", which the respective legislatures are competent to do under the Entries within the respective Lists of Seventh Schedule to the Constitution of India. Such liability is also entitled to be collected from the recipient of the "service" and the person who enjoys such "luxury". No hardship could be pleaded or sustained; if the impugned levy is permissible.

5. Petitioners contend that there remains, absolutely no other aspect which could be validly taxed by the State Legislature, since the "service" provided in so far as a function; connected with a wedding or even otherwise, is taxed by the Union Parliament and the aspect of "luxury", as defined under the Act of 1976, is imposed a levy by the State Legislature. The petitioners argue that there is no specific power under the constitutional scheme, for the State legislature, to impose such tax on wedding ceremonies. None of the entries coming within List II and List III of the Seventh Schedule of the Constitution authorises the State Legislature to enact such legislation. The levy cannot be a fee, as has been asserted by the respondents, since there is neither quid pro quo nor can it be considered as a regulatory measure. Much less is there any nexus between the persons who are so made liable and the persons who are said to benefit from the revenue generated from such cess, which lays bare the arbitrariness in the levy. The so-called "fee", hence, in effect is a "tax", the levy of which is outside the scope and powers of the State Legislature; is the essential contention. 6. The petitioners concede the power of the State Legislature to resort to reasonable

classification; while exercising the power of taxation, but brings into focus the clear discrimination in having excluded all weddings conducted other than in a Three Star hotel or an auditorium having a capacity of more than 500 seats. The petitioners pointedly refer to the weddings conducted in other hotels/auditoriums and inter alia in religious institutions and open areas with temporarily erected shamianas and so on and so forth. Furthermore, the renting of auditoriums and hotels are made for various purposes and there is no reason why "weddings" alone should be singled out. The instant levy cannot be sustained as a tax; nor could it be upheld as a fee, is the argument.

7. The learned Special Government Pleader (Taxes), would, on the basis of the counter affidavit, assert that the levy is a fee under Entry 66 of List II of the Seventh Schedule to the Constitution. The learned Special Government Pleader goes one step further to contend that the levy is a fee for use of an auditorium for the purpose of marriage and attempts to correlate the fee with Entry 49 and Entry 62 of List II of the Seventh Schedule and alternatively under Entry 47 correlated with Entry 5 of List III of the Seventh Schedule.

8. Looking at the charging section, the levy of cess is on weddings and connected celebrations, conducted in hotels having the classification of Three Star and above or auditoriums with a seating capacity of above 500, which seating capacity is inclusive of that in the dining halls. Separate rates are specified for different categories; i.e., air-conditioned and other auditoriums situated in Municipal and Panchayat areas. The air-conditioned auditoriums in Municipal areas are levied a lumpsum of Rs. 10,000/- and those without air-conditioning, are levied a fee of Rs. 5,000/-. In the Panchayat area, the air-conditioned auditoriums are charged at a lesser rate of Rs. 7,500/- and others still lesser rate of Rs. 3,000/-. The liability to such cess has been mulcted on the person from whom the charges or rent for such celebration are received by the proprietor of such hotel or auditorium. The collection is the responsibility of the owner of the hotel or auditorium, who receives such charges or rent and the remittance is to be made to the Government Treasury, in the Head of Account of "Mangalya Nidhi". Such owners, who are obliged to collect the amounts are also obliged to file returns as provided under the Act of 1976 before such authorities who are constituted under the said enactment. It has also been provided that, for assessment and recovery, the provisions of the Act of 1976 shall "mutatis mutandis" apply to the assessment and recovery of the said cess. Rules have been framed under sub-sections (3) and (5) of Section 11 by S.R.O. No. 905 of 2013, which need not be elaborated upon, for the time being. That needs to be examined only if the levy as such is sustainable.

9. The contention raised by the petitioners is that the levy is in effect a "tax"; but according to the State it is a "fee" under Entry 66 of List II and relatable to Entry 49 and Entry 62 of List II or sustainable under Entry 47 and Entry 5 of List III of the Seventh Schedule. Before examining the specific entries, one has to look at the concept of tax and fees and the source of power to make such levy under the

Constitution of India, as elaborated upon by judicial precedents. The learned counsel for the petitioners have placed reliance on a number of judgments of the Hon"ble Supreme Court to contend that though it has been held that there need not be any exactitude in the "quid pro quo" with respect to a fee levied, there should definitely be a connection, however remote, when such fees are compensatory in nature. In the case of regulatory fees, essentially there should be an amount of regulation and the quantum of the levy should have some nexus with the expenditure incurred by the State, in making operative such regulations. Though a number of judgments of the Hon"ble Supreme Court and this Court have been cited, for the purpose of deciding the particular issue, reference to the decision in Delhi Race Club Ltd. Vs. Union of India (UOI) and Others, would first suffice. The entire gamut of decisions have been referred to, in the said decision, while upholding the licence fee imposed on race courses; as a regulatory fee.

