

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

WEDNESDAY, THE 12TH DAY OF FEBRUARY 2020 / 23RD MAGHA, 1941

WP(C).No.35419 OF 2019(B)

PETITIONER/S:

AKAY FLAVOURS AND AROMATICS PVT LTD  
AMBUNADU, MALAYIDOMTHURUTH P.O.ERNAKULAM, PIN-  
683 561, (REPRESENTED BY SRI THANKACHAN  
K.J.CHIEF FINANCIAL OFFICER).

BY ADVS.  
SRI.K.N.SREEKUMARAN  
SRI.P.J.ANILKUMAR (A-1768)  
SRI.N.SANTHOSHKUMAR

RESPONDENT/S:

- 1 ASST.COMMISSIONER  
STATE GOODS AND SERVICE TAX DEPARTMENT, SPECIAL  
CIRCLE-111, ERNAKULAM
- 2 STATE TAX OFFICER,  
STATE GOODS AND SERVICE TAX DEPARTMENT, SQUAD  
NO V, KASARAGOD-671 121.
- 3 DEPUTY COMMISSIONER (APPEALS) ,  
STATE GOODS AND SERVICE TAX DEPARTMENT, ,  
NIRMAL ARCADE, ERANHIPALAM, KOZHIKODE-673 006.
- 4 STATE OF KERALA,  
REPRESENTED BY THE LAW SECRETARY, GOVERNMENT  
SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 5 COMMISSIONER OF STATE GOODS AND SERVICE TAX  
DEPARTMENT,  
TAX TOWERS, KILLIPPALAM, KARAMANA-P.O,  
THIRUVANANTHAPURAM-695 002.
- 6 CHIEF COMMISSIONER OF CENTRAL GOODS AND SERVICE  
TAX,  
CENTRAL REVENUE BUILDING, IS PRESS ROAD,  
ERNAKULAM, KOCHI-682 018.

- 7 SECRETARY,  
GOODS AND SERVICE TAX COUNCIL, 5TH FLOOR,  
JEEVAN BHARTI BUILDINGS, NEW DELHI-110001.
- 8 UNION GOVERNMENT,  
REPRESENTED BY THE CHAIRMAN, CENTRAL BOARD OF  
EXCISE AND CUSTOMS, CBEC, NEW DELHI-110001.

R1-5 BY GOVERNMENT PLEADER  
R6 BY SRI.SREELAL WARRIAR, C.G.C  
R7 BY ADV. SRI.P.R.SREEJITH  
R8 BY ADV. SHRI.P.VIJAYAKUMAR, ASG OF INDIA

OTHER PRESENT:

GP M.M.JASMINE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 12.02.2020, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

## **JUDGMENT**

**Dated this the 12th day of February 2020**

1. Petitioner has approached this Court with a prayer of quashing the demand raised vide Ext.P5, for returning the appeal preferred against the assessment order to be deficient of court fees, i.e., 1% of the disputed amount and with a further prayer of declaring imposition of levy of additional court fee by the State Authority in exercise of powers under Section 76(1) of the Kerala Court Fees Act would not apply in the field of GST laws. Petitioner being registered under the provisions of the Kerala State Goods and Service Tax Act, 2017 and Central Goods and Service Tax Act, 2017, prior to that, till 30.6.2017, under the Kerala Value Added Tax Act, submits that the realm of GST came into being with effect from 1.7.2017. The division of tax payers between Central and State was accordingly done as per the guidelines issued by the Goods and Service Tax. The aforesaid division was made by the computer without any liberty to the existing

dealers in the VAT/Central Excise/Service Tax scenario the petitioner thereafter had been filing the return online by logging into the GST portal. Government of Kerala came out with notification dated 7.4.2016 (Ext.P2) extending powers under Section 76 of the Kerala Court Fees and Suit Valuation Act, 1959 fixing the court fees to be levied by civil courts, tribunals and the appellate authorities constituted by or under any special or local law, an additional court fees special court fees at the rate of 1% of the amount involved in the dispute. The court fees payable in respect of the appeals or revisions before the notification was 0.5% of the amount involved in the dispute. The constitutional validity of Section 76 of the Court Fees Act by notification of 2002 was under challenge and this Court upheld the validity of the notification. It was held that the additional court fees under section 76 will be additional to the fee payable on the appeal. It is contended that the aforementioned additional court fees of 1% should not be leviable in the appeals filed under Section 108 of the Kerala Sales Goods Service Tax/ Central

GST Act arising out of decisions or orders passed under the Act. Reliance has been laid to the provisions of Section 108 dealing with the filing of the appeal.

