Form No. TT/G-1

IN THE WEST BENGAL TAXATION TRIBUNAL

Present :

The Hon'ble Justice Shri Malay Marut Banerjee, Chairman
The Hon'ble Shri Suranjan Kundu, Judicial Member, and
The Hon'ble Mr.Chanchalmal Bachhawat, Technical Member

Case No. RN-08 of 2018

Tata Steel Ltd. & Ors.

Versus

The State of West Bengal & Ors.

For Applicant(s) : Mr. Kavin Gulati, Ld. Advocate,
Mr. Ajay Aggarwal, Ld. Advocate,
Mr. Sumeet Gadodia, Ld. Advocate,
Mr. Avra Mazumder, Ld. Advocate,
Mr. Ananda Sen, Ld. Advocate,
Mr. Boudhayan Bhattacharyya, Ld. Advocate,
Mr. Jaweid Ahmed Khan, Ld. Advocate,
Mr. Puneet Agarawal, Ld. Advocate,
Mr. Sandip Choraria, Ld. Advocate,
Mr. Anil Kumar Dugar, Ld. Advocate,
Mr. Somak Basu, Ld. Advocate,
Dr Samir Chakraborty, Ld. Advocate,
Mr. Sujit Ghosh, Ld.Advocate,
Mr. Atish Chakroborty, Ld.Advocate,
Mr. Pujon Chatterjee, Ld. Advocate
Mr. Piyal Gupta, Ld. Advocate.

For Respondent(s) : Mr.Soumendra Nath Mookerjee, Ld. Advocate General,
Government of West Bengal, with
Mr. Soumitra Mukherjee, Ld. Advocate,
Mrs. Maitree Sen,
Mrs. Pampa Sur,
Md. Zafarullah,
Mr. Debashis Ghosh, State Representative(s)

Last Heard on : 22.02.2022

Judgement on : 25.03.2022

List of analogous Cases :-

Case No.	Cause Title	Name of Advocate
RN-1671/2018	Vst Industries Ltd.	Mr. Avra Mazumder Mr. Amitava Mitra, Mrs. Sudeshna Mazumder
RN-786/2021	Vst Industries Ltd.	-Do-
RN-677/2019	N. C. Shaw & Co. Beverages Pvt. Ltd.	Mr Puneet Agrawal Mr Yuvraj Singh Mr Chetan Kr. Shukla
RN-10772020	Calcutta Metal Depot	-Do-
RN-1431/2019	Calcutta Metal Depot	-Do-
RN-1091/2019	Uma Poly Solutions Pvt. Ltd.	-Do-
RN-426/2019	Uma Poly Solutions Pvt. Ltd.	-Do-
RN-1097/2019	Lumino Industries Ltd.	-Do-
RN-399/2019	Lumino Industries Ltd.	-Do-
RN-1438/2019	Next Education Pvt. Ltd.	-Do-
RN-1515/2018	Eskag Pharma Pvt. Ltd.	-Do-
RN-1516/2018	Eskag Pharma Pvt. Ltd.	-Do-
RN-740/2019	Leade Liquor Manufacturing Pvt. Ltd.	-Do-
RN-509 of 2020	M/s Goodwill Non-Wovens Pvt. Ltd.	Mr. Jaweid Ahmed Khan Ms. Poulami Bardhan Mr. Talha Ahmed Khan
RN-993/19	Atibir Industries Co. Ltd.	Somak Basu
RN 954/18	Atibir Industries Co. Ltd.	-Do-
RN-1128 /19	Jvl Agro Industries Ltd.	-Do-
RN-307/18	Jvl Agro Industries Ltd.	-Do-
RN-1169/19	M/S. Himadri Speciality Chemical Ltd.	-Do-
RN-1272/18	Himadri Chemicals & Industries Ltd.	-Do-
RN-956/2018	Himadri Chemicals & Industries Ltd.	-Do-
RN-232/2019	Ruchi Soya Industries Ltd.	-Do-
RN-1663/2018	Ruchi Soya Industries Ltd.	-Do-
RN-2380/T/17	Knr Automobiles Pvt. Ltd.	-Do-
RN-2382/T/17	Frostees Export India Ltd.	-Do-
RN-2384/T/17	Auto Carriage Pvt. Ltd.	-Do-
RN-2058/2017	Shree Renuka Sugars Ltd.	Dr Samir Chakraborty Somak Basu
RN-71/2019	Gsa Retail Ltd	Sandip Choraria
RN-2015/2019	Antertika Ltd	-Do-
RN-2016/2019	Antertika Ltd	-Do-
RN-303/2019	Om Prakash Agarwal	-Do-
RN-304/2019	Ajay Prakash Agarwal	-Do-
RN-305/2019	Sanjeen Kumar Mall	-Do-
RN-434/2019	Deoki Nandan Agarwal	-Do-
RN-435/2019	Kunal Garg	-Do-
RN-544/2019	Modern India Concast	-Do-
RN-545/2019	Modern India Concast	-Do-
RN-546/2019	Modern India Concast	-Do-
RN-766/2019	Alcon Petro Pvt. Ltd	-Do-

RN-794/2019	Gsa Retails Ltd	-Do-
RN-984/2019	Maya Auto Mobile	-Do-
RN-985/2019	Khokon Motor Works Pvt. Ltd.	-Do-
RN-1021/2019	Kdg Projects Pvt. Ltd	-Do-
RN-1022/2019	Kdg Projects Pvt. Ltd	-Do-
RN-1023/2019	Kdg Projects Pvt. Ltd	-Do-
RN-1024/2019	K.D. Gupta & Co.	-Do-
RN-1025/2019	K.D. Gupta & Co.	-Do-
RN-1026/2019	K.D. Gupta & Co.	-Do-
RN-1044/2019	Saluja Auto Retails Pvt. Ltd.	-Do-
RN-1045/2019	Saluja Auto Mobiles	-Do-
RN-1508/2019	Krishna Alex Pvt. Ltd	-Do-
RN-1514/2019	N.F. Forgings Pvt. Ltd	-Do-
RN-1556/2019	Gokul Refoils & Solvent Ltd	-Do-
RN-1557/2019	Gokul Refoils & Solvent Ltd	-Do-
RN-105/2020	Bharat Roll Industries Pvt. Ltd	-Do-
RN-301/2020	Machino Techno Sales Ltd	-Do-
RN-520/2020	Asansol Polyfabs Pvt. Ltd	-Do-
RN-526/2020	Shri Maa Polyfabs Pvt. Ltd	-Do-
RN-527/2020	Shri Maa Polyfabs Pvt. Ltd	-Do-
RN-528/2020	Hari Om Polypack Pvt. Ltd	-Do-
RN-529/2020	Asansol Polyfabs Pvt. Ltd	-Do-
RN-1491/19	Anukul Enterprises Pvt Ltd	Anil Kumar Dugar
RN-10/20	Century Extrusions Ltd	-Do-
RN-1425/19	Bentec India	-Do-
RN-1543/19	Vinayak Oil & Fats Pvt Ltd	-Do-
RN-1492/19	Anukul Enterprises Pvt Ltd	-Do-
RN-1392/19	Shantinath Detergents Pvt Ltd	-Do-
RN-1519/19	Ritum Jain	-Do-
RN-1543/19	Vinayak Oil & Fats Pvt Ltd	-Do-
RN-02/20	May Apparels Pvt Ltd	-Do-
RN-1320/19	Metro Retail Pvt Ltd	-Do-
RN-1412/19	Exclusive Lines	-Do-
RN-1413/19	Dinman Polypack Pvt Ltd	-Do-
RN-1414/19	Green Packaging Industries Pvt Ltd	-Do-
RN-1415/19	Jhilmil Commodities Pvt Ltd	-Do-
RN1416/19	Unistar Metals Pvt Ltd	-Do-
RN-1419/19	Lalwani Industries Ltd	-Do-
RN-1420/19	Lalwani Metallics Pvt Ltd	-Do-
RN-1436/19	Ganpati Chhajer	-Do-
RN-1437/19	Mars Fragrance Pvt Ltd	-Do-
RN-1438/19	Delsey India Pvt Ltd	-Do-
RN-930/2019	Samsung India Electronics Pvt. Ltd.	Mr. Sujit Ghosh Mr Pujon Chatterjee Mr . MannatWaraich Mr . JoybrataMisra
RN-517/2020	Samsung India Electronics Pvt. Ltd.	-Do-

R.N. 1002/2018	Sk. Selim @ Selim Sekh	Mr Ananda Sen
R.N. 2096/2017	Sk. Selim alias Selim Sekh	-Do-
RN- 1701/2017	Skipper Ltd.	Piyal Gupta
RN- 1328/2017	EMT Megatherm Pvt. Ltd.	-Do-
RN- 877/2019	Terai Tea Company Ltd.	-Do-
RN-879/2019	Terai Ispat & Trading Pvt. Ltd.	-Do-
RN-878/2019	East Indian Produce Ltd.	-Do-
RN-906/2019	Mechanical Wire Industries	-Do-
RN-907/2019	Mechanical Engineering Industries	-Do-
RN-1003/2020	Birla Tyres Ltd.	-Do-
RN-917/2020	Terai Overseas Pvt. Ltd.	-Do-
RN-411/2020	Shell India Markets Pvt. Ltd.	-Do-

&

Other applications pending before this Tribunal where the *vires* of section 5 and 6 of the West Bengal Finance Act, 2017, have been challenged.

