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M/S V.S. PRODUCTS VS. UNION OF INDIA [2022 (1) TMI 380 (KARNATAKA HIGH COURT)]

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I. ABSTRACT

This case comment examines the Karnataka High Court's decision in *M/S V.S. Products v. Union of India*, considering the constitutional validity of charging Central Excise Duty along with Goods and Services Tax (GST) on tobacco products after the adoption of the GST regime in India. The petition, by a manufacturer of tobacco, objected to the twin levy as being contrary to Articles 14, 19(1)(g), and 265 of the Constitution on the ground that GST had absorbed excise duty on goods. The Union of India justified the twin levy, contending that excise duty is levied on manufacture, whereas GST is on supply, hence different taxable events.

The court supported the viability of both levies, underlining that the 101st Constitutional Amendment and Article 246A don't repeal Parliament's power under Entry 84 of the Union List to continue imposing excise duty on some commodities, like tobacco. The ruling reiterates the principle that several taxes can coexist if they rest upon different taxable events and legislative authority. It also makes it clear that double taxation is not in and of itself unconstitutional unless arbitrary or discriminatory treatment is the result.

The decision has far-reaching implications for India's constitutional structure of indirect taxation, particularly in balancing new GST powers and reserved taxation jurisdiction under the old entries of the Union List.

II. KEYWORDS

Taxation, GST, Central Excise Duty, Article 264A, Double Taxation, Tobacco.

Court	Karnataka High Court
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Coram	Justice S. Sunil Dutt Yadav
Date of Judgment	January 2, 2022
Bench	Justice S. Sunil Dutt Yadav
Citation	2022 (1) TMI 380
Petitioner	V.S. PRODUCTS AND OTHERS
Respondent	UNION OF INDIA AND OTHERS
Counsel for Petitioner	<ul style="list-style-type: none"> • C.S. Vaidyanathan • Kg. Raghavan • Ananyaa Jagirdar
Counsel for Respondent	<ul style="list-style-type: none"> • M. Venkataraman • Jeevan J. Neeralgi

III. INTRODUCTION

Implementation of the Goods and Services Tax (GST) in India revolutionized the indirect tax structure of the nation. A new provision—Article 246A²—was enacted through the 101st Constitutional Amendment Act, 2016, authorizing Parliament and State Legislatures to enact laws with respect to the imposition and collection of GST on services and goods. This provided a concurrent tax system, diverging from the previous bifurcation under Article 246³, wherein specific taxing powers were granted to the Union and the States.

But Article 246A does not repeal or replace Article 246. Instead, it exists alongside Article 246, retaining the Union's power under Entry 84 of the Union List to continue imposing excise duties on certain specified products, including tobacco, petroleum products, and alcohol for human consumption. These products were kept out

² Constitution of India, art 246A

³ Constitution of India, art 246

deliberately from the all-encompassing GST regime and still remain payable to Central Excise Duty, despite the implementation of GST on 1st July 2017.

This two-tiered structure of tax produced a constitutional question of critical importance: Can pre-GST indirect duties such as the Basic Excise Duty (BED) and National Calamity Contingent Duty (NCCD) be validly charged in addition to GST? Or does their maintenance violate the GST's avowed goal of establishing an integrated indirect tax structure?

This issue is at the centre of the Karnataka High Court's ruling in *M/S V.S. Products v. Union of India*. The petitioner, a producer and vendor of chewing tobacco, asserted that being taxed under both Central Excise Duty and GST amounted to unconstitutional double taxation. The government responded by saying that these taxes apply on different taxable events—manufacture and supply—and are sanctioned by different constitutional provisions.

The case, therefore, is a significant test of law on the interaction of the old and new constitutional powers of taxation and whether overlap between them disables or enhances the legal and economic structure of the GST regime.

IV. FACTS OF THE CASE

A. Pre-GST Tax Structure

Before the implementation of the Goods and Services Tax (GST) from 1 July 2017, M/s V.S. Products was involved in the production and selling of chewing tobacco. It paid Central Excise Duty on a regular basis under the Central Excise Act 1944.⁴

B. Post-GST Dual Taxation

With the implementation of GST, the company was held responsible for paying both:

- Central Excise Duty on the production of tobacco products; and
- GST on supply of those goods.⁵

⁴ *Central Excise Act 1944* (No 1 of 1944).

⁵ *Central Goods and Services Tax Act 2017* (No 12 of 2017).

This resulted in the double taxation of the same products at two different points – manufacture and supply.

