

REPORTABLEIN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTIONCIVIL APPEAL No. 3453 of 2002

Jindal Stainless Ltd. & Anr.

... Appellants

versus

State of Haryana & Ors

... Respondents

with **S.L.P. (C) Nos.** 10003 of 2004, 10007 of 2004, 10129 of 2004, 10133 of 2004, 10134 of 2004, 10153 of 2004, 10154 of 2004, 10156 of 2004, 10161 of 2004, 10164 of 2004, 10167 of 2004, 10206 of 2004, 10207 of 2004, 10232 of 2004, 10366 of 2004, 10381 of 2004, 10382 of 2004, 10384 of 2004, 10385 of 2004, 10391 of 2004, 10402 of 2004, 10403 of 2004, 10404 of 2004, 10407 of 2004, 10417 of 2004, 10449 of 2004, 10493 of 2004, 10495 of 2004, 10497 of 2004, 10501 of 2004, 10505 of 2004, 10539 of 2004, 10557 of 2004, 10563 of 2004, 10566 of 2004, 10567 of 2004, 10568 of 2004, 10569 of 2004, 10571 of 2004, 10694 of 2007, 10704 of 2004, 10706 of 2004, 10708 of 2004, 10736 of 2004, 10906 of 2004, 10907 of 2004, 10908 of 2004, 10909 of 2004, 10910 of 2004, 10923 of 2004, 10929 of 2004, 10977 of 2004, 1101 of 2007, 11012 of 2004, 11266 of 2004, 11271 of 2004, 11274 of 2004, 11320 of 2004, 11326 of 2004, 11328 of 2004, 11329 of 2004, 11370 of 2004, 12424-12425 of 2008, 1288 of 2007, 12959 of 2007, **Transferred Case (C) No. 13** of 2004, **S.L.P. (C) Nos.** 13327 of 2008, 13806 of 2007, 13889 of 2008, 14070 of 2007, 14232-14252 of 2008, 14380 of 2005, 14454-14778 of 2008, 14819 of 2007, 14820 of 2007, 14821 of 2007, 14823 of 2007, 14824 of 2007, 14826 of 2007, 14828 of 2007, 14829 of 2007, 14830 of 2007, 14832 of 2007, **S.L.P. (C) Nos.** 14833 of 2007, 14835 of 2007, 14837 of 2007, 14838 of 2007, 14839 of 2007, 14841 of 2007, 14842 of 2007, 14845 of 2007, 14846 of 2007, 14847 of 2007, 15082-15085 of 2007, 15161 of 2008, 15164 of

2008, 15179 of 2008,CC 15314/2008, 15405 of 2008, 15540 of 2008, 15628 of 2008, 15629 of 2008, 15630 of 2008, 15631 of 2008, 15632 of 2008, 15633 of 2008, 15643 of 2008, 15647 of 2008, 15652 of 2008, 15653 of 2008, 15655 of 2008, 15656 of 2008, 15657 of 2008, 15659 of 2008, 15660 of 2008, 15807 of 2007, 15934 of 2008, 16351 of 2007, 16664 of 2008, 16667 of 2008, 16689 of 2008, 16733 of 2008, 16754 of 2008, 16772 of 2008, 16832 of 2008, 16865 of 2008, 16885 of 2008, 16926 of 2008, 16930 of 2008, 17192 of 2008, 17193 of 2008, 17203 of 2008, 17204 of 2008, 17233 of 2008, 17267 of 2008, 17269 of 2008, 17271 of 2008, 17272 of 2008, 17274 of 2008, 17276 of 2008, 17277 of 2008, 17279 of 2008, 17280 of 2008, 17282 of 2008, 17367 of 2008, 17368 of 2008, 17369 of 2008, 17370 of 2008, 17372 of 2008, 17373 of 2008, 17374 of 2008, 17375 of 2008, 17376 of 2008, 17377 of 2008, 17589 of 2007, 17590 of 2007, 17892 of 2008, 17905 of 2007, 17906 of 2007, 17907 of 2007, 17908 of 2007, 17909 of 2007, 17910 of 2007, 17911 of 2007, 17913 of 2007, 17914 of 2007, 17915 of 2007, 17916 of 2007, 17917 of 2007, 17918 of 2007, 17919 of 2007, 17920 of 2007, 17921 of 2007, 17922 of 2007, 17923 of 2007, 17924 of 2007, 17925 of 2007, 17926 of 2007, 17929 of 2007, 17930 of 2007, 17933 of 2007, 17934 of 2007, 17936 of 2007, 17937 of 2007, 17938 of 2007, 17939 of 2007, 17941 of 2007, 17942 of 2007, 17943 of 2007, 17944 of 2007, 17957 of 2007, 17959 of 2007, 17960 of 2007, 17961 of 2007, 17962 of 2007, 17963 of 2007, 17964 of 2007, 17965 of 2007, 17972 of 2007, 17973 of 2007, 17974 of 2007, 17975 of 2007, 17976 of 2007, 17977 of 2007, 17978 of 2007, 17979 of 2007, 17980 of 2007, **S.L.P. (C) Nos.** 17981 of 2007, 17982 of 2007, 17983 of 2007, 17984 of 2007, 18036 of 2007, 18037 of 2007, 18038 of 2007, 18039 of 2007, 18040 of 2007, 18040 of 2008, 18041 of 2007, 18042 of 2007, 18043 of 2007, 18044 of 2007, 18045 of 2007, 18046 of 2007, 18047 of 2007, 18048 of 2007, 18049 of 2007, 18050 of 2007, 18051 of 2007, 18053 of 2007, 18054 of 2007, 18055 of 2007, 18056 of 2007, 18057 of 2007, 18058 of 2007, 18059 of 2007, 18061 of 2007, 18062 of 2007, 18063 of 2007, 18064 of

