

(2003) 04 PAT CK 0090

In the Patna High Court

Case No : C.W.J.C. Nos. 6540 and 6746 of 2002

Harinagar Sugar Mills Ltd. and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-04-2003

Acts Referred:

Citation : (2003) 04 PAT CK 0090

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—The petitioners in both the cases, which are companies registered under the Indian Companies Act and are engaged in the manufacture and sale of sugar, have filed the present writ applications for quashing the notification dated 25-7-2001, issued by the Government in exercise of power under Sub-section (1) of Section 3 of the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993 (hereinafter referred to as "the Act") in respect of the scheduled goods listed therein so far as the same is applicable to the industries of the petitioners. Later on, they challenged the vires of the amended provisions of the said Act brought by Bihar Act 10 of 2001. The copies of the amendments brought in the Act as well as the notification issued under Sub-section (1) of Section 3 of the Act have been annexed in both the writ applications. However, hereinafter reference will be made to the annexures appended in C.W.J.C. No. 6540 of 2002.

2. The factual matrix lies in a narrow compass. The petitioner-companies are engaged in the business of manufacturing sugar by vacuum pan process. It is registered under the provisions of the Central Sales Tax Act and also under the provisions of the Bihar Finance Act. The raw material used in the sugar factory is sugarcane besides other raw materials like lime, sulphur, etc. The Companies purchase certain manufactured goods namely goods made out from iron and steel, pipes, electrical fittings, coal, paints etc. from outside the State of Bihar in course of interstate sale after payment of Central Sales Tax for the purposes of fitting or fixing or installation in the factory or factory premise and which

ultimately become fixed capital assets of the companies. The aforesaid purchased goods are neither consumed nor used as raw material for the manufacture of new commodity nor for sale to any other person. The said goods were not included in the schedule of the Act leviable to pay entry tax. Later on, twelve items including the goods purchased by the petitioners have been included in the schedule by the Amending Act and a notification u/s 3 (1) of the Act has also been issued prescribing rates of entry tax, restrictions and conditions regarding the same.

3. The assertion of the petitioners is that the action of the authorities after the amendment asking the petitioners to pay entry tax is impermissible in law as the petitioners are not liable to pay entry tax on those goods for the reason that those goods are neither sold nor consumed nor used by them as raw materials for the purposes of making any commercial commodity.

4. The stand of the State, on the other hand, is that the aforesaid articles, which are admittedly purchased by the petitioners, are included in the schedule of the Act and the same are used or consumed by them and as such they are liable to pay entry tax under the Act and the authorities have rightly taken steps and directed the petitioners to comply with the provisions of the Act by making payment of entry tax on those articles.

5. Learned Counsel for the petitioners raised following submissions to assail the validity of the Amending Act and the notification issued u/s 3 (1) of the Act. The Principal Act has received the assent of the President in terms of proviso to Article 304(b) of the Constitution of India, whereas, the Amending Act has been enacted without the previous assent and as such it is violative of said Article 304(b). Earlier there were only six items in the schedule liable to pay entry tax, which did not include the items purchased by the petitioners, After amendment, 12 items including the items purchased by the petitioners have been included in the schedule. Thus, total items became 18 and with regard to the same a notification was issued u/s 3 (1) of the Act on 25-7-2001 prescribing rate of entry tax and the conditions for payment of entry tax, With regard to Items No. (1) and (2), namely, Tobacco and Tobacco Products the entry tax is leviable on entry of goods into a local area in Bihar from another such area or from any place outside Bihar, whereas, in case of other 16 items, including the goods purchased by the petitioners, the entry tax is leviable only if the entry of such goods is made from outside the State. No entry of tax is leviable with regard to the goods manufactured or produced in the State on movement from one local area to the other local area within the State. Thus, there is discrimination in the matter of goods purchased or manufactured at a place inside the State or from any place outside the State and as such the same is violative of Article 304(a) of the Constitution. He further submitted that the petitioners are not dealers within the meaning as defined under the Act and as such are not liable to registration under the Act and payment of entry tax. Lastly, he submitted that under the Scheme of the Act, the liability to pay entry tax will arise only when the entry of

the scheduled goods is either for the purposes of use or consumption, which would involve conversion of the commodity into a different commercial commodity by subjective it to some processing or for sale for use and consumption. The petitioners purchased the articles for the purposes of fitting or fixing or installation in the factory or factory premises and they neither sold the aforesaid goods nor did they convert the aforesaid goods into different commercial commodities and since there is no use or consumption of the aforesaid commodities, the provisions of the Act are not attracted in their cases. He placed reliance upon certain decisions in support of the aforesaid submissions, which will be referred to while dealing with the aforesaid submissions,