C. Constitutional Challenge by the Petitioner

M/s V.S. Products filed a writ petition on 6 September 2021 before the Karnataka High Court, alleging that the double levy was unconstitutional.

The petitioner alleged:

- That GST was implemented to unify and replace earlier indirect taxes, such as excise;
- That the amount so taxed was double taxation;
- That the practice contravened:
 - Constitution of India, art 14 (equality before the law);⁶
 - Constitution of India, art 19(1)(g) (freedom to practise any profession or carry on any occupation, trade or business);⁷ and
 - Constitution of India, art 265 (no tax shall be levied or collected except by authority of law).⁸

D. Government's Defence

The Union of India and the Commissioner of Central Tax argued:

- That Parliament's competence to enact GST laws is derived from Constitution of India, art 246A;⁹
- That art 246, read with Entry 84 of the Union List, allows the continued imposition of Central Excise Duty on tobacco and similar goods;¹⁰
- That manufacture and supply are distinct taxable events, justifying separate tax treatments.

⁶ *Constitution of India*, art 14.

⁷ *ibid*, art 19(1)(g).

⁸ *ibid*, art 265.

⁹ *ibid*, art 246A

¹⁰ *ibid*, art 246 and Seventh Schedule, List I, Entry 84.

E. Procedural History

The Single Judge Bench of the Karnataka High Court rejected the writ petition on 4 January 2022, affirming the legality of the double levy.¹¹ The same was appealed again, and on 20 April 2022, the Division Bench upheld the decision of the lower court, holding the imposition of Central Excise Duty in addition to GST to be constitutionally valid.¹²

V. LEGAL ISSUE

- Whether after coming into force of the Constitution (101st Amendment) Act, with effect from 01.07.2017, the levy of BED and NCCD is constitutionally valid?
- Whether simultaneous levy of GST under Article 246A of the Constitution and levy of BED and NCCD under Article 246 with respect to tobacco and tobacco products is legally permissible?
- Whether such simultaneous levies would be consistent with purposive and harmonious construction of the Constitution?

VI. SUBMISSIONS MADE BY THE ASSESSEE (M/S V.S. PRODUCTS)

- The petitioner had advanced that Article 246A of the Indian Constitution, which gives a sui generis (special) taxing power to Parliament and State Legislatures to impose GST on the "supply of goods and services," supersedes the general legislative power under Article 246, owing to its non-obstante clause.¹³ According to the assessee, this constitutional change deprives the application of excise duties under Entry 84 of continuing applicability over goods liable for GST, including tobacco.

¹¹ *M/S V.S. Products v Union of India* [2022] 1 TMI 380 (Karnataka HC) (Single Judge).

¹² *M/S V.S. Products v Union of India* (Appeal Decision) [2022] TMI 537 (Karnataka HC) (Division Bench).

¹³ *Constitution of India*, art 246A.

- The petitioner also argued that Article 248, which confers residuary power upon Parliament to enact laws on matters not specified in the State or Concurrent Lists, was also amended by the Constitution (One Hundred and First Amendment) Act 2016 to start with the words "subject to Article 246A." This amendment, it is submitted, evidences a conscious constitutional framework to accord precedence to Article 246A in taxation matters.¹⁴
- The assessee objected to the continued effectiveness of the reference to the Central Excise Tariff Act in the Seventh Schedule of the Finance Act 2001, on the basis that such a reference had become otiose (legally ineffective) following its removal by section 174 of the Central Goods and Services Tax Act 2017.¹⁵ Hence, all provisions of excise duty derived from the Finance Act 2001 need to be considered as having been repealed in substance.
- The petitioner asserted that the general structure of Articles 246A, 269A, 270, and 279A of the Constitution of India creates a full-fledged taxing regime under GST and forbids the Union from continuing to impose Basic Excise Duty (BED) and National Calamity Contingent Duty (NCCD) on the manufacturing part of goods already included under GST.¹⁶ These duties, it was contended, are inconsistent with the mechanism of integrated GST and negates the constitutional intent behind it.
- Finally, the argument was that in both the pre-GST and the post-GST tax regimes, tobacco items are classified as indirect tax articles. But while other commodities are currently taxed only under GST, tobacco still enjoys dual taxation. This, the assessee asserted, constitutes hostile and discriminatory treatment with no rational basis and hence a denial of the right to equality under Article 14 of the Indian Constitution.

¹⁴ *Constitution of India (One Hundred and First Amendment) Act 2016*, s 6.

¹⁵ *Central Goods and Services Tax Act 2017*, s 174.

