IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETTION NO.105 OF 2010

Goa State Coop Milk Producers Union Ltd. , a registered co-operative society, with office at Curti, Ponda, Goa. … Petitioner

V/s.

1. State of Goa
by its Chief Secretary, Secretariat, Porvorim, Goa.

2. The Director (Animal Husbandry)
And Jt. Secretary (Ex Officio)
Pashusamvardhan Bhavan, Patto, Panaji, Goa.

3. The Competent Authority
and Veterinary Officer,
Veterinary Dispensary, Mollem, Goa. ... Respondents

Mr. A.F. Diniz, Senior Counsel with M. Ryan Menezes and Mr. Nigel Fernandes, Advocates for the petitioner.

Mr. D.J. Pangam, Advocate General with Mr. P. Faldessai, Additional Government Advocate. for the respondents.

Coram:- T.V. NALAWADE &

BHARATI DANGRE, JJ.

Reserved on : 16th February,2021.

Pronounced on : 4th March, 2021

JUDGMENT (Per Bharati Dangre, J.)

1. By the Writ Petition instituted by the Goa State Co-operative Milk Producers Union Limited, a relief is sought to declare the provision of the Goa Cess on Fluid Milk (Control) Act, 2000 including Section 4 as unconstitutional and void. Declaration is also sought that Rule 3 of the Goa Cess and Fluid Milk (Control) Rules, 2001 (hereinafter referred to as 'the Rules') is ultra vires since it has traveled beyond the Parent Act. A writ in the nature of Mandamus is also sought commanding the respondents to forthwith refund to the petitioner a sum of Rs.1,09,19,313/- along with interest thereon at the rate of prime lending rate of the State Bank of India in force on the date of petition, on ground that it has been recovered without validity of law.

2. On 29th March, 2010 the following order was passed in the writ petition:

> "*Rule.*
>
> *2. The respondents waive service of notice.*
>
> *3. The collection of any cess shall be subject to the outcome of this Writ Petition. In the event of the petitioner succeeding, the respondents shall refund the*

amount together with the interest at such rate that may be decided at the time of deciding the petition."

3. The learned Senior Counsel Mr. A. F. Diniz assisted by Mr. Ryan Menezes and Mr. Nigel Fernandes for the petitioner submits that the impugned levy by way of cess is unconstitutional, in absence of the legislative competence of the State legislature. His submission is that the levy imposed by the charging Section, being Section 4 in the Goa Cess on Fluid Milk (Control) Act, 2000 (hereinafter referred to as 'the Act') levy cess for use of facilities for consumption and since the levy is imposed on sale of milk by the Rules, it would be unconstitutional in view of the decision of the Honorable Apex Court in the case of **Entry Tax Officer v/s. Chandanmal Champalal and Co.** [1994 4 SCC 463]. He also urge that the said piece of legislation is violative of Article 301 of the Constitution and not saved by Article 304 thereof, since no assent of the President was obtained. Based on the amended petition, the learned Senior Counsel has also raised an attack on the Act and the Rules and its continuance after the amendment to the Constitution by the 101st Amendment Act with effect from 16th September 2016 which has resulted into introduction of Article 246-A and Article 269-A coupled with deletion of certain entries in the Seventh Schedule. He

would urge that pursuant to the constitutional amendment, the levy which was imposed on the incident of entry of goods, being milk into the State cannot be sustained, and which even if it is assumed that the State legislature had the competence and it could have been enacted the impugned Act, by invoking Entry 52 of the State list, which determine the field of State legislation, being "Taxes on the entry of goods into a local area for consumption use or sale therein", after the amendment to the Constitution the situation has changed. Another entry which according to Mr. Diniz which would empower the State legislature to enact a law in the form of the impugned Act being Entry 54, "Taxes on sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I" is also omitted. Thus, barring the sale or purchase which take place in the course of inter-State trade or commerce, the State legislature is empowered to impose tax on sale or purchase of the goods. However, in view of the 101st Amendment to the Constitution, which has done away with both the entries, now the State legislature is denuded of any power to legislate on the basis of those entries determining its field of legislation. Relying on the decision of the Apex Court in the case of **Jindal Stainless Ltd. and another vs. State of Haryana and others** [(2017) 12 SCC 1], the submission is that the tax regime pursuant to the said judgment has undergone a change and the concept of compensatory tax has been overruled.

4. The impugned Act according to the learned Senior Counsel is neither compensatory nor regulatory and levy do not amount to a reasonable restriction nor it is in public interest as it pertains to fluid milk which is an essential commodity for every individual.

Besides, according to Mr. Diniz, in pith and substance the provision of the Act would fall within Entry 33 in the Concurrent List inasmuch it pertained to the trade and commerce in production, supply and distribution of fluid milk which is an essential commodity and the Parliament has already enacted the Essential Commodities Act,1955 and milk has been enlisted as an essential commodity. The provisions of the Act therefore are repugnant to the Essential Commodities Act which is an Act of the Parliament, is the submission. Referring to Article 245 of the Constitution, the State legislation is argued to be ultra vires and void as the State lacks the competence to legislate on the product, milk and the impugned Act is against the freedom of trade and commerce. It is submitted that Entry 26 of List II being "Trade and commerce within the State, subject to the provisions of entry 33 of List III" and since the field on milk "including its distribution and sale" is covered under the

Milk and Milk Product Order,1992 issued under the Essential Commodities Act, the Goa Cess on Fluid Milk (Control) Act, 2000 is liable to be declared as void on account of legislative competence.

5. Posing a challenge to Rule 3 of the Rules, the submission is that charging Section of the enactment levy a cess on fluid milk upon use of any facilities, infrastructure or other amenities belonging to or provided by the State for consumption whereas the Rule which attempt to levy the cess on the milk brought into the State of Goa meant for sale goes beyond the scope of Section 4 of the Act and is therefore ultra vires to Section 4. According to Mr.Diniz, the respondent authorities are collecting cess on fluid milk merely brought into the State meant for sale irrespective of whether any facilities provided by the State are used for consumption. The argument is that the Act imposes a levy in form of cess on account of use of the facilities of the State for consumption, however, glaringly Rule 3 makes all fluid milk brought into the State of Goa for sale or meant for sale within Goa, liable for cess. According to learned Senior Counsel, the charging Section being contained in the parent Act in form of Section 4, the Rule by itself could not impose a cess on a predicate different from that of the Act and since Section 4 of the parent Act and Rule 3 of the Rules address themselves to different

predicates and are inconsistent with one another, the said Rule is liable to be struck down.

