

(2009) 07 KAR CK 0093
In the Karnataka High Court
Case No : Writ Petition No's. 39540 of 2003

L and T Case Equipment Pvt. Limited

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 24-07-2009

Acts Referred:

Constitution of India, 1950 — Article 301, 304 (a)
Karnataka Tax on Entry of Goods into Local Areas for Consumption, Use or Sales
Therein Act, 1979 — Section 4 B, 4 BB

Citation : (2009) ILR (Kar) 3072 : (2010) 2 KCCR 1586 : (2010) 8 RCR(Civil)
897 : (2010) 27 VST 447

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : A. Rama, S. Narayana, M. Thirumalesh, Prakasha Hegde K., G.K.V. Murthy, D.S. Joshi, S. Parthasarathi, Mahendranath Ramani, G. Rabinathan, Atul Alur, Krishnamoorthy, D., Uday Kumar Singh, H.D. Joshi, H.B.V. Patil, I.R. Biradar, Sundaraswamy Ramdas, Anand, E.R. Indra Kumar, C.H. Jadhav, Shalini Patil, M. Vishwajith Rai, Prasanna V.R., M.B. Kulkarni, Ravi B. Naik, Ranga Ramu, Associates, Ganesh Bhat Y.H., Padma S. Uttur, Patel D. Karegowda, Jagadish Patil, B.R. Sundararaja Gupta, Vani H., R.V. Prasad and M.R. Narayan and Co, for the Appellant; Niloufer Akber, AGA, K.M. Shivayogiswamy, G.P., Anand, G.P., B.L. Sanjeev, G.P. and Manjunath, G.P., for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—In all these writ petitions the petitioners have challenged the constitutional validity of Section 4-B and 4-BB of the Karnataka Tax on Entry of Goods into Local Area Act, 1979, for short, hereinafter referred to as the "Act" and the notification No. FD 41 CET 2003(iii) dated 26.07.2003 issued by the Government of Karnataka prescribing the rate of entry tax on the motor vehicles mentioned therein.

2. The petitioners are all dealers registered under the provisions of the Karnataka Sales Tax Act, 1957 and Karnataka Tax on Entry of Goods into Local Areas Act,

1979. As the constitutional validity of the aforesaid provisions are under challenge, it is not necessary to set out the facts of each case.

3. Section 4-B of the Act was the charging Section in respect of levy of entry tax on motor vehicles. The said Section was inserted in the Act for the first time with effect from 01.04.1995 by the Karnataka Tax on Entry of Goods (Amendment Act), 1994 (Karnataka Act No. 45 of 1994). Number of writ petition were filed before the High Court challenging the constitutional validity of Section 4-B of the said Act on the ground that it is ultra vires Articles 301 and 304(a) of the Constitution of India, as the tax was sought to be levied on the entry of motor vehicles brought from outside the state whereas locally manufactured motor vehicles were outside the charging section, in the case of Syndicate Bank Vs. State of Karnataka and Others, , this Court declared Section 4-B as violative of Articles 301 and 304(a) of the Constitution of India. The appeal filed by the State in Writ Appeal No. 5593-5621 and 6429 of 1999 against the said decision of the learned Single Judge was dismissed by a Division Bench of this Court vide order dated 24-11-1999. When the matter stood thus, the said Section 4-B was substituted by new Section 4-B and 4-BB with effect from 1-4-1995 by the Karnataka Tax on Entry of Goods (Amendment) Act, 2000 (Karnataka Act No. 3 of 2003).

4. The petitioners submit that the present Section 4-B and 4-BB also has in no way cured the defect which has been pointed out by this Court in the case of Syndicate Bank. It is virtually the same as the original Section 4B which has been struck down as unconstitutional by this Court. As per Section 4BB(2), if motor vehicles manufactured outside the State &re brought into a local area, then the sales tax paid on it is liable to be deducted from the entry tax payable. The effect of Section 4-B and 4-BB is that when sales tax suffered by motor vehicles purchased inside the State are brought into a local area, no entry tax is payable on it. On the other hand, if a motor vehicle is brought into the State from outside the State, entry tax is payable on it irrespective of whether sales tax has been paid on it in the other state. Thus, there is clear discrimination against vehicles purchased from other States and brought into the State via-a-via vehicles purchased inside the State.

5. The respondents have filed counter stating that Chapter II-A which included Section 4-B was inserted in the Karnataka Tax on Entry of Goods Act, 1979 (the Act) by Karnataka Act 45 of 1994 dated 25th October 1994 providing for levy of tax on entry of motor vehicles from outside the State into a local area for use or sale therein at rates not exceeding the rates specified under the Karnataka Sales Tax Act, 1957, to be fixed by Government by Notification. Karnataka Act 45 of 1994 was notified to come into force from 1st April, 1995 by notification No. FD 43 CET 95(1} dated 31st March, 1995 and pursuant to the same the Government issued notification No. FD 43 CET 95 (3) dated 31st March, 1995 specifying that tax shall be levied and collected from 1st April, 1995 on entry of motor vehicles at the rates specified. The validity of Section 4-B inserted by Karnataka Act 45 of

1994, was questioned before the High Court. This Court on 26th July, 1999 in the case of Syndicate Bank and Ors. v. State of Karnataka held that, the provision is violative of Articles 301 and 304(a) of the Constitution as it discriminated between goods imported from outside the State and locally manufactured goods. It had however suggested that there could be provision by which no discrimination between the imported goods and locally manufactured goods is given and the amount of entry tax is given adjustment in the total liability of sales tax or the amount of sales tax already paid could be given adjustment under the provisions of Entry Tax Act. The Writ Appeal preferred against this judgment was dismissed by this Court on 24th November, 1999, The State had filed a SLP before the Supreme Court in CA Nos.8129-48/2000 and the same has been dismissed.

