Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 471 OF 2007
WITH
CIVIL APPLICATION NO. 206 OF 2008
WITH
CIVIL APPLICATION NO. 63 OF 2015
WITH
CIVIL APPLICATION NO. 107 OF 2008

M/s MRF Limited,
a Company registered under the
Companies Act, 1956 and having
its office at P.B. No.1, Ponda Goa 403 401 ….. Petitioner.

Versus

1. The State of Goa,
through Chief Secretary, having
Secretariat, Porvorim, Goa.

2. Secretary to Government.
Finance Department, State of Goa,
Secretariat, Goa.

3. Commercial Tax Officer,
Ponda Ward, Ponda, Goa.

……Respondents.

Mr G.K. Sardessai, Advocate *for the Petitioner.*

Mr Vishwad Sardessai, Addl. Govt. Advocate *for the Respondents.*

WITH
WRIT PETITION NO. 417 OF 2014

1) M/s Sesa Sterlite Ltd.,
a Company formerly known as

Sesa Goa Ltd., and registered under
Companies Act, 1956, with its registered
Office at 20, EDC Complex, Patto,
Panaji, Goa, represented in this Act by
its Associate General Manager
Shri Mukesh Laddha, Indian National,
residing at 201, Altees Manor,
Caranzalem, Goa. ….. Petitioner.

Versus

1) State of Goa,
Through Chief Secretary,
Secretariat, Porvorim, Goa.

2) Secretary to Government,
Fiance Department, State of Goa,
Secretariat, Porvorim, Goa.

3) The Asst. Commissioner Tax Officer,
Panaji Ward, Altinho, Panaji, Goa. …... Respondents.

Mr J.E. Coelho Pereira, Senior Advocate with Mr A. Fernandes, Advocate *for the Petitioner.*

Mr Arun Talaulikar, Addl. Govt. Advocate *for the Respondents.*

CORAM : M. S. SONAK &
VALMIKI SA MENEZES, JJ.

DATE : 24th APRIL 2023

ORAL JUDGMENT : (Per M.S. Sonak, J.)

1. Heard Mr G.K. Sardessai for the Petitioner and Mr V. Sardessai, Addl. Govt. Advocate for the Respondents in W.P.

No.471/2007 and Mr J.E. Coelho Pereira, learned Senior Advocate who appears along with Mr A. Fernandes and Mr Arun Talaulikar, Addl. Govt. Advocate for the Respondents in W.P. No.417/2014.

2. The Petitioners challenge the constitutional validity of Sections 2(g), 2(m), and Section 3 of the Goa Tax on Entry of Goods Act, 2000 as being ultra vires Articles 14, 19(1)(g), 265, 301 and 304(a) of the Constitution of India and seek consequential relief of refund of entry tax recovered by the State from the Petitioners.

3. Since common issues of law and fact arise in both petitions, they are disposed of by a common judgement and order with the consent of the learned counsel.

4. The Petitioner in W.P. No.471/2007 manufactures tyres, tubes, flaps, and other allied rubber products at their unit in Goa. For this, the Petitioner purchases raw materials/components from outside Goa.

5. On 29/8/2000, the Goa Tax on Entry of Goods Act, 2000, entered force. On 30/8/2000, the State of Goa specified that with effect from 1/9/2000, tax shall be levied and collected under the impugned Act at the rates specified therein. The rates were set on a percentile ranging from 0.50% to 10%.

From 01,09.2000, the raw materials brought into Goa became taxable, and the Petitioners claim to have discharged this tax liability from time to time.

6. On 14/11/2000, the Government issued a notification superseding the earlier notification dated 30/08/2000 and specified fresh rates for entry tax on a paisa per rupee basis.

