VIDEO ELECTRONICS PVT. LTD. AND ANR. ETC. ETC. A

v.

STATE OF PUNJAB & ANR. ETC. ETC.

DECEMBER 22, 1989

[SABYASACHI MUKHARJI, CJ., S. RANGANATHAN AND J.S. VERMA, JJ.] B

U.P. Sales Tax Act, 1948—Sections 4A, 5A and 48 and Notification dated January 29, 1985 and December 26, 1985—Constitutional validity of Manufacturers of goods in state—No liability to pay tax—Dealers selling goods imported from outside state—liable to pay tax—whether discriminatory, legal and permissible. C

Constitution of India 1950—Articles 14, 19, 38, 39, 301 and 304—Sales Tax Law—Manufacturers of goods in the state exempted from Sales Tax—Non-manufacturer of same goods importing goods and selling—Liable to sales tax—Whether valid, legal and constitutional. D

A common question of law having arisen for determination in these petitions filed under Article 32 of the Constitution, they are disposed of by a Common Judgment, though the petitioners—dealers are different and carry on their business in different states and have challenged the respective provisions of law by which their cases are governed. E

The petitioners in WP 803/88 carry on the business of selling cinematographic films and other equipments like projector, sound recording and reproducing equipments, X-Ray films etc. in the State of U.P. and in Delhi. The petitioners receive these goods from their manufacturers outside the State of U.P. In U.P. there is a single point levy of Sales Tax. F

The State of Uttar Pradesh issued two notifications under section 4A of the Uttar Pradesh Sales Tax Act and under Section 8(5) of the Central Sales Tax Act exempting new units of manufacturers as defined in the Act in respect of the various goods for different periods ranging from 3 to 7 years, from payment of Sales Tax. The petitioners by these petitions challenge the constitutional validity of these Notifications. They have also challenged the constitutional validity of section 4A of the Uttar Pradesh Sales Tax Act and sections 8(5) of the Central Sales Tax Act, and the proceedings taken by the Respondent under section 5A of G H

A the said Act. The case of the petitioners is that they are discriminated on account of these notifications as the manufacturers covered by these Notifications are entitled to sell the articles manufactured by them without liability to pay sales-tax while the manufacturers in other states and non-manufacturers of the same article selling the same goods in the State are liable to pay sales tax under the local Sales Tax Act as well as B under the Central Sales Tax Act. Their contenton, therefore, is that they became subject to gross discrimination and their business was crippled. In these premises the petitioners challenge the provisions as *ultra vires* the constitution being violative of the provisions of Articles 301 to 305 of part III of the Constitution as also Articles 14 and 19 of the Constitution.

C The Respondents counter the assertion of the petitioners. According to them the contention put forward by the petitioners ignores the basic features of the Constitution and also the fact that the concept of economic unity may not necessarily be the same as it was at the time of the Constitution making; the state which was technically and economi- D cally weak in 1950 cannot be allowed to remain in the same state of affairs. The state has to give subsidy and grant exemptions/conscessions for the economic development of the state to new industries. It was urged that if all the states are economically strong or developed then only can economic unity as a whole be assured or strengthened.

E Dismissing the petitions, this Court,

HELD: Sales Tax Laws in all the States provide for exemption.

Power to grant exemption is inherent in all taxing Legislations. Economic unity is a desired goal. Development on parity is one of the F commitments of the Constitution. Directive Principles enshrined in Articles 38 and 39 must be harmonised with economic unity as well as economic development of developed and under-developed areas. [756H; 757A-B]

Taxes may sometime amount to restrictions but it is only such taxes as directly and immediately restrict trade that would fall within the G mischief of Art. 301. [740E]

See *Atiabari Tea Co. Ltd.* v. *The State of Assam & Ors.*, [1961] 1 SCR 809 and *Automobile Transport (Rajasthan) Ltd.* v. *The State of Rajasthan & Ors.*, [1963] 1 SCR 491.

H The taxes which do not directly and immediately restrict or

interefere with trade, commerce and intercourse throughout the territory of India would therefore be excluded from the ambit of Art. 301 of the Constitution. It has to be borne in mind that sales tax has only an indirect effect on trade and commerce. [747F] A

In the instant case, the general rate applicable to locally made goods is the same as that on imported goods. Even supposing without admitting that Sales Tax is covered by Art. 301 as a tax directly and immediately, hampering the free flow of trade, it does not follow that it falls within the exemption of Art. 304 and it would be hit by Art. 301. Still the general rate of tax which is to be compared under Art. 304(a) is at par, and the same *qua* the locally made goods and the imported goods. [751G-H] B C

Concept of economic barrier must be adopted in a dynamic sense with changing conditions. What constitutes an economic barrier at one point of time often ceased to be so at another point of time. It will be wrong to denude the people of the state of the right to grant exemptions which flow from the plenary powers of legislative heads in List III of the 7th Schedule of the Constitution. [752A-B] D

Basically the concept of equality embodied in Articles 304(a) and 16 are the same. Article 14 enjoins upon the state to treat every person equal before the law while Article 304(a) enjoins upon the state not to discriminate with respect to imposition of tax on imported goods and the locally made goods. [753C] E

It is not that with changing times the meaning changes but changing times illustrate and illuminate the meaning of the expressions used. The connotation of the expressions used takes its shape and colour in evolving dynamic situations. [757B-C] F

James v. *Commonwealth of Australia,* [1936] AC 578 at 613; *Firm A.T.B. Mehtab Majid & Co.* v. *State of Madras & Anr.,* [1963] 2 Suppl. SCR 435; *A. Hajee Abdul Shakoor & Co.* v. *State of Madras,* [1964] 8 SCR 217 at 225; *State of Madras* v. *N.K. Nataraja Mudaliar,* [1968] 3 SCR 829 at 847; *Andhra Sugars Ltd. & Anr. etc* v. *State of Andhra Pradesh & Ors.,* [1968] 1 SCR 705; *Bengal Immunity Co. Ltd.* v. *State of Bihar,* [1955] 2 SCR 603 at 754; *State of Madhya Pradesh* v. *Bhailal Bhai & Ors.,* [1964] 6 SCR 261 at 268-9; *Rattan Lal & Co. & Anr.* v. *The Assessing Authority & Anr.,* [1969] 2 SCR 544 at 557; *India Cement & Ors.* v. *State of Andhra Pradesh & Ors.,* [1988] 1 SCC 743; *Weston Electroniks & Anr.* v. *State of Gujarat & Ors.,* [1988] 2 SCC G H

568 at 571; *C.A.F. Seeling Inc.* **v.** *Charles H. Baldwin,* **79 L.Ed. 2d 1033 at 1038;** *Smt. Ujjam Bai* **v.** *State of U.P.,* **[1963] 1 SCR 778 at 851;** *Coffee Board, Bangalore* **v.** *Joint Commercial Tax Officer, Madras & Anr.,* **[1970] 3 SCR 147 at 156;** *V. Guruviah Naidu & Sons* **v.** *State of Tamil Nadu & Anr.,* **[1977] 1 SCR 1065 at 1070;** *Kathi Raning Rawat* **v.** *The State of Saurashtra,* **[1952] SCR 435;** *Kalyani Stores* **v.** *The State of Orissa & Ors.,* **[1966] 1 SCR 865;** *Bharat General & Textiles Industries Ltd.* **v.** *State of Maharashtra,* **72 STC 354;** *H. Anraj* **v.** *Government of Tamil Nadu,* **[1986] 1 SCC 414;** *West Bengal Hosiery Assn. & Ors.* **v.** *State of Bihar & Anr.,* **[1988] 4 SCC 134;** *State of U.P. & Ors.* **v.** *Babu Ram Upadhya,* **[1961] 2 SCR 679 at 702;** *State of Tamil Nadu,* **v.** *Hind Stone etc.,* **[1981] 2 SCR 742 at 757;** *State of Mysore* **v.** *H. Sanjeeviah,* **[1967] 2 SCR 361;** *Kailash Nath & Anr.* **v.** *State of U.P. & Ors.,* **AIR 1957 SC 790 at 791;** *State of U.P. & Ors.* **v.** *Renusagar Power Co. & Ors.,* **[1988] 4 SCC 59 at 100;** *M/s Narinder Chand Hem Raj & Ors.* **v.** *Lt. Governor, Administrator, U.T., Himachal Pradesh & Ors.,* **[1971] 2 SCC 747 at 751 and** *Associated Tanners Vizianagram A.P.* **v.** *C.T.O., Vizianagram, Andhra Pradesh & Ors.,* **[1986] 1 SCR 969, reffered to.**

ORIGINAL JURISDICTION: Writ Petition No. 665 of 1988 etc.

