

evident that the category of Pump Operators cannot be picked up for hostile discrimination when all other categories with qualification of matriculation and ITI have been granted the pay scale of Rs. 140-300. Accordingly the aforementioned pay scale of Rs. 140-300 deserves to be granted to the petitioners provided they have qualification of two years diploma of ITI with matriculation.

(19) In view of the above, the writ petition is allowed. The petitioners who have qualifications of ITI of two years diploma course with matriculation and have been working on the post of Pump Operators are held entitled to the pay scale of Rs. 140-300 w.e.f. the date they have joined the service. Their pay shall be fixed in the scale of Rs. 140-300 from the aforementioned date but the arrears would be restricted to a period of 38 months preceding the date of filing of the petition which has been filed on 8th August, 1990. We make it clear that those petitioners who do not possess the qualification of two years ITI diploma course and matriculation would not be entitled to the aforementioned relief.

R.N.R.

Before Hemant Gupta & Rajesh Bindal, JJ.

NAND KISHORE & COMPANY,—Petitioner

versus

STATE OF PUNJAB & ANOTHER,—Respondent

C.W.P. No. 46 OF 2008

13th August, 2008

***Constitution of India, 1950—Art. 226, 301 and 304 (a)—
Notifications dated 5th November, 2007 issued by State of Punjab—
Discrimination—Imposition of sales tax on imported sugar from
outside of Punjab—Challenge thereto—Levy of tax on imported
sugar violates Articles 301 and 304 (a) as the same creates
discrimination in levy of tax on sale of sugar brought from outside
State—Petition allowed, notification adding entry 152 in Schedule
'B' to the VAT Act struck down.***

Held, that the action on the part of the respondents in levying sales tax on sale of sugar imported from outside the State of Punjab except levy sugar is clearly violative of Articles 301 and 304(a) of the constitution of India. In fact, up to 5th November, 2007, there was no discrimination as such in the levy of tax on the sugar manufactured in the State of Punjab or imported from outside the State of Punjab as single entry No. 49 existed in Schedule 'A' to the VAT providing for tax free goods. The levy of discriminatory tax came into force with the issuance of impugned notifications, whereby entry 49 in Schedule 'A' was substituted, thereby providing for no tax on the sale of sugar manufactured in the State of Punjab and entry 152 was added in Schedule 'B' providing for tax on the sale of sugar imported from outside the State of Punjab. From a plain reading of the two notifications, dated 5th November, 2007, it is clearly made out that discriminatory tax was imposed on the imported sugar as against the sugar manufactured in the State of Punjab, which cannot stand scrutiny in the light of the provisions contained in Articles 301 and 304(a) of the Constitution of India.

(Para 25)

Further held, that we have no hesitation in striking down notification No. S.O. 53/P.A.8/2005/S.8/2007, dated 5th November, 2007 (Annexure P-2) adding entry 152 in Schedule 'B' to the VAT Act, whereby tax is sought to be levied on sale of sugar imported from outside the State of Punjab. As a necessary consequence and to correct the mischief created with the issuance of notification No. S.O.52/P.A.8/2005/S.8/2007, dated 5th November, 2007 (Annexure P-1), we further hold that the words 'manufactured in the State of Punjab' used in entry 49 in Schedule 'A' as substituted,—*vide* notification (Annexure P-1) to be violative of Articles 301 and 304(a) of the Constitution of India, as the same creates discrimination in the levy of tax on the sale of sugar brought from outside the State as against manufactured within the State of Punjab.

(Para 26)

K. L. Goyal and Mr. Sandeep Goyal, Advocates, *for the petitioner.*

P. K. Jain, Additional Advocate General, Punjab *for the respondents.*

RAJESH BINDAL, J.