6. In the meanwhile, considering the above suggestion of this Court and similar scheme of Maharashtra State for levy of entry tax on motor vehicles from outside the State with the facility of reduction of entry tax liability to the extent of sales tax paid in other State on purchase of such motor vehicles (apart from reduction of entry tax payable to extent of tax paid under the Karnataka Sales Tax Act, 1957 and also reduction of sales tax payable under the Karnataka Sales Tax Act, 1957 to the extent of entry tax paid) which has been upheld by the Hon'ble Supreme in the case of Shaktikumar M. Sancheti and Another Vs. State of Maharashtra and Others, the act was sought to be amended by the Karnataka Tax on Entry of Goods (Amendment) Bill, 2000. The Bill provided for substitution of Section 4B with Sections 4B and 4BB retrospectively from 1st April 1995, and the same after its due passage in the State Legislature was sent for Presidential assent. The Bill received the assent of the President on 7th March, 2003 and was notified on 17th March 2003 as Karnataka Act 3 of 2003.

7. It is submitted that though the substituted Section 4B is almost similar to the earlier Section 4B which was struck down by this Court, it has to be read with the new Section 4BB substituted along with Section 4B. With the combined reading of Sections 4B and 4BB, which provides for levy of entry tax (at the same rate of sales tax under the Karnataka Sales Tax, 1957) on motor vehicles brought into the State with suitable reduction towards general sales tax or Central Sales Tax paid on their purchase in another State or Union Territory there is no discrimination in the entry tax payable on motor vehicle imported into the State and motor vehicle manufactured in the State. The provisions of Section 4BB remove the defect pointed out by this Court in the Syndicate Bank case, Hence, the petitioners' contention that Section 4BB are violative of Articles 301 and 304(a) of the Constitution is baseless and untenable.

8. Sri G. Sarangan, the learned senior counsel leading the arguments on behalf of all the petitioners contended that the impugned provisions are violative of Article 301 read with 304(a) of the Constitution of India and therefore, they are ultra vires and liable to be quashed. The discrimination is writ large on the face of the provision. This Court in the Syndicate Bank's case has quashed a similar

provision which has been upheld by the Apex Court. Merely because new provision is made for refund of tax paid under the State sales tax or the Central sales tax and on such computation the tax levied at the entry point could be almost identical with the tax paid by a local dealer, would not render the provisions valid. "Any tax" in Article 304(a) of the Constitution means same tax which is levied on an importer and which is not levied on a local dealer. The discrimination should be considered qua the same tax and not with regard to different taxes. The entry tax is a tax on entry and not on sale, whereas sales tax is a tax on sale. The two taxing events are totally different and operate at different points of time. The violation of Article 304(a) of the Constitution cannot be justified on the ground that the combined effect of two types of taxes imposed under different laws and having different taxing events which ultimately imposes the same amount of tax on both the importer and the local dealer.

9. Sri Shivayogimath, the learned Government Advocate stoutly defending the amendment contended that the said amendment is brought on the suggestion of this Court in *Syndicate Bank's* case to the effect that there could be a provision by which no discrimination between imported goods and locally manufactured goods is made and the amount of entry tax is given adjustment in the total liability of sales tax or the amount of sales tax already paid could be given adjustment under the provisions of the Entry Tax Act. The impugned provisions are in conformity with the said suggestion and therefore, it cannot be found fault with. Secondly, it was contended that the Hon'ble Supreme Court in the case of *Shaktikumar M. Sancheti and Another Vs. State of Maharashtra and Others*, has upheld the constitutional validity of similar provision under the *Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987*. The said judgment has been followed by the Gujarat High Court in the case of *Eagle Corporation Private Limited v. State Of Gujarat and Ors.* 2007 (6) VST 560 (Guj.). Therefore, the concept of adjustment is well recognized, which saves the impugned provision under Article 304(a) of the Constitution.

10. Therefore, the point that arise for consideration in these Writ Petitions is:

Whether the Impugned provisions are violative of Article 301 read with 304(a) as the discrimination is writ large on the face of it even though the benefit of deduction of the sales tax is given to the importer by way of refund?

11. A Division Bench of this Court in the case of *Avinyl Polymers Limited v. State of Karnataka and Ors.* 1998 109 STC 26j was called upon to decide the legality of two notifications issued u/s 3(1) of the Act. The said notifications were impugned on the ground as offending Article 304(a) of the Constitution since they resulted in causing discrimination in the matter of levy of entry tax under the Act between similar goods manufactured or produced in the State of Karnataka and those imported from other States. After considering the rival contentions, the Division Bench held that, on the raw materials brought by the petitioners from outside the State of Karnataka, a tax at the rate of 1 per cent is liable to be paid on entry into the local area whereas for the similar goods produced in the State, no tax

has been prescribed Thus, keeping in view the rate of entry tax, there is a clear discrimination between the two and thus offends Article 304(a), Once the discrimination is made out, the enquiry by the Court ends. The price structure of the imported goods Vis-?-vis the locally manufactured goods or the economics of the importer need not be gone into. Therefore, the said notifications were quashed on the ground of offending Article 304(a) of the Constitution. The said notifications are ultra vires the powers of the State Government both on the ground of causing discrimination in terms of Article 304(a) of the Constitution of India and also on the ground of exceeding the legislative delegation made in its favour u/s 3(1) of the Act.

