

ITEM NO.10

COURT NO.7

SECTION XI -A

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). 3381-3400/1998

STATE OF KERALA AND OTHERS

Appellant(s)

VERSUS

FR.WILLIAM FERNANDEZ ETC ETC

Respondent(s)

(FOR INTERVENTION APPLICATION ON IA 1/2001 FOR INTERVENTION
APPLICATION ON IA 2/2011 FOR INTERVENTION APPLICATION ON IA /2012)

WITH

SLP(C) No. 9693-9695/2013 (XVI)
 C.A. No. 918/1999 (XI -A)
 W.P. (C) No. 66/2004 (X)
 C.A. No. 3267/2012 (III-A)
 SLP(C) No. 5407/2008 (XVI)
 SLP(C) No. 5408/2008 (XVI)
 C.A. No. 3266/2012 (III-A)
 SLP(C) No. 8231/2015 (XIV)
 SLP(C) No. 11646/2009 (XVI)
 SLP(C) No. 7356/2010 (XVI)
 SLP(C) No. 19194/2010 (XI -A)
 C.A. No. 5385/2002 (XVI)
 C.A. No. 3592/1998 (XI -A)
 SLP(C) No. 17156-17157/2013 (XII-A)
 SLP(C) No. 10694/2007 (XVI)
 SLP(C) No. 9054/2007 (XVI)
 SLP(C) No. 14886/2010 (XI -A)
 C.A. No. 4651/1998 (XI -A)
 SLP(C) No. 12959/2007 (XVI)
 C.A. No. 6331/2003 (XVI)
 SLP(C) No. 13806/2007 (XVI)
 SLP(C) No. 16694/2010 (XI -A)
 SLP(C) No. 16720/2010 (XI -A)
 C.A. No. 6177/2010 (XI -A)
 C.A. No. 6178/2010 (XI -A)
 C.A. No. 6179/2010 (XI -A)
 SLP(C) No. 18088/2007 (XI -A)
 C.A. No. 6180/2010 (XI -A)
 SLP(C) No. 18044/2007 (XI -A)
 SLP(C) No. 25390/2009 (XI -A)
 SLP(C) No. 18360-18364/2008 (XI -A)
 SLP(C) No. 22349/2015 (XI -A)
 C.A. No. 9505/2017 (XVI)
 C.A. No. 9214/2014 (IV-A)
 SLP(C) No. 18318/2010 (XI -A)

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Ms. Reshmi Rea Sinha, Adv.

Ms. Sharmila Upadhyay, AOR

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

SLP(C) No. 23990/2009, SLP(C) No. 33663-33665/2009, SLP(C) No. 35038/2009, C.A. No. 8139/2017, C.A. No. 3267/2012, C.A. No. 3266/2012, SLP(C) No. 17156-17157/2017, C.A. No. 9214/2014, SLP(C) No. 8231/2015.

List on 24.08.2017.

SLP(C) No. 1101/2007, SLP(C) No. 26543/2008, SLP(C) No. 11646/2009, SLP(C) No. 7356/2010.

List on 25.08.2017.

C.A. No. 9505/2017, T.C(C) No. 13/2004, SLP(C) No. 10694/2007, SLP(C) No. 12959/2007, SLP(C) No. 13806/2007, SLP(C) No. 746/2008, SLP(C) No. 747/2008, SLP(C) No. 742/2008, SLP(C) No. 5407/2008, C.A. No. 5041-5042/2008, SLP(C) No. 4387/2010, SLP(C) No. 9693-9695/2013.

List on 28.08.2018.

STATE OF KERALA MATTERS

C.A. No. 3026 of 2012

The appeal is taken on Board.

C.A. No. 3026 of 2012, C. A. No(s). 3381-3400/1998, C.A. No. 3592/1998, C.A. No. 4651/1998, C.A. NO. 918/1999, W.P(C) No.

574/2003, C.A. NO. 6177/2010, C.A. NO. 6178/2010, C.A. No.
6179/2010, SLP(C) No. 18088/2007, C.A. NO. 6180/2010, SLP(C) No.
18044/2007, SLP(C) Nos. 17394-17396/2009, SLP(C) No. 25390/2009,
SLP(C) No. 1820/2010, SLP(C) No. 19194/2010.

