

ÖIN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 7598 OF 2017
(Arising out of SLP (C) No. 14828 of 2008)
JAIPRAKASH ASSOCIATES LTD
VERSUS

... Appellant

STATE OF MADHYA PRADESH & ORS.

... Respondents

C.A. NO. 7606/2017
(@ SLP(C) NO. 14829/2008)
C.A. NO. 7609/2017
(@ SLP(C) NO. 14875/2008)
C.A. NO. 7612/2017
(@ SLP(C) NO. 15047/2008)
C.A. NO. 7615/2017
(@ SLP(C) NO. 15078/2008)
C.A. NO. 7617/2017
(@ SLP(C) NO. 15090/2008)
C.A. NO. 7622/2017
(@ SLP(C) NO. 15253/2008)
C.A. NO. 7625/2017
(@ SLP(C) NO. 15273/2008)
C.A. NO. 7627/2017
(@ SLP(C) NO. 15274/2008)
C.A. NO. 7629-7630/2017
(@ SLP(C) NO. 15286-15287/2008)
C.A. NO. 7632-7633
(@ SLP(C) NO. 15288-15289/2008)
C.A. NO. 7636/2017
(@ SLP(C) NO. 15324/2008)
C.A. NO. 7638/2017
(@ SLP(C) NO. 15325/2008)
C.A. NO. 7640/2017
(@ SLP(C) NO. 15326/2008)
C.A. NO. 7642/2017

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(@ SLP(C) NO. 16841/2008)
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(@ SLP(C) NO. 15015/2010)
C.A. NO. 7450/2004
(OFFICE REPORT)
C.A. NO. 2025/2007
C.A. NO. 7973/2017
(@ SLP(C) NO. 7661/2007)

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

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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:

â S 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

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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

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levied on goods entering the landmass of India from another country are left open to the determined in appropriate proceedings.â \235

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.â [2006 (7) SCC 241].

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

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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.

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

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

New Delhi;

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

SLP(C) NO. 16841/2008

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

SLP(C) NO. 17187/2008

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

SLP(C) NO. 17408/2008

(WITH APPLN. (S) FOR DIRECTIONS AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 18001/2008

(WITH APPLN. (S) FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 18030/2008

(WITH APPLN. (S) FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 18034/2008

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 18035/2008

(WITH APPLN. (S) FOR INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 18066-18067/2008

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 18582/2008

(WITH APPLN. (S) FOR INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 18850/2008

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 18870/2008

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 18871/2008

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 19019/2008

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 19026/2008

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 19120/2008

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 19372/2008

(WITH APPLN. (S) FOR PERMISSION TO PLACE ON RECORD SUBSEQUENT FACTS AND INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 19421/2008

(WITH INTERIM RELIEF AND OFFICE REPORT)

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SLP(C) NO. 19425/2008

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 19460/2008

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 19470/2008

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

SLP(C) NO. 19714/2008

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 19722/2008

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 19731/2008

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 19737/2008

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 19802/2008

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 19873/2008

(WITH APPLN. (S) FOR INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 19876/2008

(WITH APPLN. (S) FOR INTERIM RELIEF AND OFFICE REPORT)

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(WITH INTERIM RELIEF AND OFFICE REPORT)

