AFR

RESERVED

Chief Justice's Court

(1) **Case :- WRIT - C No.** - 25730 of 2017
Petitioner :- Indian Oil Corporation Ltd. Thru' Ch. Finance Manager
Respondent :- State Of U.P. & 2 Others
Counsel for Petitioner :- Shubham Agrawal, Bharat Ji Agrawal
Counsel for Respondent :- C.S.C.
With:

(2) **Case :- WRIT - C No.** - 28302 of 2017
Petitioner :- M/s Apl Apollo Tubes Limited
Respondent :- State Of U.P. And Another
Counsel for Petitioner :- Suyash Agarwal,Rakesh Ranjan Agarwal
Counsel for Respondent :- C.S.C.
With:

(3) **Case :- WRIT - C No.** - 28300 of 2017
Petitioner :- M/s Ginni Filaments Limited
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Suyash Agarwal,Rakesh Ranjan Agarwal
Counsel for Respondent :- C.S.C.
With:

(4) **Case :- WRIT - C No.** - 28301 of 2017
Petitioner :- M/s Good Luck Traders, Proprietor
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Suyash Agarwal,Rakesh Ranjan Agarwal
Counsel for Respondent :- C.S.C.
With:

(5) **Case :- WRIT - C No.** - 28433 of 2017
Petitioner :- M/s Goodluck Steel Tubes Ltd. Ghaziabad
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Suyash Agarwal
Counsel for Respondent :- C.S.C.
With:

(6) **Case :- WRIT - C No.** - 28403 of 2017
Petitioner :- M/s Apollo Metalex (P) Limited, Bulandshahar
Respondent :- State Of U.P. And Another
Counsel for Petitioner :- Suyash Agarwal
Counsel for Respondent :- C.S.C.
With:

(7) **Case :- WRIT - C No.** - 28562 of 2017
Petitioner :- M/s Prism Cement Ltd. Trhu Its Asstt. G.M.
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Nishant Mishra
Counsel for Respondent :- C.S.C.

With:

(8) **Case :- WRIT - C No.** - 28561 of 2017
Petitioner :- M/s Ambuja Cement Ltd. Trhu Its Manager Accounts
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Nishant Mishra
Counsel for Respondent :- C.S.C.

With:

(9) **Case :- WRIT - C No.** - 28558 of 2017
Petitioner :- The Associated Cement Companies Ltd.
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Nishant Mishra
Counsel for Respondent :- C.S.C.

With:

(10) **Case :- WRIT - C No.** - 28579 of 2017
Petitioner :- Century Laminating Company Ltd. Hapur
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Suyash Agarwal,Sri Rakesh Ranjan Agarwal
Counsel for Respondent :- C.S.C.

With:

(11) **Case :- WRIT - C No.** - 28572 of 2017
Petitioner :- M/s Advance Steel Tubes Ltd. Ghaziabad
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Nishant Mishra
Counsel for Respondent :- C.S.C.

With:

(12) **Case :- WRIT - C No.** - 28560 of 2017
Petitioner :- M/s Shriram Pistons & Rings Ltd. Ghaziabad
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Nishant Mishra
Counsel for Respondent :- C.S.C.

With:

(13) **Case :- WRIT - C No.** - 28477 of 2017
Petitioner :- M/s Honda Siel Cars Ltd. And 12 Others
Respondent :- State Of U.P. And 12 Others
Counsel for Petitioner :- Nishant Mishra
Counsel for Respondent :- C.S.C.

With:

(14) **Case :- WRIT - C No.** - 26263 of 2017
Petitioner :- M/s Jindal Saw Ltd.
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Adarsh Srivastava,Prashant Kumar Singh
Counsel for Respondent :- C.S.C.

With:

(15) **Case :- WRIT - C No.** - 24826 of 2017
Petitioner :- M/s Ultratech Cement Ltd.
Respondent :- State Of U.P. And 4 Others
Counsel for Petitioner :- Nishant Mishra
Counsel for Respondent :- C.S.C.

With:

(16) **Case :- WRIT - C No.** - 24953 of 2017
Petitioner :- M/s Bushan Steel Ltd.
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Rahul Agarwal,Shubham Agarwal
Counsel for Respondent :- C.S.C.

With:

(17) **Case :- WRIT - C No.** - 25174 of 2017
Petitioner :- Vijaystambh Traders Pvt. Ltd.
Respondent :- State Of U.P. & 2 Others
Counsel for Petitioner :- Rahul Agarwal,Shubham Agarwal
Counsel for Respondent :- C.S.C.

With:

(18) **Case :- WRIT - C No.** - 25175 of 2017
Petitioner :- M/s J.K. Cement Ltd.
Respondent :- State Of U.P. & 2 Others
Counsel for Petitioner :- Rahul Agarwal,Shubham Agarwal
Counsel for Respondent :- C.S.C.

With:

(19) **Case :- WRIT - C No.** - 25184 of 2017
Petitioner :- ITC Limited
Respondent :- State Of U.P. & 2 Others
Counsel for Petitioner :- Rahul Agarwal,Shubham Agarwal
Counsel for Respondent :- C.S.C.

With:

(20) **Case :- WRIT - C No.** - 25283 of 2017
Petitioner :- M/s Birla Corporation Ltd.
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Nikhil Agrawal,Dhruv Agrawal
Counsel for Respondent :- C.S.C.

With:

(21) **Case :- WRIT - C No.** - 25288 of 2017
Petitioner :- M**/s** Century Textile & Industries Ltd.
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Nikhil Agrawal,Dhruv Agrawal
Counsel for Respondent :- C.S.C.

With:

(22) **Case :- WRIT - C No.** - 25294 of 2017
Petitioner :- M/s Hil Ltd.
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Nikhil Agrawal
Counsel for Respondent :- C.S.C.

With:

(23) **Case :- WRIT - C No.** - 25355 of 2017
Petitioner :- M/s Swastik Pipes Ltd.
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Piyush Agrawal
Counsel for Respondent :- C.S.C.

With:

(24) **Case :- WRIT - C No.** - 25617 of 2017
Petitioner :- Pasupati Acrylon Limited Thru' Its Gen. Manager
Respondent :- State Of U.P. & 2 Others
Counsel for Petitioner :- Piyush Agrawal
Counsel for Respondent :- C.S.C.

With:

(25) **Case :- WRIT - C No.** - 25628 of 2017
Petitioner :- M/**s** Asian Paints India Ltd.
Respondent :- State Of U.P. & 2 Others
Counsel for Petitioner :- Nishant Mishra,Ravi Kant
Counsel for Respondent :- C.S.C.

With:

(26) **Case :- WRIT - C No.** - 25632 of 2017
Petitioner :- M/s Asian Paints India Ltd.
Respondent :- State Of U.P. & 2 Others
Counsel for Petitioner :- Suyash Agarwal,Rakesh Ranjan Agarwal
Counsel for Respondent :- C.S.C.

With:

(27) **Case :- WRIT - C No.** - 25656 of 2017
Petitioner :- M/s Asian Paints India Ltd. Now Known As Asian Paints Ltd.
Respondent :- State Of U.P. & 2 Others
Counsel for Petitioner :- Suyash Agarwal,Rakesh Ranjan Agarwal
Counsel for Respondent :- C.S.C.

With:

(28) **Case :- WRIT - C No.** - 25785 of 2017
Petitioner :- M/s Grasim Industries Ltd.
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Aloke Kumar
Counsel for Respondent :- C.S.C.

With:

(29) **Case :- WRIT - C No.** - 25790 of 2017
Petitioner :- M/s Sayeed Absar Beedi Works
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Aloke Kumar
Counsel for Respondent :- C.S.C.

With:

(30) **Case :- WRIT - C No.** - 25811 of 2017
Petitioner :- M/s Asian Paints India Ltd. Thru' A.K. Saxena
Respondent :- State Of U.P. & 2 Others
Counsel for Petitioner :- Suyash Agarwal,Rakesh Ranjan Agarwal
Counsel for Respondent :- C.S.C.

With:

(31) **Case :- WRIT - C No.** - 25923 of 2017
Petitioner :- M/s Mohan Meakin Ltd.
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Nikhil Agrawal,Dhruv Agrawal
Counsel for Respondent :- C.S.C.

With:

(32) **Case :- WRIT - C No.** - 25948 of 2017
Petitioner :- M/s Shree Cement Limited Thru' Power Of Attorney Holder
Respondent :- State Of U.P. & 2 Others
Counsel for Petitioner :- Shubham Agrawal
Counsel for Respondent :- C.S.C.

With:

(33) **Case :- WRIT - C No.** - 25970 of 2017
Petitioner :- Moser Baer India Ltd.
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Nikhil Agrawal
Counsel for Respondent :- C.S.C.

With:

(34) **Case :- WRIT - C No.** - 28615 of 2017
Petitioner :- M/s Jaiprakash Associates Ltd.(Engineering Division) Noida
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Rahul Agarwal,Shubham Agrawal
Counsel for Respondent :- C.S.C.

With:

(35) **Case :- WRIT - C No.** - 28617 of 2017
Petitioner :- M/s Jaypee Greens, Noida
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Rahul Agarwal,Shubham Agrawal
Counsel for Respondent :- C.S.C.

With:

(36) **Case :- WRIT - C No.** - 28619 of 2017
Petitioner :- M/s Jaiprakash Associates Ltd.(Cement Division) Allahabad
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Rahul Agarwal,Shubham Agrawal
Counsel for Respondent :- C.S.C.

With:

(37) **Case :- WRIT - C No.** - 28622 of 2017
Petitioner :- M/s Prayagraj Power Generation Co. Ltd. Noida
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Rahul Agarwal,Shubham Agrawal
Counsel for Respondent :- C.S.C.

With:

(38) **Case :- WRIT - C No.** - 28660 of 2017
Petitioner :- Balrampur Chini Mills Ltd.
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Tarun Agrawal
Counsel for Respondent :- C.S.C.

With:

(39) **Case :- WRIT - C No.** - 28677 of 2017
Petitioner :- M/s Lohia Starlinger Ltd.
Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Shakeel Ahmad
Counsel for Respondent :- C.S.C.

With:

(40) **Case :- WRIT - C No.** - 28644 of 2017
Petitioner :- M/s J.K. Lakshmi Cement Ltd.
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Piyush Agrawal
Counsel for Respondent :- C.S.C.

With:

(41) **Case :- WRIT - C No.** - 28643 of 2017
Petitioner :- Steel Authority Of India Ltd.
Respondent :- State Of U.P. And 4 Others
Counsel for Petitioner :- Piyush Agrawal
Counsel for Respondent :- C.S.C.

With:

(42) **Case :- WRIT - C No.** - 28639 of 2017
Petitioner :- M/s Godfrey Phillips India Ltd.
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Shubham Agrawal,Bharat Ji Agrawal
Counsel for Respondent :- C.S.C.

With:

(43) **Case :- WRIT - C No.** - 28825 of 2017
Petitioner :- M/s Simplex Infrastructures Ltd.
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Aloke Kumar
Counsel for Respondent :- C.S.C.

With:

(44) **Case :- WRIT - C No.** - 28823 of 2017
Petitioner :- M/s M.B. Wheelers Limited And 2 Others
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Aloke Kumar
Counsel for Respondent :- C.S.C.

With:

(45) **Case :- WRIT - C No.** - 28805 of 2017
Petitioner :- M/s Bhole Baba Dairy Industries Ltd.
Respondent :- State Of U.P. And Another
Counsel for Petitioner :- Vishwjit
Counsel for Respondent :- C.S.C.

With:

(46) **Case :- WRIT - C No.** - 28826 of 2017
Petitioner :- M/s Varun Beverages Ltd.
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Nikhil Agrawal,Dhruv Agrawal
Counsel for Respondent :- C.S.C.

With:

(47) **Case :- WRIT - C No.** - 28824 of 2017
Petitioner :- M/s Janki Prasad & Sons
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Nikhil Agrawal

Counsel for Respondent :- C.S.C.

With:

(48) **Case :- WRIT - C No.** - 28818 of 2017
Petitioner :- M/s Ranisati Enterprises
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Nikhil Agrawal
Counsel for Respondent :- C.S.C.

With:

(49) **Case :- WRIT - C No.** - 28817 of 2017
Petitioner :- M/s R.R. Agency
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Nikhil Agrawal
Counsel for Respondent :- C.S.C.

With:

(50) **Case :- WRIT - C No.** - 28625 of 2017
Petitioner :- Vst Industries Limited, Varanasi
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Rahul Agarwal,Shubham Agarwal
Counsel for Respondent :- C.S.C.

With:

(51) **Case :- WRIT - C No.** - 28147 of 2017
Petitioner :- M/s National Steel & Agro Industries Ltd.
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Krishna Agarawal
Counsel for Respondent :- C.S.C.

With:

(52) **Case :- WRIT - C No.** - 28924 of 2017
Petitioner :- M/s Sheela Foam (P) Limited
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Nishant Mishra
Counsel for Respondent :- C.S.C.

With:

(53) **Case :- WRIT - C No.** - 28922 of 2017
Petitioner :- M/s L.G. Electronics India Pvt. Ltd.
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Nishant Mishra
Counsel for Respondent :- C.S.C.

With:

(54) **Case :- WRIT - C No.** - 28932 of 2017
Petitioner :- Diamond Cements, Jhansi
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Gaurav Mahajan,Amit Mahajan
Counsel for Respondent :- C.S.C.

With:

(55) **Case :- WRIT - C No.** - 28929 of 2017
Petitioner :- Diamond Cements, Damoh
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Gaurav Mahajan,Amit Mahajan
Counsel for Respondent :- C.S.C.

With:

(56) **Case :- WRIT - C No.** - 29010 of 2017
Petitioner :- M/s Modern Chemicals
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Suyash Agarwal
Counsel for Respondent :- C.S.C.

With:

(57) **Case :- WRIT - C No.** - 28992 of 2017
Petitioner :- M/s Star Paper Mills Ltd.
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Rahul Agarwal
Counsel for Respondent :- C.S.C.

With:

(58) **Case :- WRIT - C No.** - 29227 of 2017
Petitioner :- M/s Gorakhpur Resources Ltd., Gorakhpur
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Nikhil Agrawal
Counsel for Respondent :- C.S.C.

With:

(59) **Case :- WRIT - C No.** - 29249 of 2017
Petitioner :- M/s Jai Shanker Coal Traders & Commission Agent & Another
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Aloke Kumar
Counsel for Respondent :- C.S.C.

With:

(60) **Case :- WRIT - C No.** - 29285 of 2017
Petitioner :- Bilt Graphic Paper Products Limited, Saharanpur
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Gaurav Mahajan,Shri Ajay Bhanot
Counsel for Respondent :- C.S.C.

With:

(61) **Case :- WRIT - C No.** - 29286 of 2017
Petitioner :- M/s Ballarpur Industries Limited, Saharanpur
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Gaurav Mahajan,Shri Ajay Bhanot
Counsel for Respondent :- C.S.C.

With:

(62) **Case :- WRIT - C No.** - 29306 of 2017
Petitioner :- M/s Shri Ram Constitution Company, Gorakhpur
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Nasiruzzaman
Counsel for Respondent :- C.S.C.

With:

(63) **Case :- WRIT - C No.** - 29642 of 2017
Petitioner :- Vodafone Mobile Services Limited, Mumbai
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Ashish Mishra
Counsel for Respondent :- C.S.C.

With:

(64) **Case :- WRIT - C No.** - 29574 of 2017
Petitioner :- M/s Jaiswal Coal Suppliers And 2 Others
Respondent :- State Of U.P. And Another
Counsel for Petitioner :- Nitin Kesarwani
Counsel for Respondent :- C.S.C.

With:

(65) **Case :- WRIT - C No.** - 29572 of 2017
Petitioner :- M/s Mahesh Cement Agency
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Nasiruzzaman
Counsel for Respondent :- C.S.C.

With:

(66) **Case :- WRIT - C No.** - 29589 of 2017
Petitioner :- M/s Sanjay And Sons And Another
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Rishi Raj Kapoor
Counsel for Respondent :- C.S.C.

With:

(67) **Case :- WRIT - C No.** - 29588 of 2017
Petitioner :- M/s Rahul Enterprises And Another
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Rishi Raj Kapoor
Counsel for Respondent :- C.S.C.

With:

(68) **Case :- WRIT - C No.** - 29606 of 2017
Petitioner :- M/s The Indure Private Ltd.
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Rishi Raj Kapoor
Counsel for Respondent :- C.S.C.

With:

(69) **Case :- WRIT - C No.** - 29586 of 2017
Petitioner :- M/s Shri Rathi Limited
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Praveen Kumar
Counsel for Respondent :- C.S.C.

With:

(70) **Case :- WRIT - C No.** - 29621 of 2017
Petitioner :- M/s Abhinav Steels Pvt. Ltd.
Respondent :- State Of U.P. And Another
Counsel for Petitioner :- Aloke Kumar
Counsel for Respondent :- C.S.C.

With:

(71) **Case :- WRIT - C No.** - 29620 of 2017
Petitioner :- M/s Abhinav Steels Pvt. Ltd.
Respondent :- State Of U.P. And Another
Counsel for Petitioner :- Aloke Kumar
Counsel for Respondent :- C.S.C.

With:

(72) **Case :- WRIT - C No.** - 29768 of 2017
Petitioner :- M/s Trinayani Cement Pvt. Ltd.
Respondent :- State Of U.P. And Another
Counsel for Petitioner :- Aloke Kumar
Counsel for Respondent :- C.S.C.

With:

(73) **Case :- WRIT - C No.** - 29770 of 2017
Petitioner :- M/s Chunar Churk Cement Limited
Respondent :- State Of U.P. And Another
Counsel for Petitioner :- Aloke Kumar
Counsel for Respondent :- C.S.C.

With:

(74) **Case :- WRIT - C No.** - 29773 of 2017
Petitioner :- M/s Eco Cement India Limited
Respondent :- State Of U.P. And Another
Counsel for Petitioner :- Aloke Kumar
Counsel for Respondent :- C.S.C.

With:

(75) **Case :- WRIT - C No.** - 29758 of 2017
Petitioner :- M/s Chota Bhai Munnu Bhai
Respondent :- State Of U.P. And Another
Counsel for Petitioner :- Nitin Kesarwani
Counsel for Respondent :- C.S.C.

With:

(76) **Case :- WRIT - C No.** - 30124 of 2017
Petitioner :- M/s Eastern Spinning And Textiles Mills Pvt. Ltd.
Respondent :- State Of U.P. And Another
Counsel for Petitioner :- Chandan Agarwal,Anshul Kumar Singhal
Counsel for Respondent :- C.S.C.

With:

(77) **Case :- WRIT - C No.** - 30833 of 2017
Petitioner :- United Spirits Limited
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Gaurav Mahajan,Ajay Bhanot,Shashank Shekhar Mishra
Counsel for Respondent :- C.S.C.

With:

(78) **Case :- WRIT - C No.** - 31735 of 2017
Petitioner :- M/s Sony India Pvt. Ltd., G.B. Nagar
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Gaurav Mahajan,Amit Mahajan
Counsel for Respondent :- C.S.C.

With:

(79) **Case :- WRIT - C No.** - 35451 of 2017
Petitioner :- Bharti Airtel Ltd. (Erstwhile Bharti Celluar Ltd.)
Respondent :- State Of U.P.Thru'Principal Secry.Institutional & 2 Ors
Counsel for Petitioner :- Ashish Mishra
Counsel for Respondent :- C.S.C.

With:

(80) **Case :- WRIT - C No.** - 35606 of 2017
Petitioner :- M/s Rohan Motors Limited, Ghaziabad
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Piyush Agrawal
Counsel for Respondent :- C.S.C.

With:

(81) **Case :-** WRIT - C No. - 35672 of 2017
Petitioner :- M/s Mirza International Limited
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Praveen Kumar
Counsel for Respondent :- C.S.C.

With:

(82) **Case :-** WRIT - C No. - 39097 of 2017
Petitioner :- M/s P & J. Aromatics (A Unit Of Jeet India Ltd.)
Respondent :- State Of U.P. And Another
Counsel for Petitioner :- Vishwjit
Counsel for Respondent :- C.S.C.

With:

(83) **Case :- WRIT - C No.** - 50769 of 2017
Petitioner :- M/s Ual U.P. Prop. M/s Ual Industries Ltd.
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Shubham Agrawal, Stuti Saggi
Counsel for Respondent :- C.S.C.

Hon'ble Dilip B. Bhosale,Chief Justice
Hon'ble Manoj Kumar Gupta,J.

(Per Manoj Kumar Gupta, J.)

1. These petitions filed under Article 226 of the Constitution call into question the vires of the Uttar Pradesh Tax on Entry of Goods into Local Areas Act, 2007[1]. The petitions have been filed on basis of liberty granted by the Supreme Court by order dated 21 March 2017, while disposing of a batch of Civil Appeals and other connected matters, the leading case being Civil Appeal Nos.997-998 of 2004 by State of U.P. and others against M/s. Indian Oil Corporation Ltd. The judgement opens by noticing that the theory of compensatory tax

1 The Act

propounded in Seven Judges' Bench judgement in **Automobile Transport (Rajasthan) Ltd. etc. vs. State of Rajasthan and others, 1963(1) SCR 491,** being doubted by a Bench of two Hon'ble Judges of the Supreme Court in **Jai Prakash Associates Ltd. vs. State of M.P. and others, (2009) 7 SCC 339,** the matter was placed before a Nine Judges' Bench. The Nine Judges' Bench, in **Jindal Stainless Ltd & Anr vs. State of Haryana & ors, 2016 (11) Scale 1**, (for short "Jindal Stainless-II" or "Nine Judges'"), while answering all major constitutional and legal issues, left open three issues for decision by regular benches of the Supreme Court. When the appeals were taken up for hearing by regular Bench, it found that the necessary factual foundation to answer the questions left open had not been laid in the petitions nor there was discussion regarding the same in the impugned judgements of the High Courts. Consequently, with the consent of counsel for the parties, the regular Bench allowed the parties to file fresh petitions in High Court by 31 May 2017 raising those issues with necessary factual background or any other constitutional/statutory issue which arise for consideration. The issues framed and left for this Court to be decided, read thus:

> (1) Whether the entire State can be treated as 'local area' for the purposes of entry tax?
>
> (2)Whether entry tax can be levied on the goods which are directly imported from other countries and brought in a particular State?
>
> (3) In some statutes enacted by certain States, there was a provision for giving adjustment of other

> taxes like VAT, incentive etc paid by indigenous manufacturers and it was contended by the assessees that whether the benefits given to certain categories of manufacturers would amount to discrimination under Section 304?

1A. While disposing of the appeals/writ petitions, as aforesaid, the interim orders, which were passed therein, were continued till 31 May 2017. Thereafter, fresh interim orders were passed by this Court. By consent of learned counsel for the parties, the entire batch of petitions was taken up for final disposal and learned counsel for the parties were heard at length. Since the entire batch arises out of the common factual matrix involving same or similar questions, we dispose of the same by this common judgement. It would be advantageous to reproduce the following observations made by the Supreme Court so as to understand the exact scope of hearing of these petitions:

> "During the hearing of arguments, counsel for both sides submitted that since the main challenge in the writ petitions, which were filed by the writ petitioners before the High Court, was predicated on the law laid down by the Constitution Bench in '*Atiabari Tea Co. Ltd.* (supra), the High Court essentially confined its discussion only on "compensatory tax theory", as propounded in the aforesaid judgment so the High Courts looked at the issue by only keeping in mind the principle propounded in the aforesaid judgment and decided as to whether the tax imposed by a particular statute is compensatory in nature or not. **Thus, when other issues are to be dealt with, as indicated above, we find that in many cases there is no adequate factual foundation and there is no discussion in the impugned judgments as well. It is also agreed by counsel for both the sides that in the absence thereof, it may not be possible for this Court to**

decide these issues.

According to us, in the aforesaid scenario, appropriate course of action would be to permit the appellants to file fresh petitions by May 31, 2017, raising the aforesaid issues with necessary factual background or any other constitutional/ statutory issue which arises for consideration.

(emphasis supplied)

2. Before we advert to the submissions advanced by learned counsel for the parties, we would like to state the facts and circumstances against which the petitioners in two writ petitions, namely, Writ-C No 25283 of 2017 and Writ-C No 25730 of 2017 have approached this Court. This would enable us to answer the submissions canvassed by learned counsel for the parties. We also note that the impugned Act stood repealed since 1.7.2017 upon enforcement of the Uttar Pradesh Goods and Service Tax Act, 2017 and thus the dispute is confined to the period prior to it only.

Writ Petition No 25283 of 2017 : M/s. Birla Corporation Ltd. vs. State of U.P. & others

3. The petitioner – M/s Birla Corporation Limited is a public limited company, being incorporated under the Companies Act, 1956, having its registered office in Kolkata (for short, “the Company”). The Company, inter-alia, owns cement manufacturing units in the States of Madhya Pradesh, Uttar Pradesh and Rajasthan, known as Satna Cement Works and Birla Vikas Cement in Madhya Pradesh, Birla Corporation Limited, Unit Raebareli in Uttar Pradesh (since 30 August 1968) and

Birla Cement Works, Chittor Cement Works in Rajasthan, wherein it is engaged in the manufacture and sale of cement. The Company has its sales and marketing offices in various places in Uttar Pradesh in respect of all its aforesaid units. One of such principal marketing and sales offices is also situated in Allahabad.

3A. The Company is a registered dealer under the provisions of the Uttar Pradesh Trade Tax Act, 1948 (for short, “Trade Tax Act”) and since 2008 under the Uttar Pradesh Value Added Tax Act, 2008 (for short, “UPVAT Act”) and has been conducting its business of sale of cement in the State of Uttar Pradesh from its aforesaid units.

3B. The respondent – State of Uttar Pradesh (for short, “State”) promulgated the Uttar Pradesh Tax on Entry of Goods Ordinance, 1999, which was, later on, enacted as Uttar Pradesh Tax on Entry of Goods Act, 2000 (for short, “Act, 2000”) with a view to augmenting the revenue of the State and decided to make law to provide for levy of tax on entry of goods. The State, in exercise of its powers under the proviso to sub-section (1) of Section 4 of the Act, 2000, issued a notification on 9 May 2003, amending the Schedule to the Act and inserting therein various entries including 'cement'. Another notification was issued on the very same date under the said provision prescribing the rate of entry tax on cement at the rate of 2 percent of the value of goods.

3C. The validity of levy of entry tax under the Act, 2000, on bringing

cement within the local area of Uttar Pradesh, was challenged by the Company in a writ petition bearing Writ Petition No 1374 of 2003. Several writ petitions were filed raising the same challenge including Civil Misc Writ Petition No 251 of 2003 (Tax) by M/s Indian Oil Corporation & Ors Vs State of Uttar Pradesh and & Ors, and Civil Misc Writ Petition No 486 of 2001 (Tax) by M/s Moser Baer India Ltd Vs State of Uttar Pradesh & Ors. This Court, vide judgment and order dated 27 January 2004 allowed the aforesaid writ petitions filed by the Indian Corporation Ltd and M/s Moser Baer India Ltd. Insofar as the writ petition filed by the Company is concerned, that also came to be disposed of in terms of judgment dated 27 January 2004, vide order dated 8 January 2007. The said judgment dated 27 January 2004 was carried to the Supreme Court by the State by way of special leave petitions being Special Leave Petition (Civil) Nos 2757-2758 of 2004, which were, after grant of special leave, registered as Civil Appeal Nos 997-998 of 2004. The judgment dated 8 January 2007 was also carried to the Supreme Court by the State by way of special leave petition bearing Special Leave Petition (Civil) No 14070 of 2007. The Supreme Court, in Civil Appeal Nos 3453 of 2002 and Civil Appeal Nos 997-998 of 2004 and connected matters, passed the order on 17 April 2007, inter alia, in the following terms: “The High Courts' orders wherever it has been passed in favour of the payers shall operate so far as the concerned writ petitions are concerned”. In view of this order of the

Supreme Court, the Company became entitled for the benefit of the judgment and order dated 8 January 2007 of this Court. Consequently, the Company also became entitled for refund of Rs 23,90,66,714/- towards entry tax deposited by them.

3D. On 24.9.2007, the State promulgated the Uttar Pradesh Tax on Entry of Goods into Local Areas Ordinance (U P Ordinance No 35 of 2007) with retrospective effect from 1 November 1999. The Ordinance was thereafter replaced by the Uttar Pradesh Tax on Entry of Goods into Local Areas Act, 2007 (for short, “Act, 2007') on 16 November 2007. The new legislation seeks to remove the defects pointed out by the High Court in the old enactment on the subject and purports to be in line with the compensatory theory propounded by the Supreme Court in the Constitution Bench judgement in **Automobile Transport**, to which we shall advert to in the latter part of the judgment.

3E. In October 2007, the Company filed a petition bearing Civil Misc Writ Petition No 1515 of 2007 challenging the constitutional validity of the Ordinance/Act. An interim order was passed by this Court in the writ petition (1515 of 2007) to the effect that the realisation of entry tax for the period between April 2007 and 24 September 2007 would not be made from the Company, provided they furnish security other than cash or bank guarantee, for the entire tax in respect of the transaction during this period. The interim order further provided that the entry tax for the future period, *i.e.* after 24 September 2007, which is the date of

promulgation of Ordinance, would not be realised from the Company in respect of the transaction, subsequent to the promulgation, provided the Company furnishes bank guarantee for the entire dues. The writ petition filed by the Company (Writ Petition No 1515 of 2007) was dismissed by the judgment and order passed by this Court on 23 December 2011, holding that the State legislature did not lack legislative competence in enacting the Act, imposing entry tax on the entry of scheduled goods into local areas for consumption, use or sale therein. This Court also observed that the provisions of the Act patently and facially indicate that there are sufficient guidelines and guarantees under the Act for ensuring that the entire amount of entry tax collected and credited to the Uttar Pradesh State Development Fund is utilized only for the purposes of its reimbursement to facilitate the trade, commerce and industry. The State, it was further observed, also established that the entire amount of entry tax by way of reimbursement/recompense to the trade, commerce and industry in the local areas of the State of Uttar Pradesh, provides quantifiable/ measurable benefits to its payers. The argument that the Act was discriminatory, unreasonable, against public interest, violates the freedom of trade, commerce and intercourse guaranteed under Article 301 of the Constitution of India was repelled. Section 17 of the Act, validating the amount of entry tax levied, assessed, realized and collected under the Act, 2000 was also held to be valid. The provision

authorising the State to keep the entire amount for the purposes of its utilisation for facilitating trade, commerce and intercourse in the local areas of the State was upheld.

3F. The judgment of this Court dated 23 December 2011 passed in Writ Petition No 1515 of 2007 was carried by the Company to the Supreme Court in Special Leave Petition (Civil) No 193 of 2012. On 12 January 2012, the Supreme Court granted special leave to appeal in Special Leave Petition No (Civil) No 193 of 2012 and also granted interim stay of the impugned judgment and order, subject to the Company depositing 50 percent of the accrued tax liability/arrears under the Act, 2007 and furnishing of bank guarantee for the balance amount within four weeks from the date of the order. The Company complied with the order of the Supreme Court. Consequent to the grant of special leave, the SLP was converted into Civil Appeal No 322 of 2012. This appeal was also heard alongwith bunch of appeals not only from the State of Uttar Pradesh but from other States also by the Bench of Nine Judges' of the Supreme Court in **Jindal Stainless-II** and decided the questions referred to it by its order dated 18 December 2012. Thereafter, the appeal filed by the Company and connected matters were placed before the Two Judges' Bench of the Supreme Court which disposed of the bunch of matters vide order dated 21 March 2017 granting liberty to the Company to file fresh petition before this High Court challenging the legality/validity of the Act, 2007

and the notice of demand dated 25 September 2007. Thus, the Company has filed the instant writ petition before this Court for the following reliefs:

> "(i) Issue a suitable writ, order or direction declaring the Uttar Pradesh Tax on Entry of Goods into Local Areas Act, 2007 as invalid, void and unconstitutional being beyond the legislative competence of the State Legislature and ultra vires Articles 245, 246, 304 (a) read with Entry 52 of List-II of the Seventh Schedule to the Constitution, as the same do not fall within the scope of Entry 52 of List-II of the Seventh Schedule to the Constitution.
>
> (ii) Issue a suitable writ, order or direction in the nature of mandamus commanding the respondents not to give effect to the provisions of Uttar Pradesh Tax on Entry of Goods into Local Areas Act, 2007.
>
> (iii) Issue a suitable writ, order or direction in the nature of certiorari be issued calling for the records and quashing the impugned notice dated 25th September, 2007; and 21.3.2017.
>
> (iv) Issue a suitable writ, order or direction in the nature of Prohibition be issued restraining the Respondents, their servants, agents or representatives from in any manner collecting any entry tax from petitioners pursuant to the Act No. 30 of 2007.
>
> (v) Issue a suitable writ order or direction in the nature of mandamus commanding the respondents to refund the amounts paid by the Petitioner No.1 towards the entry tax together with interest;
>
> (vi) Issue a suitable writ order or direction in the nature of mandamus commanding the respondents to release and discharge the bank Guarantee furnished by the Petitioner No.1 pursuant to the order passed by this Hon'ble Court and the Hon'ble Supreme Court of India;"

Writ Petition No 25730 of 2017 : M/s. Indian Oil Corporation Ltd. vs. State of U.P. & others :-

4. This petition by M/s Indian Oil Corporation Ltd (for short, 'IOC')

has been filed in the same factual background and the prayers made are also similar. IOC is a Government of India undertaking, engaged, inter-alia, in the import, storage, transportation and refining of crude oil and in the manufacture and sale of petroleum products. It has a refinery situated at Mathura, for which it purchases crude oil from different Gulf countries and transports this imported crude oil from the Port directly to Mathura Refinery through the underground pipeline laid by it, known as Salaya-Mathura Pipeline. The crude oil is unloaded from the bulk tanker ships into the SBM (single buoy mooring) which is a crude oil unloading facility located in high seas near Vadinar in the Gulf of Kutch and is transported by underground pipeline directly to Mathura refinery. The IOC exclusively owns, operates, controls, ensures and safeguards the underground pipelines.

4A. By the Act, 2007 and the relevant notifications, the entry tax at the rate of four percent / five percent ad valorum was levied, on crude oil, directly transported through the Salaya-Mathura underground pipeline to Mathura refinery. It is subject matter of challenge on the grounds to which we shall refer in the latter part of the judgement.

