

(2001) 03 J&K CK 0020

In the Jammu And Kashmir High Court

Case No : LPA No's. 554, 606, 607, 633, 634 and 742/99 and 116 and 259 of 2000 and OWP No's. 595-A Of 1998 and 896 of 2000

Shakti Traders

APPELLANT

Vs

State of Jammu and Kashmir and Others
 R.P. Traders
Vs State of Jammu and Kashmir and Others
 Shree
Mahavir Oil Mills Vs State of Jammu and Kashmir and Others

 Daya Chand Jain Vs State of Jammu and Kashmir and
Others
 Devi Dass Gopal Krishan Ltd. Vs State of
Jammu and Kashmir and Others
 S.K. Enterprises Vs
State of Jammu and Kashmir and Others
 Amrit
Banaspati Company Ltd. Vs State of Jammu and Kashmir and
Others
 National Dairy Development Board Vs State of
Jammu and Kashmir and Others
 Pawan Traders Vs
State of Jammu and Kashmir and Others

RESPONDENT

Date of Decision : 14-03-2001

Acts Referred:

Citation : (2001) 03 J&K CK 0020

Hon'ble Judges : B.P. Saraf, C.J.;G.D. Sharma, J

Bench : Division Bench

Advocate : Sunil Hali, Rahul Panth, M.M. Gupta and Subhash Dutt, Z.A. Shah, for the Appellant; M.A. Goni, S.K. Shukla and M. A. Bhat, for the Respondent

Judgement

B.P. Saraf, C.J.—All these eight appeals under clause 12 of the Letters Patent are directed against the common judgment and order dated

30.9.1999 of the learned Single Judge by which he dismissed the writ petitions of the appellants challenging the constitutional validity of the levy of

additional toll at the rate of 4 per cent by the State of Jammu and Kashmir ("State") on the edible oil imported into the State for re-sale with effect

from 30th May, 1997 vide SRO 184 dated 30.9.1999. The two writ petitions also involve the challenge to the same levy and the decision in these

appeals will govern those writ petitions as well. Those two writ petitions are, therefore, clubbed with these appeals for final hearing and disposal.

2. The material facts are as follows. All the appellants and writ petitioners, except appellant Nos. 4 and 6, namely, M/s Daya Chand Jain (LPA

No.606/99) and M/s S. K. Enterprises (LPA 116/2000) and writ petitioner, M/s Pawan Traders (OWP 595-A/98), are engaged in the business

of manufacture of edible oil in different States, viz. Punjab, Haryana, Gujarat and Madhya Pradesh and sale thereof, inter alia, in the State of

Jammu and Kashmir. Appellants 4 and 6 and writ petitioner in OWP 595-A/98 are dealers and distributors engaged in the business of sale of

edible oil imported in the State. All the appellants and the writ petitioners are aggrieved by the levy of additional toll at the rate of 4 per cent on the

value of edible oils imported in the State with effect from 30th May, 1997 vide SRO 184. According to them, the levy of additional toll at the rate

of 4 per cent by the above SRO on the oil imported from outside the State into the State violates article 301 of the Constitution of India. The

appellants challenged the above levy by filing writ petitions. The case of the appellants was that the levy of additional toll on the edible oils imported

into the State for resale in the State was violative of articles 301 and 304(a) of the Constitution of India. It was contended that the impugned levy

was discriminatory in nature because by the said levy edible oils imported from outside the State for the purpose of re-sale in the State were

discriminated. It was also contended that the said levy was not saved by article 304(b) of the Constitution of India. In support of this contention

reliance was placed on the decision of Supreme Court in Shree Mahavir Oil Mills and Another Vs. State of Jammu & Kashmir and Others, . The

further contention of the appellants before the learned Single Judge was that the oil imported by them being for the purpose of ""sale"" and not ""for

re-sale"", SRO 184 was not applicable and on that count also the levy of additional toll on the oil imported by them was illegal. The learned Single

Judge dismissed the writ petitions of the appellants as he was of the opinion that the levy of additional toll tax on the edible oil imported into the

State for re-sale in the State being under a different statute, namely, the Levy of Tolls Act, (""Tolls Act"")) was sustainable and the decision of the

Supreme Court in Shree Mahavir Oil Mills (supra), which was a case of challenge to the levy of sales tax, was not applicable. The learned Single

Judge also rejected the contention of the appellants that the goods having been imported for the purpose of sale and not "for the purpose of re-sale", no additional toll could be levied under the impugned SRO because, according to him, once the goods enter the State for the purpose of sale, the levy was attracted. The appellants have challenged the above order of the learned Single Judge by way of these appeals. Similar challenge is in the two writ petitions.