¹⁶ *Constitution of India*, arts 246A, 269A, 270, 279A.

VII. SUBMISSIONS BY THE REVENUE (UNION OF INDIA AND COMMISSIONER OF CENTRAL TAX)

- The Revenue submitted that in construing GST-related provisions, the court should never lose sight of Parliament's duty of balancing Union's and States' fiscal interests. The Revenue pointed out that taxation is a sensitive topic and that judicial interpretation should not interfere with the policy choices made in the background of cooperative federalism.
- It had been argued that some commodities had been excluded from the ambit of GST in full because of federal sensitivities and constitutional niceties. Tobacco, opium, and alcohol for consumption by human beings were mentioned as a product which, by constitutional intent, continues to be liable to both GST and existing taxes like excise.
- The Union justified its right to levy excise duty on the grounds that there was no express prohibition in the Constitution. The application of the term "notwithstanding" in Article 246A of the Indian Constitution allows Parliament and State Legislatures to make GST legislation, but it does not invalidate other constitutionally sanctioned taxes, such as those under Article 246 read with Entry 84.¹⁷
- The Revenue also relied on the aspect theory, a judicial principle whereby several taxes over the same transaction are permissible if they bear different aspects. Based on this, the production of tobacco can be taxed by excise, while its supply can be taxed by GST, without leading to unconstitutional double taxation.

VIII. LEGAL PRINCIPLES AND SCOPE OF DECISION

- The verdict reaffirms that Articles 246 and 246A of the Indian Constitution coexist in complementary fields. Whereas Article 246A grants exclusive legislation powers on GST to Parliament and State, Article 246 remains

¹⁷ *Constitution of India*, arts 246 and 246A; Seventh Schedule, List I, Entry 84.

vested with taxing powers on some specified goods, such as tobacco, under Entry 84 of the Union List.¹⁸ These powers are not repugnant but can be exercised cumulatively where constitutional framework allows.

- The court underlined that the coexistence of Article 246 with Article 246A indicates legislative intention to maintain excise duties on certain goods, in spite of the overall GST regime. The preservation of Entry 84 in List I, specifically naming excise on tobacco and tobacco products, indicates a thoughtful design.
- In *Indian Oil Corporation Ltd v Union of India*, the Allahabad High Court adjudicated that higher kerosene oil was still governed by the Central Excise Act, even post the implementation of GST.¹⁹ This ruling further entrenched the doctrine that excise duties could persist where constitutionally allowed.
- In *Union of India v Mohit Minerals (P) Ltd* [2022] 10 SCC 401, the Supreme Court explained that the legislative power to make laws with respect to GST under Article 246A inherently entails the power to levy a cess unless constitutionally there is a bar in express terms. The Court held that though the regime of GST seeks to integrate taxes, there is no constitutional bar against enactment of further levies like cesses, as long as they are traceable under the Constitution.
- The Court reasserted that double taxation, i.e., two taxes on two different facets of a transaction, is not necessarily unconstitutional. In *State of Punjab v Avinder Singh* (1979) 1 SCC 137, the Supreme Court declared that taxation by two different laws upon the same subject is valid unless prohibited by the Constitution explicitly.²⁰ A taxing law must only be within its constitutional limits and have a legitimate legislative purpose.
- The Court discussed surcharges under the GST, separating them from surcharges implemented under the Finance Act 2001. It ruled that the

¹⁸ *Constitution of India*, arts 246, 246A; Seventh Schedule, List I, Entry 84.

¹⁹ *Indian Oil Corporation Ltd v Union of India* [2020] SCC OnLine All 1538 (All HC).

²⁰ *State of Punjab v Avinder Singh* (1979) 1 SCC 137.

authority to levy a surcharge under Article 271 of the Constitution of India continues even after the introduction of Article 246A, subject to the condition that the levy must be based on an independent constitutional basis. The Court observed legislatures receive wide latitude in tax classification, although such classifications should have a rational nexus to the desired goal.

- Lastly, the Court cited the landmark case *Commissioner, Hindu Religious Endowments v Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (1954) SCR 1005 and again reaffirmed the doctrine that issues of taxation policy – e.g., objects of taxation, the quantum, and socioeconomic objectives – are squarely within the legislative jurisdiction and are not amenable to judicial review.²¹

IX. CRITICAL ANALYSIS OF COURT'S DECISION

The Karnataka High Court ruling in *M/S V.S. Products v Union of India* maintains the validity of imposing Central Excise Duty in addition to GST on tobacco products. Although doctrinally based upon a formalist interpretation of Article 246, Article 246A, and Entry 84 of List I, some features of its rationale are worth further scrutiny.

