

Kerala State Beverages Manufacturing & Marketing Corporation Ltd. v. The Assistant Commissioner of Income Tax, Circle 1(1)

Civil Appeal No. 11 of 2022 / Civil Appeal No. 12 of 2022 / Civil Appeal No. 13 of 2022 / Civil Appeal No. 14 of 2022

[2022] 1 S.C.R. 105 | 2022-01-03

Whether the State undertaking could deduct gallonage fee, licence fee and shop rental for FL-9 and FL-1 liquor licences, and surcharge on sales tax and turnover tax, in light of section 40(a)(iib); in particular, whether a second State undertaking holding FL-1 licences removed exclusivity and whether a tax could be treated as a fee, charge or appropriation under that provision.

40(a)(iib)(A) | 40(a)(iib)(B)

Two-judge bench | R. Subhash Reddy, J. | Hrishikesh Roy, J.

Assessment years: 2014-15, 2015-16

01 FACTS OF THE CASE

KSBC, a State-owned company trading in beverages wholesale and retail, held FL-9 wholesale and FL-1 retail foreign-liquor licences during AYs 2014-15 and 2015-16. It alone held FL-9 licences in the relevant years; FL-1 licences were also held by Kerala State Co-operatives Consumers' Federation Ltd., another State undertaking. The contested payments included gallonage fee, licence fee, shop rental (kist), sales-tax surcharge and turnover tax.

For AY 2014-15, the Principal Commissioner revised the section 143(3) assessment under section 263 because it had allowed sales-tax surcharge and turnover-tax debits. For AY 2015-16, the assessment disallowed Rs 811,90,88,115 in aggregate for gallonage fee, licence fee, shop rental and surcharge on sales tax under section 40(a)(iib). The Tribunal rejected the assessee's challenges, including by a fresh order after recall on the surcharge issue. The Kerala High Court's common judgment of 30 April 2020 in ITAs 135, 146 and 313/2019 upheld disallowance for FL-9 fees but allowed FL-1 fees because another State undertaking also held those licences. It also held sales-tax surcharge and turnover tax outside section 40(a)(iib), and remitted the assessments for revision. The Supreme Court heard one assessee appeal and three Revenue appeals; the common cover caption does not mean the company filed all four.

Source: [reported rendition / paragraphs 2-4 / PDF pages 8, 9, 10 / judgment](#); [reported rendition / paragraphs 9 / PDF pages 12 / judgment](#); [official signed judgment / paragraphs 2-4 / PDF pages 1, 2, 3, 4, 5 / judgment](#); [official signed judgment / paragraphs 9 / PDF pages 7, 8 / judgment](#)

02 DISCUSSION BY THE HON'BLE COURT

Section 40(a)(iib), inserted by the Finance Act 2013 with effect from 1 April 2014, was intended to protect the tax base against diversion of profits from State undertakings into State treasuries through exclusive levies or appropriations. KSBC was a separate commercial company liable to income tax. The discussion of Article 289 explained the legislative background; it did not confer the State's constitutional position on the corporate assessee (paragraphs 7, 11 and 13).

For the licence-related charges, exclusivity had to be understood by reference to the nature of the undertakings subjected to the levy, rather than the number of State undertakings. Both KSBC and the other FL-1 licensee were State undertakings. A reading under which a State could avoid section 40(a)(iib) simply by licensing a second State undertaking would defeat the amendment. The argument that the statutory fees attached only to licences rather than to the State undertaking was also rejected on these facts. Gallonage fee, licence fee and shop rental for both FL-9 and FL-1 licences therefore fell within the disallowance provision (paragraphs 14-14.2).

The result differed for the taxes. Section 3(1) of the Kerala Surcharge on Taxes Act increased the sales tax payable under section 5(1) of the Kerala General Sales Tax Act. The surcharge was an enhancement of sales tax, not a fee or charge. The Court relied on the character of surcharge described in *K. Srinivasan and Sarojini Tea*, and on Parliament's deliberate distinction between tax-related items and fees or charges within section 40. The litigation-limit circular's inclusion of surcharge and cess in tax effect was corroborative. Neither the broad wording nor Revenue's alternative 'appropriation' argument brought this surcharge within section 40(a)(iib)(A) or (B). *Jalkal Vibhag* did not eliminate the relevant distinction between a fee and a tax (paragraphs 14.3-14.5).

Turnover tax was likewise outside both limbs. The Court applied the same tax-character reasoning and recorded Revenue's concession that turnover tax also applied to other retail dealers. It did not leave that classification open for fresh adjudication as Revenue had requested. This was a ruling on disallowance under section 40(a)(iib), not a certification of deductibility under every provision or every later statutory version (paragraphs 11.3 and 15-16).

