

LISTED ON: 08.02.2017 COURT NO.8 ITEM NO. 167 TO 206

SECTION-III

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
(Matters relating to High Court of Judicature at Punjab and Haryana.)

ENTRY TAX MATTERS

CIVIL APPEAL NOS. 3453, 3454, 3455, 3456-3459, 3460, 3461, 3462-3463, 3464, 3465 3466, 3467, 3468, 3469, 3470, 3471, 4008 and 5858 of 2002 , Civil Appeals 2608, 8241, 8242, 8243, 8244 , 8245, 8246, 8247, 8248, 8249, 8250, 8251, 8252 of 2003, CIVIL APPEAL NO. 4715 OF 2008.

and

PETITION FOR SPECIAL LEAVE TO APPEAL (C) NOS. 14380 of 2005, 26813 & 30276 of 2008, 16116 of 2009, 22425 of 2009, 22428 of 2009, 30746-30845 of 2009, 36193 of 2009, 9117 of 2015

with

INTERLOCUTORY APPLICATION NO. 1 in C.A. No. 3453 of 2002
(Application for intervention filed on 5th July, 2016 filed by Mr. Parijat Sinha, Advocate)

WITH

INTERLOCUTORY APPLICATION NO. 2 in C.A. No. 3453 of 2002
(Application for intervention filed on 16th July, 2016 by Mr. Nishant R. Katneshwarkar, Advocate)

with

INTERLOCUTORY APPLICATION NO. 2
(Application for modification of Court's Order in C.A. No. 3455 of 2002)

with

INTERLOCUTORY APPLICATION NO. 2
(Application for stay in C.A. No. 3456-3459 of 2002)

with

INTERLOCUTORY APPLICATION NO. 2
(Application for modification of Court's Order in C.A. No. 8242/2003)

with

INTERLOCUTORY APPLICATION NO. 2
(Application for amendment of Cause Title in C.A. No. 8244 of 2003)

with

INTERLOCUTORY APPLICATION NO. 4
(Application for amendment of Cause Title in C.A. No. 8246 of 2003)

WITH

INTERLOCUTORY APPLICATION NO. 4
(Application for impleadment in C.A. No. 4715 of 2008)

Jindal Stainless Ltd. & Anr.

...Appellants

-Versus-

State of Haryana & Ors.

...Respondents

COMMON OFFICE REPORT FOR ITEM NO. 167 TO 206

It is submitted that Civil Appeal 3453 of 2002 alongwith other connected matter was listed before the Constitutional Bench of Nine Hon'ble Judges when the Hon'ble Court delivered its judgment and was pleased to pass the following order :

“Hon'ble the Chief Justice pronounced the judgment of the Bench comprising His Lordship, Hon'ble Mr. Justice A.K. Sikri, Hon'ble Mr. Justice S.A.Bobde, Hon'ble Mr. Justice Shiva Kirti Singh, Hon'ble Mr. Justice N.V.Ramana, Hon'ble Mrs. Justice R.Banumathi, Hon'ble Mr. Justice A.M.Khanwilkar, Hon'ble Dr. Justice D.Y.Chandrachud and Hon'ble Mr. Justice Ashok Bhushan.

Hon'ble the Chief Justice pronounced separate judgment comprising Hon'ble Mr. Justice A.K.Sikri and Hon'ble Mr. Justice A.M.Khanwilkar while Hon'ble Mr. Justice S.A.Bobde, Hon'ble Mr. Justice Shiva Kirti Singh, Hon'ble Mr. Justice N.V.Ramana, Hon'ble Mrs. Justice R.Banumathi, Hon'ble Dr. Justice D.Y.Chandrachud and Hon'ble Mr. Justice Ashok Bhushan pronounced separate judgments of the Bench.

In terms of the signed order, by majority the Court answers 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 the 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 be determined in appropriate proceedings.”

“Separate folder of Record of Proceedings and Judgments delivered in C.A. No. 3453 of 2002 and other connected matters is placed herewith”

Service Position of Civil Appeals are as under :

Item Nos.	Civil Appeal No.	Total RRs	Service position	
167	3453 of 2004	4	All the respondents are represented by Mr. Vishwa Pal Singh, Advocate	Service is complete.
168	3454 of 2002	6	Respondent nos. 1 to 4 are rep. By Mr. Vishwa Pal Singh, Advocate. Service is complete on respondent nos. 5 and 6 through High Court as the certificate of service has been received from High Court, but no one has entered appearance on behalf of respondent nos. 5 and 6.	Service is complete
169	3455 of 2002	2	Both respondents are represented by Mr. Vishwa Pal Singh, Advocate	Service is complete
170	3456- 3459 of 2002	6	Respondent nos. 1 and 2 are rep. By Mr. Sanjay Kumar Visen, Advocate. Service is complete on respondent nos. 3 to 6 through High Court as certificate of service has been received from High	Service is complete

