HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
****
CWP No.5537 of 2008 (O&M)
Date of Decision: 18.12.2017
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Steel Furnace Association of India & Anr. ... Petitioners

VS.

State of Punjab & Anr. ... Respondents
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CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDHIR MITTAL
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Present: Mr. Ashok Aggarwal, Senior Advocate with
Mr. Sandeep Goyal, Advocate;
Mr. Puneet Bali, Senior Advocate with
Mr. Vibhav Jain, Advocate and Mr. Arun Gupta, Advocate;
Mr. Varun Mittal, Advocate;
Mr. VK Sandhir, Advocate;
Mr. V.Ramasaroop, Advocate;
Ms. Meena Bansal, Advocate;
Mr. Vinay Puri, Advocate for
Mr. DK Bhatti, Advocate;
Mr. Pankaj Jain, Advocate;
Mr. Rohit Gupta, Advocate;
Mr. Suvir Sehgal, Advocate;
Mr. SS Brar, Advocate;
Mr. Harpal Singh Saggu, Advocate;
Ms. Ashima Sharma, Advocate;
For the petitioners

Mr. Puneet Jindal, Senior Advocate with
Mr. Amandeep Singh, Advocate for petitioner (CWP-15493-2010)

Ms. Anu Pal, AAG Punjab
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SURYA KANT, J. (Oral)

(1) In this bunch of cases, fully descripted in the 'Schedule' attached with this order, the petitioners have raised a common question of law pertaining to the Constitutional validity of Punjab Tax on Entry of Goods into Local Areas Act, 2000. They further seek a writ of *certiorari* to strike down the Punjab Tax on Entry of Goods into Local Areas Rules, 1999, besides a direction for the refund of the unadjusted amount of entry tax.

(2) There are mainly two sets of writ petitions i.e. *CWP No.5537 of 2008 (Steel Furnace Association of India & Anr. vs. State of Punjab & Anr.)* and several such other writ petitions filed by various private industries located in the State of Punjab. The 2nd set of cases, seeking same relief, is at the instance of public authorities like *Steel Authority of India Ltd. vs. State of Punjab & Anr. (CWP No.11542 of 2008)*. Similarly, the Railway Coach Factory, Kapurthala in *CWP No.15493 of 2010 (Union of India vs. State of Punjab & Ors.)* has also questioned the definition of the expression “persons” as inserted in sub-Section 2(1)(i) to the extent it includes the ‘Central Government’ as well.

(3) The Punjab Tax on Entry of Goods into Local Areas Ordinance, 1999 was promulgated “*to provide for the levy of tax on entry of scheduled goods into local areas of State of Punjab for consumption or use or sale therein...*”. The Ordinance was later on replaced by the Punjab Tax on Entry of Goods into Local Areas Act, 2000 for giving effect to the provisions of the Ordinance of 1999. The Punjab Tax on Entry of Goods into Local Areas Rules, 1999 was formulated to implement the 1999 Ordinance and these Rules are now duly protected under Section 11 of the 2000 Act.

(4) It appears from the record that ***CWP No.15378 of 2008 (Bhushan Power & Steel Ltd. vs. The State of Punjab & Ors.)*** was treated as the lead case in which a Division Bench of this Court vide a self-speaking order dated 28.03.2011 granted interim relief to the petitioners on the analogy of the order passed to this effect by the Hon’ble Supreme Court in the cases pertaining to Entry Tax from different States as the matter was meanwhile referred to a larger Bench in the Supreme Court in ***Jindal Stainless Ltd. and another vs. State of Haryana & Ors. (2010) 4 SCC 595***.

(5) This Court extended the *ad interim* stay order passed in ***Bhushan Power & Steel Ltd.*** in all these cases on the same terms and conditions. Subsequently, all the cases were adjourned *sine die* vide order dated 02.05.2013 to await the decision of the Constitution Bench of Hon'ble Supreme Court in ***SLP(Civil) No.18469 of 2007 (State of Haryana vs. M/s Jindal Strips Ltd.)***.

