

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

APO 106 of 2018

IA NO: GA 2 of 2013 (Old No: GA 2741 of 2013)

STATE OF WEST BENGAL AND ORS.

VS.

PEPSICO INDIA HOLDINGS PRIVATE LIMITED

WITH

APO 107 OF 2018

IA NO: GA 2 OF 2013 (Old No: GA 2744 of 2013)

**JOINT COMMISSIONER, COMMERCIAL TAX, GROUP I, BARRACKPUR &
ORS.**

VS.

CENTURY EXTRUSIONS LTD & ANR.

WITH

APO 108 OF 2018

IA NO: GA 2 OF 2013 (Old No: GA 2750 OF 2013)

STATE OF WEST BENGAL & ANR.

VS.

SIEMENS LTD & ANR.

WITH

APO 113 OF 2018

IA NO: GA 2 OF 2013 (Old No: GA 2736 of 2013)

STATE OF WEST BENGAL & ANR.

VS.

IMPEX FERROTECH LTD & ANR.

WITH

APO 114 OF 2018

IA NO: GA 2 OF 2013 (Old No: GA 2734 of 2013)

STATE OF WEST BENGAL AND ANR

VS.

IMPEX METAL AND FERRO ALLOYS LTD AND ANR.

WITH

APO 116 OF 2018

IA NO: GA 2 OF 2013 (Old No: GA 2729 OF 2013)

STATE OF WEST BENGAL AND ORS

VS.

RANBAXY LABORATORIES LTD.

WITH

APO 117 OF 2018

IA NO: GA 2 OF 2013 (Old No: GA 2727 of 2013)

STATE OF WEST BENGAL & ORS.

VS.

DUTCH TECH TOOLS PVT. LTD.

WITH

APO 122 OF 2018

IA NO: GA 2 OF 2013 (Old No: GA 2713 OF 2013)

STATE OF WEST BENGAL AND ORS.

VS.

NOKIA INDIA PVT LTD.

WITH

APO 123 OF 2018

IA NO: GA 2 OF 2013 (Old No: GA 2719 of 2013)

GA 3 OF 2017 (Old No: GA 3163 of 2017)

STATE OF WEST BENGAL AND ORS.

VS.

MARICO LIMITED

WITH

APO 125 OF 2018

IA NO: GA 2 OF 2013 (Old No: GA 2720 of 2013)

STATE OF WEST BENGAL & ANR.

VS.

GLAXOSMITHKLINE CONSUMER HEALTHCARE LTD.

WITH

APO 126 OF 2018

IA NO: GA 2 OF 2013 (Old No: GA 2723 OF 2013)

STATE OF WEST BENGAL & ORS.

VS.

ROHIT FERROTECH LIMITED & Anr.

WITH

APO 128 OF 2018

IA NO: GA 1 OF 2013 (Old No: GA 2187 OF 2013)

STATE OF WEST BENGAL AND ORS.

VS.

GODREJ CONSUMER PRODUCTS LIMITED

For the State : Mr. Kishore Dutta, Sr. Adv.
Mr. Anirban Ray, Sr. Adv.
Mr. T.M. Siddiqui, Sr. Adv.
Mr. D. Ghosh, Adv.
Mr. S. Sanyal, Adv.

For the Respondent : Mr. Sujit Ghosh, Sr. Adv.
(Samsung) Ms. Mannat Waraich, Adv.
Mr. A. Behura, Adv
Mr. Pujon Chatterjee, Adv.
Mr. Sutosom Bhattacharyya, Adv.

For the Respondent : Mr. Boudhayan Bhattacharyaa, Adv.

No. 2 Ms. Stuti Bansai, Adv.

For Ranbaxy Laboratories: Mr. Suman Basu, Adv.
Pvt. Ltd.

For the Respondent : Mr. Kumarjit Was, Adv.
(item 7, 8, 10, 11, 13) Ms. Mou Saha, Adv.

For Pepsico India : Mr. Avra Mazumdar, Adv.
Holdings Pvt. Ltd. Ms. Alisha Das, Adv.
For Rohit Ferrotech Ltd. Mr. Jaybrata Mishra, Adv.
& Anr. Mr. Suman Bhowmik, Adv.
Mr. Samrat Das, Adv.
Ms. Elina Dey, Adv.
Ms. Megha Datta, Adv.

Hearing Concluded on : December 10, 2024
Judgement on : January 30, 2025

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

MAT 1398 of 2013

STATE OF WEST BENGAL & ORS.

-VS

SOVA ELECTRONICS CASTING LTD. & ANR.

WITH

MAT 1399 of 2013

STATE OF WEST BENGAL & ANR.

-VS

KUNJ BIHARI STEEL PVT. LTD. & ANR.

WITH

MAT 1400 of 2013

STATE OF WEST BENGAL & ORS.

-VS

VIKRAM INDIA LTD. & ANR.

WITH

MAT 1408 of 2013

STATE OF WEST BENGAL & ORS.

-VS

M/S. BLUE MOON COMMERCIAL PVT. LTD. & ORS.

WITH

COT 41 of 2017

STATE OF WEST BENGAL & ORS.

VS.

TATA STEEL LIMITED & ORS.

WITH

MAT 1385 of 2013

STATE OF WEST BENGAL AND ORS.

-VS

MITTAL TECHNOPACK PRIVATE LTD & ANR.

WITH

MAT 1386 of 2013

STATE OF WEST BENGAL & ORS.

-VS

TAMRA DHATU UDYOG PVT. LTD. & ANR.

WITH

MAT 1387 of 2013

STATE OF WEST BENGAL AND ANR.

-VS

SHAKAMBARI ISPAT & POWER LTD. & ANR.

WITH

MAT 1388 of 2013

STATE OF WEST BENGAL AND ANR.

-VS

SHAKAMBARI OVERSEAS TRADES PVT. LTD. & ANR.

WITH

MAT 1389 of 2013

STATE OF WEST BENGAL AND ANR.

-VS

GAGAN FERROTECH LTD. & ANR.

WITH

MAT 1390 of 2013

STATE OF WEST BENGAL AND ANR.

-VS

HINDALCO INDUSTRIES LTD. & ANR.
WITH
MAT 1391 of 2013
THE STATE OF WEST BENGAL AND ORS.

-VS
SUMO METALLIC PVT. LTD. & ANR.
WITH
W.P.T.T. 4 of 2023
THE STATE OF WEST BENGAL & ORS.

VS.
BENTEC INDIA LTD.
WITH
W.P.T.T. 6 of 2023
IA NO: CAN 1 of 2024
CAN 2 of 2024
CAN 6 of 2024
THE STATE OF WEST BENGAL & ORS.

VS.
SAMSUNG INDIA ELECTRONICS PRIVATE LIMITED
WITH
W.P.T.T. 2 of 2024
STATE OF WEST BENGAL & ORS.

VS.
HARIOM POLYPACKS LTD.
WITH
W.P.T.T. 3 of 2024
THE STATE OF WEST BENGAL & ORS.

VS.
GSA RETAIL LTD.
WITH
W.P.T.T. 4 of 2024
STATE OF WEST BENGAL & ORS.

VS.
KRISHNA ALEX PVT. LTD.
WITH

W.P.T.T. 5 of 2024
THE STATE OF WEST BENGAL & ORS.
VS.

BIRLA TYRES LTD.

WITH

W.P.T.T. 6 of 2024
THE STATE OF WEST BENGAL & ORS.
VS.

JVL AGRO INDUSTRIES LTD. & ANR.