Background in which the legislation was brought:-

5. At this stage, it would be advantageous to state, in brief, the background against which the Uttar Pradesh Tax on Entry of Goods into Local Areas Act, 2007 came to be enacted. Several States, including the State of Uttar Pradesh, in exercise of their legislative

powers under Entry 52 of List II of the Seventh Schedule to the Constitution, have enacted laws that provide for levy of a tax on the "entry of goods into a local area for consumption, use or sale herein". The State of Uttar Pradesh had accordingly enacted the Uttar Pradesh Tax on Entry of Goods Act, 2000[2] (U P Act No 12 of 2000) to provide for the levy and collection of tax on entry of goods into a local area for consumption, use and sale therein. The said Act was declared ultra vires by this Court in **Civil Misc Writ Petition No 251 of 2003 (M/s Indian Oil Corporation Limited Vs State of Uttar Pradesh & Ors)**, by its judgment dated 27 January 2004. That judgment was carried to the Supreme Court by the State Government in Special Leave Petition (Civil) No 2757-2758 of 2004. The Supreme Court in that SLP, had stayed the operation of the judgment of the High Court vide order dated 9 February 2004, subject to condition that the amount realized as entry tax shall be deposited in a separate interest bearing account.

5A. When this Court declared the provisions of previous Act 2000 as ultravirus, its vires was tested on the yardstick of compensatory theory propounded by the Supreme Court in two Constitution Bench judgments, in **Atiabari Tea Company Ltd. Vs. State of Assam, AIR 1961 SC 232,** and **Automobile Transport (Rajasthan) Ltd vs. The State of Rajasthan, AIR 1962 SC 1406.**

6. In **Atiabari**, the constitutional validity of Assam Taxation (on

2 'Act, 2000'

Goods Carried by Roads or Inland Waterways) Act, (Assam Act XIII of 1954) was questioned before the High Court. The impugned legislation had levied taxes on certain goods carried by road and inland waterways in the State of Assam. The levy under the legislation was challenged primarily on the ground that the same was ultra vires of the Constitution, inter aila, because of its repugnance with the provision of Article 301 of the Constitution. The Supreme Court by a majority struck down the constitutional validity of the enactment holding that the impugned levy operated directly and immediately as a restriction on free trade, commerce and intercourse guaranteed under Article 301 of the Constitution of India. It was held that :-

> *"…….If the transport or the movement of goods is taxed solely on the basis that the goods are thus carried or transported that in our opinion, directly affects the freedom of trade as contemplated by Article 301. If the movement, transport or the carrying of goods is allowed to be impeded, obstructed or hampered by taxation without satisfying the requirement of Part XIII the freedom of trade on which so much emphasis is laid by Article 301 would turn to be illusory."*
>
> *"Thus the intrinsic evidence furnished by some of the Articles of Part XIII shows that* ***taxing laws are not excluded from the operation of Article 301; which means that tax laws can and do amount to restrictions, freedom from which is guaranteed to trade under the said part****."*
>
> *(emphasis supplied)*

6A. The Constitution Bench thereafter proceeded to determine as to whether all tax laws attract provisions of Part XIII, whether their impact on trade or intercourse is direct and minimum or indirect and

remote. It was held that " the taxes may and do amount to restrictions but it is only such taxes as directly and immediately restricted that would fall within the purview of Article 301."

7. In **Automobile Transport,** the Supreme Court examined the challenge to the Rajasthan Motor Vehicles Taxation Act, 1951, inter-alia, on the ground that levy of taxes imposed under the State Act were offensive to Article 301 of the Constitution of India. The judgment in **Atiabari** was extensively referred to in this judgment. The Supreme Court ultimately modified the view in **Atiabari** by bringing in the concept of compensatory taxes which was held to be outside Part XIII of the Constitution. It was held that taxes which do not hinder trade and commerce but facilitate them by providing roads and bridges etc. are out of the purview of Article 301 and need not comply with the requirements of the proviso to Article 304 (b). The net effect of the decision in **Automobile** was that taxes, if compensatory in character, would not offend the guarantee of free trade, commerce and intercourse under Article 301 of the Constitution.

8. The above two Constitution Bench judgments of the Supreme Court thus laid down that if a tax is imposed for raising revenue and which is utilized for facilitating trade and commerce, instead of hampering it, it would be compensatory tax, beyond the reach of Article 301. However, if the tax is imposed solely because goods are transported into a certain region, without having any nexus, direct or

indirect, with the facilities provided in upliftment of trade and commerce, it would come within the ambit of Article 301. Such a legislation, being a restriction on freedom of trade envisaged by Article 301, for being constitutionally valid, has to fall within one of the exception laid down under Article 302 to Article 304 of Chapter XIII. For adjudging whether the tax is compensatory tax or not it was laid down that though it is not necessary to establish that every rupee collected on account of tax should be shown to be spent in providing the trading facilities, there has yet to be a broad correlation between revenue generated by the tax realised and the expenditure on the facilities provided for facilitating trade and commerce. Justice Mathew in **G.K. Krishnan vs. State of Tamil Nadu, (1975) 1 SCC 375,** while deciding a challenge to a tax on motor vehicles under the Motor Vehicles Taxation Act, 1931 observed that in such matters, a rough approximation rather than mathematical accuracy is what is required. He however expressed skepticism about the difficulties which would arise in ascertaining the validity of a taxing statute on the touchstone of the concept of reasonable compensation by describing it as “convenient but vague”. The compensatory tax theory became yet more vague with the interpretation given to it by three Judges Bench in **M/s Bhagat Ram Rajeev Kumar Vs. Commissioner of Sales Tax M.P., 1995 Supp. (1) SCC 673**. It was observed that “if there is substantial or even some link between the tax and the facilities extended to such dealers

directly or indirectly, the levy cannot be impugned as invalid." The decision in **M/s Bhagat Ram** was followed by a two Judges Bench in **State of Bihar Vs. Bihar Chamber of Commerce, 1996 (9) SCC 136**.

9. The correctness of these decisions was doubted by a Bench of two Judges in **Jindal Stripe Ltd. Vs. State of Haryana, (2003) 8 SCC 60**. The matter was thus, once again referred to a larger Bench.

10. The Larger Bench in **Jindal Stainless Ltd. Vs. State of Haryana, (2006) 7 SCC 241** (for short 'Jindal Stainless-I') disapproved the tests laid down in **Bhagat Ram** and **Bihar Chamber of Commerce** in determining the compensatory nature of a taxing statute and reiterated and reaffirmed the principles laid down in the Seven Judge Constitution Bench judgement in **Automobile Transport**. It was held that the theory of "some connection or some link" between the tax and the facilities, as laid down in **Bhagat Ram** and **Bihar Chamber of Commerce** would not suffice. The tests laid down in **Automobile Transport** was held to be binding:-

> "31…Suffice it to state at this stage that the basis of special assessments, betterment charges, fees, regulatory charges is "recompense/reimbursement" of the cost or expenses incurred or incurrable for providing services/facilities based on the principle of equivalence unlike taxes whose basis is the concept of "burden" based on the principle of ability to pay. At this stage, we may clarify that in the above case of Automobile Transport [(1963) 1 SCR 491 : AIR 1962 SC 1406], this Court has equated regulatory charges with compensatory taxes and since it is the view expressed by a Bench of seven Judges, we have to proceed on that basis. The fallout is that compensatory tax becomes a sub-class of fees".

11. After the reference was answered, the regular Division Bench, remitted to the High Court the issue as to whether entry tax imposed by the State of U.P. is of a compensatory nature or not. In pursuance thereof, the matter was again heard by this Court in the light of the law laid down by the Supreme Court in **Jindal Stainless-I**. This Court returned a finding on 8.1.2007 to the effect that the State failed to prove that the entry tax was compensatory in nature.

12. The State, having realised difficulty in its way in persuading the Court to uphold the validity of the earlier legislation on the subject rather chose to bring a new legislation, removing the short-comings pointed out by the Supreme Court and this Court, on the model of the prevailing legislation on the subject in the State of Bihar, the vires whereof had been upheld by the Supreme Court. Accordingly, U.P. Tax on Entry of Goods into Local Area Ordinance (U.P. Ordinance No.35 of 2007) was promulgated with retrospective effect from 11.1.1999. The statement of objects and reasons which necessitated the promulgation of Ordinance states as under:-

> *"(a) Indian Oil Corporation was demanding for remand of Rs.3022.58 Crores on the basis of the interim order dated 17.04.2007 of the Apex Court;*
>
> *(b) State Government was considering to enact afresh an Entry Tax Act retrospectively after the judgment of the Constitution Bench of the Hon'ble Supreme Court;*
>
> *(c) In the meanwhile, the Bihar Entry Tax Act has been held valid by the Hon'ble Patna High Court;*
>
> *(d) It was therefore decided to make a law with retrospective effect by removing the shortcomings pointed*

> *out in the judgment of the High Court of Judicature at Allahabad and in the light of the observations with respect to the compensatory tax made by the Constitution Bench of the Supreme Court and on the basis of the provisions of Bihar Entry Tax Act which has been held valid by the Patna High Court."*

Reference to Nine Judges' Bench:-

13. The constitutional validity of levy of a tax on the entry of goods into local areas under the Act, as stated earlier, was questioned in the Supreme Court, after being unsuccessful before this Court. Various other petitions, emanating from similar challenge to the statutory provisions in other States, were also filed before the Supreme Court. A Two Judges Bench of the Supreme Court in **Jai Prakash Associates**, while hearing the matters, doubted the correctness of the compensatory tax theory propounded in **Automobile Transport** and **Jindal Stainless-I**, being of the view that certain important constitutional issues had not been examined in these judgments. Accordingly, it referred the following questions for determination by a larger Constitution Bench:-

> "(1) Whether the State enactments relating to levy of entry tax have to be tested with reference to both clauses (a) and (b) of Article 304 of the Constitution for determining their validity and whether clause (a) of Article 304 is conjunctive with or separate from clause (b) of Article 304?
>
> (2) Whether imposition of entry tax levied in terms of Entry 52 List II of the Schedule VII is violative of Article 301 of the Constitution? If the answer is in the affirmative whether such levy can be protected if entry tax is compensatory in character and if the answer to the aforesaid question is in the affirmative what are the yardsticks to be applied to determine the compensatory character of the entry tax?

(3) Whether Entry 52 List II, Schedule VII of the Constitution like other taxing entries in the Schedule, merely provides a taxing field for exercising the power to levy and whether collection of entry tax which ordinarily would be credited to the Consolidated Fund of the State being a revenue received by the Government of the State and would have to be appropriated in accordance with law and for the purposes and in the manner provided in the Constitution as per Article 266 and there is nothing express or explicit in Entry 52 List II, Schedule VII which would compel the State to spend the tax collected within the local area in which it was collected?

(4) Will the principles of quid pro quo relevant to a fee apply in the matter of taxes imposed under Part XIII?

(5) Whether the entry tax may be levied at all where the goods meant for being sold, used or consumed come to rest (standstill) after the movement of the goods ceases in the "local area"?

(6) Whether the entry tax can be termed a tax on the movement of goods when there is no bar to the entry of goods at the State border or when it passes through a local area within which they are not sold, used or consumed?

(7) Whether interpretation of Articles 301 to 304 in the context of tax on vehicles (commonly known as "transport") cases in Atiabari case and Automobile Transport case apply to entry tax cases and if so, to what extent?

(8) Whether the non-discriminatory in direct State tax which is capable of being passed on and has been passed on by traders to the consumers infringes Article 301 of the Constitution?

(9) Whether a tax on goods within the State which directly impedes the trade and thus violates Article 301 of the Constitution can be saved by reference to Article 304 of the Constitution alone or can be saved by any other article?

(10) Whether a levy under Entry 52 List II, even if held to

be in nature of a compensatory levy, must, on the principle of equivalence demonstrate that the value of the quantifiable benefit is represented by the costs incurred in procuring the facility/services (which costs in turn become the basis of reimbursement/recompense for the provider of the services/ facilities) to be provided in the "local area" concerned and whether the entire State or a part thereof can be comprehended as local area for the purpose of entry tax?"

14. This resulted in the reference being placed before a Nine Judge Constitution Bench of the Supreme Court, which by judgment dated 9.11.2016 in **Jindal Stainless-II** answered the Reference as under:-

"1. Taxes simpliciter are not within the contemplation of Part XIII of the Constitution of India. The word 'Free' used in Article 301 does not mean "free from taxation".
2. Only such taxes as are discriminatory in nature are prohibited by Article 304 (a). It follows that levy of a non-discriminatory tax would not constitute an infraction of Article 301.
3. Clauses (a) and (b) of Article 304 have to be read disjunctively.
4. A levy that violates 304(a) cannot be saved even if the procedure under Article 304(b) or the proviso there under is satisfied.
5. The compensatory tax theory evolved in Automobile Transport case and subsequently modified in Jindal's case has no juristic basis and is therefore rejected.
6. Decisions of this Court in Atiabari, Automobile Transport and Jindal cases (supra) and all other judgments that follow these pronouncements are to the extent of such reliance over ruled.
7. A tax on entry of goods into a local area for use, sale or consumption therein is permissible although similar goods are not produced within the taxing state.
8. Article 304 (a) frowns upon discrimination (of a hostile nature in the protectionist sense) and not on mere differentiation. Therefore, incentives, set-offs etc. granted to a specified class of dealers for a limited period of time in a non-hostile fashion with a view to developing economically backward areas would not violate Article 304(a). The question whether the levies in the

present case indeed satisfy this test is left to be determined by the regular benches hearing the matters.

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

10. The questions whether the entire State can be notified as a local area and whether entry tax can be levied on goods entering the landmass of India from another country are left open to be determined in appropriate proceedings."

Supreme Court's interpretation of the relevant Constitutional Provisions :-

15. We have already stated the background in which, after the Reference was answered in **Jindal Stainless-II**, these petitions came to be filed before this Court. It would be advantageous to make reference to few Articles of the Constitution of India, which are relevant for our purpose and which would help us to answer the questions that fall for our consideration. Power to levy taxes has been universally acknowledged as an essential attribute of sovereignty. The power is inherent in the people because the sustenance of the Government requires contribution from them. This power of taxing the people and their property is essential to the very existence of Government, and may be legitimately exercised on the objects to which it is applicable to the utmost extent to which the Government may choose to carry it (**Raja Jagannath Baksh Singh Vs State of Uttar Pradesh & Anr,**

AIR 1962 SC 1563).

16. As observed in **Jindal Stainless-II**, the power to levy tax is an attribute of sovereignty and exercise of that power is controlled by the Constitution and it is evident from the provisions of Article 265 which forbids levy or recovery of any tax except by the authority of law. Article 265 reads thus:

> "**265. Taxes not to be imposed save by authority of law.** No tax shall be levied or collected except by authority of law."

16A. The authority of law, referred to above, must be traceable to a provision in the Constitution especially where the legislative powers are shared by the Centre and the States as is the case with our Constitution which provides for what has been described as quasi federal system of governance.

16B. Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law; and so, for deciding whether a tax has been validly levied or not, it would be necessary to enquire whether the legislature, which passes the Act, was competent to pass it or not. The Supreme Court in **Commissioner of Income Tax, Udaipur, Rajasthan Vs MCdowell & Company Ltd, (2009) 10 SCC 755**, stated that the "tax", "duty", "cess" or "fee" constituting a class denotes various kinds of imposts by State in its sovereign power of taxation to raise revenue for the State. The Supreme Court further observed, "within the expression of each specie, each expression

denotes different kind of impost depending on the purpose for which they are levied." This power can be exercised in any of its manifestation, as observed by the Nine Judges' Bench, only under any law authorising levy and collection of tax as envisaged under Article 265 which uses only the expression that no tax "shall be levied and collected except by authorized of law. It coveys that to support a tax, legislative action is essential, it cannot be levied and collected in the absence of any legislative sanction by exercise of executive power of State under Article 73 by the Union or Article 162 by the State".

16C. In **Kunnathat Thathunni Moopil Nair Vs The State of Kerala & Anr, AIR 1961 SC 552,** wherein the question whether Article 265 of the Constitution was a complete answer to the attack against the constitutionality of a taxing statute was considered. The Supreme Court, while dealing with the challenge, held that in order that a taxing law may be valid, the tax proposed to be levied must be within the legislative competence of the legislature imposing the tax and authorizing the collection thereof, and that the tax must be subject to the condition laid down under Article 13 of the Constitution. One of such conditions declared by the Supreme Court was that the legislature shall not make any law that takes away or abridges the equality clause in Article 14. The Supreme Court declared that the guarantee of equal protection of laws must extend even to taxing statutes. It was further clarified that every person may not be taxed equally but property of the

same character has to be taxed, the taxation must be by the same standard so that the burden of taxation may fall equally on all persons holding that kind and extent of property. If the taxation, generally speaking, imposes similar burden on everyone with reference to that particular kind and extent of property on the basis of such taxation, the law shall not be open to attack on the ground of inequality even though the result of taxation may be that the total burden on different persons may be unequal. The Court summed up that taxing statute is not fully immune from an attack on the ground that it infringes equality clause under Article 14, no matter the Courts are not concerned with the policy underlying the taxing statute or whether a particular tax could have been imposed in a different way or a way that the Court might think would have been more equitable in the interest of equity.

17. The source of power to enact laws is contained in Articles 245 and 246 of the Constitution, which read thus:

> **245. Extent of laws made by Parliament and by the Legislatures of States.–**(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.
>
> (2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.
>
> **246. Subject–matter of laws made by Parliament and by the Legislatures of States.–** (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in

> the Seventh Schedule (in this Constitution referred to as the “Union List”).
>
> (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the “Concurrent List”).
>
> (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').
>
> (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

17A. The Supreme Court in **Hoechst Pharmaceuticals Ltd. & Anr Vs State of Bihar & Ors, (1983) 4 SCC 45,** held on a review of the available decisions, that the Constitution effects a complete separation of taxing power of the Union and of the States under Article 246 and that there is no overlapping anywhere in the exercise of that power. It was further observed that there is a distinction between general subjects of legislation and taxation, for the former are dealt with within one group while the later are dealt in a separate group. The result is that the power to tax cannot be deduced from a general legislative entry. This view was approved by the Constitution Bench of the Supreme Court in **State of West Bengal Vs Kesoram Industries Ltd & Ors, (2004) 10 SCC 201**.

18. At this stage, we would like to refer to the judgment of the

Supreme Court in **State of Kerala & Ors Vs Mar Appraem Kuri Company Ltd & Anr, (2012) 7 SCC 106**, where the Supreme Court explained the sweep and purport of Articles 245 and 246 of the Constitution. The relevant paragraphs read thus:

> "**37.** Article 246, thus, provides for distribution, as between Union and the States, of the legislative powers which are conferred by Article 245. Article 245 begins with the expression "subject to the provisions of this Constitution". Therefore, Article 246 must be read as "subject to other provisions of the Constitution".
>
> **38.** For the purposes of this decision, the point which needs to be emphasized is that Article 245 deals with conferment of legislative powers whereas Article 246 provides for distribution of the legislative powers. Article 245 deals with extent of laws whereas Article 246 deals with distribution of legislative powers. In these Articles, the Constitution Framers have used the word "make" and not "commencement" which has a specific legal connotation. [*See* Section 3(13) of the General Clauses Act, 1897]."

19. The power to levy tax is, however, subject to constitutional limitations. A Constitution Bench of the Supreme Court in **Synthetics and Chemicals Ltd & Ors Vs State of U P & Ors, (1990) 1 SCC 109**, recognized that in India, the Centre and the States both enjoy the exercise of sovereign power to the extent the Constitution confers upon them that power. The Supreme Court in this judgment, in paragraph 56, observed thus:

> "**56**. ...We would not like, however, to embark upon any theory of police power because the Indian Constitution does not recognise police power as

> such. But we must recognise the exercise of sovereign power which gives the State sufficient authority to enact any law subject to the limitations of the Constitution to discharge its functions. Hence, the Indian Constitution as a sovereign State has power to legislate on all branches except to the limitation as to the division of powers between the Centre and the States and also subject to the fundamental rights guaranteed under the Constitution. The Indian State, between the Centre and the States, has sovereign power. The sovereign power is plenary and inherent in every sovereign State to do all things which promote the health, peace, morals, education and good order of the people. Sovereignty is difficult to define. This power of sovereignty is, however, subject to Constitutional limitations. This power, according to some constitutional authorities, is to the public what necessity is to the individual. Right to tax or levy imposts must be in accordance with the provisions of the Constitution."

20. The Supreme Court in **Jindal Stainless-II**, while dealing with the constitutional limitations on the power of the State legislatures to levy taxes, observed that the first and the foremost of these limitations appear in Article 13 of the Constitution of India, which declares that all laws in force in the territory of India immediately before the commencement of the Constitution are void to the extent they are inconsistent with the provisions of Part III dealing with the fundamental rights guaranteed to the citizens. Then, the Supreme Court considered Articles 248 to 253 of the Constitution and noticed the limitations on the power of the State legislatures. Since, in the present case, we are not concerned with these Articles, we avoid further/detailed reference thereto. Article 286, however, is relevant for

our purpose which places constitutional limitations on the States' power to collect any levy that imposes or authorises the imposition of a tax on the sale or purchase of goods where such sale or purchase takes place outside the State or in the course of import of goods into or export of the goods outside the territory of India. It also makes law of a State imposing tax on sale or purchase of goods of special importance in inter-State trade or commerce or a tax on the sale or purchase of goods being a tax of the nature referred to in the relevant sub-clauses of clause 29(A) of Article 366 subject to such restrictions and conditions as to the system of levy, rates and other incidents of tax as the Parliament may by law specify. The other limitations placed under Article 285, 287 and 288 may not be relevant for our purpose.

21. It would, thus, appear that even when Article 246(2) and (3) confers exclusive power on the State legislatures to make laws with respect to matters in the Seventh Schedule, such legislative power is exercisable subject to constitutional limitations referred to above.

22. We would now like to have a close look at the provisions of Articles 301 to 307 comprising Part XIII of the Constitution, and the judgment of the Supreme Court in **Jindal Stainless-II**, wherein these Articles have been considered and dealt with extensively. These Articles have engaged attention not only of High Courts but even the Supreme Court on several occasions and there are lot of judgments of the Supreme Court interpreting these provisions. The last judgment is

the Nine Judges' Bench in **Jindal Stainless-II**. In this judgment, not only majority opinion deals with these provisions but even the other learned Judges, while concurring and differing with the opinion expressed by the majority, have considered these provisions extensively.

23. Part XIII of the Constitution has more than an abundant share of constitutional intricacies, as observed by Dr Justice Chandrachud in **Jindal Stainless-II**. His Lordship further observed that despite a judicial discourse of more than five decades, the debate on the true meaning of its provisions continues to bedevil academics, lawyers and judges who have had occasion to visit its provisions. The ambit of Part XIII is trade, commerce and intercourse within the territory of India.

Article 301 of the Constitution reads thus:

> "**301. Freedom of trade, commerce and intercourse**.- Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free."

23A. A plain reading of the above Article would show that freedom of trade, commerce and intercourse is by no means absolute, the same being subject to the other provisions of Part XIII of the Constitution. Amongst those provisions are Articles 302, 303 and 304 which have a direct bearing on the nature and the extent of restrictions subject to which only is the right to freedom of trade, commerce and intercourse referred to in Article 301.

24. Article 302 reads thus:

> "**302. Power of Parliament to impose restrictions on trade, commerce and intercourse.** — Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest."

24A. While dealing with this Article, the Nine Judges' Bench in **Jindal Stainless-II** observed that the contents of this Article leaves no manner of doubt that Parliament is empowered to impose such restrictions on the freedom of trade, commerce and intercourse between one State and another or within any part of the territory of India as may be required in public interest. Reading of Articles 301 and 302 together, it is clear that freedom of trade, commerce and intercourse is subject to restrictions which Parliament may by law impose in public interest. The absolute character of the freedom of trade, commerce and intercourse is thus lost by reason of Article 302 itself empowering Parliament to impose such restrictions as it may consider necessary in public interest.

25. Article 303 of the Constitution, which apparently places restrictions on the legislative power of Parliament and the States, reads thus:

> "**303. Restrictions on the legislative powers of the Union and of the States with regard to trade and commerce.—** (1) Notwithstanding anything in article 302, neither Parliament nor the Legislature of a State shall have power to make any law giving, or authorising the giving of, any

> preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.
>
> (2) Nothing in clause (1) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India."

25A. A careful reading of this Article, as observed in **Jindal Stainless-II**, would show that notwithstanding the power vested in Parliament under Article 302, it shall not make any law giving, or authorising the giving of any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule. From clause (2) of Article 303, it is manifest that the restriction on the power vested in Parliament in terms of clause (1) of Article 303 shall not extend to Parliament from making any law with a view to giving or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising out of scarcity.

26. A joint reading of clauses (1) and (2) of Article 303 would, thus, make it clear that while Parliament/Legislature of a State shall have no power to make a law imposing restriction on trade, commerce and

intercourse, by giving or authorizing the giving of any preference to one State over the other, such limitation on the legislative power of Parliament shall not extend to giving of any preference or making or authorizing any discrimination if it is declared by law that a situation has arisen out of scarcity of goods that makes it necessary to do so, as observed in paragraph 68 of **Jindal Stainless-II**. In short, while Parliament may impose restrictions in public interest under Article 302, the restrictions so imposed shall not be in the nature of giving preference or discrimination between one State or the other except when the law declares that scarcity of goods in any part of India necessitates such preference or discrimination.

27. That takes us to consider Article 304 of the Constitution, which reads thus:

> "**304. Restrictions on trade, commerce and intercourse among States.—**Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law—
>
> (a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and
>
> (b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:
>
> Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction

of the President."

27A. This Article also, like Articles 302 and 303, deals with restrictions on the freedom of trade, commerce and intercourse. The first clause (a) has been dealt with in para 69 in **Jindal Stainless-II** as under:-

> "69. ...The Article starts with a "non-obstante" clause which has been the subject matter of forensic debates in several cases. We do not for the present propose to address the effect of the non-obstante clause at this stage or the interplay between the expression "subject to" appearing in Article 301 and the non obstante clause in Article 304. We shall turn to that aspect a little later. **What we wish to examine is whether Article 304(a) treats taxes as a restriction so that any such levy may fall foul of Article 301. The answer to that question, we say without any hesitation is in the negative**. Article 304(a) far from treating taxes as a restriction per se, specifically recognises the State legislature's power to impose the same on goods imported from other States or Union Territories. The expression "the legislature of a State may by law impose on goods imported from other States (or Union Territories) any tax" are much too clear and specific to be capable of any equivocation or confusion. It is true that the source of power available to the State legislature to levy a tax is found in Articles 245 and 246 of the Constitution but, the availability of such power for taxing goods imported from other States or Union Territories is clearly recognised by Article 304 (a). The expression 'may by law impose' is certainly not a restriction on the power to tax. That does not, however, mean that the power to tax goods imported from other States or Union Territories is unqualified or unrestricted. There are, in our opinion, two restrictions on that power. **The words "to which similar goods manufactured or produced in that State are subject" impose the first restriction on the power of the State legislature to levy any such tax. These words would imply that a tax on import of goods from other States will be justified only if similar goods manufactured or produced**

> **in the State are also taxed. The second restriction comes from the expression "so, however, as not to discriminate between goods so imported and goods so manufactured or produced". The State legislature cannot in the matter of levying taxes discriminate between goods imported from other States and those manufactured or produced within the State levying such a tax**. The net effect of Article 304 (a) therefore is that while levy of taxes on goods imported from others State and Union territories is clearly recognised as Constitutionally permissible, the exercise of such power is subject to the two restrictive conditions referred to above. That does not however detract from the proposition that levy of taxes on goods imported from other States is constitutionally permissible so long as the State legislatures abide by the limitations placed on the exercise of that power. To put it differently, levy of taxes on import of goods from other States is not by itself an impediment under the scheme of Part XIII or Article 301 appearing therein."
>
> (emphasis supplied)

27B. The interplay between clause (a) and (b) has been explained in paragraph 71 as under:-

> "71. There is, in our opinion, no merit in any of the contentions noted above. **Clauses (a) and (b) of Article 304 deal with two distinct subjects and must, therefore, be understood to be independent of each other. While Clause (a) deals entirely with imposition of taxes on goods imported from other States, Clause (b) deals with imposition of reasonable restriction in public interest. It is trite that levy of a tax in terms of Article 304(a) may or may not be accompanied by the imposition of any restriction whether reasonable or unreasonable.** There is, in our opinion, no rationale in the contention that the legislature of a State cannot levy a tax without imposing one or more reasonable restrictions or that a law that is simply imposing restrictions in terms of Clause (b) to Article 304 must be accompanied by the levy of a tax on the import of goods. The use of the word 'and' between clauses (a)

> and (b) does not admit of an interpretation that may impose an obligation upon the legislature to necessarily impose a tax and a restriction together. The law may simply impose a tax without any restriction reasonable or otherwise or it may simply impose a reasonable restriction in public interest without imposing any tax whatsoever. It may also levy a tax and impose such reasonable restriction as may be considered necessary in public interest. All the three situations are fully covered and permissible under Article 304 in view of the phraseology used therein. The word 'and' can me an 'or' as well as 'and' depending upon the context in which the law enacted by the legislature uses the same. **Suffice it to say that levy of taxes do not constitute a restriction under Part XIII except in cases where the same are discriminatory in nature. Once Article 304 (a) is understood in that fashion, Clause (b) dealing with reasonable restrictions must necessarily apply to restrictions other than those by way of taxes. It follows that for levy of taxes prior Presidential sanction in terms of the proviso under Article 304(b) will be wholly unnecessary.** This view is reinforced on the plain language of proviso to Article 304(b), which is limited to law relating to reasonable restrictions referred to in clause (b)."
>
> (emphasis supplied)

28. The Supreme Court after dealing with Articles 301 to 304 extensively, in **Jindal Stainless-II**, summarized these Articles, a sum total of these Articles, which is relevant for our purpose, reads thus:

> "1. Freedom of trade, commerce and intercourse in terms of Article 301 is not absolute but is subject to the Provisions of Part XIII.
>
> 2. Article 302 which appears in Part XIII empowers the Parliament to impose restrictions on trade, commerce and intercourse in public interest.
>
> 3. The restrictions which Parliament may impose in terms of Article 302 cannot however give any preference to one State over another by virtue of any entry relating to trade and commerce in any of

the lists in the Seventh Schedule.

4. The restriction that the Parliament may impose in terms of Article 302 may extend to giving of preference or permitting discrimination between one State over another only if Parliament by law declares that a situation arising out of scarcity of goods warrants such discrimination or preference.

5. Article 304(a) recognizes the availability of the power to impose taxes on goods imported from other States, the legislative power to do so being found in Articles 245 and 246 of the Constitution.

6. Such power to levy taxes is however subject to the condition that similar goods manufactured or produced in the State levying the tax are also subjected to tax and that there is no discrimination on that account between goods so imported and goods so manufactured or produced.

7. The limitation on the power to levy taxes is entirely covered by Clause (a) of Article 304 which exhausts the universe in so far as the State legislature's power to levy of taxes is concerned.

8. Resultantly a discriminatory tax on the import of goods from other States alone will work as an impediment on free trade, commerce and intercourse within the meaning of Article 301.

9. Reasonable restrictions in public interest referred to in Clause (b) of Article 304 do not comprehend levy of taxes as a restriction especially when taxes are presumed to be both reasonable and in public interest."

28A. Further observations made in paragraphs 86 and 91 in **Jindal Stainless-II** are also relevant, which read thus:

"86. Suffice it to say that the interpretation of any provision of the Constitution will be true and perfect only when the Court looks at the Constitution holistically and keeps in view all important and significant features of the Constitutional scheme constantly reminding itself of the need for a harmonious construction lest interpretation placed on a given provision has the effect of diluting or whittling down the effect or the importance of any other provision or feature of the Constitution. **So**

interpreted Article 301 appearing in Part XIII does not, in our opinion, work as an impediment on the States' taxing powers except in situations where such taxes fall foul of Article 304(a) of the Constitution. The contextual approach thus fully matches the textual interpretation which we have placed on Part XIII.

91.Suffice it to say that the use of the non-obstante clause in Article 304 has had its share of criticism from the very inception which criticism has to an extent been prophetic for the interpretation of Part XIII has indeed been a lawyer's paradise over the past fifty years or so. Seervai has in his treatise adverted to this anomaly arising from the use of the non-obstante clause and said that the same covers both the clauses (a) and (b) of Article 304. He argues with considerable forensic force that **reference to Article 301 in the non-obstante clause is meaningless having regard to the fact that the freedom granted thereunder is itself subject to other provisions of Part XIII including Article 304. This would necessarily imply that Article 304 (a) and (b) do not subtract anything from Article 301. That appears to us to be the correct view on the subject**. While it is true that legislature does not waste words and that no part of a legislation can be rendered a surplusage, the only rational meaning that can be attributed to the non-obstante clause appearing in Article 304 is that the same was used only as a manner of abundant caution and a possible reassurance that Article 301 is indeed subordinate to Article 304 which it was even otherwise without the use of that clause. **The net effect of the discussion therefore is that the expression 'subject to other provisions of this Part' appearing in Article 301 and the non-obstante clause appearing in Article 304 do not traverse in different directions. There is no conflict in the two provisions on account of the use of the said expressions. Interpreted individually or conjointly, the said two expressions simply mean that Article 304 takes precedence over Article 301. While Article 304(a) recognizes the power of the State Legislatures to tax goods imported from other State, it also**

> **imposes limitations on the exercise of that power. On the other hand clause (b) to Article 304 permits imposition of reasonable restrictions subject to the proviso appearing below that clause. We have thus no hesitation in rejecting the argument that the use of the non-obstante clause in Article 304 is suggestive of the Constitution recognizing taxes as restrictions under Article 301 or that the power to impose a reasonable restriction under Article 304(b) is meant to include the power to levy taxes so that levy of taxes may be permissible only in case the procedure provided under the proviso is followed**."
>
> (emphasis supplied)

29. The Supreme Court also considered its decisions in **Laxmanappa Hanumantappa Jamkhandi Vs Union of India, AIR 1955 SC 3**, **Smt Ujjam Bai Vs State of Uttar Pradesh, AIR 1962 SC 1621,** along with its judgment in **Moopil Nair's** case (supra), **Reserve Bank of India Vs Peerless General Finance and Investment Co Ltd, (1987) 1 SCC 424**, **ITC Limited Vs Agricultural Produce Market Committee and Ors. (2002) 9 SCC 232**, **Kesavananda Bharti Vs State of Kerala, 1973 4 SCC 225** and so also the H M Seervai's Commentary on Constitutional Law of India to consider the textual interpretation of the provisions of Articles 301 to 304 and summed up the legal position in the following paragraph in **Jindal Stainless-II**:

> "The result of the authorities may thus be summed up:
>
> (1) A tax will be valid only if it is authorized by a law enacted by a competent legislature. That is Article 265.