Per Hon'ble Judicial Member Sri Suranjan Kundu

1. Prelude

The above bunch of cases have been heard analogously. West Bengal Tax On Entry of Goods into Local Area Act. 2012 (hereinafter referred as Entry Tax Act) was introduced w.e.f 01.04.2012 in purported exercise of the power conferred under Article 246 read with Entry 52 of the list II of the 7th Schedule of the Constitution of India. The subject matter of taxation under Entry Tax Act was only goods which were imported from outside of state of West Bengal. The vires of this Act was challenged and Hon'ble Single Bench of Hon'ble High Court Calcutta struck down this enactment on 24.06.13 mainly on two grounds – it is violative of Article 301 & 304(a) of the Constitution since the levy was found not to be in the nature of a compensatory tax and Presidential sanction as contemplated under Article 304(b) of the constitution was not obtained. This verdict was challenged by the State before the Hon'ble Division Bench of the Hon'ble High Court Calcutta and the same is still pending. The Constitution (One Hundred and First amendment) Act 2016 came into force with effect from 16.09.16. By virtue of Section 17(b) of this Constitution Amendment Act the Parliament has omitted Entry no. 52 from the State list II of the Seventh Schedule of the Constitution.

1.1. Meanwhile, Hon'ble Supreme Court in Jindal Stainless Steel and Anr. Vs. State of Haryana [(2017) 12 SCCI] have been pleased to opine on 11.11.2016 that the Judicially evolved compensatory Tax Theory in Automobile Transport case and subsequently modified in Jindal case has no juristic basis. It is also opined that "a tax on entry of goods into local area for use, sale or consumption therein is permissible although similar goods are not produced within the taxing

State". Hon'ble Supreme Court has further opined that *"States are well within their right to design their fiscal legislations to ensure that the tax burden on goods imported from other States and goods produced within the State fall equally. Such measures if taken would not contravene Article 304(a) of the Constitution. The question whether the levies in the present case indeed satisfy this test is left to be determined by regular Benches hearing the matters".* It is further held that "the questions whether the entire State can be notified as a local area …… are left open to be determined in appropriate proceedings." and clause (a) and (b) of Article 304 have to be read disjunctively.

Section 19 of the 101st of Constitution Amendment Act has authorised a State to amend or repeal any provision of any liability relating to tax on goods or services or both in force immediately before commencement of the Act which is inconsistent with the provision of the Constitution as amended by this Act within one year from such commencement. The State of West Bengal has introduced West Bengal Finance Act 2017 (hereinafter referred as Amending Act of 2017) w.e.f 6th March, 2017. Section 5 of this Amending Act of 2017 has made some amendments in the Entry Tax Act with retrospective effect and section 6 of the Amending Act 2017 has purported to validate the said Entry Tax Act. This Amending Act has also amended Rules 6, 7 and 11 of West Bengal Tax on Entry of Goods into Local Areas Rules 2012 retrospectively.

The Petitioners have challenged the vires of this Amending Act 2017 on various grounds including lack of legislative competency, discriminatory, impossibility of its successful implementation and so on. A number of petitions were filed before the Hon'ble High Court at Calcutta from time to time seeking instructions on various situations so arisen after the verdict of Hon'ble Single

Bench declaring the Entry Tax Act ultra vires was passed on 24.06.13. Various interim orders were passed by Hon'ble High Court from time to time. Hon'ble Division Bench headed by Hon'ble Chief Justice High Court Calcutta in one of such interim orders dated 31.07.2013 (in APOT 338/2013) have been pleased to pass the following orders:

"*Let affidavit-in-opposition to the stay application be filed within 15 days from date. In the meantime, we direct that the assessment proceeding should go on. It was submitted by the learned Counsel that there are various orders of other High Courts for depositing the amount. Let the orders be placed on record on the next date of hearing.*

There shall be no refund of entry tax already collected.

List this matter on 12th September, 2013.

Let the parties be prepared themselves for hearing these matters on merits on the next date."

Some of the assesses applied before Hon'ble High Court for amendment of their respective writ petitions by incorporating a challenge to the subsequent Amending Act of 2017. Hon'ble Division Bench headed by Hon'ble Justice Sanjib Banerjee in order dated 18.02.2020 passed in W.P 562/2012 have been pleased to allow those prayers for amendment and have been pleased to direct this Tribunal to decide on the challenge to the Amending Act of 2017. The following is the relevant portion of the said order:

*"*in *any event, since the tribunal is a specialized body, its view on the amended provisions would be of considerable persuasive value to this Court.*

The parties report that the matter is fixed next before the Tribunal on March 23, 2020. It also appears that the Tribunal will still assess the propriety of taking up the matter by the tribunal ahead of this Court deciding on the

constitutional validity of the amended provisions. It is made clear that it will be open to the Tribunal to take up the matters before it and that there will be no impediment to the tribunal proceeding with the matters before it notwithstanding the pendency of the challenge to the Amending Act in this Court. The Tribunal will also be free to decide on the challenge to the Amending Act of 2017."

In view of the above observation of Hon'ble High Court Calcutta this Tribunal has taken up the hearing of the Petitions which have challenged the Constitutionality of the Amending Act of 2017 (W.B Finance Act 2017) on various grounds. We have taken Tata Steel Limited & Anr. Vs. State of West Bengal (RN-08/2018) as a lead case for our discussion.

2. Ld. Adv. for Tata Steel Limited Mr. Kavin Gulati has submitted that the Entry Tax Act was enacted under Entry 52 of list II of the 7th Schedule of the Constitution and since this Entry 52 has been deleted in 101st Constitution Amendment Act 2016 w.e.f 16.09.16, the State legislature has lost its legislative competence and such loss is total and absolute and cannot be revived or revalidated in a detour way under any circumstances. Mr. Gulati has argued that section 19 of the 101st Constitution Amendment Act, a transitional provision, cannot be used as a source of power to enact the Amending Act 2017. He submitted that through this 101st Amending Act all indirect taxes which were hitherto imposed by the Union and the States separately in exercise of their respective power of taxation under list I and List II of 7th scheduled of the constitution, were now sought to be subsumed by placing them in one common basket and the scheme of taxation, in this regard, was sought to be completely altered by ushering into new GST regime for the first time in India by permitting joint levy.

2.1. Ld. Mr. Gulati has submitted that deletion of Entry 52 from list II like many other entries from other lists of 7th schedule was done in 101st Constitution Amendment in order to achieve uniformity of taxation through out the nation. Mr. Gulati has contended that by introducing the Amending Act 2017, the State legislature has tried to revive the concept on Entry Tax in indirect way at a time when it has no legislative competence in view of deletion of Entry no. 52 of list II.

He has further submitted that in order to introduce one uniform tax structure some existing laws relating to tax on goods and services of various States were required to be either deleted or changed and 101st Constitution Amendment was introduced for that purpose. He has reiterated that the concept of Entry Tax was inconsistent with the provision of the Constitution as amended in 101st Amendment Act and therefore the same cannot be re-introduced on the plea that such liberty was given to the States under section 19 of the Amendment Act. According to him section 19 has been introduced in order to provide the States Legislatures adequate time & opportunities to amend or repeal those pieces of legislations which were found inconsistent with 101st Constitution Amendment Act during the transitional period of one year after which those existing laws will automatically lapse. He submits that section 19 has conferred the States Legislature that much limited power to amend the existing laws as to bring the same in line with sprit and purpose for which 101st amending Act was introduced.

2.2. Further submission of Mr. Gulati is that the Constitution Bench of 9 Hon'ble Judges of Supreme Court in Jindal Stainless [(2017) 12 SCC I] have nowhere held that the tax could be imposed by a Legislature which was not at all competent and that too after violating Part-III of the Constitution which

interalia includes Article 14 and 19 (1) (g) of the Constitution. He contended that by introducing Amending Act of 2017 the State Legislature has committed the said mistake. After 101st amendment the Legislature lost its plenary power to legislate in the field of Entry 52 with reference to Article 246 and the Amending Act 2017 is therefore, void abinitio. Besides, as per Section 5 of the Amending Act 2017 now goods, even if they have borne VAT / Sales Tax and goods moving from one local area to another local area within the State of West Bengal are sought to be brought within the net of taxation for the first time creating new set / class of assesses which were hitherto outside the taxation net, apart from increasing the tax liability of the existing assesses. Mr. Gulati for all these reasons has described the impugned act as manifestly arbitrary, creating hostile discrimination offending equality clause enshrined in the Constitution and therefore, violative of Article 14 of the Constitution. He further argued that no assessment can be made against the new class of assesses who have been roped in for the first time because of absolute bar of limitation under section 12 of the Entry Tax Act and impugned amending law ostensibly projecting removal of defects pointed out by the Hon'ble Single Bench on 24.06.13 in section 4 (5) as it originally stood in the year 2012, in effect remains the same after amendment as the newly created class of assesses would not be assessed nor would the tax be recoverable from them resulting in continuation of discrimination.

2.3. Mr. Gulati, has further submitted that section 6 of the impugned Act is prospective whereas section 5 is retrospective in nature and thus both sections are not compatible with each other and section 6 of the Amending Act fails to achieve its ostensible purpose.

3. Mr. Sumeet Garodia, Ld. Adv. for Usha Martin Limited and Anr. (RN-1911/17) and Tata Chemicals Ltd. (RN-2093/17) has emphasised on the ostensible but futile attempt of the State Legislature in introducing the Amending Act 2017. He submitted that after the Judgement of Hon'ble Single Bench on 24.06.13 declaring the Entry Tax Act ultra vires the State Legislature tried to cure the defects and by introducing section 5 and 6 of the Amending Act 2017 the State has levied tax on all types of transfer of stock and goods purchased and / or transported from one local area to another local area within the State, apart from the goods imported from outside of the State and in this way the State had increased the number of assesses manifold retrospectively which is not only discriminatory but also impossible to implement. He submitted that after deletion of Entry 52 which was the source of Entry Tax Act 2012 the State was denuded of its plenary power to bring an amendment of that Act. He submitted that section 19 of the 101st Amendment has not conferred any power to the State Legislature to legislate in respect of legislative field which have already been deleted / omitted by virtue of section 17 of the Amendment Act and no additional levy in the form of the additional tax upon newly created assesses can be imposed. He reiterated that section 19 of the 101st Amendment Act like Article 243N and Article 243ZF has conferred limited legislative power and the Entry Tax Act the source of which has already been eclipsed, cannot be revalidated under section 6 of the Amending Act 2017.

