

(2006) 08 JH CK 0138
In the Jharkhand High Court

Central Coal Fields Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-08-2006

Acts Referred:

Constitution of India, 1950 — Article 255, 301, 302, 303, 304
Motor Vehicles Act, 1988 — Section 2

Citation : (2007) 1 JCR 94

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.; D.K. Sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, A.C.J.

1. As common questions of law are involved in all these writ petitions and two sets of prayer have been made therein, they have been heard together and are being disposed of by this common judgment.

2. While many of the petitioners have sought for a declaration that the "Bihar Taxes on entry of Goods into Local Areas for Consumption, Use or Sale thereof Act, 1993" (Bihar Act 16 of 1993-hereinafter to be referred as "Bihar Entry Tax Act. 1993") ultra vires Articles 301 and 304 of the Constitution of India, in some of the cases further prayer has been made to declare "Jharkhand Tax on Entry of Goods into Local Areas for Consumption, Use or Sale thereof (Amendment) Ordinance, 2001" [Jharkhand Ordinance No. 02 of 2002 hereinafter to be referred as Jharkhand Entry Tax (Amendment) Ordinance. 2001"] as violative of Articles 301 and 304 of the Constitution of India.

3. In W.P. (T) Nos. 2937 of 2003, 3457 of 2004, 4128 of 2005 & 4199.. of 2005 further declaration has been sought for that the petitioners in these writ petitions are not liable to pay entry tax on the entry of coal into the areas, situated within the State of Jharkhand, under the provisions of Bihar Entry Tax Act, 1993, as adopted by the State of Jharkhand and amended vide Jharkhand Entry Tax

(Amendment) Ordinance, 2001. In rest of the cases, a declaration has been sought for that the petitioners are not liable to pay entry tax on the entry of heavy earth moving machines, such as, Dozers, Dumpers, Excavators etc., into the local areas of the then State of Bihar and the present State of Jharkhand under the provisions of Bihar Entry Tax Act, 1993, as adopted by the State of Jharkhand and amended vide Jharkhand Entry Tax (Amendment) Ordinance, 2001.

4. For determination of the issue as to "whether the imposition of Bihar Entry Tax Act, 1993, as adopted by the State of Jharkhand and amended vide Jharkhand Entry Tax (Amendment) Ordinance, 2001, is violative of Articles 301 & 304(a) of the Constitution of India or is saved by Article 304(b) of the Constitution it is necessary to mention the relevant facts.

5. Bihar Taxes on Entry of Goods into Local Areas for Consumption, Use or Sale thereof Ordinance. 1993 was promulgated and published on 22nd February, 1993 in an Extraordinary Gazette of Bihar being Bihar Ordinance No. 11/1993. By a subsequent Notification SO No. 37 dated 25th February, 1993 "entry tax" was introduced in the erstwhile State of Bihar. While Section 2(e) of the Bihar Entry Tax Act, 1993 defines "entry of goods", Section 2(d) defines "importer", which are quoted hereunder:

2. Definitions.-

xx xx xx xx

(c) Entry of goods" with all its grammatical variations and cognate expressions means Entry of goods into a local area from any place outside that local area or any place outside the State for consumption, use, or sale therein."

["Provided that in case of such goods which are liable to tax u/s 12(1) of the Bihar Finance Act, 1981, entry of goods shall mean entry of goods into local area from any place outside the State for consumption, use or sale therein."]

(d) Importer" means a dealer or any other person who in any capacity brings or causes to be brought any scheduled goods into a local area for consumption, use or sale therein.

6. Charging Section is Section 3 of the Bihar Entry Tax Act, 1993, as quoted hereunder:

3. Charge of Tax-(1) There shall be levied and collected a tax on entry of "scheduled goods into a local area for consumption use or sale therein at such rate not exceeding 5 percentum of the import value of such goods as may be specified by the State Government in a notification published in a official gazette subject to such conditions as may be prescribed.

Provided different rates for different scheduled goods and different local areas may be specified by the State Government.

(2) The tax leviable under this Act shall be paid by every dealer liable to pay tax under Bihar Finance Act, 1981 or any other person who brings or causes to be brought into the local areas such scheduled goods whether on his own account or on account of his principal or takes delivery or is entitled to take delivery of such goods on such entry:

Provided no tax shall be leviable in respect of entry of such scheduled goods effected by a person other than the dealer if, the value of such goods does not exceed 25 thousand in a year.

["Provided further, that where an importer of scheduled goods liable to pay tax under the Act, becomes liable to pay tax under the Bihar Finance Act, 1981 [Bihar Act 5," 1981] by virtue of sale of such scheduled goods, his liability to pay tax under the Bihar Finance Act, 1981 shall stand reduced to the extent of tax paid under the Act."]

