

## Can levy central excise duty, GST together: Karnataka HC

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**BENGALURU:** Holding that the sources of power under Articles 246A (pertaining to levy of GST) and 246 are mutually exclusive and could be simultaneously exercised, the Karnataka high court has dismissed a batch of petitions filed by manufacturers of tobacco and tobacco products. They had challenged the July 6, 2019 notification issued by the central government whereby central excise duty has been levied on tobacco and tobacco products.

The court also negated the challenge in respect of levy and collection of National Calamity Contingent Duty (NCCD) vis-a-vis tobacco and tobacco products, saying that Article 271 clearly provides that surcharge can be levied at any time to increase duties or taxes.

“It must be noted that the levy is also for the purpose of revenue generation and the choice of the category of goods for the purpose of revenue generation cannot ipso-facto be a ground of judicial review and something more is required such as hostile discrimination and singling out a particular category of goods. In fact, the choice of the category of goods as in the present case may also be influenced by the objective of discouraging consumption and accordingly, the choice of the category of goods for the purpose of revenue generation cannot be held to be arbitrary,” justice Sunil Dutt Yadav noted.

The judge also added that as levy under Article 246 is permissible even after introduction of Article 246A, the levy of surcharge tracing power under Article 271 would still subsist even if the goods are subjected to levy of GST under Article 246A.

VS Industries and several other companies involved in manufacturers of tobacco and tobacco products had filed these petitions, contending that simultaneous levy of GST under Article 246A of the Constitution and levy of basic excise duty and

NCCD under Article 246 on tobacco and tobacco products is legally impermissible and discriminatory. The petitioners had also sought for a declaration that the repeal and saving provision as contained in section 174 of the Central

Goods and Services Act, 2017 (CGST Act) insofar as it seeks to save the operation of the Central Excise Act, 1994 in relation to tobacco and tobacco products as unconstitutional and bad in law.

The petitioners claimed that levy and collection of NCCD has been impliedly repealed with effect from July 1, 2017 i.e., the date on which CGST Act, 2017 came into effect and hence, whatever amount collected should be ordered to be refunded.

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