Source: [reported rendition / paragraphs 7; 13 / PDF pages 10, 11, 17, 18 / judgment](#); [reported rendition / paragraphs 14-14.2 / PDF pages 18, 19 / judgment](#); [reported rendition / paragraphs 14.3-14.5 / PDF pages 20, 21, 22, 23, 24 / judgment](#); [reported rendition / paragraphs 15-16 / PDF pages 24 / judgment](#); [official signed judgment / paragraphs 13-14.2 / PDF pages 16, 17, 18, 19, 20, 21 / judgment](#); [official signed judgment / paragraphs 14.3-14.5 / PDF pages 21, 22, 23, 24, 25, 26, 27, 28 / judgment](#); [official signed judgment / paragraphs 15-16 / PDF pages 28, 29 / judgment](#)

03 JUDICIAL DECISION

Gallonage fee, licence fee and shop rental for both FL-9 and FL-1 licences fell within section 40(a)(iib), so the High Court's FL-1 exception could not stand. Sales-tax surcharge and turnover tax were outside section 40(a)(iib)(A) and (B); the High Court was upheld on those components. The assessee's appeal was dismissed and the three Revenue appeals were partly allowed. The assessments for AYs 2014-15 and 2015-16 stood set aside, and the Assessing Officer was directed to pass revised orders in accordance with the Supreme Court's conclusions within two months of receiving the judgment. The Court supplied no fresh numerical computation, and its operative order made no separate costs direction.

Source: [reported rendition / paragraphs 14.1-14.2; 15-17 / PDF pages 19, 24 / judgment](#); [official signed judgment / paragraphs 14.1-14.2; 15-17 / PDF pages 20, 21, 28, 29 / judgment](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Mixed by issue: Revenue on both FL-9 and FL-1 fees; assessee on sales-tax surcharge and turnover tax

Assessee Civil Appeal 11/2022 dismissed; Revenue Civil Appeals 12-14/2022 partly allowed; both assessments set aside for revised orders

Legal classification of the disputed components decided; consequential recomputation remitted to the Assessing Officer

Relevant AYs 2014-15 and 2015-16 and the levies/licensing position examined. The exclusion of surcharge and turnover tax is specifically from section 40(a)(iib); the final remand is for implementing the decided principles, not a fresh open determination of every issue.

Source: [reported rendition / paragraphs 16-17 / PDF pages 24 / judgment](#); [official signed judgment / paragraphs 16-17 / PDF pages 28, 29 / judgment](#)

05 AKHB REVIEW POINT

Analyse each payment separately before applying section 40(a)(iib). Record the statutory source, legal character, relevant licensing policy and the nature of all entities on which the levy operates. The presence of a second State-owned licensee does not by itself remove exclusivity. Conversely, an exclusive burden does not automatically turn a genuine sales-tax surcharge into a fee or charge, and the Court rejected use of the appropriation limb to achieve that result here. Keep the fee disallowance and tax-component relief separate when implementing the remand; the label 'assessee appeal dismissed' alone obscures the tax-component relief that survived. The section 263 possible-view contention was a submission, not a standalone test newly established by this judgment. Verify the applicable statutory version, payment conditions under other provisions and later treatment before reliance. No automatic mapping to the Income-tax Act, 2025 is made.

Source: [reported rendition / paragraphs 10; 13-17 / PDF pages 13, 17, 18, 19, 20, 21, 22, 23, 24 / judgment](#)

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

143(3); 263; 30-38; 40(a)(i); 40(a)(ia); 40(a)(ic)

PROVISION-SPECIFIC SCOPE

1.

Section: 40(a)(iib)(A)

Role: Controlling disallowance provision

Treatment: Exclusive fee/charge levies on State Government undertakings; applies to the FL-9 and FL-1 gallonage, licence and shop-rental charges at issue.

2.

Section: 40(a)(iib)(B)

Role: Alternative disallowance basis argued by Revenue

Treatment: The argument that the sales-tax surcharge could be treated as an appropriation under this limb was rejected; turnover tax was also outside both limbs.

3.

Section: 263

Role: Procedural history and assessee submission

Treatment: AY 2014-15 assessment had been revised. The possible-view objection is recorded in paragraph 10; no freestanding general section 263 ratio is claimed.

4.

Section: 143(3)

Role: Assessment procedure

Treatment: Provision under which the two assessments were originally completed.

5.

Section: 30-38; 40(a)(i), 40(a)(ia), 40(a)(ic)

Role: Statutory context/comparison

Treatment: The section 40 non obstante opening and contrasting tax-related clauses assisted interpretation; no independent controversy under these comparator provisions was decided.

OTHER LEGAL MATERIALS CONSIDERED

1.

