IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.6676 of 1999
Date of decision: 22.06.2009

Food Corporation of India.

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: Hon'ble Mr. Justice J.S.Khehar.
Hon'ble Mr.Justice Uma Nath Singh.

Present: Mr.R.C.Setia, Senior Advocate, with
Mr.S.K.Goel, Advocate,
Mr.Rajiv Atma Ram, Senior Advocate with
Mr.Daman Dhir, Advocate,
Mr.J.S.Sethi, Advocate,
Mr.K.L.Goyal, Advocate,
Mr.B.S.Walia, Advocate,
Mr.I.D.Singla, Advocate,
Mr.Hari Pal Verma, Advocate,
Mr.Vipin Mahajan, Advocate,
Mr.Sajal Kasan, Advocate, and
Mr.Amit Prashar, Advocate, for the petitioners

Mr.Amol Rattan Singh, Addl. A.G, Punjab,
for respondent-State.
Mr.Puneet Bali, Advocate, for Punjab Industrial
Development Board-respondent.

...

UMA NATH SINGH, J.

This judgment shall also dispose of the connected batch of 112 writ petitions as mentioned in Annexure-A hereto since they raise, amongst others, important common questions of law, based on some what identical facts, relating to challenge to the validity of (i) The Punjab

Infrastructure Development Ordinance 1998 (Punjab Ordinance No.7 of 1998)/The Punjab Infrastructure Development Act 1998 (Punjab Act No.1 of 1999) and The Punjab Infrastructure Development Cess (Collection) Rules, 1998 framed thereunder; (ii ) The Punjab Infrastructure (Development & Regulation) Act, 2002 (inclusive of Schedule I, II and III); (iii) Levy of cess under 1998 Ordinance/Act and Rules @ 1%, and fee @ 3% (though chargeable upto 6% ) under the 2002 Act, on ad valorem basis on sale and purchase of all agricultural produces except fruits, vegetables and pulses; (iv) use of machinery as provided under the Punjab General Sales Tax Act for collection of cess/fee, and (v) the clarificatory notification No.7/8/98-5FBI/-4865 dated 8.4.1999 issued by the Government of Punjab (Department of Finance). Broadly, the common grounds of challenge are:

(i) that the levy of cess under The Punjab Infrastructure Development Ordinance/The Punjab Infrastructure Development Act 1998 (for short `the 1998 Act') and The Punjab Infrastructure Development Cess (Collection) Rules 1998 (for short `the Cess (Collection) Rules)' and fee under the Punjab Infrastructure (Development & Collection) Act 2002 (for short `the 2002 Act') is discriminatory being violative of Articles 14 & 286 (3) of the Constitution of India, as they were levied at the rate of 1% and 3% (extendable upto 6%) respectively only on the items mentioned in Schedule III to the Acts, and collected in the manner prescribed in the Acts which is not sustainable in law;

(ii) that there is absence of the element of *Quid Pro Quo* to justify the levy of cess and fee as the services rendered in lieu of the levy of imposts are devoid of proportionality and are not provided exclusively for the payers of imposts;

(iii) that the State legislature has passed the impugned statutes beyond the pale of competence as the same could be passed only under the entries of lists II and III of Seventh Schedule of the Constitution, and the Government of Punjab (Department of Finance) has encroached upon legislative field in issuing clarificatory notification dated 8.4.1999 (Annexure P-4) in the absence of express delegation of such powers or in the excess thereof;

(iv) that this is not clear from the factual background, and the purpose and objects of the enactments as to whether the imposts in question are a tax or cess/fee;

(v) that the charging Section 4 of the 1998 Act and Section 25 of the 2002 Act are violative of Sections 14 and 15 of the Central Sales Tax Act in as much as they empower the assessing authority to recover an additional Sales Tax in the guise of cess @1% under the 1998 Act and fee @3% (chargeable upto 6%) under the 2002 Act, as per the mechanism and procedure provided under the Punjab General Sales Tax Act (for short the PGST Act);

(vi) that if the cess or fee is to be levied, then it should be collected only from the registered dealers on the first sale and purchase;

(vi) that the impost amount is not being deposited in a consolidated fund provided in Article 266 of the Constitution of India;

(viii) that the petitioner Flour and Rice Mills are entitled to claim the refund of imposts amount paid to the FCI, which being a registered dealer under the Central Sales Tax Act (the CST Act) and the Punjab General Sales Tax Act (the PGST Act), is required to pay on the first purchase and sale;

(ix) that the petitioners were not given the opportunity to submit objections or of being heard before deciding to levy the imposts in question nor is there any effective representation on their behalf in the apex body of the Organisation namely the Punjab Infrastructure Development Board (for short the PIDB);

(x) that the 1998 Ordinance was repealed on 12.1.1999 with coming into force of the 1998 Act and the liability to pay the cess under the 1998 Ordinance was not retained by the Act of 1998, thus, no cess could be payable before 12.1.1999, and

(xi) that the levy of cess or fee amounts to collecting an excessive and unreasonable amount of imposts at the higher rate in as much as the total amount of tax, cess and fee being paid on the articles in question under various Acts is comparatively higher than the imposts being charged on other taxable goods.

During the course of hearing, learned counsel for both parties extensively referred to the averments of four writ petitions namely CWP No.6676 of 1999 (Food Corporation of India versus State of Punjab and another) and CWP No.2343 of 2000 (M/s Ludhiana Flour and General Mills Limited, Ludhiana versus State of Punjab and others), while assailing the validity of the 1998 Ordinance (No.7 of 1998)/the 1998 Act (No.1 of 1999), and CWP No.3295 of 2003 (Garg Rice & General Mills, Mundi Kharar and others versus State of Punjab and others), and CWP No.1449 of 2003 (Food Corporation of India versus State of Punjab and others) for laying the challenge to the provisions of the 2002 Act. According to learned counsel, the questions of law raised in the factual background of these writ petitions would squarely cover the subject matters of the other connected writ petitions also.

CWP No.6676 of 1999 has been preferred by the Food

Corporation of India (for short the 'FCI') against the State of Punjab and its instrumentality, namely, the Punjab Infrastructure Development Board (PIDB). The FCI has claimed to be the biggest food grains procuring agency in the country created under the Food Corporation of India Act, for purchase of agricultural produces and preserving and distributing the same at proper places from time to time throughout the country. It is also registered as a dealer under the CST Act and the PGST Act, and is regularly filing returns and paying purchase and sales tax on taxable goods thereunder. It is also paying market fee under the Punjab Agricultural Produce Markets Act, 1961 (for short `the PAPM Act'), besides paying fee @ 2% under the Punjab Rural Development Act, 1987 (for short `the Punjab Rural Development Act'). The FCI has challenged the validity of the 1998 Ordinance/Act and the Cess (Collection) Rules, and has prayed for declaring the offending provisions thereof as ultra vires to the extent they levy a cess on ad valorem basis at a rate of Rs.one for every one hundred rupees in respect of the sale of wheat, paddy and all other agricultural produces except fruits, vegetables and pulses, w.e.f. 15.10.1998.

In reply to the writ petition, the State of Punjab has questioned the locus-standi of the petitioner-corporation to invoke the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India, which can be invoked only in exceptional and rare circumstances where private or public wrongs are inextricably mixed up and where it is required to prevent some public injury necessary for the vindication of justice. Thus, it is invoked only in cases with patent injustice. This is also mentioned in the reply that the Punjab Infrastructure Development Board (the PIDB), respondent No.2 has been authorised by the legislature to impose the

impugned cess vide the 1998 Ordinance/Act (No.1 of 1999) for the development of infrastructure in Punjab and the Assessing Authority under the PGST Act, has been authorised to collect the cess through its own agency only in public interest. The cess amount after collection is transferred to the account of PIDB and the State Government is not entitled to retain the impost amount even though collected under the PGST Act. The Government of Punjab (Department of Finance) which issued the Cess (Collection) Rules vide the notification dated 11.11.1998 (Annexure P-3), and also a clarificatory notification dated 8.4.1999 (Annexure P-4) regarding levy of cess on sale and purchase, both, under Section 4 of the 1998 Act, has not been made a party. The respondent-State has been given the duty to collect the infrastructure cess on behalf of the PIDB also vide the Punjab Infrastructure Development (General) Rules (for short `the PID(G) Rules'), notified vide No.G.S.R.80/P.O.7/98/S.3/98 dated 10.11.1998. This is emphatically averred that the impugned levy of cess does not amount to the incidence of double taxation in the garb of cess which is being collected under the PGST Act in public interest under the sanction of the 1998 Act duly enacted by the State legislature within the pale of its competence. The cess in question is not a tax also for the fact that it is only confined to a local and specific area and is levied for a particular purpose. The word `tax' is to be construed in generic sense under Articles 265 and 266 which also includes cess. Further, the expression `tax' as used in Article 265 of the Constitution of India, also includes duties, cess or fee etc. As regards the sales tax, it is collected for the general welfare of State and not for a specific purpose and time. It discharges a common burden and its sole object is to raise general public revenue. Besides, the State legislature is competent to pass two

different types of Acts to tax the same person and objects more than once. Under the 1998 Act, the cess was levied with a purpose to accelerate the development of infrastructure in Punjab, and it was not a new tax imposed under the PGST Act, simply, because the Authorities working under the PGST Act has been given powers to assess, re-assess, collect and enforce the payment of cess on all articles and goods specified in the schedule. The cess amount so collected is to be deposited in the Punjab Infrastructure Development Fund ( for short the PID Fund) within a week from the date of collection, and is not to be used as sales tax revenue. The levy of cess under the 1998 Act is, thus, not hit by Articles 254 and 286 of the Constitution of India or sections 14 & 15 of the CST Act, 1956 read with Section 5 (3) of the PGST Act. Besides, this has also been clarified that the rate of sales tax on wheat, paddy and other agricultural produces, except fruits, vegetables and pulses has not increased from the rider of 4% as this being a separate levy under a separate enactment cannot be plugged in the sales tax. Moreover, if the petitioners have been paying the market fee and other taxes on the goods in question, then they should not have raised any objection to the payment of cess under the 1998 Act also, and this would not amount to the incidence of double taxation. For the development and maintenance of infrastructure sectors in Punjab, roughly an amount of Rs.5000 crores per annum is required which cannot be met with the budgetary resources which are not adequate enough to fulfill the demand. Besides, the sales tax on declared goods is charged only @ 4% which is perfectly in consonance with the provisions of Articles 286 and 254 of the Constitution of India read with Sections 14 & 15 of the Central Sales Tax Act and Section 5 (3) of the PGST Act. The Finance Secretary, Government of Punjab, while notifying the Cess

(Collection) Rules, and issuing the clarificatory notification dated 8.4.1999 has not entered into the realm of State Legislature inasmuch as the word `purchase' was inadvertently omitted in the 1998 Ordinance and the relevant Rules made thereunder. Hence, a clarification was needed to bring the word 'purchase' in the Rules so as to levy the cess on the first purchase of the agricultural produces in question namely wheat, paddy and rice etc., which is also the stage of imposition of tax under the PGST Act. This has also been clarified in the reply that wheat and paddy being the agricultural produces are exempted vide Entry No.39 of Schedule B of the CST Act, at the stage when it is sold by the farmers, but it is not exempted at the hands of purchasers. A tax is squarely covered by Entry No.54 of List II of the Seventh Schedule of Constitution. Further, Sales Tax on declared goods is being charged @ 4%, whereas, the cess is collected only @1%. Thus, the collection of cess under the impugned enactments, is in consonance with Articles 286 and 254 of the Constitution read with Sections 14 & 15 of the CST Act and Section 5 (3) of the PGST Act.

In the reply on behalf the PIDB, this is pointed out that the FCI has violated the memorandum No.53/3, 10/99-Cab. Cabinet Secretariat, Rashtrapathi Bhawan, dated 24.1.1994 relating to the settlement of dispute between two Government Agencies. Besides, as per the directions contained in the judgment of Apex Court in CWP No.2058-59/1989 (I.A. No.324 of 1992) (Oil and Natural Gas Commission versus Collector of Central Excise), every High Court and every Tribunal while dealing with such disputes, shall demand a clearance from the Committee constituted for resolution of disputes in case it has not been so pleaded, and in the absence of clearance, the proceeding is not to proceed further. This is also an

assertion of the PIDB that the FCI has not sought any such clearance, hence, this writ petition deserves to be dismissed at the threshold. This is emphatically contended in the reply that if these foodgrain procuring agencies like the FCI, PUNSUP, Punjab State Warehousing Corporation, PAIC, Food and Supply Department etc., are already paying a market fee @ 2% to the Market Committee apart from payment of impost also to the Rural Development Board, then they should not have any objection to the levy of cess under the 1998 and 2002 Acts. Moreover, except the FCI, no other agency has objected to the levy of cess as well as fee.

In the replication filed on behalf of the petitioners, they have reiterated the averments made in the writ petition that the Finance Secretary was not competent to issue the notification relating to Cess (Collection) Rules, and also the clarificatory notification dated 8.4.1999. Petitioners have maintained that the cess in question is an additional sales tax for it is being collected only under PGST Act. The clarificatory notification dated 8.4.1999 has added the levy of cess also on `purchase' which was not mentioned in the 1998 Ordinance and the Cess (Collection) Rules. Thus, the levy of cess, being an additional Sales Tax, is violative of the provisions of Sections 14 & 15 of the Central Sales Tax Act and Article 286 of the Constitution of India.

Coming to the facts of CWP No.2343 of 2000 (M/s Ludhiana Flour and General Mills Limited versus State of Punjab & Others), this writ petition has been filed by a Roller Flour Mill situated at Ludhiana against (1) The State of Punjab, (2) The Punjab Infrastructure Development Board, (3) The Excise and Taxation Officer-cum-Assessing Authority (Sales Tax), Ludhiana, and (4) The Food Corporation of India. In order to carry out the

business, the petitioner mill has to purchase wheat from different sources. One of the sources for the procurement of wheat is by way of purchase from the FCI which is the main procurer in Punjab and Haryana. According to the writ petitioner, the FCI has been constituted under the FCI Act to ensure payment of minimum procurement price to farmers which may be enhanced from time to time, and also in order to protect the consumers from a speculative trade. The FCI sells wheat in Punjab as per the policy decided by it from time to time. As per its policy, the release orders in respect of purchase of wheat are to be issued only after the payment of full cost, and thus, the Flour Mills are forced to pay cess @ Re.1/- for every 100 rupees on ad valorem basis. This is also a submission that the Cess (Collection) Rules notified and published on 11.11.1998 were made available for general public only on 23.11.1998, therefore, the date of enforcement of Rules whereunder the cess was to be collected, was not 11.11.1998, but 23.11.1998. In this writ petition also, collection of cess under the PGST Act from the registered dealer has been assailed. After the Cess (Collection) Rules were published on 11.11.1998, another notification in regard to Rules framed under Section 9 of the Ordinance was published on 26.11.1998. These Rules are known as the Punjab Infrastructure Development (General) Rules (PID(G) Rules). Thereafter, the 1998 Act was published on 12.1.1999 whereunder the Schedule appended to the 1998 Ordinance was amended and only 2 types of goods namely, all agricultural produces (except fruits, vegetables and pulses) as defined in the Punjab Agricultural Produces Markets Act, 1961 (the PAPM Act), and petrol, were retained, whereas, initially, there were 16 items in the schedule appended to the Ordinance. Section 12 (1) of the 1998 Act provided that the 1998 Ordinance shall stand repealed. However,

anything done or any action taken under the 1998 Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act. This is also averred in the writ petition that the Ordinance was repealed on 12.1.1999, hence, no cess could have been levied before 12.1.1999 as the legislature has specifically repealed the Ordinance and retained the liability to pay tax only from the date on which the Act came into force. Thus, the 1998 Act has not retained the applicability clause of Ordinance imposing cess for the period from 15.10.1998 to 11.1.1999. Besides, no cess can be levied at the purchase stage as it is payable only on the sale of goods. This is also averred that the liability under the 1998 Act cannot be passed on to a subsequent purchaser and it should also be only at the stage of first purchase by a dealer. Thus, the incidence of payment of cess shall only be on the purchaser at the stage envisaged under the PGST Act. This is also a submission of learned counsel that on the date of issuance of notification i.e. 8.4.1999, the Ordinance itself had stood repealed, therefore, the notification in question is void and non-enforceable for that reason as well as also for the reasons that it was never published in the Government Gazette. Besides, the wheat supplied to the Mills between 16.4.1999 to 7.2.2000 had been purchased by the FCI before coming into force of the Act. That being an old stock was not chargeable to cess under the 1998 Ordinance/ Act, thus, the FCI could not have charged the cess @1% from the mills. As such, the petitioner mills would be entitled to seek the recovery of cess, as other procurers like PUNSUP has already decided to refund the cess collected on the sale and purchase of the old stocks. Wheat is one of the declared goods under Section 15 (a) of the CST Act, hence, it cannot be subjected to levy of tax at more than one stage and,

moreover, no tax could be leviable in excess of 4% of the sale or purchase price. Besides, if Section 4 (1) of the 1998 Ordinance/Act provided for levy of cess on sale of articles, the Cess (Collection) Rules, 1998 should be interpreted to levy the cess only at the stage of sale, even though the PGST Act, whereunder the cess is being recovered, provides for levy of tax on the event of purchase also. Thus, the business of petitioner has been adversely affected on account of unilaterally action on the part of FCI in recovering the cess in connivance with the State of Punjab and, therefore, it amounts to infringement of fundamental right of the petitioner under Article 19 (1) (g) of the Constitution.

