SUPREME COURT OF INDIA

State of U.P.

Vs.

Vam Organic Chemicals Ltd.

C.A.Nos.5416-5424 of 2000

(Ruma Pal and B. N. Srikrishna, JJ.)

17.10.2003

JUDGEMENT

RUMA PAL, J.:-

1. Leave granted in the special leave petition.

2. A series of writ petitions were filed by the respondents in the Allahabad High Court challenging a Notification dated 13th January, 1990 whereby licence fee for 15 paise per litre was sought to be imposed on the quantity of specially denatured spirit (SDS) obtained from distilleries in Uttar Pradesh under Rule 3(a) of the U.P. Licences for the Possession of Denatured Spirit and Specially Denatured Spirit Rules, 1976. All the writ petitions were allowed by the High Court. The State has questioned the correctness of the decision in these appeals.

3. The basic facts in all these appeals are substantially similar. Therefore, the facts in the case of

Vam Organic Chemicals Ltd. and another are taken as illustrative for the purpose of our decision.

4. The respondent-company manufactures organic chemicals such as Acetic Acid, Acetic Anhydride and Vinyl Acetate as its chemical plant. The main raw material for manufacture of these organic chemicals is Ethyl alcohol (industrial grade) which in turn is produced from molasses. In 1982, the respondent set up its own distillery for producing the industrial alcohol. The distillery is registered under the provisions of the Industries (Development and Regulation) Act, 1951. The entire production of industrial alcohol at the respondents' distillery as well as industrial alcohol from outside sources is used at its chemical plant for producing the organic chemicals mentioned earlier. The entire quantity of industrial alcohol is "denatured" before it leaves the respondents distillery and carried in pipes to the chemical plant. It is this denatured industrial alcohol which is subjected to the disputed levy.

5. The levy of the disputed licence fee is legislatively traceable to the U.P. Excise Act, 1910. This Act provides for the control of and levy of excise duty on intoxicating liquor and on intoxicating drugs in the State of Uttar Pradesh. The word "intoxicant" has been defined under S. 3(13) of the Act as meaning 'any liquor or intoxicating drug.' Liquor has in turn been defined in S. 3(1) as meaning 'intoxicating liquor and includes spirits of wine, spirit, wine, tari, pachwai, beer and all liquid consisting of or containing alcohol also any substance which the State Government may by Notification declare to be liquor for the purposes of this Act.'

6. Industrial alcohol with which we are now concerned is not liquor nor is it potable as such. However, it may be utilised to produce a kind of liquor if it is 'denatured.' 'Denatured' according to the definition of the word in S. 3(9) of the Act means :

"rendered unfit for human consumption in such manner as may be prescribed by the State Government by Notification in this behalf."

7. The denaturants and their specification and the manner of denaturation have been prescribed by the State Government separate premises previously approved for the purpose by the Excise Commissioner are required to be provided for the process of denaturation and for the storage of denaturing agents and the vessels and receptacles used in the process. Denaturation must take place in these premises only and issue and storage of denatured spirit can only be made from or in these premises. The premises are to be secured by an excise lock, and denaturation is to take place under the direct supervision of the officer-in-charge (see para 784 of the U.P. Excise Manual). After the denaturation the emerging product is to be further tested in the manner specified by the Excise authorities. If the alcohol has not been satisfactorily denatured it is to be destroyed (vide paragraph 785 ibid). It is not in dispute that the respondent has followed all these regulatory measures.

8. To ensure the denaturation of industrial alcohol, in exercise of the powers under S. 41 of the 1910

Act, the Uttar Pradesh Licences for the Possession of Denatured Spirit and Specially Denatured Spirit Rules, 1976 (hereafter referred to as 'the Rules') were made. Rule 2 initially only provided for the three types of licences which are required for the possession of denatured spirit including specially denatured spirit for industrial purposes, namely, licences in Form FL-39, FL-40 and FL-41. The respondents herein are all holders of licences in Form FL-39 which is granted for the possession of denatured spirit for use in industries in which the alcohol is destroyed or converted chemically in the process into any other product and the product does not contain alcohol such as Ether, Styrene, Butadiene, Acetone, Polythene etc.

9. The fee for licences in Form FL-39 is imposable under R. 3(a) which initially read:

"3(a) The fee for a licence in Form FL-39 shall be at a rate prescribed for industry to industry by the Excise Commissioner per litre, payable on the quantity of specially denatured spirit obtained from any distillery in Uttar Pradesh. The fee shall be realised by the Excise Inspector in-charge of the Distillery from the licensee before making issues of the specially denatured spirit from the distillery and shall be deposited in the Treasury under the Head "X-State Excise Miscellaneous Confiscation and Miscellaneous (a) Contribution towards Establishment."

10. In 1979 by Notification No. 951/Licence-3, dated 31st May, 1979 Rule 3(a) was amended and the fee for licence in Form FL-39 was fixed for the first time at a rate of 10 paise per litre of specially denatured spirit (SDS). It was made clear that "the fee shall be realised by the Excise Inspector in-charge of the distillery from the licensee before making issues of the specially denatured spirit from the distillery and shall be deposited in the Treasury under the head "039. State Excise-E-Commercial and Denatured Spirit medicated wines-B-licence fees commercial spirits." The rate of fee has been subsequently revised on 13th January, 1990 to 15 paise per litre.

11. During this period, on 25th October, 1989 a 7-Judge Bench decision in Synthetics and Chemicals Ltd. v. State of U.P., 1990 (1) SCC 109 : 1989 Supp (1) SCR 623 held that the State was not legislatively competent to levy taxes on industrial alcohol. The subject-matter of challenge in Synthetics was the imposition of various levies by the State Legislatures on industrial alcohol. In the lead case of Synthetics (W. P. No. 182/1980) a particular challenge was made to a Notification issued by the Government of U.P. in 1979 in exercise of powers under S. 40, sub-section (1) read with sub-section (2)(d) of U.P. Excise Act amending the Rule for levying vend fee on industrial alcohol. AIR 1990 SC 1927

12. Synthetics and Chemicals Ltd. also filed a second writ petition (W. P. No. 2423 of 1980) in this Court challenging the imposition of licence fee of 10 paise per litre under Rule 3(a) by the Notification dated 31st May, 1979 referred to earlier and asked for refund of the payments which the State had been recovering from Synthetics and Chemicals Ltd. since 17th May, 1979 and which AIR 1990 SC 1927 the company had been paying under protest. By order dated 21st July, 1980 W.

P. No. 2423/80 was tagged along with W. P. No. 182/1980. The order also said that if Synthetics and Chemicals succeeded in W. P. No. 2423 of 1980 then the State would refund the amounts which formed the subject-matter of the writ petition. As already noted the challenge of the industries to the State levy of tax on industrial alcohol succeeded before the Constitution Bench.

