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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4563 OF 2013

Hindusthan National Glass &	]	
Industries Limited	]	
A Company incorporated under	]	
the Companies Act, having its	]	
registered office at 2, Red Cross Place	]	Petitioner
Kolkata 700 001 and branch office at	]	
202, Ackruti Center Point	]	
MIDC, Andheri (East) Mumbai	]	
Maharashtra 400 093	]	
and plant at F-1, MIDC Malegaon Sinnar, Nashik	]	
Maharashtra 422 113.	]	

V/s.

1. The State of Maharashtra	]	
	]	
2. The Commissioner of Sales Tax	]	
Vikrikar Bhavan	]	
Mazgaon, Mumbai 400 010	]	
Maharashtra	]	Respondents
	]	
3. The Assistant Commissioner of Sales Tax	]	
Vikrikar Bhavan	]	
Prashant Nagar, Pathardi Phatha	]	
Nashik 422 010	]	

**ALONGWITH
WRIT PETITION NO.2785 OF 2017**

Deepak Fertilizers and Petrochemicals	]	
Corporation Ltd. A Company registered under	]	
the Companies Act, 1956	]	Petitioner
having office at : Sai Hira, Survey No.93	]	
Mundhwa, Pune 411 036	]	

-vs-

1. The State of Maharashtra	]	
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|--|---|-------------|
| 2. The Commissioner of Sales Tax |] | |
| having office at 3B-7, 3 rd Floor |] | |
| Old Vikrikar Bhavan |] | |
| Mazgaon, Mumbai 400 010 |] | |
| Maharashtra |] | Respondents |
| |] | |
| 3. The Assistant Commissioner of Sales Tax |] | |
| Investigation D-38 |] | |
| Cabin No.D-6, D-Wing, 2 nd floor |] | |
| Vikrikar Bhavan |] | |
| Old Building, Vikrikar Bhavan |] | |
| Mumbai 400 010 |] | |

**ALONGWITH
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1813 OF 2013**

Indus Towers Ltd.	]	
having it's office at Skyline Icon,	]	
304, 3 rd Floor, Mittal Estate	]	Petitioner
Andheri Kurla Road, Andheri (E)	]	
Mumbai 400 059.	]	

-vs-

- | | | |
|--|---|-------------|
| 1. The State of Maharashtra |] | |
| Through Secretary, Department of |] | |
| Revenue, Ministry of Finance |] | |
| |] | |
| 2. The Commissioner of Sales Tax |] | |
| having office at |] | |
| Vikrikar Bhavan, 8 th floor |] | |
| Mazgaon, Mumbai 400 010 |] | |
| Maharashtra |] | Respondents |
| |] | |
| 3. The Sales Tax Officer (C-928) |] | |
| Having it's office at 10 th floor, Cabin No.5 |] | |
| E, Vikrikar Bhavan, |] | |
| Mazgaon, Mumbai -400 010 |] | |

Mr. R. V. Desai, Senior Counsel a/w Mr. Rohit Pardeshi, Mr. Mayank Jain i/by Khaitan and Co.,for the Petitioner in W.P. No.4563 of

2013.

Mr. V. Shridharan, Senior Counsel a/w Mr. Prakash Shah and Mr. Jas Sanghavi i/by PDS Legal, for the petitioner in W.P. No.1813 of 2013 and W.P. No.2785 of 2017.

Mr. Darius Khambata, Special Counsel with Ms. Naira Jejeebhoy and A.L. I. Patel, Additional Government Pleader, for respondent Nos. 1 to 3 in WP No.4563 of 2013 and W.P. No.2785 of 2017.

Mr. Davrius Khambata, Special Counsel a/w Ms. Naira Jejeebhoy and Mrs. Geeta Shastri, AGP for respondent Nos. 1 to 3 in WP NO.1813 of 2018.

Mr. Sonpal, Special Counsel a/w B. V. Samant, AGP for the Respondent State in WP No.2785 of 2017.

**CORAM : S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.**

JUDGMENT RESERVED ON : 4th MAY, 2018.

JUDGMENT PRONOUNCED ON : 4th MARCH 2019

JUDGMENT [PER : PRAKASH D. NAIK, J.]

1] The petitioners have invoked Writ Jurisdiction of this Court under Article 226 of the Constitution of India.

2] The petitioner in Writ Petition No.4563 of 2013 seeks declaration that the Maharashtra Tax on the Entry of Goods into Local Areas Act, 2002, as amended, Notification issued thereunder and the Rules framed under the authority of the aforesaid Act as null and void and *ultra vires* the Constitution of India, being violative of Articles 14, 19, 245, 286 and Article 301 read with Article 304 of the Constitution of the India.

3] The petitioner in Writ Petition No.2785 of 2017, seeks issuance of writ of mandamus or any other writ or direction under Article 226 of the India, declaring Entry No.16 of the Schedule to the Maharashtra Tax on the Entry of Goods into Local Areas Act, 2002 as *ultra-vires* and Entry 52 of List II of the Seventh Schedule to the Constitution of India, and to declare that Entry No.16 of the Schedule to the Maharashtra Tax on the Entry of Goods into Local Areas Act, 2002 is *ultra- vires* Article 304(a) of the Constitution of the India.

4] The petitioner in Writ Petition No.1813 of 2013, also seeks declaration that the provisions of the Maharashtra Tax on the Entry of Goods into Local Areas Act, 2002 and as *ultra-vires* of Article 14, 19(1)(g) and Articles 301 and 304 of the Constitution of India. It is also prayed that the collection of Tax under Entry No.13 of Schedule I of the Local Areas Act, 2002 on air conditioning machines imported as illegal and void. It is also prayed that the provisions of the Maharashtra Tax on the Entry of Goods into Local Areas Rules 2002, are *ultra-vires* the Article 286 of the Constitution of the India.

5] Along with aforesaid reliefs, the petitioners are also

seeking ancillary reliefs in the individual petitions.

6] Shri. R. V. Desai, Senior Counsel representing the petitioner in Writ Petition No.4563 of 2013, submits that the petitioner had purchased the Liquified Natural Gas (for short called as "LNG"), from the State of Gujarat for use as fuel, and pay 2% Central Sales Tax (C.S.T.), against C-form. The petitioner had purchased L.N.G. of Rs.41,35,20,836/- and paid sum of Rs.82,17,416/- as C.S.T. under Section 8 of the Central Sales Tax Act.

7] Section 3 of Entry Tax Act, provides that levy of the entry tax at the rate of 12.5% on the Entry of L.N.G. into local area for consumption, use or sale thereunder. Second proviso thereof provides that the tax payable by the importer under the Entry Tax Act shall be reduced by amount of tax paid, if any, under the law relating to General Sales Tax in force in the Union Territory or the State in which goods are purchased by the importer. As the Petitioner had paid 2% CST at the time of import, the respondent should reduce the said amount and ought to levy Entry Tax at the rate of 10.5% only.

8] It is further submitted that LNG produced and

purchased within the State would be subject to Value Added Tax (V.A.T.) at the rate of 12.5% under the provisions of Maharashtra Value Added Tax Act, 2002 (for short referred as, "M.V.A.T Act). Under Section 48 of the MVAT Act, the State Government allows a set off or refund of the whole or any part of the tax paid under MVAT Act and Entry Tax Act. Rule 53 of the MVAT Rules provides for reduction in set off. As per Rule 53(1), if the dealer has used any taxable goods as fuel, then the amount equal to 3% of the corresponding purchase price shall be reduced from the amount of set off otherwise available in respect of the said purchase.

9] It is submitted that the State Legislature has levied Entry Tax under Entry 52 of the List II of the Seventh Schedule to the Constitution. The Entry 52 relates to tax on the entry of goods into Local Area for consumption, use or sale therein. The Legislative power is subject to Article 304 of the Constitution. It is submitted that the constitutional validity of powers of the State Legislature to levy entry tax on goods imported from outside State in the Local Areas was re-examined by the Hon'ble Supreme Court in the case of **Jindal Stainless Steel Ltd -vs- State of Haryana and ors**¹. In the said decision the Court has observed that only such taxes as are discriminatory in nature are prohibited under Article 304(a) of the Constitution of India. It follows that levy of

1 A.I.R.2016 S.C.5617.

non-discriminatory tax would not impinge Article 301 of the Constitution of India. A levy that violates Article 304(a) cannot be saved even if the procedure under Article 304(b) or the proviso thereunder is satisfied. The theory of compensatory tax evolved in the cases of Automobile Transport and subsequently modified in the Jindal case (supra), has no juristic basis and is therefore, rejected. It is further observed that Article 304(a), frowns upon discrimination and not on mere differentiation. It is, 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 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 of India. The question whether the levies in the present case indeed satisfy this test is left to be determined by the regular benches hearing these matters.

10] It is also observed that question 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.

Mr. Desai, learned Senior Counsel, submits that there is unanimity amongst the Hon'ble Judges that a discriminatory tax cannot survive the test of Article 304(a) of the Constitution of India.

11] He further submitted that the Hon'ble Supreme Court, in above Judgment has held that the State should ensure that the tax burden on the goods imported from outside the State and produced within the State, fall equally. Both should be similarly or equally circumstanced or similarly situated as envisaged in Article 304(a) of the Constitution of India. In the present case the tax burden is substantially unreasonable on the goods imported from outside. The State is treating equals as unequals. There is additional tax burden of Rs.82,70,417/- on goods from outside the State which is in nature of hostile discrimination. The goods from outside State suffer tax burden of Rs.2,06,76,042/- and the goods within the State suffers Rs.1,24,05,625/-. It is submitted that in paragraph 141 of the aforesaid decision, it was observed that the Court was inclined to accept the submission made on behalf of the State that so long as the intention behind the grant of exemption/adjustment/credit is to equalize the fall of the fiscal burden on the goods from within the State and those from outside

the State, such exemption or set off will not amount to hostile discrimination offensive to Article 304(a).

