In Re: Reliance Industries ... vs Unknown on 18 February, 2008

Equivalent citations: 2008 I OLR 620, (2008) 16 VST 85 Orissa

Author: I Quddusi

Bench: I Quddusi, A Samantaray

JUDGMENT

I.M. Quddusi, J.

1. In these writ petitions, the petitioners have interalia challenged the validity of Orissa Entry Tax Act, 1999 (Orissa Act 11 of 1999). The Act was enacted by the State Legislative under Entry 52 of List-II of 7th Schedule to the Constitution of India, which came into force with effect from 1.12.1999. Earlier a batch of writ petitions was filed before this Court challenging the validity of the Act. This Court declined to strike down the Act as ultra vires with the following directions.

(1) Unless the basic ingredients, i.e. Entry of scheduled goods for the purpose pf consumption, use or sale into a local area of the State are satisfied, the provisions of the Orissa Entry Tax Act, 1999 shall not be attracted;

(2) The goods which enter into a local area/areas only for the purpose of transit will not be subject to entry tax; and

(3) Every manufacturer of scheduled goods under Section 26 of the Orissa Entry Tax Act shall collect by way of Entry Tax amount equal to the tax payable on the value of the finished products under Section 3 of the Act from the buying dealer either directly or through an intermediary only if the scheduled goods sold are intended for entry into any local area of the State for the purpose of consumption, use or sale.

2. While deciding the cases, the Division Bench of this Court relied on various decisions of the apex Court including the decision in M/s. Bhagatram Rajeevkumar v. Commissioner of Sales Tax, M.P.

and Ors. 1995 (Suppl.) 1 SCC 673 and State of Bihar and Ors. v. Bihar Chambers of Commerce and Ors. . Some of the writ petitioners of those writ petitions preferred SLP before the Hon'ble apex Court which was converted into civil appeal, which was initially taken up along with the Civil Appeal No. 3453 of 2002, M/s. Jindal Stainless Ltd. and Anr. v. State of Haryana and Ors. and other connected matters. As the two Judge Bench of the apex Court doubted the correctness of the views expressed in M/s. Bhagatram Rajeev kumar v. Commissioner of Sales Tax, M.P. and Ors. which was relied on in a subsequent decision in State of Bihar and Ors. v. Bihar Chambers of Commerce and Ors. (supra), the matters were referred to a large Bench and, therefore, the Constitution Bench heard and decided the issues in Jindal Stainless Ltd. and Anr. v. State of Haryana and Ors. holding that the decision in Bhagatram's case followed in the case of Bihar Chamber of Commerce (supra) was not good law. The Constitution Bench concluded as follows:

In our opinion, the doubt expressed by the referring Bench about the correctness of the decision in Bhagatram's case 1995 Supp.(1) SCC 673 followed by the judgment in the case of Bihar Chamber of Commerce was well-founded.

We reiterate 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. Ltd v. State of Assam and the working test enunciated in Automobile

Transport (Rajasthan) Ltd. v. State of Rajasthan AIR 1962 SC 1406 for deciding whether a tax is compensatory or not vide para 19 of the report, will continue to apply and the test of "some connection" indicated in para 8 of the judgment in Bhagatram Rajeevkumar v. Commissioner of Sales Tax M.P. 1995 Supp (1) SCC 673 and followed in the case of State of Bihar v. Bihar Chamber of Commerce is, in our opinion, not good law. Accordingly, the

constitutional validity of various local enactments which are the subject matters of pending appeals, special leave petitions and writ petitions will now be listed for being disposed of in the light of this judgment.

3. Thereafter the Two Judge Bench of Hon'ble apex Court comprising of Hon'ble Dr. Justice A. Pasayat and Hon'ble Mr. Justice S.H. Kapadia observed that the basic issue in all the appeals revolves round the concept of compensatory tax and the High Courts do not appear to have examined the issue in the proper prospective, as they were bound by the judgments in Bhagatram's case and Bihar of Chambers of Commerce's case (supra) and the apex Court referred the matter desiring the concerned High Court to deal with basic issue as to whether the impugned levy was compensatory in nature. Consequently, this Court Ware its judgment dated 17.1.2008 has dealt with only the issue whether the impugned levy "imposed by way of Orissa Entry Tax Act" was compensatory in nature and considered whether the impugned enactment facially or patently indicates the quantifiable data on the basis of which, the compensatory tax is sought to be levied and whether the Act facially indicates the benefits which is quantifiable or measurable and the proportionality of the quantifiable benefits and held that the data provided by the State do not show that payment of entry tax is reimbursement/recompense for the quantifiable and measurable benefits to be provided to its payers and providing facilities to the citizens or others would not definitely come under the activities like movement of trade, commerce and intercourse for the free flow of trade and commerce and, therefore, the State has failed to show that the Orissa entry Tax is reimbursement/recompense for the quantifiable and measurable benefits provided to trades people and the provision for realization of tax therein was not compensatory in nature. Since in the above writ petitions the Hon'ble apex Court had referred only a limited issue to be decided by this Court, it was not open to the parties to raise any other contentions or issues therein.

4. However, these writ petitions are fresh writ petitions and are being dealt with separately as in these writ petitions the questions/pleas raised by the parties are not limited and are to be considered elaborately.

5. Dr. Debi Prosad Pal, learned Senior Advocate appearing for the petitioner, submitted that the Orissa Entry Tax Act, 1999 and the rules framed thereunder are violative of Article 301 of the

Constitution. He submitted that in order to examine the said question, it is necessary to trace the development of law regarding the interpretation of Article 301 read with Article 304 of the Constitution. He has drawn our attention to the Five Judge Bench decision in Atiabari Tea Co. v. State of Assam in which it was held that (a) taxing laws are not excluded from the operation of Article 301 which means that tax laws can and do amount to restrictions on the freedom guaranteed to trade under Part-XIII of the Constitution, (b) Article 301 applies not only to inter-state trade, commerce and intercourse but also to intra-state trade, commerce and intercourse. 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 of the Constitution, (c) 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; and therefore 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. Therefore, the crucial point for consideration is; Does the impugned restriction operate directly or immediately on trade or its movement ? The State Legislature can only impose restriction after satisfying the requirements of Article 304(b) of the Constitution. He further submitted that Article 304(b) requires not only that the law should be in public interest but should also be reasonable and should receive the previous assent of the President of India. He further submitted that the impugned legislation does not satisfy the working test enunciated by the Supreme Court in Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan , in which it was held that only such taxes as directly and immediately restrict trade would fall within the purview of Article 301 and that any restriction in the form of taxes imposed on the carriage of goods or their movement by the State Legislature can only be done after satisfying the requirements of Article 304(b). He submitted that no previous sanction was obtained before the bill moved or introduced before the Legislature and even no subsequent sanction of the President of India under Article 255 was obtained and, therefore, the Act clearly violates the conditions laid down in the proviso to Article 304(b) of the Constitution.