WITH

W.P.T.T. 7 of 2024
THE STATE OF WEST BENGAL & ORS.
VS.

MARS FRAGRANCE PVT. LTD.

WITH

W.P.T.T. 8 of 2024
THE STATE OF WEST BENGAL & ORS.
VS.

OM PRAKASH AGARWAL.

WITH

W.P.T.T. 9 of 2024
THE STATE OF WEST BENGAL & ORS.
VS.

MODERN INDIA CONCAST LTD.

WITH

W.P.T.T. 10 of 2024
THE STATE OF WEST BENGAL & ORS.
VS.

MODERN INDIA CONCAST LTD.

WITH

W.P.T.T. 11 of 2024
THE STATE OF WEST BENGAL & ORS.
VS.

K.D. GUPTA & CO.

WITH

W.P.T.T. 12 of 2024
STATE OF WEST BENGAL & ANR.

VS.

KUNAL GARG

WITH

W.P.T.T. 13 of 2024
THE STATE OF WEST BENGAL & ORS.

VS.

K.D. GUPTA & CO.

WITH

W.P.T.T. 14 of 2024
THE STATE OF WEST BENGAL & ORS.

VS.

M/S. MAYA AUTOMOBILE.

WITH

W.P.T.T. 15 of 2024
THE STATE OF WEST BENGAL & ORS.

VS.

RITUM JAIN.

WITH

W.P.T.T. 16 of 2024
THE STATE OF WEST BENGAL & ORS.

VS.

JHILMIL COMMODITIES PVT. LTD.

WITH

W.P.T.T. 17 of 2024
THE STATE OF WEST BENGAL & ORS.

VS.

MODERN INDIA CONCAST LIMITED.

WITH

W.P.T.T. 18 of 2024
STATE OF WEST BENGAL & ANR.

VS.

DEOKI NANDAN AGARWAL.

WITH

W.P.T.T. 19 of 2024
THE STATE OF WEST BENGAL & ORS.
VS.
HIMADRI CHEMICALS & INDUSTRIES LTD. (HCIL)
WITH
W.P.T.T. 20 of 2024
THE STATE OF WEST BENGAL & ORS.
VS.
ASANSOL POLYFABS PVT. LTD.
WITH
W.P.T.T. 21 of 2024
THE STATE OF WEST BENGAL & ORS.
VS.
HIMADRI CHEMICALS & INDUSTRIES LTD. (HCIL)
WITH
W.P.T.T. 22 of 2024
THE STATE OF WEST BENGAL & ORS.
VS.
TERAI OVERSEAS PVT. LTD.
WITH
W.P.T.T. 23 of 2024
STATE OF WEST BENGAL & ORS.
VS.
SANJEEV KUMAR MALL.
WITH
W.P.T.T. 24 of 2024
THE STATE OF WEST BENGAL & ORS.
VS.
GANPATI CHHAJER.
WITH
W.P.T.T. 25 of 2024
THE STATE OF WEST BENGAL & ORS.
VS.
JVL AGRO INDUSTRIES LTD.
WITH

W.P.T.T. 26 of 2024
THE STATE OF WEST BENGAL & ORS.
VS.
K.D. GUPTA & CO.
WITH
W.P.T.T. 27 of 2024
THE STATE OF WEST BENGAL & ORS.
VS.
S.K. SELIM @ SELIM SEKH
WITH
W.P.T.T. 28 of 2024
STATE OF WEST BENGAL & ANR.
VS.
AJAY PRAKASH AGARWAL
WITH
W.P.T.T. 29 of 2024
THE STATE OF WEST BENGAL & ORS.
VS.
EXCLUSIVE LINES & ANR.
WITH
W.P.T.T. 30 of 2024
THE STATE OF WEST BENGAL & ORS.
VS.
ASANSOL POLYFABS PVT. LTD.
WITH
W.P.T.T. 31 of 2024
THE STATE OF WEST BENGAL & ORS.
VS.
DELSEY INDIA PVT. LTD.
WITH
W.P.T.T. 32 of 2024
THE STATE OF WEST BENGAL & ORS.
VS.
TERAI OVERSEAS PVT. LTD.
WITH

W.P.T.T. 33 of 2024
THE STATE OF WEST BENGAL & ORS.
VS.
KHOKAN MOTORS WORKS PVT. LTD.

For the Respondent : Mr. Avra Mazumdar, Adv.
 (in WPTT 6 of 2023) Ms. Alisha Das, Adv.
 For Biocon Ltd., Tata Mr. Suman Bhowmik, Adv.
 Play Ltd., Banomali Mr. Samrat Das, Adv.
 Trading, Vistare Ms. Elina Dey, Adv.
 Pringing, Strides Sasun
 Ltd., Shyam Enterprise,
 Churiwal Commercial
 Co., Churiwal Technopack
 Pvt. Ltd., Premchand
 Jute Industries Pvt. Ltd.

For the Respondent in : Ms. Sweta Mukherjee, Adv.
 WPTT 6 of 2023
 (Ramco Industries Ltd.)
 For the State : Mr. Kishore Dutta, Ld. A.G.
 Mr. Anirban Ray, Ld. G.P
 Mr. T.M. Siddiqui, Sr. Adv.
 Mr. Debasish Ghosh, Adv.
 Mr. Tanoy Chakraborty, Adv.
 Mr. Saptak Sanyal, Adv.

For the Respondent : Mr. Sujit Ghosh, Sr. Adv.
 (Samsung) in WPTT 6 of Ms. Mannat Waraich, Adv.
 2023 Mr. Ashray Behura, Adv
 Mr. Pujon Chatterjee, Adv.
 Mr. Sutosom Bhattacharyya, Adv.

Hearing Concluded on : December 10, 2024
 Judgement on : January 30, 2025

DEBANGSU BASAK, J.:-

1. We have heard appeals directed against the impugned judgement and order dated June 24, 2013 passed in a batch of writ petitions assailing the vires of the West Bengal Tax on Entry of Goods into Local Areas Act, 2012 as it stood prior to its amendment. We have also heard writ petitions directed against orders passed by

the Taxation Tribunal in respect of entry tax matters. We have heard these matters analogously as similar issues are involved. All these matters have been specially assigned to this bench.

2. Various assesseees had assailed the vires of the Act of 2012 prior to its amendment, by way of writ petitions. By the impugned judgement and order dated June 24, 2013, passed in such writ petitions, learned Single Judge had declared the Act of 2012 to be ultra vires the Constitution of India. Aggrieved by such decision of the learned Single Judge, State has preferred various appeals.

3. During the pendency of the appeals, by the West Bengal Finance Act, 2017 various provisions of the Entry Tax Act, 2012 had been amended with retrospective effect. Vires of the West Bengal Finance Act, 2017 had been challenged by assesseees before the Taxation Tribunal. Taxation Tribunal had set aside the amendments introduced to the Entry Tax Act, 2012 by the West Bengal Finance Act, 2017. State has assailed such decisions by way of the writ petitions.

4. Learned Advocate General appearing for the State has submitted that, the Act of 2012 was enacted exercising powers under Article 246 of the Constitution of India read with Entry 52 List II Schedule VII thereof. He has pointed out that, the Governor gave assent to the Act of 2012 on March 31, 2012.

5. Learned Advocate General has contended that, the Act of 2012 provided for levy and collection of taxes on the entry of goods into a local area in the State of West Bengal for consumption, use or sale thereof. He has pointed out that, the West Bengal Tax on Entry of Goods into Local Areas Rules were framed in exercise of powers under Section 22 of the Act of 2012.

