



13TH NANI PALKHIVALA MEMORIAL NATIONAL TAX MOOT
COURT COMPETITION 2017



MOOT PROPOSITION

In the year 2002, State X imposed Entry Tax vide “TAX ON ENTRY OF GOODS INTO LOCAL AREA ACT, 2002” (known as the “2002 Act”). However, the High Court struck down the Act as being non-compensatory in March 2006. Thereafter, the State re-enacted “TAX ON ENTRY OF GOODS INTO LOCAL AREA ACT, 2006” (known as the “2006 Act”). However, in 2008, the said Act was also struck down by the High Court as being non-compensatory. An appeal against both orders of the High Court is pending before the Hon’ble Supreme Court.

The Hon’ble Supreme Court in *Jindal Stainless Ltd. & Anr. vs. State of Haryana & Ors.*, Civil Appeal No. 3453 of 2002 judgment dated 11.11.2016 held among other things that the concept of compensatory taxes is not recognised by the Constitution and that it does not have any juristic basis.

M/s. TS Pvt. Ltd. is a company registered under the Companies Act, 1956. The company is engaged in the manufacture of telecommunication equipment in State X since the year 2005. For this purpose, the company procures inputs and raw materials from within the State as well as from outside the State. The inputs and raw materials procured from within the State come from different local areas and suffer local sales tax and entry tax. The inputs and raw materials procured from outside the State suffer Central Sales Tax.

To meet the demand in the State, the company purchases the telecom equipment from another manufacturer in State Y and also stock transfers them from another factory in State Z. In addition, some equipment is also imported from outside India directly into State X.

The company did not pay entry tax under the 2002 Act. However, notice was issued for the period 2005-06 to the company, which was challenged before the High Court, wherein the High Court struck down the 2002 Act. From April 2006 onwards, the company started paying entry tax, but stopped paying entry tax w.e.f 2008, i.e. once the High Court struck down the 2006 Act.

The matter has been posted before the Division Bench of the Supreme Court for disposal in terms of the judgment of the Constitution Bench.



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The Relevant portion of the 2006 Act is extracted herein below. It is to be noted that the 2002 Act was identical to the 2006 except for the Preamble, Sections 15 & Section 16.

An Act to provide for the levy of tax on the entry of goods into local areas for consumption, use or sale therein

¹[WHEREAS it is necessary to augment the revenue of the State to compensate the expenditure to provide trading facilities including laying and maintenance of roads and provision of markets and welfare measures;

AND WHEREAS it is necessary to levy and collect taxes on the goods entering into the local areas of the State for consumption, use or sale therein for the State to carry out the above purposes;]

Section 2 - Definitions – In this Act, unless the context otherwise requires, –

(a) “assessee” means a person by whom tax is payable;

(b) “*entry of goods into a local area*” means taking or bringing goods into a local area from any place outside the State or from any place inside any other local area in the State;”

(c) “*local area*” means an area within the limits of a Municipal Corporation established under the State Municipal Corporation Act, or any other local authority constituted or continued in State under any law for the time being in force;

(d) “turnover” used in relation to any assessee means the aggregate of the value of goods which the assessee brings or receives in any local area for consumption or use therein during any given period and determined in accordance with the provisions of this Act and the rules made thereunder;

(e) “value of the goods” means the purchase value of such goods, that is to say, the purchase price at which an importer has purchased the goods inclusive of charges borne by him as cost of transportation, packing, forwarding and handling charges, commission, insurance, taxes, duties and the like, or if such goods have not been purchased by him, the prevailing market price of such goods in the local area;

¹ Introduced in the 2006 Act



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Section 3 - Levy and Collection of Tax

1. Subject to the provisions of this Act, there shall be levied and collected a tax on the entry of any scheduled goods into any local area for consumption, use or sale therein. The rate of tax shall be at such rate not exceeding 40 per cent on the value of the scheduled goods, as may be fixed by the Government, by notification and different rates may be fixed for different scheduled goods.

(2) The tax shall be payable by an importer in accordance with the provisions of this Act.

Section 4 - Deductions

(1) In calculating the turnover liable to tax for a period, an importer may deduct from his gross turnover during that period –

- (a) the value of goods which have, without use, consumption or sale been delivered outside the local area;
- (b) the value of goods which have been subjected to tax once under this Act
- (c) the value of goods on which sales tax has been paid or has become payable to the State;

Section 15 - Validation

Notwithstanding any judgment, decree or order of any Court, Tribunal or Authority, all actions taken, things done, rules made, notifications issued or purported to have been taken, done, made or issued and tax levied, assessed, collected, realised, received or liability accrued under the Tax on entry of goods into Local Area Act, 2002, shall be deemed to have been validly taken, done, made, issued, levied, assessed, collected, realised, received or accrued under this Act, as if this Act were in force at all material times and no suit or other proceeding shall be maintained or continued in any Court or before Tribunal or any Authority for the refund of entry tax.



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Section 16 - Repeal and Saving

(1) THE TAX ON ENTRY OF GOODS INTO LOCAL AREA ACT, 2002, is hereby repealed:

Provided that such repeal shall not-

- (a) affect the previous operation of the Act so repealed or anything duly done or suffered thereunder; or
- (b) affect any right, title, privilege, obligation or liability acquired, accrued or incurred under the said Act ; or
- (c) affect any act done or any action taken (including any appointment, notification, notice, order, rule, form, regulation, certificate) in the exercise of any power conferred by or under the said Act ; or
- (d) affect any appeal, revision, review or corrective action to be initiated after the commencement of this Act for addressing an illegality, impropriety, mistake, or an error under the said Act, 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 the said Act as if this Act were in force on the date on which such act was done or action taken; and all arrears of tax and other amount due at the commencement of this Act may be recovered as if the same had accrued under this Act.

(2) Any application, appeal, revision or other proceedings made or preferred to any officer or authority under the said Act and pending at the commencement of this Act, shall, after such commencement, be transferred to and disposed of by the officer or authority who would have had jurisdiction to entertain such application, appeal, revision or other proceedings under this Act as if the said Act had been in force on the date on which such application, appeal, revision or other proceedings were made or preferred.



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SCHEDULE - I

Rate of tax:

1. All goods 20%

*The Rate of VAT in State X is 20% for all goods.

**Further, Input Tax credit of VAT paid on inputs shall not be allowed in for goods that are used in the manufacture or packing of taxable goods which are exported out of State or disposed of otherwise than by sale

*** All laws are *pari materia* with those of India.

The following issues have been framed for arguments before the Division Bench of the Supreme Court.

1. WHETHER THE 2002 AND 2006 ACTS ARE LIABLE TO BE STRUCK DOWN AS DISCRIMINATORY?
2. WHETHER THE 2002 AND 2006 ACTS ARE VIOLATIVE OF ENTRY 52 IN LIST II?
3. WHETHER ENTRY TAX CAN BE COLLECTED ON GOODS IMPORTED FROM OUTSIDE INDIA?
4. WHETHER THE NOTICE ISSUED UNDER THE 2002 ACT WOULD STILL BE VALID TO DEMAND TAX AFTER THE ENACTMENT OF THE 2006 ACT?
5. WHETHER LEGISLATURE IS ENCROACHING JUDICIAL FUNCTIONS DUE TO THE INSERTION OF SECTION 15 INTO THE ACT?