4. Ld. Adv. Mr. Avra Mazumder, appearing for Tata Sky Ltd. (RN-2499/17) and VST Industries Limited (RN-1671/18) and many other cases, while admitting that the State Legislature is competent to retrospectively validate an Act (declared by any Court unconstitutional) by removing defects therein, has argued that while validating the State Act, the core issue be

considered would be whether the Legislature of State possess legislative competency over the subject matter which it seek to validate. He submitted that the subject matter Entry Tax has already been dropped from the State list of the 7th Schedule and therefore, State Legislature has lost the power of revalidating the said Entry Tax and section 19 has not conferred the State to revalidate the same by amendment.

5. Ld. Adv. Sujit Ghosh, appearing for RN-517/21 and RN-930/19 has submitted that the Judgement of Hon'ble Single Bench dated 24.6.13 declaring the Entry Tax Act ultra vires has not yet been stayed and the Jindal decision of Hon'ble Supreme Court dated 11.11.16 cannot eclipse the decision of Hon'ble Single Bench dated 24.06.13. He contended that since Judgement dated 24.06.13 is not yet reversed by higher forum the binding effect of the said Judgement has not yet obliterated and therefore, the revalidation of Entry Tax Act (already declared void) by way of Amending Act 2017 cannot be sustained. He submitted that section 19 of the 101st Amendment Act cannot be a source of power. He pointed out that if there is any conflict between section 19 and Article 246 then Article 246(3) will prevail and since entry 52 has already been deleted the State Legislature has lost the power to amend or revalidate any provision of Entry Tax Act and the State Legislature is confined to limited power conferred by section 19. He argued that section 19 has given only the direction for amendment or repeal but that must be done in compliance of Article 246 of the Constitution.

5.1 Ld. Adv. Mr. Sujit Ghosh, has further submitted that section 19 has given the power to amend or repeal only those provision of law which are inconsistent with the provision of 101st Amendment Act. He submitted that the term 'inconsistency' means something existed and is standing in its way or with

which it has a clash or conflict. But the term 'inconsistency' cannot be used against something which is not existing at all. For example Entry no. 62 of list II has been substituted and in this case the State Legislature under section 19 has the liberty to amend or repeal to that extent of inconsistency in between Entry 62 which existed prior to 101st Amending Act and the newly defined post amendment Entry 62, as considered by the State Legislature in order to keep it in tune with the objective of 101st Amendment Act. He submitted that after deletion of Entry No. 52 nothing existed any more and therefore, question of inconsistency does not arise and the State has lost the power to consider any move on "taxes on entry of goods into local area for consumption, use or sale therein".

6. Ld. Adv. Mr. Punit Agarwal, on behalf of Lumino Industires (RN-339/19 and RN- 1097/19) has submitted that the Entry Tax Act, the Source of which was Entry No. 52 of list II was quashed in lock, stock and barrel after promulgation of 101st Amendment Act and therefore, the State Legislature has lost all power to reintroduce the Entry Tax Act by way of amendment. He submitted that section 19 of the 101st Amendment Act is applicable only on those provisions of law which were inforce on 16.09.16 and since the subject matter relating to Entry Tax was not in force on 16.09.16 the impugned Amendment Act 2017 is void abinitio and should be struck down.

7. Ld. Adv. Mr. Anil Dugar, appearing in the matter of RN-1413/19 and many other cases of similar nature, has submitted that the omission of Entry no. 52 took away the States' power to legislate on the matter relating to Entry Tax. His further submission is that section 5 of the Amendment Act 2017 has subjected new classes of assesses to pay Entry Tax retrospectively which is

unreasonable, unjust, unfair and unconstitutional and therefore, is violative of Article 304 (a) of the Constitution.

8. Ld. Adv. Jaweid Ahmed Khan, appearing on behalf of RN- 509/20 on behalf of M/s. Goodwill Non-wovens Pvt. Ltd. has submitted that section 5 of the Amendment Act, 2017 included in the tax net those new classes of assesses with retrospective effect, who were previously kept out of original Entry Tax Act.

8.1 He submitted that no mechanism has not yet developed to identify this new group of assesses who has not yet carried out legal obligation as old assesses did and thus the impugned amendment has failed to bring any equality between old assesses and new group of assesses. This new group of assesses has not filed return and their assessment has become barred by limitation. He contended that ostensible attempt of State Legislature to remove the defects pointed out by Hon'ble Single Bench Judgement dated 24.06.13 has not worked out and the Amendment Act 2017 remained discriminatory as it was before amendment.

8.2 By drawing our attention to paragraph 2.115 and 3.10 of report of Select Committee of 101st Constitution Amendment bill 2014 Ld. Adv. Mr. Khan has submitted that provision of Entry Tax is an impediment to creation of common market which is a goal of GST as it acts like a tariff barrier on movement of goods into a local area and discriminates between goods produced within and outside the area, and an impediment to the free flow of goods and services and creates inefficiencies in the supply chain. He argued that the very concept of Entry Tax is violative of Article 301 and 304(a) of the Constitution and Entry No. 52 was therefore, deleted from the State list in order to promote smooth sailing of GST.

8.3 As regards limited legislative competency conferred by section 19 of the 101st Amendment Act Ld. Adv. Mr. Khan has submitted that an Amendment Act is a vehicle for carrying the amendment to its locus in the Act being amended. In the instant case no locus has been provided for selection which carries the validation and therefore, the validation does not take root or survive beyond the Amendment Act which had a temporary life. Mr. Khan further submitted that section 6 of the impugned Amendment Act 2017 suffers from palpable ambiguity because as per section 2 (1) of the impugned Amending Act 2017 Indian Stamp Act 1899 has been referred as Principle Act whereas in section 6 Principal Act was meant to denote Entry Tax Act. He submitted that such ambiguity is fatal to the validity of section 6 and makes it infructuous.

9. Ld. Adv. Mr. Ananda Sen appearing for the Petitioner Sk. Salim (RN-2096/17) has adopted the arguments made by Ld. Adv. Mr. Gulati and Mr. Sujit Ghosh and has submitted that the demand raised vide order dated 30.06.17 for the period 01.04.14 to 31.03.15 is wholly without jurisdiction and is liable to be quashed.

10. Ld. Adv. Dr. Sumit Chakraborty, appearing for Shree Renuka Sugar Limited (RN-2058/17) has submitted that the Judgement of Hon'ble Single Bench dated 24.06.13 has not yet been stayed and its effect is still continuing since it is not yet reversed. His further submission is that the Judgement of Hon'ble Supreme Court in Jindal Stainless Steel dated 11.11.16 has not been overruled not even impliedly and the said Judgement declaring entry tax ultra vires is still in force. He contended that the very attempt of the State legislature to remove the infirmities with regard to Article 304(a) as pointed by Hon'ble Single Bench itself shows that the effect of Hon'ble Single Bench is still continuing. He submitted that the Hon'ble Supreme Court in paragraph 1160 of

Jindal Stainless Steel Judgement dated 11.11.16 had held that the issue as to whether or not the levy under entry tax Act violates Article 304 (a) has been left open. Ld. Adv. Dr. Chakraborty, for all these reasons has contended that the submission that the Hon'ble Single Bench Judgement is impliedly overruled is misconceived and untenable.

11. Ld. Adv. Dr. Chakraborty, has further submitted that the role of transitional provision in any Act is to provide a guideline which regulates the coming into operation of those enactments and to modify their effect during the given period of transition. By describing it an intended transitional arrangement, he submitted that section 19 of 101st Amendment Act has merely prescribed when and how the operative parts of that Act are to take effect by amendment or repeal of any existing provisions which are inforce on the date of Amendment but inconsistent with the provision of 101st Amendment Act. He submitted that after deletion of Entry 52 from list II the State Legislature has lost its competence for ever to consider anything further in Entry Tax matters and therefore, inspite of the liberty given under section 19 the State Legislature cannot validate the entry tax Act the source of which was extinct and no longer existed.

11.1. Ld. Adv. Mr. Somak Basu while adopting the argument made by Dr. Chakraborty has submitted that Hon'ble Division Bench on 31.07.2013 passed an interim order with some conditions which may tantamount to a stay order but such order does not destroy the binding effect of the Hon'ble Single Bench Judgement dated 24.06.13 which is still unreversed. Mr. Basu has reiterated that the Entry Tax Act already declared unconstitutional cannot be revived by amendment during the period of hearing of the appeal.

12. Ld. Adv. General Mr. Soumendra Nath Mookerjee, on behalf of the State has submitted that Hon'ble Single Bench on the same date of declaring the entry tax ultra vires i.e. to say on June, 24,2013 was pleased to grant stay of the operative part of the Judgement and order for a period of 6 weeks and the Division Bench of the Hon'ble Chief Justice before expiry of the said period have been pleased to direct on 31.07.13 that the assessment proceeding under Entry Tax Act was to continue and there should be no refund of the entry tax already collected. Ld. Adv. General has further submitted that the Hon'ble Division Bench had not imposed any embargo to collect or continue to levy and collect entry tax. Ld. Adv. General is, therefore, of the opinion that the Hon'ble Division Bench by such order not only permitted the entry tax Act to be operative but also directed the provision to be complied with.

