having its registered office at
Abkari Bhavan, MG Road,
Old High Court Building,
Ozari, Panaji, Goa - 403001

3. The Assistant Commercial Tax Officer
Vasco-Da-Gama Ward,
having its registered office
at 4th & 5th floor, Karma Point,
Nr. Vegetable Market,
Vasco-Da-Gama, Goa ….
Respondents.

Ms A.A. Agni, Senior Advocate, with Ms Surabhi Kuvelkar, Ms Rajlaxmi Bhatkar, Ms C. Dias, and Ms Afrin Khanm Harihar, Advocates *for the Petitioner.*

Mr D.J. Pangam, Advocate General with Ms Maria Correia, Addl. Government Advocate *for the Respondents.*

CORAM : M.S. SONAK &
BHARAT P. DESHPANDE, JJ.
RESERVED ON : 9th AUGUST 2023
PRONOUNCED ON : 14th SEPTEMBER 2023

JUDGMENT : *(Per M.S. SONAK, J.)*

1. Heard the learned Counsel for the parties.

2. The learned Counsel for the parties agree that a common judgment and order can dispose of all these Petitions. However, the learned Counsel for the parties requested that Writ Petition No.475/2014 be treated as the lead matter.

THE CHALLENGE AND THE RIVAL CONTENTIONS

3. In all these Petitions, the main challenge is to the constitutional validity of The Goa Cess on Products and Substances Causing Pollution (Green Cess) Act, 2013 (Green Cess Act or the impugned Act).

4. Mr Khambatta, the Learned Senior Advocate for the Petitioners in WP No.475/2014, submitted that the impugned Act relates to the field of "environment". In support of this contention, the learned Counsel referred to the Preamble and the provisions contained in Sections 4, 5 and 6 of the impugned Act. The learned Counsel also referred to the Statement of Objects and Reasons of the Impugned Act and urged that all this material leave no manner of doubt that the nature of the levy and also the primary object of the impugned Act is "environment" and "environmental pollution".

5. Mr Khambatta submitted that since the field of "environment" is a distinct field of legislation that does not appear in any of the three lists in the Seventh Schedule to the Constitution, the field of "environment" would fall within the residuary entry, i.e. Entry 97 of List I of the Seventh Schedule to the Constitution. Accordingly, he submits that the State had no legislative competence to enact the impugned Act, which was consequently ultra vires, unconstitutional, null and void.

6. Mr Khambatta pointed out that the States' legislative powers under Articles 246(2) and 246(3) of the Constitution are subject to Parliament's power to legislate under Article 246(1) and its residuary

powers under Articles 248(1) and 248(2) of the Constitution. Reliance was placed on *Union of India V/s. H.S. Dhillon*[1] to explain the scope of Parliament's residuary powers.

7. Mr Khambatta submitted that to determine the legislative competence, the Court must focus on the pith and substance of the impugned Act and ignore the ancillary or incidental effect. He submitted that the impugned Act, in pith and substance, related to the field of "environment" and benefits, if any, to health or sanitation, were only incidental. He relied on ***Ujagar Prints (2) V/s. Union of India[2], Offshore Holdings (P) Ltd. V/s. Bangalore Development Authority[3] and Reliance Industries V/s. State of Gujarat***[4] in support of their contentions.

8. Mr Khambatta submitted that though the original Constitution contained a directive principle dealing with "public health" in Article 47, the Parliament thought it fit in 1976 to introduce Article 48A to deal with "environment" specifically. He, therefore, submitted that the Constitution treats "public health" and "environment" separately. He presented that the impugned Act, in pith and substance, was concerned with the field of "environment" and not "public health". He submitted that since the State has no legislative competence to

1 (1971) 2 SCC 779
2 (1989) 3 SCC 488
3 (2011) 3 SCC 139
4 Spl. Civil Appln No.4690/2012 (Gujarat High Court, Division Bench).

legislate on the field of "environment", the impugned Act is ultra vires, unconstitutional and null and void.

9. Mr Khambatta submitted that even if it is assumed that the impugned Act relates to field of "public health" and "air" or "air pollution", then the impugned Act would relate, *inter alia,* to Entry 6, of List II and Entry 97 of List I because there is no entry comparable to Entry 17 (concerning water) with respect to "air" or "air pollution". He submitted that it is only the Parliament which has legislative competence to enact hybrid legislation of subjects covered under the State List and the Union List in the Seventh Schedule to the Constitution. Reliance was placed on ***Sat Pal & Co. V/s. Lt. Governor of Delhi***[5] **and** ***State of M.P. V/s. Mahalaxmi Fabric Mills***[6] in this regard.

10. Mr Khambatta submitted that a clear indication of the field of "air pollution" being in the Union List was the imposition of the Clean Energy Cess vide Finance Act, 2010. He relied upon the Finance Minister's Budget Speech dated 26/02/2010 to point out that the purpose of the Clean Energy Cess was to ameliorate the negative environmental consequences and increased pollution levels associated with industrialisation and urbanisation. He pointed out that the Budget Speech makes a specific reference to the creation of the National Clean Energy Fund to implement the 'polluter pays

5 (1979) 4 SCC 232
6 1995 Supp (1) SCC 642

principle'. Based on this material, the learned Counsel for the Petitioners contended that the impugned Act, which is directly concerned with the environment, air pollution, and alleged implementation of the 'polluter pays principle', is a hybrid legislation which only the Parliament had powers to enact. Accordingly, it was urged that the impugned Act is beyond the legislative competence of the State Legislature.

11. Mr Khambatta, without prejudice to the above contentions, submitted that the environmental legislations are enacted to implement international treaties like the Stockholm Convention and the Rio Declaration. He referred to Article 253 of the Constitution and the non-obstante clause with which the provision begins. He pointed out that Article 253 overrides Articles 245 and 246(2) and 246(3) of the Constitution. Based on these provisions and the decision of the Hon'ble Supreme Court in ***Maganbhai Ishwarbhai Patel V/s. Union of India***[7] he submitted that the exclusive legislative competence was vested in Union, and to that extent, the States were denuded of their legislative competence to enact any laws on such subjects or related to such fields like environment, air, pollution, etc.

12. Mr Khambatta, in the above regard, relied on ***S. Jagannath v/s Union of India***[8]***; State of Kerala V/s. James Varghese***[9] ***and K.S.***

7 (1970) 3 SCC 400,

8 (1997) 2 SCC 87

9 (2022) 9 SCC 593

Puttswamy V/s. Union of India[10]. The learned Counsel emphasised the decision in *K.S. Puttswamy* (supra) in which it was observed that Article 253 removes legislative competence from all the States and entrusts only the Parliament with the power to make such legislation for implementing international treaties.

13. Mr Khambatta submitted that the expression 'for implementing' appearing in Article 253 of the Constitution must be given a purposive interpretation that confers exclusive power on the Parliament to legislate on the entire subject matter of the international convention/treaty. The learned Counsel for the Petitioners referred to the provisions of the Air Act, Environment Protection Act and the NGT Act to point out that such legislations make specific reference to Article 253 of the Constitution apart from Entry 13 of the Union List, Seventh Schedule to the Constitution.

14. Mr Khambatta submitted that the international conventions /treaties are akin to the directive principles of State Policy, while the legislations like Air Act, the EPA and the NGT Act are means for implementing such principles. Accordingly, the learned Counsel submitted that the expression "implementation" would mean adopting legislative steps towards the goals and objectives of international conventions/treaties. Based upon this argument, he contended that even assuming without accepting that Entry 6 of List

10 (2017) 10 SCC 1

II would cover the impugned Act, the same would stand overridden by Article 253 since the Parliament has already legislated on the fields of the Stockholm Convention and Rio Deceleration viz. The Air Act, EPA and the NGT Act.

15. Mr Khambatta further pointed out that unlike Article 254, which was restricted to the concurrent list, Article 253 was unqualified. The non-obstante clause in Article 253 denudes the State to legislate on a subject or a field where the State has already enacted a law pursuant to the international convention or a treaty. Based on this argument, he contended that the impugned Act was ultra vires the legislative powers of the State because the Parliament to implement the international conventions and treaties had already enacted legislation dealing with the subject of air pollution or environmental protection.

16. Mr Khambatta, again, without prejudice, contended that the green cess imposed by the impugned Act does not qualify as a "fee" but is nothing but a tax levied without the authority of law. He pointed out that no special benefits were accorded to the Petitioners or others upon whom such levy was imposed. He submitted that no benefit was provided by the impugned Act, even to the class of which the Petitioners formed a part. He submitted that there was not even a broad correlation between the levy and the services rendered, leave alone a *quid pro quo*. He submitted that the State's affidavit only pointed out that the Petitioners received some benefits as members of

the public, but not any special benefit as members of the class upon which such levy was imposed. Mr Khambatta relied upon ***Jalkal Vibhag Nagar Nigam V/s. Pradeshiya Industrial and Investment Corpn.***[11]**,** ***Kerala State Beverages Manufacturing and Marketing Corp. V/s. ACIT***[12]**,** ***Corporation of Calcutta V/s. Liberty Cinema***[13]**,** ***Kewal Krishna Puri V/s. State of Punja*****b**[14]**,** ***CCE V/s. Chhata Sugars***[15]**'** ***Secretary, Govt. Of Madras V/s. Zenith Lam*****p**[16] **and** ***P.M. Ashwathanarayana Setty V/s. State of Karnataka***[17] in support of their contentions.

17. Finally, Mr Khambatta submitted that the impugned Act was not relatable to Entry 49 of List II dealing with taxes on lands and buildings. He pointed out that the impugned levy was a personal tax and not a tax on property. He pointed out that the impugned levy was a tax on an activity or service rendered on or in connection with lands and buildings but not a tax on lands and buildings. He pointed out that Section 4 of the impugned Act levied a tax on the handling, utilisation, consumption, combustion, transportation or movement of products and substances which were subject to the levy. But the levy was not on lands or buildings.

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11 2021 SCC OnLine SC 960;
12 (2022) 4 SCC 240
13 AIR 1965 SC 1107
14 (1980) 1 SCC 416
15 (2004) 3 SCC 466
16 (1973) 1 SCC 162
17 1989 Supp (1) SCC 696

18. For all these reasons, Mr Khambatta submitted that the impugned Act was ultra vires and could not be saved by reference to Entry 49, List II, Seventh Schedule of the Constitution. He relied on *H.S. Dhillon* (supra), ***Retailers Association of India (Rai) V/s. Union of India***[18] and *Jalkal Vibhag Nagar Nigam* (supra), amongst others, in support of his contentions.

19. Mr Lotlikar, the learned senior Advocate for the Petitioners in WP No.939/2019, adopted the submissions of Mr Khambatta. He submitted that the Petitioners contributed nothing to the increase in the carbon footprint. He submitted that the impugned Act was beyond the legislative competence of the State. In any case, the levy was a tax without the authority of the law.

20. Mr S.S. Kantak, learned Senior Advocate for the Petitioners in Writ Petition No. 393/2016, adopted Mr Khambatta's submissions. In addition, he relied upon the observations from the minority judgment of Hon'ble Shri Justice S.B. Sinha in ***State of West Bengal V/s. Kesoram Industries***[19] that the State's powers were denuded once the Parliament enacts legislation on subject matter under Entry 13, List I of Seventh Schedule. Mr Kantak contended that though the observations were in the minority judgement, they were binding on

18 (2011) 5 Mah L.J. 660
19 2004 (10) SCC 201

this Court given the decision of the Division Bench in ***Mahinder Bahawanji Takar V/s. S.P. Pande***[20].

21. Mr Kantak also pointed out that the demand notice dated 22/3/2016 issued by Respondent No.3 (Captain of Ports) was wholly without authority and jurisdiction because the Captain of Ports was not notified as the competent authority under the impugned Act to demand payment of levy. Mr Kantak submitted that on this ground, the impugned demand notice dated 22/3/2016 ought to be set aside.

22. Ms A. A. Agni, learned Senior Advocate for the Petitioners in Writ Petition No.206/2021, also adopted Mr Khambatta's submissions. In addition to the contention about the State's legislative competence to enact the impugned Act, she challenged the 2014 Rules framed under the impugned Act as being violative of Articles 14 and 304(a) of the Constitution of India.