12] In the aforesaid decision, it is further observed that the Courts have left it open for examination by the regular benches hearing the matters whether the impugned enactment achieve the object of such equalization or lead to a situation that exposes goods from outside the State to suffer any disadvantage vis-a-vis those produced or manufactured in the taxing State. It is submitted that the burden on imported L.N.G. is much higher than locally produced L.N.G. which suffers tax burden and therefore, the importing dealer is put in a disadvantageous position. It is a hostile discrimination as higher tax burden discourages the petitioner to import L.N.G. in to the State of Maharashtra. It is clear from the above that L.N.G. imported from the outside State suffer disadvantage vis-a-vis those produced or manufactured in the State and therefore levy cannot be sustained.

13] It is submitted that the respondent has passed the order dated 31st March, 2017 demanding tax without giving effect to the second proviso. The said dis-allowance of reduction of the amount of CST paid from the Entry Tax has further increased tax burden on the petitioner. Respondent has not allowed set off of

Entry Tax under Section 48 of the VAT Act. Therefore, the total tax burden on the petitioner for importing L.N.G. is Rs.5,16,90,105/- as against the tax burden of Rs.1,24,05,625/- that the petitioner would have suffered if he had procured these fuels locally.

14] Mr. Desai further submitted that the State Legislature has enacted the Mumbai Municipal Corporation Act, 1988 (for short called as “MMC Act”) and the Bombay Provincial Municipal Corporation Act, 1949 (for short called as “BPMC Act”), the City of Nagpur Corporation Act, 1948 (for short called as, “Nagpur Act”), to authorize local bodies to collect Octroi and Local Body Tax. Section 192 of the MMC Act, levy a tax, called “Octroi” on the entry of said articles, into Greater Bombay for consumption, use or sale therein. Similarly, Section 127 of the BPMC Act empowers the Municipal Corporation of the city to impose Octroi. As per Section 2(42) of the BPMC Act, "octroi" means a cess on entry of goods into the municipal limits of a city for consumption, use or sale therein. Section 114 of the Nagpur Act empowers Nagpur Municipal Corporation, to levy a cess on goods brought within the Nagpur city for sale, consumption or use therein. It is submitted that in the case of **Commissioner of Income Tax, Udaipur, Rajasthan -vs- McDowell and Co. Ltd.**,² the Hon'ble Supreme Court has held that the term “tax” under Article 265 read with Article 366(28)

2 (2009) 10 SCC 755

includes imposts of every kind viz. Tax, duty, cess or fees. The aforesaid Act has been enacted by the State Legislature, under Entry 52 of List II of the Seventh Schedule to the Constitution of India, but the power to collect tax has been delegated to the local bodies. Although Octroi is collected by the local bodies, it remains a tax imposed under Entry 52 of List II of the Seventh Schedule as the taxable event is entry of Goods into the Local Areas for consumption, use or sale therein. The taxable event under the Entry Tax Act, is also Entry of Goods into the local areas for consumption, use or sale therein. Thus, on the goods into the local areas for consumption, use or sale therein, the dealer is liable to pay entry tax as well as Octroi. As the taxable event for levying of entry tax and Octroi is one and the same, it amounts to double taxation. Double taxation on the same aspect under same taxable entry is *ultra vires* the constitution.

15] It is submitted that Explanation 2 to Section 3 of the CST Act, states that where the movement of goods commences and terminates in the same State, it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement, the goods pass through the territory of any other State. Thus, without entry and termination of goods in the local areas CST cannot be levied.

Movement of goods from one State occasioned by sale and entry and termination of such goods in the local areas of another State is one integral transaction which is subject to CST. One single transaction of sale of goods in the course of inter-state sale cannot be dissected into two taxable event to justify levy of entry tax.

16] Mr. Desai relied upon the decision in the case of **M/s V. Guruviah Naidu and Sons and others -vs- State of Tamil Nadu and others**³. Learned counsel adverted to paragraph No.9 of the said decision; wherein it is observed by the Apex Court that Article 304(a) does not prevent levy of tax on goods; what it prohibits is such levy of tax on goods as would result in discrimination between goods imported from other States and similar goods manufactured or produced within the State. The object is to prevent discrimination against imported goods by imposing tax on such goods at a rate higher than that borne by local goods since the difference between the two rates would constitute a tariff wall or fiscal barrier and thus impede the free flow of inter-State trade and commerce. The question as to when the levy of tax would constitute discrimination would depend upon a variety of factors including the rate of tax and the item of goods in respect of the sale of which it is levied.

3 (1977) 1 SCC 234

17] The petition was amended and it was contended that Second proviso to Section 3 of the Entry Tax Act, that the Entry Tax payable by the importer shall be reduced by the amount of tax paid by the importer, if any under the law relating to General Sales Tax in force, in the purchasing State. Rule 52(1)(c) of the Maharashtra Value Added Tax Rules, 2005, provides for set off of the tax paid regarding Entry Tax paid on entry of goods under the Entry Tax Act. It is further contended that during the period from 1st May, 2012 till 31st March, 2013, the petitioner, had imported L.N.G. from Dahej, Gujarat, supplied by Indian Oil Corporation Ltd. The amount equal to 10.5% of the purchase value is leviable as Entry Tax under the Entry Tax Act, on the imported LNG after reducing the tax paid in the purchasing State. The petitioner can claim set off of amount equivalent to 7.5 % of the purchase value after reducing amount equal to 3% on the purchase price as stipulated under the said Rule 1(a) of Rule 53 of MVAT Act. It is submitted that the amount levied on entry tax purported to be under Entry 52 does not conform to the principle of constitutionally amended section 21(h) of the Entry Tax Act. The definition "Local Area" to include all areas within the Municipal Corporation, Zilla Parishad and Cantonment Board. It is also provided by way of "Explanation" that all area under "a", "b" and "c" class Municipal Councils and Village Panchayats, falling within

the area of the districts, would fall under Zilla Parishad. Thus, practically the entire State of Maharashtra is declared as local area. As per Section 3(7) of the Entry Tax Act, levy is in addition to any tax levied and collected as Octroi or Entry tax by any authority including local authority in the State.

18] It is submitted that the Power to levy tax under Entry 52 of List II of the Seventh Schedule remains with local authority constituted under Mumbai Municipal Corporation Act, Bombay Provincial and Municipal Corporation Act, or City of Nagpur Corporation Act, 1948 and Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961. There cannot be two taxes on the same aspect of transaction that is entry on goods in the local area for use, consumption or sale therein. The impugned Entry Tax Act amounts to double taxation which is impermissible under the Constitution. The petitioner has filed Affidavit 10.10.2017, stating that for the financial year 2012-2013, the petitioner would suffer tax burden on procurement of LNG from outside the State of Maharashtra, if the levy of Entry Tax under the Maharashtra Tax on the entry of Goods into Local Area, is upheld. The petitioner has tendered compilation of documents and decisions.

19] Learned Senior Counsel, Mr. Shridharan, representing

the petitioner in Writ Petition No.2785 of 2017, and W.P. No.1813 of 2013, submits that the petitioner in Writ Petition No.2785 is engaged in manufacture of fertilizers chemicals etc at it's factory in Taloja Industrial Estate, District: Raigad, and subsequent sale of the said manufactured fertilizers, chemicals etc. For the purpose of manufacture of the said fertilizers, chemicals, etc., the Petitioner utilizes Natural Gas as a fuel for the generation of steam which is further used in the manufacturing process. The petitioner also utilizes natural gas as feedstock for the manufacture of chemicals such as ammonia which are further used in the manufacture of fertilizers, chemicals etc. The petitioner procures certain amount of natural gas from sources located within the State of Maharashtra. When it is not able to sufficiently procure natural gas locally, the petitioner procures the same from the State of Gujarat on inter-State purchase basis against C-forms. The petitioner is duly registered under the provisions of the MVAT Act, the CST Act and the Entry Tax Act as required by the law. The Petitioner in W.P. No.1813 of 2013, is engaged in establishment and provision of telecom infrastructure to the telecom companies and operates several towers.

20] It is submitted that the Entry Tax is traceable to Entry 52 of List II to the Seventh Schedule to Constitution of India. Under

Entry 52, levy, assessment, collection, retention and utilization of tax collected should be by same local area within which the goods are used, sold or consumed. Hence, the Maharashtra Tax on Entry of Goods into Local Area Act 2002, is *ultra-vires* Entry 52 of list II to the Seventh schedule to the Constitution of India. The interpretation of Entry 52 limits the levy, assessment, collection and retention of the tax, by local areas only and the process must be for the benefit of the same local area. Entry 16 to the Schedule of the Maharashtra Tax on the Entry of Goods into Local Areas is *ultra-vires* Entry 52 since the said Act, in effect deems the entire State to be a single local area and since the proceeds of the levy go to common state fund and not to the respective local area within which goods are actually sold, used or consumed therein.