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(WITH INTERIM RELIEF AND OFFICE REPORT)
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(WITH INTERIM RELIEF AND OFFICE REPORT)
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(WITH APPLN. (S) FOR C/DELAY IN FILING SLP AND OFFICE REPORT)
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(WITH APPLN. (S) FOR C/DELAY IN FILING SLP AND OFFICE REPORT)
SLP(C) NO. 22342/2008
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(WITH INTERIM RELIEF AND OFFICE REPORT)
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(WITH INTERIM RELIEF AND OFFICE REPORT)
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(WITH INTERIM RELIEF AND OFFICE REPORT)
SLP(C) NO. 25498/2008
(WITH INTERIM RELIEF AND OFFICE REPORT)
SLP(C) NO. 26571/2008
(WITH APPLN. (S) FOR C/DELAY IN FILING SLP AND OFFICE REPORT)
SLP(C) NO. 26572/2008
(WITH OFFICE REPORT)
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SLP(C) NO. 27606/2008
(WITH APPLN. (S) FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT AND OFFICE REPORT)
SLP(C) NO. 27927/2008
(WITH INTERIM RELIEF AND OFFICE REPORT)
SLP(C) NO. 29561-29570/2008
(WITH APPLN. (S) FOR C/DELAY IN FILING SLP AND C/DELAY IN REFILEING
SLP AND OFFICE REPORT)
SLP(C) NO. 30533/2008
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SLP(C) NO. 4102/2010
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JUDGMENT AND OFFICE REPORT)
SLP(C) NO. 23836/2010
(WITH OFFICE REPORT)
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(WITH INTERIM RELIEF AND OFFICE REPORT)
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SLP(C) NO. 1308/2011
(WITH APPLN. (S) FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT AND OFFICE REPORT)
SLP(C) NO. 6492/2011
(WITH INTERIM RELIEF AND OFFICE REPORT)
SLP(C) NO. 28173/2012
(WITH APPLN. (S) FOR BRINGING ON RECORD ADDITIONAL DOCUMENTS AND
C/DELAY IN FILING SLP AND EXEMPTION FROM FILING C/C OF THE IMPUGNED

JUDGMENT AND OFFICE REPORT)

SLP(C) NO. 7874/2015

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 7345/2009

(OFFICE REPORT)

SLP(C) NO. 15015/2010

(OFFICE REPORT)

C.A. NO. 7450/2004

(OFFICE REPORT)

C.A. NO. 2025/2007

SLP(C) NO. 7661/2007

(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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For Mr. Tapish K. Singh, Adv.

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Ms. Eesha Mohapatra, Adv.

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Mr. Nakul Gandhi, Adv.

Mrs. Manik Karanjawala, Adv.

Ms. Deepti Sarin, Adv.

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Mr. Ajay Aggarwal, Adv.
Ms. Kanika Gomber, Adv.
Ms. Mallika Joshi, Adv.
Mr. Rajan Narain, Adv.
Mrs. Vanita Bhargava, Adv.
Mr. Ajay Bhargava, Adv.
Mr. Jeevan Ballav panda, Adv.
Ms. Abhisar Bairagi, Adv.
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For Khaitan & Co.
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Mr. Aditya Bhattacharya, Adv.
Mr. Anandh K., Adv.
Mr. Abhishek Anand, Adv.
Mr. Victor Das, Adv.
Ms. Apeksha Mehta, Adv.
Mr. M.P. Devanath, Adv.
Mr. A. Chowdhury, Adv.
Ms. Diksha Rai, Adv.
Ms. Kanika Saran, Adv.
Mr. Sagar Vaish, Adv.
Ms. Sharmila Upadhyay, Adv.

Mr. C. D. Singh, Adv.
Mr. E. C. Agrawala, Adv.
Mr. Nikhil Nayyar, Adv.
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Mr. Rajesh Prasad Singh, Adv.
Mr. Rajesh Kumar, Adv.
Mr. Akshat Shrivastava, Adv.
Mr. Rajeev Sharma, Adv.
Ms. Bina Gupta, Adv.
Ms. Rakhi Ray, Adv.
Ms. Kumud Lata Das, Adv.
Mr. T. Mahipal, Adv.
Mr. Abhay Kumar, Adv.
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Mr. Arvind Minocha, Adv.
Mr. Tapesk Kumar Singh, Adv.
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Mr. B. S. Banthia, Adv.
Mr. Rameshwar Prasad Goyal, Adv.
Mr. M. A. Krishna Moorthy, Adv.
Ms. Manjeet Kirpal, Adv.
Mr. Kunal Verma, Adv.
Mr. Sridhar Potaraju, Adv.
Mr. Nitin Bhardwaj, Adv.
Ms. Diksha Rai, Adv.
Mr. Sunil Kumar Jain, 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.

(Nidhi Ahuja) (Mala Kumari Sharma)
Court Master Court Master

[Signed order is placed on the file.]

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