> (2) A law which is authorized as aforesaid must further be not repugnant to any of the provisions of the Constitution. Thus, a law which contravenes Articles 14 will be bad, Moopil Nair's case.
>
> (3) A law which is made by a competent legislature and which is not otherwise invalid, is not open to attack under Article 31 (1). Ramjilal's case and Laxmanappa's case.
>
> (4) A law which is ultra vires either because the legislature has no competence over it or it contravenes, some constitutional inhibition, has no legal existence, and any action taken thereunder will be an infringement of Article 19 (1) (g) Himmatlal's case and Laxmanappa's case. The result will be the same when the law is a colourable piece of legislation.
>
> (5) Where assessment proceedings are taken without the authority of law, or where the proceedings are repugnant to rules of natural justice, there is an infringement of the right guaranteed under Article 19(1)(f) and Article 19(1)(g); Tata Iron & Steel Co. Ltd; Moopil Nair's case and Shri Madan Lal Arora's case."

30. The Supreme Court in **Jindal Stainless-II** answered the first question in the negative and declared that a non-discriminatory tax does not per se constitute a restriction on the right to free trade, commerce and intercourse guaranteed under Article 301. Accordingly, the decision taking a contrary view in **Atiabari**, including various other judgements following it, including the decisions in **Automobile Transport** and **Jindal Stainless-I** stood overruled. After answering the first question, the Supreme Court observed that "compensatory tax theory being not approved, it was not necessary to answer the second and the third questions".

31. Then, the Supreme Court proceeded to consider Question No 4,

50.

“Is the entry tax levied by the States in the present batch of cases violative of Article 301 of the Constitution and in particular have the impugned State enactments relating to entry tax to be tested with reference to Articles 304(a) and 304(b) of the Constitution for determining their validity?” This question was divided into two parts. The first part was whether the constitutional validity of the impugned legislations, has to be tested by reference to both Articles 304 (a) and 304 (b), as contended on behalf of the assessees or only by reference to Article 304 (a), as contended by the State. While dealing with the first part of the question, the Supreme Court observed that Article 304 (b) does not deal with taxes as restrictions. It was further observed that restrictions referred to in Article 304 (b) are non-fiscal in nature. Constitutional validity of any taxing statute has, therefore, it was held, to be tested only on the anvil of Article 304 (a) and if the law is found to be nondiscriminatory, it can be declared to be constitutionally valid without the legislation having to go through the test or the process envisaged by Article 304(b). The Supreme Court further observed that should the statute fail the test of non-discrimination under Article 304 (a) it must be struck down for the same cannot be sustained even if it had gone through the process stipulated by Article 304 (b). That is because what is constitutionally impermissible in terms of Article 304 (a) cannot be validated and sanctioned through the medium of Article 304 (b). While concluding on the first part, it was further observed that

a fiscal statute shall be open to challenge only under Article 304 (a) of the Constitution without being subjected to the test of Article 304 (b) either in terms of the existence of public interest or reasonableness of the levy.

32. That takes us to have a glance at the second part of the question that was dealt with by the Supreme Court, namely, whether the impugned State enactments violate Article 304 (a) of the Constitution. The contention that grant of exemptions and incentives in favour of locally manufactured goods is also a form of discrimination was repelled by reiterating the law laid down in **Video Electronics Pvt. Ltd. and another Vs. State of Punjab, (1990) 3 SCC 87**, that "all legislative differentiation is not discrimination." It was held that use of word 'discrimination' in Article 304 (a) would mean 'intentional and unfavourable bias'. So long as such bias is not evident from the measures adopted, it would not constitute discrimination. The relevant observations made in this regard, while dealing with question no.4, are as under:-

> "130. ... While we have at some length heard learned counsel for the parties on that aspect, we do not propose to deal with all the dimensions of that challenge based on Article 304(a) except two of them that were argued at great length by learned counsel for the parties. The first of these two dimensions touches upon the State's power to promote industrial development by granting incentives including those in the nature of exemptions or reduced rates of levy on goods locally produced or manufactured. On behalf of the assesses

it was contended that grant of exemptions and incentives in favour of locally manufactured/ produced goods is also one form of insidious discrimination which was impermissible in terms of article 304(a) for such exemptions and incentives had the effect of putting goods from another State at a disadvantage. Relying upon a decision of two-Judge Bench of this Court in Shree Mahavir Oil Mills and Anr. v. State of Jammu and Kashmir and Ors. (1996) 2 SCC 39 it was argued that exemptions in favour of locally produced goods from payment of taxes was constitutionally impermissible and offensive to article 304(a). That was a case where the State Government had totally exempted goods manufactured by small scale industries within the State from payment of sales tax even when the sales tax payable by other industries including manufacturers of goods in adjoining States was in the range of 8%. This exemption was questioned by manufacturers of edible oils from other States on the ground that the same was discriminatory and violative of Articles 301 and 304 of the Constitution.

131. This Court held that the exemption given to manufacturers of edible oil was total and unconditional, while producers of edible oil from industries in adjoining states had to pay sales tax @ 8%. Grant of exemption to local oil producing units thereby put the former at a disadvantage. Having said that, the Court exercised its powers under Article 142 of the Constitution and struck down the exemption by moulding the reliefs to suit the exigencies of the situation. The Court no doubt noticed a three-Judge Bench decision in Video Electronics vs. State of Punjab (1990) 3 SCC 87 in which notifications issued by the States of U.P and Punjab providing for exemptions to new units established in certain areas for a prescribed period of 3 to 7 years were assailed as discriminatory. The challenge to the exemption was in that case also based on the alleged violation of Articles 301 and 304. This Court however upheld the notifications in question on the ground that the same related to a specific class of industrial units and the benefit under the same was admissible for a limited period of time only. The Court observed that if an

overwhelmingly large number of local manufacturers were subject to sales tax, it could not be said that the local manufactures were favored as a class against outsiders.

Adverting to the decision in Video Electronics (supra) this Court in Mahavir (supra) held the same to be distinguishable on the ground that the Punjab and U.P. notifications were qualitatively different from the one issued by the Government of Jammu and Kashmir in as much as while the former benefitted only specified units and limited the benefit to a specified period, the latter was not subject to any such limitations. This declared the Court resulted in discrimination vis-a-vis. outside goods. What is important is that in Video Electronics (supra) this Court recognized the difference between differentiation and discrimination and held that every differentiation is not discrimination. This Court noted that the word discrimination was not used in Article 14 as it has been used in Article 16, Article 303 and Article 304 (a). The use of the word in 304 (a) observed this Court involved an element of "intentional and unfavorable bias". So long as there was no such bias evident from the measure adopted by the state, mere grant of exemption or incentives aimed at supporting local industries in their growth, development and progress did not constitute discrimination.

132. We respectfully agree with the line of reasoning adopted in Video Electronics (supra). The expression "discrimination" has not been defined in the Constitution though the same has fallen for interpretation of this Court on several occasions. The earliest of these decisions was rendered in Kathi Raning Rawat v. The State of Saurashtra AIR 1952 SC 123, where a seven-Judge Bench of this Court held that all legislative differentiation is not necessarily discriminatory. Relying upon the meaning of the expression in Oxford Dictionary, Patanjali Sastri, CJ (as His Lordship then was) explained :

> "7. All legislative differentiation is not necessarily discriminatory. In fact, the word "discrimination" does not occur in Article

> 14. The expression “discriminate against” is used in Article 15(1) and Article 16(2), and it means, according to the Oxford Dictionary, “to make an adverse distinction with regard to; to distinguish unfavourably from others”. Discrimination thus involves an element of unfavourable bias and it is in that sense that the expression has to be understood in this context. If such bias is disclosed and is based on any of the grounds mentioned in Articles 15 and 16, it may well be that the statute will, without more, incur condemnation as violating a specific constitutional prohibition unless it is saved by one or other of the provisos to those articles. But the position under Article 14 is different. Equal protection claims under that article are examined with the presumption that the State action is reasonable and justified. This presumption of constitutionality stems from the wide power of classification which the legislature must, of necessity, possess in making laws operating differently as regards different groups of persons in order to give effect to its policies… .. ..”

133. Fazl Ali J. in his concurring judgment explained the concept in the following words:

> “19. I think that a distinction should be drawn between “discrimination without reason” and “discrimination with reason”. The whole doctrine of classification is based on this distinction and on the well-known fact that the circumstances which govern one set of persons or objects may not necessarily be the same as those governing another set of persons or objects, so that the question of unequal treatment does not really arise as between persons governed by different conditions and different sets of circumstances. The main objection to the West Bengal Act was that it permitted discrimination “without reason” or without any rational basis.”

Any challenge to a fiscal enactment on the touchstone of Article 304 (a) must in our opinion be tested by the same standard as in Kathi's case (supra). The Court ought to examine whether the differentiation made is intended or inspired by an element of unfavourable bias in favour of the goods produced or manufactured in the State as against those imported from outside. If the answer be in the affirmative, the differentiation would fall foul of Article 304(a) and may tantamount to discrimination. Conversely, if the Court were to find that there is no such element of intentional bias favouring the locally produced goods as against those from outside, it may have to go further and see whether the differentiation would be supported by valid reasons. In the words of Fazl Ali, J. discrimination without reason would be unconstitutional whereas discrimination with reason may be legally acceptable. In Video Electronic's case, this Court noted that the differentiation made was supported by reasons. This Court held that if economic unity of India is one of the Constitutional aspirations and if attaining and maintaining such unity is a Constitutional goal, such unity and objectives can be achieved only if all parts of the Country develop equally. There is, if we may say so, with respect considerable merit in that line of reasoning. A State which is economically and industrially backward on account of several factors must have the opportunity and the freedom to pursue and achieve development in a measure equal to other and more fortunate regions of the country which have for historical reasons, developed faster and thereby acquired an edge over its less fortunate country cousins. Economic unity from the point of view of such underdeveloped or developing states will be an illusion if they do not have the opportunity or the legal entitlement to promote industries within their respective territories by granting incentives and exemptions necessary for such growth and development. The argument that power to grant exemption cannot be used by the State even in case where such exemptions are manifestly intended to promote industrial growth or promoting industrial activity has not appealed to us. The power to grant exemption is a part of the sovereign power to levy

> taxes which cannot be taken away from the States that are otherwise competent to impose taxes and duties. The conceptual foundation on which such exemptions and incentives have been held permissible and upheld by this Court in Video's case is, in our opinion, juristically sound and legally unexceptionable. Video Electronics, therefore, correctly states the legal position as regards the approach to be adopted by the Courts while examining the validity of levies. So long as the differentiation made by the States is not intended to create an unfavourable bias and so long as the differentiation is intended to benefit a distinct class of industries and the life of the benefit is limited in terms of period, the benefit must be held to flow from a legitimate desire to promote industries within its territory. Grant of exemptions and incentives in such cases must be deemed to have been inspired by considerations which in the larger context help achieve the Constitutional goal of economic unity.
>
> 134. Seen in the above context the decision in Mahabir Oil's case is indeed distinguishable in as much as the manufactures of edible oil were exempt totally and unconditionally while other manufacturers from outside the State were not so exempt. Whether or not the impugned enactments in the present batch of cases satisfy the tests referred to above and elaborated in Video Electronics case is a matter on which we do not propose to express any opinion for that aspect is best left open to be considered by the regular benches hearing these matters after the reference is disposed off."

33. The Supreme Court also considered its judgments in **Mafatlal Vs Union of India, 1997(5) SCC 536**, **Khandige Sham Bhat Vs Agrl ITO, AIR 1963 SC 591**, **V Guruviah Naidu and Sons & Ors Vs State of Tamil Nadu & Ors, (1977) 1 SCC 234**, and **Malwa Bus Service (Private) Ltd Vs State of Punjab & Ors, (1983) 3 SCC 237**

and in concluding paragraphs, observed thus:

> "141. **Seen in the context of the above, we are inclined to accept the submission made on behalf of the State that so long as the intention behind the grant of exemption/adjustment/credit is to equalize the fall of the fiscal burden on the goods from within the State and those from outside the State such exemption or set off will not amount to hostile discrimination offensive to Article 304(a).** Having said that, we leave open for examination by the regular benches hearing the matters whether the impugned enactment achieve the object of such equalization or lead to a situation that exposes goods from outside the state to suffer any disadvantage vis-a-vis those produced or manufactured in the taxing State.
>
> 142. We must, while parting, mention that learned counsel for the parties had attempted to raise certain other issues like whether the entire State can be treated as a local area and whether entry tax can be levied on goods imported from outside the country. We do not, however, consider it necessary in the present reference to address all those issues which are hereby left open to be decided by the regular bench hearing the matter."
>
> (emphasis supplied)

34. His Lordship Justice S A Bobde, while concurring with the opinion expressed by majority on all four questions, expressed his opinion in paragraphs 148(5), 149(6) and 150(7), which we would like to reproduce as under:

> "**148(5)**. The non-discriminatory principle is embedded in two provisions of Part XIII: Article 303 (1) - Parliament cannot impose restrictions under Article 302 and make a discriminatory law under any entry relating to trade and commerce; the other is Article 304 (a) which (unlike Section 297 of the erstwhile Government of India Act, 1935 which prohibited - through a negative mandate,

discriminatory treatment) empowers State Legislatures to impose non-discriminatory taxes on goods. Thus, Article 304 (a) differentiates between discriminatory and nondiscriminatory taxes. The premise underlying this provision is the paramount aim of Part XIII to establish and foster economic unity of the country. Non-discrimination, or parity of treatment is therefore at the core of its purpose, which Shri T.T Krishnamachari stressed, in his speech in the Constituent Assembly. He said that "restrictions by the State have to be prevented so that the particular idiosyncrasy of some people in power or narrow provincial policies of certain States should not be allowed to come into play and affect the general economy of the country." [Constituent Assembly Debates, 1139 (1949)].

149(6). The Article, therefore, recognizes the power of a Legislature to a State to impose the tax on the imported goods so, however, as not to discriminate between goods so imported and goods so manufactured or produced. While there is no doubt that this Article recognizes the power to legislate on a State, it equally qualifies that power with the condition that such a law must comply with. That condition is that the law which imposes a tax on imported goods cannot "discriminate" between goods so imported and the goods so manufactured or produced. It also postulates that the tax on import is a "tax to which similar goods manufactured or produced in that State are subject." The Article thus imposes two conditions: firstly, that a law may impose a tax on goods imported from other States, 'any tax' to which "similar goods manufactured or produced' in that State are subject. This clearly implies that the goods imported from other States may be subjected to a tax where similar goods are in fact, manufactured or produced in the importing State and are subjected to tax. In other words, (a) the goods imported from other States must be similar to (b) the goods manufactured or produced in the importing State and (c) the goods so locally manufactured or produced must be subject to tax. The second condition is the tax that is imposed on imported goods should not discriminate between the imported goods and goods manufactured or produced in the importing

> State.
>
> **150(7)**. The intention of the Article thus, clearly is that where a tax exists on goods imported into a State there should be no discrimination between such a tax and a tax on similar goods manufactured or produced in the importing State. The reference point for tax on imported goods is the tax on locally manufactured goods. It is not possible to construe the prohibition against discrimination where there is no tax upon similar goods manufactured or produced in the importing State. Undoubtedly, the effect of such a construction is that the imported goods cannot be taxed where similar goods are not manufactured or produced in the importing State and are therefore, not subjected to similar tax and that seems to be the clear intention of this Article."

35. Their Lordships Justice Shiva Kirti Singh, Justice N V Ramana and Justice R Banumathi, while agreeing with the majority opinion, recorded reasons therefor. Their Lordships Dr Justice D Y Chandrachud and Justice Ashok Bhushan authored independent differing judgments.

Objection to maintainability of the writ petitions:-

36. At the outset, we would like to deal with the objection as to maintainability of writ petitions. It was contended by Mr Manish Goel, learned Additional Advocate General for the State that the petitions are not maintainable since the questions raised have already been addressed by this Court in **ITC Limited Vs State of Uttar Pradesh, 2012 UPTC 73,** (for short 'ITC Limited.') and the Nine Judges' Bench in **Jindal Stainless-II**. It was vehemently submitted that the Nine Judges' Bench has settled all questions and while doing so, neither the said Bench nor the regular Two Judges Bench had set aside the judgment of this Court

in **ITC Limited** and in view thereof, it is not open to this Court to re-consider the vires of the Act. On the other hand, learned counsel for the petitioners contended that the regular Bench of the Supreme Court having granted liberty to the petitioners to file substantive petitions before this Court, and further directing this Court to decide various questions formulated in the order, including other constitutional/ statutory issues, it was implicit therein that the judgement of this Court in **ITC Limited** stood overruled.

37. This Court in **ITC Limited** dealt with and disposed of large number of petitions preferred by traders, manufacturers and importers bringing scheduled goods into the local areas in the State of Uttar Pradesh for consumption, use or sale therein, challenging the validity of the Act on the ground of lack of the legislative competence of the State. It was contended that the Act was violative of freedom of trade, commerce and intercourse guaranteed under Article 301 and not saved by Article 304 (b) of the Constitution of India. The petitioners had also challenged the retrospectivity of the Act, with effect from 1 November 1999, when the U P Tax on Entry of Goods Ordinance, 1999, was replaced by U P Tax on Entry of Goods Act, 2000 which was promulgated and was struck down by this Court in **Indian Oil Corporation Limited Vs State of U P, AIR 2004 Alld 277**. It is not in dispute that in **ITC Limited** the validity of the Act was challenged on the aforestated ground and all the grounds were dealt with in depth. A

categorical finding had been recorded that the tax has to be non-discriminatory, reasonable and levied in public interest even if such legislation was moved with the assent of the President. After dealing with the challenge raised in those petitions and dealing with the provisions of the Act in the backdrop of the provisions of the Constitution, in particular Chapter XIII and Article 14 of the Constitution of India, in concluding paragraphs 150 and 151 of the Report, it was observed thus:

> "150. For the reasons given as above, we hold that the State of U.P. did not lack legislative competence in enacting U.P. Tax on Entry of Goods into Local Areas Act, 2007, imposing entry tax on the entry of scheduled goods into the local areas for consumption, use or sale thereunder. The provisions of the Act patently and facially indicate and that there are sufficient guidelines and guarantees under the Act for ensuring that the entire amount of entry tax collected and credited to the U.P. State Development Fund is utilised only for the purposes of its reimbursement to facilitate the trade, commerce and industry. The State Government has also established that the entire amount of entry tax is by way of reimbursement/recompense to the trade, commerce and industry, in the local areas of the State of U.P. provides quantifiable/measurable benefits to its payers. The levy under the Act, 2007 is also not discriminatory, unreasonable or against public interest. The levy of entry tax under the Act, therefore, does not violate the freedom of trade, commerce and intercourse guaranteed under Article 301 of the Constitution of India. Section 17 of the Act validating the amount of entry tax levied, assessed, realized and collected under the U.P. Tax on Entry of Goods Act, 2000, is also valid and authorises the State to keep the entire amount, for the purposes of its utilisation for facilitating trade, commerce and intercourse in the local areas of the

State.

> 151. We may observe by way of clarification that in these writ petitions we have confined our enquiry to the constitutional validity of the U.P. Tax on Entry of Goods into Local Areas Act, 2007, and whether the entry tax is compensatory in nature, which does not violate the freedom of trade, commerce and intercourse under Article 301 of the Constitution of India. We have not examined the other issues namely the validity of the notices, assessments, rebates, exemption and the liability of the traders, and manufacturers of the scheduled goods to pay entry tax. All other questions, will remain open to be considered by the competent authorities under the Act in accordance with law."

38. The judgment of this Court in **ITC Limited** was then carried to the Supreme Court and all those petitions were also before the Nine Judges' Bench, which dealt with the five questions to which we have already made reference in this judgment.

39. It is not in dispute and also apparent from the judgment of Nine Judges' Bench in **Jindal Stainless-II** and the judgement of the Two Judges Bench that the judgment of the Division Bench in **ITC Limited** was not set aside, but at the same time, the challenge to the validity of the Act was left open on limited grounds. What is left open to be considered by this Court now is whether the entire State can be treated as local area for the purpose of entry tax; whether entry tax can be levied on the goods which are directly imported from other countries and brought in a particular State; and in some statutes enacted by certain States, there was a provision for giving adjustment of other

taxes like VAT, incentives etc paid by the indigenous manufacturers, and whether the benefits given to certain categories of manufacturers would amount to discrimination under Article 304 of the Constitution of India. While leaving these questions open, the Supreme Court also allowed the petitioners to raise any other constitutional/statutory issue which arises for consideration. Definitely, the Supreme Court did not allow the petitioners to raise validity of the Act on all the grounds as were raised by the learned counsel for the petitioners and it was left open only on the grounds as reflected in the order of the regular Bench. The Supreme Court allowing the petitioners to raise “any other constitutional/statutory issue”, in our opinion, would mean the other constitutional/statutory issues related to or in the context of the questions framed by the Supreme Court for our determination. This is also clear from the observations made by majority, in the Nine Judges' Bench judgment.

40. Thus, while overruling the objection to the maintainability of these petitions, we would like to confine ourselves within the fore-corners of the judgment of the regular Bench dated 21 March 2017. We further observe, once again at the cost of repetition, that the challenge to the validity of the Act, 2007 was considered by the Division Bench in **ITC Limited** on all grounds including the ground that the levy of tax under the Act is compensatory in nature. In view of the opinion expressed by the Nine Judges' Bench, whereby compensatory theory

has been completely wiped out, we would have to, therefore, consider the challenge limited to the grounds reflected in the questions framed by the regular Bench of the Supreme Court. In short and in substance, we observe that we would be dealing with the challenge only on the grounds as reflected in the judgment of the regular Bench dated 21 March 2017, in the light of the judgment of Nine Judges' Bench in **Jindal Stainless-II**.

Submissions of the Petitioners:-

41. We would now like to refer to the submissions advanced by learned counsel for the parties albeit, while examining the challenge, we will confine ourselves to the questions left open by the Supreme Court.

42. The first ground of challenge was that the impugned Act extends to areas in respect of which the State Legislature does not have power to legislate. It was urged that under List I Entry 3 of the 7th Schedule of the Constitution, it is only the Central Government which can make legislation for cantonment areas. The impugned legislation, particularly Section 2(d), in so far as it seeks to include cantonment areas governed by Cantonments Act, 1994 within the purview of the Act is beyond the legislative competence of the State Government. A strong reliance has been placed on Section 66 of the Cantonments Act 2006 in contending that the Union, while enacting the Cantonments Act 2006, has

conferred the power to levy taxes on the Cantonment Boards, in the manner provided thereunder. The impugned legislation thus encroaches upon a field, which is not only exclusive domain of the Union, but in regard whereof, there is already a Central legislation.

43. The next submission was that the impugned legislation wrongly treats the entire State as one local area. It is urged that the impugned legislation has its source of power from Entry 52, List II, whereunder the State Government is competent to levy taxes on entry of goods into a local area for consumption, use or sale therein. Under the said entry, the State Government is empowered to enact a law for the benefit of the local area wherein the goods are to be consumed, used or sold. The word 'local area' has to be understood as an area administered by a local body, like a municipality, a panchayat or like. The use of the word 'a' before 'local area' is of immense significance. The taxable event is not the entry of goods in any area of the State, but in a local area. The impugned legislation though defines local area as an area governed by a municipal corporation, a municipality, a zila panchayat, a kshetra panchayat, a gram panchayat or other local authorities, but there are several provisions of the Act, particularly, Section 2 (c), Section 4 (3A), Section 4 (6), Section 6, Section 12 and Section 14, which when read together results in treating the entire State as one local area which is illegal. In support of the said submission reliance was placed on the judgments of the Supreme Court in **Diamond Sugar Mills Ltd. Vs.**

State of U.P. , AIR 1961 SC 652, Burmah-Shell Oil Storage & Distributing Co. of India Ltd. Vs. Belgaum Borough Municipality, AIR 1963 SC 906, Shaktikumar M. Sancheti Vs. State of Maharashtra, 1995 (1) SCC 351, Union of India and others vs. R.C. Jain and others, 1981 (2) SCC 309 and **Commissioner Of Income Tax, Lucknow vs. U.P Forest Corporation**, **1998 (3) SCC 530 (para 11 & 12)**. A specific reference was also made to the provisions of the Constitution, in particular, Articles 243, 243 (H), 243 (P), 243 (Q), 243 (W), 243 (X) as well as the views expressed on the issue by their Lordships Justice Dr D Y Chandrachud, and Justice Ashok Bhushan.

44. Another facet of the argument, vehemently urged, was that Entry 52 of List II, in fact, is the power of the 'local body' administering a 'local area' to impose tax. It is quite separate and distinct from the general power of State to collect revenue for the development of the entire State as a whole. It was a source of revenue for the local bodies which collects it and appropriates it in carrying out the duties and obligations imposed upon it as an institution of self-government. It is urged that with insertion of Part IX and IXA of the Constitution by the Constitution Seventy Third Amendment, the Panchayats and Municipalities, in order to fulfill the responsibilities conferred upon them under Articles 243G and 243W, have been given power to impose taxes under Article 243 H and 243X. These provisions also envisage a local fund for crediting all moneys received, respectively, by or on

behalf of the Municipality and prescribes the procedure for withdrawing money therefrom. The provisions of the impugned legislation in so far as it empowers the State to collect taxes on entry of goods in a local area itself, and to credit it not to the 'local fund', but to a separate Fund envisaged by Section 14, is beyond it's legislative competence. Likewise, the utilisation of the tax so collected for development of trade, commerce and industry in the entire State and not exclusively for the local area from which it is collected makes it a State level levy and not a local levy. It was submitted that the State has no power to impose such a levy for augmenting the income of the State as a whole. Such a levy could only be imposed (i) by or on behalf of a 'local body'; (ii) for its benefit; (iii) to be appropriated by it in carrying out its responsibilities of governance of the territories falling within its jurisdiction. Various provisions of the impugned legislation which are contrary to the said constitutional scheme are beyond the legislative competence. Bereft of these provisions, the Act could not survive, and is thus liable to be struck down as a whole.

45. It was further urged that a taxing statute is to be construed strictly as laid down by the Supreme Court in **State of West Bengal Vs. Keshav Ram Industries Ltd. and others, 2004 (10) SCC 201**. Where there is any ambiguity in a taxing statute, then such a legislation does not amount to a valid law. In support of the said submission, reliance was placed on **Govind Saran Ganga Saran Vs. CST 1985 SCC Supl.**

205, Commissioner, Central Excise & Customs, Kerala Vs. M/s Larsen & Toubro Ltd., 2016 (1) SCC 170, Messers Virajlal Manilal and Co. & others Vs. State of Madhya Pradesh and others, 1969 (2) SCC 248, and **Godfrey Phillips India Ltd. and another Vs. State of U.P. and others, 2005 (2) SCC 515**.

46. It was further contended that the value of goods in case of stock transfers, as permitted under Section 6-A of the Central Sales Tax Act, is determined at the price at which goods of like kind or like quality is sold or is capable of being sold at wholesale price in the open market in the local area in which the good are being brought, which is an event taking place after the taxable event. The value of goods received by stock transfer is generally less than the value at which such goods are capable of being sold in the open market in the local area and thus, such goods had been subjected to tax at a higher value, which is illegal and beyond the legislative competence of the State Government.

47. It was further submitted that Section 6 which provides for rebate in respect of scheduled goods notified under sub-section (1) of Section 4 to the extent of tax leviable under the U.P. VAT Act results in hostile discrimination vis-a-vis the industries importing similar goods as raw material, as they do not get the benefit of exemption under the rebate notification, not being a sale. This, according to learned Senior Counsel, works to the benefit of a dealer who imports similar goods from outside State and then sells it within the local area inasmuch as he

enjoys the rebate, whereas a manufacturer importing similar goods for his own consumption does not get the same.

48. In support of his submission that provisions of Section 4 (6) and Section 6 of the Act are discriminatory, he submitted that it is the ultimate amount of tax paid which has to be taken as a yardstick in determining the issue of discrimination and not the price inasmuch as a person may be compelled to sell the goods at the same price squeezing his profitability in order to compete with similar goods imported from outside State by a dealer which enjoy the rebate to the extent of the liability under the U.P. Vat Act. In support of the said submission, he has placed reliance on **Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and another**, **1963 Supp. (2) 435, H. Anraj Vs. Government of Tamil Nadu, 1986 (1) SCC 414, West Bengal Hosiery Association and others Vs. State of Bihar and another, 1988 (4) SCC 134, Shree Mahavir Oil Mills and another Vs. State of J&K and others, 1996 (11) SCC 39, and Kunnathat Thathunni Moopil Nair Vs. State of Kerala and another, 1961 (3) SCR 77.**

49. It was further submitted that Section 12 of the Act, in so far as it permits the manufacturer to realise entry tax at the time of taking delivery of goods from the manufacturer without the taxing event viz the entry of goods into a local area for sale, purchase or consumption having taken place is ultravires the provisions of the Act and the Constitution.

50. Sri Dhruv Agarwal, learned Senior Counsel, made a submission which is confined to Writ Petition No.25750 of 2017 by Indian Oil Corporation Ltd. It was contended that the tax on entry of crude oil into local area where the Mathura Refinery is located is wholly illegal. According to him, the crude oil, which is imported by the Oil Companies, reach the custom barrier of the country and thereafter, through the underground pipelines to the oil refinery at Mathura. According to him, the crude oil, unless it is received at Mathura Refinery, remains in course of transit to its ultimate destination where the import comes to an end. In other words, crude oil does not get mixed with the other goods of the land mass and consequently, it could not be subjected to entry tax in course of import to its ultimate destination. It is urged that the power to deal with the imported goods is reserved with the Central Government under Entry 41 and Entry 83 of List I. He has placed reliance on **State of Travancore-Cochin and others vs. Shanmugha Vilas Cashew Nut Factory and others, AIR 1953 SC 333, The State of Travancore-Cochin and Ors. v. The Bombay Company Ltd., (1952) 3 STC 434, M/s. Mohanlal Hargovind Das v. State of Madhya Pradesh, AIR 1955 SC 786, M/s. K.G. Khosla & Co. v. Deputy Commissioner of Commercial Taxes, Madras, AIR 1966 SC 1216, English Electronic Company of India Ltd. vs. The Deputy Commercial Tax Officer, 1976 (4) SCC 460, Deputy Commissioner of Agricultural Income Tax and Sales Tax,**

Ernakulam vs. Indian Explosives Ltd., 1985 (4) SCC 119 and **Commissioner, Delhi Value Added Tax Vs. M/s. ABB Ltd., 2016 (6) SCC 791**.

51. One of the arguments advanced by learned counsel for the parties was that the tax recovered by the State Government being a State level tax and not a local tax should go to the Consolidated Fund of the State as contemplated by Article 266 for the benefit of the local bodies. The impugned legislation, in so far as it stipulates creation of a separate fund and for crediting the tax recovered under the Act, in the said account, is ultra vires the Constitution. He submitted, by referring to various provisions of Part XII of the Constitution, that financial discipline has to be maintained as per the constitutional scheme, otherwise, it will lead to anarchy. Likewise, the provisions of the Act setting out priority according to which the tax recovered is to be spent, without the approval and sanction of the State legislation, as in case of money drawn from the Consolidation Fund of the State, are unconstitutional.

Scheme of the Act:-

52. Before we proceed to deal with the rival contentions, we would briefly refer to the scheme of the Act with specific reference to the provisions which are of relevance to answer the questions raised before us.

53. The Act as noticed earlier, was enacted to provide for levy and collection of tax on entry of goods into a local area for consumption, use and sale therein and for matters connected therewith or incidental thereto. We have also narrated the backdrop, as reflected in the Statement of Objects and Reasons, against which the Act was enacted and brought into force. The Act was amended by the Amendment Act No 8 of 2009 with a view to simplifying tax system and removing certain anomalies. The Statement of Objects and Reasons of the Amendment Act No 8 of 2009 reads thus:

> "The Uttar Pradesh Tax on Entry of Goods into Local Areas Act, 2007 (U.P. Act no. 30 of 2007) has been enacted to provide for levy and collection of tax on entry of goods into a local area for consumption, use or sale therein. With a view to simplifying tax system and removing certain anomalies it has been decided to amend the said Act mainly to provide that, –
>
> (a) no tax shall be levied on or collected from a dealer or subsequent dealer on entry of goods into a local area if the tax on such goods has been paid in any other local area;
> (b) the State Government is being empowered to allow rebate upto the full amount of tax under the said Act whether the liability for payment of tax under the Uttar Pradesh Value Added Tax Act, 2008 has accrued before or after entry of such goods into any local area.
>
> The Uttar Pradesh Tax on Entry of Goods into Local Areas (Amendment) Bill, 2009 is introduced accordingly."

54. After the Act was brought into force, notifications were issued

under Rules 3, 4, 5, 6, 7 and 8 providing for registration of dealers; submission of returns and assessment of tax; refund of tax in certain circumstances; manner of payment and realisation and deposit of tax by manufacturer and power to amend the format of different forms. Similarly, the Uttar Pradesh Tax on Entry of Goods into Local Areas (Fund) Rules, 2007 were also notified on 11 October 2007 providing for utilisation of money of the fund under Rule 3; manner of utilisation of fund under Rule 4; heads of accounts and financial procedures under Rule 5 thereof. We are not entering into further details of the Rules since Rules are not the subject matter of these petitions.

55. That takes us to consider the provisions of the Act, in particular the provisions to which our attention was specifically drawn by learned counsel for the parties and the constitutional validity of which is under challenge in these petitions. Section 2 defines relevant words/phrases/ expressions as they appear in the Act. Clause (a) of sub-section (1) of Section 2 defines business, indicating the businesses which are covered by the Act, 2007. Clause (b) defines dealer, which simply means any person, who, in the course of business, 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. The definition is inclusive definition to which we need not make further reference since all the petitioners are registered dealers and no challenge raised in the petitions is based on this provision.