13. Synthetics and Chemicals Ltd., then filed an application in W. P. No. 2423 of 1980 in which it contended that the Constitution Bench had disposed of both its writ petitions viz., W. P. No. 182/1980 and 2423/1980 by its judgment striking down the provisions of the Act and Rules which sought to levy tax on industrial alcohol. As such a prayer was made inter alia for refund of the amounts paid on account of licence fee levied under R. 3(a) together with interest at 9% p.a. By an order dated 6-5-1991 the application was allowed by this Court. However, since the Constitution Bench decision was to operate prospectively it was directed that while Synthetic and Chemicals Ltd. would not be entitled to any refund for the amounts already paid to the State, "there would be no liability prospectively from the date of judgment and the demand by the State of Uttar Pradesh would not be levied thereafter." The State filed an application for modification and clarification of this order on the ground that only the vend fee on industrial alcohol had been struck down by the Constitution Bench and vend fee was entirely different from the licence fee which was imposed on FL-39 licensees. The State's plea was that "the order dated 6-5-1991 is being treated as a precedent and the levies of licence fees to regulate issue of alcohol for industrial purposes are being challenged in the High Court and the stay order are being issued by the Hon'ble High Court of Allahabad on the basis of the aforesaid order of 6-5-1991." While dismissing the State's application on 25-4-1994, this Court said : AIR 1990 SC 1927

"Mr. D. V. Sehgal, learned senior advocate appearing for the respondent-State, states that licence fee has been challenged by various parties in the High Court. The State of Uttar Pradesh can raise all the points available to it before the High Court."

14. Soon thereafter on 22-6-1999 the following circular was issued by the Excise Commissioner to all District Magistrates in the State :

"In compliance with the judgment dated 25-10-1989 passed by the Hon'ble Supreme Court in W. P. (C) No. 182/81, Synthetic and Chemicals Ltd. v. State of U.P. and others, the recovery of the vend fees from licence holders by the Industrial Units, FL-39, FL-40, FL-41 and FL-16 has been declared illegal with prospective effect. In addition to the Hon'ble High Court by its judgment dated 12-7-1990 in W. P. No. 361/76, Synthetic and Chemicals Ltd. v. State of U.P. has held Diesel Oil and Alcohol Taxation (Amendment) Act, 1976 as illegal. Therefore, in order to ensure the compliance of the above orders this office by its Circular No. 395/408/9-89-90/Vam dated 10-4-1990 has invited the attention for the non-recovery of purchase tax FL-39, 40, 41 and FL-16 from the licence holders. AIR 1990 SC 1927

In another order passed in W. P. (C) No. 2423/1980 Synthetic and Chemicals Ltd. v. State of U.P. and others on the L. A. No. 1 of the petitioners, the Hon'ble Supreme Court by its order dated 6-5-1991, the recovery of licence fee from the petitioner has been declared illegal with prospective effect. Therefore, after the said order licence fee cannot be recovered from Synthetic and Chemicals Ltd., Bareilly.

The compliance of action in accordance with the above may kindly be ensured." (Emphasis added)

15. Consequently no licence fee is levied on Synthetics and Chemicals Ltd. under R. 3(a). These facts have been relied on by the respondent to urge that they too cannot be asked to pay any licence fee under R. 3(a). But before considering their plea one further fact needs to be noted.

16. On 18th May, 1990 a Notification was issued by the State of U.P. by which R. 2 was amended to provide for the taking out of a licence in Form DS-1 which was to be issued by the Collector to all distilleries within his district (holding licence in Form PD-1 or PD-2) "for denaturation of spirit for supply to persons in Form FL-16, FL-39, FL-40 and FL-41." A licence fee in respect of a licence in Form DS-1 was payable in advance @ 7 paise per litre of spirit so denatured by the distillery.

17. The Notification dated 18th May, 1990 amending R. 2 was challenged by distilleries, including the respondent, under Art. 226 before the High Court. The challenge was on the ground, that the State had no power to legislate in respect of industrial alcohol or to levy tax in respect thereof and that the levy not being based on quid pro quo was otherwise bad. The High Court dismissed the distillers' writ petitions. The appeals from the decision of the High Court were also disallowed by this Court in Vam Organic Chemicals Ltd. and another v. State of U.P. and others, 1997 (2) SCC 715 (referred to hereafter as "Vam Organics-I").

18. We now come to the present appeals which arise from writ petitions filed by the respondents in the High Court between 1982 to 2000 challenging the levy of denaturation fee under R. 3(a) on the ground, that the State Legislature did not have the legislative competence to legislate on denatured spirit and that the fee of 15 paise per litre was in the nature of tax and in any event excessive. The State countered the challenge and submitted that it had the power to impose the fee in exercise of its regulatory powers since it was necessary to see that the denatured spirit was not re-natured into potable alcohol. It was also contended that unless the State took steps to prevent diversion of denatured spirit, heavy loss would be caused to the exchequer of the Government and it would amount to a health hazard if the renatured spirit was consumed.

19. The High Court allowed the writ petitions. It held, following Synthetic's case (supra), that Parliament alone can legislate in respect of liquor which is unfit for human consumption, and that

the State Government can only charge regulatory fees for the purpose of payment of salary for the staff and to see that no non-potable alcohol is converted into potable alcohol. However, it held that the burden of showing that there is a broad co-relation between the fee charged and administrative expenses for imposing regulatory fee is on the State Government. It was noted that the respondents were already paying a fee under R. 2 for denaturation of spirit. It was noted that the process of renaturation of denatured spirit was involved and extremely difficult and that "it is not averred in the counter-affidavit that any additional staff has been employed for seeing that denatured spirit is not renatured. At any event, no co-relation at all (what to say of broad co-relation) has been shown between the charge of 15 paise per litre and any additional expenses incurred by the department." The additional fee sought to be levied was, in the High Court's opinion, really a tax in the garb of a regulatory fee. This conclusion was arrived at after considering the pleadings and in particular the lack of any averment in the counter-affidavit filed by the appellants justifying levy of the additional fees under R. 3(a). AIR 1990 SC 1927

20. Impugning the High Court's decision, the appellants have contended that it is possible to renature denatured spirit. They have referred to the decision of Synthetics (supra) to contend that the possibility of renatura-tion has been recognised by this Court in that decision. Instances of the illicit sale of denatured spirit after renaturing for human consumption have been cited. It AIR 1990 SC 1927, AIR 2002 SC 852 : 2002 AIR SCW 523 : 2002 AIR - Jhar HCR 216, para 171 is submitted that since the power to levy excise on potable alcohol vests solely in the State, there must be a power to take steps to ensure that the denatured spirit remains denatured. It is submitted that in fact special services had been rendered by the State in return for the licence fee levied under R. 3(a). It is also contended that even if there were no quid pro quo, nevertheless a regulatory fee can be charged unless the fee was expropriatory or excessive in which case the burden of proof would be on the assessee to show that the fee was excessive. According to the appellants, the word 'industry' has been construed by the Constitution Bench in ITC Ltd. v. Agricultural Produce Market Committee and others, 2002 (9) SCC 232 para 136 to mean only manufacture and production. Therefore, the State was legislatively competent under the provisions of Entry 33, List III of the Seventh Schedule to the Constitution to regulate the products of an industry which was declared to be controlled industry under Entry 52 of List I. Since there was no central legislation occupying the field, the State law must be held to be valid.