7. Since the Petitioner has questioned the constitutional validity of Sections 2(g), 2(m), and Section 3 of the impugned Act, the same are transcribed below for the convenience of reference :

> *"2(g) "dealer" means any person who in the course of business, whether on his own account or on account of a principal or any other person, brings or causes to be brought into a local area any goods or takes delivery or is entitled to take delivery of goods on its entry into a local area and includes an occasional dealer, a casual trader, a non-resident dealer;*
> *Explanation I.— An industrial, commercial or trading undertaking of the Government of Goa, the Central Government or any other State Government, a local authority, company, a Hindu undivided family, a firm, a society, a club or an association which carries on such business shall be deemed to be a dealer for the purposes of this Act.*
> *Explanation II.— A society (including a co-operative society), club or firm or an association which, whether or not in the course of business, buys, sells, supplies or distributes goods from or to its members for cash or for deferred payment or for commission, remuneration or other valuable consideration shall be deemed to be a dealer for the purposes of this Act.*

Explanation III.— The Central Government or a State Government other than the Government of Goa which, whether or not, in the course of business, buys, sells, supplies or distributes goods, directly or otherwise, for cash or deferred payment or for commission, remuneration or other valuable consideration shall be deemed to be a dealer for the purpose of this Act.

Explanation IV.— When a consignee does not take delivery of goods upon its entry into a local area, and such goods are sold under the provisions of any law, the buyer who takes delivery of such goods upon the goods being sold shall be deemed to be the dealer thereof.

Explanation V.— A person undertaking the execution of works contract involving the use or consumption of goods entering into a local area shall be deemed to be the dealer thereof.

Explanation VI.— Any person who brings or causes to be brought any goods into a local area, but resides outside the State of Goa (hereinafter referred to as "a non-resident dealer) including his agent or manager shall be deemed to be the dealer thereof.

Exception:— An agriculturist who brings exclusively agricultural produce grown on land cultivated by him personally shall not be deemed to be a dealer within the meaning of this clause.

2(m) "local area" means the area within the limits of a Council constituted under the Goa Municipalities Act, 1968 (Act 7 of 1969), or a Panchayat or Zilla Panchayat established under the Goa Panchayat Raj Act, 1993 (Act 14 of 1994), a cantonment board, any specified area notified by the Government and any other local authority by whatever nomenclature called, constituted or continued under any law for the time being in force;

3.3. Levy of tax.— (1) There shall be levied and collected a tax on entry of any goods specified in SCHEDULE I hereto, *into a local area upon use of any facilities/infrastructure or any other amenities belonging to or provided by the State for consumption, use or sale therein, at such rates not exceeding the rates shown against each of the entry in the said SCHEDULE.*

(2) The tax levied under sub-section (1) shall be paid by every registered dealer or a dealer liable to get himself registered under this Act who brings or causes to be brought into a local area the goods, using any facilities/infrastructure or any other amenities belonging to or provided by the State whether on his own account or on account of his principal or any other person or who takes delivery or is entitled to take delivery of such goods on its entry into a local area.

Explanation.— Where the goods are taken delivery of on its entry into a local area or brought into a local area by a person other than a dealer, the dealer who takes delivery of the goods from such person shall be deemed to have brought or caused to have brought the goods into the local area.

[(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), no tax shall be levied on and collected from a dealer who brings or causes to be brought into a local area any goods,—

> *1. in respect of which tax has been paid or has become payable in any other local area under sub-section (1), or*
>
> *2. in respect of which tax has been paid or has become payable under the Goa Value Added Tax Act, 2005 (Central Act 74 of 1956).*

Explanation.— For the purposes of this section, tax paid or become payable should be on goods in the same form in which they are brought or caused to be brought into the local area and in case of tax under the Central Sales Tax Act, 1956, that which is paid or become payable in the State of Goa.].

(4) No tax shall be levied under this Act on any goods specified in SCHEDULE II hereto on its entry into a local area for consumption, use or sale therein.

(5) No tax shall be levied on a defence unit or establishment which causes entry of any goods liable to tax under this Act, into a local area for use by it in the manufacture, repair or research and development of defence and defence related goods only if it is brought in directly by the establishment itself.

(6) [Every manufacturer who brings or causes to be brought any goods into a local area for consumption or use therein, the aggregate value of which is less than one lakh rupees in a year and any other dealer who brings or causes to be brought any goods into a local area for consumption, use or sale therein, the aggregate value of which is less than two lakh rupees in a year, shall not be liable to pay tax for that year:

Provided that every non-residential dealer including his agent or manager, or every occasional dealer shall be liable to pay the tax each year at the rates specified irrespective of the aggregate value of the goods brought or caused to be brought into the local area during the year.]