6. Referring to the impugned judgement and order dated June 24, 2013 of the learned Single Judge, learned Advocate General has contended that, the learned Single Judge declared the Act of 2012 ultra vires relying upon the ratio of ***All India Reporter 1961 Supreme Court 232 (Atiabari Tea Company Ltd. Vs. State of Assam)***, ***All India Reporter 1962 Supreme Court 1406 (Auto Mobile Transport (Rajasthan) Ltd. Vs. State of Rajasthan)*** and ***2006 Volume 7 Supreme Court Cases 241 (Jindal Steel Ltd. vs. State of Haryana)***.

7. Learned Advocate General has contended that, learned Single Judge observed that, compensatory tax is imposed for a specific purpose or for few specific identifiable purposes. The Act of 2012 has violated Article 309 and 304 (a) of the Constitution of India as it was not compensatory. Moreover, State has failed to obtain Presidential sanction under Article 304(b) of the Constitution of India. Learned Single Judge has also observed that, where the assessee alleges

discrimination, it is for the assessee to establish the same and that hardship of an assessee is no ground to challenge the validity of a fiscal statute.

8. Learned Advocate General has submitted that, learned Single Judge was pleased to stay the operation of the impugned judgement and order dated June 24, 2013 for a period of 6 weeks. Appeals had been preferred against the impugned judgement and order within time. The Appeal Court had passed an interim order on July 31, 2013 by which the Appeal Court permitted assessment proceedings to continue under the Act of 2012. Appeal Court however had directed that, there would be no refund of the entry tax already collected.

9. Learned Advocate General has contended that, during the pendency of the appeals, 101st Amendment of the Constitution occurred on September 16, 2016. Articles 246A, 269A and 279A had been introduced into the Constitution for introduction of Goods and Services Tax by subsuming all indirect taxes. Section 17 of the 101st Amendment Act, had omitted Entry 52 from List II, VII Schedule of the Constitution of India. Section 19 of the 101st Amendment had provided for transitional measures by empowering the competent legislatures or authorities to frame laws consistent with the

provisions of the 101st Amendment within a period of 1 year from the date of commencement of the 101st Amendment.

10. Learned Advocate General has pointed out that, conflicting views on entry tax laws promulgated by various States received the consideration of a 9 Judges Bench of the Hon'ble Supreme Court. He has referred to **2017 Volume 12 Supreme Court Cases 1 (Jindal Stainless Ltd vs. State of Haryana)** in this regard. He has referred to the issues considered by the Constitution Bench in **Jindal Stainless Ltd (supra)**.

11. Learned Advocate General has contended that, **Jindal Stainless Ltd (supra)** noted that entry tax legislations are framed in exercise of powers under Article 304 (a) of the Constitution of India. State had retained its sovereign power to levy tax on entry of goods in a local area. Entry tax must be non-discriminatory between imported goods and goods manufactured in the State. Discrimination with valid reasons is permissible. Discrimination if any is to be considered by the appropriate Bench. Article 304 (b) of the Constitution of India does not deal with tax as a restriction to free trade, commerce and intercourse under Article 301 of the Constitution of India. Reasonable restrictions under Article 304(b) of the Constitution does not comprehend levy of tax as a restriction to free trade, commerce and intercourse. Article 304(a) and 304(b) of

the Constitution of India are disjunctive. Non-discriminatory entry tax is not a restriction to free trade, commerce and intercourse under Article 301 of the Constitution of India. High rate of tax is not a restriction to free trade, commerce and intercourse. Dealers have not disputed the need for taxation. The judgements in ***Atiabari (supra)***, ***Automobile Transport (supra)*** and ***Jindal Steel Ltd. (supra)*** and all other judgements that followed those pronouncements to the extent of such reliance were overruled.

12. Learned Advocate General has submitted that, Entry Tax of the State had also fallen for consideration in ***Jindal Stainless Ltd (supra)***. He has pointed out the various paragraphs of ***Jindal Stainless Ltd (supra)*** where the State Act was referred to, in support of such contention. He has contended that, the only requirement is that Entry Tax must be non-discriminatory in the sense that, State must not discriminate between the goods imported from other States and the goods produced in the State. Moreover, according to him, ***Jindal Stainless Ltd (supra)*** has recognised that a discriminatory Entry Tax may be levied but on valid grounds. He has pointed out that, individual case of hostile discrimination, if any, is to be determined by the regular benches hearing the matters. According to him, learned Single Judge in the impugned judgement and order has also noted that, if discrimination is alleged, such a

case has to be made out by the assesseees. No specific case of discrimination has been made out by any of the assesseees.

13. Referring to **2019 volume 17 Supreme Court Cases 815 (State of Uttar Pradesh versus Indian Oil Corporation)** learned Advocate General has contended that, post **Jindal Stainless Ltd (supra)** the appropriate course of action in respect of assesseees raising grievances of imposition of Entry Tax would be to permit such assesseees to file fresh petitions raising such issues. He has also referred to **2018 volume 16 Supreme Court Cases 732 (Jay Prakash Associates Ltd versus State of Madhya Pradesh and others)** in this regard.

14. Referring to the writ petitions directed against the orders of the learned tribunal, learned Advocate general has contended that the learned tribunal erred in fact and law. He has pointed out that the Entry Tax Act was promulgated on April 1, 2012. Learned Single Judge had struck down the Entry Tax Act on June 24, 2013 but granted stay of the judgement for 6 weeks. On appeal, directed against the judgement and order of the learned Single Judge, the Appeal Court had permitted assessment to be carried on, by the order dated July 31, 2013. **Jindal Stainless Ltd (supra)** had been decided on November 11, 2016. Irrespective of whether the order dated July 31, 2013 of the Appeal Court allowed the Entry Tax Act to

operate or not, the impugned judgement and order of the learned Single Judge stood overruled on November 11, 2016. ***Jindal Stainless Ltd (supra)*** had revived the Entry Tax Act, assuming that it was inoperative on the expiry of the stay of 6 weeks from June 24, 2013. Thus, according to the learned Advocate General, there was no legal impediment for the state legislature to enact the West Bengal Finance Act, 2017 on March 6, 2017.

15. Learned Advocate General has relied upon Section 19 of the 101st Amendment which mandated every State to amend their respective laws relating to goods or services or both in tandem with the provisions of the Constitution of India within one year of its commencement. The 101st amendment had been published in the Gazette of India on September 18, 2016 after receiving the assent of the President of India. The West Bengal Finance Act, 2017 had been promulgated on March 6, 2017 to amend inter alia the Entry Tax Act following the mandate of Section 19 of 101st Amendment. He has pointed out that, Supreme Court in ***2024 (121) GSTR 10 (SC) (State of Telengana and Others vs. Tirumala Construction)*** held that section 19 of the 101st Amendment did not prescribe any limitation for the legislation but circumscribed a time limit.

16. Learned Advocate General has contended that, the State was within its powers to amend the Entry Tax Act, 2012 by the West

Bengal Finance Act, 2017. Referring to **1962 SCC Online SC 61 (Ram Krishna Rama Nath versus Janpad Sabha)** learned Advocate General has contended that, a power to amend or repeal is coextensive with the power to make a law.