21. The respondents have supported the decision of the High Court and submitted that once industrial alcohol is denatured, it is permanently unfit for human consumption. They have referred to the definition of denatured spirit in IS : 324/1959 which says "spirit with added denaturants to render it effectively and permanently unfit for human consumption." A reference is also made to the "Encyclopedia of Chemical Processing and Design" which defines denaturing as a permanent process. According to the respondents this was also the stand of State-appellants in Vam Organics-I. It is submitted that the respondents were already denaturing the entire quantity of industrial alcohol and paying fee under R. 2 for that purpose. That fee had been justified in Vam Organics-I as necessary to meet the cost of ensuring denaturation of the industrial alcohol and there was no scope for further regulation. It is also submitted that assuming that the fee was regulatory, there was no material whatsoever produced by the State-appellants to establish that the fee levied under R. 3(a) was necessary to meet the cost of any extra or additional expenditure by the State. According to the respondents, the clarificatory order dated 6-5-1991 passed by this Court in W.P. No. 2423 of 1980

had been accepted and acted on by the State as far as Synthetic and Chemicals Ltd. was concerned. It is their contention that the decision in Synthetic and Chemical Ltd. W.P. No. 2423/1980 was a judgment in rem, the benefit of which should be available to all industries which were similarly situated as Synthetic and Chemicals Ltd. With regard to the State's justification for the levy on industrial alcohol or denatured spirit under Entry 33 of List III to the Seventh Schedule to the Constitution, it is submitted that the same argument had been expressly negatived by the Constitution Bench in Synthetic's case. AIR 1990 SC 1927

22. Article 246 gives to the Parliament exclusive power to make laws with respect to the matters enumerated in List I in the Seventh Schedule. Entry 84 of List I and Entry 51 of List II were construed by this Court in Synthetic's case to hold that Parliament alone was the exclusive power to legislate and levy excise tax in respect of industrial alcohol. It is unnecessary to refer to the law with regard to the comparative competence of the Union and the States with regard to levy of excise, regulation and control of industrial alcohol prior to the decision of the Constitution Bench in Synthetics. Whatever the law was earlier, the decision in Synthetics now holds the field. In that decision the State's power to levy excise duly was held to be AIR 1990 SC 1927 limited by Entry 51 to tax on alcoholic liquors for human consumption. It was also held that S. 2 of the Industries (Development and Regulation) Act, 1951 as well as Serial No. 26 of the First Schedule to that Act covered the whole field on industrial alcohol and its products. Therefore since the coming into force of the IDR Act on 8th May, 1952 the State Legislatures are constitutionally incompetent to levy any tax on industrial alcohol.

23. The principle was succinctly reiterated in State of U.P. v. Modi Distillery (1995) 5 SCC 753 where it was said that the State's power to levy excise duty was limited to alcoholic liquor for human consumption and "that the framers of the Constitution, when they used the expression 'alcohol liquors for human consumption,' meant, and the expression still means, that liquor which, as it is, is consumable in the sense that it is capable of being taken by human beings as such as a beverage or drink". . . . . "Dictionaries and technical books showed that rectified spirit (95 per cent.) was an industrial alcohol and not potable as such. . . . . ." Therefore even if ethyl alcohol (95 per cent.) could be used as a raw material or input, after processing and substantial dilution, in the production of whisky, gin, country liquor, etc. nevertheless it was not 'intoxicating liquor' which expression meant only that liquor which was consumable by human beings as it was." Thus the State cannot legislate on industrial alcohol despite the fact that such industrial alcohol has the potential to be used to manufacture alcoholic liquor. 1995 AIR SCW 3791 : 1995 All LJ 2059

24. A somewhat contrary view was taken by a Bench of two-Judges of this Court in Bihar Distillery v. Union of India, 1997 (2) SCC 727, it was held that the decision in Synthetics did not deal with rectified spirit which could be converted into potable alcohol and was merely concerned with industrial alcohol which could not be so converted i.e. denatured rectified spirit. A distinction was drawn between industries engaged in manufacturing rectified spirit meant exclusively for supply to industries (industries other than those engaged in obtaining or manufacturing of potable liquor), whether after denaturing it or without denaturing it and industries engaged in manufacturing rectified spirit exclusively for the purpose of obtaining or manufacturing potable liquor. In the first

case, the industry was to be under "the total and exclusive control of the industries and be governed by the IDR Act and the Rules and regulations made thereunder." As far as the second case is concerned, "they shall be under the total and exclusive control of the State in all respects and at all stages including the establishment of the distillery." AIR 1997 SC 1208 : 1997 AIR SCW 1240

25. The decision in Bihar Distillery was doubted in Deccan Sugar and Abkari Co. Ltd. v. Commissioner of Excise, A. P., 1998 (3) SCC 272. It was said that the decision in Bihar Distillery's ran counter to the scheme of legislative competence as examined by the Constitution Bench of this Court as well as in the three-Judges Bench decision of this Court in Modi Distillery. The appeals were accordingly referred to a larger Bench for reconsideration of the judgment in Bihar Distillery's case. 1995 AIR SCW 3791 : 1995 All LJ 2059

AIR 1997 SC 1208 : 1997 AIR SCW 1240

26. The larger Bench followed Synthetics and Modi Distillery without expressly overruling the decision in Bihar Distillery1. We, therefore, proceed on the basis that the decision in Synthetics continues to exclude the State from levying tax on industrial alcohol whether or not it has the potential to be used as alcoholic liquor.

1. Deccan Sugar and Abkari Co. Ltd. v. Commissioner of Excise, A.P., C.A. No. 4355 of 1985 unreported decision dated 13th Feburary, 2002.

27. However Synthetics has also said ". . . . .the States have the power to regulate the use of alcohol and that power must include power to make provisions AIR 1990 SC 1927, para 85 to prevent and/or check industrial alcohol being used as intoxicating or drinkable alcohol."

In summing up the law the Constitution Bench said :

"The position with regard to the control of alcohol industry has undergone material and significant change after the amendment of 1956 to the IDR Act. After the amendment, the State is left with only the following powers to legislate in respect of alcohol :

(a) It may pass any legislation in the nature of prohibition of potable liquor referable to Entry 6 of List II and regulating powers.

(b) It may lay down regulations to ensure that non-potable alcohol is not diverted and misused as a

substitute for potable alcohol.

(c) The State may charge excise duty on potable alcohol and sales tax under Entry 52 of List II. However, sales tax cannot be charged on industrial alcohol in the present case, because under the Ethyl Alcohol (Price Control) Orders, sales tax cannot be charged by the State on industrial alcohol.

