State Of Bihar Etc vs Bihar Chamber Of Commerce Etc on 6 February, 1996

Equivalent citations: JT 1996 (2) 53, 1996 SCALE (1)760, AIR 1996 SUPREME COURT 2344, 1996 AIR SCW 864, (1996) 1 EASTCRIC 31, (1996) 2 CURCRIR 308, (1996) 2 JT 53 (SC), (1996) 2 SCR 184 (SC), 1996 (9) SCC 136, (1996) 1 PAT LJR 105, (1996) 103 STC 1, (1996) 1 ANDHWR 64

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy, S.C. Sen

PETITIONER:
STATE OF BIHAR ETC.

Vs.

RESPONDENT:
BIHAR CHAMBER OF COMMERCE ETC.

DATE OF JUDGMENT: 06/02/1996

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
SEN, S.C. (J)

CITATION:
JT 1996 (2) 53 1996 SCALE (1)760

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T B.P.JEEVAN REDDY.J. Leave granted.

The Bihar Legislature enacted the Bihar Tax on entry of Goods into Local Areas for consumption, use or sale therein Act, 1993 providing for levy of tax on entry of scheduled goods into a local area for consumption, use or sale therein at a rate, not exceeding five percent, as may be specified by the

State Government. The goods mentioned in the Schedule are (i) motor vehicles, (ii) tobacco products [excluding beer is], (iii) India-made foreign liquors (iv) vegetable and hydrogenated oils, (v) cements and (vi) crude oil. The Act replaces Bihar Ordinance No.19 of 1993. [Indeed, the said Ordinance was preceded by yet another Ordinance.] The expression "Local Areas' is defined in clause (f) of Section 2 to mean the areas within the limits of a (i) Municipal Corporation, (ii) Municipality, (iii) Notified Area Committee, (iv) Cantonment Board, (v) Town Board, (vi) Mines Boards (vii) Municipal Boards (viii) Gram Panchayat and (ix) any other local authority by whatever nomenclature called constituted or continued under any law for the time being in force.

Section 3 is the charging section. The levy is upon the entry of scheduled goods into a local area for consumptions use or sale therein. The proviso to subsection 3 empowers the Government to specify different rates of tax for different goods mentioned in the Schedule. Subsection (2) of Section 3 says that the tax under the Act shall be paid by every dealer liable to pay tax under the Bihar finance Act, 1981 (Sales Wax Act). Section 5 provides for registration of dealers under the Act while Section 6 empowers the State Government to exempt from levy of tax any class of dealers, persons or importers, subject to such conditions and restrictions as may be imposed in that behalf. Section 7 provides for punishment in case of contravention of the provisions of the Act. Section 8 says that the machinery under the Bihar Finance Act, 1981 shall be the machinery for assessment and collection of this tax. Section 9 confers the rule-making power upon the State Government.

A number of writ petitions were filed by dealers in the Patna High Court questioning the constitutional validity of the Ordinance/Act. Several grounds were urged in support of the said challenge. The High Court has, however, struck down the Act on the following grounds: the State has failed to place any material before the Court to show that the impugned tax is either compensatory or vagulatory in nature; the levy must, therefore, be held to be impleding the freedom of trade, commerce or intercourse guaranted by Article 301 of the Constitution; the State cannot also invoke the protection of clause (b) of Article 304 for the reason that it has not established that the said tax constitutes a reasonable restriction imposed in public interest within the meaning of the said clause though it is true that the President has assented to the Bill; the entire Act is void and inoperative on this score. The High Court has also held that the proviso to Section 3(1) and Section 6 of the Act are void being violative of Article 14 of the Constitution. It has held that both the said provisions confer an unguided and uncanalised power upon the Government. The High Court declined to consider the submission made by the petitioners based upon the Additional Duties of excise (Goods of Special Importance) Act, 1957 [hereinafter referred to as "A.D.E. Act"] in view of the fact that it had already declared the Act void for violation of Article 301.

The State of Bihar has filed Special Leave Petition (C) Nos.14636-14644 of 1995 against the said judgment. The I.T.C. Limited, one of the writ petitioners before the High Court, has filed Special Leave Petition (C) No.23172 of 1995 challenging the correctness of the judgment of the High Court insofar as it has negatived its contentions concerning the validity of the Act. Special Leave Petition (C) No.23303 of 1995 is preferred by Vazir Sultan Tobacco Industries Limited and another.

Sri M.Chandrasekharans learned Additional Solicitor Generals appearing for the State of Bihar urged the following contentions:

(1) The High Court was in error in holding that the impugned tax is not established either to the compensatory or regulatory. In facts it is both. The Act was enacted by the Bihar Legislature to off-sets atleast partly, the loss of revenue to the State resulting from the decision of this Court in India Cement Limited & Ors. v. State of Tamil Nadu & Ors. (1990 (1) S.C.C.12). The finances of the State will be spent on public welfare and to carry out the welfare schemes meant for the people of Bihar. The entire State of Bihar is divided into local areas of one or the other category. The money raised under the Act will naturally be spent for the welfare of the State which necessarily means for the benefit of the local areas.

(2) Even if it is helds for some reason that the levy is not established to be compensatory or regulatory in nature, even then the challenge to the Act cannot succeed because it has obtained the assent of the President as contemplated by clause (b) of Article 304 read with Article 255 of the Constitution. The impugned levy constitutes a reasonable restriction upon the freedom of trade, commerce and intercourse guaranteed by Article 301 imposed in public interest. It satisfies all the requirements of clause (b).

Every tax imposed must be presumed to be in the interest of the public. Further, the very fact of grant of assent by the President as contemplated by Article 304(b) read with Article 255 gives rise to the presumption that the tax constitutes a reasonable restriction conceived in public interest. The High Court was in error in holding otherwise. (3) The impugned judgment insofar as it invalidates Section 3(1) and Section 6 is contrary to several decisions of this Court which have sustained similar provisions. Where a ceiling is prescribed and the executive is empowered to prescribe the rate of tax subject to the said ceiling, the conferment of the power cannot be characterized as unguided, particularly where the power is conferred upon the Government. Conferment of power of exemption, as is conferred by Section 6, has also been upheld by this Court on the ground that the Act itself provides the requisite guidance.