17. A number of assesseees have made submissions in course of hearing of the appeals and the writ petitions.

18. Learned senior advocate appearing for Samsung India Electronics Private Limited (hereinafter referred to as Samsung) has submitted that, essentially, there are 4 areas of concern for the Court in the present appeals and the writ petitions. First amongst the areas of concern is whether the decision of **Jindal Stainless Ltd (supra)** has struck down the impugned judgement and order of the learned Single Judge dated June 24, 2013 or not. Secondly, did the impugned judgement and order of the learned Single Judge dated June 24, 2013 obliterate the Act of 2012 as it stood prior to its amendment or was such Act of 2012 in force in view of the limited stay order on not. Thirdly, was there a source of power vested with the State of West Bengal at the time when the amendment by the West Bengal Finance Act, 2017 had been affected or not. Fourthly assuming that the answer to the 3rd area of concern was in the negative, then, whether the amended Act of 2012 was discriminatory or not.

19. Learned senior advocate appearing for Samsung has submitted that, notwithstanding ***Jindal Stainless Ltd (supra)*** having held that the compensatory tax theory was not compatible to the constitutional scheme of Part XIII of the Constitution and notwithstanding the learned Single Judge in the impugned judgement and order dated June 24, 2013 holding the Act of 2012 are ultra vires on the basis of compensatory tax theory, the impugned judgement and order is required to be formally set aside by a competent Court since, neither the Act of 2012 nor the impugned judgement and order dated June 24, 2013 of the learned Single Judge were subject matter of adjudication before the Supreme Court in ***Jindal Stainless Ltd (supra)***.

20. Learned senior advocate appearing for Samsung has contended that, passing reference to the Act of 2012 of the State was made in ***Jindal Stainless Ltd (supra)*** and that, although, State of West Bengal was represented in such proceedings and arguments advanced highlighting certain errors in the impugned judgement and order dated June 24, 2013, nonetheless, the impugned judgement and order of the learned Single Judge dated June 24, 2013 is required to be set aside by a competent Court.

21. Learned senior advocate appearing for Samsung has contended that, ***Jindal Stainless Ltd (supra)*** cannot be construed

to have overruled the impugned judgement and order of the learned Single Judge dated June 24, 2013. He has pointed out that the transfer petition bearing No. 291/2017 seeking transfer of intra-Court appeals against the impugned judgement and order of the learned Single Judge dated June 24, 2013 was filed before the Supreme Court by the State. However, the same came to be dismissed by the Supreme Court by its order dated March 21, 2017.

22. Learned senior advocate appearing for Samsung has contended that, till such time, the Division Bench in the appeal issues a formal judicial order setting aside the impugned judgement and order of the learned Single Judge dated June 24, 2013, the finding by the learned Single Judge in the impugned judgement and order to the effect that the Act of 2013 is ultra-vires Article 304 (b) of the Constitution continues to remain in operation.

23. In support of such contentions, learned senior advocate appearing for Samsung has relied upon **1962 SCC Online SC 8 (Smt. Ujjam Bai versus State of Uttar Pradesh), 1996 Volume 1 Supreme Court Cases 435 (State of Kerala vs. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil and Others)** and **1997 Volume 3 Supreme Court Cases 443 (Tayabbhai M. Bagasarwalla and Another vs. Hind Rubber Industries PVT. Ltd. and Others.)**.

24. Learned senior advocate appearing for Samsung has submitted that, discriminatory aspect of any Entry Tax Act is to be considered on an individual assessee bringing on record adequate material in that regard. In support of such contention, he has relied upon **2021 Volume 11 Supreme Court Cases 776 (Bharti Airtel Limited vs. Assessing Authority, Orissa Entry Tax and Another), 2019 Volume 17 Supreme Court Cases 815 (State of Uttar Pradesh and Others vs. Indian Oil Corporation Limited and Others)** and **2017 SCC Online SC 2197 (State of Andhra Pradesh and Others vs. Sree Rayalaseema Alkalies and A. Che. And Others).**

25. Learned senior advocate appearing for Samsung has contended that, there are various provisions in the Act of 2012 prior to its amendment, which are discriminatory in nature. He has referred to Section 4 (1), (4) (b) (c), and 5 of the Act of 2012 in this regard. He has contended that, the unamended Act of 2012 allowed deductions from the turnover of imports of goods which were purchased in the same form against a tax invoice under the West Bengal Value Added Tax Act, 2003 or the West Bengal Sales Tax Act, 1994 by a dealer registered under such Acts and further allowed deductions from the turnover of imports of such goods which had

been from within the State of West Bengal from another place of business of such dealer, respectively.

26. Learned senior advocate appearing for Samsung has contended that, to overcome the discriminative burden of tax on imported goods created by the operation of the unamended provisions of clauses (b) and (c) of Section 4 (5) of the Act of 2012 State of West Bengal has enacted West Bengal Finance Act, 2017 by which, amendments to the Act of 2012 were introduced. He has pointed out that the amendments effected were given retrospective effect.

27. Learned senior advocate appearing for Samsung has contended that the amendments effectuated to the Act of 2012 by the West Bengal Finance Act, 2017 are not legally valid. He has pointed out that, the initial stay granted to the impugned judgement and order dated June 24, 2013 was for a period of 6 weeks from the date of such order that is August 18, 2013. Division Bench had passed an order dated July 31, 2013 while hearing the intra-Court appeal directed against the impugned judgement and order of the learned Single Judge dated June 24, 2013. Division Bench had issued limited directions with regard to the assessment proceedings and the refund of entry tax already collected. According to him, Division Bench did not stay the operation of the impugned

judgement and order and consequently, the unamended Act of 2012 did not revive subsequent to August 8, 2013.

28. Learned senior advocate appearing for Samsung has contended that, once a statute is declared as unconstitutional it is as though, such statute was never passed. In support of such contention, he has relied upon ***All India Reporter 1959 Supreme Court 648 (Deep Chand and Ors. Vs. State of Uttar Pradesh and Others)*** and ***1963 SCC Online Ker 36 (Lakshmi & Others vs. Narayana Iyer & Others)***.

29. Learned senior advocate appearing for Samsung has contended that, the learned Single Judge having declared the entirety of the Act of 2012 to be ultra vires and the Division Bench not having stayed such judgement and order, no formal amendment could have been legally carried out as purportedly effectuated by the West Bengal Finance Act, 2017. He has contended that, since the amendment is invalid, the discriminative burden of entry tax continues to remain.

30. Learned senior advocate appearing for Samsung has contended that, the transitional provision of section 19 of the 101st Constitutional Amendment Act does not vest the state legislature with the requisite legislative powers to validate the amendment made to the Act of 2012. He has pointed out that the 101st Constitutional

Amendment Act, 2016 was promulgated on September 8, 2016 with effect from September 16, 2016. He has referred to section 19 thereof. He has pointed out that Entry 52 of List II was omitted with effect from September 16, 2016. State of West Bengal had promulgated the West Bengal Finance Act, 2017 on March 6, 2017 ostensibly in exercise of legislative powers conferred under section 19 of the 101st Constitutional Amendment Act of 2016.

31. Relying upon **2023 SCC Online SC 1376 (State of Telangana and Others vs. Tirumala Constructions)** learned senior advocate appearing for Samsung has contended that, scope of Section 19 of the 101st Constitutional Amendment Act 2016 was considered therein. He has contended that, unforeseen or other eventualities ought to have arisen in the administration of the existing tax laws as a direct consequence of the changes introduced under the 101st Constitutional Amendment Act for the promulgation of the goods and services tax laws. According to him, there was no unforeseen or other eventualities which had arisen and which enabled the State of West Bengal to invoke the provisions of section 19 of the 101st Constitutional Amendment Act, 2016.

