

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 8667-8668 OF 1997

THE COMMNR OF INCOME TAX, WEST BENGAL III

Appellant (s)

VERSUS

M/S.VARAS INTERNATIONAL (P) LTD

Respondent(s)

(With office report )

Civil Appeal NO. 4286-87 of 2000

(With prayer for interim relief and office report)

Civil Appeal NO. 4571 of 2000

(With prayer for interim relief and office report)

Civil Appeal NO. 4488 of 2000

(With office report)

Civil Appeal NO. 4489 of 2000

(With office report)

Civil Appeal NO. 4857-4858 of 2000

(With prayer for interim relief and office report)

Civil Appeal NO. 4907 of 2000

(With prayer for interim relief and office report)

SLP (Civil) No.18984 of 2000

(with appln.for c/delay in filing SLP and with prayer for interim relief and office report)

Civil Appeal NO. 887 of 2001

(With office report)

Civil Appeal NO. 5623 of 2000

(With prayer for interim relief and office report)

SLP (Civil) No.4400 of 2001

(with appln.for c/delay in refiling SLP and c/delay in filing SLP and with office report)

SLP (Civil) No.632 of 2001

(with appln.for c/delay in refiling SLP and c/delay in filing SLP and  
with prayer for interim relief and office report)

SLP (Civil) No.11371 of 2001

(with appln.for c/delay in filing SLP and with prayer for interim relief and  
with office report)

SLP (Civil) No.12054 of 2001

(with prayer for interim relief and with office report)

Civil Appeal NO. 4164 of 2000

(With prayer for interim relief and office report)

Civil Appeal NO. 4782 of 2000

(With prayer for interim relief and office report)

Civil Appeal NO. 4929 of 2000

(With prayer for interim relief and office report)

Civil Appeal NO. 5083 of 2000

(With prayer for interim relief and office report)

Civil Appeal NO. 4908 of 2000

(with appln.for c/delay in filing SLP and

(With prayer for interim relief and office report)

Civil Appeal NO. 4911 of 2000

(With prayer for interim relief and office report)

Civil Appeal NO. 4912 of 2000

(With prayer for interim relief and office report)

Civil Appeal NO. 4913 of 2000

(With prayer for interim relief and office report)

Civil Appeal NO. 5328 of 2000

(With prayer for interim relief and office report)

:2:

SLP (Civil) No.16743 of 2000

(with appln.for c/delay in filing SLP and with office report)

SLP (Civil) No.16741 of 2000

(with appln.for c/delay in filing SLP and with prayer for interim relief and  
with office report)

Civil Appeal NO. 5771 of 2000

(With prayer for interim relief and office report)

Civil Appeal NO. 5746 of 2000

(With prayer for interim relief and office report)

Civil Appeal NO. 5745 of 2000

(With prayer for interim relief and office report)

Civil Appeal NO. 5824 of 2000

(With prayer for interim relief and office report)

SLP (Civil) No.17909-17911 of 2000

(with appln.for c/delay in filing SLP)

(With prayer for interim relief and office report)

Civil Appeal NO. 6106 of 2000

(With prayer for interim relief and office report)

Civil Appeal NO. 6107 of 2000

(With office report)

Civil Appeal NO. 5970 of 2000

(With prayer for interim relief and office report)

Civil Appeal NO. 312 of 2001

(With prayer for interim relief and office report)

SLP © No.11358 of 2001

(with prayer for interim relief and office report)

Civil Appeal NO. 4491 of 2001

(With office report)

Civil Appeal NO. 5080 of 2000

(With prayer for interim relief and office report)

SLP (Civil) No.18118 of 2001

(with prayer for interim relief and office report)

Civil Appeal NO. 2383 of 2002

(With prayer for interim relief and office report)

Civil Appeal NO. 558 of 2002

(With office report)

Civil Appeal NO. 130-131 of 2003

(With office report)

SLP (Civil) No.24514-17 of 2002

(with prayer for interim relief and office report)

Civil Appeal No.633 of 2003

SLP (Civil) No.2401 of 2003

(with prayer for interim relief and office report)

SLP (Civil) No.2412 of 2003

(with office report)

SLP (Civil) No.2399 of 2003

SLP (Civil) No.2893 of 2003

(with office report)

SLP (Civil) No.2349 of 2003

(with appln.for c/delay in filing SLP,prayer for interim relief and  
office report)

SLP (Civil) No.2350 of 2003

(with appln.for c/delay in filing SLP,prayer for interim relief and  
office report)

SLP (Civil) No.2351 of 2003

(with appln.for c/delay in filing SLP and office report)