6. The relief sought is opposed by the learned Advocate General Mr. D.J. Pangam by advancing his submission to the effect that there is always presumption in favour of the constitutionality of a statute and any legislation can be called in question only on three grounds being lack of legislative competence, violation of fundamental rights and violation of any provisions of the Constitution. By inviting our attention to the statute in question, being the Goa Cess on Fluid Milk (Control) Act, 2000, the learned Advocate General would submit that by the said enactment a provision is made for levy and collection of Cess on fluid milk and the object is to augment dairy production and to make the State of Goa self reliant in that aspect. He would strenuously urge that the tax levied i.e. the incidence of tax is on the utilization of the infrastructure of the State of Goa. By inviting our attention to the charging Section being Section 4, he would submit that if read carefully, it imply that the levy imposed in form of the cess on the Fluid Milk in the State of Goa upon use of the facilities, infrastructure or other amenities belonging to or provided by the State at the rate as may be prescribed either prospectively or retrospectively. The said Act contemplates that the cess to be assessed, levied and

collected in the manner and in such installments, if any, as may be prescribed. In exercise of the Rule making power conferred by Section 9 of the Goa cess Act, the rate of cess on the Fluid Milk have been notified which contemplate a cess @15ps per litre on the fluid milk brought into the State of Goa meant for sale by any Organization or individual, either in bulk or in sachet, packet, tetrapack, cans etc. According to the learned Advocate General the manner in which the credited proceeds of cess are to be utilised is also set out in Section 5 of the Act of 2000. He would strenuously urge that the incident of tax may be distinct from the liability imposed and in the present case taxing event is the use of infrastructure of the State. He would further submit that Entry 52 deals with the taxes on Entry of goods into the local area but Section 4 had imposes a levy which is firstly not tax and secondly it is not levied on the Entry of the goods but the taxing event is the use of infrastructure provided by the State. The learned Advocate General would urge and submit that there is a succinct distinction between the incident of tax and the subject of tax and if the legislation which charges a fee/cess on the infrastructure of the State being used, will not necessarily mean over reach of the powers conferred upon it. Inviting our attention to the 101st Amendment, in form of the tax on supply of Goods and Services, the submission of the learned Advocate General is to the effect that since the tax in question was not a tax on sale of goods and services, the 101st Amendment do not in any way eclipse the legislative competence of the State legislature to enact the Cess Act of 2000. The learned Advocate General would rely on Entry No.66 of the State List which permit the State legislature to legislate on the subject of fees in respect of any of the matter listed in the list, but not including the fees taken in any Court. The power of the State legislature according to the learned Advocate General remains unaffected after the 101st Amendment which impose a tax merely on Goods and Services and the pith and substance of the impugned Act, should be determined to deal with the said argument of Mr. Diniz.

7. Reliance is placed on the affidavit filed by the Director of Department of Animal Husbandry, Government of Goa on 26/03/2010 stating therein that the impugned enactment is a regulatory measure or measure imposing compensatory tax for the use of trading facilities. The said fact highlights the infrastructure availed by the petitioner and also enumerate facilities based on the revenue or from the cess. On the amendment being carried out in the petition and seeking declaration that Rule 3 of the Rules be declared ultra vires as amendment by 101st Amendment to the Constitution has also been dealt with by filing an additional affidavit on 25/11/2019.

8. In order to deal with the adverse contention, it would be necessary to delve into the State legislation i.e. The Goa Cess on Fluid Milk (Control) Act, 2000. The preamble of the Act articulate that it is an Act to provide and levy of collection of cess on fluid milk and augment dairy products and to make the State of Goa self-reliant as far as the milk production is concerned and to regulate the use of facilities and infrastructure etc. provided in the State of Goa and for matters connected therewith. Section 2(c) define "Fluid milk" as milk pasteurized or otherwise in sachets or barrels, in cans or any other container.

9. Section 4 reads thus:

> ***"4. Levy and collection of Cess.*** *- (1) There shall be levied and collected a cess on fluid milk in the State of Goa upon use of any facilities, infrastructure or any other amenities belonging to or provided by the State for consumption, at rates as may be prescribed, retrospectively or prospectively by the Government by Notification.*
>
> *(2) The cess shall be assessed, levied and collected in such manner, and in such instalments, if any, as may be prescribed.*
>
> *(3) The cess levied shall be in addition to any other taxes, permission fees, licence fees."*

Sub Section (2) of Section 4 clarify that the said cess shall be assessed, levied and collected in such manner and in such installments, if any, as may be prescribed. Sub Section (3) of Section 4 further clarifies that the cess levied shall be in addition to any other taxes, permission fees, license fees. Section 5 of the Act provides as to the manner in which the cess so collected is to be credited to the Government treasury and shall be utilised to augment the dairy production so that the State of Goa becomes self-reliant as far as milk production is concerned. There is a power vested in the Government to exempt or reduce cess in respect of the class confirmed by Section 7. Section 9 empowers the State to make the Rules for the purpose of carrying out provisions of the Act and Section 10 prescribe that the provisions of the Act are in addition and not in derogation of provision of any law in force. This briefly is the Scheme of the enactment which is sought to be challenged before us as unconstitutional and void on account of the competence of the State legislature.

10. In exercise to the powers conferred by Section 9 of the Goa Cess on Fluid Milk(Control) Act 2000, the Rules are framed and under the caption under the Goa Cess on Fluid Milk Control Rules, 2001. Rule 3 read as under:

3. Rules of cess on fluid milk- (1) a cess at the rate of 15 paise per every litre shall be levied on the fluid milk brought in to the State of Goa meant for sale by any organisation or individual, in bulk or in packets, sachets, tetrapacks, cans, etc.