(6) Learned counsel for the parties are *ad idem* that the above-cited matter has since been decided by a Nine-Judges Constitution Bench of the Hon'ble Supreme Court in ***Jindal Stainless Ltd. & Anr. vs. State of Haryana & Ors. (2016) 11 SCALE 1*** laying down as follows:-

> *"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."*

(7) Learned counsel for the petitioners fairly state that the grounds on which they laid challenge to the *vires* of 2000 Act have been answered against them by the nine-Judges Constitution Bench in ***Jindal Stainless Ltd.*** case, reproduced above. Regardless thereto, learned counsel submits that there are several other grounds on which they are entitled to question the validity of 2000 Act which they have not pleaded in the instant cases. They rely upon the order dated 21.03.2017 passed by Hon'ble Supreme Court in Haryana matters i.e. in ***Civil Appeal No.997-998 of 2004 (State of UP & Ors. vs. M/s Indian Oil Corporation Ltd. etc.)*** to urge that the questions (i) whether the entire State can be treated as a 'local area' for the purposes of Entry Tax? (ii) Whether the Entry Tax can be levied on the goods which are directly imported from other countries and brought in a particular State? and (iii) Whether the benefits given to certain categories of manufacturers under some Statutes enacted by certain States would amount to discrimination within the meaning of Article 304 of the Constitution, do arise for consideration in these cases also besides various other Constitutional or Statutory issues. They thus seek amendment of writ petitions to enable them to raise these additional grounds.

(8) Learned State counsel contrarily submits that the petitioners questioned the *vires* of 2000 Act primarily on the strength of 'Compensatory Tax Theory' or that the levy of Entry Tax was violative of Article 301 of the Constitution. Both these grounds, she urges, have been negatived by the Apex Court in ***Jindal Stainless Ltd. & Anr.*** (supra).

(9) Having heard learned counsel for the parties at a considerable length and after going through the record, it appears that the recourse as

evolved by Hon'ble Supreme Court in its order dated 21.03.2017 passed in Haryana matters, deserves to be followed in these cases as well. Their Lordships of the Supreme Court viewed it to be appropriate to permit the appellants (before the Apex Court) to file fresh petitions in a time bound manner and raise their respective issues afresh with necessary factual background, besides raising any Constitutional or statutory issue(s) which may arise for consideration. In other words, the most appropriate recourse for the petitioners in these cases would also be to file fresh petitions on the new grounds illustrated above or on any other Constitutional or statutory ground, as may arise for consideration, keeping in view the peculiar facts and circumstances of each case.

(10) Consequently, these writ petitions are disposed of without expressing any views on merits of the new grounds sought to be raised by the writ petitioners orally or through amended writ petitions with liberty to them to file fresh petitions on the grounds as may be available in accordance with law.

(11) Disposed of accordingly.

