

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 6557 of 2017****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS.JUSTICE HARSHA DEVANI****Sd/-****and****HONOURABLE MS. JUSTICE SANGEETA K. VISHEN****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

JINDAL STAINLESS HISAR LTD. & 1 other(s)**Versus****STATE OF GUJARAT & 2 other(s)****Appearance:****UCHIT N SHETH(7336) for the Petitioner(s) No. 1,2****GOVERNMENT PLEADER(1) for the Respondent(s) No. 1,2,3****CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI****and****HONOURABLE MS. JUSTICE SANGEETA K. VISHEN****Date : 11/03/2020****CAV JUDGMENT****(PER : HONOURABLE MS. JUSTICE SANGEETA K. VISHEN)**

1. The present petition has been filed challenging the notification dated 15th February, 2010 issued by the State

Government in exercise of powers conferred under sub-section (1A) of section 3 of the Gujarat Tax on Entry of Specified Goods into Local Areas Act, 2001 (hereinafter referred to as “the Entry Tax Act”) whereby, the State Government while amending the schedule added Entry 9 pertaining to “stainless steel plates, flats, sheets and coils” and specified the maximum rate of tax as four percent.

2. The brief facts of the case are as under:-

2.1 The petitioners are engaged in the business of manufacturing and sale of stainless steel flats and sheets. The petitioners have manufacturing unit at Haryana and from the unit the goods are dispatched by way of branch transfer to various branches located in different States across the country including the State of Gujarat and thereafter such goods are sold locally in the respective States. According to the petitioners, the petitioners duly disclose all the transactions of goods entered into the State as well as sales made in the State of Gujarat in the returns filed under the Gujarat Value Added Tax Act, 2003 (hereinafter referred to as the “VAT Act”). The petitioners duly pay tax at the applicable rate under the VAT Act.

2.2 As is discernible from the record of the captioned writ petition, the Deputy Commissioner of Commercial Tax, in exercise of powers conferred under sections 67, 70 of the VAT Act read with Rule 48 of the Gujarat Value Added Tax Rules, 2005 (hereinafter referred to as “the Rules”) issued notice dated 15th September, 2016 calling upon the petitioners to furnish all the details viz. purchase invoices, purchase register and proof of payment of entry tax, failing which the petitioners

would be liable for an offence punishable under sub-section (2) of Section 85 of the VAT Act. In response to the aforesaid notice, the petitioners, on 27th November, 2016 submitted their reply *inter alia* contending that all the goods that had been brought from outside the State, sold in the State and tax at the applicable rate had been paid under the VAT Act and thus, there is no outstanding tax liability on the part of the petitioners.

2.3 On 7th January, 2017, the Deputy Commissioner of Commercial Tax, issued a notice stating that on *prima facie* scrutiny of the online statement, it appears that the petitioners have not paid the tax on entry of goods and were instructed to remain present on 23rd January, 2017 along with all the supporting documents, substantiating the fact of payment of tax on entry of goods. The petitioners, vide communication dated 23rd March, 2017, requested for time for submission of reply to the notice and for fixing of suitable date of hearing.

2.4 According to the petitioners, instead of considering the request of the petitioners for time to submit reply, the Deputy Commissioner of Commercial Tax issued a notice through e-mail dated 25th March, 2017 rejecting the request of adjournment and further required the petitioners to deposit the amount towards the tax for entry of the goods into the State of Gujarat. It is further the case of the petitioners that the aforesaid e-mail notice dated 25th March, 2017 was followed by another e-mail dated 27th March, 2017 calling upon the petitioners to pay entry tax before 30th March, 2017, failing which coercive recovery would be initiated against the petitioners.

3. While referring to the provisions of the relevant legislations, it has been stated that the Entry Tax Act, has been enacted by the legislature of the State, providing for levy of entry tax on the specified goods.

3.1 The Gujarat Sales Tax Act, 1969 was replaced by the VAT Act with effect from 1st April, 2006 and simultaneously the Entry Tax Act was accordingly amended and reference to the Gujarat Sales Tax Act, 1969 was substituted by the VAT Act. On 1st April, 2008, sub-section (1A) was introduced in section 7 of the VAT Act providing for levy of additional tax at the rate of 1% or 2.5%. In order to correspondingly increase the rate of entry tax, the Schedule to the Entry Tax Act was amended. Similarly, sub-section (1A) of section 3 was introduced in the Entry Tax Act empowering the State Government to specify the goods for the purpose of the said Act, if necessary, in public interest, to redress an inequitable situation or for sufficient and reasonable cause for removing discrimination between the goods entering into the local area from any place outside the State but not being a place outside the territory of the Union of India for consumption, use or sale therein and goods manufactured or produced in the State.