11. The said Rules came to be amended and pursuant to the amendment published in the Gazette dated 04/07/2003 the amended Rule reads as under :

"***3. Rates of cess on fluid milk.*** *- (1) There shall be levied and collected a cess at the rate of fifteen paise per every litre of fluid milk meant for sale within the State of Goa by any organization or individual, in any form or in any packing."*

The said amendment came into force with effect from 4 July 2003 and the words mentioned in the earlier Rule "entering into the State of Goa" came to be omitted. On the Act coming into force, the Belgaum District Co-operative Milk Producers Co-operative Union limited along with several other Districts Co-operative Milk Producer Societies instituted a Writ Petition in this Court seeking a declaration that the provisions of the Act and the Rules, in as far as the relief to the levy and collection of cess of fluid milk imported in the State of Goa as ultra vires ad unconstitutional. The contention before the Court was that the State Act came into force on 01/06/2001 and it provide for levy and collection of cess on milk products or the milk brought in the State of Goa and in exercise of such powers the respondent had provided the payment of cess @15ps for every litre on fluid milk brought into the State of Goa which is meant for sale. The submission was advanced that it would place serious restrictions on the inter State trade and commerce between the States. During the pendency of the petition, the Act came to be amended vide Notification dated 21/03/2003, where the Rule 3 came to be amended and payment of cess of 15Ps was made applicable to all the milk producers and distributors, and not restricting the levy only on the milk brought from the neighbouring States.

12. At the outset, we must note that the levy sought to be imposed by the impugned legislation is in form of the cess and the distinction between 'tax' and 'cess' is not mere res integra and is well settled through various judicial pronouncements. Tax is levied compulsorily by the Government on its citizens to defray the expenses of the Government. A tax, by definition is a payment in return for which no direct and specific quid pro quo is rendered to the taxpayer. Tax is levied to incur public expenditure for the benefit of the country as a whole. As against this a cess is a form of tax levied by the Government on tax with specific purposes till the time the Government gets enough money for that purpose. Different from the usual taxes and

it's like exercise and income tax, a cess is imposed as an additional tax besides the existing tax (tax on tax). Apart from the nature of the levy of the tax, another distinction lies in the way the revenue recovered from the cess is maintained, unlike the revenue from the taxes is credited in the consolidated fund of India and Government will use the same for any purpose it deems fit. The revenue from the cess will be credited in the Government treasury which can then be used for specific purposes. Fee is a voluntary payment to the Government for special services rendered by it in public interest, but conferring a specific advantage on the person paying it. The distinction between the tax and fee lies primarily in the fact that tax is levied as a part of common burden, while fee is for payment of a specific benefit or privilege, although the special advantage is secondary to the primary purpose of regulation in public interest. The money raised by a fee is set apart and appropriated specifically for the service for which it has been imposed and it is not thrown in the hotchpotch of the general revenue of the State. The amount of fees is based upon the expenses incurred by the State in rendering the services, though in the case of particular fees the amount may not arithmetically commensurate with the expenses.

13. Immediately after the constitution was enacted, the aforesaid distinction was succinctly drawn by the Apex Court in the case

of **Mahant Sri Jagannath Ramanuj Das and Another v/s. The State of Orissa and Another** [AIR 1954 SC 400), where the Apex Court held as under:

> "***9.*** *……………………… Our Constitution, however, has made a distinction between a tax and a fee for legislative purposes and while there are various entries in the three lists with regard to various forms of taxation, there is an entry at the end of each one of these lists as regards fees which could be levied in respect of every one of the matters that are included therein. A tax is undoubtedly in the nature of a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. But the essential thing in a tax is that the imposition is made for public purposes to meet the general expenses of the State without reference to any special benefit to be conferred upon the prayers of the tax. The taxes collected are all merged in the general revenue of the State to be applied for general public purposes. Thus, tax is a common burden and the only return which the taxpayer gets is the participation in the common benefits of the State. Fees, on the other hand, are payments primarily in the public interest but for some special service rendered or some special work done for the benefit of those from whom payments are demanded. Thus in fees there is always an element of quid pro quo which is absent in a tax. Two elements are thus essential in order that a payment may be regarded as a fee. It the first place, it must be levied in consideration of certain services which the individuals accepted either*

willingly or unwillingly. But this by itself is not enough to make the imposition a fee, if the payments demanded for rendering of such services are not set apart or specifically appropriated for that purpose but are merged in the general revenue of the State to be spent for general public purposes."

14. The traditional view about an actual quid pro quo for a fee has undergone a paradigm shift**.** The Hon'ble Apex Court in **Kishan Lal Lakhmi Chand And Ors. vs State Of Haryana And Ors.** [(1993) Suppl. 4 SCC 461] has held as under:

"***5.*** *...............It is trite to reiterate the law laid down by this Court of the distinction between the tax and the fee and its demarcating line vis-a-vis the power of the legislation to make law for imposition of fee in that behalf. Suffice to reiterate the ratio laid in Sreenivasa General Traders v. State of A.P. that the traditional view that there must be actual quid pro quo for a fee has undergone a sea change. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary purpose of regulation in public interest; if the element of revenue for general purpose of the State predominates, the levy becomes a tax. In regard to fee, there is, and must always be, correlation between the fee collected and the service intended to be rendered. In determining whether a levy is a fee, the true test must be whether its primary and essential purpose is*

> *to render specific services to a specified area or class; it may be of no consequence that the State may ultimately and indirectly be benefited by it. The power of any legislature to levy a fee is conditioned by the fact that it must be "by and large" a quid pro quo for the services rendered. However, correlationship between the levy and the services rendered/expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the fee and the services rendered."*

15. Even though there is no generic difference between the tax and the fee and the taxing power of the State may manifest itself in different forms known respectively as assessment fees and tax, the Constitution however for legislative purposes drawn a distinction between tax and fees. The distribution of power to levy a tax is not identical with that a power to levy a fee. In the federal constitutional set up, there is a clear cut demarcation of the spheres of legislation between the State and the Center which is co-extensive with its power of governance. The clearly demarcated legislative fields do not permit encroaching upon each other's sphere and the division of power is strictly guarded particularly when it comes to the taxing entries. Taxes are specifically distributed as between Union and the State legislature by various Entries in List I and List II and the residuary power to levy a tax which is not enumerated in any of the entries under Entry 97 of List I

exclusively vest in the Parliament. On the other hand the entry relating to fee find specific mention at the end of the three Lists i.e. States, Union and concurrent. Every, legislature has power to levy fee which is co-extensive with the power to legislate with respect to substantive matter and the legislature may while making law relating to subject matter within its competence, levy a fee with reference to the services that would be rendered by the State under such law.

Different taxes are specifically enumerated in List I between Entry 82 to 92A and in list II, from Entry 46 to 63. The power to levy fee is thus alienated in Entry 96 of List I, Entry 66 of List II and Entry 46 of List III. The power of the legislature to levy a fee or tax is to be determined by applying different tests; If a fee is levied on the capacity of the payer then it is not a fee but it will be a tax. Similarly a fee cannot be levied for increasing the general revenue and then it cannot be traced in any of the entries of the Constitution.

