LEVY OF TAX ON ENTRY OF GOODS BY THE STATE GOVERNMENTS

- A PAN-INDIA OVERVIEW

(I) Legislative Background of the Levy

- Under Article 246 (3) of the Constitution of India, the State Government has exclusive powers to make laws for State with respect to any matter enumerated in List II ('State List') in Seventh Schedule. The power to levy entry tax is derived from Entry 52 of List II, which read as *'**Tax on entry of goods** into a local area for consumption, use or sale therein';*

- The Legislative power of the State to make any law under Article 246 read with entries in List II is subject to two limitations (i) **Fundamental rights** (Part III of the Constitution); & (ii) **Trade, commerce and intercourse within the territory of India** (Part XIII of the Constitution);

- Article 301 (Part XIII of the Constitution) states that trade, commerce and intercourse throughout the territory shall be free subject to other provisions of this part;

- Article 304, which overrides Article 301, states that SG may impose:

  (a) Any tax on goods imported from other States or UTs to which similar goods manufactured or produced in that State are subject to – i.e. tax not to be discriminatory; **&**

  (b) Restriction on freedom of trade, commerce or intercourse is reasonable and in public interest – however, such restriction would require sanction of President.

(II) Origin of Dispute

- This dispute originated from the decision of SC in the case of **Atiabari Tea Co. Ltd. v. State of Assam [1961 AIR (SC) 232]**, wherein a question came up before the SC as to whether taxing laws comes within the purview of Article 301. The contention on behalf of the Union Government and the State Government is that the freedom envisaged by Article 301 does not include immunity from taxation and that freedom means that there shall be no trade barriers or tariff walls shutting out commodities, traffic and intercourse between individuals. SC 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. [The statute which was challenged in Atiabari Tea Co. was the Assam Taxation (on goods carried by Roads and Inland Waterways) Act, 1954. It was held that the Act had put a direct restriction on the freedom of trade and since the State Legislature had not complied with the provisions of Article 304(b), the Act was declared void.]

- However, an exception to Article 301 in form of 'compensatory taxes' was judicially crafted by the Seven member bench of the Hon'ble SC in the case of **Automobile Transport Ltd. v. State of Rajasthan [AIR 1962 SC 1406].** Therefore, taxes which are compensatory would not violate Article 301 of the Constitution. In the said case, SC laid down "a *working test* for deciding whether a tax is a compensatory or not is to enquire whether the trade is having the use of certain facilities for the better conduct of its business and paying not patently much more than what is required for providing the facilities" [however no specific parameters has been laid down to decide whether tax is compensatory or not]. Finally, SC 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)*.

- Right from the year 1962 up to 1995, this working test was applied by Courts in relation to motor vehicle taxes for deciding whether the impugned levy was compensatory or not. However, some of the principles set out in Automobile's case stood deviated when the principle of compensatory tax was applied to the entry tax by Three member bench of SC in the case of **Bhagatram Rajeev Kumar v. CST [(1995) 96 STC 654 (SC)]**. In that case, SC widened the concept of compensatory nature of tax and went on to held that if there is substantial or '*some link*' between the tax and the facilities extended to dealers directly or indirectly the levy cannot be impugned as invalid. The dictum in Bhagatram's case was relied on by a Bench of two judges of SC in the case of **State of Bihar v. Bihar Chamber of Commerce [(1996) 103 STC 1 (SC)]**. In the said case, SC went further to hold that the State provides several facilities to the trade, such as, laying and maintenance of roads, waterways, markets etc., and on such premise it was held that the entry tax was compensatory on nature

- **<u>To sum up</u>**: the Pre'95 decision held that compensatory tax must, more or less, be commensurate with the cost of the service or facilities made available to the dealers. However, the Post'95 decisions held that an indirect or incidental benefit to traders by reason of stepping up the developmental activities in various local areas can be brought within the concept of compensatory tax. In view of aforesaid backdrop, the matter came up before the Two member bench of SC in the case of **<u>Jindal Stripe Ltd. v. State of Haryana [(2004) 134 STC 303 (SC)]</u>**. The SC observed that concept of compensatory tax has been blurred, particularly, by reason of the decisions in Bhagatram's and Bihar Chamber of Commerce's case (supra), hence the interpretation of Article 301 vis-à-vis compensatory tax should be authoritatively laid down by the Constitution Bench.