6. He submitted that the Supreme Court in the case of Jindal Stripe Ltd. and Anr. v. State of Haryana and Ors. summed up the law as laid down by the Hon'ble Supreme Court in Atibari Tea Co.'s case and Automobile Transport Case and the decisions which followed the Seven Judge Bench decision in Automobile Transport's case. Before 1995 the law as enunciated in Automobile Transport case held the field that an exaction to reimburse/recompense the State the cost of an existing facility made available to the traders or the cost of a specific facility planned to be provided to the traders is compensatory tax and that it is implicit in such a levy that it must, more or less, be commensurate with the cost of the service or facility. Those decisions emphasized that the imposition of tax must be with the definite purpose of meeting the expenses on account of providing or adding to the trading facilities either immediately or in future provided the quantum of tax is based on a reasonable relation to the actual or projected expenditure on the cost of the service or facility. However, the two decisions, in Bhagatram Rajeevkumar and in Bihar Chamber of Commerce deviated from the above legal position and held that even if the purpose of imposition of the tax is not merely to confer a special advantage on the traders but to benefit the public in general including the traders that levy can still be considered to be compensatory. According to the decision in the case of Bihar Chamber of Commerce, an indirect or incidental benefit to traders by reason of stepping up the developmental activities in various local areas of the State can be brought within the concept of compensatory tax, the nexus between the tax known as compensatory tax and the trading facilities not being necessarily either direct or specific. It will appear therefore that the concept of compensatory tax has been judicially evolved as an exception to the provisions of Article 301 and as the parameters of this judicially evolved concept are blurred, particularly, by reason of the decisions in Bhagatram's case and Bihar Chamber of Commerce,, the Supreme Court in the case of Jindal Stripe Ltd. and Anr. v. State of Haryana and Ors. (supra) referred the matter to a large Bench for the interpretation of Article 301 vis-a-vis compensatory tax so that legal position may be authoritatively laid down with certitude by the Constitution Bench under Article 145 (3). In the latest decision of the Constitution Bench consisting of

Five Judges rendered in Jindal Stainless Ltd. and Anr. v. State of Haryana and Ors. (hereinafter referred as Jindal-2), the apex Court nasalizing the relevant provisions of Part-XIII of the Constitution laid down the scope of Articles 301, 302 and 304 according to which Article 301 states that subject to the other provisions of Part XIII, trade, commerce and intercourse throughout India shall be free. It is not freedom from all laws but freedom from such laws which restrict or affect activities of trade and commerce amongst the States. Although Article 301 is positively worded, in effect, it is negative as freedom correspondingly creates general limitation on all legislative power to ensure that trade, commerce and intercourse throughout India shall be free. Article 301, therefore, refers to freedom from laws which goes beyond regulations which burdens, restricts or prevents the trade movement between States and also within the State. Since 'freedom' correspondingly imposes 'limitation', the Constitution Bench was of the view that the doctrine of 'direct and immediate effect' of the operation of the impugned law on the freedom of trade and commerce in Article 301 as enunciated in Atiabari Tea Co.'s case. According to the Constitution Bench Article 301 is, therefore, not only an authorization to enact laws for the protection and encouragement of trade and commerce amongst the States but by its own force creates an area of trade free from interference by the State and therefore Article 301 per se constitutes limitation on the power of the State. Article 301 is, however, subject to the other provisions of Articles 302, 303 and 304. The Constitution Bench analysing the power of the State Legislature to enact any law which may come under the protection of Article 304(b) observed that apart from limitation imposed by Article 301, Clause (1) of Article 303 imposes additional limitation, namely, that it must not give preference or make discrimination between one State or another in exercise of its powers relating to trade and commerce under Entry 26 of List II or List III. However, this limitation on the State Legislature is lifted in two cases, namely, it may impose on goods imported from sister State(s) or Union Territories any tax to which similar goods manufactured in its own State are subjected but not so as to discriminate between the imported goods and the goods manufactured in the State. Article 304 also confers upon the State Legislature power to lift the

limitations imposed on it by Article 301 and Clause (1) of Article 303. This aspect is important because the doctrine of 'direct and immediate effect' which is mentioned in Atiabari Tea Co's and Automobile Transport's case emerges from the concept of 'limitation' embodied in Article 301. This doctrine of direct and immediate effect constitutes the basis of the working test propounded vide para 19 in Automobile Transport's case. According to the Constitution Bench, therefore, whenever the law is impugned as violative of Article 301, the Courts will have to examine the effect of the operation of the impugned law on the inter-State and the intrastate movement of goods, which movement constitutes an integral part of trade. If the working test propounded by the Constitution Bench of Seven Judges in Automobile Transport's case is not satisfied in that event the State has to satisfy that such restrictions complied with the provisions of Article 304(b) of the Constitution.

7. He also submitted that the Constitution Bench in Jindal-2 has further concluded that in the case of a 'tax', the levy is part of common burden based on the principle of ability or capacity to pay. In the case of 'a fee', the basis is the special benefit to the payer (individual as such) based on the principle of equivalence. When the tax is imposed as a part of regulation or as a part of regulatory measure, its basis shifts from the concept of 'burden' to the concept of measurable/ quantifiable benefit and then it becomes 'a compensatory tax' and its payment is then not for revenue but as reimbursement/recompense to the service/facility provider. It is then a tax on recompense. Dr. Pal has given emphasis mainly on Article 304(b) of the Constitution.