In reply to the writ petition on behalf of the State, it is denied that as many as 16 items were mentioned in the schedule of 1998 Ordinance, which was amended, and later only two items have been retained in the Schedule of the 1998 Act. This is also denied that the notification regarding Cess (Collection) Rules was made available only on 23.11.1998 and not on the date of publication on 11.11.1998. This is asserted that the respondents were competent to levy cess for the period between 15.10.1998 to 11.11.1999 in view of the 1998 Ordinance, and anything done or any action taken under the Ordinance is deemed to have been done or taken under the corresponding provisions of the 1998 Act under sub-section 1 of Section 12 thereof. This is also submitted that the events of sale and purchase are the facets of same transaction. Wheat being an agricultural produce is subject to levy of cess in terms of the schedule appended to the 1998 Act. The petitioner mill is a registered dealer under the PGST Act, hence, the cess can be levied on all the sale and purchase done by the Mill. The cess is not a tax, therefore, not to be subjected to the rider of 4% limit

under the CST Act. Thus, the levy of infrastructure cess is in no manner violative of Section 15 (1) of the CST Act, nor of Article 19 (1) (g) of the Constitution.

PIDB-respondent No.2 in its counter affidavit has only reiterated the averments of the State.

Respondent No.3 in its reply has questioned the maintainability of the writ petition for extra-ordinary relief on the ground that it should be invoked only in exceptional and grave circumstances for the purpose of preventing of public injury in order to vindicate justice. Written statement of the respondent is only in line with the written statement filed in reply to the writ petition No.6676 of 1999.

The petitioner mill has not filed any replication to the written statements.

In CWP No.3295 of 2003 ( Garg Rice and General Mills and others versus State of Punjab and others), filed by various Rice Millers against the respondents namely, (1) The State of Punjab; (2) The Punjab Infrastructure Development Board, and (3) The Excise and Taxation Officer-cum-Assessing Authority, a relief has been sought to declare Section 25 of the Punjab Infrastructure (Development and Regulation) Act, 2002 (being the charging Section corresponds to Section 4 of the 1998 Act), as ultra vires in as much as it is beyond the legislative competence of the State. This Act was published in the Punjab Gazette (extra-ordinary) on 9.7.2002. Admittedly, as per the notification of the Government of Punjab, the Act came into force w.e.f. 11.7.2002. Under Section 25 of the Act, every dealer is liable to pay a fee under the Act on the sale or purchase of the goods specified in Schedule-III thereof within the State of Punjab at the

rate not exceeding 6% of the value of the goods as the State Government may by notification direct. In Schedule III of the Act, a list of articles which are subject to levy of fee under the 2002 Act has been given, and at Sr.No.1, is the item agricultural produces (except fruits, vegetables and pulses) as defined in the Punjab Agricultural Produces Markets Act, 1961, which is to be levied with fee under the circumstances and stage as mentioned in Schedule-D to the PGST Act, 1948. There is no dispute that the paddy is an item included in the Schedule at Item No.6. In the Schedule appended to the PGST Act, paddy has been declared to be liable to purchase tax within the State to be paid by a dealer under this Act on the first purchase. Thus, on coming in to force of the Act, the first purchase of paddy within the State of Punjab became liable to levy of fee under Section 25 (1) of the Act of 2002. As per the notification dated 11.7.2002, it is provided for payment of fee at Rs.1% on agricultural produces including paddy. The authorities which exercised power under Section 25 (3) of the Act of 2002, were the same as given under the 1998 Act. The validity of levy of impost under the impugned Act, has been challenged on the ground of lack of competence of State legislation. Under Section 15 (1) of the Central Sales Tax Act, the tax cannot exceed 4% of the price of goods, at the point of first purchase under the PGST Act. Thus, the levy of fee under the 2002 Act is nothing, but a tax on the purchase and sale of goods, which is evident from Section 25 (1) of the Act. Therefore, it is violative of Section 15 of the Central Sales Tax Act, 1956 and thus, it is beyond the pale of legislative competence of the State legislature. This is also mentioned that the Constitution clearly draws a distinction between the imposition of a tax by a Money bill and the levy of fee by any other kind of

bill. This is further contended that in List I and II of the Seventh Schedule of Constitution, a distinction has been maintained qua the entries of tax and fee. In order to justify the levy of fee, the authorities must render some special services to the category of individuals from whom the amount is exacted, and the total amount so collected must have a reasonable correlation to the cost of such services. Where these dual basic features are absent, the authority cannot legally levy the fee. Thus, a fee is distinguishable from a tax. According to the writ petitioners, the impost in question is a tax and it cannot be claimed as a fee. Therefore, it is not justifiable being beyond the pale of competence of the legislature and is also violative of Section 15 of the CST Act, 1956. The impost has to be collected for the purpose given in Sections 21 and 22 of the 2002 Act. The fee so collected has no relation with the kind of services provided to the petitioner dealers nor these services are meant for their benefit in any manner. Thus, it is a tax imposed without the authority of law. According to the writ petitioners, the only entry in List II of the Seventh Schedule that covers the tax is entry No.54 and therefore, undisputedly, tax can be imposed on the purchase of paddy. However, it should not exceed the limit of 4% and in case the State Government wants to do so by way of the levy of tax in excess thereof in the guise of separate Act by giving the nomenclature of cess to a tax, this would amount to a fraud on the Constitution of India. Besides, any tax collected under Article 265 has to be deposited in the consolidated fund as provided under Article 266 of the Constitution. This fund is liable to be audited by the authority under the Comptroller and Audit General of India under Article 148 of the Constitution of India. However, in the present Act, there is no provision that the tax will go to the consolidated fund and it will be subject

to the audit by the Comptroller and Audit General of India. The Act does not provide for any kind of audit by any authority. Thus, the levy of tax in the guise of cess/fee is ab-initio void. However, the impost in question is to be collected for infrastructure defined under Section 2 (15) of the Act, meaning thereby, the infrastructure in Schedule 1 of the Act. The levy is unconstitutional inasmuch as paddy is one of the declared goods and a tax @ 4% which is the maximum limit provided under Section 15 of the CST Act is already being collected. Thus, under the guise of this Act, no further imposition of tax was permissible. However, till date, no Rules have been framed, nor returns prescribed, although the Sales Tax Authorities are coercing the dealers to deposit the cess by cheque drawn in favour of the Assistant Excise and Taxation Commissioner concerned. Till 14.2.2003, the petitioners did not receive any notice from the Assessing Authority for the obvious reason that there is no prescribed performa for submitting returns. However, they have threatened the petitioners to disrupt their business by stopping the vehicles being used in transporting paddy or rice. Section 14 (B) of the Act is a stringent provision providing for penalty. Therefore, the dealers are being compelled to pay the levy which is patently illegal.

In reply filed on behalf of the respondent No.2 the PIDB, it is submitted that the cess collected under the Act of 1998 was in fact the form of fee which was being collected towards the services to be rendered by the State by developing and providing infrastructure facilities in the State. Thereafter, with a view to bring in a broad based overarching regulatory framework, the State Government has now enacted the the present Act of 2002. This Act has also laid down a regulatory framework which provides clear guidelines on all aspects for infrastructure development from the

conception to the implementation through structures of private participation and transfer (BOT), Build-Operate-Own (BOO), Build Own Operate Transfer (BOOT). This imposition of fee for facilitating the development, maintenance and providing of infrastructure facilities is well in-consonance with the spirit of the 2002 Act which aims to provide the infrastructure facilities through financial sources other than those provided by the State Budget.

The sole purpose of enacting the 2002 Act is to accelerate the infrastructure development in the State through partnership of private sector and public sector. Punjab Infrastructure Development Board is the apex body for overall planning for development of infrastructure sectors and infrastructure projects. The Board acts as a model agency to coordinate all efforts of the State Government regarding the development of infrastructure sectors involving private participation and funding from sources other than those provided by the State Budget. There is no such attempt on the part of the State to impose a tax under the garb of fee. The levy of fee by the State of Punjab has been done in pursuance of notification No.6349 dated 11.7.2002 issued under Section 25 of the Act. Section 25 of the 2002 Act empowers the State Government to levy fee for the development of infrastructure in the State of Punjab at a rate not exceeding Rs.6 for every hundred rupees of the value of goods as the State Government may by notification direct. Thus, fee @ Re.1(now Rs.3) for every Rs.100/- is being charged on the sale and purchase of all agricultural produces (except fruits, vegetables and pulses) and @ Rs.1/- per liter on the sale and purchase of petrol and deasel.

As per Section 27 (2) of the Act of 2002, the amount collected by way of fee is credited to the Development Fund or the Punjab

Infrastructure Development Fund, constituted in pursuance of Section 27 (1) and 2(11) of the Act. As per Section 27 (3) of the 2002 Act, the development fund is applied for the development of infrastructure sectors by providing infrastructure facilities in the State of Punjab for the benefit of the persons from whom the fee is being charged. These facilities are in the form of mega projects in roads, bridges, irrigation and transport sector. The petitioners have not given cogent reason to equate fee with tax in the present case. This is also mentioned that to serve the principles of quid pro quo between levy of fee and the facilities provided, the yard stick of exactitude or equivalence in such matters is neither required nor possible. The extent of services/amenities cannot have a co-relation with the fee levied and it is not essential that all required services must be in place before fee is levied. Thus, the imposition of fee under Section 25 of the Act of 2002 is not illegal and it is the misconception that it is a kind of tax under the garb of fee. The Act of 2002 is not a new legislation and the earlier enactment of 1998 had already made a mark as a major break through which provided for the establishment of the Board. The Board has been constituted under Section 18 of the 2002 Act vide notification No. 7066 dated 19.8.2002, to act as a nodal agency to coordinate all efforts of the State Government regarding the development of infrastructure sectors involving private participation and funding from sources other than those provided by the State Budge. In terms of Section 20 (3) of the Act of 2002, the Board has no role in the infrastructure projects undertaken by the State Government exclusively through its budgetary provisions. According to the answering respondent, different enactments, as referred to in the averments of the writ petition, have no direct nexus with the Act of 2002. The fee

imposed under Section 25 of the Act of 2002 does not exceed the limit of 4% tax provided under Section 15 of the Central Sales Tax Act, 1956, in as much as the fee under the 2002 Act is leviable for overall growth of infrastructure in the State, and there is no co-relation between the provisions of Section 15 of the CST Act and the 2002 Act. This has been asserted that the State Government derives its legislative powers from Article 246 read with the relevant entries of Lists II and III of Schedule 7 of the Constitution of India. Exercising power under these entries and list of the Seventh Schedule and imposing fee thereunder can neither be framed as illegal nor unconstitutional. Under Articles 265 and 266 of the Constitution of India, the tax collected is to be deposited in the consolidated fund, but since levy in question is not a tax and is rather a fee, it is deposited in the development fund to be applied for the development of the infrastructure sectors by providing infrastructure facilities in the State of Punjab for the benefit of the persons from whom the fee is being charged and collected, and the public at large, and for the infrastructure facilities of the country having direct benefit to the economy of the State of Punjab, which is justifiable. The answering respondent has also asserted that under Section 22 (3) of the 2002 Act, there is a provision for auditing of the accounts. Further, in terms of Section 22 (4) of the 2002 Act, the development fund which is vested in the Board, is regularly audited by the Local Fund Examiner, Punjab.

Thereafter, respondent-Board the PIDB has filed three additional affidavits through Sh.G.P.S. Mann, its Chief Manager, to highlight the efforts of the Board while giving the details of infrastructures provided, and the money spent by the PIDB on such projects. According to

these affidavits, in pursuance of Notification No.6343 dated 11.7.2002, issued under Section 25 of 2002 Act, the State Government has levied fee as defined under Section 2 (13) thereof.

In the affidavits, yearwise breakup of the amount of fee collected and credited in the development fund has been annexed vide annexure R-1. It depicts the area/townwise figures of fee collected and credited in the the Development Fund. It appears that till 31.3.2009, the PIDB has collected an amount of Rs.1857.92 crores as fee. This is reiterated in the affidavits that the imposition of infrastructure fee is well in consonance with the spirit of the 2002 Act which aims at to provide the infrastructure facilities through financial sources other than those provided by the State Budget. The amount collected by way of fee is primarily used for the benefit of the fee payers by providing them with world class infrastructure facilities/projects in various infrastructure sectors including roads, bridges, Expressways, irrigation, transport etc.,in the State of Punjab. This is also submitted in the affidavits that the fee collected is spent by the PIDB strictly in accordance with the provisions of the 2002 Act, particularly with reference to sub-section 3 of Section 27 of the Act. The statutory auditors of PIDB i.e. The Local Fund Examiner, Punjab, have till date never raised any such objections that the development fund or any part thereof has been applied for any object other than those provided in the 2002 Act. The Government of India has also notified the PIDB in the official gazette under Section 10 (23) (c) (iv) of the Income Tax Act, 1961 and, therefore, the development fund (including any interest earned/accrued thereon), is completely exempt from the payment of income tax, so that the spending on infrastructure projects is optimized. From the details filed with

the affidavit as Annexure R-2, it is apparent that the total amount of funds released by the Board out of the development fund from 1999-2000 to 2008-2009 (upto 31.3.2009) for undertaking the projects in various infrastructure sectors is Rs.1941.79 crores. A summary statement regarding the sectorwise overview of all the projects under the aegis of the Board upto 31.3.2009 has also been provided. This includes the projects funded by the Board out of development fund as well as the private public participation projects in which PIDB has successfully attracted the investments from private sector entrepreneurs. According to the details annexed with the affidavit, the total cost of all the projects already awarded under the aegis of PIDB upto 31.3.2009 is Rs.10,197.55 crores and the total cost of the projects being developed is Rs.33540.80 crores. Thus, the grand total of costs of the projects taken up for development by the Board is Rs.43738.35 crores, as against the fee of only Rs.1857.92 crores, collected and credited into the development fund. Out of the infrastructure projects/facilities costing Rs.43738.35 crores, developed or under-developed by the Board, majority of the projects/facilities have been utilized or are going to be utilized by the persons mentioned in the Schedule under Section 25 of the 2002 Act. It cannot be possible to cull out the exact expenditure in mathematical exactitude, however, it cannot be denied that proportionate to the fee charged and credited in the Development fund, infrastructure facilities have been provided to the petitioners. The total amount received by the State Government from the Central Road Fund (CRF) for undertaking road works in the State for 5 years i.e. 2001-2002 to 2005-06 is only 148.63 crores which is negligible and very less as compared to the total amount required just for properly maintaining the existing roads in the

State of Punjab, what to talk of upgrading the service level of roads or constructing new roads. The PIDB has released an amount of Rs.898.30 crores out of the development fund for construction of new roads. Spending on roads is just one example of amount of fee being utilized either directly or indirectly for the benefit of the persons paying the same who are essentially connected with the agricultural sector. Besides, the PIDB has also released an amount of Rs.182.76 crores for upgradation of irrigation canals and minors till date. The funds were not provided by any department or agency of the State Government. Further a mega irrigation project costing approximately Rs.3500 crores is being developed and the same is being substantially funded by the Board out of the fee collected under the 2002 Act. The decisions regarding expenditure from the development fund spent for infrastructure development are taken at the level of the Board headed by the Chief Minister and constituted under Sub Section 2 of Section 18 of the Act of 2002 or at the level of Executive Committee of the Board constituted under sub section 4 of Section 18 of the 2002 Act, which is headed by the Chief Secretary. From the affidavits, it is clear that till 31.3.2009, the total amount of fee collected and credited in the development fund was Rs.1875.92 crores. The bank interest earned on the development fund till that date was Rs.231.56 crores; Bonds money (i.e. Loan raised) received was Rs.1549.96 crores; OUVGL receipt is Rs.38.17 crores and Misc. receipts like refund from Income Tax Department, and receipt of Railway share etc. amount was Rs.89.97 crores. Thus, the total fund that is available with the PIDB, was to the tune of Rs.3767.48 crores. The PIDB has not received any fund or financing for its projects from the State till date. This is reiterated in the reply that under the aegis of the PIDB, the

works of infrastructure projects costing approximately Rs.10197.55 crores have already been awarded. The total amount of fee received by the PIDB till 31.3.2009 is only Rs.1857.92 crores, out of which the amount of fee paid by the individual writ petitioners herein would hardly be a few thousands and in some cases, a few lacs rupees. According to reply, the writ petitioners as well as their workers, visitors, transporters carrying goods and grains etc. to the mills would be directly benefited from a single project, namely, the proposed Kharar-Phagwara Expressway. Besides, the writ petitioners are free to derive the direct or indirect benefits on a non-exclusive basis from the infrastructure facilities costing over Rs.43000 crores created with the efforts of the PIDB. Thus, leveraging of such a huge development fund is unprecedented in our country and is also the need of hour. Thus, the development fund created with the funds collected from the payers under the 1998 Act and the 2002 Act, is substantially directed towards providing benefits to the agrarian sector.

As regards CWP No.1449 of 2003, this writ petition is again filed by the Food Corporation of India against the respondents namely (1) The State of Punjab; (2) The Financial Commissioner, Taxation, Punjab; (3) The Punjab Infrastructure Development Board, and (4) The Excise and Taxation Officer cum Assessing Authority, Patiala, to challenge the validity of the new Act, namely the Punjab Infrastructure (Development and Regulations) Act, 2002 (the 2002 Act), on identical grounds as raised to question the validity of the 1998 Act. The respondents have filed written statements reiterating the reasons already given in reply to other writ petitions impugning the 2002 Act. Thus, for the sake of brevity and in order to avoid repetition, they need not be referred to again.

