

(CORRECTED)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7411-7543 OF 2017
(Arising out of SLP (C) Nos. 24934-25066 of 2007)

STATE OF ASSAM & ORS.

... Appellants

VERSUS

CHHOTABHAI J.P.TOBACCO PROD.CO.LD.& ORS.

... Respondents

C.A. NO. 7546/2017
(@ SLP(C) NO. 6669/2009)

C.A. NO. 7547/2017
(@ SLP(C) NO. 6670/2009)

C.A. NO. 7548/2017
(@ SLP(C) NO. 6675/2009)

C.A. NO. 7549/2017
(@ SLP(C) NO. 6676/2009)

C.A. NO. 7550/2017
(@ SLP(C) NO. 6953/2009)

C.A. NO. 7551/2017
(@ SLP(C) NO. 8244/2009)

C.A. NO. 7552/2017
(@ SLP(C) NO. 11042/2009)

C.A. NO. 7554-7562/2017
(@ SLP(C) NO. 11603-11611/2009)

C.A. NO. 7567/2017
(@ SLP(C) NO. 13496/2009)

C.A. NO. 7568/2017
(@ SLP(C) NO. 14429/2009)

C.A. NO. 7569/2017
(@ SLP(C) NO. 14484/2009)

C.A. NO. 7570/2017
(@ SLP(C) NO. 14488/2009)

C.A. NO. 7571/2017
(@ SLP(C) NO. 14949/2009)

C.A. NO. 7572/2017
(@ SLP(C) NO. 16253/2009)

C.A. NO. 7573/2017
(@ SLP(C) NO. 17722/2009)

C.A. NO. 7574/2017
(@ SLP(C) NO. 35587/2009)

C.A. NO. 7575/2017
(@ SLP(C) NO. 6811/2010)

C.A. NO. 7576/2017
(@ SLP(C) NO. 7426/2010)

C.A. NO. 7577/2017
(@ SLP(C) NO. 7776/2010)

C.A. NO. 7578/2017
(@ SLP(C) NO. 11423/2010)

C.A. NO. 7580/2017
(@ SLP(C) NO. 22520/2010)

C.A. NO. 7582/2017
(@ SLP(C) NO. 13525/2011)

C.A. NO. 7584/2017
(@ SLP(C) NO. 30594/2009)

W.P. (C) NO. 11/2010

C.A. NO. 7586-7590/2017
(@ SLP(C) NO. 13270-13274/2009)

C.A. NO. 7594/2017
(@ SLP(C) NO. 17731/2009)

O R D E R

Leave granted in the special leave petitions.

Having regard to the fact that the correctness of the ratio of the judgment of the Seven Judges' Bench of this Court in '*Automobile Transport (Rajasthan) Ltd. Etc. v. State of Rajasthan and Ors.*' [1963 (1) SCR 491] and the theory of compensatory tax was questioned, the matter was referred to Nine Judges' Bench. The Nine Judges' Bench of this Court heard the matters and answered the reference in those cases, leading case being '*Jindal Stainless Ltd. and Anr. v. State of Haryana and Ors.*' [2016 (11) SCALE 1]. The Court, by majority, answered the reference in the following terms:

"1. Taxes simpliciter are not within the contemplation of Part XIII of the Constitution of India. The word 'Free' used in Article 301 does not mean "free from taxation".

2. Only such taxes as are discriminatory in nature are prohibited by Article 304(a). It follows that

levy of a non-discriminatory tax would not constitute an infraction of Article 301.

3. Clauses (a) and (b) of Article 304 have to be read disjunctively.

4. A levy that violates 304(a) cannot be saved even if the procedure under Article 304(b) or the proviso there under is satisfied.

5. The compensatory tax theory evolved in *Automobile Transport* case and subsequently modified in *Jindal's* case has no juristic basis and is therefore rejected.

6. Decisions of this Court in *Atiabari*, *Automobile Transport* and *Jindal* cases (*supra*) and all other judgments that follow these pronouncements are to be extent of such reliance over ruled.

7. A tax on entry of goods into a local area for use, sale or consumption therein is permissible although similar goods are not produced within the taxing state.

8. Article 304(a) frowns upon discrimination (of a hostile nature in the protectionist sense) and not on mere differentiation. Therefore, incentives, set-offs etc. granted to a specified class of dealers for a limited period of time in a non-hostile fashion with a view to developing economically backward areas would not violate Article 304(a). The question

whether the levies in the present case indeed satisfy this test is left to be determined by the regular benches hearing the matters.

9. States are well within their right to design their fiscal legislations to ensure that the tax burden on goods imported from other States and goods produced within the State fall equally. Such measures if taken would not contravene Article 304(a) of the Constitution. The question whether the levies in the present case indeed satisfy this test is left to be determined by the regular benches hearing the matters.

10. The questions whether the entire State can be notified as a local area and whether entry tax can be levied on goods entering the landmass of India from another country are left open to the determined in appropriate proceedings."

It may be recapitulated at this stage that insofar as the instant appeals are concerned, which were also part of the aforesaid reference, the levy of entry tax was challenged by the assesseees by filing writ petitions in the High Courts primarily on the ground that the levy was not in the nature of compensatory tax. The aforesaid challenge was because of the law laid down in *Automobile Transport* case (*supra*) which

held the field at that time.

Similar challenges were made by the assesseees in other States challenging various provisions of the similar enactments made by the said States. Some of the High Courts upheld the legislation holding the tax to be compensatory tax whereas some other High Courts found the legislation not to be compensatory in nature and, thus, struck down the provisions thereof. Some High Courts had taken support of certain other reasons also in striking down these legislations. The assesseees as well as the States had filed special leave petitions against those judgments. Those cases were heard and decided by the Constitution Bench of this Court in *Jindal Stainless Ltd.(2) and Anr. v. State of Haryana and Ors.* [2006 (7) SCC 241].