["(3) The liability to pay tax on Scheduled goods shall only be at the point of first entry into a local area and any subsequent entry or entries into any other local area or areas of the said Scheduled goods shall not be subject to tax provided the subsequent importing dealer produces before the assessing officer the original copy of the cash memo, invoice, bill or challan issued to him by the dealer from whom he purchased or received the said Scheduled goods, and files a true and complete declaration in the Form and manner prescribed.]

7. The validity of the said Act fell for consideration before Patna High Court in the case of Bihar Chamber of Commerce v. State of Bihar reported in 1995(1) PLJR 716, wherein, a Division Bench of Patna High Court held that levy of entry tax, as was sought to be imposed under the said Act, was neither compensatory nor regulatory and impedes free flow of trade and commerce and does not satisfy the requirement under Article 304(b) of the Constitution. The Patna High Court further held that the said Act did not put reasonable restriction within the meaning of Article 304(b) of the Constitution and consequently declared Section 3 of the Bihar Entry Tax Act, 1993 ultra vires to the provisions of Articles 301 and 304(b) of the Constitution of India. The said judgment, rendered by the Patna High Court, was reversed by the Supreme Court in the case of State of Bihar v. Bihar Chamber of Commerce reported in : [1996]2SCR184 . The Supreme Court held Section 3 and Section 6 of the Bihar Entry Tax Act, 1993 intra vires.

8. The judgment, rendered by the Supreme Court in the case of Bihar Chamber of Commerce, (supra) was based on an earlier decision of the Supreme Court, rendered in the case of Bhagatram Rajeev Kumar v. Commissioner Of Sales Tax reported in 1995 Suppl. (1) SCC 673. Both the aforesaid judgments, rendered in the cases of Bhagatram Rajeevkumar, (supra) and Bihar Chamber of Commerce, (supra), were doubted by the Supreme Court in the case of Jindal Stainless Steel Ltd. and Anr. v. State of Haryana and Ors. (Civil Appeal No. 3453 of 2002), which was referred to 5-judges Constitution Bench. The Supreme Court in the case of Jindal Stainless Ltd. and Another Vs. State of Haryana and Others, held that

"some connection" enunciated in Bhagatram Rajeevkumar's case, as reported in 96 STC 654. is not only contrary to the working test, propounded in the case of The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, but it also obliterates the very basis of the compensatory tax. The Supreme Court overruled the test of "some connection" as propounded in the case of Bhagatram Rajeevkumar, (supra), and declared the judgments of the Supreme Court in the cases of Bhagatram Rajeevkumar, (supra) and Bihar Chamber of Commerce, (supra) overruled to that extent.

9. The Constitution Bench of Supreme Court referred to the case of Atiabari Tea Co., Ltd. Vs. The State of Assam and Others, , wherein, it was held that taxing laws are not excluded from the operation of Article 301, which means that tax laws can and do amount restrictions on freedom of trade under Part-XIII of the Constitution. However, it was held by the Supreme Court that the prohibition of restrictions on free trade is not an absolute one and restrictive trade can avoid invalidation, if it complies with Article 304(a) or 304(b) of the Constitution of India.

10. In the case of Automobile Transport (Rajasthan) Ltd.. (supra), the Supreme Court held that only such taxes, as directly and immediately restrict trade, would fall within the purview of Article 301 and any restriction in the form of taxes imposed on the carriage of goods or their movement by the State Legislature can only be done after satisfying the requirements of Article 304(b). The Statute i.e. Assam Taxation (On Goods carried by Roads and Inland Waterways) Act, 1954, which was challenged in the case of Atiabari Tea Co. Ltd., (supra), was held to have put a direct restriction on the freedom of trade since the State Legislature had not complied with the provisions of Article 304(b) of the Constitution and the Act was declared invalid by the Supreme Court. The said judgment, in the case of Atiabari Tea Co. Ltd., (supra), was delivered by 5-Judges Constitution Bench of the Supreme Court.

11. In the case of Automobile Transport (Rajasthan) Ltd. (supra) 7-Judges Constitution Bench of Supreme Court judicially crafted the exception to Article 301. In that case "Rajasthan Motor Vehicles Taxation Act, 1951" was challenged. Such challenge under Article 301 was rejected by 7-Judges Constitution Bench of the Supreme Court by holding that the taxes are compensatory taxes which instead of hindering trade, commerce and intercourse, facilitate them by providing roads and maintaining roads. It was observed that if Statute fixes a charge for a convenience or service provided by the State or any agency of the State, and imposes it upon those, who choose to avail themselves of the service or convenience, the freedom of trade and commerce may well be considered unimpaired. Thus, the concept of "compensatory taxes" was judicially propounded. Therefore, the taxes which would otherwise interfere with the unfettered freedom under Article 301 will be protected from the vice of unconstitutionality, if they are compensatory.