10. The challenge in Delhi Race Club Ltd. (supra) was on two counts; one being the delegation, of fixation of licence fee, to the rule making authority as being excessive delegation, in so far as there being absolutely no guidance in the statute as to how such rate be fixed. The second challenge was on the ground that the fee levied is in fact a tax and, therefore, ultra vires Entry 66 List II of the Seventh Schedule. The first ground of challenge would not be relevant for the purpose of the instant case. In considering the second ground of challenge, the Hon"ble Supreme Court had dealt with the earlier decisions on the concept of fee and the nature of such levy, being regulatory or compensatory. The characteristics of a "fee" as distinct from "tax" was considered in the light of the decisions in The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others, and The State of West Bengal Vs. Kesoram Industries Ltd. and Others, to hold that "the true test to determine the character of a levy, delineating "tax" from "fee" is the primary object of the levy and the essential purpose intended to be achieved" (sic). The extract from Hingir-Rampur Coal Co. Ltd. (supra) relied on was under:

"... It is true that when the Legislature levies a fee for rendering specific services to a specified area or to a specified class of persons or trade or business, in the last analysis such services may indirectly form part of services to the public in general. If the special service rendered is distinctly and primarily meant for the benefit of a specified class or area the fact that in benefitting the specified class or area the State as a whole may ultimately and indirectly be benefited would not detract from the character of the levy as a fee. Where, however, the specific service is indistinguishable from public service, and in essence is directly a part of it, different considerations may arise. In such a case it is necessary to enquire what is the primary object of the levy and the essential purpose which it is tended to achieve. Its primary object and the essential purpose must be distinguished from its ultimate or incidental results or consequences. That is the true test of determining the character of the levy".

(emphasis supplied)

11. Kesoram Industries Ltd. (supra) was also relied on and the following extract assumes relevance:

"The term cess is commonly employed to connote a tax with a purpose or a tax allocated to a particular thing... However, it also means an assessment or levy. Depending on the context and purpose of levy, cess may not be a tax; it may be a fee or fee as well. It is not necessary that the services rendered from out of the fee collected should be directly in proportion with the amount of fee collected.

It is equally not necessary that the services rendered by the fee collected should remain confined to the persons from whom the fee has been collected. Availability of indirect benefit and a general nexus between the persons bearing the burden of levy of fee and the services rendered out of the fee collected is enough to uphold the validity of the fee charged...".

(emphasis supplied)

Hence, in considering the sustainability of the levy, the primary object and the essential purpose of the levy must be distinguished from its ultimate or incidental results. The fact that incidentally or ultimately the State or the public in general benefits from the levy would not denude the State of the authority to make such levy so long as some specific services are rendered in a specified area or to a specified class of persons or trade or business, wherein or to whom such service is extended by the State.

12. With respect to the need for "quid pro quo", the necessity of only a broad correlation between the impost and the services rendered was emphasized; following the judgment in Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others, . The Hon"ble Supreme Court in the said decision deviated from the traditional view, in the following words:

"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 part of a common burden, while a fee is for 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. In determining whether a levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specified area of class; it may be of no consequence that the State may ultimately and indirectly be benefited by it. The power of any Legislature to levy a fee is conditioned by the fact that it must be "by and large" a quid pro quo for the services rendered. However, correlation ship between the levy and the services rendered (sic or) expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the fee and the services rendered...

7. It is not always possible to work out with mathematical precision the amount of fee required for the services to be rendered each year and to collect only just that amount which is sufficient for meeting the expenditure in that year. In some years, the income of a market committee by way of market fee and licence fee may exceed the expenditure and in another year when the development works are in progress for providing modern infrastructure facilities, the expenditure may be far in excess of the income. It is wrong to take only one particular year or a few years into consideration to decide whether the fee is commensurate with the services rendered. An overall picture has to be taken in dealing with the question whether there is quid pro quo, i.e., there is correlation between the increase in the rate of fee from 50 paise to rupee one and the services rendered...".