(d) However, in case State is rendering any service, as distinct from its claim of so-called grant of privilege, it may charge fees based on quid pro quo. See in this connection, the observations of Indian Mica case (1971 (2) SCC 236). AIR 1971 SC 1182

28. The State's power is thus limited to (i) the regulation of non-potable alcohol for the limited purpose of preventing its use as alcoholic liquor, and (ii) the charging of fees based on quid pro quo. The question then is - is the levy under R. 3(a) of the 1976 Rules justifiable as such fee?

29. The locus classicus on the distinction between a 'fee' and a 'tax' is the decision of this Court in the Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005. In that case the subject-matter of challenge was, inter alia, S. 76 of the Madras Hindu Religious and Charitable Endowments Act, 1951 under which religious institutions were required to make a contribution at 5 per cent. of their income towards the services rendered by the Government and its officers. According to the State this annual contribution was a fee for overseeing the working of the religious institutions. According to the religious institutions, the levy was a tax which the State was incompetent to impose. AIR 1954 SC 282

30. The distinctive characteristics of a tax and fee were laid down. As far as a fee is concerned it was held that :

a 'fee is generally defined to be a charge for a special service rendered to individuals by some Governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases."

31. However, the Court made it clear that the service need not necessarily be one which is voluntarily taken by the person responsible for paying the fee. There may be an element of

compulsion or coerciveness present "if in the larger interest of the public, a State considers it desirable that some special service should be done for certain people, the people must accept these services, whether willing or not."

32. This Court struck down S. 76 on the ground that the annual contribution was a tax as there was

"total absence of any correlation between the expenses incurred by the Government and the amount raised by contribution under the provision of S. 76 and in these circumstances the theory of a return or counter-payment of quid pro quo cannot have any possible application to this case."

33. The word "service" in the context of a fee could, therefore, include therefore a levy for a compulsory measure undertaken vis-a-vis the payer in the interest of the public. This 'coercive' measure has been subsequently judicially clarified to mean a 'regulatory measure.' But in the case of both kinds of services whether compulsorily imposed or voluntarily accepted, there would have to be a correlation between the levy imposed and the "counter-payment or quid pro quo".

However, correlationship between the levy and the services rendered is one of general character and not of mathematical exactitude. All that is necessary is that there should be a reasonable 'relationship' between "levy of the fee and the service rendered."2Contrariwise when there is no such correlation, the levy, despite its nomenclature is in fact a tax. In the Corporation of Calcutta v. Liberty Cinema, AIR 1965 SC 1107. The licence fee charged under S. 548 of the Calcutta Municipal Act, 1951 had been challenged on the ground that no service was rendered commensurate with the tax. This Court said that the levy was a tax which the State was competent to impose.

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Sreenivasa General Traders v. State of A.P., 1983 (4) SCC 353 AIR 1983 SC 1246

"the Act does not provide for any services of special kind being rendered resulting in benefits to the person on whom it is imposed. The work of inspection done by the Corporation which is only to see that the terms of the licence are observed by the licensee is not a service to him. No question here arises of correlating the amount of the levy to the costs of any service. The levy is a tax. It is not disputed, it may be stated that if the levy is not a fee, it must be a tax." (Para 20)

34. This test of correlationship or "correspondence" has been repeatedly used by this Court either to uphold the fee holding that it was reasonable for the requirement of the authority for fulfilling its statutory obligations (B.S.E. Brokers Forum v. Securities and Exchange Board of India, 2001 (3) SCC 482, p. 505); Secunderabad Hyderabad Hotel Owners' Assocn. v. Hyderabad Municipal

Corpn., 1992 (2) SCC 274, 286 ; State of Tripura v. Sudhir Ranjan Nath (1997) 3 SCC 665; Shri Bileshwar Khand Udyog Khedut Sahakari Mandali Ltd. v. State of Gujarat (1992) 2 SCC 42; M/s. Gujchem Distillers India Ltd. v. State of Gujarat (1992) 2 SCC 399) or to strike it down on the ground that the fee charge was not established to be so commensurate. (See Indian Mica Micanite Industries v. State of Bihar, 1971 (2) SCC 236, 243; A. P. Paper Mills Ltd. v. Govt. of A. P. (2000) 8 SCC 167). AIR 2001 SC 1010 : 2001 AIR SCW 628 : 2001 CLC 258, para 39, AIR 1999 SC 635 : 1999 (2) SCC 274, 286 : 1999 AIR SCW 286, para 17, AIR 1997 SC 1168 : 1997 AIR SCW 1178, AIR 1992 SC 872 : 1992 AIR SCW 554, AIR 1992 SC 1256 : 1992 AIR SCW 1206, AIR 1971 SC 1182 at pp. 1187, 1188

35. The respondents correctly objected to the States' contention that the levy of tax on industrial alcohol and its products is competent under Entry 33 of List III. The issue was not raised before the High Court and was raised before us only in reply. The arguments had been specifically raised before the Constitutional Bench in Synthetics and expressly negatived where the State's contention was that the levy was stipulated "jointly or severally both under Entries 8 of List II, Entry 51 of List II, Entry 33 of List III and what is described as police powers regulatory and other incidental charges, according to them." (para 46). AIR 2000 SC 3290 : 2000 AIR SCW 3622

AIR 1990 SC 1927

36. In rejecting the submission the Constitution Bench said : "Under the constitutional scheme of division of powers under legislative lists, there are separate entries pertaining to taxation and other laws. A tax cannot be levied under a general entry." It was also held that the power to tax is neither incidental nor subsidiary to the power to legislate on a matter or topic. Since there was no such specific entry allowing the State to tax industrial alcohol it could not derive the power from any other entry. It was said that the State cannot also claim that, it can regulate industrial alcohol and a product of the scheduled industry, under Entry 33 of List III because the Union, under S. 18-G or the IDR Act, has evinced clear intention to occupy the whole field. Given this clear enunciation of the law, the submission of the State must be rejected.

37. Both the sides have relied heavily on the decision of this Court in Vam Organic Chemicals Ltd. and another v. State of Uttar Pradesh and others, 1997 (2) SCC 715. Since the decision has basically and briefly affirmed the reasoning of the High Court, we take up the High Court's decision for consideration before determining what this Court has in fact held. The subject-matter of challenge in Vam Organic-I was the Notification amending Rule 2 of the Rules by which licence fee @ 7 paise per litre was sought to be imposed w.e.f. 2nd June, 1990. It was contended that the State Legislature had no power to impose the fee as the industrial alcohol which was produced by the petitioner was not fit for human consumption. In answer to the challenge, the State's contention as recorded by the High Court was as follows :

"According to the respondents, this process of denaturing, to render the rectified spirit unfit for human consumption, has been in vogue since 1863. They have also set out the process by which,

and the chemicals by mixing which, the rectified spirit is converted into denatured spirit or especially denatured spirit, as in the case may be. According to the respondents, however, the denaturing is necessary to preclude the misuse of rectified spirit for drinking purposes. They go further and say that even after denaturing, it is necessary to ensure that denatured spirit is not renatured to render it fit for human consumption. It is towards this regulation and service, the respondents say, that they are charging the impugned fee."