(1) This order will dispose of the bunch of 37 writ petitions bearing Nos. 46, 53, 54, 55, 59, 67, 68, 69, 70, 85, 88, 124, 125, 126, 127, 128, 135, 139, 140, 142, 146, 153, 155, 159, 160, 161, 165, 184, 215, 219, 220, 555, 602, 603, 1130, 1457 and 1458 of 2008.

(2) The facts are extracted from C.W.P. No. 46 of 2008.

(3) The challenge in the bunch of petitions is to notification No. S.O.52/P.A.8/2005/S.8/2007, dated 5th November, 2007 (Annexure P-1), issued by the Department of Excise and Taxation, Punjab carrying out amendment in Schedule 'A', whereby entry "49" has been substituted and notification No. S.O.53/P.A.8/2005/S.8/2007, dated 5th November, 2007 (Annexure P-2), whereby new entry "152" has been added in Schedule 'B' to the Punjab Value Added Tax Act, 2005 (for short, 'the VAT Act').

(4) Briefly, the facts are that the petitioner is a proprietary concern carrying on the business of purchase and sale of sugar and allied goods. He is registered under the provisions of the VAT Act. The controversy giving rise to the cause of action to the petitioner to file the present petition arose with the issuance of the impugned notification by the respondents on 5th November, 2007, whereby entry 49 in Schedule 'A' was substituted and new entry 152 in Schedule 'B' was added. In some and substance, the effect of the entries was that the sugar which was imported from outside the State of Punjab except levy sugar was leviable to tax under the Act, whereas the sugar manufactured in the State of Punjab was exempted from taxation.

(5) Learned counsel for the petitioner submitted that Article 301 of the Constitution provides that trade, commerce and intercourse throughout the territory of India shall be free. It is only the Parliament which has been authorised in law to impose restrictions on the freedom of trade, commerce or intercourse between one State and another, as may be required in public interest, in terms of Article 302 of the Constitution of India. Article 303 of the Constitution provides that neither the Parliament nor the Legislature of a State shall have any 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 of the Lists in the Seventh Schedule. Notwithstanding anything contained in Articles 301 or 303 of the Constitution of India, the State Legislature is authorised to impose on goods imported from other State or the Union Territory any tax to which similar goods manufactured or produced in that State are subject. However, there cannot be any discrimination regarding taxation between the goods so imported and goods so manufactured or so produced. The submission is that effect of impugned notifications is that tax at the rate of 4% has been levied only on the sugar imported from outside the State of Punjab, whereas the sugar which is manufactured in the State of Punjab is not subjected to any tax, as the same has been put in Schedule 'A' containing tax free goods. Concluding the arguments, learned counsel submitted that the impugned notifications are clearly violative of the constitutional mandate contained in Part XIII of the Constitution of India and are liable to be set aside. Reliance has been placed upon **Firm A.T.B. Mehtab Majid and Co. versus State of Madras and another (1) State of Madhya Pradesh & another versus Bhailal Bhai and others (2) A. Hajee Abdul Shukoor and Co. versus The State of Madras, (3) West Bengal Hosiery Association and others versus State of Bihar and another, (4) Weston Electronics and another versus State of Gujarat and another (5), State of Uttar Pradesh and another versus M/s Laxmi Paper Mart and others (6), and Shree Mahavir Oil Mills and another versus State of Jammu and Kashmir and others (7).**

(6) Defending the impugned notifications issued by the State, learned Additional Advocate General submitted that the impugned notifications are in no way unreasonable or illegal. The discrimination in taxation on the imported sugar, as is sought to be pointed out by the