			Court, but no one has entered appearance on behalf of respondent no. 3 to 6	
171	3460 of 2002	4	Respondent nos. 1 to 3 are rep. By Mr. Sanjay Kumar Visen, Advocate. Service is complete on respondent nos. 4 at SLP stage as A.D. card duly signed has been received but no one has entered appearance on behalf of respondent no. 4	Service is complete
172	3461 of 2002	2	Both respondents are represented by Mr. Vishwa Pal Singh, Advocate	Service is complete
173	3462-3463 of 2002	2	Both respondents are represented by Mr. Vishwa Pal Singh, Advocate	Service is complete
174	3464 of 2002	4	All respondents are represented by Mr. Sanjay Kumar Visen, Advocate	Service is complete
175	3465 of 2002	1	Sole respondent is rep. By Mr. Sanjay Kumar Visen, Advocate	Service is complete
176	3466 of 2002	3	All respondents are represented by Mr. Vishwa Pal Singh, Advocate	Service is complete
177	3467 of 2002	6	Respondent nos. 1 to 3 are rep. By Mr. Sanjay Kumar Visen, Advocate. Service is complete on respondent nos. 4 to 5 at SLP state through A.D. card duly signed has been received back and service is complete on respondent no. 6 through High Court as certificate of service received from High Court, but no one has entered appearance on behalf of respondent no. 6	Service is complete
178	3468 of 2002	6	Respondent nos. 1 to 3 are rep. By Mr. Vishwa Pal Singh, Advocate. Service of notice of lodgement of Petition of Appeal is complete as certificate of service has been received from High Court on behalf of respondent nos. 4 to 6 but no one has entered appearance on behalf of respondent no. 4 to 6	Service is complete
179	3469 of 2002	6	Respondent nos. 1 to 3 are rep. By Mr. Sanjay Kumar Visen, Advocate. Service is complete on respondent nos. 4 to 5 at SLP stage through A.D. card duly signed has been received back and service	Service is complete

			is complete on respondent no. 6 through High Court as certificate of service has been received but no one has entered appearance on behalf of respondent no. 6.	
180	3470 of 2002	3	All the three respondents are represented by Mr. Vishwa Pal Singh, Advocate	Service is complete
181	3471 of 2002	8	Respondent nos. 1 to 2 are rep. By Mr. Sanjay Kumar Visen, Advocate. Service is complete on respondent nos. 3 to 8 through High Court as certificate of service has been received, but no one has entered appearance on behalf of respondent no. 3 to 8	Service is complete
182	4008 of 2002	3	All respondents are represented by Mr. Sanjay Kumar Visen, Advocate	Service is complete
183	5858 of 2002	4	All respondents are represented by Mr. Sanjay Kumar Visen, Advocate	Service is complete
184	2608 of 2003	4	All respondents are represented by Mr. Sanjay Kumar Visen, Advocate	Service is complete
185	8241 of 2003	3	All respondents are represented by Mr. Sanjay Kumar Visen, Advocate	Service is complete
186	8242 of 2003	4	All respondents are represented by Mr. Sanjay Kumar Visen, Advocate	Service is complete
187	8243 of 2003	2	Both respondents are represented by Mr. Sanjay Kumar Visen, Advocate	Service is complete
188	8244 of 2003	2	Both respondents are represented by Mr. Sanjay Kumar Visen, Advocate	Service is complete
189	8245 of 2003	2	Both respondents are represented by Mr. Sanjay Kumar Visen, Advocate	Service is complete
190	8246 of 2003	2	Both respondents are represented by Mr. Sanjay Kumar Visen, Advocate	Service is complete
191	8247 of 2003	2	Both respondents are represented by Mr. Sanjay Kumar Visen, Advocate	Service is complete
192	8248 of 2003	2	Both respondents are rep. By Mr. Sanjay Kumar Visen, Advocate	Service is complete
193	8249 of 2003	2	Both respondents are represented by Mr. Sanjay Kumar Visen, Advocate	Service is complete
194	8250 of 2003	2	Both respondents are rep. By Mr. Sanjay Kumar Visen, Advocate	Service is complete
195	8251 of 2003	3	All the three respondents are represented by Mr. Sanjay Kumar Visen, Advocate	Service is complete
196	8252 of 2003	2	Both respondents are rep. By Mr. Sanjay Kumar Visen, Advocate	Service is complete
197	4715 Of 2008	2	Both respondents are rep. By Ejaz Maqbool, Advocate	Service is complete

Service Position of SLPs are as under :

Item Nos.	S.L.P. Nos.	Total Respondents	Service Position	Service is complete
198	14380/2005	2	Both respondents are represented through Mr. Sanjay Kumar Visen, Advocate	Service is complete
199	26813/2008	1	Sole respondent represented through Ms. Priya Puri, Advocate and she has also filed counter affidavit and copies of the same have been included in the paper books.	Service is complete
200	30276/2008	1	Sole respondent represented through Mr. R.S. Jena, Advocate and he has also filed counter affidavit and copies of the same have been included in the paper books.	Service is complete
201	22425/2009	1	Sole respondent represented through Ms. Sushma Sharma, Advocate and she has also filed counter affidavit and copies of the same have been included in the paper books.	Service is complete
202	22428/2009	1	Sole respondent represented through Ms. Meera Mathur, Advocate	Service is complete
203	30746-30845/2009	100	Sole respondent in S.L.P.(C) Nos. 30746, 30750, 30751, 30753-30757, 30760-30761, 30764-30770, 30772-30775, 30777, 30779, 30796-30798, 30800, 30804, 30805, 30811, 30820-30822, 30824, 30832, 30835-30837, 30839-30842, 30844, 30845 of 2009 is represented through their respective Advocates. Mr. Amit Pawan, Advocate for sole respondent in S.L.P.(C) Nos. 30779 of 2009 has filed counter affidavit. Copy of the same has been included in the paper books.	Service is complete
204	36193/2009	1	Sole respondent represented through Mr. E.C. Agrawala, Advocate	Service is complete