13. Delhi Race Club Ltd. (supra) reiterated that our Constitution contemplates fee for licensing and fee for services rendered, which are distinct and different kinds of levy and the former is not intended to be a fee for services rendered. In granting licences and thereby bringing in regulations, the fee charged would necessarily be, to defray the cost of administering such regulatory measure. If that would enrich the coffers of the State, which money would also be used for public purposes, unrelated to the regulatory measure; that alone cannot result in the levy being struck down. Hence, when a fee is charged for rendering specific services, quid pro quo is existent; but there need not be any mathematical exactitude between the services rendered and the fee charged. The service rendered need not also be confined to the persons or class of persons on whom the levy is made; but there should be an element of service to persons who have the liability. When the fees are essentially regulatory, despite there being no service rendered, the same would be sustainable and there would be absolutely no necessity for any "quid pro quo" Secunderabad Hyderabad Hotel Owners Association and Others Vs. Hyderabad Municipal Corporation, Hyderabad and Another, . The other principles as in "service" would equally apply in a "regulatory" measure.

14. It is in this context that the cess, which is the subject matter of these writ petitions, has to be examined. The State does not have a case that the levy is a "tax" and in the context of the specific contention that it is a "fee" under Entry 66, the State should necessarily indicate some services offered or in the alternative a regulatory measure being employed. The levy of "cess" is on weddings and its connected celebrations, when such celebrations are conducted in Three Star hotels and above or in Auditoriums having a seating capacity of above 500 including that in the dining halls. Definitely there is no contention put forth that there is any service offered and on the averments as also on facts, there is no quid pro quo with respect to the levy. The service, if at all, offered, is by the hotels or the auditoriums, which service is taxed by the Central Government under List I of the Seventh Schedule, by the Finance Act, 1994. The State also does not plead any regulation insofar as the ceremony or the social institution of "marriage" as such.

15. The learned Special Government Pleader, however, would rely on a decision of the Hon"ble Supreme Court to sustain the levy; India Cement Ltd. and Others Vs. State Of Tamil Nadu and Others, . A levy of cess on royalty made by the State Government of Tamil Nadu was challenged therein. The royalty amounts were payable on mines and minerals under a Central legislation. The learned Special Government Pleader would specifically rely on the following paragraph extracted from the dissenting judgment in Shinde Brothers etc. Vs. Deputy Commissioner and Others, etc., :

"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".

16. The Constitution Bench of the Hon"ble Supreme Court noted that the aforesaid observations were not the aspect on which the dissent was expressed, but did not actually rely on such observation. In any event, the above extracted observation only places the concept of "cess" in the proper perspective insofar as declaring it to be a compulsory levy imposed either for special administrative expense or as an increment or increase on the existing tax and its sustainability being entitled to be adjudicated, just as the validity of a tax.

17. A Constitution Bench of the Hon"ble Supreme Court in Jindal Stainless Ltd. and Another Vs. State of Haryana and Others, reiterated that a "fee", "tax" as also "compensatory tax", the latter being a judicially evolved concept; were all compulsory extractions from the public. In considering the parameters of compensatory tax, the difference between a "tax", "fee" and a "compensatory tax" was succinctly stated so:

"38. Tax is levied as a part of common burden. The basis of a tax is the ability or the capacity of the taxpayer to pay. The principle behind the levy of a tax is the principle of ability or capacity. In the case of a tax, there is no identification of a specific benefit and even if such identification is there, it is not capable of direct measurement.

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39. On the other hand, a fee is based on the "principle of equivalence". This principle is the converse of the "principle of ability" to pay. In the case of a fee or compensatory tax, the "principle of equivalence" applies. The basis of a fee or a compensatory tax is the same. The main basis of a fee or a compensatory tax is the quantifiable and measurable benefit.

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40. A tax can be progressive. However, a fee or a compensatory tax has to be broadly proportional and not progressive. In the principle of equivalence, which is

the foundation of a compensatory tax as well as a fee, the value of the quantifiable benefit is represented by the costs incurred in procuring the facility/ services which costs in turn become the basis of reimbursement/recompense for the provider of the services/facilities. Compensatory tax is based on the principle of "pay for the value". It is a sub-class of "a fee"... A tax may be progressive or proportional to income, property, expenditure or any other test of ability or capacity (principle of ability)... They are based on the principle of equivalence. However, a compensatory tax is levied on an individual as a member of a class, whereas a fee is levied on an individual as such... The basic difference between a tax on one hand and a fee/compensatory tax on the other hand is that the former is based on the concept of burden whereas compensatory tax/fee is based on the concept of recompense/reimbursement... ".