-
- (1) AIR 1963 S.C. 928
 - (2) AIR 1964 S.C. 1006
 - (3) AIR 1964 S.C. 1729
 - (4) AIR 1988 S.C. 1814
 - (5) AIR 1988 S.C. 2038
 - (6) AIR 1997 S.C. 950
 - (7) (1997) 104 STC 148

petitioner is not there as in the case of sugar manufactured in the State of Punjab, the sugarcane used in the manufacture thereof is already taxed. As the State of Punjab gets tax on the sugarcane, the sugar was made tax free, whereas in the case of imported sugar, the State would get tax on the sale of sugar in the State. The action on the part of the State will not hamper free flow of trade and commerce at the boundaries of the State or at any other points inside the State and is not hit by Article 301 of the Constitution of India. It is further submitted that a similar tax has been levied under the Punjab Tax on Entry of Goods into Local Area Act, 2000 (for short, 'the Entry Tax Act'),—*vide* notification, dated 15th November, 2007 and as the petitioner is not aggrieved against the notification issued under the Entry Tax Act, it cannot possibly have any grievance against the notifications issued under the VAT Act.

(7) In response to the contention of learned counsel for the State regarding non-challenge to the notification issued under the Entry Tax Act, learned counsel for the petitioner submitted that Entry Tax Act itself is under challenge in a number of petitions filed by various parties before this Court and in any case, non-challenge to a notification under a different statute cannot be considered as a bar on the right of the petitioner to challenge a notifications issued under the VAT Act.

(8) Heard learned counsel for the parties and perused the paper book.

(9) To appreciate the contentions raised by learned counsel for the parties, it would be necessary to extract relevant provisions of the Constitution of India and also the VAT ACT. The same are extracted below :

“Articles 301 and 304 of the Constitution of India.

301. Freedom of trade, commerce and intercourse.—Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.

....

.....

.....

304. Restrictions on trade, commerce of 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.

.....

Section 16 of the VAT Act

16. Tax-Free Goods

No tax shall be payable on the sale of goods specified in Schedule A and no person including a taxable person or a registered person shall charge tax on the sale of goods which are declared tax-free goods under this section.”

(10) The entry in Schedule ‘A’, as existing upto 5th November, 2007, is reproduced below :

“ SCHEDULE ‘A’

(upto 5th November, 2007)

S.No. Name of Commodities

49 Sugar and Khandsari”

(11) After the amendment,—*vide* notification, dated 5th November, 2007, entry 49 in Schedule ‘A’ is reproduced below :

“ SCHEDULE ‘A’

S.No. Name of Commodities

49 Sugar manufactured in the State of Punjab, levy sugar and Khandsari

(12) On the same date, entry 152 was added in Schedule ‘B’ providing for levy of tax at the rate of 4%, which is as under :

“ SCHEDULE ‘B’

S.No. Name of Commodities

152 Sugar imported from outside the State of Punjab except levy sugar.”

(13) Article 301 of the Constitution of India provides that trade, commerce and intercourse throughout India shall be free. However, the same is subject to other provisions of Part XIII of the Constitution of India. Hon’ble the Supreme Court considered the import of Article 301 of the Constitution of India in a Constitution Bench judgment in **Atiabari Tea Co. Ltd. versus State of Assam**, (8) and in **Automobile Transport (Rajasthan) Ltd. versus State of Rajasthan**, (9). In **Atiabari Tea Co. Ltd.’s** case (*supra*), Hon’ble the Supreme Court opined as under :

“.....Thus considered we think it would be reasonable and proper to hold that restrictions freedom from which is guaranteed by Art. 301, 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.....
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

(8) AIR 1961 S.C. 232

(9) AIR 1962 S.C. 1406

the impugned restriction operates directly or immediately on trade or its movement ?.....

.....Our conclusion therefore is that when Art. 301 provides that trade shall be free throughout the territory of India it means that the flow of trade shall run smooth and unhampered by any restriction either at the boundaries of the States or at any other points inside the States themselves. It is the free movement or the transport of goods from one part of the country to the other that is intended to be saved, and if any Act imposes any direct restrictions on every movement of such goods it attracts the provisions of Art. 301, and its validity can be sustained only if it satisfies the requirements of Art. 302 or Art. 304 of Part XIII.....”