3.2 On 15th February, 2010, the State Government, in exercise of powers conferred under the provisions of sub-section (1A) of section 3 of the Entry Tax Act added Entry 9 in the Schedule to the said Act, specifying stainless steel plates, flats, sheets and coils as a specified goods and the maximum rate of tax was fixed at four percent. Subsequently, the State Government, in exercise of its powers conferred by clause (a) of sub-section (2) of section 5 of the VAT Act, while amending the Government Notification, Finance Department dated 31st

March, 2006, issued a Notification dated 3rd October, 2012 introducing entry 93 relating to stainless steel flats, stainless steel sheets (patta or patti), specifying the rate of tax as 1%.

3.3 It is the case of the petitioners that while the State Government reduced the applicable rate of tax under the VAT Act on stainless steel flats and sheets to 1% it did not correspondingly reduce the rate of entry tax applicable to the same goods and thus, while the rate of tax under the VAT Act for stainless steel flats and sheets is reduced to 1%, the rate of entry tax on the same goods continues to be four percent.

4. The petitioners being aggrieved by the prescription of rate of entry tax at the rate of four percent as well as dissatisfied by the aforesaid action on the part of the Deputy Commissioner of Commercial Tax in issuing the notices to the petitioners, have preferred the captioned writ petition with the aforementioned prayers.

5. Mr. Uchit Sheth learned advocate for the petitioners submitted that the Entry Tax Act itself provides for a self contained mechanism coupled with the provision of adjustment of the rate of tax. It is submitted that when the Entry Tax Act was originally enacted, it by virtue of the explanation to the Schedule to the said Act, provided that if rate of sales tax is reduced by exemption notification then the rate of entry tax should also be correspondingly reduced. It is further submitted that the Gujarat Tax on Entry of Specified Goods into Local Areas (Amendment) Bill, 2006 was introduced whereby the Schedule to the said Bill provided for the specified goods indicating maximum rate of tax. The said amendment, was the result of the enactment of the VAT Act, replacing the erstwhile

regime of Gujarat Sales Tax Act, 1969. It is submitted that initially, there was an exception carved out by virtue of the explanation to Schedule to the Entry Tax Act; however, after the amendment in the year 2006 in the VAT Act, the explanation was deleted. It is submitted that even if explanation is not forming part of the Schedule, it does not mean that the State Government has got unbridled powers to impose entry tax on the goods prescribing higher rate compared to the rate of tax provided under the VAT Act.

5.1 It is submitted that subsequently, in the year 2008, the legislature of the State introduced the Gujarat Tax on Entry of Specified Goods into Local Areas (Amendment) Bill, 2008. By virtue of the said Bill, the Schedule appended to the Bill of 2008, was amended. It clearly reveals that the rate of tax specified is maximum, and that providing of maximum rate of tax in the Schedule against the specified goods, does not mean that the State Government can levy any rate of tax. It is obligatory on the part of the State Government that the link is maintained between the rate of tax under the VAT Act vis-à-vis the rate of tax levied under the Entry Tax Act. Simultaneously, sub-section (1A) of Section 3 came to be added in the Entry Tax Act. The object and purpose of sub-section (1A) of section 3 of the Entry Tax Act is to see that the State Government, if it is necessary so to do in public interest; in order to redress an inequitable situation or for sufficient or reasonable cause for removing discrimination between the goods entering into the local area from anywhere outside the State, can levy the tax.

5.2 It is submitted that the State Government in its Finance Department, in exercise of its powers conferred under clause (a) of sub-section (2) of Section 5 of the VAT Act, has issued

the notification dated 3rd October, 2012 amending the Schedule to the notification and thereby added Entry 93 viz. stainless steel flats, stainless steel sheets (patta or patti) providing for rate of tax at 1%. It is thus submitted that after the issuance of the notification dated 3rd October, 2012, the notification dated 15th February, 2010 issued by the State Government under the provisions of the Entry Tax Act is causing discrimination.

5.3 It is further submitted that the levy of tax itself is not a hindrance and / or barrier to the trade and export; however, the same should be within the four corners of provisions of Article 304(a) of the Constitution of India. The notification dated 15th February, 2010 continuing to impose entry tax at the rate of four percent on the specified goods viz. stainless steel flats and stainless steel sheets even after the rate of tax on such goods under the VAT Act has been reduced to 1% by notification dated 3rd October, 2012, is *ultra vires* the provisions of sub-section (1A) of section 3 of the Entry Tax Act. Pertinently, the said provision empowers the State Government to specify goods for the purpose of the Entry Tax Act only to redress an inequitable situation or for sufficient and reasonable cause for removing discrimination between goods entering into the local areas from any place outside the State. However, in the present case, the continuance of notification imposing entry tax at the rate of four percent despite the fact that such goods are subjected to local VAT rate of 1%, the same is causing discrimination rather than redressing it. It is further submitted that levy of entry tax vide notification dated 15th February, 2010 at a higher rate than the rate prevailing in the State of Gujarat, frustrates the object and purpose of the

entry tax and thus, the notification dated 15th February, 2010 issued by the State Government in its Finance Department, has been rendered illegal and bad in law.