2007, 18065 of 2007, 18066 of 2007, 18067 of 2007, 18068 of 2007, 18069 of 2007, 18073 of 2007, 18074 of 2007, 18075 of 2007, 18076 of 2007, 18077 of 2007, 18078 of 2007, 18079 of 2007, 18080 of 2007, 18081 of 2007, 18082 of 2007, 18083 of 2007, 18084 of 2007, 18085 of 2007, 18086 of 2007, 18087 of 2007, 18088 of 2007, 18089 of 2007, 18090 of 2007, 18091 of 2007, 18092 of 2007, 18344 of 2008, 18346 of 2008, 18354 of 2008, 18360-18364 of 2008, 18379 of 2008, 18405 of 2008, 18532 of 2008, 18684-18714 of 2008, 18857 of 2008, 18865 of 2008, 19030 of 2008, 19049 of 2007, 19049 of 2008, 19050 of 2007, 19051 of 2007, 19052 of 2007, 19053 of 2007, 19055 of 2007, 19057 of 2007, 19059 of 2007, 19060 of 2007, 19062 of 2007, 19064 of 2007, 19066 of 2007, 19068 of 2007, 19070 of 2007, 19071 of 2007, 19072 of 2007, 19073 of 2007, 19074 of 2007, 19076 of 2007, 19077 of 2007, 19094 of 2007, 19095 of 2007, 19096 of 2007, 19099 of 2007, 19100 of 2007, 19101 of 2007, 19102 of 2007, 19103 of 2007, 19104 of 2007, 19105 of 2007, 19106 of 2007, 19107 of 2007, 19108 of 2007, 19110 of 2007, 19111 of 2007, 19113 of 2007, 19114 of 2007, 19141 of 2008, 19505 of 2007, 19506 of 2007, 19507 of 2007, 19508 of 2007, 19510 of 2007, 19511 of 2007, 19512 of 2007, 19513 of 2007, 19514 of 2007, 19515 of 2007, 19516 of 2007, 19518 of 2007, 19521 of 2007, 19522 of 2007, 19523-19528 of 2007, 19529 of 2007, 19530 of 2007, **S.L.P. (C) Nos.** 19531 of 2007, 19543-19547 of 2007, 19847 of 2008, 19849 of 2008, 19867 of 2008, 19986 of 2008, 20089 of 2008, 20165 of 2008, 20527 of 2007, 20529 of 2007, 20559 of 2007, 20766 of 2008, 20795 of 2008, 21107 of 2008, 21404 of 2007, 21635 of 2007, 21819 of 2008, 21841 of 2007, 21843 of 2007, 21844 of 2007, 21845 of 2007, 21846 of 2007, 21847 of 2007, 21848 of 2007, 21849 of 2007, 21851 of 2007, 21855 of 2007, 21864 of 2007, 21866 of 2007, 21867 of 2007, 21871-21904 of 2007, 21905 of 2007, 21907 of 2007, 21908 of 2007, 21909 of 2007, 21910 of 2007, 22081 of 2008, 22083 of 2008, 22084 of 2008, 22086 of 2008, **Writ Petition (C) No.** 221 of 2004, **S.L.P. (C) Nos.** 22293 of 2009, 22295 of 2009, 22302 of 2009, 22303 of 2009, 22304 of 2009, 22306 of 2009,