6. Learned Counsel for the State combated all the four submissions advanced on behalf of the petitioners and submitted that the tax levied under the Act is not a sales tax, on the other hand, it is compensatory in nature and, as such Article 301 of the Constitution is not attracted, In that view of the matter, the Amending Act is not to meet the requirement of proviso to Article 304(b) of the Constitution. There is no discrimination between the goods produced and manufactured in the State and imported from outside, the State so as to violate the mandate of Article 304(a) of the Constitution of India. This apart, in view of nature of the tax under the Act, Article 304(a) of the Constitution of India is not attracted. He also submitted that the Act and the notification issued u/s 3 (1) of the Act being a part of the Act on fact also do not make any discrimination between the goods of one State or other State. He further submitted that according to Section 3 (2), the tax leviable under the Act has to be paid by the dealer liable to pay tax under the Bihar Finance Act or any other person, who brings or causes to be brought into the local areas the scheduled goods on his account or on account of his principal etc. and, thus, even a non-dealer is liable to pay tax on the entry of scheduled goods in terms of the charging section and as such even if the petitioners are not treated to be dealers of the products purchased by them for consumption and use, they are liable to pay tax under the Act. Lastly, he submitted that under the provisions of the Act, the tax is leviable on the entry of scheduled goods into a local area if the same are brought for consumption, use or sale for the purposes of consumption and use. According to the petitioners' own case, they consumed the articles purchased by them and as such they are liable to pay entry tax under the Act. It is not necessary that in all cases of consumption and use, the entry of scheduled goods into the local area should be for the purpose of consumption or use with a view to convert the same into some other commercial commodities.

7. Before adverting to the submissions advanced at the Bar, it is necessary to refer to the relevant provisions of the Act and the Constitution having relevancy in these cases. In 1993, the State Government promulgated Bihar Tax on Entry of Goods into Local Area for Consumption, Use or Sale Therein Ordinance, 1993, to provide for levy and collection of tax on entry of goods into the focal area for consumption, use or sale therein. On 25-2-1993, a notification was issued in

terms of the provisions of the Ordinance imposing entry tax on six items, namely, (i) Motor Vehicles, (ii) Tobacco Products (excluding Biris), (iii) India-made foreign liquor, (iv) vegetable and hydrogenated oil, (v) cement and (iv) crude oil. Rules were framed and notifications were issued under the Ordinance. On 22-8-1993, the State Legislature enacted the Act replacing the Ordinance and the Rules and notifications issued under the Ordinance were treated to have been issued under the Act and, thus, the Act was applicable only with regard to the aforesaid six scheduled goods.

8. A large number of writ petitions were filed before this Court challenging the vires of the Act and this Court declared the Act to be void and inoperative on the ground that nothing was produced on behalf of the State to show that the tax under the Act is either compensatory or regulatory in nature and, thus, the levy was held to be impeding the freedom of trade, commerce or intercourse guaranteed by Article 301 of the Constitution. The State cannot also invoke the protection of Clause (b) of Article 304 as the State failed to prove that the said tax constitutes a reasonable restriction imposed in public interest within the meaning of the said clause. This Court also held that the proviso to Sections 3 (1) and 6 of the Act are void being violative of Article 14 of the Constitution by virtue of both conferring unguided and uncanalised power upon the Government.

