Department of Commercial Tax
Government of Jharkhand

DIPP Point No. 203

Question	Remarks
8b. Online tax payment **Q:** Design and implement a system for Entry Tax to be paid online	No entry tax is imposed in Jharkhand. The certificate to this effect is attached. 'W.P. (T) No. 5696 of 2011' attached

W.P. (T) No. 5696 OF 2011

In the matter of an application under Article 226 of the Constitution of India

---

Tata Steel Limited

Versus

The State of Jharkhand & Ors.

With

W.P.(T) No. 5000 of 2011

Imperial Fastners Private Vs. State of Jharkhand & Others

With

W.P.(T) No. 5450 of 2011

Adhunik Power and Natural Vs. State of Jharkhand & Others

With

W.P.(T) No. 5278 of 2011

Electrosteel Steels Limited Vs. State of Jharkhand & Others

With

W.P.(T) No. 5250 of 2011

Jindadl Steel & Power Limited Vs. State of Jharkhand & Others

With

W.P.(T) No. 5304 of 2011

M/s. Reliance Communication Vs. State of Jharkhand & Others

With

W.P.(T) No. 5305 of 2011

M/s. Reliance Communication Vs. State of Jharkhand & Others

With

W.P.(T) No. 5318 of 2011

M/s. Reliance Webstore Pvt. Ltd. Vs. State of Jharkhand & Others

With

W.P.(T) No. 5578 of 2011

Montecarlo Construction Ld. Vs. State of Jharkhand & Others

With

W.P.(T) No. 5332 of 2011

M/s. Reliance Infratel Ltd. Vs. State of Jharkhand & Others

With

Department of Commercial Tax
Government of Jharkhand

Entry Tax is not applicable in Jharkhand

27. Consequently, the writ petitions are allowed. It is declared that section 3 of the Jharkhand Entry Tax Act on Consumption or Use of Goods Act, 2011 is ultra vires and unconstitutional as being not saved by Article 304 of the Constitution of India and is in conflict with Article 301 of the Constitution of India. Since the charging section 3 of the Jharkhand Entry Tax Act on Consumption or Use of Goods Act, 2011 has been held to be ultra vires, the respondent State cannot enforce any of the provisions of the Jharkhand Entry Tax Act on Consumption or Use of Goods Act, 2011.

(Prakash Tatia.,C.J.)

Hon'ble Justice P.P.Bhatt,J.

I agree.

(P.P.Bhatt, J.)

Jharkhand High Court, Ranchi
The 3rd,April, 2012
NAFR/Dey

SUPPORTING DOCUMENT

W.P. (T) No. 5696 OF 2011

In the matter of an application under Article 226 of the Constitution of India

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With

W.P.(T) No. 5312 of 2011

M/s. Reliance Big TV Ltd. Vs. State of Jharkhand & Others

With

W.P.(T) No. 5315 of 2011

M/s. Macronet Pvt. Ltd. Vs. State of Jharkhand & Others

With

W.P.(T) No. 5341 of 2011

M/s. Macronet Mercantile Pvt. Ltd. Vs. State of Jharkhand & Others

With

W.P.(T) No. 5311 of 2011

M/s. Reliance Telecom Ltd. Vs. State of Jharkhand & Others

With

W.P.(T) No. 5880 of 2011

M/s. Calcutta Industrial Su Vs. State of Jharkhand & Others

With

W.P.(T) No. 5866 of 2011

M/s. Dhansar Engineering Company Vs. State of Jharkhand & Others

With

W.P.(T) No. 5869 of 2011

M/s. B.K.B. Transport Pvt. Ltd. Vs. State of Jharkhand & Others

With

W.P.(T) No. 5871 of 2011

M/s. Libra Business Pvt. Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 5861 of 2011
M/s. Divine Alloys & Poer Vs. State of Jharkhand & Others
With
W.P.(T) No. 5855 of 2011
M/s. Sahu Estate Pvt. Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 5823 of 2011
Tata Motors Limited Vs. State of Jharkhand & Others
With
W.P.(T) No. 5824 of 2011
M/s. Tata Cummins Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 6386 of 2011
M/s. Sistema Shyam Tele Services Vs. State of Jharkhand & Others
With
W.P.(T) No. 5526 of 2011
M/s. Shivam Iron & Steel Company Vs. State of Jharkhand & Others
With
W.P.(T) No. 5579 of 2011
M/s. Sundaram Ferro-tech Pvt. Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 5650 of 2011
M/s. S.B.W. Udyog Ltd. & Ors. Vs. State of Jharkhand & Others
With
W.P.(T) No. 5712 of 2011
M/s. Telco Construction Equipment Vs. State of Jharkhand & Others
With
W.P.(T) No. 5741 of 2011
Giridih Mines & Minerals (P) Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 6016 of 2011
Gajanand Ferro Pvt. Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 6094 of 2011
M/s. Rungta Projects Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 6411 of 2011
Inland Power Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 6414 of 2011
Triveni Engicons Pvt. Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 6437 of 2011
Sakambri Niketan (P) Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 6424 of 2011
Abhijit Projects Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 6429 of 2011
M/s. Nilachal Iron & Power Vs. State of Jharkhand & Others
With
W.P.(T) No. 6500 of 2011
Bharti Telemedia Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 6447 of 2011

Bharti Airtel Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 6450 of 2011
Idea Cellular Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 6195 of 2011
M/s. Beekay Steel Industries Vs. State of Jharkhand & Others
With
W.P.(T) No. 6677 of 2011
M/s. Bla Projects Pvt. Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 6689 of 2011
M/s. Bla Infra (JV) Vs. State of Jharkhand & Others
With
W.P.(T) No. 5934 of 2011
Rungta Mines Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 5912 of 2011
Rungta Mines Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 5941 of 2011
M/s. Corporate Ispat Alloys Vs. State of Jharkhand & Others
With
W.P.(T) No. 5940 of 2011
M/s. Jagannathpur Steel Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 5939 of 2011
M/s. Abhijit Infrastructure Vs. State of Jharkhand & Others
With
W.P.(T) No. 5930 of 2011
M/s. Abhijit Projects Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 5919 of 2011
M/s. Sandhu Tubes Pvt. Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 5952 of 2011
M/s. Corporate Ispat Alloys Vs. State of Jharkhand & Others
With
W.P.(T) No. 5947 of 2011
M/s. Abhijit Projects Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 5943 of 2011
M/s. Corporate Power Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 6435 of 2011
M/s. Idea Cellular Infrastructure Vs. State of Jharkhand & Others
With
W.P.(T) No. 5864 of 2011
M/s. H.V. Transmissions Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 5868 of 2011
M/s. H.V. Axels Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 6814 of 2011
Multitech Auto Pvt. Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 6821 of 2011