12. Against the said order Special Leave Petitions came to be filed before the Apex Court. The Supreme Court disposed of the Special Leave Petitions by holding that, the counsel for the parties agree that the appeals filed by the State of Karnataka have become infructuous. It is because the aforesaid notifications of March 30, 1994 and March 31, 1997 were superseded by notification dated January 7, 1998 and notification dated September 23, 1998 which are retrospective in character, The later notifications are subject matter of challenge before the Karnataka High Court. As far as the State of Karnataka is concerned, it is not seeking to realise any tax under the earlier notifications dated March 30, 1994 and March 31, 1997. Therefore, the appeals filed by the State of Karnataka have become infructuous and nothing more survives.

13. The respondents also preferred an appeal challenging the portion of the order which held the entry tax was compensatory in nature. The said finding of the Division Bench was set aside without going into the merits and the High Court was given the opportunity to go into the said question afresh while deciding the Writ Petitions which have been filed challenging the subsequent notifications. It was also made clear that the High Court while deciding the fresh petitions will not be bound by the earlier decision.

14, Therefore, it is clear the legality of the judgment of the Division Bench declaring that the notifications were discriminatory was not disturbed and the order of the Division Bench merged with the judgment of the Supreme Court and it has become final.

15. The Karnataka Legislature by way of amendment introduced Chapter IIA, by Act No. 6 of 1995, which came into effect from 1-4-1995. The said Chapter contained a provision 4B, which read as under:

4-B Levy of tax. (1) Notwithstanding anything contained in Section 3, there shall be levied and collected a tax on the entry of any motor vehicle into a local area for use or sale therein by an importer which is liable for registration, or assignment of a new registration mark in the State under the Motor Vehicles Act, 1988

(2) The tax shall be levied on the purchase value of the motor vehicles at such rate as may be fixed by the Government by notification but not exceeding the

rates specified in respect of motor vehicles under the Karnataka Sales Tax Act, 1957:

Provided that, no tax shall be levied and collected in respect of a motor vehicle which is registered in any Union Territory or any other State under the Motor Vehicles Act, 1988 fifteen months prior to the date on which a new registration mark is assigned in the State under the said Act.

(3) the tax levied under this Section shall be paid by the importer in such manner and within such time as may be prescribed.

16. The said provision was challenged before this Court. This Court in the case of *Syndicate Bank v. State of Karnataka and Ors.* 2000 229 STC 155 decided on 26.7.1999 struck down the aforesaid provision on the ground that the tax is discriminatory and thus violates Article 304(a) of the Constitution. It held that, if locally manufactured motor vehicles are moved from one local area to another, they are not liable to entry tax and it is only the importer who has been subjected to tax. Therefore, the provisions of Section 4B of the Act are directly hit by Articles 301 and 304(a) of the Constitution and consequently it was declared ultra vires the Constitution, in the course of the said judgment the learned Judge made the following observations:

There must be a provision by which no discrimination between imported goods and locally manufactured goods is given and the amount of entry tax is adjustment in total liability of sales tax or the amount of total tax already paid could be given adjustment under the provisions of the Entry Tax Act

17. The aforesaid judgment of the single judge was challenged in appeal which came to be dismissed. Even the SLP filed against the said order came to be dismissed. It is thereafter action on the aforesaid observations set out above the impugned provisions are enacted.

18. It is in this background, we have to appreciate the impugned provisions. The impugned provisions read as under:

4-B Levy of tax- (1) notwithstanding anything contained in Section 3, there shall be levied and collected a tax on the purchase value of a motor vehicle on entry of which is affected into a local area for use or sale there and which is liable for registration or assignment of a new registration mark in the state under the Motor Vehicles Act, 1988, at such rate as may be State Government by notification but not exceeding the rate specified in respect of motor vehicles under the Karnataka Sales Tax Act 1957 [or the Karnataka Value Added Tax Act, 2003]:

Provided that, no tax shall be levied and collected in respect of a motor vehicle which is registered in any Union Territory or any other State under the Motor Vehicles Act, 1988 fifteen months prior to the date on which a new registration mark is assigned in the State under the said Act.

(2) The tax levied wider this Section shall be paid by the importer in such manner and within such time as may be prescribed.

4-BB. Reduction of tax Mobility.- (1) Where a person liable to pay tax under this Act becomes liable to pay tax under the Karnataka Sales Tax Act, 1957 [or the Karnataka Value Added Tax Act, 2003] on the sale or purchase of such motor vehicles, then his liability under the Karnataka Sales Tax Act, 1957 fir the Karnataka Value Added Tax Act, 2003] shall be reduced to the extent of tax paid under this Act on such motor vehicle.

(2) Where the liability to pay tax under this Act is in respect of motor vehicle subjected to tax under the Karnataka Sales Tax Act, 1957, then, the tax payable under this act shall be reduced by an amount of tax already paid under the Karnataka Sales Tax Act, 1957 on such motor vehicle subject to production of proof

(3) The amount of tax leviabale under this Act shall, subject to such conditions as may be prescribed, be reduced to the extent of the amount of tax paid, if any, under the taw relating to General Sales Tax for Central Sales Tax] as may be in force in any other State or Union Territory by an importer who, not being a dealer in motor vehicle had purchased the motor vehicle for his own use.