(Surya Kant)
Judge

18.12.2017
vishal shonkar

(Sudhir Mittal)
Judge

1. Whether speaking/reasoned? ***Yes***
2. Whether reportable? ***No***

SCHEDULE				
S.No.	Case No.	Parties Name		
1	CWP No.18609 of 2007	Surya Pharmaceuticals Ltd.	vs.	State of Punjab etc.
2	CWP No.3342 of 2008	Malwa Indus Ltd.	vs.	State of Punjab etc.
3	CWP No.578 of 2008	Malwa Cotton Spinning Mills Ltd.	vs.	State of Punjab etc.
4	CWP No.1670 of 2008	Tube Investment of India Ltd.	vs.	State of Punjab etc.
5	CWP No.6705 of 2008	Avon Ispat and Power Ltd.	vs.	State of Punjab etc.
6	CWP No.7099 of 2008	Vardhman Industries Ltd. & Anr.	vs.	State of Punjab etc.
7	CWP No.11542 of 2008	Steel Authority of India Ltd.	vs.	State of Punjab etc.
8	CWP No.16081 of 2008	Oswal Spinning and Weaving Mills Ltd.	vs.	State of Punjab etc.
9	CWP No.19001 of 2008	Hero Cycle Ltd.	vs.	State of Punjab etc.
10	CWP No.5537 of 2008	Steel Furnace Asso.	vs.	State of Punjab etc.
11	CWP No.18991 of 2008	M/s Gupta Brothers	vs.	State of Punjab etc.
12	CWP No.9237 of 2010	Shree Cement Ltd. & Anr.	vs.	State of Punjab etc.
13	CWP No.10334 of 2010	Diesel Loco Modernisation Works	vs.	State of Punjab etc.
14	CWP No.5362 of 2010	M/s Khanna Paper Mills Ltd.	vs.	State of Punjab etc.
15	CWP No.9906 of 2010	Union of India & Ors.	vs.	State of Punjab etc.
16	CWP No.15378 of 2008	Bhushan Power & Steel Ltd.	vs.	State of Punjab etc.
17	CWP No.15493 of 2010	Union of India etc.	vs.	State of Punjab etc.
18	CWP No.21494 of 2010	Gillander Arbuthnot and Co.Ltd.	vs.	State of Punjab etc.
19	CWP No.6064 of 2011	Singla Construction Ltd.	vs.	State of Punjab etc.
20	CWP No.6066 of 2011	Govind Wires	vs.	State of Punjab etc.
21	CWP No.6691 of 2011	Nahar Industrial Enterprises Ltd.	vs.	State of Punjab etc.
22	CWP No.7578 of 2011	M/s Raja Fat & Feeds P.Ltd. & Ors.	vs.	State of Punjab etc.
23	CWP No.7246 of 2011	M/s Sanjay Weaving Mills P.Ltd.	vs.	State of Punjab etc.
24	CWP No.6627 of 2011	M/s Viren Polutaries & Ors.	vs.	State of Punjab etc.
25	CWP No.7671 of 2011	M/s SJS International	vs.	State of Punjab etc.
26	CWP No.7253 of 2011	M/s Sureikha Knit Fab	vs.	State of Punjab etc.
27	CWP No.10739 of 2011	M/s Glaxosmithkline Consumer Healthcare	vs.	State of Punjab etc.
28	CWP No.7619 of 2011	M/s Victory Impex	vs.	State of Punjab etc.
29	CWP No.7241 of 2011	M/s Sva Metal Pvt. Ltd.	vs.	State of Punjab etc.
30	CWP No.7363 of 2011	Sonalika Agro Industrial Corp.	vs.	State of Punjab etc.