A.S.L. Enterprises Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 6822 of 2011
Ramkrishna Forgings Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 7043 of 2011
Tata Power Company Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 7044 of 2011
Industrial Energy Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 7045 of 2011
Maithan Power Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 6636 of 2011
Mongia Steel Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 6625 of 2011
Nanak Hi-tech Pvt. Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 6517 of 2011
M/s. Bhushan Power & Steel Vs. State of Jharkhand & Others
With
W.P.(T) No. 6739 of 2011
Kohinoor Steel (P) Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 7061 of 2011
M/s. Hindustan Steelworks Company Vs. State of Jharkhand & Others
With
W.P.(T) No. 7156 of 2011
Electrosteel Castings Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 6645 of 2011
M/s. M.Ishaq M Gulam Modern Vs. State of Jharkhand & Others
With
W.P.(T) No. 7203 of 2011
Bhittal Das Agarwal Vs. State of Jharkhand & Others
With
W.P.(T) No. 7505 of 2011
Ilika Estate Pvt. Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 7764 of 2011
Birla Institute of Technology Vs. State of Jharkhand & Others
With
W.P.(T) No. 337 of 2012
Steel Authority of India Vs. State of Jharkhand & Others
With
W.P.(T) No. 7568 of 2011
Vodafone Essar Spacetel Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 99 of 2012
Kohinoor Power Pvt. Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 6328 of 2011
Tata Sky Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 6369 of 2011

Essar Power (Jharkhand) Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 7798 of 2011
M/s. Central Coalfields Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 111 of 2012
Swati Udyog Pvt. Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 380 of 2012
Imperial Automobiles Pvt. Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 521 of 2012
A.C.C. Ltd. Vs. State of Jharkhand & Others
With
W.P.(T) No. 453 of 2012
M/s. Unitech Wireless (TAMI) Vs. State of Jharkhand & Others

For the Appellant/Petitioner	M/s. Dr.D.Prasad, B.Poddar, Snr.Advocates, I.Sinha, S.Gadodia, B.Kumar,P.Poddar, A.K.Sah, P.N.Rai, R.R.Sinha, R.K.Das, A.N.Sen, R.Roy, R.K.Prasad,B.Kumar
For the Respondents	M/s.Anil Kumar Sinha, Advocate General A.Kumar, R.Ranjan, AAG

PRESENT
HON'BLE THE CHIEF JUSTICE
HON'BLE MR.JUSTICE P.P.BHATT

C.A.V on 2.2.2012 **Pronounced on 3rd /4/2012**

Hon'ble Justice Prakash Tatia, CJ, This bunch of writ petitions have been preferred to challenge the validity of section 3 of the Jharkhand Entry Tax Act on Consumption or Use of Goods Act, 2011 being ultra vires to Article 301 read with Article304(a) of the Constitution of India and is not saved by Article 304(b) of the Constitution of India with consequential relief of order of restraint against the respondent State of Jharkhand from enforcing the provisions of the Jharkhand Entry Tax Act, 2011, whereby and whereunder entry tax has been sought to be levied and collected on scheduled goods, making entry exceeding Rs. 10,000/- into local area from any place outside the State for consumption or use therein.

2. All the petitioners are engaged in trade or manufacture and registered under the Jharkhand Value Added Tax Act, 2005 and Central Sales Tax Act, 1956 as dealer. The petitioners, during the course of their business,

import scheduled goods as specified under the Jharkhand Entry Tax Act of 2011 on Consumption or Use of Goods Act, 2011 (hereinafter referred to as the Act of 2011) from outside the State of Jharkhand for their works at various places in the State of Jharkhand. By section 3 of the Act of 2011, liability has been imposed upon the petitioners to pay entry tax on the value of those scheduled goods which they are importing in the State of Jharkhand and which are used in their works. The objection of the petitioners is that levy of such entry tax directly interferes the free movement of goods and imposes unreasonable restrictions upon free trade and therefore, it has violated Article 301 which provides that trade, commerce and intercourse throughout the territory of India shall be free and power to impose restriction has been given to Parliament in Article 302. The Parliament may impose 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 and that power is not vested in the State. It is true that under Article 304, notwithstanding, anything contained in Article 301 or 303, the Legislature of a State may frame the law to impose tax on goods imported from other State or Union Territories to which similar goods manufactured or produced in the State are subject to some tax. However, the tax should not to discriminate between the goods so imported and goods so manufactured or produced. The State may impose such reasonable restrictions on the freedom of trade, commerce and intercourse with or within the State as may be required in public interest.

3. As per proviso to Article 304, no Bill or amendment for the purposes of clause (b) of the Article 304 can be introduced or moved in the Legislature of the State without sanction of the President. Therefore, according to the petitioners, Article 301 imposes a general limitation on all legislative power in order to ensure that trade, commerce and intercourse throughout India is free. However, this limitation on power has been relaxed under Article 302 of the Constitution of India but only in favour of the Union Legislation and that too, on satisfaction of public interest. Article 303(2) of the Constitution of India is an

exception to the restrictions imposed under Article 303(1) on the Parliament and that exception applies only to Parliament and to be resorted only in a specified situation indicated in Article 303(2) of the Constitution. Article 304(a) of the Constitution authorizes imposition of tax on the goods imported from the neighbouring State at par in such a manner as not to create any discrimination between similar goods manufactured and produced inside the State with regard to State taxation within the allocated field. Similarly Article 304(b) of the Constitution is analogous to Article 302 for it makes the State power contained in Article 304(b) of the Constitution free from the prohibition contained under Article 301 in view of the opening words of Article 304 of the Constitution. However, there is also difference between the power under Article 302 and those of Article 304 and the difference is that under Article 302 of the Constitution restrictions are not subject to the test of reasonableness or it is coupled with the requirement of a previous sanction from the President as introduced in the proviso to Article 304(b) of the Constitution. The legislation mentioned in Article 304(b) of the Constitution is, thus, made subject to the requirements – (i) test of reasonable restriction and (ii) prior sanction of the President.