23. Ms Agni submitted that under the impugned Act and the 2014 Rules, levy was imposed only upon the substances and products which were brought in the State of Goa from outside. She submitted that no levy was imposed upon the substances or products manufactured in the State of Goa. Based upon this, she contended that there was violation of Articles 14 and 304(a) of the Constitution of India.

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20 AIR 1964 Bom 170

24. Ms Agni pointed out that Article 304(a) prohibits discrimination between goods imported and the goods manufactured in a State. She further pointed out that notwithstanding anything contained in Article 301 of the Constitution, the tax imposed on the goods imported and those manufactured in the State shall be the same. She relied on ***Jindal Stainless Limited and Anr. V/s. State of Haryana and ors.***[21]***, Firm A.T.B. Mehtab Majid and Co. V/s. State of Madras and anr.***[22]***, M/s Rattan Lal and Co. and Anr. etc. V/s. The Assessing Authority, Patiala and Anr. etc.***[23] ***Belgaum District Co-operative Milk Producers' Societies Union Ltd. V/s. State of Goa and Anr.***[24] in support of her contentions.

25. Ms Agni also relied upon ***Kewal Krishan Puri and Anr. V/s. State of Punjab and Anr.,*** [25] ***, Dewan Chand Builders and Contractors V/s. Union of India and Ors.,***[26]***, The Corporation of Calcutta and Anr. V/s. Liberty Cinema***[27]***, P.M. Ashwathanarayana Setty and Ors.*** **(supra),** ***Om Prakash Agarwal etc. V/s. Giri Raj Kishori and Ors. etc.***[28]***, Krishi Upaj Mandi Samiti Orient Paper and Industries Ltd.***[29]***, Union of India and Anr. V/s. Mohit Minerals P.***

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21 2017 (12) SCC 1
22 AIR 1963 SC 928
23 AIR 1970 SC 1742
24 2017 SCC OnLine Bom 7780
25 1980 (1) SCC 416
26 2012 (1) SCC 101
27 AIR 1965 SC 1107
28 AIR 1986 SC 726.
29 (1995) 1 SCC 655

Ltd.[30]***, Calcutta Municipal Corp. and Ors. V/s. Shrey Mercantile (P) Ltd. and Ors.***[31] **and** ***B.S.E Brokers' Forum, Bombay and Ors. V/s. Securities and Exchange Board of Indian and Ors.***[32] mainly, in the context of the distinction between "tax" and "fee".

26. Mr Gosavi, learned Counsel for the Petitioners in WP No.436/2016, also adopted Mr Khambatta's submissions. In addition, he submitted that the impugned Act was relatable to Entry 97 List I because it directly and substantially concerns the field of "environment" and "environmental pollution". He referred to the constituent assembly debates to explain the significance of the residuary entry in the Union list. He submitted that the impugned Act imposes a tax without there being any corresponding entry in the State List or any other provision in the Constitution of India. He submitted that the levy imposed by the impugned Act was a tax imposed without any authority of law and consequently hit by Article 265 of the Constitution.

27. The learned Counsel for the Petitioners, based on the above contentions, submitted that these Petitions may be allowed, and the impugned Act struck down as *ultra vires*, unconstitutional, null and void.

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30 (2022) 10 SCC 700
31 (2005) 4 SCC 245
32 (2001) 3 SCC 482

28. Mr D.J. Pangam, learned Advocate General for the State of Goa, opposed the grant of any reliefs in this petition by submitting that the impugned Act was within the legislative competence of the State, and even otherwise not ultra vires Articles 14 and 301 to 304 of the Constitution of India.

29. Learned AG submitted that the impugned Act and the levy thereunder was to promote steps to reduce carbon footprint, but the same did not relate to the regulation and control of pollution. He submitted that the impugned Act provides for levies and collection of cess on the handling, consumption, utilisation, combustion, movement or transportation of products and substances which, upon their handling, etc., cause pollution of the lithosphere, atmosphere, biosphere, hydrosphere and other environmental resources of the State of Goa, under the concept of "polluter pays principle", and matters connected therewith or incidental thereto.

30. Learned AG submitted that the impugned Act is relatable to various entries in List II and List III of the Seventh Schedule, which he submitted, have to be liberally and broadly construed. He submitted that the impugned Act is relatable to Entries 6, 14, 17, 18, 21 and 25 of List II, Seventh Schedule of the Constitution of India and, therefore, within the legislative competence of the State.

31. Learned AG referred to the Water (Prevention and Control of Pollution) Act, 1974 and its Statement of Objects and Reasons. He submitted that from this, it is apparent that the Parliament had itself

admitted that legislation with respect to pollution of rivers and streams is relatable to Entries 6 and 17 of List III, Seventh Schedule. However, the Water (Prevention and Control of Pollution) Act was enacted by the Parliament by taking recourse to Article 252 of the Constitution of India and not by referring to Entry 97 of List I, i.e. the residuary entry in the union list.

32. Learned AG submitted that a comparison of entries in List I and List II of the Seventh Schedule would indicate that List I contains no entries relatable to the field of environment or environmental pollution. However, he referred to several entries in List III relatable to land, water, agriculture, fisheries, health, etc., which, according to him, relate to the fields of nature, environment, pollution, sanitation, etc. Learned AG submitted that from this scheme, it is apparent that the Constitution makers intended to leave the field of environment and environmental pollution of the State. He, therefore, submitted that it would not be correct to rely on the residuary clause in Entry 97 of List I, Seventh Schedule of the Constitution of India.

33. Learned AG submitted that the impugned Act neither seeks to implement any international treaties or conventions nor does it in any manner conflict with or interfere with the legislations like the Environment (Protection) Act, Air (Prevention and Control of Pollution) Act, 1981 and National Green Tribunal Ac, 2010 for the implementation of international treaties and conventions. He submitted that particularly where no conflict whatsoever was pointed

out, the State cannot be denuded from legislating upon fields included in the State list simply because the Centre may have entered into treaties or conventions relating to such fields. Learned AG submitted that the petitioners' contention if accepted, would constitute an affront to the federal structure or the Constitution which is accepted as the basic structure of the Constitution.

34. Learned AG, without prejudice to the above contentions, submitted that the power of "regulation and control" is different from the power of "taxation and fees". For this proposition, he relied on ***State of West Bengal v/s. Kesoram Industries Ltd.***[33]. He submitted that the Parliament, by enacting legislations like the Environment (Protection) Act of 1986, the Air (Prevention and Control of Pollution) Act of 1981, the Biological Diversity Act of 2002 and the National Green Tribunal Act of 2010, has exercised only its powers of "regulation and control". He submitted that the exercise of such power of the Parliament never denudes the State from exercising its powers of enacting fiscal legislation, even though there may be some incidental overlap. He relied on ***Synthetics and Chemicals Ltd. v/s. State of U.P.***[34] in support of this proposition.

35. Learned AG submitted that the Clean Energy Cess levied through the Finance Act 2010 does not occupy the field covered by the impugned Act. He referred to Section 83 of the Finance Act, 2010,

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33 (2004) 10 SCC 201
34 (1990) 1 SCC 109

which clarifies that the Clean Energy Cess is an "Excise Duty" which is concerned with the manufacture of certain products. He submitted that such cess has nothing to do with the environment as such. He relied on ***Union of India V/s. Mohit Mineral (P) Ltd.***[35], in which it is held that when a cess is levied as an increment to the existing tax, the validity of the cess must be judged in the same way as the validity of the tax to which it is an increment. Learned AG submitted that the Clean Energy Cess is a levy relatable to Entry 83 of List I, i.e. duties of customs, including export duties. He submitted that the levy under the impugned Act was a levy relatable to Entry 66 read with Entries 6, 14, 17, 18, 21 and 25 of List II, Seventh Schedule.

36. Learned AG submitted that in any case, it was always permissible to levy different fiscal levies, even on the same transaction, based on different entries, different causes and different purposes. Learned AG, therefore, submitted that there was no constitutional bar on the State to levy the impugned cess simply because the Central Government had levied an excise duty upon the same or similar transaction. He submitted that the impugned cess, in any case, was not on the manufacture of the products and substances. He relied on ***State of West Bengal & Ors. V/s. Purvi Communication (P) Ltd.***[36] in support of this contention.

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35 (2019) 2 SCC 599

36 (2005) 3 SCC 711

37. Learned AG submitted that the impugned cess was a fee but urged that even if it were to be a tax, the same was within the legislative competence of the State. He submitted that the fee levied by the impugned Act was relatable to Entry 66, r/w Entries 6, 14, 17, 18, 21 and 25 of List II, Seventh Schedule.

38. Learned AG submitted that the State had the legislative competence to levy a fee as a payment towards services rendered, benefits provided or a privilege conferred. He submitted that the impugned fee was inter alia to augment the State revenue for incurring expenditure and taking measures to reduce the carbon footprint caused by the petitioners. He submitted that the State was entitled to levy fees for services rendered by it, and the petitioners could not insist upon *quid pro quo*. He submitted that the services rendered by the fee collected need not be confined to the persons or entities from whom the fee is collected. Even the availability of any indirect benefit and a general nexus between the persons paying the fee and services rendered out of the collected fee is sufficient, as held in *Kesoram Industries Ltd.* (supra).

39. In the context of the distinction between "tax" and "fee", the learned Advocate General relied upon the ***City of Corpn. of Calicut V/s. Thachambalath Sadasivan***[37], ***Municipal Corporation of Delhi***

37 (1985) 2 SCC 112 (para 5)

V/s. Mohd. Yasin[38] and ***Sreenivasa General Traders V/s. State of A.P.***[39].

40. The learned Advocate General submitted that the preamble of the impugned act makes it clear that the act is based on the principle of 'polluter pays' and that the "cess" collected shall be used to reduce the carbon footprint of and remedy the pollution caused by the petitioners, to the lithosphere atmosphere etc. and that as such the levy falls within the definition of a fee and satisfies the doctrine of quid pro quo. He further submitted that state machinery is required to prevent and cure the pollution caused by the petitioners and for the enforcement of the provisions of the Environment (Protection) Act, 1986, the Air (Prevention and Control of Pollution) Act, 1981 and that the levy is required to meet the financial burden imposed by the same.

41. The learned Advocate General submitted that the levy under the impugned act can also be upheld as a tax and is levied under Entry 49 of List II, which provides for "Taxes on Lands and Buildings", he submitted that all the petitioners use land in one form or another while transporting, handling, or loading, their goods, products and substances. Therefore, such use was taxable as a tax on land. The learned AG relied upon *Kesoram Industries Limited (supra)*, where

38 (1983) 3 SCC 229 (para 9)
39 (1983) 4 SCC 353

it was held that the word "land" cannot be assigned a narrow meaning and that it included all strata above and below.

42. The learned Advocate General contended that the word "land" includes not only the face of the Earth but also includes within it, the lithosphere, atmosphere, biosphere, hydrosphere and other environmental resources, that the levy upon the use of land on account of handling or consumption or utilisation or combustion or movement or transportation of products and substances, including hazardous substances would amount to a Tax on the land. He further submitted that the levy is not imposed on a product per se but that it is a levy upon activities being carried on by the petitioners, that the particular use of the land in the management of particular commodities, causing a polluting impact on the land, and was there for not a tax on those commodities.

43. The learned Advocate General submitted that the Act identifies the persons from whom such Cess has to be collected but that it is not to say that is the tax on any person, that the measure, manner, and the point at which the tax has to be collected is not indicative of the true nature of the levy, and that these are different and distinct from the taxing event, that in this case the taxing event is the use of the land by causing pollution on it and not on the commodity or any person.

44. The learned Advocate General submitted that in ***Anant Mills Co. Ltd V/s. State of Gujarat***[40] the Hon'ble Supreme Court held that the use of underground pipelines is a use of land and therefore taxable under Entry 49 of List II. He submitted that in ***Ajoy Kumar Mukherjee V/s. Local Board of Barpeta***[41], it was held that the use to which the land is put can be taken into account for imposing a tax on it within the meaning of Entry 49 of List II. He submitted that the impugned Act has to be read as a whole in its true scope and import, which is, that the levy is a tax on the use of land and not on any commodity or person.