8. Dr. Pal has also submitted a written note of submission. Repelling the contention of the State that the levy of entry tax is saved by Article 304(a) of the Constitution, Dr. Pal in the notes of submission stated that Article 304(a) empowers the State Legislature to impose tax on goods imported from outside the States provided that like goods manufactured within the State are subjected to the similar tax. At no stage of the long winding proceedings the State has taken this defence. He stated that in Kalyani Stores v. State of Orissa AIR 1966 SC 1986, the Constitution

Bench of the Supreme Court held that Article 304(a) authorizes the State Government to legislate notwithstanding anything in Article 301 or 303 to impose on goods imported from other States any tax to which goods manufactured or produced in that State are subject to, so, however, as not to discriminate between goods imported and goods manufactured or produced. Hence the State Legislature can impose tax on goods imported from outside the State by taking refuge under Article 304(a) only when like goods manufactured or produced in the State are subjected to similar tax. He also referred to Shree Mahavir Oil Mills v. State of J&K , in which the Supreme Court held that 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. Hence, the issue is whether goods similar to the scheduled goods are also manufactured or produced within the State and such goods are subjected to similar tax. The onus or burden is on the State, as to whether similar goods manufactured or produced in the State are subjected to similar tax, which it has miserably failed to discharge.

He also submitted that this submissions made by the State was more of an argument of despair and less of argument of substance. He further stated that in order to attract Article 304(a), following conditions are to be satisfied, i.e., the manufactured goods imported from outside the State are subjected to a rate of tax by way of entry tax and the goods which are manufactured within the State are subjected to the same rate of tax. If the above conditions are satisfied then the taxes are not discriminatory and therefore the provisions of Article 304(a) would be applicable. In the present case the State has not given any material as to whether the goods imported from outside the State to which the entry tax is attracted are also manufactured within the State. In the absence of any such material furnished by the State in their affidavit the onus of satisfying that Article 304(a) has been complied with is not discharged. Therefore, Article 304(a) cannot have any application to the facts and circumstances of the present case. In view of the

submissions made that the Orissa Entry Tax Act is not compensatory in nature for the reasons stated herein before, the restrictions imposed by the Act on the free movement of trade and commerce can be saved and/or protected if such restrictions comply with Article 304(b) and the proviso thereto of the Constitution of India in spite of such restrictions are non-discriminatory.

9. However, Shri A.K. Ganguly, learned Senior Counsel appearing for some of the petitioners, besides his argument that the entry tax imposed by the State Government through Orissa Entry Tax Act is not compensatory, regulatory and quantifiable, has drawn our attention to the provisions of Article 304(a) of the Constitution. He argued that the activities making seizure of goods but not allowing the goods entering into the local areas and imposing a barrier certainly amounts to obstruction on free flow of goods. He has argued that whenever a levy or tax is imposed, it has to be seen whether it is a tax or a compensatory levy is to be determined on the basis of the observation made and principles laid down by the apex Court in the above mentioned cases. With regard to Article 304(a), he has submitted that article applies only where similar goods are produced in that State where the goods are being imported from outside and in that case, there should be no discrimination between the goods produced in the State and imported from outside to that local area. Law cannot be enacted for raising general revenue of the State. He has placed reliance on the case of Kalyani Store v. State of Orissa which is a Five

Judge Bench decision in which it has been specifically held as follows:

...As no foreign liquor is produced or manufactured in the State of Orissa, the power to legislate given by Article 304 is not available and the restriction which is declared on the freedom of trade, commerce or intercourse by Article 304 of the Constitution remains unfettered.

He has submitted that in the cases where any particular goods is not produced in Orissa, the power to legislate under Article 304(a) of the Constitution is not available. For example, no foreign liquor is

produced in the State of Orissa and, as such, in respect of foreign liquor entering into the local area, the State has no power to legislate or enact law under the provisions of Article 304(a) of the Constitution. He has, however, placed reliance on the case of State of Karnataka v. Hansa Corporation wherein paras 27 and 30, it has been held as follows:

On a conspectus of these decisions it appears well settled that if a tax is compensatory in character it would be immune from the challenge under Article 301. If on the other hand the tax is not shown to be compensatory in character, it would be necessary for the party seeking to sustain the validity of the tax law to show that the requirements of Article 304 have been satisfied.

Article 304 lifts the embargo placed on the legislative power of State to enact law which may infringe the freedom of inter-State trade and commerce if its requirements are fulfilled. Article 304(a) imposes a restriction on the power of legislature of a State to levy tax which may be discriminatory in character by according discriminatory treatment to goods manufactured in the State and identifical goods imported from outside the State. This article further enables the State to levy tax on such imported goods in the same manner and to the same extent as may be levied on the goods manufactured or produced inside the State. If a State tax law accords identical treatment in the matter of levy and collection of tax on the goods manufactured within the State and identical goods imported from outside the State, Article 304(a) would be complied with. There is an underlying assumption in Article 304(a) that such a tax when levied within the constraints of Article 304(a) would not be violative of Article 301 and State legislature has the power to levy such tax.

He has also placed reliance on M/s. Hoechst Pharmaceuticals Ltd. and Anr. v. State of Bihar and Ors. in paragraph 86 of which, it has been held as follows:

The contention that Sub-section (3) of Section 5 of the Act imposes an unreasonable restrictions upon the freedom of trade guaranteed under Article 19(1)(g) of the Constitution proceeds on the basis that

sales tax being essentially an indirect tax, it was not competent for the Legislature to make a provision prohibiting the dealer from collecting the amount of surcharge cannot prevail. It is urged that the surcharge does not retain its avowed character as sales tax but in its true nature and character is virtually a tax on income, by reason of the limitation contained in Sub-section (3) of, Section 5 of the Act. We are not impressed with the argument. Merely because a dealer falling within the class defined under Sub-section (1) of Section 5 of the Act is prevented from collecting the surcharge recovered from him, does not affect the competence of the State Legislature to make a provision like Sub-section (3) of Section 5 of the Act nor does it become a tax on his income. It is no doubt true that a sales tax is, according to the accepted notions, intended to be passed on to the buyer, and the provisions authorizing and regulating the collection of sales tax by the seller from the purchaser are a usual feature of sales tax legislation. But it is not an essential characteristic of sales tax that the seller must have the right to pass it on to the consumer, nor is the power of the Legislature to impose a tax on sale conditional on its making a provision for sellers to collect the tax from the purchasers. Whether a law should be enacted, imposing a sales tax, or validating the imposition of sales tax, when the seller is not in position to pass it on to the consumer, is a matter of policy and does not affect the competence of the Legislature.