Sri S.Ganesh and Sri Pawan Kumar, learned counsel for respondents-writ petitioners, while disputing the correctness of the contentions urged by the learned Additional Solicitor General, urged the following further contentions in support of their challenge to the validity of the impugned Act:

(a) The A.D.E. Act was enacted by the Parliament to replace the levy of sales tax and all other taxes by the States on the commodities mentioned in the First Schedule to that Act.

Tobacco i included in the First Schedule. The State of Bihar has been provided an appropriate share in the revenues raised under the A.D.E. Act. It, therefore, follows that so far as tobacco is concerned, the State cannot levy any impost thereon including entry tax. It it does, lt will be deprived of its share in the revenues raised under the A.D.E. Act. By sharing the revenues under the A.D.E. Acts the State of Bihar must be presumed to have agreed not to levy any type of tax or impost on tobacco. The levy of entry tax under the impugned Act, therefore, is incompetent and void. The report of the

Taxation Enquiry Commission on the basis of which the said Act was enacted and the practice and understanding of the various States at the Center since the enactment of the said Act clearly establish that while sharing She revenues under the A.D.E. Act, the States have agreed not to impose any tax, cess or fee on tobacco under whatever name. As a matter of fact, entry tax is a tax similar to the sales tax.

(b) The impugned Act does not indicate either expressly or by necessary implication that the revenues raised thereunder will be utilized for the purposes of local areas. Entry 52 In List-II of the Seventh Schedule to the Constitution has been understood in a particular manner right from 1920. The entry tax is a substitute for octroi. Octroi was levied by the local authorities on consumption, use or sale of goods within their areas. The revenues so raised were meant for the purpose of such local authorities. The character of entry tax is no different. Even though levied by the State, it is levied (a) on the entry of goods into a local area for consumption, use or sale therein and (b) for the purposes of such local area. Since the impugned Act does not indicate in any manner that the revenues raised thereunder will be passed on to the local authorities for being used for their own purposes, the tax imposed cannot be treated as a tax contemplated by Entry 52. For this reason too, the impugned Act is beyond the legislative competence of the Bihar Legislature.

Needless to add that the learned Additional Solicitor General disputed the correctness of the above contentions.

From the contentions urged before us, the following questions arise for consideration:

> (1) Whether the impugned tax has been established to be compensatory in nature or whether it can be called a regulatory measure?
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> (2) In case the impugned tax is not established to be compensatory - or as a measure of regulation - whether it is saved by virtue of the provision contained in Article 304(b) read with Article 255 of the Constitution. In other words,
>
> (a) whether the Act has received the assent of the President as alleged by the State, (b) whether the levy of the said tax constitutes a reasonable restriction and (c) whether the said levy is conceived in public interest? (3) Whether the Bihar Legislature is deprived of its legislative competence to enact the impugned Act on account of the enactment of A.D.E. Act and/or because the State of Bihar is getting a portion of the taxes levied and collected under the A.D.E. Act.
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> (4) Whether the impugned enactment is outside the purview of Entry 52 in List-II of the Seventh Schedule to the Constitution and, therefore, beyond the legislative competence of the Bihar Legislature for the reason that it does not provide for the revenues raised thereunder to be passed on to the local authorities for being used for the purposes of the respective local areas? (5) Whether the proviso to Section 3(1) and Section 6 are void for the reasons assigned by the High Court? Question No. 1: Whether the impugned tax has been established to be compensatory or whether it

can be treated as a regulatory measure?

Article 301 declares that subject to the other provisions in Part XIII, trade, commerce and intercourse throughout the territory of India shall be free Certain exceptions are provided to the said Rule by Part XIII itself, one of them being clause (b) of Article 304.

This Court has held that tax laws are not outside the purview of Article 301 and that taxes which M and immediately restrict trade and interfere with the flow of trade and commerce do offend Article 301 Similarly, non- fiscal measures which have the above effect are equally hit by Article 301 It has, however, been held by a seven-Judge Constitution Bench of this Court in Automobile Transport (Rajasthan State of Rajasthan (1963 (1) S.C.R.491) that "regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by Article 301 and such measures need not comply with the requirements of the proviso to Article 304(b) of the Constitution." It is held that regulatory measures do not really impede the trade, commerce or intercourse but rather facilitate it. Similarly, it is held that compensatory taxes for the use of trading facilities are outside the purview of Article 301. Since the impugned Act is not a regulatory measure but a taxing enactment and the tax is levied upon the entry of goods into a local area, i.e., upon the movement of goods, the question is whether the impugned tax is compensatory in nature for the use of trading facilities provided by the State. One High Court has observed that the State has failed is adduce any material to establish the compensatory nature of the tax. The only averment in the counter-affidavit filed in the High Court is the following one Counter affidavit filed by Sri Binoy Krishan, Deputy Commissioner, Commercial Taxes, Bihar]: "the Entry Tax Ordinance was thought to be promulgated in view of the loss of revenue on cess due to the decision rendered by the Hon'ble Supreme Court in the case of India Cement Ltd. reported in A.I.R. 1990 S.C.85 as well as several decisions of the Hon'ble Patna High Court following the decision". The learned Additional Solicitor General however contended that the following indisputable facts do establish the compensatory nature of the taxes viz. the entire State of Bihar is divided into local areas of one or the other kind and that the Government and the local authorities do provide several trading facilities to promote trade and commerce with and within the State in the form of laying and maintenance of roads, establishment and maintenance of markets, establishment and operation of market yards for agricultural commodities and a host of other facilities. He submitted that the impugned tax. will naturally help in providing t he above facilities and therefore, it must he held to be compensatory. He requested us to take notice of these undeniable facts and to hold, on that basis, that the impugned tax is compensatory. The learned Additional Solicitor General further submitted that when the entire State is divided into local areas when no part of the State is left uncovered by a local area and when the impugned tax is levied for the purposes of the State including the welfare schemes being undertaken by it, the tax cannot but be compensatory in nature. The impugned tax will help the State in providing and improving the trading facilities since the interest of the State lies in promoting trade and commerce in goods and commodities with and within the State of Bihar. Reliance is placed upon the following observations at Page 549 of Automobile Transport (Rajasthan) Limited, which read:

"Licensing system with compensatory- fees would not be restrictions but regulatory provisions; for without it, the necessary lines of communications such as roads, water-ways and air-

ways cannot effectively be maintained and the freedom declared may in practice turn out to be an empty one. So too, regulations providing for necessary services to enable the free movement of traffic, whether charged or not, cannot also be described as restrictions impeding the freedom."

