

ITEM NO. 104 COURT NO. 4 SECTION XIV/IIIA

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s) 827-833/1995

STATE OF HIMACHAL PRADESH & ANR. Appellant (s)

Versus

JAI MATA ROLLED GLASS LTD. & ORS. Respondent (s)

(with appln. for intervention and directions and directions
and intervention and early hearing and with office report)

WITH CA NOS.12094-12258/1996 (with office report),
CA NOS.3545-62/1991 (with appln. for intervention and with
office report)

Date:25/02/2003 This/These Appeal(s) was/were called
on for hearing today.

CORAM:

HON'BLE MR. JUSTICE M.B. SHAH
HON'BLE MR. JUSTICE ARUN KUMAR

For the Appellant (s)

Mr.Naresh K. Sharma,Adv.,
Mr.Shrish Kumar Mishra,Adv.

For the Respondent (s)

Mr.Sunil Gupta,Sr.Adv.,
Mr.Ravi Prasad Gupta,Adv.

Mr.Rakeshwar L. Sood,Sr.Adv.,
Mr.E.C. Agrawala,Adv.

Mr.Rajiv Shakdhar,Adv.,
Mr.U.A. Rana,Adv.,
Mr.Arvind Kumar,Adv.,
Ms.Anuradha Priyadarshini,Adv.for
M/s.Gagrat & Co.

Mr.Raj Kumar Gupta,Adv.,
Mr.Sheo Kumar Gupta,Adv.,
Mr.A.N. Bardiyar,Adv.

Mr.G.S. Chatterjee,Adv.,
Mr.Raja Chatterjee,Adv.

Ms.Manjula Gupta,Adv. (N/P)

Mr.Chandra Prakash Pande,Adv.

Mr.R.K. Bhatt,Adv.

Mr.A.K.Gupta,Adv.

Mr.J.S. Attri,Adv.
Mr.Anil Kumar Gupta-II Adv.
Ms.Meenakshi Arora,Adv. (N/P)
Mr.T.N. Singh,Adv. (N/P)
Dr.Krishan Singh Chauhan,Adv.(N/P)
Mr.Pankaj Kalra,Adv. (N/P)
Mr.Prem Sunder Jha,Adv.
Mr.B.S. Banthia,Adv. (N/P)

Upon hearing counsel the Court made the following

O R D E R

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After hearing the learned counsel for the parties exhaustively, the Court reserved its verdict. Liberty to file written submissions within ten days.

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(Vijay Kumar Sharma)
AR cum PS to Hon'ble Judge

(Janki Bhatia)
Court Master

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.SP2

ITEM NO.104 COURT NO.4 DATED 25.2.2003

CIVIL APPEAL NOS.827-833/95 ETC.

STATE OF H.P.& ANR. VS. JAI MATA ROLLED GLASS LTD. & ORS.@@
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Conspicuous distinction, feeble defence State cannot be allowed to take this defence submitted Mr. Sunil Gupta,Sr.Adv.

Per Court (Hon'ble Shah,J.) At any point of time the Legislature which is competent to enact the Act can change the error which has been pointed out in the previous enactment. Replied counsel that it is a case of direct tax if it is on the movement of goods.

Per Court (Hon'ble Shah,J.) We are not on the question of competence of Legislature. Even on goods Legislature does enjoins competence to legislate and levy tax on goods it will amount to direct tax.

Vehicles which used the road and for which the development and maintenance of road is necessary, levy of tax is compensatory and regulatory in nature. High Court judgment is right and need not to be interferred submitted Mr.Gupta,Sr.Adv.

We are not at present on the factum of correctness of the truth whether the levy of tax is compensatory or regulatory in nature. Rightly or wrongly I am still not on that case it is the verdict in the writ jurisdiction. High Court in its judicial power understood and interpreted the

intention as best as it could in the circumstances and the

material placed on record by the parties. High Court or any court does not and cannot go against the intention of the Legislature.

Referred to 1961 (1) SCR 809 at 852, 858, 863 Levy is in the outside or inside some light is thrown at page 852. 1981 (2) SCC 318, 1993 (1) SCC 236.

Referred to 1963 (1) SCR 491 at 502 - This judgment reconsiders Atiabari's case. Substance it is on goods trade commerce is affected. Sum and substance as it is directly on the goods therefore it is violative of Article 304. They have dealt with the statistics, they have gone by it. We must consider the substance of the matter.

Per Hon'ble Shah, J. passengers and goods are to be taxed for construction and maintenance of roads.

Argued Mr. Sunil Gupta - levy of tax on goods itself gets affected.

Distinction from the High Court Judgment page 31 at 36 of the High Court judgment.

Also cited 1977 (3) SCC 212 Mishri Lal Jain case.@@
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Mr. Ravi Prakash Gupta advocate submitted that Act has to be proved whether it is compensatory or regulatory.

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In Kherbari Tea Company case this Court has held that onus to prove that it is regulatory or compensatory in nature lies upon the State and not upon us. Principal enactment My submission is once the object has not been shown and provided in the Statement of Objects and Reasons then one cannot assume that whether it is regulatory or compensatory in nature. Therefore, the High Court when it has found that in the said statement of objects and reasons no object has been provided i.e. maintenance of road etc., High Court was right then the State has completely failed to prove whether it is regulatory or compensatory in nature.

Per Hon'ble Shah, J. It is the duty of the Court to verify from the Bill or other discussion whether it is regulatory or compensatory in nature. After revalidation they have amended the provisions and they have provided that if you have travelled less than 150 KMs then the same rate would be applicable, if it is between 150 KMs - 300 KMs then double the tax would be applicable and even more than 300 KMs it would be triple the tax that is missing in the Principal Act. This particular portion was missing in the Principal Act. By revalidating State has tried to cure the defect in the Principal Act. Two amendments have been brought by way of revalidation. So, there is nothing wrong in correcting the error which has been pointed out in the previous enactment.

Submitted Mr. Rakeshwar L. Sood, learned senior counsel that we are advancing this contention that this is

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compensatory in nature and if what my learned friend says it is compensatory in nature and we are stating it, I rely on the observation of this Court in 1964 (5) SCR 975 at 987

ratio 4:1. Financial implication and therefore revalidating Act they have to take the sanction. Earlier Act they did not take sanction. And the revalidating Act has been enacted in order to justify the earlier enactment where the President assent was not. In my respectful submission it amounts to back door entry.

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(Vijay Kr.Sharma)
AR cum PS to Hon'ble Judge