9. The State of Bihar challenged the aforesaid judgment of this Court before the Apex Court and the Apex Court vide its decision in the case of State of Bihar v. Bihar Chamber of Commerce, reported in : (1996)9 SCC 136 set aside the judgment of this Court and held the Act to be a valid piece of legislation as the tax is compensatory in nature. The Apex Court also held that even if it is assumed that it is not compensatory in nature, the requirement of Article 304(b) of the Constitution has been satisfied as the levy of tax only puts a reasonable restriction and has been done in public interest and the said legislation has received the assent of the President as provided under proviso to Article 304(b) of the Constitution,

10. Section 3 of the Act is the charging section Under Sub-section (1) of Section 3 of the Act, the tax is levied 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 by the State Government in a notification published in an official gazette. Sub-section (2) of Section 3 provides that the tax will be paid by every dealer liable to pay tax under Bihar Finance Act or any other person, who brings the scheduled goods into the local areas for consumption, use or sale therein. Section 5 deals with the registration. Section 6 deals with the power of the State Government to exempt from levy of tax any class of dealers, persons or importers, subject to the condition as provided in the said section. Section 7 provides for offences and penalties in case of contravention of any of the provisions of the Act or Rules made thereunder. Section 8 says that the provisions of the Bihar Finance Act, 1981 (Bihar Act 5,1981) and rules made thereunder shall apply with regard to the matter of assessment and collection of

tax under the Act. Section.9 confers power to make rules on the State Government and the schedule appended with the Act contains the details of the scheduled goods. On 27-11-1993, a notification was issued u/s 3 (a) prescribing rate of tax with regard to six items as mentioned above, which were included in the schedule. The notification further provided that the scheduled goods shall be liable to pay entry tax at the first point of entry of the scheduled goods. It was also provided therein that if the importer of India-made foreign liquor, vegetable and hydrogenated oil or cement is liable to pay tax under Sub-section (2) of Section 3 of the Ordinance as it then was, and is also liable to pay tax under the Bihar Finance Act by virtue of sale of such scheduled goods, then, his liability under the Bihar Finance Act shall be reduced to the extent of the tax paid under the Ordinance.

11. On 11-7-2002, the Act was amended by Bihar Ordinance No. 1 of 2001 and the Ordinance was replaced by Act 10 of 2001, published on 5-11 -2001 (Annexure-12). By the amendment a proviso was added to the definition of Entry of goods as provided u/s 2 (c) of the Act. When the goods are liable to tax u/s 12 (1) of the Bihar Finance Act, the entry of goods shall mean entry of goods into local area from any place outside the State for consumption, use or sale therein. Section 2 (c) of the Act, with the added proviso, runs as follows :

"2 (c) "Entry of goods" with all its grammatical variations and cognate expressions means entry of goods into a local areas from any place outside the local area or any place outside the State for consumption :

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." (amended provision).

Second proviso was added to Sub-section (2) of Section 3 of the Act, according to which when an importer of scheduled goods liable to pay tax under the Act, becomes liable to pay tax under the Bihar Finance Act by virtue of sale of such scheduled goods, his liability to pay tax under the Bihar Finance Act shall stand reduced to the extent of the tax paid under the Act. Sub-section (2) of Section 3, with the added second proviso, runs as follows :

"3. Charge of Tax:

(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 on 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 thousands 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." (Amended provision).

Sub-section (3) of Section 3 of the Act has been substituted, which provides that the liability to pay tax shall only be at the point of first entry into a local area.

12. The two amendments brought in Section 3 of the Act are nothing but reproduction of the two paragraphs of the notification dated 25-2-1993 as mentioned above.

13. The schedule of the Act was also amended on 25-7-2001 (Annexure-2) and in place of six scheduled goods, as mentioned above, 18 items were included in the Schedule. 12 new items included in the schedule, apart from six items which were included earlier, are (1) Tobacco, (2) Emulsion Paints, (3) Timber and plywood, (4) Sanitary fittings, (5) Air conditioner, Air cooler and Air circulators, (6) Marble, marble chips and tiles, granite, ceramic and glazed tiles, (7) Steel, plastic and PVC pipes, (8) Electrical fittings, (9) Coal, (10) Iron and steel, (11) Paper including waste paper, (12) Computer hardware and software.