205	9117/2015	1	Sole respondent represented through Mr. Praveen Kumar, Advocate and he has also filed counter affidavit and copies of the same have been included in the paper books.	Service is complete
206	16116/2009	1	Sole respondent served as A.D. Card duly signed and stamped has been received back from sole respondent but no one has filed Vakalatnama/Appearance so far.	Service is complete

CIVIL APPEAL 3453 OF 2002

It is submitted that M/s Parijat Sinha & Nishant R. Katneshwarkar, Advocates have on 5th July, 2016 and 17th July, 2016 filed Applications for Intervention alongwith Vakalatnama on behalf of applicant wiz. State of West Bengal and State of Maharashtra and the said applications have been registered as I.A. No. 1 and I.A. No. 2 respectively and copies of the applications have been included in the paper books.

Civil Appeal No. 3455 OF 2002

It is submitted that Interlocutory Application No. 2 (Application for modification of Court's Order was listed before the Hon'ble Court on 21st January, 2010, when the Court was pleased to pass the following order :

“No Order”

Civil Appeal No. 8242 of 2003

It is submitted that Interlocutory Application No. 2 (Application for modification of Court's Order dated 30th October, 2009) was listed before the Hon'ble Court on 19th March, 2010, when the Court was pleased to pass the following order :

**“No Orders.
Liberty to apply at a later stage.”**

Civil Appeal No. 8244 of 2003

It is submitted that Counsel for the appellant has filed Application for Amendment of cause title i.e. for change the name of Appellant Company alongwith

Certificate of Incorporation. The said application has been registered as Interlocutory Application No. 2.

Civil Appeal No. 8246 of 2003

It is submitted that counsel for the appellant has filed an application for amendment of cause title with regard to change the name of appellant Company and the said application was listed before the Hon'ble Chamber Judge on 1st February, 2010 when the Court was pleased to direct to issue notice on the said application.

Accordingly, notice was issued to the Respondents/State of Haryana through Mr. Kamal Mohan Gupta, the then Standing Counsel for the State of Haryana. Hence service of notice on the said application is complete.

Civil Appeal No. 4715 of 2008

It is submitted that Mr. Parmanand Pandey, Advocate has filed an Application for Impleadment on behalf of Perfetti Van Melle India Pvt. Ltd., praying therein that the said applicant may be impleaded as party respondent. The said application has been registered as I.A. No. 4. Copies of said application have been included in the paper books.

CIVIL APPEAL 3453 OF 2002

It is submitted that M/s Parijat Sinha & Nishant R. Katneshwarkar, Advocates have on 5th July, 2016 and 17th July, 2016 filed Applications for Intervention alongwith Vakalatnama on behalf of applicant wiz. State of West Bengal and State of Maharashtra and the said applications have been registered as I.A. No. 1 and I.A. No. 2 respectively and copies of the applications have been included in the paper books.

The matters alongwith applications above-mentioned are listed before Hon'ble Court with this office report.

Dated this the 7th day of February, 2017.

Sd/-
ASSISTANT REGISTRAR

Copy to :

1. Mr. Ejaz Maqbool, Advocate
2. Mr. Vishwa Pal Singh, Advocate
3. Mr. Parijat Sinha, Advocate
4. Mr. Nishant R. Katneshwarkar, Advocate
5. Mr. Sanjay Kumar Visen, Advocate
6. Mrs. Priya Puri, Advocate
7. Mr. Rajesh Kumar, Advocate
8. Ms. Suruchi Aggarwal, Advocate
9. Mr. Nikhil Nayyar, Advocate
10. Mr. Harish Pandey, Advocate
11. Mr. Vishwajit Singh, Advocate
12. Ms. Kamakshi S. Mehlwal, Advocate
13. Mr. K.J. Janjani, Advocate
14. Mr. Praveen Kumar, Advocate
15. Mr. Himinder Lal, Advocate
16. Mr. Balaji Srinivasan, Advocate
17. Mr. Naresh Bakshi, Advocate
18. Mr. Subramonium Prasad, Advocate
19. Ms. Shirin Khajuria, Advocate
20. Mr. M.P. Devanath, Advocate
21. Ms. Sushma Sharma, Advocate
22. Mr. Amit Pawan, Advocate
23. Mr. Manish K. Bishnoi, Advocate
24. Mr. Dheeraj Nair, Advocate
25. Ms. Divyam Agarwal, Advocate

ASSISTANT REGISTRAR