22307 of 2009, 22308 of 2009, 22100-22101 of 2008, 22425 of 2009, 22428 of 2009, 22707 of 2008, 22735 of 2008, 22931 of 2008, 22947 of 2007, 22958 of 2007, 23075 of 2008, 23270 of 2008, 23277 of 2008, 23609 of 2008, 23623 of 2008, 24934-25066 of 2007, **Civil Appeal Nos.** 2769 of 2000, 2608 of 2003, 2637 of 2003, **S.L.P. (C) Nos.** 26377 of 2008, 26543 of 2008, 26593 of 2008, 26813 of 2008, 27442-27444 of 2008, ...CC 2867/2009, 29194 of 2008, 29196 of 2008, 29763 of 2008, 29764 of 2008, 30276 of 2008, **Civil Appeal Nos.** 3144 of 2004, 3145 of 2004, 3146 of 2004, **S.L.P.(C) Nos.** 3230 of 2008, 3231 of 2008, 3233 of 2008, 3234 of 2008, 3236 of 2008, 3237 of 2008, 3238-3262 of 2008, 3276 of 2009, **Civil Appeal Nos.** 3314 of 2001, 3381-3400 of 1998, 3454 of 2002, 3455 of 2002, 3456-3459 of 2002, 3460 of 2002, 3461 of 2002, 3462-3463 of 2002, 3464 of 2002, 3465 of 2002, 3466 of 2002, 3467 of 2002, 3468 of 2002, 3469 of 2002, 3470 of 2002, 3471 of 2002, 3592 of 1998, 4008 of 2002, 4471 of 2000, 4476 of 2000, 4651 of 1998, 4715 of 2008, **S.L.P. (C) No.** 4720 of 2009, **Civil Appeal Nos.** 4953 of 2004, 4954 of 2004, 5041-5042 of 2008, **Writ Petition (C) No.** 512 of 2003, **Civil Appeal Nos.** 5139 of 2004, 5141 of 2004, 5142 of 2004, 5143 of 2004, 5144 of 2004, 5145 of 2004, 5147 of 2004, 5148 of 2004, 5149 of 2004, 5150 of 2004, 5151 of 2004, 5152 of 2004, 5153 of 2004, 5154 of 2004, 5155 of 2004, 5156 of 2004, 5157 of 2004, 5158 of 2004, 5159 of 2004, 5160 of 2004, 5162 of 2004, 5163 of 2004, 5164 of 2004, 5165 of 2004, 5166 of 2004, 5167 of 2004, 5168 of 2004, 5169 of 2004, 5170 of 2004, 5385 of 2002, 5407 of 2008, 5408 of 2008, **Writ Petition (C) No.** 574 of 2003, **Civil Appeal Nos.** 5740 of 2002, 5858 of 2002, **S.L.P. (C) Nos.** 6148-6152 of 2008, **Civil Appeal Nos.** 6331 of 2003, 6383-6421 of 1997, 6422-6435 of 1997, 6436 of 1997, 6437-6440 of 1997, **Writ Petition (C) No.** 66 of 2004, **S.L.P. (C) Nos.** 6831 of 2008, 6914 of 2007, 742 of 2008, 746 of 2008, 747 of 2008, **Civil Appeal No.** 7658 of 2004, 7914 of 2008, **S.L.P. (C) Nos.** 8053-8077 of 2008, 8199 of 2008, 8204 of 2008, **Civil Appeal Nos.** 918 of 1999, 8241 of 2003, 8242 of 2003, 8243 of 2003, 8244 of 2003, 8245 of 2003, 8246 of 2003, 8247 of