21] In determining the scope of entry in the lists to the constitution, consistent pre-constitutional legislative practice followed must be properly considered and due weight must be given to it. The octroi has been consistently levied, collected and utilized by the local areas prior to enactment of constitution and Government of India Act 1935. The term "local area" has well established meaning that is, the area administered by local authority such as Municipality, district Board, Local Board, Union Board, Panchayat or any other body constituted under the statute

for the governance of the local affairs of any part of the State. Hence Entry 52 of the List II must be interpreted to mean that tax on entry into local area to be imposed, assessed, collected and retained by the local area and more significantly utilized or consumed by same local area, as that was the consistent legislative practice adopted without any exception. Mr. Shridharan, further submitted that the Hon'ble Supreme Court has laid down law while interpreting Entry 52, in the case of **Diamond Sugar Mills and anr -vs State of Uttar Pradesh**⁴, **Burmah Shell Oil Storage and Distributing Co. of India -vs- Belgaum Borough Municipality Belgaum**⁵. It is submitted that Maharashtra Tax on the Entry of Goods in Local Areas Act 2002, does not adhere to principles laid down in the aforesaid decisions. The tax is levied, assessed, collected and retained by the State Government itself and is not distributed directly to the respective local areas in which the goods enter for use, sale or consumption therein. Hence that Entry 16 of the Schedule to the Entry Tax Act is violative of Entry 52 of List II of the Seventh Schedule to the Constitution. The scope of an entry in list II to the Constitution is governed by the Legislature, practice that has been followed prior to enactment of the Constitution of India. While interpreting the meaning of term "Excise Duty", the Courts looked into earlier legislative practice followed in India. It is

4 A.I.R. 1961 3 SCR 242

5 1961 Supp (2) SCR 216

submitted that in another decision of the Hon'ble Supreme Court in **Izhar Ahmed Khan and ors -vs Union of India**,⁶ the Court has observed that when power is conferred, to Legislate on a particular topic, it is important in determining the scope of the power to have regard to what is ordinarily treated as embraced within that topic in legislative practice and particularly in the legislative practice of the State which has conferred the power.

22] It is submitted that the scope of entry 52 of list II must be interpreted in the light of consistent legislative practice followed by the Central Provincial Legislature prior to enactment of the Constitution of India and the Government of India Act, 1935. The Octroi has been consistently levied, collected and utilized by the Local Areas prior to enactment of the Constitution. Entry 52 of list II must be interpreted to mean that the tax on the entry into local areas though levied may be by the State Legislature, must be assessed, collected by the local areas and utilized from same local area as that was consistent legislative practice adopted prior to enactment of the Constitution and the Government of India Act, 1935.

23] The change in the Nomenclature of the entry is not relevant and would not change the character and the nature of the

6 A.I.R. (1962) 1052

tax. The Legislative practice prior to enactment of the Constitution, is that octroi or entry tax is levied, collected and utilized by local area. The nature of levy is not changed after the Constitution is enacted and the said principle must be read into entry 52 of list II.

24] It is submitted that the Hon'ble Supreme Court in the case of **Diamond Sugar Mills (supra)**, while judging the validity of U. P. Sugarcane Zone Act, 1956, considered the question whether the factory could be termed to be "local area". The Apex Court exploring the Legislative history of entry 52 so as to interpret the meaning and scope of term, "local area" as utilized in the said entry.

25] Learned counsel drew our attention to the observation of the Apex Court in paragraph Nos. 17, 18, 19, 20, 21, 22 of the said decision.

"17. Turning now to the previous legislative history we find that in the Government of India Act, 1935, Entry 49 of the Legislative List (List II of the 7th Schedule) was in the same words as Entry 52 of the Constitution except that instead of the words "taxes" as in Entry 52 of List II of the Constitution, Entry 49 List II of the Government of India Act, used the word "cess". The Government of India Act, 1915, the powers of the provincial legislatures were defined in s. 80A. Under clause (a) of the third sub-section of this section the local

legislature of any province has with the previous sanction of the Governor-General power to make or take into consideration any law imposing or authorizing the imposition of any new tax unless the tax was a tax scheduled as exempted from this provision by rules made under the Act.

18. The third of the Rules that were made in this matter under Notification No.311/8 dated December 18, 1920, provides that the Legislative Council of a Province may without the previous sanction of the Governor General make an take into consideration any law imposing or authorizing a local authority to impose for the purpose of such a local authority any tax included in Schedule II items of which items 7 and 8 were in these words.

7. An octroi.

8. A terminal tax on goods imported into a local area in which an octroi was levied on or before 6th July, 2017.

19. Item 8 was slightly modified in the year 1924 by another notification as a result of which it stood thus : 8. A terminal tax on goods imported into or exported from a local area save where such tax is first imposed in a local area in which an octroi was levied on or before July, 6, 1917. Octroi is an old and well known term describing a tax on the entry of goods into a town or a city or a similar area for consumption, sale or use therein. According to the Encyclopaedia Britannica octroi is an indirect or consumption tax levied by a local political unit, normally the commune or municipal authority, on certain categories of goods on their entry into its area. The Encyclopaedia Britannica describes the octroi tax system in France (abolished in 1949) and states that commodities were prescribed by law and were divided into six classes and for all the separate commodities within these six groups maximum

rates of tariff were promulgated by presidential decree, specific rates being fixed for the three separate sorts of octroi area, established on the basis of population, namely, communes having (1) less than 10,000 inhabitants, (2) from 10,000 to 50,000 and (3) more than 50,000. While we are not concerned here with other features of the octroi tax system, it is important to note that the tax was with regard to the entry of goods into the areas of the communes which were local political units. According to the Shorter Oxford English Dictionary "commune" in France is a small territorial division governed by a maire and municipal council and is used to denote any similar division elsewhere.

20. The characteristic feature of an octroi tax then was that it was on the entry of goods into an area administered by a local body. Bearing in mind this characteristic of octroi duty we find on an examination of items 7 and 8 of the Schedule Rules mentioned above that under the Government of India Act, 1919, the local legislature of a Province could without the previous sanction of the Governor-General impose a tax-octroi - for entry of goods into an area administered by a local body, that is, a local government authority and the area in respect of which such tax could be imposed was mentioned in item 8 as local area.

21. It is in the background of this history that we have to examine the use of the word "local area" in item 49 of List II of the Government of India Act, 1935. Here the word "octroi" has given place to the longer phrase "cesses on the entry of goods into a local area for consumption, use or sale therein."

22. It was with the knowledge of the previous history of the legislation that the Constitution-makers set about their task

in preparing the lists in the seventh schedule. There can be little doubt therefore that in using the words "tax on the entry of goods into a local area for consumption, use or sale therein", they wanted to express by the words "local area" primarily area in respect of which an octroi was leviable under item 7 of the schedule tax rules, 1920 - that is, the area administered by a local authority such as a municipality, a district Board, a local Board or a Union Board, a Panchayat or some body constituted under the law for the governance of the local affairs of the any part of the State. Whether the entire area of the State, as an area administered by the State Government, was also intended to be included in the phrase "local area", we need not consider in the present case."

26] It is further submitted that Maharashtra Tax on the Entry of Goods into Local Area Act 2002, do not adhere to the principle laid down in the said decision. The tax levied and collected by the State Government itself is not distributed to the local area and is thus violative of entry 52 of list II of seventh Schedule to the constitution.

27] Learned counsel submitted that the question was left open by the majority in recent decision of Jindal Stainless Steel (supra). It is submitted that in the very decision the *Hon'ble Mr. Justice Chandrachud*, had endorsed the contention that whole State cannot be local area. The majority judgment does not deal with the issue. It is submitted that *Hon'ble Mr. Justice Ashok Bhushan*, in the said decision has also endorsed and agreed with

the observations made by *Hon'ble Mr. Justice Chandrachud*, that the levy in question must be in respect of entry, "into local area". The local area has been defined as area administered by local body, like Municipality, District Board, Local Board, the Union Board, Panchayat or like .

28] It is further submitted that the Maharashtra Tax on the Entry of Goods into Local Areas Act 2002 does not levy tax on entry of goods from another local area within the state and hence discriminates the provisions of Article 304(a) of the Constitution of India. It is submitted that in the case of **Ratan Lal & Co. and anr -vs- The Assessing Authority and anr**⁷ followed in **V. Guruviah Naidu & Sons -vs- State of Tamil Nadu and anr**⁸, It was held that so long as the rate of taxes imposed on imported goods and locally produced goods was same, article 304(a) would not be violated. In the present case, there is not even tax imposed on the goods imported from other local areas within the State. Hence the entry tax clearly creates fiscal tax barrier by which goods imported from other States are discriminated against in comparison to goods imported into local area from another local area in the same State.

7 1968 (25) STC 137

8 1976 (38) STC 565

Mr. Shridharan submitted that, if the majority judgment has not expressed any opinion on a particular point, but the minority judgment has expressed an opinion on that very same point, then the minority view is a binding precedent. He relies on the decision in the case of **“Bakul Cashew Co. & Ors -vs- Sales Tax Officer⁹, Income Tax Officer -vs- M.C. Ponooze & ors¹⁰ and Commissioner of Wealth Tax -vs- Dr. Karan Singh and ors¹¹”**. Learned counsel with the assistance of the chart prepared by him contends that there is discrimination in the rates of tax viz. Purchase of goods by Maharashtra based consumer in Gujarat and then brought into Maharashtra, purchase of goods by Maharashtra based dealer in Gujarat and then brought into Maharashtra for sale to consumer, purchase of goods by Maharashtra based dealer on inter-state basis from Gujarat for local sale to consumer in Maharashtra.