12. In the case of Automobile Transport (Rajasthan) Ltd.. (supra), the Supreme

Court held that a working test for deciding whether a tax is a compensatory or not is to enquire whether the trade is having the use of certain facilities for the better conduct of its business and paying not patently much more than what is required for providing the facilities.

13. In the case of Bhagatram Rajeev-kumar (supra), the working test, enunciated by 7-Judges Constitution Bench of Supreme Court in the case of Automobile Transport (Rajasthan) Ltd. (supra), was not applied and the Court deviated and applied a different test and it was held that even if there is substantial or "some connection" between the tax and the facilities, extended to the dealers directly or indirectly, the levy cannot be impugned as invalid. The proposition, laid down in the case of Bhagatram Rajeevkumar (supra), was followed and applied by a Bench of 2- Judges in the case of Bihar Chamber of Commerce, (supra), which reiterated the position that "some connection" between the tax and the trading facilities, extended to dealers directly or indirectly, is sufficient to characterize it as compensatory tax.

14. The 5-Judges Constitution Bench of Supreme Court in the case Jindal Strips Ltd. and Anr. v. State of Haryana and Ors. reported in 134 STC 303 summed up the law, as laid down by the Supreme Court in the cases of Atiabari Tea Co. Ltd., (supra) and Automobile Transport (Rajasthan) Ltd., (supra) and the decision of 7-Judges Constitution Bench in the case of Automobile Transport (Rajasthan) Ltd. (supra) was followed. The Constitution Bench, on an analysis of relevant provisions of Part-XIII of the Constitution, analysed the scope of Articles 301, 302 and 304 and held as follows:

Article 301 is binding upon the Union Legislature and the State Legislatures, but Parliament can get rid of the limitation imposed by Article 301 by enacting a law under Article 302. Similarly, a law made by the State Legislature in compliance with the conditions imposed by Article 304 shall not be hit by Article 301. Article 301 thus provides for freedom of inter-State as well as intra-State trade and commerce subject to other provisions of Part-XIII and correspondingly it imposes a general limitation on the legislative powers which limitation is relaxed under the following circumstances:

(a) Limitation is relaxed in favour of the Parliament under Article 302, in which case Parliament can impose restrictions in public interest. Although the fetter is limited enabling the Parliament to impose by law restrictions on the freedom of trade in public interest under Article 302, nonetheless, it is clarified in clause (1) of Article 303 that notwithstanding anything contained in Article 302, the Parliament is not authorized even in public interest, in the making of any law, to give preference to one State over another. However, the said clarification is subject to one exception and that too only in favour of the Parliament where discrimination or preference is admissible to the Parliament in making of laws in case of scarcity. This is provided in Clause (2) of Article 303.

(b) As regards the State Legislatures, apart from the limitation imposed by

Article 301. Clause (1) of Article 303 imposes additional limitation, namely, that it must not give preference or make discrimination between one State or another in exercise of its powers relating to trade and commerce under Entry 26 of List-II or List-III. However, this limitation on the State Legislatures is lifted in two cases, namely, it may impose on goods imported from sister State(s) or Union Territories any tax to which similar goods manufactured in its own State are subjected by not so as to discriminate between the imported goods and the goods manufactured in the State [See Clause (a) of Article 304]. In other words, Clause (a) of Article 304 authorizes a State Legislature to impose a non-discriminatory tax on goods imported from sister State(s), even though it interferes with the freedom of trade and commerce guaranteed by Article 301. Secondly, the ban under Article 303(1) shall stand lifted even if discriminatory restrictions are imposed by the: State Legislature provided they fulfill the following three conditions, namely, that such restrictions shall be in public interest: they shall be reasonable; and lastly, they shall be subject to the procurement of prior sanction of the President before introduction of the bill.

15. The 5-Judges Constitution Bench of the Supreme Court observed that the concept of "compensatory tax" is not there in the Constitution but is judicially evolved in the case of Automobile Transport (Rajas-than) Ltd., (supra) as a part of regulatory charge. Consequently, the Court will have to go into the concepts and doctrines of (axing powers vis-a-vis regulatory powers, particularly when the concept of "compensatory tax" was judicially crafted as an exception to Article 301 in the case of Automobile Transport (Rajasthan) Ltd. (supra).

16. In order to lay down the parameter of "compensatory tax", the Supreme Court discussed the concept of taxing powers and held that a tax is levied as a part of common burden. The basis of tax is the ability or the capacity of the taxpayers to pay. On the other hand, a fee is based on the "principle of equivalence", which is the converse of the "principle of ability" to pay. In the case of a fee or compensatory tax, the "principle of equivalence" applies. The main basis of a fee or compensatory tax is quantifiable and measurable benefits. In the case of a tax, even if there is any benefit, the same is incidental to the Government action and is not measurable. Under the "principle of equivalence" as applicable to a fee or compensatory tax, there is an indication of a quantifiable data, namely, a benefit, which is measurable.