(14) Considering an issue where Rule 16 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939 providing for levy of discriminatory tax on tanned hides or skins imported from outside the State as against those manufactured within the State, a Constitution Bench of Hon’ble the Supreme Court in **Firm A.T.B. Mehtab Majid and Co.’s** case (*super*) opined as under :

“It is therefore now well settled 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 regulatory measures. Sales tax, of the kind under consideration here, cannot be said to be a measure regulating any trade or a compensatory tax levied for the use of trading facilities. Sales tax, which has the effect of discrimination between goods of one state and goods of another may affect the free flow of trade and it will then offend against Art. 301 and will be valid only if it comes within the terms of Art. 304(a).

Article 304(a) enables the Legislature of a State to make laws affecting trade, commerce and intercourse. It enables the imposition of taxes on goods from other States if similar goods in the State are subjected to similar taxes, so as not to discriminate between the goods manufactured or produced

in that State and the goods which are imported from other States. This means that if the effect of the sales-tax on tanned hides or skins imported from outside is that the latter becomes subject to a higher tax by the application of the proviso to sub-r. (2) or R. 16 of the Rules, then the tax is discriminatory and unconstitutional and must be struck down.

We do not agree with the contentions for the respondents. The contention that Art. 304(a) is attracted only when the impost is at the border, i.e., when the goods enter the State on crossing the border of the State, is not sound. Art. 304(a) allows the Legislature of a State to impose taxes on goods imported from other States and does not support the contention that the imposition must be at the point of entry only.

.....

It is urged for the respondent State that to consider discrimination between the imported goods and goods produced or manufactured in the State, circumstances and situations at the taxable point must be similar and that the circumstance of hides or skins tanned within the State and on which tax had been paid earlier at the time of their purchase in the raw condition is sufficient to consider such hides or skins to be different from the hides or skins which had been tanned outside the State. We do not consider that the mere circumstance of a tax having been paid on the sale of such hides or skins in their raw condition justifies their forming goods of a different kind from the tanned hides or skins which had been imported from outside. At the time of sale of those hides or skins in the tanned state, there was no difference between them as goods and the hides or skins tanned outside the State as goods. The similarity contemplated by Art. 304(a) is in the nature of the quality and kind of the goods and not with respect to whether they were subject of a tax already or not.

We are therefore of opinion that the provisions of R. 16(2) discriminate against the imported hides or skins which had been purchased or tanned outside the State and that therefore they contravene the provisions of Art. 304(a) of the Constitution.”

(15) Another Constitution Bench of Hon’ble the Supreme Court in **State of Madhya Pradesh and another versus Bhailal Bhai** (*supra*) considered the issue, whereby discriminatory tax was imposed on tobacco imported from outside the State as against the tobacco grown within the State. Relevant paragraph thereof is extracted below :

“There can therefore be no escape from the conclusion that similar goods manufactured or produced in the State of Madhya Bharat have not been subjected to the tax which tobacco leaves, manufactured tobacco and tobacco used for Bidi manufacturing, imported from other States have to pay on sale by the importer. This tax is therefore not within the saving provisions of Art. 304(a). As already pointed out it contravenes the provisions of Art. 301 of the Constitution. The tax, has therefore been rightly held by the High Court to be invalid. It is clear that the assessment of tax under these notifications was thus invalid in law.”

(16) To the similar effect is another Constitution Bench judgment in **A. Hajee Abdul Shukoor and Co.’s case** (*supra*).

(17) In **Weston Electronics and another versus State of Gujara and another** (*supra*), again the issue for consideration before Hon’ble the Supreme Court was regarding levy of discriminatory tax on electronic goods which were imported from outside the State as against the goods manufactured within the State. The discriminatory tax was sought to be defended by the State on the plea that the same was meant to provide incentive for encouraging local manufacturing unit. However, such a plea was not accepted by Hon’ble the Supreme Court. While accepting the plea set up by the appellant before the Supreme Court, the notification providing for lower rate or tax on the sale of goods manufactured within the State was struck down.