16. In the light of the aforesaid situation in the field of taxation as clearly demarcating the power between the State and the Union, authoritative pronouncements if we scrutinize the provisions of the impugned legislation, the levy can be clearly traced as a cess and the amount of cess so collected is credited to the Government treasury but

is to be utilized to augment the dairy production, which aim at making the State of Goa self-reliant in milk production is concerned. The affidavit filed on behalf of the State specifically contained a statement to the effect that the State is providing following facilities based on the revenue earned from the cess collected under the impugned Act:

> *"9. I say that in addition to the infrastructure being provided by the State to the traders, the State has also provided to the Petitioner huge tracts of land at a nominal rate of Rs. 1/per year. I say that the State is also providing the following facilities based on the revenue earned from the Cess;*
>
> *a) <u>Milk Incentive Scheme</u> - subsidy is provided to local milk producers. I say that the Petitioner benefits from this scheme since it is able to procure milk at a lesser rate since the State subsidizes the milk supplied to the Petitioner.*
>
> *b) <u>Social Calf RearinScheme</u> - For better development of Dairy Animals. This scheme also greatly benefits the milk producers since it provides financial assistance for calf rearing in the State with the ultimate aim of augmenting the milk production in the State.*
>
> *c) <u>Revised Fodder Development Scheme</u> -Provides subsidies to the milk producers for fodder being fed to the cattle.*

d) Revised Modern Dairy Scheme - For purchasing dairy animals for better milk production.

e) Subsidy for Milking Machines

f) Kamdenhu Scheme:- The Government also provides 50% subsidy and insurance cost to the members of Dairy Societies for purchase of milking animals. These dairy societies are members of the Petitioners."

The expenditure incurred on the aforesaid scheme has also been placed before us.

On reading of the said affidavit we have no hesitation in holding that the cess which is collected under the said Act is for a specific purpose catering to a specific class and therefore is distinct from the tax which is levied as a common burden and since it do not cater for the general purpose of the State, it cannot be regarded as a tax.

17. Affirming the levy of the impugned legislation to be a cess, we proceed to deal with the arguments of legislative competency of the State legislature in imposing the said levy. There is always a presumption in favour of the constitutionality of the statute and unless there is a clear case made out, free from any doubt; in case of doubt, the constitutionality of the law is to be resolved in favour of its validity. It is a settled proposition of law, where the validity of the statute is

questioned and there are two interpretations, one which would uphold the law and other which would strike it down, the former must be preferred and the validity of law must be upheld.

Dealing with the arguments that the present Act is violative of Article 301, which ensures freedom of trade and commerce and intercourse throughout the territory of India, it is clear that Article 301 is inserted in the Constitution to ensure that the unity of the nation is maintained by removing the geographical barriers which exist in various parts of the country. Also by removing the imposition of any restrictions it ensures the free flow of goods throughout the country. However, this freedom underlined in Article 301 does not mean that the State is completely barred from completely regulating the aspects of trade and, therefore, if the State levy taxes it does not automatically become a restriction on freedom of trade and the criteria which is followed to understand whether a tax charged on goods violate Article 301 or not, the remaining part of Part XIII will have to be referred to. A nondiscriminatory tax per se cannot be regarded as restriction on freedom of trade, commerce and intercourse under Article 301. Merely because tax is charged on goods and services do not amount to a restriction but the imposition of the tax or fee become necessary on account of providing services which facilitates the trade activities, which may include providing of services of maintaining roads to ensure smooth transportation of goods and it would rather facilitate the trade rather than restricting it. Such types of taxes are identified as compensatory taxes and for ascertaining the validity of a compensatory tax, the object behind the tax and the relation with such a tax bears to the subject and object it is necessary to be determined. Once such a relation or connection is established the tax can be validly upheld and it is not necessary to show the exact amount of benefit which is provided and the expenditure that has been incurred in providing such services. On the contrary, if the levy is not in the nature of facilitation of trade but it restrict the trade, it cannot be upheld and will have to be struck down as confiscatory and instances may be, imposition of excessive tax, disproportional levy of tax, discriminatory imposition of tax on goods produced within the State and goods outside the State.

18. Pertinent to note that the freedom of trade, commerce and intercourse contemplated under Article 301 is not an absolute one but certain restrictions can be imposed on this freedom, the restrictions itself are set out in Part XIII of the Constitution. Under Article 302 the Parliament may impose such restrictions on the freedom of trade, commerce and intercourse between one State and another, as may be required in public interest. When the Parliament has the power to

impose restrictions on the freedom of trade in any State or part of the territory of India this power is further subjected to the provision contained in Article 303 which restrict the Parliament or the legislature of the State to impose a restriction on such State in favour of another State, meaning thereby that it is not permissible to impose a discriminatory restriction which extend the benefit to one particular State to the exclusion of other. Article 304 authorizes the State legislature, by law to impose such restrictions and the legislature can charge tax on the goods which are imported from other States if such tax is charged on similar goods which are produced in that State, however, it cannot discriminate between the goods so imported and goods so manufactured or produced and it is competent for the State legislature to impose reasonable restrictions for freedom of the trade, commerce or intercourse with or within that State as may be required in public interest.

19. Trade and commerce must pay for the facilities provided by the State which can be in form of constructing, maintaining and regulating roads, bridges and other means of transportation necessary for such trade, commerce or intercourse. All that is necessary to uphold the tax as compensatory is the existence of a specific identifiable object behind the levy and the nexus between the subject and object of Levy.

As there is some correlation between the tax recovered and cost incurred by the State it cannot be termed as ex-proprietor. It is not necessary to establish that the whole or substantial part collected is utilised and once it is held that the tax is compensatory or regulatory in character, that would form the guideline for the State to keep in view to determine the rate at which tax to be levied. Proviso appended to Article 304, of obtaining the assent of the President before the bill or amendment for the purposes of Clause (b), shall be introduced or moved in the Legislature of the State is restricted qua Clause (b) of Article 304 being imposing reasonable restrictions on freedom of trade, commerce or intercourse with or within that State as required in public interest. Pertinent to note that Article 304 begins with the non obstante clause and notwithstanding anything contained in Article 301 or Article 303, the legislature of a State may impose restrictions on trade, commerce and intercourse amongst States. However, if the composition of the tax is compensatory or regulatory in nature, it is not hit by Article 301 or Article 303 and the proviso appended to Article 304 will not come into picture at all. Constitution Bench of the Apex Court in the case of **Automobile Transport v/s. State of Rajasthan** [AIR1962 SC 1406] has held that tax laws are not outside the comprehension of Article 301 but regulatory/compensatory taxes do not come within the purview of the restrictions contemplated by Article 301, if it do not hinder the freedom of trade, commerce and intercourse. Only the taxes which directly impede the flow of trade or commerce are violative of the freedom guaranteed under Article 301.