17. When the taxation law was challenged before the Court as violative of Article 301, to find out whether it would be a taxation law or non-taxation law and what is (he scope of operation of law, the following test was laid down by the 5-Judges Constitution Bench of Supreme Court:

When any legislation, whether it would be a taxation law or a non-taxation law, is challenged before the Court as violating Article 301. the first question to be asked is: what is the scope of the operation of the law? Whether it has chosen an activity like movement of trade, commerce and intercourse throughout India, as the criterion of its operation? If yes, the next question is: what is the effect of

operation of the law on the freedom guaranteed under Article 301? If the effect is to facilitate free flow of trade and commerce then it is regulation and if it is to impede or burden the activity, then the law is a restraint. After finding the law to be a restraint/restriction one has to see whether the impugned law is enacted by the Parliament or the State Legislature. Clause(b) of Article 304 confers a power upon the State Legislature similar to that conferred upon Parliament by Article 302 subject to the following differences:

(a) While the power of Parliament under Article 302 is subject to the prohibition of preference and discrimination decreed by Article 303(1) unless Parliament makes the declaration under Article 303(2), the State power contained in Article 304(b) is made expressly free from the prohibition contained in Article 303(1) because the opening words of Article 304 contains a non-obstante clause both to Article 301 and Article 303.

(b) While the Parliament's power to impose restrictions under Article 302 is not subject to the requirement of reasonableness, the power of the State to impose restrictions under Article 304 is subject to the condition that they are reasonable.

(c) An additional requisite for the exercise of the power under Article 304(b) by the State Legislature is that previous Presidential sanction is required for such legislation.

18. The Supreme Court after analyzing the scope of Articles 301, 302, 303 and 304 of the Constitution concluded that the doctrine of "direct and immediate effect" of the impugned law on trade and commerce under Article 301, as propounded in the case of *Atiabari Tea Co. Ltd.*, (supra), and the working test, enunciated in the case of *Automobile Transport (Rajasthan) Ltd.*, (supra), for deciding whether a tax is compensatory or not, vide paragraph 19 of the report, will continue to apply and the test of "some connection" indicated in paragraph 8 of the judgment in the case of *Bhagatram Rajeevkumar*, (supra), as followed by the Supreme Court in the case of *Bihar Chamber of Commerce*, (supra) was held to be not a good law to the above extent.

19. Learned Advocate General while fairly conceded that the judgment rendered by the Supreme Court in the case of *Bihar Chamber of Commerce*, (supra), so far as the question relating to compensatory tax is concerned, has been overruled by 5-judges Constitution Bench of Supreme Court in the case of *Jindal Stainless Ltd.*, (supra), according to him, rest part of the judgment, rendered by the Supreme Court in the case of *Bihar Chamber of Commerce* (supra) still holds good, having not been overruled and the finding of the Supreme Court that the Bihar Taxes on Entry of Goods into Local Areas for Consumption, Use or Sale thereof Act, 1993 is *intra vires*, has not been overruled. It was submitted that the Supreme Court in the case of *Bihar Chamber of Commerce*, (supra), having given specific finding that the Bihar Taxes on Entry of Goods into Local Areas for Consumption, Use or Sale thereof Act, 1993 has received the assent of the President; levy of entry tax is in public interest, and the levy of entry tax

constitutes a reasonable restriction, no contrary finding can be given by this Court.

20. The question whether the Supreme Court's decision in the case of Bihar Chamber of Commerce, (supra) to the extent that Bihar Taxes on Entry of Goods into Local Areas for Consumption, Use or Sale thereof Act, 1993 is saved by Article 304(b) of the Constitution, fell for consideration before a Division Bench of this Court in the case of Tata Iron and Steel Company Ltd. v. State of Jharkhand and Ors. WP (T) No. 5354 of 2004, which was allowed on 14th August, 2006. Having noticed the 2nd question, as was framed and answered by the Supreme Court in the case of Bihar Chamber of Commerce, (supra), the Division Bench of this Court while held that the judgment of the Supreme Court in the said case to the extent it relates to receipt of assent of the President and that the levy of entry tax was in public interest, has not been overruled, held that the decision in the case of Bihar Chamber of Commerce, (supra), so far as the question as to whether the levy of entry tax under Bihar Taxes on entry of goods into Local Areas for Consumption, Use or Sale thereof Act, 1993 constitutes reasonable restriction or not, stands impliedly overruled by the Supreme Court's decision in the case of Jindal Stainless Ltd., (supra).