14. Part XIII of the Constitution deals with the Trade, Commerce and Intercourse within the territory of India. Article 301 provides that the Trade, Commerce and Intercourse throughout the country shall be free. Any law, which directly and immediately impedes the freedom of trade, commerce and intercourse throughout the country shall be violative of the aforesaid article unless the said law stands the test as provided under Article 302 in the case of law made by the Parliament and Article 304 with regard to the law made by the State Legislature. Article 304(a) empowers the State Legislature to impose on goods imported from other States any tax, which is charged with regard to the similar goods manufactured and produced in that State. However, while making such law, the State cannot discriminate between the goods imported from outside State and goods manufactured and produced inside the State. In other words, it empowers to impose tax on the goods imported from other States but there should be no discrimination between the goods imported from other States and the goods manufactured or produced inside the State. Article 304(b) of the Article empowers the State Legislature to make the law putting reasonable restrictions upon the freedom of trade, commerce and intercourse with or within that State, which is required in the public interest, provided that no bill or amendment with regard to the law made u/s 304 (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President.

15. The Apex Court has considered the scope of Articles 301 to 304 of the Constitution in catena of cases and some of them will be referred to hereinafter. The settled law is that there should be a free flow of trade, commerce and intercourse throughout the country and if any Act imposes a direct and

immediate restriction or impedes the free flow or movement of trade etc., it attracts the provision of Article 301 and the said Act can be valid only if it meets the requirement of Article 302 in the case of law made by the Parliament and Article 304 in the case of law made by the State Government. Imposition of tax is also one of the restrictions for the purpose of Article 301 and taxation law, which directly or immediately impedes the trade, will come within the purview of Article 301 of the Constitution. However, the taxes, which are either regulatory or compensatory in nature are outside the purview of Article 301 of the Constitution and once they are out of the purview of the same, Articles 302 and 304 of the Constitution are not attracted.

16. The first decision rendered by the Apex Court in this connection is *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, . In that case, the Apex Court held that a rational and workable test has to be applied while determining the limits of the width and amplitude of the freedom guaranteed by Article 301. If the law puts immediate or direct restrictions on trade, the same is violative of Article 301 and the law would be void. It was held as follows :

"Our conclusion, therefore, is that when Article 301 provides that trade shall be free throughout the territory of India it means that the flow of trade shall run smooth and unhampered by any restriction either at the boundaries of the States or at any other points inside the States themselves. It is the free movement or to be saved, and if any Act imposes any direct restrictions on the very movement of such goods it attracts the provisions of Article 301 and its validity can be sustained only if it satisfies the requirements of Article 302 or Article 304 of Part XIII. At this stage we think it is necessary to repeat that when it is said that the freedom of the movement of trade cannot be subject to any restrictions in the form of taxes imposed on the carriage of goods or their movement all that is meant is that the said restrictions can be imposed by the State Legislatures only after satisfying the requirements of Article 304(b). It is not as if no restrictions is at all can be imposed on the free movement of trade."

It was also held :

"Thus considered we think it would be reasonable and proper to hold that restrictions, freedom from which is guaranteed by Article 301, would be such restrictions as directly and immediately restrict or impede the free flow or movement of trade. Taxes may and do amount to restrictions; but it is only such taxes as directly and immediately restrict trade that would fall within the purview of Article 301....We are, therefore, satisfied that in determining the limits of the width and amplitude of the freedom guaranteed by Article 301 a rational and workable test to apply would be: Does the impugned restriction operate directly or immediately on trade or its movement?"

17. The matter was again considered by the Apex Court in the case of *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, . In that case Section 4 (1) of the Rajasthan Motor Vehicle Taxation Act provided

for levy of tax on all motor vehicles used in any public place or kept for use at the rates specified in the schedules. The vires of the Act was challenged as violative of Articles 301 and 304(b) of the Constitution. The matter was disposed by a Constitution Bench of seven Judges. The Apex Court held the Act to be compensatory in nature and as such it was out of the purview of Article 301. The majority view taken in *Atiabari Tea Co. Ltd.* case (supra) was approved by majority view with only one clarification that the regulatory measures or measures imposing compensatory taxes for the use of trading facilities are beyond the purview of Article 301 and as such are not to meet the requirements of Article 304(b) of the Constitution. It was held as follows:

"The interpretation which was accepted by the majority in the *Atiabari Tea Co.* case is correct, but subject to this clarification. Regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by Article 301 and such measures need not comply with the requirements of the proviso to Article 304(b) of the Constitution."