19. The impugned notification issued under the aforesaid provision reads as under:

Government of Karnataka

No. FD 41 CET 2003 (iii) Karnataka Government Secretariat Vidhana Soudha Bangalore, dated 26-7-2003 Notification

In exercise of the powers conferred by sub-section (1) of Section 4-B of the Karnataka Tax on Entry of Goods Act, 1979 [Karnataka Act 27 of 1979] the Government of Karnataka hereby specifies that with effect Staxm the first day of January, 2000 up to 31st March 2002, the tax shall be levied and collected under the said Act, at the rates specified in column (3) of the table below on the entry of Motor Vehicles specified in the corresponding entries in column (2) thereof.

Table

Sl. No. Category of Motor Vehicles Rate of tax under (1) (2) (3)

1 Motor cars including motor taxi 12% cabs 2 Motor cycles including scooters, 12% motorettes, mopeds and cycle combinations 3 Jeeps, Trekkers and Vans (all 12% petrol driven) 4 Light diesel vehicles 12% 5 Motor Lorries including motor omni 12% buaea 6 Three wheeler motor vehicles (auto rickshaws) 7 Chassk of motor vehicles 8% 8 Tractors and power tillers (other 4% than those meant for use as agricultural machinery) and trailers of all kinds of tractors and power tillers 9 Earth movers, such as Dumpers, 8% Dippers, Bulldozers and the like and adopted for use on road 10 Truck-bus chassis with side 12% bodies 11 Any other Motor Vehicle not 12% covered by items above. By Order

and in the name of The Government of Karnataka

Sd/- (S. Divakar) Under Secretary to Government Finance Department (CTI)

20. The Apex Court in *Bhakta Kumar M. Sancheti and Anr. v. Stats of Maharashtra and Ors.* 1995 96 STC 669/was called upon to decide the validity of a similar provision in the Maharashtra Tax on Entry of Motor Vehicles into Local Area Act, 1987. The challenge to the said provision were on the following grounds:

(a) That the incidence of tax being on the purchase value of the motor vehicle it was in the nature of purchase tax.

(b) Local area having a connotation of its own and basing understood as an area which was administered by a local authority, the tax on entry of the vehicle in the State as such was bad for being vague and contrary to the concept of the local area as understood.

(c) It being in addition to the tax levied and collected as octroi by a municipal corporation or other local authorities was violative of Article 286 of the Constitution.

21, The Supreme Court negated the first contention on the ground that so long as the levy is on the entry of the vehicle into a local area for use or as therein it cannot be said to be invalid merely because of the measure of levy has been provided to be purchase value of the motor vehicle. The second contention was negated on the ground, the levy is not on entry of vehicle in any part of the State but in any local area in the State and, therefore it cannot be found fault with. The third contention was negated on the ground that, tax levied under different legislations enacted in exercise of constitutional power are not rendered bad on assumption that it amounts to double taxation. The taxable event for entry tax is not same as for octroi nor it is by the same authority for the same purpose and for same period.

22. In the said case the High Court did not find that the provisions violated the constitutional provision guaranteed under Article 301 of the Constitution. The correctness of the said finding of the High Court was not challenged before the Apex Court. Therefore, the Apex Court held that the levy would be held to be valid because the legislature intended to avoid any loss of sales tax in the State so long as it is not found to be invalid either by any statutory or constitutional violations. Therefore, the Supreme Court did not go into the question whether the said levy of tax violates the constitutional provision as contained in Article 301 read with Article 304(a).

23. In fact, the Supreme Court in the case of *Ranchhoddas Atmaram Vs. The Union of India (UOI)*, dealing with a similar situation observed as under:

10. Some of the High Courts have thought that this Court had decided in these cases that the maximum penalty permissible under the provision is Rs. 1,000/ -.

The fact is that the question was never required to be decided in any of these cases and could not, therefore, have been or be treated as decided by this Court.

24. Therefore, when the question whether the levy of tax under the Maharashtra Act is violative of Article 301 and 304(a) was not urged before the Supreme Court and it was never required to be decided by the Supreme Court in the aforesaid case, the said decision cannot be treated as deciding the said question in the aforesaid decision. However, the said question is urged in these batch of Writ Petitions, Therefore, this Court is called upon to decide the said question notwithstanding the pronouncement of the Apex Court in the aforesaid judgment on similar provision contained in the Maharashtra Act.

25. In this regard it is useful to refer to the judgment of the Apex Court in the case of Executive Eng., Dhenkanal Minor Irrigation Division v. N.C. Budharaj (2001) 2 SCC 721, where it is held as under:

A decision is an authority on the question that is raised and decided by the court. R cannot be taken as an authority on a different question though in some cases the reason stated therein may have a persuasive value.

26. The Supreme Court in the case at Director or Retirement A.P. and Ors. v. M.R. Apparao and Anr. 200 4 SCC 638 has held AM under:

7. So far as the first question is concerned Article 141 of the Constitution indicate that the law declared by the Supreme Court shall be binding on all courts within the territory of The aforesaid Article empower the Supreme Court to declare the law, is, therefore, an essential function of the Court to interpret a legislation. The statement of the Court on matters ether than tour tike feats may hat no binding form as the facts of two cases may not bibber. But what is binding is the ratio of the desks and no any fading of facts. R Is the principle found out upon a reason of a Judgment as a whole, in the Ought of the questions before the Court that forms the ratio and not any particular word or sentence, lb determine whether a decision has declared taw it cannot be said to be a laid when a point is disposed of on concession and what is binding is the principle underlying a decision. Judgment of the Court has to be wad in the context of questions which arose for consideration in the case in which the judgment was delivered.... The law which wm be binding wider Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given cam. So far as constitutional matters are concussed, it is a practices of the Court not to make any pronouncement on points not directly raised for decision.