(Under Article 32 of the Constitution of India).

Sanjay Parikh, M.L. Sachdev, C.S. Vaidyanathan, S.R. Bhat, S.R. Setia, S.C. Dhanda, H.K. Puri, Harish N. Salve, Rajiv Dutta, Anil Kumar and Sultan Singh for the Petitioners.

Raja Ram Agarwal, S.C. Manchanda, G.L. Sanghi, A.S. Nambiar, Ashok K. Srivastava, R.S. Rana, P.G. Gokhale, B.R. Agarwala, R.B. Hathikhanawala, C.M. Nayar, P.K. Manohar, P.N. Misra, Ms. Halida Khatoon and Santhanam for the Respondents.

G.L. Sanghi, Ms. Vrinda Grover, Miss Seita Vaidialingam, Kailash Vasudev and A.C. Gulathi for the Intervenor.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, CJ. In these several writ petitions, we are concerned with the question of harmonising the power of different States in the Union of India to legislate and/or give

appropriate directions within the parameters of the subjects in list II of the 7th Schedule of the Constitution with the principle of economic unity envisaged in Part XIII of the Constitution of India. We are also concerned with the provisions of exemption, encouragement/incentives given by different States to boost up or help economic growth and development in those States, and in so doing the attempt of the States to give preferrential treatment to the goods manufactured or produced in those States. The question essentially is the same in all the matters but the question has to be appreciated in the context of the provisions and the fact situation of the different States involved in these writ petitions. It would, therefore, be appropriate to first deal with writ petition No. 803/88 (*Niksin Marketing Associate & Ors.* v. *Union of India & Anr.)* which is under article 32 of the Constitution by four petitioners.

Petitioner No. 1 in W.P. No. 803/88 is a partnership firm carrying on business in New Delhi. Petitioner No. 2 is its partner and petitioner No. 3 is another partnership business carrying on business at Kanpur in U.P. consisting of petitioner No. 4 and other partners. The petition challenges the constitutional validity of notification No. ST-II-7558/X-9(208)-1981 U.P. Act XV-48 order 85 dated 26th December, 1985 issued by Uttar Pradesh Govt u/s 4A of the Uttar Pradesh Sales Tax Act, 1948. A prior notification No. ST-II/604-X-9(208)-1981 U.P. Act XV-48-Order 85 dt. 29th January, 1985 was superseded by the aforesaid notification dt. 26th December, 1985. It also challenges the constitutional validity of notification No. ST-II/8202/X-9(208)-1981 issued by Uttar Pradesh Govt. u/s 8(5) of the Central Sales Tax Act, 1956 which superseded a previous notification. It also challenges the constitutional validity of s. 4A of the Uttar Pradesh Sales Tax Act, 1948 as substituted by U.P. Act 22 of 1984 and also s. 8(5) of the Central Sales Tax Act, 1956 and consequentially all actions and proceedings taken by the respondent u/s 5A of the said Act. The respondents to this application are the State of Uttar Pradesh, the Union of India, and the Commissioner of Sales Tax, Uttar Pradesh.

It is stated that the petitioners carry on the business of selling cinematographic films and other equipments like projectors, sound recording and reproducing equipment, industrial X-ray films, graphic art films, Photo films etc. in the State of Uttar Pradesh and in Delhi. The petitioners sell the goods upon receiving these from the manufacturers from outside the State of U.P. They are dealers on behalf of those manufacturers. The petitioners are dealers of Hindustan Photo Films Mfg. Co. Ltd., a Government of India undertaking. In

A U.P. there is a single point levy of sales tax. The State of U.P. had issued two notifications u/s 4A of the U.P. Sales Tax Act and u/s 8(5) of the Central Sales Tax Act exempting new units of manufacturers as defined in the Act in respect of the various goods for different periods ranging from 3 to 7 years as the case may be, from payment of any sales tax. These notifications are annexed and terms thereof are set out B in annexures A-1 & B-1 to the writ petition.

The notification dated 26th December, 1985 stated, *inter alia*:

> "The Governor is pleased to direct that in respect of any goods manufactured in an industrial unit, which is a new unit as defined in the aforesaid Act of 1948 established in C the areas mentioned in column 2 of the Table given below, the date of starting production whereof falls on or after the first day of October, 1982 but not later than 31st March, 1990, no tax under the aforesaid Act of 1956 shall be payable by the manufacturer thereof on the turnover of sales D on such goods for the period specified in column 3 against each, which shall be reckoned from the date of first sale if such sale takes place not later than 6 months from the date of starting production subject to certain conditions mentioned."

E It is not necessary to set out the conditions. In the annexure several districts have been mentioned. In column 2 categories have been made for exemption and have been divided in 2 categories, one in case of units with capital investment not exceeding 3 lakhs of rupees and another in cases of the units with capital investment exceeding 3 lakhs of rupees. For one the period of exemption is 5 years while for F the latter it is 7 years. Period of exemption various from 3 to 7 years in different districts. More or less similar were the terms of notification dated 29th January 1985.

The case of the petitioners is that they did not initially feel the adverse effects or discrimination on account of these notifications. G Petitioners point out that the manufacturers covered by the said notification are entitled to sell the articles manufactured by them without liability to pay sales tax while the manufacturers in other States and non-manufacturers of the same article selling the same goods in the State are liable to pay sales tax under the local Sales Tax Act as well as under the Central Sales Tax Act. The petitioners found that they had H become liable to pay sales tax on their sales at 12% + 10% surcharge

(13.2%) under the U.P. Sales Tax Act on photographic and graphic arts material and @ 8% + 10% surcharge (8.8%) on medical x-ray films and chemicals and a minimum of 10% on their inter-State turnover whereas the manufacturers in the State of U.P. and their dealers had no tax liability by virtue of the exemption granted under the empugned notifications. Thus the petitioners contend that the goods sold by them became costlier by 8.8% to 13.2% depending on the item sold compared to the goods of manufacturers in the State of U.P. They had given a chart illustrating the position. They, hence, contended that they became subject to gross discrimination and their business was crippled and wanted to sustain the said contention by referring to a chart showng gross sale prices of the products in diverse States. In the premises the petitioners challenge these provisions as *ultra vires* of the Constitution of India, the rights guaranteed under part XIII as also under articles 14 & 19(1)(g) of the Constitution.