18. The same view has been reiterated by the Apex Court in the case of *Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another*, and other case decided later on. It is not necessary to overburden this judgment by referring to all the judgments. The points raised by the petitioners will be discussed in *seriatum*.

Point No. 1.

19. So far as the first point is concerned, according to the learned Counsel for the petitioners, the Principal Act was passed after previous assent of the President in terms of proviso to Article 304(b) of the Constitution, whereas, in the case of the Amendment Act, no such previous assent has been taken and as such the Act is violative of Article 304(b) of the Constitution. This submission has to be rejected for the simple reason the the Apex Court in the case of *Bihar Chamber of Commerce* (supra) has already held in paragraph 12 that the tax imposed under the Act is compensatory in nature and as such it is outside the purview of Article 301 of the Constitution and in that view of the matter there is no question of applicability of Article 304 of the Constitution. Thus, in view of the fact that the Act is outside the purview of Articles 301, Article 304(b) of the Constitution is not attracted and as such there was no requirement in law in terms of proviso to Article 304(b) of the Constitution to take previous assent of the President at the time of amendment. Point No. 2

20. To appreciate the second point, it is to be stated that according to the learned Counsel for the petitioners, after the addition of the scheduled goods in the schedule, a notification has been issued u/s 3 (1) of the Act prescribing the rates of entry tax and restrictions with regard to the same. In this connection, he drew our attention to the notification dated 25-7-2001, wherein so far as two items i.e., Tobacco and Tobacco products are concerned, the entry tax is leviable

on entry of goods into a local area in Bihar from another such area or from any place outside the Bihar, whereas, with regard to the remaining articles, including the articles purchased by the petitioners, the entry tax is leviable with regard to the petitioners, the entry tax is leviable with regard to the entry of goods into a local area in Bihar from any place outside Bihar. According to the learned Counsel for the petitioners, there is a discrimination between the goods manufactured and produced inside the State, which is divided into several local areas and the goods imported from outside the State. According to him, there is a discrimination against the imported goods and thus, the notification, which is a part of the Act with regard to the scheduled goods from Items No. 3 to 18, is violative of Article 304(a) of the Constitution, which though empowers the State to impose tax on goods imported from other States but creates a discrimination against the imported goods. In support of the said submission, he relied upon the two judgments of the Apex Court i.e., *Shree Mahavir Oil Mills and Another Vs. State of Jammu & Kashmir and Others*, and *Loarn Steel Industries Ltd. and another etc. Vs. State of Andhar Pradesh and another*, , as well as a decision of the Karnataka High Court in the case of *Avinyl Polymers Pvt. Ltd. v. State of Karnataka*, reported in Vol. 109 S.T.C. 26.

21. In the case of *Shree Mahavir Oil Mills (supra)*, the Apex Court dealt with the scope of Article 304(a) of the Constitution and held in paragraph No. 8 as follows :

"Article 304(a), though worded in positive language, has a negative aspect. It is, in truth, a provision prohibiting discrimination against the imported goods. In the matter of levy of tax the article tells the State Legislatures "tax you may the goods imported from other States/Union Territories but do not, in that process, discriminate against them vis-a-vis goods manufactured locally." In short, the article says : levy of tax on both ought to be at the same rate. This was and is a ringing declaration against the States creating what may be called "tax barriers"- or "fiscal barriers", as they may be called, at or along their boundaries in the interest of freedom of trade, commerce and intercourse throughout the territory of India, guaranteed by Article 301."

The Apex Court having found that discrimination has been made with regard to imported edible oils from other States, held the provisions to be discriminatory and violative of Article 301 and 304(a) of the Constitution.

22. In the case of *Lohra Steel Ltd. (supra)*, the Apex Court found that the State Government made a discrimination between the goods manufactured within the State and outside the State in the matter of sales tax and, accordingly, held that the same is violative of Article 304(a) of the Constitution.