20. Every State is empowered to impose taxes for compensating it for the services, benefits and facilities provided by it. The word 'restriction' in Article 304(b) has been held not to include any regulations and therefore taxes or other measures which are regulatory will not come within the Article 304(b) and, therefore, the contention that the assent of the President was necessary before passing the impugned legislation deserve a rejection.

21. The restriction that Parliament may impose in terms of Article 302 cannot give any preference to one State over another, by virtue of entry relating to trade and commerce in any of the list in Seventh Schedule. Article 304(a) recognise the power to impose tax on goods imported from other States, such power to levy tax is however subject to the condition that similar goods manufactured or produced in State levying the tax are also subjected to tax and that there is no discrimination on that front. The recent Constitution Bench in **Jindal Stainless Ltd. (supra)** take a view that the limitation on power to levy

taxes is entirely covered by clause(a) of Article 304, which exhausts the universe. Insofar as the State legislature's power to levy is concerned and hence only a discriminatory tax on import of goods from other States will work as an impediment on free trade, commerce and intercourse, within meaning of Article 301. Holding that there is no specific limitation on State's power to levy tax, except the one in Article 304(a) and that limitation is confined to levy of discriminatory taxes within comprehension of Article 304(a), so long as taxes are not discriminatory, there is no limitation on power of State to levy any tax and such a tax or levy do not amount to restriction of free trade.

22. The competence of the legislature to legislate on a particular subject is determination of the entries contained in the list in the Seventh Schedule and the various entries in the three lists are not the powers of legislature but are the fields of legislation. No tax can be levied or collected except by authority of law and therefore while dealing with an argument about the competence of the State legislature, we would be required to reflect on the entries contained in List II authorizing the State to bring in the impugned legislation. The power to legislate is engrafted in Article 246 of the Constitution and the different entries under distinct legislative heads define and delimit the respective legislative areas of the Union and the State legislature. It is a consistent

view taken that the language of the entries should be construed by giving it widest possible meaning, fairly capable with a restriction that a legislature is not competent to make law relating to a matter which has no rational connection with the subject matter of any entry.

Part XI of the Constitution dealing with the distribution of the legislative powers, authorizes the Parliament to make laws for the whole or any part of the territory of India, and the legislature of a State to make laws for the whole or any part of the State. In the Scheme contained in Part XI, the Parliament has exclusive power to make laws with respect to the matters enumerated in List I whereas subject to the said power of the Parliament the legislature of the State has power to make laws with respect to any of the matters enumerated in List III whereas subject to the aforesaid provision the legislature of any State or any part thereof has exclusive power to make laws for such State with respect to any of the matters enumerated in List II in the Seventh Schedule . While determining the validity of a legislation, the substance of the legislation will have to be looked into. Pertinent to note that the authority to make law also flows from the other sources apart from the Entry in the respective List and the same being 1) express text of the constitution 2) by implication from the scheme of the constitution and 3) as an incident of sovereignty. In the decision in case of **Bimolangshu**

Roy (Dead) vs State of Assam [2017 SC 3 552], the Apex Court has held to the aforesaid effect in the following words:

> "*21. The authority to make law flows not only from an express grant of power by the Constitution to a legislative body but also by implications flowing from the context of the Constitution is well settled by the various decisions of the Supreme Court of America in the context of American Constitution. A principle which is too well settled in all the jurisdictions where a written Constitution exists. The US Supreme Court also recognised that the Congress would have the authority to legislate with reference to certain matters because such authority is inherent in the nature of the sovereignty. The doctrine of inherent powers was propounded by Justice Sutherland in the context of the role of the American Government in handling foreign affairs and the limitations thereon. In substance, the power to make the legislation flows from various sources:(1) express text of the Constitution; (2) by implication from the scheme of the Constitution; and (3) as an incident of sovereignty.* "

The taxing powers of Union and State are mutually exclusive. While Parliament cannot legislate on subjects reserved for State, States cannot trespass on taxing powers of Union.

23. While testing the competence of the State legislature to enact a particular law by invoking a particular legislative Entry, it is always permissible for the legislature to seek support of any other Entry

within the legislative competence or the legislature. For the purposes of sustaining legislation, the legislature of a State could rely upon multiple entries within the State List and it can be a composite legislation drawing the power to legislate from several entries.

For our purposes, the entries on which the State legislation can be sustained and the power could be derived by the State legislature from the following entries in List III:

Entry 14 :	*Agriculture, including agricultural education and research, protection against pets and prevention of plant diseases.*
Entry 15 :	*Preservation, protection and improvement of stock and prevention of animal diseases, veterinary training and practice.*
Entry 26 :	*Trade and commerce within the State subject to the provision of entry 33 of List III.*
Entry 66 :	*Fees in respect of any of the matters in this List, but not including fees taken in any Court.*

Entry 14 which pertains to agriculture will have to be widely construed. Agriculture is understood as a science, art and practice of cultivating plants and livestock. Agriculture would involve farming of domesticated species, rearing of animals who provide food, wool and other products. Widest possible meaning which could be appended to the said term is it being science, art or occupation concerned with cultivating land, raising crops, feeding, breeding and raising livestock. Livestock is commonly understood as domestic animals raised in an agricultural setting to produce labour and commodities such as meat, eggs, milk, fur, leather, wool etc. The cows raised in the farm which are domestic animals would fall within the purview of livestock. Further, the Entry 15 which is also pertaining to livestock, empowers the State legislature to enact a law dealing with the milk being considered as a subject of tax/levy. Entry 66 pertaining to fees in respect of any of the matters listed in the State list, would shut the arguments on legislative competence and we need not be required to take the challenge further so as to deal with the competence of the State legislature to bring law. However, since arguments have been advanced on behalf of the petitioner to the effect that the impugned Act was an enactment under Entry 52 and Entry 54 of the State List and since these two entries are deleted by the Constitution (101st Amendment) Act of 2016, the State no longer possess the power to impose the levy contemplated under the Act will have to be dealt with.