27. The Supreme Court in case of the State Financial Corporation and Anr. v. Jagadamba Oil Mills and Anr. AIR 2002 SC 334 held as under:

19. Courts should not place reliance on decagons without discussion as to how the factual situation fits in with the fact situation of the decision on which reliance is placed Observations of Courts are not to he read as Euclid?s theorems nor as provisions of the states. These observations must be r3ead in the context

in which they appear. Judgments of Court are not to be construed as statutes. To interpret words, phrases and provisions of a statutes, it may become necessary for judges to embark it into lengthy discussions but the discussion is merit to explain and not of defer. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their word are not of interpreted as statutes.

28. The Constitution Bench of the Supreme Court in the case of Islamic Academy of Education v. State of Karnataka(2003) SCC 697 has held as under:

Per Khare, C.J (for himself and for Variative Balakrishnan and pasayat, J)

The answers to the questions, in the majority judgment in Pai case (in para 161 therein) are merely a brief summation of the ratio laid down in the judgment. The ratio decidendi of a judgment has to be found out only on reading the entire judgment. In fact, the ratio of the judgment is what is set out in the judgment itself. The answer to the question would necessarily have to be mad in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading a tine here and there from the judgment, one cannot find out the entire ratio decidendi of Prejudgment.

Sinha, J.

A judgment, it is trite, is not to be read as a statute. The ratio decidendi of a judgment is Us reasoning which can be deciphered only upon reading the same in its entirety. The ratio decidendi of a case or the principles and reasons on which it is based is distinct from the relief finally granted or the manner adopted for its disposal.

It is incorrect to contend that answers to the questions would be the ratio to a judgment. The answers to the questions are merely conclusions.

They have to be interpreted, in a case of doubt or dispute with the reasons assigned in support thereof in the body of the Judgment, wherefore, it would be essential to read the other paragraphs of the judgment also. It is also permissible pr this purpose (albeit only in certain cases and if there exist strong and cogent reasons) to took to the pleadings of the parties

The Judgment of this Court in T.M.A Pai Foundation will, therefore, ham to be construed or to be interpreted on the few mentioned principles, The Court cannot mad some sentences from here and there to find out the intent and purport of the decision by not only considering what has been said therein but the text and context in which it was said For the said purpose the Court may also consider the constitutional or relevant statutory provisions vis-a-vis Us earner decisions on which reliance has been placed.

29. The Supreme Court in the case of The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another, held as under:

The decision ordinarily is a decision on the case before the Court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Therefore, while applying the decision to a later case, the Court, (having with it should carefully try to ascertain the principle laid down by the previous decision. A decision often taints color the question involved in the case in which it is rendered. The scope and authority of a principle upon which a statement is expanded extends beyond the needs of a given situation the only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which amount to the ratio decidendi delisting obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without an analysis of the facts, assumed whether a similar decision must or ought to be made as a matter of small justice. Precedents without argument are of no moment. Mere casual expression carry no weight at all. Nor every passing expression of a Judge, however eminent can be treated as an ex cathedra statement having the weight of authority.

30. In a recent judgment in the case of *Sanjay Singh and Another Vs. U.P. Public Service Commission, Allahabad and Another*, dealing with the law of precedence, the Supreme Court observed as under:

10. The contention of the Commission aims overlooks the fundamental difference between challenge to the final order forming part of the Judgment and challenge to the ratio decidendi of the Judgment. Broadly speaking, every Judgment of superior courts has three segments, namely, (i) the facts and the point at issue; (ii) the reasons for the decision; and (iii) the final order making the decision. The reasons for the decision or the ratio decidendi is not the final order containing the decision. At fact, in a Judgment of this Court, though the ratio decidendi may point to a particular result, the decision (final order relating to relief) may be different and not a natural consequence of the ratio decidendi of the judgment. This may happen either on account of any subsequent event or the need to mould the relief to do complete justice in the matter. It is the ratio decidendi of a Judgment and not the final order in the Judgment, which forms a precedent. The term "Judgment" and "decision" are used, rather loosely, to refer to the entire Judgment or the final order or the ratio decidendi of a judgment.

31. Therefore, it is clear that, a judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. A decision is an authority on the question that is raised and decided by the Court, and it is an authority for what it decides and not what can logically be deduced thereupon. The decision ordinarily is a decision on the case before the Court while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. The only thing binding as an authority upon a subsequent judge is the principle upon which the case was decided. It is also to be borne in mind that so far as Constitutional matters are concerned, it is the practice of the Supreme Court not

to make any pronouncements on points not directly raised for decision. Therefore, this Constitutional question whether the similar provisions under the Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987 was violative of Article 301 read with Article 304(a) was not required to be considered by the Apex Court in the aforesaid judgment, they have not decided the said question and, therefore, the said judgment cannot be construed as a binding precedent answering the said question by merely looking into the final result of the said decision. Therefore, the said decision is of no assistance and the Court has to decide the said question in the light of the three judgments of the Apex Court rendered by the Constitution Benches, laying down the law on the point.