29] Writ Petition No.1813 of 2013, was amended by incorporating new grounds. It is contended that the levy under the Maharashtra Tax on the Entry of Goods into Local Areas Act, 2002 is discriminatory in nature as sub section 5 of section 3 of the charging provision specifically exempts the levy of entry tax on goods imported by a dealer registered under MVAT Act, for the

9 (1986) 2 SCC 365,

10 1969 (2) SCC 351

11 1993 Supp(3) SCC 500.

purpose of resale in the state or sale in the course inter state, trade or commerce or export. Rule 52 of the MVAT Rules permits set off tax of entry against VAT payable by registered dealer on purchases made by him. The above provision results in differential treatment of importer as defined in Section 2(1)(a) of the Maharashtra Entry Tax on the Entry of Goods into Local Areas Act, read with MVAT Rules, is *ultra-vires* Articles 14 and 304 of the Constitution and the law laid down by the Constitution bench in the case of Jindal Stainless Steel (supra). The provisions of Maharashtra Entry Tax Act, enabling levy of entry tax on different importers are biased against those importers who have MVAT liability in the state and such exemption and deductions available under the Maharashtra Entry Tax Act, read with MVAT Rules are made protectionist in nature and do not equalize the fiscal burden falling on importer having intra State business, importer having no such business.

30] Apart from the aforesaid decisions, learned counsel Mr. Sridharan had relied upon several decisions, compilation of which was tendered in support of his submissions, in support of his submission, that the scope of Entry 52 is limited by the consistent pre-constitutional legislative practice and taxes as levied under entry 52 have consistently been levied, assessed, collected and

retained by the local authority within which the goods have been sold, consumed or used, reliance was placed on several decisions which are referred hereinabove and the decision in the case of **Surya Joti Devices India (P) Ltd -vs- State of Punjab**¹², **State of Bihar -vs- Bihar Chamber of Commerce**¹³ to supplement his submission that the scope of legislative entry in one of the three lists of Constitutions, is limited by the consistent legislative practice adopted by various legislatures prior to the enactment of the Constitution. Reliance was placed on the **State of Bombay -vs- Narothamdas Jethabai**¹⁴, **State of Bombay -vs- F.N. Balsara**¹⁵, learned counsel also relied upon the decision in the case of **Thresslamma L. Chiryil -vs- State of Kerala**¹⁶, **ITC Ltd -vs- State of Tamil Nadu and anr**¹⁷, **Bharat Earth Movers Ltd -vs- State of Karnataka and ors**¹⁸, **Firm A.T.B. Mehtab Majid & Co. -vs- The State of Madras and anr**¹⁹, **State of Madhya Pradesh and anr -vs- Bhailal Bhai and ors**²⁰, **A. Hajee Abdul Shukoor & Co. -vs- The State of Madras**²¹.

31] Mr. D. J. Khambata, Senior Advocate and Special

12 1996 SCC Online P & H 465

13 (1996) 103 STC 1.

14 1951 SCR 51

15 AIR 1951 SC 318

16 [2007] 7 VST 293 (Ker)

17 [2007] 7 VST 367 (Mad)

18 [2007] 8 VST 69 (Karna)

19 1962 (14) STC 355,

20 1964 (15) STC 450

21 1964 (15) STC 719

Counsel, appearing for the respondent submitted that the petitions are devoid of merits and are required to be dismissed. It is submitted that Entry 52 of List II of the Seventh Schedule to the Constitution of India, empowers the State Legislature to impose tax on the Entry of Goods into Local Area for the consumption, use or sale therein. The State of Maharashtra has enacted, Maharashtra Tax on the Entry of Goods into Local Areas Act, 2002. The provision of Maharashtra Entry Tax read together with Maharashtra Value Added Tax Rules, 2005 (for short “MVAT Rules”), satisfy the criteria laid down by the Supreme Court and are not unconstitutional.

32] The Courts have already considered and addressed the issues raised by the Petitioners and the law in this regard is now settled. It is submitted that the Supreme Court, in the case of Jindal Stainless Steel (supra), a nine Judge bench, considered the constitutional validity of Entry Tax, *inter alia* reiterated that freedom guaranteed by Article 301 of the Constitution is a freedom of trade and not freedom of taxation. While summarizing the majority decision by way of an order the Hon'ble Court has clarified that taxation does not amount to a restriction on trade, commerce and intercourse and the word “free” used in Article 301 does not mean “free from taxation”. It further clarified that the levy of a non

discriminatory tax would not constitute an infraction of Article 301. It is submitted that Article 304(a) and (b) of the Constitution are disjunctive and the tests for each are distinct.

While Article 304(a) pertains to levy of taxes, Article 304(b) covers non fiscal measures. Therefore, Article 304(b) is applicable independent of Article 304(a). Under Article 304(b), the State can impose a reasonable restriction on the freedom of trade, commerce and intercourse within the State as required in public interest. This test does not apply to Article 304(a). He further submitted that in Jindal's case (supra), the Hon'ble Supreme Court has clarified that clauses (a) and (b) of Article 304 have to be read disjunctively. Consequently, the tests required to be satisfied for Article 304(b) are not applicable to taxes imposed under Article 304(a). It is submitted that Article 304(a) expressly clarifies that the imposition of taxes by a State must not discriminate. In Jindal's case (supra), the Hon'ble Supreme Court has clarified that non discriminatory State taxes do not violate Article 301 of the Constitution. Only discriminatory taxes are forbidden. It is further clarified that there is no impediment to trade, commerce and intercourse unless the tax visits a hostile discrimination. Imposition of Entry Tax under Entry 52 of the State List would not violate Article 301 or Article 304(a) of the Constitution merely by virtue of such tax being a tax on the movement of goods. The

burden is on the person challenging the validity of the legislation to show that the intention in levying the tax is to visit a hostile discrimination on goods from outside the State.

33] Mr. Khambata, further submitted that it is open to the State to impose a tax on goods brought into the State from outside the State (imported goods), provided such tax is equal to the tax imposed by the State on goods manufactured /produced within the State. This can be done to ensure that the importer is not in a more advantageous position than local manufacturers/producers by virtue of the rate of tax in the place of origin being lower than that imposed by the State into which the goods are imported. To buttress this submission, learned Senior counsel for respondent relied upon the decision in the case of **Eagle Corporation Pvt. Ltd -vs- State of Gujarat**²². In the said decision it was observed that:-

“On payment of Entry Tax by the importer, after deduction of Sales-tax and/or C.S.T. already paid in another State, such an importer would be put at par with the local dealers. Thus, in sum and substance, the importers as well as the local dealers would be paying the tax at 12% in all. **It can, therefore, be said that, on the contrary, the vice of discrimination would stand removed by payment of Entry Tax by an importer of specified goods. If the importer is not required to pay Tax on Entry**

he would stand on better footing because on one side the local person would be required to pay 12% Sales Tax while the importer would be paying 4% tax in other State, which would be discriminatory qua the local person. Not only that, such low tax would persuade local people to import specified goods from another State which shall adversely affect the local production. It is at this point, it must be seen that **in the name of free flow of trade the local economy of a State can't be sacrificed. If no Entry Tax is levied then the importer would steal a march over the local person and he would be in a dominating position to the extent of the Tax difference**".

34] It is submitted that Maharashtra Entry Tax Act is non discriminatory statute that is aimed at achieving a level playing field so as to obviate the risk of discrimination. Where the State imposes a rate of tax on imported goods that is the same as the rate paid in respect of locally procured goods, then, there is no discrimination even if the resultant tax amount on the imported goods is different. He relied upon the decision in the rate of **Ratan Lal & Co. -vs- Assessing Authority**²³. Reliance is also placed on the decision in the case of **Video Electronics Pvt. Ltd -vs- State of Punjab**²⁴. It is submitted that differentiation is not same as discrimination and in support of this submission, learned Senior Counsel pointed out the decision in the case of **State of Madras**

²³ (1969) 2 SCR 544,

²⁴ (1990) 3 SCC 387

-vs- N.K. Nataraja Mudaliar²⁵ as well as the decision in the case of Video Electronics (supra). It is further submitted that the majority in the Jindal's case (supra) has approved the decision in the case of Video Electronics (supra). It is well settled that the tax would not be discriminatory or amount to a restriction /interference with trade merely by reason of differential treatment or imposition of a different rate, where such differential treatment does not actually affect trade, commerce or intercourse. It is clarified that ground of incentive /set off with a view to develop economically backward areas does not violate Article 304(a) of the Constitution if there is a justifiable reason for the classification. In Jindal's case (supra), the Hon'ble Supreme Court has once again clarified that differentiation is not necessarily discrimination and that the Court is required to examine whether the differentiation made is intended or inspired by an element of unfavourable bias in favour of the goods produced or manufactured in the State as against those imported from outside and whether the differentiation can be supported by reasons. Therefore, the State cannot act in a hostile protectionist manner. As long as the intention behind the grant of exemption / adjustment is to equalise the fall of the fiscal burden on local and imported goods there is no hostile discrimination.

²⁵ AIR 1969 SC 147

35] Learned counsel further submitted that in the case of **Indian Oil Corporation Ltd -vs- State of Bihar**²⁶ the Hon'ble Supreme Court has reiterated well established principles that set off is not a matter of right and has clarified, in the context of VAT -vs- entry tax, that a levy of entry tax cannot be assailed as unconstitutional only because set off is not given. There is no burden on the State to nullify the effect of taxes imposed by it. Article 304(a) of the Constitution mandates that the State shall not discriminate between imported and local goods. The fetter imposed by this Article is on the taxation power of the State and is not a mandate or compulsion on the State to proactively equalise all inequalities or differences that may arise as a consequence of other tax laws. It is submitted that in **State of Madras -vs- N.K. Mudaliar (supra)**, the Hon'ble Supreme Court has clarified that goods manufactured or produced in the State and similar goods imported in the State. Learned counsel also placed reliance on the decision in the case of **State of Madhya Pradesh -vs- C. Mandawar**²⁷ and submitted that the Court has clarified the scope of challenge under Article 13 of the Constitution. Reliance was also placed on the another decision of the Supreme Court, in the case of **Ashutosh Gupta -vs- State of Rajasthan**²⁸ and adverted to the observations in paragraph 6 of the said decision, in the context of a

26 (2018) 1 SCC 242

27 AIR 1954 SC 493

28 (2002) 4 SCC 34

challenge under Article 14 of the Constitution. It was observed that:-

“the inequality must arise under the same piece of legislation or under the same set of laws which have to be treated together as one enactment. **Inequality resulting from two different enactments made by two different authorities in relation to the same subject will not be liable to attack under Article 14**”.