It is not possible to deny the force of this submission. Where the local areas contemplated by the Act cover the entire States the distinction between the State and the local areas practically disappears. [The situation would, no doubts be different if the local areas are confined to a few cities or towns in the State and the levy is upon the entry of goods into those local areas alone. This is an important distinction which should be kept in mind while appreciating this aspect and also while examining the decisions of this Court rendered in fifties and sixties'.] The facilities provided in the State are the facilities provided in the local areas as well. Interests of the State and the interests of the local authorities are, in essence, no different. It is not and it cannot be stipulated that for the purpose of establishing the compensatory character of the tax, it is necessary to establish that every rupee collected on account of the entry tax should be shown to be spent on providing the trading facilities. It is enough if some connection is established between the tax and the trading facilities provided. The connection can be a direct one or an indirect one, as held by this Court in Bhagatram Rajeev Kumar v. Commissioner of Sales Tax, Madhya Pradesh [(1995) 96 S.T.C 654]. "The concept of compensatory nature of tax has been widened and 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". Though not stated in the counter-affidavit, we can take notice of the fact that the State does provide several facilities to the trade including laying and maintenance of roads, water-ways and markets, etc. As a matter of fact, since the levy is by the State, we must also look to the facilities provided by the State for ascertaining whether the State has established the compensatory character of the tax. On this basis, it must be held that the State has established that the impugned tax is compensatory in nature. This finding is by itself sufficient to negative the attack based on Article 301 but even if we assume that the State has not established the said fact, even so the result is no different. We proceed to elaborate. Question No.2: In case the impugned tax is not established to be compensatory - or as a measure of regulation - whether it is saved by virtue of the provision contained in Article 304(b) read with Article 255 of the Constitution. In other words, (a) whether the Act has received the assent of the President as alleged by the State, (b) whether the levy of the said tax constitutes a reasonable restriction and (c) whether the said levy is conceived in public interest?

The impugned tax is a tax on entry - on movement of goods into a local area. If it is assumed to be neither compensatory, nor regulatory, [as mentioned above] it may be said to be offending Article 301, unless, of course, it is saved by virtue of the provision contained in Article 304(b) read with Article 255 of the Constitution, as contended by the learned Additional Solicitor General. Article 304 and Article 255 read as follows:

> "304. Restrictions on trade, commerce and intercourse among States. -- Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law--
>
> (a) Omitted as unnecessary.

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within the State as may be required in the public interest. Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President.

255. Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only.-- No Act of Parliament or of the Legislature of a State and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by the Constitution was not given, if assent to that Act was given-

(a) where the recommendation required was that of the Governor, either by the Governor or by the President;

(b) where the recommendation required was that of the Rajpramukh, either by the Rajpramukh or by the President;

(c) where the recommendation or previous sanction required was that of the President, by the President."

For, the exception in Article 304(b) to come to the rescue of the State, three requirements have to be satisfied, viz.,

(a) that the Bill was introduced or moved in the Legislature with the previous sanction of the President of India or that the Bill has been assented to by the President [as contemplated by Article 255], (b) that the levy of the impugned tax constitutes a reasonable restriction and (c) that the said reasonable restriction is required in public interest?

In this case, the Bill was not introduced or moved in the Assembly with the previous sanction of the President as required by Article 304(b) but the contention of the State is that the Bill has been assented to by the President and hence, the requirement is satisfied. The writ petitioners deny the same. They point out that the impugned Act does not recite the said fact. It cannot, however, be said that in the absence of such recital, the said fact cannot be established aliunde. In support of its contention, the State relies upon Para 11 of the supplementary counter-affidavit filed in the High Court and upon the telegram sent from Sri M.L.Gupta, Director (Home), New Delhi bearing No.17/36/93- JUDL. dated 22.8.1993 addressed to Sri P.S.Cheema, Commissioner and Secretary to the Governor, Bihar, Raj Bhawan, Patna. Para 11 of the counter-affidavit reads: "11. That thereafter the Bill was introduced in the Assembly and it was passed on getting assent communication on 22nd August, 1993 and same was published in Bihar Gazette on 22nd August, 1993". The telegram reads thus: "REF. YOUR LETTER NO.1414/GS(I) DATED 18.1.1993(.) PRESIDENT ASSENTED TO THE BIHAR TAXES ON ENTRY OF GOODS INTO LOCAL AREAS CONSUMPTION, USE OR SALE THEREIN BILL, 1993 ON 21.8.1993(.) LETTER WITHOUT COMMENTS FOLLOWS(.)" In the absence of any material to the contrary, we accept the averment of the State and hold that the

requirement of prior consent has been satisfied in the case of the impugned Act.

The next question is whether the impugned tax constitutes a reasonable restriction and whether it is imposed in public interest? In other words, the question is whether the interference with and the restriction upon the freedom guaranteed by Article 301 in the form of the impugned tax is a reasonable one and whether it is required in public interest. The learned Additional Solicitor General says that both the requirements are satisfied in this case. He says that in view of the sudden loss of revenue from the cess upon minerals as a result of the judgment of this Court in India Cement Limited and other judgments of the Patna High Court following it, public interest required the State to find alternative sources of revenue to keep its various welfare programmes and other governmental functions going and that the impugned tax was conceived as one of the alternate sources. He relies upon the statement in the counter-affidavit of Sri Binoy Krishan, filed on behalf of the State, referred to hereinbefore, in support of his submissions. He also relies upon the Objects and Reasons appended to the Bill, which are to the following effect:

> "To collect funds for various public welfare schemes and to implement various financial recommendations of the State Government, taxation according to the existing financial condition is highly essential.
>
> With a view to fulfil the above object and to make the provisions of the Bihar Finance Act more workable, it is essential that tax is levied and collected on certain goods entering the local areas of the State for consumption, use or sale; Bihar tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Second Ordinance, 1993 (Bihar Ordinance 19 of 1993) has been promulgated incorporating the aforesaid provisions.
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> The Object of this Bill is to get the essential provisions of the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Ordinance, 1993 substituted by an Act of the Legislature."
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> On the basis of the Statement of Objects and Reasons, the learned Additional Solicitor General contends that the levy of impugned tax was found "essential" to raise funds for various public welfare schemes, to implement various financial recommendations of the State Government and to make the Bihar Sales Tax Law more effective. It is suggested that public interest demanded that alternate and new sources be found for raising the money to meet the needs of the State and that, therefore, the levy was "required" in the public interest. The learned Additional Solicitor General relies upon the following holding in State of Karnataka v. M/s.Hansa Corporation (1981 (1) S.C.R.823 at 843):
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> "..... a levy which appears to be quite reasonable in its impact on the movement of goods and is imposed for the purpose of augmenting municipal finances which suffered a dent on account of abolition of octroi cannot be said to impose an unreasonable restriction on the freedom of inter-State trade, commerce and