45. The learned Advocate General submitted that the impugned Act is a fiscal legislation, and as such, the court should judge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions, to support this contention, the AG relied upon ***R.K. Garg V/s. Union of India***[42]. He submitted that economic legislation ought to be viewed with greater latitude than law touching upon civil rights and freedom.

46. On the question of whether the impugned act violates Articles 301 and 304 of the Constitution, the learned Advocate General submitted that the impugned Act does not discriminate between goods which are imported into the state and manufactured in the state.

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40 (1975) 2 SCC 175
41 AIR 1965 SC 1561
42 (1981) 4 SCC 675

He relied upon ***Jindal Stainless Ltd V/s. State of Haryana***[43] to say that the Constitution permits the levy of tax on goods imported from other states and that it is only discriminatory taxation on the import of goods that is prohibited by Article 304(a). Further, he submitted that it was incumbent upon the petitioners to plead and prove that the levy of tax under the impugned Act is discriminatory and that the state only taxed goods manufactured outside the State of Goa, further that the petitioner's goods were manufactured within Goa. He submitted that the cess is levied on the use of land on account of handling of hazardous substances by any and all and that it is not levied only on the goods manufactured outside the state of Goa.

47. For all the above reasons, learned Advocate General submitted that these petitions may be dismissed and the interim orders granted may be vacated.

48. The rival contentions now fall for our determination.

MAIN ISSUES

49. Based on the rival contentions, one of the main issues which arises for determination in all these matters is whether the impugned Act, in pith and substance, relates to the fields enumerated in Entries 6, 14, 17, 18, 21 and 25 of List II, Seventh Schedule to the Constitution or whether the same relates to the

43 (2017) 12 SCC 1

field of "environment" or "environmental pollution", which, according to the petitioners, is not covered by any of the fields in Lists II and III, Seventh Schedule to the Constitution but falls exclusively within the residuary Entry i.e. Entry 97 of List I of the Seventh Schedule to the Constitution. The petitioners contend that the impugned Act, in pith and substance, falls within the residuary Entry in List I, and, therefore, the same is ultra vires the legislative competence of the State.

50. The petitioners also contend that the levy under the impugned Act is not a "fee" as contemplated by Entry 66 of List II but instead, the levy is a "tax" beyond the legislative competence of the State. In Writ Petition No.206/2021, the petitioner has raised an additional issue of the demand notice being issued by an Officer/Authority not competent to issue the same.

51. To determine the above issues, at the outset, a detailed reference is necessary to the preamble and the provisions of the impugned Act.

ANALYSIS OF THE IMPUGNED ACT

52. The preamble to the said Act states that the said Act was enacted to provide for levy and collection of cess on the products and substances, including hazardous substances, which upon

their handling or consumption or utilization or combustion or movement or transportation causes pollution of the lithosphere, atmosphere, biosphere, hydrosphere and other environmental resources of the State of Goa, under the concept of "polluter pays principle", and also to provide for measures to reduce the carbon footprint left due to such activities and for matters connected therewith or incidental thereto.

53. The impugned Act comprises, in all about 15 sections. Sections 2(e) and 2(g) define the expressions "products" and "substances", as follows :

> *"2(e) "products" means those products which upon their handling, consumption, utilization, combustion or movement or transportation causes pollution of the lithosphere, atmosphere, biosphere, hydrosphere and other environmental resources and causes emission of carbon dioxide and other green house gases or discharge other types of effluents and includes asphalts, automotive gasolines, fuel, oils, kerosene, lubricants, napthas, waxes, other hydrocarbon compounds including mixtures and products obtained from crude oil and natural gas processing and such other products which the Government may, by notification in the Official Gazette, specify for the purpose of this Act,;*
>
> *2(g) "substances" means substances which may upon their handling or consumption or utilization or combustion or movement or transportation, causes pollution of the lithosphere, atmosphere ,biosphere, hydrosphere and other environmental resources and causes emission of carbon dioxide and other greenhouse gases or discharge other types*

of effluents and includes carbon products, coke, coal, chemicals and chemical products, hazardous substances and such other substances which the Government may, by notification in the Official Gazette, specify for the purpose of this Act."

54. Under Section 3 of the said Act, the Government is empowered to appoint a Competent Authority, or Competent Authorities as may be required and assign to them such areas as may be specified in such notification. The Competent Authorities shall perform such functions and discharge such duties as may be prescribed.

55. Section 4 of the impugned Act, is a charging section and the same is transcribed below for the convenience of reference:

"4. Levy and collection of cess.— (1) There shall be levied and collected a cess at such rates as may be specified by the Government by a notification in the Official Gazette, not exceeding two percent of the sale value of the products and/or substances, the handling, utilization, consumption, combustion, transportation or movement, of which, by any means, causes pollution within the State of Goa, from every person carrying out any of the above activities. (2) The cess shall be assessed, levied and collected in such manner, as may be prescribed. (3) The cess levied under this Act shall be in addition to any other cess, taxes, charges, duties, permission fees, license fees or any other fees payable under any other law for the time being in force."

56. Section 5 of the impugned Act deals with crediting proceeds and utilization of cess. It provides that proceeds of the cess collected under section 4 shall be credited to the Consolidated Fund of the State of Goa and shall be utilized for undertaking the measures to reduce the carbon footprint, by means of such programmes or schemes as may be decided by the Government.

57. Section 6 of the impugned Act is concerned with the constitution of the Environmental and Energy Audit Bureau. It provides that in order to identify sensitive areas of energy and environmental conservation and recommend appropriate measures and solutions for reducing carbon footprint, and suggest measures for deriving benefits under carbon credit trading and related matters in the State of Goa, the Government shall establish an Environmental and Energy Audit Bureau by notification in the Official Gazette. The composition of, procedure to be followed by, and functions of the Environmental Energy Audit Bureau, shall be such as may be prescribed.

58. Section 7 provides for penalties when there is a failure to pay the cess levied under the provisions of the impugned Act. Section 8 empowers the Government to exempt or reduce cess if in its opinion it is necessary in public interest to do so. Section 9 provides that the provisions of the impugned Act are in addition

to and not in derogation of the provisions of any other law for the time being in force. Section 10 bars the jurisdiction of the Court in respect of any matter in relation to which the competent authority or any other person authorized by the competent authority is empowered by or under the impugned Act to exercise any power, and no injunction shall be granted by any Civil Court in respect of anything which is done or intended to be done by or under the impugned Act.

59. Section 11 protects action taken by the Competent Authority in good faith under the provisions of the impugned Act or any Rule made thereunder. Section 12 bars suits and prosecutions against the Government or any officer of the Government or against any other person appointed under the impugned Act for any act done or purported to be done under the impugned Act, without the previous sanction of the Government. Section 13 empowers the Government to issue directions in respect of matters not provided for in the impugned Act and not inconsistent therewith. Section 14 empowers the Government to make rules. Section 15 empowers the Government to remove difficulties arising in giving effect to the provisions of the impugned Act as may appear to be necessary or expedient for removing such difficulties. This power, however, has to be

exercised within two years from the date of commencement of the impugned Act.

BROAD PRINCIPLES FOR INTERPRETATION OF LEGISLATIVE ENTRIES IN THE LISTS IN SCHEDULE VII.

60. In the context of determining whether legislation, in pith and substance, falls within the residuary Entry 97, List I, Seventh Schedule to the Constitution, reference has to inevitably be made to the Constitution Bench judgment (Bench strength of seven) in *Union of India V/s. H.S. Dhillon* (supra). The Hon'ble Supreme Court held that in any matter, including tax, which has not been allotted exclusively to the State Legislatures under List II or to both, the State and the Union Legislatures in List III, fall within List I, including Entry 97 of that List read with Article 248 of the Constitution. The Court held that it would be unthinkable that the Constitution makers while creating the sovereign democratic republic held certain matters or taxes as beyond the legislative competence of the Legislations in this country either legislating singly or jointly. This was never the intention of the constituent assembly.

61. The Court explained that whatever doubt there may be on the interpretation of Entry 97, List I, the same is removed by the wide terms of Article 248 of the Constitution. The Court pointed out that this Article is framed in the widest possible terms. Therefore, on its terms, the only question to be asked is: "*is the matter sought to be legislated or included in List II or in List III or is the tax sought to be*

levied mentioned in List II or in List III. No question has to be asked about List I. If the answer is in the negative, then it follows that the parliament has powers to make up laws or tax". Thus, it was held that residuary power is as much power as the power conferred in Article 246 of the Constitution in respect of a specified item.

62. The decision in *Union of India V/s. H.S. Dhillon* (supra) was reiterated by a Constitution Bench (Bench strength of nine judges) in the case of ***Attorney General for India V/s. Amratlal Prajivandas*** [44]. This Bench referred to the test evolved in *Union of India V/s. H.S. Dhillon* (supra), in the following terms:

> *"Where the legislative competence of Parliament to enact a particular statute is questioned, one must look at the several entries in List II to find out (applying the well-known principles in this behalf) whether the said statute is relatable to any of those entries. If the statute does not relate to any of the entries in List II, no further inquiry is necessary. It must be held that the Parliament is competent to enact that statute whether by virtue of the entries in List I and List III or by virtue of Article 248 read with Entry 97 of List I".*

63. Durga Das Basu's Commentary on the Constitution of India (9th Edition, Vol. 12) fairly summarises the position regards legislative competence with reference to several decided cases. In

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44 (1994) 5 SCC 54

deciding the question of legislative competence, it has to be kept in view that the Constitution is not required to be considered with a narrow or pedantic approach. It is not to be construed as a mere law but as a machinery by which laws are made. The interpretation should be broad and liberal. The entries only demarcate the legislative field of the respective legislature. If it is found that some of the entries overlap or conflict with the other, an attempt to reconcile such entries and bring about a harmonious construction is the duty of the Court. When reconciliation is not possible, then the Court will have to examine the entries in relation to legislative power in the Constitution. The legislature is supreme in its own sphere under the Constitution, subject to limitations provided for in the Constitution itself. It is for the legislature to decide as to when and in what respect and on what subject matter the laws are to be made. If the State Legislature was competent to pass the Act, the question of motive with which the Act was imposed is immaterial, and there can be no plea of a colourable exercise of power to tax if the government had the authority to impose a tax. If the government had the authority to impose a tax, the fact that it gave a wrong reason for exercising the power would not derogate from the validity of the tax. There is a distinction between the object of tax, the incidence of tax and the machinery for the collection of tax. Legislative competence is to be determined with reference to the object of the levy and not with reference to its incidence or machinery. (See ***Gujarat Ambuja***

Cements Ltd. V/s. Union of India[45]***; Ujagar Prints (II) v. Union of India,***[46]***; Harakchand Ratanchand Banthia v. Union of India***[47]***; G.K. Krishnan v. State of T.N.,***[48]**)*

64. Further, in the context of deciding the question of legislative competence or interpreting the legislative entries, the Courts must bear in mind that the entries in the legislative lists are not sources of the legislative power but are merely topics or fields of legislation and, therefore they must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. The expression "with respect to" in Article 246 brings in the doctrine of "Pith and Substance" in the understanding of the exertion of the legislative power, and wherever a question of legislative competence is raised, the test is whether the legislation, looked at as a whole, is substantially "with respect to" the particular topic of legislation. If the legislation has a substantial and not merely a remote connection with the entry, the matter may well be taken to be legislation on the topic. [See *Ujagar Prints and Ors. V/s. Union of India* (supra)].

65. In *Ujagar Prints and Ors. V/s. Union of India* (supra), the Constitution Bench of the Hon'ble Supreme Court held that if

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45 (2005) 4 SCC 214

46 (1989) 3 SCC 488

47 (1969) 2 SCC 166

48 (1975) 1 SCC 375

legislation purporting to be under a particular legislative entry is assailed for lack of legislative competence, the State can seek to support it on the basis of any other entry within the legislative competence of the legislature. It is not necessary for the State to show that the legislature, in enacting the law, consciously applied its mind to the source of its own competence. Competence to legislate flows from Articles 245, 246, and the other Articles following in Part XI of the Constitution. In defending the validity of a law questioned on the ground of legislative incompetence, the State can always show that the law was supportable under any other entry within the competence of the legislature. In supporting a legislation, sustenance could be drawn and had from a number of entries. The legislation could be a composite legislation drawing upon several entries. Such a "rag-bag" legislation is particularly familiar in taxation.