The question is, are these notifications valid, proper and sustainable in the light of part XIII of the Constitution of India judged in the background of the said articles. Appearing in support of the petition, Mr. Sanjay Parikh in writ petitions Nos. 790, 665 and 1939-40/88, Mr. C.S. Vaidynathan and Mr. S.C. Dhanda in writ petition No. 761/88, Mr. Harish N. Salve for the petitioners in writ petition No. 803/88. Miss Seita Vaidialingam, Mr. G.L. Sanghi, Kailash Vasudev for the intervenors. Mr. Raja Ram Agarwal, Mr. G.L. Sanghi and Mr. Nambiar for the State of U.P. and respondents have made their elaborate submissions. These petitions have been heard together.

Apart from the submission that the provisions impugned violate articles 19(1)(g) and 14 of the Constitution, and are in violation of the principles of natural justice, the main challenge to these provisions by Mr. Salve was that they violated the provisions of articles 301 to 305 of Part XIII of the Constitution of India. The contention of the petitioners was that, subject to other provisions of Part XIII, trade, commerce and intercourse throughout the territory of India was enjoined to be free. Article 302 of the Constitution empowers the Parliament by law to impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest. Article 303 indicates the restrictions on the legislative powers of the Union and the States with regard to trade and commerce, and stipulates that, notwithstanding anything contained in article 302, neither Parliament nor the legislature of the States shall have power to make any law giving or authorising the giving of any preference to one State

over another or making or authorising the making of any discrimination between one State and another by virtue of any entry relating to trade and commerce in any list of the 7th Schedule. Sub-clause (2) of article 303 enjoins that nothing in clause (1) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India. Article 304 deals with restrictions on trade, commerce and intercourse among States, which is as follows:

> "304. Restrictions on trade, commerce and intercourse among States.—
>
> Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law—
>
> (a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and
>
> (b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest;
>
> Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President."

Article 305 saves certain existing laws and laws providing for State monopolies.

Our attention was drawn to the decision of this Court in *Atiabari Tea Co. Ltd.* v. *The State of Assam & Ors.*, [1961] 1 SCR 809. There this Court was concerned with the Assam Taxation (on goods carried by Roads and Inland Waterways) Act, 1954 which was passed under entry 56 of list II of the 7th Schedule to the Constitution. The appellants therein contended that the Act had violated the freedom of trade guaranteed by article 301 of the Constitution and as it was not passed after obtaining the previous sanction of the President as

required by art. 304(b), it was *ultra vires*. The respondent therein had urged that taxing laws governed only by Part XII and not Part XIII (which contained articles 301 & 304) and in the alternative that the provisions of Part XIII applied only to such legislative entries in the 7th Schedule as dealt specifically with trade, commerce and intercourse. Gajendragadkar, Wanchoo and Das Gupta, JJ. held that the Act violated art. 301 and since it did not comply with the provisions of art. 304(b) it was *ultra vires* and void. On the contrary, Chief Justice Sinha held that the Assam Act did not contravene art. 301 and was not *ultra vires*. According to the learned Chief Justice, neither the one extreme position that art. 301 included freedom from all taxation nor the other that taxation was wholly outside the purview of art. 301 was correct; and that the freedom conferred by art. 301 did not mean freedom from taxation simpliciter but only from the erection of trade barriers, tariff walls and imposts which had a deleterious effect on the free flow of trade, commerce and intercourse. Justice Shah on the other hand expressed the view that the Assam Act infringed the guarantee of freedom of trade and commerce under art. 301 and as the Bill was not moved with the previous sanction of the President as required by art. 304(b) nor was it validated by the assent of the President under art. 255(c), it was *ultra vires* and void.

In construing the provisions with which we are concerned herein, in our opinion, it is instructive to remind ourselves, as was said in *James* v. *Commonwealth of Australia,* [1936] AC 578 at 613, that the relevant provision of the Constitution has to be read not in vacuo but as occurring in a single complex instrument in which one part may throw light on another, and therefore, Gajendragadkar, J. as the learned Chief Justice then was, at p. 860 of the said report, rightly in our opinion, posed the problem as follows:

> "In construing Art. 301 we must, therefore, have regard to the general scheme of our Constitution as well as the particular provisions in regard to taxing laws. The construction of Art. 301 should not be determined on a purely academic or doctrinaire considerations; in construing the said Article we must adopt a realistic approach and bear in mind the essential features of the separation of powers on which our Constitution rests. It is a federal constitution which we are interpreting, and so the impact of Art. 301 must be judged accordingly. Besides, it is not irrelevant to remember in this connection that the Article 23 are construing imposes a constitutional limitation on the power of

A the Parliament and State Legislatures to levy taxes, and generally, but for such limitation, the power of taxation would be presumed to be for public good and would not be subject to judicial review or scrutiny. Thus considered we think it would be reasonable and proper to hold that restrictions freedom from which is guaranteed by Art. 301, B would be such restrictions as directly and immediately restrict or impede the free flow or movement of trade. Taxes may and do amount to restrictions; but it is only such taxes as directly and immediately restrict trade that would fall within the purview of Art. 301. The argument that all taxes should be governed by Art. 301 whether or not their impact on trade is immediate or mediate, direct or remote, C adopts, in our opinion, an extreme approach which cannot be upheld. If the said argument is accepted it would mean, for instance, that even a legislative enactment prescribing the minimum wages to industrial employees may fall under Part XIII because in an economic sense an additional wage D bill may indirectly affect trade or commerce. We are, therefore, satisfied that in determining the limits of the width and amplitude of the freedom guaranteed by Art. 301 a rational and workable test to apply would be: Does the impugned restriction operate directly or immediately on trade or its movement?"

E

It is in that light we must examine the impugned provision. It is necessary to bear in mind that taxes may and sometimes do amount to restrictions but it is only such taxes as directly and immediately restrict trade that would fall within the mischief of art. 301. Mr. Salve, however, rightly reminded us that regulatory measures or measures impos- F ing compensatory taxes for using trading facilities do not come within the purview of restrictions contemplated under art. 301. Here, it is necessary to refer to the decision of this Court in the *Automobile Transport (Rajasthan) Ltd.* v. *The State of Rajasthan & Ors.*, [1963] 1 SCR 491 which was a decision of a bench of this Court consisting of 7 learned Judges, and was concerned with the Rajasthan Motor Vehicles G Taxation Act, 1951. Sub-section (1) of s. 4 of that Act provided that no motor vehicle shall be used in any public place or kept for use in Rajasthan unless the owner thereof had paid in respect of it, a tax at the appropriate rate specified in the schedules to that Act within the time allowed. The appellants therein were carrying on the business of plying stage carriages in the State of Ajmer. They held permits and H plied their buses on diverse routes. There was one route which lay