21. The question "whether the entry tax under the Bihar Taxes on Entry of Goods into Local Areas for Consumption, Use or Sale thereof Act, 1993, as adopted by the State of Jharkhand and modified vide Jharkhand Tax on Entry of Goods into Local Areas for Consumption, Use or Sale thereof (Amendment) Ordinance, 2001, satisfies the test of compensatory tax, so as to come within the protection under Article 304(b) of the Constitution of India" has been decided by a Division Bench of this Court in the case of Tata Iron and Steel Company Ltd., (supra), which has been allowed on 14th August, 2006. Having noticed the relevant facts, as pleaded by the parties, the Court held that the Bihar Entry Tax Act, 1993 is not compensatory in nature, falling under Article 304(a) of the Constitution of India.

22. So far as the question "whether the Bihar Taxes on Entry of Goods into Local Areas for Consumption. Use or Sale thereof Act, 1993, as adopted by the State of Jharkhand and modified vide Jharkhand Tax on Entry of goods into Local Areas for Consumption, Use or Sale thereof (Amendment) Ordinance, 2001, is saved by virtue of the provisions, contained in Article 304(b) of the Constitution or not", in the case of Tata Iron and Steel Company Ltd., (supra), having noticed the rival contention of the parties, the Division Bench of this Court while allowed the writ petition on 14th August, 2006 held as follows:

So far as the other question "whether it is saved by virtue of the provisions, contained in Article 304(b) of the Constitution of India is concerned, the respondents have neither made any statement in their affidavit nor have brought on record any data to suggest that the entry tax, imposed under Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1993, as adopted and amended by the State of Jharkhand by Jharkhand Tax on Entry

of Goods into Local Areas for Consumption, Use or Sale thereof (Amendment) Ordinance, 2001 (Jharkhand Ordinance 02 of 2002), constitutes reasonable restriction. From the judgment, rendered by the Supreme Court in the case of Bihar Chamber of Commerce (*supra*), though it will be evident that the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1993 was assented to by the president and the said entry tax was levied in public interest, there is nothing on the record to suggest that Jharkhand Tax on Entry of Goods into Local Areas for Consumption, Use or Sale thereof (Amendment) Ordinance, 2001 (Jharkhand Ordinance 02 of 2002), so far it relates to further restriction on certain goods, as introduced by Amended Schedule, had prior sanction of the President, as required under proviso to Article 304(b), nor there is anything on the record to suggest that while amending the Schedule, assent of the President was obtained by the respondents, as contemplated by Article 255 of the Constitution of India. The respondents having failed to show that the entry tax, imposed by Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1993, as adopted by the State of Jharkhand and amended by Jharkhand Tax on Entry of Goods into Local Areas for Consumption, Use or Sale thereof (Amendment) Ordinance, 2001 (Jharkhand Ordinance 02 of 2002), constitutes reasonable restriction, we are of the view that the entry tax imposed by Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1993, as adopted by the State of Jharkhand and amended by Jharkhand Tax on Entry of Goods into Local Areas for Consumption, Use or Sale thereof (Amendment) Ordinance, 2001 (Jharkhand Ordinance 02 of 2002), is also not saved by the provisions, contained in Article 304(B) of the Constitution of India.

23. In regard to the Jharkhand Taxes on Entry of Goods into Local Areas for Consumption, Use or Sale thereof (Amendment) Ordinance, 2001 it was contended on be-half of the petitioners that Section 2(c) of the Bihar Entry Tax Act, 1993, as adopted by the State of Jharkhand and amended vide Jharkhand Tax on Entry of Goods into Local Areas for Consumption, Use or Sale thereof (Amendment) Ordinance, 2001, altered the basic scheme and structure of imposition of entry tax by giving the complete immunity in respect of the goods entering into one local area to another local area but imposes entry tax on goods which are imported outside the State into the local area, as the substantial alteration requires the assent of the President of India under the proviso to Article 304(b) of the Constitution, which was not obtained. Learned Counsel for the petitioners further submitted that the Schedule which has been introduced under the Bihar Entry Tax Act, 1993, was amended by Jharkhand Entry Tax Ordinance, 2001 and various articles, which were not there in the earlier Schedule of the Bihar Entry Tax Act, 1993, were incorporated by the Jharkhand Legislatures. According to the petitioners, this inclusion of different items like, "coal", has been introduced by a substantive legislation by altering the Schedule to the Act and thereby, the scope of entry tax, as amended by Jharkhand Entry Tax Ordinance, 2001, has been widened and expanded. Thus, the Schedule to

the Jharkhand Entry Tax Ordinance. 2001, as amended, has introduced an additional restriction on various articles of the Schedule, which were not there in the original Schedule to the Bihar Entry Tax Act. 1993. The Schedule being a part of the Act, assent of the President in terms of the proviso to Article 304(b) of the Constitution was required to be obtained, which has not been obtained in the present case.