"108. Appeal to the Appellate Authority-

(1) An appeal to the Appellate Authority under subsection (1) of section 107 shall be filed in FORM GST APL-01, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner, and a provisional acknowledgment shall be issued to the appellant immediately.

(2) The grounds of appeal and the form of verification as contained in FORM GST APL-01 shall be signed in the manner specified in rule 26.

(3) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule (1) and a final acknowledgment, indicating appeal number shall be issued thereafter in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf:

provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the FORM GST APL-01, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgment and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.

Explanation- For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgment, indicating the appeal number, is issued."

2. The aforementioned rule do not contemplate remittance of any additional court fees or other fees and thus the objection of the authorities in not entertaining the appeals being not accompanied by 1% additional fee is wholly falacious and arbitrary, though the additional fee in this case would be only a sum of Rs.36,981/-. The notification Ext.P2 is not based on intelligible differentia or any reasonable classification. It amounts to hostile discrimination in making a choice based on jurisdiction of the registration which is solely outside the domain and control of the assessee. The fundamental objectives of GST are 'one nation one tax' by way of simplification of the tax process and by bringing uniformity in tax rates and the process throughout the nation. The levy of additional court fee at the flat rate of 1% on the disputed amount in appeal is disproportionately high as it partakes the character of tax.

3. Article 304 A and B of the Constitution of India empower the State to impose tax by putting a certain reasonable restriction which should not be violative of Article 14 of the Constitution

of India. The question with regard to reasonable classification or intelligible differentia referred to is no longer res integra in view of the judgment of the Constitution Bench in **Jindal Stainless Steel Ltd. & Anr. V. State of Haryana & Ors.** reported at 2016 VOL. 66 SC-CB wherein the following 4 questions were determined.

- "1. Can the levy of a non-discriminatory tax per se constitute infraction of Article 301 of the Constitution of India?
2. If answer to question No.1 is in the affirmative, can a tax which is compensatory in nature also fall foul of Article 301 of the Constitution of India?
3. What are the tests for determining whether the tax or levy is compensatory in nature?
4. Is the Entry Tax levied by the States in the present batch of cases violative of Article 301 of the Constitution and in particular have the impugned State enactments relating to entry tax to be tested with reference to both Articles 304(a) and 304(b) of the Constitution for determining their validity?"

Answering question No.4, the Supreme Court held as follows:

"132. We respectfully agree with the line of reasoning adopted in Video Electronics (supra). The expression "discrimination" has not been defined in the

Constitution though the same has fallen for interpretation of this Court on several occasions. The earliest of these decisions was rendered in *Kathi Raning Rawat v. The State of Saurashtra* AIR 1952 SC 123, where a seven-Judge Bench of this Court held that all legislative differentiation is not necessarily discriminatory. Relying upon the meaning of the expression in Oxford Dictionary, Patanjali Sastri, CJ (as His Lordship then was) explained:

*"7. All legislative differentiation is not necessarily discriminatory. In fact, the word "discrimination" does not occur in Article 14. The expression "discriminate against" is used in Article 15(1) and Article 16(2), and it means, according to the Oxford Dictionary, "to make an adverse distinction with regard to; to distinguish unfavourably from others". Discrimination thus involves an element of unfavourable bias and it is in that sense that the expression has to be understood in this context. If such bias is disclosed and is based on any of the grounds mentioned in Articles 15 and 16, it may well be that the statute will, without more, incur condemnation as violating a specific constitutional prohibition unless it is saved by one or other of the provisos to those articles. But the position under Article 14 is different. Equal protection claims under that article are examined with the presumption that the State action is reasonable and justified. This presumption of constitutionality stems from the wide power of classification which the legislature must, of necessity, possess in making laws operating*

*differently as regards different groups of persons in order to give effect to its policies. . . . ."*

