

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).1880-1889 OF 2003

M/S. SHIVAM ENTERPRISES ETC. ETC. APPELLANT(S)

VERSUS

STATE OF BIHAR AND ORS. RESPONDENT(S)

WITH

CIVIL APPEAL NO.2273/2005

CIVIL APPEAL NO.2255/2005

CIVIL APPEAL NOS.6778-6780/2018

(Arising out of SLP(C) No.21923-21925/2003)

O R D E R

1. Delay condoned.
2. Leave granted in Special Leave Petition Nos.21923-21925/2003.
3. We have heard the learned counsels for the parties and perused the relevant material.
4. The challenge to the levy of entry tax was dismissed by the High Court on the ground that as the levy has been found to be compensatory its validity cannot be decided with reference to the provisions of Article 301 and 304 of the Constitution.
5. The above position cannot said to be holding the field as on today in view of the decision of this Court in *Jindal Stainless Steel*

*vs. State of Haryana*<sup>1</sup> wherein it has been, *inter alia*, held that the compensatory theory evolved in *Atiabari Tea Co.Ltd. Etc. vs. State of Assam & Ors.* has no juristic basis. The question of levy being discriminatory and therefore violative of Article 304(a) of the Constitution would therefore be still alive.

6. The High Court seems to have answered the aforesaid question without the basic facts being on record, a conclusion that we have reached after looking into the pleadings contained in the writ petition filed before the High Court. In such situations, in several decisions of this Court i.e. in Civil Appeal No.8316/2017 (*State of Kerala & Anr. vs. Thressiamma L. Chirayil*) and other connected cases, Civil Appeal No.11170/2017 (*Indian Oil Corporation Ltd. vs. State of Bihar & Ors.*) and Civil Appeal No.11084 of 2017 (*State of Bihar & Ors. vs. M/s. Harinagar Sugar Mills Ltd.*), this Court while setting aside the judgment(s) of the High Court had remanded the issue i.e. the tax being discriminatory, open for fresh determination in light of the law laid down in *Jindal Stainless Ltd.* (supra).

7. We, therefore, in the facts stated above, consider it prudent to adopt the same course of action and permit the appellant(s)-assessee(s) to lay the necessary foundational facts before the High Court. We also request the High Court to decide the issue i.e. whether the levy is contrary to Article 304(a) of the Constitution in the light of law laid down by this court in *Jindal Stainless Ltd.*(supra).

8. The appellant(s)-assessee(s) may move the High Court afresh within a period of three months from today failing which the High Court may refuse the adjudication in terms of the present Order.

9. The amount stated to be lying in deposit shall continue to remain in deposit and shall abide by the outcome of the proceedings before the High Court.

10. The appeals are disposed of in the above terms.

.....,J.  
(RANJAN GOGOI)

.....,J.  
(R. BANUMATHI)

NEW DELHI  
JULY 18, 2018

ITEM NO.102

COURT NO.2

SECTION XVI

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 1880-1889/2003

M/S. SHIVAM ENTERPRISES ETC. ETC.

Appellant(s)

VERSUS

STATE OF BIHAR AND ORS.

Respondent(s)

WITH

C.A. No. 2273/2005 (XVI)

C.A. No. 2255/2005 (XVI)

SLP(C) No.21923-21925/2003 (XVI)

Date : 18-07-2018 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI  
HON'BLE MRS. JUSTICE R. BANUMATHI

For Appellant(s)

Mr. Ajit Kumar Sinha, Sr. Adv.  
Mr. Devashish Bharuka, Adv.  
Mr. Ravi Bharuka, Adv.  
Mr. Rajiv Shankar Dvivedi, AOR

Mr. Pankaj Bhagat, Adv.  
Mr. Sadqe Alam, Adv.  
Dr. Sushil Balwada, AOR

Mr. Akhilesh Kumar Pandey, AOR

For Respondent(s)

Mr. Manish Kumar, Adv.  
Mr. Gopal Singh, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Delay condoned.

Leave granted in Special Leave Petition

Nos.21923-21925/2003.

The appeals are disposed of in terms of the  
signed order.

In view of the above, pending application(s),  
if any, shall stand disposed of.

(NEETU KHAJURIA)  
COURT MASTER

(ASHA SONI)  
BRANCH OFFICER

(Signed order is placed on the file.)