

SUPREME COURT OF INDIA

Jindal Stainless Ltd.

Vs.

State of Haryana

C.A.No.3453 of 2002

(S.H. Kapadia, Altamas Kabir, B. Sudershan Reddy, P. Sathasivam and Surinder Singh
Nijjar JJ.)

16.04.2010

ORDER

1. On 18th December, 2008, when some of the cases in the present batch came for hearing before a Division Bench of this Court to which one of us, Kapadia, J., was a party, the Division Bench of this Court found that some of the High Courts before which the State Entry Tax stood challenged had taken the view that clause (a) and clause (b) of Article 304 of the Constitution of India are independent of each other and that if the impugned law stood saved under Article 304(a) then it need not be tested with reference to clause (b) for determining its validity. Accordingly, on that date, the Division Bench of this Court referred to the Constitution Bench 10 questions, the most important of which being - whether the State enactments relating to levy of entry tax have to be tested with reference to both Article 304(a) and Article 304(b) of the Constitution and whether Article 304(a) is conjunctive with or separate from Article 304(b)? Consequently, the matter stood referred to the Constitution Bench of this Court.

2. Accordingly, on 16th March, 2010, the entire batch of cases came for hearing before the Constitution Bench in which the lead matter is Jindal Stainless Ltd. & Anr. v. State of Haryana & Ors.. When the hearing commenced before the Constitution Bench, we found that the assesseees (original petitioners in the High Courts) are heavily relying upon the tests propounded by a 5-Judge Bench of this Court in *Atiabari Tea Co. Ltd. v. The State of Assam and Ors.*, (1961) 1 SCR 809, which tests subject to the clarification, stood reiterated in the subsequent judgment delivered by a larger Bench of this Court in the case of *The Automobile Transport (Rajasthan) Ltd. v. The State of Rajasthan and Ors.*¹.

3. In fact, it may be stated that the Constitution Bench of this Court delivered the judgment in *Atiabari Tea Co. Ltd.* (supra) on 26th September, 1960. Soon thereafter, on 4th April, 1961, after hearing arguments in full, a 5-Judge Bench of this Court came to the conclusion that the matter needs to be referred to a larger Bench. In the circumstances, a 7-Judge Bench of this

Court decided the matter in *Automobile Transport (Rajasthan) Ltd.* (supra) on 9th April, 1962 reiterating the tests laid down in *Atiabari's case* (supra) subject to one clarification.

4. The question, therefore, which we need to answer, in the first instance, before going into the validity of each of the State Laws impugned before us is - Whether after 49 years, this Court should revisit the tests propounded in the earlier decisions in the case of *Atiabari Tea Co. Ltd.* and *Automobile Transport (Rajasthan) Ltd.* (supra)? At this stage, it may be mentioned that the States whose Entry Tax Laws have been challenged have contended before us that the tests propounded in *Atiabari Tea Co. Ltd.* and *Automobile Transport (Rajasthan) Ltd.* (supra) have failed to strike a balance between the "freedom of trade and commerce" under Article 301 of the Constitution and the States' authority to levy taxes under Articles 245 and 246 of the Constitution read with the appropriate Legislative Entries in the Seventh Schedule to the Constitution of India. The states, therefore, sought revisiting of the aforesaid two decisions in *Atiabari Tea Co. Ltd.* and *Automobile Transport (Rajasthan) Ltd.* (supra) by a larger Bench.

5. In *Keshav Mills Co. Ltd. v. Commissioner of Income-tax, Bombay North*², a Constitution Bench of this Court enacted circumstances in which a reference to the larger Bench would lie. It was held that in revisiting and revising its earlier decision, this Court should ask itself whether in the interest of the public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revised? Whether on the earlier occasion, did some patent aspects of the question remain unnoticed, or was the attention of the Court not drawn to any relevant and material statutory provision, or was any previous decision bearing on the point not noticed? What was the impact of the error in the previous decision on public good? Has the earlier decision been followed on subsequent occasions either by this Court or by the High Courts? And, would the reversal of the earlier decision lead to public inconvenience, hardship or mischief? According to the judgment in *Keshav Mills* case these and other relevant considerations must be born in mind whenever this Court is called upon to exercise its jurisdiction to review and revisit its earlier decisions. Of course, in *Keshav Mills* case a caution was sounded to the effect that frequent exercise of this Court of its power to revisit its earlier decisions may incidentally tend to make the law uncertain and introduce confusion which must be avoided. But, that is not to say that if on a subsequent occasion, the Court is satisfied that its earlier decision was clearly erroneous, it should hesitate to correct the error. In conclusion, in *Keshav Mills* case, this Court observed that it is not possible to lay down any principles which should govern the approach of the Court in dealing with the question of revisiting its earlier decision. It would ultimately depend upon several relevant considerations.