2003, 8248 of 2003, 8249 of 2003, 8250 of 2003, 8251 of 2003, 8252 of 2003, **S.L.P. (C) Nos.** 9054 of 2007, 9479 of 2004, 9496 of 2004, 9548 of 2009, 10279 of 2009, 16183 of 2009, 9569 of 2004, 9832 of 2004, 9883 of 2004, 9885 of 2004, 9891 of 2004, 9893 of 2004, 9898 of 2004, 9899 of 2004, 9901 of 2004, 9904 of 2004, 9910 of 2004, 9911 of 2004, 9912 of 2004, 9950 of 2004, 9964 of 2004, **Civil Appeal Nos.** 997-998 of 2004, **S.L.P. (C) Nos.** 9976 of 2004, 9989 of 2004, 9991 of 2004, 9993 of 2004, 9998 of 2004, 9999 of 2004, 22309 of 2009, 22310 of 2009, 22311 of 2009, 22312 of 2009, 22313 of 2009, 22316 of 2009, 22317 of 2009, 22318 of 2009, 22320 of 2009, 22321 of 2009, 22322 of 2009, 22323 of 2009, 22324 of 2009, 22325 of 2009, 19695 of 2009, 23227 of 2009, 16757-16760 of 2009, 22408 of 2009, 24149 of 2009, 25399-25400 of 2009, 25474 of 2009, **S.L.P. (C) Nos.** 25467 of 2009, 25157 of 2009, 25390 of 2009, 25470 of 2009, 17722/2009, 25753 of 2009, 28509 of 2009, 25797 of 2009, 26116 of 2009, 26236 of 2009, 13270-13274 of 2009, 30847 of 2009, 27883 of 2009, 29597 of 2009, 28775 of 2009, 33672 of 2009, 31410 of 2009, 31411 of 2009, 31412 of 2009, 35585 of 2009, 35740 of 2009, 36196 of 2009, 36219 of 2009, 36271 of 2009, 35742 of 2009, 35743-35746 of 2009, 35747 of 2009, 35749 of 2009, 35750 of 2009, 35751 of 2009, 35752 of 2009, 35753 of 2009, 35754 of 2009, 35755 of 2009, 35756 of 2009, 35757 of 2009, 245 of 2010, 247 of 2010, 248 of 2010, 1876 of 2010, 2459 of 2010, **Civil Appeal Nos.** 1956 of 2003, 2633 of 2003, 2638 of 2003, 3720-3722 of 2003, **S.L.P. (C) Nos.** 30534-30540 of 2008, 14828 of 2008, 14829 of 2008, 14875 of 2008, 15273 of 2008, 15274 of 2008, 15047 of 2008, 15324 of 2008, 15325 of 2008, 15326 of 2008, 15327 of 2008, 15328 of 2008, 15090 of 2008, 15253 of 2008, 15286-15287 of 2008, 15288-15289 of 2008, 15329 of 2008, 15330 of 2008, 15331 of 2008, 15335 of 2008, 15337 of 2008, 22342 of 2008, 25378 of 2008, 26571 of 2008, 25498 of 2008, 26572 of 2008, 9227 of 2008, 30533 of 2008, 30542 of 2008, 27606 of 2008, 26972 of 2008, 29561-29570 of 2008, 27927 of 2008, 5495 of 2009, 5371 of 2009, 5376 of 2009, 5381 of 2009, 5383 of 2009, 5384 of 2009, 5393 of 2009,