24. Learned Advocate General referred to a decision of the Supreme Court in the case of Subodhaya Chit Fund (P) Ltd. and another, Vs. Director of Chits, Madras and another etc., and submitted that if amended provision only varies the form of restriction, which was already inherent in the original Act, and since the principal Act had the sanction of the President, it was not necessary to obtain the sanction of the President for the amending Act. Reliance was also placed on a Supreme Court's decision in the case of S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others, to suggest that no Presidential assent is required if the Act is amended or varied without putting any further restriction.

25. To decide whether further restriction has been made by the State of Jharkhand, while amending the Bihar Entry Tax Act, 1993, it is necessary to look into the relevant amendment, as made, and the comparative chart, as shown hereunder:

Jharkhand	Entry	Bihar Entry Tax Tax
		Section
2(c)-"Entry of goods"	2(c)-"Entry of goods"	with all its grammatical with all its grammatical variations and cognate variations and cognate expressions means entry of expressions means entry of goods into a local area from goods into a local area from any place outside that local any place outside that local area or any place outside the area or any place outside the State for consumption use or State for consumption use or sale therein. sale therein.
Provided that in case of such goods which are liable to tax u/s 12(1) of the Bihar Finance Act, 1981 entry of goods shall mean entry of goods into local areas from any place outside the State for consumption, use or sale therein. (*) Section 3- (1) There shall be Section 3-(1) There shall be levied and collected a tax on levied and collected a tax on entry of scheduled goods into a entry of scheduled goods into a local area for consumption use local area for consumption use or sale therein at such rate not or sale therein at such rate not exceeding 5 percentum of the exceeding 5 percentum of the import value of such goods as import value of such goods as may be specified by the State may be specified by the State Government in a notification Government in a notification published in a official gazette published in a official gazette subject to such conditions as subject to such conditions as may be prescribed. may be prescribed. Provided different rates for Provided different rates for different scheduled goods and different scheduled goods and different local areas may be different local areas may be		

specified by the State specified by the State Government. Government.

----- (2) The tax
leviable under this (2) The tax leviable under this Act shall be paid by every Act
shall be paid by every dealer liable to pay tax under dealer liable to pay tax
under Bihar Finance Act, 1981 or any Bihar Finance Act, 1981 or any other
person who brings or other person who brings or causes to be brought into the
causes to be brought into the local areas such scheduled local areas such
scheduled goods whether on his own goods whether on his own account or on
account of his account or on account of his principal or takes delivery or
principal or takes delivery or is is entitled to take delivery of entitled to take
delivery of such such goods on such entry. goods on such entry. Provided no
tax shall be Provided no tax shall be leviable in respect of entry of leviable in
respect of entry of such scheduled goods effected such scheduled goods
effected by a person other than the by a person other than the dealer if, the
value of such dealer if, the value of such goods does not exceed 25 goods does
not exceed 25 thousand in a year. thousands in a year. Provided further that
where an importer of scheduled goods liable to pay tax under the Bihar
Finance Act, 1981 (Adopted) by virtue of sale of such goods, his liability to pay
tax under the Bihar Finance Act, 1981 (Adopted) shall stand reduced to the
extent of tax paid under the Act.(*)

----- (3)
Notwithstanding, anything (3) The liability to pay tax on contained in Sub-
sections (1) scheduled goods shall only be and (2) of this section and at the
point of entry into a local subject to the provisions of this area and any
subsequent entry Act there shall be levied and or entries into any other local
collected a tax on the entry of area or areas of the said any motor vehicle into
any local scheduled goods shall not be area for use or sale therein subject to
tax provided the which is liable for registration subsequent importing dealer in
the State under the Motor produces before the assessing Vehicle Act, 1988. The
rate of officer the original copy of the tax shall be at such rate or cash memo,
invoice bill or rates as may be specified by challan issued to him by the the
State Government by a dealer from whom he notification published in the
purchased or received the said official gazette on the scheduled goods and files
a purchase, import value of motor declaration in the form and vehicle but not
exceeding the manner prescribed. (*) rate prescribed for sales tax for such
vehicles under the Bihar Finance Act, 1981. Provided that no tax shall be
levied and collected in respect of any motor vehicle which was registered in
any other State or Union Territory under the Motor Vehicles Act,, 1939 for a
period of fifteen months or more before the date on which it is registered in
the State under that Act.

----- (4) Section 4
stands deleted.(*)

----- Note: (*) have
been deleted/inserted by/in Jharkhand Tax on Entry of Goods in Local Areas
for Consumption, Use or Sale thereof (Amendment) Ordinance, 2001.