(7) The tax shall be assessed, levied and collected in such manner and in such instalments, if any, as may be prescribed.

(8) Subject to such rules as may be made the assessing authority may assess a dealer for any year, as if, the aggregate value of the goods brought or caused to be brought into a local area in such year had been received as in the previous year.

(9) The tax shall be in addition to the tax levied and collected as octroi by a Municipal Council, Zilla Panchayat or Village Panchayat or any other local authority, as the case may be, within its local areas."

8. Therefore, as is evident from the above, the scheme of the impugned Act and the charging section stipulate that there shall be a levy and collection of tax on the entry of goods into the State of Goa into a local area for consumption, use or sale therein. Schedule I lists the goods taxable under Section 3(1) of the impugned Act.

9. Section 3(2) of the impugned Act makes it obligatory for the dealer and manufacturers to pay the tax. Section 3(3) of the impugned Act provides certain exemptions from the levy of entry tax for the dealer alone regarding goods on which tax has been paid or becomes payable. Schedule II, read with Section 3(4), provides a general exemption on entry tax for certain goods.

10. When this Petition was filed, the Petitioner relied upon ***Automobiles Transports Vs. State of Rajasthan*** —AIR 1962 SC 1406; ***Jindal Stainless Ltd., and anr. vs State of Haryana and ors***. - (2006) 7 SCC 241 and some Madras and Kerala High Courts decisions then holding the field. A nine-judge Constitution Bench has explained these decisions in ***Jindal Stainless Limited and another vs State of Haryana and ors.*** - (2017) 12 SCC 1. Thus most of the Petitioners'contentions stand answered against them.

11. The Petitioners had contended that the impugned levy does not satisfy the "compensatory levy" test as laid down in the 2006 decision. The Petitioners had, therefore, alleged that the impugned levy violates Article 301 of the Constitution. The same is not saved because of non-compliance with Article 304(b) of the Constitution of India. Additionally, the Petitioners alleged that the State had not placed any material to show that the accrual through the levy was only to compensate the State for the measurable benefits extended to the taxpayers.

12. The Petitioners also challenged the impugned levy by submitting that the impugned provisions making the entire State a local area invalidates the "local area" aspect, which is the key to the levy of entry tax. Therefore, it was submitted that the entire State of Goa could not be declared a local area for Entry 52 of List 1 of the Seventh Schedule to the Constitution of India.

13. The Petitioners also contended that the Petitioner as an importer of goods into the State of Goa suffers from serious injuries and discrimination by reasons of the operation of the impugned Act, which violates Articles 14, 19(1)(g) and 304 of the Constitution.

14. Based on the above grounds, the Petitioner sought the following substantive relief in terms of prayer clause (a):

> *"a) For a declaration, or any appropriate writ, order or direction under Article 226 of the Constitution of India, declaring Section 2 (g), Section 2 (m) and Section 3 of the Goa Tax on Entry of Goods Act 2000 ultra vires Article 14, 19(1)(g), 265, 301 and 304 (a) of the Constitution of India and for consequential relief to refund to the Petitioner company of such entry tax illegally received from them."*

15. After this Petition was instituted, the Constitution Bench comprising Nine Judges of the Hon'ble Supreme Court, examined the question of the constitutional validity of the Entry Tax Legislation that permitted various States to levy entry tax on goods imported from outside the State, into local areas within the State, in case of ***Jindal Stainless Limited and another vs. State of Haryana and ors.*** - (2017) 12 SCC 1.