24. Entry 52 which is omitted with effect from 16th September 2016 read as under:

> *Entry 52 : "Tax on entry of goods into a local area for consumption, used for sale there in".*
>
> *Entry 54 : "Taxes on the sale or purchase of goods other than newspaper subject to the provisions of entry 92a of List I."*
>
> Entry 92A in the List I reads as under
>
> *"Taxes on the sale or purchase of goods other than newspaper where such sale or purchase takes place in the course of inter-State trade or commerce."*

According to the learned Advocate General, the impugned State legislation do not invoke the said entries, for Entry 52, is for taxes on entry of goods into a local area for its consumption and Entry 54 is a tax on sale or purchase of goods which are not within the course of inter-State trade or commerce, since when a sale or purchase takes place in the inter-State trade or commerce it is only a Parliament which can enact a law. The cess levied by the impugned Act is not restricted only on entry of milk into the State but is also equally levied on the fluid milk meant for sale within the State, thus removing the existing discrimination between the milk brought in the State and milk produced in the State. Thus, we find that the Entry 52 of List II is not invoked and cannot be invoked by the State in enacting the impugned legislation. Further Entry 54 is tax on sale or purchase of goods is also not invoked as field of legislation since the cess imposed is on utilization of the infrastructure of the State and not the trade and commerce is the subject of taxation.

25. Let us then ascertain what is the nature of the impugned enactment, with reference to the subject and event of tax and what is the incidence of tax. The impugned Act is a legislation providing for levy and collection of cess on fluid milk and for augmentation of dairy production.

As the learned Advocate General has rightly contended that the said levy is on utilisation of infrastructure of the State and as per the charging Section, the subject of tax is the fluid milk, event of tax is the use of facilities/ infrastructure or any other amenities provided by the State for consumption of the said milk. Sub-section 3 of the Section 4 convey that the cess levied shall be in addition to any other taxes, permission fees, licence fees. The use of facilities, infrastructure or amenities belonging to or provided by the State for consumption of the fluid milk in the State of Goa is the purport of the charging Section of the enactment i.e. Section 4. Since the levy is the cess and the State government has enlisted before us the utilisation of the cess amount credited into the Government treasury for rendering services in the field of dairy and milk and since, we have also noted that the petitioner itself has availed huge tracts of land at the nominal rate of ₹ 1/- per year and we have before us a Lease Deed executed in favour of the petitioner way back in the year 1984 for a lease of the land admeasuring 81485 square metres situated at Curti and Usgao along with all buildings and structures erected on the said land and the milk processing plant and the cattle feed manufacturing plant and the allied equipments/ machinery pertaining to the above lands. The levy imposed is for utilisation of the infrastructure of the State and the incidence of tax is not the entry of goods into the local area or the sale or purchase of goods as has been sought to be argued by the learned Senior Counsel. Thus, the 2 entries being Entry 52 and Entry 54 are not the entries which are revoked by the State legislature in enacting the impugned Act, in fact we are not supposed to deal with the arguments of the learned Senior Counsel about the effect of its omission after the Constitution (101st amendment) Act. Pertinent to note that except raising one line ground in the petition, by amending it on 27/08/2019, which we reproduce is the basis of challenge.

> *"10 b) The petitioners submit that rule 3 of the Rules which purports to levy cess on fluid milk brought into the State of Goa for sale, is in any event, ultra vires the Constitution of India i.e. Article 286 thereof (As amended by the 101st Amendment) with effect from 16/09/2016 read with Articles 246 A(2) and 269 A(1) of our Constitution."*

Pertinent to note that it is only Rule 3 of the Rules which is alleged to be ultra vires to the Constitution of India pursuant to the 101st amendment.

26. By the 101st Amendment to the Constitution certain provisions are repealed and changes also effected in the Sixth and Seventh Schedule. What is inserted is Article 246-A and Article 269-A. By insertion of Article 246-A the parliament is the exclusive repository of the power to make laws with respect to Goods and Service Taxes where supply of goods or of services or both take place in the course of inter-State trade or commerce. Article 269-A provides that such a levy of tax and services tax shall be collected by the Government of India and it shall be apportioned between the Union and State in the manner as may be provided by the Parliament by law on recommendations of the Goods and Services Tax Councils. Sub clause(2) of Article 269-A set out that the amount apportioned to a State shall not form part of the

Consolidated Fund of India and authorises Parliament to formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of in inter-State trade and commerce by enacting a law. Apart from this Article 366 of the constitution is also amended inserting clause (12A) which defines 'Goods and Services Tax' to mean any tax on supply of goods, or services or both except taxes on supply of alcoholic liquor for human consumption. The amending Act also contain a transitional provision retaining the law relating tax on goods or services or both in force in the State immediately before the commencement of the Act to continue to be in force until amended or repel by a competent legislature or by a competent authority or until expiration of one year of such commencement whichever is earlier.

The provisions which have been introduced by the 101st Amendment are with respect to goods and services inter alia it deal with taxes on supply of goods or services or both. The newly introduced provision 246-A empowers the Parliament and even legislature of every State to make laws with respect to goods and services tax as imposed by Union or by such State. The competency of the legislature of the State is however subjected to clause (2) of the said Article being the Parliament will have exclusive power to make laws with respect to goods and services tax where all goods, or services, or both takes place in the course of inter-State trade or commerce. The levy and collection of such tax is to be apportioned between the Union and the State. The consequence of the 101st Amendment is the enactment of the Central Goods and Services Tax Act,2017 the Integrated Goods and Services Act,2017 and the Goa Goods and Services Act,2017 along with another enactment, being the Goods and Services Tax (Compensation to States Act), 2017 is also enacted and Mr. Diniz has relied upon the judgment of the Apex Court in the case of **Union Of India vs Mohit Mineral Pvt Ltd.** [(2019) 2 SCC 599] dealing with the legislative competency and the State enactment.