10. Mr. S.C. Lal has relied upon the submission of Dr. Pal, learned Senior Advocate. However, he has further submitted that to see whether the tax is compensatory in nature, it is necessary to take notice that general collection of entry tax goes to the consolidated fund of the State of Orissa and it is not allowed that the some levy should be compensatory and some should not be.

11. Shri J.K. Das, learned Senior Advocate, also relying upon the arguments of Dr. Pal and Shri A.K. Ganguly, learned Senior Advocates, further submitted that the burden to prove whether the tax levied is quantifiable, compensatory or regulatory in nature is on the State as laid down in Jindal-2 case.

12. Other learned Counsel for the petitioners have also relied upon the arguments of Dr. Pal, Senior Advocate, appearing for the petitioner.

13. Shri Jagannath Patnaik, learned Senior Counsel appearing for the State, submitted that the impugned Act does not violate Article 301 of the Constitution and is not required to be compensatory. The levy has not chosen movement of trade as the criteria of its operation. It is not a tax on movement of goods. Having regard to the test of directness of legislation applied in Atibari, the levy does not come within the scope of Article 301. The purpose and object of the levy is not to tax movement or carriage of goods. He submitted that the levy under the Entry tax enactments by their character are not on movement of trade and commerce. The levy under the Act has not chosen an activity like movement of trade and commerce as the criterion of its operation as laid own in Jindal Stripes Case. Considering the test of directness of the legislation, as required to be examined pursuant to Aiabaris case, the levy is not on flow or movement of trade and commerce, the subject matter covered under Article 301. On examination on the basis of doctrine of pith and substance, the levy by its true nature and character is not with respect to movement of trade and commerce. The object and purposes of the levy is not to tax carriage, transport or movement of goods into or in a local area. Entry is the object or result of movement not the movement itself. Mere entry of goods does not mean movement of goods. The good are not taxed on the sole basis of their entry into a local area, but solely on the ground of entry of the goods into a local area for the purposes of consumption, use or sale therein. Imposition is not on the sole basis that the goods carried or transported. The levy under the said enactments could not be concluded to fall under the scope of Article 301. To sum up his arguments, he contended that

a. the operation of the law does not affect on the movement of trade and commerce;

b. the doctrine of direct and immediate effect in Atiabari does not apply to the impugned levy;

c. the levy is not prohibitive. It does not scare away the consumers. It does not have deleterious effect on trade and commerce. The impact of the levy is negligible. No trade barrier is caused. Effect on intra-state trade and commerce and inter state trade and commerce is the same;

d. the inclusion of freight charges in the purchase value of the goods is not determinative that the levy is on movement of goods, as contended;

Shri Patnaik further contended that the object of the Act is to tax goods coming into a local area both from within the State and outside. The Legislature has Used plain, clear and unambiguous language to conclusively express its intention. He further contended that the claim that the definition of purchase value of Section 2 (j) of the Act does not include 'customs duty' for which the goods imported from outside the country does not come within the scope of the Act is not sustainable. The imposition of the levy shall be strictly in accordance with the charging provision. So construed, goods imported from outside the State are within the scope of the Act. Learned Counsel submitted that in view of the position stated in the counter affidavit, the Act without hitting Article 301 of the Constitution of India is a compensatory tax. The Act fully complies the principles laid down in para-19 of the Automobile Transport Case and the dicta of the Constitution Bench of the apex Court in Jindal's case. The expenditure incurred by the State to bring about growth of trade and commerce has been more fully described in the State's counter affidavit. He has submitted that the source of expenditure according to the dicta of Constitution Bench of the Supreme Court in Jindal's case is not relevant. He submitted that the expenditure is booked under State Plan, Central Plan, Central Sponsored Plan, Market borrowing, funding by NABARD, World Bank and other sources. Such borrowings has its interest load which is also borne by the State. Lastly, he has submitted that the decisions of other High Courts holding the levy to be violative of Article 301 and relied upon by the petitioners are not applicable to the present case.

14. Shri Jagannath Patnaik, learned Senior Counsel, has further contended that the State Legislature has the power to impose a nondiscriminatory tax in compliance of Article 304(a) even if it interferes with the freedom of trade and commerce guaranteed under Article 301. He has further submitted that when an Act is impugned as violative of Article 301 if it is shown that the Act complies Article 304(a) or Article 304(b), the same shall be outside the mischief of Article 301. Article 304(a) relates to imposition of any tax on goods. It authorizes the State Legislature to impose such tax. The article begins with a non obstante Clause to Article 301. Thus the State Legislature has the powers to impose tax on goods imported, even if it violates Article 301. The only qualification for such imposition of tax is that no discrimination shall be caused to goods imported from other States and Union Territories vis-a-vis goods manufactured or produced within the State.

15. We have elaborately discussed the points whether the entry tax in the State of Orissa is compensatory in nature while deciding the issue whether the Orissa Entry Tax was compensatory in nature as per the direction of the apex Court in the batch of writ petitions leading case of which is O.J.C. No. 1241 of 2000. In the said batch of cases, we have already held that the State has failed to show that the Orissa Entry Tax is reimbursement/recompense for the quantifiable and measurable benefits provided to trades people and the provision for realization of tax therein was not compensatory in nature. Therefore, this point is not to be redetermined here in the cases.