SLP (Civil) No.2347 of 2003

(with appln.for c/delay in filing SLP,prayer for interim relief and  
office report)

SLP (Civil) No.2674 of 2003

(with appln.for c/delay in filing SLP)

Civil Appeal No.1301 of 2003

(with office report)

:3:

SLP (Civil) No.5912 of 2003

(with appln.for c/delay in filing SLP,prayer for interim relief and  
office report)

SLP (Civil) No.5914 of 2003

(with appln.for c/delay in filing SLP,prayer for interim relief and  
office report)

SLP (Civil) No.5770-71 of 2003

(with appln.for c/delay in filing SLP,prayer for interim relief and

office report)

SLP (Civil) No.5348 of 2003

(with appln.for c/delay in filing SLP and office report)

SLP (Civil) No.5350-51 of 2003

(with appln.for c/delay in filing SLP)

Civil Appeal 2004-2005 of 2003

SLP (Civil) No.6284 of 2003

(with prayer for interim relief and office report)

SLP (Civil) No.6286 of 2003

(with prayer for interim relief and office report)

SLP (Civil) No.6287 of 2003

(with prayer for interim relief and office report)

SLP (Civil) No.7148 of 2003

(with appln.for c/delay in filing SLP,prayer for interim relief and office report)

SLP (Civil) No.7406 of 2003

(with appln.for c/delay in filing SLP,prayer for interim relief and office report)

Civil Appeal No.3617 of 2003

(with office report)

Civil Appeal No.4084 of 2003

(with office report)

Civil Appeal No.4103 of 2003

(with office report)

Civil Appeal No.4485-86 of 2003

(with office report)

SLP © No.12255 of 2003

(with appln.for c/delay in filing SLP, with prayer for interim relief and office report)

Civil Appeal No.5492 of 2003

(with office report)

SLP © No.2965 of 2004

(with appln.for c/delay in filing SLP)

SLP © No.3363 of 2004

(with appln.for c/delay in filing SLP and substituted service

Civil Appeal No.1727 of 2004

(with office report)

Civil Appeal No.1729 of 2004

(with office report)

Civil Appeal No.1728 of 2004

(with office report)

Civil Appeal No.1730 of 2004

SLP (Civil) No.7048 of 2004

(with office report on default)

SLP (Civil) No.7047 of 2004

Civil Appeal No.2153 of 2004

(with office report)

SLP (Civil) No.7547 of 2004

(with appln. For c/delay in filing SLP)

Civil Appeal No.2794 of 2004

(with office report)

Civil Appeal No.2799 of 2004

(with office report)

Civil Appeal No.2800 of 2004

(with office report)

:4:

Civil Appeal No.2801 of 2004

(with prayer for interim relief and office report)

Civil Appeal No.4002 of 2004

(with office report)

SLP (Civil) No.12396-97 of 2004

(with appln. For c/delay in filing SLP)

Civil Appeal No.5677 of 2004

(with office report)

SLP (Civil) No.20299 of 2004

(with appln. For c/delay in filing SLP and with office report)

Civil Appeal No.7198 of 2004

(with office report)



For Respondent(s) Mr. Joseph Vellapally, Sr. Adv.

Mr. Ragvesh Singh, Adv.

Mr. Atul Sharma, Adv.

Mr. Sanjay Bhatt, Adv.

Mr. P.K. Sinha, Adv.

Mr. A.N. Choudhary, Adv.

Mrs. Nandini Gore, Adv.

:5:

Mr. Dhruv Mehta, Adv.

Mr. Harsh Vardhan Jha, Adv.

Mr. Yashraj Singh Deora, Adv.

Mr. A.A. Kulkarni, Adv.

For M/S K.L. Mehta & Co.

Mr. Shantha Kr. V. Mahale, Adv.

Mr. Rajesh Mahale, Adv.

Mr. R.C. Kohli, Adv.

Mr. S. Manjunath, Adv.

Mr. S. Sarangan, Sr. Adv.

Ms. Asha G. Nair, Adv.

Ms. Anu Mohla, Adv.

Mr. S.N. Bhat, Adv.

Mr. S. Sukumaran, Adv.

Mr. A. Deb Kumar, Adv.

Mr. Kulbhushan Arora, Adv.

Mr. K. Rajeev, Adv.