56. Clause (c) of sub-section (1) of Section 2 of the Act, 2007 defines entry of goods and clause (d) defines local area, which are relevant for our purpose. The said definitions read thus:

> **“(c) "entry of goods"**, with all its grammatical variations and cognate expressions, means, entry of goods;
>
> (i) into a local area from any place outside such area;
>
> (ii) into a local area from any place outside the State;
>
> (iii) into a local area from any place outside the Territory of India for consumption, use or sale therein;
>
> **(d) "local area"** means the territorial area of,–
>
> (i) a Municipal Corporation under the Uttar Pradesh Municipal Corporations Act, 1959;
>
> (ii) a Municipality under the Uttar Pradesh Municipalities Act, 1916;
>
> (iii) a Zila Panchayat or a Kshettra Panchayat under the Uttar Pradesh Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961;
>
> (iv) a Gram Panchayat under the United Provinces Panchayat Raj Act, 1947;
>
> (v) a Cantonment under the Cantonments Act, 1924;
>
> (vi) any Industrial Development Area under the Uttar Pradesh Industrial Area Development Act, 1976;
>
> (vii) an Industrial Township by whatever name called;
>
> (viii) any other local authority by whatever name called under an Act of the Parliament or the State Legislature;”

57. From bare perusal of the definition of “entry of goods” and “local area”, it appears to us that the Act does not treat the entire State as 'local area' for the purposes of entry of goods. It was, however,

submitted on behalf of the petitioners that a conjoint reading of Section 4 (3A) and Section 14 would show that the entire State of Uttar Pradesh has been converted into a single local area and the definition of local area in Section 2(d) is only a colourable device.

58. Section 3 of the Act, 2007 defines the authorities under the Act. Sub-section (2) thereof provides for the territorial jurisdiction of the authorities under the Act which shall be the same as as may be fixed or determined by the State Government or the Commissioner of Commercial Taxes for the purposes of the Uttar Pradesh Value Added Tax Act, 2008 (for short, 'VAT Act').

59. Section 4 is a charging Section, which reads thus:

> "**4. Levy of tax.–**(1) For the purpose of development of trade, commerce and industry in the State, there shall be levied and collected a tax on entry of goods specified in the Schedule into a local area for consumption, use or sale therein, from any place outside that local area, at such rate not exceeding five percent of the value of the goods as may be specified by the State Government by notification and different rates may be specified in respect of different goods or different classes of goods;
>
> PROVIDED that the State Government may by notification amend the Schedule and upon issue of any such notification, the Schedule shall, subject to the provisions of sub-section (10), be deemed to be amended accordingly.
>
> (2) The Tax under sub-section (1) shall be continued to be levied till such time as is required to improve infrastructure within the State such as power, road, market condition etc., with a view to facilitate better market conditions for trade, commerce and industry.
>
> (3) The tax levied under sub-section (1) shall

be payable by a dealer who brings or causes to be brought into the local area such goods, whether on his account or on the account of his principal or takes delivery or is entitled to take delivery of such goods on its entry into a local area.

PROVIDED that the State Government, may by notification, permit any Power Project Industrial Unit engaged in generation, transmission and distribution, having aggregate capital investment of Rs. One thousand crore or more to own the liability of payment of tax of other dealers on the entry of such goods into a local area from any place out side that local area as are used and consumed by the said unit subject to such conditions as may be specified in the notification.

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.

(3A) *Notwithstanding anything to the contrary contained in sub-section (1) or sub-section (3), no tax shall be levied on or collected from a dealer or subsequent dealer who brings or cause to be brought into a local area any goods in respect of which tax has been paid in any other local area under any of the said sub-sections and such dealer furnishes before the concerned Assessing Authority the prescribed declaration in regard thereto within such time as may be prescribed:*

PROVIDED that the amount of tax deposited under this section shall be deemed to have been deposited for and on behalf of such dealer or any subsequent dealer to whom above prescribed declaration has been issued.

(4) The State Government may by notification remit the amount of tax to the extent necessary to ensure that effective rates of tax on entry of goods into a local area, from any place out side the local area for consumption or use in a Power Project Industrial Unit, do not exceed the respective rates applicable as on the date of commencement of State Energy Policy subject to the conditions as may be notified in such notifications.

(5) No dealer who brings or causes to be brought any goods into a local area shall be liable to tax, if during the assessment year the aggregate value of such goods is less than five lakh rupees or such larger amount as the State Government may by notification, specify in that behalf either in respect of all dealers in any goods or in respect of a particular class of such dealers:

PROVIDED that the provisions of this sub-section shall not apply in respect of value of the goods brought into a local area from outside Uttar Pradesh.

(6) Notwithstanding anything to the contrary contained in sub-section (1) or sub-section (3), no tax shall be levied on or collected from a dealer, who brings or causes to be brought into a local area any goods which are,-

(i) consigned without using them in the local area to any place outside the State; or

(ii) sold or re-sold either in the course of inter-State trade or commerce or in the course of export out of the territory of India;

EXPLANATION – Section 3, Section 5 and Section 6A of the Central Sales Tax Act, 1956 shall apply for the purpose of determining whether or not any goods has been sold by a dealer in the course of inter-State trade or commerce or in the course of export out of the territory of India:

PROVIDED that where at the time of entry of goods into a local area, the quantity or value of goods to be sold within such local area for the purpose of being taken outside the State without consumption, use or sale in such local area, is not ascertainable, the dealer shall pay the amount of tax on the value of total quantity of goods and after the goods are consigned or sold outside or in the course of, export, the dealer may claim refund or adjustment of the amount so paid as tax in the month in which such goods are transferred outside the State or sold in the course of inter-State trade or commerce or the course of export, in respect of such goods.

(7) [.....] Deleted

(8) Where tax, in respect of entry of any goods into a local area, is payable and has been so paid by the agent, the principal shall not be liable for payment of tax and likewise where tax, in respect of entry of any goods into a local area, is payable and has been so paid by the principal, the agent shall not be liable for payment of tax.

(9) Where in respect of any -

(i) purchased scheduled goods,-

(a) value of such goods is not ascertainable or value of such goods, as declared by the dealer or the person in-charge of the goods, as the case may be, is not verifiable on account of non-availability or non production of any document; or

(b) any document produced in support of purchase price or transport charges and other charges, is not worthy of credence; or

(ii) scheduled goods, acquired or obtained otherwise than by way of purchase, value of such goods disclosed by the person in-charge of the goods or the dealer, as the case may be, does not appear to be reasonable and worthy of credence then the whole-sale price, in the open market in a local area in which such goods are being brought, reasonably determined by the Assessing Authority, after affording reasonable opportunity of being heard to the person incharge of the goods or the dealer, as the case may be, shall be deemed to be, the value of goods, and for this purpose in reference to Clause (i), the Assessing Authority shall assume that goods has been acquired or obtained otherwise than by way of purchase.

(10) Every notification made under this section shall, as soon as may be after it is made, be laid before each House of the State Legislature,

> while it is in session; for a total period of not less than fourteen days, extending in its one session or more than one successive sessions and shall unless some later date is appointed take effect from the date of its publication in Gazette subject to such modifications or annulments as the two Houses of the Legislature may during the said period agree to make, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder except that any imposition, assessment, levy or collection of tax or penalty shall be subject to the said modification or annulment.

Suffice it to state at this stage that based on this provision, it was contended that the entire State is treated as one local area read with other provisions of the Act.

60. Section 5 provides for reversal of levy of tax. Under this provision, the dealers, who bring any good notified under sub-section (1) of Section 4 into a local area for consumption, use or sale therein and pay tax in respect of entry of such goods into such local area, are entitled for refund or adjustment, when such goods are consigned to any other place outside the State or are sold either in the course of inter-State trade or commerce or in the course of export outside the territory of India.

61. Section 6 talks of rebate, Section 7 about exemption and Section 8 provides for registration of a dealer. Sections 6, 7 and 8 read thus:

> "**6. Rebate –** Where in respect of any scheduled goods notified under sub-section (1) of Section 4, tax is payable in respect of a sale or purchase of such goods under the Uttar Pradesh

Value Added Tax Act, 2008 by a dealer registered under the said Act, the State Government may, by notification and subject to such conditions and restrictions, as may be specified therein, allow a rebate upto the full amount of tax leviable under the Act.

7. Exemption – Where the State Government is satisfied that it is expedient in the public interest so to do, it may, by notification, exempt subject to such conditions and restrictions as may be specified in the notification, any goods or class of goods from levy of tax, or class of dealers from the payment of the Tax.

8. Registration.– (1) Subject to the provisions of sub-section (2) every dealer liable to pay tax shall apply to the Assessing Authority for grant of registration certificate in the prescribed manner along with proof of deposit of Registration fee within thirty days from the date on which he becomes liable to pay tax under this Act:

PROVIDED that a dealer who holds a registration certificate granted under the provisions of the Uttar Pradesh Value Added Tax Act, 2008, if, furnishes required information in the prescribed form of application within the aforesaid time, shall not be liable to obtain separate registration certificate under this Act and for all purposes of this Act, such dealer shall be deemed to be a registered dealer:

PROVIDED FURTHER that a Government shall not be required to obtain registration certificate under this Act if such Government Department is not engaged in regular business.

(2) Where a dealer has no fixed place of business within the State of Uttar Pradesh, he shall not be liable for obtaining registration under this Act.

(3) In respect of grant of registration certificate under this Act, provisions of Section 17 of the Uttar Pradesh Value Added Tax Act, 2008 shall *mutatis mutandis* apply as they apply to grant of Registration Certificate under that Act.

62. Section 9 provides for submission of returns and assessment of tax. Section 10 provides for provisional assessment of tax, and Section

11 provides for composition of tax. Section 12 provides for realization of tax through manufacturer.

63. Section 13 enlists the provisions of VAT Act which *mutatis mutandis* applies to all dealers and proceedings under the Act, 2007.

64. Section 14 of the Act, 2007 provides for utilization of the proceeds of the levy under the Act, 2007. Section 14 is relevant for our purpose, which reads thus:

> **"14. Utilization of the proceeds of the levy under this Act.–** (1) The proceeds of the levy under this Act shall be appropriated to the Fund and shall be utilized exclusively for the development or facilitating the trade, commerce and industry in the State of Uttar Pradesh which shall include the following –
>
> (a) construction, development and maintenance of roads and bridges for linking the market and industrial areas;
>
> (b) providing finance, aids, grants and subsidies to financial, industrial and commercial units;
>
> (c) creating infrastructure for supply of electricity and water to industries, marketing and other commercial complexes;
>
> (d) creation, development and maintenance of other infrastructure for the furtherance of trade, commerce and industry in general;
>
> (e) providing finance, aids, grants and subsidies for creating, developing and maintaining pollution free environment in the concerned areas;
>
> (f) any other purpose connected with the development of trade, commerce and industry or for facilities relating thereto which the State Government may specify by notification;
>
> (g) providing finance, aids, grants and subsidies to local bodies and government

> agencies for the purposes specified in Clauses (a), (c), (d), (e) and (f);
>
> (2) The entry tax levied and collected under this Act shall be credited to the Uttar Pradesh Trade Development Fund and shall exclusively be used for facilitating trade, commerce and industry. The amount realised as entry tax shall not be used for the purposes other than those specified in sub-section (1).
>
> (3) The State Government shall, by notification, specify the manner of deposit of tax under appropriate Heads of Accounts and the manner in which the proceeds of the levy shall be utilized exclusively for the development of trade and commerce in the State of Uttar Pradesh.

65. Section 15 provides for power to remove difficulties. Section 16 confers power on the State Government to make rules for carrying out the purposes of the Act, 2007. Section 17 talks about validation, Section 18 repeals the Uttar Pradesh Tax on Entry of Goods Act, 2000. However, it also saves anything done or any action taken in exercise of the powers under the said Act with the deeming fiction. Section 19 repeals U P Ordinance No 35 of 2007, whereas Section 19A repeals the Uttar Pradesh Tax on Entry of Goods into Local Area (Amendment) Ordinance, 2008 (U P Ordinance No 1 of 2008). The Schedule appended to the Act, 2007, as provided for under Section 4(1) of the Act, gives the list of items with the rate of tax to be levied under the Act.

Legislative Competence:-

66. Having taken a bird eye view of the Scheme of the Act, we now proceed to examine the challenge based on legislative competence of

the State Legislature to enact a law for collection of taxes by the State and not by local bodies, on the entry of goods into a local area. The argument advanced in this regard by learned senior counsel Sri Navin Sinha and Sri Dhruv Agrawal is based on the contention that Entry 52 of List II is the power of the local bodies to impose taxes. A local body, it is urged, is to be understood as defined in Section 3 (31) of the General Clauses Act, 1897 to mean a municipal committee, district board or body of port commissioners or other authority legally entitled or entrusted by the Government with the control or management of a municipal or local fund. Its distinguishing attributes inter alia being that they must have the power to raise funds for the furtherance of the activities and fulfillment of their objectives by levying taxes, rates, duties, tolls charges or fees. A State wide Entry Tax imposing a levy at flat rate for the stated purpose of development of trade in the State is a subversion of the localized tax contemplated by Entry 52 List -II of the Seventh Schedule of Constitution of India.

67. The challenge advanced by learned counsel for the petitioners on the above grounds, in our opinion, is no more *res-integra*. A regular Two Judge Bench of the Supreme Court, after judgement of Nine Judges' Bench in **Jindal Stainless-II**, while deciding a batch of petitions arising out of State of Orissa, Bihar, Kerala and Jharkhand dealt with a similar challenge in **State of Kerala Vs. Fr. Williams**

Fernandez and other connected matters, 2017 (12) SCALE 463 (for short, hereinafter referred to as '**Fr. Williams**'). Both their Lordships comprising the regular Bench (Hon'ble Justice A.K. Sikri and Hon'ble Justice Ashok Bhushan) were also members of the Nine Judges' Bench. The issue was formulated by the regular Bench in following terms:-

> "vii. Whether Entry Tax Legislations are not covered by Entry 52 List II since the Entry 52 is in essence entry of levying octroi which can be levied only by local authorities and the State has no legislative competence to impose entry tax under Entry 52 List II."

68. While examining the challenge, their Lordships noted that the word 'octroi' was not used in the Government of India Act, 1935 nor has been used in the Constitution. List II Entry 52 provides for levy of tax on the entry of goods in a local area for consumption, use or sale. After making an elaborate discussion on distribution of legislative power between Union and State, it was observed that various entries in List I and II are fields of legislation which have to be given a widest possible amplitude. The nomenclature or form of a tax, it is held, is not decisive, to find out the nature of tax. The judgement proceeds by making a specific reference to Article 366 (28) and by holding that the provision thereof does not, in any manner, support the contention that tax under Entry 52 is only a local tax which is to be collected through local bodies. Whether a tax is collected as a general tax or as local tax, is held to be a matter of legislative policy. The challenge was repelled

in paragraphs 132 to 135 in the following words:-

> “132. It is well settled that the nomenclature or form of a tax is not a decisive factor to find out the nature of the tax. It is the matter of legislative policy as to how the tax is to be collected. **The definition of taxation as given in Article 266 (28) [sic Article 366 (28)] that tax includes general or local tax does not in any manner support the contention of the petitioner that tax under Entry 52 is only a local tax which ought to be collected through local bodies. It is the matter of legislative policy that whether a tax is collected as a general tax or a local tax. The nature of tax, measure of tax and machinery for tax collection are all different aspects. The submission of the petitioner that tax in Entry 52 should be collected by local authorities and State has no legislative competence to levy such tax is fallacious.** It is well within the jurisdiction of the legislature to formulate its policy regarding levy of tax and its collection. Entry 52 of List II has to be given its wide and full meaning and no limitation in the legislative power of the State can be read as contended by counsel for the petitioner.
>
> 133. The Constitution framers have abandoned the use of word 'octroi' which has to be given a meaning and purpose. While interpreting a taxing entry no shackles can be put nor use of any expression in the Constitution of India, referring to a tax can be tied up to any pre-constitutional tax or levy. Further, any preconstitutional tax practice cannot put any fetter on Constitution farmers to define any tax, to elaborate the concept of tax or to move away or forward from any kind of earlier levy. This Court in Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi and Anr, 1968 (3) SCR 251 has laid down the following:
>
> > "To insist that the legislature should provide for every matter connected with municipal taxation would make municipalities mere tax collecting departments of Government and not selfgoverning bodies which they are intended to be. Government might as well collect the taxes and make them available to the municipalities.

> That is not a correct reading of the history of Municipal Corporations and other self governing institutions in our country."
>
> 134. Thus, taxes which are to be used by the local authorities can be collected by the local authorities as well as by the State Government. It is the matter of legislative policy as to how the tax is collected and distributed. Under List II Entry 5, the State has legislative power to lay down powers of the Municipal Corporation by legislation. **It is again legislative policy that as what machinery is to be provided by the State legislature regarding collection of taxes on the entry of goods into a local area for consumption, use or sale. No capital can be made on the submission that since tax is not being collected by local authorities it is beyond the power of the State under Entry 52 List II**.
>
> 135. We thus do not find any substance in the submission of the learned counsel for the petitioner that entry tax legislation is not covered by Entry 52 List II."
>
> (emphasis supplied)

69. In view of the authoritative pronouncement directly on the issue by the Supreme Court, with which we are bound, we do not consider it necessary to refer to the detailed submissions made by learned counsel for the parties in support of the said contention or the judgements cited by them.

Whether provisions of the Act contrary to mandate of Article 266:-

70. The above discussion now takes us to another limb of the argument in regard to the Constitutional mandate of Article 266 of the Constitution, which requires all revenue received by the Government of a State to be credited to the consolidated fund of that State. It was urged

that Section 14 (2) of the Act which mandates that the entry tax levied and collected under the Act would be credited to the Uttar Pradesh Trade Development Fund and would exclusively be utilized for facilitating trade, commerce and industries, violates the Constitutional mandate of Article 266.

71. Again the contention advanced in this regard was also raised before the regular Bench of the Supreme Court in **Fr. Williams**. The Supreme Court, after making a specific reference to Section 4 (1) of the Bihar Act, containing *pari-materia* provision, repelled the contention by observing that the creation of funds and its utilization does not affect the levy of entry tax. It is further held that validity of an impost is not to be tested on the ground that the amount recovered thereunder has been dealt with in a manner not provided by the Constitution. In taking this view, their Lordships of the Supreme Court placed reliance on the judgement in **Jaora Sugar Mills (P) Ltd. v. State of Madhya Pradesh and others, 1996 (1) SCR 523**. The relevant observations contained in this regard in paragraphs 140 to 141 of the law report are reproduced below:-

> "140. One more submission raised by one of the learned counsel for the writ petitioners also needs to be noted. Section 4 of Bihar Act, 1993 as inserted by Bihar Act 19 of 2006 was also challenged on the ground that it violates constitutional provision of Article 266. Section 4 deals with "utilization of the proceeds of the levy under the Act". Section 4 subsection (1) provides that the proceeds of the levy under the Act shall be appropriated to the fund and

shall be utilised exclusively for the development of trade, commerce and industry in the State of Bihar. Presumably, the said amendment was brought by the State Legislature to support the State's claim that levy is compensatory in nature. **The submission of the writ petitioners is that Section 4 indicates that the tax levied under the Act would be collected and kept in a separate fund which according to the writ petitioners is contrary to the constitutional mandate of Article 266 of the Constitution, which specifically mandates that all public money must be credited to the Consolidated Fund of respective States. There are two reasons due to which the above submissions cannot be accepted. Firstly, Section 4 relates to creation of fund and utilisation of funds received from the collection of entry tax. The creation of fund and its utilisation can in no manner effect the levy of the entry tax and the compensatory tax theory having already negated by nine Judge Constitution Bench of this Court in Jindal Stainless (supra), the inquiry as to whether tax is compensatory or not is not relevant. Secondly, this Court in Jaora Sugar Mills (P) Ltd. v. State of Madhya Pradesh and Ors., 1996 (1) SCR 523 while considering Article 266 of the Constitution of India has already held that it is difficult to understand how the Act can be said to be invalid because the cesses recovered under it are not dealt with in the manner provided by the Constitution.** Following observations were made by the Court:

> "It is doubtful whether a plea can be raised by a citizen in support of his case that the Central Act is invalid because the moneys raised by it are not dealt with in accordance with the provisions of Part XII generally or particularly the provisions of Article 266. We will, however, assume that such a plea can be raised by a citizen for the purpose of this appeal. Even so, it is difficult to understand how the Act can be said to be invalid because the cesses recovered under it are not dealt with in the manner provided by the the Constitution. The validity of the Act must be judged in the light of the legislative competence of the Legislature which

> passes the Act and may have to be examined in certain cases by reference to the question as to whether fundamental rights of citizens have been improperly contravened, or other considerations which may be relevant in that behalf. **Normally, it would be inappropriate and indeed illegitimate to hold an enquiry into the manner in which the funds raised by an Act would be dealt with when the Court is considering the question about the validity of the Act itself**."
>
> 141. Although learned counsel for the writ petitioners sought to distinguish the above decision on the ground that the said observations were made while the Court was considering the entirely different issue that is an issue relating to interse transfer of money from Consolidated Funds of respective States to Consolidated Fund of India. As per aforesaid judgment the challenge to the validity of the Act on the ground that it is violative of Article 266 was repelled. What was held by this Court as quoted above clearly negates the submissions raised by the learned counsel for the writ petitioners on the basis of Article 266. In any view of the matter, the said ground has no relevance with regard to levy of entry tax on imported goods."
>
> (emphasis supplied)

72. It is noteworthy that under the relevant provision of the enactment of the State of Bihar which was under consideration, the amount was to be utilized exclusively for the development of trade, commerce and industries in the entire State. The impugned legislation in the State of Uttar Pradesh contains exactly a similar provision. It was observed by the Supreme Court that such a provision was brought on the statute book to make it consistent with the doctrine of compensatory tax, prevalent at the relevant time. But once the compensatory tax

theory was rejected by Nine Judges' Constitution Bench, further enquiry into the validity of the provision from the angle as to whether tax was compensatory or not was not considered germane.

73. Following the law laid down by the Supreme Court on the point, we have no hesitation in rejecting challenge to the levy on the ground that the proceeds thereof were required to be deposited in a separate fund and not the Consolidated Fund of the State in terms of Article 266 of the Constitution.

Effect of inclusion of 'Cantonment' within the definition of local area:-

74. The next submission urged by Sri Dhruv Agrawal, learned senior counsel was that the provisions of the Act, particularly the definition of 'local area' in Section 2 (d) in so far as it includes a 'cantonment' within its ambit is beyond the legislative competence of the State legislature. Elaborating his submission, he urged that while enacting a law in exercise of power under Entry 52 List II, the State legislature could include only those areas within its ambit to which its legislative field extends by virtue of Entry 5 of List II to the Seventh Schedule. The provisions of the Act cannot be made applicable to cantonment areas, which are essentially territories reserved for the Union legislature by virtue of Entry 3 List I and are administered by a central legislation viz. the Cantonments Act, 1924 or the Cantonments Act, 2006. In support of the said contention, reliance was placed on Section 66 of the Cantonments Act, 2006, which empowers Cantonment Board to impose

taxes with the previous sanction of the Central Government.

75. In **Fr. Williams,** the Supreme Court, after referring to Constitution Bench judgment in **Godfrey Phillips (I) Ltd. and another Vs. State of U.P. and others, (2005) 2 SCC 515,** observed that entries in the Seventh Schedule are not powers but fields of legislation. In deciding whether any particular enactment is within the purview of one legislature or the other, it is pith and substance of the legislation that has to be looked into. Whenever a legislation is challenged on the ground that it encroaches upon the field reserved for the other, the test, which has been laid down is to find out by applying the rule of pith and substance that whether the legislation falls within any of the entries reserved for that particular legislature or not. The distribution of power between Union and States being done in a mutually exclusive manner, there is no overlapping between areas reserved for each of them.

76. Having regard to these principles of law, we now proceed to examine the submission advanced by learned counsel for the petitioners. No doubt, as noted above, the definition of 'local area' under Section 2 (d) includes the territorial area of a cantonment under the Cantonments Act, 1924/Cantonment Act, 2006. Entry 3 of List I of the Seventh Schedule reserves the field for enacting law on delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities

and the regulation of house accommodation (including the control of rents) in such areas in favour of the Union. In a like manner, Entry 5 List II confers the State Government with the power to enact a law relating to local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration. Thus, in respect of a cantonment area, it is the Union which can make law in respect of administration of such areas by a local self-government, constitution and powers of such authorities and matters connected therewith, whereas, in respect of other areas, it is the State which is invested with such power.

77. The statement of objects and reasons for enacting the Cantonments Act, 2006 states that the Act makes provisions relating to administration of cantonments as cantonments are central territories under the Constitution and the civil bodies functioning in these areas are not covered under the State Municipal laws. Section 66 of the Cantonments Act, 2006 relates to general power of taxation of the Board. The Board, with the previous sanction of Central Government, is competent to impose property tax and taxes on trades, professions, callings and employments. In addition, it also has the power to impose any tax which under any enactment, for the time being in force, may be imposed in any Municipality in the State in which the cantonment is

situated. A law framed by the Union under Entry 3 List I is for providing local self-government in a cantonment area which is not covered by the Municipal laws of the State Government. The Cantonment Board, as noted above, has been invested with the power to impose taxes to augment its income. However, the Cantonment Board in exercise of this power is not competent to impose tax on entry of goods into a cantonment area. In fact, the argument is based on wrong notion that since it is Union which has been conferred with the power to provide for local self-government in cantonment area, invested with power to impose tax, therefore, no tax could be imposed on entry of goods into such areas being a central territory.

78. Under Article 1 (3) of the Constitution of India, the territory of India comprises of (a) the territories of the States; (b) the Union territories specified in the First Schedule; and (c) such other territories as may be acquired. Under Article 245 the legislature of State has been invested with the power to make laws for the whole or any part of the State. Under Article 246 (3) the legislature of a State has exclusive power to make laws for the State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule. Under Article 249 the Parliament can legislate with respect to a matter in the State list in the national interest in exceptional circumstances specified thereunder. No doubt, the Union is invested with the power to enact law providing for the local self-government, delimitation and other matters

connected with the administration of the cantonment area but it does not mean that a cantonment area is beyond the bounds of the State in which that cantonment lies. It continues to be territory of the State in respect of which State legislature has power to frame laws in respect of items enumerated in List II. The impugned legislation providing for imposition of a levy on entry of goods into a cantonment area, in no manner, infringes upon the field reserved for the Union legislature under Entry 3 of List I. A dealer, who in course of business, 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, would equally be bound by the provisions of the Act and would be liable to payment of the levy. The same would, in no manner, be subversive of the power of the Union Government to legislate under Entry 3 List I nor that of the Cantonment Board to impose taxes under Section 66 of the Cantonments Act, 2006. We, therefore, repel the contention that by including a cantonment within the definition of local area, the State legislature has encroached upon the field reserved for the Union.

Whether entire State treated as one local area:-

79. We now come to the next submission advanced by Sri Dhruv Agrawal and Sri Navin Sinha, learned senior counsel. It was urged that a law made by the State legislature under Entry 52 List II could only provide for levy of taxes on entry of goods into a local area and not the entire State. The use of word and expression “a local area” coupled

with the word “therein” in Entry 52 List II restricts the scope of taxing power under the above entry in List II to local bodies administering “a” particular local area on the happening of any or more of the three contingencies mentioned in the entry namely consumption, use or sale therein. In the garb of exercising legislative power under Entry 52 List II of the Seventh Schedule to the Constitution of India, the State legislature cannot arrogate to itself the general taxing power under the above entry by treating the entire geographical area of the State as “a local area”. Entry 52 List II only carves out a legislative field in respect of which State can make law relating to tax, but power to legislate in respect of Entry 52 List II is derived from Article 243-H, 243-X read with Article 246 (3) of the Constitution of India. In support of the said contention, they have placed reliance on the judgements of the Supreme Court in **Diamond Sugar Mills Ltd. Vs. State of U.P., AIR 1961 SC 652**, **Burmah-Shell Oil Storage & Distributing Co. India Ltd. Vs. Belgaum Borough Municipality, AIR 1963 SC 906**, **Union of India Vs. Shri R.C. Jain, (1981) 2 SCC 308**, **Jothi Timber Mart & others Vs. Corporation of Calicut & another, 1969 (2) SCC 348**, **Shaktikumar M. Sancheti & another Vs. State of Maharashtra & others, (1995) 1 SCC 351**, **State of Kerala & others Vs. Mar Appraem Kuri Company Ltd. & another, (2012) 7 SCC 106** and **Maharaja Umeg Singh Vs. State of Bombay, AIR 1955 SC 540**. It was urged that for ascertaining the true meaning of Entry 52 List II, the

legislature history against which such entry came to be included in List II, should be examined. Traditionally and historically, levy of the said nature has always been imposed and collected by the local bodies administering the said area and is nothing but octroi. The expression "local authority" has been defined in Section 3(31) of General Clauses Act to mean "a municipal committee, district board, body or other authorities, legally entitled to or entrusted by the Government with the control or management of a municipal or a local fund. The words consumption, use or sale have been held to be a composite expression meaning Octroi, having precise legal connotation.

80. We first proceed to consider **Diamond Sugar Mills** on which much emphasis was laid. Therein a Constitution Bench of the Supreme Court was examining the validity of Section 3 of the U.P. Sugarcane Cess Act, 1956 under which the State Government was empowered to impose a cess not exceeding a stipulated amount on the entry of sugarcane into the premises of a factory for use, consumption or sale therein. In pursuance thereof, several notifications were issued setting out the factories into which upon an entry of sugarcane, the cess was to be paid. The levy was challenged as beyond the legislative competence of the State legislature on the ground that under Entry 52, the levy could be only on entry of goods into a local area and not into a factory. It was urged that the word "local area" would mean an area administered by a local body and it could not be a factory.

80A. The Supreme Court, in order to find an answer to the question, examined the history of Constitutional legislation in the country on the subject of giving power to legislature to levy tax on the entry of goods. After examining the same, it was observed that in past, an octroi tax was being imposed on entry of goods into an area administered by a local body. Having regard to the history of the legislation, His Lordship Hon'ble K.C. Das Gupta, J delivering the leading judgment observed thus:-

> “22. It was with the knowledge of the previous history of the legislation that the Constitution-makers set about their task in preparing the lists in the seventh schedule. There can bring title doubt therefore that in using the words "tax on the entry of goods into a local area for consumption, use or sale therein", they wanted to express by the words "local area" primarily area in respect of which an octroi was leviable under Item 7 of the Schedule Tax Rules, 1920, that is, the area administered by a local authority such as a municipality, a district Board, a local Board or a Union Board, a Panchayat or some body constituted under the law for the governance of the local affairs of any part of the State.”

80B. After holding that a local area would mean an area administered by a local authority, it was held that the premises of a factory cannot be a local area by observing thus:-

> “28. We are of opinion that the proper meaning to be attached to the words "local area" in Entry 52 of the Constitution, (when the area is a part of the State imposing the law) is an area administered by a local body like a municipality, a district board, a local board, a union board, a Panchayat or the like. The premises of a factory is therefore not a "local area".”

80C. Consequently, the imposition of a cess on entry of sugarcane into the premises of a factory was held to be beyond the legislative competence of the State legislature. However, the question whether the entire State could be declared as a local area was kept open (vide para 22).

81. The next judgment heavily relied upon by learned counsel for the petitioners is in **Shakti Kumar M. Sancheti**. The validity of the levy of entry tax on motor vehicles into the State of Maharashtra under the Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987 was under scrutiny. The vires of the Act was challenged by the dealers who had purchased the motor vehicles from outside the State and had brought them within the State. It was claimed that the levy was a colourable exercise of the legislative power of the State as Entry 52 of List II of Seventh Schedule of the Constitution did not permit imposition of such tax. It was also urged that the legislation impeded their freedom under Article 301 of the Constitution. Another ground of challenge was that the imposition was double burden on them and in the absence of any rational nexus between levy of tax and constitutional objective, it was violative of Articles 14 and 286 of the Constitution of India. The Supreme Court, after examining the provision of the impugned legislation ruled that thereunder, the entire State was not being treated as one local area, and accordingly upheld the validity of

the legislation by observing thus:-

> "In Diamond Sugar Mills the question whether entire area of the State was an area administered by State Government and was covered in the phrase "local area", was not decided. The expression "local area" has been used in various articles of the Constitution, namely, 3(b), 12, 245(1), 246, 277, 321, 323-A, and 37 1 -D. They indicate that the constitutional intention was to understand the "local area" in the sense of any area which is administered by a local body, may be corporation, municipal board, district board etc. **The High Court on this aspect held, and in our opinion rightly that the definition does not comprehend entire State as local area as the use of word 'a' before "local area" in the section is significant. The taxable event according to High Court, is not the entry of vehicle in any area of the State but in a local area.** The High Court explained it by giving an illustration that if a motor vehicle was brought from Jabalpur (Madhya Pradesh) for being used or sold at Amravati (in Nagpur District of Maharashtra), which was the border area, taxable event was not the entry in Nagpur District but entry in area of Amravati Municipal Corporation. **The levy, therefore, is not, as urged by the learned counsel for appellant, on entry of vehicle in any part of the State but in any local area in the State. It cannot, therefore, be struck down on this ground.**"
>
> (emphasis supplied)

82. These judgements, it is clear, are not an authority on the proposition as to whether the entire State could be treated to be one local area or not. Reliance placed by learned counsel for the petitioners on the said judgments in support of the aforesaid contention is thus wholly misplaced.

83. At this stage, we would like to refer to the observations made in para 691 by Hon'ble Dr. D.Y. Chandrachud in **Jindal Stainless-II** on which much emphasis was placed by learned counsel for the

petitioners:-

> "691 (232). In the judgment in Diamond Sugar Mills, the Constitution Bench emphasized that in using the expression local area, the framers of the Constitution were aware of the previous legislative history and meant an area administered by a body (such as Municipalities, Panchayats or local board) constituted under the law for the governance of local affairs in any part of the state. This statement of principle in the decision in Diamond Sugar Mills now stands fortified in view of the constitutional amendments brought by the insertion of Parts IX and IXA into the Constitution. A local area cannot be defined with reference to the entire state but will comprehend within the state, an area that is administered by a local body constituted under the law."

84. In the same context, the contrary view taken by Hon'ble R. Banumathi J. in **Jindal Stainless-II** also deserves a mention. It has been observed in paragraph 370 of the Report, placing reliance on **Bihar Chamber of Commerce**, that "the State is a compendium of local areas and where the local areas cover the entire State, the difference between the "State" and "a local area" practically disappears. It is pertinent to note that the theory of "indirect or remote" connection between "the tax and the facilities provided" laid down in **Bihar Chambers of Commerce** was overruled in **Jindal Stainless-I,** but the said judgement was not overruled on other points on which reliance was placed on the said judgement by Hon'ble R. Banumathi, J.

85. Before we delve further on the issue, we would like to state that at the time when arguments were being advanced that entire State cannot be treated as one local area, we made specific query from

learned counsel as to under which provision of the Act, the entire State is being treated as one local area. As according to us, the definition of local area given under Section 2 (d) does not treat the entire State as one local area, rather the local area has been defined as the territorial area of a local body namely a municipal corporation or a municipality or a zila panchayat or a kshetra panchayat or a gram panchayat or a cantonment or an industrial development area or any industrial township or any other local authority by whatever name called under an Act of the Parliament or the State legislature.