5.4 Reliance has been placed on the judgment of this court in the case of *Tractors and Farm Equipment Ltd. vs. State of Gujarat, Special Civil Application No.1560 of 2016*, to submit that the issue involved in the present petition is no longer *res integra*. In the said case, the State Government had sought to levy entry tax at the rate of 15% on import / entry of tractors in the State of Gujarat treating the same as a motor vehicle, whereas, the applicable rate of tax was 5% under the Sales Tax Act / VAT Act. It is submitted that the Division Bench while allowing the writ petition held that the Statement of Objects and Reasons of the amending Act was not to levy additional tax but to provide level playing field between the goods entering into the local areas from any place outside the State and the goods manufactured or produced in the State. It is submitted that the Division Bench, while declaring the action of the levy of tax by the State Government as illegal, held that the entire legislative history of the Entry Tax Act as well as Objects and Reasons behind the introduction so also the amendments in the Entry Tax Act establish that entry tax was always sought to be levied at the rates prescribed for such goods under the Sales Tax Act / VAT Act and that there is a nexus between the entry tax rates and local Sales Tax / VAT rates on similar goods.

5.5 While referring to the judgment of the Apex Court in the case of *Video Electronics Pvt. Ltd. & Anr. vs. State of Punjab & Anr. reported in 1990 (77) STC 82 (SC)*, it is submitted that the Apex Court, upheld the action of the State Government

providing for higher rate of tax inasmuch as, the same was done in view of the peculiar circumstances. It is submitted that the Apex Court in the said case has categorically observed that there was difference in rate yet there was reason for such differentiation and that the notification was issued by the State Government in the public interest and the benefit was extended only to newly setup units and that too for a specified period. It is thus submitted that since the notification was issued for a limited period, the Supreme Court, did not interfere with the action of the State Government.

5.6 Relying upon the judgment of the Apex Court in the case of *Weston Electronics and Anr. vs. State of Gujarat & Anr.* reported in 1988 (70) STC 52 (SC), it is submitted that the Apex court while allowing the writ petition has quashed the notification issued by the State Government prescribing lower rate of tax for local manufacturers in respect of television sets and electronic goods since the same was discriminatory in nature.

5.7 Reliance has also been placed on the judgment of the constitution bench of the Apex Court in the case of *Jindal Stainless Ltd. & Anr. vs. State of Haryana & Ors.* reported in (2017)12 SCC 1. It is submitted that the Apex Court, recognized the power of the State Government to grant exemption exercised as a part of the sovereign power to levy taxes and held that the same cannot be taken away as it is otherwise competent to impose taxes and duties. While placing heavy reliance to the answers to the reference and more particularly, to the answers at paragraphs 1159.1 and 1159.2, it is submitted that the Apex Court has categorically held that tax which is discriminatory in nature is prohibited by Article

304(a) of the Constitution of India. It is thus submitted that the levy of non-discriminatory tax would not constitute an infraction of Article 301 of the Constitution of India. By referring to answer at paragraph number 1159.8, it is submitted that the Apex Court, has categorically observed that only exemption in the nature of incentives, set-offs 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 be violative of Article 304(a) of the Constitution of India. It is submitted that the State Government is well within its powers to grant exemption but the same should be in sync with the paragraph number 1159.8 of the judgment in the case of Jindal Stainless Ltd. (supra).

5.8 Adverting to the aspect of input tax credit, it is submitted that the validity of the notification is not to be tested on the ground that the petitioner has availed input tax credit. The action of the authorities to insist for payment of illegal tax and ask him to go for refund is also impermissible. It is submitted that the issue of input tax credit, is also covered by the judgment of this court in the case of Tractors and Farm Equipment Ltd. vs. State of Gujarat (supra). In support of the said contention, reliance has been placed on paragraph 8.12 of the said judgment and it is submitted that this court, while negating the contention of the State Government that owing to the levy of 15% entry tax on the tractors the petitioner therein were not likely to be affected and that they will be entitled for input tax credit under sub-rule (7) of Rule 15 read with Section 11 of the VAT Act, observed that once the levy is held to be illegal, unconstitutional and contrary to the object and purpose of the entry tax, there arises no question of first requiring the

petitioner to pay such tax and thereafter, to go for refund by way of input tax credit.

5.9 It is submitted that consequent to the notification dated 15th February, 2010, various demand notices have been issued to the petitioners requiring the petitioners to pay the entry tax together with penal interest under the provisions of sub-section (2) of Section 17 of the Entry Tax Act. It is contended that Apex Court as well as this court, while dealing with countervailing duty has held that levy of countervailing duty is in lieu of excise duty. Thus, if excise duty is not payable then there is no question of payment of countervailing duty. In support of such contention, reliance has been placed on the following judgments:-

1. *Thermax Private Ltd. vs. Collector of Customs* 1992 (61) E.L.T. 352 (SC)
2. *Hyderabad Industries Ltd. vs. Union of India* 1999(108) E.L.T. 321 (SC)
3. *Roxul Rockwool Insulation India Pvt. Ltd. vs. Union of India* 2015(320) E.L.T. 554 (Guj)
4. *Adani Power Limited & Ors. vs. Union of India & Ors.* - Special Civil Application No.3142 of 2010.