16. The case of the State is that entry tax is an indirect tax on goods. The legal incidence of the levy is both on traders (dealers) in common with the consumers. The tax is borne by the consumers. The levy has not chosen movement of trade and commerce as the criteria of its operation. In pith and substance, the tax is on consumption, use or sale aspect of the goods in the local area. It is not a restriction or burden or impediment on trade and commerce. It does not have any direct or immediate impact on trade or its movement. The doctrine of direct and immediate effect enunciated in Atiabari's case (supra) does not apply to the tax under the impugned Act. Therefore, the levy is outside the scope of Article

301. There is only one rate of tax on goods or class or classes of goods under the Act in respect of goods coming into a local area both from another local area within the State or from any place outside the State. The impact of the levy on both intra-State trade and commerce and Inter-State trade and commerce is the same. The rate of tax is same for all local areas. The levy does not create any fiscal barrier/trade barrier/tariff wall which will impede the flow of goods to a local area from another within the State or from outside the State. The levy complies with the requirements of Article 304(a). Therefore, it is not an impediment to free flow of trade and commerce under Article 301. Assuming that the tax imposed directly and immediately impedes free flow of trade and commerce or in an manner discriminates goods imported from outside the State vis-a-vis goods produced within the State in the matter of tax, yet the facilities provided by the State and its agencies to trades people go to show that the levy is compensatory. The tax being paid by the consumer, the trades people do not have claim to facilities. Assuming the legal incidence of the levy to be conclusive of who pays the tax, such incidence being both on dealers and consumers, the facilities have to be in common. According to the case of Jindal-2, the principle of measurement/quantification of the benefits provided/ to be provided to trades people being the cost incurred on facilities, the expenditure incurred on facilities represents the benefits or the advantage derived by them. The tax collected is not patently much more than the amount required for providing facilities. The tax complies with the working test laid down in para-19 of Automobile Transport's case (supra) for determination if a tax is compensatory. The trades people are having the use of the facilities which provide quantifiable/measurable benefits with some special advantage to trade and commerce. The cost of providing and maintaining the roads and bridges etc. is more because of the special needs of heavy vehicular traffic of trade and commerce. The facilities are provided by positive action by the State or its agencies. It is the further case of the State that in any view of the matter the levy is outside Article 301. Therefore, compliance of Article 304(b) is not necessary. The levy in any view of the matter is intra-vires Article 301 and is valid.

17. Explaining the power of the State Legislature under Article 301, it has been held by the Supreme Court in para 31(b) of the decision in Jindal-2 case that in other words, Clause (a) of Article 301 authorizes a State Legislature to impose a non-discriminatory tax on goods imported from sister State(s), even though it interferes with the freedom of trade and commerce guaranteed by Article 301. The Supreme Court in V. Guruviah Naidu and Sons v. State of Tamil Nadu held as under:

Article 304(a) does not prevent levy of tax on goods; what is prohibits is such levy or tax on goods as would result in discrimination between the goods imported from other States and similar goods manufactured and produced within the State. The object is to prevent discrimination against imported goods by imposing tax on such goods at a rate higher than that borne by local goods since the difference between the two rates would constitute a tariff wall or fiscal barrier and thus impede the free flow of trade and commerce.

In the case of Shree Mohavir Oil Mills v. State of J&K , the apex Court 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 tells the Legislature- "tax you may the goods imported from other States/Union Territories but do not, in that process, discriminate against them vis-a-vis those manufactured locally, meaning thereby that if similar goods are manufactured or produced within the State, such local goods cannot be taxed on a lower rate in comparison to the tax on imported goods and if such thing is done that would amount to discrimination which is prohibited under Article 304(a). So, there cannot be two rates of tax, one for the imported goods and the other for goods manufactured within the State. It is not the case of the petitioners that there is discrimination on the rate of tax on the goods manufactured within the State or imported from outside the State. In Video Electronics Pvt. Ltd. v. State of Punjab the apex Court held that where the general rate applicable to the goods locally made and on those imported from other States is the same nothing more normally and generally is to be shown by the State to

dispel the argument of discrimination under Article 304(a) even though the resultant tax amount on imported goods may be different. In para-31 (b) of Jindal-2 case, the apex Court held as follows:

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

In the case of Guruviah Naidu (supra), the Supreme Court was of the view that object of Article 304(a) is to prevent imposition of a tax at a higher rate on goods imported than that borne by the local goods since the difference between the two rates would constitute a tariff wall or fiscal barrier and thus impede the free flow of trade and commerce. The Supreme Court in Automobile Transport Ltd (supra) held that the State Legislature may impose different kinds taxes and duties, such as property tax, professional tax, sales tax, excise duty etc. and legislation in respect of any one of these items may have an indirect effect on trade and commerce.

18. In Clause (kk) of Sub-section (1) of Section 131 of the Orissa Municipal Act, it was provided that the Municipality may impose within the limits of the Municipal area a tax in the form of octopi and goods brought within the limits of a Municipal area for consumption, use or sale therein. But it was provided that no such imposition as are referred to in Clause (kk) shall be made without the sanction of the State Government. Rules in the name and style of 'Octroi Rules' were framed in exercise of the powers conferred under Section 131 (kk) of the Orissa Municipal Act under which octroi was collected in respect of goods entering into the local areas for sale, use and consumption. Clause (kk) of Sub-section (1) of Section 131 of the Orissa Municipal Act was repealed and octroi rules were abolished by the Orissa Entry Tax Act vide Sub-section (1) of Section 41 of the Orissa Entry Tax Act. However, the Orissa Entry Tax cannot be said to be a substitute of the Octroi duty imposed by the Municipalities. Under the Act, a schedule has been given and entry tax is leviable on the goods mentioned in the schedule on their entry into the local areas. It may be stated here that the validity of the Octroi Rules was challenged before this Court as well as the Supreme Court and charging of octroi on goods brought for consumption, use or sale within the local areas was found to be intra vires. Here it is apt to quote what the apex Court said in paragraph-8 of Hansa Corporation (supra) which is as under:

Entry 52 in the State List read with Article 246 of the Constitution confers power on the State Legislature to enact a law to levy tax on the entry of goods into a local area for consumption, use or sale therein. This tax in common parlance is known as 'octroi', Octroi was leviable by the municipality under the power delegated to it under various laws providing for setting up of and administration of municipal corporations and municipalities. Octroi thus understood was being levied by various municipalities and municipal corporations in Karnataka State. Since some time a feeling had grown that octroi was obnoxious in character and impeded the development of trade and commerce and there was a clamour for its abolition. Taking note of the resentment of the business community, Karnataka State abolished octroi with effect from April