86. Learned counsel for the petitioners very fairly conceded that the definition of local area under the Act does not treat the entire State as one local area. However, it was contended that there are certain provisions of the Act, particularly Section 2 (c), Section 4(6), Section 4(3A), Section 6, Section 12 and Section 14 which have the effect of treating the entire State as one local area. It is urged that under Section 14 of the Act, the proceeds of the levy are appropriated to the Uttar Pradesh Trade Development Fund and is utilised for development of the entire State. In other words, since the revenue generated from the levy is being used for development of the entire State and not passed on to the local body, which controls and manages the local fund, therefore it is bad. In support of the said contention reliance has been placed on Article 243-X.

87. The submission, in our opinion, is devoid of any force. The

argument has its genesis in the assumption that entry tax is a local levy for the benefit of the local body namely a municipal corporation or a municipality or a zila panchayat or a kshetra panchayat or a gram panchayat or a cantonment or any industrial development area or a industrial township, from where it is realised. We have already repelled the contention that the impugned levy is a local tax, the power of the local body to impose tax, and not the general power of taxation of the State Government. While considering the challenge to the competence of the State legislature to enact a law providing for imposition of a general levy at the State level, we have also held that the manner in which the levy is to be collected i.e. as a general levy or through the local bodies, is a matter of legislative policy and so long as the levy is within the field reserved for the State Government, its validity could not be challenged on the ground that it is being collected by the State Government without the aid and help of the local bodies. The necessary corollary of the above proposition of law is that the legislature was also competent to provide for the manner in which the tax is to be appropriated. The mere fact that the levy is credited in an account which is under the direct control of the State Government or that it is being spent on the development of the entire State, would not make the levy illegal or beyond the legislative competence of the State Government. The deposit of tax in a central fund will not result in altering the taxable event which, as noted above, is within the

legislative competence of the State Government. The deposit of the levy in a central fund and its utilization are separate and distinct from the taxable event. In this regard, we may gainfully refer to certain passages from **Bihar Chamber of Commerce**, where it is held that entry tax 'is a State level levy' and 'spending for the purposes of the State is spending for the purposes of local area' :-

> "12. ….Where the local areas contemplated by the Act cover the entire States the distinction between the State and the local areas practically disappears. The situation would, no doubts be different if the local areas are confined to a few cities or towns in the State and the levy is upon the entry of goods into those local areas alone. This is an important distinction which should be kept in mind while appreciating the aspect and also while examining the decisions of this Court rendered in fifties and sixties). **The facilities provided in the State are the facilities provided in the local areas as well. Interests of the State and the interests of the local authorities are, in essence, no different**….
>
> 36. …**Entry 52 empowers the State Legislature to levy this tax**. The local authorities cannot themselves levy this tax. **The power is that of the State Legislature and of none else**. So long as the tax is levied upon the entry of goods into a local area for the purpose of consumption, use or sale therein, the requirement of Entry 52 is satisfied. The character of the tax so levied is that of entry tax – by whatever name it is called……..**From the point of view of the entry tax, one may say that the State is a compendium of local areas. Spending for the purposes of the State is thus spending for the purposes of local areas. Situation may perhaps be different where the local areas are confined to a few cities or towns in the State. But where the local areas span the entire State, it cannot be argued that money spent for welfare schemes for improvement of roads, rivers and other means of transport and communication is not spent on or**

> **for the purposes of local areas.** The purposes and needs of local areas are no different from the purposes and needs of the State – not at any rate to any appreciable degree….."
>
> (emphasis supplied)

88. Hon'ble R. Banumathi, J, after referring to the passages from **Bihar Chamber of Commerce**, concluded thus :-

> "**The Entry tax is a State level levy and the entry tax revenue is treated as the State Revenue**. As held in Bihar Chamber of Commerce, "the State is a compendium of local areas…. the purposes and needs of local areas are no different from the purposes and needs of the State." **As entry tax levy being a State-level entry, it is spent on the development of local bodies and the State in general**. When the entry tax is levied by the Entry Tax Act enacted by the State Legislature, the term 'a local area' contemplated by Entry 52 may cover the 'whole State' or 'a local area' as notified in the legislation. I agree with the views taken in Bihar Chamber of Commerce that from the view of Entry Tax, the State is a compendium of local areas and where the local areas cover the entire State, the difference between the 'State' and 'a local area' practically disappears."
>
> (emphasis supplied)

89. In the same context, we would also like to deal with Article 243-X, on which also much emphasis was laid by learned Senior Counsel Sri Navin Sinha. For convenience of reference, Article 243-X is extracted below :-

> "243X. Power to impose taxes by, and Funds of, the Municipalities. - The Legislature of a State may, by law,-
> (a) authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
> (b) assign to a Municipality such taxes, duties, tolls and

> fees levied and collected by the State Government for such purposes and subject to such conditions and limits;
> (c) provide for making such grants in aid to the Municipalities from the Consolidated Fund of the State; and
> (d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom, as may be specified in the law."

90. What Article 243-X does is to permit legislature of a State to make a law (a) authorising a municipality to levy, collect and appropriate taxes, duties, tolls and fees; (b) permit the State Government to collect such taxes, duties, tolls and fees and assign the same to the municipality; (c) provide for making such grants-in-aid to the municipalities from the consolidated fund of the State; and (d) provide for constitution of such funds for crediting all moneys received, respectively, by or on behalf of the municipalities and also for withdrawal of such moneys therefrom as may be specified in the law. Under the last mode, the State legislature by law is competent to provide for (a) constitution of a fund; (b) crediting all moneys received, respectively, by or on behalf of the municipalities in the said fund and (c) for the withdrawal of moneys therefrom as may be provided.

90A. Assuming that the entry tax is an adjunct of the power of the municipality to impose taxes and the money so recovered constitutes a local fund, the legislature of the State by virtue of clause (d) of Article 243-X was competent to constitute a fund and also for crediting all moneys received as entry tax in the said fund. The power conferred on

the State legislature to provide for 'withdrawal of such moneys from the fund', invests the State legislature, as a necessary corollary, with the power to provide for the manner in which the money withdrawn from the fund would be utilised. Under Rule 4 of the Uttar Pradesh Tax on Entry of Goods into Local Areas (Fund) Rules, 2007 the money from the fund is allocated to different departments and local bodies on the recommendation of Uttar Pradesh Development Fund Management Committee. The Principal Secretary, Nagar Vikas Department and Principal Secretary, Panchayati Raj Department are members of the said Committee. The money is to be spent for the purposes specified in Section 14 of the Act. It was within the legislative competence of the State legislature to provide by Section 14 the heads on which the money withdrawn from the fund would be utilised. We do not find anything unconstitutional in Section 14 of the Act, nor would it detract from the nature of the levy.

91. One more provision on the basis of which it was contended that the entire State is being treated as one local area is Section 4 (3A) which reads thus:-

> “(3A) Notwithstanding anything to the contrary contained in sub-section (1) or sub-Section (3), no tax shall be levied on or collected from a dealer or subsequent dealer who brings or cause to be brought into a local area any goods in respect of which tax has been paid in any other local area under any of the said sub-sections and such dealer furnishes before the concerned assessing authority the prescribed declaration in regard thereto within such time as may

be prescribed:

PROVIDED that the amount of tax deposited under this section shall be deemed to have been deposited for and on behalf of such dealer or any subsequent dealer to whom above prescribed declaration has been issued".

92. The contention, in fact, is again based on the assumption that entry tax is a local levy, the power of a local body to impose such tax. Accordingly, it is contended that local area where such good is re-sold would not be able to realise the levy, *albeit* the same having been paid in some other local area.

93. The object of the provision is to avoid double taxation. Once a good covered by the Act has been subjected to levy upon its entry into a local area, the same good, upon being re-sold in same or some other local area, will not be subjected to the levy over again. We have already repelled the contention that the levy of entry tax is a local levy or an adjunct of the power of the local body, consequently, argument based on such premise, which itself is not correct, is also not sustainable. We once again reiterate that the taxable event remains the same i.e. entry of good into a local area for consumption, use or sale and once the good has been subjected to the levy on occurrence of the taxable event, the good would not be subjected to the same levy irrespective of the fact that it changes hands between dealers situated in different local areas. The levy being a State levy and which goes to a centralised fund, we do not find any force in the contention that the

provisions of sub-section (3A) of Section 4 has the effect of treating the entire State as one local area.

94. The provisions in reference to which a similar contention has been raised are Section 2(c), Section 4(6), Section 6 and Section 12 which could, by no stretch of reasoning, lead to the conclusion that thereunder the entire State is being treated as one local area. Section 2(c) defines 'entry of goods' to mean entry into a local area from any place outside such area; or from any place outside the State; or from any place outside the territory of India for consumption, use or sale therein. The taxable event being entry of goods into a local area whether the entry is from any place outside such area; or from outside the State; or from outside the territory of India, it would not have any relevance. The definition is only clarificatory in nature and does not, in any manner, contemplate the entire State as one local area. Section 4(6) envisages that where a dealer who brings or causes to be brought any goods into a local area but which are consigned without using them in the local area to any place outside the State; or sold or re-sold either in course of inter-State trade or commerce; or in course of export out of the territory of India, no entry tax would be levied on the same. Concededly, the taxable event gets completed not merely with the entry of goods but if it is followed by consumption, use or sale. If the same is not to happen, no entry tax would be leviable. Sub-section (6) only clarifies the said position, which is also otherwise explicit from the

main charging section itself. We fail to understand how the said provision is illegal or supports the contention of the petitioners. Section 6 deals with rebate, which the State Government is empowered to grant by issuing a notification in respect of the tax paid under U.P. VAT, Act to the extent of tax leviable under the impugned Act. Section 12 deals with realization of tax through manufacturer. It is a machinery provision to facilitate collection of tax. None of these provisions, in our opinion, support the contention that thereunder the entire State is being treated as one local area, though no doubt the Act being applicable to the entire State deals with various situations and events which would arise in the entire State. These provisions would, in no manner, detract from the nature of the levy or the power of the State Government to provide for various matters incidental to the charging provision.

Plea of excessive delegation:-

95. Sri Ravi Kant, learned senior counsel appearing for the petitioners in some of the matters contended that Sections 4 (1) and 15 of the Act suffers from the vice of excessive delegation of power. It is urged that under these provisions the State Government has been conferred unfettered and uncanalized powers to fix the rate of entry tax and to issue orders in the name of exercising power to remove difficulties in implementation of the provisions of the Act. The provisions do not lay down any guidelines, according to which, power under these provisions is to be exercised. In respect of Section 15, it

was also contended that the provision is akin to Henry VIII Clause and confers unguided powers which were likely to be used in a discriminatory and arbitrary manner. Similar contention has been raised in respect of (i) Section 6 which confers power upon the State Government to provide by notification a rebate upto the full amount of tax leviable under the Act where tax is payable in respect of sale or purchase of such goods under the U.P. VAT Act and (ii) Section 7 which empowers the State Government to issue notification exempting any good or class of goods from levy of tax or class of dealers from the payment of tax.

96. The law in regard to excessive delegation of legislative power is no more *res-integra*. A Constitution Bench of the Supreme Court in **M/s Devi Das Gopal Krishnan, etc. V. State of Punjab and others, AIR 1967 SC 1895,** while examining the validity of Section 5 of the East Punjab General Sales Tax Act, 1948 conferring upon the Provincial Government the power to prescribe rate of tax at which levy would be imposed on dealers on their taxable turnover, placed reliance on a passage from an earlier judgement in **Vasantlal Maganbhai Sanjanwala Vs. State of Bombay, AIR 1961 SC 4,** which succinctly lays down the principles of excessive delegation of power in the following words:-

> "The Constitution confers a power and imposes a duty on the legislature to make laws. The essential legislative function is the

> determination of the legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favour of another. But **in view of the multifarious activities of a welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to the executive or any other agency.** But there is a danger inherent in such a process of delegation. **An over-burdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may not lay down any policy at all; it may declare its policy in vague and general terms; it may not set down any standard for the guidance of the executive; it may confer an arbitrary power on the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation. This self-effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation.** It is for a Court to hold on a fair, generous and liberal construction of an impugned statute whether the legislature exceeded such limits. But the said liberal construction should not be carried by the Courts to the extent of always trying to discover a dormant or latent legislative policy to sustain an arbitrary power conferred on executive authorities. It is the duty of the Court to strike down without any hesitation any arbitrary power conferred on the executive by the legislature".
>
> (emphasis supplied)

96A. Under Section 5 of the Punjab General Sales Tax Act, 1948 as it originally stood, an uncontrolled power was conferred on the Provincial Government to levy tax on the taxable turnover of a dealer at such rates as it may direct. The said provision later came to be amended,

whereunder a ceiling was prescribed in regard to the upper limit at which the tax could be levied. The Supreme Court, while examining the argument relating to excessive delegation of legislative power in the context of the unamended provision, held it as suffering from the vice of excessive delegation, there being no guidelines prescribed which would govern the Provincial Government in fixation of the rates. However, in respect of the amended provision which prescribes the maximum rate, it was held that sufficient guidelines have been provided and it was found to be valid. It was observed thus:-

> "(16) Under section 5 of the Punjab General Sales Tax Act, 1948, as it originally stood, an uncontrolled power was conferred on the provincial Government to levy every year on the taxable turnover of a dealer a tax at such rates as the said Government might direct. Under that section the Legislature practically effaced itself in the matter of fixation of rates and it did not give any guidance either under that section or under any other provisions of the Act …..... no other provision was brought to our notice. The argument of the learned counsel that such a policy could be gathered from the constitutional provisions cannot be accepted, for, if accepted, it would destroy the doctrine of excessive delegation. It would also sanction conferment of power by Legislature on the executive Government without laying down any guidelines in the Act. The minimum we expect of the Legislature is to lay down in the Act conferring such a power of fixation of rates clear legislative policy or guidelines in that regard. As the Act did not prescribe any such policy, it must be held that Section 5 of the said Act, is it stood before the amendment, was void".
>
> "(23) **Even so it was contended that Section 5, as amended, only gave the maximum rate and did not disclose any policy giving guidance to the executive for fixing any rate within that maximum. Here we are concerned with sales-tax. If the Act had said "2**

> **pice in a rupee" it would be manifest that it was a clear guidance**. But as the Act applies to sales or purchases of different commodities it had become necessary to give some discretion to the Government in fixing the rate. Conferment of reasonable area of discretion by a fiscal statute has been approved by this Court in more than one decision : see Khandige Sham Bhat v. The Agricultural Income Tax Officer, Kasargod, 2963-3 SCR 809: (AIR 1963 SC 591). At the same time a larger statutory discretion placing a wide gap between the minimum and the maximum rates and thus enabling the Government to fix an arbitrary rate may not be sustained. In the ultimate analysis, the permissible discretion depends upon the facts of each case. The discretion to fix the rate between 1 pice and 2 pice in a rupee is so insignificant that it is not possible to hold that it exceeds the permissible limits. It follows that Section 5 of the Act as amended is valid."
>
> (emphasis supplied)

97. Hon'ble Wanchoo, C.J. in **Municipal Corporation of Delhi Vs. Birla Cotton, and Spinning and Weaving Mills, Delhi, AIR 1968 SC 1232,** has explained the principles which are applied to find out if the legislature has provided sufficient guidelines to the delegate or not in the following words:-

> "It will depend upon the circumstances of each statute under consideration; in some cases guidance in broad general terms may be enough; in other cases more detailed guidance may be necessary. As we are concerned in the present case with the field of taxation, let us look at the nature of guidance necessary in this field. **The guidance may take the form of providing maximum rate of tax upto which a local body may be given the discretion to make its choice, or it may take the form of providing for consultation with the people of the local area and then fixing the rates after such consultation. It may also take the form of**

> **subjecting the rate to be fixed by the local body to the approval of Government which acts as a watch-dog on the actions of the local body in this matter on behalf of the legislature.** There may be other ways in which guidance may be provided. But the purpose of guidance, whatsoever may be the manner thereof, is to see that the local body fixes a reasonable rate of taxation for the local area concerned. So long as the legislature has made provision to achieve that reasonable rates of taxation are fixed by local bodies, whatever may be the method employed for this purpose-provided it is effective, it may be said that there is guidance for the purpose of fixation of rates of taxation."
>
> (Emphasis supplied)

98. The principles enunciated above lays down that the guidance may take the form of providing (i) maximum rate of tax which the delegate can levy or (ii) it may take the form of subjecting the rate fixed to the approval of the Government, which may act as a watch dog, or that of the legislature itself, or (iii) it could also take the shape of consultation with the local people by inviting objections against the proposed rate of tax and the same being taken into consideration by an independent body before the final rates being notified.

99. A number of decisions were cited by learned counsel for the petitioners on the point, but we do not consider it necessary to refer to all the judgements cited, as the above principles alone have been reiterated in all those cases. It is noteworthy that under Section 4, the maximum rate of levy i.e. "not exceeding 5% of the value of goods" has been prescribed. The provision also stipulates that different rates

may be specified in respect of different goods or different classes of goods. It enabled the Government to fix different rates, subject to the ceiling prescribed, for different goods or different class of goods, having regard to the prevailing market situation. The power is to be exercised for the object for which the levy was imposed, i.e., for the purposes of development of trade, commerce and industry in the State and consistent with the scheme and essential provisions of the Act. Moreover, sub-section (10) of Section 4 stipulates that every notification made under Section 4 shall be laid before each House of the State legislature while it is in session, for a total period of not less than 14 days, extending in its one session or more than one successive session and shall unless some later date is appointed, take effect from the date of its publication in Gazette subject to such modifications or annulments as the two Houses of the legislature may during the said period agree to make, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder except that any imposition, assessment, levy or collection of tax or penalty shall be subject to the said modification or annulment.

100. A perusal of these provisions would indicate that the legislature has not only provided sufficient guidelines to the delegate by prescribing the upper limit at which tax could be imposed, but a further check by providing that the notification issued shall be subject to the

approval of the State Legislature. The legislature has reserved with it the power to annul the notification or to approve subject to such modification as it may agree. Thus, the power conferred upon the State Government is hedged with adequate check and balances which, in our opinion, would keep the State Government within the bounds intended by the legislature. There is no scope for the delegate exceeding the limits, but in case, where it does, the legislature would step in by annulling the notification or modifying it in such manner as it may consider proper. There is no scope for the State Government to act as per its whims and fancies, as contended by learned counsel for the petitioners.

101. Sri Ravi Kant, learned senior counsel submitted that the Supreme Court in **Avinder Singh and others Vs. State of Punjab and others, (1979) 1 SCC 137**, did not approve the principle laid down in paragraph 22 in **M.K. Papiah Vs. Excise Commissioner, AIR 1975 SC 1007,** that the legislature could exercise control over its delegate by reserving with it the power to repeal the subordinate legislation. It was thus sought to be urged that merely because under Section 4 (10) the legislature has reserved with it the power to repeal, it cannot be said that the provision does not suffer from the vice of excessive delegation.

101A. In para 22 of the judgement in **M.K. Papiah,** Mathew J., after discussing a number of English case laws, observed as under:-

"The Legislature may also retain its control over its

> delegate by exercising its power of repeal. This was the basis on which the Privy Council in **Cobb & Co. v. Kropp.** (1967) 1 AC 141 (PC) upheld the validity of delegation of the power to fix rates to the Commissioner of Transport in that case. **”**

101B. In **Avinder Singh**, the Supreme Court, after extracting paragraph 22 from **M.K. Papiah**, made the following observations in paragraph 45:-

> “The learned Judge quoted the Privy Council(3) which held that the Legislature was entitled to use any agent or machinery that it considered for carrying out the object and the purposes of the Acts and to use the Commissioner for Transport as its instrument to fix and recover the licence and permit fees, provided it preserved its own capacity intact and retained perfect control over him; that as it could at any time repeal the legislation and withdraw such authority and discretion as it had vested in him, it had not assigned, transferred or abrogated its sovereign power to levy taxes, nor had it renounced or abdicated its responsibilities in favour of a newly created legislative authority and that, accordingly, the two Acts were valid”.

101C. In **Avinder Singh**, the Supreme Court was called upon to adjudge the validity of Section 90 (3) of the Punjab Municipal Corporation Act which empowered the Government to impose tax on sale of Indian made foreign liquor at the rate of Rs.1 per bottle where the Municipal Corporation fails to exercise such power. The provision was challenged on the ground *interalia* that it suffered from the vice of the excessive delegation and there were no guidelines for the exercise of fiscal power by the Corporation or the Government. Hon'ble Krishna

Iyer, J. speaking for the Bench held that the stipulation contained in Section 90 (2) that taxes shall be levied “for the purposes of the Act” provides sufficient guideline and canalise the objects for which the fiscal levy may be collected or spent. It has been observed thus:-

> “**18.** We are clearly of the view that there is fixation of the policy of the legislation in the matter of taxation, as a close study of Section 90 reveals; and exceeding that policy will invalidate the action of the delegate. What is that policy? The levy of the taxes shall be only **for the purposes of the Act**. Diversion for other purposes is illegal. Exactions beyond the requirements for the fulfillment of the purposes of the Act are also invalid. Like in Section 90(1), Section 90(2) also contains the words of limitation **'for the purposes of this Act'** and that limiting factor governs sub-sections (3), (4) and (5). Sub-section (3) vests nothing new beyond sub-sections (1) and (2). Sub-section (4) does not authorise the government to direct the corporation to impose any tax falling outside sub-section (1) or sub-section (2). Sub-section (5) also is subject to a similar circumscription because the Government cannot issue an order to impose a tax outside the limitation of sub- section (1) or sub-section (2). Thus, the impugned provision contains a severe restriction that the taxation leviable by the corporation, or by the Government acting for the corporation, shall be geared wholly to the goals of the Act. The fiscal policy of Section 90 is manifest. No tax under guise of Section 90(2)(b) can be charged if the purposes of the Act do not require or sanction it. The expression "purposes of this Act" is pregnant with meaning. It sets a ceiling on the total quantum that may be collected. It canalises the objects for which the fiscal levies may be spent. It brings into focus the functions, obligatory or optional, of the municipal bodies and the raising of resources necessary for discharging those functions-nothing more, nothing else”.

101D. Thereafter, His Lordship reproduced para 22 from the judgement of **Papiah's** case, and in para 47 of the judgement observed that:-

> "**47.** The proposition so stated is very wide and sweeping. By that standard, there is nothing unconstitutional about Section 90(5) of the Act."

102. The above observation, in our opinion, does not amount to overruling **Papiah**, though in the opinion of His Lordship, the proposition of law in para 22 was couched in a very wide and sweeping language. It is noticeable that ultimately the vires of Section 90 (5), which was under challenge, was upheld and the writ petitions were dismissed. We are, therefore, unable to accept the contention advanced by learned senior counsel that the principle of law alluded above, had been overruled in **Avinder Singh**.

103. At this juncture, we wish to emphasize that the principle relating to exercise of control by the legislature over the delegate by exercising power of repeal as laid down in **Papiah** has been followed even in the subsequent judgments, noticeable amongst them being **State of M.P. Vs. Mahalaxmi Fabric Mills Ltd. and others, 1995 Supp (1) SCC 642,** and in **R.C. Tobacco (P) Ltd and another Vs. Union of India and another, (2005) 7 SCC 725**. In **Mahalaxmi Fabric Mills**, a similar contention relating to power conferred on the Central

Government under Section 9 (3) of the Mines and Minerals (Regulation and Development) Act, 1957 was challenged as suffering from the vice of excessive delegation. Under the said provision, the Central Government was empowered to issue notification amending the Second Schedule so as to enhance or reduce the rate at which royalty would be payable in respect of any mineral. The argument was repelled by placing reliance on the law laid down in **Papiah** holding that the power of repeal reserved by the Parliament under Section 28 (1) acts as "safety valve". The relevant observations made in this regard are extracted below:-

> "15. ….....There are sufficient guidelines from the Act to enable the Central Government to exercise its delegated legislative function in a just and proper manner keeping in view the uniform development of minerals through out the country. In this connection it is also necessary to keep in view Section 28 sub-section (1) which provides that every rule or notification made by the Central Government be placed before each House of Parliament for a total period of 30 days in one session or two more successive session and if both Houses agree in making any modification in the rule or Notification should not be made, the rule or Notification shall thereafter have effect only in such modified form or be of no effect, as the case may be. **When such a safety valve is provided it cannot be said that the exercise of delegated legislative power by Central Government in the first instance under Section 9 (3) would suffer from any excessive delegation of legislative power or effacement of legislative power of the Parliament**.
>
> 16. In our view the High Court correctly held that Section 9 (3) does not suffer from any excessive delegation of legislative power. Before parting with

this discussion we may deal with one more submission of Shri Sanghi. He submitted that earlier the legislation had itself provided in Section 9 (3) a ceiling for enhancement of rates of royalty and to that extent there was a safety valve or guideline by Parliament. But after amendment this ceiling is given a go bye and hence the Section has become arbitrary. **It is not possible to agree with this contention for the obvious reason that whatever enhanced rate of royalty is fixed by Notification by the Central Government under Section 9 (3), it has got to be filtered through the process of Section 28 (1) and if the Parliament finds the proposed hike to be uncalled for it may veto it out.** There are sufficient guidelines as to for what purpose the royalty can be enhanced as discussed hereinabove, once in three years. **In this connection we may profitably refer to the decision of this Court in the Case N.K. Papiah & Sons.** v. The Exercise Commissioner and another, (AIR 1975 SC 1007). In that case this Court was concerned with the question of constitutional validity of Section 22 of Karnataka Excise Act. Section 22 conferred power on the Government to fix rates of excise duty. There was no guideline in Section 22 about upper limit of the duty which could be fixed. Repelling the contention that this had resulted in excessive delegated power, Mathew J. speaking for this Court held that power conferred on the Government by Section 22 was valid. From the mere fact that it is not certain whether the preamble of the Act gives any guidance for fixing the rate of excise duty, it cannot be said that the legislature has no control over delegate; that requirement of laying of rules before the legislature is control over delegated legislation. **The legislature may also retain its control over its delegate by exercising its power of repeal**."

(emphasis supplied)

104. The provisions of Section 7 of the Act, which permits grant of exemption by the State Government, is also sought to be challenged on the ground that thereby the State Government could make a hostile

discrimination between goods or class of goods or class of dealers. The exemption under Section 7 could be issued only where the State Government is satisfied that it is expedient to grant such exemption in the public interest. A notification issued under Section 7 pre-supposes a considered decision by the State Government having regard to the market conditions, the availability of the goods or such other factors it considers expedient in the public interest. The notification has to be in respect 'any goods' or 'class of goods' or 'class of dealers' thus permitting reasonable classification. In **Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and others, (1959) SCR 279,** the Supreme Court held that :

> "A statute may not make any classification of the persons or things for the purpose of applying its provisions but may -leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the court will not strike down the law out of hand only because no Classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself."

105. In **K. T. Moopil Nair vs. State of Kerala, AIR 1961 SC 552**, the Supreme Court while examining the constitutionality of the Travancore Cochin Land Tax Act, 1957, reiterated the above principles. It was a case where the statutory provisions provided for a uniform rate of tax on forest land, without making any provision for departure even in case the land is arid, not yielding any income. It was observed that :-

> "It is clear, therefore, that inequality is writ large on the Act and is inherent in the very provisions of the taxing section. It is also clear that there is no attempt at classification in the provisions of the Act. Hence, no more need be said as to what could have been the basis for a valid classification. It is one of those cases where the lack of classification creates inequality. It is, therefore, clearly hit by the prohibition to deny equality before the law contained in Article 14 of the Constitution."

106. As noted above, Section 7 specifically envisages selection and classification of goods, while deciding grant of exemption. This again provides ample safeguard against misuse of power by the delegate. Where, however, the power is exercised for extraneous considerations or has resulted in any discrimination, the exercise of power would be bad and not the provision itself.

107. Sri Manish Goel, learned Additional Advocate General submitted that a notification for exempting a good from levy of entry tax under

Section 7 could only be issued by following the procedure provided under Section 4 (10) of the Act. The contention is based on Section 21 of the U.P. General Clauses Act which provides that a power to do a particular thing also includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add, amend, vary or rescind.

108. We have already held in the earlier part of this judgment that where the Legislature reserves in itself the power of repeal, there is rare possibility of the delegate abusing its power. Consequently, where the notification issued by the State Government is found to be against public interest, it is always open to the State Legislature to annul or modify the same in exercise of its power of supervision reserved under the statutory provisions of the Act. We accordingly do not find any force in the contention that the State Government could abuse its power under Section 7, while granting exemptions.

109. We now proceed to examine the challenge to Section 15 of the Act which provides as under :-

> **“15. Power to remove difficulties--** (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the official gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for

removing the difficulty :

PROVIDED that no such order shall be made after the expiry of a period of two years from the date this Act is notified.

(2) The provisions made by any order under sub-section (1) shall have effect as if enacted in this Act and any such order may be made so as to be retrospective to any date not earlier than the date of commencement of this Act.

(3) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before both the Houses of the State Legislature and the provisions of sub-section (1) of Section 23-A of the Uttar Pradesh General Clauses Act, 1904 shall apply as they apply in respect of rules made by the State Government under any Uttar Pradesh Act".

110. It is urged that Section 15 arms the State Government to issue orders in the name of removing difficulties in implementation of the provisions of the Act, but without providing any guidelines in regard to the manner in which said power is to be exercised. The power conferred is unfettered and uncanalised and the State Government could exercise the power discriminately and arbitrarily. According to learned counsel, the provision could be christened as Henry VIII Clause.

111. In support of the said submission, a strong reliance has been placed on the celebrated judgment of the Supreme Court in **Central Inland Water Transport Corporation Ltd. and another Vs. Brojo Nath Ganguly and another, (1986) 3 SCC 156,** wherein the Supreme Court, while interpreting a particular Rule governing the service

conditions of the employees of Central Inland Water Transport Corporation Ltd. held that the power conferred thereunder to terminate service of a permanent employee without giving any reason by three months notice was like Henry VIII Clause. It confers absolute and arbitrary power on the Corporation to terminate service of a permanent employee without providing the guidelines for exercise of such power. The contention advanced on behalf of the Corporation that the power was to be exercised by Board of Directors which comprised of responsible persons, therefore, the apprehension that the power would be exercised arbitrarily or capriciously is not correct, was repelled by quoting a maxim from Historical Essays and Studies, a well-known treaties of Lord Acton, which states that “power tends to corrupt, and absolute power corrupts absolutely”.

112. The next judgement relied upon was in **Straw Products Ltd. Vs Income-Tax Officer, 'A' Ward Bhopal & others, AIR 1968 SC 579,** wherein Section 6, which is also a difficulty removal clause of the Taxation Laws (Extension to Merged States and Amendment) Act, 67 of 1949 was under consideration. The said Act, had come into force from 1st April, 1949, to meet with the situation emerging out of the merger of the State of Bhopal with the State of Madhya Pradesh under the States Re-organization Act, 1956. The Governor General of India issued the “Taxation Laws (Extension to Merged States) Ordinance No.

21 of 1949 to make certain taxation laws applicable to the merged States. By Clause 3 of the Ordinance, amongst other Acts, the Indian Income Tax Act, 1922 and all the orders and rules issued thereunder were extended to the merged States and by Clause 7 the corresponding laws in force in the merged States were repealed. Act No.67 of 1949 replaced the Ordinance w.e.f. 1st April, 1949. Section 6 of the said Act conferred power upon the Government to issue orders or directions for removal of difficulties in implementation of the provisions of the Act. It provided thus:-

> "If any difficulty arises in giving effect to the provisions of any Act, rule or order extended by section 3 to the merged States, the Central Government may, by order, make, such provisions or give such directions as appear to it to be necessary for removal of the difficulty."

112A. In exercise of the said power, the Central Government issued an order called the Taxation Laws (Merged States) (Removal of Difficulties) Amendment Order 1962 (for short 'the Order, 1962') and provided for the meaning of the expression “all depreciation actually allowed under any laws or rules of a Merged State”. It was subjected to challenge on the ground that in fact, there had been in existence no difficulty in giving effect to the provisions of the Act and the Rules, rather the provision brought about more confusion and innumerable difficulties by providing a new definition to the expression. The contention was repelled by the High Court by observing that the

existence of the difficulty was a matter of subjective satisfaction of the Central Government incapable of being determined by anyone else. The view taken by the High Court was not approved by the Supreme Court by observing thus:-

> "In so observing, in our judgment, the High Court plainly erred. Exercise of the power to make provisions or to issue directions as may appear necessary to the Central Government is conditioned by the existence of a difficulty arising in giving effect to the provisions of any Act, rule or order. The section does not make the arising of the difficulty a matter of subjective satisfaction of the Government: it is a condition precedent to the exercise of power and existence of the condition if challenged must be established as an objective fact."

112B. The Supreme Court examined the implications flowing out of the order of the Central Government under challenge and thereafter, came to the conclusion that in fact, no difficulty had arisen in implementation of the provisions of the Act. Consequently, the exercise of power under Section 6 was found to be invalid. The conclusion has been summed up in paragraph 19 of the Law Report in the following words:-

> "To sum up : the power conferred by Section 6 of Act 67 of 1949 is a power to remove a difficulty which arise, in the application of the Income-tax Act to the merged States : it can be exercised in the manner consistent with the scheme and essential provisions of the Act and for the purpose for which it is conferred. **The impugned Order which seeks, in purported exercise of the power, to remove a difficulty which had not arisen was, therefore, unauthorised.** "
>
> (emphasis supplied)

112C. Accordingly, the definition given by the Order, 1962 issued in purported exercise of power under the Removal of Difficulty Order was declared ultravires the power under Section 6 of the Act and was struck down. However, Section 6 itself, which confers power on the Central Government to issue orders or directions to remove difficulties in implementation of the provisions of the Act was neither under challenge nor struck down.

113. A Full Bench decision of the Patna High Court in **Krishnadeo Misra Vs. State of Bihar, AIR 1988 Patna 9,** which also takes a similar view and strikes down the notification issued under the Removal of Difficulty Clause was also vehemently relied upon. In that case, Rule 8 of the Bihar Non-Government Elementary Schools (Taking Over of Control) Act, 1976, which was under consideration, was to the following effect:-

> "If any difficulty arises in giving effect to the provisions of this Act, the State Government may take such action or pass such order as appears to it necessary for the purposes of removing the difficulty."

113A. The circulars and notifications issued from time to time under Section 8 of the Act were challenged on the ground that despite passage of number of years since the enforcement of the Act, no statutory rules

had been framed despite an express power conferred for such purpose under Section 7 of the Act. On the other hand, from time to time, circulars and notifications had been issued in purported exercise of power under Section 8. The main ground of attack was that the exercise of power under Section 8 was not bonafide but had been used as a camouflage to avoid following the procedure prescribed for framing the rules.