66. In ***State of Rajasthan V/s. Shri G. Chawla and Dr Pohumal***[49], in the context of the challenge to the Ajmer (Sound Amplifiers Control) Act, 1952 as being beyond the legislative competence of the State legislature, the Hon'ble Supreme Court explained that after Lord Selborne's oft-quoted and applied dictum in ***Queen V/s. Burah***[50], it must be held as settled that the legislatures in our Country possess plenary powers of legislation. This is so even after the division of legislative powers, subject to this, that the supremacy of

49 1959 Supp (1) SCR 904

50 (1878) 3 App Cas 889

the legislatures is confined to the topics mentioned as Entries in the Lists conferring respective powers on them. These Entries, it has been ruled on many an occasion, though meant to be mutually exclusive, are sometimes not really so. They occasionally overlap and are to be regarded as *enumeratio simplex* of broad categories. Where in an organic instrument, such enumerated powers of legislation exist and there is a conflict between rival Lists, it is necessary to examine the impugned legislation in its pith and substance, and only if that pith and substance falls substantially within an Entry or Entries conferring legislative power, is the legislation valid, a slight transgression upon a rival List, notwithstanding.

67. In ***Subramanyam Chettiar V/s. Muthuswamy Goundan***[51], the above principle was expressed in the following words:

> "*It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee whereby the impugned statute is*

51 (1940) FCR 188, 201

examined to ascertain its 'pith and substance', or its 'true nature and character', for the purpose of determining whether it is legislation with respect to matters in this list or in that."

68. Bearing in mind the above principles, it becomes necessary to examine and analyze the impugned Act with a view to determining whether the same is "with respect to" any of the matters enumerated in Lists II and III in the Seventh Schedule to the Constitution of India. For this, we will have to focus on the "pith and substance" or the "true nature and character" of the impugned Act. Since the impugned Act is a fiscal legislation, the distinction between the object of the levy, the incidence of the levy and the machinery for collection of the levy will also have to be borne in mind. Typically, the legislative competence is to be determined with reference to the object of the levy and not with reference to its incidence and machinery [See *Gujarat Ambuja Ltd. V/s. Union of India* (supra)].

APPLICATION OF THE ABOVE PRINCIPLES TO DETERMINING WHETHER THE IMPUGNED ACT IS BEYOND THE LEGISLATIVE COMPETENCE OF THE STATE.

69. The entries referred to and relied upon by the learned Advocate General to sustain the constitutional validity of the impugned Act, read as follows:

"*6. Public health and sanitation; hospitals and dispensaries.*

14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.
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.
18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization
21. Fisheries
25. Gas and gas-works.
66. Fees in respect of any of the matters in this List, but not including fees taken in any court."

70. Going by the preamble to the impugned Act, it does appear that the object and purpose of the impugned Act is to augment the State's revenue for having programmes and schemes to reduce the carbon footprint. The impugned Act provides for levy and collection of cess on the products and substances including hazardous substances, which upon their handling or consumption or utilization or combustion or movement or transportation cause pollution of the lithosphere, atmosphere, biosphere, hydrosphere and other environmental resources of the State of Goa, under the concept of "polluter pays principle", and also to provide for measures to reduce the carbon footprint left due to such activities and for matters connected therewith or incidental thereto.

71. The levy under the impugned Act is on the handling or consumption or utilization or combustion or movement or

transportation of products and/or substances, the handling etc. of each causes pollution within the State of Goa. The Act invokes the "polluter pays principle" as a justification for the levy though it is not often that legislation provides for justification for the levy in the text of the legislation itself.

72. Bearing in mind the principles that Entries in the legislative lists are not sources of the legislative power but are merely topics or fields of legislation and that they must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense and further bearing in mind the width of the expression "with respect to" employed in Article 246 of the Constitution, we find it different to accept the argument that the impugned Act is not a legislation "with respect to" the entries relating to public health, sanitation, water, land, gas as referred to in entries 6, 17, 18 and 25 of List II of Seventh Schedule to the Constitution.

73. Since the levy and the object of the levy is to augment resources to reduce the carbon footprint generated by the petitioners involved in handling etc. specified products and substances, the impugned Act has a direct nexus with subjects like public health, sanitation, water, gas or land. Greater effective means to combat increased carbon footprint or even disincentivising increased carbon footprint would clearly promote public health. The entries in the State list cannot be narrowly or pedantically construed. They have to be liberally and generously construed. Upon their meaningful construction, it would

be difficult to agree with the Petitioner's argument that in pith and substance, the impugned Act is an enactment not "with respect to" the entries in the State List.

74. For example, ***State of West Bengal V/s. Kesoram Industries Ltd. & Ors.***[52], the Constitution Bench of the Hon'ble Supreme Court considered the scope of the expression "land" as used in Entry 49 Lit II. The Constitution Bench by referring to ***Anant Mills Co. Ltd. V/s. State of Gujarat & Ors.***[53] held that the word "land" cannot be assigned a narrow meaning so as to confine it to the surface of the earth. It includes all strata above or below. In other words, the word "land" includes not only the surface of the earth but everything under or over it, and has in its legal significance an indefinite extent upward and downward.

75. The Constitution Bench in *State of West Bengal V/s. Kesoram Industries Ltd. & Ors.* (supra), held that ample authority is available for the concept that under Entry 49 in List II the land remains a land without regard to the use to which it is being subjected. It is open for the Legislature to ignore the nature of the user and tax the land. At the same time, it is also permissible to identify, for the purpose of classification, the land by reference to its user.

52 (2004) 10 SCC 201

53 (1975) 2 SCC 175

76. The Constitution Bench also approved the law in ***Ajoy Kumar Mukherjee V/s. Local Board of Barpeta***[54], where the local Board levied a license fee upon the land owner for holding a market on his own land. It was urged that the impost was unconstitutional, inter alia, on the ground that the tax was actually imposed on the market, which infringed Article 14 of the Constitution, and also because the State Legislature had no legislative competence to tax a market. The Local Board relied on Entry 49 in List II. The Constitution Bench in *Ajoy Kumar Mukherjee* (supra) held that the tax was on the land though the charges arise only when the land is used for a market. The tax remained a tax on land in spite of the imposition being dependent upon the user of the land as a market. Thus, the tax was held to be a tax on land, though the incidence depended upon the use of the land as a market.

77. In *Anant Mills Co. Ltd.* (supra) and in *Ajoy Kumar Mukherjee* (supra), the Court explained that the word "land" included not only the piece of the earth but everything in and over it and has in its legal signification an indefinite extent upward and downward, giving rise to the maxim, *Cujus eat solum ejus est usque ad coelom.* Since the impugned Act, in this case, encapsulates within it, the lithosphere, atmosphere, biosphere, hydrosphere and other environmental resources, it cannot be said that the impugned Act is not a legislation with respect to the entries like land, water, gas or even public health

54 AIR 1965 SC 1561

and sanitation. A legislation need not relate to any one specific Entry in the State List. Even if the legislation is on a field with respect to several entries in the State List, the State Legislature cannot be denuded of its legislation competence to legislate upon such a field.

78. In pith and substance, the impugned Act imposes a levy upon the handling or consumption or utilization or combustion or movement or transportation of certain products and substances, including hazardous substances, which upon their handling or consumption or utilization or combustion or movement or transportation causes pollution of the lithosphere, atmosphere, biosphere, hydrosphere and other environmental resources of the State of Goa. The expressions used in the preamble to the impugned Act or in the definition clauses of the impugned Act substantially establish that the impugned Act relates to fields like public health, sanitation, water, land, gas, particularly since these entries have to be broadly and not pedantically construed. By reducing carbon footprint or otherwise disincentivizing polluting measures, the State promotes public health and sanitation. Even fields like agriculture (particularly, protection against pests and prevention of plant diseases), water, land, fisheries and gas have a close nexus with the field of "environment" or "environmental pollution", even though these expressions may not have been specifically used in the entries in any of the List I of the Seventh Schedule to the Constitution.

ENVIRONMENT OR ENVIRONMENT POLLUTION- FIELDS RELATABLE EXCLUSIVELY TO RESIDUARY ENTRY 97, UNION LIST?

79. Even if the petitioners' contention about the impugned Act being relatable to "environment" or "environmental pollution" is accepted, still, the further contention that these topics or fields, because of they not being specifically mentioned in Lists II or III of the Seventh Schedule, falling within the residuary entry, that is Entry 97 of List I, Seventh Schedule, cannot be readily accepted. The tag which the Petitioners give to a field or a subject is not decisive in such matters. If the impugned Act, on its reasonable construction, is a law with regard to an entry or even several entries in the State List, the legislative competence of the State must not be doubted. The entries must be construed liberally and meaningfully but not narrowly or pedantically. Besides, in such matters, the attempt must be to first examine the entries in the State or Concurrent lists and not rush to conclude that the field or subject finds a place in none of the specified entries in the seventh schedule and, therefore, must relate only to the residuary entry 97 in list 1, seventh schedule.

80. Apart from Entries 6, 14, 17, 18, 21 and 25, being relatable to the field of "environment" and "environmental pollution", there are some entries even in List III (current List), which have a very close nexus with the environment. For example, Entry 17-A and 17-B deal with the topics of "Forests" and "Protection of wild animals and

birds". Earlier, these topics were in List II (State List). However, vide Constitution (Forty-second Amendment) Act, 1976 with effect from 03.01.1977, these topics were transferred into List III (current List). Therefore, the broad or omnibus proposition that the subject or topic or field of "environment" or "environmental pollution" is not covered by any of the entries in List II or List III of the Seventh Schedule to the Constitution, cannot be accepted.

81. In the above context, reference can be made to the Statement of Objects and Reasons (SOR) to the Water (Prevention and Control of Pollution) Act, 1974 (Water Act). There is no doubt, this Act was enacted by the Parliament to provide for the prevention and control of water pollution or restoring the wholesomeness of water. The SOR refers to the problem of pollution of rivers and streams assuming considerable importance and urgency in recent years as a result of the growth of industries and the increasing tendency to urbanization. The SOR records that it has therefore become essential to ensure that the domestic and industrial effluents are not allowed to be discharged into the water courses without adequate treatment as such discharges would render the water unsuitable as a source of drinking water as well as for supporting fish life and for use in irrigation. It is recorded that pollution of rivers and streams also causes increasing damage to the country's economy. Accordingly, a Committee was set up in 1962 to draw a draft enactment for the prevention of water pollution. The report of the Committee was circulated to the State Government and was also considered by the Central Council of Local Self-

Government in September 1963. The Council resolved that a single law regarding measures to deal with water pollution control, both at the central and at the State levels, may be enacted by the Union Parliament. A draft Bill was accordingly prepared and put up for consideration at a joint session of the Central Council of Local Self-Government and the Fifth Conference of the State Ministers of Town and Country Planning held in 1965. In pursuance of the decision of the joint session, the draft Bill was considered subsequently in detail by a Committee of Ministers of Local Self-Government from the States of Bihar, Madras, Maharashtra, Rajasthan, Haryana and West Bengal.

82. The SOR records that having considered the relevant local provisions existing in the country and the recommendation of the aforesaid Committees, the Government concluded that the existing local provisions are neither adequate nor satisfactory. There was, therefore, an urgent need for introducing comprehensive legislation which would establish unitary agencies in the Centre and States to provide for the prevention, abatement and control of pollution of rivers and streams, for maintaining or restoring the wholesomeness of such water courses and for controlling the existing and new discharges of domestic and industrial wastes.

83. The SOR significantly recorded that the legislation in respect of the aforesaid subject matter, that is, the subject matter of controlling water pollution, was relatable to Entry 17 read with Entry

6 of List II in the Seventh Schedule to the Constitution and therefore, "*Parliament has no power to make a law in the States (apart from the provisions of Articles 249 and 250 of the Constitution) unless the Legislatures of two or more States pass a resolution in pursuance of article 252 of the Constitution empowering Parliament to pass the necessary legislation on the subject*". The SOR then records that the Legislatures of the States of Gujarat, Jammu and Kashmir, Kerala, Haryana and Mysore have passed such resolutions in the context of Article 252 of the Constitution. Accordingly, the SOR records that the proposed bill was intended to give effect to the resolutions passed by the Legislatures of the aforesaid States.

