Fee and Tax. According to Words and Phrase', Permanent Edition, Vol. 41 Page 230, a charge or fee, if levied for the purpose of raising revenue under the taxing power is a 'tax'. Similarly, imposition of fees for the primary purpose of 'regulation and control' may be classified as fees as it is in the exercise of 'police power', but if revenue is the primary purpose and regulation is merely incidental, then the imposition is a 'tax'. A tax is an enforced contribution expected pursuant to a legislative authority for purpose of raising revenue to be used for public or governmental purposes and not as payment for a special privilege or service rendered by a public officer, in which case it is a 'fee'. Generally speaking 'taxes' are burdens of a pecuniary nature imposed for defraying the cost of governmental functions, whereas charges are 'fees' where they are imposed upon a person to defray the cost of particular services rendered to his account ……………………………………………

The main difference between "a fee" and "a tax" is on account of the source of power. Although "police power" is not mentioned in the Constitution, we may rely upon it as a concept to bring out the difference between "a fee" and "a tax". The power to tax must be distinguished from an exercise of the police power. The "police power" is different from the "taxing power" in its essential principles. The power to regulate, control and prohibit with the main object of giving some special benefit to a specific class or group of persons is in the exercise of police power and the charge levied on that charge levied on that class to defray the costs of providing benefit to such a class is "a fee". Therefore, in the judgment in State of West Bengal v. Kesoram Industries Ltd. : 2004 AIR SCW 5998: (2004) 10 SCC 201, it has been held that where regulation is the primary purpose, its power is referable to the 'police power'. If the primary purpose in imposing the charge is to regulate, the charge is to regulate, the charge is not a tax even if it produces revenue for the Government. But where the Government intends to raise revenue as the primary object, the imposition is a tax. Int eh case of *synthetics and Chemicals Ltd. vs. State of U.P.,* (1990) 1 SCC 109 : AIR 1990 SC 1927, it has been held that regulation is a necessary concomitant of the police power of the State and that though the doctrine of police power is an American doctrine, the power to regulate is a part of the sovereign power of the State, exercisable by the competent legislature. However, as held in *Kesoram's* case (supra), in the garb of regulation, any fee or levy which has no connection with the cost or expense of administering the regulation cannot be imposed and only such levy can be justified which can be treated as part of regulatory measure. To that extent, the State's power to regulate as an expression of the sovereign power has its limitations. It is not plenary as in the case of the power of taxation.

These well settled principles have been reiterated by this Court in the case of *Commissioner of Central Excise v Chhata Sugar Co. Ltd.: (2004) 3 SCC 466: AIR 2004 SC 3005: 2004 AIR SCW 1528*, in which it has been held: "18. The Constitution of India postulates either a tax or a fee. However, the use of the expression "tax" or "fee" in a statute is not decisive; as on a proper construction thereof and having regard to its scope and purport "fee" may also be held to be a tax.

The definition of "tax" in terms of clause (28) of Article 366 of the Constitution is wide in nature. The said definition may be for the purpose of the Constitution, but it must be borne in mind that the legislative competence conferred upon the State Legislature or Parliament to impose 'tax' or 'fee' having been enumerated in different entries in the three lists contained in the Seventh Schedule of the Constitution of India, the same meaning of the expression 'tax' unless the context otherwise requires should be assigned. *Calcutta Municipal Corpn.* v. *Shrey Mercantile Pvt. Ltd.*, AIR 2005 SC 1879.

A levy in the nature of a 'fee' does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual services rendered by the authority to individual who obtains the benefit of the service. If with a view to provide a specific service, levy is imposed by law and expenses for maintaining the service are met out of the amounts collected there being a reasonable relation between the levy and the expenses incurred for rendering the service, the levy would be in the nature of a 'fee' and not in the nature of a 'tax'. It is true that ordinarily a fee is uniform and no account is taken of the varying abilities of different recipients. But absence of uniformity is not a criterion on which alone it can be said that it is of the nature of a tax. A 'fee' being a levy in consideration of rendering service of a particular type, correlation between the expenditure by the Government and the levy must undoubtedly exist, but a levy will not be regarded as a tax merely because of the absence of uniformity in its incidence, or because of compulsion in the collection thereof, nor because some of the contributors do not obtain the same degree of service as others may. *H. H. Sudhundra Thirtha Swamiar* v. *Commissioner For Hindu Religious & Charitable Endowments, Mysore.* (1963) Supp 2 SCR 302.

It is true that between a 'tax' and a 'fee' there is no generic difference; both are compulsory exactions of money by public authorities; but whereas a tax is imposed for public purposes and is not supported by any consideration of service rendered in return, a fee is levied essentially for services rendered and as such there is an element of *quid pro quo* between the person who pays the fee and the public authority which imposes it. *Nagar Mahapalika Varanasi* v. *Durga Das Bhattacharya and others.* (1968) 3 SCR 374: AIR 1968 SC 1119, 1123. (See also *Sri Jagannath Ramanuj Das* v. *State of Orissa.* AIR 1954 SC 400).