> intercourse. In this connection, it would be useful to recall the observations of this Court in Khyerbari Tea Co. Ltd-case that the power conferred on this Court to strike down a taxing statute if it contravenes the provisions of Arts. 14,19 or 301 has to be exercised with circumspection, bearing in mind that the power of the State to levy taxes for the purpose of governance and for carrying out its welfare activities is a necessary attribute of sovereignty and in that sense it is a power of paramount character. It is, therefore, idle to contend that the levy imposed an unreasonable restriction on the freedom of trade and commerce."

The above observation is relied upon to show not only that the impugned tax was "required" in the public interest but that it is also reasonable. To demonstrate the reasonable character of levy, the learned Additional Solicitor General relies upon a few more circumstances. He points out that so far as motor vehicles, India-made foreign liquor, vegetable and hydrogenated oil and cements [Items 1, 3, 4 and 5 in the Schedule to the Act] are concerned, the entry tax levied and collected thereon is given credit towards the sales tax payable on the sale of the said goods, which means that no additional burden is created on the dealers by the impugned levy. It is pointed out that entry tax is levied and collected mainly from the dealers in the said goods/commodities and that a dealer brings the said goods into a local area only for the purpose of sale. Such sale attracts sales tax which is levied at a far higher rate than the entry tax. Once the entry tax paid in respect of a commodity/goods is given credit towards the sales tax, there is in effect no levy of entry tax on these goods. Thus, no extra burden is cast by the impugned Act insofar as four out of six commodities mentioned in its Schedule are concerned. These facts are not disputed by anyone before us. No such credit is, of course, given in respect of crude oil and tobacco products, which means that, in effect, the entry tax is being levied only upon two commodities, viz., tobacco productions and crude oil. But there is a good reason, says the learned Additional Solicitor General, for not providing for such credit in the case of the said two commodities. The reason given for not making a similar provision [giving credit] in the case of tobacco products is that no sales tax is levied on tobacco products by the State of Bihar. Since no sales tax is levied on the sale of tobacco products, the question of giving credit to the entry tax against the sales tax does not arise, says the Additional Solicitor General. This, no doubt, means that so far as tobacco products are concerned, there is an additional levy of three percent by virtue of the impugned Act and to that extent it may be said to impede the freedom guaranteed by Article 301. The learned Additional Solicitor General, however, submits that the levy represents a reasonable restriction because of the negligible additional burden it creates and also because of the inherent harmful nature of tobacco products. [It may be remembered that the nature of the activity is relevant in the matter of judging the reasonableness of the restriction imposed a well-settled proposition under Article 19 and which proposition is equally relevant under Article 304(b).] We are inclined to agree with the submission. It is stated by Sri S.Ganesh, learned counsel for the I.T.C., who is the main party said to have been affected by this levy, that the percentage cf excise duties on tobacco products [duties of excise levied under the Central Excise and Salt Act, 1944 and the A.D.E. Act read with notifications issued in that behalf] is between 250 to 300 percent of their value. Can it be said that an addition of three percent to the said level of taxation is unreasonable when the tax so levied and collected is going to serve the interest of the public in that State? Can it be reasonably suggested that this addition of three percent is impeding the trade, commerce or intercourse in tobacco products directly and immediately or to any appreciable

degree? We think not. In this connections it is not irrelevant to take into consideration the harmful nature of the tobacco products. Though it may not have been recognized in 1957 when A.D.E. Act was enacted, it is now recognized by one and all that tobacco is injurious to health. [R warning to the above effect is statutorily required to be printed on all packets and cartons containing the tobacco products.] The extraordinary high level of excise duties on tobacco is meant precisely to discourage its consumption. In our opinions therefore, it is not possible to say that the addition of three percent is either an unreasonable restriction on the freedom of trade and commerce or that it is not required in public interest.

In this connections it is necessary to notice a few decisions brought to our notice. In Bhagatram Rajeev Kumar, a three-Judge Bench of this Court has rejected the argument that to be compensatory the tax must facilitate the trade. The reason is obvious: if a measure facilitates the trade, it would not be a restriction on trade but an encouragement to it. lt was observed:

> "The submission of Shri Ashok Sen, learned Senior Counsel, that compensation is that which facilitates the trade only does not appear to be sound. The concept of compensatory nature of tax has been widened and if there is substantial or even s me link between the tax and the facilities extended to such dealers Directly or indirectly the levy cannot be impugned is invalid. The stand of the State that the revenue earned is being made over to the local bodies to compensate them for the loss caused, makes the impost compensatory in nature, as augmentation of their finance would enable them to provide municipal services more efficiently, which would help or ease free-flow of trade and commerce, because of which the impost has to be regarded as compensatory in nature, in view of what has been stated in the aforesaid decisions, more particularly in Hansa Corporation's case [1981] 1 SCR 823 : AIR 1981 SC
>
> 463."

[Emphasis supplied] In Shakti Kumar M.Sancheti v. State of Maharashtra [(1995) 96 S.T.C.659], the very same Bench has opined:

> "A very perusal of these objects and reasons would indicate that this legislation was brought in order to compensate loss of revenue by consumers who avoid payment of the sales tax or purchase tax on the vehicle payable in the State by purchasing it in another State where the rate was lesser than the State of Maharshtra and then to bring the vehicle inside the State. The legislature, therefore, clearly intended to avoid any loss of legitimate sales tax revenue by the State. But the levy cannot be held to be bad because the Legislature intended to avoid any loss of sales tax in the State so long as it is not found to be invalid because of any constitutional or statutory violation. It is not the intention or propriety of a legislation but it is legality or illegality which renders it valid or invalid."