133. Fazl Ali J. in his concurring judgment explained the concept in the following words:

*"19. I think that a distinction should be drawn between "discrimination without reason" and "discrimination with reason". The whole doctrine of classification is based on this distinction and on the well-known fact that the circumstances which govern one set of persons or objects may not necessarily be the same as those governing another set of persons or objects, so that the question of unequal treatment does not really arise as between persons governed by different conditions and different sets of circumstances. The main objection to the West Bengal Act was that it permitted discrimination "without reason" or without any rational basis."*

Any change to a fiscal enactment on the touchstone of Article 304(a) must in our opinion be tested by the same standard as in Kathi's case (supra). The Court ought to examine whether the differentiation made is intended or inspired by an element of unfavourable bias in favour of the goods produced or manufactured in the State as against those imported from outside. If the answer be in the affirmative, the differentiation would fall foul of Article 304(a) and may tantamount to discrimination. Conversely, if the Court were to find that there is no such element of intentional bias favouring the locally produced goods

as against those from outside, it may have to go further and see whether the differentiation would be supported by valid reasons. In the words of Fazl Ali, J. discrimination without reason would be unconstitutional whereas discrimination with reason may be legally acceptable. In Video Electronic's case, this Court noted that the differentiation made was supported by reasons. This Court held that if economic unity of India is one of the Constitutional aspirations and if attaining and maintaining such unity is a Constitutional goal, such unity and objectives can be achieved only if all parts of the Country develop equally. There is, if we may say so, with respect considerable merit in that line of reasoning. A State which is economically and industrially backward on account of several factors must have the opportunity and the freedom to pursue and achieve development in a measure equal to other and more fortunate regions of the country which have for historical reasons, developed faster and thereby acquired an edge over its less fortunate country cousins. Economic unity from the point of view of such underdeveloped or developing states will be an illusion if they do not have the opportunity or the legal entitlement to promote industries within their respective territories by granting incentives and exemptions necessary for such growth and development. The argument that power to grant exemption cannot be used by the State even in case where such exemptions are manifestly intended to promote industrial growth or promoting industrial activity has not appealed to us. The power to grant exemption is a part of the

sovereign power to levy taxes which cannot be taken away from the States that are otherwise competent to impose taxes and duties. The conceptual foundation on which such exemptions and incentives have been held permissible and upheld by this Court in Video's case is, in our opinion, juristically sound and legally unexceptionable. Video Electronics, therefore, correctly states the legal position as regards the approach to be adopted by the Court while examining the validity of levies. So long as the differentiation made by the States is not intended to create an unfavourable bias and so long as the differentiation is intended to benefit a distinct class of industries and the life of the benefit is limited in terms of period, the benefit, must be held to flow from a legitimate desire to promote industries within its territory. Grant of exemptions and incentives in such cases must be deemed to have been inspired by considerations which in the larger context help achieve the Constitutional goal of economic unity."

4. In view of what has been noticed above, the notification cannot be seen to be in violation of Article 14 or suffering from the character of tax. The writ petition is dismissed.

Sd/-

AMIT RAWAL  
Judge.

k kb.

## **APPENDIX**

### **PETITIONER'S/S EXHIBITS:**

|            |                                                                                                                          |
|------------|--------------------------------------------------------------------------------------------------------------------------|
| EXHIBIT P1 | TRUE COPY OF THE CIRCULAR NO 1/2017<br>DATED 20.9.2017 ISSUED BY THE GST<br>COUNCIL                                      |
| EXHIBIT P2 | TRUE COPY OF NOTIFICATION S.R.O NO<br>315/.2016 DATED 7.4.2016ISSUED BY THE<br>GOVERNMENT OF KERALA                      |
| EXHIBIT P3 | TRUE COPY OF THE ORDER IN GST MOV-09<br>DATED 18.6.2019 DATED 18.6.2019 ISSUED<br>BY THE 2ND RESPONDENT                  |
| EXHIBIT P4 | TRUE COPY OF THE APPEAL IN FORM GST<br>APL-01 WITH THE GROUNDS OF APPEAL FILED<br>BEFORE THE 3RD RESPONDENT ON 16.7.2019 |
| EXHIBIT P5 | TRUE COPY OF NOTICE IN FORM XX11 (ST)<br>DATED 20.10.2019 ISSUED BY THE 3RD<br>RESPONDENT                                |

/True copy/