1, 1979. However, no one was in doubt that octroi was a major source of revenue to municipalities and its abolition would cause such a dent on municipal finances that compensation for the loss would be inevitable. Accordingly, the State Government undertook a policy of compensating the municipalities year by year. For generating funds for this compensation, raise of sales tax were raised and in some cases a surcharge was levied. The amount so collected was not sufficient to bridge, the gap in municipal budget. To further augment the finances for compensating the municipalities, additional fund was sought to be generated by levy of tax under the impugned legislation. No doubt, the tax levied was one on entry of scheduled goods in local areas meaning thereby it had all the broad features of octroi, yet the manner of levy, the method of collection and the persons liable to pay the same were so devised by the impugned Act as to remove the obnoxious features of octroi. As the charging section shows, the tax was to be levied on entry of scheduled goods in a local area at a rate to be specified by the government not exceeding two per cent ad valorem. The taxing event would be the entry of scheduled goods in a local area. In fact octroi was being levied on almost all conceivable goods entering into a local area for consumption, use or sale therein. There appears to be a discernible policy in selecting the goods set out in the schedule, the entry of which in a local area would provide the taxing event. The goods selected for levy are textiles, tobacco and sugar. Way back in 1957 where was a demand for abolition of sales tax on the scheduled goods and at the instance of the Union Government, the State Government agreed to forego their right to levy sales tax on the aforementioned scheduled goods on the condition that the Union Government would levy additional excise duty on them and distribute the net proceeds of such duty amongst the consenting States. Parliament accordingly has enacted the Additional Duties on Goods (Goods of Special Importance) Act, 1957. Therefore, while raising rates of sales tax and levying surcharge in respect of some other items the State Government could not have levied sales tax on the scheduled goods. They were, therefore, selected for the levy of the tax under the impugned Act on their entry into a local area.

The apex Court further held in para 31 as under:

31. Tax under the impugned legislation would be levied on scheduled goods either manufactured or produced within Karnataka State or imported from outside on their entry in a local area. Thus, this tax is non-discriminatory in that it does not discriminate between scheduled goods manufactured or produced within Karnataka State or those imported from outside. And the microscopic discrimination relied upon by the respondents that there is differential treatment accorded to goods produced within a local area and those imported from outside the local area is hardly relevant for the purpose of Article 304(a). The High Court was accordingly right in concluding that the impugned tax satisfies the requirements of Article 304(a).

19. The definition of "entry of goods" is given in Clause (d) of Section 2 of the Act as under:

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

'Local area' has been defined in Clause (f) of that section which is also reproduced hereinbelow:

Local area means the areas within the limits of any

(i) Municipality constituted under the Orissa Municipal Act, 1950 (Orissa Act 23 of 1950);

(ii) Grama Panchayat constituted under the Orissa Grama Panchayats Act, 1963 (Orissa Act 1 of 1965);

(iii) Other local authority by whatever name called, constituted or continued in any law for the time being in force;

And includes the area within an Industrial township constituted under Section 4 of the Orissa Municipal Act, 1950 (Orissa Act 23 of 1950).

20. Perusal of definition of 'entry of goods' shows entry of goods into the local area either from any place outside that local area within the State or any place outside the State for sale, consumption and use in uniform way. Therefore, if entry of goods is made into a particular local area from any place outside that local area within the State of Orissa or outside the State of Orissa, there would be no discrimination between them.

21. Now perusal of Article 304 of the Constitution is necessary which is reproduced as under:

304. Restriction on trade, commerce and intercourse among States- Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law-

(a) impose on goods imported from other States [or the Union territories] any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restriction 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.

22. A perusal of the above quoted provision of Article 304 shows that the Legislature of a State has been given the powers to legislate a law notwithstanding anything contained in Article 301 or Article 303 of the Constitution meaning thereby that the restrictions imposed in Article 301, i.e., free flow of trade would not affect the legislation made under Article 304(a) or Article 304(b). Further if the Legislatures legislate with reasonable restrictions on freedom of trade, commerce and intercourse within the State as may be required in public interest, the previous sanction of the President would be necessary. Without the same the law enacted under Article 304(b) would not be enforceable but no such sanction of the

president is required if the Legislatures of the State legislate a law imposing a tax on goods imported from other States or Union Territories to which similar goods manufactured or goods produced in that State are subjected and are not discriminated with the goods imported or manufactured or produced outside the State. Therefore, the provisions of Article 304(a) and Article 304(b) are two independent provisions and have no relationship to each other. This has also been laid down in para 32 of Jindal-2 case which is reproduced as under:

Broadly, the above analysis of the scheme of Articles 301 to 304 shows that Article 304 relates to the State Legislature while Article 302 relates to the Parliament in the matter of lifting of limitation which, as stated above, flows from the freedom of trade and commerce guaranteed under Article 301. Article 304 also confers upon the State Legislature power to lift the limitations imposed on it by Article 301 and Clause (a) of Article 303. This aspect is important because the doctrine of 'direct and immediate effect' which is mentioned in Atiabari Tea Co., emerges from the concept of 'limitation' embodied in Article 301. It is this doctrine of direct and immediate effect which constitutes the basis of the working test propounded vide paragraph 19 in Automobile Transport. Therefore, whenever the law is impugned as violative of Article 301, the Courts will have to examine the effect of the operation of the impugned law on the inter-State and the intra-State movement of goods which movement constitutes an integral part of trade.

23. Giving reasons for referral order, the Constitution Bench in paragraph-6 of Jindal-2 case held as under:

6. In Atiabari Tea Co. Ltd. v. State of Assam it

was held that taxing laws are not excluded from the operation of Article 301, which means that tax laws can and do amount to restrictions on the freedoms guaranteed to trade under Part XIII of the Constitution. However, the prohibition of restrictions on free trade is not an absolute one. Statutes restrictive of trade can avoid invalidation-if they comply with Article 304(1) or (b).

In the case of Video Electronics Pvt. Ltd. (supra), the apex Court has held as follows:

Where the general rate applicable to the goods locally made and on those imported from other States if the same nothing more normally and generally is to be shown by the State to dispel the argument of discrimination under Article 304(a), even though the resultant tax amount on imported goods may be different.