Both these decisions deal with entry tax levied by Madhya Pradesh and Maharshtra States respectively.

Now, coming to the crude oil (Indian Oil Corporation is also a party before us), it is explained by the learned Additional Solicitor General that inasmuch as there is no sale of crude in the State of Bihar, a provision for giving credit of entry tax against sales tax was thought to be unnecessary. It is explained that the crude from the oil fields in Assam is pumped to Barauni Oil Refinery, located in Bihar, through a pipeline. The crude is refined here and petroleum and other products produced therefrom are sold. It is, therefore, submitted that while an entry tax is levied on the entry of crude in a local area, no provision has been made for giving credit/set-off of such tax against the sales tax payable inasmuch as no crude is ever sold in Bihar and no tax is levied or collected thereon, as a fact.

Reliance is placed by the learned Additional Solicitor General upon the decision of the Constitution Bench in Khyerbari Tea Company Ltd. v. State of Assam (1964 (5) S.C.R.975) where it has been recognized that a tax levied by the State must be presumed to be a reasonable restriction inasmuch as taxes are levied to raise money in order to carry on the functions of the Government and to sustain the manifold activities undertaken by it. This decision also points out that the fact that President has given assent to the Bill also raises a presumption that the President [Central Government] had applied his mind to the problem and had come to the conclusion that the proposed tax constitutes a reasonable restriction and is required to be imposed in public interest. It is true that these are only presumptions but taken together with other materials referred to above, they do firmly establish the said requirement in Article 304(b). The learned Additional Solicitor General also relied upon the following holding in Hansa Corporation:

> "The next is whether this levy is in public interest. As has been pointed out earlier, the levy was to compensate the loss suffered by abolition of octroi. These very people were paying octroi without a demur. After removing the obnoxious features of octroi a very modest impost is levied on entry of goods in a local area and that too not for further augmenting finances of the municipalities but for compensating the loss suffered by the abolition of octroi, is certainly a levy in public interest. As has been repeatedly observed by this, Courts the taxes generally are imposed for raising public revenue for better governance of the country and for carrying out welfare activities of our welfare State envisaged in the Constitution and, therefore, even if a tax to some extent imposes an economic impediment to the activity taxed, that by itself is not sufficient either to stigmatize the levy as unreasonable or not in public interest."

Sri Ganesh, learned counsel for the I.T.C., points out that in Khyerbari Tea Co Ltd., this Court did not rest its decision merely upon the presumptions aforementioned and that as a fact, specific material was produced before the Courts by the States that the funds in question were being utilized for keeping the roads in order and in maintaining the water-ways in the State. The statement filed by the State in that case did establish that the expenditure incurred by it in maintaining the water-ways was more than the revenue received from the carriage tax. It is because of the said material, Sri Ganesh say, that the levy was held to be a reasonable restriction. It is true that no such specific statement is contained in the counter affidavit of the State in the cases before us but this circumstance is of no consequence herein for the reason that on the material brought to the notice of the Court and for the reasons recorded hereinabove, the requirements of Article 304(b) must be held to have been satisfied in this case. The attack upon the validity of the impugned Act on the

ground of violation of Article 301 accordingly fails. Question No.3: Whether the Bihar Legislature is deprived of its legislative competence to enact the impugned Act on account of the enact of A.D.E. Act and/or because the State of Bihar is getting a portion of the taxes levied and collected under the A.D.E. Act?

The submission of Sri Ganesh on this count runs thus:

> the A.D.E. Act was enacted by Parliament in lieu of levy of sales tax and all other taxes and imposts by the States on tobacco and other commodities mentioned in the First Schedule thereto. This Act was enacted by the Parliament based on an understanding with the States that they will not levy sale or purchase tax or any other kind of impost upon the scheduled commodities and that the Union will collect additional duties of excise under the Act and make over a portion of the same in specified proportion to the several States in the Country. The Report of the Taxation Enquiry Commission [1953-54] is the basis of this Act. The Report of the Taxation Enquiry Commission states inter alia that various duties imposed [by certain States] upon tobacco are casting an unduly heavy burden on tobacco and on tobacco manufactures and that there is need "for ensuring proper coordination between the taxes on tobacco levied by the Central Governments the States and the local authorities". For this purpose, the report stated: "We consider that such coordination would be best evolved through the machinery of the inter-State Taxation Council to which we have already alluded" [Para 23 at Page 136 of the Report]. At a meeting of the National Development Council held in December, 1976, the Center and all the States agreed unanimously that "sales tax levied in States on mill-made textiles, tobacco including manufactured tobacco and sugar should be replaced by surcharge on the central excise duties on these articles, the income derived therefrom being distributed among States on the basis of consumption, subject to the then income derived by States being assured". Pursuant to the said agreement and the decision to levy additional excise duties on three commodities including tobacco, the Second Finance Commission was requested to recommend a suitable basis for distribution of the proceeds of the additional excise duties among the States and the Union Territories. The Second Finance Commission made a thorough enquiry and submitted its proposals. On the basis of the N.D.C. resolution and the recommendations of the Second Finance Commissions the A.D.E. Act was enacted. On the basis of the above materials Sri Ganesh submits that the A.D.E. Act was intended to prevent the levy of all forms of taxes on the goods mentioned in the Schedule thereto and that this understanding was adhered to, respected and followed all these years by all the States. Pursuant to the said understanding, he says, certain States which had levied one or the other form of impost on tobacco withdrew the same. The decision of this Court in A.B.Abdul Qadir & Ors.v. State of Kerala [1976 (2) S.C.R.690], he says, refers to the fact that the State of Kerala has withdrawn the licence fee on tobacco after the coming into force of the A.D.E. Act. The learned counsel places strong reliance upon a letter dated May 4, 1957 from the then Finance Minister, Sri T.T.Krishnamachary, addressed to the Chief Ministers of the States

stating, inter alia, that "it is proposed to correlate the principles of distribution to the existence of a complete exemption from sales tax or purchase tax or any other impost by whatever name called on these commodities under the respective State laws. In other words, the State which does not exempt completely all these three commodities from its sales tax Act or any other similar legislation will not be entitled to partake in the distribution of the proceeds of the additional excise duty". Learned counsel points out that Bihar has been receiving its due share from the additional duties of excise collected by the Center on the basis of the recommendations made by the Finance Commissions from time to time. Indeed, he goes to the extent of submitting that the entry tax contemplated by Entry 52 in List-II of the Seventh Schedule to the Constitution is a tax similar to sales tax inasmuch as it is a tax levied upon the entry of goods into a local area for the purposes of consumptions use or sale therein.