5395 of 2009, 5396 of 2009, 5399 of 2009, 5401 of 2009, 5403 of 2009, 5405 of 2009, 5406 of 2009, 5408 of 2009, 5409 of 2009, 5410 of 2009, 5411 of 2009, 5412 of 2009, 5413 of 2009, 5414 of 2009, 5420 of 2009, 5421 of 2009, 5422 of 2009, 5424 of 2009, 5493-5494 of 2009, 5426 of 2009, 5883 of 2009, 6254 of 2009, 6669 of 2009, 6670 of 2009, 6675 of 2009, 6676 of 2009, 6678 of 2009, 6679 of 2009, 6680 of 2009, 6782 of 2009, 6785 of 2009, 6788 of 2009, 6791 of 2009, 6794 of 2009, 6796 of 2009, 6800 of 2009, 6820 of 2009, 6833 of 2009, 6898 of 2009, **S.L.P. (C) Nos.** 6953 of 2009, 7345 of 2009, 6682 of 2009, 6683 of 2009, 6684 of 2009, 6685 of 2009, 6686 of 2009, 6687 of 2009, 6688 of 2009, 6689 of 2009, 6690 of 2009, 6692 of 2009, 6693 of 2009, 6694 of 2009, 6698 of 2009, 6699 of 2009, 6696 of 2009, 6700 of 2009, 6701 of 2009, 6702 of 2009, 6703 of 2009, 6704 of 2009, 6705 of 2009, 6708 of 2009, 6709 of 2009, 6710 of 2009, 6711 of 2009, 6712 of 2009, 6713 of 2009, 6714-6715 of 2009, 10040 of 2009, 10041 of 2009, 10042 of 2009, 10045 of 2009, 10047 of 2009, 10048 of 2009, 10049 of 2009, 10050 of 2009, 10051 of 2009, 10053-10054 of 2009, 23383 of 2008, 8244 of 2009, 7344 of 2009, 7350 of 2009, 12948 of 2009, 26813 of 2008, 11042 of 2009, 13496 of 2009, 10952 of 2009, 10954-10956 of 2009,CC 5143/2009,CC 5311/2009,CC 5803/2009, 10192 of 2009, 9699 of 2009, 11603-11611 of 2009, 11646 of 2009, 11122 of 2009, 20192 of 2008, 22195 of 2008, 14323 of 2009, 13611-13612 of 2009, 14163 of 2009, 13483 of 2009, 14545 of 2009, 17865 of 2008, 15356 of 2008, 15357 of 2008, 15369 of 2008, 15491 of 2008, 15492 of 2008, 15493 of 2008, 15495 of 2008, 15496 of 2008, 15498 of 2008, 15551 of 2008, 15579 of 2008, 15618 of 2008, 15623 of 2008, 5636 of 2008, 15666 of 2008, 15684 of 2008, 15700 of 2008, 15711 of 2008, 15845 of 2008, 16888-16898 of 2009, 14623 of 2009, 17332-17333 of 2009, 17394-17396 of 2009, 17488 of 2009, 17490 of 2009, 17491 of 2009, 17492-17498 of 2009, 14856 of 2009, 16253 of 2009, 14429 of 2009, 14484 of 2009, 14488 of 2009, 15723 of 2009, 16789 of 2009, 14949 of 2009, 16784 of 2009, 17731 of 2009, 17744 of 2009, 26750 of

2008, 28583 of 2009, 30746-30845 of 2009, 33663-33665 of 2009, 35587 of 2009, 36193 of 2009, 15078 of 2008, 15605 of 2008, 15742 of 2008, 15819 of 2008, 16837 of 2008, 16841 of 2008, 18034 of 2008, 18035 of 2008, 17187 of 2008, 17408 of 2008, 18001 of 2008, 18030 of 2008, **S.L.P. (C) Nos.** 18066-18067 of 2008, 34253 of 2009, 34859 of 2009, 18582 of 2008, 18850 of 2008, 18870 of 2008, 18871 of 2008, 19019 of 2008, 19026 of 2008, 19120 of 2008, 19372 of 2008, 19421 of 2008, 19425 of 2008, 19460 of 2008, 19470 of 2008, 19714 of 2008, 19722 of 2008, 19731 of 2008, 19737 of 2008, 19802 of 2008, 19873 of 2008, 19876 of 2008, 20068 of 2008, 21117-21125 of 2008, 21127 of 2008, 21506 of 2008, 21509 of 2008, 21510 of 2008, 19227 of 2009, 1820 of 2010,CC 886 of 2010,CC 1082 of 2010, 4387 of 2010, 4388 of 2010, 4389 of 2010, 4390 of 2010, 23990 of 2009, 24430 of 2009, 24822 of 2009, 26509 of 2009, 28696 of 2009, 29868 of 2009, 30383 of 2009, 35038 of 2009, 33176 of 2009, 5308 of 2010, 3387 of 2010, 4511 of 2010, 5309 of 2010, 4572 of 2010, 4362 of 2010, 104 of 2010, **Writ Petition (C) Nos.** 11 of 2010, 42 of 2010, 43 of 2010, 44 of 2010, 46 of 2010, 48 of 2010, 63 of 2010, 71 of 2010, **S.L.P. (C) Nos.** 11281 of 2004, 6037 of 2010, 5151 of 2010, 6723 of 2010, 6770 of 2010, 6762 of 2010, 6763 of 2010, 6765 of 2010, 6772 of 2010, 4102 of 2010, 12739 of 2009, 4720 of 2010, 6811 of 2010, 7021-7022 of 2010, 7356 of 2010, 7426 of 2010 and 7776 of 2010.