Leave granted.

Heard learned counsel for the parties.

Arguments concluded.

Judgment reserved.

W.P. No. 66 of 2004

The writ petition is disposed of in terms of the signed order.

Pending application(s), if any, stands disposed of
accordingly.

STATE OF BIHAR MATTERS:

SLP(C) No. 9054 of 2007

The special leave petition is dismissed as infructuous.

C.A. No. 5385/2002

The civil appeal is dismissed in terms of the signed order.

Pending application(s), if any, stands disposed of
accordingly.

C.A. 6331/2003

The civil appeal is disposed of in terms of the signed order.

Pending application(s), if any, stands disposed of accordingly.

SLP (C) No. 5408/2008,

Leave granted.

The appeal is disposed of in terms of the signed order.

Pending application(s), if any, stands disposed of accordingly.

STATE OF TAMIL NADU MATTERS

SLP (C) Nos. 15082-15085/2007

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

Pending application(s), if any, stands disposed of accordingly.

SLP (C) No. 22349/2015, SLP (C) No. 14886/2010, SLP (C) No. 16694/2010, SLP (C) No. 16720/2010, SLP (C) No. 18318/2010, SLP (C) No. 19199/2010, SLP (C) Nos. 18360-18364/2008

The above matters were reserved on 22.08.2017.

SLP (C) No. 13526/2011

The above said petition is disposed of on 22.08.2017 in view of order dated 23.03.2017 passed in Civil Appeal No. 6914 of 2007.

(ASHWANI KUMAR)
COURT MASTER

(MADHU NARULA)
COURT MASTER

(Signed orders are placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) No. 66 of 2004

M/S. ENGLISH INDIAN CLAYS LTD.

PETITIONER

VS.

STATE OF KERALA & ANR.

RESPONDENTS

O R D E R

In this writ petition filed under Article 32 of the Constitution of India the petitioner has the validity of entry tax on the ground that no entry tax can be levied on the imported goods. Insofar as this issue is concerned, the same is being heard in various appeals which are filed by the State of Kerala against the judgment of the Kerala High Court, which decided in the aforesaid issue favour of the assessee. The main leading case is Civil Appeal NO. 3381-3400/1998 (State of Kerala & Ors. Versus Fr. William Fernandez etc. etc. Therefore, whatever is the judgment given in these cases would cover the case of the petitioner as well.

In addition, the petitioner has raised the issue of exemption from payment of entry tax on the ground that its case is covered by exemption Notification SRO No. 696/2002 dated 02.09.2002. Insofar as this aspect is concerned, the petitioner may approach the High Court in this respect.

With the aforesaid observations, the writ petition is disposed
of.

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

.....J
[ASHOK BHUSHAN]

NEW DELHI;
AUGUST 23, 2017.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 6331 OF 2003

M/S. HARINAGAR SUGAR MILLS LTD.

APPELLANT(S)

VS.

STATE OF BIHAR & ORS.

RESPONDENT(S)

O R D E R

This appeal is preferred by the appellant/assessee against the judgment and order dated 25.04.2003. Various issues are decided by the High Court in the said judgment passed in the writ petition filed by the appellant herein. The appellant is aggrieved by the decision only on two aspects. In respect of first aspect, it is submitted that the goods which were brought by the appellant from outside the State of Bihar, where the factory of the appellant is situated, were used by the appellant itself in its own factory for maintenance of factory building and factory. On that basis, contention is that the goods were not brought for use, consumption or sale and, therefore, no entry tax was payable on the said goods inasmuch as under the Bihar Entry Tax Act, 1993, which is enacted

in exercise of powers under Entry 52 of List II of 7th Schedule of the Constitution, entry tax can be levied only on consumption, sale and use of the goods. In other words, submission is that bringing the goods for the use in the factory for the maintenance of the factory and factory building would not amount to 'use of goods'. In support of this submission, reliance is placed on two judgments of this Court in S.M.Ram Lal & Co. vs. Secretary to Government of Punjab [1969(2) UJ 373] and Mafatlal Industries Ltd. vs. Nadiad Nagar Palika & Anr. [2000(3) SCC 1]. It is difficult to accept the aforesaid submission of the appellant. It cannot be said that goods are not 'used by the appellant' in the present case. The two judgments cited by the appellant have no application to the facts of the present case. In S.M.Ram Lal & Co. (supra) case, the wool was brought for dyeing on job work and thereafter returned to the person on whose behalf job work was taken, who was outside the jurisdiction. Likewise, in Mafatlal Industries Ltd. (supra) case, the cloth pieces of 100 meters' length were brought within the octroi limits and after cutting them into smaller pieces the same were exported. In both these cases, the Court held that there was no use of the goods by the importer/assessee. We, thus, do not find any merit in the appeal as far as this aspect is concerned.