(III) <u>Decision of Constitution Bench (Five member) of SC in Jindal Stainless Ltd. v. State of Haryana [(2006) 145 STC 544 (SC)]</u> – It was held that the ratio of decision in the case of Atiabari Tea Co. Ltd & the working test enunciated in case of Automobile Transport will continue to apply and the test of "some connection" applied in case of Bhagatram is not a good law. Further, the following parameters of compensatory tax were laid down by the Hon'ble Supreme Court:

- ✓ in case of compensatory tax, principle of equivalence shall apply;
- ✓ benefits under a compensatory tax are quantifiable and measurable;
- ✓ it is based on the principle of '**pay for the value'**;
- ✓ compensatory tax compulsorily charged is in proportion to special benefits derived to defray the cost of regulation or facilities or special advantages provided to the trades in question; &
- ✓ **burden of showing that the tax is compensatory in nature lies on the State**.

The Supreme Court directed the Courts to decide whether the levy is compensatory in nature or not, based on the above parameters. The orders passed by High Courts / Supreme Court in different States, pursuant to decision of Supreme Court in Jindal's case, are elucidated in the Table below at Serial No. (IV) for ease of reference. **In all such cases, the aggrieved party, be it the State or assesses have filed SLP with the Supreme Courts to decide on the constitutional validity of the entry tax of the respective states and for granting interim stays.** Two member bench of Supreme Court in the case of **<u>Jaiprakash Associates Ltd. v. State of M.P. [2009 (21) VST (0001) SC]</u>** has held that the principles evolved by the Hon'ble Supreme Court in the case of **<u>Jindal Stainless Ltd. [(Supra)]</u>**

was based on the approach of levy of transport cases. Transport cases are conceptually and contextually different from Entry Tax cases. Hence considering the importance of issues relating to Article 301 and 304, they have once again referred the issue to Larger Bench to answer certain major questions of law.

(IV) HC's/SC's order in different States pursuant to decision of Supreme Court in Jindal's Case

Sl. No.	State	Entry Tax Act & Rule	Current Legal Status
(A)	**North Region**		
1	**Haryana**	Haryana Local Area Development Tax Act, 2000 & Rules,2001	Punjab and Haryana HC in the case of **Jindal Strips Ltd. and Another v. State of Haryana and Others [(2008) 12 VST 149 (P&H)]** held the Haryana Local Area Development Tax Act, 2000 is non compensatory since the levy is not to meet the cost of any specific facility for trade, commerce and intercourse but for assistance to local area for their development generally. A Divisional Bench of this Court held that the levy amounted to restriction on free flow of trade and commerce and is in violation of Article 301 & 304 of Constitution of India.
		Haryana Tax on Entry of Goods into Local Area Act, 2008	Punjab and Haryana HC in the case of **IOCL v. State of Haryana and Others [(2009) 21 VST 10 (P&H)]** held that Haryana Tax on Entry of Goods into Local Area Act, 2008 is not compensatory in nature as the State was unable to show relation between levy and cost of existing facility and therefore the State cannot impose unnecessary tax on the Petitioners. It was further held that the levy is in violation of Article 301 and therefore is unconstitutional & void.
2	**Jammu & Kashmir**	Jammu & Kashmir Entry Tax on Goods Act, 2000 & Rules, 2000	Not yet decided in case of any assessee
3	**Madhya Pradesh**	MP. Entry Tax Act, 1976 & Rules, 1976	M.P. HC in the case of **M/s Godfrey Philips India Ltd. and Others v. The State of M.P. & Ors [2008-(017) VST 0465 (MP)]** held that the levy is compensatory in nature and hence constitutional

