

OVERVIEW OF THE ENTRY TAX JUDGMENT – 9 MEMBER BENCH

As we are well aware that constitutional validity of Entry Tax laws of several states was in challenge before the 9 Judges Constitution Bench of the Hon'ble Supreme Court led by the Hon'ble Chief Justice of India.

Despite the law laid down in 1960s in the two Constitution Bench judgements of the Hon'ble Supreme Court in *Atiabari Tea Co. Ltd.* case and *Automobile Transport Ltd.* case, the constitutional validity of entry tax has been subject matter of litigation for more than 50 years; and it has been evaluated time and again by the Supreme Court and the High Courts of the various States on the touchstone of the principles of Article 301 of the Constitution of India read with compensatory tax. The conflicting decisions given by the Highest Court led to unending litigation and flood of appeals reaching the door steps of Hon'ble Supreme Court.

The issue was thus placed before the 9 Judges Constitution Bench of the Hon'ble Supreme Court in order to examine whether the earlier Constitution Bench judgements in *Atiabari Tea Co. Ltd.* case (5 Judges) and *Automobile Transport Ltd.* case (7 Judges) laid down correct principles of law. More precisely, the issue examined by the Supreme Court was whether entry tax per se constitutes violation of Article 301 of the Constitution of India if it is not discriminatory in nature.

Hearing of this matter commenced on 19th July 2016, and the hearing continued on a day-to day basis till 21st September 2016 even after the 122nd Constitutional Amendment Bill became 101st Constitutional Amendment Act on 8th September 2016.

The hearings before the Court witnessed a marathon of arguments on behalf of the assesseees which went from discussing the federal structure of India, economic unity of India, taxing power of the Centre and States, interplay between Article 301 and 304, conjunctive nature of Article 304(a) and 304(b) to discussing in detail whether entry taxes are discriminatory *vis-à-vis* the goods manufactured within a local area qua the goods imported from outside that local area and therefore whether it is an impediment to the freedom of trade, commerce and intercourse throughout the territory of India enshrined in Article 301.

Counsels on behalf of the State Government endeavored to justify levy of entry taxes by raising the presumption that public purpose is always inherent in levy of taxes and making a distinction between discrimination and deliberate/purposeful discrimination. They argued that purposeful discrimination between goods imported from other local areas and goods manufactured within that local area is necessary for the upliftment and development of the state.

On 12th November 2016 the Hon'ble Supreme Court by a majority of 7:2 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 the extent of such reliance overruled.
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.

The majority judgment has been written by the Hon'ble CJI Justice T.S.Thakur (for himself and A.K. Sikri and A.M.Khanwilkar, JJ.). Hon'ble Justices S.A.Bobde, Justice Shiva Kirti Singh, Justice N.V. Ramana and Justice R. Banumathi have written concurring judgments.

Hon'ble Justice Dr. D.Y. Chandrachud and Justice Ashok Bhushan have differed from the majority and have written the minority opinion.