A. Article 246A vs Article 246: Hierarchy or Coexistence?

The Court supported the perception that Articles 246 and 246A work in parallel, enabling Parliament to have excise powers over particular items even after GST. This reading, however, arguably undermines the transformative intention of Article 246A, brought into force to provide a harmonious, holistic regime of taxation. By rendering Article 246A non-exclusive, the Court essentially enables pre-GST taxes such as the Basic Excise Duty (BED) to continue indefinitely, and thereby split the envisaged "one nation, one tax" framework.

A different interpretation would see Article 246A as a special provision that impliedly limits the general legislative authority under Article 246, at least as it pertains to taxes

²¹ *Commissioner, Hindu Religious Endowments v Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (1954) SCR 1005.

covered by GST. Such an interpretation would more accurately reflect the purpose of the 101st Constitutional Amendment to abolish parallel indirect tax frameworks, other than where specifically retained (e.g., alcohol, petroleum).

B. Aspect Theory: Useful but Overextended?

The Court relies on the aspect theory, which allows separate levies on distinct taxable events (manufacture vs supply). While this is well-established in Indian tax jurisprudence, its application here may dilute the GST's goal of tax unification. Tobacco, although constitutionally carved out to some extent, is still a GST-covered good. The concurrent imposition of excise and GST on the identical product, though in different stages, brings back administrative and economic inefficiencies that were sought to be eradicated by GST.

C. Consistency with Earlier Jurisprudence

The decision follows the Supreme Court's holding in *Union of India v Mohit Minerals (P) Ltd* [2022] 10 SCC 401 to the extent that the Court approved the levy of a GST Compensation Cess in addition to GST. That was a case where a cess to aid GST's federal structure was being levied, and not a leftover pre-GST era legacy tax. The analogy is therefore imperfect.

The judgment looks less in line with the spirit of judgments such as *Jindal Stainless Ltd v State of Haryana* (2017) 12 SCC 1, where the Supreme Court stressed destination-based, simplified taxation as a cornerstone of contemporary indirect tax reform. This judgment, on the other hand, reiterates a multi-layered model of taxation that punishes producers and warps supply chain homogeneity.

D. Implications for Cooperative Federalism

One of the central objectives of GST was the creation of cooperative federalism through the integration of Union and State taxation powers under the umbrella of the GST Council (Article 279A). The Court's sanction of ongoing unilateral Union taxation through Article 246 arguably disaffirms this cooperative intention. It maintains a vertical imbalance, enabling the Union to levy non-GST duties on GST-covered goods without any consultation with States or the GST Council.

This move thus risks establishing a precedent that will promote taxing outside the GST Council structure, undermining the consultative federalism model embedded in the post-amendment Constitution.

X. CONCLUSION

The Karnataka High Court's ruling in *M/S V.S. Products v Union of India* upholds the constitutional legitimacy of imposing Central Excise Duty in addition to GST on tobacco products. Although legally sound, the decision has a narrow, literal interpretation of Articles 246 and 246A of the Constitution of India, without satisfactorily grappling with the larger goals of the GST regime—viz., unification of taxation, economic efficiency, and federal cooperation.

By upholding the Union's excise authority over tobacco within Entry 84 of List I, the Court allows for a two-rate system of taxation that places a burden on manufacturers and renders compliance more difficult. The retention of legacy taxes in the age of GST threatens to revive the same inefficiencies GST was designed to eradicate. The over-reliance upon the aspect theory, while doctrinally impeccable, perhaps diminishes the integrative purpose of Article 246A.

The judgment emphasizes the requirement of legislative certainty and judicial interpretation. Parliament can look towards defining the extent of residual excise powers, while courts need to interpret GST provisions consistent with their constitutional intent. Unless this alignment is achieved, India's indirect tax system might continue to be fragmented.

Finally, this case showcases the balancing act between sustaining fiscal sovereignty and achieving constitutional tax consistency—one that must be undertaken cautiously to maintain the integrity of the GST regime.

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- *GST (Compensation to States) Act 2017*

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- *Indian Oil Corporation Ltd v Union of India* [2020] SCC Online All 1538 (All HC)
- *State of Punjab v Arvinder Singh* (1979) 1 SCC 137
- *Commissioner, Hindu Religious Endowments v Sri Lakshmana Thirtha Samira of Sri Shirr Mutt* (1954) SCR 1005
- *Jindal Stainless Ltd v State of Haryana* (2017) 12 SCC 1