mainly in Ajmer State but it crossed narrow strips of the territory of the State of Rajasthan. Another route, Ajmer to Kishangarh, was substantially in the Ajmer State, but a third of it was in Rajasthan. Formerly, there was an agreement between the Ajmer State and the former State of Kishangarh, by which neither State charged any tax or fees on vehicles registered in Ajmer or Kishangarh. Later, Kishangarh became a part of Rajasthan. On the passing of the Rajasthan Motor Vehicles Taxation Act, 1951, and the promulgation of the rules made thereunder, the Motor Vehicles Taxation Officer, Jaipur, demanded of the appellants payment of the tax due on their motor vehicles for the period from April 1, 1951 to March 31, 1954. The appellants challenged the legality of the demand on the grounds that s. 4 of the Act read with the Schedules constituted a direct and immediate restriction on the movement of trade and commerce with and within Rajasthan inasmuch as motor vehicles which carried passenger and goods within or through Rajasthan had to pay tax which imposed a pecuniary burden on commercial activity and was therefore hit by art. 301 of the Constitution and was not saved by Art. 304(b) inasmuch as the proviso to Art. 304(b) was not complied with, nor was the Act assented to by the President within the meaning of art. 255 of the Constitution. It was held by Das, Kapur, Sarkar and Subba Rao, JJ. as the learned Judges then were, that the Rajasthan Motor Vehicles Taxation Act, 1951 did not violate the provisions of art. 301 of the Constitution of India and that the taxes imposed under the Act were compensatory or regulatory taxes which did not hinder the freedom or trade, commerce and intercourse assured by that article. Das, Kapur and Sarkar, JJ. held that the concept of freedom of trade, commerce and intercourse postulated by art. 301 must be understood in the context of an ordinary society and as part of a Constitution which envisaged a distribution of powers between the States and the Union, and if so understood, the concept must recognise the need and legitimacy of some degree of regulatory control, whether by the Union or the States. Mr. Justice Subba Rao, as the learned Chief Justice then was, observed that the freedom declared under art. 301 referred to the right of free movement of trade without any obstructions by way of barriers, inter-State or intra-State, or other impediments operating as such barriers; and the said freedom was not impeded, but on the other hand, promoted, by regulations creating conditions for the free movement of trade, such as, police regulations, provisions for services, maintenance of roads, provision for aerodromes, wharfs etc., with or without compensation. Parliament may be law impose restrictions, it was stated, on such freedom in the public interest, and the States also, in exercise of their legislative power, may impose similar restrictions,

A subject to the proviso mentioned therein. Laws of taxation were not outside the freedom enshrined either in Art. 19 or 301. Mr. Justice Hidayatullah, as the learned Chief Justice then was, and Rajagopala Ayyangar and Mudholkar, JJ. held that s. 4(1) of the Rajasthan Motor Vehicles Taxation act, 1951 offended art. 301 of the Constitution, and as resort to the procedure prescribed by art. 304(b) was not taken it B was *ultra vires* the Constitution. The pith and substance of the Act was the levy of tax on motor vehicles in Rajasthan or their use in that State irrespective of where the vehicles came from and not legislation in respect of inter-State trade or commerce. A tax which is made the condition precedent of the right to enter upon and carry on business is a restriction on the right to carry on trade and commerce within art. 301 of the Constitution. The tax levied under the Act was not truly a C fair recompense for wear and tear of roads but a restriction which art. 301 forbade. The act was not, in its true character, regulatory. In judging the situation it would be instructive to bear in mind the observations of Mr. Justice Das at p. 512 of the report, where he observed that in evolving an integrated policy on this subject our Constituton-D makers seem to have kept in mind three main considerations which may be broadly stated thus: first, in the larger interests of India there must be free flow of trade, commerce and intercourse, both inter-State and intra-State; second, the regional interests must not be ignored altogether; and third, there must be a power of intervention by the Union in any case of crisis to deal with particular problems that may E arise in any part of India. At p. 523 of the report, it was reiterated that for the tax to become a prohibited tax it has to be a direct tax the effect of which is to hinder the movement part of trade. Dealing with wide interpretation Justice Das observed at p. 523-5 of the said report as follows:

F "The widest view proceeds on the footing that Art. 301 imposes a general restriction on legislative power and grants a freedom of trade, commerce and intercourse in all its series of operations, from all barriers, from all restrictions, from all regulation, and the only qualification that is to be found in the article is the opening clause, namely, G subject to the other provisions of Part XIII. This in actual practice will mean that if the State Legislature wishes to control or regulate trade, commerce and intercourse in such a way as to facilitate its free movement, it must yet proceed to make a law under Art. 304(b) and no such bill can be introduced or moved in the Legislature of a State H without the previous sanction of the President. The practi-

cal effect would be to stop or delay effective legislation which may be urgently necessary. Take, for example, a case where in the interests of publiic health, it is necessary to introduce urgently legislation stopping trade in goods which are deleterious to health, like the trade in diseased potatoes in Australia. If the State Legislature wishes to introduce such a bill, it must have the sanction of the President. Even such legislation as imposes traffic regulations would require the sanction of the President. Such an interpretation would, in our opinion, seriously affect the legislative power of the State Legislatures which power has been held to be plenary with regard to subjects in list II."

Mr. Justice Subba Rao, as the learned Chief Justice then was, at page 550 of the report, observed that if a law directly and immediately imposes a tax for general revenue purposes on the movement of trade, it would be violating the freedom. The learned Judge reiterated that the Court will have to ascertain whether the impugned law in a given case affects directly the said movement or indirectly and remotely affects it.

Mr. Salve, however, sought to contend that as regards the local sales tax, there were broadly two well accepted propositions, namely, sales tax was a tax levied for the purpose of general revenue. Secondly, it was neither a compensatory tax nor a measure regulating any trade. Reliance was placed on the observations of Mr. Justice Raghubar Dayal, J. in *Firm A.T.B. Mehtab Majid & Co.* v. *State of Madras & Anr.*, [1963] 2 Suppl. SCR 435 but the context in which the said observations were made has to be examined. That case dealt with a petition under art. 32 of the Constitution. The petitioners therein were dealers in hides and skins in the State of Madras. The impugned sales tax assessment related to turnover of sales of tanned hides and skins which had been obtained from outside the State of Madras. The main contention was that the tanned hides and skins imported from outside and sold inside the State were, under r. 16 of the Madras General Sales Tax Rules, subject to a higher rate of tax than the tax imposed on hides and skins tanned and sold within the State and this discriminatory taxation offended art. 304 of the Constitution. The contentions of the respondents therein were that sales tax did not come within the purview of art. 304(a) as it was not a tax on the import of goods at the point of entry, that the impugned rule was not a law made by the State legislature, that the impugned rule by itself did not impose the tax but fixed the single point at which the tax was imposed by ss. 3 & 5 of the Act was to

be levied; and that the impugned rule was not made with an eye on the place of origin of the goods. It was held that taxing laws can be restrictions on trade, commerce and intercourse, if they hamper the flow of trade and if they are not what can be termed to be compensatory taxes or regulating measures.

Reliance was also placed by Mr. Salve on the observations of Justice Raghubar Dayal in *A. Hajee Abdul Shakoor & Co.* v. *State of Madras,* [1964] 8 SCR 217 at 225. See also the observations in *State of Madras* v. *N.K. Nataraja Mudaliar,* [1968] 3 SCR 829 at 847 and *Andhra Sugars Ltd. & Anr. etc.* v. *State of Andhra Pradesh & Ors.,* [1968] 1 SCR 705 where at p. 718 of the report it was reiterated that a sale tax which discriminates against goods imported from other States may impede the free flow of trade and is then invalid unless protected by art. 304(a). It is, however, necessary to bear in mind that in *N.K.N. Mudaliar's,* case (supra) at p. 850 Mr. Justice Bachawat after referring to several cases observed as follows:

> "But, there can be no doubt that a tax on such sales would not normally offend Article 301. That Article makes no distinction between movement from one part of the State to another part of the same State and movement from one State to another. Now, if a tax on intra-State sale does not offend Article 301, logically, I do not see how a tax on inter-State sale can do so. Neither tax operates directly or immediately on the free flow of trade or the free movement of the transport of goods from the part of the country to the other. The tax is on the sale. The movement is incidental to and a consequence of the sale."

