

# SUPREME COURT OF INDIA

Jaiprakash Associates Ltd.

Vs.

State of M.P.

S.L.P. (C) No.14828 of 2008

(Dr. Arijit Pasayat S.H. Kapadia JJ.)

18.12.2008

## JUDGMENT

### **Dr. Arijit Pasayat, J.**

1. In these cases various issues of seminal importance are involved. Pursuant to the directions given by this Court in *Jindal Stainless Ltd. (2) and Anr. v. State of Haryana and Ors.*<sup>1</sup> various High Courts have heard the Writ Petitions filed challenging the legality of levy of Entry Tax in the State by concerned Statute of the State. In most of the cases, Entry Tax has been introduced after abolition of Octroi. A series of judgments of this Court, for example, *Atiabari Tea Co. Ltd. v. State of Assam*<sup>2</sup>, *Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan*<sup>3</sup>, *Khyerberi Tea Co. Ltd. v. State of Assam*<sup>4</sup>, *Meenakshi v. State of Karnataka*<sup>5</sup>, *Bolani Ores Ltd. v. State of Orissa*<sup>6</sup> and *Kamaljeet Singh and Ors. v. Municipal Board, Pilkhwa and Ors.*<sup>7</sup> apart from Jindal's case (supra) have been pressed into service by the parties. Stand of the appellants in the present cases essentially is that true nature of the levy of Entry Tax has to be seen and that has not been done. With reference to paragraphs 31 and 42 of Jindal's case (supra) it has been submitted by assessee-appellants that Entry Tax is really in essence not a tax in the classical sense, but a sub class of fee. Some High Courts by the impugned judgment have held that Clauses (a) and (b) of Article 304 of the Constitution of India, 1950 (in short the 'Constitution') are independent of each other and if law is saved under Article 304 (a) then it need not be tested with reference to Clause (b) of Article 304 for determining its validity.

2. It is to be noted that almost all the cases on which the parties have placed reliance did not relate to Entry Tax and related to levy in the context of tax on vehicles brought inside the local area. These are commonly known as transport cases. Those cases like Meenakshi's case (supra) were decided because of Presidential permission in terms of Article 304 was there. The applicability of Part XIII is also in issue. It is not contended and in our view rightly that compensatory tax is not levied on trade. Though some of the important factors have been addressed to by the Constitution Bench in Jindal's case (supra) certain other important constitutional issues are involved because the approach so far as the levy on transport cases indicated above are concerned is conceptually and contextually different from Entry Tax

cases. In that sense, the foreign decisions, more particularly, the Australian cases decided in the background of Section 95 of the Australian Constitution may not have much relevance so far as cases relating to Entry Tax are concerned.

3. In Jindal's case (*supra*) in paras 16 and 46 it was noted as follows:

"16. To sum up: the pre-1995 decisions held that an exaction to reimburse/recompense the State the cost of an existing facility made available to the traders or the cost of a specific facility planned to be provided to the traders is compensatory tax and that it is implicit in such a levy that it must, more or less, be commensurate with the cost of the service or facility. Those decisions emphasised that the imposition of tax must be with the definite purpose of meeting the expenses on account of providing or adding to the trading facilities either immediately or in future, provided the quantum of tax is based on a reasonable relation to the actual or projected expenditure on the cost of the service or facility. However, the post-1995 decisions in *Bhagatram Rajeevkumar v. CST*<sup>8</sup> and in *State of Bihar v. Bihar Chamber of Commerce*<sup>9</sup> now say that even if the purpose of imposition of the tax is not merely to confer a special advantage on the traders but to benefit the public in general including the traders, that levy can still be considered to be compensatory. According to this view, an indirect or incidental benefit to traders by reason of stepping up the developmental activities in various local areas of the State can be brought within the concept of compensatory tax, the nexus between the tax known as compensatory tax and the trading facilities not being necessarily either direct or specific.