32. The answer to the questions raised in these Writ Petitions revolve round the interpretation of Articles 301, 302, 303 and 304 of the Constitution which is contained in Chapter XIII of the Constitution, in fact these provisions have been the subject matter of interpretation of several Constitution Bench judgments and the legal position is fairly well settled. The first Constitution Bench of the Apex Court in the case *Atiabari Tea Co. Limited v. State of Assam* AIR 1962 SC 233 interpreting these provisions held that, the main object of Article 301 obviously was to now the free flow of the stream of trade, commerce and intercourse throughout the territory of India. The doctrine of the freedom of trade, commerce and intercourse enunciated by Article 301 is not subject to the other provisions of the constitution but is made subject to the other provisions of Part XIII; that means that once the width and amplitude of the freedom enshrined in Article 301 are determined they cannot be controlled by any provision outside Part XIII. It is obvious that whatever may be the content of the said freedom it is not intended to be an absolute freedom; absolute freedom in matters of trade, commerce and intercourse would lead to economic confusion, if not chaos and anarchy; and so that freedom guaranteed by Article 301 is made subject to the exceptions provided by the other Articles in Part XIII. The freedom guaranteed is limited in the manner specified by the said Articles but it is not limited by any other provisions of the Constitution outside part XIII. That is why, Article 301, read in its proper context and subject to the limitations prescribed by the other relevant Articles in Part XIII. must be regarded as imposing a constitutional provision on the legislative power of Parliament and the Legislatures of the States. Wherever it is held that Article 301 applies, the legislative competence of the Legislature in question will have to be judged in the light of the relevant Articles of Part XIII. The freedom of trade guaranteed by Article 301 is freedom from all restrictions except those which are provided by the other Articles in Part XIII. The non-obstacle clause referring to Article 301 would go with Article 304(a) and it indicates that tax on goods would not have been permissible but for Article 304(a) with the nonobstacle clause. This incidentally helps to determine the scope and width of the freedom guaranteed under Article 301; in other words, Article 304(a) is another exception to Article 301.

33. When yet another Constitution Bench was dealing with similar matter it felt the matter should be heard by a larger Bench. Therefore, the matter was heard

by a Bench of seven Judges in the case of Automobile Transport (Rajasthan) Limited v. State of Rajasthan and Ors. AIR 1963 BC 1406 where the said Bench was called upon to decide which of the three views expressed in Atiabari Tea Co., Limited case lays down the correct law. The said Bench held that, the concept of freedom of trade, commerce and inter-course postulated by Article 301 must be understood in the context of an orderly society and as part of a Constitution which envisages a distribution of powers between the States and the Union, and if so understood, the concept must recognize the need and the legitimacy of some degree of regulatory control, whether by the Union or the States: this is irrespective of the restrictions imposed by the other articles in Part XIII of the Constitution. Most regulatory measures do not impede the freedom of trade, commerce and intercourse and compensatory taxes for the use of trading facilities are not hit by the freedom declared by Article 301. They are excluded from the purview of the provisions of Part XIII of the Constitution on the simple reason that they do not hamper trade, commerce and intercourse but rather facilitate them. The freedom granted by Article 301 does not take in regulatory measures or compensatory taxes for the use of trading facilities. Then whether we look at such measures from the point of view of Article 19(1)(g) or from the point of view of Article 301, the result will be the same. The interpretation which was accepted by the majority in the Atiabari Tea Company's 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. In the aforesaid judgment for the first time the concept of compensatory taxes was evolved by the Apex Court,

34. The law laid down in the aforesaid two judgments held the field for more than three decades. Expanding the scope of its judicial concept of compensatory taxes, a three Judges Bench of the Supreme court in the case of Bhagatram Rajeev Kumar Vs. Commissioner of Sales Tax, M.P. and Others, / enunciated the test of some connection saying that even if there is some between the tax and the facilities extended to the trade directly or indirectly, the levy cannot be impugned as invalid. The said judgment was followed by the Apex Court in the case of State of Bihar v. Bihar Chamber of commerce : 1996 (9) SCC 136. This view was doubted by yet another Bench of three Judges of the Supreme Court, who sought a reference to a Constitution Bench. Therefore, the Constitution Bench of the Supreme Court in the case of Jindal Stainless Limited and Anr. v. State of Haryana and Ors. 2006 246 STC 544 was called upon to decide the correctness of the decision in Bhagat Ram's case and Bihar Chamber of Commerce's case. In answering the reference, the Constitution Bench held that, the doctrine of "direct and immediate effect" of the impugned law on trade and commerce under Article 301 as propounded in Atiabari Tea Co. limited v. State of Assam and the working test enunciated in Automobile Transport (Rajasthan) limited v. State of Rajasthan for deciding whether a tax is compensatory or not

vide paragraph 19 of the report, continue to apply and the test of "some connection" indicated in paragraph 8 of the Judgment in Bhagatram Rajeevkumar v. Commissioner of Sales Tax and followed in the case of State of Bihar v. Bihar Chamber of Commerce is, in our opinion, not good law and, therefore, they declared the test of "some connection" as propounded in the aforesaid two judgments is not applicable to the concept of compensatory taxes and accordingly to that extent the judgments rendered by the Apex Court in those two cases has been over-ruled. It is in the background of this settled legal position, the point that arises for consideration in the instant cases has to be decided.

35. A reading of the impugned provisions make it clear that, what is levied is a tax. It is payable by the importer. The importer is defined to mean a person who brings a motor vehicle into a local area of any place "outside the State" for use or sale therein and who owns the vehicle at the time of its entry into a local area. The words "outside the State" in the definition of importer has created a charge only on the imported vehicles. The goods manufactured or produced within the State are not subjected to any such levy under the Act, as the imported goods. Therefore, the discrimination is writ large on the face of the impugned provision. The freedom of trade so declared is against the imposition of barriers or obstructions within the State as well as interstate. All restrictions which directly and immediately affect the movement of trade are declared by article to be ineffective. The only two exceptions under which the Part XIII of the Constitution held to be non applicable is that when such levy of tax is in the nature of compensatory tax or regulatory in character. Therefore, first it is to be found out whether the levy of tax is regulatory in nature or is it a compensatory tax.