(18) In **The Indian Cement versus State of Andhra Pradesh** (10), Hon'ble the Supreme Court observed as under :

“Variation of the rate of inter-State sales tax does affect free trade and commerce and creates a local preference which is contrary to the scheme of Part XIII of the Constitution.”

(19) The issue again came up for consideration before Hon'ble the Supreme Court in **West Bengal Hosiery Association's case** (*supra*), where the goods manufactured outside the State of Bihar and sold in the State of Bihar were subjected to levy of sales tax at the rate of 5%, whereas the sales of similar goods manufactured in the State of Bihar were exempted from tax. Considering the law on the subject, Hon'ble the Supreme Court opined that from a commercial or normal point of view, such a discriminatory levy of sale tax is bound to affect free flow of hosiery goods from outside States into the State of Bihar and would, therefore, amount to hampering the free flow of trade and commerce, hence, violative of Article 301 of the Constitution of India.

(20) In **Shree Mahavir Oil Mill's case** (*supra*), Hon'ble the Supreme Court, considering a similar issue, opined that though clause (a) of article 304 of the Constitution of India is worded in a positive language but as a negative aspect. It is, in truth, a provision prohibiting discrimination against the imported goods. It provides that levy of tax on both imported as well as locally manufactured goods ought to be at the same rate so that artificial fiscal barriers are not created. Relevant passage therefrom is extracted below :

“.....Article 304 contains two clauses. Clause (a) states that “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.” The wording of this clause is of crucial significance. The first half of the clause would make it appear at first flush that it merely states the obvious : one may indeed say that

the power to levy tax on goods imported from other States or Union territories flows from article 246 read with Lists II and III in the Seventh Schedule and not from this clause. That is of course so, but then there is a meaning and a very significant principle underlying the clause, if one reads it in its entirety. The idea was not really to empower the State Legislatures to levy tax on goods imported from other States and Union territories-that they are already empowered by other provisions in the Constitution-but to declare that power shall not be so exercised as to discriminate against the imported goods *vis-a-vis* locally manufactured goods. The clause, though worded in positive language has a negative aspect. It is, in truth, a provision prohibiting discrimination against the imported goods. *In the matter of levy of tax-* and this is important to bear in mind-the clause tells the State Legislature "tax you may the goods imported from other States/Union Territories but do not, in that process, discriminate against them *vis-a-vis* goods manufactured locally". In short, the clause says : levy of tax on both ought to be at the same rate. This was and is a ringing declaration against the States creating what may be called-at or along their boundaries in the interest of freedom of trade, commerce and intercourse throughout the territory of India, granted by article 301. As we shall presently point out, this clause does not prevent in any manner the States from encouraging or promoting the local industries in such manner as they think fit so long as they do not use the weapon of taxation to discriminate against the imported goods *vis-a-vis* the locally manufactured goods. To repeat, the clause bars the State from creating tax barriers- or fiscal barriers, as they can be called- around themselves and/or insulate themselves from the remaining territories of India by erecting such "tariff walls". Part XIII is premised upon the assumption that so long as a State taxes its residents and the residents of other States uniformly, there is no infringement of the freedom guaranteed by article 301; no State would tax its people at a higher level merely with a view to tax the

people of other States at that level. And it is this clause which has a crucial bearing on this case..... The freedom guaranteed, it is worthy of notice, is “*throughout the territory of India*” and not merely between the State as such; the emphasis is upon the oneness of the territory of India. Part XIII starts with this concept of oneness but then it provides exceptions to that rule, as stated above, to meet certain emerging situations. As a matter of fact, it can well be said that clause (a) of article 304 is non really an exception to article 301, notwithstanding the non obstante clause in article 304 and that it is but a restatement of a facet of the very free freedom guaranteed by article 301, viz., power of taxation by the States.”

