

# Modern Isolators Ltd Anr. vs The State Of Rajasthan State Of ... on 20 January, 2020

**Bench: D.Y. Chandrachud, Hrishikesh Roy**

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ITEM NO.3

COURT NO.7

SECTION

S U P R E M E C O U R T O F  
RECORD OF PROCEEDINGS

I N D I A

Petition(s) for Special Leave to Appeal (C)

No(s).1

(Arising out of impugned final judgment and order dated 23-05-2016  
in DBCWP No. 4869/2016 passed by the High Court of Judicature for  
Rajasthan at Jodhpur)

MODERN ISULATORS LTD

ANR.

VERSUS

STATE OF RAJASTHAN AND ORS.

Date : 20-01-2020 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s)

Mr. Ranjay Kr Dubey, Adv.  
Mrs. Priya Puri, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

The Nine-Judge Bench of this Court in Jindal Stainless Steel Limited v State of Haryana<sup>1</sup> has answered the reference in the following terms:

“1. Taxes simpliciter are not within the contemplation of Part XIII of the Constitution of India. The word 'Free' used in Article 301 does not mean “free from taxation”.

2. Only such taxes as are discriminatory in nature are prohibited by Article 304(a). It follows that levy of a non-discriminatory tax would not constitute an infraction of Article SANJAY KUMAR Date: 2020.01.21 17:20:34 IST Reason:

3. Clauses (a) and (b) of Article 304 have to be read disjunctively.

1 (2006) 11 SCALE 1

4. A levy that violates 304(a) cannot be saved even if the procedure under Article 304(b) or the proviso there under is satisfied.

5. The compensatory tax theory evolved in Automobile Transport case and subsequently modified in Jindal's case has no juristic basis and is therefore rejected.

6. Decisions of this Court in Atiabari, Automobile Transport and Jindal cases (supra) and all other judgments that follow these pronouncements are to be extent of such reliance over ruled.

7. A tax on entry of goods into a local area for use, sale or consumption therein is permissible although similar goods are not produced within the taxing state.

8. Article 304(a) frowns upon discrimination (of a hostile nature in the protectionist sense) and not on mere differentiation. Therefore, incentives, set-offs etc. granted to a specified class of dealers for a limited period of time in a non-hostile fashion with a view to developing economically backward areas would not violate Article 304(a). The question whether the levies in the present case indeed satisfy this test is left to be determined by the regular benches hearing the matters.

9. States are well within their right to design their fiscal legislations to ensure that the tax burden on goods imported from other States and goods produced within the State fall equally. Such measures if taken would not contravene Article 304(a) of the Constitution. The question whether the levies in the present case indeed satisfy this test is left to be determined by the regular benches hearing the matters.

10. The questions whether the entire State can be notified as a local area and whether entry tax can be levied on goods entering the landmass of India from another country are left open to the determined in appropriate proceedings.” In view of the decision in Jindal Stainless Steel Limited (supra), the issue in regard to the theory of compensatory taxes has been conclusively resolved. In that view of the matter, nothing further survives in the present Special Leave Petition. However, we clarify that if any other incidental issue remains to be adjudicated upon other than the issue of compensatory taxes, it would be open to the petitioners to adopt such remedies as are open to them in law.

The Special Leave Petition is disposed of.

(SANJAY KUMAR - I)  
AR - CUM - PS

(SAROJ KUMARI GAUR)  
COURT MASTER