36. In the budget speech of 1994-95 the then Chief Minister who was also the Finance Minister gave the following reason for imposing the entry tax on motor vehicles which reads as under:

Tax holidays and lower tax rates prevailing in neighboring areas have depleted our Sales tax revenue from motor vehicles which are high value goods. I propose to counter this trend by imposing entry tax at such rates equal to the sales tax rates on motor vehicles entering our State. The States of Maharashtra and Tamil Nadu, have already successfully levied a similar tax.

37. The object behind this levy of tax is to augment the depleted Sales Tax revenue of the Government. This measure became necessary to counter the policies of the neighboring States who have granted Tax holidays and lowered the tax on motor vehicles which are high value goods. Therefore, the tax levied is not a "compensatory tax", for the use of trading facilities. Compensatory tax is based on the principle of "pay for the Value". It is a sub-clause of a "fee". From the point of view of the Government, a compensatory tax is a charge for offering trading facilities. It adds to the value of trade and commerce. Compensatory taxes, like fees are always proportional to benefits. They are based on the principle of equivalence. For a tax to be compensatory there must be some link

between the quantum of tax and the facility/services. Compensatory tax is a recompense/reimbursement. In fact the levy of tax is to compensate the State, the loss in revenue which is said to have sustained because of tax holidays and lower tax in neighboring States.

38. The tax levied is also not regulatory in nature. The regulation extends to administrative acts which produces regulative effect on trade and commerce. The impugned provisions do not seek to contract conditions under which the activity like trade is to take place. The said provisions are not enacted to enforce discipline or conduct under which the trade has to perform. The tax is not a payment for regulation of conditions or incident! of trade or manufacture, The levy of tax do not facilitate trade. On the contrary it hampers free trade. The primary object of levy of tax is the collection of revenue, as is clear from the object behind the amendment. Therefore, the impugned levy is neither a compensatory tax nor a regulatory measure. Therefore, part XIII of the Constitution is attracted to the levy of tax and it has to satisfy the Constitutional requirement as contained in Article 301 and 304 of the Constitution as it is a law passed by the State Legislature.

39. The impugned law chooses an activity, namely, the movement of trade and commerce as the criterion of its operation and if the effect of the operation of such law is to impede the activity then the law is a restriction under Article 301. Article 301 provides, 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 the transport of goods from one part of the country to the other that is intended to be saved and if any law 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. the said discriminatory tax directly and immediately restrict or impede trade and commerce. It would fall within the purview of Article 301 and will be valid only if it comes within the terms of Article 304(a).

40. Article 304(a) enables the Legislature of a State to make laws effecting trade, commerce and intercourse. It enables the imposition of taxes on goods from other States if similar goods in the State are subjected to similar taxes so as not to discriminate between the goods manufactured or produced in that State and the goods which are imported from other States. The similarity contemplated by Article 304(a) is in the nature of the quality and kind of goods and not with respect to whether they were already subject of tax or not. Clause (a) of Article 304 authorises a State legislature to impose a non-discriminatory tax on goods imported from the sister states, even though it interferes with the freedom of trade and commerce guaranteed by Article 301.

41. The Supreme Court in the case of *Shree Mahavir Oil Mills and Anr. v. State of Jammu and Kashmir and Ors.* 1997 VOL. 104 STC 148 interpreting Article 304(a)

of the Constitution held that, the clause, 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 - and this is important to bear in mind - the clause the 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 clause 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 across along their boundaries in the interest of freedom of trade, commerce and intercourse throughout the territory of India, guaranteed by Article 301.

42. The Supreme Court in the case of State of Uttar Pradesh and Anr. v. Laxmi Paper Mart and Ors. 1997 105 STC 1 has held that, once the discrimination is made out, the enquiry by Court ends. The price structure of the imported goods vis-a-vis the locally manufactured goods or the economics of the importer need not be gone into.

43. The Karnataka legislature by law, under the impugned provisions of the Act, has not imposed any tax on motor vehicles manufactured or produced on purchase value of a motor vehicle and entry of which is effected into a local area for use or sale therein, within the local area of the State of Karnataka. Under the impugned provision such a tax is levied and collected only in respect of motor vehicle which are brought into a local area from any place outside the State for use or sale therein and who owns the vehicle at the time of entry into a local area. Therefore, the imposition of tax under the Act is discriminatory and hit by Article 304(a) of the Constitution. Realising the disseminator nature of this tax, the legislature has enacted Section 4BB, giving reduction of tax liability, to such persons who suffer tax u/s 4B. The reduction contemplated under this provision is in respect of the tax levied and collected under a different enactment namely the Karnataka Sales Tax Act, 1957 or Central Sales Tax or General Sales Tax. The question for consideration is, whether the provisions made to equalize the tax taking into consideration the tax not paid under the Act but under other provisions of another enactment, would it save the legislation from the vice provision should end there. In order to find out the discrimination what is to be seen is the impugned provisions and nothing else. The price structure of the imported goods, vis-a-vis the locally manufactured goods or the economics of the importer cannot be gone into. The levy of tax on both ought to be at the same rate. "Any Tax" in Article 304(a) of the Constitution means same tax which is levied on an importer and not levied on the local dealer. The discrimination to be considered qua the same tax and not with regard to different taxes levied under different enactment. The entry tax is on entry and not on sale whereas the sales tax is on sale. The two taxing events are totally different and operate at different points of time. Once the discrimination is established or admitted the law becomes void, as offending the Constitution, as such discrimination results in creating tax barriers or fiscal barriers. What is void cannot be restored to life by

enacting the provisions for reduction of taxes paid under a different so as to wipe out the vice of discrimination.