It is not possible to agree with Sri Ganesh. Entry tax is a tax levied at the point of entry of goods into a local area for the purpose of consumption, use or sale therein. It is not a tax on sale. It is a tax on the entry of goods into a local area and it is precisely because of this that the petitioners say, Article 301 is attracted. They cannot, at the same time, say that it is not a tax on entry but a tax in the nature of a tax on sale* - apart from the fact that such a contention is wholly misconceived. Taxes on sale and purchase of goods are provided by Entry 52 in List-II Moreover, Entry 52 has been the subject-matter of several decisions of this Court which say that the tax is upon the entry of goods into a local areas i.e., upon entry of goods for the purpose of consumptions use or sale

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*If it is a tax on sale, Article 301 is not attracted. therein. Neither mere entry of goods is enough to attract the levy nor the mere sale thereof within the local area. What attracts the levy under Entry 52 [and under the impugned enactment] is the entry of goods into local area for consumption or for use or for sale within that local area for the purpose of consumption or use within that local area. Indeed, when it was contended by one of the States, State of Karnataka, that the expression "sale" occurring in Entry 52 should be given, its full and normal meaning and should not be confined to sale of goods in a local area for consumption or use therein, the contention was rejected by this Court with reference to the earlier decisions of this Court [See Entry Tax Officer, Bangalore v. Chandanmal Champalal [1994 (4) S.C.C.463]. The said decision refers to and follows the earlier decisions of this Court on the point. Secondly, it is abundantly clear from the materials which we shall presently refer to, that the A.D.E. Act was meant as a substitute for the taxes on the sale or purchase of scheduled commodities alone and not for all kinds of taxes, cesses and fees which the States are entitled to impose by virtue of the entries in List-II or for that matter List-III of the Seventh Schedule to the Constitution. The statement of Objects and Reasons appended to the Bill reads thus:

"The object of the Bill is to impose additional duties of excise in - replacement of the sales taxes levied by the Union and States on sugar, tobacco and mill-made textiles

> and to distribute the net proceeds attributable to Union Territories, to the States. The distribution of the proceeds of the additional duties broadly follows the pattern recommended by the Second Finance Commission. Provision has been made that the States which levy a tax on the sale or purchase of these commodities after the 1st April, 1958 do not participate in the distribution of the net proceeds. Provision is also being made in the Bill for including these three goods in the category of goods declared to be of special importance in inter-State trade or commerce so that, following the imposition of uniform duties of excise on them, the rates of sales tax if levied by any State are subject from 1st April, 1958 to the restrictions in Section 15 of the Central Sales Tax Act, 1956."

Section 3 provides for levy and collection of additional duties. Section 4 provides for distribution of additional duties among the States. It says that during each financial years there shall be paid out of the Consolidated Fund of India to the States, in accordance with the provisions of the Second Schedules such sums, representing a part of the net proceeds of the additional duties levied and collected during that financial year, as are specified in the Schedule. Section 5 says that any expenditure incurred under the Act shall be charged to the Consolidated fund of India. Section 6 confers the rule-making power upon the Central Government. The proviso to Rule (2) in the Second Schedule to the Act is of crucial relevance to us. Rule (2) along with its proviso reads thus:

> "During each of the financial years commencing on and after the Ist day of April, 1974 there shall be paid to each of the States specified in column 1 of the Table below such percentage of the net proceeds after deducting therefrom a sum equal to 1.41 per cent of the said proceeds as being attributable to Union Territories, as is set out against it in column 2.
>
> Provided but if during the financial year there is levied and collected in any State a tax on the sale or purchase of sugar, tobacco, cotton fabrics. woollen fabrics.
>
> rayon or artificial silk fabrics or one or more of them by or under any law of that States no sums shall be payable to that State under this paragraph in respect of that financial year unless the Central Government by special order otherwise directs."

The proviso states that if during a given financial years a State levies and collects a tax on the sale or purchase of scheduled goods or on any one or more of the scheduled goods by or under a law of that States no sums shall be payable to that state under this paragraph in respect of that financial year, unless the Central Government by special order directs otherwise. There is no reference in the Act or in the Statement of Objects and Reasons to any tax other than the tax on sale or purchase of goods. There is no ambiguity in the language of the proviso to Rule (2), which is a part of the statute.

The A.D.E. Act is enacted by the Parliament with reference to Entry 84 in List-I of the Seventh Schedule to the Constitution whereas the impugned enactment is made by the State with reference to Entry 52 in List-Il. The power to levy taxes on sale or purchase of goods is conferred upon the States and the States alone by Entry 52 in List II. The Parliament cannot make a law either with

reference to Entry 52 or for that matter with reference to Entry 54. The A.D.E. Act is also not a law made under and with reference to Article 252 of the Constitution, which article powers the Parliament to make a law with respect to any matter mentioned in List- II, if two or more States pass resolutions requesting the Parliament to make a law in that behalf. The impugned Act is also not relatable to any of the Articles 249 to 253 which are in the nature of exceptions to the normal rule that Parliament can make no law with respect to the entries in List-II. If so, it follows that the State legislatures are not denuded or deprived of their power to make a law either with reference to Entry 52 or with reference to Entry 54 in List-II. That power remains untouched and unaffected. All that the Parliament has said by enacting the A.D.E. Act is that it will levy additional duties of excise and distribute a part of the proceeds among the State provided the States do not levy taxes on sale or purchase of the scheduled commodities. The Parliament has also provided the consequence that follows if any State levies tax on sale or purchase of scheduled commodities; all that happens is that the State will be deprived of its share in the proceeds af additional duties of excise for that financial year. Even this is subject to the power of the Central Government to direct otherwise. The Parliament could not, and did not, prohibit any State from making any law or levying any tax which a State can levy by virtue of the entries in List-II. The decision of this Court in State of Kerala v. M/s.Attesee [Agro Industrial Corporation] (1989 Suppl.(1) S.C.C.733) does bear out our understanding. At Page 744, this Court observed:

> "The 1957 Act also has a bearing on the sales tax levy of various States. By levying sales tax on an item covered by the schedule to the 1957 Act, the State will have to forego its share on distribution of the proceeds of the additional excise duty levied. Whether it should impose sales tax on an item of declared goods, limited by the restrictions in Section 15 pf the CST Act and at the risk of losing a share in the additional excise duty levied in respect of those very items, is for the State to determine. As Pointed out by Sri Poti, it was open to the Kerala Legislature to decide - and it did so also - that on some items there should be one or other of the levies or both of them and to modify these levies depending upon its financial exigencies. But these factual or periodical variations do not detract from the basic reality that the policy of sales tax levy on declared goods has to keep in view, and be influenced by, the provisions of the CST Act and the 1957 Act."