3. We have heard M/s Z. A. Shah, Sunil Hali, M. M. Gupta, Subhash Dutt and Rahul Panth, learned counsel for the appellants/writ petitioners, who submit that the levy of additional toll vide SRO 184 of 1997 is illegal and unconstitutional, the same being violative of articles 301 and 304(a) of the Constitution of India. Before we deal with the arguments of the learned counsel for the appellants/writ petitioners (hereinafter, for the sake of brevity, referred to as "appellants"), it will be expedient to set out SRO 184. SRO 184 of 1997 reads as below:

GOVERNMENT OF JAMMU AND KASHMIR

FINANCE DEPARTMENT

Notification,

Dated, Srinagar the 30th May, 1997

SRO 184 - In exercise of the powers conferred by Sub-section (5) of section (3) of the Levy of Tolls Act, Samvat 1995, the Government hereby notifies that additional toll on the edible oil imported into the State for re-sale in the State shall be levied at the rate of 4% on the value of such goods with immediate effect.

By order of the Government of Jammu & Kashmir.

Sd/-

(Dr. R.K.Kotru)

Director Finance".

From a plain reading of the above SRO, it is clear that additional toll has been levied on the edible oil imported into the State for re-sale in the State at the rate of 4 per cent with effect from 30th May, 1997.

4. This levy of additional toll on edible oil imported into the State has a chequered history. Originally under schedule 'D' to the Jammu and Kashmir

General Sales Tax Act, 1962, edible oils were liable to sales tax at the rate of 4 per cent. The rate of tax was later raised to 8 per cent with effect

from 27th May, 1994. With a view to protecting the interest of the local oil industry, which was facing a stiff competition from the edible oil

manufacturers from outside the State, the Government of Jammu and Kashmir issued SRO 93 of 1991 on 7th March, 1991 u/s 5 of the General

Sales-tax Act, 1962 (Sales-tax Act) directing that the goods manufactured by a dealer operating as a small-scale industrial unit in the State and

registered with the Director of Industries and Commerce, Handicrafts or Handloom Development, subject to the conditions specified therein, shall

be exempted from payment of tax to the extent and for the period specified therein. At the material time, all the units manufacturing edible oil in the

State were small-scale industrial units as defined by the Jammu and Kashmir Government. The exemption was thus total. The period of exemption

was 5 years - which was later extended by another 5 years. The result of the aforementioned orders was that while the manufacturers of edible oil

in other States were obliged to pay sales tax on the sales effected by them in the State of Jammu and Kashmir at the rate of 4 per cent, the local

manufacturers were totally exempted therefrom. As stated above, in May 1994, the rate of tax was raised from 4 per cent to 8 per cent, With the

raising of the rate of sales tax to 8 percent, the outside manufacturers were obliged to pay 8 per cent tax while the local producers of edible oils

were exempt fully. It is at that stage that some of the outside manufacturers approached this Court by way of writ petitions, which were dismissed

by a learned Single Judge. The Letters Patent appeals against the order of the learned Single Judge were also dismissed by the Division Bench

relying upon the decision of the Supreme Court in Video Electronics Pvt. Ltd. and Another and Weston Electronics Ltd. and Another Vs. State of

Punjab and Another, . The outside manufacturers appealed to the Supreme Court. The Supreme Court held that by exempting unconditionally the

edible oil produced within the State of Jammu and Kashmir altogether from sales tax while subjecting the edible oil produced in other States to

sales tax at 8 per cent, the State of Jammu and Kashmir had brought about discrimination by taxation which was prohibited by article 304(a) of the

Constitution of India and the said levy was invalid and unconstitutional Shree Mahavir Oil Mills and Another Vs. State of Jammu & Kashmir and

Others, . However, keeping in view the fact that the exemption in question was to promote the interest of the disturbed and economically and industrially undeveloped State of Jammu and Kashmir, the Supreme Court moulded the relief in exercise of powers under article 142 of the Constitution of India and directed that the appellants (outside manufacturers) would not be entitled to claim any amount by way of refund or otherwise by virtue of, or as a consequence of, the declaration of non-validity contained in the judgment and that the declaration of non-validity of the impugned notification would take effect on and from 1st April, 1997. Till that date, i.e., upto and inclusive of 31.3.1997, the impugned notification was allowed to continue to be effective and operative. In other words, though the Supreme Court declared the exemption granted by the State Government vide notification No.93 of 1991 to local manufacturers/producers of edible oils violative of the provisions of articles 301 and 304(a) of the Constitution of India, in view of the special circumstances of the State of Jammu and Kashmir, it gave effect to the same prospectively with effect from 1st April, 1997.