12.1. Further submission of Ld. A.G is that Hon'ble Supreme Court in the Judgement of Jindal Stainless dated 11.11.16 had been pleased to hold that non-discriminatory tax would not fall foul of Article 301 and Compensatory Tax Theory has no juristic basis. It was further held that Article 304(a) and 304(b) are to be read disjunctively and prior sanction of the President under Article 304(b) is not required if Article 304(a) is complied with. Ld. A.G has submitted that by virtue of this decision of Hon'ble Supreme Court the findings of Hon'ble Single Bench Judgement dated 24.06.13, insofar as it held that since the tax was not compensatory and prior sanction of the President would be required under Article 304(b), the tax imposed by the Entry Tax Act was bad, stood impliedly overruled more so when the State of West Bengal was represented before Hon'ble Supreme Court at the time of hearing of this case. Ld. A.G, has, therefore, urged us that the Tribunal should proceed on the basis

that Entry Tax Act was in existence on 06.03.17, the date when the Amending Act 2017 was enacted.

12.2. As regards the submission of the Petitioners that since Entry 52 stood deleted by 101st Amendment Act (henceforth C.A Act. 2016) the State Legislature has lost its power to enact section 5 and section 6 of Amending Act 2017 Ld. A.G has contended that a power of the legislature to repeal is co-extensive with the power to enact. According to him section 19 of the C.A Act 2016 has empowered the Legislature to amend the Entry Tax Act any time before expiry of one year and since the Amending Act 2017 was promulgated on 06.03.17 prior to expiry of one year it is valid. By citing a decision of Hon'ble Supreme Court reported in A.I.R 1969 SC 1073 (Ramkrishna Ram Nath Vs. Janapad Sabha) Ld. A.G contended that both sections 19 of C.A of Act and Article 143 (2) of the Government of India Act 1935 are transitional provisions and section 19 of C.A Act 2016 like Article 143 (2) of Government of India Act 1935 has conferred power to State Legislature to enact section 5 & 6 of Amending Act 2017. He has submitted that it was an impending necessity of the State Legislature to remove the defect pointed out by Hon'ble Single Bench for making it non-discriminatory so that it does not fall foul of Article 304(a) and the intention of the Legislature was bonafide. He argued that irrespective of deletion of Entry 52 the State Legislature was adequately empowered by section 19 of the C.A Act 2016 to bring that Amendment. By citing another decision of Hon'ble High Court Kerala in M/s. Sheen Golden jewels Vs. S.T.O (2019-V IL-53 KER) Ld. A.G has reiterated that legislative power is continued by virtue of C.A Act until one year from commencement of the C.A Act. 2016.

12.3. As regards the submission made by the Petitioners that section 5 & 6 of the Amending Act 2017, apart from increasing tax liabilities of the existing assesses, have imposed levy on new classes of assesses retrospectively w.e.f 01.04.12 which is not permissible in law, Ld. A.G has submitted that the Hon'ble Supreme Court has already held that the Legislature, provided it has legislative competency to impose the tax, can also validate the tax, declared by a Court to be invalid, retrospectively by curing the invalidity attached to such tax. By citing a decision of Hon'ble Supreme Court [1969(2) section 283] Ld. A.G has argued that the legislature can also re-enact retrospectively a valid and legal taxing provision and then by fiction make the decision already collected to stand under the re-enacted law.

13. The following citations have been considered:

A. Prithvi Cotton Mills Ltd. Vs. Broock Borough Municipality & Others.
B. Sheen Golden Jewels (India) Pvt. Ltd. Vs. STO 2019 VIL 53 Ker
C. M/s. Pankaj Adversity Vs. State of UP-2019- VIL-70-ALH-
D. Ram Krishna Ramnath & Ors. Vs. Janpad Sabha (1962) SC. 1073-
E. Town Municipal Committee AIR 1964 SC 1166- K.
F. Prakash Kumar Vs. State of Gujrat (2008) 2 SCC 409
G. Baiju A.A Vs. Sales Tax Office (219) VIL 601 (Kes)
H. Jayam & Co. Vs. Assistant Commission – (2016) 15 SCC 125
I. Shree Chamunhdi Mopeds Ltd. Vs. Church of South Indian Trust Association (1992) 3 SCC
J. Sunil Kr. Kovi Vs. Gopal Das Kobra (2016) 10 SCC 467
K. Tata Steel Vs. State of West Bengal MANU / WB/0151/2013
L. Jindal Stainless Steel Vs. St. of Haryana [(2017) 12 SCC 1]
M. KSEB Vs. Indian Aluminum (1976) I SCC 466

14. We are inclined to frame the following issues for discussion: -

(a) Is there any stay of the Judgement dated 24.06.13 by which the Entry Tax Act 2012 was declared void and unconstitutional? And if not, then can such Act be amended during the period when the appeal challenging the said Judgement is pending and is not yet reversed?

(b) (i) After deletion of Entry No. 52 from the State list of 7th schedule of the Constitution, has the State Legislature absolutely lost its legislative competency to amend the Entry Tax Act with a view to making it non-discriminatory with retrospective effect?

(ii) If not then whether section 19 of the C.A Act 2016 has conferred the said power to the State Legislature?

(c) Do section 5 & 6 of the Amending Act 2017 withstand the test of Article 304(a) of the Constitution ?

(d) Is the retrospective imposition of Entry Tax with effect from 01.04.12 by section 5 & 6 of the Amending Act 2017 permissible in law?

(e) Is the Amending Act 2017 violative of Article 14 and Article 19(i)(g) of the Constitution?

Decision

15.

Issue no. 14.(a)

(i) Ld. Adv. for the Petitioners have questioned the justification and propriety of the State Legislature to amend retrospectively the Entry Tax Act 2012 after about five years of its enactment on 06.03.17 when the said Act was declared unconstitutional on 24.06.13 and the said verdict has not yet been reversed by higher forum. It is argued that the verdict dated 24.06.13 has not yet been stayed and the order of the Hon'ble Division Bench dated 31.07.13 allowing the State to continue the assessment proceedings does not mean that the verdict dated 24.06.13 "has been wiped out from existence". The Petitioners by citing a decision of Hon'ble Supreme Court in M/s. Shree Chamundi Mopeds Limited Vs. Church of South I.T.A Madras (A.I.R 1992 S.C 1439) have contended that a stay order does not erase the effect of original order and Entry Tax Act cannot be revived by way of amendment during the period of appeal until the verdict is reversed.

(ii) It is fact that Hon'ble Division Bench on 31.07.13 had not passed stay order in black and white. Ld. A.G has submitted that by permitting the State to continue the assessment proceeding as before and not to refund tax already collected Hon'ble Division Bench had impliedly granted stay order. By distinguishing the principle enunciated in Shree Chamundi Mopeds (Supra) Ld. A.G has contended that in the instant case it was not merely a stay order simpliciter but something more than the stay order as there was a mandatory direction by the Hon'ble Division Bench to carry on assessment and there would be no refund. Ld. A.G submitted that even Hon'ble Supreme Court in Jindal Stainless Steel had proceeded on the basis that Entry Tax Act of 2012 was in existence. What Ld. A.G wanted to explain the situation as if Hon'ble Division Bench had not shown any red signal of stay rather a yellow signal to proceed slowly and the verdict of Hon'ble Supreme Court in Jindal Stainless Steel dated 11.11.16 has encouraged the State Legislature to take it as green signal for going ahead for amendment with retrospective effect.

(iii) I most humbly do not contribute to such submission of Ld. A.G. Hon'ble Supreme Court in Shree Chamundi Moped after clearly distinguishing between quashing of an order and stay operation of an order, had been pleased to hold that "*quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence".* In the instant case the order dated 31.07.13 of the Hon'ble Division Bench had no doubt passed an interim order with certain further conditions which are binding upon the parties. The object of granting

interim order is to see that the relief claimed in the appeal may not become inappropriate or the appeal does not became infructuous for not granting such interim order. In the instant case Hon'ble Division Bench by granting some interim relief never intended the revival of Entry Tax Act as it was before 24.06.13 when it was declared void. Once a provision has been declared ultra vires, the State cannot invoke that the said ultra vires proceedings against the citizen of the country, simply because interim order has been passed in an appeal. During the period of appeal an Act already declared void can at best be considered as voidable but the said Act cannot be revived in a detour way. In the instant case the State Legislature has done exactly the same thing by increasing the tax liability of the existing assesses, by creating new class of assesses with the ostensible reason to make it non-discriminatory and all these happened when the verdict declared it unconstitutional and existed unreversed by higher forum.

(iv) The argument of Ld. A.G that since the Hon'ble Supreme Court in Jindal Statinless Steel case on 11.11.16 held that the Compensatory Tax Theory has no juristic basis and Presidential assent is not required if levy on goods imported from outside the State is not found non-discriminatory, the verdict of Hon'ble Single Bench has been virtually overruled and therefore, the State Legislature is free to amend the same, is equally not tenable. This Tribunal is not adjudicating as to whether imposition of levy on goods imported from outside of the State is as enumerated in E.T Act 2012 is discriminatory or not. This Tribunal is examining all the parameters of validity of only the Amending Act 2017. Therefore, the verdict of Hon'ble Single Bench whether virtually overruled or not is not relevant in our discussion. We are of the opinion that the State Legislature should not have amended the Entry Tax Act 2012 which was

declared unconstitutional and which is not yet reversed. We hold that this amendment is premature and smacks of mis-adventure despite the fact that interim order was granted with some conditions.

Issue no. 14(b)(i)

16. Tata Steel Limited (RN- 08/18) is the lead case of our discussion. In paragraph 27 to 30 of the application the Petitioner has agitated this point very emphatically and elaborately that after promulgation of C.A Act 2016 the Entry 52 of State list II stood deleted w.e.f 16.09.16 thereby drying up the very legislative source / field relating to Entry Tax . The Respondent / State in a paragraph 10 of its affidavit-in-opposition dated 15.11.19 has given one liner denial without any elaboration. Ld. A.G in his written submission has mainly confined his argument on the scope and liberty given by section 19 of the C.A Act to the State Legislature. We shall discuss on this issue as framed in paragraph 14 (b)(ii) of this Judgement later. As regards the issue framed in paragraph 14 (b)(i) as to how the State Legislature obtained power to amend in the field of Entry Tax when the same was deleted Ld. A.G has not enlightened us any further except section 19 of C.A Act 2016.