84. Article 252 of the Constitution deals with the power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State. This Article provides that if it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such States by Parliament by law, and if resolution to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

85. From the above, it does appear that even the Parliament was conscious that on the subject of water pollution, which was relatable to Entries 6 and 17 of List II of the Seventh Schedule to the Constitution, it had no powers to make laws in the States. Therefore, the route provided for by Section 252 of the Constitution was adopted. Based upon resolutions of two or more States, the Parliament enacted the Water Pollution Act, which was later adopted by most of the States. If the subject "Water Pollution", which is nothing but a facet of "environment" or "environmental pollution," was relatable to the residuary Entry 97 of List I as is now contended on behalf of the petitioners, then the Parliament would not have felt the necessity to go by the Article 252 route or the SOR to the Water Pollution Act would not have stated so in express terms that the legislation in respect of water pollution was relatable to Entry 17 read with List II of Seventh Schedule and that the Parliament had no power to make law in the States (apart from the provisions of Article 249 and 250 of the Constitution).

86. The Counsel for the Petitioners attempted to explain the SOR to the Water Pollution Act by simple reference to entry 17 in the State list relating to 'water'. But the SOR also refers to entry 6 of the State list, which concerns 'public health'. Water pollution directly impacts public health. So also land or air pollution directly impacts public health. To say that water pollution is a subject within the legislative competence of the State but air pollution is not, may not be a proper construction either of the legislative entries or the expression

'environmental pollution'. The absence of the entry 'Air' in specific terms in the State list is insufficient to conclude that the State lacks legislative competence to enact the impugned Act. The Constitution Benches have liberally construed the entry relating to 'land' as including not only the surface of the earth but everything under or over it and has in its legal significance an indefinite extent upward and downward.

87. As referred to earlier, in *State of Rajasthan V/s. Shri G. Chawla and Dr. Pohumal* (supra), the issue involved was about the legislative competence of the State to enact the Ajmer (Sound Amplifiers Control) Act, 1952. The Judicial Commissioner, in fact, struck down this Act as being beyond the legislative competence of the State Legislature by referring to Entry 31 of the Union List and Entry 6 of the State List. The Judicial Commissioner held that the Ajmer (Sound Amplifiers Control) Act, 1952 substantially fell within Entry 31 of the Union List dealing with Post and Telegraphs, Telephones, wireless, broadcasting and other like forms of communication. The Judicial Commissioner also held that the Act, in its pith and substance, was not relatable to Entry 6 of the State List dealing with public health, sanitation, hospitals and dispensaries.

88. The Hon'ble Supreme Court reversed the Judicial Commissioner and held that the Ajmer Act, in pith and substance, was an Act to control noise pollution, that is, the ill effects of noise on health. The Court further held that such a law was relatable inter

alia to Entry 6 of the State List dealing with public health. The Court also noted that the attention of the learned Judicial Commissioner was apparently not drawn to Entry I of the State List, which deals with "public order".

89. The Hon'ble Supreme Court, in paragraph 9, examined closely how the Ajmer Act was constructed and what it provided. The Court held that the Act, in its preamble, expresses the intent as the control of the 'use' of sound amplifiers. The Court noted that the Act prohibits the use in any place, whether public or otherwise, of any sound amplifier except at times and places and subject to such conditions as may be allowed, by order in writing either generally or in any case or class of cases by a police officer not below the rank of an Inspector, but it excludes the use in a place other than a public place, of a sound amplifier which is a component part of a wireless apparatus duly licensed under any law for the time being in force. In the explanation which is added, "public place" is defined as a place (including) a road, street or way, whether a thoroughfare or not or a landing place) to which the public is granted access or has a right to resort or over which they have a right to pass. The Hon'ble Supreme Court noted that the gist of the prohibition is the "use" of an external sound amplifier, not a component part of a wireless apparatus, whether in a public place or otherwise, without the sanction in writing of the designated authority and in disregard of the conditions imposed on the use thereof.

90. Finally, the Hon’ble Supreme Court significantly held that there can be little doubt that the growing nuisance of blaring loudspeakers powered by amplifiers of great output needed control, and the short question was whether this salutary measure can be said to fall within one or more of the entries in the State List. The Court admitted that amplifiers are instruments of broadcasting and even of communication, and in that view of the matter, they fall within Entry 31 of the Union List. The manufacture, or the licensing of amplifiers or the control of their ownership or possession, including the regulating of the trade in such apparatus is one matter, but the Court held that the control of the *'use'* of such apparatus though legitimately owned and possessed, to the detriment of tranquillity, health and comfort of others is quite another.

91. The Hon’ble Supreme Court held that it cannot be said that public health does not demand control of the use of such apparatus by day or by night, or in the vicinity of hospitals or schools, or offices or habited localities. The power to legislate in relation to public health includes the power to regulate the use of amplifiers as producers of loud noises when the right of such users, by the disregard of the comfort of and obligation to others, emerges as a manifest nuisance to them. Nor is it any valid argument to say that the pith and substance of the Act fall within Entry 31 of the Union List, because other loud noises, the result of some other instruments, etc., are not equally controlled and prohibited.

92. The Hon'ble Supreme Court revealed that the pith and substance of the impugned Act is the control of the use of amplifiers in the interests of health and tranquility, and thus falls substantially (if not wholly) within the powers conferred to preserve, regulate and promote them and does not so fall within the Entry in the Union List, even though the amplifier, the use of which is regulated and controlled is an apparatus for broadcasting or communication.

93. Thus, *State of Rajasthan v/s G Chawla* (Supra) is an authority for the proposition that a law to deal with noise pollution or the deleterious effect of the use of amplifiers in public places was a law with regard to entry 6 in the State list dealing with public health or even public order. Such a law was not held to be beyond the legislative competence of the State by referring to entry 31 of the Union list dealing with apparatus for broadcasting and communications. The Petitioners' arguments in the present matters are not qualitatively very different from the arguments that the Hon'ble Supreme Court rejected in *G. Chawla (supra).* In the said decision reliance was placed on a specific entry 31 in the union list. In the present cases, the Petitioners rush to the residuary entry 97 in the union list without examining whether a law imposing a levy to augment the State's resources to combat the deleterious effects of increased carbon footprint impacting public health was a law with respect to the entries in the State List.

94. The Hon'ble Supreme Court on the view of the Ajmer Act as a whole, held that the substance of the legislation was within the powers conferred by Entries 1 and 6 of the State List and the Ajmer Act did not encroach upon the field of Entry 31, though it incidentally touched upon the matter provided there. The end and purpose of the legislation furnished the key to connect it with the State List. Accordingly, the Judicial Commissioner's order was set aside and the Ajmer Act was held to be within the legislative competence of the State.

95. The Ajmer Act, as noted above, was an Act which, in effect, dealt with the issue of noise pollution and its deleterious impact on health. Still, the Hon'ble Supreme Court, held that such an Act was well within the legislative competence of the State by referring to Entries 1 and 6 of the State List. Once the Act relates to a field in List II or List III, there is no question of reference to the residuary Entry 97 in List I.

96. Thus, in the context of the Water Pollution Act or the Ajmer Act dealing with noise pollution, there are legislative and judicial precedents suggesting that subjects like water pollution or noise pollution relate to the fields in the State List. Accordingly, the broad contention that the field of "environment" or "environmental pollution", for want of express reference to these terms in the entries in the State List or current List, necessarily falls in the residuary Entry 97 of List I, cannot be accepted.

97. We may refer to ***M/s. International Tourist Corporation & ors. v. State of Haryana and Ors.***[55] which was cited with approval in *Jindal Stainless Ltd.*. In this case, the Hon'ble Supreme Court held that before exclusive legislative competence can be claimed in the Parliament by resort to the residuary power, the *legislative incompetence* of the State Legislature must be clearly established. Entry 97 itself is specific that a matter can be brought under that entry only if it is not enumerated in List II or List III. The Court held that in a Federal Constitution like ours where there is a division of legislative subjects, but the residuary power is vested in Parliament, such residuary power cannot be so expansively interpreted, as to whittle down the power of the State legislature. The Court held that that might affect and jeopardize the very federal principle. The federal nature of the Constitution demands that an interpretation which would allow the exercise of legislative power by Parliament pursuant to the residuary powers vested in it to trench upon State legislation and which would thereby destroy or belittle state autonomy must be rejected.

[55] (1981) 2 SCC 318

98. Therefore, unless a clear case of the all-important field or subject of environment or environmental pollution being left out from the entries in the lists is made out, it would be quite unsafe to read this field or subject in the residuary entry. This would, in our judgment, not be the appropriate manner of construing the legislative entries. Such a manner of interpretation would run counter to several decisions of the Hon'ble Supreme Court on the question of interpretation of such entries.

IS THE IMPUGNED ACT A HYBRID LEGISLATION?

99. Learned Counsel for the petitioners then attempted to contend that the impugned Act is a "hybrid legislation" relatable to Entry 17 of List II (Water, etc.) and "Air Pollution", which, according to them, is not a subject or a topic under any of the entries under List II of the Seventh Schedule. The learned Counsel for the petitioners contended that the topic of "air pollution" is relatable to the residuary Entry 97 of List I. The learned Counsel for the petitioners accordingly contended that hybrid legislation relatable to subjects that may not squarely fall in any specific entry of List I or III, has to be enacted by the Parliament, given the provisions of Article 248 of the Constitution read with Entry 97 of List I, Seventh Schedule to the Constitution. The learned Counsel relied upon ***M/s. Sat Pal & Co. and Ors. V/s. Lt. Governor of Delhi and Ors.***[56]

56 (1979) 4 SCC 232

100. There is no warrant for the broad proposition that all issues relatable to "air pollution" necessarily fall within the residuary Entry 97 of List I. In any case, since the impugned Act is aimed at augmenting the State's revenues for having programmes and schemes to reduce the carbon footprint or since the impugned Act imposes a levy on the handling or consumption or, utilization or combustion or, movement or transportation of products and substance, which upon their handling, etc. causes pollution of the lithosphere, atmosphere, biosphere, hydrosphere and other environmental resources of the State of Goa, the same legitimately relates to the domain covered by Entry 6, 14, 17, 18, 21 and 25, particularly since these entries have to be construed liberally and broadly and not pedantically.

101. Therefore, the argument about the impugned Act being a hybrid legislation on the field in the State list and the Residuary entry 97 of the Union list cannot be accepted. Once any legislation is found to substantially relate to the entries in the State or Concurrent lists, even some incidental or marginal overlap is of no consequence. In any case, once a field or subject is found to be reasonably related to the entries in the State or Concurrent lists, the Courts must be slow to place such fields or subjects in the residuary entry 97 of the Union list. "Residuary" typically means what is left out.

CLEAN ENERGY CESS ARGUMENT

102. The learned Counsel for the petitioners also referred to the Clean Energy Cess imposed through the Finance Act 2010 to contend

that this legislation gives a clear indication of the fact that the subject of "air pollution" is within the legislative domain of the centre and not the State. They contended that clean energy cess was similar if not identical to the impugned cess. They contended that since the Parliament had to enact a law to levy clean energy cess, it is clear that the State lacks the legislative competence to enact any similar law to impose a similar levy. They urged that there could be no concurrent levies by the two legislatures on the same subject matter. They submitted that this would amount to double taxation. With respect, we find it difficult to agree with these contentions for reasons discussed hereafter.

103. Section 83 of the Finance Act, 2010, by which Clean Energy Cess was introduced and enforced, states that clean energy cess shall be collected as "excise duty". Excise duty, as is well known, is a duty payable on the manufacture of products. Any law to impose such duty, in pith and substance, cannot be styled as a law dealing with "environment" or "environmental pollution". Therefore, the levy imposed by the Finance Act cannot be said to be the same or similar to the levy imposed by the impugned Act. In such matters, we cannot go simply by the nomenclature of the levy, the real character of the levy is significant.

104. In *Mohit Minerals Pvt. Ltd.* (supra), the Hon'ble Supreme Court held that when a cess is levied as an increment to an existing tax, the validity of such cess must be judged in the same way as the

validity of the tax to which it is an increment. Therefore, even the validity of the Clean Energy Cess Act will have to be considered in the context of legislation imposing excise duty. This is because the clean energy cess is nothing but a duty of excise and, therefore, the same must be judged as an increment to the existing duty of excise on the manufacture of the specified products. The learned Advocate General referred to the Central Government Circular dated 24.06.2010, in which it was clarified that the impost of clean energy cess was "a duty of excise".