There was a reference in the said judgment to the observations of Jagannathadas, J. in *The Bengal Immunity Co. Ltd.* v. *State of Bihar,* [1955] 2 SCR 603 at 754 wherein it was stated:

> "Now it is not disputed that a tax on a purely internal sale which occurs as a result of the transportation of goods from a manufacturing centre within the State to a purchasing market within the same State is clearly permissible and not hit by anything in the Constitution. If a sale in that kind of trade can bear the tax and is not a burden on the freedom of trade, it is difficult to see why a single point tax on the same kind of sale where a State boundary intervenes bet-

ween the manufacturing centre and the consuming centres need be treated as a burden, especially where that tax is ultimately to come out of the residents of the very State by which such sale is taxable. Freedom of trade and commerce applies as much within a State as outside it. It appears to me again, with great respect, that there is no warrant for treating such a tax as in any way contrary either to the letter or the spirit of the freedom of trade, commerce and intercourse provided under Article 301."

It was contended that the Central Sales Tax Act ex-hypothesi violates art. 301 of the Constitution since it is a tax on inter-State movement of goods. Shah, J. in *Mudaliar's* case (supra) at p. 841 of the report observed that tax under the Central Sales Tax Act on inter-State sales, it must be noticed, is in its essence a tax which encumbers movement of trade or commerce, if it—(a) occasions the movement of goods from one State to another; (b) is effected by a transfer of documents of title to the goods during their movement from one State to another. It was contended by Mr. Salve that by exempting the local manufacturers from both local and central sales tax, the State Govt. has clearly made the imposition of both local and central sales tax discriminatory and prejudicial to outside goods. The goods of the local manufacturer, when sold by him, do not bear any tax whereas the goods imported from outside the State have to bear the burden of sales tax. It was also contended that similarly, the goods of a local manufacturer, when exported from the State of U.P. do not have to bear tax, while goods brought into the State of U.P. and further exported in competition with the local goods have to bear the tax, so there is clear discrimination against goods produced by manufacturers situated outside the State. The discrimination within the meaning of art. 301 read with art. 304 arises where there is a difference in the rates of sales tax levied, it was sought to be emphasised by Mr. Sanjay Parikh for some of the petitioners. This proposition has been reiterated by this Court in a large number of cases, according to counsel, and we were referred to the observations in *State of Madhya Pradesh* v. *Bhailal Bhai & Ors.*, [1964] 6 SCR 261 at 268-9 and *Mudaliar's* case (supra) where at p. 847 Shah, J. reiterated that imposition of differential rates of tax by the same State on goods manufactured or produced in the State and similar goods imported in the State is prohibited under art. 304(a). It was also reiterated by this Court in *Rattan Lal & Co. & Anr.* v. *The Assessing Authority & Anr.*, [1969] 2 SCR 544 at 557 dealing with the Punjab General Sales Tax Act that when a taxing State was not imposing rates of tax on imported goods different from the rates of

tax on goods manufactured or produced, art. 304 had no application. So long as the rate was the same, art. 304 was satisfied. Reference was made to *India Cement & Ors.* v. *State of Andhra Pradesh & Ors.*, [1988] 1 SCC 743, whereas at p. 759 this Court observed that variation of the rate of inter-state sales tax did affect free trade and commerce and created a local preference which was contrary to the scheme of Part XIII of the Constitution. To similar effect are the observations to which Mr. Sanjay Parikh has referred us in *Weston Electronics & Anr.* v. *State of Gujarat & Ors.*, [1988] 2 SCC 568 at 571. Mr. Salve strongly relied on the observations of Justice Cardozo in *C.A.F. Seeling Inc.* v. *Charles H. Baldwin*, 79 L. Ed. 2d 1033 at 1038 where the learned Judge observed while he was dealing with Art. (1) s. 8, clause (3) of the American Constitution which is known as the 'Commerce Clause'—"This part of the Constitution was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several States must sink or swim together and that in the long run prosperity and salvation are in union and not division". This passage has been cited with approval in this Court in *Atiabari's* case (supra) by Gajendragadkar, J. as aforesaid.

We were referred to the observations of *Firm A.T.B. Mehtab Majid & Co.'s* case [1963] 2 Suppl. SCR 435 at 445. It was contended that the acceptance of the petitioner's case would not conflict with the plenary power of the State to grant exemptions under the Act because statutory powers have to yield to constitutional inhibitions and, therefore, article 304(a) & (b) being envisaged to safeguard the economic unity of the country, these must have precedence. It was also contended that the petitions under art. 301 read with 304(a) are clearly maintainable.

Reliance was placed in *Smt. Ujjam Bai* v. *State of U.P.*, [1963] 1 SCR 778 at 851 and *Coffee Board, Bangalore* v. *Joint Commercial Tax Officer, Madras & Anr.*, [1970] 3 SCR 147 at 156. In light of these, it was contended by the petitioners that the petition under art. 32 is clearly maintainable.

The question as we see is, how to harmonise the construction of the several provisions of the Constitution. It is true that if a particular provision being taxing provision or otherwise impedes directly or immediately the free flow of trade within the Union of India then it will be violative of art. 301 of the Constitution. It has further to be borne in mind that art. 301 enjoins that trade, commerce and

intercourse throughout the territory of India shall be free. The first question, therefore, which one has to examine in this case is, whether the sales tax provisions (exemption etc.) in these cases directly and immediately restrict the free flow of trade and commerce within the meaning of art. 301 of the Constitution. We have examined the scheme of art. 301 of the Constitution read with art. 304 and the observations of this Court in *Atiabari's* case (supra), as also the observations made by this Court in *Automobile Transport, Rajasthan's* case (supra). In our opinion, Part XIII of the Constitution cannot be read in isolation. It is part and parcel of a single constitutional instrument envisaging a federal scheme and containing general scheme conferring legislative powers in respect of the matters relating to list II of the 7th Schedule on the State. It also confers plenary powers on States to raise revenue for its purposes and does not require that every legislation of the State must obtain assent of the President. Constitution of India is an organic document. It must be so construed that it lives and adapts itself to the exigencies of the situation, in a growing and evolving society, economically, politically and socially. The meaning of the expressions used there must, therefore, be so interpreted that it attempts to solve the present problem of distribution of power and rights of the different States in the Union of India, and anticipate the future contingencies that might arise in a developing organism. Constitution must be able to comprehend the present at the relevant time and anticipate the future which is natural and necessary corollary for a growing and living organism. That must be part of the constitutional adjudication. Hence, the economic development of States to bring these into equality with all other States and thereby develop the economic unity of India is one of the major commitments or goals of the constitutional aspirations of this land. For working of an orderly society economic equality of all the States is as much vital as economic unity.

The taxes which do not directly or immediately restrict or interfere with trade, commerce and intercourse throughout the territory of India, would therefore be excluded from the ambit of art. 301 of the Constitution. It has to be borne in mind that sales tax has only an indirect effect on trade and commerce.

Reference may be made to the Constitution bench judgment of this Court in *Andhra Sugar Ltd. & Anr.* v. *State of A.P. & Ors.*, [1968] 1 SCR 705 where this Court observed that normally a tax on sale of goods does not directly impede the free movement of transport. See also the observations in *Mudaliar's* case (supra) where at p. 851 it was observed that a tax on sale would not normally offend art. 301. That

A article made no distinction between movement from one part of State to another part of the same State and movement from one State to another. In this connection, reference may also be made to the observations in *Bengal Immunity's* case (supra). Both the preceding cases clearly establish that if a taxing provision in respect of intra-State sale does not offend art. 301, logically it would not affect the freedom of B trade in respect of free flow and movement of goods from one part of the country to the other under art. 301 as well.