4. According to the learned counsel for the petitioners, verbatim similar enactment imposing same entry tax came for consideration before this Court in the case of **Tata Iron & Steel Company Ltd. Vs. State of Jharkhand & Ors.** reported in **[2007] 6 VST 587 (Jhr.)** and a Division Bench of this Court, after relying upon the decision rendered in the case of **Jindal Stainless Ltd. vs. State of Haryana** reported in **[2006] 145 STC 544**, held that provisions of Bihar Tax on Entryof Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993, as adopted by the State of Jharkhand vide notification dated 15th December, 2000 and as amended vide the Jharkhand Entry Tax Act on Consumption, Use or Sale thereof (Amendment) Ordinance, 2001, (Jharkhand Ordinance2 of 2002) do not satisfy the requirement under Article 301 read with Article 304(b) of the Constitution of India and section 3 of the said Act was declared ultra vires and consequently it was also held that the State of

Jharkhand cannot enforce the provisions of the aforesaid Act. The decision of the Tata Iron & Steel Company Ltd. has been challenged by the State by preferring S.L.P before the Hon'ble Supreme Court but therein, in spite of seeking stay against the operation of the judgment, Hon'ble Supreme Court has not granted any stay.

5. Learned counsel for the petitioners submitted that in spite of the said declaration in the Tata Iron & Steel Company Ltd., now the State has enacted verbatim same law, in the name of the Jharkhand Entry Tax on Consumption or Use of Goods into Local Areas Act, 2011. Further the earlier enactment referred above which was considered in the case of **Tata Steel Ltd.** case, the Division Bench of this Court, after considering notification no.S.O.48 dated 29th March, 2008/930/FD, by which the Jharkhand Trade Development Fund was created, held that section 11 of the Jharkhand Value Added Tax) Act, 2005 had been introduced without obtaining prior sanction of the President as required under proviso to Article 304(b) of the Constitution of India. The respondent State in the above case has not produced and placed any material before the Court showing that payment of compensatory tax is a reimbursement for the quantifiable/measurable benefit provided or to be provided to its taxpayers. The Division Bench observed that, providing roads and bridges is not compensatory in nature so as to constitute special advantage to trade, commerce and intercourse and expenses for maintenance and construction of roads and bridges are met from general revenue of the State and it is the statutory obligation and duty of the State to provide facilities like roads and bridges etc. Providing supply of electrical energy and water to the industries, marketing and commercial complexes are not the facilities or special facilities to the traders. This Court held that purposes for which the trade development fund has been created do not directly facilitate trade and commerce and do not specially benefit the trade people in the local areas from which such entry tax is collected. In that matter, the State failed to show that the entry tax collected from 1st April, 2006 till the date of notification has been utilized for the said purposes

referred above and thereafter, this Court held that levy of entry tax was discriminatory being violative of Article 304(a) of the Constitution of India.

6. Learned counsel for the petitioners submitted that even after, when the Division Bench of this Court already declared, section 11 of the Jharkhand Value Added Tax Act, 2005 and the amendment made therein by the Act of 2007 ultra vires and unconstitutional as being opposed to Article 301 of the Constitution of India and are not saved by Article 304 of the Constitution of India, the State Government again enacted same law and further without even examining the relevant details of expenditure which is required for giving specific benefits to the payers of the said tax under the Act.

7. Learned counsel for the petitioners drew our attention to the relevant provisions of the earlier enactment 2007 and notification issued thereunder dated 29.3.2008 for comparing it with the Act of 2011 and only difference is that earlier by separate notification a development fund was created, whereas under the Act of 2011, for development fund, provision has been made under section 4 of the Act of 2011, under the heading "Jharkhand Trade Development Fund" for utilization of it, exclusively for development of trade, commerce and industry in the State of Jharkhand for the purposes as enumerated in clauses (a) to (d) of section 4(3) of the Act of 2011. These clauses are verbatim same to the clauses made by notification dated 29.3.2008 issued under the earlier enactment of 2007, which could not save the Act of 2007. Learned counsel for the petitioners vehemently submitted that in spite of the decision of the Division Bench of this Court, which is binding upon the State Government and its operation has not been stayed by the Hon'ble Supreme Court in the S.L.P preferred by the State, the State did nothing to find out the basic details and furnish any data base of calculation to indicate that such fund is, in fact, needed for the purposes for which it has been projected in section 4 of the Act of 2011 and sought to be utilized and no exercise has been made to find out whether the tax is broadly proportional and not progressive and its value of quantifiable benefit will be utilized for the cost incurred in procuring the facility/

service to such tax prayers only. Indication of a quantifiable data is **sine qua non** for levy of such compensatory tax.

8. It is submitted that construction and maintenance of roads and bridges are met from the general revenue and the clauses, providing for finance, aid, grants and subsidies to financial, industrial and commercial units, as provided under the Trade Development Fund, cannot make the said fund as compensatory and creation of infrastructure for supply of electrical energy and water supply to industries, marketing and other commercial complexes is common burden and responsibility of the welfare State and no other benefit or advantage is provided to trade people of the local area in which such entry tax is levied and collected. Further it is submitted that supply of electrical energy cannot be held compensatory for meeting the outlay incurred for special advantage to trade, commerce and intercourse and water and electricity are not connected with the facilities for the purpose of trade and such facilities are available for the general development of the State and to be provided necessarily to the general public and not particularly only to the tax prayers under the Act of 2011. In sum and substance, the tax levied by the Act of 2011 is not compensatory in character and is for augmentation of State revenue and admitted position is that no sanction of the President has been obtained and therefore, the impugned Act along with its amendment being not compensatory in character is not saved by Article 304(b) of the Constitution of India. It is also submitted that if the tax is held to be compensatory in nature, then the State failed to procure its utilization for the taxpayers.