32. Learned advocate appearing for Emami Agrotech Ltd has submitted that, retrospective amendments made to section 4 (5) of the West Bengal Tax on Entry of Goods Act, 2012 with effect from

April 1, 2012 by leaving tax on the intrastate movement of goods for the first time, in the absence of any supervening public interest, is arbitrary and unreasonable. He has contended that, such amendments must be struck down. He has also contended that, when the taxes imposed retrospectively by any legislation by retrospectively withdrawing the relief unequivocally conferred by a valid statutory provision, the amendments in the absence of any larger public interest, have to be held to be arbitrary and unreasonable. He has relied upon **2016 Volume 15 Supreme Court Cases 125 (Jayam And Company Vs. Assistant Commissioner and Another)** and **1975 SCC Online Cal 274 (Bengal Paper Mill Co. Ltd. and Another Vs. Commercial Tax Officer, Calcutta and Others)** in this regard.

33. Learned advocate appearing for Emami Agrotech Ltd has submitted that, validation acts can only be passed to cure defects are lacuna which are in the nature of small repairs and not to carry out substantial amendments which has the effect of living taxes and transactions for the first time which was never the intent of the legislature when the law was first enacted. In support of such contention, he has relied upon **1973 Volume 1 Supreme Court Cases 75 (M/s. Krishnamurthi and Co. Etc. Vs. State of Madras and Another)**, **2004 Volume 5 Supreme Court Cases 783 (Tata**

Motors Ltd. Vs. State of Maharashtra and Others)* and **1985 Volume 2 Supreme Court Cases 197 (Lohia Machines Ltd. and Another Vs. Union of India and Others).*

34. Learned advocate appearing for Emami Agrotech Ltd has contended that, the amendments made to the Entry Tax Act, 2012 by the West Bengal Finance Act, 2017 were never meant to be implemented and brought about to nullify the judgement of the learned Single Judge without curing the defects in substance.

35. Learned advocate appearing for Godrej Consumer Products Ltd has contended that, his client challenged the constitutionality of the West Bengal Tax on Entry of Goods into Local Areas Act, 2012 by way of a writ petition being WP No. 128 of 2018. Such a writ petition had been allowed by the impugned judgement and order of the learned Single Judge. He has contended that, the impugned judgement and order of the learned Single Judge should not be set aside, as the provisions of the Act of 2012 under challenge in the writ petition are unconstitutional and discriminatory.

36. Learned Advocate appearing for Tata Play Limited and Biocon Ltd has submitted that, the impugned order of the learned Single Judge stands impliedly overruled by ***Jindal Stainless Ltd (supra)*** and **2021 Volume 11 Supreme Court Cases 705 (State of Kerala Vs. Father William Fernandez and others).** However, he has

contended that, the portion of the impugned judgement and order of the learned Single Judge to the extent where it holds that levy of taxes is discriminatory, it is in consonance with the ratio laid down in ***Jindal Stainless Ltd (supra)***. He has contended that, the Entry Tax Act, 2012 even without its amendments does not qualify the test laid down in ***Jindal Stainless Ltd (supra)***.

37. Learned advocate appearing for Gloster Ltd and 6 more assesses has submitted that, the statutory provisions such as section 4 (5) (b) and (c) are discriminatory in view of the ratio laid down in ***Jindal Stainless Ltd (supra)***. He has relied upon ***A T B Mehtab Majid (supra)***, ***Shree Mahavir Oil Mills (supra)***, ***West Bengal Hosiery Association (supra)***, ***Anand commercial agencies (supra)*** and ***Hindustan National Glass and Industries Ltd (supra)*** in support of his contentions.

38. Learned advocate appearing for Rohit Ferro Tech Ltd has submitted that, his client underwent a corporate insolvency resolution process under the provisions of the Insolvency and Bankruptcy Code, 2016. He has contended that, all liabilities of the corporate entity on account of successful resolution, stand extinguished/abated. He has contended that, his client has no liability for the period prior to the order dated April 7, 2022 passed by the National Company Law Tribunal.

39. Learned advocate appearing for Ruchi Soya Industries Ltd and 2 other assessee has contended that, the impugned judgement and order of the learned Single Judge stands overruled in view of the decision of the Hon'ble Supreme Court in ***Jindal Stainless Ltd. (supra)***. Nonetheless, he has contended that, the Division Bench before whom the appeals are pending, has to decide on the legality and validity of the impugned judgement and order of the learned Single Judge. Till such time a decision is rendered by the Division Bench, the judgement of the learned Single Judge does not lose its force as a final judgement. In this regard, he has relied upon ***Father William Fernandez and Others (supra)***.

40. Learned advocate appearing for Ruchi Soya Industries Ltd has contended that, the contention of the State that by virtue of the stay granted by the impugned judgement and order, the Entry Tax Act, 2012 was in force on the date of its amendment, is fallacious. He has pointed out that, Division Bench passed an order providing for an interim arrangement till the stay petition filed by the state is heard and disposed of. Stay petition has not been disposed of by the Division Bench. In any event, he has contended that, the impugned judgement and order continues to remain in force. In support of such contention, he has relied upon ***1992 volume 3 Supreme Court Cases 1 (Shree Chamundi Mopeds Ltd versus Church of***

South India Trust Association)* and *2007 volume 3 Calcutta High Court Notes 178 (Pijush Kanti Chowdhury versus State of West Bengal).

41. Learned advocate appearing for Ruchi Soya Industries Ltd has contended that, the amending Act cannot have retrospective effect. He has relied upon ***2016 Volume 15 Supreme Court Cases 125 (Jayam And Company Vs. Assistant Commissioner and Another)***. He has contended that, test laid down by the Supreme Court for giving retrospective effect have not been satisfied. He has pointed out that, Entry Tax Act came into effect from April 1, 2012 and that, the amendment introduced in March 2017 has created a new liability. According to him, benefit of nontaxability for intra-local area entries was enjoyed for the period from April 1, 2012 to March 2017 which is sought to be taken away by the amendment.

42. Learned advocate appearing for Ruchi Soya Industries Ltd has contended that, the Entry Tax Act, 2012 is not compliant with Article 304 (a). He has contended that, provisions of the Act discriminate between imported goods and goods manufactured and produced in the State of West Bengal. The former is subject to tax whereas the latter is not.

43. The following issues have arisen for consideration in the present matters:

- i. What is the effect of the ratio of ***Jindal Stainless Ltd. (supra)*** on the impugned judgment and order of the learned Single Judge dated June 24, 2013?
 - ii. Was the Entry Tax Act, 2012 in force at the time of its amendment on March 6, 2017 in view of the impugned judgment and order dated June 24, 2013 of the learned Single Judge?
 - iii. Are the amendments introduced to the Entry Tax Act of 2012 by the West Bengal Finance Act, 2017 valid?
 - iv. Are the amendments introduced by the West Bengal Finance Act, 2017 to the Entry Tax Act, 2012 discriminatory?
 - v. Are the impugned orders of the learned Tribunal correct?
 - vi. To what relief or reliefs are the parties entitled to?
- 44.** The specially assigned matters before us can be conveniently classified into two categories, with the first category being the appeals directed against the impugned judgment and order dated June 24, 2013, passed by the learned Single Judge and the second category being writ petitions directed against orders of the Tribunal deciding on the vires of the amendments to the Entry Tax Act, 2012, as introduced by the West Bengal Finance Act, 2017.

45. State of West Bengal had enacted the West Bengal Tax on Entry of Goods into Local Areas Act, 2012. Several writ petitions had been filed challenging the vires of the Act of 2012. By the impugned judgement and order dated June 24, 2013, learned Single Judge had held the Act of 2012 to be ultra vires Article 304 (b) of the Constitution of India. Learned Single Judge had also granted stay of the operative portion of the impugned judgement and order for a period of 6 weeks from the date of such judgement and order.