5. It appears that the State Government failed to appreciate the true import of the judgment of the Supreme Court wherein the Supreme Court held in unequivocal terms that by exempting unconditionally the edible oil produced within the State of Jammu and Kashmir altogether from sales tax, while subjecting the edible oil produced in other States to sales tax at 8 per cent, the State had brought about discrimination by taxation prohibited by article 304(a) of the Constitution and declared the exemption to be invalid. Obviously, the State Government misunderstood and misconstrued the indulgence given by the Supreme Court by declaring the levy invalid and unconstitutional with prospective effect and sought to do the very same thing and achieve the very same result by levying, in place of sales tax at the rate of 8 per cent under the Sales- tax Act which had been declared invalid in *Shree Mahavir Oil Mills (supra)* by the Supreme Court, additional toll at the rate of 4 per cent on edible oils imported into the State for re-sale in the State under another enactment, namely, Levy of Tolls Act. . That is evident from the budget speech dated 20th March, 1997 of the Finance Minister for the Budget Session 1997-98, wherein he said in unequivocal terms (in para 93):

93. The exemption given to small scale industrial units on the sale of edible oil manufactured by them in the State is proposed to be withdrawn in

the light of the judgment of the Honourable Supreme Court (Shree Mahavir Oil Mills vs. State of J&K). But I, however, propose to levy entry tax

at the rate of 4% on the edible oil which is imported from outside the State for resale in the State.

6. This statement of the Finance Minister in the Budget Speech was followed by the impugned SRO by which additional toll was levied at the rate

of 4 per cent under the Levy of Tolls Act on edible oil imported into the State for resale in the State. It is this SRO which was challenged by the

appellants before the learned Single Judge on the ground that the State Government had committed the same illegality and brought about the same

discrimination by taxation prohibited by article 304(a) of the Constitution of India which was declared illegal and invalid by the Supreme Court in

Shree Mahavir Oil Mills v State of J&K (supra). The learned Single Judge dismissed the writ petitions. Aggrieved by the order of the learned

Single Judge, the appellants have filed these Letters Patent appeals.

7. The case of the appellants is that the impugned levy is in total disregard to the clear mandate of the Supreme Court in Shree Mahavir Oil Mills

(supra). It is contended that the State Government has merely changed the nomenclature of the levy and, in fact, done the very same thing that was

declared illegal by the Supreme Court. Learned counsel submit that article 304(a) of the Constitution of India clearly prohibits the State from

discriminating by taxation the goods imported from outside the State and the State Government, in the instant case, despite the clear mandate of

the Supreme Court, has done the same. It is further submitted that while the position prior to the impugned SRO was that locally produced edible

oil was exempted from tax but the edible oil manufactured in other States and imported into the State was subjected to sales tax at the rate of 8

per cent, the position under the impugned SRO is that tax by way of additional toll under the provisions of Levy of Tolls Act at the rate of 4 per

cent is levied on the edible oils imported into the State from outside for resale in the State leaving the locally manufactured edible oil outside the tax

net. The net result, according to the appellants, is the same - levy of tax by way of additional toll on the imported edible oil without identical levy on

the locally manufactured oil resulting in gross discrimination against the imported edible oil. The further contention of the appellants is that the

additional toll under the Levy of Tolls Act is not a fee but a tax and that issue is no more res integra in view of the Full Bench decision of this Court

in *Girdharilal Anand Saraf v State of J & K* AIR 1969 J&K 113 (which has been followed in another Full Bench Decision in *M/s Mehta Food Pvt*

Ltd v State of J&K (Writ Petition No.660/82 decided on 23.8.1999) wherein it has been held that the levy of toll under the said Act is not a fee

but a tax. Learned counsel for the appellants submit that the present case is squarely covered by the decision of the Supreme Court in *Shree*