113B. The Full Bench quoted a passage from the judgment of the Supreme Court in **Mahadeva Upendra Sinai Vs. Union of India and others, AIR 1975 SC 797,** which authoritatively and exquisitely deals with the nature and purpose of Removal of Difficulty Clause as under:-

> **"To keep pace with the rapidly increasing responsibilities of a welfare democratic State, the legislature has to turn out a plethora of hurried legislation, the volume of which is often matched with its complexity. Under conditions of extreme pressure, with heavy demands on the time of the legislature and the endurance and skill of the draftsman, it is well -- nigh impossible to foresee all the circumstances to deal with which a statute is enacted or to anticipate all the difficulties that might arise in its working due to peculiar local conditions or even a local law.** This is particularly true when Parliament undertakes legislation which gives a new dimension to socio economic activities of the Stale or extends the existing Indian laws to new territories or areas freshly merged in the Union of India. **In order to obviate the necessity of approaching the legislature for removal of every difficulty, howsoever trivial,**

> **encountered in the enforcement of a statute, by going through the time consuming amendatory process, the legislature sometimes thinks it expedient to invest the Executive with a very limited power to make minor adaptations and peripheral adjustments in the statute, for making its implementation effective without touching its substance. That is why the "removal of difficulty clause"** once frowned upon and nicknamed as Henry VIIT Clause in scornful commemoration of the absolutist ways in which that English King got the "difficulties" in enforcing his autocratic will removed through the instrumentality of a servile Parliament, **now finds acceptance as a practical necessity in several Indian statutes of post independence era."**
>
> (emphasis supplied)

113C. Thereafter, the Full Bench concluded by holding as under:-

> "The notifications purporting to issue under Section 8 are indeed very far from removing any difficulty in the enforcement of the Act. Indeed, it could not even remotely be contended that the Act itself faced any major problem of enforcement. However, the notifications purporting to emanate from Section 8 far from removing difficulties appear to me as creating further and virtually insoluble difficulties of their own creation."

> "To conclude, the answer to the question posed at the very outset is rendered in the negative and it is held that **Section 8 of the Act empowering the State Government to remove difficulties in giving effect to its provisions cannot be used as a cloak for subordinate legislation and as a substitute for the express rule making power under Section 7 thereof.**"
>
> (emphasis supplied)

113D. Here again the Full Bench, while noticing that once frowned upon and nick-named as Henry VIII Clause, the Removal of Difficulty Clause, now finds acceptance as a practical necessity. However, what the Full Bench held is that power thereunder cannot be used as a substitute to the rule making power, for which a different procedure is prescribed. The Full Bench further observed that if power under the said clause is permitted to be used as a cloak for subordinate Legislation, it will render the said provision akin to Henry VIII Clause. In our considered opinion, none of these judgements are an authority on the point that removal of difficulty clause investing power in the appropriate Government to issue orders to remove difficulty in implementation of the Act amounts to conferment of arbitrary and uncanalised powers in favour of such Government, rather approves the need for having such a clause on the statute book. The test for adjudging its validity qua attack on ground of excessive delegation remains the same, as discussed above. We, therefore, proceed to examine the challenge to Section 15 in the light of the principles noted in the earlier part of the judgment.

114. The provision itself contemplates that the power thereunder could be exercised if any difficulty arises in giving effect to the provisions of the Act. Thus, the existence of a difficulty arising in giving effect to the

provisions of the Act is a condition precedent to the exercise of power and existence of the condition, if challenged, has to be established as an objective fact. Where the appropriate Government succeeds in establishing the existence of the difficulty as an objective fact, it still has to establish that the order issued is (i) not inconsistent with the provisions of the Act; and (ii) the measures provided thereby would result in removal of the difficulty. In case the Order issued is inconsistent with any provision of the Act, it would render the Order vulnerable and so would be the case where the measures sought to be enforced do not remedy the difficulty. The Legislature has diligently put these restrictions to ensure that the power under Section 15 is not used in a colourable manner, as a substitute to the rule making power, as was in the case before the Full Bench of the Patna High Court. The proviso to sub-section (1) of Section 15, which limits the exercise of the power under Section 15 to a period of only two years from the date the Act is notified, in our opinion, sets at rest all speculative arguments regarding likelihood of the power being abused or taking shape of a substitute to the rule making power. It is a matter of common knowledge that the difficulties in implementation arise ordinarily during the initial years, during which period only the power was to be exercised. We thus find no force in the contention that Section 15 arms the State Government with excessive and arbitrary powers which were likely to be used in a whimsical and discriminatory manner.

Discrimination:-

115. The next ground of attack to the validity of the Act was that it makes invidious discrimination between dealers similarly situated. It was urged that various provisions of the Act treat dealers similarly circumstanced in different manner. These provisions, it was urged, are violative of Articles 14, 301 and 304 (a) of the Constitution.

116. It is now well settled that levy of taxes on goods imported from other States is constitutionally permissible so long as the State Legislature abides by the limitations placed on the exercise of that power. These restrictions are two folds; (I) the levy will be justified only if similar goods manufactured or produced in the State are also taxed; and (ii) the State Legislature cannot in the matter of levying taxes discriminate between the goods imported from other States and those manufactured or produced within the State while levying such tax. Concededly, Section 4, which is charging provision, does not make any distinction between the goods imported from other States or those produced locally within the State in the matter of levying entry tax. The taxable event, as noted above, is the entry of specified goods into a local area for consumption, use or sale therein from any place outside that local area, irrespective of whether that good is manufactured within the State or is being brought from outside the

State. However, the contention of the petitioners is that grant of exemptions and rebate under the Act is resulting in a marked difference in the ultimate liability of the amount of tax payable on a particular good which is impermissible. It is urged that a blanket rebate on entry tax under Section 6 for goods in respect of which a dealer registered under the U.P. VAT Act has paid tax under the said Act, is resulting in discrimination between the goods brought by the same manufacturer by stock transfer from outside the Sate as compared to those purchased from a registered dealer within the State. In writ filed by M/s Birla Corporation Ltd., it is contended that clinker, which is raw material used for manufacture of cement, if brought from outside the State by way of stock transfer, it suffers the levy of entry tax at the rate of 5% besides central sales tax in the originating State, but the manufacturer receiving the same, neither gets rebate under Section 6 of the Act nor input tax credit under the U.P. VAT Act. At the time of sale of cement, he has to pay VAT @ 12.50%. Thus, he has to suffer a total tax burden of 14.33% on the manufactured cement. On the other hand, in case the same amount of clinker is purchased from a trader dealer situated within the State, then the selling dealer gets a rebate upto the full amount of tax leviable as entry tax under the Act. The purchasing manufacturer dealer has to pay only VAT on the purchase of clinker at the rate of 4%. The alleged discrimination was sought to be highlighted by bringing on record a chart alongwith supplementary affidavit, which

is extracted below:-

BIRLA CORPORATION LIMITED
ALLAHABAD

Clinker received from Satna Plant on Stock Transfer basis against form-F		
		1000 MT
Cost of imported Clinker & Freight thereof (import Qty.1000 MT @ Rs.1828.91)	Rs.	1828910
Entry tax on clinker @5%	Rs	91446
UP VAT on clinker @ 4%	Rs.	0
Clinker consumption	MT	1000
Cement produced by such Clinker (% of Clinker is 70.19% in Final product	MT	1424.70
Sale of 1424.70 MT Cement @ Rs.3506.00 PMT	Rs.	4994998
UP VAT @ 12.50%	Rs.	624375
Total Tax Paid :-		
UP Entry tax @ 5% on Clinker	Rs.	91446
UP VAT @ 12.50% on sale of Cement	Rs.	624375
Total	**Rs.**	**715821**
(Set off if any between 01.04.2008 to 31.03.2009	Rs.	Nil
Total Tax Liability borne by Manufacture	Rs.	715820
Tax Burden on Sale of Cement	%	**14.44**

Clinker purchased within the State from the Registered Dealer of U.P.		
		1000 MT
Purchased value of Clinker & Freight thereof (import Qty.1000 MT @ Rs.1828.91)	Rs.	1828910
Entry tax on clinker @5%	Rs	0
UP VAT on clinker @ 4%	Rs.	73156
Clinker consumption	MT	1000
Cement produced by such Clinker (% of Clinker is 70.19% in Final product	MT	1424.70
Sale of 1424.70 MT Cement @ Rs.3506.00 PMT	Rs.	4994998
UP VAT @ 12.50%	Rs.	624375
Total Tax Paid :-		
UP Entry tax @ 5% on purchase of Clinker	Rs.	73156
UP VAT @ 12.50% on sale of Cement	Rs.	624375
Total	**Rs.**	**697531**
(Set off if any between 01.04.2008 to 31.03.2009	Rs.	73156
Total Tax Liability borne by Manufacture	Rs.	624375
Tax Burden on Sale of Cement	%	**12.50**

Note :-
1) Annual production capacity of plant 6.30 Lacs Metric Ton Per year

2) Illustration based on actual data of 2008-09

117. The State has filed an affidavit in rebuttal thereto. It has taken a specific plea that clinker, which is raw material for the manufacture of cement, is not produced in the State. The said fact has not been disputed by the petitioners in the supplementary rejoinder affidavit nor

during course of hearing. It is stated by the State respondents that clinker was added in the list of Scheduled Goods for the first time by a Notification dated 18.8.2005 and the rate of tax notified was 0.5% of the value of goods with effect from the date of the Notification. By a subsequent Notification dated 29.9.2008, entry tax on clinker was enhanced to 5% of the value of goods w.e.f. 30.9.2008. On 29.5.2009, by another Notification, clinker was deleted from the list of Scheduled Goods w.e.f. 1.6.2009. The cement was added to the schedule w.e.f. 16.5.2003 by Notification dated 9.5.2003 and it was made taxable at the rate of 2% of the value of goods w.e.f. 16.5.2003. By a Notification dated 19.2.2010, cement was omitted from the schedule. By Notification dated 4.3.2008, the Government allowed a rebate to the extent of the amount of tax payable by a dealer on sale or purchase of clinker under the U.P. Value Added Tax Act from the tax payable under the Act. A combined reading of the above Notifications would mean that clinker attracted an entry tax of 0.5%; it was enhanced to 5% w.e.f. 30.9.2008 and it remained the same till 31.5.2009 when it was omitted from the Schedule; a rebate to the extent of amount of tax paid as VAT from the tax payable under the Act was allowed by Notification dated 4.3.2008 w.e.f. 1.1.2008. The cement was taxable to entry tax at the rate of 2% of the value of goods w.e.f. 16.5.2003 and the position remained the same till 19.2.2010 when it was omitted from the Schedule.

118. It is also evident from perusal of these notifications that rebate

on clinker is allowed to a dealer on its sale or purchase. If clinker is purchased by a manufacturer of cement from a dealer within the State he would be allowed a rebate but if a manufacturer of cement in the State purchases clinker from outside State or brings cement within State by way of stock transfer or consignment he would not be allowed the rebate because no VAT would be payable on such import or transfer of clinker. If the manufacturer of cement purchases clinker within the State from a registered dealer, the selling dealer will charge VAT and the manufacturer/purchaser would be entitled to input tax credit if he purchases against tax invoice.

119. The State respondents have justified their action in giving rebate on clinker by Notification dated 4.3.2008 by stating thus:-

> "That apparently rebate given on clinker by notification dated 4.3.08 is in effect to off set the VAT payable by cement manufacturer in U.P. who purchases clinker from inside the State, otherwise a cement manufacturer in U.P. who purchases clinker from within U.P. would be in disadvantage position with reference to cement manufacturer who purchases/brings clinker from outside the State.
>
> Thus by providing rebate on clinker to the extent of VAT payable both the manufacturer i.e. a manufacturer who purchases or brings clinker from outside the State and a manufacturer who purchases clinker within the State have been put at par."
>
> "That by notification no.K.A.NI.-2-1045/XI-9(1)/08-U.P. Act-30-07-Order-46-2009 dated 29.5.09 and w.e.f. 1.6.09 entry tax on clinker has been omitted. It is further stated that rebate granted to clinker by notification dated 4.3.08 is to the extent of VAT payable by a dealer on sale or purchase of clinker under the U.P. Value Added Tax Act, 2008. If clinker

> is brought in the State of U.P. by stock transfer and consumed by the manufacturer of cement in U.P. no VAT on clinker would be payable and consequently no rebate in respect of such clinker would be available. If clinker is purchased within the state a rebate to the extent of VAT payable on sale or purchase on clinker would be available. If such clinker is purchased from a registered dealer on the basis of tax invoice input tax credit will be available on such purchase.
>
> It is further stated that the rebate notification was effective for a limited period and as far as the rate of tax on clinker is concerned there is no discrimination with respect to entry tax on imported clinker or locally purchased clinker. As far as annexure 1 to the supplementary affidavit is concerned which is stated to be based on actual data for the year 08-09, but for the assessment year 08-09 no such date had been furnished before the assessing authority during assessment proceedings or thereafter and so is not liable to be accepted, for the reasons already stated."

120. A close examination of the plea would reveal that Article 304 (a) is not at all attracted. As noted above, Article 304 (a) frowns upon discrimination between goods imported from other States with similar goods manufactured or produced in the State. Concededly, clinker is not produced in the State at all. Consequently, there does not arise any question of discrimination between goods imported with goods manufactured or produced in the State. In fact, according to the illustration cited, in both the situations, the clinker has been brought from outside the State. Under the first situation, it is brought by the petitioner by stock transfer while in the other situation, it is purchased by the petitioner from a dealer situated in the State who had also

brought the same from outside the State. Consequently, the alleged difference in tax liability was on account of two different modes of acquisition of the same goods from outside the State, which, in our considered opinion, would not be covered by Article 304 (a).

121. We would still like to examine the challenge from the angle of Article 14 and other constitutional provisions to find out if by issuing rebate notification in respect of clinker any discrimination has resulted. For examining the challenge, it would be advantageous to allude to the principles laid down in **Jindal Stainless-II** for determining whether the levy under challenge passes the muster of Article 304 (a) and other constitutional provisions. In the leading judgment, Hon'ble T.S. Thakur, after adverting to earlier decisions of the Supreme Court on the point, reiterated the principles laid down in a Seven Judge Constitution Bench judgment in **Kathi Raning Rawat Vs. the State of Saurashtra, AIR 1952 SC 123,** holding that all legislative differentiation is not discrimination. The relevant passages from the said judgment on which reliance was placed is reproduced below:-

> "7. All legislative differentiation is not necessarily discriminatory. In fact, the word "discrimination" does not occur in Article 14. The expression "discriminate against" is used in Article 15(1) and Article 16(2), and it means, according to the Oxford Dictionary, "to make an adverse distinction with regard to; to distinguish unfavourably from others". Discrimination thus involves an element of unfavourable bias and it is in that sense that the expression has to be understood in this context. If such bias is disclosed and is based on any of the

> grounds mentioned in Articles 15 and 16, it may well be that the statute will, without more, incur condemnation as violating a specific constitutional prohibition unless it is saved by one or other of the provisos to those articles. But the position under Article 14 is different. Equal protection claims under that article are examined with the presumption that the State action is reasonable and justified. This presumption of constitutionality stems from the wide power of classification which the legislature must, of necessity, possess in making laws operating differently as regards different groups of persons in order to give effect to its policies… .. ..”
>
> “19. I think that a distinction should be drawn between “discrimination without reason” and “discrimination with reason”. The whole doctrine of classification is based on this distinction and on the well-known fact that the circumstances which govern one set of persons or objects may not necessarily be the same as those governing another set of persons or objects, so that the question of unequal treatment does not really arise as between persons governed by different conditions and different sets of circumstances. The main objection to the West Bengal Act was that it permitted discrimination “without reason” or without any rational basis.”

122. Another judgment on which reliance was placed was in **Video Electronics Private Ltd. and another Vs. State of Punjab and another, (1990) 3 SCC 87,** in which notifications issued by the States of U.P. and Punjab providing for exemptions of new units established in certain areas for a period of three to seven years were assailed as discriminatory. The challenge was turned down by providing that the exemption was available to a specified class of industrial units and for a limited period of time only. In the said judgment, it was held that every differentiation in the tax rebate, exemption or tax concession granted to

indigenous goods which may result in differentiation in the rate of tax on goods imported into the State would not amount to discrimination. It was held that so long as there was no intentional and unfavourable bias evident from the measure adopted by the State, mere grant of exemption or incentives aimed at supporting local industries in their growth, development and progress did not constitute discrimination.

123. In paragraph 137 of the law report, the approach which the Courts have to adopt while examining the constitutional validity of a fiscal legislation has been laid down thus:-

> "Courts have almost universally accepted the principle that keeping in view the inherent complexities of fiscal adjustments and the diverse elements and inputs that go into such exercise a greater latitude is due to the legislature in taxation related legislations."

124. Hon'ble Ramana, J. again placing reliance on **Video Electronics** observed as under:-

> "There is a vital difference between mere 'differentiation' and 'discrimination. It is discrimination not differentiation that is sought to be prevented through Part XIII. Again reference to certain observations of this Court in Video Electronics would be pertinent:
>
> > '… very differentiation is not discrimination. The word 'discrimination' is not used in Art. 14 but is used in Articles 16, 303 & 304(a). When used in Article 304(a), it involves an element of intentional and purposeful differentiation thereby creating economic barrier and involves an element of an unfavorable bias. Discrimination implies an unfair classification. Reference may be made to the observations of this Court in Kathi Raning Rawat v. The State of Saurashtra, [1952] SCR 435 where Chief Justice Shastri at p. 442 of the report reiterated that all

> legislative differentiation is not necessarily discriminatory. At p. 448 of the report, Justice Fazal Ali noticed the distinction between 'discrimination without reason' and 'discrimination with reason'. The whole doctrine of classification is based on this and on the well-known fact that the circumstances covering one set of provisions or objects may not necessarily be the same as these covering another set of provisions and objects so that the question of unequal treatment does not arise as between the provisions covered by different sets of circumstances'."

124A. Thereafter, His Lordship in paragraph 248 of the law report laid down as under:-

> "Thus stated, the principle laid down in Video Electronics is that, if a backward area in a State needs impetus for the development, and in such circumstances incentives are given for the industry to develop whether by way of subsidies or tax exemptions for a certain period of time as desired by the competent legislature, the same would be permissible and would fall outside the scope of Article 304 (a). Such State enactment is not inherently discriminatory, but rather aims to ensure economic equality which is a facet of economic unity."

125. Hon'ble Banumathi, J. again placing reliance upon **Video Electronics** and host of other judgments on the point held that:-

> "States are free to equalise the burden of entry tax on the goods imported from other States by giving them set-off against the sales tax paid by them in the exporting State. In such a manner, equivalence can be brought about in the tax burden borne by the goods imported from other States and the locally manufactured/produced goods. The contention of the assessees that the term 'any tax' used in Art. 304(a) refers to every tax distinctly, thereby prohibiting imposition of entry tax on imported goods unless, entry tax is imposed on locally manufactured/ produced goods, does not lead to just and reasonable

> interpretation of Art. 304(a). The wholesome effect of the taxes levied under distinct heads needs to be taken into account. The tax burden borne by the goods form a part of the price of the goods and if both, locally manufactured/produced goods and imported goods are subjected to similar tax burdens, irrespective of the heads under which the taxes are levied, say entry tax or sales tax etc., then no discrimination can be said to have been caused."

126. The observation made in paragraph 381 of the law report in regard to exemptions, set-offs and rebates is also pertinent to be noted:-

> "Entry of goods into a local area from another local area of the State can be effected either by a dealer who purchased the goods from the manufacturer or by an individual. A dealer who effects entry of goods into a local area from another local area in the same State would be taxed in the form of sales tax/VAT; so also the individual would have already paid the sales tax in another local area, where he bought the goods. In case of entry tax levied on goods imported from other State, set-off like in the cases of State enactments of Tamil Nadu and Andhra Pradesh is given to the extent of the sales tax/VAT paid in the purchasing State; in few of the States like Kerala, after levy of entry tax, to the extent entry tax paid, input credit is given from the sales tax/VAT payable in the State where the goods are imported. Tax burden is more or less the same, for both indigenous goods and outside goods. This is because, where an entry tax is imposed on goods brought from outside, the benefit of credit of the amount already paid as entry tax is given as input credit for the purpose of payment of VAT. Moreover, if a State enactment provides for set-off and statutory exemptions to goods paying local sales tax, thereby equalising the net tax burden on the imported goods and local goods, it does not fall foul under Art. 304(a), so long as it is balancing sales tax against the entry tax."

127. Hon'ble Chandrachud, J. in the same judgement has held that burden of establishing that there is a discrimination against goods

which are imported from other States lies on the person who sets up a plea and in answering the same, it is open to the State to establish that the legislative provision which it has enacted maintains the principle of non-discrimination between goods produced and manufactured within the State and goods imported from other States, while at the same time, bringing about parity in terms of tax burden between domestic and imported goods. It is the specific case of the State respondents that the entry tax on clinker whether imported or purchased from within State is one and the same.

128. The petitioner while bringing clinker from Satna Plant on stock transfer has admittedly suffered entry tax of 5% but since the goods have been brought for use and consumption and not for sale and, therefore, no VAT was payable. However, in case of a registered dealer who brings clinker on his own account, pays entry tax. When he sells the same product to the petitioner, he becomes liable to pay VAT at the rate of 4%. However, as a result of the rebate being granted to the extent of VAT, the price would come at par with the clinker brought on stock transfer. We find considerable force in the contention of the State respondents that the rebate granted on clinker, in fact, equalises the tax liability and brings the price of clinker brought from outside the State by stock transfer at par with that purchased from a trader dealer.

129. The facts and figures mentioned in the chart based on a hypothetical case without any supporting material in the shape of sale

vouchers or invoices does not inspire much confidence. Concededly, clinker is not produced within the State. A registered dealer who brings clinker from outside the State would, therefore, pay entry tax on the clinker and while selling it, would also include his profit therein. Therefore, the price of acquisition of clinker by a manufacturer in case of stock transfer would be substantially less than that when he purchases it from a trader dealer who had brought the same good on his own account from outside the State. However, in the chart, purchase value of clinker in case of stock transfer as well as in case of purchase from a registered dealer of U.P. has been shown to be one and the same. In view of the said discrepancy, all other figures given in the chart are also not correct.

130. Moreover, it is relevant to note that the notification dated 4.3.2008 by which rebate was granted on clinker was not challenged by the petitioners when they filed Writ Petition No.1515 of 2007 challenging the validity of the Act, nor even now. The rebate on clinker, as noted above, was effected for the short period starting from 4.3.2008 and ending on 1.6.2009. Certified copy of the assessment orders of the relevant period was placed on record during the course of hearing by Sri Manish Goel, learned Additional Advocate General and wherein no such plea relating to discrimination was raised. The assessment proceedings have attained finality long back and as noted above, the challenge even in the earlier writ petition to the validity of the Act was

not on the ground of any discrimination having taken place against the petitioners on account of the notification dated 4.3.2008.

131. An identical plea was raised by Indian Oil Corporation in reference to notification dated 4.3.2008 which grants a rebate on the tax payable by a dealer on sale or purchase of certain petroleum products under the U.P. VAT Act to the extent of tax leviable under the Act. It was contended that when a dealer is importing a petroleum product and selling the same, he gets the benefit of set off of entry tax in respect of VAT. On the other hand, in case of manufacturer importer like IOC, there is no provision of set off. Thus, the incidence of VAT and entry tax has to be borne by the IOC while dealer bringing petroleum product from outside the State of U.P. gets the benefit of the rebate notification. The said contention has been refuted in the counter affidavit filed by the State respondents on the ground that there is no discrimination in the rate of tax between locally manufactured/produced goods and those imported from outside the State. The rate of tax was with reference to the value of goods and not with respect to the import or local manufacture/production of goods. The object of the rebate notification dated 4.3.2008 is to bring at par a dealer who pays both entry tax and VAT on petroleum product with a dealer who only pays VAT having manufactured the good locally. It is also asserted in the counter affidavit that in fact there is “no comparison between the cost price of the HSD which is produced in the State or HSD which is imported and

sold within the State unless it is specified that there is no entry tax on crude oil in the State from where HSD is purchased." It is further asserted in the counter affidavit that the chart filed by the petitioner alongwith supplementary affidavit to show discrimination, does not disclose the correct state of affairs. The respondents have given specific reasons to show how the figures given in the chart are incorrect. The IOC has not brought on record any documentary evidence to establish that the figures given in the chart were correct or based on real facts, therefore, we do not consider it necessary to make a detailed reference to the said chart. Suffice to say that the contention does not merit acceptance for the reasons on which similar plea raised by M/s Birla Corporation was turned down.

132. Prism Cement Limited, which is engaged in manufacture of cement, has also alleged discrimination by giving the following illustration :-

Cement sold against Form-C from State of M.P. For Varanasi in State of U.P. & Considering value of Cement to be Rs.100/-	Cement manufactured at Chunar in State of U.P. and sold for Varanasi in State of U.P. & Considering value of Cement to be Rs.100/-
CST @ 2%=Rs 2/-	NIL
ET @ 5%=Rs 5.1/-	ET @ 5%=Rs 5/-
VAT @ 14.5 = Rs 15.52	VAT @ 14.5=Rs 15.22
Total Tax = 22.62/-	**Total Tax = 20.22/-**

133. It is contended on its behalf that entry tax could only be sustained if the State while imposing the same succeeds in equalising the fiscal

burden, so that there is no disparity in the final price of the good. It is contended that the said principle has been laid down in **Jindal Stainless-II** in para 141 and 378 which reads thus :-

> "141. Seen in the context of the above, we are inclined to accept the submission made on behalf of the State that so long as the intention behind the grant of exemption/adjustment/credit is to equalize the fall of the fiscal burden on the goods from within the State and those from outside the State such exemption or set off will not amount to hostile discrimination offensive to Article 304(a)."

> "378 (118). The expression 'any tax' used in Art. 304 (a) is generic in nature and covers all taxes on goods which a State is competent to impose by virtue of Articles 245 and 246 read with List II of Seventh Schedule. A Scheme adopted by a State Legislature whereby several taxes are levied on the goods (either locally produced or imported from other States) under different heads, cannot be faulted with if it conforms to the principle of equivalence and nondiscrimination. For e.g., both sales tax levied under entry 54, List II and entry tax levied under entry 52, List II are taxes on goods. It is the burden of the tax which can discriminate and not the form. States are free to equalise the burden of entry tax on the goods imported from other States by giving them set-off against the sales tax paid by them in the exporting State. In such a manner, equivalence can be brought about in the tax burden borne by the goods imported from other States and the locally manufactured/produced goods. The contention of the assessees that the term 'any tax' used in Art. 304(a) refers to every tax distinctly, thereby prohibiting imposition of entry tax on imported goods unless, entry tax is imposed on locally manufactured/produced goods, does not lead to just and reasonable interpretation of Art. 304(a). The wholesome effect of the taxes levied under distinct heads needs to be taken into account. The tax burden borne by the goods form a part of the price of the goods and if both, locally manufactured/produced goods and imported goods are subjected to similar tax burdens, irrespective of the heads under which the taxes are levied, say entry tax or sales tax etc., then no discrimination can be said to have

been caused."

133A. It is submitted that the fiscal burden on cement sold against Form C, brought from outside the State of U.P. and sold in Varanasi, is higher than the cement manufactured at Chunar, within the State, and sold in Varanasi.

134. The Supreme Court while examining a similar plea in **Rattan Lal & Co. and another Vs. The Assessing Authority and another, AIR 1970 SC 1742,** repelled the contention by holding thus:-

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

134A. Again in **Shree Digvijay Cement Co. Ltd. and others Vs. State of Rajasthan and others, (2000) 1 SCC 688**, the Supreme Court considered a challenge to validity of a notification issued by the State

of Rajasthan under the Central Sales Tax Act, 1956 reducing sales tax on inter-State sale of cement by dealers of that state to 4%, while it was 16% in the adjoining State Gujarat. The grievance of the petitioners in the aforesaid petition was that as a consequence of such reduction of sales tax, cement from Rajasthan became much cheaper in the neighbouring States like Gujarat and that adversely affected the local sale of cement manufactured by the petitioners in Gujarat by reason of higher rate of sales tax on the local sales within that State. Such reduction of the rate of tax, it was contended, was contrary to the scheme contained in Part XIII of the Constitution and was liable to be struck down. The challenge was repelled holding thus:-

> "We are unable to agree with the contention of the learned counsel for the petitioners that the impugned notification had the effect of preventing or hindering the free movement of goods from one State to another. As far as the State of Rajasthan is concerned, it had the opposite effect. **Merely because local rate of tax in the State of Gujarat on the sale of cement was higher than the inter-State sales tax on the cement sold from Rajasthan cannot lead to the conclusion that the impugned notification prevented or hindered the free movement of goods from one State to another.** In fact the impugned notification had the opposite effect, namely, it increased the movement of cement from Rajasthan to other States. It is not as if the impugned notification created a barrier which may have had the effect of hindering free movement of goods but on the other hand, the sales tax barrier was lowered resulting in increased volume of inter-state trade."
>
> (emphasis supplied)

135. Concededly, the entry tax on cement, whether it is produced

within the State or brought from outside, was at a uniform rate of 5%. In both the situations, at the time of sale, it was liable to VAT. It is not the case of the petitioner that there is any disparity in tax burden on account of the imposition of entry tax, or any exemption or set off notification issued under the Act. The difference in fiscal burden, according to him, is solely on account of central sales tax payable on cement when brought from outside the State.

136. Once it is admitted that the entry tax was levied at a uniform rate both on cement manufactured within the State and that brought from outside the State and that there was no exemption or set off notification resulting in any discrimination between the cement imported from outside and that manufactured within the State, the impost, in our opinion, was absolutely non-discriminately and fully passes muster of Article 304(a). The principle of equalization of fiscal burden was laid down to save exemptions and set-off granted under the Act. It is nowhere held that if there is disparity in price because of the good being subject to certain taxes in the importing State, it is incumbent upon the State to equalise the fiscal burden on the good imported from outside by giving it a set off or exemption in the entry tax. Grant of set off or exemption is a matter of policy and the State Government cannot be compelled to exercise these powers. The object of Article 304(a) is to prevent erection of economic barrier for the goods coming from other States and not to provide for a machinery to equalise the cost of

procurement of a good from the other State where it had been subjected to taxes payable in that State.

137. In Writ Petition No.24953 of 2017 M/s. Bhushan Steel Ltd vs. State of U.P., and certain other petitions, wherein the petitioners are manufacturers and dealers of CR Coil, GP/GC sheets etc., the validity of the notification dated 29.9.2008 issued by the State Government under Section 4 of the Act, specifying the goods on which entry tax would be levied, was challenged on the ground that it is arbitrary, discriminatory and violative of Article 14 of the Constitution. The contention was that the State had selectively excluded other goods from the preview of the entry tax legislation, thus making hostile discrimination.

138. Before we deal with the contention, we would like to advert to certain well established principles which govern a constitutional challenge on the ground of violation of Article 14. It is now well established that taxing laws are not outside the purview of Article 14. However, in matter pertaining to a fiscal legislation, much greater latitude is enjoyed by the Legislature in selection of goods or people who are to be subjected to tax and who not. This is in view of inherent complexity of fiscal adjustment of diverse elements which the Legislature has to make while laying down a fiscal policy. There is no fixed formula or scientific principle of exclusion or inclusion which could be applied with exactitude. Willis, in his “Constitutional Law”,

page 587, observed :-

> "A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably.....

138A. Applying the above principle, the Supreme Court in **East India Tobacco Co. vs. State of A.P., AIR 1962 SC 1733,** held that

> "If a State can validly pick and choose one commodity for taxation and that is not open to attack under Article 14, the same result must follow when the State picks out one category of goods and subjects it to taxation.". This indicates a wide range of selection and freedom in appraisal not only in the objects of taxation and the manner of taxation, but also in the determination of the rate or rates applicable...."

138B. The Constitution Bench of the Supreme Court in In Re: **Special Courts Bill, 1978 [1979] 1 SCC 380** held that constitutionality of a fiscal legislation should be adjudged by the generality of its provisions and not by its crudities and inequities. This is in view of the fact that an economic legislation is based on experimentation, or what is called 'trial and error method'. The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should not be arbitrary, illusory, or artificial. It is well settled that latitude for classification in a taxing statute is much greater; and in order to tax something as observed above, it is not necessary to

tax everything. These basic postulates have to be borne in mind while determining the constitutional validity of a taxing provision challenged on the ground of discrimination.

139. The scope for permissible classification in a taxing statute was considered in **P.H. Ashwathanarayana v. State of Karnataka**, **AIR 1989 SC 100**. After a review of earlier decisions, it was stated therein as under :-

> "**It is for the State to decide what economic and social policy it should pursue and what discrimination advance those social and economic policies**. In view of the inherent complexity of these fiscal adjustments, courts give a larger discretion to the legislature in the matter of its preferences of economic an social policies and effectuate the chosen system in all possible and reasonable ways....."
>
> (emphasis supplied)

140. The Act, by Section 4 conferred power on the State to specify by notification the goods which were to be subjected to levy. The Supreme Court in **State of U.P. vs. Renu Sagar Power Co., AIR 1988 SC 1737,** has held that exercise of such power is a quasi legislative function by the delegate. The same view has been taken in **Narinder Chand Hem Raj vs. Lt. Governor, Administrator, UT Himanchal Pradesh, (1972) 1 SCR 940.**

141. Now, by notification dated 29.9.2008, the State Government in exercise of power under Section 4 of the Act, specified the goods which would come under the net of entry tax. Iron & Steel as defined in Section 14 of the Central Sale Tax Act, 1956 was enlisted at Sl. No.14

of the notification. It was made liable to entry tax @ 1% of the value of goods. The notification, in our considered opinion, could not be challenged on the ground that it is discriminatory, in as much as it did not include several other goods. As already noted, it was the wisdom of the State Government as to which good or classes of goods were to be subjected to tax. The State was not required to tax every good, to tax some of the goods. It was conferred with ample discretion, having regard to the very nature of power, to decide which of the goods were required to be brought under the tax net. Nothing concrete has been pointed out as to how the notification violated the mandate of Article 14 or any other provision of the Constitution. The challenge therefore does not merit acceptance.