36] The burden imposed by the another State Legislature or by Parliament, (illustratively by way of the Central Sales Tax Act), cannot be taken into consideration in order to arrive at a finding of discrimination qua the Maharashtra Entry Tax Act nor can the burden of different Acts by different legislatures be taken together for adjudging discrimination. Learned counsel further submitted that in Jindal's case (supra), the Supreme Court has rejected the compensatory tax theory evolved in **Automobile Transport (Rajasthan) Ltd -vs- State of Rajasthan**²⁹ and subsequently modified in **Jindal Stainless Ltd (2)-vs- State of Haryana**³⁰ 's case (supra), and it was held that this theory has no juristic basis. It is contended that it is not necessary to deposit the entry tax collected into a separate fund or should be proportionate to the expenditure incurred by a local area. It is permissible for the entry tax to be added to the Consolidated Fund of a State. It is submitted

29 (1963) 1 SCR 491

30 (2006) 7 SCC 241

that in the decision of Jindal's case, it was observed that the entry tax is a State level levy and the entry tax revenue is treated as the State Revenue. He further submitted that the Apex Court in the case of Jindal (supra), has reiterated the approach to be taken by Courts while considering the constitutional validity of fiscal measures and the requirement to grant greater latitude to the legislature in taxation related legislations. He would contend that when the above principle of law are kept in mind, it is clear that there is no infirmity with the Maharashtra Entry Tax Act. Merely because some states may have argued in Jindal's case that the burden of VAT/ Sales Tax/Central Sales Tax payable on imported goods was equal to the entry tax imposed in their States, does not affect much less alter the ratio of Jindal's case. It is well settled that a judgment is ratio for only what it actually holds and not for what may logically flow from it, much less an argument of parties. The ratio of Jindal's case does not contain any dicta that even Central Sales Tax has to be compensated for by States or else the entry tax would be discriminatory. Section 3 proviso 2 refers to a reduction in Entry tax for the amount of tax paid, if any, under the "the law relating to General Sales Tax in force in the Union Territory or the State in which the goods are purchased by the importer". The "law in force in any State" clearly means a law by that State and not a Central law which operates in the entire Union

of India. When the State of Maharashtra wished to give a reduction for Central Sales Tax in the Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987, it expressly did so.

37] In the present case the Petitioners have not made out any element of bias on account of the absence of any provision for set-off of Central Sales Tax. The petitioners have merely proceeded on the basis that the eventual fiscal burden may differ, despite the intention to equalise the same, since no set-off is granted in respect of tax paid outside the State. The provision of the Act under challenge makes it clear that the imported goods and local goods are treated equally and in a non discriminatory manner by the State of Maharashtra. It is further contended that local area can cover each local area in the State. Under entry 52 of the State List the State Legislature can levy, "Taxes on the entry of goods into a local area for consumption, use or sale therein".

38] The Division bench of this Court, in **Jaika Automobiles -vs- State of Maharashtra**³¹, in the context of Maharashtra Tax on Entry of Motor Vehicle into Local Area Act, 1987 where the definition of "local area" in the impugned Act was such that if all the different local areas mentioned in the definition are clubbed together, the total area comprises the entire area of the State and,

31 1992 Mah LJ 1658

further, an importer was defined in section 2(g) as a, “person who brings a motor vehicle into a local area from any place outside the State”. The Court recognized that, “local area” and “area of the State” are two different concepts under the Constitution and held that since the Taxable event was the entry in any one of the local area of the State, “the factor that the Act refers to more than one local area, which together covers the entire area of the State, could make no difference and would not put the Act beyond the legislative competence of the State Legislature under entry 52”. The challenge to the decision in case of Jaika Automobile, was dismissed by the Hon'ble Supreme Court in **Shaktikumar M. Sancheti -vs- State of Maharashtra** ³² observing that there was no infirmity in the view of the Bombay High Court.

39] Mr. Khambata, relied upon the decision in the case of **State of Bihar -vs- Bihar Chamber of Commerce**³³ and more particularly observations in paragraph Nos. 12 and 36 of the said decision, submitted that the Court in the said decision has held that State is a compendium of local areas and that the requirement of Entry 52 of List II is satisfied so long as the tax is levied on the entry of goods into a local area in the State. It is submitted that the meaning of words, “a local area” has also been considered by a

32 (1995) 1 SCC 351

33 (1996) 9 SCC 136

Division bench of the Karnataka High Court, in the case of **Jyothi Home Industries and ors -vs- State of Karnataka**³⁴, and it was held that on a proper construction the article 'a' prefixing the words "local area" does not mean that the State Government has no power to apply the provisions of the Act to every local area. The petitioners are relying on the minority decision in the case of *Jindal (supra)*. The minority judgments cannot be relied upon in support of the petitioner's contention, in the light of the fact that it is contrary to the express decision of the majority to leave this issue open. In any event, the two minority judges cannot overrule the earlier decision of the Supreme Court in the case of *State of Bihar -vs- Bihar Chamber of Commerce (supra)*.

40] In the case of **State of Kerala -vs- Fr. William Fernandez**³⁵ the Hon'ble Supreme Court has rejected his submission that entry tax Legislation is not covered by Entry 52 of the List II of the Seventh Schedule to the Constitution. The Supreme Court has held that this legislation must be given a broad, wide meaning and cannot be confined in the manner suggested. It is submitted that there is no merit in the submission that there is double taxation in the the light of the observation of the Courts in several decisions, the Act is not *ultra vires* the provisions of the

34 1983 SCC Online Kar 197

35 2017 SCC Online SC 1291

Constitution or to Entry 52 and hence the petitions are required to be dismissed.

41] Mr. Sonpal, Special Counsel appearing on behalf of respondent State adopted the arguments, advanced by learned Senior Counsel Mr. Khambata. He relied upon the affidavit-in-reply filed on behalf of respondents. He also placed on record the chart showing how the Entry Tax levy is revenue and cost neutral. He relied upon the decision of the Orissa High Court, in the case of **Orissa Management Colleges Association and etc -vs- State of Orissa and etc.**³⁶ and asserted observations in paragraph Nos. 33, 50 and 56 of the said decision. In the said decision, it was emphasized that minority judgment is not judgment nor does it comes within the concept of "Law declared under Article 141 of the Constitution, as such not binding upon any Court. He also relied upon the decision in the caste of **State of Kerala and others -vs- Fr. Villaim Fernandez (supra)**. It is submitted in the case of State of Kerala -vs-Fr. William Fernandez (supra), it is held that similar Acts are within competence of State Legislature. The grounds taken in this petition are with intention to stall recovery of dues. The grounds are frivolous. The assessment orders of levying taxes challenged before First Appellate authority while fixing part payment at 3% entry tax liability at 12.69 crores to

which part payment of Rs.2.69 crores is paid and there is default in payment of Rs.10 crores by petitioner in W.P. No.2785 of 2017. The Apex Court in Jindal's case (supra) has decided all the issues. The principles relevant for present controversy are broadly laid down by the Apex Court in the said decision. In Jindal's case, the Supreme Court has observed that it is not necessary that money realised by levy should be put into separate fund or that levy should be proportionate to the expenditure. There is no bar to subsume the revenue realised from Regulatory/Compensatory Taxes into consolidated fund of the State as they are not different from other taxes of general nature. Applying this analogy, it is submitted that when tax under Entry 52 in List II is collected in absence of any constitutional bar, it will have to be credited to the consolidated Fund of India. It is submitted that where rebate is given or not for CST paid by the petitioner does not make out any net burden caused to the petitioner. In Jindal's case the Supreme Court has clearly observed that additional burden of tax cannot be said to be a ground to conclude that there is hostile discrimination falling under Article 304(a) of the Constitution of India.

42] After hearing both sides extensively, on considering the issue relating to challenge raised by the petitioner, provisions of law and the judicial pronouncements pressed into service by both

sides, we have no doubt that the issue or point raised by petitioners in these petitions is squarely covered by the recent judgment of the Supreme Court delivered by nine judges, in the case of Jindal (supra).

43] Article 304 of the Constitution provides as follows:-

“Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law :-

“(a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so however, as not to discriminate between goods so imported and goods so manufactured or produced and
(b) impose such reasonable restrictions on the freedom of trade, commerce, or intercourse with or within that State as may be required in the public interest;

Provided that no Bill or amendment for the purpose of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President”.

While article 304(a) pertains to levy of Tax, Article 304 (b) covers non fiscal measures. Article 304(b) is applicable independent of Article 304(a). Under Article 304(b) the State can

impose a reasonable restriction on the freedom of trade, commerce and intercourse within the State as required in public interest.

44] The principles relevant to adjudicate the issues in these petitions are broadly laid down by the Apex Court in the case of Jindal Steel (supra) as under:-

- a) Only such taxes which are discriminatory in nature are prohibited by Article 304(a).
- b) Clauses (a) and (b) of Article 304 have to be read disjunctively.
- c) Article 304(a) frowns upon discrimination of hostile nature in the protectionist sense and not merely differentiation.
- d) The tax levied for entry of goods cannot be such that it is for the purpose of protecting local industries /manufacturers.
- e) The levy must be tax on entry of goods to local area in the State, the levy is imposed with intention to protect the local industries vis-a-vis the goods coming from other State. The discrimination is not merely differentiation but should be of hostile nature with intention to protect local industries.
- f) The power of tax as per entries in list II is sovereign.
- g) The only limitation on the power is provided vide Article 303 or Article 286(2) etc. of the Constitution.
- h) Levy of tax under Article 304(a) does not

require assent of President and even if assent is taken the same cannot sustain the levy if it is discriminatory.