Therefore, a bare reading of Clauses (a) and (b) of Article 304 would show that they are to be construed and interpreted separately. For imposing a levy or tax under Clause (b) of Article 304, previous sanction of the President is required but if the levy or tax is found to be non-discriminatory between goods so imported or goods manufactured or produced within that State, it cannot be said that the State has not fulfilled the conditions imposed under Clause (a) of Article 304. If both the clauses would have been conjunctive, there would have been no purpose to enact these clauses separately mentioning specifically that for Clause (b) of Article 304, there would be necessity to obtain the previous sanction of the President. If this condition would have been imposed in the case where both the clauses would have been conjunctive, there would have been no necessity to mention specifically 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. The Legislature could have mentioned previous sanction of the president for the whole article and not only for Clause (b), which shows that both the clauses have been worded separately and are unconjunctive. More so when it is well settled that if the State has followed the provisions of Clause (b) of Article 304 and obtained the previous sanction of the President, the tax can be imposed even if it is discriminatory. In the case of Video Electronics (supra), it has been held by the apex Court that "the word 'discrimination' is not used in Article 14 but is used in Articles 16, 303 and 304(a). When used in Article 304(a), it involves an element of intentional and purposeful differentiation thereby creating economic barrier and involves an element of unfavorable bias". In Hansa Corporation (supra), the apex Court held that there is always a presumption of constitutionality of a statute. If the language is rather not clear and

precise, as it ought to be, attempt of the Court is to ascertain the intention of the legislature and put that construction which would lean in favour of the constitutionality unless such construction is wholly unreasonable. However, where one has to look at a section not very well drafted but the object behind the legislation and the purpose of enacting the same is clearly discernible, the Court cannot held its hand and blame the draftsman and chart an easy course of striking down the statute. In such a situation the Court should be guided by a creative approach to ascertain what was intended to be done by the legislature in enacting the legislation and so construe it as to give force and life to the intention of the legislature.

24. The contention raised by Shri A.K. Ganguli, Senior Advocate, is that the law under Article 304(a) cannot be enacted in the case where the goods are not produced or manufactured in that State. Clause (a) of Article 304 applies only for those goods which are produced by the State enacting the law under that clause. Therefore, in the State of Orissa, the goods which are not manufactured within the State cannot be subject to Entry Tax Act. Therefore, under the Entry Tax Act, the State can impose the levy without discrimination on the goods which are imported from outside the State and manufactured within the State. The opposite parties may make scrutiny of such goods and may not realize the levy under the Orissa Entry Tax Act on the goods which are not manufactured in the State of Orissa but for these reason the enactment of law, namely, the Orissa Entry Tax Act cannot be declared ultra vires.

25. In the case of H. Anraj v. State of Tamil Nadu , the apex Court in paragraph 37 has held as under:

37. I find considerable force in the aforesaid contention of Counsel for the writ petitioners. It is unnecessary to deal with all the decisions cited by Counsel but it will suffice if reference is made only to the decision in A.T.B. Mehtab Majid and Co.'s case (supra). In this case the petitioner firm was a dealer in hides and skins; it used to sell hides and skins tanned outside the State of Madras as well as those tanned inside the State. Under Rule 16 of the Madras General Sales Tax Rules tanned hides and skins imported from outside and sold inside the State were subjected to higher rates of

tax than the tax imposed on hides and skins tanned and sold within the State and the petitioner firm challenged the sales tax assessment made in relation to the turnover of sales of tanned hides and skins which had been obtained from outside the State of Madras on the ground that there was discriminatory taxation which offended Article 304(a) of the Constitution. The respondents contended (a) that sales tax did not come within he purview of Article 304(a) as it was not a tax on the import of goods at the point of entry, (b) that the impugned Rule was not a law made by the State Legislature, (c) that the impugned Rule by itself did not impose the tax but fixed the single point at which the tax was imposed by Sections 3 and 5 of the Act, and (d) that the impugned Rule was not made with an eye on the place of origins of the goods. Negativing all the contentions of the respondents this Court held that it was well settled that taxing laws can be restrictions on trade, commerce and intercourse, if they hampered free flow of trade and if they are not what can be termed to be compensatory tax or regulatory measure; that sales tax of the kind under consideration could not be said to be a measure regulating any trade or a compensatory tax levied for the use of trading facilities; that the sales tax which had the effect of discriminating between goods of one State and goods of another may affect the free flow of trade and it will then offend against Article 301 but will be valid only if it comes within the terms of Article 304(a). The Court finally held the impugned Rule 16(2) invalid. The instant case is on all fours of this decision.

26. 'Purchase value' has been defined in Clause (j) of Section 2 f the Act as under:

Purchase value' means the value of scheduled goods as ascertained from original invoice or bill and includes insurance charges, excise duties, countervailing charges, sales tax, value added tax or, as the case may be, turnover tax transport charges, freight charges and all other charges incidental to the purchase of such goods. The definition of 'purchase value.

Provided that where purchase value of any scheduled goods is not ascertainable on account of non-availability or non-production of the original invoice or bill or when the invoice or bill produced is

proved to be false or if the scheduled goods are acquired or obtained otherwise than by way of purchase, then the purchase value shall be the value or the price at which the scheduled goods of like kind or quality is sold or is capable of being sold in open market.

27. Clause (3) of Article 246 of the Constitution empowers he Legislature of any State to make laws for such State or any part hereof with respect to any of the matters enumerated in List II in the seventh Schedule of the Constitution referred to as 'State List'. Entry 52 of List II of Seventh Schedule provides as under:

52. Taxes on the entry of goods into a local area for consumption, use or sale therein.

Therefore, the State has exclusive power to make laws for such State for imposing tax on entry of goods into a local area for consumption, use or sale in that local area. Hence, there is no prohibition for the State to impose tax on entry of goods into a State or local area from outside the State or local area. Article 301 of the Constitution guarantees free flow of trade, commerce and intercourse throughout the territory of India but subject to other provisions of law in Part XIII. Therefore, any action of the State restricting free flow of trade, commerce and intercourse would amount to infringement of Article 301. However, exception is there. That exception is the other provisions in that part, i.e. Part XIII of the Constitution. Article 302 empowers the Parliament to make laws imposing such restriction on freedom of trade, commerce and intercourse between one State and another or within any part of the territory of India as may be required in the public interest. Clause (1) of Article 303 provides that neither the Parliament nor the Legislature of a State shall have power to make any law giving, or authorizing the giving of any preference to one State over another, or making, or authorizing the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule. We are concerned here with the State law and as such, meaning of Article 303 would be that State would not be authorized to make discrimination between one State and another by any law with regard to any entry relating to trade and commence in any of the