27. Under CGST Act,2017 Section 9 prescribe the levy and collection of tax known as the central goods and services tax on all intra-State supplies of goods or services or both. The term 'supply' has been defined in Section 7 as all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business; import of services for a consideration whether or not in the course or furtherance of business; and the activities specified in Schedule One, made or agreed to be made without a consideration. Similar is the taxing Section and the definition of

'supply' in the State enactment i.e. the Goa Goods and Services Tax Act. On perusal of the scheme of the aforesaid enactment, brought into existence pursuant to the 101st Amendment, reference to the goods and services is its focal point. In view of the introduction of special provision with respect to Goods and Service Tax and with an object of doing away with a cascading of taxes as the taxes levied by the Central Government are not available as set off against the taxes being levied by the State Government in the earlier regime, the several taxes came to be subsumed in the single tax, to be levied on the supply of goods and services or both at the end point. Tax levied by the Central Government or the State Government on supply of goods or services is converged into Goods and Services Tax, which is a dual levy where the Central Government will levy and collect tax in form of Central Goods and Services Tax (CGST) and State Government will levy and collect tax in form of State Goods and Service Tax (SGST) on intra-State on supply of goods or services or both. The whole emphasis of the entire new regime being the supply of goods, the necessary entries being Entry No.52 and Entry No. 54 of the State List were omitted. However, since it is not only the entries which determine the legislative competence of the legislature but also other provisions of the Constitution and in the present case Article 246 and Article 269 along with Article 270 in its amended form in sub-clause I(A) provided for distribution of tax collected by Union between the Union and the State in the manner prescribed, it cannot be held that the State is denuded of imposing of any cess/ levy on use of its infrastructure, facilities, etc. for consumption of the fluid milk which happened to be enlisted as 'goods'.

28. GST is a Value Added Tax, proposed to be a comprehensive indirect tax on manufacture, sale and consumption of goods as well as service. It replaces all indirect taxes levied on Goods and Services by Union and State Government and is a comprehensive multi stage, destination based tax. It has subsumed several taxes and levies including levies applicable on interstate transportation of goods. What has been adopted in India, is a dual GST model, meaning taxation is administered by both Union and State. Transactions made within single State are levied with CGST by Central Government and State GST by State. For interstate transactions and imported goods or services, an IGST is levied by Central Government. GST is consumption based tax therefore taxes are to be paid to the State where goods or services are consumed not the State where they are produced.

Revenue earned from GST (intra-State transaction – where both the Seller – Buyer in one State) is shared equally on 50-50 basis by the Centre and the State. IGST – (where both seller and buyer are in different State), revenue is collected by Central Government & shared with State where goods are imported.

CGST is levied by Centre and SGST is levied by the State whereas in case of IGST, Centre levy it and distribute it. For a transaction within a State, there are two 2 components of GST – CGST & GGST being levied in value of goods and services. Both Centre and States will simultaneously levy the Goods and Services Tax across value chain. GST structure proposed by 101st Amendment is synchronized with the constitutional framework of the Country, enabling concurrent levy and collection of GST by Centre and State, and hence the autonomy of States is not impacted.

In fact, keeping in mind the spirit of federal structure contemplated under the Indian Constitution, which give power to Centre and State to legislate and govern on several subjects, and both Centre and States have been empowered to levy taxes on Goods & Services under different indirect tax laws. Dual GST give equal power to both Central and State to levy the tax. This apart from ensuring fiscal autonomy of States, maintain overall spirit of cooperative federalism.

29. Dealing with the submission of Mr. Diniz that after the constitution Bench in **Jindal Stainless Ltd.**(supra), the concept of compensatory tax has been done away. The learned Senior Counsel may be right in saying that the tax regime for compensatory tax has under went a change; it was in 1963 in case of **Automobile Transport** (supra) the Supreme Court introduced a concept of 'compensatory tax' and it is after 50 years it has held that there is nothing 'compensatory' about a tax and that it is contrary to the fundamental principles of taxation. The Constitution Bench by a majority judgment has held that there is no constitutional or juristic basis of compensatory tax theory and the concept is not recognised by Constitution. A tax is compulsory extraction of money for general public good and a tax eventually meant to serve larger public good and for running governmental machinery and providing to people the facilities essential for civilized living and there is no question of tax being non-compensatory in character in broader sense. The concept of compensatory tax obliterate the distinction between tax and fee, further since the concept of compensatory Tax being outside Part XIII of the Constitution and it brings dichotomy, which is inconsistent with the language employed in Article 30, the said theory came to be rejected by overruling the earlier decisions. However, the essence that flows from

the Constitution Bench decision is based on the premise that the framers of the Constitution have provided for all exceptions under which freedom of trade, commerce and intercourse guaranteed under Article 301 can be overridden, compensatory tax being not included as one of the exceptions, the same cannot be added as an exception by judicial interpretation.

30. In the decision in case of **Jindal Stainless Ltd.(supra)** (supra), the majority decision has also highlighted the manner in which the constitutional validity of the impugned state enactment would be determined by providing a two fold challenge to be mounted. Their Lordships has held as under :

> *130. This question touching the constitutional validity of the impugned State enactments can be split into two parts. The first part which can be briefly dealt with at the outset is whether the constitutional validity of the impugned legislations has to be tested by reference to both Articles 304(a) and 304(b) as contended by learned counsel for the assessees or only by reference to Article 304(a) as argued by the States. In the light of what we have said while dealing with Question (i) we have no hesitation in holding that Article 304(b) does not deal with taxes as restrictions. At the risk of repetition, we may say that restrictions referred to in Article 304(b) are non-fiscal in nature. Constitutional validity of any taxing*

> *statute has, therefore, to be tested only on the anvil of Article 304(a) and if the law is found to be non-discriminatory, it can be declared to be constitutionally valid without the legislation having to go through the test or the process envisaged by Article 304(b). Should, however, the statute fail the test of non-discrimination under Article 304(a) it must be struck down for the same cannot be sustained even if it had gone through the process stipulated by Article 304(b). That is because what is constitutionally impermissible in terms of Article 304(a) cannot be validated and sanctioned through the medium of Article 304(b). Suffice it to say that a fiscal statute shall be open to challenge only under Article 304(a) of the Constitution without being subjected to the test of Article 304(b) either in terms of the existence of public interest or reasonableness of the levy."*

By applying the said test, when the present impugned legislation is tested, it satisfy the test of being nondiscriminatory and can be declared as constitutionally valid without under going a process envisaged by Article 304(b). Hence, the submission of Mr. Diniz about the cess imposed by the impugned legislation not passing the test contemplated under Article 304 holds no good in light of the recent decision of the Constitution Bench.

31. The submission of Mr. Diniz needs to be tested qua Rule 3 of the Rules and it is not his case set out in the petition that on account

of the 101st Amendment the State legislature cannot enact the Goa Cess Act. Rule 3 also has to be tested in light of his argument that the Rule making power traveled beyond the Parent Act.