(21) Summing up the enunciation of law on the subject, in the above referred case, Hon’ble the Supreme Court while declaring the impugned notification to be violative of the provisions of Articles 301 and 304-A of the Constitution of India, directed that the appellant therein shall not be entitled to claim any refund of the amount already paid.

(22) In **State of Uttar Pradesh and another versus M/s Laxmi Paper Mart and others** (*supra*), Hon’ble the Supreme Court, while following its earlier judgment in **Firm A. T. M. Mehtab and Co.’s case** (*supra*), struck down levy of discriminatory tax on the exercise books prepared from the paper purchased within the State and exercise books imported from outside the State.

(23) In a recent decision, a Constitution Bench of Hon’ble the Supreme Court in **Jindal Stainless Ltd. and another versus State of Haryana and others** (11), while considering the concept of “compensatory tax” *vis-a-vis* Part XIII of the Constitution of India, examined the scope of Articles 301, 302 and 304 of the Constitution of India. The relevant paragraphs thereof are extracted below :

“Article 301 states that subject to the other provisions or Part XIII, trade, commerce and intercourse throughout India shall be free. It is not freedom from all laws but freedom

from such laws which restrict or affect activities of trade and commerce amongst the States. Although Article 301 is positively worded, in effect, it is negative as freedom correspondingly creates general limitation on all legislative power to ensure that trade, commerce and intercourse throughout India shall be free. Article 301, therefore, refers to freedom from laws which go beyond regulations which burdens, restricts or prevents the trade movement between States and also within the State. Since "freedom." correspondingly imposes "limitation", we have the doctrine of "direct and immediate effect" of the operation of the impugned law on the freedom of trade and commerce in Article 301 as enunciated in *Atiabari Tea Co.*

Article 301 is, therefore, not only an authorisation to enact laws for the protection and encouragement of trade and commerce amongst the States but by its own force creates an area of trade free from interference by the State and therefore, Article 301 per se constitutes limitation on the power of the State. Article 301 is however, subject to the other provisions of Articles 302, 303 and 304. It states that subject to other provisions of Part XIII, trade, commerce and intercourse throughout India shall be free.

Article 301 is binding upon the Union Legislature and the State Legislatures, but Parliament can get rid of the limitation imposed by Article 301 by enacting a law under Article 302. Similarly, a law made by the State Legislature in compliance with the conditions imposed by Article 304 shall not be hit by Article 301. Article 301 thus provides for freedom of inter-State as well as intra-State trade and commerce subject to other provisions of Part XIII and correspondingly it imposes a general limitation on the legislative powers, which limitation is relaxed under the following circumstances :

- (a) Limitation is relaxed in favour of Parliament under Article 302, in which case Parliament can impose

restrictions in public interest. Although the fetter is limited enabling Parliament to impose by law restrictions on the freedom of trade in public interest under Article 302, nonetheless, it is clarified in clause (1) of Article 302, Parliament is not authorised even in public interest, in the making of any law, to give preference to one State over another. However, the said clarification is subject to one exception and that too only in favour of Parliament, where discrimination or preference is admissible to Parliament in making of laws in case of scarcity. This is provided in clause (2) of Article 303.

- (b) As regards the State Legislatures, apart from the limitation imposed by Article 301, clause (1) of Articles 303 imposes additional limitation, namely, that it must not give preference or make discrimination between one State or another in exercise of its powers relating to trade and commerce under Entry 26 of List II or List III. However, this limitation on the State Legislatures is lifted in two cases, namely, it may impose on goods imported from sister State(s) or Union Territories any tax to which similar goods manufactured in the State [see clause (a) of Article 304]. In other words, clause (a) of Article 304 authorises a State Legislature to impose a non-discriminatory tax on goods imported from sister State(s), even though it interferes with the freedom of trade and commerce guaranteed by Article 301. Secondly, the ban under Article 303(1) shall stand lifted even if discriminatory restrictions are imposed by the State Legislature provided they fulfil the following three conditions, namely, that such restrictions shall be in public interest; they shall be reasonable; and lastly, they shall be subject to the procurement of prior sanction of the President before introduction of the Bill.”