Lists in the Seventh Schedule. We are concerned with Entry 52 of List II. Therefore, in plain and natural meaning of Article 303 vis-a-vis the instant matter, the State of Orissa has no power to make such law which discriminates between one State and another in respect of imposing tax on entry of goods in the State of Orissa. Clause (a) of Article 304 which is an independent clause and provides that notwithstanding anything in Article 301 or Article 303, the Legislature of the State has been empowered to make law to impose any tax on goods imported from other States or Union territories to which similar goods manufactured or produced in that State, here we may say in the State of Orissa, as not to discriminate between goods so imported and goods so manufactured or produced in the State of Orissa. Clause (b) of Article 304, however, provides that notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law impose such reasonable restrictions on the freedom of trade, commerce and intercourse with or within that State, as may be required in the public interest but for that purpose the previous sanction of the President is necessary. Therefore, on one hand when Article 301 restricts the State to make hindrance in the free flow of trade, commerce and intercourse throughout the territory of India, on the other, the States have been empowered to make laws exclusively given in List II of Seventh Schedule and for the purpose of Entry 52, i.e. imposing tax on the entry of goods under the instant law within the State of Orissa and therefore, the words "notwithstanding anything in Article 301 or Article 303" have been used which means that the guarantee of free flow of trade and commerce given in Article 301 would not be applicable at all if the Legislature of a State imposes a tax under Clause (a) of Article 304 or Clause (b) of that article. The difference between Clause (a) and Clause (b) of Article 304 is that under Clause (a) there would be no need of previous sanction of the President whereas for Clause (b) previous sanction of the President is necessary before imposing a tax. However, the scope of Clause (a) of Article 304 is limited to the extent that the State can impose a tax on the entry of such goods brought from outside the local area or the State to which similar goods manufactured or produced in that State are subjected and further not to discriminate between the goods so imported or goods so manufactured or produced in that

State meaning thereby that if any goods is produced or manufactured in the State of Orissa and goods imported from outside the State, entry tax can only be imposed under Clause (a) of Article 304 on those goods which are manufactured or produced in that State and imported from other States provided there would not be any discrimination between those goods. But goods, which are not manufactured in the State of Orissa and are imported from outside the State, no tax can be imposed on them. Under Clause (b) of Article 304 if a tax is imposed, provisions of Article 301 or 302 would not be applicable meaning thereby that reasonable restriction on freedom of trade, commerce and intercourse with or within the State may be imposed if required and in that case the limited scope of imposing a tax as given in Clause (a) of Article 304 would not be there and the State would have unlimited scope in imposing the tax provided that State has obtained the previous sanction of the President.

28. To sum up, we are of the opinion that the State has the following three alternatives to impose a levy or tax which would not be violative of Article 301 meaning thereby it will not be treated as a hindrance in trade, commerce and intercourse. They are:

(i) if the levy imposed is compensatory in nature and facially or patently indicates the quantifiable data on the basis of which the compensatory levy or tax is sought to be levied and the Act facially indicates the benefits which is quantifiable or measurable and the proportionality of the quantifiable benefits and should be in the form of reimbursement/recompense for the quantifiable and measurable benefits to be provided to its payers or trades people;

(ii) if the tax is levied under Clause (a) of Article 304 but subject to conditions given therein that such levy or tax on goods would not result in discrimination between the goods imported from other States and similar goods manufactured or produced within the State entering into a local area. However, the scope of Clause (a) of Article 304 is limited to the extent that the State cannot impose tax on the goods imported from other States and are not manufactured or produced within that State;

(iii) if the tax is imposed following the provisions of Clause (b) of Article 304 meaning thereby that the previous sanction of the President has been obtained in imposing the tax.

29. Admittedly in enforcing the Orissa Entry Tax Act, previous sanction of the President was not obtained and therefore the Act cannot be said to be in accordance with Clause (b) of Article 304. We have already held in a batch of cases leading case of which was O.J.C. No. 1241 of 2000 that the Orissa Entry Tax is not compensatory or regulatory in nature and that the payment of entry tax is not

reimbursement/recompense for the quantifiable and measurable benefits provided to its payers. Therefore, if we do not consider Article 304 Clause (a) or (b) certainly the Orissa Entry Tax would tantamount to infringement of Article 301.

30. The State has taken the plea that the Orissa Entry Tax Act has been enacted under Clause (a) of Article 304 of the Constitution. Therefore, as discussed above, no tax can be imposed on those goods imported from outside the State which are not manufactured or produced in the State of Orissa. However, we do not find any discrimination in the provisions of the Act between the goods imported from outside the State and those manufactured or produced in the State of Orissa and are brought into the local area within a State. In this regard, the definition of 'entry of goods' given in Clause (d) of Section 2 is relevant which shows that there is no discrimination between the goods produced or manufactured within the State of Orissa or imported from outside and are brought within the local area. The rate of tax imposed under the Act or the Rules are also applicable uniformly on the goods imported from outside or goods manufactured within the State which are brought into a local area. Therefore, it cannot be said that the Orissa Entry Tax Act is not made under Clause (a) of Article 304 of the Constitution. However, the State has no jurisdiction to impose tax on such goods imported from outside and are not manufactured within the State of Orissa. Therefore, the opposite parties may make scrutiny of the same and not realize entry tax on such goods but for this the Act cannot be declared ultra vires.

31. Therefore, in our opinion, the contention raised by Shri Jagannath Patnaik, learned Senior Advocate appearing for the State, to the effect that the Orissa Entry Tax Act has been enacted following the provisions of Article 304(a) of the Constitution is sustainable in the eye of law and, therefore, it cannot be said that the Orissa Entry Tax Act is ultra vires the Constitution.

32. Some of the petitioners have raised objections that the assessing authorities have made the assessments without considering that the goods imported to a local area either from outside the State or from abroad are not taxable. For that purpose instead of filing appeals, they have approached this Court questioning the validity of the Orissa Entry Tax Act. Since we have upheld the validity of Orissa Entry Tax Act, we give them liberty to file appeals against the order of assessments and if such appeals are filed within a period of thirty days from today, the same shall be entertained and shall be dealt with in accordance with law.

33. To enable the petitioners to file appeals, it is provided that till thirty days from today or till filing of the appeals, whichever is earlier, no coercive action shall be taken against them for realization of the balance amount of tax.

34. Subject to the aforesaid observations and directions, all the writ petitions are dismissed. There would be no order as to costs.

A.K. Samantaray, J.

35. I agree.