The second aspect which is raised is that the provision of entry tax is violative of Article 304(a) of the Constitution as it is discriminatory in nature. On this aspect, the matter is remitted to the High Court to decide the issue afresh and the detailed order is passed in this behalf in C.A. NO. 11084 2017 @ SLP(c) No.

5408/2008.

The appeal is accordingly disposed of.

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

.....J
[ASHOK BHUSHAN]

NEW DELHI;
AUGUST 23, 2017.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.11084 OF 2017

(Arising out of SLP(C) No. 5408 of 2008)

THE STATE OF BIHAR & ORS.

APPELLANT(S)

VS.

M/S. HARINAGAR SUGAR MILLS LTD.

RESPONDENT(S)

O R D E R

Delay condoned.

Leave granted.

This appeal is preferred by the State of Bihar questioning the validity of the judgment and order dated 09.01.2007 passed by the High Court of Judicature at Patna. By the impugned judgment the High Court has decided the Bihar Entry Tax (Amendment) Act, 1993 to be non-compensatory in nature and it is also held that it is violative of Article 304(a) of the Constitution. It is also held by the High Court that the Presidential sanction was not taken as required under Article 304B of the Constitution.

Insofar as issues pertaining to compensatory tax and requirement of Presidential assent under Article 304(b) of the Constitution are concerned, by a Nine Judge Bench judgment of this Court in the case of Jindal Stainless Steel vs. State of Haryana reported in 2016 (11) SCALE 1, these issues are decided in favour

of the States and the judgment of the High Court to that extent is set aside.

Insofar as issue of tax being discriminatory in nature and violative of Article 304(a) of the Constitution is concerned, after hearing the learned counsel for the parties we find that the required foundational facts which are necessary for determining the issue were not pleaded. The manner in which the issue is to be examined is now authoritatively determined in Jindal Stainless Steel (supra). In view thereof while setting aside the judgment of the High Court we are remitting this issue to the High Court for fresh determination in the light of the law laid down by this Court in Jindal Stainless Steel(supra).

It would be open to the appellant/assessee to supplement their pleadings by filing additional affidavit(s) and the High Court shall give an opportunity to the State to file its reply as well. The High Court shall endeavour to decide the case afresh as expeditiously as possible.

The appeal is accordingly disposed of.

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

.....J
[ASHOK BHUSHAN]

NEW DELHI;
AUGUST 23, 2017.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 11086-89 OF 2017
(Arising out of SLP(C) No. 15082-15085 of 2007)

THE STATE OF TAMIL NADU & ORS.

APPELLANT(S)

VS.

ITC LIMITED & ANR.

RESPONDENT(S)

O R D E R

Leave granted.

In the light of the judgment of a Nine Judge Bench in the case of Jindal Stainless Steel vs. State of Haryana reported in 2016 (11) SCALE 1, the impugned judgment of the High Court is set aside and it is held that the Tamil Nadu Entry Tax Act is a valid enactment. However, it is made clear that insofar as period from 27.03.2002 to 01.04.2007 is concerned, the State of Tamil Nadu shall not realise the entry tax from the respondent(s) with regard to Tobacco product as for this period levy is found to be discriminatory in nature qua the aforesaid product.

The appeals are accordingly disposed of.

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

.....J
[ASHOK BHUSHAN]

NEW DELHI;
AUGUST 23, 2017.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S) . 5385/2002

BIHAR STEEL MANUFACTURERS ASSON.

APPELLANT(S)

VERSUS

STATE OF BIHAR

RESPONDENT(S)

O R D E R

The appeal is dismissed as not pressed.

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

.....J.
[ASHOK BHUSHAN]

NEW DELHI;
AUGUST 23, 2017