Now coming to CWP No.8890 of 2003, this writ petition has been filed by four petitioners against the respondents, namely (1) The State of Punjab; (2) The Financial Commissioner to Government of Punjab, and (3) The Punjab Infrastructure Development and Regulation Board, challenging the validity of 2002 Act, mainly on the grounds that petrol and deasel have also been included in Schedule III of the Act for the purpose of levy of fee @ Re.1 per litre, and, thus a prayer has been made for the quashment of said Schedule III on the ground that the levy of fee has adversely affected their business. Para Nos.5 & 6 of the writ petition contain the details as to how the business of the writ petitioners has been effected adversely, and paras 8 and 9 contain the relevant details for the purpose of challenge to notifications as well as to the validity of the 2002 Act.

Respondent No.3 the PIDB has denied the averments of the writ petition in its reply, and asserted that the right to do business under Article 19 (1) (g) of the Constitution of India is in no manner affected and the allegations are also vague and baseless. The respondent has given the reasons for imposition of fee and justified the competence of the State legislature in enacting the Act. The same is the reply on behalf of respondent No.1.

In the replication filed on behalf of the petitioners, they have reiterated the averments made in the writ petition.

We have heard learned counsel for parties and perused the writ records.

Sh.Kashmiri Lal Goel, learned counsel for the petitioners, submitted that imposition of cess @ 1% is in the nature of an additional tax. Alternatively, this is also his submission that even if the impost is found to be fee, then it would be the liability of the FCI and not of the petitioner-

mills to pay it, but on the contrary, the FCI has been coercively recovering the amount of cess from the millers. This is also his submission that the levy of impost in question is discriminatory in as much as it is being levied only on agricultural produces (except fruits, vegetables and pulses), petrol and deasel, and not on other articles, although the infrastructure so provided or proposed to be provided would be used by the public at large. Thus, there is discrimination in classification of goods for the purpose of levy of cess as also the fee. Besides, the PIDB has not provided any infrastructural facility to be counted towards providing special services to the petitioners herein. This is also his submission that the money so collected by imposing the impost has to be deposited only with a Consolidated Fund under Article 266 of the Constitution even if it is a fee. According to learned counsel, there is no Quid Pro Quo to justify the levy of cess/fee. Thus, the impost in question is only a tax and not a fee. Learned counsel also urged that both the statutes namely, the Acts of 1998 and 2002, are discriminatory and violative of Article 14 and also Article 301 of the Constitution. Hence, they are liable to be struck down. This is also his submission that the levy of cess, which is otherwise a tax, being in excess of 4% of purchase or sale price of declared goods i.e. wheat, paddy and cotton, is violative of Article 286 (3) of the Constitution of India read with Section 14 & 15 (1) of the Central Sales Tax Act, 1956. In addition to that, if the levy of cess is found to be not discriminatory in nature and held to be only a fee, then also, no cess was leviable on the purchase of these goods for the period from 1998 to 2002 when the 1998 Act was in force. According to learned counsel, under the charging Section 4 of the 1998 Act, no cess could be levied on the purchase of the goods, and it was leviable only at the stage envisaged

under the Punjab General Sales Tax Act, 1948. (the PGST Act). Learned counsel also urged that the petitioner mills are entitled to claim the refund of cess amount from the FCI which have been paid at the time of issuance of release orders.

Mr.J.R.Sethi, learned counsel who appeared for some of the petitioners, contended that the impugned Act of 1998 was passed beyond the pale of legislative competence by the State legislature, therefore, it is devoid of source. This is also his submission that if the impugned impost is a tax, then it is violative of Article 301 of the Constitution. Besides, the Cess (Collection) Rules and also the Clarificatory Notification dated 8.4.1999 have been framed and notified in the excess of Section 4 of the 1998 Ordinance/Act, thus, such provisions need to be read down and brought in line with Section 4, as aforesaid. However, in case it is read down to come within the comprehension of Section 4 of the 1998 Act, then the Act itself would become unenforceable. Learned counsel also assailed the 1998 Act to be arbitrary and discriminatory in nature, and there is no element of Quid Pro Quo as the amount collected towards cess and utilized for providing infrastructure by the Board are not being utilized towards special services being rendered to the petitioners. This is also his contention that the services should be provided for the class which makes the payment of impost and it cannot be utilized by anyone and everyone. According to learned counsel, the concept of `sale' is to be read as provided under Section 2 (h) of the Punjab General Sales Tax Act. Learned counsel also contended that the relief by way of Quid Pro Quo must be the relief other than those flowing to the petitioners as an ordinary citizen. According to learned counsel, the purpose for which the fund is to be utilized is mentioned in

Section 6 (1) of the 1998 Act. The purpose as such was to utilize the funds for the development of infrastructure in the State of Punjab, and the infrastructure facilities in the country having direct benefit to the economy of the State of Punjab and not for the special benefits of individuals who paid the impost. According to learned counsel, an Act must substantially meet the facial test, and every legislation has to be tested on the ground of reasonableness. Learned counsel referred to a Constitutional Bench judgment of the Apex Court, reported in 1980 (1) SCC 416 (Kewal Krishan Puri versus State of Punjab and others), wherein the market fee levied under the Punjab Agricultural Produces Markets Act, 1961, when increased from 2% to 3% on all sales and purchases of agricultural produces, was struck down. Learned counsel thus submitted that in the instant case also, as the Punjab Infrastructure Development Board (the PIDB) has increased the fee from 1% to 2% w.e.f. 1.4.2008 and further from 2% to 3% w.e.f. 1.9.2008 without publication of any draft or without inviting any objection, the levy of fee deserves to be struck down. Learned counsel also submitted that the tax should be levied only on one stage of collection, but presently under different enactments, a total amount of 11% tax is being charged apart from other incidental expenses. According to learned counsel, the agricultural produce is a basic food, therefore, it cannot be subjected to imposition of excessive imposts. Besides, the Act does not provide for the object and reason for the imposition of impost. The provision is discriminatory in as much as the imposts are only collected from the registered dealer, who is defined under Section 2 (d) of the Punjab General Sales Tax Act, 1948 (the PGST Act). He also submitted that the clarificatory notification dated 8.4.1999 could not have been enforced retrospectively from the date of

1998 Ordinance which came into force on 15.10.1998. Further, the notification is also not consistent with the provisions of Section 11 of the Act. Section 4 of the 1998 Act is a policy matter, and therefore, it cannot be enforced by the respondents under Section 11of the 1998 Act by notifying amendments. A legislature cannot abdicate its legislative functions to any other authority, much less to say in favour of a Government department. Moreover, the taxable events have been fixed only at the point of sale and purchase of declared goods under Schedule D of Section 5 (3) of the PGST Act, and also correspondingly Section 25 and Schedule-III of the 2002 Act.

Mr.Bawa Singh Walia, learned counsel appeared for petitioners in CWP No.8890 of 2003, which related to levy of 1% impost on the petrol and deasel. According to learned counsel, as a result of levy of impost, there was a sharp decline in the sale of the petroleum in the State of Punjab and in the process, there was a loss to the State revenue. According to learned counsel, earlier also when the octroi was abolished, there was a marked growth in the State revenue. Learned counsel further submitted that there are 961 filling stations in Punjab, and out of which 50% are situated on the Highways and 40% on the inter-State borders. In case of 40% petrol pumps, the vehicle owners prefer to purchase petrol or deasel from across the border where the rate is cheaper. According to learned counsel, the imposition of impost without providing infrastructure is arbitrary which has adversely affected the trade of the petitioner as also the revenue of State.

Mr.Puneet Bali, learned counsel for the PIDB, submitted that none of the petitioners has disclosed the amount of cess being paid by each of them. They have not given any figure or amount of cess they have paid so far in the support of their contention assailing the validity of enactments.

They have also not given any figure to say that the amount spent on the infrastructure facilities by the State does not meet the requirement of Quid Pro Quo. Learned counsel referred to three affidavits filed on behalf of the PIDB so as to establish that the amount earned from the levy of impost is much less in comparison with the amount spent on the infrastructure sector. Learned counsel also referred to the details of accounts given in the affidavits and submitted that the petitioners are not able to deny the facts. He also submitted that the amounts in question were not spent on the projects which are alien to the objects of the Acts. According to learned counsel, the petitioners have relied on only two judgments namely, Jindal Stainless Limited (2006 (7) SCC 241) and Kewal Krishan Puri and others (1980 (1) SCC 416). He further submitted that Articles 301, 302, 303 and 304 of the Constitution of India are applicable to entire Country and the State can impose reasonable restriction on any trade in public interest. Learned counsel also submitted that all the judgments cited on behalf of the petitioners are only with reference to Article 301 of the Constitution of India which is not the case before this Court. While referring to the judgment of Jindal Stainless Limited, (2006 (7) SCC 241), learned counsel submitted that the issues dealt with in the judgment are related to Article 301 of the Constitution. He also submitted on compensatory nature of taxes and difference between the taxing and regulatory powers. Learned counsel referred to entries 13, 14, 17, 24, 26, 28, 35, 41, 52 and 66 of List II (State list) and entries 20, 25, 36, 38 and 47 of List III (Concurrent list) of the Seventh schedule of Constitution, to submit that the State legislature is competent to enact laws under Article 246 of the Constitution. Thus, according to learned counsel, the State legislature has power under Articles

245, 246 and 254 of the Constitution to make laws in relation to 'fee' in respect of any matter contained in the List II (State list), and List III (concurrent list), but would not include fees taken in any Court. Learned counsel submitted that the Compensatory tax has been held to be a sub-class of fee and is a judicially evolved concept. This is also his submission that the State has taken a categorical stand in the written statements that levy under the impugned legislation is a fee and not a tax and, therefore, it is well within the legislative competence of the State to charge fee in respect of the items mentioned in Lists II and III in terms of the power conferred upon it by virtue of Articles 245 and 246 of the Constitution. The 1998 Act, impugned herein, according to learned counsel, was introduced with a view to accelerate the development of infrastructure with or without the private sector participation in the State. Under the 1998 Act, in Section 2 (c) the word 'fund' has been defined to mean 'Punjab Infrastructure Development Fund' constituted under Section 5. Sub Section (d) of Section 2 of the 1998 Act defined the Government to mean the Government of Punjab in the department of Finance. Under Section 3 of the 1998 Act, the Government by notification would establish for the purpose of carrying out the provisions of 1998 Act, a Board. Section 4 of the Act provides for a cess on ad-valorem basis @ Rs.1/- for every Rs.100 in respect of the articles specified in the Schedule on all the sales effected after coming into force of 1998 Act and all the sales of goods made under the Punjab General Sales Tax Act, 1948. Section 6 of the Act relates to the purpose for which the fund may be applied and sub-section 2 thereof provides for generality of sub-section (1) and the funds in question have in fact been especially applied for infrastructure development in the sectors as mentioned in the

Act, which include irrigation, transportation, roadways including the roads which may be national highways, State highways, district roads and village roads etc. and power generation etc. Section 7 of the 1998 Act relates to audit of the accounts of the funds constituted under Section 5 and prescribes that the same shall be audited by the local Fund Examiner, Punjab. Section 11 of the 1998 Act inter-alia stipulates that where any difficulty arises in giving effect to the provisions of the 1998 Act, the Government may by order, make such provisions including any adaptation or modification of the provisions of the 1998 Act, as appears to the Government to be necessary or expedient for the purpose of removing the difficulty. In the schedule attached to the 1998 Act, description of articles and goods has been given, which includes all agricultural produces except fruits, vegetables and pulses, as defined in the Punjab Agricultural Produce Markets Act,1961 and petrol. Learned counsel has summarized his arguments on the 1998 Act, as under:

> "- Cess can be charged in respect of the articles specified in the Schedule appended to the 1998 Act;
>
> - There is power with the Government to amend the Schedule;
> - There is separate fund to be created for matters which are mentioned in Section 6 of the 1998 Act;
> - Under Section 7 of the 1998 Act, the accounts of the Fund constituted under Section 5 are to be audited by the Local Fund Examiner, Punjab (since the time of promulgation of the 1998 Act and as repeated by the Punjab Infrastructure (Development and Regulation) Act, 2002, all accounts have been audited by the Local Fund Examiner, Punjab);

- Under Section 11 of the 1998 Act, if any difficulty arises in giving effect to the provisions of the 1998 Act, the Government can by order make such provisions which are necessary or expedient for the purpose of removing the difficulty;
- The word 'Government' under Section 2 (d) of the 1998 Act, has been defined to mean the Government of Punjab in the Department of Finance;
- Under Section 4 of the 1998 Act, 'Cess' has to be charged on ad valorem basis at a rate of rupee one for every one hundred rupees in respect of all the articles specified in the Schedule on the sales and purchases (as notified vide notification dated 8.4.1999);
- In exercise of the powers conferred by Section 9 read with Section (8) of Section 4 of the Punjab Infrastructure Development Ordinance, 1998 (Punjab Ordinance NO.7 of 1998), Rules have been framed, which are known as 'the Punjab Infrastructure Development Cess (Collection) Rules, 1998 (for brevity, 'the 1998 Cess Rules'). Rule 3 (1) whereof reads thus:

> "3 (1) The authorities for the time being empowered to assess, re-assess, collect the enforce payment of any tax under the Punjab General Sales Tax Act, 1948, shall assess, re-assess, collect and enforce payment of cess on

the articles and goods specified in the Schedule appended to this Ordinance, from any dealer registered under the Punjab General Sales Tax Act, 1948, at the stage envisaged under the Punjab General Sales Tax Act, 1948”

-A perusal of the above mentioned rule would show that the authorities which have to assess, re-assess, collect and enforce payment of any tax under the PGST Act, shall do the same on the articles and goods specified ini the Schedule appended to the Ordinance at the stage envisaged under the PGST Act. The stage as mentioned in the PGST Act is only a method/mode of procedure to be adopted while levying the cess. It by no stretch of imagination means that the cess has to be charged in accordance with the provisions of the PGST Act. Only for the administrative and legislative convenience the methods envisaged under the PGST Act have to be followed.

-The word `Sales' as mentioned under Section 4 (1) of the 1998 Act included purchases as well. The Legislation has not stated that the words 'sales' mentioned under Section 4 (1) would have the same meaning as 'sales' under the PGST Act. Since the intention of the Legislature was very clear to charge the cess on sales and purchases as well, therefore, ro remove the difficulty, notification dated 8.4.1999 was issued

under the powers derived under the 1998 Act itself."

Learned counsel submitted that the 1998 Act was repealed by the Punjab Infrastructure (Development and Regulation) Act, 2002 (the 2002 Act). While arguing in support of the 2002 Act, learned counsel referred to Sub-sections 2, 11, 13 and 15 of Section 2 of the 2002 Act, which contain the definition of `Board', `Development Fund', `Fee', and `Infrastructure'. Learned counsel also referred to Clause (i), (vi), (vii) & (viii) of Sub section 2 and sub section 3 of Section 20 of the 2002 Act, to highlight the functions and powers of the PIDB (Punjab Infrastructure Development Board). Besides, learned counsel also referred to Sections 22, 27 and 53 of the 2002 Act, to submit as to how the Finance, Accounts and Audit of the PIDB are managed and the State Govt.has power to amend the schedule.