46. State of West Bengal had preferred several appeals against the impugned judgement and order dated June 24, 2013 passed by the learned Single Judge. In such appeals, the Division Bench had passed an order dated July 31, 2013. By such interim order, the Division Bench had directed the assessments under the Act of 2012 would continue. However, Division Bench had restrained refund of tax already collected.

47. Promulgation of the Constitution 101st Amendment Act, 2016 had occurred on September 8, 2016. The Constitution 101st Amendment Act, 2016 had come into force on September 16, 2016.

48. During the pendency of the appeals and the stay petitions of the State, Supreme Court had pronounced ***Jindal Stainless Ltd (supra)*** on November 11, 2016 holding that, compensatory tax theory is not compatible with the constitutional scheme delineated

by Part III of the Constitution. It has however left the issue of levies of Entry Tax satisfying the test of whether the tax burden of goods imported from other States and goods produced within the State, to be determined by the regular bench hearing such matters.

49. State had applied before the Supreme Court in TP (C) No. 291 of 2017 for transfer of the pending matters before the High Court to the Supreme Court on February 23, 2017. By an order dated March 21, 2017 Supreme Court had dismissed TP (C) 291 of 2017 and directed the High Court to proceed with the matter in accordance with the law and in light of the judgement passed in ***Jindal Stainless Ltd (supra)***.

50. State of West Bengal had promulgated the West Bengal Finance Act, 2017 on March 6, 2017. Relevant provisions of the West Bengal Finance Act 2017, for the purpose of the present matters, are sections 5 and 6.

51. By section 5 of the West Bengal Finance Act, 2017, sections 4 (5) (b) and (c) of the Entry Tax Act, 2012 have been amended. By the amendments introduced, retrospective effect from April 1, 2012 have been given to the meaning of the expression “taxable turnover of imports” as appearing in section 4 (1) of the Act of 2012.

52. It is in this factual matrix that we are considering the issues that have fallen for decision in these batch of matters.

53. In holding that the Entry Tax Act, 2012 was ultra vires the Constitution of India, learned Single Judge, in the impugned judgement and order dated June 24, 2013, has referred to and relied upon the ratio laid down in **Atiabari (supra)**, **Automobile Transport (supra)** and **Jindal Steel Ltd (supra)**.

54. The issues that **Jindal Stainless Ltd (supra)** have answered are framed in paragraph 11 thereof which are as follows: –

“11. At the hearing before us the learned counsel for the parties agreed after a day long exploratory exercise that the questions that fall for determination by this Court could be reframed as under:

11.1. (i) Can the levy of a non-discriminatory tax per se constitute infraction of Article 301 of the Constitution of India?

11.2. (ii) If answer to Question (i) is in the affirmative, can a tax which is compensatory in nature also fall foul of Article 301 of the Constitution of India?

11.3. (iii) What are the tests for determining whether the tax or levy is compensatory in nature?

11.4. (iv) 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 both Articles 304(a) and 304(b) of the Constitution for determining their validity?”

55. **Jindal Stainless Ltd (supra)** has answered the reference in paragraph 1159 as follows: –

“1159. By majority the Court answers the reference in the following terms:

1159.1. 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”.

1159.2. 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 Article 304(a) cannot be saved even if the procedure under Article 304(b) or the proviso thereunder is satisfied.

1159.5. The Compensatory Tax Theory evolved in Automobile Transport case [Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan, AIR 1962 SC 1406 : (1963) 1 SCR 491] and subsequently modified in Jindal case [Jindal Stainless Ltd. (2) v. State of Haryana, (2006) 7 SCC 241] has no juristic basis and is therefore rejected.

1159.6. The decisions of this Court in Atiabari [Atiabari Tea Co. Ltd. v. State of Assam, AIR 1961 SC 232 : (1961) 1 SCR 809], Automobile Transport [Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan, AIR 1962 SC 1406 : (1963) 1 SCR 491] and Jindal [Jindal Stainless Ltd. (2) v. State of Haryana, (2006) 7 SCC 241] cases and all other judgments that follow these pronouncements are to the extent of such reliance overruled.

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.”

56. For the decision on the first issue raised in this batch of matters, paragraph 1159.6 of ***Jindal Stainless Ltd (supra)*** is of utmost importance where it has been held that, the decisions of the Supreme Court in ***Atiabari (supra)***, ***Automobile Transport (supra)*** and ***Jindal Steel Ltd (supra)*** and all other judgements that follow such pronouncements are to the extent of such reliance, overruled.

57. Learned Single Judge in the impugned judgement and order dated June 24, 2013 has relied upon ***Atiabari (supra)***, ***Automobile Transport (supra)*** and ***Jindal Steel Ltd (supra)*** to hold that the Entry Tax Act, 2012 is ultra vires the Constitution of India.

58. Learned Single Judge having relied upon ***Atiabari (supra)***, ***Automobile Transport (supra)*** and ***Jindal Steel Ltd (supra)*** in arriving at the constitutional validity of the Entry Tax Act, 2012 and subsequently, ***Jindal Stainless Ltd (supra)*** having overruled ***Atiabari (supra)***, ***Automobile Transport (supra)*** and ***Jindal Steel Ltd (supra)*** and all other judgements that follow such pronouncements, the impugned judgement and order dated June 24, 2013 does not survive the decision rendered in ***Jindal Stainless Ltd (supra)***.

59. Significantly, attention of the Constitutional Bench in ***Jindal Stainless Ltd (supra)*** had been drawn to the provisions of the Entry

Tax Act, 2012 although, the same was not directly in issue in such reference.

60. The first issue noted in these batch of matters necessarily has raised a question whether, by virtue of the decision in ***Jindal Stainless Ltd (supra)*** the impugned judgement and order of the learned Single Judge stood set-aside or not.

61. Although, ***Jindal Stainless Ltd (supra)*** has held in paragraph 1159.6 thereof that, all judgements that follow ***Atiabari (supra)***, ***Automobile Transport (supra)*** and ***Jindal Steel Ltd (supra)*** stands overruled, nonetheless, the appeals directed against the impugned judgement and order of the learned Single Judge remained pending without a formal order of disposal of the same. The appeals therefore are required to be formally disposed of by us as an Appeal Court. We have to return a finding as to whether, the impugned judgement and order of the learned Single Judge following the overruled decisions of the Supreme Court rendered in ***Atiabari (supra)***, ***Automobile Transport (supra)*** and ***Jindal Steel Ltd (supra)***, in deciding the constitutional validity of the Entry Tax Act, 2012 should be sustained or not.

62. We have already returned a finding that, learned Single Judge, in the impugned judgement and order dated June 24, 2013 proceeded on the basis of the ratio laid down in ***Atiabari (supra)***,

Automobile Transport (supra) and ***Jindal Steel Ltd (supra)*** to decide on the constitutional validity of the Entry Tax Act, 2012. Consequently, we hold that, the impugned judgement and order dated June 24, 2013 cannot survive, subsequent to the pronouncement of ***Jindal Stainless Ltd (supra)***.

63. In view of the discussions above, respectfully, we answer the first issue by setting aside the impugned judgement and order dated June 24, 2013 passed by the learned Single Judge.