Jindal Strips Ltd. is an industry manufacturing products within the State of Haryana. The raw-material is purchased from outside the State. The finished products are sent to other States on consignment basis or stock transfer basis. No sales tax is paid on the input of the raw material. Similarly, no sales tax is paid on the export of finished products.

The impugned Act came into force w.e.f. 5th May, 2000, to provide for levy and collection of tax on the entry of goods into the local areas of the State for consumption or use therein. The Act is enacted to provide for levy and

collection of tax on the entry into a local area of the State, of a motor vehicle for use or sale, and of other goods for use or consumption therein. The Act seeks to impose entry tax on all goods brought into a "local area". The entire State is divided into local areas. The Act covers not only vehicles bringing goods into the State but also vehicles carrying goods from one local area to another. However, those who pay sales tax to the State are exempt from payment of entry tax. Ultimately, the entry tax only falls on concerns, like Jindal Strips, which, by virtue of the provisions of the Central Sales Tax Act, 1956, pay sales tax on purchase of raw-material and sale of finished goods to other States and do not pay sales tax to the State of Haryana. This is the context in which the challenge to the Act under Article 301 has been made. At this stage, we may point out that prior to September 30, 2003, Section 22 stated that the tax collected under the Act shall be distributed by the State Government amongst the local bodies to be utilized for the development of local areas. However, on 30th September, 2003, Section 22 was amended clarifying that the tax levied and collected shall be utilized for facilitating free flow of trade and commerce.

REASONS FOR THE REFERRAL ORDER:

In Atiabari Tea Co. Ltd. etc. v. State of Assam & Ors.,

it was held that taxing laws are not excluded from the operation of Article 301, which means that tax laws can and do amount to restrictions on the freedoms guaranteed to trade under Part-XIII of the Constitution. However, the prohibition of restrictions on free trade is not an absolute one. Statutes restrictive of trade can avoid invalidation if they comply with Article 304(a) or (b).

In *Automobile Transport (Rajasthan) Ltd.* (Supra), it was held that only such taxes that directly and immediately restrict trade would fall within the purview of Article 301 and that any restriction in the form of taxes imposed on the carriage of goods or their movement by the State Legislature can only be done after satisfying the requirements of Article 304(b). The statute which was challenged in *Atiabari Tea Co.* (supra) was the Assam Taxation (On Goods Carried By Roads And Inland Waterways) Act, 1954. It was held that the Act had put a direct restriction on the freedom of trade and since the State Legislature had not complied with the provisions of Article 304(b), the Act was declared void.

It is in the aforesaid background, reference was made to Nine Judges' Bench, as indicated at the outset of this order.

We may also mention at this stage that when the matters were argued before the Nine Judges' Bench, certain other

aspects were also argued. Primarily, three kinds of issues were taken by the assesseees which are to the following effect:

(1) Whether the entire State can be treated as 'local area' for the purposes of entry tax?

(2) Whether entry tax can be levied on the goods which are directly imported from other countries and brought in a particular State?.

(3) In some statutes enacted by certain States, there was a provision for giving adjustment of other taxes like VAT, incentives etc. paid by the indigenous manufacturers and it was contended by the assesseees that whether the benefits given to certain categories of manufacturers would amount to discrimination under Section 304.

The Nine Judges' Bench while answering the reference deemed it appropriate to leave these questions to be agitated before the regular Bench. That is how these matters are posted before this Bench and it is agreed that the aforesaid issues are the main issues to be decided.

During the hearing of arguments, counsel for both sides submitted that since the main challenge in the writ petitions, which were filed by the writ petitioners before the High Court, was predicated on the law laid down by the

Constitution Bench in '*Atiabari Tea Co. Ltd.* (supra), the High Court essentially confined its discussion only on "compensatory tax theory", as propounded in the aforesaid judgment so the High Courts looked at the issue by only keeping in mind the principle propounded in the aforesaid judgment and decided as to whether the tax imposed by a particular statute is compensatory in nature or not. Thus, when other issues are to be dealt with, as indicated above, we find that in many cases there is no adequate factual foundation and there is no discussion in the impugned judgments as well. It is also agreed by counsel for both the sides that in the absence thereof, it may not be possible for this Court to decide these issues.

According to us, in the aforesaid scenario, appropriate course of action would be to permit the appellants to file fresh petitions by May 31, 2017, raising the aforesaid issues with necessary factual background or any other constitutional/statutory issue which arises for consideration.

All these appeals are, accordingly, disposed of with the aforesaid liberty granted to the appellants. The interim orders which were passed by this Court and which are continued in these appeals shall continue till May 31, 2017. It will be open to the appellants to seek interim orders. We make it clear that the High Courts shall deal with the

interim prayers of stay on their own merits without being influenced by the fact that the stay order was passed in these cases or has been extended by this Court as aforesaid. The High Courts, at that time, shall also consider the import and effect of the reference answered by the Nine Judges' Bench.

There are many applicants who have filed applications for intervention in some of the petitions, those applications for intervention are dismissed giving them liberty to file substantive writ petitions in the High Courts on the same lines as given to others.

Some of the intervenors who had filed writ petitions in the High Courts but the High Court did not entertain those petitions directing them to intervene in these matters. They are also given liberty.

W.P.(C) NO. 11 of 2010

As prayed for, the writ petition stands dismissed as withdrawn.

....., J.
[A.K. SIKRI]

....., J.
[ASHOK BHUSHAN]

New Delhi;
March 22, 2017.