6. In the case of *Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra and Anr.*³ a Constitution Bench of this Court observed that, in case of doubt, a smaller Bench can invite attention of Chief Justice and request for the matter being placed for hearing before a Bench larger than the one whose decision is being doubted.

7. Applying the tests laid down in the aforesaid two cases, i.e., Keshav Mills Co. Ltd. and Central Board of Dawoodi Bohra Community (supra), we find that on number of aspects a larger Bench of this Court needs to revisit the interpretation of Part XIII of the Constitution including the various tests propounded in the judgments of the Constitution Bench of this Court in the aforesaid two cases, namely, Atiabari Tea Co. and Automobile Transport (Rajasthan) Ltd. (supra). Some of these aspects which need consideration by larger Bench of this Court may be briefly enumerated.

8. Interplay/interrelationship between Article 304(a) and Article 304(b). The significance of the word "and" between Article 304(a) and 304(b). The significance of the non obstante clause in Article 304. The balancing of freedom of trade and commerce in Article 301 vis-à-vis the States' authority to levy taxes under Article 245 and Article 246 of the Constitution read with the appropriate legislative Entries in the Seventh Schedule, particularly in the context of movement of trade and commerce. Whether Article 304(a) and Article 304(b) deal with different subjects? Whether the impugned taxation law to be valid under Article 304(a) must also fulfil the conditions mentioned in Article 304(b), including Presidential assent? Whether the word "restrictions" in Article 302 and in Article 304(b) includes tax laws? Whether validity of a law impugned as violative of Article 301 should be judged only in the light of the test of non-discrimination? Does Article 303 circumscribe Article 301? Whether "internal goods" would come under Article 304(b) and "external goods" under Article 304(a)? Whether "per se test" propounded in Atiabari's case (supra) should or should not be rejected? Whether tax simpliciter constitutes a restriction under Part XIII of the Constitution? Whether the word "restriction" in Article 304(b) includes tax laws? Is taxation justiciable? Whether the "working test" laid down in Atiabari makes a tax law per se violative of Article 301? Inter-relationship between Article 19(1)(g) and Article 301 of the Constitution? These are some of the questions which warrant reconsideration of the judgments in Atiabari Tea Co. Ltd and Automobile Transport (Rajasthan) Ltd. (supra) by a larger Bench of this Court.

9. In conclusion, we may also mention that though the judgments in Atiabari Tea Co. Ltd. and Automobile Transport (Rajasthan) Ltd. (supra) came to be delivered 49 years ago, a doubt was expressed about the tests laid down in those two judgments even in the year 1975 in the case of *G.K. Krishnan and Ors. v. State of Tamil Nadu and Ors.*⁴ by Mathew, J., vide para 27, which reads as under:

“Whether the restrictions visualized by Article 304(b) would include the levy of a non-discriminatory tax is a matter on which there is scope for difference of opinion.

Article 304(a) prohibits only imposition of a discriminatory tax. It is not clear from the article that a tax simpliciter can be treated as a restriction on the freedom of internal trade. Article 304(a) is intended to prevent discrimination against imported goods by imposing on them tax at a higher rate than that borne by goods produced in the State. A discriminatory tax against outside goods is not a tax simpliciter but is a barrier to trade and commerce. Article 304 itself makes a distinction between tax and restriction. That apart, taxing powers of the Union and States are separate and

mutually exclusive. It is rather strange that power to tax given to States, say, for instance, under Entry 54 of List II to pass a law imposing tax on sale of goods should depend upon the goodwill of the Union Executive.”

(emphasis supplied)

10. For the aforesaid reasons, let this batch of cases be put before Hon'ble Chief Justice of India for constituting a suitable larger Bench for reconsideration of the judgments of this Court in *Atiabari Tea Co. and Automobile Transport (Rajasthan) Ltd.* (*supra*).

¹(1963) 1 SCR 491

²(1965) 2 SCR 908 at p. 921

³(2005) 2 SCC 673

⁴(1975) 1 SCC 375