- i) Levy of taxes are not restrictive unless discriminatory.
- j) Article 304(a) recognizes the availability of power to impose taxes on goods imported from other State.
- k) The sovereign power to levy taxes can have limitation contained in the Constitution.

45] In the aforesaid decision the Apex Court, while summarizing the majority decision by way of an order has clarified that taxation does not amount to restriction on trade, commerce and intercourse. The levy of tax which is non discriminatory would not constitute an infraction of Article 301. *Justice Banumathi*, in a concurring decision has observed as follows :-

“263. Historically, Article 301 was meant to do away with barriers between 'Native States' and the rest of India. Thus, Article 301 should be interpreted in the light of the object i.e. "economic integration of the nation", as opposed to being aimed at any or every action which can possibly have an impact on trade, commerce and intercourse. "Free" in Article 301 does not mean freedom from taxation; taxation simpliciter is not within the purview of Article 301. In a sense, every tax imposed by a State Legislature may have an indirect effect on the flow of trade, commerce and intercourse. If the power of the State Legislature to enact any tax laws is held to be subject to the limitation Under Article 301, the legislative power of the State to levy taxes under

various entries in List II would be rendered ineffective.

273. In *Hari Krishna Bhargav v. Union of India and Anr.* AIR 1966 SC 619, the Bench noting the effect the series of decisions has had on Ramjilal, concluded that although the power to tax is not a power that transcends fundamental rights, a taxing Statute cannot merely be challenged on the ground that it is harsh and excessive. It was observed as under:

10. It was urged that even if the exercise of the powers to compel deposits be regarded as not unconstitutional, its exercise is harsh and the demands made by the State are excessive. Exercise of the taxing power by the State has undoubtedly to be tested in the light of the fundamental freedoms guaranteed by Ch. III of the Constitution. It is not a power which transcends the fundamental rights, as was assumed in certain earlier decisions: *Ramjilal v. Income-tax Officer* (1951) 19 ITR 174 (SC); *Laxmanappa Hanumantappa v. Union of India (UOI)* (1954) 26 ITR 754 (SC); and the view expressed by Venkatarama Ayyar J., in *S. Anantha Krishnan v. State of Madras* I.L.R. [1952] Mad. 933. But it is now settled by decisions of this Court (e.g.) *Kunnathat Thathunni Moopil Nair v. The State of Kerala and Anr.* (1961) 3 SCR 77 that a taxing statute is subject to the "conditions laid down in Article 13 of the Constitution". A taxing statute may accordingly be open to challenge on the ground that it is expropriatory; or that the statute prescribes no procedure or machinery for assessing tax, but it is not open to challenge merely on the ground that the tax is harsh or excessive.

Consistent view taken in the above series of decisions and other decisions is that tax legislations can be challenged on the ground that they infringe the Fundamental Rights under Part III but that does not however mean that there is freedom from taxation or that tax is per se a restriction on Fundamental Rights or freedom of trade, commerce and intercourse.”.

46] In paragraph Nos. 71, 129, 203, 215, 306 and 310 of the said decision, it is clarified that clauses (a) and (b) of the Article 304 have to be read disjunctively, consequently the tests required to be satisfied for Article 304(b) are not applicable to taxes imposed under Article 304(a). In paragraph Nos. 72, 126, 150, 158, 159, 217, 268, 269, 319, and 415 of the above decision, it is observed that Article 304(a) expressly clarifies that the imposition of taxes by a State must not discriminate. Non discriminatory taxes do not violate Article 301 of the Constitution and only discriminatory taxes are forbidden. There is no impediment to trade, commerce and intercourse unless the tax visits hostile discrimination. In the light of observations, imposition of entry tax under Entry 52 of the State list would not violate Article 301 or 304(b) of the Constitution.

47] In the case of Ratanlal & Co. (supra), in paragraph No.14 and 15 of the said decision, it was observed as follows :-

“14. It is also urged in this connection that there is a discrimination between the imported goods and local goods. It is said that the discrimination is also between the first purchase in the case of imported goods and last sale in the case of local goods. Since the imported goods might be more expensive by reason of freight etc. or intermediary sales having taken place, it is said, that the burden of tax will be heavier and therefore this will offend against the equality clause and Article 304 of the Constitution. In our opinion this argument is without any substance. The rate of tax is same in every case. In *State of Madras' v. N. K. Nataraja Mudaliar*, [1969] 1 S.C.R this Court stated that the essence of Articles 301 and 303 is to enable the State by a law "to impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in the State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced." It was pointed out by this Court that "imposition of differential rates of tax by the same State on goods manufactured or produced in the State and similar goods imported in the State is prohibited by that clause. But where the taxing State is not imposing rates of tax on imported goods different from rates of tax on goods manufactured or produced, Article 304 has no application".

15. Here also the tax is at the same rate and

therefore the tax cannot be said to be higher in the case of imported goods. It may be that when the rate is applied the resulting tax is somewhat higher but that does not offend against the equality contemplated by Article 304. That is the consequence of ad valorem tax being levied at a particular rate. So long as the rate is the same Article 304 is satisfied. Even in the case of local manufactures if their cost of production varies, the net tax collected will be more or less in some cases but that does not create any inequality because inequality is not the result of the tax but results from the cost of production of the goods or the cost of their importation. This ground, therefore, has also no substance. We do not think it necessary to set down here the provisions of the Haryana Amendment Act because they follow the scheme of the Punjab Amendment Act in substance and what we have said in regard to the Punjab Amending Act applies mutatis mutandis to Haryana Amendment Act also.

48] In the case of State of Madras -vs- N.K. Nataraja Mudaliar (supra), it has been observed that :-

“a difference in the rate imposed does not *ipso facto* mean that there is a restriction on trade or commerce since other factors may be relevant /compensate. The Supreme Court has expressly clarified that the, “prevalence of differential rates of tax on sales of the same commodity cannot be regarded in isolation as determinative of the object to

discriminate between one State and another”.

Similarly in the case of Video Electronic Pvt Ltd (supra), it has been observed that :-

“In order to impinge on the freedom guaranteed by Article 301, the entry tax must be one which will “directly or immediately restrict or interfere with trade, commerce and intercourse throughout the territory of India”. The Supreme Court then goes on to clarify, in paragraph 22, that “the mere fact that there is a difference in the rate of tax on goods locally manufactured and those imported, this would not amount to hampering of trade between the two States within the meaning of Article 301 of the Constitution”.

49] In Indian Oil Corporation Ltd -vs- State of Bihar (supra), the Hon'ble Supreme Court has reiterated the well established principle that a set off is not a matter of right and has clarified, in the context of VAT -vs- entry tax, that a levy of entry tax cannot be assailed as unconstitutional only because set off is not given. In paragraph Nos. 25 and 26 of the said decision, it has been observed that :-

“25. When it comes to taxing statutes, the law laid down by this Court is clear that Article 14 of the Constitution can be said to be breached only when there is perversity or gross disparity resulting in clear and hostile discrimination practiced by the legislature,

without any rational justification for the same (See Twyford Tea Co. Ltd v. State of Kerala (Twyford Tea Co. Ltd -vs- State of Kerala, (1970) 1 SCC 189) at paras 16 and 19, Ganga Sugar Corpn Ltd v. State of U.P. [(1980) 1 SCC 223] and P.M. Ashwathanarayana Setty v. State of Karnataka [1989 Supp. (1) SCC 696].

26. We must also not forget that no assessee can claim set-off as a matter of right and the levy of entry tax cannot be assailed as unconstitutional only because set off is not given.

50] In the case of State of Madhya Pradesh v. Mandawar (supra), five Judge Bench of the Hon'ble Supreme Court, in paragraph No.9 has observed as follows :-

“9..... On these provisions, the position is that when a law is impugned under Article 13, what the court has to decide is whether that law contravenes any of the provisions of Part III. If it decides that it does, it has to declare it void; if it decides that it does not, it has to uphold it. The Power of the Court to declare a law void under Article 13 has to be exercised with reference to the specific legislation which is impugned. It is conceivable that when the same legislature enacts two different laws but in substance they form one legislation, it might be open to the Court to disregard the form and treat them as one law and strike it down, if in their conjunction they result in discrimination. But such a course is not open where, as here, the two laws sought to be read in conjunction are

by different Governments and by different legislatures.

Article 14 does not authorize the striking down of a law of one State on the ground that in contrast with a law of another State on the same subject its provisions are discriminatory. Nor does it contemplate a law of Center or of the State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of the two enactments. The sources of authority for the two statutes being different, Article 14 can have no application”.

