

**(1996) 10 SC CK 0194**

**Supreme Court of India**

**Case No:** Civil Appeals Nos. 952-57 Of 1986 With Slp (C) No. 3091 Of 1993 And 14615-19 Of 1996

Deputy Commissioner of Sales  
Tax (Law), Board of Revenue  
(Taxes), Ernakulam

APPELLANT

Vs

Hindustan Petroleum  
Corporation <BR> Hindustan  
Petroleum Corporation Ltd. and  
Indian Oil Corporation Ltd. Vs  
State of Kerala

RESPONDENT

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**Date of Decision:** Oct. 9, 1996

**Citation:** (2000) 10 SCC 605

**Hon'ble Judges:** A. M. Ahmadii, C.J; Sujata V. Manohar, J

**Bench:** Division Bench

**Final Decision:** Disposed Of

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**Judgement**

A.M. Ahmadi, C.J. and; Sujata V. Manohar, J.-This special leave petition is filed against the judgment of the Full Bench of the High Court of Kerala in Hindustan Petroleum Corpn. Ltd. (formerly Caltex Oil Refining (India) Ltd.) v. State of Kerala<sup>1</sup>. The facts of the case briefly stated are that the petitioner Company which was at all material times dealing in petroleum products purchased petroleum products manufactured by another oil company known as Cochin Refineries Ltd. (for short "CRL") which sold its products to Indian Oil Corporation (for short "IOC") which in turn sold it to the petitioner. No sales tax was payable on these sales. The goods in question were transferred from bonded warehouse to bonded warehouse and no excise duty was actually paid. IOC while issuing regular bills to the petitioner indicated therein the value of goods sold only. The petitioner paid the excise duty on the said goods directly to the Government of India. The Sales Tax Tribunal (for short "the Tribunal") held that when the petitioner paid the excise duty leviable it merely discharged its contractual obligations arising out of the bond executed under the Central Excise

Rules, 1944 (hereinafter called "the Rules") and, that excise duty was includible in its purchase turnover for purposes of taxation under Section 5-A of the Kerala General Sales Tax Act, 1963. On revision the High Court dismissed the petitions holding that excise duty is a duty on production or manufacture of goods which can be imposed at any convenient stage. However, the liability to pay the duty remains fixed on the manufacturer. The appointment of a licensee under the Rules operates as a contractual obligation on the licensee by which he covenants to pay the duty demandable on the goods stored in the warehouse to the Government of India. So when the petitioner paid the excise duty it merely discharged the obligation attached to the goods on production and this obligation being primarily that of the producer, the liability discharged was that of the producer. The excise duty paid by the petitioner was, said the High Court, in discharge of the liability of CRL and would form part of the purchase turnover of the petitioner for the purposes of Section 5-A of the Kerala General Sales Tax Act, 1963 (hereinafter called "the Act"). It is this view of the High Court which is sought to be challenged by the petitioner in this petition.

2. We have carefully read the decision rendered by the Full Bench of the Kerala High Court. The High Court rightly concluded after referring to a catena of decisions rendered by this Court and after referring to the relevant rules, namely, Rules 3, 9, 9-A, 140, 157, 173 and 173-N that the liability to pay excise duty is on the manufacturer. So when the assessee paid excise duty the obligation discharged was the obligation which had come into being on the production of petroleum products and this obligation was primarily that of the producer and hence the petitioner discharged the liability of that producer. That is because it is well settled that excise duty is a duty on the production or manufacture of goods. Of course, this duty can be imposed at any convenient stage provided it retains its character as excise duty. It was tried to be contended before us that having regard to the Rules in particular Rules 9, 9-A, 47, 49, 140, 152, 172 and 173 it would appear that the liability to pay excise duty is joint and several on the manufacturer as well as the purchaser or licensee of the warehouse, a contention which we find difficult to accept as it runs against the well-settled law that the duty of excise falls on the production or manufacture of goods. Now, if the excise duty is payable by the manufacturer though not collected when the sale is made, the obligation is that of the manufacturer and if any other person discharges that obligation, that person discharges it on behalf of the manufacturer, and, therefore, the excise duty paid by the purchaser is to meet the liability of the manufacturer. The High Court was, therefore, right in concluding that the liability is cast on the manufacturer alone. Since this basic premise on which Full Bench judgment is based is unexceptionable and since we cannot accept the contention attempted to be put forward that the liability is joint and several so far as the manufacturer and the purchaser are concerned, we must uphold the decision reached by the Full Bench of the Kerala High Court. In our view, the Full Bench of the Kerala High Court has correctly analysed the provisions of the Act and the relevant rules as well as the decisions

rendered by this Court to which the attention of the High Court was drawn. We, therefore, do not see any reason to entertain this special leave petition. It will stand dismissed with no order as to costs.

SLPs (C) Nos. 14615-19 of 1996

3. In view of the short order passed while rejecting SLP (C) No. 3091 of 1993 approving the decision of the Full Bench of the Kerala High Court in *Hindustan Petroleum Corpn. Ltd. v. State of Kerala*<sup>1</sup> we see no merit in these petitions also and dismiss the same. On the question of penalty, we express no opinion.

Civil Appeals Nos. 952-57 of 1986

4. Two questions have been raised in these appeals. The first relates to the question whether the High Court should have held that the amount of excise duty paid by the assessee/purchaser directly to the Central Excise Department on petroleum products owned by the assessee at the stage of removal from the bonded warehouses ought to have been treated as part of the taxable turnover of the purchaser within the meaning of Section 5-A of the Act and second, whether the High Court ought to have held that shell hexane and special boiling point spirit were liable to tax at the rate applicable to the detergents and therefore under Entry 57-B of the First Schedule to the Act. So far as the first question is concerned, that stands concluded by the decision of the Full Bench of the Kerala High Court in *Hindustan Petroleum Corpn. Ltd. v. State of Kerala*<sup>1</sup> which we have approved and affirmed while disposing of SLP (C) No. 3091 of 1993. Therefore, the decision of the High Court on this point must be set aside and the appeals allowed in terms of the decision of the Full Bench of the Kerala High Court, the ratio whereof we have approved.

5. So far as the second question is concerned, we are told that the very same point arises in Civil Appeals Nos. 374-77 of 1979 which has been referred to a three-Judge Bench. However, counsel for the respondent contends that it is not necessary to keep these appeals pending because if the decision taken in a group of appeals, Civil Appeals Nos. 374-77 of 1979, is against the respondent assessee, the respondent assessee undertakes to abide by that decision and pay the tax in accordance with that decision. In view of this statement made by the learned counsel for the respondent assessee, we do not see any reason to retain these appeals on the file of this Court. These appeals will, therefore, stand disposed of accordingly with no order as to costs.