16. 1. Entry 52 of list II was deleted under section 17 (b)(i) of the C.A Act 2016 w.e.f 16.09.16. The Parliament in order to introduce a uniform tax structure through out the Nation has introduced the 122nd Constitution Amendment Bill 2012. In the statement of object and reasons of the bill the purpose of the said Bill stated was to amend the Constitution inter-alia, providing for:

"(b) subsuming of State Value Added Tax / Sales Tax, Entertainment Tax (other than the tax levied by the local bodies), Central Sales Tax (levied by the Centre and collected by the States), Octroi and Entry Tax, Purchase Tax,

Luxury Tax, Taxes on lottery, betting and gambling; and State cesses and surcharges in so far as they relate to supply of goods and services".[Clause 2(b)]"

This 2014 Amendment Bill passed by the Parliament on 08.09.16 became 101st Constitution Amendment Act w.e.f 16.09.16. Hon'ble High Court Kerala in paragraph 27 of their Lordships' Judgement dated 11.01.19 in the matter of M/s. Sheen Golden Jewels [2019-VII-53 KER] have described C.A Act 2016 in the following manner:-

" 27. *That said, 101st Constitutional Amendment is the epoch-making federal feat unparalleled in constitutional democracies- almost. It is, I may say, a constitutional coup de grace delivered against the fiscal confusion compounded by conflicting taxation regimes. This amendment, perhaps, marks the crest of cooperative federalism. It has created even a constitutional institution –GST Council."*

Hon'ble Court in paragraph 40 & 41 of that Judgement has been pleased to hold the following: -

" 40. GST replaces these taxes currently levied and collected by the Centre: (a) Central Excise Duty, (b) Duties of Excise (Medicinal and Toilet Preparations), (c) Additional Duties of Excise (Goods of Special Importance), (d) Additional Duties of Excise (Textiles and Textile Products), (e) Additional Duties of Customs (commonly known as CVD), (f) Special Additional Duty of Customs (SAD), (g) Service Tax, (h) Cesses and surcharges, in so far as they relate to the supply goods and services.

41. State taxes that get subsumed within the GST are: (a) State VAT, (b) Central Sales Tax, (c) Purchase Tax, (d) Luxury Tax, (e) Entry Tax (All forms), (f) Entertainment Tax and Amusement Tax (except those levied by the local

bodies), (g) Tax on advertisement, (h) Tax on lotteries, betting and gambling, (i) State cesses and surcharges in so far as they relate to the supply of goods and services."

Thus we find that in order to promote GST both the Central Government and State Governments had to surrender some of their field of taxation. Like Entry 52 of the State List Entry 92 & 92C of the Union List were entirely dropped. Some area of the Entry 54 of the State list has been truncated. In this way there were many changes of various entries of both Union and State list in order to make the tax structure smooth transparent and effective. Here the States have sacrificed some financial power along with Union Government to make this joint venture successful. Hon'ble Court in paragraph 38 of the above Judgement has been pleased to observe the following:-

"38. Tarun Jain's Goods and Services Tax, already copiously quoted, observes that in constitutional terms, GST is unique because of these aspects of its design: 1. It provides for the concurrent exercise of taxing powers by the Centre and the States on the same subject- a unique and unprecedented measure. 2. Both the Centre and the States are to act in tandem based on the GST Council's recommendations."

16.2. In the scenario given above it is palpably apparent that Entry 52 was dropped permanently so that State Legislature cannot make any law in the field of entry of goods into local area for consumption, use and sale therein. State Legislature has exclusive power to make laws with respect to any matters enumerated in list II of 7th schedule. Entry 52 having been omitted there is no vestige of power left with State Legislature to legislate or amend the law in Entry tax matter and this loss is absolute and final. This window in our opinion is shut for ever. It is true that Hon'ble Supreme Court in Jindal Stainless Steel

have given a number of opinions on Entry Tax Act and the said Judgement was passed on 11.11.16 after enactment of C.A Act 2016 on 16.09.16. But the fact is that the deletion of Entry 52 from list II w.e.f 16.09.16 and the effect of such deletion was not the subject matter in that case nor had either of the parties made any reference before us on this matter. Except Article 246(3) of the Constitution there is no other provision that may be the source of power of the State Legislature to enact any law.

Issue no. 4(b)(II)

17. Section 19 of C.A Act 2016 is as follows:-

"19 Notwithstanding anything in this Act, any provision of any law ***relating to tax on goods or services*** *or on both* ***in force*** *in any State immediately before the commencement of this Act which is inconsistent with the provisions of the Constitution as amended by this Act* ***shall continue to be in force until amended or repealed by a competent Legislature*** *or other competent authority or until expiration of one year from such commencement,* ***whichever is earlier****."*

Ld. A.G has claimed that the power of State Legislature under section 19 of C.A Act 2016 continued until the E.T Act 2012 was repealed by section 173 of West Bengal goods and services Tax Act (W.B GST Act) which came into force on 01.07.2017. Ld. A.G by citing the decision of Hon'ble Supreme Court in Ramkrishna Ramnath (AIR 1962 SC 1073) has submitted that Hon'ble Supreme Court upheld the act of Legislature on the basis that the legislative power was derived from the transitional provision in section 143(2) of Government of India Act 1935. He reiterated that section 19 is also such a transitional provision from which the State Legislature had derived the power to amend. By citing another decision M/s. Sheen Golden Jewell (Supra) Ld. A.G contended that section 19 of C.A Act 2016 is not a mere savings clause as

Hon'ble Supreme Court observed that legislative power does not come to an end with coming into force of C.A Act 2016 and such power continued by virtue of section 19 until one year or until repeal of the previous enactment by the State GST Act.

17.1. Ld. Adv. for the Petitioners have submitted that section 19 has given limited legislative power to amend only those provisions on which Legislature has competency to enact. It is argued that with the dropping of Entry 52 w.e.f 16.09.16 the State Legislatures lost its competency to legislate on Entry Tax matters and therefore, section 19 is not coming to its help. Ld. Adv. for the petitioners have submitted that limited legislative power conferred in section 143(2) of the GI Act 1935 was much more wide than that of section 19 of C.A Act. 2016 and such power was given at a completely different time and perspective when Provinces had lost its power to impose terminal tax. It is submitted that the purpose of section 143 (2) of Government of India Act 1935 was to allow the Provinces to maintain continuity in levying the same tax which was being levied earlier without increasing or allowing incidence of tax in any manner and for that reason section 143(2) expressly provided the power to impose a tax by using the expression "continue to be levied" whereas such expression is glaringly absent in section 19 of C.A Act 2016 and therefore, both the sections are not on same footing.

17.2. Ld. Adv. for the Petitioners while distinguishing the decision in Sheen Golden (Supra), as relied upon by the Ld. A.G, have submitted that the subject matter of the said case is totally different from that of the instant case. It is submitted that in Sheen Golden the Hon'ble High Court Kerala was considering whether the provision of Kerala Vat Act relating to levy, assessment and recovery for the period prior to coming into force of GST regime could be saved

by enacting section 174 of Kerala GST Act. Besides, this decision dealt with Entry 54 of list II which was not entirely deleted like Entry 52 of list II.

17.3. On bare reading of section 19 of the C.A Act 2016 the following characteristics can be noted : -

(a) it deals with those provisions which relates to tax on goods or services or both.

(b) which are in force in any State on 16.09.16,

(c) which are also inconsistent with the purpose / goal for which C.A Act 2016 was enacted.

(d) which will continue to be in force for one year up to 15.09.17

Or (e) until amended or repealed which ever is earlier.

(f) by competent Legislature or competent Authority.

17.4. E.T Act 2012 relates to tax on goods or services or both and therefore, it attracts the characteristic described in (a) above. As regards the characteristic (b) above as to whether it was in force on 16.09.16 after it was declared void by Hon'ble Single Bench on 24.06.13, Ld. A.G has argued that the order of Hon'ble Division Bench dated 31.07.13 allowing the State to continue assessment as before and not to refund the taxes already collected made the verdict dated 24.06.13 virtually stayed and the E.T Act 2012 continued to exist and operative even after 24.06.13 and therefore, the said Act was in force on 16.09.16. Per contra Ld. Adv. for the Petitioners argued that since the verdict dated 24.06.13 has not yet been reversed by the higher forum there can be no other explanation but to hold that the E.T Act declared unconstitutional on 24.06.13 was not in force on 16.09.16.

In paragraph 15 (iii) of this Judgement on being guided by the principle enunciated in Shree Chamundi Moped (Supra) I have already come to the

conclusion that once a law was declared void and its appeal is pending, the State Legislature, however laudable the purpose may be, without Legislative competency cannot amend the same with retrospective effect. The direction of Hon'ble Division Bench dated 31.07.16 for continuation of assessment proceedings cannot be interpreted as a license given to the State Legislature to amend / validate the same during the pendency of appeal. In view of the direction of Hon'ble Division Bench dated 31.07.16, I am consciously not discussing the issue as to whether the E.T Act was in force on 16.09.16 or not and am leaving it open because the answer of this issue either negative or positive is no longer essential for our discussion.

17.5. In order to implement uniform tax structure effectively both Union and States had to surrender some its erstwhile exclusive fields of taxation and there was a realignment of legislative power of the Union and the States. Hon'ble Court in paragraph 7 of Sheen Golden Jewell (Supra) has observed the same in the following manner : -

"For the first time, in the taxation sphere, both the Union and the States have come to enjoy simultaneous powers, thus putting paid to the repugnancy doctrine, at least, in particular areas of taxation. With the insertion, amendment, and deletion of a few constitutional provisions-particularly with the insertion of Article 246A of the Constitution and deletion of Entry 52 of List II in Seventh Schedule-there has been a realignment of legislative powers of the Union and the States."