UPON hearing counsel the Court made the following

O R D E R

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2000,  
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001,  
2003,  
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In C.A. Nos.4286-4287/2000, 4488/2000, 4857-4  
4907/2000, 5083/2000, 4911/2000, 4912/2000, 4913/2000, 4485-86/2003,  
1729/2004, 4002/2004, 4164/2000, 4782/2000, 4929/2000, 5745/  
6106/2000, 5080/2000, 558/2000, 130-131/2003, 5492/2003, SLP  
Nos.18984/2000, 16743/2000, 17909-11/2000, 11358/2001, 18118/2  
2412/2003, 2893/2003, 2349/2003, 5912/2003, 5348/2003, 6284/  
6286/2003, 6287/2003, 2965/2004, 7047/2004, 9308/2005, 24514  
24517/2002, 2401/2003, 2350/2003, 2347/2003, 5770-5771/2003:

Delay condoned.

The civil appeals and special leave petitions are dismissed.

In rest of the matters delay condoned, 1  
leave granted and  
appeals are disposed of with no order as to costs.

[USHA BHARDWAJ]

[MADHU SAXENA]

COURT MASTER

COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8667-8668 OF 1997

THE COMMISSIONER OF INCOME TAX,

... APPELLANT

WEST BENGAL III

VERSUS

M/S VARAS INTERNATIONAL (P) LTD.

... RESPONDENTS

AND

Civil Appeal No. 4286-87 of 2000  
Civil Appeal NO. 4571 of 2000  
Civil Appeal NO. 4488 of 2000  
Civil Appeal NO. 4489 of 2000  
Civil Appeal NO. 4857-4858 of 2000  
Civil Appeal NO. 4907 of 2000  
SLP (Civil) No.18984 of 2000  
Civil Appeal NO. 887 of 2001  
Civil Appeal NO. 5623 of 2000  
C.A. No...../2006 @ SLP (Civil) No.4400 of 2001  
C.A. No...../2006 @ SLP (Civil) No.632 of 2001  
C.A. No...../2006 @ SLP (Civil) No.11371 of 2001  
C.A. No...../2006 @ SLP (Civil) No.12054 of 2001  
Civil Appeal NO. 4164 of 2000  
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Civil Appeal NO. 5328 of 2000  
C.A. No...../2006 @ SLP (Civil) No.16743 of 2000  
C.A. No...../2006 @ SLP (Civil) No.16741 of 2000  
Civil Appeal NO. 5771 of 2000  
Civil Appeal NO. 5746 of 2000  
Civil Appeal NO. 5745 of 2000  
Civil Appeal NO. 5824 of 2000  
SLP (Civil) No.17909-17911 of 2000  
Civil Appeal NO. 6106 of 2000  
Civil Appeal NO. 6107 of 2000  
Civil Appeal NO. 5970 of 2000  
Civil Appeal NO. 312 of 2001

SLP © No.11358 of 2001  
Civil Appeal NO. 4491 of 2001  
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SLP (Civil) No.18118 of 2001  
Civil Appeal NO. 2383 of 2002  
Civil Appeal NO. 558 of 2002  
Civil Appeal NO. 130-131 of 2003  
SLP (Civil) No.24514-17 of 2002  
Civil Appeal No.633 of 2003  
SLP (Civil) No.2412 of 2003  
C.A. No...../2006 @ SLP (Civil) No.2399 of 2003  
SLP (Civil) No.2893 of 2003  
SLP (Civil) No.2349 of 2003  
SLP (Civil) No.2350 of 2003  
C.A. No...../2006 @ SLP (Civil) No.2351 of 2003  
SLP (Civil) No.2347 of 2003  
C.A. No...../2006 @ SLP (Civil) No.2674 of 2003  
Civil Appeal No.1301 of 2003  
SLP (Civil) No.5912 of 2003  
C.A. No...../2006 @ SLP (Civil) No.5914 of 2003  
SLP (Civil) No.5770-71 of 2003  
SLP (Civil) No.5348 of 2003  
C.A. No...../2006 @ SLP (Civil) No.5350-51 of 2003  
Civil Appeal 2004-2005 of 2003  
SLP (Civil) No.6284 of 2003  
SLP (Civil) No.6286 of 2003  
SLP (Civil) No.6287 of 2003  
C.A. No...../2006 @ SLP (Civil) No.7148 of 2003  
C.A. No...../2006 @ SLP (Civil) No.7406 of 2003  
Civil Appeal No.3617 of 2003  
Civil Appeal No.4084 of 2003  
Civil Appeal No.4103 of 2003  
Civil Appeal No.4485-86 of 2003  
C.A. No...../2006 @ SLP © No.12255 of 2003