51] In Jindal's case, the Apex Court has rejected compensatory tax theory evolved in Automobile Transport (Rajasthan) Ltd -vs- State of Rajasthan (supra), and subsequently modified in Jindal Stainless Ltd (2) v. State of Haryana (supra), in the light of the observations of the Court, it is not necessary that entry tax collected must be put into separate fund or should be proportionate to the expenditure incurred by the local area. In paragraph 137 of the recent decision in case of Jindal (supra), it was observed that :-

“137. The legal position as to the approach that courts adopt towards fiscal measures while examining their constitutional validity is fairly well settled by a long line of decisions of this Court. **The law on the subject is so well settled that it calls for no elaborate discussion of the same. Courts have almost universally accepted the principle that keeping in view the inherent complexities of fiscal adjustments and the**

diverse elements and inputs that go into such exercise a greater latitude is due to the legislature in taxation related legislations. It is unnecessary to refer to all the decisions in which this Court has conceded such play at the joints to the legislature. Reference to some of the decisions of this Court should, in our opinion suffice. In *Mafatlal Industries Ltd -v. Union of India* (1997) 5 SCC 536), in a separate but concurring opinion Paripoornan, J. held in para 343 :-

“343. In the matter of taxation laws, the court permits a great latitude to the discretion of the legislature. The State is allowed to pick and choose districts, objects, persons methods, and even rates for taxation if it does so reasonably. The Courts view the laws relating to economic activities with greater latitude than other matters”

52] There is no infirmity in the provisions of Maharashtra Entry Tax Act and levy under the said Act is constitutional. Entry tax in Maharashtra is payable in the following circumstances:-

a) The State of Maharashtra comprises of several local areas, all of which are subject to the provisions of the Maharashtra Value Added Tax Act, 2002 (“the MVAT Act”). Tax is levied on goods sold within Maharashtra as per Sections 5 and 6 of the MVAT Act.

b) Under Section 3 of the Maharashtra Entry Tax Act, Tax is levied on goods brought into a local area from outside the State for consumption, use or sale therein at the rates specified. The rationale and purpose of levying entry tax only on goods brought into a local area from outside the State is to create a level playing field and prevent discrimination in the local areas of the State by ensuring that the specified goods imported and the goods manufactured or produced in such local areas are treated at par with each other.

c) Where goods are purchased outside Maharashtra, no tax is leviable under the MVAT Act. However, tax would be payable under the MVAT Act in respect of the same goods sold within the State of Maharashtra. It may transpire that the rate of tax levied on the goods in the State where they are purchased is significantly lower than the rate being levied under the MVAT Act. In such a case, dealers in Maharashtra would suffer a discrimination and purchasers would opt to purchase the goods from other States where the rate of sales tax is significantly lower.

d) The first proviso to Section 3(1) of the Maharashtra Entry Tax Act clarifies that the rate of entry tax shall not exceed the rate specified for that commodity under the MVAT Act.

e) The second proviso to section 3(1) of the

Maharashtra Entry Tax Act grants a set-off in respect of the General Sales Tax paid on the goods in the State or Union Territory where the goods were purchased. In order to avail of the benefit of this proviso, the sales tax must be one in force in the State, namely one imposed by the State.

f) Section 3(5) of the Maharashtra Entry Tax Act clarifies that no entry tax is payable if an importer imports specified goods for the purpose of resale in the state or sale in course of inter state trade or commerce or exports out of the territory of India.

g) Rule 52(1)(c) of the MVAT Rules grants a set-off in respect of any entry tax paid under the Maharashtra Entry Tax Act to the dealers registered under the MVAT Act. This is to safeguard against any double taxation /cascading effect in Maharashtra.

53] These provisions indicate that the object and purpose of the Maharashtra Entry Tax Act is not to discriminate against goods from outside the State but instead is to bring about economic unity and parity by doing away with the discrimination visited by virtue of differing rates of tax in different States.

54] There is no Constitutional burden on the State to

equalize all inequalities of burden on goods even if such inequalities do not result from the State's taxation. No inequality results from any action /legislation attributable to the State of Maharashtra. Merely since the State of Maharashtra has allowed reduction for Central Sales Tax in the Maharashtra Tax on Entry of Motor Vehicle into Local Areas Act, 1987, does not mean that it is obligated to give a similar reduction for entry tax under the Maharashtra Entry Tax Act. Notably, other States also do not give any reduction for Central Sales Tax while levying entry tax. Therefore, local goods exported from Maharashtra to other States, which also bear Central Sales Tax, would incur a higher tax burden than just the VAT of the State to which they are exported.

55] The Petitioners are relying on para 141 of Jindal's case which reads as follows :-

“141. Seen in the context of the above, we are inclined to accept the submission made on behalf of the State that so long as the intention behind the grant of exemption/adjustment/credit is to equalise the fall of the fiscal burden on the goods from within the State and those from outside the State such exemption or set off will not amount to hostile discrimination offensive to Article 304(a). Having said that, we leave open for examination by the regular Benches hearing the matters whether the impugned enactment achieve the

object of such equalization or lead to a situation that exposes goods from outside the State to suffer any disadvantage vis-a-vis those produced or manufactured in the taxing State.

This paragraph merely accepts that the State may take steps to equalise the fall of the fiscal burden on imported and local goods. It does not mandate that the State must equalise the fall of the fiscal burden regardless of at whose hands that fall is. On the contrary, it is only the burden imposed by that State on local goods that must be equalized with the burden imposed by the State on local goods. Moreover, para 141 of the Jindal's case makes it apparent that what is important is the "intention" to equalise. In the present case, there is no material to indicate that the State does not have an intention to equalise. In fact, the intention to equalise is borne out by the fact that the rates of entry tax and VAT imposed by the State are the same.

56] In the State of Bihar -vs- Bihar Chamber of Commerce (supra), it was held that State is a compendium of local areas and that the requirement of Entry 52 of List II is satisfied so long as the tax is levied on the entry of goods into a local area in the State. It would be relevant to quote paragraph 36 of the said judgment which reads thus :-

"36.Entry 52 empowers the State Legislature to levy this tax. The power is that of the State Legislature and of none else. So long as the tax is levied upon the

entry of goods into a local area for the purpose of consumption, use or sale therein, the requirement of Entry 52 is satisfied. The character of the tax so levied is that of entry tax – by whatever name it is called..... In our opinion, the relevant requirement is satisfied in this case. As stated hereinbefore, the entire State of Bihar is divided into local areas. From the point of view of the entry tax, one may say that the State is a compendium of local areas. Spending for the purposes of the State is thus spending for the local areas. Situation may perhaps be different where the local areas are confined to a few cities or towns in the State. But where the local areas span the entire State, it cannot be argued that money spent for welfare schemes for improvement of roads, rivers and other means of transport and communication is not spent on or for the purposes of local areas. The purposes and needs of local areas are no different from the purposes and needs of the State – not at any rate to any appreciable degree. In this context, it is relevant to notice that the Maharashtra Entry Tax Act, considered by this Court in *Shaktikumar* (1995) 1 SCC 351 was also meant for augmenting the general revenues of State, to wit to make up the loss of revenue the State was suffering on account of reduction of sales tax on motor vehicles in the adjoining States. The following observations in the said decision tend to support our reasoning, though, it is true this particular question was not raised therein: (STC P.661)

“A very perusal of these objects and reasons would indicate that this legislation was brought in order to

compensate loss of revenue by consumers who avoid payment of the sales tax or purchase tax on the vehicle payable in the State by purchasing it in another State where the rate was lesser than the State of Maharashtra and then to bring the vehicle inside the State. The legislature, therefore, clearly intended to avoid any loss of legitimate sales tax revenue by the State. But the levy cannot be held to be bad because the legislature intended to avoid any loss of sales tax in the State so long it is not found to be invalid because of any constitutional or statutory violation. It is not the intention or propriety of a legislation but it is legality or illegality which renders it valid or invalid”.

57] It is contended by petitioners that Entry tax cannot be levied only on goods coming from outside State by defining the entire State as a local area. In support of the submission, petitioner had relied upon the decisions in the case of Thressiamma L. Chiravil v. State of Kerala (supra), ITC Ltd -vs- State of Tamil Nadu (supra), **Bharat Earth Movers Ltd -vs- State of Karnataka³⁷**, **Jaiprakash Associates Ltd v. State of Arunachal Pradesh³⁸**, **L & T Case Equipment v. State of Karnataka³⁹**, in view of the decision in the case of Jindal (supra) the ratio in the said decision cannot be applied in this proceeding. In the case of State of Kerala

37 2007 8 VST 69 Kar

38 Manu /GH/0010/2009

39 (2010) 27 VST 447

-vs- Fr. William Fernandez (supra), the Apex Court has rejected the submission that entry tax legislation is not covered by Entry 52 of List II of the Seventh Schedule to the Constitution. It was observed that entry tax legislation must be given a broad / wide meaning and cannot be confined in the manner suggested. In each local area if the State levied tax on the entry of goods from another local area in the State, it would be required to grant a set off to the extent of VAT /entry tax already paid in the other local area. This would result in a duplication of administration and taxation, which the State chose to do away with by levying entry tax on the first entry of the goods into a local area in the State.

58] In Jaika Automobiles (supra), this Court in paragraph No.23 has observed as follows :

“23. Ground (d) Submission of the petitioner is that there is in the field a tax in the nature of octroi duty imposed under the various municipal laws made under entry 542, List II and hence impost referable to that very entry amounts to double taxation and hence is bad in law. The submission is wholly misconceived. In the first place, there is neither constitutional nor statutory bar in express terms prohibiting levy of double taxes. Article 265 of the Constitution only mandates that, “no tax shall be levied or collected except by authority of law”. Upon same object and person, separate taxes can be

imposed for different purposes by the same authority or by different authorities. Last word on the topic can be found in recent decision of the Supreme Court in the case of **Sri Krishna Das v. Town Area Committee**⁴⁰; wherein it is observed

“Double taxation, in the strict legal sense means taxing the same property or subject-matter twice, for the same purpose, for the same period and in the same territory. To constitute double taxation, the two or more taxes must have been (1) levied on the same property or subject matter, (2) by the same Government or authority, (3) during the same taxing period, and (4) for the same purpose”.