-----						Earlier
Scheduled			Amended			Schedule
-----						1. Motor
Vehicles.			1.			Tobacco.(*)
-----						2. Tobacco
products	2.	Tobacco	products	(excluding	Biris)	(excluding Biris)
-----						3. India made
foreign	3.	India	made	foreign	liquor.	liquor.
-----						4. Vegetable and
4.	Vegetable	and	Hydrogenated	Oil.	Hydrogenated	Oil
-----						5. Cement
Cement	-----					6.
Crude		Oil	6.	Crude		Oil.
-----						7. Motor
-----						8.
Vehicles	-----					Paints.(*)
Emulsion	-----					9. Sanitary
-----						10.
fittings.(*)	-----					11. Marble,
Air	conditioner,	aircooler	and	air	circular.(*)	
-----						12. electrical
chips,	titles,	granite	stones,	ceramic	and	glazed tiles.(*)
-----						13.
fittings.(*)	-----					14. Iron
Coal(*)	-----					15.
and steel(*)	-----					16. Bitumen.(*)
Steel	plastic	and	PBC	pipe.(*)	Note : (*) have	
-----						been added in the Schedule by amending Jharkhand Tax on Entry of Goods into
-----						Local Areas for Consumption, Use or Sale thereof (Amendment) Ordinance,
-----						2001.

26. From the aforesaid comparative chart, it will be evident that while Bihar Entry Tax Act, 1993 was introduced the President assented the Schedule of which a reference has been given in Section 3 of the Act i.e. six items, as shown in the Schedule and enclosed with the Bihar Entry Tax Act, 1993. However, by Jharkhand Entry Tax (Amendment) Ordinance, 2001 the said Schedule has been amended and restrictions have been put on 10 (ten) more items, including "coal", as shown in the amended Schedule. Similar issue fell for consideration before the Supreme Court in the case of Syed Ahmed Aga and Others Vs. The State of Mysore and Others, . In the said case, the Supreme Court held that if the amendments do not go beyond a regulation, which was fully authorized by the language of the provisions of the principal Act, the mere change in form, from statutory rules to statutory provision hardly constitutes even additional regulation. It is only an additional restriction from the special point of view of

Article 304(b), which requires Presidential sanction. It has already been pointed that while amending Bihar Entry Tax Act, 1993 vide Jharkhand Entry Tax (Amendment) Ordinance, 2001 additional restriction has been imposed on different items, such as, "coal" etc. In that background, we are of the opinion that it was essential for the State of Jharkhand to take Presidential sanction in view of Article 304(b) of the Constitution.

27. In the case of Tata Iron and Steel Company Ltd. (supra), Division Bench of this Court vide judgment dated 14th August, 2006 having discussed the relevant provisions of Bihar Entry Tax Act, 1993, as adopted by the State of Jharkhand and amended vide Jharkhand Entry Tax (Amendment) Ordinance, 2001, held that the provisions of the Bihar Taxes on Entry of Goods into Local Areas for Consumption, Use or Sale thereof Act, 1993, as adopted by the State of Jharkhand vide Notification dated 15th December, 2000 and amended vide Jharkhand Tax on Entry of Goods into Local Areas for Consumption, Use or Sale thereof (Amendment) Ordinance, 2001 do not satisfy the requirement under Article 301 read with Article 304(b) of the Constitution of India and, thus, Section 3 of the Act, including the amendment made therein, is ultra vires. In view of such findings, already given, no separate declaration is required to be given in the present case.

28. The petitioners of WP (T) Nos. 2937 of 2003, 3457 of 2004. 4128 of 2005 and 4199 of 2005 have also raised the question of imposing entry tax on "imported coal". According to them. Section 3 is not applicable in their case, who import coal from outside the country. It was also submitted that Item No. 13 of the Schedule, which deals with "coal" is different from "imported coal". Another ground was taken that the coal having not been originally included in the Schedule, attached to the Bihar Entry Tax Act, 1993, its inclusion by the State of Jharkhand vide Jharkhand Tax on Entry of goods into Local Areas for consumption, Use or Sale thereof (Amendment) Ordinance, 2001, by amending the Schedule, is illegal and ultra vires, no Presidential assent having been obtained before imposing restriction on coal. Different submissions were made by the parties. However, such submissions are not required to be discussed, as the issue has already been settled by a Division Bench of this Court in the case of Tata Iron and Steel Company Ltd. v. State of Jharkhand and Ors., disposed of on 14th August, 2006. In the said case, having noticed similar submissions, the Division Bench held that the Company cannot be held liable to pay entry tax in regard to the coal, imported from outside the country.