5.10 Similarly, reliance has been placed on the following judgments to contend that the delegated legislation cannot go beyond the parent Act:-

1. *Indian Express Newspapers (Bombay) Private Ltd. & Ors. vs. Union of India & Ors.* AIR 1986 SC 515(1)
2. *Western India Theatres Ltd. vs. Municipal Corporation of the City of Poona* AIR 1959 SC 586
3. *Bhawani Cotton Mills Ltd. vs. The State of Punjab & Anr.* 20 STC 290 (SC)

5.11 While concluding, it is submitted that the notification dated 15th February, 2010 is beyond the scope/powers granted under sub-section (1A) of Section 3 of the Entry Tax Act. The power of the State Government to issue notification arises only when there is an inequitable situation. However, in the present case, there was no such occasion available to the State Government and thus, the notification dated 15th February, 2010, is clearly discriminatory, illegal and against the provisions of the Entry Tax Act, VAT Act and *ultra vires* the provisions of the Article 304(a) of the Constitution of India and deserves to be quashed and set-aside.

6. *Per contra* Mr. Trupesh Kathiriya, learned Assistant Government Pleader submitted that the petitioners have not complied with the provisions relating to the filing of returns, payment of taxes as per the provisions of the Entry Tax Act. Thus, the petitioners have not approached this court with clean hands and therefore, the petition deserves to be dismissed without grant of any relief. It is further submitted that the contention of the petitioners that the petitioners are not required to pay entry tax as ultimately, the petitioners would be entitled for refund of unpaid input tax credit, is unfounded, rendering the whole Act nugatory.

6.1 The learned Assistant Government Pleader submitted that the petitioners have shown the same amount of entry tax payable and input tax credit receivable in the return filed under the provisions of VAT Act; however, the petitioners would be entitled to input tax credit under the provisions of section 11 only on the amount of tax paid and not on payable tax amount. It is thus urged that without payment of tax, the petitioners are not entitled to claim any input tax credit. It is

further submitted that even the explanation to sub-rule (5) of Rule 15 of the VAT Rules would not come to the aid of the petitioners, for, the petitioners have not filed any returns under the Entry Tax Act and by not paying the tax, the petitioners have rendered themselves liable for penalty as prescribed under section 17 of the said Act.

6.2 It is next contended that the product “iron and steel” is covered under Entry 43 of Schedule II to the VAT Act and taxable at the rate of four percent for the period from 1st April, 2008 to 10th April, 2011 and further, additional tax at the rate of 1% is levied in view of the notification dated 11th April, 2011. It is submitted that accordingly, in exercise of the powers conferred under sub-section (1A) of section 3 of the Entry Tax Act, the State Government, has issued the notification dated 15th February, 2010 prescribing the entry tax at the rate of four percent. While advertng to the notification dated 3rd October, 2012 issued by the State Government under the provisions of the VAT Act, it is submitted that sub-section (2) of section 5 categorically empowers the State Government to exempt any class of goods or exempt any specified dealer or specified class of dealers and it may do so in the public interest. It is thus submitted that accordingly, the notification dated 3rd October, 2012 has been issued by the State Government under the provisions of the VAT Act.

6.3 Lastly it is urged that the notification dated 15th February, 2010 cannot be said to be discriminatory or against the provisions of the Act and thus, the petition being bereft of any merits deserves to be dismissed.

7. No further and other submissions have been made by the

learned advocates for the respective parties.

8. An issue which arises for the consideration of this court in the captioned petition is as to whether continuation of entry tax at the rate of 4% contained in the notification dated 15th February, 2010 issued by the State Government after the issuance of the amended notification dated 3rd October, 2012 under the provisions of VAT Act, whereby the rate of tax has been reduced to 1%, is valid and in sync with the provisions of the Entry Tax Act read with the provisions of the VAT Act.

9. At the outset it is required to be mentioned that the State Government is not in a position to dispute the proposition that it is incumbent on the part of the State Government to make sure that the link is maintained between the rate of tax under the VAT Act vis-à-vis the rate of tax levied under the Entry Tax Act and hence, in furtherance of maintaining the link, there has to be a corresponding reduction in the rate of tax under the provisions of the Entry Tax Act; if the rate of tax is reduced under the VAT Act by the State Government.

10. Perceptibly, the legislature of the State enacted the Entry Tax Act, and the Statement of Objects and Reasons whereof contained that in the recent past it was observed that due to the difference in the rate of sales tax between the State of Gujarat and neighbouring States, diversion of trade has taken place and in some cases sales tax payments are either avoided or evaded by various means; and that the said fact has resulted in the loss of sales tax revenue legitimately due to the State of Gujarat. Thus, it was considered necessary to levy tax on the entry of certain specified goods purchased outside the State and brought into the local areas of the State of Gujarat

for use, consumption or sale therein.