Thus we find that Entry 52 of list II was a spoilsport, the presence of which would have obviously marred the successful implementation of GST. It was inconsistent with C.A Act 2016 and for that reason Entry 52 of list II was entirely deleted in C.A Act 2016.

17.6. The word *'inconsistent'* of section 19 denotes only those provisions which were not entirely deleted like Entry 52 but were deleted partially or kept in 7th schedule in altered / truncated version. For example Entry 62 of State list which was not entirely deleted but some of its area of operation have changed and the remaining portion which were dropped became inconsistent with C.A Act 2016. The word 'inconsistent' has been used for this type of Entries which need amendment in order to bring the inconsistent portion of that Entry in tune of the Constitution. As Ld. Adv. Sujit Ghosh has convincingly described that the word 'inconsistent' is used only when something opposite to that meaning i.e. to say 'consistent' exists. In other words for existence of an inconsistency there ought to be an apparent conflict or contrary position. In our case Entry 52 has been deleted entirely and therefore nothing exists and nothing is left comparable with term 'inconsistent'. It is true that Entry 52 by its nature was not consistent with goal / purpose of C.A Act 2016 but the word "inconsistent" used in section 19 has lost significance when the Entry 52 was dropped entirely.

17.7. Ld. Adv. Kavin Gulati has submitted that the term 'amended' or 'repealed' have to be read distributively with the word 'substituted' and 'omitted' as found in section 17 of C.A Act 2016 as per Black's interpretation of law:

"Where a sentence in a statute contains several antecedents and several consequences, they are to be read distributively, that is to say, each phrase or expression is to be referred to its appropriate object"

Considering the context and the setting in which the words amended or repealed are used in Section 19, read with Section 17, it becomes clear that even words which appear synonymous in ordinary use when employed in different parts of a statute, and together, they often convey a different meaning. The

Hon'ble Supreme Court in the case of Sunil Kumar Kori Vs. Gopal Das Kabra & Ors. (2016) 10 SCC 467 in Para 19,22,23 has explained the aforesaid principles by holding, inter-alia, that *"the general rule is that when two different words are used by the same statute, prima facie one as to construe these different words as carrying different meanings"* The word "substituted" mentioned in section 17 of the CA Act 2016 is referring those Entries which were truncated and were given a new definition after partial change like Entry no. 54 and 62 of State list and the word 'omitted' mentioned in section 17 is referring to those Entries which were deleted entirely like Entry 52 and 55 of State list.

Having considered the above principle I, after harmonious construction of section 17 with section 19 of C.A Act 2016, am of the opinion that the word "amended" or "repealed" are to be read disjunctively but distributively and the word "amended" in section 19 is meant for those entries of 7th schedule which are partially deleted and or substituted like entry 62 and the word 'repealed' is meant for those Entries of 7th schedule which were entirely deleted like Entry 52 of state list. In the instant case the State Legislature has nothing left for amendment of Entry Tax matter and it has no option but to repeal. Section 173 of W.B GST Act 2017 has accordingly repealed the Entry Tax Act 2017 w.e.f 01.07.17 but section 5 & 6 of Amending Act which have been enacted on 06.03.17 dealing in Entry Tax matter ostensibly with the help of section 19 of C.A Act. 2016 is, in our opinion unconstitutional since section 19 of C.A Act 2016 has not conferred any right to amend the same, be it before expiry of one year.

17.8. Section 19 of C.A Act 2016 is not the source of legislative power. The source of legislative power continues to be Article 245 read with Article 246

further read with seventeenth scheduled. Section 19 does not confer any new or additional power to anybody. It merely identified or recognised the power already inherent in the Competent Legislature. After deletion of Entry 52 the term 'amended' used in section 19 is no longer including any matter relating to Entry Tax and therefore the State Legislature is denuded of its plenary power to deal with Entry Tax related matters on and from 16.09.16 when C.A Act 2016 come into effect.

18. Ld. A.G has strongly relied upon the principle enunciated in Ramkrishna Ramnath (Supra) and has submitted that power to repeal is co-extensive with the power to enact / amend a law and has submitted that there is no difference between section 19 of C.A Act 2016 and section 143(2) of G.I Act 1935 in respect of competency of the Legislature to derive plenary power from these transitional provision and power of the State Legislature under section 19 of C.A Act 2016 continued until the E.T Act of 2012 was repealed by section 173 of West Bengal GST Act 2017. On perusal of the views taken by Hon'ble Supreme Court in Ramkrishna Ramnath I am unable to contribute to the views of the Ld. A.G. The historical perspectives under which both the sections were enacted are different. After G.I Act 1935 came into force the terminal taxes could be imposed only by the Federal Legislature as the Provinces have lost its power to impose such terminal taxes. This limited power was conferred to the Provinces with a view to maintaining the continuity in levying the same tax which were being levied earlier without any increase or alteration of the incidence of tax.

19. Section 143(2) of the G.I Act 1935 enacted :

"143. (2) Any taxes, duties, cesses or fees which, immediately before the commencement of Part III of this Act, were being lawfully levied by any

Provincial Government, municipality or other local authority or body for the purposes of the province, municipality, district or other local area under a law in force on the first day of January, nineteen hundred and thirty-five, may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Federal Legislative List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Legislature."

Hon'ble Supreme Court in Ramkrishna Ramnath (Supra) has been pleased to opine the following:

"The precise import, significance and effect of the words "continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Legislature" is the common question which arises in these four appeals which come before us by virtue of certificates under Article 132 of the Constitution granted by the High Court of Madhya Pradesh at Nagpur."

Thus I find that the very purpose of section 143(2) of the G.I Act 1935 was to empower the Provinces who did not have the plenary power to tax, the imposition of which was a necessity in order to maintain continuity. But as regards section 19 of the C.A Act 2016 the same principle cannot be applied in view of the different background when plenary power of the State Legislative in respect of certain field of taxation were deliberately taken away by Amendment of the Constitution in order to promote smooth sailing of GST. For that reason unlike section 143(2) of G.I Act 1935 the words "continue to be levied and to be applied for the same purpose until provision to the contrary is made ……." are not present in section 19 of the C.A Act 2016. Hon'ble Supreme Court in this decision have been pleased to clarify in unequivocal term that once the entry relating to terminal tax was removed from the Provincial list

and was taken to the Federal list, the Provinces lost its plenary power to tax and the tax which had not been imposed earlier could not now be imposed by either adding a new classes of assesses or by increasing the rate of tax. Hon'ble Apex Court had further held that the word "notwithstanding" does not provide an unlimited power to tax. In the instant case by enacting the Amending Act 2017 with retrospective effect despite having lost its plenary power the State Legislature has infringed the principle as discussed in Ramkrishna Ramnath (Supra). In our opinion this decision as relied by Ld. A.G is clearly misplaced and has no relevance in the present case.

20. Ld. A.G while relying upon the decision of Hon'ble High Court Kerala in M/s. Sheen Golden Jewels has submitted that the legislative power by virtue of section 19 of C.A Act 2016 continued until one year or until the repeal of E.T Act 2012 by State GST Act on 01.07.17. We do not agree with such submission. In the said case Kerala VAT Act was amended as well as repealed by virtue of section 19 of the C.A Act and what was dealt with in that case was the power of the State qua Entry 54 and not Entry 52 of the State list and the power to enact a saving clause that is to say section 174 of the Kerala GST Act. The instant case is thus found different from the fact discussed in M/s. Sheen Golden Jewells. This decision is distinguishable for yet another reason i.e to say that the Court in that case was considering whether the provision of Kerala VAT Act relating to levy, assessment and recovery for the period prior to coming into force of the GST regime could be saved by enacting section 174 in the GST Act.

21. Entry 54 of the State list was not entirely deleted but was substituted and therefore, the power to frame legislation under Entry 54 was retained albeit in a truncated form. The State of Kerala had accordingly amended Kerala VAT Act u/s. 173 of KGST Act 2017 in order to make it in tune with the CA Act 2016

and again repealed the said Act through section 174(i) of KGST Act in order to prune out the dead matters. Section 174(ii) of the KGST Act is also a saving clause by which all previous operation of pre-amended Entry 54 of State list, any right or liability acquired, accrued or incurred there of etc. were protected.

22. The Petitioners of Sheen Golden Jewell challenged the constitutional validity of 174 of KGST Act on the ground that the pre-amended Entry 54 of State list ceased to exist after its substitution on 16.09.16; that nothing from pre-existing legislative regime saves itself from or transit across what is set out in section 19 which is a sun set clause; that any judicial effort to save or resurrect the erstwhile entry 54 beyond 16.09.16 render section 19 of the C.A Act otiose, meaningless and insignificant; that section 19 itself provides for repeal, for the savings, and for the consequence too so there remains no power to have a further repeal and saving as is done by 174 of KGST Act.

23. Hon'ble High Court Kerala in this case rejected the above claims of the petitioners and had observed that the legislative power is continued by virtue of section 19 of the CA Act 2016 until one year or until the repeal of previous enactment (KVAT Act) and Kerala State Legislature derived the power from section 19. This observation, however, came in different perspective where the subject matter was Entry 54 of list II which was substituted not omitted like the Entry 52 of State list of the instant case where the State Legislature lost its competency after deletion of Entry 52 of the State list. Entry 52 of list II was not the subject matter of discussion in Sheen Golden Jewell. This is more so reflected in paragraph 179 of this Judgement where we find that Hon'ble Court had not considered the matter relating to Entry 52 of list II in the following manner :-

"The petitioners argue that the CA Act has disrupted the federal demarcation*; the State's legislative fields under Entry 54 of the 7th Schedule have been truncated. Thus, the State has no longer the power to legislate on the files that have been taken away from it. Have the State's legislative power on the items once available for it under the Entry 52 taken away? We will see."*

Therefore, the view taken in Sheen Golden Jewell is not applicable in the instant case where the issue is related to Entry 52 not Entry 54 of list II.