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

Petition(s) for Special Leave to Appeal (C) Nos. 24934-25066/2007
(Arising out of impugned final judgment and order dated 30/08/2007
in WA No. 103/2007, WP No. 1070/2007, WP No. 1180/2007, WP No.
1238/2007, WP No. 1284/2007, WP No. 1288/2007, WP No. 1301/2007, WP
No. 1338/2007, WP No. 138/2007, WP No. 1431/2005, WP No. 147/2007,
WP No. 15/2007, WP No. 1554/2007, WP No. 1603/2007, WP No.
1604/2007, WP No. 1607/2006, WP No. 1608/2006, WP No. 1704/2007, WP
No. 184/2007, WP No. 186/2007, WP No. 1869/2007, WP No. 19/2007, WP
No. 1904/2007, WP No. 1964/2005, WP No. 1974/2007, WP No.
2000/2007, WP No. 2021/2005, WP No. 2078/2007, WP No. 212/2007, WP
No. 2230/2007, WP No. 2231/2007, WP No. 2232/2007, WP No.
2294/2007, WP No. 2295/2007, WP No. 2296/2007, WP No. 2389/2007, WP
No. 2392/2007, WP No. 2393/2007, WP No. 2425/2006, WP No.
2426/2006, WP No. 2427/2006, WP No. 2428/2007, WP No. 2545/2006, WP
No. 2546/2006, WP No. 2547/2006, WP No. 2548/2006, WP No.
2549/2006, WP No. 2550/2006, WP No. 2551/2006, WP No. 2633/2007, WP
No. 2636/2007, WP No. 2650/2006, WP No. 2734/2007, WP No.
2736/2007, WP No. 276/2007, WP No. 277/2007, WP No. 288/2007, WP
No. 2889/2007, WP No. 3059/2005, WP No. 3081/2006, WP No.
3166/2006, WP No. 323/2007, WP No. 3254/2007, WP No. 3283/2007, WP
No. 329/2007, WP No. 3312/2007, WP No. 3506/2007, WP No. 3691/2007,
WP No. 3692/2007, WP No. 4031/2007, WP No. 4612/2006, WP No.
4613/2006, WP No. 4614/2006, WA No. 462/2006, WP No. 462/2007, WA
No. 465/2006, WA No. 466/2006, WA No. 467/2006, WP No. 4685/2006,
WP No. 4775/2005, WP No. 489/2007, WP No. 4943/2006, WP No.
499/2007, WP No. 5080/2005, WP No. 5330/2006, WP No. 5331/2006, WP
No. 5332/2006, WP No. 5334/2006, WP No. 5336/2006, WP No.
5341/2006, WP No. 535/2007, WP No. 539/2007, WA No. 54/2007, WP No.
542/2007, WP No. 552/2007, WP No. 558/2007, WP No. 559/2007, WP No.
560/2007, WP No. 561/2007, WP No. 562/2007, WP No. 566/2007, WP No.
5937/2006, WP No. 595/2007, WP No. 6169/2006, WP No. 641/2007, WP
No. 660/2007, WP No. 661/2007, WP No. 662/2007, WP No. 680/2007, WP
No. 682/2007, WP No. 705/2007, WP No. 727/2007, WP No. 728/2007, WP
No. 729/2007, WP No. 75/2007, WP No. 77/2007, WA No. 78/2007, WP
No. 78/2007, WP No. 785/2006, WA No. 79/2007, WP No. 792/2007, WP
No. 793/2007, WA No. 80/2007, WP No. 80/2007, WA No. 81/2007, WP
No. 81/2007, WA No. 82/2007, WP No. 82/2007, WA No. 83/2007, WP No.
83/2007, WP No. 8314/2005, WP No. 84/2007, WP No. 8445/2003, WP No.
85/2007, WP No. 86/2007, WA No. 88/2007, WP No. 880/2007, WA No.
90/2007 passed by the High Court of Gauhati)

STATE OF ASSAM & ORS.

Petitioner(s)

VERSUS

CHHOTABHAI J.P.TOBACCO PROD.CO.LD.& ORS.

Respondent(s)

(With appln. (s) for permission to file additional documents and interim relief)

SLP(C) NO. 24934-25066/2007

(WITH APPLN. (S) FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS AND INTERIM RELIEF)

SLP(C) NO. 5883/2009

(WITH APPLN. (S) FOR MAY REFER TO REMARKS AND WITHDRAWAL OF SLP AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 6254/2009

(WITH APPLN. (S) FOR BRINGING NEW FACTS AND WITHDRAWAL OF SLP AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 6669/2009

(WITH APPLN. (S) FOR PERMISSION TO FILE SYNOPSIS AND LIST OF DATES AND SEEKING PERMISSION TO BRING ADDITIONAL FACTS AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 6670/2009

(WITH APPLN. (S) FOR BRINGING NEW FACTS AND PERMISSION TO FILE ADDL. DOCUMENTS AND PERMISSION TO FILE SYNOPSIS AND LIST OF DATES AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 6675/2009

(WITH APPLN. (S) FOR BRINGING NEW FACTS AND PERMISSION TO FILE ADDL. DOCUMENTS AND PERMISSION TO FILE SYNOPSIS AND LIST OF DATES AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 6676/2009

(WITH APPLN. (S) FOR PERMISSION TO BRING ADDL. FACTS AND PERMISSION TO FILE ADDITIONAL DOCUMENTS AND PERMISSION TO FILE SYNOPSIS AND LIST OF DATES AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 6953/2009

(WITH APPLN. (S) FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 8244/2009

(WITH APPLN. (S) FOR BRINGING NEW FACTS AND DIRECTIONS AND PERMISSION TO FILE ADDITIONAL DOCUMENTS AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 11042/2009