Civil Appeal No.5492 of 2003  
SLP © No.2965 of 2004  
C.A. No...../2006 @ SLP © No.3363 of 2004  
Civil Appeal No.1727 of 2004  
Civil Appeal No.1729 of 2004  
Civil Appeal No.1728 of 2004  
Civil Appeal No.1730 of 2004  
C.A. No...../2006 @ SLP (Civil) No.7048 of 2004  
SLP (Civil) No.7047 of 2004  
Civil Appeal No.2153 of 2004  
C.A. No...../2006 @ SLP (Civil) No.7547 of 2004  
Civil Appeal No.2794 of 2004

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Civil Appeal No.2799 of 2004  
Civil Appeal No.2800 of 2004  
Civil Appeal No.2801 of 2004  
Civil Appeal No.4002 of 2004  
C.A. No...../2006 @ SLP (Civil) No.12396-97 of 2004  
Civil Appeal No.5677 of 2004  
C.A. No...../2006 @ SLP (Civil) No.20299 of 2004  
Civil Appeal No.7198 of 2004  
Civil Appeal No.7818 of 2004  
Civil Appeal No.6644 of 2004  
Civil Appeal No.6645 of 2004  
SLP (Civil) No.9308 of 2005  
C.A. No...../2006 @ SLP (Civil) No.10930 of 2005  
C.A. No...../2006 @ SLP (Civil) No.21115 of 2005  
C.A. No...../2006 @ SLP (Civil) No.21112 of 2005  
Civil Appeal No.873 of 2006  
SLP (Civil) No.2401 of 2003

O R D E R

In C.A. Nos.4286-4287/2000, 4488/2000, 4857-4858/2000, 4907/2000,

5083/2000, 4911/2000, 4912/2000, 4913/2000, 4485-86/2003, 1729/2004,  
4002/2004, 4164/2000, 4782/2000, 4929/2000, 5745/2000, 6106/2000,  
5080/2000, 558/2000, 130-131/2003, 5492/2003, SLP (C) Nos.18984/2000,  
16743/2000, 17909-11/2000, 11358/2001, 18118/2001, 2412/2003, 2893/2003,  
2349/2003, 5912/2003, 5348/2003, 6284/2003, 6286/2003, 6287/2003,  
2965/2004, 7047/2004, 9308/2005, 24514-24517/2002, 2401/2003, 2350/2003,  
2347/2003, 5770-5771/2003:

Delay condoned.

Having regard to the provisions of Section 17 and 24 of  
the  
Karnataka Excise Act, 1965, the conclusion of the Division Bench  
of the

Karnataka High Court cannot be questioned. The civil appeals and special  
leave petitions are, accordingly, dismissed.

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In rest of the matters:

Leave granted.

The assessment years in question are 1984-85 and 1985-86. The  
respondent imported spirit from outside West Bengal for the assessment  
years in question in terms of Rule-6 of the West Bengal (Manufacture of  
Country Spirit in Labelled and Capsuled Bottles) Rules, 1979 (hereinafter  
referred to as the 'Rules'). Apart from the fee which is payable by  
the  
manufacturer for the privilege of manufacturing of country spirit in labelled  
and capsuled bottles, an additional fee, was payable on the import of spirits.  
Initially, this fee which was introduced for the first time in 1981, w  
as  
leviable at the rate of Rs.0.60. The rate was reduced to Rs.0.50 by

subsequent amendment of Rule-6.

The respondent/assessment's claim for deduction of the amounts payable was rejected by the I.T.O. on the ground that Section 43-B of the Income Tax Act, 1961 applied. The assessee preferred an appeal to the

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Commissioner. The Commissioner dismissed the appeal holding "fee payable to the Government by whatever name it is called is a duty and hence it is hit by mischief of Section 43B".

The respondent/assessee carried the matter by way of an appeal before the Income Tax Appellate Tribunal. The Tribunal notice the submission of the Revenue which appears to have been two fold. It was contended that the additional fee was a fee for the purposes of Section 43-B of the Income Tax Act, 1961. It was also contended that it was an excise levy. The Tribunal, however, rejected the submission of the Revenue holding that Section 43-B had included the word 'fee' after the assessment years in question and, therefore the same could not be included within the provisions of that Section for the purposes of rejecting the respondent's claim for deduction. The appellant then filed Reference Applications for the two assessment years under Section 256(1) of the Act. The three questions were:

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"1) Whether, on the facts and in the circumstances of the case and on a correct interpretation of the amendment made by the Finance Act, 1988 to the Section 43B (a) of the Income Tax Act, 1961, which has been explained as clarificatory of legislative intention by the Explanatory notes issued by the Government, the Tribunal was justified in law in not holding that the said amendment will be retrospective in its application?