24. Section 19 of C.A Act 2016 has been enacted only to facilitate a temporary arrangement prescribing a mechanism which the Legislature are required to adopt in order to initiate the implementation of GST effectively. The State Legislature lost some of their erstwhile fields of taxation for ever and retained some in changed form. Section 19 has conferred limited legislative power within a prescribed period to amend those entries of State list which were substituted / truncated / partially changed. Such limited power was conferred to make it in tune with the cherished goal of GST. Section 19 has not conferred any power to amend the Principal Act (E.T Act 2012). The principle that *" a power of the Legislature to repeal is co-extensive with the power to enact"* as enunciated in Ramkrishna Ramnath (Supra) and relied upon by the Ld. A.G is not applicable in the given facts and circumstances of the instant case in view of deletion of Entry 52 of State list.

25. Ld. Adv. Mr. Sujit Ghosh, by referring the Kelsen's Pure Theory of Law has convincingly pointed out that section 19 of C.A Act 2016 is subordinate to Article 245 and 246 of the Constitution in the hierarchy of law and therefore, section 19 could not be pressed into action to circumvent Articles 245 and 246 of the Constitution. This essentially means that even to effect the amendment the Respondent State was required to follow the mandate prescribed under

Article 245 and 246(3) of the Constitution read with the seventh schedule of the Constitution. Since Entry 52 of seventh schedule is no longer existing the State has no legislative competency to amend anything on Entry Tax matters and Article 19 has not conferred such power. I therefore, hold that section 5 and 6 of Amending Act 2017 (West Bengal Finance Act 2017 enacted on 06.03.2017) is unconstitutional and non est in the eyes of law, having no legal effect being beyond the Legislative competence of the State of West Bengal.

26. Hon'ble Supreme Court in paragraph 1160 of Jindal Stainless Steel (Supra) has been pleased to hold :

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

The appeal challenging the Judgement of Hon'ble Single Bench dated 24.06.13 is pending for hearing before the Division Bench of Hon'ble High Court. A number of petitions challenging the Amending Act 2017 are also lying before the Hon'ble High Court for hearing. Those writ petitions have raised the question as to whether section 5 & 6 of Amending Act 2017 withstand the test of Article 304(a) to the Constitution or whether retrospective imposition of Entry Tax is permissible in law or whether the Amending Act 2017 is violative of Article 14 and Article 19(i)(g) of the Constitution. Since these issues are pending before the Hon'ble High Court we are not inclined to discuss the issues framed in paragraph 14(c) (d) and (e) above.

27. In fine we hold that the State of West Bengal had no legislative competency to introduce section 5 and 6 of West Bengal Finance Act 2017 w.e.f 01.07.2017 and the said provisions are hereby declared ultra vires and unconstitutional. This Judgement is applicable to all other applications which are not mentioned in this Judgement but are pending before this Tribunal challenging section 5 and 6 of the West Bengal Finance Act 2017. It is made clear that this Judgement will not cover those pending applications where the E.T Act 2012 have been challenged.

Per Hon'ble Technical Member Sri Chanchalmal Bachhawat :

1. I have gone through the judgment of Hon'ble Judicial Member, Mr. Suranjan Kundu. As observed in the said judgment, an interim order dated 31st July, 2013 of Hon'ble Division Bench headed by Hon'ble Chief Justice of Calcutta High Court was passed and the said interim order continues, whereby there shall be no refund of entry tax already collected, along with other directions in the order dated 31st July, 2013 (in APOT 338 /2013). Later on Hon'ble Division Bench of Calcutta High Court had allowed, vide order dated 18th February, 2020, subsequent prayers of some of the assesses, whereby amending Act of 2017 was challenged. It was observed in the order *"*in *any event, since the tribunal is a specialized body, its view on the amended provisions would be of considerable persuasive value to this Court.* I agree with the views of Hon'ble Judicial Member and Hon'ble Chairman on challenge to the amending Act of 2017, which has been arrived after examination of the relevant provisions of law and various judgments of Hon'ble Supreme Court of India with reference to adjudication of various questions of law in disposal of the applications vide this judgement.

2. I agree that the State of West Bengal had no legislative competency to introduce sec. 5 and 6 of West Bengal Finance Act, 2017 with effect from 1st July, 2017 and therefore the said provisions are ultra vires and unconstitutional, as observed by Hon'ble Judicial Member in para 27 of this judgment.

Per Justice Malay Marut Banerjee, Hon'ble Chairman :

I have the opportunity to go through the judgment well written by Brother Judicial Member Shri Suranjan Kundu. Needless to say that quite appreciably he has discussed every pros and cons of the matter which have been broadly debated and discussed by the scholarly arguments advanced by the ld. Advocates including the ld. senior advocate Mr. Kevin Gulati appearing on behalf of some of the petitioners on the one hand and by the ld. Advocate General of the State who made it convenient to address this Tribunal for days together. It may not be out of place to mention that in the present discourse name of few ld. Advocates will be mentioned but that does not in any way mean that we have not been benefited by the arguments advanced by the other ld. Advocates. Even though, my Brother Judicial Member Shri Suranjan Kundu wrote the judgment by way of thorough analytical process but still I am impelled to add few lines of my own, since the points of law debated and discussed during hearing of arguments are all the more academically interesting and important. Before adverting to the points raised and arguments advanced by the parties to the lis, it would be appropriate to bear in mind the following sequence of events :-

1. The West Bengal Tax on Entry of Goods into Local Areas Act came into force on and from 01.04.2012;

2. This Act was struck down by two judgments passed by the Hon'ble Single Bench of Calcutta High Court, one in the case of Tata Steel (Appellate Side) and the other in the case of Bharti Airtel (Original Side);

3. Subsequent to the said judgment of the Hon'ble Single Bench, the State of West Bengal filed intra – court appeals which are now pending before a Division Bench of Hon'ble High Court.

4. The Constitution (101st Amendment Act) came into force with effect from 16/09/2016.

5. The Supreme Court decided Jindal Steels Limited's case on 11/11/2016.

6. On 06/03//2017, the West Bengal Finance Act, 2017 was assented to by the Governor of West Bengal and so published in the Calcutta Gazette – Section 5 thereof made certain amendments in the Entry Tax Act retrospectively with effect from 01/04/2012 and section 6 thereof purports to validate the Entry Tax Act and it was to have come into force at once.

7. On 07/03/2017 rule 6, 7 and 11 of West Bengal Tax on Entry of Goods into Local Areas Act were amended retrospectively with effect from 01/04/2012; and

8. On 01/07/2017 the Entry Tax Act was repealed by Section 173 (iv) of the West Bengal Goods and Services Tax Act, 2017.

The indubitable and undeniable position is that by virtue of the 101st Constitution Amendment Entry 52 of List II (State List) of the Seventh Schedule was omitted / deleted. It would be somehow beneficial to reproduce Entry 52 before it was omitted by the said amendment:

" **52.** Taxes on the entry of goods into a local area for consumption, use or sell therein".

It is, therefore, apparent from the above that the source or fountain of the legislative power of the State Legislature (in our case West Bengal) came to be dried up and, therefore, it could very well be said that the State Legislature did not have the legislative competence to introduce amendment in the Entry Tax Act of 2012 on 06/03/2017 by the West Bengal Finance Act, 2017 but the grey area is, Section 19 of the Constitution 101st Amendment Act. It would again be pertinent to reproduce the aforesaid Section 19 of the 101st Constitution Amendment which reads:

"**19.** Notwithstanding anything in this Act, any provision or any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or repealed by competent legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier".

Not only the interpretations of the ld. Advocates appearing for the respective parties to the aforesaid Section 19 but the effect of the order passed by Hon'ble Division Bench of the Calcutta High Court as also the relevant portions of the judgment of the Hon'ble Apex Court in the Jindal Steel's case are discussed at length to take us to the answers of the following questions:-

1. Can the State Legislature (West Bengal) be said to have legislative competence to bring in amendment in the Entry Tax Act, 2012 by way of the Finance Bill of 2017 after deletion /omission of Entry 52 of the State List?

2. Was the Entry Tax Act in force as on 16/09/2016 when the Constitution 101st Amendment Act came into force and that too to alter the said Act having been struck down by a Single Bench judgment of the Hon'ble High Court on 24.06.2013 ?

The argument put forward by Mr. Gulati, Mr. Sujit Ghosh, Mr. Gadodia, Mr. Punit Agarwal, Mr. Javed Ahmed Khan, Mr. Boudhayan Bhattacharyya, Dr. Sumit Chakraborty, Mr. Somak Basu, Mr. Choraria, Mr. A K Dugar and all other eminent lawyers is that by no stretch of imagination, this Entry Tax Act can be said to be in force on 16/09/2016 to reap the benefit of the transitional provisions of Section 19 of the 101st Constitution Amendment Act. It was vehemently argued that since there was no clear and express stay order passed by the appellate court i.e., Division Bench of Calcutta High Court against the judgment of the Single Bench, the Entry Tax Act was dead and this Tribunal must consider that the aforesaid Entry Tax Act never existed. In this context Mr. Sujit Ghosh, ld. Advocate relied on a decision in the case of Lakshmi & Others vs. Narayana Iyer & Others, reported in 1963 SCC online Ker 36 where the following was observed at paragraph 29 & 30 of the judgment :-

"**29**. In "Willison Constitutional Law", at page 89 it is stated:

"A judicial declaration of the unconstitutionality of a statute neither annuls or repeals the statute but has the effect of ignoring or disregarding it so far as the determination of the rights of private parties are concerned. The Courts generally say that the effect of an unconstitutional statute is nothing. It is as though it had never been passed....."