4	**Punjab**	Punjab Tax on Entry of Goods into Local Areas Act, 2000 & Rules, 1999	Not yet decided in case of any assessee
5	**Rajasthan**	Rajasthan Tax on Entry of Goods into Local Areas Act, 1999 & Rules, 1999	Rajasthan HC in case of **M/s Dinesh Pouches Ltd. v. State of Rajasthan[(2007) 8 VR 115]** held that : (a) **Article 301** – the levy is non-compensatory since there is neither any facial indication in the preamble to substantiate that levy is for any specific purpose nor the material placed by state proves that entry tax is a reimbursement & provides quantifiable benefits. (b) **Article 304(a)** – the levy will not come within the purview of this clause since the levy is not on the goods imported from outside State (c) **Article 304(b)** – no prior presidential assent (d) **Conclusion** – the levy is unconstitutional
6	**Uttar Pradesh**	The UP Tax on Entry of Goods into Local Areas Act 2000 & Rules 1999 (repealed)	Prior to decision of SC in the case of Jindal, Allahabad HC, vide **order dated 27-01-04**, in the case of **Indian Oil Corporation Limited v. State of U.P. and Others** has held that the levy is non-compensatory in nature. Further, it was held that the levy is non-discriminatory in nature & is without presidential assent, hence the levy is unconstitutional. Pursuant to decision of SC in the case of Jindal, Allahabad HC in the case of **Indian Oil Corporation Limited v. State of U.P. and Others [(2007) 10 VST 282]** held that the levy is non-compensatory in nature since the State has failed to produce any data to show that the levy is a re-imbursement.
		U.P. Entry Tax Act, 2007	The 2007 Act was also challenged before the High Court. The High Court in the case of **ITC Limited v. State of U.P. and Others [Writ Tax No. 1484 OF 2007]** has upheld the impugned U.P. Entry tax Act, 2007 as 'compensatory' in nature and held the levy to be constitutional.

7	**Himachal Pradesh**	The Himachal Pradesh Tax on Entry of Goods into the Local Area Act, 2010	Not yet decided in case of any assessee
8	**Delhi**	Delhi Tax on Entry of Motor vehicles into Local Areas Act, 1994 & Rules, 1995	Not yet decided in case of any assessee
(B)	**South-West Region**		
9	**Goa**	Goa Tax on Entry of Goods Act, 2000 & Rules, 2000	Not yet decided in case of any assessee
10	**Gujarat**	Gujarat Tax on Entry of Specified Goods into Local Areas Act 2001 & Rules 2001	Gujarat HC in the case of **Eagle Corporation Pvt. Ltd. v. State of Gujrat and Others [(2007) 6 VST 560(Guj)]** has held that: (a) **Article 301** – the levy is compensatory as the preamble of this Act was same as of Maharashtra Tax on Entry of Motor Vehicles Act, 1987 which has been upheld by the SC. HC denied to take a different view and relied on the above SC's decision (b) **Article 304(a)** – the levy is non-discriminatory as the importers enjoy exemption of entry tax payable against the sales tax paid, which puts them at par with the local dealers. HC also held that the contention that the discrimination is required to be considered qua each act and the tax separately has no substance. (c) **Article 304(b)** – since the levy is non-discriminatory, the provisions of Article 304(b) is not required to be compiled with. (d) **Conclusion** – The levy is constitutional
11	**Maharashtra**	Maharashtra Entry Tax On Petroleum Goods into Notified Areas Act (2002)	Not yet decided in case of any assessee
12	**Andhra Pradesh**	The Andhra Pradesh Tax on Entry of Goods into Local Areas Act, 2001 & Rules, 2001	A.P. HC in the case of **Sree Rayalaseema Alkalies and Allied Chemicals Ltd. v. State of Andhra Pradesh [(2008) 13 VST 15 (AP)]** held that : (a) **Article 301** – the levy is non-compensatory since no material has been placed by State to prove that the payment of entry tax is a reimbursement for the quantifiable benefits provided to the taxpayers.