38. The High Court said that the State was competent to frame regulations under Entry 6 as well as Entry 8 of List II of the Seventh Schedule of the Constitution to ensure that "ethyl alcohol/rectified spirit, which is proposed to be used for industrial purposes, should be denatured first so that it cannot thereafter be used for obtaining country liquor or for manufacturing IMFLs. The State, thus, draws a dividing line. It says that all ethylic alcohol/rectified spirit, which is proposed to be used for industrial purposes, should be denatured first. Once denatured, it cannot be used except for industrial purposes. Once denatured, it goes out of the seisin of the State Legislature. But, the State oversees the process of denaturing so that quantity of rectified spirit is no longer available for obtaining or producing potable liquors. Rule 2 provides for such regulation and also charges, what it calls, a licence fee thereof."

39. In this background, the High Court held that :

"The subject and purpose underlying the impugned rule is to ensure that rectified spirit sought to be used for industrial purposes is used only for that purpose and is not diverted or misused for obtaining country liquor or for manufacturing other IMFLs . . . . . This is a regulation made in the interest of public health (Entry 6 of List II). It is also a law with respect to possession and sale of intoxicating liquors - Entry 8 of List II."

40. The High Court was also of the view that S. 18-G of the IDR Act did not operate on different fields. The reasoning of the High Court in Vam Organics-I has been adopted by the same learned Judge in Bihar Distillery's case. We have already noted that the reading and construction and consequent limitation of Synthetics in Bihar Distillery has been disapproved and can safely be said not to represent the law. However, Vam Organics-I also had held that the State was competent to regulate industrial alcohol so that it was not converted into potable liquor, the High Court also found that the State was competent to levy a fee for the purpose. It was held that the fee could be levied not only for services rendered but also towards the cost of regulation. In the first case, the element of quid pro quo is necessary but in the second case, the fee must be reasonable. The High Court then said : AIR 1997 SC 1208 : 1997 AIR SCW 1240

"The question then arises, how to judge the reasonableness of such a fee. In our opinion, it would be appropriate, in such a case, to look to the expenditure which the State undergoes for administering the regulation, and if we find that there is a broad correlation between the expenditure and the fees

charged, we should sustain the same."

41. The Court noticed the facts stated in the counter-affidavits particularly setting up of a Headquarters laboratory and deployment of a good number of officers and employees who were engaged in manning the laboratory besides the staff which is posted at the distilleries. There was, according to the High Court, a broad correlationship between the amount of fee charged and the expenses incurred for implementing and overseeing the regulation. The challenge to the levy of licence fee under R. 2 was accordingly dismissed. As we have noted the appeal of Vam Organic was dismissed by this Court affirming this reasoning of the High Court because it found no reason to differ with it.

42. Considering the various authorities cited, we are of the view that the State Government is competent to levy fee for the purpose of ensuring that industrial alcohol is not surreptitiously converted into potable alcohol so that the State is deprived of revenue on the sale of such potable alcohol and the public is protected from consuming such illicit liquor. But this power stops with the denaturation of the industrial alcohol. Denatured spirit has been held in Vam Organics-I, to be outside the seisin in the State Legislature. Assuming that denatured spirit may by whatever process be renatured, (a proposition which is seriously disputed by the respondents) and then converted into potable liquor this would not give the State the power to regulate it. Even according to the demarcation of the fields of legislative competence as envisaged in Bihar Distillery, industrial alcohol for industrial purposes falls within the exclusive control of the Union and according to Bihar Distillery "denatured spirit, of course, is wholly and exclusively industrial alcohol."

43. Besides, the fee is required to be justified with reference to the cost of such regulation. The industry is already paying a fee under R. 2 for such regulation. Indeed the justification for levying the fee under R. 3(a) is the identical justification given by the State for levying the fee under R. 2. Presumably, a full complement of Excise Officers and staff are appointed by the State in the Excise Department to carry out their duties under the Act to oversee, control and keep duty on the various kinds of intoxicants under the Act. Having regard to the decision in Vam Organics-I, we must also assume that apart from the normal strength, additional officers and staff were appointed to regulate the denaturation of the industrial alcohol. There is nothing to show that there has been any deployment of any additional staff to oversee the possibility of renaturation of the denatured spirit.

44. The question is (to borrow the language in Synthetics) whether in the garb of regulations a legislation which is in pith and substance, as we look upon the instant legislation, a fee or levy which has no connection with the cost or expenses administering the regulation, can be imposed purely as a regulatory measure. Judged by the pith and substance of the impugned legislation, we are definitely of the opinion that these levies cannot be treated as part of regulatory measures." The State has not produced any material to show that it was incurring any additional cost for any further regulation of denatured spirit. Any trace of a lingering doubt as to the propriety of the levy under R. 3(a) must be taken to have been noted off effectively with the order passed by three-Judges of this

Court in the writ petition filed by Synthetics challenging the same levy as we have noted earlier. That order has resulted in granting Synthetics and Chemicals Ltd. relief from payment under R. 3(a). The only distinction between the present respondents' cases and Synthetics was that the respondents chose to challenge the levy before the High Court. That could be no rational basis for denying the respondents who are otherwise identically situated, the same relief. (See Anil Kumar Neotia v. Union of India (1998) 2 SCC 587). In the absence of any such correlation the fee under R. 3 is not a fee at all levied for the purpose of additional regulation or for any service rendered but is really a tax in the garb of a fee. 1988 (2) SCC 587 : AIR 1988 SC 1353

45. The appeals must, therefore, be and are hereby dismissed. It appears from the records that since 1982 the High Court had passed interim orders in the series of writ petitions filed by the respondents challenging the validity of the imposition of the licence fee, staying the impugned levy. Separate writ petitions were filed in respect of the assessment years and interim orders obtained in respect of each year. For the excise year 1994-95 initially an order was passed staying the levy of the impugned licence fee subject to the respondents furnishing adequate security. This order was clarified on 2-9-1984 by allowing the respondents to furnish AIR 2001 SC 1723 : 2001 AIR SCW 1758 : 2001 All LJ 1109, para 36 Bank guarantee in respect of the licence fee for the excise year in question subject to which the levy was stayed. For the subsequent years the same interim order was passed. The respondent had, therefore, made no payment to the appellant of the licence fee but had furnished several Bank guarantees which were kept renewed until the disposal of all the writ petitions by the High Court. After allowing the writ petition the High Court directed the discharge of the Bank guarantees. Although this order was stayed when the appeal was admitted by this Court on 25-9-2000, there has been no collection of the disputed levy by the appellants. There is as such no question of any refund being directed of any amount by the appellant to the respondents. Where the levy itself has been held to be invalid, the State-appellant cannot be permitted to realise the amount recovered by the Bank guarantees. (See : Somaiya Organics v. State of U.P. (2001) 5 SCC 519, para 35). We, therefore, dismiss these appeals with costs and direct that the Bank guarantees furnished by the respondents will stand discharged.