(WITH APPLN. (S) FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS AND SEEKING PERMISSION TO BRING ADDITIONAL FACTS AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 11603-11611/2009
(WITH APPLN. (S) FOR PERMISSION TO FILE LENGTHY LIST OF DATES AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 13496/2009
(WITH APPLN. (S) FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED ORDER AND OFFICE REPORT)

SLP(C) NO. 14429/2009
(WITH APPLN. (S) FOR BRINGING NEW FACTS AND MAY REFER TO REMARKS AND PERMISSION TO FILE ADDL. DOCUMENTS AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 14484/2009
(WITH APPLN. (S) FOR EXEMPTION FROM FILING BETTER COPIES OF DIM PAGES AND INTERVENTION AND PERMISSION TO FILE ADDITIONAL DOCUMENTS AND SEEKING PERMISSION TO BRING ADDITIONAL FACTS AND STAY AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 14488/2009
(WITH APPLN. (S) FOR AMENDMENT OF THE PETITION AND BRINGING NEW FACTS AND MAY REFER TO REMARKS AND PERMISSION TO PLACE ADDL. DOCUMENTS ON RECORD AND STAY AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 14949/2009
(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 16253/2009
(WITH APPLN. (S) FOR C/DELAY IN FILING SLP AND OFFICE REPORT)

SLP(C) NO. 17722/2009
(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 35587/2009
(WITH OFFICE REPORT)

SLP(C) NO. 6811/2010
(WITH APPLN. (S) FOR PERMISSION TO FILE LENGTHY LIST OF DATES AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 7426/2010
(WITH APPLN. (S) FOR PERMISSION TO FILE LENGTHY LIST OF DATES AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 7776/2010

C.A. NOS. 7411-7543 OF 2017 etc.
(@ SLP (C) Nos. 24934-25066 of 2007)

(WITH APPLN. (S) FOR PERMISSION TO FILE LENGTHY LIST OF DATES AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 11423/2010
(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 22520/2010
(WITH APPLN. (S) FOR TAKING ADDITIONAL DOCUMENT ON RECORD AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 13525/2011
(WITH APPLN. (S) FOR C/DELAY IN FILING SLP AND OFFICE REPORT)

SLP(C) NO. 30594/2009
(WITH OFFICE REPORT)

W.P. (C) NO. 11/2010
(WITH APPLN. (S) FOR WITHDRAWAL OF WRIT PETITION AND OFFICE REPORT)

W.P. (C) NO. 42/2010
(OFFICE REPORT)

W.P. (C) NO. 43/2010
(OFFICE REPORT)

W.P. (C) NO. 44/2010

W.P. (C) NO. 46/2010

W.P. (C) NO. 48/2010
(OFFICE REPORT)

W.P. (C) NO. 71/2010
(OFFICE REPORT)

W.P. (C) NO. 497/2011
(OFFICE REPORT)

W.P. (C) NO. 278/2012

W.P. (C) NO. 290/2012
(OFFICE REPORT)

SLP(C) NO. 13270-13274/2009
(WITH APPLN. (S) FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 17731/2009
(WITH APPLN. (S) FOR PERMISSION TO FILE ADDL. DOCUMENTS AND INTERIM

RELIEF AND OFFICE REPORT)

Date : 22/03/2017 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Parties

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Mr. Nalin Kohli, Adv.
Mr. Ankit Roy, Adv.
Ms. Vishakha Ahuja, Adv.
Mr. Indrajeet Singh, Adv.
Mr. Shuvodeep Roy, Adv.
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Mr. Ravinder Narain, Adv.
Mr. Ajay Aggarwal, Adv.
Ms. Kanika Gomber, Adv.
Ms. Mallika Joshi, Adv.
Mr. Rajan Narain, Adv.

Mr. Dileep Tandon, Adv.
Ms. Neha T. Phookan, Adv.
Mr. R. B. Phookan, Adv.
Mr. Shailesh M., Adv.

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Mr. Rituraj Biswas, Adv.

Mr. Arvind P. Datar, Sr. Adv.
Mr. Pratap Venugopal, Adv.
Ms. Surekha Raman, Adv.
Mr. Anuj Sarma, Adv.

Ms. Niharika, Adv.
Ms. Kanika K., Adv.
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Mr. Ranjay Dubey, Adv.
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Ms. Reshmi Rea Sinha, Adv.

Mr. Jagjit Singh Chhabra, Adv.

Mr. Chiraranjan Addey, Adv.

Ms. Ruby Singh Ahuja, Adv.
Mr. Visha Gehrana, Adv.
Ms. Suman Yadav, Adv.
Ms. Aakanksha Munjal, Adv.
Mr. Milinda Sharma, Adv.
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Ms. Deepti Sarin, Adv.
M/s. Karanjawala & Co.

M/s. Arputham.

Mr. V. N. Koura, Adv.
Ms. Aruna Mathur, Adv.
Ms. Paramjeet Benipal, Adv.
Mr. Sumeet Benepal, Adv.
Mr. Avneesh Arputham, Adv.
Ms. Anuradha Arputham, Adv.
Mr. Amit Arora, Adv.
M/s. Aruna & Co.

Mr. M. P. Vinod, Adv.

Mr. Rajiv Tyagi, Adv.
Mr. Divakar Kumar, Adv.
Mr. Ram Manohar Singh, Adv.

Mr. Ghanshyam Joshi, Adv.

Mr. Rajan Narain, Adv.

