



13TH NANI PALKHIVALA MEMORIAL NATIONAL TAX MOOT
COURT COMPETITION 2017



Clarifications with regard to the Moot Proposition

1. Are goods similar to the ones imported by M/s. TS Pvt. Ltd. are manufactured locally in State X?

Yes. Please refer to Para 4.

If yes, what's the total tax burden imposed by the State on such goods?

Entry Tax – 20%, VAT 20%

2. What is the rate of local sales tax in State X? **Please refer Pg 4.**
3. What did the Preamble to the 2002 Act state? **Please refer to Pg. 2.**
Since the 2002 Act was repealed by the 2006 Act, is it necessary to argue the constitutionality of the 2002 Act?
The repeal of the 2002 Act by 2006 Act was prospective in nature.
4. Is the factory in State Z owned/affiliated to the Company? In other words, does 'stock transfer' indicate the general connotation of transfer of stock between two branches of the manufacturer? **Yes, Yes**
5. What is the state of economic development of State X? **Not relevant**
6. Were there any other grounds other than the tax being non-compensatory for which the two Acts were struck down? **No**
7. Can the issues framed be combined? **Yes**
8. Can the order of the issues be modified? **Yes**
9. Whether the goods manufactured within the local area of the State X is also liable to pay Entry Tax? **Refer to Pg. 2.**
10. What will be the definition of consumption as per the impugned Acts?
As per common law
11. When was the date of issue of the notice and did the assessee comply with the said notice?
Date of notice is not relevant; notice was challenged in the high court
12. What was the economic condition of State X? **Not relevant**
13. As stated in para 3, sentence 3 of the moot proposition, the query is whether the particular inputs and raw materials procured 'from outside the state' are also available within State X? **Please read Para 3 carefully**
14. In Section 4 - Deductions, specifically in 4(1) (c), whether the word sales tax would construe as State sales tax or would it amount to Central Sales tax? **State Sales Tax**



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15. Whether assessment of TS Pvt Ltd for the period of 2005-2006 has been done or not.

Not relevant.

16. Which party had filed the suit against the State in the year 2008 so as to ascertain the cause title of the appeal? **Not relevant**

17. clarification with respect to the definition of 'importer' under the Tax on Entry of Goods into Local Area Act, 2002 or the 2006 Act.

"importer" means any person who, in the course of business, whether on his own account or on account of a principal or any other person, brings any goods into or receives or is entitled to receive any goods on their entry into a local area importer;"

18. Whether presidential assent was taken before Tax on Entry of Goods into Local Area Act, 2002 or the 2006 Act was enforced or not? **No**

19. In cases where the goods are imported from outside the state, was entry tax levied on the goods under the 2002 Act or the 2006 Act, as per the definition of "entry of goods into local area" under Section 2 of the Acts. **Yes.**

20. clarification as to the absence of the word "sale" in the definition of "turnover" under Section 2(d) of the 2002 and 2006 Act. **No clarification required**

21. What will be the definition of consumption as per the impugned Acts? **Already answered**

22. When was the date of issue of the notice and did the assessee comply with the said notice?

Already Answered

23. Did the High Court decide to invalidate the Acts from the date of judgment or was it retrospective? **Retrospective**

24. The 2016 Jindal Judgment places reliance on taxes not essential to be compensatory in nature and henceforth the defect in 2002 and 2006 Act being non-compensatory in nature is cured. My doubt is whether we have to point out the defects in the 2002 and 2006 act in lieu of Jindal Judgment or do we need address Issue 5 with reference to the time when Jindal Judgment was not delivered. (If we only consider the 2016 judgment then the plight of the company would fall lose and no defect could be pointed out.)

The division Bench is deciding the matter based on the guidelines given by 9 judge bench in Jindal.



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25. We would like to know whether the inputs and raw materials procured from outside the State suffer entry tax in addition to the Central Sales tax.

We feel no further clarification is required for this question

26. Whether the 2002 and 2006 Acts are liable to be struck down as discriminatory? This issue is wrongly drafted because there cannot be violation of any Entry. There can only be violation of power given under Article 245 and Article 246.

We feel no further clarification is required for this question

27. The word "sale" has been omitted from Section 2(d). Is it a typographical error or is it a deliberate omission? **No clarification required.**

28. Please explain the deductions under section 4 of the given Act, which is one of the relevant portion of the 2006 given Act. In specific Section 4(1) (c).

No clarification required.

29. Whether the Value of the good on which Sales Tax has been paid include VAT and CST as well. **Sales Tax is the same as VAT**

30. Whether the expression "Sales Tax" in Sec 4 (1)(c) denotes both Value Added tax and CST, both, or not. **VAT**

31. What is the rate at which CST is levied in an inter-state sale of:

- a. Raw materials and inputs required for production of telecommunication equipment?
- b. Telecommunication equipment?

Not relevant

32. Which amongst State X, Y and Z are more economically developed? Are they equally developed or there is some difference between the numbers of industries present in each State? **Not relevant**

33. When is Entry Tax paid to the State Govt? We understand that the tax is levied as soon as the goods enter the Local Area, however when is it actually paid to the State Government? **Not relevant**

34. Sale of telecommunication equipment (including raw materials and inputs required for its manufacture) from one Local Area to another Local Area within the State X suffers Entry Tax or Sales Tax? It is written in the Moot Proposition on Page 1 "inputs and raw materials procured from different local areas suffer local sales tax (VAT) AND



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- entry tax, however as per Section 4 of the 2006 Entry Tax Act, the value of goods on which Sales Tax [both VAT and CST (which is payable to State X)] is paid or has become payable are not chargeable to Entry Tax". It implies that both Sales tax and Entry Tax cannot be levied on same goods (whether they are finished goods or inputs or raw materials). If both the taxes have been paid on same goods, will one tax be refunded? If yes, then which tax would be refunded? **Yes. Entry tax will be refunded**
35. State X has appealed against the two orders of High Court to the Apex Court. Kindly tell under which Provision of Law have they approached the Apex Court? **Not relevant**
36. To clarify, which type of proceedings are being pursued before the Division Bench of the Supreme Court and what chain of proceedings has led the matter to this stage? Had M/s TS Pvt. Ltd. filed writ petitions which resulted in the 2002 and 2006 Acts being struck down as stated in the first paragraph of the problem? Has State X filed the appeal against the said orders of the High Court and is this appeal the premise of the problem? **Yes**
37. If so, which year was this appeal filed in/what is the caption of the concerned matter?
Not relevant
38. With regard to Section 16(1)(d) of the 2006 Act that has been reproduced in the problem, should the word "the said" in the clause be replaced with "this", so that the sentence could be read as "...and any such act done or any action taken in the exercise of the powers conferred by or under the said Act shall be deemed to have been done or taken in the exercise of the powers conferred by or under *this* Act as if this Act were in force on the date on which such act was done or action taken.."? **No**
39. The High Court have struck down the impugned act on the ground of being Non-compensatory, the State being the Appellant in the instant matter, court can only frame the issue as whether the Impugned act is compensatory and the issue of the Acts being discriminatory or not does not arises at all. **No clarification required**