105. As such, considering the provisions of Section 83 of the Finance Act, 2010, by which such clean energy cess was imposed, and the clarificatory circular dated 24.06.2010, it would be legitimate to hold that the clean energy cess is a levy relatable to entries in List I, Seventh Schedule to the Constitution. For example, Entry 84 of List I prior to the 2016 amendment referred to duties of excise on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption and opium, Indian hemp and other narcotic drugs and narcotic but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of the entry.

106. The learned Counsel for the petitioners referred to the budget speech of the Finance Minister dated 26.02.2010, particularly, para 65, 66 thereon which referred to the purpose of the clean energy cess being to ameliorate the negative environmental consequences and

increased pollution levels associated with industrialization and urbanization. The learned Counsel for the petitioners also pointed out that the clean energy cess was not confined to domestic goods but also covered imported goods as is evidenced by Section 83(3) of the Finance Act, 2010.

107. Based on the budget speech of the Finance Minister, we cannot conclude that the clean energy cess, which is nothing but an excise duty, was imposed by the Parliament because the subject of "environment" or "environmental pollution" relates to the residuary Entry 97 of List I. Instead, it is clear that the levy is an excise duty and in 2010, the Parliament had legislative competence to impose such excise duty or a cess which is nothing but an increment on the excise duty. Since the petitioners point out that such levy covered imported goods as well, the levy could also be said to relate to Entry 83 of List I dealing with duties of customs, including export duties.

108. In any case, what is important is that the clean energy cess imposed by the Finance Act of 2010 can neither be cited as an instance where the Parliament legislated on the subject of "environment" or "environmental pollution" by relying on residuary Entry 97 in List I nor can it be said that the finance Act 2010 to the extent it imposes clean energy cess covers the field relating to the subject matter of the impugned Act.

DOUBLE TAXATION ARGUMENT

109. The contention about so-called double taxation, with respect, is misplaced. In *Mohit Minerals (P) Ltd.* (supra), the Hon'ble Supreme Court held that on the same transaction, different taxes can be levied based on different entries and different causes as well for different purposes. The Court held that the principle is well settled that two taxes/imposts, which are separate and distinct imposts on two different aspects of the transaction, are permissible as in law, there is no overlapping.

110. A Constitution Bench further clarified this position in the ***Federation of Hotel & Restaurant Association of India, etc.***[57], where it was held that 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. Therefore, if the taxes are separated and distinct imposts and levied on different aspects, then there is no overlapping in law. Accordingly, there is nothing like the vice of "double taxation", based upon which the impugned Act or the levy imposed thereby can be struck down as ultra vires the State's legislative competence.

57 (1989) 3 SCC 364

111. In ***Avinder Singh V/s. State of Punjab & Anr.***[58], the Hon'ble Supreme Court rejected the feeble plea that the levy was bad because of the vice of the double taxation or that the impost was unreasonable because there were heavy prior levies. The Court held that some of these contentions hardly merit consideration but have been mentioned out of courtesy to the counsel. The Court pointed out that there was nothing in Article 265 of the Constitution from which one could spin out the constitutional vice called double taxation. (Bad economics may be good law and vice versa).

112. The Hon'ble Supreme Court noted that the Bombay High Court gave short shrift to the argument based on double taxation in ***Cantonment Board Poona V/s. Western India Theatres Ltd.***[59]. The Court observed that some undeserving contentions die-hard rather than survive after death. The only epitaph that could be inscribed is: Rest in peace and don't be re-born! If, on the same subject matter, the legislature chooses to levy tax twice over, there is no inherent invalidity in the fiscal adventure save where other prohibitions exist.

113. For all the above reasons, we cannot accept the argument based on overlap or double taxation given the law laid down by the Hon'ble Supreme Court in *Mohit Minerals (P) Ltd.* (supra), *Purvi Communications (P) Ltd.* (supra) and *Avinder Singh* (supra).

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58 1979 1 SCC 137

59 AIR 1954 Bom 261

ARGUMENTS BASED ON ARTICLE 253, EPA, AIR POLLUTION ACT, NGT ACT, AND OCCUPIED FIELD.

114. The learned Counsel for the petitioners, then, referred to the Environment Protection Act, 1986, the National Green Tribunal Act, 2010 and the Air Pollution Act, 1981 to contend that these three legislations dealing directly with the subject of "environment" or "environmental pollution" were enacted by the Parliament because this subject matter was in the exclusive domain of the Union. Based upon this, it was contended that the impugned Act, which was in pith and substance, an Act concerned with environment or environment pollution, was beyond the legislative competence of the State.

115. The above argument does not appeal to us because, in none of these legislations, does the Union or the Parliament rely upon the residuary entry 97 in the Union list. None of the decisions dealing with these legislations refer to the residuary entry in the Union list or say that these legislations relate to the residuary list. Instead, the Parliament adopted the Article 253 route, which was unnecessary if the subject matter was already in the exclusive domain of the Union list vide entry 97. Reference was also made to entry 13 of the Union list relating to the implementation of international treaties. Therefore, it cannot be said that the Parliament assumed legislative competence to enact these legislations relying upon the residuary entry 97 in the

union list or because it regarded the field of environment or environment pollution to relate to the residuary entry.

116. The learned Counsel for the petitioner then argued that these legislations were relatable to Article 253 of the Constitution, which is an Article which begins with a non-obstante clause. They pointed out that the entire field relating to "environment" or "environmental pollution" was completely covered by the three legislations they referred to and given the peremptory provisions of Article 253 of the Constitution, the State Legislatures were completely denuded of their powers of enacting any legislations concerned with "environment" or "environmental pollution". The learned Counsel for the petitioners also referred to Entry 13 of List I, Seventh Schedule to the Constitution, which is concerned with participation in international conferences, Associations and other bodies and implementing of decisions made thereat.

117. Again, we are unable to agree with this line of argument. In ***State of West Bengal & Ors. V/s. Purvi Communication (P) Ltd. & Ors.***[60], the Hon'ble Supreme Court rejected the contention about West Bengal Entertainment-cum-Amusement Tax Act, 1982 being ultra vires the State legislature's legislative competence because the subject fell under Entry 31 of the Union List and further the field was already occupied by Cable Television Networks (Regulation) Act,

60 (2005) 3 SCC 711

1995 enacted by the Parliament. The Court held that the powers of the State Legislature and the Parliament were separate and distinct. Therefore, even the enactment of more than one statute on different taxable objects and taxable persons under the legislative field exclusively reserved for the State was not prohibited by the Constitution.

118. In *Purvi Communication (P) Ltd. And Ors.* (supra), the Hon'ble Supreme Court squarely rejected the contention that the State Legislation impinged on the field occupied by the Central Legislation. The Court noted that the Cable Television Networks (Regulation) Act, 1995, was enacted to regulate the operation of cable television networks in the country and matters connected therewith or incidental thereto. In contrast, the State legislation was for a levy of entertainment tax on entertainment within the legislative field exclusively assigned to the State Legislature under Entry 62 of List II of the Seventh Schedule of the Constitution. Thus, the objects sought to be achieved by two different Acts enacted under two different legislative fields exclusively assigned to the respective Legislatures are entirely distinct and separate. The Court concluded that the Cable Television Networks (Regulation) Act, 1995 of the Union Legislature does not denude the State Legislature for levying entertainment tax on entertainment.

119. The scope and ambit of the three Parliamentary legislations is different and distinct from the scope and ambit of the impugned Act.

The Environment Protection Act, 1986 and the Air Pollution Act, 1981 have nothing to do with the cess that the impugned act levies. Similarly, the clean energy cess imposed by the Finance Act is nothing but a duty of excise on the manufacture of certain items.

120. In any case, as explained by the Constitution Bench in ***Fatehchand Himmatlal and ors. vs. State of Maharashtra*** [61] the doctrine of occupied field applies only where there is a clash between Dominion Legislation and Provincial Legislation within an area common to both. (*see Canadian Constitutional Law by Laskin – pp. 52-54, 1951 Edn.*). The Constitution Bench held that the doctrine of occupied field does not totally deprive the State Legislature from the capacity to make any law incidentally referable to a subject in the Union List. But in the event of a plain conflict, the State law must step down unless Article 254(2) comes to the rescue.

121. The Environment Protection Act, 1986 and the Air Pollution Act, 1981 indeed refer to the United Nations Conference on Human Environment held in Stockholm in June, 1972, in which India participated, and where it was decided to take appropriate steps for the protection and improvement of the human environment. The preamble to both these enactments speaks about the necessity to implement the decisions taken at the United National Conference at

61 (1977) 2 SCC 670

Stockholm in June 1972. Similarly, the National Green Tribunal Act, 2010, apart from referring to the United Nations Conference on Human Environment held in Stockholm in June 1972 also refers to the decisions taken at the United Nations Conference held in June 1992 in which India participated. The preamble to this Act also speaks about the implementation of the decision taken at aforesaid conferences and to have a National Green Tribunal in view of the environment of the multi-disciplinary issues relating to the environment. Accordingly, there can be no doubt about legislations enacted by the Parliament were for the purposes of implementing the decisions taken at the Stockholm and Rio de Janeiro conferences held in 1972 and 1992 in which India participated. Clearly, therefore, these legislations can be said to be preferable to Article 253 of the Constitution read with Entry 13 of List I, Seventh Schedule to the Constitution.

122. But the impugned Act and the levy imposed by the impugned Act neither seeks to implement any decisions taken at Stockholm, Rio de Janeiro or any other international conferences or treaties in which India participated or was a party. None of the Counsel for the petitioners pointed out or seriously contended that the provisions of the impugned Act either conflicted with the provisions of the Environment Protection Act, 1986, or Pollution Act, 1981 or the National Green Tribunal's Act, 2010. A perusal of the three enactments and their comparison with the provisions of the impugned

Act does not make out any case of conflict or inconsistency between the Central legislation and the impugned Act, a State legislation.

123. In such circumstances, it is difficult to accept the petitioners' contention that the moment some decision is taken at an international conference or a treaty is signed or the moment when any legislation is enacted to implement any treaty agreement or convention with any other or any decision made by the Association or other body, the State legislature is completely denuded from enacting any legislation on the said subject, even though such subject continues to remain in the State List Seventh Schedule to the Constitution and such legislation, in no manner conflicts or contradicts the Parliamentary legislation. With respect, the Petitioners' proposition is too broad a proposition to accept, particularly when the petitioners have failed to demonstrate any conflict between the legislations referred to by them and the impugned legislation. No contention was raised about the impugned Act rendering it difficult or otherwise even remotely affecting the implementation of the decisions at Stockholm or Rio de Janeiro.

124. In pith and substance, if the parliamentary legislation is for implementing any treaty agreement or convention or any decision made at an International Association or other body, then such legislation, even if it relates to a subject in the State List, will have to be held as within the legislative competence of the Parliament given the provisions of Article 253 read with Entry 13 of the State List of Seventh Schedule to the Constitution. This would be the proper

import of Article 253 of the Constitution. However, this does not mean that State Legislation on a field relatable to the entries in the State List, which does not even remotely conflict with Parliamentary legislation, made in the exercise of the powers under Article 253 read with Entry 13 of List I, would fall foul of the State's legislative competence.

125. If the broad and sweeping contention raised on behalf of the petitioner is to be accepted, then based on Parliamentary legislation, as distinct from a constitutional amendment under Article 368, entries in the State List would be deemed to have been amended. Therefore, we find it difficult to accept or endorse the sweeping and broad contention about the State being denuded of its legislative competence to enact upon a subject in List II or List III, even though such enactment does not even remotely conflict with the Parliamentary enactment on the same subject made in the exercise of powers under Article 253 read with Entry 13 List I of the Constitution.

126. The Environment Protect Act 1986, The Air Pollution Act 1981 and The Biodiversity Act 2002 relate mainly to regulation and control. In *Kesoram Industries Ltd.* (supra), the Constitution Bench has explained that the power of "regulation and control" is different and distinct from the power to impose "taxes" or "fees". Therefore, the impugned Act, which is concerned with the levy of cess, does not conflict with the three Parliamentary legislations referred to and

relied on behalf of the Petitioners. Further, the enactment of legislation under the power to regulate and control by the Parliament does not denude the State from exercising powers to impose tax or fee even though the legislation to impose tax or fee may incidentally overlap.