16. By majority, the Constitution Bench answered the reference in the following terms :

> *"11.59.1. Taxes simpliciter are not within the contemplation of Part XIII of the Constitution of India. The word 'Free' used in* Article 301 *does not mean "free from taxation".*
>
> *11.59.2. Only such taxes as are discriminatory in nature are prohibited by Article 304(a). It follows that levy of a non-discriminatory tax would not constitute an infraction of Article 301.*
>
> *1159.3. Clauses (a) and (b)* of *Article 304 have to be read disjunctively.*
>
> *1159.4. A levy that violates 304(a) cannot be saved even if the procedure under Article 304(b)or the proviso there under is satisfied.*
>
> *1159.5. The compensatory tax theory evolved in Automobile Transport case and subsequently modified in Jindal Stainless Ltd. (2) v. State of Haryana, (2006) 7 SCC 241 case has no juristic basis and is therefore rejected.*
>
> *1159.6. Decisions of this Court in Atiabari Tea Co. Ltd. v. State of Assam- AIR 1961 SC 232, Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan, AIR 1962 SC 1406*

and Jindal cases (supra) and all other judgments that follow these pronouncements are to the extent of such reliance over ruled.

1159. 7. A tax on entry of goods into a local area for use, sale or consumption therein is permissible although similar goods are not produced within the taxing State.

1159. 8. Article 304 (a)frowns upon discrimination (of a hostile nature in the protectionist sense) and not on mere differentiation. Therefore, incentives, set-offs etc. granted to a specified class of dealers for a limited period of time in a non-hostile fashion with a view to developing economically backward areas would not violate Article 304(a). The question whether the levies in the present case indeed satisfy this test is left to be determined by the regular benches hearing the matters.

1160. States are well within their right to design their fiscal legislations to ensure that the tax burden on goods imported from other States and goods produced within the State fall equally. Such measures if taken would not contravene Article 304(a) of the Constitution. The question whether the levies in the present case indeed satisfy this test is left to be determined by the regular benches hearing the matters.

1161. 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."

17. Thus, all questions about the constitutional validity of the provisions of the impugned Act were answered against the Petitioner. However, only the questions referred to in paragraphs 1160 and

1161 referred to above were left open to be decided in appropriate proceedings.

18. Therefore, the only points that survive for consideration are as follows:

(A) Whether the impugned levy ensures that the tax burden of goods imported from other States and the goods produced within the State fall equally, thereby not violating Articles 14 and 301 r/w 304 of the Constitution.

(B) Further, the question is whether the entire State can be notified as a local area, as done in the State of Goa.

19. Mr Pereira learned Senior Advocate and Mr Sardessai for the Petitioners submitted that both the questions are linked because by declaring the entire State of Goa as a local area in terms of Section 2(m) of the impugned Act, the Petitioner is subjected to hostile discrimination qua the goods which the Petitioners source from outside the State of Goa and bring into the State of Goa. They submitted that while goods brought from outside the State into the State are liable to pay entry tax, those moving the goods from one local area are not subject to entry tax, thereby discriminating against those bringing goods from outside the State. They further submitted that the absence of provisions for exemption/ refund of taxes, even in respect of goods, which initially suffered entry tax, moved out of the local area to another State by way of stock transfer or sale, renders the impugned provisions invalid and ultra vires Entry 52 of the State List. They contend that such provisions violate Article 301 and are not saved by Article 304 of the Constitution.

20. Mr Pereira submitted that the pith and substance of the levy of entry tax is only to tax such goods entering the local area to be used or consumed within the local area. That being the case, the absence of a refund when such goods move out of the local area violates the principles underlying the levy of entry tax. Accordingly, he submits that the impugned provisions are discriminatory and ultra vires Articles 14, 301 and 304 of the Constitution.

21. The contentions now raised by the petitioners' counsel were precisely those considered by the Division Bench of this Court in ***Hindusthan National Glass & Industries Limited vs State of Maharashtra and Ors. -*** (2019) 3 Bom CR 625. The Division Bench, after detailed consideration of such contentions, found no merit in the same and dismissed the Petition.