Mr. Rauf Rahim, Adv.
Mr. Jai Prakash Pandey, Adv.
Mr. Vipin Kumar Jai, Adv.
Mr. Manish K. Bishnoi, Adv.
Mr. Somiran Sharma, Adv.
Mr. Jai Prakash Pandey, Adv.
Mr. Vivek Jain, Adv.
Mr. Anil Shrivastav, Adv.
Mr. S. S. Shroff, Adv.
Mr. Sunil Kumar Jain, Adv.
Mr. Shibashish Misra, Adv.
Mr. Parmanand Pandey, Adv.
Mr. Abhijit Sengupta, Adv.
Mr. C. D. Singh, Adv.
Mr. Radha Shyam Jena, Adv.
Mr. Sumeet Lall, Adv.
Mr. Krishnanand Pandeya, Adv.
Mr. Parijat Sinha, Adv.
Mr. Nikhil Jain, Adv.
Mr. Shailesh Madiyal, Adv.

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

Delay condoned.

Leave granted in the special leave petitions.

The appeals are disposed of in terms of the signed

order.

Pending applications stand disposed of.

SLP(C) NO. 5883/2009
SLP(C) NO. 6254/2009

As prayed for, the special leave petitions are dismissed as withdrawn.

W.P.(C) NO. 11 of 2010

As prayed for, the writ petition stands dismissed as withdrawn.

W.P.(C) NO. 42 of 2010

W.P.(C) NO. 43 of 2010

W.P.(C) NO. 44 of 2010

W.P.(C) NO. 46 of 2010

W.P.(C) NO. 48 of 2010

W.P.(C) NO. 71 of 2010

W.P.(C) NO. 497 of 2011

W.P.(C) NO. 278 of 2012

W.P.(C) NO. 290 of 2012

List the petitions on 23rd March, 2017.

(Nidhi Ahuja)
Court Master

(Mala Kumari Sharma)
Court Master

[Corrected Signed order is placed on the file.]

C.A. NOS. 7411-7543 OF 2017 etc.
(@ SLP (C) Nos. 24934-25066 of 2007)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7411-7543 OF 2017
(Arising out of SLP (C) Nos. 24934-25066 of 2007)

STATE OF ASSAM & ORS.

... Appellants

VERSUS

CHHOTABHAI J.P.TOBACCO PROD.CO.LD.& ORS.

... Respondents

C.A. NO. 7546/2017
(@ SLP(C) NO. 6669/2009)

C.A. NO. 7547/2017
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(@ SLP(C) NO. 14949/2009)

C.A. NO. 7572/2017
(@ SLP(C) NO. 16253/2009)

C.A. NO. 7573/2017
(@ SLP(C) NO. 17722/2009)

C.A. NO. 7574/2017
(@ SLP(C) NO. 35587/2009)

C.A. NO. 7575/2017
(@ SLP(C) NO. 6811/2010)

C.A. NO. 7576/2017
(@ SLP(C) NO. 7426/2010)

C.A. NO. 7577/2017
(@ SLP(C) NO. 7776/2010)

C.A. NO. 7578/2017
(@ SLP(C) NO. 11423/2010)

C.A. NO. 7580/2017
(@ SLP(C) NO. 22520/2010)

C.A. NO. 7582/2017
(@ SLP(C) NO. 13525/2011)

C.A. NO. 7584/2017
(@ SLP(C) NO. 30594/2009)

W.P. (C) NO. 11/2010

W.P. (C) NO. 42/2010

W.P. (C) NO. 43/2010

W.P. (C) NO. 44/2010

W.P. (C) NO. 46/2010

W.P. (C) NO. 48/2010

W.P. (C) NO. 71/2010

W.P. (C) NO. 497/2011

W.P. (C) NO. 278/2012

W.P. (C) NO. 290/2012

C.A. NO. 7586-7590/2017
(@ SLP (C) NO. 13270-13274/2009)

C.A. NO. 7594/2017
(@ SLP (C) NO. 17731/2009)

O R D E R

Leave granted in the special leave petitions.

Having regard to the fact that the correctness of the ratio of the judgment of the Seven Judges' Bench of this Court in '*Automobile Transport (Rajasthan) Ltd. Etc. v. State of Rajasthan and Ors.*' [1963 (1) SCR 491] and the theory of compensatory tax was questioned, the matter was referred to Nine Judges' Bench. The Nine Judges' Bench of this Court heard the matters and answered the reference in those cases, leading case being '*Jindal Stainless Ltd. and*

Anr. v. State of Haryana and Ors.' [2016 (11) SCALE 1]. The Court, by majority, answered the reference in the following terms:

"1. Taxes simpliciter are not within the contemplation of Part XIII of the Constitution of India. The word 'Free' used in Article 301 does not mean "free from taxation".

2. Only such taxes as are discriminatory in nature are prohibited by Article 304(a). It follows that levy of a non-discriminatory tax would not constitute an infraction of Article 301.

3. Clauses (a) and (b) of Article 304 have to be read disjunctively.

4. A levy that violates 304(a) cannot be saved even if the procedure under Article 304(b) or the proviso there under is satisfied.

5. The compensatory tax theory evolved in *Automobile Transport* case and subsequently modified in *Jindal's* case has no juristic basis and is therefore rejected.

6. Decisions of this Court in *Atiabari*, *Automobile Transport* and *Jindal* cases (*supra*) and all other judgments that follow these pronouncements are to be extent of such reliance over ruled.

7. A tax on entry of goods into a local area for use, sale or consumption therein is permissible although

similar goods are not produced within the taxing state.

8. Article 304(a) frowns upon discrimination (of a hostile nature in the protectionist sense) and not on mere differentiation. Therefore, incentives, set-offs etc. granted to a specified class of dealers for a limited period of time in a non-hostile fashion with a view to developing economically backward areas would not violate Article 304(a). The question whether the levies in the present case indeed satisfy this test is left to be determined by the regular benches hearing the matters.