Mahavir Oil Mills (supra) and the levy of additional toll at the rate of 4 per cent on the imported edible oil by the State Government is in gross

violation not only of the constitutional mandate of articles 301 and 304(a) but also in blatant disregard to the decision of the Supreme Court in the

above case and hence the impugned SRO is liable to be set-aside and quashed. Another contention of the learned counsel for the appellants is that

though the levy under SRO 184 is on the edible oil imported into the State for resale in the State, the authorities are levying tax on oil imported by

the manufacturers for first sale in the State and not "resale". We have also heard Mr. M. A. Goni, learned Advocate General, for the State who

supports the judgment of the learned Single Judge.

8. We have carefully perused the impugned SRO and considered the rival contentions of the parties. There is no dispute at the Bar about the fact

that the additional toll under the Levy of Tolls Act is a tax and not a fee and that this issue is no more res integra in view of the Full Bench decisions

of this Court in *Girdhari Lal Saraf* (supra) and *Mehta Foods* (supra). The learned Advocate General, in course of arguments, also fairly stated that

in view of the above Full Bench decisions of this Court, it is not open to the State to contend before this Court that additional toll under the Levy of

Tolls Act is not a tax. Otherwise also, we find that the State has nowhere made out a case to justify the levy of additional toll as a fee by placing

relevant materials before this Court. However, in view of the Full Bench decisions of this Court holding the toll of the type levied in this case under

the Levy of Tolls Act as a tax, we would examine the validity of the levy of additional toll under the Levy of Tolls Act on the edible oils imported

from outside the State by the impugned SRO 184 as levy of tax on imported edible oil without identical levy on the locally manufactured edible oil.

9. The real question that arises for consideration is whether the levy of additional toll at the rate of 4 per cent on the edible oil imported into the

State for resale in the State amounts to discrimination against the goods manufactured or produced outside the State of Jammu and Kashmir which

is prohibited by articles 301 and 304 of the Constitution of India. Article 301 provides that subject to other provisions of Part XIII, trade,

commerce and intercourse throughout the territory of India shall be free. Article 304 empowers the Legislature of a State to impose certain

restrictions on trade, commerce and intercourse. It reads:

304. Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law-

(a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are

subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public

interest;

Provided that no Bill or amendment for the purpose of clause (b) shall be introduced or moved in the Legislature of a State without the previous

sanction of the President.

10. It is well settled by now that taxing laws can be restrictions on trade, commerce and intercourse if they hamper the flow of trade and if they are

not what can be termed as compensatory taxes or regulatory measures (Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another, ;

Atiabari Tea Co., Ltd. Vs. The State of Assam and Others, ; The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others,

. Article 304(a) enables the legislature of a State to make laws effecting trade, commerce and intercourse. It enables the imposition of tax 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 in that State

and goods which are imported from other States (A.T. B. Mehtab Majid v. State of Madras, supra). This means that if the effect of the tax on

goods imported from outside the State is that the latter becomes subject to higher tax, then the tax is discriminatory and unconstitutional.

11. Dealing with the scope and ambit of article 304(a), in *Shree Mahavir Oil Mills (supra)*, the Supreme Court observed:

...Article 304 deals with the power of the State Legislatures. It begins with a non obstante clause; 'Notwithstanding anything in Article 301 or

Article 303.' Article 303 was also referred to in this non obstante clause evidently for the reason that clause (1) of Article 303 refers to 'the

legislature of a State' besides referring to Parliament. Article 304 contains two clauses. Clause (a) states that 'the legislature of a State may by law

- (a) impose on goods imported from other States or the Union Territories any tax to which similar goods manufactured or produced in that State

are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced'. The wording of this clause

is of crucial significance. The first half of the clause would make it appear at the first blush that it merely states the obvious: one may indeed say that

the power to levy tax on goods imported from other States or Union Territories flows from Article 246 read with Lists II and III in the Seventh

Schedule and not from this clause. That is of course so, but then there is a meaning and a very significant principle underlying the clause, if one

reads it in its entirety. The idea was not really to empower the State Legislatures to levy tax on goods imported from other States and Union