127. By resorting to Article 253, read with Entry 13 of List I, Seven Schedule to the Constitution, the Parliament undoubtedly has the legislative competence to enact laws for the implementation of treaties, international agreements, etc. In order to do so, the Parliament may also legislate on a subject or field included in the State list. However, this cannot be construed to mean that the State Legislature is completely denuded of its legislative competence to legislate on the subject or field otherwise included in the State list mainly because the Union has entered into a treaty or an international agreement in its executive capacity or even because the Parliament has enacted a law for implementing such a treaty or an international agreement.

128. However, if any State legislation conflicts with or obstructs the Parliamentary legislation seeking to implement a treaty or an international agreement to the extent of conflict or inconsistency, the State legislation may have to yield. But, this is not the same thing as the State being denuded of its legislative power to legislate upon any subject in the State list merely because the Parliament, in exercise of its powers under Article 253 of the Constitution may have legislated

on the subject to implement a treaty or an international agreement, and even though there is no conflict whatsoever between the Central and the State legislation.

129. In *K.S. Puttaswamy* (supra), the Hon'ble Supreme Court has held that it has always been the law that International law must be respected. Further, the Court, in the context of Article 253 of the Constitution and by referring to several judgments, held that in the absence of any specific prohibition in municipal law, International law forms a part of Indian law and consequently, must be read into or as part of our fundamental rights. Accordingly, based upon this judgment, we cannot hold that the State is denuded of legislative competence to enact any law on a subject within the State List and not conflicting with any law made by the Parliament in exercise of its powers under Article 253 of the Constitution.

130. In *Maganbhai Ishwarbhai Patel* (supra) also holds that the Parliament has exclusive legislative competence to enact any law for the implementation of an international treaty or an international agreement. But, this decision is not an authority for the broad proposition that the State is denuded of its legislative competence to enact a law which is unconcerned with the implementation of an international treaty or an international agreement or enact a law on the subject within its legislative competence which does not even remotely conflict with the Parliamentary enactment made in exercise of Article 253 of the Constitution read with Entry 13 of List I.

131. In ***S. Jagannath v. Union of India*** (supra), the issue that arose for the court's consideration was, what the effect of a conflict between a law made by the State under List II and a law made by the Union parliament, namely the CRZ Notification issued under Section 3(3) of the Environment Protection Act, 1986 enacted under Entry 13 and Article 253 would be. It was argued that certain provisions of the State legislations including that of the State of Tamil Nadu were not in consonance with the CRZ Notification issued by the Government of India under Section 3(3) of the Act, the court held that the CRZ Notification having been issued under the Act shall have overriding effect and shall prevail over the law made by the legislatures of the States. Therefore, it is in the context of conflicting legislations that the central legislation enacted under Art. 253 would override state legislation. This again, is not an authority on the broad proposition that the State is denuded of all its legislative competence, particularly in any a case where there exists no conflict whatsoever between the impugned Act and the various Central Legislations enacted under Article 253.

132. The contention of the Petitioners, if accepted, would virtually amount to Parliamentary legislation (not a constitutional amendment) amending the Entries in the State list or the concurrent list or transferring some of the entries from the State and concurrent list into the Union list. Such an over-broad and omnibus interpretation, as suggested on behalf of the Petitioners, would conflict with the provisions of Article 368 of the Constitution. Such an interpretation will also run counter to the principles of federalism, which is now

accepted as a part of the basic structure of the Constitution. Therefore, an interpretation which would uphold the federal structure of our Constitution must be preferred over an interpretation which would dent such a structure.

133. In *Jindal Stainless Ltd.* (supra), the Hon'ble Supreme Court held that it was well settled that India's federal structure is one of the basic features of the Constitution. The Court accepted the contention that provisions of our Constitution are aimed at vesting and maintaining with the States substantial and significant powers in the legislative and executive fields so that States enjoy their share of autonomy and sovereignty in their sphere of governance. The Court held that this can be done by interpreting the provisions of the Constitution, including those found in Part XIII, in a manner that preserves and promotes the federal set-up instead of diluting or undermining the same.

134. In ***ITC Limited vs Agriculture Produce Market Committee and ors***[62] the Hon'ble Supreme Court held that the Constitution must be interpreted in a manner that does not whittle down the powers of the State legislature. An interpretation that supports and promotes federalism while upholding the Central supremacy as contemplated by some of the Articles of the Constitution must be preferred.

[62] (2002) 9 SCC 232

135. In ***S.R. Bommai & ors vs. Union of India and ors.***[63] the Hon'ble Supreme Court held that the fact that under the scheme of our Constitution, greater power is conferred upon the Center vis-a-vis the States, does not mean that States are mere appendages of the Center. Within the sphere allotted to them, States are supreme. The Center cannot tamper with their powers. More particularly, the Courts should not adopt an approach, an interpretation, which has the effect of or tends to have the effect of whittling down the powers reserved to the States. The Court held that the federalism in the Indian Constitution is not a matter of administrative convenience, but one of principle – the outcome of our own historical process and a recognition of the ground realities. Accordingly, it was emphasized that Court should be careful not to upset the delicately crafted constitutional scheme by a process of interpretation of the Constitution.

136. Thus, several Constitution Bench of the Hon'ble Supreme Court have held that where more than one interpretation is possible or plausible, the interpretation that favours federalism of power and the supremacy of the State within its own sphere must be preferred, and the one that derogates from the same must be eschewed. For all the above reasons, we find it difficult to agree with the Petitioner's

63 (1994) 3 SCC 1

arguments based upon Article 253 and the three Parliamentary legislations.

THE TAX VERSUS FEE ARGUMENT

137. The Petitioner's contention about the cess being a "tax" and not a "fee" relatable to Entry 66 of List II, Seventh Schedule, also cannot be accepted. This is because the cess imposed has the attributes of a fee rather than a tax. Besides, now there is a sea change in the legal position distinguishing a fee from a tax. The classical arguments based upon quid pro quo in the strict sense or the compulsion involved in the exaction of a tax have been considerably diluted as was explained by the Hon'ble Supreme Court in paragraphs 55, 56, and 60 in *Jalkal Vibhag Nagar Nigam* (supra).

138. The Court observed that the distinction between a tax and a fee has substantially been effaced in the development of our constitutional jurisprudence. This differentiation, based on the element of a *quid pro quo* in the case of a fee and its absence in the case of a tax, has gradually, yet steadily, been obliterated to the point where it lacks any practical or constitutional significance. The service may not be provided directly to a person as distinguished from a general service provided to the members of a group or class of which that person is a part.

139. The Court held that as the law has progressed, it has come to be recognized that there need not be any exact correlation between the

expenditure incurred in providing a service and the amount the State realizes. The Court explained that the gradual obliteration of the distinction between a tax and a fee on a conceptual level has been the subject matter of several decisions of this Court. Because of this consistent line of authority, the practical and even constitutional distinction between a tax and a fee has been weathered down.

140. In ***Municipal Corporation of Delhi vs Mohd. Yasin Etc.***[64] the Hon'ble Supreme Court held that the precedents show that there is no generic difference between a tax and a fee, though broadly a tax is a compulsory exaction as part of a common burden, without promise of any special advantages to classes of taxpayers; whereas a fee is a payment for services rendered, benefit provided or privilege conferred. Compulsion is not the hallmark of the distinction between a tax and a fee. That the money collected does not go into a separate fund but goes into the consolidated fund does not also necessarily make a levy a tax. Though a fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere causal relation may be enough. Further, neither the incidence of the fee nor the service rendered need be uniform. That others besides those paying the fees are also benefited does not detract from the character of the fee. *In fact the special benefit or advantage to the payers of the fees may even*

64. **1**983 SCC (3) 229

be secondary as compared with the primary motive of regulation in the public interest. Nor is the court to assume the role of a cost accountant. It is neither necessary nor expedient to weigh too meticulously the cost of the services rendered etc. against the amount of fees collected so as to evenly balance the two. A broad co-relationship is all that is necessary. Quid pro quo in the strict sense is not the one and only true index of a fee; nor is it necessarily absent in a tax.

141. In ***Sociedade de Fomento Industrial Pvt. Ltd. Vs. State of Goa and Ors.***[65] the issue involved before the Division Bench of this Court was constitutional validity of Goa Rural Improvement and Welfare Cess Act, 2000 and the Rules made thereunder. Broadly, two arguments were raised on behalf of the Petitioner. First that since the Parliament had enacted the MMDR Act by reference to Entry 54, List I, the entire field pertaining to minerals stands occupied. The Goa Cess Act was an enactment taxing mineral as cess based on the tonnage of the ore. Therefore, there was no power with the State Legislature to enact such a law since MMDR, the Parliamentary legislature entirely occupied the field and nothing was left to be legislated upon by the State Legislature. It was contended that once the field is occupied and the requite declaration by the Parliament that it was a law expedient in

[65] 2019 (5) All MR 155

public interest was made, the State was denuded of its legislative power. The second contention was that the impugned levy was not a fee, but it was a tax since quid pro quo even in the broadest sense was not established by the State. The Petitioner contended that the State had no legislative competence to impose a tax by styling the same as a cess.

142. The Division Bench of this Court rejected both the above contentions by adverting to several decisions of the Hon'ble Supreme Court in the context of the interpretation of the entries in the Seventh Schedule. The Court held that it has to look at the substance of the legislation and regard must be had to the enactment as a whole to its main objects and to the scope and effect of its provisions. Incidental and superficial encroachments are to be disregarded. The predominance of the Union List would not prevent the State Legislature from dealing with any matter within List II, though it may incidentally affect any item in List I.

143. The Division Bench held that legislation in the field of taxation and economic activities needs special consideration and is to be viewed with more flexibility in approach. Greater latitude is to be allowed to the Legislature in such matters because it has to deal with complex problems. In the matters of utilities, tax and economic regulation the legislature has the affirmative responsibility and further given the complexity of economic regulation, self-limitation on the part of the

Court in testing the constitutional validity of such Legislature should be observed and the Courts ought to adopt a pragmatic approach. The measure employed for assessing a tax must not be confused with the nature of the tax. Even crudities and inequities have to be accommodated in taxation and economic legislation. The Legislation should therefore, receive an interpretation as far as possible to make the legislation operative unless the legislation unequivocally travelled beyond the bounds set out in the Constitution, the legislation should not be declared as ultra vires. A heavy burden lies on those who challenge the constitutional validity of a statute, and the Court must presume constitutionality.

144. The Division Bench relief relied upon *Kesoram* (supra), which noted and explained the difference between the power to regulate and power to tax. *Kesoram* held that the power to levy fees and impose tax for augmenting revenue shall continue to be exercised by the legislature in whom it vests i.e. the State Legislature even though regulation or control is assumed by the Union.

145. *Kesoram* (supra), evaluated and distinguished India ***Cement Ltd. and Ors. v. State of Tamil Nadu and Ors.***[66] which, in turn, had relied upon a decision of the Division Bench of Mysore High Court in

[66] (1990) 1 SCC 12

Laxminarayana Mining Co. Bangalore and anr. vs. Taluk Development Board and anr.[67] *Kesoram* held that the decision of the Mysore High Court could not be read widely so as to lay down an absolute proposition that the power of the Union to regulate and control results in depriving the States of their power to levy a tax or a fee within their legislative competence without trenching upon the fields of regulation and control as power of regulation is different from the power to tax. In *Kesoram,* the Constitution Bench held that an anomaly by way of an error that had crept up in *India Cement* and that *India Cement* never meant to lay down that royalty was a tax.