Octroi duty and entry tax are imposed by the different authorities and for entirely two different purposes. Former is for augmenting the resources of the local body and the latter is for compensating the loss of revenue of the State on account of diversion of transaction of sale and purchase of vehicles to the neighbouring States or Union Territories due to difference in the rates of sales tax. Goods taxable are not the same, though some may be common, eg., vehicle brought in the local area after 15 months of its registration under the MV Act in areas outside the State. Thus, there is no taxation of the same goods twice by the same authority and/or for the same purpose and hence there is no “double taxation”

59] The Supreme Court, in the case of Shaktikumar Sancheti's case, has observed that :-

“Feeble attempt was made to submit that the tax being in addition to octroi realised by the local body it amounted to double taxation. The taxable event for entry tax is not same as octroi”.

60] By way of amendment carried out in W.P. No.1813 of 2013, the petitioner has alleged that levy of Entry Taxes under the Maharashtra Tax on Entry of Goods into Local Areas Act, 2002, is discriminatory, unconstitutional inasmuch as it differentiates between importers, who have no liability under the Maharashtra Value Added Tax Act, 2002 and those who are registered under MVAT Act and have VAT liability. The respondent's contention IS that persons importing goods into a local area for their own use do not pay VAT in the State of Maharashtra. By levying entry tax at a rate that does not exceed the rate specified under the MVAT Act, such persons are placed in the same position as a person who procures those goods from within the State. This is in keeping with the rationale and purpose of providing a level playing field and ensuring there is no disparity in the rate of tax payable in respect of goods brought into a local area of the State and those already in such local area by virtue of being manufactured or produced there. The Petitioner's submission regarding the grant of exemptions and

set off ignore the fact that the proviso to Section 3(5) of the Entry Tax Act clarifies that dealers who are registered under the MVAT Act and are importing goods into a local area covered by the Entry Tax Act for the purpose of resale or export are liable to pay entry tax if the goods are not resold and are dealt with in any other manner. Notably, such registered dealers would; be liable to pay VAT or Central Sales Tax to the Revenue at the time of the resale since the MVAT Act and Central Sales Tax Act also apply to the local areas within the State covered by the Entry Tax Act. Such importers are, accordingly, placed on the same footing as other dealers who sell or buy ;goods within the State. Instead of levying entry tax on such dealers and then granting a set-off, the Legislature has opted to grant a conditional exemption under Section 3(5) of the MVAT Act. The grant of such an exemption is neither discriminatory nor unconstitutional. The Petitioner's submissions further ignore the fact that the grant of set-off or exemptions to dealers who are registered within the State and importing goods into a local area covered by the Entry Tax Act has the same effect as grant of set-off to a dealer who purchases such goods domestically within a local area of the State. The purpose of a set off is to obviate any cascading effect of tax on the ultimate consumer. The set off under rule 52 is available to prevent the cascading effect of multi point taxation scheme which stops at the

stage of consumer. The final consumer is not entitled to any set-off and has to sustain the burden of tax ultimately. Therefore, where the importer is itself the ultimate consumer of the goods imported into the local area and is not using them to manufacture further goods for sale, there is no question of granting set off in respect of the goods purchased. An importer consumer cannot be compared with an importer-manufacturer registered under MVAT Act and therefore eligible for set-off under Rule 52 of the MVAT Rules. Further the MVAT Act and Rules framed thereunder do not provide for any set off to a person who is the ultimate consumer not registered under the Act. The Petitioner in this case is a final consumer and hence he is not entitled for any set-off nor for exemption from payment of entry tax under Section 3(5) of the Entry Tax Act. These provisions are neither discriminatory nor unconstitutional inasmuch as the different class of importers under the Entry Tax Act that the Petitioner refers to is similar to the different class of purchasers recognized under the MVAT Act viz. , final consumers and persons who are purchasing for the purpose of re-selling the goods.

61] Under Entry 52 of List II of Seventh Schedule appended to the constitution, the State is empowered to levy and collect entry tax on the entry of the goods into local areas. Further, the

imposition of tax on sale or purchase of goods is permissible under entry 54 of List II. Entry 52 and Entry 54 are two separate fields of legislations. Incidence of tax under these two entries is also independent. Merely because the rate of tax under both the taxing statutes is the same, it cannot be said that the state is levying VAT in the garb of Entry Tax. The State having taken a conscious decision to avoid discrimination has decided not to levy Entry tax in excess of VAT applicable on similar goods.

62] Article 286 comes into operation only when there is imposition of tax on sale or purchase of goods and not when tax is sought to be imposed on entry of the goods into local areas within the State, as in the present case. Article 304(a) does not fetter the States from ensuring an equality in the rate of tax levied on goods that are imported from other states and goods manufactured or produced within the State. Since, under the Entry Tax Act and MVAT Act, the rate of tax on specified goods which are imported into the local areas in the State of Maharashtra is brought at par with the rate on similar goods manufactured or produced in the State of Maharashtra, there is no infirmity in the provisions of the Entry Tax Act whether as alleged or at all. There is no unfair or arbitrary classification whether as alleged or at all.

63] Thus, the controversy raised in this petition as stated hereinabove is no more *res-integra*. In paragraph No.9 of the Judgment in Jindal's case, the Court formulated following questions :-

- a) Can levy of a non-discriminatory tax per se constitute infraction of Article 301 of the Constitution of India?
- b) If the answer to Question No.1 is in the affirmative, can a tax which is compensatory in nature also fall foul of Article 301 of the Constitution of India?
- c) What are the tests for determining whether the tax or levy is compensatory in nature?
- d) Is the entry tax levied by the states in the present batch of cases violative of Article 301 of the Constitution and in particular have the impugned State enactments relating to entry tax to be tested with reference to Articles 304(a) and 304(b) of the Constitution for determining their validity?

By majority, the Court answered the reference in the following manner.

- i. 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".
- ii. 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.

iii. Clauses (a) and (b) of Article 304 have to be read disjunctively.

iv. A levy that violates 304(a) cannot be saved even if the procedure under Article 304(b) or the proviso there under is satisfied.

v. The compensatory tax theory evolved in Automobile Transport case and subsequently modified in Jindal's case has no juristic basis and is therefore rejected.

vi. 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.

vii. 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.

viii. 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 Articles 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.

ix. 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. (underlining ours)

64] The Hon'ble Apex Court in paragraph No.146 answering question No.1 in negative held as under:-

“In the light of what we have said above, we answer Question No.1 in the negative and declare that a non discriminatory tax does not per se constitute a restriction on the right to free trade, commerce and intercourse guaranteed under Article 301. Decisions taking a contrary view in Atibari's case (supra) followed by a series of later decisions shall, therefore, stand overruled including the decision in Automobile Transport (supra) declaring that taxes generally are restrictions on the freedom of trade, commerce and intercourse but such of them as are compensatory in nature do not offend Article 301. Resultantly decisions of this Court in Jindal Stainless Limited (2) and anr v. State of Haryana and ors (2006) 7 SCC shall also stand overruled”.

65] The Act in no way makes any discrimination against the local purchases and importers much less any hostile discrimination. The importers are given input tax credit of Entry Tax Paid to the Government against the VAT liability and balance is payable or refundable as the case may be. Hence tax burden of Entry Tax not borne by the dealers who purchase locally within the State who get set off of the input tax credit u/s 48 r/w 52, is balanced in case of persons who suffer entry tax by making provisions in the MVAT Act that the entry tax can be adjusted against the MVAT liability thus in effect the dealers who import from other State or Country are at par with local manufacturers who purchase from local dealers so far as burden of tax is concerned since in effect there is no entry tax at all when rebate or set off or ITC is granted for the same. Further as per the second proviso any local sales tax paid by the importer on the goods that are imported is also available for reduction from the entry tax payable under the Act. Thus the rebate is provided in second proviso of the Act that the tax payable by the importer under this Act shall be reduced by amount of tax paid, if any, under the law relating to General Sales Tax in force in the UT or the State in which the goods are purchased by the importer in effect takes care of the ground that the dealers who import goods are discriminated vis a vis the dealer who procure the goods from local sources.

66] Provided further that, the tax payable by the importer under this Act shall be reduced by the amount of tax paid, if any, under the law relating to General Sales Tax in force in the Union Territory or the State, in which the, goods are purchased, by the importer.

67] As per plain simple language of the Entry 52 of List II of VII th Schedule to the Constitution of India, there are no restrictions or impediment put in specific words that the funds collected by levy under the Act shall be only for the area in which goods have entered. Moreover neither there is any specific restriction on levy that cannot be credited to Consolidated Fund of State but must be utilized by a separate fund for the specific local area in which goods have entered. There is no scope for reading such restrictions in the Entry Tax Act. The consistent theory of looking at pre-legislative practice, if at all has to be followed, has no basis. The judgments in case of Diamond Sugar Mills and Burmah Shell Oil Storage and Distribution Company has no application to such restrictions as contemplated by petitioner since the same were decided in different context. The levy of Entry Tax is in addition to the octroi levied under local self governing bodies as per law applicable to them. It is not a correct proposition of law

that the scope of Entry in the Lists to the Constitution would be governed by the consistent legislative practice that has been followed prior to the enactment of the Constitution of India. The Legislative practice to enactment of Constitution and Government of India Act, 1935 framed by the then British Parliament has no binding limitation and practice under the Constitution of India in independent India. The Legislation is not ultra vires in any manner. We, therefore, uphold the Constitutional validity of the Maharashtra Entry Tax Act.

68] In the light of aforesaid observations, we do not find any merit in these petitions and hence all the petitions are required to be dismissed.

69] Writ Petition Nos.4563 of 2013, 2785 of 2017 and 1813 of 2013 stand dismissed.

70] Civil Application No.1079/2017, all connecting Notice of Motions, Chamber Summons stand disposed off.

[PRAKASH D. NAIK J.]

[S. C. DHARMADHIKARI, J.]