According to learned counsel, a perusal of the aforesaid schemes of 2002 Act, would clearly elaborate that under sub section 15 of the Section 2, infrastructure sectors are provided in Schedule I. Thus, if any work has to be carried on the infrastructure sector mentioned in Schedule I, then as per Schedule III (Section 25), fee can be charged on the articles and goods mentioned therein. Schedule III is subject to change as would be clear from a perusal of Section 53. Thus, from a bare perusal of the aforesaid provisions of 1998 Act as well as 2002 Act, it would be clear that the State has the legislative competence to charge fee under Article 245 and 246 read with Entries 66 and 47 of the List II and List III respectively. All the items mentioned in Schedule I of the 2002 Act as well as under Section 6 of the 1998 Act, would be covered under List II and III. Thus, from the facts and circumstances, it would be clear that being a fee, the 1998 Act and the 2002 Act cannot be challenged on the grounds of legislative incompetence of State

legislature or on the ground that the Government has no power to levy cess/fee. This is also a submission of learned counsel that the cess in question is not discriminatory as under Section 2 (15) of the 2002 Act as well as under Section 6 of the 1998 Act, various infrastructure sectors have been earmarked for the levy of fee. As 80% of the occupational trades within the State of Punjab relates to agricultural and agricultural produces etc., the fee for the time being is being levied on those products and in turn is being used for the development of the infrastructural facilities in relation to the trade and industry etc. relating to agricultural produce, which is the main occupation of the people of Punjab. The levy would have become discriminatory or illegal if an infrastructure sector as mentioned in Schedule -I of the 2002 Act would be charged the levy without providing any facilities as a measure of recompense to them. Thus, Schedule-III under Section 25 of the 2002 Act is not exhaustive at all. As and when the State Government would undertake the infrastructure development work in relation to any infrastructure sectors, as mentioned under Schedule I, the articles and goods in relation to that infrastructure sector shall definitely be included in Schedule-III. This is also his submission in regard to proportionality of services in lieu of the funds collected till date that the money atleast six times more than the fund collected has been spent or is contemplated to be spent on the agriculture sector. As regards deposit of fee in a consolidated fund, learned counsel submitted that in the case of Jindal Stainless Limited (supra), this has been held that a specific fund has to be made for the cess/fee to be charged and the same cannot be merged with the general revenue. This is further submitted by learned counsel that in the case of Jindal Stainless Limited, a reference has been made in regard to Haryana Local Area Development Tax Act, 2000

being violative of Article 301 and not saved by Article 304 of the Constitution of India. Alternatively, learned counsel submitted that even if the principles laid down in the case of Jindal Stainless Limited are to apply, it is related to the proportionality of the fee levied and the service rendered. According to learned counsel, the affidavits filed on behalf of the PIDB adequately meet the requirements as laid down in the judgment. Learned counsel further submitted that even in Kewal Krishan Puri's case (supra), the principles laid down only related to the proportionality of services rendered by the State. Further, this has been held to be an obiter dicta in case of Sreenivasa General Traders (1983 (4) SCC 353). Learned counsel further submitted that fee and taxes are compulsory exactions of money by public authority. Specific services rendered to a specific area or specific class of persons or trade or business or any local area meet the requirement of principle of quid pro-quo. The class or person or area cannot plead that they do not want the service. As to whether a particular cess is tax or fee, would depend upon the facts and circumstances of each case. Fee collected by the PIDB forms a part of fund of the Board. This is also a submission of learned counsel that co-relation of a fee has to be of general category and not of arithmetical exactitude. This is his further submission that the fees are ordinarily uniform but absence of uniformity is not a criterion on the basis of which alone it can be said that the levy is in the nature of tax. If the service is meant for the benefit of a class or area, in fact, in that benefitting of the specific class or area, the State as a whole may ultimately be benefitted, however, that would not detract from the character of the levy being the fee. Thus, there is a fair correspondence between the fee charged and the cost of services rendered to the fee payers as a class, which is enough to prove the

co-relationship. The principle of `quid pro quo' in respect of fee is undergoing transformation and the person paying the fee may not receive direct special benefit, and the facilities/services need not be provided immediately, but can be provided in future also. Amount collected by way of fee can be reserved for future service and Entry 66 of List II gives power to the State to levy a fee and thus, there is no question of double taxation. Besides, service is not a condition precedent and it is confined to contributory alone. There is a difference between compensatory fee and regulatory fee like transit fee, licence fee etc. The traditional view that there must be an actual quid pro quo has undergone a sea change with the passage of time. All that is necessary is that there should be a reasonable relationship between the levy of the fee and services rendered. Besides, the doctrine of `quid pro quo' is not strictly applied in case of fee. A reasonable relationship between the fee charged and services rendered is sufficient. Besides, the entries in 3 lists in the Seventh Schedule which confer legislative competence on the respective legislature to deal with the topics covered by them must receive the widest possible interpretation and so it would be unreasonable to read in the Entry any limitation. Thus, such power has to be widely construed. Besides, the method of collection does not affect the essence of the duty but only relates to the machinery of collection for administrative convenience. This is also a submission of learned counsel that the mere fact that a validating statute operates retrospectively does not justify the contention that the character of the tax sought to be recovered by such retrospective operation would necessarily change. Besides, absence of machinery under the Act or Rule does mean that fee cannot be levied or collected. In addition to that, the

minimum and maximum limit of fee chargeable can be fixed by the legislature. Fixing of fee would be subject to the rendering of adequate services. The PIDB, which is collecting and spending the funds for the benefit of the payers of fee, has placed on record affidavits in 2006 as well as in 2008, giving the details of the funds released and spent. It is factually incorrect to say that there is no provision for auditing of the accounts of the Board, which is regularly done by the Local Fund Examiner, Punjab. Learned counsel while referring to Section 11 of the 1998 Act, submitted that though this has been submitted on behalf of the petitioners that the State Government has no power to issue notification dated 8.4.1999, but the position is different in the sense that Section 11 specifically empowers the Government to issue notification to remove the difficulties. The intent of the provisions is to delegate this power to the Government. The essential legislative function is the charging of cess and this cannot be found fault with. Our Constitution is a growing document and the pressure on legislatures is immense and, therefore, once the Act itself grants the power to the State Government to do something, it cannot be called an excessive delegation at all. The legislature can part with the performance of ancillary functions in favour of some other authority. That apart, legislature may, after laying down the legislative policy confer discretion on an administrative agency to work out the details within the framework of policy. While considering the factum of delegated legislation, the object and purpose of the Act as can be gathered from the various provisions of the statute, should be taken in to account. The Court should not substitute its own opinion in respect of the legislative policy, and the object and purpose of the statute. Once the essential legislative function is performed by the legislature and

the policy has been laid down, it is always open to the legislature to delegate the ancillary and subordinate powers to the Executive Authority which is necessary for carrying out the policy and purpose of the Act.

Learned counsel appearing for Markfed, respondent No.3, has made a submission that the Markfed procured foodgrains on behalf of the Food Corporation of India in the central pool and made the payment of cess thereon to the State of Punjab. However, the same is not being refunded to it by the FCI in view of the pendency of the writ petition.

Sh.Amol Rattan Singh, learned Additional Advocate General for the State of Punjab also supported the contention of learned counsel for the PIDB by contending that this is not a case of double taxation, and the State legislature is competent to levy the impost under separate enactment.

On a careful consideration of rival pleadings and submissions, we are of considered view that the questions raised in the instant writ petitions relating to the validity of 1998 and 2002 Acts, as also the levy of cess/fee thereunder, need to be decided while addressing the questions like legislative competence of State Legislature to pass the impugned Acts; delegation of powers to the Government of Punjab (Department of Finance) to frame and notify the Cess (Collection) Rules, and to issue Clarificatory Notification dated 8.4.1999 and the nature and character of impost (whether cess or tax or fee), and if found to be a compensatory tax/fee, then the proportionality of services rendered to the payers of fee in lieu of the total amount collected pursuant thereto.

Part XI of the Constitution contains the articles relating to legislative relations between the Union and the States. Article 245 of the Constitution deals with the extent of laws made by the Parliament and by

legislatures of States, whereas, Article 246 provides for the subject matter of laws made by Parliament and by the legislatures of States. Clause 2 & 3 of Article 246, in particular, are relevant for the purpose of defining the area of legislation to be undertaken by the State legislature. For ready reference, Clause (2) and (3) of Article 246 are reproduced hereunder:

> "246. **Subject-matter of laws made by Parliament and by the Legislatures of States:** (1) xx xx xx xx xx xx xx
>
> (2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
>
> (3) Subject to clause (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').
>
> (4) xx xx xx."

As the Acts in question have been passed by the State legislature of Punjab, we need to find out the relevant entries of List II (State List) and List III (Concurrent List) of the seventh Schedule in order to examine the source of legislation as well as the competence of State legislature. The relevant entries of these lists for the purpose of testing the validity of the impugned Acts, are as under:

**LIST II (STATE LIST)**

> "13. Communications, that is to say, roads, bridges, ferries,

and other means of communication not specified in List I; municipal tramways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.

14. Agriculture, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.

17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.

24. Industries subject to the provisions of entries 7 and 52 of List I.

26. Trade and commerce within the State subject to the provisions of entry 33 of List III.

28. Markets and fairs.

35. Works, lands and building vested in or in the possession of the State.

41. State public services; State Public Service Commission.

52. Taxes on the entry of goods into a local area for consumption, use or sale therein.

66. Fees in respect of any of the matters in this List, but not including fee taken in any Court (emphasis supplied)."

**List III (Concurrent List):**

"20. Economic and Social Planning.

25. Education, including technical education, medical

education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.

36. Factories.

38. Electricity.

47. Fees in respect of any of the matters in this List, but not including fees taken in any Court. (emphasis supplied)"

As per the impugned Schedule {under Section 4 (1) & (2)}, attached with the 1998 Act, there are only two articles mentioned for the purpose of levy of cess. They are as:

"1. All agricultural produces except fruits, vegetables and pulses as defined in the Punjab Agricultural Produce Markets Act, 1961;

2. Petrol."

This Act came into force on 12.1.1999 whereas the Cess (Collection) Rules were notified on 11.11.1998 and the clarificatory notification adding the incidence of cess on `purchase' was issued on 8.4.1999. The clarificatory notification was to apply retrospectively but only in respect of the items as mentioned in the Schedule attached to 1998 Act, therefore, the number of items appended to the 1998 Ordinance is irrelevant and the items mentioned in the Schedule attached to the 1998 Act above were to be subjected to the levy of cess in question. As all the items mentioned in various schedules attached to both the Acts, directly or indirectly relate to the aforesaid entries of Lists II & III, the State legislature would be competent to make legislation in regard to the subject matters mentioned therein. Besides, the 1998 Ordinance as well as the 1998 Act in the purpose and object clearly

state the reasons for these enactments, namely, to provide for establishment of the Punjab Infrastructure Development Board and Punjab Infrastructure Fund with a view to accelerate the development of infrastructure with or without private sector participation in the State. Besides, Section 6 of the 1998 Act provides for the items for which the fund would be utilized as under:

> "6. (1) The fund shall be applied for the development of infrastructure in the State of Punjab and infrastructure facilities in the country having direct benefit to the economy of the State of Punjab.
>
> (2) Without prejudice to the generality of sub-section (1), the Fund shall be specially applied for infrastructure development in the following sectors, namely:
>
> (a) transportation, roadways, including roads which may be national highways, State highways, major district roads (plan roads), other district roads, and village roads, express ways, by-passes bridges, intercharges, roads over and under bridges, road transport system and water transportation;
>
> (b) power generation, transmission and distribution;
>
> (c) infrastructure for information technology;
>
> (d) inland container facilities, container transport and warehousing for export purposes;
>
> (e) industrial parks and Modern industrial Townships;
>
> (f) water supply and sewerage disposal and treatment systems, solid waster management, roads, street

lights, parks and gardens and urban mass transport systems;

(g) irrigation, and

(h) any other infrastructure as may be decided by the board for betterment of the economy of the State of Punjab.

Explanation: "Infrastructure Development" shall include creation and addition of new infrastructure facilities, replacement of existing facilities and strengthening and augmenting of existing facilities."

In the affidavits filed on behalf of the PIDB as well as the State, the purpose for constitution of Board and levy of cess have been emphasized in great details. It has been asserted that the Board has been constituted to provide adequate infrastructure facilities in the State and for speedy development thereof. The primary purpose of the Board is to invest in infrastructure so as to attract private capital for diversifying the production in expending the trade coping with population growth, reducing poverty and to improve environmental conditions. That apart, research studies have established that there is a strong association between availability of infrastructural services and per capita gross domestic product (for short GDP). This is stressed that the total investment required towards infrastructure sector in the State is approximately Rs.5000 croes i.e. at the price intex of 1998-99, if the growh of 6-7% is to be sustained. As against this, the budgetary resources of the State are grossly inadequate. Thus, in order to provide a sustained source of funding for infrastructure development, the State has levied an infrastructural cess @1% on

sale/purchase of all agricultural produces except fruits, vegetables and pulses. The money so collected will constitute the corpus of Punjab Infrastructure Development Fund to be administered by the Board. This fund is to be used only for the purpose of power generation, industrial transportation etc. and to raise loan from the financial institution/private investors. In order to provide infrastructure on priority and without waiting for investment from the meagre and in adequate budgetary resources, this corpus has been created. In this way, delay, inconvenience, escalation of price and set back to the economy of the State can be avoided.

The purpose and object of the 2002 Act are reproduced as:

> ".....to provide for the partnership of private sector and public sector, participation of private sector in the development, operation and maintenance of infrastructure facilities and development and maintenance of infrastructure facilities through financial sources other than those provided by the State budget by following modern project management systems and for matters connected therewith or incidental thereto..."

Besides, the works undertaken by the Board towards the development of infrastructure have been detailed in three affidavits filed on behalf of the PIDB in reply to the writ petition. It appears that till 31.3.2009, the Board has collected an amount of Rs.1857.92 crores as fee. The amount collected by way of fee is primarily used for the benefit of fee payers by providing them with world class infrastructure facilities/projects for various infrastructure sectors including roads, bridges, Expressways, irrigation, transport etc. This is also mentioned in the affidavit that the main stay of

the residents of the Punjab is agriculture, and most of the infrastructure facilities in the shape of good roads, bye-passes, rail over bridges (ROBs), High Level Bridges (HLBs), Expressways, irrigation canals and minors, bus terminals, water supply and sewerage facilities in villages and towns etc. provide a major relief to the agrarian sector. Thus, the infrastructure facilities provided towards the collection of fee being in consonance with the object of the Act directly relate to the entries of Lists II & III of Seventh Schedule of the Constitution, hence, the State legislature is competent to pass the impugned legislation. Hon'ble the Apex Court in a judgment reported in (1990) 3 Supreme Court Cases 645 (Sri Krishna Das versus Town Area Committee, Chirgaon), has extensively dealt with the powers of State Legislature to levy tax as well as fee, as under:

> ".....23. Under the Indian Constitution the State Government's power to levy a tax is not identical with that of its power to levy a fee. While the powers to levy taxes is conferred on the State Legislatures by the various entries in list II, in it there is entry 66 relating to fees, empowering the State Government to levy fees "in respect of any of the matters of this List, but not including fees taken in any Court." The result is that each State Legislature has the power, to levy fees, which is coextensive with its powers to legislate with respect to substantive matters and it may levy a fee with reference to the services that would be rendered by the State under such law' The State may also delegate such a power to a local authority. When a levy or an imposition is

> questioned, the Court has to inquire into its real nature inasmuch as though an imposition is labelled as a fee, in reality it may not be a fee but a tax and vice versa. The question to be determined is whether the power to levy the tax or fee is conferred on that authority and if it falls beyond to declare it ultra vires.
>
> xx xx xx xx"

From a careful reading of the aforesaid elucidation and observations of Hon'ble the Apex Court, it is clear that the State Legislatures have the power to levy fee under Entry 66 of List II, which is co-extensive with the powers to legislate in respect of substantive matters, and it may as well levy a fee with reference to service that would be rendered by the State Authority. In the case of State of West Bengal versus kesho Ram Industry Limited and others, reported in 2004 (10) SCC 201, the Apex Court has articulated that Articles 245, 246 & 248 are the fountain source of legislation and has elaborated on the scheme of the Seventh Schedule of the Constitution as:

> ".....31. Article 245 of the Constitution is the fountain source of legislative power. It provides - subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State. The legislative field between the Parliament and the Legislature of any State is divided by Article 246 of the Constitution. Parliament has exclusive power to make laws with respect to any of the matters

enumerated in List I in Seventh Schedule, called the "Union List". Subject to the said power of the Parliament, the Legislature of any State has power to make laws with respect to any of the matters enumerated in List III, called the "Concurrent List". Subject to the abovesaid two, the Legislature of any State has exclusive power to make laws with respect to any of the matters enumerated in List II, called the "State List". Under Article 248 the exclusive power of Parliament to make laws extends to any matter not enumerated in the Concurrent List or State List. The power of making any law imposing a tax not mentioned in the Concurrent List or State List vests in Parliament. This is what is called the residuary power vesting in Parliament. The principles have been succinctly summarised and restated by a Bench of three learned Judges of this Court on a review of the available decisions in Hoechst Pharmaceuticals Ltd. v. State of Bihar. They are:

(1) the various entries in the three Lists are not "powers" of legislation but "fields" of legislation. The Constitution effects a complete separation of the taxing power of the Union and of the States under Article 246.There is no overlapping anywhere in the taxing power and the Constitution gives independent sources of taxation to the Union and the States.

(2) In spite of the fields of legislation having been demarcated, the question of repugnancy between law made

by Parliament and a law made by the State Legislature may arise only in cases when both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List and a direct conflict is seen. If there is a repugnancy due to overlapping found between List II on the one hand and List I and List III on the other, the State law will be ultra vires and shall have to give way to the Union law.

(3) Taxation is considered to be a distinct matter for purposes of legislative competence. There is a distinction made between general subjects of legislation and taxation. The general subjects of legislation are dealt with in one group of entries and power of taxation in a separate group. The power to tax cannot be deduced from a general legislative entry as an ancillary power.

(4) The entries in the lists being merely topics or fields of legislation, they must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. The words and expressions employed in drafting the entries must be given the widest possible interpretation. This is because, to quote V. Ramaswami, J., the allocation of the subjects to the lists is not by way of scientific or logical definition but by way of a mere simplex enumeration of broad categories. A power to legislate as to the principal matter specifically mentioned in the entry shall also include within its expanse the legislations touching incidental and

ancillary matters.

(5) Where the legislative competence of a Legislature of any State is questioned on the ground that it encroaches upon the legislative competence of Parliament to enact a law, the question one has to ask is whether the legislation relates to any of the entries in Lists I or III. If it does, no further question need be asked and Parliament's legislative competence must be upheld. Where there are three Lists containing a large number of entries, there is bound to be some overlapping among them. In such a situation the doctrine of pith and substance has to be applied to determine as to which entry does a given piece of legislation relate. Once it is so determined, any incidental trenching on the field reserved to the other Legislature is of no consequence. The Court has to look at the substance of the matter. The doctrine of pith and substance is sometimes expressed in terms of ascertaining the true character of legislation. The name given by the Legislature to the legislation is immaterial. Regard must be had to the enactment as a whole, to its main objects and to the scope and effect of its provisions. Incidental and superficial encroachments are to be disregarded.