146. The Division Bench, in the context of the argument based on tax versus fee, held that in order to sustain the presumption of constitutionality, the Court can take matters of common knowledge into consideration The Court noted that there are certain features unique to Goa. Goa is the smallest State in the Country in terms of land mass. The Court noted that mining is one of the major industries in the State of Goa. The ore extracted is exported. In addition to the ore extracted from Goa, the ore from outside Goa is also exported through Goa. The Government of Goa did not charge any royalty on the ore which is extracted in Goa. The royalty on this is fixed by the Central

[67] AIR 1972 Mysore 299

Government. The Government of Goa does not charge royalty on the ore coming from outside Goa. The process of transportation created severe dust pollution in various parts of the State. There was a heavy load on the infrastructure such as roads, water supply, and environment. Heavy traffic has led to dust pollution and traffic congestion. The transportation of the material in the Schedule of the impugned Act resulted in pollution of the natural water resources, dumping of garbage, spillage of materials, and use of plastic. The transportation of such materials referred to in the Schedule affected the health of people. Massive dumps of garbage and pollution to rivers, water bodies, and wells, air pollution, spillage, dust, and plastic were some of the common problems. The Court noted that the scheduled items included not only minerals, but also debris, garbage, and plastic waste.

147. The Division Bench observed that the Goa Cess Act made it clear that the State wanted to augment revenue for infrastructures and health facilities to the people who had suffered the ill consequence of transportation of the materials. The Court noted that neither the measure of levy nor the method of collection was important in such matters.

148. The Court held that the small land mass of Goa makes the effect of transportation activity more acute, and the benefit of improved road conditions cascades to the travellers and consequent to the mining

leaseholders. It cannot be denied that the workforce employed by entities such as the Petitioner may also be from the local area, and the health and welfare of its workforce will benefit even those who employ them. Those who use the improved road will benefit from the reduced air pollution and ease and economics of better roads. The Court held that even assuming that the services rendered benefit others and the State as a whole or indirectly benefits would not make the levy unconstitutional, and therefore, the Petitioners could not legitimately urge that they do not benefit at all from the services rendered or that there is not even a remote connection between the fees paid and the service received. The Division Bench, relying upon *Kesoram,* held that it was immaterial whether the impost was fee or tax if both could be justified, and it is not necessary that one of the pleas must be given up.

149. In ***Madhyabharat Phosphate Pvt. Ltd. v. State of Rajasthan***[68], the Division Bench of the Rajasthan High Court was concerned with the constitutional validity of the Rajasthan Finance Act, 2008, providing for levy of cess on mineral rights and Rajasthan Environment and Health Cess Rules, 2008. In the aims and objects concerning the impugned Act or the impugned Rules, there was a reference to the duty of the State to protect and to improve the environment and health of the people and the corresponding social

[68] 2011 SCC OnLine Raj 3026

and moral duty of those who are benefited by the natural resources like minerals. Accordingly, it was considered expedient that an environment and health cess be levied on mineral rights, and the proceeds of the cess be dedicated to the protection and improvement of the environment and health and maintenance of ecological balance, especially in those areas of State where minerals are being mined.

150. The Division Bench of Rajasthan High Court rejected the argument based upon the field to be occupied by MMDR, the Parliamentary Legislation referable to Entry 54, List I. The Division Bench relied upon the decision in *Kesoram* (supra) where it was held that the doctrine of occupied field applies when there is a clash between the Union and the State Lists within an area common to both and incidental and superfluous encroachments are to be disregarded. The Division Bench held that levy of cess on environment and health purpose does not trench upon regulation, development or control of the subject, under MMDR Act, 1957 enacted by the Parliament. The Division Bench of Rajasthan High Court also held that so long as a tax or fee on mineral rights remains in pith and substance a tax for augmenting the revenue resources of the State or a fee for rendering services by the State and it does not encroach upon regulation of mines and mineral development or control of industry by the Union Government, it is not unconstitutional.

151. In *Sociedade de Fomento Industrial Pvt. Ltd.*, (supra) *the* Division Bench of this Court cited with approval the decision of the Rajasthan High Court in the case of *Madhyabharat Phosphate Pvt. Ltd.* (supra). Thus, a coordinate Bench approved the view taken by the Division Bench of Rajasthan High Court in *Madhyabharat Phosphate Pvt. Ltd.* (supra).

152. The legislature has determined that handling, etc. of certain products and substances increases carbon footprint and the state revenues have to be augmented to prevent the increase of carbon footprint or, in any case, to combat the deleterious effects of such increase. The affidavit filed by the State Government refers to several measures that the State is compelled to adopt in this regard. Therefore, the arguments based upon the alleged absence of quid pro quo etc. do not hold good.

153. The contention that such measures benefit only the members of the general public and not the Petitioners upon whom such levy is imposed, cannot be accepted. The responsibility for reducing the carbon footprint or, in any case, combating the deleterious effects of such increase, is primarily on the Petitioners. Therefore, if the State levies a cess or a fee upon the Petitioners for taking measures to reduce the carbon footprint or to deal with the deleterious effects of its increase, the Petitioners cannot say that they receive no benefits.

154. Besides, we cannot appreciate the Petitioners' contention that though their activities contribute to the increase of the carbon footprint,

the measures taken by the State to prevent the increase of the carbon footprint or to combat the deleterious effects of such increase in carbon footprint, confers no particular benefit to the Petitioners. In other words, the Petitioners contend that they are content with their activities increasing the carbon footprint or that they are unconcerned with the deleterious effects of the increase in carbon footprint. The Petitioners contend that since they are content or in any case, unconcerned, they derive no benefits from the measures adopted by the State and, therefore, no cess or fee can be levied upon them. Levy of cess or fee cannot be questioned based upon such contentions, particularly now that the practical and constitutional significance of the distinction between a tax and a fee is substantially weathered down.

155. The benefits of measures taken by the State to reduce the carbon footprint on the Petitioners' activities of handling, etc. the products and substances, including hazardous substances, which upon their handling, etc. cause pollution, are quite obvious. Reduction of the carbon footprint would not only lend greater acceptability to such activities but would also reduce said Petitioners' primary liability and responsibility to take measures or settle claims based on the principle of polluter pays. The correlation between the benefits gained and the fees paid cannot be computed by any mathematical exactitude. A broad correlation is more than enough. Most of the decisions relied upon by the Petitioners say so.

156. This is not a case where the benefit derived by the Petitioners is relatable to the general service provided to the members of the public of which the Petitioners may be a part. Here, the Petitioners are legislatively deemed to be responsible for undertaking activities that increase the carbon footprint. The State's affidavit refers to the measures that the State is required to take and takes to reduce the carbon footprint. There is a reference to setting up monitoring agencies and several other measures. Obviously, therefore, this is not a case where the benefits that the Petitioners receive are relatable to the general service provided to the members of the public. Instead, this is a case where benefits are provided to the Petitioners or to a distinct group or a class of which the Petitioners are a part. In any case, the precedents on the subject hold that the State need not even provide direct service to a person, and it would be sufficient if service is provided to a group of persons/entities of which such person is a part. The Petitioners and others are involved in activities which increase the carbon footprint; therefore, the levy cannot be questioned based on the tax versus fee argument.

157. As noted earlier, Section 5 of the impugned Act provides that the proceeds of the cess collected under Section 4 of the impugned Act shall be utilized for undertaking the measures to reduce the carbon footprint by means of such programmes or schemes as may be decided by the Government. Further, Section 6 of the impugned Act provides for the constitution of the Environmental and Energy Audit Bureau. This Bureau is tasked with identifying sensitive areas of energy and environmental

conservation and recommending appropriate measures and solutions for reducing carbon footprint, and suggesting measures for deriving benefits under carbon credit trading and related matters in the State of Goa.

158. Therefore, the argument that the cess is a "tax" and not a "fee" cannot be accepted. In the present case, there is sufficient material to hold that the cess is nothing but a fee relatable to Entry 66 List II, Seventh Schedule. Accordingly, the impugned Act cannot be held to be beyond the legislative competence of the State.

159. The learned Advocate General did contend that the State is entitled to defend the impugned Act on the basis that the levy was a tax relatable to Entry 49 List II, Seventh Schedule to the Constitution. He cited some decisions in support of this contention. However, now that we have concluded that the levy imposed by the impugned Act is a fee and that the State had sufficient legislative competence to enact the impugned Act, we do not propose to examine the issue as to whether the impugned levy can be justified as a "tax" relatable to Entry 49 List II, Seventh Schedule to the Constitution.

ARGUMENTS PECULIAR TO W.P. 393/2016 AND W.P. 206/2021.

160. In W.P. 393/2016, Mr Kantak's contention about the demand notice dated 22nd March 2016 issued by Respondent No.3- the Captain of Ports being ultra vires, also merits no acceptance. A perusal of the communication dated 22nd March 2016 issued by the Captain of Ports simply directs the Petitioner to pay green cess on the coal imported by the Petitioner from 2013

to date. The communication also requires the Petitioner to furnish documentary proof of payment of green cess in case the Petitioner already paid the same.

161. Therefore, the communication dated 22nd March 2016 merely calls upon the Petitioner to comply with its statutory obligation under the provisions of the impugned Act. However, from the perusal of the said communication, it cannot be said the Captain of Ports has usurped the powers of the competent authority under the impugned Act or that the functions and duties of the competent authority and the assessment, levy and collection of cess have been undertaken by the Captain of Ports. The communication dated 22nd March 2016, as noted earlier, merely called upon the Petitioner to comply with the provisions of the impugned Act and provides the Petitioner with details of coal imported or that the Petitioner can assess and pay the levy under the impugned Act.

162. The communication dated 22nd March 2016 also calls upon the Petitioner to furnish documentary proof of payments, if already made by the Petitioner. Such a communication cannot be elevated to the status of a demand notice under the impugned Act. Accordingly, no case is made out by the Petitioner in Writ Petition No.393/2016 for grant of any relief in the context of the communication dated 22nd March 2016.

163. In Writ Petition No.206/2021, the impugned Act is challenged as violative of Articles 14 and 304(a) of the Constitution. Ms Agni's argument was that cess was levied on goods manufactured outside the State of Goa and

not on the goods manufactured within the State of Goa. Accordingly, it was urged that the impugned levy is discriminatory and violative of Articles 14 and 304(a) of the Constitution of India.

164. In Writ Petition No.206/2021, there are no proper pleadings to consider a challenge based on discrimination or breach of Article 304(a) of the Constitution. Besides, the contention is premised on the misconception that the impugned levy imposes a cess on the manufacture of goods. The second misconception is that the impugned cess applies in respect of handling, etc. of products and substances manufactured outside the State of Goa and not within the State of Goa. This is incorrect. Rule 3 of the Rules framed under the impugned act only prescribes the point at which cess becomes payable. It is well settled that the measure of tax, point and manner of its levy are different and distinct from the charging event prescribed under the taxing legislation. In this case, what is relevant is the charging section under the impugned Act and not the Rules, which prescribe the point at which the cess becomes payable or would be imposed or collected.

165. The challenge based on Articles 301 to 304 of the Constitution was quite vague. In any case, the decision of the Constitution Bench in *Jindal Stainless Limited* (supra) provides a complete answer to the contention raised. From the perusal of the impugned Act, at least, we could not find any provision based upon which it could be contended that the impugned Act discriminates between the goods imported into the State and the goods manufactured within the State. By misconstruing the Rules, no case of either discrimination and violation of Article 14 or violation of the constitutional

scheme in Articles 301 to 304 is made out by the Petitioner in Writ Petition No.206 of 2021.

166. The learned Counsel for the parties relied upon several other decisions as are referred to while recording their contentions. However, most of those decisions are considered in the decisions of the Hon'ble Supreme Court which have been discussed by us in this judgment and order, in some detail. Therefore, we have avoided referring to such decisions referred to and relied upon by the learned Counsel for the Petitioners and the learned Advocate General to avoid any repetition.

167. For all the above reasons, we dismiss these Petitions and vacate the interim orders, restraining the Respondents from taking coercive measures.

168. The rule in each of these Petitions is discharged. There shall be no orders for costs.

169. Misc. Civil Applications will not survive the disposal of the main Petitions and are hereby disposed of.

BHARAT P. DESHPANDE, J. **M.S. SONAK, J.**

170. At this stage, Mr Kantak, learned Senior Advocate appearing on behalf of the Petitioners in Writ Petitions No.475/2014 and 393/2016 requests for extension of the interim relief that no coercive action would

be taken against the Petitioners based on the impugned Act, as was granted on 15th April 2016. Since, we have held that the impugned Act is constitutional and further, neither any assessment has commenced nor any demand notices have been issued under the impugned Act, we do not deem it appropriate to accede to the request made.

BHARAT P. DESHPANDE, J. **M.S. SONAK, J.**