31	CWP No.15738 of 2011	M/s Ganesh Brick Supply Co. & Ors.	vs.	State of Punjab etc.
32	CWP No.15166 of 2011	M/s Kiran Bala & Ors.	vs.	State of Punjab etc.
33	CWP No.7669 of 2011	M/s Maingi Brothers	vs.	State of Punjab etc.
34	CWP No.7254 of 2011	M/s National Plastics	vs.	State of Punjab etc.
35	CWP No.7291 of 2011	M/s Kaytex Fabrics P Ltd.	vs.	State of Punjab etc.
36	CWP No.7243 of 2011	M/s Katyal & Co.	vs.	State of Punjab etc.
37	CWP No.7216 of 2011	M/s Shree Ram Plastic Industries	vs.	State of Punjab etc.
38	CWP No.9885 of 2011	M/s BR Steels	vs.	State of Punjab etc.
39	CWP No.7290 of 2011	M/s PSR Steels	vs.	State of Punjab etc.
40	CWP No.6536 of 2011	Ludhiana Knitters Association	vs.	State of Punjab etc.
41	CWP No.7358 of 2011	International Tractors Ltd.	vs.	State of Punjab etc.
42	CWP No.7670 of 2011	M/s HB Industries	vs.	State of Punjab etc.
43	CWP No.7229 of 2011	M/s Buildwell Construction Co.	vs.	State of Punjab etc.
44	CWP No.7629 of 2011	M/s Jit Ram & Sons and Ors.	vs.	State of Punjab etc.
45	CWP No.7245 of 2011	M/s Anandh Overseas P.Ltd.	vs.	State of Punjab etc.
46	CWP No.7591 of 2011	M/s Luxmi Flour Mills & Ors.	vs.	State of Punjab etc.
47	CWP No.8289 of 2011	M/s Anku Brick Company & Ors.	vs.	State of Punjab etc.
48	CWP No.21535 of 2011	M/s Surinder Kumar & Ors.	vs.	State of Punjab etc.
49	CWP No.6379 of 2011	Vardhman Yarns & Threads Ltd.	vs.	State of Punjab etc.
50	CWP No.22753 of 2011	M/s Kailash Brick Traders and Ors.	vs.	State of Punjab etc.
51	CWP No.18163 of 2011	M/s Guru Nanak Brick Industry & Ors.	vs.	State of Punjab etc.
52	CWP No.19856 of 2011	M/s Dilbagh Singh and Company & Ors.	vs.	State of Punjab etc.
53	CWP No.23614 of 2011	M/s Manpreet BKO & Anr.	vs.	State of Punjab etc.
54	CWP No.10351 of 2011	M/s Kisco Castings Works	vs.	State of Punjab etc.
55	CWP No.23326 of 2012	Indus Towers Ltd. & Ors.	vs.	State of Punjab etc.
56	CWP No.15612 of 2012	Power Grid Corporation of India Ltd.	vs.	State of Punjab etc.
57	CWP No.7727 of 2012	M/s Amit Vikram Food & Feeds Dhuri	vs.	State of Punjab etc.
58	CWP No.7819 of 2012	M/s RK Brick Kilan & Ors.	vs.	State of Punjab etc.
59	CWP No.21030 of 2012	Gupta BKO & Ors.	vs.	State of Punjab etc.
60	CWP No.20857 of 2012	M/s JCT Ltd.	vs.	State of Punjab etc.
61	CWP No.16024 of 2012	M/s Ambuja Cement Ltd.	vs.	State of Punjab etc.
62	CWP No.25286 of 2012	Shree Mahaluxmi Bricks & Ors.	vs.	State of Punjab etc.
63	CWP No.20779 of 2012	M/s Supreme Industries Ltd.	vs.	State of Punjab etc.