44. What appears to have influenced the Constitution makers while enacting Article 301 of the Constitution, is a similar provision in the American Constitution which is known as a "commerce clause". The observations made by Cardoso J in *Charles H. Baldwin v GAF. Seeling*, (1934) 294 US 511 at p.523:79 Law Ed 1032 at p. 1033 while dealing with the commerce clause contained in Article 1 Section 8, Clause 3 of the American Constitution assumes significance which is as under:

This part of the Constitution was framed wider the dominion of a political philosophy less parochial in range. It was framed -upon the theory that the peoples of the several states must sink or swim together and that in the long run prosperity and salvation am in union and not division.

45. Following the aforesaid observations, the Apex Court in *Atiabari Tea Co. Limited v. State of Assam* AIR 2961 SC 232 held as under:

34. In drafting the relevant Articles of Part XIII the makers of the Constitution were fully conscious that economic unity was absolutely essential for the stability and progress of the federal polity which had been adopted by the Constitution for the governance of the country. Political freedom which had been won, and political unity which had been accomplished by the Constitution, had to be sustained and strengthened by the bond of economic unity. It was realised that in course of time different political parties believing in different economic theories or ideologies may come in power in the several constituent units of the Union, and that may conceivably give rise to local and regional pulls and pressures in economic matters. local or regional fears or apprehensions raised by local or regional problems may persuade the State Legislatures to adopt remedial measures Mended solely for the protection of regional interest without due regard to their effect on the economy of the nation as a whole. The object of Part XM was to avoid such a possibility, Free movement and exchange of goods throughout the territory of India is essential for the economy of the nation and for sustaining and improving living standards of the country. The provision contained in Article 301 guaranteeing the freedom of trade, commerce and intercourse is not a declaration of a mere platitude, or the expression of a pious hope of a declaratory character; it is not also a mere statement of a directive principle of State policy, it embodies and enshrines a principle of paramount importance that the economic unity of the country with provide the main sustaining force for the stability and progress of the political and cultural unity of the country.

46. Therefore, the object sought to be achieved by the makers of the Constitution was, free movement and exchange of goods throughout the territory of India. It is essential for the economy of the nation and for sustaining and improving living standards of the country and its people. It should ultimately lead to one country, one people concept, and the economic benefits of the

development should reach every citizen, wherever he lives within the country. The people of the states must sink and swim together. The long run prosperity and salvation lies in union and not in division. Article 301 embodies and enshrines this principle of paramount importance that the economic unity of the country will provide the main sustaining force for stability and progress of the political and cultural unity of the country. This object is best achieved if the benefits enjoyed by the people in one state is also available to the people in other states, by demolishing this artificial boundaries and barricades separating one State from another. In the present context of globalization, privatization, and free economy the national boundaries and barriers are sought to be side lined and the benefit of economic development is sought to be made available to the people of the whole world.

47. If a State's economy could be prosperous, because of tax holidays and lower tax rates, it only shows a matured political leadership, vibrant tax planning and marshalling the resources available in the State. It is worthy of emulation by other States. By free flow of trade and commerce from such a State to neighbouring States, the people of both the States are benefited, Such benefit extend beyond the State borders, If such a policy results in depletion of revenue to the adjoining State, they must wake up to the hard realities of life, and reduce the tax burden and extend the same benefit to the people of the State, as the economy and revenue of the State also would improve. The said revenue loss, if at all could be arrested by reducing the tax burden within the State, so that there is no occasion or reason for the people of the State to go to neighbouring State to purchase the motor vehicle. In the long run both the State and the people stand to gain. In the end it is the economy of the nation which would be the winner. Instead if they want to short circuit the process by taking away the said benefit by imposing tax and neutralize the said benefit, it would be only a short time gain. It would hamper free flow of trade and commerce enshrined in the Constitution. That is what is frowned upon under Article 304(a), imposition of discriminatory tax. The State has the power to legislate and impose tax. But then, it would be a case of exercising the said legislative power, against the interests of its own people, and in derogation of the constitutional philosophy as contained in Article 301 of the Constitution, which is essential for the economy of the nation and sustaining and improving living standards of the people of the country. These taxes are indirect taxes. Ultimately, it is the common man who bears the burden of this tax. Therefore, a welfare State cannot exercise its legislative power contrary to the Constitutional scheme and take away the benefit accrued to a common man, extended by another State, on the pretext of recovering the depleted revenue of the State on account of tax holidays and lower taxes in the neighbouring State. It impedes free flow of trade, commerce and intercourse throughout the territory of India, violative of Article 301 read with 304(a) of the Constitution, as such, such provisions are void, and unenforceable. It is liable to be struck down as offending the Constitutional right.

48. Hence, the following:

ORDER

- (a) All the writ petitions are allowed. Ride made absolute.
- (b) The impugned provisions namely Sections 4B, 4BB of the Karnataka Tax on Entry of Goods into Local Areas Act, 1979 is declared as void, vires the Article 301 and 304(a) of the Constitution of India and accordingly quashed.
- (c) The notification issued in pursuance of the said impugned provision namely notification No. FD 41 CBT 2000 (iii) dated 26-7-2003 and other notifications issued under the said provisions are all quashed.
- (d) Consequently, wherever the assessment orders are passed and demands made in pursuance of the impugned provisions they also stand quashed.
- (e) Taxes paid, if any, in pursuance of the aforesaid provisions, assessment orders and demands are ordered to be refunded to the respective parties within four weeks from the date of receipt of copy of this order.
- (f) No costs.