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46. Applying the above tests/parameters, whenever a law is impugned as violative of Article 301 of the Constitution, the Court has to see whether the impugned enactment facially or patently indicates quantifiable data on the basis of which the compensatory tax is sought to be levied. The Act must facially indicate the benefit which is quantifiable or measurable. It must broadly indicate proportionality to the quantifiable benefit. If the provisions are ambiguous or even if the Act does not indicate facially the quantifiable benefit, the burden will be on the State as a service/facility provider to show by placing the material before the Court, that the payment of compensatory tax is a reimbursement/recompense for the quantifiable/measurable benefit provided or to be provided to its payer(s). As soon as it is shown that the Act invades freedom of trade it is necessary to enquire whether the State has proved that the restrictions imposed by it by way of taxation are reasonable and in public interest within the meaning of Article 304(b) [see para 35 (of AIR) of the decision in *Khyerbari Tea Co. Ltd. v. State of Assam*<sup>10</sup>]"

4. The concept of compensatory tax is judicially evolved and in a way provides a balancing factor between federal control and State Taxing Board. The concept really had its matrix in transportation cases and does not apply to general notion of Entry Tax.

5. Therefore, considering the importance of the issues relating to Articles 301 and 304 and Part XIII of the Constitution, we consider it necessary to refer the matter to a larger Bench in terms of Article 145(3) of the Constitution. The following questions are referred for the aforesaid purpose:

(1) Whether the State enactments relating to levy of Entry Tax have to be tested with reference to both Clauses (a) and (b) of Article 304 of the Constitution for determining their validity and whether Clause (a) of Article 304 is conjunctive with or separate from Clause (b) of Article 304?

(2) Whether imposition of Entry Tax levied in terms of Entry 52 List II of 7th Schedule is violative of Article 301 of the Constitution? If the answer is in the affirmative whether such levy can be protected if Entry Tax is compensatory in character and if the answer to the aforesaid question is in the affirmative what are the yardsticks to be applied to determine the compensatory character of the Entry Tax.

(3) Whether Entry 52, List II, 7th Schedule of the Constitution like other taxing entries in the Schedule, merely provides a taxing field for exercising the power to levy and whether collection of Entry tax which ordinarily would be credited to the Consolidated Fund of the State being a revenue received by the Government of the State and would have to be appropriated in accordance with law and for the purposes and in the manner provided in the Constitution as per Article 266 and there is nothing express or explicit in Entry 52, List II, 7th Schedule which would compel the State to spend the tax collected within the local area in which it was collected?

(4) Will the principles of quid pro quo relevant to a fee apply in the matter of taxes imposed under Part XIII?

(5) Whether the Entry Tax may be levied at all where the goods meant for being sold, used or consumed come to rest (standstill) after the movement of the goods ceases in the 'local area'?

(6) Whether the Entry Tax can be termed a tax on the movement of goods when there is no bar to the entry of goods at the State border or when it passes through a local area within which they are not sold, used or consumed?

(7) Whether interpretation of Articles 301 to 304 in the context of Tax on vehicles (commonly known as 'transport') cases in *Atiabari's case* (supra) and *Automobile Transport's case* (supra) apply to Entry Tax cases and if so, to what extent.

(8) Whether the non discriminatory indirect State Tax which is capable of being passed on and has been passed on by traders to the consumers infringes Article 301 of the Constitution?

(9) Whether a tax on goods within the State which directly impedes the trade and thus violates Article 301 of the Constitution can be saved by reference to Article 304 of the Constitution alone or can be saved by any other Article?

(10) Whether a levy under Entry 52, List II, even if held to be in the nature of a compensatory levy, it must, on the principle of equivalence demonstrate that the value of the quantifiable benefit is represented by the costs incurred in procuring the facility/services (which costs in turn become the basis of reimbursement/recompense for the provider of the services/facilities) to be provided in the concerned 'local area' and whether the entire State or a part thereof can be comprehended as local area for the purpose of Entry Tax?

6. The records be placed before the Hon'ble Chief Justice of India for necessary orders. It is open to the parties to move the Hon'ble Chief Justice of India for early hearing of the cases.

<sup>1</sup>(2006 (7) SCC 241)

<sup>2</sup>(1961 (1) SCR 809)

<sup>3</sup>(1963 (1) SCR 491)

<sup>4</sup>(1964 (5) SCR 975)

<sup>5</sup>(1984 Supp SCC 326)

<sup>6</sup>(1974 (2) SCC 777)

<sup>7</sup>(1986 (4) SCC 174)

<sup>8</sup>(1995 Supp (1) SCC 673)

<sup>9</sup>(1996 (9) SCC 136)

<sup>10</sup>AIR 1964 SC 925)