9. In addition to the above, the entry tax is levied only on the goods which are imported from outside the State and does not apply to goods which are moved from one local area into another. Therefore, the Act is discriminatory in character and violates Article 304(a) of the Constitution of India. It is also submitted that in the definition, “consumption or use” as defined under section 2(t) of the Jharkhand Entry Tax Act, 2011, distinction has been sought to be made by the State of Jharkhand with respect to goods brought in by the

registered dealer vis-à-vis unregistered dealer for consumption or use in the State of Jharkhand. Apart from the above, even with respect to registered dealer, goods brought by them into a local area for consumption or use directly in manufacture of taxable goods has been exempted from payment of entry tax; thereby goods brought in by any dealer for consumption or use directly in manufacture of taxable goods would not be levied with entry tax, whereas goods brought into the local area for indirect use or for consumption and use in non-manufacturing activities, entry tax would be required to be paid by the tax prayers. The aforesaid distinction is not based on reasonable classification and intelligible differentia. This fact demonstrates that entry tax has been enacted by the State of Jharkhand for augmentation of revenue and not for encouragement and development of trade and commerce. In fact, the present enactment is with the intention to over-reach and **override** the effect of the Division Bench judgment of this Court delivered in **Tata Steel Limited** (supra) and that too without attempting to remove and cure the defects which were pointed out in the judgment referred above.

10. The State submitted counter-affidavit and after narrating the background history of enacting the present Act, submitted that octroi was social revenue for the local bodies and that has been abolished after release of White Paper on State-level Value Added Tax System by the Empowered Committee of the States Finance Ministers, which says:-

> ***"As mentioned earlier, all other existing taxes such as turnover tax, surcharge, additional surcharge and Special Additional Tax (SAT) would be abolished. There will not be any reference to these taxes in the VAT Bills. The States that have already introduced entry tax and intend to continue with this tax should make it vatable. If not made vatable, entry will need to be abolished. However, this will not apply to entry tax that may be levied in lieu of octroi."***

Therefore, the adopted Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1993 was repealed by section 96 of the Jharkhand Value Added Tax Act, 2005 and entry tax was again levied by section

11 of the said Jharkhand Value Added Tax Act 2005 on consumption, use or sale therein on some 17 goods entering into the State or into a local area from outside the State. However, entry tax levied under VAT Act, 2005 was adjustable against the tax payable on sale of such goods. At page 21 of the counter-affidavit filed on behalf of the respondent-State dated 30.11.2011, it is specifically admitted as under:-

> ***"The Jharkhand Entry Tax on Consumption Or Use of Goods Act, 2011: a compensatory tax on entry of some 63 goods entering into the State from outside the State for consumption or use only and as passed by the State Legislature was promulgated for the development of trade, infrastructure, commerce and industry for the local area(s), hereinafter referred to as "Entry Tax 2011".***

After admitting that the tax sought to be imposed by the Act of 2011 is compensatory in nature, in counter it has been stated that this imposition is completely different from the earlier Bihar 1993 Act as well as from Jharkhand VAT Act 2005. To justify the stand of the State and in support of their argument and to show the tax is compensatory in nature, the State specifically submitted that to carry out the purposes of this Act, the State Government issued notification No.S.O. 163 dated 25th August, 2011 specifying creation of Jharkhand Trade Development Fund for a period of five years and further specifying the manner, conditions and procedures by which proceeds of the "Fund" to be appropriated for the purpose of development of trade, infrastructure, commerce and industry of the local areas of the State of Jharkhand. Thereafter, the State again issued another notification no.164 dated 25th August, 2011 specifying that entry tax on consumption or use of the Scheduled goods shall be paid under the head of 0042-Taxes on Goods and Passengers-00-106-Tax on Entry of Goods into Local Areas-02 Jharkhand Trade Development Fund-01-Receipt-01 (Receipt (004200106020101. Therefore, according to learned Advocate General appearing for the respondent-State, the State has made specific provision to keep the fund in treasury under a particular head so that it can be utilized for the service and facilities to be

provided to the traders from the fund so collected under the Act, 2011. Therefore, there is no chance of not utilization of the fund for the purposes mentioned in section 4(3) of the Act, 2011.

11. Learned Advocate General appearing for the respondent-State vehemently submitted that, it has been held in the earlier judgments, that the State can show as to (I) how the fund are actually utilized or (ii) likely to be utilized for the services and facilities to the tax payers under the Act, 2011. Therefore, writ petitions of the petitioners are premature and unless the fund comes in the Government exchequer, it cannot be utilized and only after coming of the fund in the treasury, it will be invested directly in accordance with the provisions under the Act of 2011, specifically as provided for the purposes specified in section 4(3)(a) to Z(d) of the Act of 2011. It is also submitted that in the case of **Automobile Transport (Rajasthan) Ltd. Vs. State of Rajasthan & Ors.** reported in **AIR 1962 SC 1406**, Hon'ble Supreme Court has held that it was not correct to say that while Article 19(1)(g) guaranteed the individual's right to carry his trade, Article 301 guaranteed free flow of volume of trade against geographical barriers and Article 301, according to the majority, also aimed at the freedom of the individual from restrictions, not necessarily geographical, but since regulatory measures were outside the purview of Article 301, the scope of the two provisions are not identical. If the impugned law is merely regulatory, its reasonableness will have to be determined under Article 19 before it can be held to be valid, but so far as Article 301 is concerned, no complaint can, prima facie, be made under that Article unless, of course, it is a colourable exercise of the regulatory power, aimed at the restriction of the free flow of trade, commerce and intercourse. But if the freedom of trade, commerce and intercourse is violated by a non-regulatory law, the individual who affected may have his remedy in a court of law. Therefore, according to the respondent State, the regulatory measures will not constitute restriction under either of provisions. Learned Advocate General appearing for the State also relied upon the judgments of the Hon;ble Supreme Court delivered in the case of **State of**

MadrasVs. Natrajan Mudaliar N.K. reported in **AIR 1969 SC 147** and of **Automobile Transport (Rajasthan) Ltd. Vs. State of Rajasthan & Ors.** reported in **AIR 1962 SC 1406** as well as on **Jindal Stainless Steel case** (supra) and gave his own interpretation to above judgment in State's favour.

12. Learned Advocate General appearing for the respondent State was more empathetic in submitting that **Bharatram's** case **(1995 Supp. (1) SCC 673)** is **contrary to** working test propounded in **Automobile Transport case** and principle of "some connection" has been evolved by declaring that, even if there is some link between the tax and the facilities extended to the trade, directly or indirectly, the levy cannot be impugned as invalid and therefore, in the present facts of the case, even if some of the incidental and ancillary benefits go to the general public, in addition to the trader community paying tax under the Act of 2011, even then there is not only "some connection" with the service and facilities to be provided from this fund to such traders and that is "substantially". It is vehemently submitted that, only some connection in some link between the tax and facilities extended to the trade directly or indirectly from the fund itself is sufficient but the State has earmarked separate account for the fund, so it can be known in point of time whether the fund has been utilized for the purposes shown in section 4(3)(a) to (d) of the Act, 2011 and at this stage, it cannot be held that the fund sought to be created has no any connection with the facilities and services to be provided to the trader community liable to pay taxes under the Act of 2001.

