

## West Bengal Entry Tax Act:

A Legal Saga of Constitutional Challenges, Amendments and Taxpayer Strain

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The West Bengal Tax on Entry of Goods into Local Areas Act, 2012 (Act) was introduced to boost the state's revenue. Since its inception, the Act has been the focal point of significant legal debate and judicial scrutiny. Back in 2013, the Ld. Single Judge of the Hon'ble Calcutta High Court<sup>1</sup> had struck down the Act as unconstitutional for being violative of Article 301 and 304(b) of the Indian Constitution. However, the Hon'ble Supreme Court in "*Jindal Stainless Steel Vs. State of Haryana*"<sup>2</sup> overturned the five decades old compensatory tax theory, leaving room for challenge mainly on the ground of discrimination. In response to these decisions, the state government of West Bengal made retrospective amendments to the Entry Tax Law in 2017<sup>3</sup> (2017 Amendments) seeking to address concerns regarding discrimination.

A further challenge by the assesseees to these retrospective amendments was also sustained by the West Bengal Taxation Tribunal on the ground of lack of legislative competence of the State who legislate on the subject of entry tax in view of obliteration of Entry 52 by the 101<sup>st</sup> Constitutional Amendment Act, 2016<sup>4</sup>.

The tables have turned once again with the latest judgment dated 30 January 2025<sup>5</sup> from the Division Bench of the Hon'ble Calcutta High Court overturning the order of the Ld. Single Judge of the Hon'ble Calcutta High Court and the decision of the West Bengal Taxation Tribunal while upholding the 2017 Amendments as valid and non-discriminatory. Interestingly the Hon'ble Division Bench has also permitted individual assessee to raise contention of discrimination, if any, before the appropriate forum in accordance with law, if so advised. The findings of the Hon'ble Division Bench create a fair bit of uncertainty on the way forward for an assessee who had not already availed the various amnesty schemes notified by the state government of West Bengal from time to time.

The terrain in so far as the contest with respect to the entry tax is concerned, has only got difficult with some of the key arguments, such as: (a) absence of source of power to legislate, (b) levy of entry tax on imports which was infringing upon the subject specifically reserved for the centre etc. got annulled in the subsequent decisions of the Hon'ble Supreme Court.<sup>6</sup> Therefore, assessee will have to quickly recalibrate the strategy and think of the legal options available to them vis-à-vis the potential entry tax liability staring at them with a penal rate of 24% per annum.

- Arvind Baheti (Executive Director) and Khushi Kedia (Associate)

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<sup>1</sup> vide "*Tata Steel Ltd. & Anr. V State of West Bengal & Ors*" W.P No. 11407 (W) OF 2012 and "*Bharti Airtel Ltd. v the state of West Bengal*" W.P No. 464 OF 2012

<sup>2</sup> 2016-TIOL-187-SC-MISC-CB

<sup>3</sup> Vide the West Bengal Finance Act, 2017 notified vide Notification No. 256L dated 06.03.2017 and Notification No. 457-F. T dated 07.03.2017

<sup>4</sup> For more information on this, please refer to "[Ergo Update 2022 WB Entry Tax WB Tax Tribunal](#)"

<sup>5</sup> *State of West Bengal & Ors. v PepsiCo India Holdings Private Limited & Ors.* (2025 SCC OnLine Cal 884)

<sup>6</sup> Vide the Judgement "*State of Telangana v Tirumala Constructions*" (2024) 121 GSTR 10 (SC) and "*State of Kerala and Ors. v Fr. William Fernandez and Ors.*" (2018) 57 GSTR 6 (SC)

*Khaitan and Co. Team Arvind Baheti and Rahul Dhanuka appeared on behalf of M/s Emami Agrotech in the proceeding before the Calcutta High Court.*

*KCO has exercised due caution in the preparation and publication of the Ergo so as not to compromise sensitive details in the interest of confidentiality.*



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