(24) What has been held in the above noted judgments of Hon'ble the Supreme Court is that Article 304 of the Constitution of India authorises the State Legislature to levy tax on goods imported from other States or Union Territories, but levy of such tax should not discriminate between the goods so imported and similar goods manufactured or produced within the State. Clause(a) of Article 304 of the Constitution of India though worded in a positive language has a negative aspect. It is, in truth, a provision prohibiting discrimination against the imported goods *vis-a-vis* the goods manufactured or produced within the State. The basic object of the provision is to check the State from creating what may be called "tax barriers" or "fiscal barriers" with the object to ensure enjoyment of right guaranteed under Article 301 of the Constitution of India to the freedom of trade, commerce and intercourse throughout the territory of India. The object is to emphasis upon oneness of the territory of India.

(25) If the facts of the present case are considered in the light of the enunciation of law consistently laid down by Hon'ble the Supreme Court, the inescapable conclusion is that the action on the part of the respondents in levying sales tax on sale of sugar imported from outside the State of Punjab except levy sugar is clearly violative of Article 301 and 304(a) of the Constitution of India. In fact, upto 5th November, 2007, there was no discrimination as such in the levy of tax on the sugar manufactured in the State of Punjab or imported from outside the State of Punjab as single entry No. 49 existed in Schedule 'A' to the VAT Act providing for tax free goods. The levy of discriminatory tax came into force with the issuance of impugned notifications, whereby entry 49 in Schedule 'A' was substituted, thereby providing for no tax on the sale of sugar manufactured in the State of Punjab and entry 152 was added in Schedule 'B' providing for tax on the sale of sugar imported from outside the State of Punjab. From a plain reading of the two notifications, it is clearly made out that discriminatory tax was imposed on the imported sugar as against the sugar manufactured in the State of Punjab, which cannot stand scrutiny in the light of the provisions contained in Articles 301 and 304(a) of the Constitution of India.

(26) Accordingly, we have no hesitation in striking down notification No. S.O. 53/P.A. 8/2005/S.8/2007, dated 5th November,

2007 (Annexure P-2) adding entry 152 in Schedule 'B' to the VAT Act, whereby tax is sought to be levied on sale of sugar imported from outside the State of Punjab. As a necessary consequence and to correct the mischief created with the issuance of notification No. S.O.52/P.A. 8/2005/S.8/2007, dated 5th November, 2007 (Annexure P-1), we further hold that the words "manufactured in the State of Punjab" used in entry 49 in Schedule 'A' as substituted,—*vide* notification (Annexure P-1), to be violative of Articles 301 and 304(a) of the Constitution of India, as the same creates discrimination in the levy of tax on the sale of sugar brought from outside the State as against manufactured within the State of Punjab.

(27) The writ petitions are disposed of in the manner indicated above.

R.N.R

Before Satish Kumar Mittal, J.

GURCHARAN RAM,—Plaintiff/Appellant

versus

**TEJWANT SINGH (DEAD) THROUGH L.Rs & ANOTHER, —
Defendant/Respondents**

R.S.A. No. 3312 of 1984

21st January, 2008

Code of Civil Procedure, 1908—Dispute between brothers—Family settlement—Defendants in actual possession of portion of house which fell to their respective share—Courts below ignoring evidence available on record—Courts below drawing a totally wrong and perverse conclusion from evidence available on record resulting into grave injustice to plaintiff—Courts below finding that family settlement was not acted upon either during life time of father or even after his death—Two brothers already taking possession of portion of their respective share in house—No reason for plaintiff to give consent for sanctioning of mutation with regard to agricultural land in favour of all three brothers—Findings of Courts below set aside & suit filed by plaintiff decreed.