18. The reference in *Jindal Stainless Ltd. (supra)* arose by reason of post 1995 decisions of the Hon'ble Supreme Court. Post 1995, in *Bhagatram Rajeev Kumar Vs. Commissioner of Sales Tax, M.P. and Others*, the concept of "quid pro quo" was widened to hold that "some connection" between the tax and the trading facilities extended to dealers directly or indirectly is sufficient to uphold a compensatory tax. That later view was held to be not good law and the doctrine of direct and immediate effect propounded in *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, and the working test evolved in *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, was held to be applicable even now by *Jindal Stainless Ltd. (supra)*. The working test for deciding whether a tax is compensatory or not, evolved in *Automobile Transport (Rajasthan) Ltd. (supra)*, was held to be paraphrased in *G.K. Krishnan and Others Vs. State of Tamil Nadu and Others*, in the observation that "the very idea of a compensatory tax is service more or less commensurate with the tax levied".

19. Entry 66 of List II specifically speaks of "fees in respect of any of the matters in this List", for the purpose of which the learned Special Government Pleader correlates it to Entry 49 and Entry 62 of List II. Entry 49 refers to "taxes on lands and buildings" and what is argued is that, since the levy is on the use of auditoriums or Three Star hotels, the levy is one on "buildings". The decision on which reliance was placed by the learned Special Government Pleader, in fact, goes against the said argument. *India cements Ltd. (supra)*, as was noticed, levied a cess on royalty. The State sought to sustain the same on the ground that it is a levy on land, relatable to Entry 49 of List II. The Hon'ble Supreme Court, in para 23, refused to accept such contention and held so:

"It is, therefore, not possible to accept Mr. Krishnamurthy Iyer's submission and that a cess on royalty cannot possibly be said to be a tax or an impost on land. Mr. Nariman is right that royalty which is indirectly connected with land, cannot be said to be a tax directly on land as a unit. In this connection, reference may be made to the differentiation made to the different types of taxes for instance, one being professional tax and entertainment tax. In the *The Western India Theatres Ltd. Vs. The Cantonment Board, Poona, Cantonment*, it was held that

an entertainment tax is dependent upon whether there would or would not be a show in a cinema house. If there is no show, there is no tax. It cannot be a tax on profession or calling. Professional tax does not depend on the exercise of one's profession but only concerns itself with the right to practice. It appears that in the instant case also no tax can be levied or is leviable under the impugned Act if no mining activities are carried on. Hence, it is manifest that it is not related to land as a unit which is the only method of valuation of land under Entry 49 of List II, but is relatable to minerals extracted. Royalty is payable on a proportion of the minerals extracted. It may be mentioned that the Act does not use dead rent as a basis on which land is to be valued. Hence, there cannot be any doubt that the impugned legislation in its pith and substance is a tax on royalty and not a tax on land".

The said principle would, in fact, apply squarely against the contention raised by the State. The levy is only on the event of renting out a Three Star hotel or an auditorium; that too, only when it is rented out specifically for weddings or connected ceremonies. Unless the (taxing) event of renting for wedding occurs, there is no levy and that cannot be sustained as a levy on the "building" as such.

20. The correlation to Entry 62 List II also cannot be sustained, since there is already a levy by virtue of the Act of 1976, on the activities for which the Three Star hotels or auditoriums, covered under the impugned enactment are taxed. Any amenity or service provided in a hotel, auditorium or kalyanamantapam where the rate of charges for such amenity or service is above a specified limit; are deemed to be luxury and is taxed under Entry 62. The tax levied is on the aspect of luxury enjoyed. The fees now sought to be levied, tracing the power to Entry 66 List II and correlating it with Entry 62, cannot be sustained in view of the specific intention professed for providing marriage assistance to the under-privileged. The beneficiaries are not related to any service which has any remote connection to the persons on whom such levy is made. There is no regulatory exercise or administrative effort on the part of the Government; which if present could have possibly sustained the levy on the ground of defraying of expenses.

21. The State hence, does not provide any service or incur any administrative expense and the amount received on levy and collection is sought to be applied for the purpose of mobilizing a Matrimony Fund (Mangalya Nidhi) to finance poor girls; specifically as marriage assistance. So much is evident, only from the Budget Speech of the Minister and does not emanate from either the Act or the subsequent Rules framed. It is also pertinent that till date the Government has not thought it fit to frame a scheme for such distribution of largesse in the form of financial assistance to the poor sections of the community. This is not to say that good intentions of the Government alone could sustain the levy. Taxing the "haves" to enrich the "have-nots" though an extolled virtue; it has certain restrictions when applied to a system built on rule of law. While exercising powers of taxation under a constitutional framework, State can ill afford to put on the mantle of a Robin Hood.