It has to be examined whether difference in rates *per se* discriminates so as to come within articles 301 and 304(a) of the Constitution. It is manifest that free flow of trade between two States does not *necessarily or generally* depend upon the rate of tax alone. Many C factors including the cost of goods play an important role in the movement of goods from one State to another. Hence the mere fact that there is a difference in the rate of tax on goods locally manufactured and those imported would not amount to hampering of trade between the two States within the meaning of art. 301 of the Constitution. As in D manifest, art. 304 is an exception to art. 301 of the Constitution. The need or taking resort to exception will arise only if the tax impugned is hit by articles 301 and 303 of the Constitution. If it is not then art. 304 of the Constitution will not come into picture at all. See the observations in *Nataraja Mudaliar's* case (supra) at pp. 843-6 of the report. It has to be borne in mind that there may be differentiations based on E consideration of natural or business factors which are more or less in force in different localities. A State might be allowed to impose a higher rate of tax on a commodity either when it is not consumed at all within the State or if it is felt that the burden falling on consumers within the State, will be more than that and large benefit is derived by the revenue. The imposition of rates of sales tax is influenced by F various political, economic and social factors. Prevalence of differntial rate of tax on sales of the same commodity cannot be regarded in isolation as determinative of the object to discriminate between one State and another. Under the Constitution originally framed revenue from sales tax was reserved for the States.

G In *V. Guruviah Naidu & Sons.* v. *State of Tamil Nadu & Anr.*, [1977] 1 SCR 1065 at 1070 this Court observed as follows:

> "Article 304(a) does not prevent levy of tax on goods; what it prohibits is such levy of tax on goods as would result in discrimination between goods imported from other States H and similar goods manufactured or produced within the

State. The object is to prevent discrimination against imported goods by imposing tax on such goods at a rate higher than that borne by local goods since the difference between the two rates would constitute a tariff wall or fiscal barrier and thus impede the free flow of inter-State trade and commerce. The question as to when the levy of tax would constitute discrimination would depend upon a variety of factors including the rate of tax and the item of goods in respect of the sale of which it is levied. The scheme of items 7(a) and 7(b) of the Second Schedule to the State Act is that in case of raw hides and skins which are purchased locally in the State, the levy of tax would be at the rate of 3 per cent at the point of last purchase in the State. When those locally purchased raw hides and skins are tanned and are sold locally as dressed hides and skins, no levy would be made on such sales as those hides and skins have already been subjected to local tax at the rate of 3 per cent when they were purchased in raw form. As against that, in the case of hides and skins which have been imported from other States in raw form and are thereafter tanned and then sold inside the State as dressed hides and skins, the levy of tax is at the rate of 1-½ per cent at the point of first sale in the State of the dressed hides and skins. This levy cannot be considered to be discriminatory as it takes into account the higher price of dressed hides and skins compared to the price of raw hides and skins. It also further takes note of the fact that no tax under the State Act has been paid in respect of those hides and skins. The Legislature, it seems, calculated the price of hides and skins in dressed condition to be double the price of such hides and skins in raw state. To obviate and prevent any discrimination of differential treatment in the matter of levy of tax, the Legislature therefore prescribed a rate of tax for sale of dressed hides and skins which was half of that levied under item 7(a) in respect of raw hides and skins."

The object is to prevent discrimination against the imported goods by imposing tax on such goods at a rate higher than that borne by local goods. The question as to when the levy of tax would constitute discrimination would depend upon a variety of factors including the rate of tax and the item of goods in respect of the sale on which it is levied. Every differentiation is not discrimination. The word 'discrimination' is not used in art. 14 but is used in articles 16, 303 & 304(a).

When used in art. 304(a), it involves an element of intentional and purposeful differentiation thereby creating economic barrier and involves an element of an unfavourable bias. Discrimination implies an unfair classification. Reference may be made to the observations of this Court in *Kathi Raning Rawat* v. *The State of Saurashtra*, [1952] SCR 435 where Chief Justice Shastri at p. 442 of the report reiterated that all legislative differentiation is not necessarily discriminatory. At p. 448 of the report, Justice Fazal Ali noticed the distinction between 'discrimination without reason' and 'discrimination with reason'. The whole doctrine of classification is based on this and on the well-known fact that the circumstances covering one set of provisions or objects may not necessarily be the same as these covering another set of provisions and objects so that the question of unequal treatment does not arise as between the provisions covered by different sets of circumstances.

Where the general rate applicable to the goods locally made and on those imported from other States is the same nothing more normally and generally is to be shown by the State to dispel the argument of discrimination under art. 304(a), even though the resultant tax amount on imported goods may be different. Here, reference may be made to *Ratan Lal's* case (supra). In the instant writ petition, in the State of U.P. those producers or manufacturers who do not come within the ambit of notifications, have to pay tax on their goods at the general rate described and there is no differentiatiion or discrimination *qua* the imported goods. The question naturally arises whether the power to grant exemption to specified class of manufacturers for a limited period on certain conditions as provided by s. 4A of the U.P. Sales Tax Act is violative of art. 304(a). It was contended by the petitioners that Part XIII of the Constitution was envisaged for preserving the unity of India as an economic unit and, hence, it guarantees free flow of trade and commerce throughout India including between State and State and as such art. 304(a), even though an exception to art. 301, yet applies where an exemption is granted by one State to a special class of manufacturers for a limited period on certain conditions. It was so submitted that either a State should grant exemption to all goods irrespective of the fact that the goods are locally manufactured or imported from other States, else it would be violative of art. 304 and 304(a).

It was submitted by the respondents that this is not the correct position. This argument ignores the basic feature of the Constitution and also the fact that the concept of economic unity may not necessa-

rily be the same as it was at the time of Constitution making. The result of the same would be acceptance of the view that a State which was technically and economically weak in 1950 due to various factors, must always remain the same and cannot be helped to develop economically by granting concessions/exemptions or allowing subsidies etc. for establishing new industries so as to be economically developed. It was also submitted that if all the parts of India i.e. to say all the States are economically strong or developed then only can economic unity as a whole be assured and strengthened. Hence, the concept of economic unity is ever changing with very wide horizons and cannot and should not be imprisoned in a strait-jacket of the concept and notion as advocated by the petitioner. Economic unity of India is one of the constitutional aspirations of India and safeguarding the attainment and maintenance of that unity are objectives of the Indian Constitution. It would be wrong, however, to assume that India as a whole is already an economic unit. Economic unity can only be achieved if all parts of whole of Union of India develop equally, economically. Indeed, in the affidavits of opposition various grounds have been indicated on behalf of the respondents suggesting the need for incentives and exemptions, and these were suggested to be absolutely necessary for economic viability and survival for these industries in these States. These were based on cogent and intelligible reasons of economic encouragement and growth. There was a rationale in these which is discernible. The power to grant exemption is always inherent in all taxing Statutes. If the suggestions/submissions as advanced by the petitioners are accepted, it was averred, and in our opinion rightly, that it will destroy completely or make nugatory the plenary powers of the States. If the exemption is based on natural and business factors and does not involve any intentional bias, the impugned notifications to grant exemption for limited period on certain specific conditions cannot be held to be bad. Judged by that yardstick, the present notifications cannot be held to be violative of the constitutional provisions. An examination of art. 304(a) would reveal that what is being prohibited by this article which is really an exception to art. 301 will not apply if art. 301 does not apply.

In the instant case the general rate applicable to locally made goods is the same as that on imported goods. Even supposing without admitting that sales tax is covered by art. 301 as a tax directly and immediately hampering the free flow of trade, it does not follow that it falls within the exemption of art. 304 and it would be hit by art. 301. Still the general rate of tax which is to be compared under art. 304(a) is at par and the same *qua* the locally made goods and the imported goods.