9. States are well within their right to design their fiscal legislations to ensure that the tax burden on goods imported from other States and goods produced within the State fall equally. Such measures if taken would not contravene Article 304(a) of the Constitution. The question whether the levies in the present case indeed satisfy this test is left to be determined by the regular benches hearing the matters.

10. The questions whether the entire State can be notified as a local area and whether entry tax can be levied on goods entering the landmass of India from another country are left open to the determined in

appropriate proceedings."

It may be recapitulated at this stage that insofar as the instant appeals are concerned, which were also part of the aforesaid reference, the levy of entry tax was challenged by the assesseees by filing writ petitions in the High Courts primarily on the ground that the levy was not in the nature of compensatory tax. The aforesaid challenge was because of the law laid down in *Automobile Transport* case (*supra*) which held the field at that time.

Similar challenges were made by the assesseees in other States challenging various provisions of the similar enactments made by the said States. Some of the High Courts upheld the legislation holding the tax to be compensatory tax whereas some other High Courts found the legislation not to be compensatory in nature and, thus, struck down the provisions thereof. Some High Courts had taken support of certain other reasons also in striking down these legislations. The assesseees as well as the States had filed special leave petitions against those judgments. Those cases were heard and decided by the Constitution Bench of this Court in *Jindal Stainless Ltd. (2) and Anr. v. State of Haryana and Ors.* [2006 (7) SCC 241].

Jindal Strips Ltd. is an industry manufacturing products within the State of Haryana. The raw-material is

purchased from outside the State. The finished products are sent to other States on consignment basis or stock transfer basis. No sales tax is paid on the input of the raw material. Similarly, no sales tax is paid on the export of finished products.

The impugned Act came into force w.e.f. 5th May, 2000, to provide for levy and collection of tax on the entry of goods into the local areas of the State for consumption or use therein. The Act is enacted to provide for levy and collection of tax on the entry into a local area of the State, of a motor vehicle for use or sale, and of other goods for use or consumption therein. The Act seeks to impose entry tax on all goods brought into a "local area". The entire State is divided into local areas. The Act covers not only vehicles bringing goods into the State but also vehicles carrying goods from one local area to another. However, those who pay sales tax to the State are exempt from payment of entry tax. Ultimately, the entry tax only falls on concerns, like Jindal Strips, which, by virtue of the provisions of the Central Sales Tax Act, 1956, pay sales tax on purchase of raw-material and sale of finished goods to other States and do not pay sales tax to the State of Haryana. This is the context in which the challenge to the Act under Article 301 has been made. At this stage, we may point out that prior to September 30, 2003, Section 22 stated that the tax collected

under the Act shall be distributed by the State Government amongst the local bodies to be utilized for the development of local areas. However, on 30th September, 2003, Section 22 was amended clarifying that the tax levied and collected shall be utilized for facilitating free flow of trade and commerce.

REASONS FOR THE REFERRAL ORDER:

In *Atiabari Tea Co. Ltd. etc. v. State of Assam & Ors.*, it was held that taxing laws are not excluded from the operation of Article 301, which means that tax laws can and do amount to restrictions on the freedoms guaranteed to trade under Part-XIII of the Constitution. However, the prohibition of restrictions on free trade is not an absolute one. Statutes restrictive of trade can avoid invalidation if they comply with Article 304(a) or (b).

In *Automobile Transport (Rajasthan) Ltd.* (Supra), it was held that only such taxes that directly and immediately restrict trade would fall within the purview of Article 301 and that any restriction in the form of taxes imposed on the carriage of goods or their movement by the State Legislature can only be done after satisfying the requirements of Article 304(b). The statute which was challenged in *Atiabari Tea Co.* (supra) was the Assam Taxation (On Goods Carried By Roads And Inland Waterways) Act, 1954. It was held that the Act had put

a direct restriction on the freedom of trade and since the State Legislature had not complied with the provisions of Article 304(b), the Act was declared void.

It is in the aforesaid background, reference was made to Nine Judges' Bench, as indicated at the outset of this order.

We may also mention at this stage that when the matters were argued before the Nine Judges' Bench, certain other aspects were also argued. Primarily, three kinds of issues were taken by the assesseees which are to the following effect:

(1) Whether the entire State can be treated as 'local area' for the purposes of entry tax?

(2) Whether entry tax can be levied on the goods which are directly imported from other countries and brought in a particular State?.

(3) In some statutes enacted by certain States, there was a provision for giving adjustment of other taxes like VAT, incentives etc. paid by the indigenous manufacturers and it was contended by the assesseees that whether the benefits given to certain categories of manufacturers would amount to discrimination under Section 304.

The Nine Judges' Bench while answering the reference

deemed it appropriate to leave these questions to be agitated before the regular Bench. That is how these matters are posted before this Bench and it is agreed that the aforesaid issues are the main issues to be decided.

During the hearing of arguments, counsel for both sides submitted that since the main challenge in the writ petitions, which were filed by the writ petitioners before the High Court, was predicated on the law laid down by the Constitution Bench in '*Atiabari Tea Co. Ltd.* (supra), the High Court essentially confined its discussion only on "compensatory tax theory", as propounded in the aforesaid judgment so the High Courts looked at the issue by only keeping in mind the principle propounded in the aforesaid judgment and decided as to whether the tax imposed by a particular statute is compensatory in nature or not. Thus, when other issues are to be dealt with, as indicated above, we find that in many cases there is no adequate factual foundation and there is no discussion in the impugned judgments as well. It is also agreed by counsel for both the sides that in the absence thereof, it may not be possible for this Court to decide these issues.