23. The decision in the case of *Avinyl Polymers Pvt. Ltd. (supra)* does not help the petitioners of these cases. The Division Bench having found that though the tax under the Karnataka Act is compensatory in nature, held that the same is ultra vires Article 301 of the Constitution. Once the Act was held to be

compensatory in nature, there is no question of applicability of Article 301 of the Constitution. This apart, in that case, as per the Government notification, the raw materials used by the manufacturers and purchased from outside and brought into the local areas were liable to pay entry tax at 1 percent but similar goods of the State of Karnataka and brought into those very local areas have been exempted from such levy. In that situation, it was held that the notification was discriminatory in nature. That question does not arise in this case. In the present cases, there is no sufferance to the manufacturer or purchasers of scheduled goods No. 3 to 18 brought from outside as in this case, their liability under the Bihar Finance Act is adjusted towards the payment of entry tax under the Act.

24. The settled legal position has already been indicated above. In this case, the tax has been held to be compensatory in nature and as such the same do not contravene Article 301 of the Constitution, thus, question of meeting the requirement of Article 304(a) of the Constitution for saving it does not arise. Article 304(a) has no application at all in this case.

25. There is no discrimination regarding entry of the goods from local areas inside the State and outside the State. According to the newly added proviso to Section 2 (c) of the Act, if the scheduled goods are liable to pay tax under the Bihar Finance Act, then the entry of goods shall mean entry of goods into the local area from any place outside the State for consumption, use or sale therein. In the light of the aforesaid amendment in Section 2 (c) of the Act, a notification dated 25-7-2001 has been issued describing the conditions for levy of entry tax. Items No. 3 to 18 of the notification, which included the articles purchased by the petitioners are liable to pay tax under the Bihar Finance Act and as such it has been stated against each of the entries that the liability to pay entry tax will arise only when the goods are brought from outside the State. With regard to items No. 1 and 2, the same are not liable to pay tax under the Bihar Finance Act as stated by the learned Counsel for the State and in that case it is mentioned that the entire tax will be leviable when the goods are brought either from one local area into other local area or from outside the State. There is purpose for making the aforesaid two separate provisions under the Act. According to the newly added proviso to Section 3 (2) of the Act, which was there from before by issuance of the notification when an importer of scheduled goods liable to pay tax under the Act becomes also liable to pay tax under the Bihar Finance Act by virtue of sale of such scheduled goods, his liability to pay tax under the Bihar Finance Act shall stand reduced to the extent of tax paid under the Act. Thus, those Items No. 3 to 18 in the notification are liable to pay tax under the Bihar Finance Act and as such liability under the Bihar Finance Act has to be reduced to the extent of the tax paid. Under the Act, there is no question of such adjustment in the case of the products not liable to pay tax i. e., Items 1 and 2 of the notification and as such the liability has been fixed with regard to entry of scheduled goods from the other local areas inside the State or outside the State. Thus, the said point has no substance. Point No. 3

26. So far as the third point is concerned, the dealer under the Act has been defined in Section 2 (b) thereof, according to which it has the same meaning as assigned to it under the Bihar Finance Act. Section 2 (e) of the Bihar Finance Act defines the dealer. However, it is not necessary to reproduce the same for the simple reason that under Sub-section (2) of Section 3 of the Act, the dealer as well as non-dealer both are liable to pay entry tax with regard to entry of scheduled goods into the local area. No doubt, learned Counsel for the State submitted that as the definition of the dealer under the Act is the same as under the Bihar Finance Act and, admittedly, the petitioners are registered dealers under the Bihar Finance Act, they are dealers within the meaning of the Act but we do not go into the said question in view of the specific provisions making non-dealer also liable to pay entry tax if the scheduled goods are brought in the local area for the aforesaid three purposes. Point No. 4