11. Section 3 of the Entry Tax Act envisages incidence of tax. Sub-section (1) of section 3 provides for levy and collection on the entry of specified goods into a local area, a tax on the purchase value thereof at such rates as may be fixed by the State Government by notification in the official gazette but not exceeding the maximum rates specified in the column 3 of the schedule; and different rates may be fixed for different specified goods. Section 4 provides for reduction in tax liability. Sub-section (1) of section 4 is to the effect that the amount of tax leviable under the Entry Tax Act shall be subjected to such conditions as may be prescribed, be reduced to the extent of the amount of tax paid, if any, under the law relating to the sales tax as may be in force in other State or Union Territory by an importer who has purchased the specified goods in that State. Sub-section (2) of section 4 deals with the extent of reduction of the amount of tax paid under the Central Sales Tax Act. Similarly, sub-section (3) of section 4 provides that an importer of a specified goods liable to pay tax under the Entry Tax Act being a dealer for a specified goods becomes liable to pay tax under the erstwhile Gujarat Sales Tax Act, 1969.

12. In the year 2006, the legislature of the State amended the Entry Tax Act in view of the Gujarat Sales Tax Act, 1969 being replaced by VAT Act with effect from 1st April, 2006. Accordingly, the Entry Tax Act was amended whereby, the reference to the Gujarat Sales Tax Act, 1969 was replaced by the VAT Act. By virtue of the said amendment, sub-section (3) of section 4 came to be substituted which after amendment, provides that where an importer of specified goods liable to pay tax under the Entry Tax Act being a dealer in the specified

goods becomes liable to pay tax under the VAT Act by virtue of the sale of such specified goods then his liability under the VAT Act shall be reduced to the extent of tax paid under the Entry Tax Act. The Schedule to the Entry Tax Act was also substituted; however, the explanation to the erstwhile Schedule was not forming part of the substituted Schedule.

13. Subsequently, in the year 2008, the Entry Tax Act was further amended whereby, sub-section (1A) came to be introduced in Section 3. Sub-section (1A) contemplates that subject to such conditions as it may imposed, the State Government may if it is necessary so to do in the public interest to redress an inequitable situation or for sufficient and reasonable cause for removing discrimination between the goods entering into the local area from any place outside the State, but not being a place outside the territory of the Union of India for consumption, use or sale therein and goods manufactured or produced in the State, specify by notification in the Official Gazette, such other goods as the specified goods. The idea behind introduction of sub-section (1A), was with a view to empower the State Government to add new goods as specified goods in the Schedule to address an inequitable situation or for removing discrimination between the goods that has entered into the local areas from any place outside Gujarat.

14. Entry 9 came to be added by notification dated 15th February, 2010 issued by the State Government in exercise of powers conferred under sub-section (1A) of Section 3 of the Entry Tax Act. Though the maximum rate of tax has been specified to the extent of four percent, the column "rate by notification" does not specify any rate which, the State

Government is otherwise obliged to specify as per the provisions of sub-section (1) of Section 3 of the Entry Tax Act.

15. Subsequently in the year 2012 the State Government in its Finance Department and in exercise of the powers conferred by clause (a) of sub-section (2) of Section 5 of the VAT Act, issued a notification dated 3rd October, 2012 amending the notification dated 31st March, 2006, whereby Entry 93 came to be added namely “stainless steel flats, stainless steel sheets (patta or patti)”, prescribing the amount of tax at the rate of 1%. Issuance of this notification has given rise to cause of action to the petitioner inasmuch as, the rate of tax prescribed in the notification dated 15th February, 2010 vis-à-vis the rates of tax prescribed in the notification dated 3rd October, 2012 is discriminatory.

16. Tracing the history of enactment of the Entry Tax Act, it can be discerned that the rates of sales tax of certain goods in the adjoining States were lower than the rates of sales tax in the State of Gujarat and thus, the State was losing the revenue of the sales tax. With this object in mind, the Entry Tax Act was enacted proposing to levy entry tax at the applicable rate of sales tax of the Gujarat, but to be collected after allowing the deduction in respect of the amount of sale tax paid under the sales tax law of the other State. Pertinently, the rate of entry tax was always equal to the rate of sales tax in the State and thus, the rate structure was in consonance with the object of the entry tax, that is, providing a level playing field.

17. The validity of the Entry Tax Act was challenged before this court in the case of *Eagle Corporation vs. State of Gujarat* reported in (2007)6 VST 560 (Guj.), on which heavy reliance

has been placed by the learned advocate for the petitioners. In the said case, this court considered as to whether by enacting the Entry Tax Act, is there any discriminatory treatment and/or such levy is discriminatory? In the said context, this court while upholding the validity of the Entry Tax Act held that considering the Statement of Objects and Reasons in juxtaposition with the provisions of the Entry Tax Act, it cannot be said that the provisions of the Entry Tax Act and consequent levy of the entry tax on the specified goods are violative of Article 304 of the Constitution of India. This court further held that entry tax is not discriminatory between the goods so imported and goods so manufactured, produced in a local areas and the challenge to the constitutional validity of the Entry Tax Act and the levy of entry tax thereof fails. Paragraphs 22, 23 and 28 of the aforesaid judgment, relevant extracts whereof read thus:-