29. Apart from the aforesaid decision, as discussed above, it will be evident that we have already held that the amendment of Schedule made vide Jharkhand Tax on Entry of Goods into Local Areas for Consumption, Use or Sale thereof (Amendment) Ordinance, 2001 and thereby inclusion of items, such as, coal, by amendment, is illegal and ultra vires.

30. In rest of the cases one of the questions raised is as to whether dozers, dumpers, rollers, excavators etc. are "motor vehicles" within the meaning of

Section 2(28) of the Motor Vehicles Act, 1988.

31. According to the petitioners, the expression "Motor Vehicles" has been defined in Section 2(g) of the Bihar Entry Tax Act to mean a "Motor Vehicle" as defined in Section 2(28) of the Motor Vehicles Act, 1988. It was submitted that Section 2(28) of the Motor Vehicles Act, 1988 defines Motor Vehicles, which specifically excludes a vehicle running upon fixed rails or a vehicle of special type, adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty five cubic centimeters. Dozers, dumpers, rollers and excavators, which are of a special type adapted for use only in a factory or in any other enclosed premises are not to be included in the definition of motor vehicle.

32. Learned Advocate General for the State relied on a decision of the Supreme Court in the case of Bose Abraham v. State of Kerala reported in 121 STC 614. In the said case, the Supreme Court having noticed the provisions of Section 3 of the Kerala Tax on Entry of Motor Vehicles into Local Areas Act, 1994 and the definition of "Motor Vehicles", as defined under the Motor Vehicles Act, 1988, held that the Excavators and Road Rollers were "Motor Vehicles" u/s 2(j) of the Kerala Tax on Entry of Motor Vehicles into Local Areas Act, 1994.

33. According to the counsel for the petitioners, in the case of Bose Abraham, (supra), the Supreme Court noticed the contention of the petitioners that such Excavators and Road Rollers are suitable for use on the roads. It was submitted that the Dozers, Excavators, Road Rollers etc., which are being used by the Companies, who have approached this Court, are being used only within their factories/mines/ premises and are not being used on the roads. It was further submitted that the Central Motor Vehicles Rules, 1989, as was framed under the Motor Vehicles Act, 1988, has been amended vide Notification dated 28th July, 2000 and an explanation under Rule 92(2) has been added, which provides that for the purpose of said Rule "motor vehicles" include construction equipment vehicles. Under the said notification, Rule 2(ca) defines what is the construction equipment vehicle, such as, rubber tyred, rubber padded or steel drum wheel mounted, self-propelled, excavator etc. but the explanation to Rule 2(ca) makes it clear that a construction equipment vehicle shall be a non-transport vehicle, driving on the road of which is incidental to the main off- highway function and for a short duration at a speed not exceeding 50 Kms, per hour, but such vehicle does not include other purely off-highway construction equipment, designed and adopted for use in any enclosed premises, factory or mines, other than toad network, not equipped to travel on public roads on their own power.

34. The reply of the learned Advocated General was that the amended Rule 92(2) or Rule 2(ca), introduced vide Notification dated 28th July, 2000. can not override the main provision, including the definition of the "Motor Vehicle", as defined u/s 2(28) of the Motor Vehicles Act. 1988.

35. In the present case, Bihar Taxes on Entry of Goods into Local Areas for

Consumption, Use or Sale thereof Act, 1993, as adopted by the State of Jharkhand and amended vide Jharkhand Tax on Entry of Goods into Local Areas for Consumption, Use or Sale thereof (Amendment) Ordinance, 2001, including Section 3 and the Schedule, attached to the Ordinance, have been declared ultra vires. In view of such declaration, already given, neither it is necessary to decide the present issue nor it is necessary to find out whether the decision of the Supreme Court in the case of Bose Abraham, (supra) is applicable in the case of the petitioners or not. Accordingly, we are not giving any opinion in this regard and keep it open for decision in some other case, if so required.

36. Having regard to the facts and circumstances and in view of the findings, as recorded above, we hold that the State-respondent can not enforce the provisions of Bihar Taxes on Entry of Goods into Local Areas for Consumption, Use or Sale thereof Act, 1993, as adopted by the State of Jharkhand and amended vide Jharkhand Tax on Entry of Goods into Local Areas for Consumption, Use or Sale thereof (Amendment) Ordinance, 2001, nor can enforce any order or direction, issued in terms with the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale thereof Act, 1993, as adopted by the State of Jharkhand and amended vide Jharkhand Tax on Entry of Goods into Local Areas for Consumption, Use or Sale thereof (Amendment) Ordinance, 2001. All the writ petitions are, thus, allowed with the aforesaid observations. However, in the facts and circumstances, there shall be no order as to costs.

D.K. Sinha, J.

37. I agree.