13. It will be appropriate to note that number of earlier judgments including the judgment of the Hon'ble Supreme Court delivered in the case of **Jindal Strips Ltd. vs. State of Haryana** reported in **(2003) 8 SCC 60, Bharatram** came up for consideration before the Hon'ble Supreme Court in **Jindal Stainless Ltd.** case and therefore, Constitution bench of the Hon'ble Supreme Court in the case of **Jindal Stainless Ltd. Vs. State Of Haryana (2nd Jindal Stainless Case)** reported in **2010 (4) SCC 595** referred the matter to the larger Bench for consideration of the judgment delivered in the case of **Atiabri**

Tea Co. Ltd. Vs. State of Assam reported in **AIR 1961 SC 232 = 1961(1) SCR 809** for reconsideration.

14. In sum and substance, learned Advocate General submitted that it is not disputed that entry tax levied by the Act of 2011 is a compensatory tax. The tax has been levied as it became necessary in the interest of trader community and for that purpose, to created a fund for the purpose of development of trade, infrastructure, commerce and industry of the local areas. As per the scheme of the Act f 2011 itself, it is mandatory for the State Government to create the Jharkhand Trade Development Fund as defined in clause (f) of section 2 of the Act of 2011 and that fund is required to be deposited with the Government Treasury under the specified head for the purpose of its utilization exclusively for the development of trade, commerce and industry in the State of Jharkhand, which shall include the following.

15. It is submitted by learned Advocate General that clauses (a) to (d) under sub-section (3) of section 4 of the Act of 2011 is illustrative when it has given some of the purposes for which the fund will be utilized and in addition to the above, the fund can be utilized for more purposes which may be termed for the development of trade, commerce and industry in the State of Jharkhand and therefore, in sub-section (3), before giving the list of the purposes for which "fund will be used" as words have been used shall include the followings". Therefore, it is premature to declare that the utilization of the fund will not be for the development of trade, commerce and industry in the State of Jharkhand. However, the purposes shown in the clauses (a) to (d) of sub-section (3) of section (4) of the Act of 2011 also necessarily help into development of trade, commerce and industry in the State of Jharkhand.

16. So far as quantifiable data is concerned, the State till this time has not collected substantial tax under the Act of 2011 and therefore, may not give complete facts and figures of the revenue to be collected and to be utilized for such development in the State of Jharkhand. It is submitted that such data can be provided when the fund is made available and it is permitted to be utilized.

Though in the counter, it has been submitted that the Act of 2011 is entirely different from the earlier enactment, which has been declared ultra vires but during the course of argument it was difficult for the learned Advocate General to point out distinction between the two enactments.

17. We have considered the submissions of the learned counsel for the parties and perused the relevant provisions of law, enactments referred above, validity of which has been considered by the Division Bench of this Court in the case of **Tata Iron & Steel Company Ltd.**, which provisions have been declared ultra vires to the Article304(b) of the Constitution of India and provisions of the present Act of 2011. We also perused the reasons given in various judgments which has been cited by the learned counsel for the parties, some of which we have alrady referred and we do not find any reason to reproduce the facts of the earlier cases and decisions thereon in view of the fact that the issue has been considered by the Hon'ble Supreme Court on various occasions in several judgments, which have been again reconsidered in detail by the Constitution Bench of the Hon'ble Supreme Court in the case of **Jindal Stainless Ltd. (2) & Ano. Vs. State of Haryana & Ors.** reported in **(2006) 7 SCC 241**.

18. Before proceeding to decide the issues referred above, it will be appropriate to make it clear that the Act of 2011 has been enacted without sanction of the President of India under proviso to Article304(b) of the Constitution of India and the case of the State is also that since the Act of 2011 imposes entry tax, which is compensatory in nature, sanction of the President of India is not required under Article 304(b). In view of the above, the question remained for our consideration is not that whether the tax levied by the Act of 2011 is compensatory in nature or not and it is the admitted case of the State that the said tax is compensatory in nature. Therefore, the question for determination before us is whether the tax levied by the Act of 2011 gives quantifiable and measurable benefits to the tax payers under the Act of 2011. Hon'ble Supreme Court in the case of **Jindal Stainless Ltd. (2) & Ano.** held

that concept compensatory tax is not there in the Constitution but is judicially evolved in **AutomobileTransport case** (supra) as part of regulatory charge. Regarding what is tax, Hon'ble Supreme Court held in paragraph 40 as under :-

> ***"40*. Tax is levied as a part of common burden. The basis of a tax is the ability or the capacity of the taxpayer to pay. The principle behind the levy of a tax is the principle of ability or capacity. In the case of a tax, there is no identification of a specific benefit and even if such identification is there, it is not capable of direct measurement. In the case of a tax, a particular advantage, if it exists at all, is incidental to the State's action. It is assessed on certain elements of business, such as manufacture, purchase,sale, consumption, use, capital etc but its payment is not a condition precedent. It is not a term or condition of a licence. A fee is generally a term of a licence. A tax is a payment whre the special benefit, if any, is converted into common burden.**

Thereafter Hon'ble Supreme Court dictated what is fee or comp tax in paragraph 41, which is as under:-

> ***"41. On the other hand, a fee is based on the "principle of equivalence".This principle is the converse of the "principle of ability" to pay. In the case of a fee or compensatory tax, the "principle of equivalence" applies. The basis of a fee or a compensatory tax is the same. The main basis of a fee or a compensatory tax is the quantifiable and measurable benefit. In the case of tax, even if there is any benefit, the same is incidental to the government action and even if such benefit results from the government action, the same is not measurable. Under the principle of equivalence, as applicable to a fee or a compensatory tax, there is an indication of a quantifiable data, namely, a benefit which is measurable".***

In paragraph 42 of the same judgment of **Jindal Stainless Ltd. (2) & Ano.**, which is as follows, tax and compensatory tax have been compared:-

