

ITEM NO.1501

COURT NO.5

SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 8486/2011

M/S TRIMURTHI FRAGRANCES (P) LTD. THROUGH
ITS DIRECTOR SHRI PRADEEP KUMAR AGRAWAL

Appellant(s)

VERSUS

GOVT.OF N.C.T OF DELHI THROUGH ITS PRINCIPAL
SECRETARY (FINANCE) & ORS.

Respondent(s)

WITH

C.A. No. 8485/2011 (XIV-A)

C.A. No. 8487/2011 (XIV-A)

C.A. No. 8488/2011 (XIV-A)

C.A. No. 8491-8494/2011 (XIV-A)

C.A. No. 8495/2011 (XIV-A)

C.A. No. 8496-8501/2011 (XII)

C.A. No. 8502/2011 (XII)

C.A. No. 8617/2014 (III-A)

C.A. No. 10374-10379/2014 (III-A)

SLP(C) No. 33322/2017 (XI)

(FOR ADMISSION and I.R. and IA No.130575/2017-EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT and IA No.130572/2017-EXEMPTION FROM
FILING O.T. IA No. 130575/2017 - EXEMPTION FROM FILING C/C OF THE
IMPUGNED JUDGMENT IA No. 130572/2017 - EXEMPTION FROM FILING O.T.)

Date : 19-09-2022 These appeals were called on for pronouncement of
today.

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Hon'ble Ms. Justice Indira Banerjee pronounced the judgment of Constitution Bench for Her Ladyship, Hon'ble Mr. Justice Surya Kant, Hon'ble Mr. Justice M.M. Sundresh and Hon'ble Mr. Justice Sudhanshu Dhulia.

The operative part of the judgment reads as under :-

"In our considered opinion there is no conflict between the *Kothari Products (supra)* line of cases and the *Agra Belting* line of cases. The *Kothari Products (supra)* line of cases was on the question of whether "tobacco" or other goods specified in the First Schedule to the ADE Act and hence exempted from Sales Tax under State sales tax enactments, can be made exigible to tax under the State enactments by amending the Schedule thereto. On the other hand, *Agra Belting Works (supra)* line of cases was on the question of interplay between general exemption of specified goods from sales tax under Section 4 of the U.P. Sales Tax Act and specification of rates of sales tax under Section 3-A of the said Act. This Court held that goods exempted from sales tax under Section 4 would be exigible to tax by virtue of subsequent notification under Section 3-A specifying the rate of sales tax for any specific item of the class of goods earlier exempted under Section 4. There being no conflict, the reference to Constitution Bench is incompetent. The cases may be placed for decision before the regular Bench.

The second question is answered by the judgment of the Constitution Bench of this Court in *Dr. Jaishri Laxmanrao Patil v. The Chief Minister and Others*.

In view of the five-Judge Bench decision in *Dr. Jaishri Laxman Rao (supra)*, it is not necessary for this Court to answer the question."

Hon'ble Mr. Justice Hemant Gupta pronounced the reportable judgment of the Constitution Bench expressing His Lordship's concurring opinion with which all the Hon'ble Judges of the Constitution Bench are in agreement.

Operative part of the judgment reads as under :-

"The conclusion (1) is that a decision delivered by a Bench of largest strength is binding on any subsequent Bench of lesser or coequal strength. It is the strength of the Bench and not number of Judges who have taken a particular view which is said to be relevant. However, conclusion (2) makes it absolutely clear that a Bench of lesser quorum cannot disagree or dissent from the view of law taken by a Bench of larger quorum. Quorum means the bench strength which was hearing the matter.

Thus, it has been rightly concluded that the numerical strength of the Judges taking a particular view is not relevant, but the Bench strength is determinative of the binding nature of the Judgment."

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(MATHEW ABRAHAM)
COURT MASTER (NSH)

(Signed reportable judgments are placed on the file)