To the same effect is the decision of a Division Bench of the Madras High Court in Nemichand Parasmal & Co. v. Deputy Commercial Tax Officer, Evening Bazaar Assessment Circle, Madras [(1984) 55 S.T.C.47] where this aspect has been elaborately dealt with. We agree with their reasoning on this score.

We are also of the opinion that the scope of the A.D.E. Act cannot be extended by reference to anterior reports or correspondence between the Center and the States, as the case may be, apart from the fact that the material referred to is not unambiguous. Para 32 at Page 126 of the Taxation Enquiry Commission [1953-54], the relevant portion whereof we have extracted hereinbefore, is more in the nature of a statement of fact coupled with a recommendation. All that it says is that the States had imposed several duties and other imports upon tobacco which were casting an unduly heavy burden upon it and that, therefore, there should be coordination between different taxes on

tobacco levied by the Central Government, the States and the local authorities. For that purpose, the Commission recommended the constitution of an Inter-State Taxation Council. Admittedly, no such Council has ever been constituted. Similarly, the letter of the then finance Minister, Sri T.T.Krishnamachary, relied upon by Sri Ganesh, which we have set out hereinabove, is also not quite clear. The extract speaks, in the first instance, of "a complete exemption from sales tax or purchase tax or any other impost by whatever name called on these commodities under the respective State laws" but then it immediately proceeds to explain, what it means by the said expression, by saying, "(I)n other words, the State which does not exempt completely all these three a commodities from its sales tax Act or any other similar legislation will not be entitled to partake in the distribution of the proceeds of the additional excise duties". Again, the fact that subsequent to the A.D.E. fact, certain States withdrew certain enactments providing for levy of taxes/fees other than sales tax on the scheduled commodities, in the light of the enactment of the A.D.E. Act assuming that it was for that reason alone is not relevant on the meaning and interpretation of the A.D.E. Act or for that matters the proviso to Rule (2) in the Second Schedule thereto. So long as the language of the enactment is clear and unambiguous, it is not permissible to refer to the kind of material relied upon by Sri Ganesh for altering, expanding or modifying the meaning or scope of the provisions of the Act. We ares therefore, unable to say that by agreeing to take a share in the proceeds of the additional duties of excise, he State of Bihar has deprived itself of its power to levy entry tax under and by virtue of Entry 52 in List-lI in the Seventh Schedule to the Constitution. Indeed, it has not even forsaken its power to levy taxes on sale or purchase of tobacco or any other scheduled commodity; if it does so, all that would happen is that the consequence provided in the proviso to Rule (2) in the Schedule to the A.D.E. Act will follow and nothing more. The A.D.E. Act does not affect the legislative competence of the State Legislature to make a law with reference to any of the entries in List-II. The contention of Sri Ganesh on this score is accordingly rejected.

Pausing here, we may mention a particular submission made by Sri Ganesh on this score. He submitted that this very question [considered by us under Question No.3] has been referred by a Bench of this Court to the Constitution Bench by its Order dated January 2, 1995, a copy af which has been placed before us. The Order does not support the submission of the learned counsel. It does not say that the reference to the Constitution Bench was on this point. Sri Ganesh submitted that this is one of the points arising in the said matter. However, in the absence of any indication in the Order of reference that this particular question was referred to the Constitution Bench, we declined to accede to his request to tag these matters to Special Leave Petition (C) No.21476 of 1994 for being heard by the Constitution Bench. It should also be noticed that the main ground upon which the High court has invalidated the impugned Bihar Act, or certain provisions thereof, as the case may be, is in no way relatable to the A.D.E. Act. The High Court has indeed refused to go into this question in view of its finding on other issues. Even before us, the contention was not that the Bihar Legislature had no competence to enact the impugned Bihar Act but only that it ought not have done so in view of the decision of the National Development Council to which the State of Bihar was a party and which agreement led to the enactment of the Act. Since the question before us is one of legislative competence and not one of desirability of making such an enactment, the submission of the learned counsel was unacceptable to us.

Question No-4: Whether the impugned enactment is outside the purview of Entry 52 in List-II of the Seventh Schedule to the Constitution and, therefore, beyond the legislative competence of the Bihar Legislature for the reason that it does not provide for the revenues raised thereunder to be passed on to the local authorities for being used for the purposes of such local authorities?

The next submission of Sri Ganesh is that inasmuch as the impugned Bihar Act does not contain any provision or any indication that the taxes collected under the Act will be passed on to the local authorities, it cannot be said to be a tax contemplated by Entry 52 in List-II. Counsel submitted, on the basis of certain decisions of this Court to which we shall presently refer, that the said tax is essentially in the nature of octroi which was being levied by the local authorities prior to the Government of India Act, 1935. Octroi was levied by the local authorities to raise money for their own purposes. It was meant to meet the financial needs of the local authorities and not for supplementing or augmenting the general finances of the State. The impugned Bihar Act, however, seeks to do precisely that which is not contemplated; by Entry 52. It has levied the impugned tax for the purpose of supplementing and augmenting the finances of the State and not the finances of the local authorities and hence, outside the purview of Entry 52 in List-II, says Sri Ganesh.

Sri Ganesh relied upon the following decisions:

> In Central India Spinning & Weaving & Manufacturing Co.Ltd., The Empress Mills, Nagpur v. The Municipal Committee, Wardha [1958 S.C.R.1102], this Court observed:
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> "The legislative history of this tax thus shows that octroi was leviable on the entry of goods in a local area when the goods were for consumptions use or sale therein.....In the absence of clear intention to the contrary, the incidence of the tax leviable under item 8 of Schedule II of the Schedule Tax Rules is incapable of having a different complexion from that which it had before 1920 or that which was clearly given after 1935."

