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## **Sector update (constitutional): International law not binding on state governments**

Friday, 05 March 2010 by Neha Chauhan

The Bombay High Court has held in a recent land mark judgment on the cost of imported wines that state governments are not required to comply with the understanding between nations under international treaties unless the legislature enacts a law to reflect the principles agreed under such treaties.

In the 5 January 2010 decision in *Karan Dileep Nevatia vs. Union of India* the petitioner was a licensed importer and distributor of foreign liquor/wines and challenged the constitutional validity of the imposition of 'Special Fees', 'Authorisation Fees' or 'Label Registration Fees' on foreign liquor and remission of excise duty on domestically manufactured wine.

Their main contention was why domestic wines sold in Maharashtra were treated favourably over imported wines.

The High Court decided that the executive is competent to represent the state in all international matters. But the obligations arising under the agreement or Treaties are not by their own force binding upon Indian nationals, and should expressly be made into the law of the land for the citizens to follow the same. If the rights of the citizens are not affected, no legislative measures are needed to give effect to the Treaty.

The court agreed with the Government and decided that the classification of foreign wines as a distinct class for the purpose of taxation is not discriminatory as the state has a wide discretion in that behalf.

The court also upheld that if statutory acts are clear in meaning, they must be treated as the primary source of law and construed according to their meaning even though they are contrary to the understanding between nations.

It was further stated that the judiciary is not expected to interfere with the discretion of the state unless a very strong case of hostile discrimination is made out and unless the taxing statute operates unequally within the range of its selection.

Nishith Desai Associates alerted the case in its email newsletter, noting that this was a landmark judgment.

**Case: *Karan Dileep Nevatia vs. The Union of India* ([Writ Petition No.7852 of 2008](#))**

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