			(b) **Article 304(a)** – not considered (c) **Article 304(b)** - No prior presidential assent. (d) **Conclusion** - The levy is unconstitutional
13	**Karnataka**	Karnataka Entry Tax Act, 1979	Karnataka HC in the case of **Manipal Academy of Higher Education v. State of Karnataka [(2008) 13 VST 377 (Karn)]**, while deciding the validity of the Karnataka Entry Tax Act, 1979, held that : (a) **Article 301** – the levy is compensatory since tax so collected is diverted to urban local bodies to provide various service and infrastructure facilities to trader community to carry on their business. (b) **Article 304(a)** – not considered (c) **Article 304(b)** – the levy is in public interest and had received prior Presidential assent. (d) **Conclusion** – The levy is constitutional
		Karnataka Special Tax on Entry of Certain Goods Act, 2004 & Rules, 2004.	Karnataka HC in the case of **Bharat Earth Movers Ltd. v. State of Karnataka [(2007) 8 VST 69 (Karn)]** held that: (a) **Article 301** – the levy is non compensatory since the state was unable to demonstrate any exclusive or special service provided to Entry Tax payers. (b) **Article 304(a)** - the levy is discriminatory (c) **Article 304(b)** – no Presidential assent obtained (d) **Conclusion** – The levy is unconstitutional

14	**Kerala**	Kerala Tax on Entry of Goods into Local Areas Act, 1994 & Rules, 1994	Kerala HC in case of **Thressiamma L. Chirayil v. State Of Kerala [(2007) 7 VST 293(Ker)]** held that: (a) **Article 301** –the levy is non compensatory as no quantitative data was provided, to show any nexus between the collection of entry tax and its utilisation for the benefit of the payers. (b) **Article 304(a)** - the levy is discriminatory since the Act provides for levy of tax on entry of goods into the local area from outside the state of Kerala not on movement of goods within the state. (c) **Article 304(b)** – the State has no proof to show that levy imposes reasonable restriction and is in public interest. Prior sanction of the president has also not been obtained. (d) **Conclusion** – The levy is unconstitutional
15	**Tamil Nadu**	Tamil Nadu Tax on Entry of Goods into Local Areas Act, 2001	Madras HC in the case of **ITC Limited v. State of Tamil Nadu [(2007) 7 VST 367(Mad)]** challenging Tamil Nadu Tax on Entry of Goods into Local Areas Act, 2001 held that: (a) **Article 301** – the levy is non-compensatory as the materials provided by the state to draw a co-relation between the tax collected and services provided has been considered as irrelevant. (b) **Article 304(a)** –the levy is discriminatory as the same is only levied on entry of goods into local area from outside state and not on entry of goods produced or obtained within the State into local area. (c) **Article 304(b)** – the Act has not received the assent of the President (d) **Conclusion** - The levy is unconstitutional.
		Tamil Nadu Tax on Entry of Motor Vehicles Act, 1990	Madras HC in the case of **R. Gandhi V. State of Tamil Nadu and Others [(2008) 13 VST 390 (Mad)]** has held Tamil Nadu Tax on Entry of Motor Vehicles Act as non-compensatory. However, HC has not decided on constitutional validity since the issue dealt by the HC in that order was specifically related to compensatory nature of the levy.

(C) East Region

16	**Assam**	Assam Entry Tax Act, 2008 & Rules,2008	Gauhati HC in the case of **State of Assam V. Chhtabhai Jethabhai Patel Tobacco Products Co. Ltd [(2008) 15 VST 70 (Gauhati)]**, while deciding the validity of the erstwhile Assam Entry Tax Act, 2001, held that: (a) **Article 301** - the levy in non compensatory as the state had no material proof to show that the tax collected had been used substantially for the benefits of the trader. (b) **Article 304 (a)** – the levy is discriminatory as the incidence of tax is on items brought into local area from outside state and not on intra-state movements. (c) **Article 304 (b)** - Although the levy has received prior assent of the President, there is nothing to prove that such discriminatory tax is reasonable and in public interest. (d) **Conclusion** - The levy is unconstitutional
17	**Bihar**	Bihar Entry Tax Act, 1993 Bihar Act 10 of 2001 Bihar Act 9 of 2003 Bihar Act 11 of 2003 Bihar Act 7 of 2006 Bihar Act 19 of 2006	Bihar HC in the case of **IOCL and Another V. State of Bihar [(2007) 10 VST 140]** held that: (a) **Article 301** – the levy is non-compensatory till the amendment is made by the Act 19 of 2006 dated 29-08-06. After the said amendment, the Act acquired the nature of compensatory tax. (b) **Article 304 (a)** – the levy originally was non-discriminatory till the amendment made in the definition of 'Entry of goods' w.e.f. 05-11-01 which introduce an element of discrimination. However, after amendment made vide Act 19 of 2006, the levy again acquired the nature of non-discriminatory tax (c) **Article 304 (b)** – only parent Act has received Presidential assent and the amendments made thereafter has no Presidential assent (d) **Conclusion** - (i) **Bihar Entry Tax Act, 1993** – even non-compensatory in nature, is constitutional since same