142. Again it was contended that by another notification dated 15.1.2009, also issued under Section 4 of the Act, certain items of the category of Iron and Steel were excluded from the ambit of the scheduled goods, but not H.R. Coil, which belong to the same genes. It was urged that the State realising the omission on its part, by notification dated 31.3.2011, also excluded H.R. Coil from the levy of entry tax. Thus, it was argued, in Writ Petition No.24953 of 2017 filed by M/s. Bhushan Steel Ltd. and certain other petitions, where the petitioners are manufacturers and dealers of H.R. Coil that they are entitled for a mandamus commanding the State to refund the entry tax collected from them in pursuance of notification dated 15.1.2009.

143. We are not ready to accept the contention. Initially, the rate of tax on Iron and Steel levied by notification dated 29.9.2008 was @ 1% of the value of goods. The relevant entry at Sl. No.14 read thus : “Iron and Steel as defined in Section 14 of the Central Sales Tax Act, 1956”. It included H.R. Coil as well. By subsequent notification dated 15.1.2009, the earlier notification dated 29.9.2008 was amended. The entry, after amendment, was to the following effect:-

14.	Iron and Steel as defined in section 14 of the Central Sales Tax Act, 1956 excluding following goods :- (i) pig iron, sponge iron and cast iron including ingot moulds, bottom plates, iron scrap, cast iron scrap, runer scrap and iron skull scrap; (ii) steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes); (iii) steel melting scrap in all forms including steel skull, turnings and borings; (iv) wires-rolled, drawn, galvanized, aluminized, tinned or coated such as by copper.	1% of the value of goods.

143A. On 31.3.2011, again the notification was amended and H.R. Coil was also excluded. By the second notification of the same date, issued in exercise of power under Section 6, a rebate to the extent of the amount of tax payable by a dealer under UP VAT Act was also granted in respect of the items which remained under the ambit of the notification under Section 4. The net effect was that from 31.3.2011, when the rate of tax was enhanced to 5%, H R Coil like other goods

falling under the category of Iron and steel, also stood excluded. Thus, HR Coil was subject to levy from 31.10.1999 to 31.3.2011 at the rate of 1% of the value of goods and whereafter it stood excluded from the levy of entry tax.

143B. The relevant part of Section 14 of the Central Sales Tax Act, 1956 which was adopted wholly or partially in the above notifications reads thus :-

(iv) iron and steel, that is to say,—

(i) pig iron, [sponge iron] and cast iron including [ingot moulds, bottom plates], iron scrap, cast iron scrap, runner scrap and iron skull scrap;
(ii) steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes);
(iii) skelp bars, tin bars, sheet bar, hoe-bar and sleeper bars;
(iv) steel bars (rounds, rods, squares, flat, octagons and hexagons, plain and ribbed or twisted, in coil form as well as straight lengths;
(v) steel structurals (angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections);
(vi) sheets, hoops, strips and skelps, both black and galvanised, hot and cold rolled plain and corrugated, in all qualities, in straight lengths and in coil form, as rolled and in rivetted condition;
(vii) Plates both plain and chequered in all qualities;
(viii) discs, rings, forgings and steel castings;
(ix) tools, alloy and special steels of any of the above categories;
(x) steel melting scrap in all forms including steel skull, turnings and borings;
(xi) steel tubes, both welded and seamless, of all diameters and lengths including tube fittings;
(xii) tin-plates, both hot dipped and electrolytic and tinfree plates;
(xiii) fish plate bars, bearing plate bars, crossing sleeper bars, fish plates, bearing plates, crossing sleepers and pressed steel sleepers, rails—heavy and light crane rails;

(xiv) wheels, tyres, axles and wheels sets;
(xv) wire rods and wires—rolled, drawn, galvanised, aluminised, tinned or coated such as by copper;
(xvi) defectives, rejects, cuttings, or end pieces of any of the above categories;

143C. Now, when notification was issued on 15.1.2009, out of sixteen different categories specified under 'Iron and Steel' under the Central Sales Tax Act, 1956, only four were exempted. It cannot be assumed that there was any omission on part of the State while issuing the said notification. Like several other items which were not excluded, HR Coil, though falling under the category of 'Iron and Steel' under the Central Sales Tax Act, 1956 was also not excluded. It was certainly a deliberate and well considered decision of the State not to exclude HR Coil from the tax net under the Act. It is possible that initially when entry tax was leviable at the rate of 1% of the value of goods, the State felt that HR Coil should also be taxed, but when the rate was enhanced to 5% by notification dated 31.3.2011, it was considered expedient to exclude HR Coil also. Though, the notifications were issued with specific reference to the phrase 'Iron and Steel' used in the Central Sales Tax Act, 1956 but the categorisation made thereunder was not binding on the State. It was free to decide which of these items should be included and which excluded. It would not be proper to subject the judgement of the State not to exclude HR Coil from levy of entry tax, while issuing notification dated 15.1.2009 to judicial review. As noted above, the decision of the State in economic matters' is not based on

any precise scientific principle but on societal exigencies, empiricism and experimentation. The Court is not ready to accept that it was a case of *casus omissus*, nor is the Court inclined to supply the alleged omission, by issuing a writ of mandamus, overriding the wisdom of the State.

144. The Supreme Court in **Jaipur Hosiery Mills (P) Ltd. vs. The State of Rajasthan, (1970) 2 SCC 26,** dealt with a similar challenge, while considering an exemption notification issued by the State Government under the Rajasthan Sales Tax Act, 1950. On January 31, 1958 a notification was issued exempting garments of the value not exceeding Rs.4/- in single piece from sale tax. The Authorities did not grant the benefit of the said notification to the appellant, which was engaged in manufacture and sale of vests and underwears as the notification was interpreted to exclude garments made of hosiery material. The stand taken by the authorities was challenged before the High Court which extended the benefit of the notification to the appellant holding that vests and underwears would be covered by the notification. On 26 March, 1962 another notification was issued, which again exempted garments of value not exceeding Rs.4/- per piece excluding “hosiery products and hats of all kinds.” The notification was again challenged, but the notification was upheld. The principal attack was based on Article 14 of the Constitution. The Supreme Court

repelled the challenge and upheld the notification, observing that:

> "It is for the State to decide which granting the exemption by means of a notification as to the class of goods which should be exempted in public interest. As rightly pointed out by the High Court the notification makes a classification between garments in general the value of which does not exceed Rs.4/- in a single piece and hosiery products including hosiery garments. Hosiery products generally are knitted articles. They are different from woven articles. It is not for the court to decide whether the policy of exempting articles made from woven cloth was justified or that hosiery articles should have been given the exemption in the same way as other garments. It is entirely for the taxing authorities to take a decision as to the goods which will be subjected to taxation and those which would be exempted from it."

145. It is noteworthy that in the body of the writ petition, no factual foundation has been laid, to make out a case of discrimination. Under the heading 'Grounds', some such assertions have been made, albeit aware of the practice prevalent in this Court that the other party only replies to the pleadings and not the grounds. Thus, the version of the State as regards the circumstances in which such distinction was drawn while issuing the notification dated 15.1.2009 could not come on record. This is not withstanding the fact that the writ petition was filed before this Court in pursuance of liberty granted by the Supreme Court, to enable the petitioners to make factual pleadings to enable its adjudication by this Court. It is also not borne out from record whether any such plea was raised before the Authorities during assessment proceedings, which seem to have attained finality by now. Having

regard to these facts, the challenge on the above ground, does not merit acceptance and is accordingly rejected.

146. The exemption notifications, in respect of which it was alleged that it had resulted in discrimination, have been found to be constitutionally valid. It is more than clear that the provision of the Act providing for grant of exemptions, set offs or rebate are not, *ipso facto* arbitrary or discriminatory, albeit a notification issued in exercise of such power may, in a given case, result in discrimination. But for that, the validity of notification has to be specifically challenged. In most of the other writ petitions, there is absolutely no pleading regarding any discrimination under Article 14 or Article 304 (a) except for the plea being raised as a legal submission. We, therefore, are unable to uphold the contention that the provisions of the Act relating to rebate, exemption and set off were discriminatory or violative of Article 14 or Article 304 (a).

Challenges peculiar to the case of IOC:-

147. In the writ petition filed by Indian Oil Corporation Ltd., certain challenges peculiar to the facts of that case were raised. The petitioner Corporation has a Refinery situated at Mathura for which it purchases crude oil from Gulf countries and transports the imported crude oil from Vadinar Port in Gujarat to Mathura Refinery through underground pipelines laid by it, known as Salya-Mathura Pipeline. According to the

petitioner, the crude oil is first unloaded from the bulk tanker ships into the single buoy mooring (for short 'SBM'), a crude oil unloading facility, located in the high sea. The crude oil is thereafter pumped on shore through under water pipelines laid on the seabed, which in turn, are linked to Mathura Refinery. The crude oil, during its journey from Salya in Gujarat to Mathura, crosses the State of Gujarat, Rajasthan and then enters Uttar Pradesh into Mathura Refinery. The supplies of crude oil at Vadinar Port are received in VLCC (very large crude carrier). The crude oil is taken out from VLCC at the port and stored in storage tanks located at the port. These storage tanks are bonded warehouses where crude oil is stored without payment of custom duty. According to the petitioner Corporation, prior to 15.2.2005, the petitioner Corporation was availing the facility of inland warehouse at the Mathura Refinery. The crude oil from the bonded warehouse at Vadinar Port was directly pumped through the underground pipelines to the warehouse situated at the Mathura Refinery and the custom duty was being paid at Mathura. According to the petitioner, although the said facility has been withdrawn since 15.2.2005, but the import of crude oil upto the port and its further transportation through the underground pipeline to the Mathura Refinery is part of an integrated activity of import. It is contended that the import of crude oil which originates in the foreign countries ends at Mathura Refinery. Consequently, the crude oil is not subject to the VAT Act or the Central Sales Tax Act during its

movement to the Mathura Refinery. Prior to 2005, the petitioner Corporation did not discharge the custom duty at Vadinar Port situated in Gujarat since the crude was stored at the Port under warehousing bond. It was transferred to the inland warehouse at the Mathura Refinery under Into Bond Bill of Entry. The custom duty was paid at Mathura Refinery and whereafter customs payment challan was generated in which the details of Bill of Entry, shipping bill number, Ex-Bond Bill of Entry and the quantity of the crude oil is duly mentioned. Thereafter, the petitioner was permitted to take out crude oil from the bonded tanks for further processing in the Refinery.

148. Since the midnight of 15.2.2005, the Government of India, Ministry of Finance, stopped the re-warehousing facility which was being availed in the past. It is an admitted fact that since thereafter the custom duty is being paid at Vadinar Port upon removal of the goods from the custom bonded warehouse situated at the port.

149. In the backdrop of the above facts, the following submissions were raised by learned senior counsel Sri Dhruv Agrawal appearing on behalf of the petitioner Corporation:-

(a) The petitioner Corporation, which is paying custom duty on the import of crude oil, which is a subject covered by Union List, cannot be subjected to entry tax or any other tax imposed by the State legislation. Conversely, if any tax is levied on crude oil by

the State legislature, it will be intrusion into the field reserved for the Union legislature vide Entry 41, read with Entry 83 of List I. Movement in the course of inter-State trade and commerce or in the course of import constitutes a series of events in an integrated and inextricable contract. Principles of movement in the course of inter-State trade and commerce will equally apply to movement in course of import.

(b) The import of crude oil continues till it reaches the factory premises of the petitioner. The State legislature has no power to impose tax at any point of time before it reaches the factory premises.

(c) The doctrine of unbroken package prohibits the State from levying any tax till the crude oil is used or consumed at the Refinery. Since both these events take place at Mathura Refinery and in between there is no movement of crude oil into any local area, but within the factory premises, consequently, there is no taxable event taking place nor any question of any entry tax being levied.

150. Entry 83 of List I is as follows: “duties of customs including export duties”. The issue as to whether there is any overlapping of the field reserved for the Central legislation under Entry 83 which relates to “duties of customs including export duties” with Entry 52 of List II was

considered by Hon'ble Banumathi, J. in **Jindal Stainless-II**. After considering the provisions of the Customs Act, it was held that there is no overlapping between the two entries and the field reserved under each is mutually exclusive. In paragraph 421 of the Law Report it has been observed thus:-

> 421(161). The moment imported goods are cleared for home consumption either under Section 47 of the Act or under Section 68 of the Customs Act, the imported goods mix up with the mass of goods in the country and enter into the local area. **Import of goods into the territory of India and transit of goods within the country are not integral. Import of goods and customs clearance and the entry of goods into the local areas are two distinct events.** In the case of customs duty, **the taxable event is entry of goods into the territory of India."The taxable event under entry 52, List II is the entry of goods into local area for consumption, use or sale therein. Two taxable events are distinct in law and there is no overlap**."
>
> (emphasis supplied)

151. Hon'ble Dr. D.Y. Chandrachud, J. has also specifically noted a similar contention in paragraph 705 in the following words:-

> "705 (246). Entry 83 of List I provides for "duties of customs including export duties". The submission of the petitioners is that there being no over-lapping of legislative entries, the field of Entry 52 of List II would begin where that of Entry 83 of List I ends. Hence, while considering whether entry tax can be imposed in relation to goods imported into India, it is urged that until the goods become a part of the land mass, they can be subjected to a law under Entry 83 of List I and to a duty of import. It is only where a Bill of entry for home consumption is filed that the goods cease to be imported goods. Until then, it is urged, no entry tax would be leviable."

151A. Thereafter, His Lordship, after considering in great detail the provisions of the Customs Act, 1962, concluded by holding that "Entry 83 of List I and Entry 52 of List II have separate and distinct fields of operation. Entry 41 of List I deals with trade and commerce with foreign countries; import and export across customs frontiers; and definition of customs frontiers. The distribution of powers with reference to the taxing entries in List I and II is mutually exclusive."

152. The Division Bench of the Supreme Court in **Fr. Williams**, while considering the challenge to the entry tax legislation in the State of Orissa, Patna, Kerala and Jharkhand, has specifically dealt with the above question under issues no. (ii) and (iii), which are in the following terms:-

> "ii. Whether Entry Tax Legislations in question intrude into exclusive legislative domain of Parliament as reserved under Entry 41 and Entry 83 List I.
>
> iii. Whether levy of entry tax on goods imported from outside territory of India is legislation trenching the field of "import and export", "duties of custom" reserved to Parliament. "

152A. Their Lordships, after considering the Constitution Bench judgement of the Supreme Court in **Godfrey Phillips India Ltd. and another Vs. State of U.P. and others, (2005) 2 SCC 515**, **State of A.P. and others Vs. Mcdowell and Company and others, (1996) 3 SCC 709**, the judgement of the **Federal Court in AIR 1942 FC 33**, **the**

Province of Madras Vs. Messrs Boddu Paidanna and sons, (1942 FCR 90), and host of other judgments as well as the judgements of Justice R. Banumathi and Justice Dr. D.Y. Chandrachud in **Jindal Stainless-II** repelled the contention that there is any overlapping between the field reserved for the State legislature under Entry 52 List II with that reserved for the Union legislature under Entry 83 List I by holding thus:-

> "83. As noted above, although, Nine Judges Constitution Bench had left the question open of validity of entry tax on goods imported from countries outside the territories of India, the two Hon'ble Judges, i.e. Justice R. Banumathi and Justice Dr. D.Y. Chandrachud while delivering separate judgment have considered the leviability of entry tax on imported goods in detail. Both Hon'ble Judges have held that there is no clash/overlap between entry levied by the State under Entry 52 List II and the custom duty levied by the Union under Entry 83 List I. We have also arrived at the same conclusion in view of the foregoing discussions. **We thus hold that entry tax legislations do not intrude in the legislative field reserved for Parliament under Entry 41 and under Entry 83 of List I. The State Legislature is fully competent to impose tax on the entry of goods into a local area for consumption, sale and use**. We thus repel the submission of petitioner that entry tax legislation of the State encroaches in the Parliament's field. "
>
> (emphasis supplied)

153. Following the above and with due deference to their Lordships of the Supreme Court, we outrightly repel the contention that crude oil, which is imported by the petitioner, cannot be subjected to entry tax.

Doctrine of unbroken package:-

154. We now proceed to examine the other limb of the argument of learned senior counsel that crude oil which is transferred from Vadinar Port to Mathura Refinery through underground pipelines cannot be subjected to entry tax, as the entire transaction is a part of one single integrated transaction and that the import ends at Mathura Refinery. The contention is based on the doctrine of unbroken package, which postulates that import of goods continues even after crossing customs barrier until the package imported is broken up and the goods are taken out. The contention is that crude oil in same form in which it is imported is transported to Mathura Refinery through underground pipelines. The package in which it is carried through underground pipelines while it crosses the local area remains undisturbed. It becomes part of the common land mass when it is removed at Mathura Refinery for consumption and use and not before that, consequently, no entry tax could be levied upon the same.

155. Hon'ble Banumathi, J. in **Jindal Stainless-II** has in great detail dwelt on the doctrine of unbroken package and thereafter observed that the said doctrine, which was propounded by Chief Justice Marshell in **Brown Vs. State of Maryland** has been disapproved not only by the Indian Courts but even by the Courts of America where it has its genesis.

156. In **Fr. Williams**, the regular Division Bench also considered the theory of original/unbroken package and after referring to the trend of the judgments which followed after Brown Vs. State of Maryland, the Supreme Court arrived at the following conclusion:-

> "118. From the above, it is clear that the U.S. Supreme Court itself has abandoned the Original Package theory and it has been held that imported goods are not immuned from non-discriminatory ad valorem taxes imposed by the State."

157. The Division Bench of the Supreme Court eloquently quoted several passages from subsequent judgments of the United States Supreme Court which dealt with Brown Vs. State of Maryland. Some of the passages from the subsequent judgement of the United States Supreme Court in **Michelin Tire Corporation Vs. W.L. Wages, Tax Commissioner, 46 L.Ed. 2D 495,** would be advantageous for understanding the line of reasoning for giving up the doctrine of unbroken package and the same are reproduced below:-

> "The Court stated that there were two situations in which the prohibition would not apply. One was the case of a state tax levied after the imported goods had lost their status as imports. The Court devised an evidentiary tool, the "original package" test, for use in making that determination. The formula was: "It is sufficient for the present to say, generally, that when the importer has so acted upon the thing imported, that it has become incorporated and mixed up with the mass of property in the country, it has, perhaps, lost its distinctive character as an import, and has become subject to the taxing power of the State; but while remaining the property of the importer, in his warehouse, in the original form or package in which it

> was imported, a tax upon it is too plainly a duty on imports to escape the prohibition in the constitution." Id., at 441-442 6 L Ed 678. "It is a matter of hornbook knowledge that the original package statement of Justice Marshall was an illustration, rather than a formula, and that its application is evidentiary, and not substantive . . . . Galveston v. Mexican Petroleum Corp., 15 F2d 208 (SD Tex 1926).”
>
> “Thus, it is clear that the Court's view in Brown was that merely because certain actions taken by the importer on his imported goods would so mingle them with the common property within the State as to "lose their distinctive character as imports" and render them subject to the taxing power of the State, did not mean that in the absence of such action, no exaction could be imposed on the goods. Rather, the Court clearly implied that the prohibition would not apply to a state tax that treated imported goods in their original packages no differently from the "common mass of property in the country"; that is, treated it in a manner that did not depend on the foreign origins of the goods.”

158. In **Fr. Williams**, the regular Division Bench also specifically considered the issue as to when import of goods come to end. While considering the said issue, reliance was placed on the judgement of the Supreme in **J.V. Gokal & Co. (Private) Ltd. Vs. Assistant Collector or Sales Tax (Inspection) & others, AIR 1960 SC 595**, wherein the Court explained the phrase “in the course of the import of goods into the territory of India” as follows:-

> “9. What does the phrase “in the course of the import of the goods into the territory of India” convey? The crucial words of the phrase are “import” and “in the course of”. The term “import” signifies etymologically “to bring in”. To import goods into the territory of India therefore means to bring into the territory of India goods from abroad. The words

> "course" means "progress from point to point". The course of import, therefore, starts from one point and ends at another. It starts when the goods cross the customs barrier in foreign country and ends when they cross the customs barrier in the importing country. These words were subject of judicial scrutiny by this Court in State of Travancore Cochin v. Shanmugha Vilas Cashew Nut Factory1. Construing these words, Patanjali Sastri, C.J., observed at p. 62:
>
> > "The word 'course' etymologically denotes movement from one point to another, and the expression 'in the course of' not only implies a period of time during which the movement is in progress but postulates also a connected relation."
>
> As regards the limits of the course, the learned Chief Justice observed at p. 68:
>
> > "It would seem, therefore, logical to hold that the course of the export out of, or of the import into the territory of India does not commence or terminate until the goods cross the customs barrier."

158A. Again in paragraphs 102, 104 and 105 of the Law Report, after considering the provisions of the Customs Act, it has been concluded thus:-

> "102. The law relating to customs has been consolidated by the Customs Act,1962. The definitions of "import", "imported goods" and "importer" have already been noticed above. The definition of imported goods as given in Section 2(25) is - any goods brought into India from the place outside India but does not include goods, which have been cleared for home consumption. **The provision clearly contemplates that once the goods are released for home consumption, the character of imported goods is lost and thereafter no longer the goods could be called as imported goods.** The import transit is only till the goods are released for home consumption. **The taxing event for entry tax under Entry 52 List II is entirely different and has nothing to do with the customs duty.** The State by

imposing entry tax in any manner is not entrenching in the power of the Parliament to impose customs duty. The goods are released for home consumption only after payment of the customs duty due to the Central Government. **The goods which are imported cannot be held to be insulated so as to not subject to any State tax, any such insulation of the imported goods shall be a protectionist measure which will be discriminatory and invalid.** When all normal goods are subjected to State tax no exemption can be claimed by goods, which have been imported from payment of entry tax. To take a common example, all goods, which pass through a toll bridge are liable to pay toll tax, can it be said that the imported goods which after having been released from customs barriers and are passing through a toll bridge, are not liable to pay the toll tax, the answer has to be in No. Thus, the event for levy of customs duty, which is in the domain of the Parliament, is entirely different from that of event of entry tax. The liability to pay State entry tax arises only when goods enter into a local area for consumption, use and sale, which event is entirely different and separate from the levy of a customs duty, which is on import.

104. There cannot be any dispute to the proposition as laid down by this Court in the above case that the scope and ambit of the Constitutional entries have to be given a wide meaning and scope. There is no inhibition on the Parliament in exercising its legislative power under Entry 41 List I to define customs frontiers and further legislate with regard to duties of customs. Even if we do not confine to the definition of imported goods as given in the Customs Act, 1962, the generally accepted meaning and definition of import as has been laid down in cases as noted above is that import commences when the goods leave the customs frontiers of the country from where the goods are imported and continue when the goods enters into the customs frontiers of imported country and ends when goods are released for home consumption. Till the event of import is over, Parliamentary Legislation, the control of Union continues for ensuring the realisation of the customs duties.

105. In view of the foregoing discussions, **we are of**

> **the clear opinion that taxing event with regard to levy of customs duty by Parliament and levy of entry tax by States under Entry 52 List II are entirely different and separate. The taxing event pertaining to levy of entry tax occurs only after the taxing event of levy of customs duty is over.** Thus, the State Legislation imposing entry tax in no manner encroaches upon the Parliamentary Legislation under Entry 41 and Entry 83. There is no invalidity in levy of entry tax by the States."
>
> (emphasis supplied)

159. Learned counsel for the petitioner has placed a great emphasis on paragraph 104 in contending that the crude oil could not be subjected to entry tax before it is released for home consumption. It is urged that the crude oil gets released for home consumption when it is taken out from underground pipeline situated within the premises of the Mathura Refinery but thereafter it does not enter any local area, but is consumed within the same local area, consequently, it cannot be subject to any entry tax.

160. It is not in dispute that the petitioner Corporation, after receiving the crude oil at Vadinar Port in VLCC, stores the same at storage tanks located at the port. These storage tanks are bonded warehouses where crude oil is stored without payment of custom duty. However, before the same is removed from the storage tanks for further transportation to Mathura Refinery through underground pipelines, it pays the custom duty at the custom barrier at Vadinar Port. This practice is being adopted since the year 2005. Once the crude oil crosses the custom

barrier at Vadinar Port upon payment of custom duty, it becomes part of the land mass. Undoubtedly, it enters the State of U.P. and the local area where the Mathura Refinery is situated as part of the land mass. As soon as the crude oil enters the local area, the taxable event takes place and liability to pay entry tax comes into existence.

161. It is noteworthy that in order to overcome the aforesaid difficulty, it was sought to be contended on behalf of the petitioner Corporation that the factory premises of the Mathura Refinery is situated beyond the local area and therefore, even otherwise, no entry tax would be leviable on the crude oil. The said stand has been emphatically refuted by the respondents in their affidavit dated 8th September 2017 in which it is categorically stated that Mathura Refinery is situated in Mathura Gram Panchyat Dhanateja, Dhana Shamsabad, Chargawn. A copy of the letter dated 4.8.2017 from Block Development Officer, Block Farah, Mathura certifying the same has also been brought on record. We have no hesitation in accepting the stand taken in this regard by the State respondents. Having regard to these facts, we have no difficulty in rejecting the contention in respect of leviability of entry tax on crude oil after the issuance of the notification of the Government of India dated 14.2.2005 when the facility of transfer of crude oil from the warehouse located at the port to the inland warehouse at the Mathura Refinery was discontinued.

162. We now proceed to examine the position which would emerge

before the disbandment of the bonded warehouse facility available to the petitioner Corporation at Mathura Refinery itself. In this regard, it would be useful to refer to the notification itself which reads thus:-

> "Petroleum Products – Discontinuation of removal from one warehouse to another without payment of duty
>
> Circular No.8/2005-Cus., dated 14.2.2005
>
> F.No.473/09/2004-LC
>
> Government of India
>
> Ministry of Finance (Department of Revenue)
>
> Central Board of Excise & Customs, New Delhi
>
> Subject: Discontinuation of removal of petroleum products from one warehous to another – Reg.
>
> A present, oil companies who import petroleum and petroleum products deposit the same in the warehouse (bonded tanks) at shore of refinery and thereafter they pay duty. Sometimes they transfer the warehoused goods from one warehouse to another without payment of duty under Section 67 of the Customs Act, 1962 with the permission of proper officer of customs and then pay duty at the destination.
>
> 2. It has been decided to withdraw this facility of transfer of petroleum products without payment of customs duty from the warehouse at the port of import to inland warehouse. Section 46 of the Customs Act, 1962, provides for the importer to file the Bill of Entry for home consumption and clear the goods on payment of duty or to file Into-Bond Bill of Entry and warehouse the goods and clear them subsequently after payment of duty. Henceforth, the warehousing facility for petroleum products would be available only at the port of import and no removal to inland bonded warehouses without payment of customs duty will be allowed.
>
> 3. The proper officer of customs in the field should ensure that the petroleum products lying in warehouses at places in the hinterland other than the ports are de-bonded from the customs warehouses and duty realized immediately.
>
> 4. It may, however, be noted that nothing in the above instructions would apply to goods which are exempted from

payment of customs duty in terms of customs notifications or to goods imported by EOUs, STPs, EHTPs and SEZs.

5. The Chief Commissioners and Commissioners of Customs and Central Excise are requested to ensure that there is no hold-up of clearance of petroleum products or any disruption caused in the movement of petroleum products as a result of the withdrawal of warehousing provisions. No precipitate action should be taken. In case of any difficulty in determining the assessable value or on any other account, refineries/ warehouses may be advised to resort to provisional assessment. Difficulties/ problems, if any, that are noticed in the implementation of "switch over" may be examined on an urgent basis by the Chief Commissioners and the same may be brought to the notice of Board immediately along with views and suggestions.

6. These instructions would come into force w.e.f. the midnight of 15.2.2005.

7. Hindi version will follow."

163. A perusal of the circular would reveal that until the issuance thereof, the petitioner Corporation was given the facility of transporting crude oil from bonded warehouse tanks situated at the port to the bonded tanks located within its factory premises at Mathura. This enabled the petitioner Corporation to defer payment of custom duty until the crude oil is cleared for home consumption at the factory premises.

164. Under the scheme of the Customs Act, 1962, an importer of any goods other than those intended for transit or trans-shipment is obliged by Section 46 to make entry of the goods by presenting to the proper officer a Bill of Entry. The Bill of Entry could be for home consumption, in which event, the proper officer under Section 47, upon

being satisfied that the goods are not prohibited goods and import duty has been duly paid, shall make an order permitting clearance of the goods for home consumption. It is open to the importer to defer payment of custom duty as well as clearance of the goods for home consumption, by depositing the goods in a bonded warehouse. Under Section 17, an importer entering any imported goods under Section 46 shall, save as otherwise provided in Section 85, self-assess the duty, if any, leviable on such goods. The proper officer has been conferred with power to verify the correctness of the self-assessment or to carry out re-assessment by passing a speaking order. Under Section 59, the importer of any good in respect of which a Bill of Entry for warehousing has been presented under Section 46 and assessed to duty under Section 17 or Section 18, shall execute a bond in a sum equal to thrice the amount of the duty assessed on such goods binding himself to comply with the provisions of the Act and the Rules; to pay all duties with interest; and to pay all penalties and fines incurred for the contravention of the Act or the Rules and Regulations. When the provisions of Section 59 has been complied with, the proper officer may order under Section 60 permitting removal of the goods from a custom station for the purpose of deposit in a warehouse. Section 61 prescribes the period for which any warehoused good may remain in the warehouse. Section 67 of the Act permits owner of any warehoused goods to transfer them from one warehouse to another. This is done by presenting once again a Bill of

Entry, which in commercial parlance is called Into-Bond Bill of Entry. The petitioner Corporation availing the said facility had been transferring crude oil from bonded warehouse at Vadinar Port to the bonded warehouse situated at Mathura Refinery. Section 68 permits clearance of warehoused goods from the warehouse for home consumption by submitting a Bill of Entry which in commercial parlance is called Ex-Bond Bill of Entry for home consumption. The clearance is granted after the proper officer satisfies himself that import duty, interest, fine and penalties payable in respect of such goods have been paid.

165. Hon'ble Banumathi, J. in **Jindal Stainless-II**, after considering these provisions of the Customs Act, especially the facilities relating to warehousing and deferred payment of custom duty observed in paragraphs and 431 and 435 as under:-

> “431(171). Chapter VIII of Customs Act deals with goods in Transit. Section 54 deals with trans-shipment of goods without payment of duty upon presentation of bill of trans-shipment. The inland container depot and land custom station are creatures of Statute. They are not determinative of the taxable event for imposition of custom duty on imports. Many of the provisions are facilitative and/or intended for purposes of valuation and fixation of rates. The crucial aspect is that according to entry 83, List I as well as the Customs Act, 1962 the taxable event is ‘import’ or ‘bringing of the goods into India’ and it is distinct from the taxable event of entry 52, List II.”
>
> 435(175). A comparison of Sections 58 and 57 shows that a licensed private warehouse is different from a public warehouse. Section 58 deploys the expression

> "dutiable goods imported by or on behalf of the licensee, or any other imported goods". Similar expression is not used in Section 57 with respect to public warehouses wherein dutiable goods may be deposited. It is clear that the goods deposited in private warehouses are considered to be goods which have already been imported. Further, 'warehousing bond' is dealt with in Section 59 which is issued where the goods have been entered for warehousing and after assessment of the duty, the bond is executed for a sum twice the amount of the duty assessed. When the requirements in Section 59 are complied with then permission to deposit the goods in warehouse is granted. **This indicates that both in public warehouses and private warehouses the deposits are permitted only for goods which are already imported.** Stringent provision is made in Section 59(2) to pay all duties or interest on or before the date of demand. Under Section 62, the proper custom officer exercises control over all the warehoused goods and he may cause any warehouse to be locked. The owner of the goods can with the sanction of the proper officer deal with the goods, show the goods for sale and even carry on any manufacturing process or other operations in the warehouse in relation to such goods.
>
> (emphasis supplied)

Again in paragraph 436 it has been held as follows:-

> "436(176). **Such warehousing or warehousing bond cannot prevent the levy of entry tax, especially where warehouse is established in a factory unit. On the basis of the law laid down above, I hold that the taxable events under entry 83, List I and entry 52, List II are distinct; any movement of the imported goods to the warehouse in the factory unit would not prevent the State from levying and collecting entry tax when such goods enter a local area of the State for consumption, use or sale therein.**"
>
> (emphasis supplied)

166. A similar view was taken by Hon'ble Dr. D.Y. Chandrachud, J

after placing reliance on a passage from the judgement of the Hon'ble Sinha, CJ. in the Nine Judges' Presidential Reference in **Re-Sea Customs**, by observing thus:-

> "716 (257). A Bench of nine Judges of this Court in Re Sea Customs195, distinguished the taxable event in the case of a duty of excise, which is the manufacture of goods, with a sales tax where the taxable event is the act of sale. Dealing with customs duties, the Bench of nine Judges speaking through Sinha, CJ held as follows :
>
> > "Similarly in the case of duties of customs including export duties though they are levied with reference to goods; the taxable event is either the import of goods within the customs barriers or their export outside the customs barriers. They are also indirect taxes like excise and cannot in our opinion be equated with direct taxes on goods themselves. Now, what is the true nature of an import of an import duty? Truly speaking, the imposition of an import duty, by and large, results in a condition which must be fulfilled before the goods can be brought inside the customs barriers, i.e. before they form part of the mass of goods within the country." (Id. at. p. 543)
>
> Entry of goods into a local area for consumption, use or sale therein attracts the charging provision of entry tax legislation. The levy which is referable to Entry 52 of List II is attracted the moment the goods enter a local area for consumption, use or sale. **The Customs Act, 1962 has made a beneficial provision for allowing goods to be deposited in public or private warehouses and for the clearance of goods for home consumption. These provisions cannot and do not detract from the power of the state legislatures under Entry 52 nor do they denude the states from levying an entry tax once the taxable event under state law has occurred.**"
>
> (emphasis supplied)

167. While referring to the observations made by the learned Judges in

their separate judgment in **Jindal Stainless-II**, we are conscious of the fact that the said issue was not decided finally as per the majority opinion and has been left for consideration by the regular Division Benches, and thereafter by this Court, in pursuance of the order of the regular Division Bench, but at the same time, there is also no contrary opinion expressed by the other learned Judges constituting the Bench. We are, therefore, of the opinion that the observations made by their Lordships, definitely have a persuasive value for this Court.