27. According to the provisions of the Act, neither entry of the scheduled goods into the local area nor sale of such goods is sufficient to attract the provisions of the Act. Entry of Scheduled goods in the local area as well as sale should be for the purposes of use or consumption. If the scheduled goods brought in the local area are not for the purpose of use or consumption or the sale for the purposes of use or consumption, scheduled goods are not liable to entry tax. It is not necessary that for the use and consumption there should be always conversion of the scheduled commodity into a different commercial commodity by adopting some processing. The articles may be used or consumed in different way. Sometimes due to consumption, articles itself may stand destroyed, wasted or used etc. Sometimes, the articles may remain unused even without using them up. This question in our view is no longer *res Integra* and has been decided by a Constitution Bench of the Apex Court in several cases. Reference in this connection may be made to the case of *Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality*, . In that case, the question for consideration was under the Bombay Municipal Boroughs Act. The provision of the said Act empowered the State Government to make a law with regard to levy of octroi tax on animals or goods or both, brought within the octroi limits for consumption, use or sale therein. The *Burmah-Shell Company* was manufacturing petrol and other petroleum products in its refineries situated outside the octroi limits of Belgaum Municipality. The Company brought the products inside the said area either for use or consumption by itself or for sale to consumer or its dealers and licensees who in their turn sold them to the consumers, who consumed it either in the local are or outside the local area and the goods sent by the Company from Depot situated in the local area to extra-municipal points where they were brought and consumed by persons other than the Company. The Municipality charged octroi duty on all the goods brought inside the local area, which was challenged by the Company. The Apex Court considered the scope of the words "use and consumption" and held that the Company was liable to pay octroi tax on goods brought into local area to be consumed by itself or sold by it to consumers direct and for sale to dealers who

in their turn sold the goods to consumers within the municipal area irrespective of whether such consumers brought them for use in the area or outside it. The Company was, however, not liable to pay octroi duty in respect of goods which it brought into the local area and which were re-exported. The meaning of the words "use and consumption" was considered and it was -held by the Apex Court that the goods should be brought into the local area not with a view to taking them out again but with a view to their retention either for use without using them up or for consumption in a manner which destroys, wastes, or uses them up. It is relevant to refer paragraph 20 of the said judgment, which runs as follows:

"20. It is not the immediate person who brings the goods into a local area who must consume them himself the act of consumption may be postponed or may be performed by someone else put so long as the goods have been brought into the requirements of the Boroughs Act and octroi is payable. Added to the word "consumption" is the word "use" also. There may be certain commodities which though put to use are not "used up" in the process. A motor car brought into an area for use is not used up in the same sense as food-stuffs. The two expressions use and consumption together therefore, connote the bringing in of goods and animals not with a view to taking them out again but with a view to their retention either for use without using them up or for consumption in a manner which destroys, wastes, or uses them up. In this context, the word "consumption", as has been shown above, must receive a larger meaning than merely the act of consuming in the generally understood sense."

28. The same view was reiterated by another Constitution Bench of the Apex Court in the case of *Hiralal Thakorlal Dalal Vs. Broach Municipality and Others*, , as well as in the case of *Municipal Council, Jodhpur Vs. Parekh Automobiles Ltd. and Others*, .

29. The said question was again considered by two Judges Bench of the Apex Court in the case of *Entry Tax Officer, Bangalore v. Chandanmal Champalal and Co.*, reported in Vol. 95 S.T.C. page 5. The Apex Court relying upon the cases of *Burma-shell Oil Storage and Distributing Co. of India Ltd.*, (supra), *Hiralal Thakdorelal* (supra) and *Municipal Council, Jodhpur* (supra) held that the sale of goods in the local area must be for consumption and sue therein. If the scheduled goods are sold Within the local area for the purposes of being taken out of that local area and are actually taken out, the entry tax is not leviable.

30. In the case of *Bihar Chamber of Commerce* (supra), the Apex Court has also considered the scope of the words "use, consumption or sale therein", and held that the entry tax is a tax levied under the Act at the point of entry of goods into a local area for the purpose of consumption, use or sale in that area. In paragraph 24, it was opined as follows :