			has Presidential assent and levy is reasonable restriction and in public interest (ii) **Bihar Act 10 of 2001 & Act 9 of 2003** – This amendments made the levy discriminatory, increased the rate of tax and scope of goods, which is bad in law. Further both amendments do not have Presidential assent. (iii) **Bihar Act 11 of 2003** – This amendment seeking to levy entry tax even on goods imported from outside India, with retrospective effect, is bad in law for being retrospective and also for want of Presidential assent. (iv) **Bihar Act 7 of 2006** – Vide this amendment, set off of entry tax against sales tax disallowed, with retrospective effect, even if goods were exempted from sales tax by virtue of any notification. Validity of this amendment has not been decided. (v) **Bihar Act 19 of 2006** – After this amendment, the levy acquired the nature of compensatory tax & the Act in its present form is a valid.
18	**Chhattisgarh**	Chhattisgarh Entry Tax (Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam) Act, 1976 & Rule, 1976	Hon'ble Division Bench of the Chhattisgarh High Court vide **Order dated 10-02-2009** dismissed the batch of writ petitions on the premise that the concept of compensatory nature of tax has been widened and even if there is substantial or even some link between the tax and the facilities extended to such dealers, directly or indirectly the levy cannot be impugned as invalid, as held in Bhagatram Rajeev Kumar's case.
19	**Jharkhand**	Jharkhand Entry Tax on Consumption or Use of Goods Act, 2011	The Hon'ble Jharkhand HC vide Order dated 03-04-2012 in the case of **Tata Steel Limited v. The State of Jharkhand & Co**. has held that: (a) **Article 301** - the levy in non compensatory as there is no indication of any measurable and quantifiable data viz. the benefit which is measurable, to the dealers liable to pay entry tax. (b) **Article 304 (a)** – the levy is only on entry of goods from outside the State and not on movement of similar goods within the State, thus clearly

			discriminating similar goods brought from outside the State vis-à-vis within the State (c) **Article 304(b)** – the Act has not received the assent of the President (d) **Conclusion** - The levy is unconstitutional.
20	**Orissa**	Orissa Entry Tax Act, 1999 & Rules, 1999	Orissa HC vide **Order dated 17-01-08** in the case of **National Aluminium Company Limited v. The State of Orissa** has held Orissa Entry Tax as non-compensatory. Further HC vide **order dated 18-02-08** in the case of **Reliance Industries Limited and Others v. The State of Orissa**, held that: (a) **Article 301** – the levy is non-compensatory (b) **Article 304(a)** – the levy is non discriminatory as the tax would be leviable only on those similar scheduled goods which are manufactured in Orissa. (c) **Article 304(b)** – no Presidential assent has been obtained (d) **Conclusion** – Orissa HC held the levy as constitutional, since the levy is non discriminatory. Further, HC directed refund on tax collected on imported goods which are not manufactured in State.
21	**West Bengal**	West Bengal State Tax on Consumption or Use of Goods Act, 2001	W.B. Taxation Tribunal has held in the case of **NHPCL v. A.C.C.T., Siliguri Charge [(2008) 15 VST 158 (WBTT)]** held that: (a) **Article 301** - the levy is non compensatory and is for augmenting general revenue of the State (b) **Article 304(a)** – the levy is discriminatory as the tax is on entry of goods into local area from outside State & not on the intra State movement of the goods. (c) **Article 304(b)** – Not considered (d) **Conclusion** - The levy is unconstitutional.
		West Bengal Entry Tax Act, 2012 & Rules, 2012	The Entry Tax Act, 2012 has been held as unconstitutional by HC vide order dated 24-06-13. **[Explained in detail subsequently]**