In support of his submission Mr. Diniz has placed reliance on the judgment of the Apex Court in case of **Anwar Khan Mehboob Company versus State of Bombay**[1960 DGLS (SC) 210] where the constitution Bench expanded the term 'consumption' in the backdrop of a tobacco being delivered in the State of Bombay for consumption in that State. The term was explained in the following manner:

> "*9. It is in the background of these facts that we have to consider the question whether tobacco was delivered in the State of Bombay for consumption in that State. In answering that question it is unnecessary and indeed inexpedient to attempt an exhaustive definition of the word " consumption " as used in the explanation to Article 286 of the Constitution. The act, of consumption with which people are most familiar occurs when they eat, or drink or smoke. Thus, we speak of people consuming bread, or fish or meat or vegetables, when they eat these articles of food; we speak of people Consuming tea or coffee or water or wine, when they drink these articles; we speak of people consuming cigars or cigarettes or bidis, when they smoke these. The production of wealth, as economists put it, consists in the creation of " utilities ". Consumption consists in the act of taking such advantage*

> *of the commodities and services produced as constitutes the " utilization " thereof. For each commodity, there is ordinarily what is generally considered to be the final act of consumption. For some commodities, there may be even more than one kind of final consumption. Thus grapes may be " finally consumed " by eating them as fruits; they may also be consumed by drinking the wine prepared from " grapes ".*

The term 'consumption' convey the action of using up a resource. As has been held by the constitution bench consumption consists in the act of taking advantage of the commodities and services produced to constitute 'utilisation thereof'. As has been expounded by their Lordships in the aforesaid judgment, before reaching the stage at which the final act of consumption takes place, the commodity may be required to pass through different stages of production and for such different stages, their exists one or more intermediate act of consumption. An example is cited in respect of the final act of consumption of cotton to be used as wearing apparel of the cloth produced from it but before the cotton becomes a wearing apparel it passes through different stages, each stage adding some utility to the commodity at the hands of different producers; act of ginning, act of spinning, act of weaving, act of making of the wearing apparel by the tailor and in this context it is held that at each of these stages distinct utilities are produced and what is produced is at the last stage consumed. In this context, the word 'consumption' contemplated in Article 286 has been construed.

On understanding the concept of consumption, when we deal with section 4, which is a charging section and proposes a cess on fluid milk in the State of Goa for consumption, which is the last stage and before reaching the said stage the milk will have to pass through stages like it being pasteurized or packed in sachets, cans or containers before reaching the consumers. Since the Act authorised the determination of the assessment levy and collection of cess to be prescribed, Rule 3 precisely determines the rate of cess which shall be levied on the fluid milk brought into the State of Goa meant for sale either in bulk or in packets , sachets, tetrapacks, can etc. The stage of sale is an intermediate stage before the milk brought into the State of Goa can be consumed in the sense, being used or drunk. The term 'consumption' is wide enough to cover several stages from its production, transport and supply, marketing and ultimately reaching the consumer for consumption. The submission of the learned Senior Counsel that the cess is levied on the milk meant for sale in the State and is distinct from the taxing incident being consumption cannot be considered. The term 'consumption' being of wide connotation and covering various stages till the product i.e. is fluid milk reach its final stage of consumption, by the Rules and in particular Rule 3 read the rate of cess on fluid milk has been determined on the milk in the State of Goa meant for sale. It is only after the sale of the milk it can be said to be consumed both physical consumption and if it is being put to use for production of any other commodity, in the sense which the Constitution Bench has interpreted, gets subsumed into another stage. In this entire exercise of bringing the milk into the State of Goa and being sold for the purpose of its consumption, infrastructure of the State is being used and in the impugned Act aims at levying and collecting cess for users of these facilities, infrastructure and other amenities provided by the State. The Parent Act which proposes levy and collection of cess on fluid milk in the State of Goa for consumption, for using its infrastructure whereas the Rule determines the rate of levy on the milk brought in the State of Goa meant for sale which get subsequently consumed. Pertinent to note that after the amendment in the Rules, there is no distinction made between the levy on the milk brought into the State of Goa or the milk within the State of Goa meant for sale in the State. The sale of the milk being one step in the consumption of milk in the State of Goa and this is by way of use of infrastructure of the State, it cannot be said that the Rule is ultra vires to the provision in the Parent Act.

32. The Milk and Milk Product Order, 1992 made by the Central Government in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955, is an order aimed at maintaining and increasing a supply of liquid milk of the desired quality in the interest of general public and it regulate the production, supply and distribution of milk and milk product. It contemplate constitution of advisory board which shall assist, aid and advise the Central Government on the matters concerned production, manufacture, Sale, purchase and distribution of milk. The said order contemplate registration by every manufacturer or a person carrying business in milk. The subject matter of the said order of 1992 issued by the Central Government is maintaining and increasing the supply of liquid milk in the interest of the general public. The subject and purport of the order 1992 thus do not occupy the same field as the State legislation which attempt to impose a cess on the user of facilities by the State of Goa and in no way deal with the maintenance and supply of milk of desired quality in the interest of general public. The quality of milk ande its supply as well as the milk being compliant with the conditions of hygiene, manner of its packing, certification is not the subject matter of

the impugned legislation and the Rules and therefore it cannot be said that the State legislation has trenched upon the field covered by the Central Government. The pith and substance of the State legislation being an act on user of the facilities and infrastructure of the State of Goa, even an incidental encroachment in some aspect while dealing with the goods being milk will have to be ignored since we have held that the Goa Cess on Fluid Milk (Control) Act, 2000 is well within the competence of the State legislature.

33. As a result of the aforesaid discussion, the validity of the impugned Goa Cess on Fluid Milk (Control) Act, 2000 and the Goa Cess and Fluid Milk (Control) Rules, 2001 is upheld and the contention that the said Act and Rules are ultra vires of the Constitution and that the legislature lack the legislative competency to enact the same is rejected. The Writ Petition, devoid of any merit is dismissed. No order as to costs.

T. V. NALAWADE,J. **BHARATI DANGRE, J.**

Per T.V. Nalawade,J.

Judgment is authored by Hon'ble Justice Bharati Dangre. We had discussion on findings, reasoning and operative order. I agree with the same. The judgment will be signed when it will be received.

T.V. NALAWADE, J.

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