2) Whether, on the facts and in the circumstances of the case and on a correct interpretation of Section 2(10) of the West Bengal Excise Act, 1909 by applying the principles of "Ejusdem Generis" the Tribunal was justified in law in holding that the privileged and specified fee as mentioned in rules 2 and 6 of the Excise Rules cannot be construed as the fee used in Section 43B (a) of the Income Tax Act, 1961?

3) Without prejudice to question No.(1) and (2) above whether on the facts and in the circumstances of the case, and on a correct interpretation of the Income Tax Law and the State Excise Law, the Tribunal was justified in holding that the fees payable by the assessee was not excise duty and thereby deleting the addition made in the assessment in this regard?"

The High Court answered the Reference in favour of the assessee holding that the amount paid by the assessee was really neither a duty nor a

cess nor fee but was a price for the grant of a privilege.

Initially when the appeal was entertained by this Court the appellant had argued that the amount payable on the import of spirits was a fee. That was why the Court was of the opinion that the issue should be heard by a Bench of five learned Judges on the question whether the decision of three learned Judges in the cases of Commissioner of Income Tax, Bombay vs. Podar Cement Pvt. Ltd. [(1997) 5 SCC 482], Allied Motors (P) Ltd. vs. Commissioner of Income Tax [224 ITR 677], Suwalal Anandlal Jain vs. Commissioner of Income Tax [224 ITR 753] and the judgment of a bench of two learned Judges in Brij Mohan Das Laxman Das vs. Commissioner of Income Tax [223 ITR 825] needed consideration. The question which was framed specifically by the referring Court for this purpose was "For the amendment of a statute to be construed as being retrospective, should not the amended provision itself indicate, either in terms or by necessary implication, that it is to operate retrospectively?"

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The issue came up before the Constitution Bench on 2nd February, 2006. The Constitution Bench was of the view that there was no conflict which required resolution and that the issue required to be determined in question did not need reconsideration. The matter was accordingly

remanded back to this Court for disposal of the matter on merits.

When the matter was placed before this Court it was argued by

Mr. Mohan Parasaran, learned Additional Solicitor General, that the amount that had been levied on the respondent was in fact a countervailing duty. It

was pointed out that the State Government was competent under Entry 51

of List II to levy excise duty and countervailing duty and that the word

'duty' under Section 43-B before its amendment would cover both duties.

Mr. Joseph Vellapally, learned senior counsel appearing on behalf

of the respondent, has submitted that this issue had never been raised at any stage of the

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proceedings. It was submitted that even before the Tribunal the

case of the Department was that it was an excise duty. It is submitted that

the questions as framed including question 3 would clearly show that the Department was raising the issue of the impost being countervailing duty for the first time before this Court.

We find that the order of the C.I.T. (A) is not very clear on this

aspect. As far as the Tribunal is concerned, it is true that the submission of

the Department was that the levy was either a fee or excise duty. However,

we note that Rule-6 under which the levy is imposed on the import of spirit

is contained in the rules which are described as Excise Rules. Additionally

we find that in the grounds of the appeal before this Court it has been

submitted that the levy was a duty and the duty would include payment on public revenue levied on the import, export, manufacture or sale and that the additional fee was nothing but duty and Section 43-B of the Income Tax Act, 1961 was fee on any sum payable by

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the assessee by way of tax or duty under any law for the time being in force.

In any event, the tribunal certainly erred in not dealing with the contention

relating to the levy being an excise duty. The High Court also erred in

holding that even an excise duty or other duty imposable by virtue of Entry-

51 of List II would be covered by the principle that the amount levied under

that Entry should also be treated as a price or consideration for the purposes of the grant of privilege with regard to the manufacture of alcohol.

Having said this, we are of the view that the respondent's grievance

that the issue has not been squarely raised either before the Tribunal and

the reference application is strictly speaking correct. Nevertheless granting

the benefit of the doubt to the Department that what was intended to be

argued was that it was a countervailing duty , we cannot shut out what is a

pure question of law from consideration. However, we

feel that an opportunity should be granted to the respondent of meeting this case fairly. Accordingly, we set aside the decision of the High Court as well as the Tribunal and remand the matters back to the Tribunal for the purposes of deciding this issue alone. We make it clear that we have not decided the issue on merits in any manner whatsoever and it will be open to the parties to raise whatever points on this issue before the Tribunal as they may be advised and they may be entitled in law.

The appeals are disposed of accordingly. There will be no order as to costs.

.....J

[ RUMA PAL ]

.....J.

New Delhi,

[ DALVEER BHANDARI ]

March 02, 2006.