64	CWP No.19182 of 2012	M/s Puneet Singh & Co. & Ors.	vs.	State of Punjab etc.
65	CWP No.5810 of 2012	M/s Shankar Brikc Field & Ors.	vs.	State of Punjab etc.
66	CWP No.14366 of 2012	M/s Reliance Infocomm Engineering P.Ltd.	vs.	State of Punjab etc.
67	CWP No.14280 of 2012	M/s Reliance Communication Ltd.	vs.	State of Punjab etc.
68	CWP No.14329 of 2012	M/s Reliance Infratel Ltd.	vs.	State of Punjab etc.
69	CWP No.454 of 2013	Apex Group of Bricks & Ors.	vs.	State of Punjab etc.
70	CWP No.2664 of 2013	M/s RB Forgings P.Ltd.	vs.	State of Punjab etc.
71	CWP No.2510 of 2013	NKG Infrastructure Ltd.	vs.	State of Punjab etc.
72	CWP No.3133 of 2013	M/s Alcon Wires & Cables Industries	vs.	State of Punjab etc.
73	CWP No.2017 of 2013	M/s Sat Pal Varinder Kumar & Anr.	vs.	State of Punjab etc.
74	CWP No.5532 of 2013	Samrala Construction Co. & Ors.	vs.	State of Punjab etc.
75	CWP No.3420 of 2013	Shree Ganesh Saru Bricks & Ors.	vs.	State of Punjab etc.
76	CWP No.1768 of 2013	M/s Chinar Forge Ltd.	vs.	State of Punjab etc.
77	CWP No.3717 of 2013	Sunrise Enterprise	vs.	State of Punjab etc.
78	CWP No.3204 of 2013	M/s Leo Vinyls	vs.	State of Punjab etc.
79	CWP No.2957 of 2013	M/s Jay Bee Industries	vs.	State of Punjab etc.
80	CWP No.3098 of 2013	M/s HPL Additives Ltd.	vs.	State of Punjab etc.
81	CWP No.940 of 2013	M/s Vijay Bricks & Ors.	vs.	State of Punjab etc.
82	CWP No.4639 of 2013	M/s Siel Chemicals Complex	vs.	State of Punjab etc.
83	CWP No.3833 of 2013	M/s Nirwan Bricks Udyog & Ors.	vs.	State of Punjab etc.
84	CWP No.3058 of 2013	M/s Emmbros Forgings P. Ltd.	vs.	State of Punjab etc.
85	CWP No.3060 of 2013	M/s Avon Meters P Ltd.	vs.	State of Punjab etc.
86	CWP No.14189 of 2013	M/s GLS Industries P.Ltd.	vs.	State of Punjab etc.
87	CWP No.4001 of 2013	M/s RB Gears P.Ltd.	vs.	State of Punjab etc.
88	CWP No.4016 of 2013	M/s Welspun Projects Ltd.	vs.	State of Punjab etc.
89	CWP No.4106 of 2013	M/s Punjab Plastofab P.Ltd. & Ors.	vs.	State of Punjab etc.
90	CWP No.2944 of 2013	Jai Durga & Ors.	vs.	State of Punjab etc.
91	CWP No.4739 of 2013	Ganesh Brick Industry & Ors.	vs.	State of Punjab etc.
92	CWP No.4737 of 2013	M/s Sardari Lal Soni & Ors.	vs.	State of Punjab etc.
93	CWP No.5771 of 2013	M/s Bhushan Chhura Co. & Anr.	vs.	State of Punjab etc.
94	CWP No.3716 of 2013	Mahajan Tyre Co.	vs.	State of Punjab etc.
95	CWP No.3115 of 2013	M/s Rama Hitek Engineers P.Ltd.	vs.	State of Punjab etc.
96	CWP No.3744 of 2013	M/s Unique Manufacturing Co.	vs.	State of Punjab etc.
97	CWP No.3056 of 2013	M/s Bhargava Poly Pack	vs.	State of Punjab etc.
98	CWP No.4085 of 2013	M/s Girdhari Lal Aggarwal Contractors P.Ltd.	vs.	State of Punjab etc.
99	CWP No.3524 of 2013	Kosmo Enterprises Etc.	vs.	State of Punjab etc.
100	CWP No.3978 of 2013	M/s Agi Infra Ltd.	vs.	State of Punjab etc.
101	CWP No.3700 of 2013	Arihant Construction Co.	vs.	State of Punjab etc.
102	CWP No.3701 of 2013	Aggarwal Construction Co.	vs.	State of Punjab etc.
103	CWP No.2600 of 2013	M/s Greatways Overseas & Ors.	vs.	State of Punjab etc.
104	CWP No.3578 of 2013	M/s Hamco Ispat Ltd. JDR. & Ors.	vs.	State of Punjab etc.
105	CWP No.3525 of 2013	BVM Feed Corporation Etc.	vs.	State of Punjab etc.
106	CWP No.3132 of 2013	M/s Tulsyan Cans & Cardboards P.Ltd.	vs.	State of Punjab etc.
107	CWP No.13658 of 2011	M/s Fine Bricks & Anr.	vs.	State of Punjab etc.
108	CWP No.3096 of 2013	M/s Aquaplus Plastics P.Ltd.	vs.	State of Punjab etc.