22. The further contention raised on behalf of the State is that the impost would be sustainable on a correlation of Entry 5 to Entry 47 of List III of the Seventh Schedule. Entry 5 definitely deals with marriage, for which regulatory measures are brought in by the State in the form, inter alia, of registration and admittedly there are fees levied for the said purpose. In the present context, there is discernible no regulation except, of course, as a deterrent measure in conducting a wedding ceremony involving exorbitant costs. But, that is sought to be taxed as a luxury by levying separate fees for renting out premises, which event would be exigible to luxury tax and culling out wedding ceremonies alone for further taxation, would be arbitrary and discriminatory, nor can it be sustained under the fields of legislation under the Seventh Schedule.

23. The levy made obviously is in the nature of a levy on the persons who carry on expensive ceremonies with respect to weddings and by such compulsory extraction to benefit the poor; an avowed object. But, however, when such compulsory extraction is made in the form of a cess, tracing the source of power to Article 246 of the Constitution of India and seeking to bring it under the fields of legislation enumerated in the Seventh Schedule, the State, definitely, would have to indicate some correlation between the persons on whom the levy is made and the persons who are sought to be benefited by employing the funds received from such compulsory extractions.

24. As was noticed before hand, the State does not state any reason; why, wedding ceremonies alone was singled out for the levy; from a host of purposes for which auditoriums as such and those in Three star Hotels are rented out. Though classification is permissible and the State is given a wide berth in resorting to classification; there is an interdiction in singling out; as in this case the event for taxation. The intention disclosed is clear and unambiguous. A socially relevant measure to tax those who carry on expensive ceremonies in connection with weddings to enable marriage-unions for the less-privileged. The State could definitely employ its funds to that laudable object; but when it taxes citizens to generate money, it should have the power so to do. Social responsibility though could be enforced under the fields of legislation, it should be relatable to a specific entry under the lists of the Seventh Schedule.

25. Koluthara Exports Ltd. Vs. State of Kerala and Others, was a case in which a welfare fund constituted for the fishermen, by the Kerala Fishermen Welfare Fund Act, 1985, was sought to be sustained as a regulatory measure under Entry 23 of List III. The impost was made on exporters of marine products. The Hon"ble Supreme Court referred to the observations of Alagiriswami, J. in Mangalore Ganesh Beedi Works and Others Vs. Union of India (UOI) and Others, :

"Nobody can dispute the need for setting right those evils. But good intentions should not result in a legislation which would become ineffective and lead to a lot of fruitless litigation over the years".

The burden, of the impost for the welfare of fishermen, under Entry 23 of List III,

was held to be possible of placement, only in situations wherein there is a relationship of employer and employee, between the contributor and the beneficiary.

26. The primary object and the essential purpose of the levy as also the ultimate result is the constitution of a fund; "Mangalya Nidhi", to assist the under-privileged women, in getting married. There is absolutely no service offered and no regulatory measure employed. The levy definitely is not a fee and can only be treated as a tax; for which the source is unavailable under any of the fields of legislation enumerated in the Seventh Schedule to the Constitution of India. The State Legislature has to be found to be incompetent to enact the impugned legislation under Article 246 of the Constitution of India.

27. The impugned legislation, Exhibit P8, in so far as it relates to Section 11 of the Kerala Finance Act, 2013 and Exhibit P9 Rules framed thereunder, is ultra vires the powers of the State Legislature as conferred by the Constitution of India and the State is restrained from levying and collecting the cess in accordance with such enactment.

28. On a specific query raised by the Court, it is submitted by the learned Government Pleader that more than Rupees Four Crores were collected under the enactment before this Court stayed the same in the batch of writ petitions. The levy being held to be unconstitutional, refund, however, would be possible only to those persons who rented the premises, from whom the hotels and auditoriums definitely would have collected the amounts, who at this distance of time would be practically not traceable. Hence, the amounts collected other than from any of the petitioners herein shall be retained by the State and used only for welfare purposes. Those of the petitioners who are owners of hotels or auditoriums who have paid the levy and not collected the levy from the individuals who have rented out the premises and those of the petitioners who paid the levy shall be refunded the same.

Writ petitions are allowed. Parties are directed to suffer their respective costs.