(6) The doctrine of occupied field applies only when there is a clash between the Union and the State Lists within an area common to both. There the doctrine of pith and substance is to be applied and if the impugned legislation substantially

falls within the power expressly conferred upon the Legislature which enacted it, an incidental encroaching in the field assigned to another legislature is to be ignored. While reading the three lists, List I has priority over lists III and II, and List III has priority over List II. However, still, the predominance of the Union List would not prevent the State Legislature from dealing with any matter within List II though it may incidentally affect any item in List I. (emphasis supplied)

xx xx xx xx

74. It is necessary to examine the scheme underlying the Seventh Schedule of the Constitution. We are relieved of the need of embarking upon any maiden voyage in this direction in view of the availability of a Constitution Bench decision in M.P.V. Sundararamier & Co. v. The State of A.P. Venkatarama Aiyar, J., speaking for the Constitution Bench, traced the history of legislations preceding the Constitution, analysed the scheme underlying the division of legislative powers between the Centre and the States and then succinctly summed up the quintessence of the analysis. It was held, inter alia:

1. In List I, Entries 1 to 81 mention the several matters over which Parliament has authority to legislate. Entries 82 to 92 enumerate the taxes which could be imposed by a law of Parliament. An examination of these two groups of Entries shows that while the main subject of legislation

figures in the first group, a tax in relation thereto is separately mentioned in the second.

2. In List II, Entries 1 to 44 form one group mentioning the subjects on which the States could legislate. Entries 45 to 63 in that List form another group, and they deal with taxes. (AIR p.493, para 51)

3. Taxation is not intended to be comprised in the main subject in which it might on an extended construction be regarded as included, but is treated as a distinct matter for purposes of legislative competence. And this distinction is also manifest in the language of Article 248 clauses (1) and (2) and of Entry 97 in List I of the Constitution. Under the scheme of the entries in the lists, taxation is regarded as a distinct matter and is separately set out. (AIR p.494, paras 51 & 55)

4. The entries in the legislative lists must be construed broadly and not narrowly or in a pedantic manner. (AIR p.494, para 56)

5. The entries in the two Lists - List I and II - must be construed, if possible, so as to avoid conflict. Faced with a suggested conflict between entries in List I and List II, what has first to be decided is whether there is any conflict. If there is none, the question of application of the non obstante clause “subject to” does not arise. And, if there be conflict, the correct approach to the question is to see whether it was possible to effect a reconciliation between

the two entries so as to avoid a conflict and overlapping.

Illustration

If it is possible to construe Entry 42 in List I as not including tax on inter-State sales it should be so construed and the power to levy such tax must be held to be included in Entry 54 in List II (entries as they existed pre-Forty-second Amendment, 1976) (See: Governor General in Council v. Province of Madras, and Province of Madras v. Boddu Paidanna & Sons. (AIR p.495, para 56-57)

6. In the event of a dispute arising it should be determined by applying the doctrine of pith and substance to find out whether between two entries assigned to two different legislatures the particular subject of the legislation falls within the ambit of the one or the other. Where there is a clear and irreconcilable conflict of jurisdiction between the Centre and a Provincial Legislature it is the law of the Centre that must prevail. (AIR pp.494-95, para 56) (italicised by us)".

While arguing on the competence of State Legislatures, an endeavour was made by learned counsel for the petitioners to contend that the impugned legislations (the 1998 and 2002 Acts) are violative of Section 15 of the CST Act, therefore, these Acts have been enacted beyond the pale of competence. In this regard, it would be profitable to refer to Article 254 of the Constitution, as under:

"254. **Inconsistency between laws made by Parliament and laws made by the Legislatures of State:**

> (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.
>
> (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:
>
> Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

From a bare reading of the aforesaid Constitutional provisions, it is wide evident that a State legislature is competent to enact laws in

relation to fee in respect of any matters contained in List II ( State List), but would not include fee taken in any Court. Besides, this is now well established by the judicial decisions that the compensatory tax is only a sub class of fee. As the respondents have admitted in their replies on affidavit that the imposts in question are only a fee and they have furnished enough data therein (as referred to herein above and would be further detailed later) to satisfy the test of proportionality as propounded in the latest judgment of a Constitution Bench of Hon'ble the Apex Court in the case of Jindal Stainless Ltd. & anr. vs. State of Haryana & ors. (2006 (7) SCC 241), we are of the considered view that the provisions of the impugned Acts in question satisfy the requirement of Quid Pro Quo and the respondents have also complied therewith. Thus, the State legislature is well within its competence to pass the impugned legislation in terms of Entry No.66 of List II (State List) of the Seventh Schedule of Constitution. For the same reason, namely, the impost being a fee, the argument that the statutes and the levy of imposts thereunder are violative of Sections 14 and 15 of the CST Act and Articles 286 and 301 of the Constitution would not be tenable, hence, the same stands negatived. In view of the aforesaid, the argument on behalf of the petitioners that this is a case of double taxation would also not be sustainable, hence, it is rejected.

This may also be noticed that the provisions of the impugned Acts have been carefully drawn so as to facilitate the development of infrastructure sectors and not to interfere with the business or trade of the petitioners in any manner. It is needless to say that the State legislature has plenary powers of legislation on the entries mentioned in List II (State List) of the VII Schedule of Constitution, and it would not infringe in any manner upon any right under Article 19 (1) (g) or Article 301 of the Constitution

(Pl. see 1979 (4) SCC 232). Besides, there are various agencies like FCI, PUNSUP, Punjab State Warehousing Corporation, PAIC, Food and Supplies Department etc. which are engaged in procurement of food grains in the State and are also paying a market fee @ 2% to Market Committees and Rural Development Board, separately besides paying other imposts and the cess/fee in question but except the petitioners, no other agency has objected to the levy of impugned cess/fee.

Regarding the contention of discrimination under the impugned enactments that only a few articles and individuals have been selected for the purpose of levy of imposts, we may hold that as the articles in question are the major agricultural produces in Punjab and the services rendered out of utilisation of the fund created from the collection of imposts are mainly directed towards augmenting the infrastructure facilities in agriculture sectors, there is no discrimination in the levy and collection of the imposts. In a three Judge Bench judgment in G.K.Krishanan vs. State of Tamil Nadu and another (AIR 1975 SC 583), this has been held that as the State legislature was competent to pass the Act, and as the Government was authorised under Section 4 to levy the tax, the question of motive with which the tax was imposed is immaterial and, therefore, it would not be a ground to question its validity. Besides, in the case of Srikrishan Das vs. Town Area Committee, Chirgaon (1990(3) SCC 645), Hon'ble the Apex Court has held that it is for the legislature or the taxing authority to determine the question of need and policy, and to select the goods or services for taxation. Courts cannot review the wisdom or advisability or expediency of the levy of a tax as the Court has no concern with the policy of legislation, so long as they are not in consistent with the provisions of the Constitution. It is only where there

is abuse of powers and transgression of legislative function in levying a tax, it may be corrected by the judiciary and not otherwise. Taxes may be and often are oppressive, unjust, and even unnecessary but this can constitute no reason for judicial interference. When taxes are levied on certain articles or services and not on others it cannot be said to be discriminatory. Every tax must discriminate; and only the authority that imposes it can determine how and in what directions. Thus, the argument of the petitioners also fails on that count.

Now the next question that needs to be addressed is to find out the nature and character of the impugned imposts to determine as to whether they are a cess/fee or a tax. A Constitution Bench of Hon'ble the Apex Court in the case of The Hingir-Rampur Coal Co., Ltd. and others versus the State of Orissa and others (AIR 1961 SC 459 ), has held that there is no generic difference between a tax and fee and both are compulsory exaction, but a tax is imposed for public purpose and need not be supported by any consideration of service rendered in return, whereas, fee is levied essentially for services rendered and as such, there is an element of quid pro quo between the person who pays the fee and the public authority who imposes it. The Constitution Bench of Hon'ble the Apex Court has further articulated its dicta about the character of fee in the judgment in the case of Kewal Krishan Puri and another versus State of Punjab and another (1980 (1) SCC 416). While dealing with the concept of quid pro quo, the Constitution Bench has held as under:

> "....A fee is a charge for a special service rendered to individuals by some governmental agency. The levy of fees thus must be proved to be a quid pro quo for the services

> rendered to them. But for the payer of the fee, the State cannot be concerned on whom the ultimate burden of the fee falls. Also the service does not mean any personal or domestic service, but it means service in relation to the transaction, property or the institution in respect of which he is made to pay the fee. The literal meaning of the phrase quid pro quo is one for the other, meaning thereby you charge the fee for the service. But the element of quid pro quo may not be possible, or even necessary to be established with arithmetical exactitude but even broadly and reasonably it must be established with some amount of certainty, reasonableness or preponderance of probability that quite a substantial portion of the amount of fee realised is spent for the special benefit of its payers. Each case has to be judged from a reasonable and practical point of view for finding out the element of quid pro quo...."

The aforesaid judgment was later discussed and further elucidated in a Three Judge Bench judgment of the Apex Court in the case of Sreenivasa General Traders and others versus State of Andhra Pradesh and others (1983 (4) SCC 353). While dealing with the test to determine as to whether an impost is a tax or fee, this was held that element of quid pro quo in the true sense was not an essential element for fee, though a reasonable relationship between levy and fee and services rendered must be present. The Court also held that the decision in Kewal Krishan Puri's case does not lay down any legal principle of general applicability. The observation made therein seeking to quantify the extent of co-relation between the amount of

fee collected and the cost of rendition of service, was held to be an obiter as is evident from the observations as:

> "at least a good and substantial portion of the amount collected on account of fees, may be in the neighbour-hood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services in the market to the payer of fee, appears to be an obiter. It was not intended to lay down a rule of universal application but it was a decision which must be confined to the special facts of that case".

A Full Bench of this Court in the case of Subhash Chander Kamlesh Kumar versus State of Punjab and others (1990 (2) PLR-666) while dealing with the nature and degree of quid pro quo (one thing in return for another) between the fee realised and the costs of the services rendered, has held as:

> ".....that the true test for a valid fee is whether the primary and essential purpose is to render specific service to a specified area or class, it being of no consequence that the State may ultimately and in directly benefit by it. Quid pro quo is not always a sine qua non of a valid fee and what is required to be shown is that by and large there is quid pro quo. The corelationship between services expected is of a general character and a broad, reasonable and casual relationship in enough to satisfy the requirement of law. The prayer of the fee represents collectively the class of persons i.e., users of the market, including growers and those engaged in business to whom the benefit is directly intended by the establishment of a regulated market and not the actual

individual i.e., the trader. If there is quid pro quo in the sense explained above for such a class of persons, the test of valid fee is satisfied."

A Division Bench of this Court in the case of Health Aid Foods Specialists Private Limited versus State of Punjab (2002 (19) PHT 238 (P&H)), has also discussed the question as to whether the cess is a fee or tax. The question was answered by holding that the cess, fee and tax constitute a common species. There is no generic difference between one or the other. They all are a compulsory exaction of money by public authorities. The basic difference lies in the fact that while a tax need not be supported by any consideration of service, a fee is levied essentially for services rendered. In case of fee, there is essentially an element of quid pro quo between the person who pays and the public authority which collects. It is not always absent in the case of tax. However, it is not an essential pre requisite.

A Constitution Bench of Hon'ble the Apex Court in the case of State of West Bengal versus Kesoram Industries Limited and others (2004 (10) SCC 201), has held that it is the object and essential purpose of the Act, which would determine the character of levy and not the ultimate or incidental results or consequences like effect on the price of the commodity. A Three Judge Bench of Hon'ble the Apex Court in the case of State of H.P. And others versus Shivalik Agro Poly Products and others (2004 (8) SCC 556), has also held that there is no generic difference between a tax and fee, which both are a compulsory exaction of money by public authorities. As regards the fee, this has been held that there is no co-relationship between the levy and the services rendered which should be of general character and

not of mathematical exactitude.

During the course of arguments, we were also taken through some latest judgments of Hon'ble the Apex Court rendered in the cases of (1) Sonachandi Oal Committee and others versus State of Maharashtra (2005 (2) SCC 345); (2) State of Bihar and others versus Shree Baidyanath Ayurved Bhawan (2005 (2) SCC 762), and (3) State of H.P. and others versus Shivalik Agro Poly Products and others (2004 (8) SCC 556). In Sonachandi's case, the Hon'ble Court has held that the service to be rendered is not a condition precedent and only a reasonable relationship between the levy and fee and the services rendered is sufficient. In Shree Baidyanath Ayurved Bhawan's case, a Three Judge Bench of Hon'ble the Apex Court has held that the fee for grant of licence is regulatory and not compensatory, hence quid pro quo for the same is not necessary, therefore, in the absence of quid pro quo, such fee would not violate Articles 301 of the Constitution. Again, in Shivalik Agro's case, a Three Judge Bench of Hon'ble the Apex Court has taken the view that the co-relationship between the levy and the services rendered should be one of general character and not of mathematical exactitude. Thus, the view taken in Kewal Krishan Puri's case has undergone a major change regarding the ratio of services to be rendered in lieu of the payment of fee.

Hon'ble the Apex Court in the case of Jindal Stripe Limited and others versus State of Haryana and others ((2004) 134 STC 303), while dealing with the question of facilities to be provided towards the imposition of compensatory tax, deemed it fit to refer the matter to a larger Bench by passing the following order:

"......24. The decisions in Bhagatram's case and Bihar

Chamber of Commerce's case (1996) 9 SCC 136 now say that even if the purpose of imposition of the tax is not merely to confer a special advantage on the traders, but to benefit the public in general including the traders, that levy can still be considered to be compensatory. According to this view, an indirect or incidental benefit to traders by reason of stepping up the developmental activities in various local areas of the State can be legitimately brought within the concept of compensatory tax, the nexus between the tax known as compensatory tax and the trading facilities not being necessarily either direct or specific.

25. Since the concept of compensatory tax has been judicially evolved as an exception to the provisions of article 301 and as the parameters of this judicial concept are blurred particularly by reason of the decisions in Bhagatram's case and Bihar Chamber of Commerce's case (1996) 9 SCC 136, we are of the view that the interpretation of article 301 vis-a-vis compensatory tax should be authoritatively laid down with certitude by the Constitution Bench under article 145 (3).

In the circumstances let all these matters be placed before the honourable Chief Justice for appropriate directions..."

In the case of Vijayalashmi Rice Mill and others versus Commercial Tax Officers, Palakol and others (2006 (6) SCC 763), Hon'ble the Apex Court has held that a cess is ordinarily a tax which generates

revenue to be utilized for a specific purpose. In paras 27 & 28 of the judgment, Hon'ble Court has held as:

> "...27. In our opinion, the cess in question is in substance a fee as it is being levied for rendering to the rural public the service of rural development for the purposes stated in para 9 of the Act. Clearly roads, bridges and storage facilities have to be built in rural areas for the progress, and naturally this will require generating funds. Thus, even if no specific service is rendered to any particular individual from whom the fee has been realised, the cess in question is nevertheless a fee, for the reasons already mentioned above. Services are being rendered to the people in the rural areas as mentioned in Section 9 of the Act.
>
> 28. No doubt, as stated above, there has to be a broad correlation between the total amount of fees generated by the impugned cess and the total value of the services rendered, but there is no specific averment in the writ petition that there is no such broad correlation. It is true that if say, Rs.100 crores revenue is generated every year by this cess, it is not necessary that this entire amount of Rs.100 crores must be spent for the purposes mentioned in Section 9, and it will suffice if a substantial part of this Rs.100 crores is spent for such purposes. At the same time, we would like to clarify that if say, Rs.100 crores is generated by the cess in question and only Rs.1 crore or

> Rs.50 lakhs is spent for the purpose mentioned in Section 9, obviously there would not be in such a case a broad correlation between the fees being realised and the services rendered. ..."

The issue raised in the case of Jindal Stripe Ltd. was addressed threadbare by a Constitution Bench of Hon'ble the Supreme Court in the case of Jindal Stainless Limited and another versus State of Haryana and others (2006 (7) SCC 241) and the Hon'ble Court passed a detailed judgment while dealing with the questions relating to taxing and regulatory powers; difference between a tax and fee, and also the scope of Articles 301, 302 & 304 viz-a-viz compensatory taxes. The relevant portions of the judgment, on reproduction, read as:

> **"**16**.** To sum up: the pre-1995 decisions held that an exaction to reimburse/ recompense the State the cost of an existing facility made available to the traders or the cost of a specific facility planned to be provided to the traders is compensatory tax and that it is implicit in such a levy that it must, more or less, be commensurate with the cost of the service or facility. Those decisions emphasised that the imposition of tax must be with the definite purpose of meeting the expenses on account of providing or adding to the trading facilities either immediately or in future, provided the quantum of tax is based on a reasonable relation to the actual or projected expenditure on the cost of the service or facility. However, the post-1995 decisions in *Bhagatram case*

(***Jindal Strips Ltd. (1)*** ***v.*** ***State of Haryana*** (2003) 8 SCC 60 and in *Bihar Chamber of Commerce* (***Sharma Transpport*** ***v.*** ***Govt. of A.P.*** now say that even if the purpose of imposition of the tax is not merely to confer a special advantage on the traders but to benefit the public in general including the traders, that levy can still be considered to be compensatory. According to this view, an indirect or incidental benefit to traders by reason of stepping up the developmental activities in various local areas of the State can be brought within the concept of compensatory tax, the nexus between the tax known as compensatory tax and the trading facilities not being necessarily either direct or specific.

xx xx xx xx

37**.** The concept of compensatory tax is not there in the Constitution but is judicially evolved in *Automobile Transport* ***(Bhagatram Rajeevkumar*** ***v.*** ***CST*** 1995 Supp (1) SCC 673 as a part of regulatory charge. Consequently, we have to go into concepts and doctrines of taxing powers vis--vis regulatory powers, particularly when the concept of compensatory tax was judicially crafted as an exception to Article 301 in *Automobile Transport* .