ORDER

On 18th December, 2008, when some of the cases in the present batch came for hearing before a Division Bench of this Court to which one of us, Kapadia, J., was a party, the Division Bench of this Court found that some of the High Courts before which the State Entry Tax stood challenged

had taken the view that clause (a) and clause (b) of Article 304 of the Constitution of India are independent of each other and that if the impugned law stood saved under Article 304(a) then it need not be tested with reference to clause (b) for determining its validity. Accordingly, on that date, the Division Bench of this Court referred to the Constitution Bench 10 questions, the most important of which being – whether the State enactments relating to levy of entry tax have to be tested with reference to both Article 304(a) and Article 304(b) of the Constitution and whether Article 304(a) is conjunctive with or separate from Article 304(b)? Consequently, the matter stood referred to the Constitution Bench of this Court.

Accordingly, on 16th March, 2010, the entire batch of cases came for hearing before the Constitution Bench in which the lead matter is *Jindal Stainless Ltd. & Anr. v. State of Haryana & Ors.*. When the hearing commenced before the Constitution Bench, we found that the assesseees (original petitioners in the High Courts) are heavily relying upon the tests propounded by a 5-Judge Bench of this Court in ***Atiabari Tea Co. Ltd. v. The State of Assam and Ors.***, (1961) 1 SCR 809, which tests subject to the clarification, stood reiterated in the subsequent judgment delivered by a larger Bench of this Court in the case of ***The Automobile Transport (Rajasthan) Ltd. v. The State of Rajasthan and Ors.***, (1963) 1 SCR 491. In fact, it may be stated that the Constitution Bench of this Court delivered the judgment in *Atiabari Tea Co. Ltd. (supra)* on 26th September, 1960. Soon

thereafter, on 4th April, 1961, after hearing arguments in full, a 5-Judge Bench of this Court came to the conclusion that the matter needs to be referred to a larger Bench. In the circumstances, a 7-Judge Bench of this Court decided the matter in Automobile Transport (Rajasthan) Ltd. (supra) on 9th April, 1962 reiterating the tests laid down in Atiabari's case (supra) subject to one clarification.

The question, therefore, which we need to answer, in the first instance, before going into the validity of each of the State Laws impugned before us is – Whether after 49 years, this Court should revisit the tests propounded in the earlier decisions in the case of Atiabari Tea Co. Ltd. and Automobile Transport (Rajasthan) Ltd. (supra)? At this stage, it may be mentioned that the States whose Entry Tax Laws have been challenged have contended before us that the tests propounded in Atiabari Tea Co. Ltd. and Automobile Transport (Rajasthan) Ltd. (supra) have failed to strike a balance between the “freedom of trade and commerce” under Article 301 of the Constitution and the States’ authority to levy taxes under Articles 245 and 246 of the Constitution read with the appropriate Legislative Entries in the Seventh Schedule to the Constitution of India. The states, therefore, sought revisiting of the aforesaid two decisions in Atiabari Tea Co. Ltd. and Automobile Transport (Rajasthan) Ltd. (supra) by a larger Bench.

In **Keshav Mills Co. Ltd. v. Commissioner of Income-tax, Bombay North**, (1965) 2 SCR 908 at p. 921, a Constitution Bench of this Court enacted circumstances in which a reference to the larger Bench would lie. It was held that in revisiting and revising its earlier decision, this Court should ask itself whether in the interest of the public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revised? Whether on the earlier occasion, did some patent aspects of the question remain unnoticed, or was the attention of the Court not drawn to any relevant and material statutory provision, or was any previous decision bearing on the point not noticed? What was the impact of the error in the previous decision on public good? Has the earlier decision been followed on subsequent occasions either by this Court or by the High Courts? And, would the reversal of the earlier decision lead to public inconvenience, hardship or mischief? According to the judgment in Keshav Mills case these and other relevant considerations must be born in mind whenever this Court is called upon to exercise its jurisdiction to review and revisit its earlier decisions. Of course, in Keshav Mills case a caution was sounded to the effect that frequent exercise of this Court of its power to revisit its earlier decisions may incidentally tend to make the law uncertain and introduce confusion which must be avoided. But, that is not to say that if on a subsequent occasion, the Court is satisfied that its earlier decision was clearly erroneous, it should hesitate to correct the error. In conclusion, in Keshav Mills case, this Court observed that it is not possible to lay down any

principles which should govern the approach of the Court in dealing with the question of revisiting its earlier decision. It would ultimately depend upon several relevant considerations.