In Diamond Sugar Mills Ltd. & Anr. v. State of Uttar Pradesh & Anr. [1961 (3) S.C.R.242], this Court referred to the previous legislative history including the position obtaining under the Government of India Acts 1919, Notification No.311/8 dated December 18, 1920 and Entry 49 of List-II of the Government of India Act, 1935 and observed: "It was with the knowledge of the previous history of the legislation that the Constitution-makers set about their task in preparing the lists in the seventh schedule. There can be little doubt therefore that in using the words 'tax on the entry of goods into a local area for consumption, use or sale therein', they wanted to express by the words 'local area' primarly ares in respect of which an octroi was leviable under item 7 of the schedule tax rules, 1920 - that is, the area administered by a local authority such as a municipality, a district Board, a local Board or a Union Board, a Panchayat or some body constituted under the law for the governance of the local affairs of any part of the State....'.

In Burma Shell Oil Storage Distributing Company India Ltd. v. The Belgaum Borough Municipality [1963 Suppl. (2) S.C.R.216], this Court again traced legislative history of octroi and terminal taxes

and held that octroi was always understood as a tax leviable on the entry of goods into a local area for consumption, use or sale therein.

We find it difficult to agree with the submission of Sri Ganesh Entry 49 of List-II of the Seventh Schedule to the Government of India Act, 1935 as well as Entry 52 in List-II in our Constitution speak of "local areas" and not "local authorities" The tax, by whatever name called, is levied upon the entry of goods into a local area for consumption, use or sale therein. The decisions relied upon by Sri Ganesh too use the same words. Entry 52 empowers the State Legislature to levy this tax. The local authorities cannot themselves levy this tax. The power is that of the State Legislature and of none else. So long as the tax is levied upon the entry of goods into a local area for the purpose of consumption, use or sale therein, the requirement of Entry 52 is satisfied. The character of the tax so levied is that of entry tax - by whatever name it is called. The decisions relied upon by Sri Ganesh do not say that the State must levy the tax and make over the collection part of it to local authorities nor do they say that after collecting it, the State must make over the proceeds to the local authorities. The highest that Sri Ganesh can legitimately put his submission is that the tax is meant for and must be utilised for the purpose of the local areas. It cannot further be stipulated that this utilisation should be through or by the concerned local authorities. In our opinion, the relevant requirement is satisfied in this case As stated hereinbefore, the entire State of Bihar is devided into local areas. From the point of view of the entry tax, one may say that the State is a compendium of local areas. Spending for the purposes of the State is thus spending for the purposes of local areas. Situation may perhaps be different where the local areas are confined to a few cities or towns in the State. But where the local areas span the entire State, it cannot be argued that money spent for welfare schemes for improvement of roads, rivers and other means of transport and communication is not spent on or for the purposes of local area. The purposes and needs of local areas are no different from the purposes and needs of the State - not at any rate to any appreciable degree. In this context, it is relevant to notice that the Maharashtra Entry Tax Act, considered by this Court in Shakti Kumar was also meant for augmenting the general revenues of State, to wit, to make up the loss of revenue the State was suffering on account of reduction of sales tax on motor vehicles in the adjoining States. The following observations in the said decision tend to support our reasoning, though, it is true, this particular question was not raised therein:

> "A very perusal of these objects and reasons would indicate that this legislation was brought in order to compensate loss of revenues by consumers who avoid of payment of the sales tax or purchase tax on the vehicle payable in the State by purchasing it in another State where the rate was lesser than the State of Maharashtra and then to bring the vehicle inside the State. The Legislature, therefore, clearly intended to avoid any loss of legitimate sales tax revenue by the State. But the levy cannot be held to be bad because the Legislature intended to avoid any loss of sales in the State so long it is not found to be invalid either because of any constitutional or statutory "3. Charge of Tax.--(l) There shall ba levied and collected a tax on entry of scheduled goods into a local area for consumption, use or sale therein at such rate not exceeding five percentum of the import value of such goods as may be specified by the State Government in a notification published in an official gazette subject to such conditions as may be prescribed.

Provided different rates for different scheduled goods and different local areas may be specified by the State Government.

6. Exemption from Tax.-- The State Government may by notification and subject to such conditions restriction as it may impose exempt from tax any class of dealers persons or importers."

The proviso to Section 3(1) empower, the State Government to specify different rates of entry tax for different commodities mentioned in the Schedule to the Act. This is, however, subject to the ceiling of five percent specified in Section 3 itself. in such a situations it cannot be held that the power conferred upon the State Government to specify the rate of tax is unguided. In Municipal Corporation of Delhi v. Birla Cotton Spinning & Weaving Mills, Delhi & Anr. [1968 (3) S.C.R.25l], it was held that where the power is given to a responsible elected body like the municipal corporation to prescribe the rates of tax subject to a ceiling prescribed and where the rates fixed have to be submitted to the Government for its sanctions it cannot be held to be a case of excessive delegation of legislative power. In this cases the delegation is to the State Government and a ceiling is also prescribed. The State Government must be deemed to be aware of the needs of the State and the interest of its people. It is the State Government that prepares the budget for every year. The very provisions of the Act and its scheme coupled with the above factors provide sufficient guidance to the Government in the matter of specification of the rates. It cannot, therefore, be held that the proviso confers an unguided power upon the State Government. Now, coming to Section 6, it confers upon the State Government the power to grant exemption to any class of persons from the operation of the Act. Such a power has consistently been upheld by this Court in a number of decisions commencing from P.J.Irani v. State of Madras [1962 (2) S.C.R. 169]. In fact, such a provision is a common feature in all the taxing enactments and many other enactments. It has been held that the very scheme and the provisions of the Act do provide the necessary guidance. Accordingly, we hold that the High Court was in error in declaring Section 6 to be void for being violative of Article 14.

For the above reasons, the appeals arising from Special Leave Petition (C) Nos.14636-14644 of 1995 [preferred by the State of Bihar] are allowed and the judgment of the High Court is set aside. The appeals arising from Special Leave Petition (C) No. 23172 of 1995 [preferred by I.T.C. Limited & Ors.] and Special Leave Petition (C) No. 23303 of 1995 [preferred by V.S.T. Industries & Anr.] are dismissed.

No order as to costs.