> ***"42. A tax can be progressive. However, a fee or a compensatory tax has to be broadly proportional and not progressive. In the principle of equivalence, which is the foundation of a compensatory tax as well as a fee, the value of the quantifiable benefit is represented by the costs incurred in procuring the facility/services, which costs in turn become the basis of reimbursement/recompense for the provider of the service/facilities. Compensatory tax is based on the principle of "pay for the value". It is a sub-class of "a fee". From the point of view of the Government, a compensatory tax is a charge for offering trading facilities. It adds to the value of trade and commerce which does not happen in the case of a tax as such. A tax may be progressive or proportional to income, property, expenditure or any other test of ability or capacity (principle of ability). Taxes may be progressive rather than proportional. Compensatory taxes, like fees, are always proportional to benefits. They are based on the principle of equivalence. However, a compensatory tax is levied on an***

> ***individual as a member of a class, whereas a fee is levied on an individual as such. If one keeps in mind the "principle of ability" vis-a-vis the "principle of equivalence", then the difference between a tax on one hand and a fee or a compensatory tax on the other hand can be easily spelt out. Ability or capacity to pay is measurable by property or rental value. Local rates are often charged according to the ability to pay. Reimbursement or recompense are the closest equivalence to the cost incurred by the provider of the services/facilities. The theory of compensatory tax is that it rests upon the principle that if the Government by some positive action confers upon individual(s), a particular measurable advantage, it is only fair to the community at large that the beneficiary shall pay for it. The basic difference between a tax on one hand and a fee/compensatory tax on the other hand is that the former is based on the concept of burden whereas compensatory tax/fee is based on the concept of recompense/reimbursement. For a tax to be compensatory, there must be some link between the quantum of tax and the facility/service. Every benefit is measured in terms of cost which has to be reimbursed by compensatory tax or in the form of compensatory tax. In other words, compensatory tax is a recompense/ reimbursement".***

Hon'ble Supreme Court thereafter in paragraph 43 of the same judgment held that compensatory tax is a compulsory contribution levied broadly in proportion to the special benefits derived to defray the cost of regulation or to meet the outlay incurred for some special advantage to trade, commerce and intercourse and it may incidentally bring in net revenue to the Government but that circumstance is not an essential ingredient of compensatory tax. Thus, it will be appropriate, in this connection, to reproduce the relevant paragraphs:-

> ***"43. In the context of Article 301, therefore, compensatory tax is a compulsory contribution levied broadly in proportion to the special benefits derived to defray the costs of regulation or to meet the outlay incurred for some special advantage to trade, commerce and intercourse. It may incidentally bring in net revenue to the Government but that circumstance is not essential ingredient of compensatory tax".***
>
> ***"44. Since compensatory tax is a judicially evolved concept, understanding of the concept, as discussed above, indicates its parameters.***
>
> ***"45. To sum up, the basis of every levy is the controlling factor. In the case of "a tax", the levy is a 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. Compensatory tax is by nature hybrid but it is more***

> ***closer to fees than to tax as both fees and compensatory taxes are based on the principle of equivalence and on the basis of reimbursement/recompense. If the impugned law chooses an activity like trade and commerce as the criterion of its operation and if the effect of the operation of the enactment is to impede trade and commerce then Artilce 301 is violated".***

19. Therefore, if the tax is compensatory, it is required to be based on the test of requirements laid down by the Hon'ble Supreme Court in **Jindal Stainless Ltd. (2) & Ano.** As we have already noticed that it is a case of the State that the tax is compensatory, we are required to examine that whatever tax has been imposed for the development of trade, commerce and industry in the State of Jharkhand which will benefit the tax payers under the Act of 2011.

20. Learned counsel for the State submitted that Hon'ble Supreme Court in the case of **Bharatram case** held that if, there is some link between the tax and the facilities extended to the trade directly or indirectly by "some connection", the levy cannot be impugned as invalid. However, this proposition has been specifically overruled by the Hon'ble Supreme Court in the case of **Jindal Stainless Ltd. (2) & Ano.** and Hon'ble Supreme Court held that working test propounded by a Bench of seven Judges in **Automobile Transport case** (supra) and the test of "some connection" enunciated by a Bench of three Judges in **Bharatram case** cannot stand together. Therefore, in their view, test of "some connection" as propounded in **Bharatram case** is not applicable to the concept of compensatory tax and accordingly to that extent, judgment of the Hon'ble Supreme Court in the case of **Bharatram Rajeevkumar Vs. CST and State of Bihar Vs. Bihar Chamber of Commerce** was overruled. Hon'ble Supreme Court declared in paragraph 53 as under:-

> ***"53. We reiterate that the doctrine of "direct and immediate effect" of the impugned law on the trade and commerce under Article 301 as propounded in Atiabari Tea Co. Ltd. Vs. State of Assam and the working test enunciated in Automobile Transport (Rajasthan) Ltd. Vs. State of Rajasthan for deciding whether a tax is compensatory or not vide para 19 of the Report (AIR), will continue to apply and the test of "some connection" indicated in para 8 (of SCC) of the judgment in Bhagatram Rajeevkumar Vs. CST and followed in State of Bihar Vs. Bihar Chamber of Commerce is, in our opinion, not good law. Accordingly, the constitutional validity of various local enactments which are the subject-matter of pending appeals, special leave petitions and writ petitions will now***

be listed for being disposed of in the light of this judgment".

In view of the above, the State has to pass test of direct and immediate effect of the impugned Act of 2011 on trade, commerce and intercourse under Article 301.