168. Under the Customs Act, the taxable event is the import of goods within the custom barriers. Sections 17 of the Act postulates that an importer, after entering the goods on importation under Section 46, whether for home consumption or for warehousing, shall self-assess the duty, if any, leviable on such goods. Where he is unable to assess the duty imposed, the provisions of Section 18 takes care of the manner in which the duty is to be assessed and paid. The provisions of Section 60 which permits storage of goods in a bonded warehouse and that of Section 66 which permits removal of goods from one warehouse to another warehouse, are facilitative provisions for the benefit of the importer or owner of the goods. As aptly observed by Hon'ble Banumathi, J. in **Jindal Stainless-II**, these inland container depot and warehousing station which are creatures of Statute, are not determinative of the taxable event for imposition of custom duty on

imports. It is separate and distinct from the taxable event of Entry 52 List II.

169. The contention could be examined from another angle. Ordinarily, as noted above, the custom duty was payable at Vadinar Port, as is being paid since the abolition of the facility of inland warehousing in the year 2005, but the petitioner Corporation was given facility of deferred payment of custom duty by transferring the crude oil from Vadinar Port to the bonded warehouse established at the Mathura Refinery. The arrangement, as noted, was purely facilitative in character. Now if the contention of the petitioner Corporation that since it was paying custom duty on release of good for home consumption at the Mathura Refinery, therefore, it was not liable to pay entry tax as the import had not concluded at the time of its entry into local area is accepted, it would result in the entry tax assuming the shape of a discriminatory impost. An importer of crude oil, who was not given the facility of inland warehousing but had paid custom duty at the port itself, undoubtedly had to pay entry tax resulting in discrimination between him and the petitioner Corporation.

170. In **Fr. Williams**, their Lordships cautioned against making an interpretation which would insulate the imported goods from being subjected to any State tax, as any such insulation would be a protectionist measure which would render the impost discriminatory and invalid. The observations made in this regard by their Lordships

are extracted for convenience of reference:-

> "The taxing event for entry tax under Entry 52 List II is entirely different and has nothing to do with the customs duty. The State by imposing entry tax in any manner is not entrenching in the power of the Parliament to impose customs duty. The goods are released for home consumption only after payment of the customs duty due to the Central Government. **The goods which are imported cannot be held to be insulated so as to not subject to any State tax, any such insulation of the imported goods shall be a protectionist measure which will be discriminatory and invalid. When all normal goods are subjected to State tax no exemption can be claimed by goods, which have been imported from payment of entry tax. To take a common example, all goods, which pass through a toll bridge are liable to pay toll tax, can it be said that the imported goods which after having been released from customs barriers and are passing through a toll bridge, are not liable to pay the toll tax, the answer has to be in No.** Thus, the event for levy of customs duty, which is in the domain of the Parliament, is entirely different from that of event of entry tax. The liability to pay State entry tax arises only when goods enter into a local area for consumption, use and sale, which event is entirely different and separate from the levy of a customs duty, which is on import."
>
> (emphasis supplied)

171. In taking the above view, their Lordships have placed reliance on a judgment of the Supreme Court of United States in **Michelin Tire Corporation Vs. W.L. Wages, Tax Commissioner, 46 L.Ed. 2d 495**. In that case, the respondent was importer of tires and tubes from the European countries. The articles were included in an inventory maintained in a whole-sale distribution warehouse. The authorities assessed *ad valorem* property taxes against inventory of imported tires and tubes. The imposition of property tax was challenged on similar

ground that the State taxes were prohibited by the provisions of the Constitution. The U.S. Supreme Court held that the prohibition imposed on the State to tax the imported goods on the basis of their foreign origin would not mean according preferential treatment to imported goods, thereby permitting them to escape from non-discriminatory State tax imposed without regard to the foreign origin of the goods. The U.S. Supreme Court, after alluding to the observations made in **Brown Vs. State of Maryland**, held as under:-

> "Thus, it is clear that the Court's view in Brown was that **merely because certain actions taken by the importer on his imported goods would so mingle them with the common property within the State as to "lose their distinctive character as imports" and render them subject to the taxing power of the State, did not mean that in the absence of such action, no exaction could be imposed on the goods. Rather, the Court clearly implied that the prohibition would not apply to a state tax that treated imported goods in their original packages no differently from the "common mass of property in the country"; that is, treated it in a manner that did not depend on the foreign origins of the goods**."
>
> (emphasis supplied)

172. Concededly, the re-warehousing facility stood withdrawn in the year 2005. The specific stand of the State respondents in the counter affidavit filed by it is that the petitioner Corporation had not raised any such plea before the assessing authority at the time of assessment and assessment proceedings for the period upto 2005 have already attained finality. The petitioner has not brought on record any documentary

evidence nor orders passed in course of assessment proceedings to show that any such plea was raised by it. Consequently, even otherwise, we are of the opinion that the challenge to the imposition of entry tax on crude oil for the period anterior to 2005 deserves rejection.

Challenge to Vires of Section 2 (h) proviso (iv):-

173. The next contention was that proviso (iv) to Section 2 (h) which treats wholesale price of goods in a local area as value of goods for purpose of imposition of tax is dehors the provisions of Section 4. It was urged that value of goods for purpose of imposition of tax should be the price at the time of entry of goods into the local area of the State and not the price post the taxable event i.e. the wholesale price prevailing in the local area. This results in tax being imposed on a higher amount, as the wholesale price in the local area also includes the profit of the whole seller whereas in case of stock transfer of the goods, there is no element of profit. The contention was sought to be illustrated by giving the following example:-

> "Assuming that the cost of manufacturing, packaging and taxes at a manufacturing unit in the State of M.P. is Rs.100/- per bag of cement and insurance, transport and other charges upto the point of entry into the local area in Allahabad is Rs.50/- and the wholesale margin is Rs.50/-, then the bag of cement will be sold in the State of U.P. for 200/-. Thus, the petitioner will have to pay entry tax on Rs.200/- because petitioner has not acquired goods in question by way of purchase.
>
> On the other hand, a normal trader in the State of U.P. who purchases cement directly from M.P. at Rs.100/- and incurs Rs.50/- as transport and insurance charges till the

> time of entry into local area in U.P. will have to pay entry tax by valuing the same cement only at Rs.150/- although the cement bag may be sold by him in the local area in U.P. at Rs.200/- by taking the same profit of Rs.50/-."

174. Reliance was placed on paragraph 6 of the judgement of Supreme Court in **Govind Saran Ganga Saran Vs. Commissioner of Sales Tax and others, (1985) Supp. SCC 205,** which enumerates the components of a tax as under:-

> "The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If these components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity."

175. Again emphasis was placed on **State of Rajasthan Vs. Rajasthan Chemist Association, 2006 (6) SCC 773,**[3] where the validity of Section 4-A of the Rajasthan Sales Tax Act, 1994 was called into question. Section 4-A envisaged levy of sales tax on any transaction of sale of notified goods not on the actual price which is paid or becomes payable by the buyer to the seller on such sales as have taken place, but on MRP of the goods declared on the package i.e. the retail price as per the provisions of the Standards of Weight &

3 For short, hereinafter referred to as 'Rajasthan Chemist Association'

Measures Act, 1976. The challenge was on the ground that the taxable event was the first sale or purchase, irrespective of series of sales by successive dealers, consequently, the price at which manufacturer or whole seller had sold the goods to retailer should be chargeable to tax and not the turnover calculated on basis of MRP at which the goods are sold by retailer to a customer. In the above context, it was observed thus:-

> "42. The pivotal question, therefore, which needs to be considered is whether the measure to which rate of tax is to be applied on single point transaction of sale of any formulation by the wholesaler to the retailer can be something notional which is not related to subject of tax or to say in other words, whether MRP to be chargeable subsequent to taxing event by a retailer when he sells the same goods to consumer can provide a basis which has a nexus with taxable event to provide a valid measure to which rate of tax can be applied.
>
> 45. Accepting the contention of the Revenue that the retail sale price likely to be received when such transaction takes place is taken only as a basis to provide measure of levying tax on a completed transaction between wholesalers and the retailer would make it suffer from basic fallacy of importing the composition (sic component) of sale which has not come into existence to determine tax which is fixed as soon as the taxable sale is completed. "

176. Section 2 (h) reads thus:-

> **"2. (h) "Value of Goods"** means the value of any goods as ascertained from original purchase invoice or bill and includes value of packing material, packing and forwarding charges, insurance charges, amounts representing excise duty, countervailing duty, custom duty and other like duties, amount of any fee or tax charged, transport charges, freight charges and any other charges relating to purchase and

transportation of such goods into the local area in which goods are being brought or received for consumption, use or sale therein;

PROVIDED that where any goods have been-

(i) purchased and the value thereof is not ascertainable on account of non availability or non production of any document; or

(ii) purchased and the value declared by the dealer or the person incharge is not verifiable on account of non availability or non production of any document; or

(iii) purchased and a document produced in support of purchase price or transport charges and other charges, is not worthy of credence; or

(iv) acquired or obtained otherwise than by way of purchase, the 'value of goods' shall mean the value or the price at which the goods of the like kind or like quality is sold or is capable of being sold at wholesale price in the open market in the local area in which goods are being brought or received for consumption, use or sale.

EXPLANATION – For the purpose of ascertaining whole sale price of any goods under this clause the whole sale price shall include any amount paid or payable by the purchaser as excise duty or any other duty but shall not include any amount charged for anything done to the goods after entry of goods into the local area or any amount of fee or tax including lax under this Act payable in respect of sale of the goods of the like kind or like quality."

177. Under the Act, the entry tax is levied on the value of goods. A plain reading of Section 2 (h) reveals that value of goods is the actual purchase price, ascertainable from the original purchase invoice or bill, and includes certain other charges like transportation cost etc. It thus represents the value of goods at the time of entry into a local area, which is the taxable event. The proviso is an exception to the main provision. Where the value of goods purchased is not ascertainable or

not verifiable on account of non availability or non production of documents or the documents produced are not found to be worthy of credence or where in fact no actual sale takes place as in case of stock transfer, the value of goods for purposes of imposition of entry tax is ascertained on the whole sale price of the said good in the open market in the concerned local area. It cannot be doubted that in a taxing statute it is open to the legislature to device ways to ascertain the measure or value to which the specified rate of tax has to be applied for computing the tax liability, provided it has reasonable correlation with the taxable event. The legislature considered it proper and appropriate that in the contingencies stated in the proviso, the wholesale price in the local area concerned would provide the yardstick for determining the value of goods. It is true that the whole sale price would include the profit of the whole seller but it is equally possible that in a given case the good is produced in the same local area and thus, its whole sale price at which the manufacturer is selling the same, is available. It may include his profit but since the good is available in the same local area, therefore, the insurance, transport and other charges would be considerably low as compared to goods brought from outside the State. In the illustration cited, the cost of a bag of cement acquired by stock transfer is assumed to be Rs.100/-. It includes the cost of manufacturing, packaging and taxes, but not profit, as there is no sale in case of stock transfer. On the other hand, the same price has been assumed even when the cement is

acquired by a dealer by purchase. In normal course of events, the manufacturer would also take his profit and thus, a cement bag for a trader buying goods from a manufacturer in Madhya Pradesh would not be Rs.100/- but higher than that. Again in case of purchase of cement from a manufacturer or distributor in another State, the central sales tax and other local taxes including entry tax, if leviable in that State, would also be payable and thus it is incorrect to assume that the cement purchased by a trader in M.P. would cost him only Rs.100/-. It is noteworthy that the illustration is not based on any data or figures relating to any actual transaction of sale or purchase but is a hypothetical one and thus, in our opinion, it is not safe to place reliance on the said illustration to adjudge the correctness of the submission made.

178. In **Rajasthan Chemist Association**, the legislation impugned namely the Rajasthan Sales Tax Act, 1994 was enacted in exercise of power under Entry 54 of List II. The taxable event under the Statute was the first point of sale in the State of Rajasthan, irrespective of series of subsequent sales by successive dealers. However, with insertion of Section 4-A by Finance Act, 2004, the tax was sought to be imposed on the successive sale and not the first sale. By providing for charging tax on MRP, the transaction which was subjected to tax was sale by retailer to the customer, a transaction subsequent to the first sale under which the good is procured by retailer from manufacturer or

distributor. It is in context thereof that it was held that the transaction on which tax was sought to be realised was having no nexus to the taxable event i.e. the first sale. However, in the instant case, as observed above, the taxable event has not undergone a change. It continues to be the entry of goods into local area for consumption, use or sale. The value of goods under the main provision is also the one representing the price of the good at the time of its entry into a local area. It is only where the price is not ascertainable or where no actual sale takes place that the tax is to be realised on the whole sale price of the same good prevailing in the open market in the local area in which the goods are being brought or received for consumption, use or sale. During the course of entry of such goods into a local area, the whole sale price prevailing for the same goods in that local area, in the wisdom of the legislature, would be the only objectively available data for qualification of tax liability. Consequently, in our view, the law laid down in **Rajasthan Chemist Association** would not apply.

179. The Supreme Court in **Union of India and another Vs. A. Sanyasi Rao and others, (1996) 3 SCC 465,** was called upon to adjudge the constitutionality of Sections 44-AC and Section 206-C of the Income Tax Act. These provisions enabled the Revenue to estimate the profits on a “presumptive basis”. The provisions were introduced as the Government wanted to get over the problems in assessing income and recovering tax in the case of persons dealing in country liquor,

timber, forest produce etc. The stand taken by the Government was that persons dealing in these commodities did not maintain any books of accounts or where such books are maintained, those were found to be incomplete; the business of such persons existed only for a short period and whereafter it was also not possible to trace them. The assessees contended that the legislature lacked competence to enact such provisions whereunder tax was sought to be realised on a hypothetical income and not real income. It was further contended that both the provisions were arbitrary and discriminatory, inasmuch as the legislature had picked up only wholesale dealers of country liquor leaving out the retailers, processors, manufacturers as well as persons dealing in Indian made foreign liquor.

179A. Their Lordships, after referring to judgment in **Ram Krishna Dalmia vs. Justice S.R. Tendolkar, AIR 1958 SC 538,** re-affirmed the principle that Article 14 of the Constitution applies to tax laws as well. However, their Lordships thereafter proceeded to place reliance on **Khyerbari Tea Co. Ltd. Vs. State of Assam, AIR 1964 SC 925**, **Twyford Tea Co. Ltd. Vs. State of Kerala, AIR 1970 SC 1133** and **East India Tobacco Co. Vs. State of A.P., AIR 1962 SC 1733,** in laying down the principles which are to be applied while adjudging validity of a taxing statute on the touchstone of Article 14 of the Constitution and thereafter held that there was nothing illegal in the legislature devising ways and means to facilitate collection of tax on a

presumptive basis, by observing as under:-

> "Considered in the light of the practical difficulties envisaged by the Revenue to locate the persons and to collect the tax due in certain trades, if the legislature in its wisdom thought that it will facilitate, the collection of the tax due from such specified traders on a "presumptive basis", there is nothing in the said legislative measure to offend Article 14 of the Constitution. In the light of the legal principles stated above, we are unable to hold that Section 44-AC read with Section 206-C is wholly hit by Article 14 of the Constitution of India. "

180. Irrespective of what has been observed above, it is noteworthy that the petitioners had been paying entry tax on stock transfer since the enforcement of the Act without the vires of the provision being challenged despite repeated challenges on other grounds being made earlier. The plea in this regard does not seem to be raised even when earlier batch of writ petitions were filed before this Court, when the vires of the impugned Act was upheld. The challenge to the statutory provision on this ground, in our opinion, would not be covered by the window left open by the regular Bench while remitting the matter. Consequently, the plea raised in this regard, even otherwise, does not merit consideration.

Challenge to Vires of Section 12:-

181. The next provision, which is subjected to challenge is Section 12 of the Act, which reads thus:-

> **12. Realization of tax through manufacturer.-**
> **(1)** Notwithstanding anything contained in any other provision of this Act, any person who intends to

bring into a local area from any manufacturer within the State, such goods specified in the Schedule as may be notified by the State Government, shall, at the time of taking delivery of the goods from the manufacturer, pay to the manufacturer the tax payable on entry of such goods into the local area and the manufacturer shall receive the tax so paid. The manufacturer shall not deliver such goods to the purchaser unless the amount of such tax has been paid by the purchaser.

(2) The manufacture receiving the tax under sub-section (1) shall submit to the Assessing Authority a return in respect of the goods supplied, and the tax received, by him under sub-section (1) and deposit the tax so received in such manner and within such time as may be prescribed.

(3) Where any manufacturer fails to deposit, the tax under this section he shall be liable to pay the tax along with the interest and penalty, if any, payable thereon which shall be recoverable as arrears of land revenue.

(4) Where the Assessing Authority is satisfied that any goods referred to in sub-section (1) is lost or destroyed after its delivery by the manufacturer and before its entry into the local area, it shall direct that the tax paid in respect of such goods shall be refunded to the person who had paid the tax under sub-section (1):

PROVIDED that no claim for such refund shall be entertained after the expiry of six months from the date of the loss or destruction of the goods.

(5) Provisions regarding imposition of penalty in respect of amount of tax deducted under section 34 of the Uttar Pradesh Value Added Tax Act, 2008 and provision regarding payability of interest under sub-section (2) of section 33 of the said Act shall *mutatis mutandis* apply to amounts collected by manufacturers from purchasers under this section.

(6) The amount of tax deposited under this section shall be deemed to have been deposited for and on behalf of the dealer from whom such tax has been received. The manufacturer shall mention the amount of such tax in the tax invoice or sale invoice, as the case may be, issued to the purchasing dealer. It shall be deemed to be the proof for deposit of tax unless

> the tax invoice or sale invoice, as the case may be, is found forged or bogus or fake or not validly issued or obtained fraudulently."

182. It is contended that Section 12 mandates collection of entry tax even before the taxable event takes place and is thus beyond legislative competence of the State legislature. In support of the said contention, reliance has been placed on paragraph 106 of the judgment of a Constitution Bench of the Supreme Court in **State of West Bengal Vs. Kesoram Industries Ltd. and others, (2004) 10 SCC 201**, where judicial opinion flowing from various previous pronouncements was summarised in the following words:-

> "The judicial opinion of binding authority flowing from several pronouncements of this Court has settled these principles: (i) in interpreting a taxing statute, equitable considerations are entirely out of place. Taxing statutes cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency; (ii) before taxing any person it must be shown that he falls within the ambit of the charging section by clear words used in the section; and (iii) if the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject. There is nothing unjust in the taxpayer escaping if the letter of the law fails to catch him on account of Legislature's failure to express itself clearly. "

183. Reliance has also been placed on the judgment of the Supreme Court in **Mathuram Agrawal Vs. State of Madhya Pradesh, (1999) 8**

SCC 667, wherein it is held that an interpretation which does not follow from the plain, unambiguous language of the statute is to be eschewed. The Statute should clearly and unambiguously convey the three components of tax i.e. the subject of tax, the person who is liable to pay the tax and the rate at which the tax is paid. If there is any ambiguity regarding any of these ingredients in a taxing Statute, then there shall be no tax in law. The judgment in **Commissioner, Central Excise & Customs, Kerala Vs. M/s Larsen & Toubro Ltd., (2016) 1 SCC 170,** wherein the above observations made in **Mathuram Agrawal** have been reiterated in paragraph 20 was also cited in contending that the charging section and the computation provisions together constitute an integrated code. Consequently, where the computation provisions cannot apply at all, it is a case falling beyond the charging section. The operation of the charging section cannot be altered by a computation provision.

184. The anchor sheet of the submission made in this regard is based on observations made in paragraph 14 by a Constitution Bench in **Commissioner of Commercial Taxes, Board of Revenue Vs. Ramkishan Shrikishan Jhaver, AIR 1968 SC 59**. These observations are extracted below:-

> "**We have already indicated that in a large majority of cases covered by the Act the tax is payable at the point of first sale in the State. But under clause (a) of the second proviso the tax is ordered to be recovered even before the sale, in**

> **addition to the penalty not exceeding Rs. 1,000 or double the amount of tax recoverable whichever is greater. Therefore clause (a) of the second proviso is clearly repugnant to the general scheme of the Act which in the majority of the cases provides for recovery of tax at the point of first sale in the State.** In view of this repugnancy one or other of these two provisions must fall. Clearly it is clause (a) in the proviso which under the circumstances must fall, for we cannot hold that the entire Act must fall because of this inconsistency with respect to recovery of tax under clause (a) of the second proviso even before the taxable event occurs in the large majority of cases which would be covered by the Act. We are, **therefore of opinion that clause (a) of the second proviso being repugnant to the entire scheme of the Act, in so far as it provides for recovery of tax even before the first sale in the State which is the point of time in a large majority of cases for recovery of tax, must, fall, on the ground of repugnancy**."
>
> (emphasis supplied)

184A. The facts apposite for understanding the context in which the aforesaid observations came to be made deserves a mention. The powers conferred on the authorities relating to search, seizure and confiscation of goods under the Madras General Sales Tax Act was under consideration. Under Section 3 of the Act which was the main charging section, every dealer whose total turn over is less than Rs.10,000/- was liable to pay a tax for each year at the rate of 2% of his taxable turn over. The point at which tax was to be paid on single point taxable goods was indicated in the Schedule of the Act and whereunder in a large majority of cases the tax was payable at the point of first sale in the State, though in some cases, it was paid at the point of first purchase or last purchase in the State. Section 41 of the Act empowered

the Government to authorise officers to carry out search and seizure. Sub-section (4) thereof conferred power on the officer carrying out search to seize and confiscate any goods which are found in any office, shop, godown, vessel, vehicle, or any other place of business or any building or place of the dealer, but not accounted for by dealer in his accounts registers, records and other documents maintained in the course of his business. Under the second proviso, an option was given to the person affected by confiscation to pay in addition to the tax recoverable, a sum not exceeding one thousand rupees or double the amount of tax, whichever is greater, and in other cases, a sum of money not exceeding one thousand rupees. The provision thus conferred power to confiscate goods merely on suspicion, without the taxable event taking place i.e. sale or purchase of goods. The statute was enacted in purported exercise of power under Entry 54, List II relating to “taxes on sale or purchase of goods”. In the aforesaid background, it was held that the second proviso was beyond the legislative competence, as thereby “the tax is ordered to be recovered even before the sale.”

185. Under Section 12, any person who intends to bring into a local area any good which is subject to entry tax, has to pay tax to the manufacturer in advance, failing which the manufacturer is mandated not to deliver such goods to the purchaser. The manufacturer receiving the tax has to submit a return to the assessing authority disclosing the

goods supplied and the tax received by him. He has to deposit the tax received from such persons in such manner and within such time as has been prescribed. Where the manufacturer fails to deposit the tax received, it is recoverable from him as arrears of land revenue. Where the assessing authority is satisfied that the goods, after delivery, have been lost or destroyed, before its entry into the local area, it shall direct the tax paid in respect of such goods to be refunded to the person who had paid the tax. The provisions regarding imposition of penalty and payment of interest under Section 34 of the U.P. VAT Act, 2008 have been made applicable to the amounts collected by the manufacturers from purchasers under this Section. The tax deposited is deemed to have been deposited for and on behalf of dealer from whom such tax has been received. The manufacturer has to mention the amount of such tax in the tax invoice or sale invoice, as the case may be, issued to the purchasing dealer to enable the dealer to claim benefit thereof.

186. Under the earlier legislation on the subject i.e., Act, 2000, there was a similar provision – Section 4-A as follows :-

> "**4-A. Realisation of tax through manufacturer.**-(1) Notwithstanding anything contained in any other provisions of this Act, any person who intends to bring to a local area from any manufacturer within the State, such goods specified in the Schedule as may be notified by the State Government, shall, at the time of taking delivery of the goods from the manufacturer, pay to the manufacturer the tax payable on entry of such goods into the local area and the manufacturer shall receive the tax so paid.

> (2) The manufacturer receiving the tax under sub-section (1) shall submit to the Assessing Authority a return in respect of the goods supplied, and the tax received, by him under sub- section (1) and deposit the tax so received, in such manner and within such time as may be prescribed.
>
> (3) Where any manufacturer refuses to receive, or fails to deposit, the tax under this section he shall be liable to pay the tax alongwith the interest and penalty, if any, payable thereon which shall be recoverable as arrears of land revenue.
>
> (4) Where the Assessing Authority is satisfied that any goods referred to in sub-section (1) is lost or destroyed after its delivery by the manufacturer and before its entry into the local area, it shall direct that the tax paid in respect of such goods shall be refunded to the person who had paid the tax under sub-section (1):
>
> Provided that no claim for such refund shall be entertained after the expiry of six months from the date of the loss or destruction of the goods.
>
> (5) The provisions of section 5 shall not apply to a person making payment of the tax under sub-section (1) and such person shall not be assessed, or required to submit a return, under this Act."

186A. Its vires was subjected to challenge on exactly similar grounds in **West U.P. Sugar Mills Association and others vs. State of U.P., 2001 U.P. T.C. 1110.** The State defended its action by contending that insertion of Section 4-A did not change the taxable event. It continued to be the entry of goods into a local area for consumption, use or sale. However, in order to check evasion of tax, a mechanism was provided for advance collection of tax. The liability continued to be that of the person bringing goods into a local area. A manufacture had to act as a middle man between the Government and such person. It was a

machinery provision to facilitate collection of tax in a manner considered convenient by the legislature. A Division Bench of this Court which decided the challenge, upheld the vires of the provision by observing thus :-

> "14. A perusal of Section 4-A shows that the stand of the Government appears to be correct. **Section 4-A appears to be only a convenient device for the collecting the Entry Tax which continues to be imposed on the dealer and not on the manufacturer. What Section 4-A has done is to provide for payment of the Entry Tax by the dealer to the manufacturer. The Legislature in its wisdom may have thought that this could facilitate the collection of the Entry Tax regarding which the authorities may be having some difficulties. It is settled law that the motive of legislation cannot be seen.** The doctrine of colourable legislation only relates to legislative competence and not to the motive of the law. Moreover, merely because of some hardship which the sugar manufacturer has to face, this does not mean that the Act is beyond legislative competence. There are similar provisions in various Taxing Institutes, which have been held to be valid by the Court e.g. Section 8-D of U.P. Trade Tax Act, provisions for deduction at source by the employer, and for representative assessees under Income Tax Act, etc. Greater freedom has to be given to the Legislature and the authorities with regard to Tax measures, as these are often complicated. The validity of Section 8-D of the U.P. Trade Tax Act has been upheld by this Court in V.K. Singhal and others v. State of U.P. and others, 1995 UPTC 337. It is settled law that the mode of recovery cannot alter the character of the levy nor can it determine the competence of the State Legislature vide Venkateshware Theatre v. State of Andhra Pradesh, AIR 1993 (3) SCC 677; Buza Dooras Tea Company v. Stare of West Bengal, AIR 1989 SC 2015; Govind Saran Ganga v. Commissioner of Sales Tax1985 UPTC 1164 : AIR 1986 SC 1041 and Kheer Bori Tea Company v. State of Assam, AIR 1964 SC 925; M.D. Century Co-operative Bank v. IIIrd Income Tax Officer, AIR 1975 SC 2016. The Supreme Court held that the power to collect a tax means the power to collect it properly and effectively and the same view was taken in Orient Paper Mills v. State of Orrissa, 12 STC 357

and Chhote Bhai Jetha Bhai Patel v. State of M.P., 30 S.T.C. 1. In V.K. Singhal v. State of U.P., 1995 UPTC 337, this Court upheld the validity of Section 8-D and observed that **the power to impose tax also include the power of collection by means of advance payment of tax or deduction of tax at source to be finally adjusted at the time of filing of the return of the assessment**."

"16. ….....Sri Chandra submitted that Section 4-A levies a tax on intention and not on actual entry of goods into the local area. In our opinion sub-section (4) of Section 4-A must be read alongwith sub-section (1). Sub-section (4) deals with the situation where despite an intention goods are not brought into the local area. In such a situation the tax has to be refunded as provided by sub-section (4). Hence the statute has also catered for this situation".

"22. As regards the argument on the basis of Article 19 (1) (g) of the Constitution we are of the opinion that Section 4-A does not place any unreasonable restrictions on the right of the petitioners to do business. **Section 4-A, as already observed by us, is only a convenient device for facilitating the collection of the Tax which the Legislature thought would otherwise be evaded. This Court cannot substitute its own wisdom for the wisdom of the Legislature in such matters relating to fiscal statutes.** It is well known that the Legislature and the Government had the thing of various contingencies in taxing measures, and this Court can only interfere if there is any constitutional violation or violation of any Statute. **However, we find no Constitutional invalidity in Section 4-A in the impugned Notification**".

(emphasis supplied)

187. In our opinion, the above judgment is a complete answer to the contention raised against the validity of the provision. Section 12 of the Act did not shift the taxable event to the purchase of goods by a retailer from manufacturer but it continued to be entry of such goods into a local area for consumption, use or sale. Where taxable event is not to

take place, as would be in a case where the manufactured goods are sold within the same local area, no entry tax would be payable, as held in **M/s. Mawana Sugar Ltd. vs. Deputy Commissioner, Commercial Tax and others, 2013 (6) All. L.J. 19 (DB)**. Likewise, where the goods are lost even before entry into a local area, sub-section (4) takes care of the eventuality and provides for refund of the tax to the person who had paid it. Section 12 was a machinery provision to avoid evasion of taxes and it is well settled that while charging section of a fiscal legislation has to be construed strictly, the machinery provisions have to be construed so as to effectuate the purpose of the levy. Concededly, Section 12 is not the charging section, but a machinery provision for collection and recovery of tax. The legislature was entitled to provide for advance deduction of tax in certain specified situations and there is no force in the challenge to the validity of the provision.

188. We wish to emphasise another aspect which completely makes the issue an academic one only, with no practical significance. The Act was repealed on 1.7.2017 with the enforcement of the Goods and Service Tax Act, 2017. The provision, as noted above, did not shift the liability on the manufactures, nor the taxable event. The advance tax under the Act would have been collected only till the Act was in force. The amount already collected must have been deposited or would be deposited in due course, for which due credit is admissible to the person paying the tax. The advance collection of tax under this

provision, by the manufacturer, is no more in vogue, the Act itself having been repealed. Therefore, challenge to the provision is only academic in nature and does not deserve any further consideration.

Conclusions:-

189. The result of the above discussion is summarised thus:-

(a) The contention that the impugned Act was not covered under Entry 52 List II since Entry 52 is in essence power of local bodies to levy octroi and thus State legislature had no legislative competence to impose entry tax, is no more *res-integra*, having been repelled by the Supreme Court in **Fr. Williams**. Accordingly, we find no force in the said contention.

(b) Again the contention that the provisions of the Act, particularly Section 14 (2), which mandates that the entry tax levied and collected would be credited to a central fund i.e. Uttar Pradesh Trade Development Fund and be utilised for facilitating trade, commerce and industry, violates constitutional mandate of Article 266 of the Constitution having been already repelled by the Supreme Court in **Fr. Williams**, we do not find any force in the said argument and it is accordingly rejected.

(c) The contention that the provisions of the Act cannot

be made applicable to cantonment areas and the impugned legislation seeks to encroach upon the field reserved for the Parliament under Entry 3 List I and is contrary to the Cantonment Act, 1924/Cantonment Act, 2006, is devoid of any merit as the field under Entry 3 List I under which Cantonment Act, 1924/Cantonment Act, 2006 had been enacted is separate and distinct from the legislative field under Entry 52 List II and there is no overlapping nor any conflict.

(d) The contention that the entire State cannot be treated as one local area, is devoid of any merit, as the definition clause of local area under Section 2 (d) did not treat the entire State as one local area. The other provisions of the Act also do not amount to treating the entire State as one local area vis-a-vis the taxable event and merely because the tax is collected as general revenue and credited to a central fund would not result in altering the taxable event nor would be fatal to the vires of the Act. Thus, the first question framed for consideration by the Supreme Court, does not directly arise in the context of the provisions of the impugned Act.

(e) The contention that the entry tax is a local levy, the power of a local body to impose such tax and the State

Government was not competent to realise entry tax as general revenue or to direct the same being credited to a central fund or its appropriation for facilitating trade, commerce and industry in the entire State, rather than passing it to the local body from where the tax had been collected, is based on a wrong premise that the entry tax is a local levy and not the power of the State Government to impose tax.

(f) None of the provisions of the Act suffer from the vice of excessive delegation of power as sought to be contended on behalf of the petitioners.

(g) The provisions of the Act relating to reversal of levy of tax (Section 5), rebate (Section 6) and exemption (Section 7) are neither violative of Article 14 nor Article 304 (a). The rebate and exemption notifications, which have been challenged, also pass muster of Article 14 and Article 304 (a). The third question framed by the Supreme Court is thus answered in favour of the Revenue and against the petitioners.

(h) The crude oil imported by IOC from Gulf countries becomes part of the land mass of the country and was liable to entry tax upon its entry into a local area within the State.

Entries 41 and 83 of List I operate in separate and distinct fields as compared to Entry 52 of List II and there is no conflict between the Customs Act, 1962 and the impugned Act.

(i) The doctrine of unbroken package having been abandoned by Courts in the United States where the doctrine was propounded and no more followed by the Supreme Court would not come to the rescue of IOC in contending that crude oil could not be subjected to entry tax in course of its transportation to Mathura Refinery through the underground pipelines. In the above context, we further hold that goods which are directly imported from other country could, in a given case, be subject matter of entry tax. We accordingly answer the second question framed by the Supreme Court in affirmative.

(j) The warehousing facility being enjoyed by IOC prior to 15.2.2005 was in the nature of a concession; a special facility being provided to IOC. It is not determinative of the taxable event for imposition of custom duty on imports nor would make the crude oil immune from liability towards entry tax. In any case, the assessment proceedings for the period anterior to the withdrawal of such facility on 15.2.2005 having attained finality, the same could not be

reopened in these proceedings.

(k) Proviso (iv) to Section 2 (h) which provides for calculation of value of goods in certain contingencies at wholesale price of such good in the open market in the local area in which goods are being brought or received for consumption, use or sale is neither dehors the provisions of Section 4 nor beyond legislative competence. It is only a legislative device for quantification of tax liability in cases where the price of the good is not ascertainable or not verifiable or not worthy of credence or where no actual sale takes place, as in case of stock transfer. Further, the said plea is also not covered by the window left open by the regular Bench while remitting the matter and, therefore, does not merit any further consideration.

(l) Section 12 of the Act was only a machinery provision to facilitate collection of tax and prevent its evasion. It was neither illegal nor arbitrary nor resulted in shifting the liability of the person who in fact was liable under the Act nor the taxable event. Further, the contention in this regard is now of academic importance only, the Act itself having been repealed since 1.7.2017.

190. In consequence and as a result of discussion made above, we do

not find any merit in these petitions and they are accordingly dismissed. The State shall be free to encash the bank guarantees or other security, if any, furnished by the petitioners. No order as to costs.

Order Date :- 04.05.2018
AHA/SKV/SL/-

(Dilip B Bhosale, CJ)

(M K Gupta, J)