Appeal dismissed.

SUPREME COURT OF INDIA AIR 2003 4475

State of Kerala

Vs.

K. Sarojini Amma

C.A.Nos.321-322 of 1998

(Shivaraj V. Patil and D. M. Dharmadhikari, JJ.)

14.10.2003

JUDGEMENT

SHIVARAJ V. PATIL, J.:-

1. The State of Kerala is in appeal assailing the impugned orders passed by the High Court made in exercise of its revisional jurisdiction under Section 103 of the Kerala Land Reforms Act, 1983 (for short 'the Act'). The Taluk Land Board directed the respondents to surrender a total extent of about 2067 acres of land holding that, that was the excess land in their possession as on 1-1-1970, the date on which the ceiling provisions of the Act were brought into force. Late Shri C. Kumaran Nair purchased 1501 acres of land on 22-12-1965 which was a private forest. It was also the case of the respondents that the said land was converted into rubber plantation before 1-1-1970. The legal heirs of late Shri C. Kumaran Nair were the declarants in Ceiling Case S.R. 780 of 1973 in the Taluk Land Board, Perintalmanna. Their main contention was that the area of 1501 acres of land purchased by late Shri C. Kumaran Nair, being a private forest, was exempted under Section 81 of the Act and further that the said land having been converted into rubber plantation before 1-1-1970 also got the benefit of exemption under the said Section. The Taluk Land Board rejected the contentions of the respondents and held that excess land of 1501 acres was in their possession. Hence, aggrieved by the said order, the respondents filed C. R. P. No. 1654 of 1991 in the High Court.

2. The claim made by the assignees of the declarants in respect of the properties in Mannarkkad taluk over 546.56 acres was also rejected on the ground that they failed to establish their claim of plantation over the said land prior to 1-1-1970. Aggrieved by the rejection of their claim, the assignees of the declarants filed C. R. P. No. 1697 of 1991. The High Court by the impugned common order concluded that the area of 1501 acres purchased by late Shri C. Kumaran Nair on 22-12-1965 should be excluded from reckoning in the ceiling area applicable to the respondents but no discussion was made in regard to the subject matter and the questions raised in C. R. P. No. 1697 of 1991. In that situation, a review petition was filed by the respondents in C. R. P. No. 1697 of 1991 which was allowed by the High Court by the order dated 30th July, 1996 holding that non-mentioning of 257 acres of land covered by revision petition in C. R. P. No. 1697 of 1991 was only

an omission and that was to be incorporated in last paragraph of the common order made in both the C. R. Ps. on 11-9-1995 without affecting the order made in C. R. P. No. 1654 of 1991. C. A. No. 324 of 1998 is against this order of the High Court made in review.

3. The learned Counsel for the appellants contended that the High Court in its revisional jurisdiction under Section 103 of the Act was not right and justified in interfering with the order passed by the Taluk Land Board; the High Court could disturb the finding recorded by the Taluk Land Board only when the Board decided the question of law erroneously or failed to decide any question of law; from the impugned order, it cannot be said that the Taluk Land Board had decided any question of law erroneously or failed to decide any question of law. The learned Counsel further submitted that on the facts found by the Taluk Land Board, its conclusions could be sustained; the respondents failed to establish that there was plantation in the lands in question prior to 1-1-1970; further the lands in question being the private forest vested in the Government under the Kerala Private Forests (Vesting and Assignment) Act, 1971.

4. In opposition, the learned Senior Counsel for the respondents made submissions supporting the impugned order for the reasons recorded therein; they submitted that the situation existing on the lands and the nature of lands as on 1-4-1964 were relevant. According to them, the lands in question were private forest as on 1-4-1964 and even assuming that there was no plantation on the lands before 1-1-1970, the position as to exemption of the lands from the calculation to ceiling area is not affected as per Section 81(1)(d); it is not the case that the exempted category of lands on 1-4-1964 were converted into non-exempted category of lands. According to the learned Senior Counsel, when the Taluk Land Board committed a serious error in law as regards the relevant date in considering the exemption in the light of the law laid down by the High Court in the earlier judgments, the High Court was justified in interfering exercising revisional jurisdiction under Section 103 of the Act inasmuch as the Taluk Land Board decided the question of law erroneously on the facts either found or established; the Board also failed to decide the question of law as to the effect when the exempted category of lands were converted to non-exempted category of lands. Even otherwise, the High Court was justified in passing the impugned order in its jurisdiction under Article 227 of the Constitution of India.

5. In order to appreciate the rival contentions urged on behalf of the parties having regard to the facts found or established or admitted, it is useful to notice certain provisions of the Act to the extent they are relevant and having bearing on the decision of the case.

"Section 2(47) - "Private forest" means a forest which is not owned by the Government, but does not include-

(i) areas which are waste and are not enclaves within wooded areas;

(ii) areas which are gardens or nilams;

(iii) areas which are planted with tea, coffee, cocoa, rubber, cardamom or cinnamon; and

(iv) other areas which are cultivated with pepper, arecanut, coconut, cashew or other fruit-bearing trees or are cultivated with any other agricultural crop;"

Section 81 - Exemptions - (1) The provisions of this Chapter shall not apply to-

(a) to (c) .....

(d) private forests;

(e) plantations;"

Section 83 - "No person to hold land in excess of the ceiling area - With effect from such date as may be notified by the Government in the Gazette, no person shall be entitled to own or hold or to possess under a mortgage lands in the aggregate in excess of the ceiling area."

Section 87 - "Excess land obtained by gift etc., to be surrendered - (1) Where any person acquires any land after the date notified under Section 83 by gift, purchase, mortgage with possession, lease, surrender or any other kind of transfer intervivos or by bequest or inheritance or otherwise and in consequence thereof, the total extent of land owned or held by such person exceeds the ceiling area, such excess shall be surrendered to such authority as may be prescribed.

Explanation I - Where any land is exempted by or under Section 81 and such exemption is in force on the date notified under Section 83, such land shall, with effect from the date on which it ceases to be exempted, be deemed to be land acquired after the date notified under Section 83.

Explanation II - Where, after the date notified under Section 83, any class of land specified in Schedule II has been converted into any other class of land specified in that Schedule or any land

exempt under Section 81 from the provisions of this Chapter is converted into any class of land not so exempt and in consequence thereof the total extent of land owned or held by a person exceeds the ceiling area, so much extent of land as is in excess of the ceiling, shall be deemed to be land acquired after the said date."

Section 103 - "Revision by High Court-

(1) (i) .....

(ii) .....

(iii) any final order of the Taluk Land Board under this Act, may, within such time as may be prescribed, prefer a petition to the High Court against the order on the ground that the appellate authority or the Land Board, or the Taluk Land Board, as the case may be, has either decided erroneously, or failed to decide, any question of law.

(1A) .....

(1B) .....

(2) to (4) .....