***Difference between exercise of Taxing and Regulatory Power***

38**.** In the generic sense, tax, toll, subsidies, etc. are manifestations of the exercise of the taxing power. The primary purpose of a taxing statute is the collection of revenue. On the other hand, regulation extends to

administrative acts which produces regulative effects on trade and commerce. The difficulty arises because taxation is also used as a measure of regulation. There is a working test to decide whether the law impugned is the result of the exercise of regulatory power or whether it is the product of the exercise of the taxing power. If the impugned law seeks to control the conditions under which an activity like trade is to take place then such law is regulatory. Payment for regulation is different from payment for revenue. If the impugned taxing or non-taxing law chooses an activity, say, movement of trade and commerce as the criterion of its operation and if the effect of the operation of such a law is to impede the activity, then the law is a restriction under Article 301. However, if the law enacted is to enforce discipline or conduct under which the trade has to perform or if the payment is for regulation of conditions or incidents of trade or manufacture then the levy is regulatory. This is the way of reconciling the concept of compensatory tax with the scheme of Articles 301, 302 and 304. For example, for installation of pipeline carrying gas from Gujarat to Rajasthan, which passes through M.P., a fee charged to provide security to the pipeline will come in the category of manifestation of regulatory power. However, a tax levied on sale or purchase of gas which flows from that very pipe is a manifestation of exercise of the taxing power. This example indicates the difference between taxing and regulatory powers (see *Essays in Taxation* by Seligman).

***Difference between "a tax", "a fee" and "a CompensatoryTax"***

*Parameters of Compensatory Tax"*

"39**.** As stated above, in order to lay down the parameters of a compensatory tax, we must know the

concept of taxing power.

40. Tax is levied as a part of common burden. The basis of a tax is the ability or the capacity of the taxpayer to pay. The principle behind the levy of a tax is the principle of ability or capacity. In the case of a tax, there is no identification of a specific benefit and even if such identification is there, it is not capable of direct measurement. In the case of a tax, a particular advantage, if it exists at all, is incidental to the State's action. It is assessed on certain elements of business, such as manufacture, purchase, sale, consumption, use, capital, etc. but its payment is not a condition precedent. It is not a term or condition of licence. A fee is generally a term of a licence. A tax is a payment where the special benefit, if any, is converted into common burden.

41. On the other hand, a fee is based on the "principle of equivalence". This principle is the converse of the "principle of ability" to pay. In the case of a fee or compensatory tax, the "principle of equivalence" applies. The basis of a fee or a compensatory tax is the same. The main basis of a fee or a compensatory tax is the quantifiable and measurable benefit. In the case of a tax, even if there is any benefit, the same is incidental to the government action and even if such benefit results from the government action, the same is not measurable. Under the principle of equivalence, as applicable to a fee or a compensatory tax, there is an indication of a quantifiable data, namely, a benefit which is measurable.

42. A tax can be progressive. However, a fee or a compensatory tax has to be broadly proportional and not progressive. In the principle of equivalence, which is the foundation of a compensatory tax as well as a fee, the

value of the quantifiable benefit is represented by the costs incurred in procuring the facility/services, which costs in turn become the basis of reimbursement/recompense for the provider of the services/facilities. Compensatory tax is based on the principle of “pay for the value”. It is a sub-class of a “a fee”. From the point of view of the Government, a compensatory tax is a charge for offering trading facilities. It adds to the value of trade and commerce which does not happen in the case of a tax as such. A tax may be progressive or proportional to income, property, expenditure or any other test of ability or capacity (principle of ability). Taxes may be progressive rather than proportional. Compensatory taxes, like fees, are always proportional to benefits. They are based on the principle of equivalence. However, a compensatory tax is levied on an individual as a member of a class, whereas a fee is levied on an individual as such. If one keeps in mind the “principle of ability” vis-à-vis the “principle of equivalence”, then the difference between a tax on one hand and a fee or a compensatory ax on the other hand can be easily spelt out. Ability or capacity to pay is measurable by property or rental value. Local rates are often charged according to the ability to pay. Reimbursement or recompense are the closest equivalence to the cost incurred by the provider of the services/facilities. The theory of compensatory tax is that it rests upon the principle that if the Government by some positive action confers upon individual(s), a particular measurable advantage, it is only fair to the community at large that the beneficiary shall pay for it. The basic difference between a tax on one hand and a fee/compensatory tax on the other hand is that the former is based on the concept of burden whereas compensatory

tax/fee is based on the concept of recompense/reimbursement. For a tax to be compensatory, there must be some link between the quantum of tax and the facility/services. Every benefit is measured in terms of cost which ahs to be reimbursed by compensatory tax or in the form of compensatory tax. In other words, compensatory tax is a recompense/reimbursement.

43. In the context of article 301, therefore, compensatory tax is a compulsory contribution levied broadly in proportion to the special benefits derived to defray the costs of regulation or to meet the outlay incurred by some special advantage to trade, commerce and intercourse. It may incidentally bring in net revenue to the Government but that circumstance is not an essential ingredient of compensatory tax.

44. Since compensatory tax is a judicially evolved concept, understanding of the concept, as discussed above, indicates its parameters."

45. To sum up, the basis of every levy is the controlling factor. In the case of "a tax", the levy is a part of common burden based on the principle of ability or capacity to pay. In the case of "a fee", the basis is the special benefit to the payer (individual as such) based on the principle of equivalence. When the tax is imposed as a part of regulation or as a part of regulatory measure, its basis shifts from the concept of "burden" to the concept of measurable/quantifiable benefit and then it becomes "a compensatory tax" and its payment is then not for revenue but as reimbursement/recompense to the service/facility provider. It is then a tax on recompense. Compensatory tax is by nature hybrid but it is more closer to fees than to tax as both fees and compensatory taxes are based on the principle of equivalence and on the basis

of reimbursement/recompense. If the impugned law chooses an activity like trade and commerce as the criterion of its operation and if the effect of the operation of the enactment is to impede trade and commerce then article 301 is violated.

**Burden on the State**

46. Applying the above tests/parameters, whenever a law is impugned as violative of Article 301 of the Constitution, the Court has to see whether the impugned enactment facially or patently indicates quantifiable data on the basis of which the compensatory tax is sought to be levied. The Act must facially indicate the benefit which is quantifiable or measurable. It must broadly indicate proportionality to the quantifiable benefit. If the provisions are ambiguous or even if the act does not indicate facially the quantifiable benefit, the burden will be on the state as a service/facility provider to show by placing the material before the Court, that the payment of compensatory tax is a reimbursement/recompense for the quantifiable/measurable benefit provided or to be provided to its payer(s). As soon as it is shown that the Act invades freedom of trade it is necessary to enquire whether the State has proved that the restrictions imposed by it by way of taxation are reasonable and in public interest within the meaning of Article 304(b) (see para 35 (of AIR) of the decision in Khyerbari Tea Co. Limited v. State of Assam, AIR 1964 SC 925.

a. **Scope of articles 301, 302 and 304 vis-à-vis compensatory Tax.**

47. As stated above, taxing laws are not excluded from the operation of Article 301, which means that tax laws can and do amount to restrictions on the freedom guaranteed to trade under part XIII of the Constitution.

This principle is well settled in Atiabari Tea Co., AIR 1961 SC 232. it is equally important to note that in Atiabari Tea Co., AIR 1961 SC 232, the Supreme Court propounded the doctrine of "direct and immediate effect". Therefore, whenever a law is challenged on the ground of violation of article 301, the Court has not only to examine the pith and substance of the levy but in addition thereto, the Court has to see the effect and the operation of the impugned law on inter-State trade and commerce as well as intra-State trade and commerce.

48. when any legislation, whether it would be a taxation law or a non-taxation law, is challenged before the Court as violating Article 301, the first question to be asked is: what is the scope of the operation of the law? Whether it has chosen an activity like movement of trade, commerce and intercourse throughout India, as the criterion of its operation? If yes, the next question is: what is the effect of operation of the law on the freedom guaranteed under Article 301? If the effect is to facilitate free flow of trade and commerce then it is regulation and if it is to impede or burden the activity, then the law is a restraint. After finding the law to be a restraint/restriction one has to see whether the impugned law is enacted by parliament or the State Legislature. Clause (b) of Article 304 confers a power upon the state Legislature similar to that conferred upon parliament by article 302 subject to the following differences:

(a) While the power of Parliament under Article 302 is subject to the prohibition of preference and discrimination decreed by Article 303(1) unless Parliament makes the declaration under article 303 (2), the state power contained in article 304(b) is made expressly free from the prohibition contained in Article 303(1) because the opening words of

Article 304 contain a non obstante clause both to article 301 and Article 303.

(b) While parliament's power to impose restrictions under article 302 is not subject to the requirement of reasonableness, the power of the State to impose restrictions under article 304 is subject to the condition that they are reasonable.

(c) An additional requisite for the exercise of the power under Article 304(b) by the State Legislature is that previous Presidential sanction is required for such legislation.

7. After the judgment of the Constitution Bench dated 13.4.2006 reported in **Jindal Stainless Limited (2) and another v. State of Haryana and others,** (2006) 7 SCC 241, the matter was placed before a Division Bench of the Hon'ble Supreme Court and while adjourning the matter, the following directions were issued in order dated 14.7.2006 (2006 (7) SCC 271):-

> "Since relevant data do not appear to have been placed before the High Courts, we permit the parties to place them in the writ petitions concerned within two months. The High Courts concerned shall deal with the basic issue as to whether the impugned levy was compensatory in nature. The High Courts are requested to decide the aforesaid issue within five months from the date of receipt of our order. The judgment in the respective cases shall be placed on record by the parties concerned within a month from the date of the decision in each case pursuance to our direction."

Thus, we need to examine the data available on record towards the mandate of aforesaid directions of the Supreme Court. As referred to

herein above, the PIDA has filed three affidavits and, thus, it would be apposite to detail the relevant averments of the affidavits showing the services rendered in lieu of the levy of the imposts.

According to these affidavits, in pursuance of Notification No.6343 dated 11.7.2002, issued under Section 25 of the Act of 2002, the State Government has levied fee as defined in Section 2 (13) thereof as:

> "Fee means a charge levied and collected for facilitating the development, maintenance and providing of infrastructure facilities under this Act."

The latest affidavit dated 27.4.2009 refers to Section 27 of the 2002 Act, which is reproduced as:

> "27. Constitution of the Development Fund.
>
> (1) The State Government shall constitute a Fund to be known as the Development Fund which shall vest in the Board.
>
> (2) The amount of fee charged and collected under this Act, shall be credited to the Development Fund.
>
> (3) The Development Fund shall be applied for the development of infrastructure sectors by providing infrastructure facilities in the State of Punjab for the benefit of the persons from whom the fee has been charged and collected and the public at large and for the infrastructure facilities of the country having direct benefit to the economy of the State of Punjab."

In the affidavit, a yearwise breakup of the amount of fee collected and credited in the development fund has been annexed as R-1. It

depicts the area and townwise figures of fee collected and credited in the the Development Fund. It appears that till 31.3.2009, the Board has collected an amount of Rs.1857.92 crores as fee. This is emphatically averred in the affidavit that the imposition of infrastructure fee is well in consonance with the spirit of the Act of 2002 which aims to provide the infrastructure facilities through financial sources other than those provided by the State Budget. The amount collected by way of fee is primarily used for the benefit of the fee payers by providing them with world class infrastructure facilities/projects in various infrastructure sectors including roads, bridges, Expressways, irrigation, transport etc., in the State of Punjab. This is also submitted in the affidavit that the fee collected is spent by the Board (the PIDB) strictly in accordance with the provisions of the Act of 2002, particularly with reference to sub-section 3 of Section 27 of the Act. Statutory auditors of PIDB i.e. the Local Fund Examiner, Punjab, have till date never raised any objections that the development fund or any part thereof has been applied for any object other than those provided in the Act of 2002. The Government of India has also notified the PIDB in the official gazette under Section 10 (23 (c) (iv) of the Income Tax Act, 1961 and, therefore, the development fund (including any interest earned/accrued thereon), is completely exempt from the payment of income tax, so that the spending on infrastructure projects is optimized. Thus, no part of the money deposited as fee is to be paid towards income tax and the entire amount of fee collected is spent on infrastructure development activities. As per the terms and conditions of the income tax exemption, PIDB's annual income tax returns are compulsorily scrutinized by the income tax department every year and the department has never raised any objection in respect of the

utilization of fund that it has been utilized in violation of the objectives or the parameters provided in the Act of 2002 or the earlier Act of 1998. This is also mentioned that the main stay of the natives of Punjab is agriculture. Thus, most of the infrastructure facilities in the shape of good roads, bye-passes, rail over bridges (ROBs), High Level Bridges(HLBs), Expressways, irrigation canals and minors, bus terminals, water supply and sewerage facilities in villages and towns etc. would provide a major relief to the agrarian sector. From the details filed with the affidavit as Annexure R-2, it is apparent that the total amount of funds released by the PIDB out of the development fund from 1999-2000 to 2008-2009 (upto 31.3.2009) for undertaking the projects for various infrastructure is Rs.1941.79 crores. A summary statement regarding the sectorwise overview of all the projects under the aegis of the PIDB upto 31.3.2009 has also been provided in the affidavits. This includes the projects funded by the PIDB out of the development fund as also by way of the private public participation in which the PIDB has successfully attracted the investments from private sector entrepreneurs. According to the details annexed with the affidavit, the total cost of all the projects already awarded under the aegis of PIDB upto 31.3.2009 is Rs.10,197.55 crores and the total cost of the projects being developed is Rs.33540.80 crores. Thus, the grand total costs of the projects taken up for development by the Board is Rs.43738.35 crores, as against the amount of fee of only Rs.1857.92 crores, collected and credited into the development fund. Out of the infrastructure projects/facilities costing Rs.43738.35 crores, developed or under developed by the Board, majority of the projects/facilities have been utilized or are going to be utilized by the persons related to the items in Schedule III under Section 25

of the 2002 Act. It may not be possible to cull out the exact expenditure in mathematical exactitude, however, it cannot be denied that in proportion to the fee charged and credited in the Development fund, infrastructure facilities worth many times more than the collection of cess/fee have been provided to the petitioners. The respondents have detailed as under the relevant data relating to the facilities provided by them, in order to show as to how the fee collected by the PIDB is being utilized:

| **"CWP No.** | **Petitioners** | **Projects** |
|---|---|---|
| 3295/2003 | M/s Garg Rice and General Mils, Ludhiana -Moga Road, Moga | (1) Steps being taken for four lanning of Ludhiana – Moga – Ferozepur road on BOT basis (approximate project cost of Rs.300 crores). Tenders to be invited shortly. Rs.90 lacs already spent on shifting of utilities for clearing the right of way.<br>The upgraded four lane road would immensely benefit the petitioner rice and general mills, transport vehicles visiting the mills, customers, workers/ employees and other persons visiting the mills. Commuting in the periphery of the petitioner rice and General Mills would become much easier with lesser wear and tear of vehicles, besides reduction in accidents and increased safety while traveling, transporting goods etc.<br>(2) Proposed Kharar-Phagwars Express way which is going to be the first fully Access Control Expressway upgradable to 10 lanes.<br>This would immensely benefit the |

| | | |
|---|---|---|
| | | petitioner rice and general mills, transport vehicles visiting the mills, customers, workers/employees and other persons visiting the mills. Commuting in the periphery of the petitioner rice and general mills would become much easier and quicker with lesser wear and tear of vehicles, besides reduction in accidents and increased safety while traveling, transporting goods etc. The land acquisition notifications for the project have already been issued and the Expression of Interest has also been invited from the prospective bidders who would construct the project on BOT basis, PIDB would be spending about Rs.2500 crores for meeting the land acquisition cost, whereas, the construction cost of about Rs.2600 crores would be financed by the BOT Operator to be selected in due course. |
| 1981/2005 | M/s Nauhria Rice & General Mills, Moga-Barnala Road, Village Badani Kalan, Moga. | Widening & Strengthening work of Raikot -Barnala road (57.9 Kms) is being carried out on BOT basis. Project cost Rs.78.66 cores. Construction work to be completed shortly. A number of other projects in the area surrounding village Badni Kalan are being developed at nearby places i.e. Dhuri, Sangrur, Moga and Bathinda. All such projects would bring direct |

| | | |
|---|---|---|
| | | and indirect economic benefits to the petitioners, their workers/employees etc. residing in the nearby areas. |
| 1984/2005 | M/s Nauhria Food Products, Moga-Barnala Road, Vill.Badani Kalan District Moga. | Widening & Strengthening work of Raikot-Barnala Road (57.9 Kms) is being carried out on BOT basis. The Project cost Rs.78.66 crores. Construction work to be completed shortly.<br>A number of other projects in the area surrounding village Badni Kalan, are being developed at nearby places i.e. Dhuri, Sangrur, Moga and Bathinda. All such projects would bring direct and indirect economic benefits to the petitioners, their workers/employees etc. residing in the nearby areas. |
| 2861/2002 | M/s Ganesh Roller Flour Mills, G.T.Road, Bahumajra, Khanna | Construction of ROB at Khanna completed at a cost of approximately Rs.6 crores.<br>Work of Khanna- Nawanshahr – Machiwara Road completedat a cost of approximately Rs.26 crores.<br>The aforesaid projects in the vicinity on the petitioner flour mills would facilitate easy transportation of goods to and from the flour mills. Prior to the construction of the ROB at Khanna, the travelers including goods transport vehicles had to often wait at the railway level crossing for hours. Better infrastructure facilities in the |

| | | |
|---|---|---|
| | | nearby area would definitely bring a number of direct and indirect economic and other benefits to the petitioners. |
| 3842/2000 | M/s Samana Roller Flour Mills, Patiala Saman road. | Work of Patiala-Samana-Patran road (48. Kms.) awarded on BOT basis. Project cost Rs.48.10 crores. The upgraded road is already functional and is benefiting the petitioner flour mills, transport vehicles visiting the flour mills, customers, workers/ employees and other persons visiting the flour mills by using the said road. Due to the development of the road project, the value of the flour mills and other assets of the petitioners which are located on the Patiala -Samana road has appreciated in value to a much more extent as compared to the amount of fee which would have been paid to them." |

Besides, a number of water supply and sewerage schemes are being implemented at Samana, Fazilka, Malout, Rayya, Qadian, Dinanagar, Nabha, Jaitu, Mukerian, Ghanaur, Khannauri, Pathankot, Dirba, Rahon, Rajpura, Sangrur and Dasuya under the aegis of PIDB. In addition to that, low cost small bore sewerage systems are being provided in 30 villages of Punjab. These development efforts focused in the agri-rural sectors indicate that the agriculturists spread across various parts of the State who are covered by the entries of Schedule III under Section 25 of the 2002 Act would be immensely benefited by the provisions of infrastructure facilities.