According to us, in the aforesaid scenario, appropriate course of action would be to permit the appellants to file fresh petitions by May 31, 2017, raising the aforesaid issues with necessary factual background or any other

constitutional/statutory issue which arises for consideration.

All these appeals/petitions are, accordingly, disposed of with the aforesaid liberty granted to the appellants. The interim orders which were passed by this Court and which are continued in these appeals shall continue till May 31, 2017. It will be open to the appellants to seek interim orders. We make it clear that the High Courts shall deal with the interim prayers of stay on their own merits without being influenced by the fact that the stay order was passed in these cases or has been extended by this Court as aforesaid. The High Courts, at that time, shall also consider the import and effect of the reference answered by the Nine Judges' Bench.

There are many applicants who have filed applications for intervention in some of the petitions, those applications for intervention are dismissed giving them liberty to file substantive writ petitions in the High Courts on the same lines as given to others.

Some of the intervenors who had filed writ petitions in the High Courts but the High Court did not entertain those petitions directing them to intervene in these matters. They are also given liberty.

W.P.(C) NO. 11 of 2010

As prayed for, the writ petition stands dismissed as
withdrawn.

....., J.
[A.K. SIKRI]

....., J.
[ASHOK BHUSHAN]

New Delhi;
March 22, 2017.

ITEM NO.920-958

COURT NO.8

SECTION III

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

Petition(s) for Special Leave to Appeal (C) Nos. 24934-25066/2007
(Arising out of impugned final judgment and order dated 30/08/2007
in WA No. 103/2007, WP No. 1070/2007, WP No. 1180/2007, WP No.
1238/2007, WP No. 1284/2007, WP No. 1288/2007, WP No. 1301/2007, WP
No. 1338/2007, WP No. 138/2007, WP No. 1431/2005, WP No. 147/2007,
WP No. 15/2007, WP No. 1554/2007, WP No. 1603/2007, WP No.
1604/2007, WP No. 1607/2006, WP No. 1608/2006, WP No. 1704/2007, WP
No. 184/2007, WP No. 186/2007, WP No. 1869/2007, WP No. 19/2007, WP
No. 1904/2007, WP No. 1964/2005, WP No. 1974/2007, WP No.
2000/2007, WP No. 2021/2005, WP No. 2078/2007, WP No. 212/2007, WP
No. 2230/2007, WP No. 2231/2007, WP No. 2232/2007, WP No.
2294/2007, WP No. 2295/2007, WP No. 2296/2007, WP No. 2389/2007, WP
No. 2392/2007, WP No. 2393/2007, WP No. 2425/2006, WP No.
2426/2006, WP No. 2427/2006, WP No. 2428/2007, WP No. 2545/2006, WP
No. 2546/2006, WP No. 2547/2006, WP No. 2548/2006, WP No.
2549/2006, WP No. 2550/2006, WP No. 2551/2006, WP No. 2633/2007, WP
No. 2636/2007, WP No. 2650/2006, WP No. 2734/2007, WP No.
2736/2007, WP No. 276/2007, WP No. 277/2007, WP No. 288/2007, WP
No. 2889/2007, WP No. 3059/2005, WP No. 3081/2006, WP No.
3166/2006, WP No. 323/2007, WP No. 3254/2007, WP No. 3283/2007, WP
No. 329/2007, WP No. 3312/2007, WP No. 3506/2007, WP No. 3691/2007,
WP No. 3692/2007, WP No. 4031/2007, WP No. 4612/2006, WP No.
4613/2006, WP No. 4614/2006, WA No. 462/2006, WP No. 462/2007, WA
No. 465/2006, WA No. 466/2006, WA No. 467/2006, WP No. 4685/2006,
WP No. 4775/2005, WP No. 489/2007, WP No. 4943/2006, WP No.
499/2007, WP No. 5080/2005, WP No. 5330/2006, WP No. 5331/2006, WP
No. 5332/2006, WP No. 5334/2006, WP No. 5336/2006, WP No.
5341/2006, WP No. 535/2007, WP No. 539/2007, WA No. 54/2007, WP No.
542/2007, WP No. 552/2007, WP No. 558/2007, WP No. 559/2007, WP No.
560/2007, WP No. 561/2007, WP No. 562/2007, WP No. 566/2007, WP No.
5937/2006, WP No. 595/2007, WP No. 6169/2006, WP No. 641/2007, WP
No. 660/2007, WP No. 661/2007, WP No. 662/2007, WP No. 680/2007, WP
No. 682/2007, WP No. 705/2007, WP No. 727/2007, WP No. 728/2007, WP
No. 729/2007, WP No. 75/2007, WP No. 77/2007, WA No. 78/2007, WP
No. 78/2007, WP No. 785/2006, WA No. 79/2007, WP No. 792/2007, WP
No. 793/2007, WA No. 80/2007, WP No. 80/2007, WA No. 81/2007, WP
No. 81/2007, WA No. 82/2007, WP No. 82/2007, WA No. 83/2007, WP No.
83/2007, WP No. 8314/2005, WP No. 84/2007, WP No. 8445/2003, WP No.
85/2007, WP No. 86/2007, WA No. 88/2007, WP No. 880/2007, WA No.
90/2007 passed by the High Court of Gauhati)

STATE OF ASSAM & ORS.

Petitioner(s)

VERSUS

CHHOTABHAI J.P.TOBACCO PROD.CO.LD.& ORS.