21. Admittedly the State has to pass the test of discharge its burden whether the impugned enactment facially or patently indicates quantifiable data on the basis of which compensatory tax is sought to be levied. Hon'ble Supreme Court in the case of **Jindal Stainless Ltd. (2) & Ano.** held that, the Act must facially indicate the benefit which is quantifiable or measurable and it must broadly indicate proportionality to the quantifiable benefit and if the provisions are ambiguous or even it the Act does not indicate facially the quantifiable benefit, the burden will be on the State as a service/facility provider to show by placing the material before the Court that the payment of compensatory tax is a reimbursement/recompense for the quantifiable or measurable benefit provided or to be provided to its prayer(s). Hon'ble Supreme Court further held that since if it is shown that the Act invades freedom of trade, it is necessary to enquire whether the State has proved that the restrictions imposed by it by way of taxation are reasonable and in public interest within the meaning of Article304(b). To justify the validity of the Act of 2011, though in the counter, it has been stated that the Act of 2011 is entirely different than the earlier enactment, but we are of the considered opinion that there is no difference between the earlier enactment and the present Act of 2011, except that it is an Act of 2011 and provision of utilization of fund of tax has been made in the Act itself, whereas in earlier enactment, fund was created by separate notification dated 29.3.2008. The notification dated 29.3.2008 issued under the Act of 2007 is as follows:-

"FINANCE DEPARTMENT

Notification S.O 48 dated the 29th March, 2008/930/FD

In exercise of the powers conferred by the clause (xxiA) of section 2 read with section 11 of the Jharkhand Value Added Tax Act, 2005 (Jharkhand Act 5 of 2006) as amended by (Act 3 of 2008) which prescribes for levy and collection of tax on import price(s) on entry of goods mentioned in Third Schedule of the Act into the State or into a local area

for consumption, use or sale therein subject to conditions as may be prescribed and also other conditions laid down under sub-sections (2) and (3) of section 11 and all other enabling powers in this behalf, the Governor of Jharkhand is pleased to create a fund to be known as the Jharkhand Trade Development Fund (hereinafter called the 'Fund').

2. The proceeds of the entry tax levied and collected under section 11 of the Jharkhand Value Added Tax Act, 2005 (Jharkhand Act 5 of 2006) shall be appropriated into the 'Fund'.

3. The proceeds of the 'Fund' shall be exclusively utilized or facilitating trade, commerce and industry throughout the State of Jharkhand which shall include the following:

(a) construction, development and maintenance of roads and bridges for linking the market and industrial areas to their hinterlands,

(b)providing finance, aids, grants and subsidies for development of infrastructure to facilitate free movement of goods;

(c) creating infrastructure for supply of electrical energy and water supply to augment trade and commerce in the State;

(d) creation, development and maintenance of other infrastructure for the furtherance of trade, commerce and industry in general.

4. There shall be constituted a High Level Committee under the Chairmanship of the Chief Secretary for specifying the manner in which the proceeds of the 'Fund' shall be utilized. The Committee shall be consisting of a Chairman, a Member-Secretary and the following ex-officio members:-

(a) Chief Secretary, Jharkhand — ex-officio Chairman
(b) Finance Secretary, Jharkhand — Member, Secretary
(c) Secretary-cum-Commissioner, Commercial Taxes, Department, Govt. of Jharkahdn — Co-ordinator
(d) Secretary, Road Construction Department, Govt. of Jharkhand — ex-officio Member
(e) Secretary, Agriculture and Sugarcane Department, Govt. of Jharkhand — ex-officio Member
(f) Secretary, Industries Deptt. Govt. of Jharkhand — ex-officio Member
(g) Secretary, Energy Deptt. Govt. of Jharkahnd — ex-officio Member
(h) Secretary, Drinking Water & Sanitation Deptt. Govt. of Jharkhand — ex-officio Member

5. The headquarter of the said Committee shall be at Ranchi.

6. High Level Committee shall identify and sanction schemes to be completed from the proceeds of the fund keeping in view necessary facilities and infrastructure to be created for the benefit of entry tax payers as far as possible commensurate with their respective contribution by such class of taxpayers.

7. The Member Secretary of the Committee shall convene the meeting, at least once a year to allocate the proceeds of the amount so collected, to the different respective departments in order to achieve the objective of the 'fund'.

8. High Level Committee shall monitor the utilization of fund for the purposes specified in the clause (3) from time to time with a view to ensure full and proper utilization thereof.

9. The entry tax deposited under the Jharkhand Value Added Tax Act, 2005 under minor Head-106 of the major Head-0042 shall be deemed to have been appropriated into the fund.

10. Any amount credited to the fund and unutilized during any financial year shall be utilized for the same purpose in the subsequent financial year in accordance with the direction of the High Level Committee.

11. This notification shall remain valid for ten years, provided the State Government may extend its validity for such as it may deem necessary in this regard.

This notification shall be deemed to have come into effect from April 1, 2006.

By the order of the order of Governor of Jharkhand.
Sd/- NIRANJAN KUMAR
Additional Finance Commissioner
Jharkahand, Ranchi"

Section 4 of the Act of 2011 is as under:-

*"4.**Tax to be appropriated into the Fund –** (1) The Entry Tax levied and collected under this Act, shall be appropriated into the "Fund", as created under clause (f) of Section 2 of this Act.*

(2) The tax payable under section 5 shall continue to be levied till such time as is required to provide and improve the infrastructure within the State; such as power, road, market condition etc. with a view to facilitate better market condition for trade, commerce and industry.

(3) The proceeds of the "Fund" shall be utilized, exclusively for the development of trade, commerce and industry in the State of Jharkhand, which shall include the following:-

(a) construction, development and maintenance of roads and bridges for linking the market and industrial areas to their hinterlands,

(b) providing finance, aids, grants and subsidies to financial, industrial and commercial units;

(c) creating infrastructure for supply of electrical energy and water supply to industries,marketing and other commercial complexes

(d) creation, development and maintenance of other infrastructure for the furtherance of trade, commerce and industry in general.

(4) The State Government shall, by a notification issued in this behalf, specify the manner of deposit of tax under appropriate Heads of Accounts or in such bank account as notified in this behalf.

(5) The State Government by notification shall form a high level committee, which shall determine the manner of disbursement of the fund for the purposes as contained out in this section".

22. Bare perusal of the provisions for the Trade Development Fund created by the notification dated 29.3.2008 under the Act of 2005, amended in the year 2008, and the Tade Development Fund under the Act of 2011, clearly demonstrates that the provision is similar without there being any change and therefore, the State's submission in the counter-affidavit that the new Act is entirely different is liable to be rejected.