6. The relevant provisions of the Madras Preservation of Private Forests Act, 1948 (for short 'the MPPF Act') are as under :-

Section 3. "Preservation of Private Forests-

(1)(a) - No owner of any forest shall, without the previous sanction of the District Collector sell, mortgage, lease or otherwise alienate the whole or any portion of the forest.

Explanation - .....

(b) Any alienation in contravention of clause (1) shall be null and void -

(i) if the alienation is of any forest declared by the District Collector to be a forest under clause (iii) of Section 1(2) or of any portion of such a forest, and is made on

or after the date on which the declaration takes effect;

(ii) [.....]

(iii) if the alienation is of any other forest or of any portion of such a forest, and is made on or after the 16th August, 1946."

7. Section 2(f) of the Kerala Private Forests (Vesting and Assignment) Act, 1971 reads as under:-

"private forests" means-

(1) in relation to the Malabar district referred to in sub-section (2) of Section 5 of the State Reorganisation Act, 1956 (Central Act 37 of 1956)-

(i) any land which the Madras Preservation of Private Forest Act, 1949 (Madras Act XXVII of 1949) applied immediately before the appointed day excluding-

(A) land which are gardens or nilams as defined in the Kerala Land Reforms Act, 1963 (1 of 1964).

(B) land which are used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon and lands used for any purpose ancillary to the cultivation of such crops or for the preparation of the same for the market."

It is clear from the definition of private forests given in Kerala Private Forests (Vesting and

Assignment) Act, 1971 that any land to which the MPPF Act applied immediately before the appointed day was a private forest. Admittedly, to the lands in question, the MPPF Act was applicable as the very permission for selling the lands was granted by the District Collector under Section 3(1)(a) of the MPPF Act.

8. Sections 81 and 82 of the Act appearing in Chapter III came into force on 1-4-1964 and Section 83 of the Act relating to ceiling area was brought into force w.e.f. 1-7-1970. The Kerala Forests (Vesting and Assignment) Act, came into force on 10-5-1971.

9. The Taluk Land Board directed the respondents to surrender excess land of 2067 acres holding that they were in possession of this excess land as on 1-1-1970, the date on which the ceiling provisions of the Act came into force. According to the respondents, they were not the excess lands being private forests falling within the purview the MPPF Act and the same had been converted into a plantation before 1-1-1970. According to them, these lands were exempted under Section 81(1)(d) and (e). The Taluk Land Board did not accept the plea of the respondents. It recorded a finding that the respondents did not place records and proper evidence to show that the lands held by them were private forests to claim exemption and to prove that those lands had been converted into rubber plantation before 1-1-1970. Thus, rejecting the claim of the respondents for exemption, the Board held that the respondents had to surrender the total extent of 2067 acres of land.

10. The High Court upset the order passed by the Taluk Land Board observing thus :

"It appears that even the State has no dispute on the point that the land purchased by Shri Kumaran Nair was initially a private forest falling within the purview of Madras Preservation of Private Forests Act. This may be because the State cannot now wriggle out of the permission granted by the District Collector on 23-8-1965 under Section 3(1)(a) of the MPPF Act in favour of one Abdul Haji and Kadarshah for selling the property of Shri Kumaran Nair. District Collector could have granted permission only if the property fell within the meaning of the said Act. If it was a private forest and remained so on 1-1-1970 such land was exempted from the ceiling provisions enumerated in Chapter III of the Kerala Land Reforms Act. If private forest had been converted into plantation before 1-1-1970 then also the same would stand exempted from the ceiling provisions. This can be discerned from Section 81(a), (d) and (e) of the Kerala Land Reforms Act. Learned Senior Counsel invited my attention to the decision rendered by U. L. Bhat, J. (as his Lordship then was) reported in Alekutty John v. Taluk Land Board (1981 Ker LT 731) that the crucial date as for Section 81 was 1-4-1964 and not 1-1-1970. The latter may be important if the exempted category happened to be a non-exempted category before that date. I would say that if the exempted category was converted into another exempted category before 1-1-1970 the position would still remain unaffected as for the declarant."

11. The High Court has also recorded in the impugned order that a specified question was put to the learned Additional Advocate General as to whether the State had a case that private forest was not converted into a plantation before 1-1-1970 and that the learned Additional Advocate General

replied that he was not definite about it.

12. It is on record that the District Collector, Palakkad granted permission to transfer 1501 acres of land to Abdul Haji and Kadarshah in favour of late Shri Kumaran Nair on 23-8-1965. In the said permission, there is reference to the MPPF Act - Survey of Forest and alteration granted in respect of 1583.95 acres and that on the application made by Abdul Haji and Kadarshah permission was granted under Section 3(1)(a) of the said Act and the rules and regulations made thereunder read with Section 119 of the States' Reorganisation Act, 1956 and clause 4(1) of the Kerala Adoption of Laws Order, 1956 to sell various lands measuring 1583.95 acres in favour of late Shri Kumaran Nair. The permission also indicates that separate permission was to be obtained from the Collector for felling trees. It is not disputed that the said Act applies to the private forests. Previous sanction of the District Collector was required under Section 3(1) of the said Act in case an owner of the forest i.e. private forest wished to alienate any portion of the forest. The fact that the owners of the private forest applied to the District Collector seeking permission to sell the forest land of 1501 acres in favour of late Shri Kumaran Nair and that the District Collector granted permission accordingly under the Act as early as on 23-8-1965 is a matter of record. If the lands were not private forests, there was no question of the owners applying for previous sanction and at any rate District Collector granting permission under S. 3(1)(a) of the Act did not arise. If the lands were not private forests, the District Collector ought to have refused permission as rightly observed by the High Court. The Taluk Land Board committed a serious error both on facts and in law in holding that the respondents failed to prove that the lands in question were private forests. As per S. 81(1)(d), private forests are exempted in reckoning or determining the ceiling area of a holder of the lands. Although material was placed before the Board to show that the forest lands were converted into plantation before 1-1-1970, the Taluk Land Board rejected the plea of the respondents as to the conversion into plantations before 1-1-1970. Under Section 81(1)(d) and (e), both private forests and plantations are exempted. Assuming that the respondents failed to establish that the forest lands were not converted into plantation before 1-1-1970, yet it did not affect their claim for exemption as the lands continued to be private forests. It is not the case of the appellants that the exempted category of lands were converted into non-exempted category of lands so as to apply S. 87 of the Act. It is not the case where exemption available to private forest ceased. For the purpose of reckoning the ceiling area of the holder of the lands, the position existing as on 1-4-1964 is to be taken into consideration subject to S. 87 of the Act. The Kerala High Court has considered this aspect of the matter in earlier decisions. In Aleykutty John v. Taluk Land Board (1981 KLT 731) in paras 7 and 8 of the said judgment, it is held thus:-