30. "Willoughby on Constitution of the United States", Second Edition, Volume I, page 10 says:

"The Court does not annul or repeal the statute if it finds it in conflict with the Constitution. It simply refuses to recognise it, and determines rights of the parties just as if such Statute had no application....."

Mr. Ghosh invited our attention to paragraph 13 & 14 of a decision of the Supreme Court reported in AIR 1967 SC 1480 in the case of B Shama Rao vs. Union Territory of Pondicherry. The said paragraphs are quoted below :-

"**13**. Mr Desai's contention was that since the principal Act was ab initio void, the Amendment Act cannot resuscitate that which was stillborn. In support of this contention he relied on the decisions in Deepchand v. State of U. P. and Mahendralal v. State of U. P. Against that contention it was submitted that assuming that the principal Act suffered from the said defect the said defect was removed by the Amendment Act inasmuch as the Pondicherry Legislature re-enacted the said Act extending the Madras Act as amended upto April 1, 1966 to Pondicherry. Put differently, the contention was that the Amendment Act was an independent legislation, that the Pondicherry Assembly has power to enact a retrospective law and has re-enacted the provisions of the principal Act extending as from April 1, 1966 the Madras Act as amended upto that date.

14. But the question is can the Amendment Act be said to be an independent re-enactment of the principal Act and has the Pondicherry Legislature extended the Madras Act by this Act? If that was what the legislature intended to do it would have either repealed the principal Act or even without repealing it on the footing that it was void enacted the Amendment Act as an independent legislation extending the Madras Act retrospectively as from April 1, 1966. The Amendment Act, as is clear from its long title was passed to amend the principal Act. That can only be on the footing that it was a valid Act and still on the statute-book. Under Section 2 what the legislature purports to do is to amend Section 1(2) of the principal Act by substituting the words "It shall come into force on the 1st day of April 1966" in place of the words "It shall come into force on such date as the Government may by notification in the Official Gazette appoint". The only result is that instead of the principal Act having

been brought into force under the said notification, it is deemed to have come into force on April 1, 1966. This is done by a deeming provision as if the new clause was there from the beginning when the Act was passed. That being so, it is as if the Pondicherry Legislature had extended the Madras Act together with such amendments which might be made into that Act upto April 1, 1966. Since the Amendment Act was thus passed on the footing that there was in existence a valid Act viz. the said principal Act, it is impossible to conceive that it was or intended to be an independent legislation extending thereunder the Madras Act. The Amendment Act was and was intended to be an amendment of the principal Act and it would be stretching the language of the Amendment Act to a breaking point to construe it as an independent legislation whereby the Madras Act was retrospectively brought into operation as from April 1, 1966. That being so, and on the view that the principal Act was stillborn, the attempt to revive that which was void ab initio was frustrated and such an Act could have no efficacy."

It was argued by the ld. Advocates appearing on behalf of the petitioners that the Entry Tax Act was not in force as on 16/09/2016 and the question of bringing in any amendment cannot and does not arise and the attempt by the State Legislature by introducing the impugned amendment is futile and unconstitutional.

The ld. Advocate General, on the other hand, submitted that on the very date of delivery of the judgment by the Single Bench, the ld. Single Judge was pleased to grant stay of operation of the judgment and thereafter the Division Bench of the Chef Justice by an order dated 31/07/2013 made an order that assessment shall go on and there will be no refund of entry tax already collected. It was argued that when the Division Bench permitted assessment to be carried on how can it be said that the Entry Tax Act was not in existence. It was argued the

decision of the Single Bench striking down the Entry Tax Act has not reached its finality and the matter will be examined by the Appellate Court in due course. The Ld. Advocate General argued that by virtue of observations made by the Hon'ble Apex Court in the Jindal's case it can very well be said that the judgment of the Single Bench of Calcutta High Court dated 24/06/2013 stood impliedly overruled. It was also argued by the ld. Advocate General that the said GST Act which came into force on and from 01/07/2017 in Section 173 repealed The Entry Tax Act of 2012 and this also goes to show that the Act was very much there. Further argument put forward by the ld. Advocate General is that Section 19 of the Constitution 101st Amendment Act made it abundantly clear that any law in force as on 16/09/2016 will be there till amended or repealed or until expiry of one year. The ld. Advocate General took us to paragraph 392 and 393 of the judgment in Jindal Stainless case and pointed out that the West Bengal Entry Tax Act came to be discussed in course of argument before the Hon'ble Apex Court since it was contended by the ld. Advocates appearing on behalf of the petitioners that State of West Bengal was not a party to the Jindal Steels Limited's case and the Application of the State of West Bengal to intervene was dismissed. The ld. Advocate General took us through paragraph 870 of the judgment of the Jindal Stainless Limited case and submitted that Shri Rakesh Dwivedi, ld. Senior Counsel advanced submissions on behalf of the State of West Bengal and other States. The ld. Advocate General was candid enough to invite our attention to paragraph 1159.8 of the said Judgment which is as follows :-

"**1159.8** Article 304(a) frowns upon discrimination (of a hostile nature in the protectionist sense) and not on mere differentiation. Therefore, incentives, set-offs, etc. granted to a specified class of dealers for a limited period of time in a non-hostile fashion with a view to developing economically backward areas

would not violate Article 304(a). The question whether the levies in the present case indeed satisfy this test is left to be determined by the regular Benches hearing the matters."

After going through the above decision of the Hon'ble Apex Court we are unable to hold that the decision of the ld. Single Bench of the Calcutta High Court striking down the West Bengal Tax on Entry of Goods into Local Areas Act 2012 has been impliedly overruled because the Hon'ble Apex Court has clearly expressed that the question whether the levies in the present case indeed satisfy the test is left to be determined by the regular benches hearing the matters.

Bearing in mind the above observation of the Supreme Court and particularly when the judgment of the ld. Single Bench striking down the Entry Tax Act of 2012 now pends for appeal it can very well be said that whether the original Act indeed satisfy the constitutional tests within ambit of Article 304(a) of the Constitution will be taken care of the Appellate forum i.e., the Division Bench of the Hon'ble Calcutta High Court and it is only incumbent upon us to decide whether the Amending Act of 2017 i.e., Finance Act of 2017 whereby the Entry Tax Act was validated and given retrospective effect is hit by the lack of legislative competence.

The ld. Advocate General relying on a decision reported in AIR 1962 SC 1073 (Ram Krishna Ram Nath & ors. vs. Janpad Sabha) argued that this decision gives the answer to the challenge made by the petitioners against the legislative competence of the State of West Bengal to amend the Entry Tax Act after deletion of Entry 52. The ld. Senior Counsel Mr. Gulati and other ld. Advocates for the petitioners submitted that the said decision does not in anyway help the State since in the said reported case there was no change in the incidence and or increase of the terminal tax but in the present case the State of West Bengal

purportedly made an attempt to bring into the tax net new classes of assesses who were so long out side such tax net because of trading within the local area meaning thereby the State of West Bengal.

Although it was argued by the ld. Advocate General that by introducing the amendment the State Legislature has made a level playing field. Ld. Advocate Mr. J A Khan argued along with other Ld. Advocates for the petitioners that such an attempt is a sham and futile because in view of the provision of limitation in the old Act of 2012 such new classes of assesses could never be assessed to Entry Tax.

Mr. Sujit Ghosh, ld. Advocate submitted that this is a fraud on the Constitution. The argument of Mr. Ghosh is that in terms of Article 265 of the Constitution no tax shall be levied or collected except by authority of law. Such authority is the Constitution and as far the State Legislatures are concerned and more particularly in the matter of Entry Tax the authority was there by virtue of Entry 52 of the State List but that having been removed/deleted/omitted by the 101st amendment of the Constitution, it can never be said that the amending Act introduced by the Finance Act of 2017 is a valid piece of legislation. There is nothing on record to show that the Appellate Court (Division Bench of the Calcutta High Court) granted stay of operation of the judgment rendered by the ld. Single Bench in clear and unambiguous terms. In such circumstances it is not possible to accept that the West Bengal Entry Tax Act was in force as on 16/09/2016. The further question remains to be answered is whether anything is there in the Entry Tax Act which is inconsistent with the provisions of the Constitution as amended by the 101 Amendment Act. There is no area of doubt that by virtue of this constitutional amendment Entry 52 of List 2 has been simply deleted. So this deletion cannot be equated with inconsistency.

In view of the above, it must be held that the transitional provision contained in Section 19 of the 101st Amendment Act cannot come in aid to save the amendment of the Entry Tax Act introduced by way of Finance Act, 2017. The State Legislature cannot be said to have legislative competence to bring in the impugned amendment and validation of the Act.

Even assuming for a moment that the West Bengal Entry Tax Act was not struck down by any judgment of the High Court can it be said that the amendment introduced retrospectively and validation of the Act by way of introducing Finance Act of 2017 is within the legislative competence of the State Government? Having regard to the deletion of Entry 52 of the State List and bearing in mind the provision contained in Section 265 of the Constitution we are impelled to hold that the State Legislature did not have the legislative competence to bring in such amendment insofar as it relates to the West Bengal Tax on Entry of Goods into Local Areas Act, 2012.

In view of what has been discussed above we find and hold that Section 5 & Section 6 of the West Bengal Finance Act, 2017 are ultra-vires and unconstitutional.

In the result,

the applications filed by the petitioners are allowed on contest but without any order as to costs. Urgent certified copy (Photostat) if applied for be given with utmost priority.

Suranjan Kundu	Justice Malay Marut Banerjee	C.M. Bachhawat
Judicial Member	Chairman	Technical Member