(IV) Levy of Entry Tax in the State of West Bengal under West Bengal Entry Tax Act, 2012 –

(a) Salient Features of the levy of Entry Tax in West Bengal–

- Entry Tax is leviable on entry of goods into local area from outside the State [inter-state movement], within the State [intra-state movement] as well as from outside India [Import];

- Exemption provided on (a) entry of goods purchased in the same form against a Tax Invoice from a Registered Dealer, & (b) Stock transfer within the State;

- No set-off is available for payment of entry tax against VAT – Hence, the same becomes a COST &

- The levy of Entry Tax is @ 1% on goods falling under Schedule C, CA & D of the West Bengal VAT Act 2003.

(b) Interim Orders passed by High Court –

Interim Order dated 12-06-2012 – The matter in the case of Tata Steel Limited & Another [W.P. No. 11407(W) of 2012] came up for hearing before the bench of Justice Indira Banerjee on 12-06-2012 wherein the High Court passed an interim order directing the petitioners to comply with the provisions of the impugned Act and make payment of taxes;

Interim Order dated 27-06-2012 – For modification of the above interim order, one of writ petitioner Bharti Airtel Limited [WP No. 464 of 2012] moved an appeal before the Divisional Bench of the High Court. The Divisional Bench in this regard has passed an interim order on 27-06-12, granting full stay from payment of Entry Tax, however, the Court has asked the assessee to file Entry Tax Return

Interim Order dated 17-07-2012 –Thereafter various assessees has applied before the bench of Justice Indira Banerjee for application of the above order (dated 27-06-2012) in their respected cases also. The Bench vide order dated 17-07-2012 in the case of Tata Steel Limited & Another

[W.P. No. 11407(W) of 2012] has been pleased to direct that for a definite period [which has now been extended till the pronouncement of final order], order of assessment shall not be given effect to. Based on the afore-said order, various Corporates stopped paying Entry Tax to the Department, under intimation and subject to filing of return.

(c) Final Order dated 24-06-2013 passed by Single Member Bench of Calcutta High Court holding the levy of Entry Tax in West Bengal as Unconstitutional –

The Hon'ble High Court held the levy of Entry Tax in West Bengal as unconstitutional, mainly on the following premises:

(i) To clear the test of compensatory tax [i.e. Article 301], the onus lies on the State to show the exact purpose or purposes for which the levy is imposed, which should be identifiable, measurable, directly beneficial to the tax payers as a class. The State has failed to disclose details of projects in contemplation, projects in progress and/or completed projects, providing facilities to the trading community, which the levy would pay for, and show that the expected proceeds of such levy are more/less equivalent to the estimated expenditure on such projects;

(ii) The State has a general duty to construct roads and bridges for all its citizens, and utilization of the proceeds of the levy to construct and maintaining roads and bridges throughout the State, irrespective of the trading activities would render the levy a tax to collect revenue and not compensatory tax;

(iii) The previous sanction of the President of India not having been obtained, before enactment of the impugned Entry Tax Act, this court is constrained to hold that the impugned Entry Tax Act is ultra vires Section 304(b) of the Constitution of India;

(iv) It is immaterial that the rate of tax which is 1%, is reasonable;

There is a stay in operation of the impugned judgment & order for a period a six weeks from date of order. Further, nothing has been stated in the Impugned Order for refund of Entry Tax already deposited with the State Government.

(d) Appeal filed by the State against the Favourable Order passed by the Single Member Bench and Interim Order dated 31-07-13 passed by the Divisional Bench :

The Divisional Bench vide Interim Order dated 31-07-13 has directed:

- That the Assessment Proceedings should continue [i.e. the assessing officers are allowed to assess the Liability];
- That there shall be no refund of Entry Tax already paid**; &**
- The State Counsel to produce orders of different High Courts for depositing the amount [subsequent to which subsequent payment terms may be decided]

The decision regarding payment of Entry Tax may be taken by the Divisional Bench during the next hearing scheduled on 12-09-2013, after perusal of the interim orders passed by various other High Courts.

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