Respondent(s)

(With appln. (s) for permission to file additional documents and interim relief)

SLP(C) NO. 24934-25066/2007

(WITH APPLN. (S) FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS AND INTERIM RELIEF)

SLP(C) NO. 5883/2009

(WITH APPLN. (S) FOR MAY REFER TO REMARKS AND WITHDRAWAL OF SLP AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 6254/2009

(WITH APPLN. (S) FOR BRINGING NEW FACTS AND WITHDRAWAL OF SLP AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 6669/2009

(WITH APPLN. (S) FOR PERMISSION TO FILE SYNOPSIS AND LIST OF DATES AND SEEKING PERMISSION TO BRING ADDITIONAL FACTS AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 6670/2009

(WITH APPLN. (S) FOR BRINGING NEW FACTS AND PERMISSION TO FILE ADDL. DOCUMENTS AND PERMISSION TO FILE SYNOPSIS AND LIST OF DATES AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 6675/2009

(WITH APPLN. (S) FOR BRINGING NEW FACTS AND PERMISSION TO FILE ADDL. DOCUMENTS AND PERMISSION TO FILE SYNOPSIS AND LIST OF DATES AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 6676/2009

(WITH APPLN. (S) FOR PERMISSION TO BRING ADDL. FACTS AND PERMISSION TO FILE ADDITIONAL DOCUMENTS AND PERMISSION TO FILE SYNOPSIS AND LIST OF DATES AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 6953/2009

(WITH APPLN. (S) FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 8244/2009

(WITH APPLN. (S) FOR BRINGING NEW FACTS AND DIRECTIONS AND PERMISSION TO FILE ADDITIONAL DOCUMENTS AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 11042/2009

(WITH APPLN. (S) FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS AND

SEEKING PERMISSION TO BRING ADDITIONAL FACTS AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 11603-11611/2009
(WITH APPLN. (S) FOR PERMISSION TO FILE LENGTHY LIST OF DATES AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 13496/2009
(WITH APPLN. (S) FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED ORDER AND OFFICE REPORT)

SLP(C) NO. 14429/2009
(WITH APPLN. (S) FOR BRINGING NEW FACTS AND MAY REFER TO REMARKS AND PERMISSION TO FILE ADDL. DOCUMENTS AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 14484/2009
(WITH APPLN. (S) FOR EXEMPTION FROM FILING BETTER COPIES OF DIM PAGES AND INTERVENTION AND PERMISSION TO FILE ADDITIONAL DOCUMENTS AND SEEKING PERMISSION TO BRING ADDITIONAL FACTS AND STAY AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 14488/2009
(WITH APPLN. (S) FOR AMENDMENT OF THE PETITION AND BRINGING NEW FACTS AND MAY REFER TO REMARKS AND PERMISSION TO PLACE ADDL. DOCUMENTS ON RECORD AND STAY AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 14949/2009
(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 16253/2009
(WITH APPLN. (S) FOR C/DELAY IN FILING SLP AND OFFICE REPORT)

SLP(C) NO. 17722/2009
(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 35587/2009
(WITH OFFICE REPORT)

SLP(C) NO. 6811/2010
(WITH APPLN. (S) FOR PERMISSION TO FILE LENGTHY LIST OF DATES AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 7426/2010
(WITH APPLN. (S) FOR PERMISSION TO FILE LENGTHY LIST OF DATES AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 7776/2010
(WITH APPLN. (S) FOR PERMISSION TO FILE LENGTHY LIST OF DATES AND

C.A. NOS. 7411-7543 OF 2017 etc.
(@ SLP (C) Nos. 24934-25066 of 2007)

INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 11423/2010
(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 22520/2010
(WITH APPLN. (S) FOR TAKING ADDITIONAL DOCUMENT ON RECORD AND
INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 13525/2011
(WITH APPLN. (S) FOR C/DELAY IN FILING SLP AND OFFICE REPORT)

SLP(C) NO. 30594/2009
(WITH OFFICE REPORT)

W.P.(C) NO. 11/2010
(WITH APPLN. (S) FOR WITHDRAWAL OF WRIT PETITION AND OFFICE REPORT)

W.P.(C) NO. 42/2010
(OFFICE REPORT)

W.P.(C) NO. 43/2010
(OFFICE REPORT)

W.P.(C) NO. 44/2010

W.P.(C) NO. 46/2010

W.P.(C) NO. 48/2010
(OFFICE REPORT)

W.P.(C) NO. 71/2010
(OFFICE REPORT)

W.P.(C) NO. 497/2011
(OFFICE REPORT)

W.P.(C) NO. 278/2012

W.P.(C) NO. 290/2012
(OFFICE REPORT)

SLP(C) NO. 13270-13274/2009
(WITH APPLN. (S) FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS AND
INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 17731/2009
(WITH APPLN. (S) FOR PERMISSION TO FILE ADDL. DOCUMENTS AND INTERIM
RELIEF AND OFFICE REPORT)

Date : 22/03/2017 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

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Ms. Anuradha Arputham, Adv.
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Mr. Jai Prakash Pandey, Adv.

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Mr. Sumeet Lall, Adv.

Mr. Krishnanand Pandeya, Adv.

Mr. Parijat Sinha, Adv.

Mr. Nikhil Jain, Adv.

Mr. Shailesh Madiyal, Adv.

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

Delay condoned.

Leave granted in the special leave petitions.

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

C.A. NOS. 7411-7543 OF 2017 etc.
(@ SLP (C) Nos. 24934-25066 of 2007)

Pending applications stand disposed of.

SLP(C) NO. 5883/2009
SLP(C) NO. 6254/2009

As prayed for, the special leave petitions are dismissed as withdrawn.

W.P.(C) NO. 11 of 2010

As prayed for, the writ petition stands dismissed as withdrawn.

(Nidhi Ahuja)
Court Master

(Mala Kumari Sharma)
Court Master

[Signed order is placed on the file.]