"Entry of tax is a tax levied at the point of entry of goods into a local area for the purpose of consumption, use or sale therein. It is not a tax on sale. It is a tax on

the entry of goods into a local area and it is precisely because of this that the petitioners say, Article 301 is attracted. They cannot, at the same time, say that it is not a tax on entry but a tax in the nature of a tax on sale apart from the fact that such a contention is wholly misconceived. Taxes on sale and purchase of goods are provided by Entry 52 in List II. Moreover, Entry 52 has been the subject-matter of several decisions of this Court which say that the tax is upon the entry of goods into a local area i.e., upon entry of goods for the purpose of consumption, use or sale therein. Neither mere entry of goods is enough to attract the levy nor the mere sale thereof within the local area. What attracts the levy under Entry 52 (and under the impugned enactment) is the entry of goods into a local area for consumption or for use or for sale within that local area for the purpose of consumption or use within that local area. Indeed, when it was contended by one of the States, State of Karnataka, that the expression sale occurring in Entry 52 should be given its full and normal meaning and should not be confined to sale of goods in a local area for consumption or use therein, the contention was rejected by this Court with reference to the earlier decisions of this Court (See *Entry Tax Officer, Bangalore Vs. Chandanmal Champalal and Co. Etc. Etc.*, . The said decision refers to and follows the earlier decisions of this Court on the point."

31. A Division bench of this Court has also considered the said question in the case of *Hindustan Lever Ltd. and Another Vs. State of Bihar and Others* and relying upon the decision of the Apex Court in the case of *Burma-Shell Oil Storage and Distributing Co. of India Ltd. (supra)*, it was held that liability to pay tax under the Act will come when the scheduled goods are brought in the local area for use or consumption or for sale for consumption in that local area or taken out and consumed in other local area.

32. Learned Counsel appearing for the petitioners relied upon paragraph 14 of the judgment of the Apex Court in the case of *Mafatlal Industries Ltd. Vs. Nadiad Nagar Palika and Another*, and submitted that the words "use and consumption" mean conversion of the commodity into another commercial commodity by adopting some processing, In that case, it appears that octroi was leviable under the provisions of the Gujarat Municipalities Act and according to the definition the octroi means a tax on the entry of goods into the limits of a municipal borough for consumption, use or sale therein. The said provisions are similar to the provisions under the Act. The appellant in the aforesaid case brought cloth pieces of 100 metres length within the octroi limits of Nadiad town and cut the same into pieces with a view to meet the requirement of the relevant excise rules and the demands in the market and sent outside the octroi limits of the said town. The question posed for consideration in the said case was whether the cloth pieces of 100 metres" length brought into octroi area and cut into similar pieces within that area and then exported would be liable to levy of octroi or not. While dealing with the said matter, in paragraph 14 the Apex Court held that mere physical entry of goods into the octroi limit is not sufficient to attract the provision unless use and consumption would involve conversion of the

commodity into a different commercial commodity by subjecting it to some processing. It was held in paragraph 14 as follows :

"Situating thus, we hold that mere physical entry of goods into the octroi limits would not attract levy of octroi unless goods are brought in for use or consumption or sale. Use and consumption would involve conversion of the commodity into a different commercial commodity by subjecting it to some processing."

33. As stated above, admittedly in that case pieces of clothes were brought into local area and they were not used or consumed in that local area. In that context, it was found that there was only physical entry of the goods without any of the said two purposes and as such it was held that the octroi tax or entry tax was not leviable on the goods. The words "use and consumption", as stated above, have been interpreted by the Apex Court and the goods may be used or consumed in different way. It is not necessary at all that the use and consumption must result into conversion of the scheduled goods into some other commodities. It may be one of the ways of use and consumption but that is not all. As such, the said observation made in paragraph 14 by the Apex Court was with reference to the facts of the said case.

34. If the interpretation as put forward by the petitioners with regard to the words "use and consumption" as given in the definition of entry of goods under the Act is accepted then that will run contrary to the object and purpose of the Act. It is not a tax on the conversion of the scheduled goods from one commodity to another commodity by adopting some processing. It is entry of goods for consumption and use, which, in the words of the Apex Court as quoted above, means for use without using them up or consumption in a manner which destroys, wastes or uses them up.

35. Thus, the said submission advanced on behalf of the petitioners is devoid of any substance.

36. Admittedly, the petitioners are purchasing some of the scheduled goods and utilising the same for the purposes of fitting or fixing or installation and for other purposes in the factory or factory premises. Thus, the entry of scheduled goods into local area is for the purpose of use and consumption and as such liable to pay tax under the Act.

37. For the reasons aforementioned, I do not find any merit in these two writ petitions and they are, accordingly, dismissed.