Vending fee payable to Govt. which will be used to repair machinery is covered under sec. 43B

Summary – The Supreme Court of India in a recent case of Travancore Sugars & Chemicals Ltd., (the Assessee) held that Vend fee collected by State Government from manufacturer for giving special benefit to repair or replace old machinery would be a 'fee' by 'whatever name called' to be allowed only on actual payment in previous year, relevant to assessment year

Facts

- The assessee was engaged in the manufacture and sale of foreign liquor and sugar.
- For relevant assessment year the assessee itself showed that vend fee was disallowable under section 43B, on account of same being not paid before the expiry of the relevant previous year and same was confirmed by the Assessing Officer.
- On assessees appeal, the Commissioner(Appeals) deleted the disallowance under section 43B which was later confirmed by the Tribunal.
- Aggrieved, revenue preferred a reference application before the Tribunal under section 256(1) and the question was placed before High Court which finally decided the same in assessee's favour.
- On further appeal by revenue to the Supreme Court:

Held

- A reading of section 43B after it was substituted by Finance Act, 1988 with effect from 1-4-1989 shows that sub-clause (a) in section 43B has been considerably widened by the aforesaid amendment by the addition of the words 'by whatever name called'. It is clear, therefore, that to attract this section any sum that is payable whether it is called tax, duty, cess or fee or called by some other name, becomes a deduction allowable under the said section provided that in the previous year, relevant to the assessment year, such sum should be actually paid by the assessee.
- The revenue is correct in saying that the impugned judgment does not refer to the amendment made in section 43B with effect from 1-4-1989 at all. The assessment year with which we are involved on facts in the instant case is 1990-1991 which would clearly attract the amendment so made. Secondly, he is also correct in stating that the Karnataka High Court judgment in *CIT* v. *Sri Balaji & Co.* [2000] 246 ITR 750/[2001] 114 Taxman 682, decided a question arising under section 43B in respect of assessment year 1984-85, *i.e.*, it was a judgment relating to an assessment year prior to the amendment made on 1-4-1989.
- Further on a reading of a Government of Kerala order dated 28-4-1988, what becomes clear is that the Government proposed to impose and then imposed a levy on three sugar mills by way of collecting of vend fee of Rs. 0.50 paisa per bulk litre of arrack sold by them which would go into a fund which would then be used for the repair / replacement of old machinery and equipment in

these three mills. This document shows that the vend fee collected from the three mills is, in fact, a fee in the classic sense of the term. It is clear, on a reading of this document, that the State compulsorily takes from the three mills, a vend fee for the purpose of conferring a special benefit on the said three mills, *viz.*, the repair and replacement of existing machinery and equipment.

- On facts in the instant case, it is clear that the amendment made to section 43B is attracted. Even if the vend fee that is paid by the assessee to the State does not directly fall within the expression 'fee' contained in section 43B(a), it would be a 'fee' by 'whatever name called', that is even if the vend fee is called 'privilege' as has been held by the High Court in the judgment under appeal.
- Hence, the instant appeal is allowed in favour of the revenue.