The neat and terse definition of 'tax', which has been given by ***Latham, C.J.***, in *Matthews* v. *Chicory Marketing, Board* (1938) 60 CLR. 263, 276 is often cited as a classic on this subject. A "tax", said ***Latham, C.J.,*** "is a compulsory exaction of money by public authority for public purposes enforceable by law, and is not payment for services rendered". In bringing out the essential features of a tax this definition also assists in distinguishing a tax from a fee. It is true that between a tax and a fee there is no generic difference. Both are compulsory exactions of money by public authorities; but whereas the tax is imposed for public purposes and is not, and need not, be supported by any consideration of service rendered in return, a fee is levied essentially for services rendered and as such there is an element of *quid pro quo* between the person who pays the fee and the public authority which imposes it. If specific services are rendered to a specific area or to a specific class of persons or trade or business in any local area, and as a condition precedent for the said services or in return for them cess is levied against the said area or the said class of persons or trade or business the cess is distinguishable from a tax and is described as a fee. Tax recovered by public authority invariably goes into the consolidated fund which ultimately is utilized for all public purposes, whereas the cess levied by way of fee is not intended to be, and does not become, a part of the consolidated fund. It is earmarked and set apart for the purpose of services for which it is levied. There is, however, an element of compulsion in the imposition of both tax and fee. When the Legislature decides to render a specific service to any area or to any class of persons, it is not open to the said area or to the said class of persons to plead that they do not want the service and therefore they should be exempted from the payment of the cess. Though there is an element of *quid pro quo* between the taxpayer and the public authority there is no option to the taxpayer in the matter of receiving the service determined by public authority. In regard to fees there is, and must always be, co-relation between the fee collected and the service intended to be rendered. Cases may arise where under the guise of levying a fee Legislature may attempt to impose a tax; and in the case of such a colourable exercise of legislative power courts would have to scrutinise the scheme of the levy very carefully and determine whether in fact there is a co-relation between the service and the levy, or whether the levy is either not co-related with service or is levied to such an excessive extent as to be a pretence of a fee and not a fee in reality. In other words, whether or not a particular cess levied by a statute amounts to be fee or tax would always be a question of fact to be determined in the circumstances of each case. The distinction between a tax and a fee is, however, important, and it is recognised by the Constitution. Several Entries in the Three Lists which empower the appropriate Legislatures to levy taxes; but apart from the power to levy taxes thus conferred each List especially refers to the power to levy fees in respect of any of the matters covered in the said List excluding of course the fees taken in any Court. *The Hingir-Rampur Coal Co. Ltd. and others* v. *The State of Orissa and others.* (1961) 2 SCR 537: AIR 1961 SC 459. (See also *Municipal Council* v. *R. Narayanan.* (1975) 2 SCC 497: AIR 1975 SC 2193).

Fee. A "fee" is a charge for special services rendered to individuals by some Governmental agency and such a charge has an element in it of a *quid pro quo. Organon (India) Ltd. (Now known as INFAR (India Ltd. and another* v. *The collector of Excise and others.* AIR. 1994 SC 2489.

A "fee" is generally defined to be a charge for a special service rendered to individuals by some Governmental

Agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases. *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.* (1954) SCR. 1005: AIR 1954 SC 282, 295, 296.

The term "licence fee" and the term "fixed fee" in the context of the *U.P. Excise Act, 1910,* the Ordinance and the *Excise (Amendment) Rules, 1972* being the consideration, which the Government receives from a private party to part in latter's favour its exclusive privilege or right to vend foreign liquor in specified shops of any locality in U.P. State under a contract by way of Shop Licence Form (Form FL-4) or (Form FL-5), it is held by us, to be not 'fee' at all, falling in line with the view expressed in this regard by a Constitution Bench of the Court in *Har Shankar v. Deputy Excise and Taxation Commissioner,* (1975) 1 SCC 737: AIR 1975 SC 1121, and other decisions adverted to. If that be so, the 'licence fee' or 'fixed fee' cannot partake of the character of either 'regulatory fee' or 'compensatory fee' so as to regard it as 'fee'. Thus, neither the 'licence fee' nor 'fixed fee' realizable from a private party for granting the privilege or right to sell or vend foreign liquor to such party can fall within the ambit of the subject 'fee' in the entry to List II of the Seventh Schedule to the Constitution. Then, the 'licence fee' or 'fixed fee' under consideration, Cannot be regarded as "tax" since the characteristics of tax, namely, its levy being compulsive in nature, its burden being common, it being payable according to the varying abilities of the person to be charged, are wholly absent in both of them. As 'duty' or 'cess' stands on the same footing as 'tax', the 'licence fee' of 'fixed fee' cannot be regarded either as 'duty' or 'cess'. *State of U.P. an dothers v. Sheopat Rai an dothers.* (1994) Supp 1 SCC 8.