Instrument: Finance Act, 2013 (Act 17 of 2013), insertion of section 40(a)(iib)

Role: Commencement from 1 April 2014 and anti-profit-shifting purpose examined in paragraphs 7, 11 and 13

2.

Instrument: Kerala Abkari Act, section 18A, and Foreign Liquor Rules, rule 15A

Role: Underlying licence/gallonage levy context, paragraph 9

3.

Instrument: Kerala Surcharge on Taxes Act, 1957, section 3(1)

Role: Surcharge construed as enhancement of basic sales tax, paragraphs 14.3-14.4

4.

Instrument: Kerala General Sales Tax Act, 1963, sections 5(1)(b) and 5(2)

Role: Underlying sales-tax and turnover-tax context

5.

Instrument: Constitution, Article 289

Role: Background to the purpose of preventing diversion of corporate profits to the State treasury, paragraph 13; not a decision extending State immunity to the corporate assessee

6.

Instrument: CBDT Circular No. 3/2018 dated 11 July 2018

Role: Corroborative reference to tax effect including surcharge and cess; not a disposition under monetary appeal limits, paragraph 14.5

INDIVIDUAL APPEAL OUTCOMES

1.

Case number: Civil Appeal No. 11 of 2022

Appellant role: Assessee

Disposition: Dismissed

2.

Case numbers: Civil Appeal No. 12 of 2022; Civil Appeal No. 13 of 2022; Civil Appeal No. 14 of 2022

Appellant role: Revenue

Disposition: Partly allowed to the extent indicated in the common reasons; no distinct monetary allocation among the three Revenue appeals is supplied

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(reported rendition\)](#)

Identified source rendition: 24 PDF pages; SHA-256
ed4d5acc87535a25dc2d8d948e53dae0c57d84520374f2efc48203263649257f. Original bytes preserved.

[Open cited source rendition](#)

The judicial text begins part-way through reported physical page 8 and continues to page 24; the lengthy earlier material is editorial headnote and reference material. No neighbouring decision is included.

Paragraph 2 clarifies one assessee appeal and three Revenue appeals despite the opening collective wording and common caption. Official cover appeal-to-SLP mappings and the issue-specific disposition are retained.

The quoted High Court paragraphs 23-24 on reported page 10 are procedural history. Their FL-1 allowance and three-month revision period must not be mistaken for the Supreme Court holding, which reverses that fee allowance and directs revised orders within two months of receipt.

AY 2015-16 aggregate disallowance Rs 811,90,88,115 is a historical assessment figure from paragraph 4, not the final Supreme Court tax liability or a quantified surviving disallowance.

Exclusivity is assessed by nature of undertaking in paragraph 14; paragraph 14.2 also uses nature of licence. The holding addresses the two State undertakings and actual licensing/levy setting, not any hypothetical class containing private licensees.

Paragraph 10 records the section 263 possible-view submission. The note does not elevate it into a separate general holding on revisional jurisdiction.

The request to leave turnover tax open appears in Revenue submission paragraph 11.3; paragraph 15 instead decides it outside both section 40(a)(iib) limbs. The final remand is consequential.

The source refers to the Abkari Act as being of 1902 in paragraphs 14 and the headnote. The note identifies the relevant Kerala Abkari provisions without using that date as an independently verified enactment citation.

The source index neutral citation 2022INSC4 is metadata-only here; the verified displayed citation is [2022] 1 S.C.R. 105.

SCR citation verified on physical PDF page 1. The source index additionally records 2022INSC4; that neutral citation is not printed in the inspected PDFs and is not represented as independently verified.

AY 2014-15 is specified in paragraph 3; AY 2015-16 in paragraph 4; both are expressly included in the final direction in paragraph 17.

Official cover maps Civil Appeals 11, 12, 13 and 14/2022 respectively to SLP(C) 12859, 12162, 12768 and 14150/2020. Paragraph 2 identifies the first as the assessee appeal and the other three as Revenue appeals.

STATUTORY SCOPE

Section 40(a)(iib), inserted with effect from 1 April 2014, and the relevant Kerala levies as examined for AYs 2014-15 and 2015-16; no independent consolidated current-statute audit.

No automatic mapping to the Income-tax Act, 2025 or certification of later licensing, surcharge or turnover-tax regimes.

LATER TREATMENT

Source checked 2026-10-04. Subsequent appeals, review proceedings, stays, reversals and later judicial treatment have not been comprehensively checked. This note is not a citator status certificate.

IDENTIFIED SOURCE LINKS

[reported rendition - Physical PDF page 1 / SCR page 105 - PDF pages: 24](#)

SHA-256: ed4d5acc87535a25dc2d8d948e53dae0c57d84520374f2efc48203263649257f

[official signed judgment - PDF pages: 29](#)

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