A Concept of economic barrier must be adopted in a dynamic sense with changing conditions. What constitutes an economic barrier at one point of time often cease to be so at another point of time. It will be wrong to denude the people of the State of the right to grant exemptions which flow from the plenary powers of legislative heads in list II of the 7th Schedule of the Constitution. In a federal polity, all the B States having powers to grant exemption to specified class for limited period, such granting of exemption cannot be held to be contrary to the concept of economic unity. The contents of economic unity by the people of India would necessarily include the power to grant exemption or to reduce the rate of tax in special cases for achieving the industrial development or to provide tax incentives to attain economic equality in growth and development. When all the States have such C provisions to exempt or reduce rates the question of economic war between the States *inter se* or economic disintegration of the country as such does not arise. It is not open to any party to say that this should be done and this should not be done by either one way or the other. It cannot be disputed that it is open to the States to realise tax and D thereafter remit the same or pay back to the local manufacturers in the shape of subsidies and that would neither discriminate nor be hit by art. 304(a) of the Constitution. In this case and as in all constitutional adjudications the substance of the matter has to be looked into to find out whether there is any discrimination in violation of the constitutional mandate.

E

In *Kalyani Stores* v. *The State of Orissa & Ors.*, [1966] 1 SCR 865, Shah, J. (as the learned Chief Justice then was), speaking for himself and on behalf of Chief Justice Gajendragadkar, Wanchoo, J. and Sikri, J. observed that the restriction on the freedom of trade, commerce and intercourse throughout the territory of India declared F by Article 301 of the Constitution cannot be justified unless it falls within Art. 304. Exercise of power under art. 304(a) can be effective only if the tax or duty on goods imported from other States and the tax or duty imposed on similar goods manufactured or produced in that State is such that there is no discrimination. Hidayatullah, J. as the learned Chief Justice then was, observed, at p. 883 of the report, that G art. 304(a) imposes no ban but lifts the ban imposed by articles 301 & 303 subject to one condition. That article is enabling and prospective.

Counsel for the respondents drew out attention to articles 38 & 39 of the Constitution. The striving for the attainment of the objects enshrined in these Articles is enjoined. For achieving these objects the H States have necessarily to devlop themselves economically so as to

secure economic unity and to minimise the inequalities and imbalances between State and State and region and region. If the power to grant exemption has been conferred for achieving these objects on all, it is not possible to assail these as violative of art. 304 as the latter article has to be interpreted in conjunction with others and not in isolation. Reference may be made to the observations of this Cuort in *Bharat General & Textiles Industries Ltd.* v. *State of Maharashtra,* 72 STC 354 where it was held that s. 41 of the Bombay Sales Tax Act, did not contravene articles 14 & 19 of the Constitution of India and the State Govt. could validly classify new units producing edible oil as distinct and separate from other units and validly withdraw the exemption in relation to such units only. It is true that the aforesaid observations were made in the context different from art. 304(a) but basically the concept of equality embodied in articles 304(a) & 16 are the same. Art. 14 enjoins upon the State to treat every person equal before the law while art. 304(a) enjoins upon the State not to discriminate with respect to imposition of tax on imported goods and the locally made goods. The petitioners made reference to several decisions of this Court, namely, *H. Anraj* v. *Government of Tamil Nadu,* [1986] 1 SCC 414; *Indian Cement & Ors.* v. *State of Andhra Pradesh & Ors.,* (supra); *Weston Electroniks* v. *State of Gujarat,* (supra) and *West Bengal Hosiery Assn. & Ors.* v. *State of Bihar & Anr.,* [1988] 4 SCC 134 wherein it has been reiterated that difference in rate of sales tax is hit by articles 301 & 304 but the said conclusions were arrived at in the context of a controversy not in the present form and the question of exemption as such did not arise in these cases, as explained later. These cases were not at all concerned with granting of exemption to a special class for a limited period on specific conditions of maintaining the general rate of tax on the goods manufactured by all those producers in the State who do not fall within the exempted category at par with the rate applicable to imported goods as we have read these cases. Hence, it was not necessary in those decisions to consider the problem in its present aspect. If, however, the said power is exercised in a colourable manner intentionally or purposely to create unfavourable bias by prescribing a general lower rate on locally manufactured goods either in the shape of general exemption to locally manufactured goods or in the shape of lower rate of tax, such an exercise of power can always be struck down by the courts. That is not the situation in the instant cases. The aforesaid decisions, therefore, are not authorities for the general proposition that while, maintaining the general rate at par, special rates for certain industries for a limited period could not be prescribed by the States.

A B C D E F G H

A There was another subsidiary question in these matters as to whether the legislation in the shape of notification is law within the meaning of art. 304 of the Constitution. The phrase used in the opening part of art. 304 should necessarily mean any law enacted either by legislature itself or by its delegate. Here it may be instructive to refer to clause 10 of art. 366 of the Constitution which defines existing law B and even though the word 'Notification' is not to be found, yet in *Kalyani Stores* v. *The State of Orissa & Ors.*, (supra) it has been held that it was an existing law. In *The State of U.P. & Ors.* v. *Babu Ram Upadhya,* [1961] 2 SCR 679 at 702 this Court relied on a passage from Maxwell "On the Interpretation of Statutes" and held that a rule framed in the absence of any specific provision in the Act shall be deemed to be a part of the Act itself. In the *State of Tamil Nadu* v. C *Hind Stone etc.,* [1981] 2 SCR 742 at 757 this Court relied upon the aforesaid dictum in the case of *Babu Ram Upadhya,* (supra) and distinguished the decision in *State of Mysore* v. *H. Sanjeeviah,* [1967] 2 SCR 361 cited on behalf of the petitioner. This Court in *Kailash Nath & Anr.* v. *State of U.P. & Ors.,* AIR 1957 SC 790 at 791 has held that the D notification having been made in accordance with the power conferred by the Statute has statutory force and validity and, therefore, exemption is as if contained in the Act itself. The U.P. Sales Tax Act by s. 24(4) confers rule making powers on the State Government. Section 25 confers powers on the State Government to issue notifications with retrospective effect. Hence, it cannot be disputed that the exemption E notification is the exercise of the legislative power. This Court in *State of U.P. & Ors.* v. *Renusagar Power Co. & Ors.,* [1988] 4 SCC 59 at 100 has held that the power to grant exemption is quasi legislative. In *M/s Narinder Chand Hem Raj & Ors.* v. *Lt. Governor, Administrator, U.T., Himachal Pradesh & Ors.,* [1971] 2 SCC 747 at 751 it was held that the exercise of the power is legislative whether it is by the legisla- F ture or by the delegate.

In respect of the decisions aforesaid relied on behalf of the petitioner, on examination of the observations in *India Cement's* case (supra) to the contrary to which stated hereinbefore on this aspect must be confined to the facts of that case alone as the said decision had G no occasion to consider it in the full light. In the aforesaid view of the matter the challenge in these petitions to the aforesaid exemptions cannot, in our opinion, be upheld. The writ petitions dealing with the U.P. matters on the same contentions, therefore, fail.