23. Now the question arises as to whether the State has demonstrated in the enactment itself, facially or patently, quantifiable data on the basis of

which compensatory tax sought to be levied is equal to the service and benefit to the taxpayers. The State's only contention is that by a notification constituted a high-level committee and made provision for separate account in the treasury in separate head but that is not quantifiable data on the basis of which compensatory tax is sought to be levied. But this exercise of the State Government of constituting a Committee to manage the fund after opening the separate account in the treasury in the separate head is only an effort to manage and utilize the fund which may be collected under the Act of 2011. There is difference between State's intention and placing actual data showing the comparative collection and utilization of fund. It appears that the State is more relying upon the words, “used” in the **Jindal Stainless Ltd. (2) & Ano.,** wherein it has been held that if the provisions are ambiguous or even if the Act does not indicate facially the quantifiable benefit, the burden will be on the State as a service/facility provider to show by placing the material before the Court that the payment of compensatory tax is reimbursement/recompense for the quantifiable/ measurable benefit **provided or to be provided to its payer(s)**. Therefore, it is submitted that the State can justify the Act of 2011 after its' implementation by showing that the State has , in fact, utilized fund for development of trade and commerce for the benefit of traders. However, in the Act of 2011 under clauses (a) to (d) in sub-section (3) of section 4, the purposes have been given, for which trade development fund will be utilized. These purposes have been considered by the Division Bench of this Court in the case of **Tata Steel Limited** (supra) in paragraph 44 and after considering these purposes, this Court held that the benefits referred above mentioned in the notification of 2008 are not the benefits and services to the traders only and substantially these are the benefits and services required to be made available by the State Government from general revenue of the State Government and these are not special or additional or incidental services for the trade community only. In spite of the decision of this Court in **Tata Steel Limited,** no separate earmarked facility has been planned for the traders and there is absolutely no correlation to the revenue generated

under the Act and the expenditure incurred by the local authorities for providing the services and whatever facilities sought to be provided by the Act and the notification are either the constitutional obligation of the State or statutory duty of the Corporation and the local bodies constituted under the Act. In spite of this, the State again did not choose to place even the data which could have been as full project report for levy of the tax and utilization of its fund by making assessment of collection of tax and its utilization in future when fund will be made available to the State Government by imposition of tax so as to satisfy the test of services and facilities "to be provided to its tax payers".

24. However, we doubt that even such projection would have saved the validity of the Act of 2011 in view of the fact that in the Act of 2011 itself, the State has provided financial utilization exclusively for the development of trade, commerce and industries in the State of Jharkhand by making provisions of construction, development and maintenance of the roads and bridges for linking the market and industrial area to their hinterlands, for providing finance, aids, grants and subsidies to financial, industrial and commercial units; creating infrastructure for supply of electrical energy and water supply to industries, marketing and other commercial complexes and creation, development and maintenance of other infrastructure for the furtherance of trade,commerce in general, which services and facilities have already declared to be not only for the benefit of the taxpayer. Therefore, basic purposes for utilization have been shown in the clauses (a) to (d) of sub-section (3) of section 4 of the Act of 2011. We are, thus, in full agreement with the view expressed by the earlier Division Bench of this Court in the case of **Tata Steel Ltd.** that the above works cannot be said to be benefits and services to tax payer community from whom tax is sought to be recovered under the Act of 2011. The above benefits are required to be borne from the general revenue of the State so far as it relates to the construction of roads and bridge and finance, aid, grant and subsidies to financial or industrial or commercial units are provided by the State Financial Corporation as well as by the other financial institutions and neither in the Act

nor in the notification issued under the Act, any provision has been made so as to provide any scheme to give finance, aid, grants and subsidies to financial, industrial and commercial units. Not only this but for these purposes no data base has been prepared by the State and consequently it had not been provided to this Court in spite of the fact that Hon'ble Supreme Court as back as in the year 2006 in the case of **Jindal Stainless Ltd. (2) & Ano.** has declared that whenever such law is impugned as violative of Article 301 of the Constitution of India and facially and patently does not indicate quantifiable data on the basis of which compensatory tax is sought to be levied, then burden lies on the State to show by placing materials before the Court that payment of compensatory tax has quantifiable and measurable benefits provided or to be provided to its tax payers but the State did not produce any such data base for any of the clauses made in clauses (a) to (d) of sub-section (3) of section 4 of the Act of 2011.

25. We do not find any force in the submission of the learned counsel for the respondents that it will be premature to judge the validity of the Act before collection of the tax and utilization of the collected tax after putting it into trade development fund account. The State should have first collected the quantifiable data to find out the need of the benefit and the requirements of its meeting with the levy of compensatory tax. The State Government enacted the law in wilderness in hope that the State may collect the tax and thereafter it may appropriate the tax for the benefit and services of the tax payers and that too,without there being any data base or project report and then if it fails to justify the imposition of tax, then tax may not be refunded to the tax payers with the plea of traders unlawful enrichment. The statute cannot be enacted so as to create liability of the tax payers and ultimately of the public by taking chance of it being constitutionally valid, with all probabilities of being violative of the provisions of the Constitution of India.

26. Therefore, we are of the considered opinion that the Act of 2011 is admittedly a levy of compensatory tax but without furthering the principle of equivalence and is not providing quantifiable and measurable benefits to the tax

payers and is even not broadly proportional to the benefit. The State further failed to discharge its burden by placing material or even calculation or data before this Court that payment of compensatory tax is reimbursement for the quantifiable or measurable benefits provided or to be provided to its tax payers. The creation of the fund under clause (a) to (d) of section 4(3) in the name of the Jharkhand State Trade Development fund and utilization of the tax amount for the purposes as given in clauses (a) to (d) under sub-section (3) of section 4 do not indicate and prove reimbursement/recompense of the tax amount to the tax payers. The purposes shown in clauses (a) to (d) of sub-section (3) of section 4 of the Act of 2011 are of general nature and not specific benefits to the tax payers.

27. Consequently, the writ petitions are allowed. It is declared that section 3 of the Jharkhand Entry Tax Act on Consumption or Use of Goods Act, 2011 is ultra vires and unconstitutional as being not saved by Article 304 of the Constitution of India and is in conflict with Article 301 of the Constitution of India. Since the charging section 3 of the Jharkhand Entry Tax Act on Consumption or Use of Goods Act, 2011 has been held to be ultra vires, the respondent State cannot enforce any of the provisions of the Jharkhand Entry Tax Act on Consumption or Use of Goods Act, 2011.

(Prakash Tatia.,C.J.)

Hon'ble Justice P.P.Bhatt,J.

I agree.

(P.P.Bhatt, J.)

Jharkhand High Court, Ranchi
The 3rd,April, 2012
NAFR/Dey