It cannot be denied that the provisions of roads connecting the rural areas with the urban areas, which have been provided by the PIDB are going to benefit the petitioner rice millers by making the transport of the agricultural produces from rural areas to their rice mills located in the urban areas easier and economical. Besides, the flour and rice millers would be immensely benefited by the large number of urban infrastructure works including urban roads, water supply, sewerage, street lighting etc. provided in the periphery of their respective flour and rice mills. Technical education infrastructure i.e. 9 Industrial Training Institutes which are strategically located in major agricultural belts of the State would make available skilled workmen as required by the petitioner millers. Since most of the PIDB sponsored projects are to focus on the persons connected with the agriculture sector who pay the fee, the National Bank for Agriculture & Rural Development (NABARD) has partly shared the cost of some of the High Level Bridges (HLBs) which were perceived by the bank as directly benefiting the agricultural community. The total amount received by the State Government from the Central Road Fund (CRF) for undertaking road works in the State for 5 years i.e. 2001-2002 to 2005-06 being only Rs.148.63 crores is negligible and much less as compared to the total amount required for properly maintaining the existing roads even in the State of Punjab and what to talk of upgrading the service level of roads or constructing new roads. On the other hand, an amount of Rs.898.30 crores has been released by the Board out of the development fund just for new road works. This is also stated in the affidavit that the onus is on the petitioners to furnish the precise figures of the fee paid by each of them, which if provided would establish that the quantum of facilities which each of the petitioners is

enjoying is many times more than the actual amount of fee paid by each of them. This is reiterated in the affidavit that none of the road projects which have been exclusively developed by the PIDB would benefit the commercial private projects such as shopping malls etc. falling within the towns and cities. Such internal city projects are only developed by the local development authorities like PUDA, GMADA, BDA, PDA, GLADA, Municipal Committees, Municipal Corporations etc. as part of their official functions. Almost all the road sector projects developed by the PIDB connect towns with towns, towns with villages and villages with villages. Primarily and substantially the PIDB has developed the road sector projects including bridges etc. which benefit the agrarian community and not for the benefit of visitors to commercial private projects. In fact, the scheme of the Act rather envisages and encourages the PIDB to take up the projects in various infrastructure sectors, as mentioned in Schedule-I by attracting private sector finances. Therefore, the PIDB can also take up Information Technology related projects in future with 100% private sector funding, as has been successfully done by it in the transport sector and technical education sector by awarding BOT and Operation and Maintenance (O&M) contracts. However, the Board has immensely focused on the agricultural rural sectors and the development efforts are largely connected with the agriculturists spread across the various parts of the State and are covered by the entries in Schedule III of Section 25 of the 2002 Act. It is they who are going to be immensely benefitted by the provisions of Infrastructure facilities. Spending on roads is just one example of amount of fee in question being utilized either directly or indirectly for the benefit of the persons paying the same. The PIDB has till date released an amount of

Rs.182.76 crores for the upgradation of irrigation canals and minors, and no funds were provided by any department or agency of the State Government. Further, a mega irrigation project costing approximately Rs.3500 crores is also being developed and substantially funded by the PIDB out of the fee collected under the 2002 Act. The decisions regarding expenditure from the development fund spent for infrastructure development are taken at the level of the Board headed by the Chief Minister and constituted under Sub Section 2 of Section 18 of the 2002 Act or at the level of Executive Committee of the Board constituted under sub section 4 of Section 18 of the 2002 Act, which is headed by the Chief Secretary. From perusal of the said affidavits, it is clear that till 31.3.2009, the total amount of fee collected and credited in the development fund was Rs.1875.92 crores. Bank interest earned on the development fund till that date was Rs.231.56 crores; Bonds money (i.e. Loan raised) received is Rs.1549.96 crores; OUVGL receipt is Rs.38.17 crores, and the Misc. receipts amount like refund from Income Tax Department, receipt of Railway share, etc. was Rs.89.97 crores. Thus, the total fund available with the PIDB on that date was to the tune of Rs.3767.48 crores. The PIDB has not received any funds or financing for its projects from the State till date. The development fund vested with the Board is a ring fenced dedicated fund which is used on an exclusive basis for developing infrastructure projects by leveraging the available amounts for the benefit of persons paying the fee. As mentioned herein above, infrastructure projects funds costing approximately Rs.10197.55 crores have already been awarded, whereas the total amount of fee received by the Board till 31.3.2009 is only Rs.1857.92 crores, out of which the individual writ petitioners herein have hardly paid few thousands and in some

cases, few lacs rupees each. On the contrary, one of the petitioners namely M/s Garg Rice and General Mills situated in Mundi Kharar, District Mohali, would be getting benefit from the construction of proposed Kharar-Phagwara Expressway to be constructed at a tentative cost of Rs.5000 crores which is going to be the first fully access control expressway upgradable upto 10 lanes. Rs.2500 crores paid towards the cost of land acquisition would be financed by the PIDB whereas the cost of construction worth approximately Rs.2600 crores would be borne by the BOT operator. This writ petitioner, its workers, visitors and transporters carrying goods, grains etc. to the mills would directly be benefitted from this single project, leaving aside the direct or indirect benefits which the petitioner is free to derive on a non-exclusive basis from the infrastructure facilities costing over Rs.43000 crores created with the efforts of the PIDB in lieu of the fee collected from the payers. The PIDB has also got the statutory mandate under the 2002 Act to follow modern project management practices and models such as Build, Operate and Transfer (BOT) etc., and therefore, this organisation has been successfully and sincerely leveraging the amount available in the development fund. In other words, by adopting the modern projects management practices and models and by involving private sector participants to invest in projects, the PIDB has ensured that with every one rupee spent out of the development fund, infrastructure facilities worth two, three or four rupees should be created for the benefit of individuals paying the fee as well as for the public at large. The judgment of Constitution Bench of Hon'ble the Apex Court in the case of Jindal Stainless Ltd. (supra) was referred and considered 1in the case of Vijayalashmi Rice Mill and others versus Commercial Tax Officers, Palakol reported in (2006) 6 Supreme

Court Cases 763 in the context of principle of equivalence and the Hon'ble Court held that the aforesaid decision cannot be interpreted to mean that the sea change which has taken place in the concept of fee has vanished and that by this decision, the old concept of fee has been restored and that now it has to be established that the particular individual from whom the fee is being realised must be rendered some specific services. The Hon'ble Court further held that the decision in Jindal Stainless Ltd. Case (supra) was given in connection with Article 301 of the Constitution and it was not regarding the nature of fee. However, in a later judgment in the case of Hardev Motors Transport versus State of MP and others reported in (2006) 8 SCC 613, the aforesaid judgments in Jindal Stainless Ltd. and Vijayalashmi Rice Mill were cited and considered. The Hon'ble Court in para 27 of the judgment has noted as "we, however, feel that this Bench is bound by the Constitution Bench decision of this Court." Thus, in order to find out a reasonable relationship between the fee levied and cost of regulation/services made available in lieu thereof, some empirical and quantifiable data have to be made available by the authority imposing the cess/fee for examination as to whether the impugned Acts indicate proportionality to quantifiable benefit. Looking to the exhaustive replies filed on behalf of the State as well as the PIDB setting out in detail the fund utilised towards the object and purpose of the Acts (which is much more than the collection of cess/fee), and the provisions of the Acts indicating the area i.e. Infrastructure development sectors where for the fund in question is to be utilized and is being utilised as discussed herein above, we have in no manner any doubt that the mandates of Constitution Bench judgment in Jindal Stainless Ltd. case (supra) stand fully addressed and satisfied. Thus, the argument on behalf of the writ petitioners that the imposts

in question are a tax and not a cess/fee is answered in negative. Resultantly, we hold that the imposts in question are only a fee and not a tax.

Now coming to the question like the retrospective levy of cess, we may profitably refer to a Constitution Bench judgment of Hon'ble the Apex Court reported in AIR 1964 SC 925 (Khyebari Tea Co. Ltd. and another vs. State of Assam and others), wherein the Hon'ble Court has held that the power to make law necessarily includes the power to make the provisions of law applicable retrospectively and it is within the competence of a legislature to pass validating Acts because the power to pass such validating Acts is essentially subsidiary to the main power of legislation on the topics included in the relevant list. Therefore, if the legislature felt that the infirmity in the earlier Act could be cured and it proceeded to comply with the requirement of Article 304(b), it cannot be said that the law passed is void because the legislature has thereby attempted to recover taxes, which could not be recovered under the earlier Act owing to the constitutional infirmity in the said Act. Thus, the exercise of legislative powers does not become colourful or confiscatory only because it has been passed substantially for the purpose of validating the recovery made under the earlier Act and enforcing the assessment orders passed under that Act. Besides, it is for the legislature to decide from which date a particular law should come into operation. (Pl. see M/s Jain Brothers and others vs. the Union of India and others, AIR 1970 SC 778, para 9). In the instant case, the clarificatory notification issued on 8.4.1999 and the Cess (Collection) Rules notified on 11.11.1998 have been made applicable also in respect of collection of cess under the 1998 Ordinance promulgated on 15.10.1998 and the 1998 Act notified in the official gazette on 12.1.1999.

In addition to that, the 1998 Act has also saved the acts done under the 1998 Ordinance dated 15.10.1998 under Section 12 thereof. Thus, the retrospective applicability of the Cess (Collection) Rules and the clarificatory notification is valid in the light of the aforesaid authoritative pronouncements. In another judgment in the case of Ram Chandra Kailash Kumar and Co. and others vs. State of UP and another (AIR 1980 SC 1124), a Constitution Bench of the Supreme Court had upheld the imposition of market fee retrospectively. In yet another judgment in Sri Krishan Dass (supra), imposition of tax retrospectively was held to be valid. Thus, we hold that the retrospective levy of imposts in question under the 1998 Ordinance/Act, the Cess (Collection) Rules notified on 11.11.1998 and the clarificatory notification issued on 8.4.1999 with effect from the date of promulgation of Ordinance No.7 of 1998 on 15.10.1998 and coming into force of the Act No.1 of 1999, dated 12.1.1999, is valid in law. Thus, the submission to the contrary on behalf of the petitioners would not be sustainable, hence, it stands rejected.

As regards the contention relating to recovery of cess by using the machinery under the PGST Act, in our view, this point would be covered by the decision of a Constitution Bench of Hon'ble the Apex Court in Khyebari Tea Co. Ltd. case (supra). Para 23 thereof on reproduction reads as:

> "....23. This question has been frequently considered by this Court and the power of the legislature to create appropriate machinery to recover a tax, or to prevent the evasion of payment of tax has been consistently recognised. In R.C. Jall v. Union of India, (1962) Sup 3 SCR 436: (AIR 1962 SC 1281) while dealing with the question about the power of legislature

to decide at what stage and from whom excise duly should be recovered, this Court held that subject always to the legislative competence of the taxing authority, the tax can be levied at a convenient stage so long as the character of the impost is not lost. The method of collection does not affect the essence of the duty but only relate to the machinery of collection for administrative convenience. While enunciating this principle this Court, however, took the precaution of adding that "whether in a particular case the tax ceases to be in essence as excise duty and the rational collection between the duty and the person own whom it is imposed ceased to exist, is to be decided on a fair construction of the provision of a particular Act."

Again in Ram Chandra Kailash Kumar's case (supra), a Constitution Bench of Hon'ble the Apex Court has held that the absence of machinery under the Act or the Rules framed thereunder for adjudication of disputes does not mean that fee cannot be recovered or collected. Thus, in this case, use of machinery under the PGST Act for the purpose of collection of cess/fee under the impugned Acts would not invalidate the levy of cess simply because there is no such machinery of its own under the 1998 or the 2002 Act to collect the imposts. In view of all the aforesaid, we are of the view that the use of machinery provided under the PGST Act for the purpose of collection of imposts in question would not in any manner invalidate the levy and collection of cess/fee under the 1998 and 2002 Acts; the Cess (Collection) Rules and the clarificatory notification dated 8.4.1999. Hence, this question also stands answered in negative.

So far as the point relating to delegation legislative power by the State Legislature to the State Government is concerned, Section 11 of the 1998 Act specifically empowers the Government to issue a notification to remove difficulties. Thus, the legislative intention is to delegate this ancillary function to Government as the essential legislative function is the charging of cess. Hon'ble the Supreme Court in the case of Krishan Parkash Sharma versus Union of India ((2001) 5 SCC 212) (para 18), has held that such delegation is permissible and cannot be found fault with. This has also been emphasized in the judgment that our Constitution is a growing document and the pressure of legislature is immense, therefore, once the Act itself grants the power to the State Government to do something, it cannot be said to be an excessive delegation of power. Besides, if two views are possible, one in favour of the legislation and the other against it, the one in favour of legislation should prevail. Besides, in other cases also namely (i) State of Tamil Nadu vs. K. Sabanayagam (1998 (1) SCC 318); (ii) St. Johns Teacher Training Institution vs. Regional Director, National Council for Teacher Education (2003 (3) SCC 321); (iii) Union of India vs. Azadi Bachao Andolan (2004 (10) SCC 1), and (iv) M.P.High Court Bar Association vs. Union of India (2004 (11) SCC 766), the Hon'ble Court has taken a view in favour of delegation of ancillary functions by the legislature.

As regards the amendment in Schedule, Section 11 of the 1998 Act provided as:

> "11. If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, make such provisions including any adaptation or modification of any

> provision of this Act, as appears to the Government to be necessary or expedient for the purpose of removing the difficulty.....”

In the instant case, the Government of Punjab (Finance Department) was given ample powers under Section 11 of the 1998 Act to pass an order and make provisions for any adaptation or modification of any provision of the Act for the purpose of removing difficulty in realising the cess, thus, the Government was competent to issue the clarificatory notification dated 8.4.1999 when the word `purchase' had been inadvertently omitted in the 1998 Ordinance/Act as well as in the Rules as clarified in the affidavits filed by the State. Besides, in the affidavits filed on behalf of the PIDB and the State, the contention that originally there were 16 items in the Schedule attached to the Ordinance has been denied. Moreover, the objects and reasons of the Ordinance as well as of the Acts clearly provide for utilisation of funds only for the development of infrastructure essentially related to the agriculture sector. Thus, if the articles related to this sector have been selected for imposition of fee by adding 'purchase' as aforesaid under the clarificatory notification, it cannot be said that the amendment in the Schedule suffers from dearth of legislative sanction. As such, this contention on behalf of the petitioners also does not find favour with the Court and is hence rejected.

Coming to the question of increase in rate of levy of cess/fee, a Constitution Bench of Hon'ble the Apex Court in the case of Corporation of Calcutta and another versus Liberty Cinema (AIR 1965 SC 1107) has upheld the increase of fee by holding that it does not amount to expropriation and violation of Article 19(1)(f) and (g) of the Constitution.

Similarly, in the case of Avinder Singh and others vs. State of Punjab and others (1979 (1) SCC 137), levy of tax on a flat rate was held to be not discriminatory. Besides, in a later judgment in the case of Sona Chandi Oal Committee and others vs. State of Maharashtra (2005(2) SCC 345), difference in inspection fee realised from money lender to money lender was held to be not discriminatory since the absence of infirmity is not the sole criterion on which the levy can be said to be tax in nature. In the instant case, we have already held that the imposts in question are a fee and thus, amount of fee has been increased under the 2002 Act only for the purpose of augmenting the infrastructure facilities primarily for the payers of fee.

Another submission of learned counsel that an objection should have been invited before the levy of imposts may also not hold ground for the State legislature is well within its competence to pass the impugned legislation qua entry 66 of List II (State List). Besides, there cannot be any procedural fetter like inviting objection before enacting a legislation.

In regard to the argument that the fee collected should be deposited in a consolidated fund, we may say that the imposts have not been collected towards general revenue and the State Government has no control over the corpus. The collection of fund goes to a special fund namely infrastructure development fund created under the Act, which is regularly audited by the Local Fund Examiner, Punjab, and it has been granted exemption under the Income Tax Act. The PIDB files income tax returns regularly and it has never earned any objection from the Income Tax Department. Moreover, we have already held that the imposts in question are only a fee and not a tax, thus, the provisions of Article 266 would not be attracted.