"22.Thus, on a fair reading of the provisions of the Act and the object of levy of Entry Tax, it cannot be said that such a levy is discriminatory between the importer of the specified goods from other States into a local area in the State of Gujarat, and the local dealers bringing specified goods from one local area into another local area in the State. The local dealers, bringing specified goods from one local area to another local area in the State, are, otherwise, paying the sales-tax at 12%. Thus, as stated hereinabove, on payment of Entry Tax by the importer, after deduction of sales-tax and/or C.S.T. already paid in another State, such an importer would be put at par with the local dealers. Thus, in sum and substance, the importers as well as the local dealers would be paying the tax at 12% in all. It can, therefore, be said that, on the contrary, the vice of discrimination would stand removed by payment of Entry Tax by an importer of specified goods. If the importer is not required to pay Tax on Entry he would stand on better footing because on one side the local person would be required to pay 12% Sales Tax while the o,porter would be paying 4% tax in other State, which would be discriminatory qua the local person. Not only that, such low tax would persuade local

people to import specified goods from another State which shall adversely affect the local production. It is at this point we must see that in the name of free flow of trade the local economy of a State can't be sacrificed. The contention, therefore, on behalf of the petitioner, that the discrimination is required to be considered qua each Act and the tax separately, has no substance at all. Considering the provisions of the Act and the objects for which the Act is enacted, one is required to see whether there is any discrimination qua goods imported and payment of sales-tax/tax thereon, and as stated hereinabove, on payment of Entry Tax fixed as aforesaid and considering the reduction as mentioned in Section 4 of the Act, an importer would be at par with a local dealer. In view of the clear position obtained in the case, the contention on behalf of the petitioner, that levy of entry tax is discriminatory, is required to be rejected. It is also to be noted at this stage that as per Section 30B(a) discrimination is required to be considered between goods so imported and goods so manufactured or produced. It is undisputed that on payment of Entry Tax as a reduced liability does not put the importer at a position worse in comparison to local producer, dealer or manufacturer. If no Entry Tax is levied then the importer would steal a march over the local person and he would be in a dominating position to the extent of the Tax difference.

23. Now, on perusal of a plethora of the provisions of the Act, it is evident that they are aimed at achieving level playing field so as to obviate any chance of discrimination. When there is a reduction in the effective rate of sales tax under the Gujarat Sales Tax Act, there will automatically be a corresponding reduction in the maximum rate of entry tax prescribed in the Schedule so that the goods brought from outside the State are not discriminated against the goods manufactured within the State, from the point of view of ultimate burden of tax. Hence, it is well settled proposition of law that reading the provisions of the Act of 2001 with the provisions of the local Sales Tax Act viz. VAT Act, it is abundantly clear that the provisions of the Act of 2001 are aimed at achieving a level playing field so as to obviate any chance of discrimination. The aforesaid reasoning is based on the principle that considering the provisions of the Act of 2001, if there is a reduction in the effective rate of the sales tax under the respective local Sales Tax Act and / or VAT Act, as the case may be; there has to be corresponding reduction in maximum rate of entry tax prescribed in the schedule.

28. So far as the decision of the Karnataka High Court in the case of *Syndicate Bank v. State of Karnataka* [2000] 119 STC 155 upholding the challenge to the levy of tax on vehicles imported from outside the State alone while no tax was levied on vehicles manufactured in the State is concerned, it is required to be noted that in the said provisions there was no such provision like section 4 of the Gujarat Act and therefore the Karnataka High Court held that the said provision and levy ultra vires the articles 301 and 304(a) of the Constitution. In fact, while declaring the aforesaid provision as ultra vires the Constitution, the Karnataka High Court has observed that there could be a provision by which no discrimination between imported goods and locally manufactured goods is committed and the amount of entry tax is given adjustment in the total liability of the sales tax or the amount of sales tax already paid would be given adjustment under the provisions of the Entry Tax Act. It is undisputed that so far as the present Act is concerned, it provides for such a provision of adjustment, therefore, the judgment in the case of *Syndicate Bank v. State of Karnataka* [2000] 119 STC 155 (Karn), would not be of any assistance to the petitioner, rather the aforesaid observation will give a dent to the petitioner's case and would go in favour of the State of Gujarat."

While upholding the validity of the provisions of the Entry Tax Act, it has been held by this court that when there is a reduction in the effective rate of sales tax under the erstwhile Gujarat Sales Tax Act, there will automatically be a corresponding reduction in the maximum rate of entry tax prescribed in the schedule so that the goods brought from outside the State are not discriminated against the goods manufactured within the State, from the point of view of ultimate burden of tax.