22. The contention that entry tax cannot be levied only on goods coming from outside the State by defining the entire State as a local area was considered and rejected in paragraphs 62, 63, 64, 65, 66, 67, and 70, which read as follows :

"62. 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 – (2007) 7 VST 293 (Ker), ITC Ltd. vs. State of Tamil Nadu – [2007] 7 VST 367 (Mad)*, Bharat Earth Movers Ltd -vs- State of Karnataka - 2007 8 VST 69 Kar, Jaiprakash Associates Ltd v. State of Arunachal Pradesh-2009 SCC OnLine Gau 569, L & T Case Equipment v. State of Karnataka, (2010) 27 VST 447 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 vs William Fernandez —2017 SCC OnLine SC 1291, 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.*

63. In Jaika Automobiles vs State of Maharashtra —1992 Mah LJ 1658, 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 (1990) 183 ITR 401 SC, 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"

64. The Supreme Court, in the case of Shaktikumar Sancheti Vs. State of Maharashtra —(1995) 1 SCC 351, 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".*

65. 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.*

66. 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.

67. 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.

68. ...

69. …

*70**.** 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 U.T. 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."*

23. Besides, in ***State of Bihar and ors. vs Bihar Chamber of Commerce and ors***.- (1996) 9 SCC 136 the Hon'ble Supreme Court held that tax on entry of goods into local areas for consumption, use or sale therein was compensatory in nature as the entire State has been divided into local areas and State Government as well as local authorities providing several trading facilities to promote trade and commerce within the State. Since there was some connection between the tax and the facilities provided, the Hon'ble

Supreme Court held that there was no violation of Article 301 of the Constitution. The Court held that for establishing the compensatory nature of tax, it is enough if some connection, direct or indirect, is shown to exist between the tax and the trading facilities provided by the State or the local authorities.

24. Recently, in ***OCL India Ltd. vs State of Orissa and ors***. - 2022 SCC OnLine SC 1518, the Hon'ble Supreme Court considered the scope of interpretation of "local area" occurring under Entry 52 of List II of the Seventh Schedule to the Constitution. This was in the context of the Orissa Entry Tax Act, 1999, which defined local area to include industrial townships, including areas within the industrial township constituted under Section 4 of the Orissa Municipal Act, 1950, subjecting goods entering into such areas to entry tax.

25. The Court held that reliance upon *Diamond Sugar Mills Ltd. vs State of Uttar Pradesh* - (1961) 3 SCR 242 was misplaced because, in that decision, the Apex Court had to deal with a different set of facts. The levy on sugarcane imposed by the State of U.P. was on the incidence of entry into factory premises. The Court, therefore, correctly concluded that factory premises per se could not constitute a local area. The subsequent decision in *Shakti Kumar Sancheti vs State of Maharash* —(1995) 1 SCC 351 explained that entry into the State with the ultimate destination within the State constituted a taxable event the moment the goods, i.e. the vehicles reached within the limits of the municipality of its ultimate destination. Finally, in *Sahaj Gram Panchayat vs State of Gujarat* —(1999) 2 SCC 366, the argument that the industrial areas could not be excluded in the exercise of the powers under Article 2439(Q)(1) was repelled.

26. Further, the Hon'ble Supreme Court held that it is also a cardinal rule of interpretation that words of a taxing statute should be read in their ordinary, natural, and grammatical meaning. Further, in construing the words in a constitutional enactment that confers legislative power, a liberal construction should be placed upon them to have effect in their widest amplitude. The object of the levy, i.e., entry tax, is the regulation of entry of goods in a regular area for consumption, i.e., manufacture, use or sale. There is no dispute that entry of goods into an industrial area or estate is for their use for manufacturing or processing or the purposes of their delivery as their ultimate destination, i.e. for consumption, use or sale within that area. It could even be that the goods enter within the industrial area or estate as the ultimate point of destination for their use. In any case, the levy would be attracted because the incidence is the entry into the local area.

27. Thus, the limited surviving challenges in this Petition based upon the alleged violation of Articles 14, 301 and 304 or the entire State being declared as a local area and, consequently, the legislation being ultra vires for such reasons cannot be accepted. Such challenges have been considered and repelled in the decisions referred to above.

28. For all the above reasons, these Petitions are liable to be dismissed and are, hereby, dismissed. Accordingly, there shall be no order for costs.

VALMIKI SA MENEZES, J. **M. S. SONAK, J.**

SANTOSH S MHAMAL Digitally signed by SANTOSH S MHAMAL Date: 2023.04.27 14:11:10 +05'30'