Territories - that they are already empowered by other provisions in the Constitution - but to declare that that power shall not be so exercised as

to discriminate against the imported goods vis-a vis locally manufactured goods. 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 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-à-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 - at or along

with boundaries in the interest of freedom of trade, commerce and intercourse through the territory of India, guaranteed by Article 301... [T]his

clause does not prevent in any manner the States from encouraging or promoting the local industries in such manner as they think fit so long as they do not use the weapon of taxation to discriminate against the imported goods vis-à-vis the locally manufactured goods. To repeat, the clause bars the States from creating tax barriers - or fiscal barriers, as they can be called - around themselves and/or insulate themselves from the remaining territories of India by erecting such 'tariff walls'. Part XIII is premised upon the assumption that so long as a State taxes its residents and the residents of other States uniformly, there is no infringement of the freedom guaranteed by Article 301; no State would tax its people at a higher level merely with a view to tax the people of other States at that level.

12. Articles 301 and 304(a) had come up for consideration before the Supreme Court in *Atiabari Tea Co. Ltd. v State of Assam* AIR 1961 SC

809; *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, ; *Firm A.T.B. Mehtab Majid and Co. Vs. State of*

Madras and Another, ; *H. Anraj v Govt. of T. N.* (1986) 1 SCC 414; *Indian Cement and Others Vs. State of Andhra Pradesh and Others*, ;

Weston Electronics v. State of Gujarat (1988) 2 SCC 268; *Video Electronics Pvt. Ltd. and Another and Weston Electronics Ltd. and Another*

Vs. State of Punjab and Another, ; *State of Mysore Vs. H. Sanjeeviah*, ; *Kalyani Stores Vs. The State of Orissa and Others*, and a large number

of cases. The ratio of the decisions, so far as article 304(a) is concerned, was summed up by the Supreme Court in *Shree Mahavir Oil Mills*

(supra) as under:

Now, what is the ratio of the decisions of this Court so far as clause (a) of Article 304 is concerned? In our opinion, it is this: the States are

certainly free to exercise the power to levy taxes on goods imported from other States/Union Territories but this freedom, or power, shall not be

so exercised as to bring about a discrimination between the imported goods and the similar goods manufactured or produced in that State. The

clause deals only with discrimination by means of taxation; it prohibits it. The prohibition cannot be extended beyond the power of taxation. It

means in the immediate context that States are free to encourage and promote the establishment and growth of industries within their States by all

such means as they think proper but they cannot, in that process, subject the

goods imported from other States to a discriminatory rate of taxation, i.e., a higher rate of sales tax vis-à-vis similar goods manufactured/produced within that State and sold within that State. Prohibition is against discriminatory taxation by the States. It matters not how this discrimination is brought about. A limited exception has no doubt been carved out in Video Electronics but, as indicated hereinabove, that exception cannot be enlarged lest it eat up the main provision.

13. Dealing with the validity of exemption of edible oil produced within the State of Jammu and Kashmir from sales tax while subjecting the edible oil produced in other States to such tax at the rate of 8 per cent, which was the subject matter of challenge before the Supreme court in that case, it was held:

So far as the present case is concerned, it does not fall within the limited exception aforesaid; it falls within the ratio of A.T.B. Mehtab Majid and the other cases following it. It must be held that by exempting unconditionally the edible oil produced within the State of Jammu and Kashmir altogether from sales tax, even if it is for a period of ten years, while subjecting the edible oil produced in other States to sales tax at eight per cent, the State of Jammu and Kashmir has brought about discrimination by taxation prohibited by Article 304(a) of the Constitution.

14. We may now examine the constitutional validity of the levy of additional toll at the rate of 4 percent on the edible oil imported in the State from outside the State for the purpose of resale in the State by the impugned SRO 184 dated 30th May, 1997 on the touch stone of article 304(a) of the Constitution of India in the light of the decision of the Supreme Court in Shree Mahavir Oil Mills Ltd. (supra). There is no dispute about the fact that the additional toll on the edible oil imported by the appellants is tax on imported edible oil and not a fee. Obviously, it is not a regulatory or compensatory measure. It directly and immediately impedes the free flow or movement of trade. It therefore violates the freedom of trade under article 301 of the Constitution. The only question is whether it is saved by article 304. The answer obviously has to be in the negative. Imposition of tax at the rate of 4 percent by way of additional toll on the edible oil imported from outside the State by the impugned SRO, without similar levy on the edible oil manufactured or produced in the State, is clear discrimination

against the imported edible oil. The levy is patently discriminatory.