18. In a somewhat similar case, which arose before this court in the case of *Tractors and Farm Equipment Ltd. vs. State of Gujarat* (*supra*), this court while deciding the validity of the action on the part of the State Government imposing tax on entry at the rate of 15% on Tractors, held that as per the

Statement of Objects and Reasons, the purpose of the Entry Tax Act was not to levy additional tax but to provide a level playing field between the goods entering into the local areas from any place outside the State and the goods manufactured or produced in the State. While determining the action of the State Government, this court, considered the principles laid down by the Apex Court in the case of *Jindal Stainless Limited vs. State of Haryana (supra)*. This court has, further held that the entry tax rates are having a direct linkage with the rates prescribed under the VAT Act on the same goods and hence, change in the rates prescribed under the VAT Act necessitates change in the rates of tax under the Entry Tax Act. Paragraph 8.08 and relevant extract of paragraph 8.10 of the said judgment read thus: -

"8.08. It is required to be noted and as averred by the petitioners, rate of tax on Tractors in the exporting states namely state of Tamilnadu, State of Karnataka and State of Punjab and Haryana are around 5%. Even VAT under the VAT Act in the State of Gujarat is 5%. Therefore, if on entry / import of the Tractors from the aforesaid States into the State of Gujarat and sale of Tractors in the State of Gujarat, if the petitioners are liable to pay entry tax at 15%, in that case, the same would be discriminatory and directly in violation of Article 304(a) of the Constitution of India and the same shall be contrary to the scheme and object and purpose of introducing Entry Tax under the Entry Tax Act. If the importer like the petitioners are required to pay entry tax higher than VAT levied on sale of goods in the State of Gujarat, in that case, such importers would be at a disadvantageous position and there shall not be "level playing field" which was the aim/goal for introducing the entry tax under the Entry Tax Act. Therefore, any levy of tax beyond the VAT required to be paid by the local dealer, shall be discriminatory and directly in violation of Article 304(a) of the Constitution of

India.

8.10. *Thus, the entire legislative history of the Entry Tax Act as well as object and reasons behind the introduction as well as amendments of the Entry Tax Act establish that Entry Tax was always sought to be levied at the rates prescribed for such goods under the Sales Tax Act / VAT Act. In other words, there is a nexus between the Entry Tax rates and local Sales Tax / VAT rates on similar goods."*

19. Reliance has been placed by the learned advocate for the petitioners on the recent judgment of the Apex Court in the case of *Jindal Stainless Ltd. & Anr. vs. State of Haryana & Ors. (supra)*. The Apex Court, upheld the proposition that the power to grant exemption is a part of sovereign power of the State to levy taxes and which cannot be taken away from it which otherwise is competent to impose taxes and duties. The Apex Court, while interpreting the provisions of Article 304(a) held that the expression "may by law impose" is certainly not a restriction on the power to tax; that does not, however, mean that the power to tax goods imported from other States or Union Territories is unqualified or unrestricted. The Apex Court, in paragraph 73 observed, relevant extract whereof reads thus: -

"73..... It is true that the source of power available to the State Legislature to levy a tax is found in Articles 245 and 246 of the Constitution but, the availability of such power for taxing goods imported from other States or the Union Territories is clearly recognized by Article 304(a). The expression "may by law impose" is certainly not a restriction on the power to tax. That does not, however, mean that the power to tax goods imported from other States or the Union Territories is unqualified or unrestricted. There are, in our opinion, two restrictions on that power. The

words "to which similar goods manufactured or produced in that State are subject" impose the first restriction on the power of the State Legislature to levy any such tax. These words would imply that a tax on import of goods from other States will be justified only if similar goods manufactured or produced in the State are also taxed. The second restriction comes from the expression "so, however, as not to discriminate between goods so imported and goods so manufactured or produced:.. The State Legislature cannot in the matter of levying taxes discriminate between goods imported from other States and those manufactured or produced within the State levying such a tax. The net effect of Article 304(a) therefore is that while levy of taxes on goods imported from other State and the Union Territories is clearly recognised as constitutionally permissible, the exercise of such power is subject to the two restrictive conditions referred to above. That does not however detract from the proposition that levy of taxes on goods imported from other States is constitutionally permissible so long as the State Legislatures abide by the limitations placed on the exercise of that power. To put it differently, levy of taxes on import of goods from other States is not by itself an impediment under the scheme of Part XIII or Article 301 appearing therein."

20. It is nobody's case that the notification dated 15th February, 2010, has been issued to redress an inequitable situation or has been issued for sufficient and reasonable cause for removing the discrimination between the goods entering into the local areas from other places outside the State. Besides, there is not a semblance of explanation coming forth for such differentiation in the prescription of rates of entry tax vis-à-vis rate of tax under the VAT Act. As observed and held by the Apex Court in the case of *Video Electronics Private Limited (supra)*, differentiation is permissible only when there is a valid reason that is to say, if there are justifiable and

rational reasons for differentiation. If there is none, it will amount to hostile discrimination. The only stand taken in the affidavit-in-reply filed by the State Government is in paragraphs 10 to 13 which are reproduced hereinbelow for ready reference: -

“10. Accordingly in exercise of powers conferred by sub-section (1A) of Section 3 read with entry 9 of Schedule of the Entry Tax Act by way of Notification dated 15.02.2010, Entry tax was levied @ 4%. As the rate of the Entry Tax is equivalent/lower to the rate prescribed in the VAT Act, it cannot be stated as unconstitutional or illegal by any standard.