64. While delivering the impugned judgement and order dated June 24, 2013, learned Single Judge had granted stay of the same for a period of 6 weeks. Within the period of 6 weeks of stay, the Appeal Court on appeals directed against the impugned judgement and order dated June 24, 2013, had passed an interim order dated July 31, 2013 by which, the Division Bench directed the assessments under the Act of 2012 to continue. However, Division Bench had restrained refund of the tax already collected.

65. Having answered the first issue we take up the second issue to the fifth issues together as they are interconnected as also for the sake of convenience.

66. The interim order dated July 31, 2012 passed by the Division Bench is still continuing. The appeals are yet to be disposed of. In fact, the appeals would be disposed of, if we do so, by this judgement

and order. As on date therefore, the interim order dated July 31, 2012 is still continuing. At least no material was placed before us to suggest otherwise in course of the long hearing of these matters.

67. The Division Bench while passing the interim order on July 31, 2012 obviously considered the Entry Tax Act, 2012 to be valid as the validity of the Entry Tax Act, 2012 was in issue in the appeals. It did not pronounce the Entry Tax Act, 2012 to be invalid at any point of time prior to the date of the amendments introduced to the Entry Tax Act, 2012 on March 6, 2017. Issue of validity of the Entry Tax Act, 2012 was still open at the point of time of the amendments being enacted.

68. Interim order passed by the Appeal Court on July 31, 2013 had permitted the assessment under the Entry Tax Act, 2012 to be continued. It had also restrained refund of the tax already collected. Appeal Court did not vacate the stay granted by the learned Single Judge in the impugned judgement and order. Appeal Court had regulated the implementation of the Entry Tax Act, 2012 in the manner noted in its order dated July 31, 2013. Therefore, it cannot be said that, the Appeal Court had decided on the vires of the Entry Tax Act, 2012 finally on either side of the divide. In fact, Appeal Court had made the interim arrangements as done by the interim order dated July 31, 2013 on the basis that the Entry Tax Act, 2012

subsists. It had therefore allowed the assessment under the Entry Tax Act, 2012 to continue with no refund being made.

69. *Shree Chamundi Mopeds Ltd. (supra)* has considered the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 and held that, when the High Court passes an interim order staying the operation of the order of the Appellate Authority exercising powers under the provisions of the Act of 1985, the same does not revive the appeal which had been dismissed as no such proceedings was pending before the Appellate Authority.

70. *Pijush Kanti Chowdhury (supra)* has held that, passing of an interim order staying the operation of a judgement, does not mean that, the existence of the judgement is wiped out.

71. Applying the principles of ***Shree Chamundi Mopeds Ltd (supra)*** and ***Pijush Kanti Chowdhury (supra)*** in the facts of the present case, the interim order passed by the appeal Court dated July 31, 2013 did not wipe out the impugned judgement and order of the learned Single Judge dated June 24, 2013, nonetheless, at the same time, the interim order had the effect of keeping the Entry Tax Act, 2017 in operation, in the manner as modulated by the appeal Court.

72. Authorities that have been cited at the bar namely, ***Ujjam Bai (supra)***, ***M.K. Kunhikannan Nambiar Manjeri Manikoth,***

Naduvil and Others (supra), Tayabbhai M. Bagasarwalla Another (supra), Deep Chand (supra) and Lakshmi & Others (supra) do not assist the assesseees since, final pronouncement on the legality, validity and vires of the Entry Tax Act, 2012 was yet to be pronounced finally by the Appeal Court where, the issue of vires was still open. It is trite law that, appeal is a continuation of the original proceedings. In the original proceedings, the vires of the Entry Tax Act, 2012 were under challenge. The judgement and order passed in such proceedings were under challenge in the appeal with the Appeal Court passing an interim order on the basis that, the Entry Tax Act, 2012 was valid and without finally pronouncing on the vires thereof. Appeal Court could not have passed the interim order dated July 31, 2013 in the manner and form as it did, if it considered the Entry Tax Act, 2012 to have been obliterated subsequent to the filing of the appeals and as on the date of framing of its order.

73. In view of the discussions above, we are not in a position to arrive at a finding that, the Entry Tax Act, 2012 came to be declared ultra vires on the expiry of 6 weeks from the date of the impugned judgement and order of the learned Single Judge being June 24, 2013 and consequently stood obliterated. Consequently, we are also unable to hold that, the amendments sought to be introduced by the

West Bengal Finance Act, 2017 to the Entry Tax Act, 2012 are invalid simply on the basis that, the Entry Tax Act, 2012 stood obliterated on the expiry of 6 weeks from the date of the impugned judgement and order.

74. State legislature by the West Bengal Finance Act, 2017 had amended the Indian Stamp Act, 1899, in its application to the State of West Bengal, The West Bengal Taxation Tribunal Act, 1987, the West Bengal Sales Tax (Settlement of Dispute) Act, 1999, the West Bengal Tax on Entry of Goods into Local Areas Act, 2012 and the West Bengal Value-Added Tax Act, 2003 in order to provide for validation in respect of levy, assessment and collection of tax, et cetera under the Entry Tax Act, 2012 as has been stated in the objects clause of the West Bengal Finance Act, 2017.

75. The bone of contention between the parties is sections 5 and 6 of the West Bengal Finance Act, 2017. By such section 5 of the West Bengal Finance Act, 2017 sections 4 (5) (b) and (c) of the Entry Tax Act, 2012 were amended. Amendments were given retrospective effect from April 1, 2012 that is the date when the Entry Tax Act, 2017 came into effect.

76. Prior to the amendment of section 4 (5) (b) and (c) of the Entry Tax Act, 2012 the same were as follows: –

“4.
(5).....

(b) turnover of imports relating to entry of specified goods into a local area, have been purchased in the same form against a tax invoice, or invoice, or bill issued under the West Bengal Value Added Tax Act, 2003, or the West Bengal Sales Tax Act, 1994, by a dealer registered under the West Bengal Value Added Tax Act, 2003, or the West Bengal Sales Tax Act, 1994, as the case may be;

(c) turnover of imports relating to entry of specified goods into a local area where it is proved to the satisfaction of the Commissioner that such goods have been transported from within West Bengal from another place of business of such dealer or importer other than a dealer;”

77. Section 5 of the West Bengal Finance Act, 2017 is as follows: –

“5. In the West Bengal Tax on Entry of Goods into Local Areas Act, 2012,-

in section 4, in sub-section (5), for clause (b) and clause (c), the following clause shall be deemed to have been substituted with effect from 1st day of April, 2012:-

“(b) turnover of imports of a dealer whose such turnover does not exceed rupees five lakh during a return period, subject to a maximum of total deduction of rupees twenty lakh in a year;””

78. Section 6 of the West Bengal Finance Act, 2017 is as follows:

“6. Notwithstanding anything contained in any judgment, decree or order of any court or other authority, no levy, assessment including provisional assessment, deemed assessment or summary assessment, reassessment or collection of any tax, interest, late fee or penalty made or purporting to have been made under the provisions of the West Bengal Tax on Entry of goods into Local Areas Act, 2012 (hereinafter referred to as the said Act) before the date of coming into force of this provision, shall be deemed to be invalid or ever to have been invalid on the ground only that such levy, assessment including provisional

assessment, deemed assessment or summary assessment, reassessment or collection was not in accordance with law and such tax, interest, late fee or penalty levied, assessed, reassessed or collected or imposed or purporting to have been levied, assessed, reassessed or collected or imposed shall, for all purposes, be deemed to be and always to have been validly levied, assessed, reassessed or collected or imposed as if such levy, assessment including provisional assessment, deemed assessment or summary assessment, reassessment or collection or action or thing, had been made, taken or done under the said Act as amended by section 5 of the principal Act, and accordingly

—

- (i) all acts, proceedings or things done or taken by the State Government or by any officer of the State Government or by any authority in connection with the levy, assessment including provisional assessment, deemed assessment or summary assessment, reassessment or collection of such tax, interest, late fee or penalty shall, for all purposes, be deemed to be and to have always been done or taken in accordance with law;*
- (ii) no suit or other proceedings shall be maintained or continued in any court against the State Government or any person or other authority whatsoever for the refund of any tax, interest, late fee or penalty so paid;*
- (iii) refund shall be made upon assessment to a dealer who has already paid the tax but is covered by clause (b) of sub-section (5) of section 4 of the said Act; and*
- (iv) no court shall enforce any decree or order directing the refund of any tax, interest, late fee or penalty so paid:*

Provided that nothing in this section be construed as preventing any person from questioning, in accordance with the provisions of the said Act and rules made thereunder, the assessment of any tax for any period, or from claiming refund of any tax, interest or late fee paid by him in excess of the amount payable by him under the said Act.”