In the case of **Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra and Anr.**, (2005) 2 SCC 673, a Constitution Bench of this Court observed that, in case of doubt, a smaller Bench can invite attention of Chief Justice and request for the matter being placed for hearing before a Bench larger than the one whose decision is being doubted.

Applying the tests laid down in the aforesaid two cases, i.e., Keshav Mills Co. Ltd. and Central Board of Dawoodi Bohra Community (supra), we find that on number of aspects a larger Bench of this Court needs to revisit the interpretation of Part XIII of the Constitution including the various tests propounded in the judgments of the Constitution Bench of this Court in the aforesaid two cases, namely, Atiabari Tea Co. and Automobile Transport (Rajasthan) Ltd. (supra). Some of these aspects which need consideration by larger Bench of this Court may be briefly enumerated. Interplay/interrelationship between Article 304(a) and Article 304(b). The significance of the word “and” between Article 304(a) and 304(b). The significance of the *non obstante* clause in Article 304. The balancing of freedom of trade and commerce in Article 301 vis-à-vis the States’ authority to levy taxes under Article 245 and Article 246 of the Constitution read with

the appropriate legislative Entries in the Seventh Schedule, particularly in the context of movement of trade and commerce. Whether Article 304(a) and Article 304(b) deal with different subjects? Whether the impugned taxation law to be valid under Article 304(a) must also fulfil the conditions mentioned in Article 304(b), including Presidential assent? Whether the word “restrictions” in Article 302 and in Article 304(b) includes tax laws? Whether validity of a law impugned as violative of Article 301 should be judged only in the light of the test of non-discrimination? Does Article 303 circumscribe Article 301? Whether “internal goods” would come under Article 304(b) and “external goods” under Article 304(a)? Whether “*per se* test” propounded in *Atiabari’s* case (*supra*) should or should not be rejected? Whether tax simpliciter constitutes a restriction under Part XIII of the Constitution? Whether the word “restriction” in Article 304(b) includes tax laws? Is taxation justiciable? Whether the “working test” laid down in *Atiabari* makes a tax law *per se* violative of Article 301? Inter-relationship between Article 19(1)(g) and Article 301 of the Constitution? These are some of the questions which warrant reconsideration of the judgments in *Atiabari Tea Co. Ltd* and *Automobile Transport (Rajasthan) Ltd.* (*supra*) by a larger Bench of this Court.

In conclusion, we may also mention that though the judgments in *Atiabari Tea Co. Ltd.* and *Automobile Transport (Rajasthan) Ltd.* (*supra*) came to be delivered 49 years ago, a doubt was expressed about the tests laid down in those two judgments even in the year 1975 in the case of **G.K.**

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by Mathew, J., vide para 27, which reads as under:

“Whether the restrictions visualized by Article 304(b) would include the levy of a non-discriminatory tax is a matter on which there is scope for difference of opinion. Article 304(a) prohibits only imposition of a discriminatory tax. It is not clear from the article that a tax simpliciter can be treated as a restriction on the freedom of internal trade. Article 304(a) is intended to prevent discrimination against imported goods by imposing on them tax at a higher rate than that borne by goods produced in the State. A discriminatory tax against outside goods is not a tax simpliciter but is a barrier to trade and commerce. Article 304 itself makes a distinction between tax and restriction. That apart, taxing powers of the Union and States are separate and mutually exclusive. It is rather strange that power to tax given to States, say, for instance, under Entry 54 of List II to pass a law imposing tax on sale of goods should depend upon the goodwill of the Union Executive.”
(emphasis supplied)

For the aforesaid reasons, let this batch of cases be put before Hon’ble Chief Justice of India for constituting a suitable larger Bench for reconsideration of the judgments of this Court in Atiabari Tea Co. and Automobile Transport (Rajasthan) Ltd. (supra).

.....J.
(S.H. Kapadia)

.....J.
(Altamas Kabir)

.....J.
(B. Sudershan Reddy)

.....J.
(P. Sathasivam)

.....J.
(Surinder Singh Nijjar)

New Delhi;
April 16, 2010