11. Further S. 5(2)(a) of the VAT Act reads as,

“Subject to such conditions as it may impose, the State Government may, if it considers necessary so to do in the public interest, by notification in the Official Gazette, exempt any specified class of sales or purchases or sales or purchases of goods by any specified dealer or specified class of dealers from payment of the whole or any part of the tax payable under the provisions of this Act.”

12. It is pertinent to note the specific words of clause (a) of subsection (2) of section 5:

Subject to such conditions as it may impose;

in the public interest;

exempt any specified class of sales or purchases;

by any specified dealer or specified class of dealers

Accordingly State Government is empowered to exempt any class of goods or even exempt any specified dealer or specified class of dealers under section 5(2)(a) of the VAT Act. It may do so with or without any such condition as it may impose in the public interest.

13. Accordingly by Notification No.(GHN:23) VAT-2012_S.5(2)(36)-TH dated 3rd October 2012, Rate under VAT Act was exempted to the extent it exceeds 1%."

Thus, in absence of any special circumstances pointed out by the State Government either in its affidavit or during the course of the submissions made by the learned Assistant Government Pleader, it can be safely concluded that neither there exist any circumstances for redressal of an inequitable situation nor was there any sufficient and reasonable cause which weighed with the State Government for removing the discrimination between the goods entering into the local areas from any place outside the State.

21. Clearly, as is discernible from the aforesaid well established principles, the Entry Tax Act is aimed at achieving a level playing field so as to obviate any chance of discrimination. Further, considering the provisions of the Entry Tax Act, in juxtaposition with the provisions of the VAT Act further read with the provisions of Article 304(a) of the Constitution of India, it is abundantly clear that if rates of a specified goods are reduced by the State Government in exercise of the powers conferred under the VAT Act, there has to be a corresponding reduction of the rates of entry tax by the State Government by issuing a notification under the Entry Tax Act; proportionately reducing the rate of tax. Not doing so and continuing with the notification specifying the rate of entry tax on the higher side as compared to the rates specified by the State Government in the notification under the VAT Act, would be in the teeth of the aforesaid well established principles enunciated by this court in the aforesaid judgments. In other words, the continuation of the notification dated 15th February,

2010 after the notification dated 3rd October, 2012 issued by the State Government under the VAT Act, without any justifiable reason, would run contrary to the Statement of Objects and Reasons of the Entry Tax Act so also the provisions of the VAT Act, rendering the action of the State Government violative of the provisions of the Article 304(a) of the Constitution of India. Under the circumstances, continuation of the notification dated 15th February, 2010 prescribing the rate of tax as 4%, after the issuance of the notification dated 3rd October, 2012 is discriminatory and is directly hit by the provisions of Article 304(a) of the Constitution of India and thus, cannot be sustained. Thus, the notification dated 15th February, 2010 insofar as it prescribes the rate of tax as 4% is illegal and not in sync with the provisions of the Entry Tax Act so also the VAT Act and hence, it is impermissible to the State Government to charge tax in excess of the rate of tax prescribed under the notification dated 3rd October, 2012.

22. Since the notification dated 15th February, 2010, has been held to be illegal and bad in law insofar as it prescribes a higher rate of entry tax vis-à-vis the rate of tax provided in the notification dated 3rd October, 2012 issued under the provisions of the VAT Act, the consequential notices dated 23rd January, 2017 (Annexure 'B' collectively) also cannot be sustained.

23. A contention has been raised by the respondent to the effect that sub-clause (iii) of clause (a) of sub-section (1) of section 11 entitles the registered dealer to claim tax credit equal to the amount of tax paid by a purchasing dealer under the Entry Tax Act and that any excess amount is refundable to the dealer as per the provisions of section 37 of the VAT Act

and hence, any excess amount of entry tax paid would be refunded if found eligible as per the provisions of the VAT Act. It is also contended that legitimate tax calculated would not be discriminatory as also the dealer would be eligible to excess tax paid. The said contention does not merit acceptance inasmuch as, as discussed hereinabove, the action of the State Government continuing with the prescription of the higher rate of entry tax vide notification dated 15th February, 2010, have been held to be illegal and bad in law, there arises no question of asking the petitioner to make the payment and then seek refund of the tax amount under the provisions of the VAT Act.

24. In view of the above discussion, the petition succeeds and is accordingly allowed. The impugned notification dated 15th February, 2010 (Annexure A) to the extent it prescribes a higher rate of entry tax vis-à-vis the rate of tax provided in the notification dated 3rd October, 2012 issued under the provisions of the VAT Act is hereby held to be illegal and bad in law. Consequently, the impugned notices dated 23rd January, 2017 (Annexure 'B' collectively) are hereby quashed and set aside. Rule is made absolute accordingly. No order as to costs.

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Sd/-
(HARSHA DEVANI, J)

Sd/-
(SANGEETA K. VISHEN, J)

RAVI P. PATEL