Writ petition No. 665/88 being *M/s Video Electronics Pvt. Ltd. &* H *Anr.* v. *State of Punjab & Anr.,* deals with the notification issued by

the Punjab Government whereby two different rates of taxes are provided. By that notification the State Government has differentiated between the manufacturers of electronics goods outside the State and within the State. Under section 5 of the Punjab General Sales Tax Act (hereinafter referred to as 'the Act'), the State of Punjab had been imposing sales tax @ 10% + 2% surcharge on electronics goods sold within the State irrespective of their manufacture. The State Govt. in pursuance of the powers conferred on it u/s 5 of the Act issued the notification date 11.12.1986 stating that the rate of sales tax payable by an electronic manufacturing unit existing in Punjab in cases of electronic goods specified in Annexure-A of the petition within the State will be 1%. Thus the rate of sales tax was brought down from 10% (+ 2% surcharge) to 1% while for similar goods manufactured outside the State and sold within the respondent-State, the rate of sales tax remained 10% (+ 2% surcharge). It was contended that there was differentiation. In support of this contention the petitioners reiterate more or less the same submissions, as indicated before. It is true that there was difference in rate yet there was reason for this differentiation. The State Government in its counter affidavit has stated that a lower rate of tax i.e. to say 1% in the case of new units and 2% in the case of existing units has been levied to boost this industry and to stop the existing industry shifting to neighbouring States. The prevailing peculiar circumstances of Punjab were one of the factors indicated for the same. The lower rate, it was reiterated, was imposed in view of the peculiar circumstances and also to attract new entrepreneurs from other States and from within the State. It was contended that the said notification was issued in public interest in view of the peculiar position; and that while the States of Gujarat and Maharashtra are fully developed States, on the other hand, Punjab is comparatively a backward State in industry. Unless some incentives are given, the industries which have already shifted to other States, will have further deterring effects. Hence, in view of the situation the concessional rate was introduced and was not discriminatory.

As mentioned hereinbefore, reliance was placed mainly on *H. Anraj* v. *Govt. of Tamil Nadu,* (supra) to which one of us was a party. That was a decision dealing with lottery tickets, and dealt with the question whether lottery tickets amounted to movable property so as to be within the purview of the Sale of Goods Act. But in relation to the question relevant to the present purpose it was reiterated that the real question is, whether direct and immediate result of the impugned notification was to impose an unfavourable and discriminatory tax burden on the imported goods (in those cases lottery tickets of other

States) when they are sold within the State of Tamil Nadu as against indigenous goods (Tamil Nadu Government lottery tickets) when these are sold within the State, from the point of view of the purchaser and this question had to be considered from the normal business of commercial point of view. It has to be reiterated that more or less all States used to issue and sell lottery tickets, hence, the lottery tickets from other States were specifically discriminated against in the sense that there was differentiation without any valid or justifiable reason. That would certainly work as deterrent. Trade, commerce and intercourse throughout the territory of India, come within art. 301 of the Constitution. It prevents imposing on goods imported from other States a tax to which similar goods in the State are not subject so as to discriminate between the goods so imported and goods produced locally. In that light the decision in *Anraj's* case has to be understood.

The cases of *India Cement & Ors.* v. *State of Andhra Pradesh & Ors.*, (supra); *Weston Electroniks* v. *State of Gujarat & Ors.*, (supra) and *West Bengal Hosiery Assn. & Ors.* v. *State of Bihar & Anr.*, (supra) were cases where there was a naked blanket preference in favour of locally manufactured goods as against goods coming from outside the State. These cases, as we read these, dealt with a conferment of exemption without any reason or concession in favour of indigenous manufactured goods which was not available in respect of the goods imported into that State. In case, however, of U.P. as well as State of Punjab the provisions which we have examined, proceeded on a different basis. In these cases, it cannot be suggested, in our opinion, that there is discrimination against goods manufactured outside the State. In case of Punjab an overwhelmingly large number of local manufacturers of similar goods are subject to sales tax and, therefore, the general statement that the manufacturers within the State are favoured against the manufacturers outside the State, is incorrect. Under the notifications in case of Punjab, only newly set up units are eligible to claim the benefits thereunder for a limited period of 5 years and that also only if they strictly comply with the terms and conditions set out in the notification.

It has to be reiterated that sales tax laws in all the States provide for exemption. It is well-settled that the different entries in lists I, II and III of the 7th Schedule deal with the fields of legislation, and these should be construed widely, liberally and harmoniously. And these entries have been construed to include ancillary or incidental power. Power to grant exemption is inherent in all taxing legislations. Economic unity is a desired goal, economic equilibrium and prosperity

is also the goal. Development on parity is one of the commitments of the Constitution. Directive principles enshrined in articles 38 & 39 must be harmonised with economic unity as well as economic development of developed and under-developed areas. In that light on art. 14 of the Constitution, it is necessary that the prohibition in art. 301 and the scope of art. 304(a) & (b) should be understood and construed. Constitution is a living organism and the latent meaning of the expressions used can be given effect to only if a particular situation arises. It is not that with changing times the meaning changes but changing times illustrate and illuminate the meaning of the expressions used. The connotation of the expressions used takes its shape and colour in evolving dynamic situations. A backward State or a disturbed State cannot with parity engage in competition with advanced or developed States. Even within a State, there are often backward areas which can be develped only if some special incentives are granted. If the incentives in the form of subsidies or grant are given to any part of units of a State so that it may come out of its limping or infancy to compete as equals with others, that, in our opinion, does not and cannot contravene the spirit and the letter of Part XIII of the Constitution. However, this is permissible only if 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. Judge in this light, despite the sumbissions of Mr. Sanjay Parikh and Mr. Vaidyanathan, we are unable to accept the contentions that the petitioners sought to urge in this application.

The next petition is W.P. No. 1124/88—*Computer Graphics (P) Ltd. & Anr.* v. *Union of India & Ors.*, which challenges the concession given in favour of manufacturers in U.P. and Goa. The same contentions were reiterated for the reasons discussed hereinbefore. We are unable to accept this petition. It may be relevant to refer to *Associated Tanners Vizianagram, A.P.* v. *C.T.O., Vizianagram, Andhra Pradesh & Ors.*, [1986] 1 SCR 969 where it was stated that when a taxing statute was not imposing rates of tax on imported goods different from rates of tax on goods manufactured locally, art. 304 had no application. In case an exemption was granted applying the same rate the resulting tax might be somewhat higher but that did not contravene the equality clause contemplated by art. 304.

In the instant writ petition in view of the terms of the notification impugned and the facts and the circumstances stated in the affidavit of the State Government as well as the intervenors, Goa and Pondicherry, being comparatively under-developed in electronic industry, in

A our opinion, it cannot be said that there was violation of either Part XIII of the Constitution or Article 14 of the Constitution. This application must also, therefore, fail.

Writ petition No. 70/89—*Spartek Ceramics India Ltd.* v. *Union of India & Ors.*, under art. 32 also challenges the notification under
B the Central Sales Tax Act and the U.P. Act as mentioned hereinbefore. In the state of facts as appearing, this petition also fails. We have considered the submissions and the statements made by the intervenors in these matters. Writ Petition No. 761/89—*Weston Electroniks Ltd. & Anr.* v. *State of Punjab & Anr.*, dealing with the notifications issued by the State of Karnataka and writ petition No. 1140/88—*M/s*
C *Survo Udyog Pvt. Ltd. & Anr.* v. *State of Bihar & Anr.*, deal with the same controversy and with similar notification. In view of the averments made which we have examined in detail on behalf of the concerned State Governments in the light of the principles we have reiterated before, we are of the opinion that the notifications impugned cannot be challenged and the petition cannot succeed.
D

We have also considered writ petition No. 1016/88—*M/s Disco Electronics Ltd. & Anr.* v. *State of U.P. & Others*, and in light of the facts and the circumstances and the averments made in the background of the principles reiterated, we are unable to sustain the challenge to the impugned notifications. In these matters we had the advantage of
E having the views of the intervenors and we have considered the submissions made on their behalf.

In the aforesaid light the intervention applications are allowed, submissions considered and the aforesaid writ petitions are dismissed but in the facts and the circumstances of the case, there will be no
F order as to costs.

Y. Lal Petitions dismissed.