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Analysing developments impacting business

REFUND OF ENTRY TAX ONCE LAW IS STRUCK DOWN: FOOD FOR THOUGHT

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The constitutional validity of levy of Entry Tax has been a matter of constant hue and cry amongst the trade. A nine-member bench of the Hon'ble Supreme Court in the case of *Jindal Stainless Steel v. State of Haryana*¹ *inter alia* held that only entry tax laws which are discriminatory in nature are to be declared unconstitutional and the question of entry tax laws being discriminatory or not were left to be decided by the respective High Courts.

Pursuant to such decision, the West Bengal Finance Act, 2017 (Amending Act) was notified which retrospectively amended the West Bengal Tax on Entry of Goods into Local Areas Act, 2012 (WB Entry Tax Act) to eliminate the clauses leading to discrimination. Recently, a three-Member bench of the Hon'ble West Bengal Taxation Tribunal (WBTT) in the case of *Tata Steel Ltd. v. State of West Bengal*² vide order dated 25 March 2022, *inter alia* observed that the legislative competency of the state to amend the WB Entry Tax Act has been obliterated, and therefore, held that the entry tax amendments introduced with retrospective effects and the validation of the WB Entry Tax Act through the Amending Act is ultra vires and unconstitutional.

Presently, the writ appeal on constitutional validity of WB Entry Tax Act is pending before the Hon'ble Division Bench of Calcutta High Court in *State of West Bengal v. Tata Steel Limited*³. Such decision of the WBTT may act as a pacifier to the trade amidst the hullabaloo of challenge to entry tax levy. It transpires that *de hors* the Amending Act, the WB Entry Tax Act may have no leg to stand as discrimination between inter and intra state movement would become palpable, a fact also acknowledged in the *Statement of Objects and Reasons* of the bill draft Act leading to the enactment of the Amendment Act.

Given that the aforementioned decision of the WBTT is also amenable to challenge, it would be naive to say that issue is anywhere close to attaining finality. Be that as it may, the WBTT Order is premised on sound reasoning and waiting for the matter to attain finality may be too late in the day for the entry taxpayers (including those who availed the benefit of settlement under the West Bengal Sales Tax (Settlement of Dispute) Act, 1999 (**SOD Scheme**)) to evaluate and strategize the way forward for securing their claim for refund in this volatile situation. Therefore, there is a need for

¹ Civil Appeal No. 3453/2002

² Case No. RN-08 of 2018

³ M.A.T. 1107 of 2013

businesses to assess their position by taking into consideration the following relevant questions:

- If entry tax law is held to be unconstitutional, can refund be claimed under Article 265 of the Constitution of India?
- Will refund of entry tax paid flow automatically once such law is struck down? How can refund of entry tax be claimed once the law is held to be ultra-vires?
- Was the burden of such entry tax paid passed on the buyers? Is there any unjust enrichment?
- How can one establish that the burden of entry tax payment was not passed on?
- Even if burden was passed on, can refund still be claimed?
- Whether levy under entry tax was challenged on its constitutionality earlier and ruling was passed against the taxpayer?
- Can such challenge be revisited and reopened if the entry tax law was later held to be unconstitutional in another taxpayer's petition?
- If the challenge was later withdrawn, can it be argued that such challenge did not attain finality, and hence can refund be claimed?
- Will such refund claim be barred by limitation? What is the starting point of limitation?
- Has any payment been made under the SOD Scheme? What are the various hurdles to claim refund of entry tax paid under the SOD Scheme?

The recent decision of WBTT has put music to the ears of the trade and hopefully, the Hon'ble Division Bench of the Calcutta High Court will follow suit and dismiss the writ appeal declaring the WB Entry Tax Act as unconstitutional, thereby, putting an end to the confusion and bringing a much-needed relief to the trade and commerce. Suffice it to say that war of refund for taxpayers who paid the entry tax has not even begun.

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