Now coming to the submission of Mr.B.S.Walia in CWP No. 8890 of 2003 (Chawla Feeling Station and others vs. State of Punjab and others), that by levy of imposts in question, there is a decline in the sale of petrol in the State and, thus, the general revenue of a State has also suffered a set back, we are not able to appreciate it for the reasons that the petitioner not being a registered dealer, has no locus standi under the Act to agitate the point and that the Indian Oil Corporation which is paying the impost is not before us. This is a matter of public policy and for the reasons elaborated herein above, the State legislature is free to select the items for levy of tax, cess or fee.

So far as the submission on behalf of some of the petitioners that though they are not a party to the first purchase, still they have been subjected to levy of imposts, is concerned, it is needless to say that the imposts in question are to be collected from a registered dealer on the event of first purchase as per Rule 3 of Cess (Collection) Rules and Schedule D of the PGST Act, thus, it is only the food grain procuring agencies which, being the registered dealers and first purchasers, would be under the obligation to pay the imposts to the Government. Hence, if such an agency has passed on the burden to the subsequent purchasers, this may amount to unjust enrichment and the agency would return the amount of cess/fee to such purchasers. In view of the aforesaid, the subsequent purchasers would be at liberty to take appropriate steps under law for the refund of the amount of imposts collected by the registered dealers/food grain procuring agencies.

Last but not the least, before parting with this judgment, we may like to observe that though the services shown to have been rendered by the respondents in their affidavits as widely referred to herein above, are

enough to meet the requirements of the mandate of the Constitution Bench judgment in the case of Jindal Stainless Limited (supra), but there is yet further scope for making the services more specific and responsive to the payers of fee in question. We hope that the respondents would take necessary steps to remove even a grain of doubt in the mind of cess/fee payers regarding the bonafide of PIDB in utilising the fund in question. Besides, we may also like to observe that as far as possible, the respondents shall make space for the representation on behalf of individuals paying cess/fee under the Acts in question in the Punjab Infrastructure Development Board for participation in the formulation of schemes, utilisation of the development fund and implementation of projects relating to infrastructure development sectors.

In view of all the aforesaid discussions and in the premises set out herein above, we hereby dispose of this batch of writ petitions with the liberty and observations as above while holding the impugned 1998 Ordinance (Ordinance No.7 of 1998), the 1998 Act (Act No.1 of 1999), the Cess (Collection) Rules, 1999, the clarificatory notification dated 8.4.1999 and the 2002 Act (Act No.8 of 2002), as valid and intra vires, and the levy of imposts thereunder being sustainable in law. However, in the facts and circumstances of the case, the parties are directed to bear their own costs.

(UMA NATH SINGH )
JUDGE

(J.S.KHEHAR)
JUDGE

22-06-2009
Mohinder

Whether this judgment be referred to Reporter: YES/NO

**Annexure 'A'**

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| 1. | CWP-14317-1999 | M/S VISHNU RICE MILLS (SO) V/S THE STATE OF PUNJAB |
| 2. | CWP-15280-1999 | M/S ATHWAL RICE & GENERAL MIL V/S PUNJAB STATE ETC. |
| 3. | CWP-15424-1999 | RATTNA RICE AND GEN.MILLS ETC. V/S STATE OF PB. |
| 4. | CWP-15642-1999 | M/S PUNJAB RICELAND P.LTD. V/S STATE OF PB. |
| 5. | CWP-16399-1999 | M/S RAI BHARAT TRADING CO.ETC. V/S PUNJAB STATE ETC. |
| 6. | CWP-334-2000 | M/S BANSAL TRADING CO. V/S STATE OF PUNJAB |
| 7. | CWP-2343-2000 | M/S LUDHIANA FLOUR & GENERAL M V/S STATE OF PUNJAB ETC. |
| 8. | CWP-2827-2000 | SHREE GANESH ROLLER FLOUR MILL V/S THE STATE OF PUNJAB |
| 9. | CWP-2859-2000 | SOOD AGRO MILLS V/S THE STATE OF PUNJAB |
| 10. | CWP-2861-2000 | LORD GANESH ROLLER FLOUR MILLS V/S THE STATE OF PUNJAB |
| 11. | CWP-1454-2000 | M/S LAKSHAMI RICE & GENERAL MI V/S STATE OF PUNJAB ETC. |

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| 12. | CWP-2630-2000 | M/S KISAN TRADING COMPANY V/S STATE OF PUNJAB ETC. |
| 13. | CWP-3797-2000 | SHREE RAM ROLLER FLOUR MILLS V/S STATE OF PB. |
| 14. | CWP-3842-2000 | M/.S SAMANA ROLLER FLOUR MILLS V/S STATE OF PB. |
| 15. | CWP-2938-2000 | M/S LAKSHMI ELECTRIC FLOUR MIL V/S STATE OF PB.ETC. |
| 16. | CWP-260-2000 | M/S SINGLA GRAM UDYOG SAMITI V/S STATE OF PUNJAB |
| 17. | CWP-7030-2000 | SANT RAM UDYOG SAMITI V/S STATE OOFO PB.ETC. |
| 18. | CWP-7905-2000 | M/S KOCHAR BROTHERS RICE MILLS V/S STATE OF PUNJAB |
| 19. | CWP-3295-2003 | M/S GARG RICE & GENERAL MILLS ETC. V/S STATE OF PB. |
| 20. | CWP-1449-2003 | FCI V/S STATE OFP UNJAB AND ORS |
| 21. | CWP-8890-2003 | CHAWLA FILLING STATION V/S STATE OF PUNJAB |
| 22. | CWP-1984-2005 | M/S MAIJROA FPPD [RPDICTS V/S STATE OF PB. |
| 23. | CWP-1981-2005 | M/S NAUHRIA RICE & GENERAL MILLS V/S ST FO PB & ORS |

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| 24. | CWP-9192-2006 | SHREE RAM COTTON FACTORY V/S STATE OF PB. & ORS. |
| 25. | CWP-9640-2006 | M/S CHAHAL COTTON FACTORY V/S STATE OF PB. AND ORS. |
| 26. | CWP-10069-2006 | M/S AGGARWAL COTTON CO. V/S STATE OF PB. AND ORS. |
| 27. | CWP-10093-2006 | SHREE GANESH COTTON COMPANY V/S STATE OF P B. AND ORS. |
| 28. | CWP-10833-2006 | M/S RAMA KRISHNA TRADING CO. V/S STATE OF PB. AND ORS. |
| 29. | CWP-10834-2006 | M/S RAMA TRADING CO. V/S STATE OF PB. AND ORS. |
| 30. | CWP-5166-2007 | M/S KISSAN RICE TRADING CO. V/S STATE OF PB. AND ORS. |
| 31. | CWP-5168-2007 | M/S RAJENDRA RICE AND GEN. MILLS V/S STATE OF PB. AND ORS. |
| 32. | CWP-1629-2007 | DWARKA TRADERS V/S STATE OF PB. AND O RS. |
| 33. | CWP-3713-2008 | COTTON CORPORATION OF INDIA LTD. V/S STATE OF PUNJAB AND OTHERS |
| 34. | CWP-1000-2008 | M/S SHREE RAM DASS RICE AND GENERAL MILLS V/S STATE OF PUNJAB AND ORS. |
| 35. | CWP-7052-2008 | M/S A.M.RICE AND GENERAL MILLS V/S STATE OF PUNJAB AND ORS. |

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| 36. | CWP-6989-2008 | M/S R.K.RICE MILLS AND ORS V/S STATE OF PUNJAB AND ORS |
| 37. | CWP-5849-2008 | M/S SHANTI RICE MILLS AND ORS. V/S STATE OF PUNJAB AND ORS. |
| 38. | CWP-7070-2008 | M/S K.N.RICE MILLS V/S STATE OF PUNJAB AND ORS. |
| 39. | CWP-7051-2008 | M/S A.V.AND COMPANY V/S STATE OF PUNJAB AND ORS. |
| 40. | CWP-7053-2008 | M/S DASHMESH RICE MILLS V/S STATE OF PUNJAB AND ORS. |
| 41. | CWP-7055-2008 | M/S DASS RICE AND OIL MILLS V/S STATE OF PUNJAB AND ORS. |
| 42. | CWP-7054-2008 | M/S GUPTA RICE MILLS V/S STATE OF PUNJAB AND ORS. |
| 43. | CWP-7057-2008 | M/S MEWA SINGH AVTAR SINGH V/S STATE OF PUNJAB AND ORS. |
| 44. | CWP-7056-2008 | M/S B.P.AGRO INDUSTRIES V/S STATE OF PUNJAB AND ORS. |
| 45. | CWP-12163-2008 | M/S SHRI CHANDU LAL AGRO IND. AND ORS V/S STATE OF PUNJAB AND ORS |
| 46. | CWP-12162-2008 | RAM SARUP GARG COTTON MILLS AND ORS V/S STATE OF PUNJAB AND ORS |
| 47. | CWP-12789-2008 | J.D.RICE MILLS V/S STATE OF PUNJAB & ORS. |

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| 48. | CWP-12594-2008 | M/S JAGAN NATH DIN DAYAL AND ORS V/S STATE OF PUNJAB AND ORS |
| 49. | CWP-12156-2008 | M/S SHREE GANESH COTTON INDUSTRIES AND ORS V/S STATE OF PUNJAB AND ORS |
| 50. | CWP-13323-2008 | M/S GOBIND RICE AND GENERAL MILLS AND ORS. V/S STATE OF PUNJAB AND ORS. |
| 51. | CWP-14310-2008 | M/S KHALSA RICE MILLS AND ORS V/S STATE OF PUNJAB AND ORS |
| 52. | CWP-14547-2008 | M/S SHIV SHAKTI EXPORTERS AND ORS. V/S STATE OF PUNJAB AND ORS. |
| 53. | CWP-13075-2008 | CAPITAL AGRO EXPORT PVT. LTD. V/S STATE OF PUNJAB AND ORS. |
| 54. | CWP-14534-2008 | M/S ROBIN TRADERS AND ORS. V/S STATE OF PUNJAB AND ORS. |
| 55. | CWP-13977-2008 | M/S BHARTI RICE MILLS & ORS V/S STATE OF PUNJAB & ORS |
| 56. | CWP-20654-2008 | M/S BASANT LAL ASHOK KUMAR V/S STATE OF PUNJAB & ORS. |
| 57. | CWP-20660-2008 | M/S BHOLE NATH RICE MILLS V/S STATE OF PUNJAB & ORS. |
| 58. | CWP-20662-2008 | M/S RAM FOODS V/S STATE OF PUNJAB & ORS. |
| 59. | CWP-20663-2008 | M/S SK TRADERS V/S STATE OF PUNJAB & ORS. |

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| 60. | CWP-21806-2008 | OLAM EXPORTS LTD. V/S STATE OF PUNJAB AND ORS. |
| 61. | CWP-21058-2008 | M/S VISHAL RICE MILLS V/S STATE OF PUNJAB AND ORS. |
| 62. | CWP-21036-2008 | M/S ASHOKA RICE & GENERAL MILLS V/S STATE OF PUNJAB AND ORS. |
| 63. | CWP-11155-2008 | M/S ASA SINGH RICE MILLS V/S STATE OF PUNJAB AND ORS. |
| 64. | CWP-11156-2008 | ASA SINGH COMMISSION AGENTS PVT. LTD. V/S STATE OF PUNJAB AND ORS. |
| 65. | CWP-11161-2008 | M/S GABA ENTERPRISES V/S STATE OF PUNJAB AND ORS. |
| 66. | CWP-11261-2008 | M/S CENTRAL AGRO CORP. V/S STATE OF PUNJAB AND ORS. |
| 67. | CWP-11602-2008 | M/S JANTA RICE MILL V/S STATE OF PUNJAB AND ORS. |
| 68. | CWP-11599-2008 | RAM SINGH RAWAIL SINGH V/S STATE OF PUNJAB AND ORS. |
| 69. | CWP-11603-2008 | MODERN FOODS V/S STATE OF PUNJAB AND ORS. |
| 70. | CWP-11641-2008 | M/S AJMER SINGH COTTON & GENERAL MILLS V/S STATE OF PUNJAB AND ORS. |
| 71. | CWP-1953-2009 | M/S HINDUSTAN RICE MILLS V/S STATE OF PUNJAB AND ORS. |
| 72. | CWP-2010-2009 | M/S AGGARWAL RICE MILLS V/S STATE OF PUNJAB AND ORS. |

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| 73. | CWP-2236-2009 | SHIV OM TRADERS V/S STATE OF PUNJAB AND ORS. |
| 74. | CWP-2248-2009 | DASHMESH AGRO EXPORTS V/S STATE OF PUNJAB AND ORS. |
| 75. | CWP-16699-2002 | M/S SHREE MAHA LUXMI ROLLER FLOUR MILLS V/S STATE OF PUNJAB & ORS. |
| 76. | CWP-8945-2000 | M/S SHIV SHAKTI TRADING CO.ETC. V/S STATE OFPB.ETC. |
| 77. | CWP-13337-2003 | M/S ATAM RICE MILLS V/S STATE OF PUNJAB AND ORS. |
| 78. | CWP-2622-2009 | NAINA INDUSTRIES AND ORS. V/S STATE OF PUNJAB AND ORS. |
| 79. | CWP-1754-2009 | SHIVA TRADERS & ORS. V/S STATE OF PUNJAB & ORS. |
| 80. | CWP-1468-2007 | M/S RF OVERSEAS V/S ST OF PB |
| 81. | CWP-1491-2007 | M/S CHARAN DASS MULKH RAJ V/S STATE OF PUNJAB AND ORS. |
| 82. | CWP-1492-2007 | M/S CHARAN DASS MULKH RAJ V/S STATE OF PUNJAB AND ORS. |
| 83. | CWP-1467-2007 | M/S FATTU DHINGA RICE MILL V/S ST OF PB AN DORS |
| 84. | CWP-2564-2007 | M/S JAIN AGRO INDUSTRIES SULTANPUR ROAD V/S STATE OF PB. AND ORS. |
| 85. | CWP-2505-2007 | M/S AGGARWAL RICE MILLS V/S STATE OF PUNJAB AND ORS. |

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| 86. | CWP-2489-2007 | GURDIAL MAL AND SONS LTD. V/S STATE OF PUNJAB AND ORS. |
| 87. | CWP-2512-2007 | M/S GUPTA RICE MILLS V/S STATE OF PUNJAB AND ORS. |
| 88. | CWP-1499-2007 | M/S M.S. SOKHAL RICE MILLS, V/S STATE OF PUNJAB AND ORS. |
| 89. | CWP-16910-2008 | S .S. A.INTERNATIONAL LTD. V/S STATE OF PUNJAB AND ORS. |
| 90. | CWP-11150-2008 | M/S TEJINDER KUMAR AND BROS. V/S STATE OF PUNJAB AND ORS. |
| 91. | CWP No.21294-2008 | M/S AJMER SINGH COTTON & GENERAL MILLS VS. FCI & ANOTHER |
| 92. | CWP-11551-2008 | M/S KHOSLA RICE & GENERAL MILLS VS. STATE OF PUNJAB AND OTHERS |
| 93. | CWP-1189-2000 | M/S R.F.OVERSEAS (PVT) LTD. VS. STATE OF PB. AND ORS. |
| 94. | CWP-686-2009 | LOVE KUSH FOODS PVT. LTD. VS. STATE OF PB. AND ORS. |
| 95. | CWP-1230-2009 | JEUNI RICE MILLS V/S STATE OF PUNJAB AND ORS. |
| 96. | CWP-1231-2009 | ONKAR RICE MILLS V/S STATE OF PUNJAB AND ORS. |

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| 97. | CWP-1233-2009 | M/S SEHAJ RICE MILLS V/S STATE OF PUNJAB AND ORS. |
| 98. | CWP-12426-2000 | M/S DEVA SINGH SHAM SINGH V/S STATE OF PUNJAB |
| 99. | CWP-1243-2009 | M/S MAHADEV RICE AND GENERAL MILLS V/S STATE OF PUNJAB AND ORS. |
| 100. | CWP-1257-2009 | M/S GANPATI FOODS V/S STATE OF PUNJAB AND ORS. |
| 101. | CWP-1266-2009 | M/S KRISHNA RICE MILLS V/S STATE OF PUNJAB AND ORS. |
| 102. | CWP-1267-2009 | M/S GURUVAR OVERSEAS V/S STATE OF PUNJAB AND ORS. |
| 103. | CWP-1276-2009 | S.K. RICE MILLS V/S STATE OF PUNJAB AND ORS. |
| 104. | CWP-1547-2009 | M/S AGGARWAL RICE MILLS, NABHA V/S STATE OF PUNJAB AND ORS. |
| 105. | CWP-1548-2009 | M/S GOLDEN FOOD PRODUCTS, PATIALA V/S STATE OF PUNJAB AND ORS. |
| 106. | CWP-681-2009 | REI AGRO LTD.Q V/S STATE OF PUNJAB AND ORS. |
| 107. | CWP-682-2009 | PATRAN FOODS PVT. LTD. V/S STATE OF PUNJAB AND ORS. |
| 108. | CWP-683-2009 | SANT FOODS PVT. LTD. V/S STATE OF PUNJAB AND ORS. |
| 109. | CWP-684-2009 | M/S DURGA FOODS V/S STATE OF PUNJAB AND ORS. |
| 110. | CWP-685-2009 | SANGAM RICE PVT. LTD. V/S STATE OF PUNJAB AND ORS. |

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| 111. | CWP-1223-2009 | M/S SHIV SHAKTI ENTERPRISES V/S STATE OF PUNJAB AND ORS. |

(Uma Nath Singh)
Judge

(J.S.Khehar)
Judge

22.6.2009