79. Section 6 of the West Bengal Finance Act, 2017 validates the steps taken under the Entry Tax Act, 2012 notwithstanding anything contained in any judgement, decree or order of any Court or other authority. By the deeming clause introduced, it has made steps taken under the Entry Tax Act, 2012 to be done as amended by section 5 of the principal Act.

80. ***Bharti Airtel Limited (supra)***, has permitted the assesses to file a fresh writ petition with adequate pleadings. Similar liberty has been granted in ***State of Uttar Pradesh and Others (supra)*** and ***Sree Rayalaseema Alkalies and A. Che. And Others (supra)***.

81. In the facts and circumstances of the present case, some assesses approached the Tribunal complaining of discrimination by reason of both the unamended Act of 2012 as well as the amendment introduced thereto by the West Bengal Finance Act, 2017. In course of hearing of these matters, we had called upon the learned counsels appearing for the assesses to bring to our notice individual instances of the so-called discrimination. The common answer has been that, the original applications before the learned

Tribunal as also the writ petitions before the learned Single Judge of the High Court did not contain such materials.

82. Learned Advocate General has also acknowledged the fact that, in the event, an individual instance of discrimination is brought to the notice of a judicial forum, the same should be considered in light of the law prevailing.

83. In such circumstances, applying the ratio of ***Bharti Airtel Limited (supra)***, ***State of Uttar Pradesh and Others (supra)*** and ***Sree Rayalaseema Alkalies and A. Che. And Others (supra)***, we permit the individual assesseees to raise the contention of discrimination if any, before the appropriate forum, in accordance with law, if so advised.

84. ***Deep Chand (supra)*** has considered the validity of the UP Transport Services (Development) Act, 1955 in the context of the scheme of nationalisation of State Transport Service formulated by the State Government and the consequential orders made by it and the Motor Vehicles (Amendment) Act, 1956 passed by the Parliament. It has held that, the amending Act occupies the same field in respect of the schemes initiated after the amending Act and therefore to that extent the State Act must yield its place to the Central Act.

85. In ***Lakshmi & Others (supra)***, Kerala High Court has noticed that, the Kerala Act (IV) of 1961 was struck down by the Supreme Court in a decision reported at ***All India Reporter 1962 Supreme Court 723 (Kuhikoman Vs. State of Kerala)***. It has noticed that the decision of the Supreme Court was rendered on December 5, 1961 and that, Kerala Act (IV) of 1961 was modified to come into force from February 15, 1961. It has also noticed that the entirety of Kerala Act (IV) of 1961 was struck down by the Kerala High Court. In such factual matrix, it has held that, since a statute enacted in the teeth of the prohibition contained in Article 13 (2) of the Constitution is ab initio void in its entirety, non-nest, nullity and still born, no rights whatsoever could have flown from such an enactment and that enactment could not have any operation whatsoever.

86. ***Tirumala Constructions (supra)*** has considered section 19 of the 101st Constitutional Amendment Act and held that, section 19 and 20 thereof constitute incidental and transitory provisions with limited life. With regard to section 19 thereof it has held that it was not comparable to a mere parliamentary enactment and was not a mere legislative device.

87. ***Jayam and company (supra)*** has considered retrospective amendment to a tax act in the context of Tamil Nadu Value-Added

Tax Act, 2006. It has observed that, in the realm of fiscal legislation, legislature has the power to make provision retrospectively. However, it has laid down principles and test which must be kept in mind while enacting a fiscal legislation with retrospective effect.

88. Applying the principles that have been laid down in ***Jayam and company (supra)***, it cannot be said that, the retrospective amendments introduced to the Entry Tax Act, 2012 by the West Bengal Finance Act, 2017 is unreasonable mainly because it operates retrospectively. Nothing has been placed before us to establish that the retrospective operation of a fiscal statute was unduly oppressive or confiscatory or discriminatory or provides no procedural machinery for assessment and levy of tax or a decree of unforeseen or unforeseeable financial burden has been imposed for the past period.

89. ***M/s. Krishnamurthi and company (supra)*** has recognised the power of the legislature to enact laws with retrospective effect and give retrospective operation to the provisions of a law. It has also held that, the fact that the dealer is not in a position to pass on the tax to others does not affect the competence of the legislature to enact a law imposing tax retrospectively since it is a matter of legislative policy.

90. *Tata Motors Ltd (supra)* has held that, although State has enormous powers in the matters of legislation and in enacting fiscal laws, actions taken by the State cannot be so irrational and so arbitrary so as to introduce one set of rules for one and another set of rules for another, by amending the laws in such a manner as to withdraw the benefit that had been given earlier resulting in higher burdens upon the assesseees without any reason. It has struck down section 26 of the Maharashtra Tax Laws (Levy, Amendment and Repeal) Act, 1989.

91. In the facts and circumstances of the present case, the amending act does not take away any benefit which has accrued to any assesseees by the amendments introduced retrospectively. At least now materials have been placed before us to suggest so.

92. *Lohia Machines Ltd (supra)* has upheld the validity of the Rule 19 A (3) of the Income Tax Rules, 1961 on the grounds that, same was not arbitrary or whimsical or irrational.

93. *Fr. William Fernandez (supra)* has noticed ***Jindal Stainless Ltd (supra)*** and considered the entry tax legislations of State of Orissa, Bihar, Kerala and Jharkhand. It has pronounced on the validity of each of the State laws involved therein.

94. In view of the discussions above, the 2nd issue is answered by holding that, Entry Tax Act, 2012 was in force at the time of its

amendment on March 6, 2017. The 3rd issue is answered by holding that, the amendments introduced to the Entry Tax Act, 2012 by the West Bengal Finance Act, 2017 are valid. The 4th issue is answered by holding that the amendments introduced by the West Bengal Finance Act, 2017 to the Entry Tax Act, 2012 are not discriminatory.

95. The first 4 issues being answered in the manner as noted in this judgement and order, the 5th issue is answered by holding that the impugned order of the learned tribunal cannot be sustained. Impugned order of the learned tribunal is set aside.

96. In view of the discussions above, it would be appropriate to allow all the appeals of the State government directed against the impugned judgement and order of the learned Single Judge dated June 24, 2013 and set aside such impugned judgement and order. The writ petitions are disposed of by setting aside the impugned order of the Tribunal. All connected applications in the appeals and the writ petitions are disposed of. No order as to costs.

[DEBANGSU BASAK, J.]

97. I agree.

[MD. SHABBAR RASHIDI, J.]