The Supreme Court, in *Shree Mahavir Oil Mills (supra)*, has declared identical discriminatory treatment of imported edible oil by levy of sales tax

at the rate of eight percent on such edible oil, while unconditionally exempting the locally manufactured edible oil, by the State of Jammu and

Kashmir as illegal and unconstitutional. The position of the levy of additional toll at the rate of 4 percent on the imported edible oil is in no way

different. What is different is the nomenclature, which is not relevant in deciding the nature and validity of the levy. In course of argument before us,

the learned Advocate General tried to justify the levy of additional toll on imported oil without similar levy on locally produced edible oil on the

ground that the oil manufacturers in the State were not in a position to compete with the outside manufacturers in view of the difficult situation in the

State and as such a different treatment to them was not discriminatory. We don't find any merit in this contention because, as observed by the

Supreme Court in *Shree Mahavir Oil Mills (supra)*, though the States are free to encourage and promote the establishment and growth of industries

within their States by all such means as they think proper but they cannot, in that process, subject the goods imported from other States to a

discriminatory rate of taxation, i.e., a higher rate of tax vis-à-vis similar goods manufactured/produced within that State. The prohibition is against

discriminatory taxation by the States. It matters not how the discrimination is brought about. In other words, the States have the power to levy tax

on goods imported from other States but that power cannot be so exercised as to discriminate against the imported goods vis-à-vis similar goods

manufactured locally. Article 304, in effect, prohibits discrimination against imported goods. The State Government can levy tax on both imported

and the locally manufactured goods at the same rate. The States cannot, however, use taxation as a tool to discriminate against the imported goods

even with a view to protecting the local manufacturers from competition from outside manufacturers. The States cannot create tax barriers around

themselves. In the instant case, the State of Jammu and Kashmir has perpetuated the discrimination against imported edible oil despite the quashing

of similar levy by the Supreme Court, by mere change of description of the levy. The net effect remains the same- discrimination against imported

edible oil vis-a-vis locally manufactured similar oil. Discrimination is writ large on the face of the impugned SRO. We, therefore, hold that the levy

of additional toll on the edible oil imported in the State for the purpose of resale by the impugned SRO without similar levy or imposition on the

locally manufactured edible oil is violative of articles 301 and 304(a) of the Constitution. We declare accordingly and set aside and quash the same.

15. Before parting with the case, we deem it expedient to deal with the alternate submission made on behalf of the appellants who are importing

edible oil manufactured by them outside the State for sale in the State that the additional toll levied by the impugned SRO is not applicable to them

because they import edible oil for sale in the State and not for ""resale"" which attracts the levy. The submission, in other words, is that while

determining the liability under the impugned SRO, the distinction between ""sale"" and "" resale"" must be kept in mind by the assessing authorities and

the levy should be confined only to edible oil imported for ""resale"". It is contended that the manufacturers who import the edible oil manufactured

by them in the State for the sale cannot be subjected to the additional toll under the impugned SRO, even if it is held to be valid, because the

import is not for resale.

16. We have carefully considered the above submission. There is no dispute about the fact that additional toll under the impugned SRO is leviable

on edible oil imported in the State for ""resale"" in the State. ""Resale"" means sale of a thing previously bought. It is a sale by a person who has

purchased the same from some one else. According to Blacks Law Dictionary, the term ""resale"" refers to act of a retailer who purchases goods

from the manufacturer or whole-seller for purposes of selling such goods in normal course of business. ""Resale"" visualises a prior purchase of the

goods by the seller from some one else. Though every resale is a sale, the reverse is not true. Every ""sale"" cannot be termed as ""resale"". In that

view of the matter, we are of the clear opinion that the additional toll under the impugned SRO is leviable only on edible oil imported from outside

into the State for purposes of ""resale"" in the State. This controversy, however, has become academic in view of the impugned notification itself

having been declared by us as illegal and inoperative, the same being ultra vires

articles 301 and 304 of the Constitution.

17. In the result all these Letters Patent Appeals are allowed. The impugned SRO No.184 dated 30th May, 1997 is declared illegal and

inoperative, the same being violative of articles 301 and 304 of the Constitution of India. The two writ petitions are also allowed in the same terms.

All the appeals and writ petitions are disposed of accordingly with no order as to costs.