"7. S. 82(4) states that where after the commencement of this Act, any class of land specified in Schedule II has been converted into any other class of land specified in that Schedule or into a plantation, the extent of land liable to be surrendered by a person owning or holding such land shall be determined without taking into consideration such conversion. The date of the commencement of the Act for the purpose of S. 84 is undoubtedly 1-4-1964. This has been made clear by this Court in Ramunni Nair v. The State of Kerala (1976 K.L.T. 732) and by the Supreme Court in Mathew and others v. Taluk Land Board (1979 KLT 601) . The date of commencement of the Act i.e. 1-4-1964 is significant in two ways; that is, the nature of the land on a particular day and the conversion after that day. Section 82(4) will be attracted only if the land was of the nature specified in Schedule II on 1-4-1964. Again, only where the conversion was made after 1-4-1964, this provision will be

attracted. In other words, the meaning of this provision would be clearly brought out if we read the provision in the following way: AIR 1975 Kerala 104

AIR 1979 SC 1573

"Where any class of land of the nature specified in Schedule II at the commencement of the Act i.e. on 1-4-1964 has been after the commencement of this Act, i.e. 1-4-1964, converted into any other class of land specified in that schedule or into a plantation, the extent of land liable to be surrendered by a person owning or holding such land shall be determined without taking into consideration such conversion."

If the provision is read in the above manner, it will bring out correctly the legislative meaning. The time element is relevant vis-a-vis conversion as well as the nature of the property prior to conversion. On 1-4-1964 the land must be of the class specified in Schedule II. After 1-4-1964 it must be converted into any other class of land specified in Schedule II or a plantation. It is only where both these conditions are satisfied that the operation of the provision would be attracted. If one of these conditions is not satisfied, the provision will not have any operation at all.

8. The above proposition can be explained in the following way. One of the conditions is that the conversion must be after the commencement of the Act, viz. 1-4-1964. Of course, if the conversion is after 1-1-1970, this provision will not be applicable though under the general scheme of Chapter III such a conversion will have to be ignored or in appropriate cases it may attract the operation of S. 87 of the Act. Then there is the other condition; the land must be a class of land specified in Schedule II on 1-4-1964. If the land was a house site on 1-4-1964 and ceased to be house site and has become dry land thereafter, this condition is not fulfilled and S. 82(4) will not be attracted. If the land was plantation on 1-4-1964 and has been converted into dry land or cocoanut garden thereafter (but before 1-1-1970), this condition is not fulfilled. That is because on 1-4-1964 the land was not of the class specified in Schedule II. If this be the proper way to understand the scope of S. 82(4), and I have no doubt that it is so, it would follow that whenever it is found that land is exempt by reason of its falling within one or the other of the clauses in S. 81(1) of the Act (I am not taking into consideration clauses (b), (h) and (k) which are not permanent exemptions or which are only exemptions of a temporary nature) it cannot be taken into account for the purpose of determining the ceiling area under S. 85 whatever may have happened to its nature after 1-4-1964 and before 1-1-1970 and even thereafter, subject of course to S. 87. In this view, the fact that land which was private forest on 1-4-1969 has been converted into dry land in 1965 and thereafter into plantation in 1969 will not matter at all and the land continues to be exempted for the purpose of S. 85 of the Act."

13. The same High Court yet in another case in Joseph Thomas v. State of Kerala (1987 (2) KLT 273) has taken the view that "On a plain reading of S. 81, it is clear that "private Forests" belong to that category of land which enjoys the exemption without any restriction. If that be so, 'private forest' converted into rubber plantation, although the conversion took place after 1-4-1964, requires

to be excluded from the accounts of the declarant because the land converted belongs to the category of lands permanently exempted from the purview of the ceiling provisions contained in KLR Act."

14. Thus, this being the legal position, in the absence of any material the private forests were converted into non-exempted category of lands, it was not permissible to the Taluk Land Board to deny the benefit of exemption claimed by the respondents. Hence, the High Court was right in upsetting the order of the Taluk Land Board.

15. The alternative argument advanced on behalf of the appellants that the lands in question vested in the State by virtue of the provisions of the Kerala Private Forests (Vesting and Assignment) Act, 1971 does not help the appellants as on this front also the State had failed in the proceedings taken up under the said Act. The Forest Tribunal by its order dated 21-7-1978 in O. A. Nos. 81/1986, 82/1976, 83/1976 and 84/1976 had held that the land did not vest in the Government except some rocky and other portions stated in the said order. Appeal filed before the High Court by the State of Kerala challenging the said order of the Forest Tribunal was also dismissed. Further, even the S. L. P. filed in this regard against the order of the High Court passed in the appeal was dismissed. In this view, the argument that the lands in question vested in the State cannot be accepted.

16. What remains to be considered is whether the High Court committed an error of jurisdiction in passing the impugned order when the Taluk Land Board did not consider the question of law erroneously or failed to consider any question of law. From the facts found and looking to the provisions of law and the discussion made in the impugned order of the High Court, it is clear that the Taluk Land Board decided the question of law erroneously in taking the view that the benefit of exemption available to private forests could be denied on account of non-conversion of those lands into plantation before 1-1-1970. As already discussed above, denying the benefit of exemption of the lands being private forests when they were not converted into category of non-exempted lands was a clear case of deciding the question of law erroneously. This apart, as held by this Court in dealing with the scope of the provision of S.103 of the Act in Baby v. Travancore Devaswom Board and Ors. (1998 (8) SCC 310) the High Court had powers under Article 227 of the Constitution of India to quash the orders passed by the Tribunals if the findings of fact had been arrived at by non-consideration of the relevant and material documents. Para 6 of the said judgment reads : AIR 1999 SC 519 :1999 AIR SCW 120

"But that, in our opinion, is not the end of the matter. The High Court had still powers under Article 227 of the Constitution of India to quash the orders passed by the Tribunals if the findings of fact had been arrived at by non-consideration of the relevant and material documents the consideration of which could have led to an opposite conclusion. This power of the High Court under the Constitution of India is always in addition to the powers of revision under S. 103 of the Act. In that view of the matter, the High Court rightly set aside the orders of the Tribunals. We do not, therefore, interfere under Article 136 of the Constitution of India. The appeals fail and are dismissed."

17. The decision of this Court in Kerala Ayurveda Vydyasala Ltd. v. Pandara Valappil Kallianai and Anr. (1999 (3) SCC 238) on which reliance is placed on behalf of the appellants in support of their contention as to the limited jurisdiction of the High Court under S. 103 of the Act, in our view, does not help them. The said decision was on the facts of that case. That was a case where the learned single Judge of the High Court did not record a finding that the Tribunal or the appellate authority has either decided a question of law or has failed to decide the question of law. But a perusal of the impugned judgment in the present case shows that the High Court has recorded that the Taluk Land Board decided the question of law erroneously. Even otherwise, in the light of the decision in Baby v. Travancore Devaswom Board and Ors. (supra) the High Court could exercise powers under Section Article 227 of the Constitution of India.

18. Having regard to all aspects and in the light of what is stated above, we decline to interfere with the impugned orders. Consequently, the appeals are dismissed. Parties to bear their costs.

Appeals dismissed.