

# Atiabari Tea Co Ltd vs State of Assam & Ors – Case Analysis

**Appellant:** Atiabari Tea Co

**Respondent:** State of Assam & Ors

**Case No.:**

**Citation:** AIR 1961 SC 232 : 1961 1 SCR 809

**Prepared By:**

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## Introduction

Part- XIII- Trade, commerce and intercourse within the territory of India

This part of the constitution contains section 301 to section 307. Section 301 guarantees freedom of trade, commerce and intercourse subject to the other provisions of this Part. As there is a subsection clause in this article, this freedom is not absolute. To know the limits and scope of this freedom we have to read the whole part in total and not just individually Art. 301. This is why the Drafting Committee, later decided that it would be better to assemble all the articles dealing with trade, commerce and intercourse in one part and set them out seriatim, so that it would be possible to know at one glance, what were the provisions with regard to the freedom of trade and commerce throughout the India<sup>[1]</sup>. This is why Art. 301 was not included in the part of fundamental rights of the constitution. As said by Dr. B. R. Ambedkar, as discussed in

the constituent assembly debates, the provisions contained in this part it is not the intention to make trade and commerce absolutely free, that is to say, deprive both Parliament as well as the States of any power to depart from the fundamental provision that trade and commerce shall be free throughout India. The freedom of trade and commerce has been made subject to certain limitations which may be imposed by Parliament or which may be imposed by the Legislatures of various States, subject to the fact that the limitation contained in the power of Parliament to invade the freedom of trade and commerce is confined to cases arising from scarcity of goods in any part of the territory of India and in the case of, the States it must be justified on the ground of public interest<sup>[2]</sup>.

In this connection it has got to be remembered that before the commencement of the Constitution about two-third of India was directly under British rule and was called 'British India' and the remaining about one third was being directly ruled by the Princes and was known as 'Native States'. There were a large number of them with varying degrees of sovereignty vested in them. Those rulers had, broadly speaking, the trappings of a Sovereign State with power to impose taxes and to regulate the flow of trade, commerce and intercourse. It is a notorious fact that many of them had erected trade barriers seriously impeding the free flow of trade, commerce and intercourse, not only shutting out but also shutting in commodities meant for mass consumption. Between the years 1947 and 1950 almost all the Indian States entered into managements with the Government of India and ultimately merged their individualities into India as one political unit, with the result that what was called British India, broadly speaking, became under the Constitution, Part A States, and subject to certain exceptions not relevant to our purpose, the native States became Part B States. We also know that before the Constitution introduced the categories of Part A States, Part B States and Part C States (excluding Part D relating to other territories), Part B States themselves, before their being

constituted into so many units, contained many small States, which formed themselves into Unions of number of States, and had such trade barriers and customs posts, even inter se. But even after the merger, the Constitution had to take notice of the existence of trade barriers and therefore had to make transitional provisions with the ultimate objective of abolishing them all. Most of those Native States, big or small, had their own taxes, cases, tolls and others imposts and duties meant not only for raising revenue, but also as trade barriers and tariff walls. It was in the back ground of these factors and circumstances that the Constitution by Art. 301 provided for the abolition of all those trade barriers and tariff walls. When for the first time in the history of India the entire territory within the geographical boundaries of India, minus what became Pakistan, was knit into one political unit, it was necessary to abolish all those trade barriers and custom posts in the interest of national solidarity, economic and cultural unity as also of freedom of trade, commerce intercourse. [3]

#### Brief facts of the case, Atiabari Tea Co. v. State of Assam-

The state came up with an Act, Assam Taxation (on Goods Carried by Roads or Inland Waterways) Act, 1954, imposing taxes on goods carried by road or inland waterways in the state of Assam. The appellants moved to the high court praying for a writ of mandamus or any other writ restraining the respondents from taking any steps under the provisions of this Act.

#### Issues of the case-

1. The Act, rules and the notifications under the Act were ultra vires the Constitution, because the Act was repugnant to the provisions of Art. 301 of the

Constitution as the tax on carriage of tea through the State of Assam had the effect of interfering with the freedom of trade, commerce and intercourse.

2. Tea being a controlled industry under the provisions of the Tea Act XXIX of 1953, the Union Government alone had the power to regulate the manufacture, production, distribution or transport of tea and the jurisdiction of the Assam legislature was thus completely ousted.
3. The tax under the Act was nothing but a duty of excise, in substance, though not in form, and was thus an encroachment on the Central legislative field within the meaning of entry 84 of the Union List.

The main issue is the issue no.1 on which we will be discussing mainly.

#### Arguments advanced:-

For issue 1-

Appellants— The impugned Act imposed fetters on the free flow of trade and commerce in respect of tea and jute, the two commodities dealt with by the Act and, therefore, contravened the provisions of Art. 301 of the Constitution.

Respondents— That taxation simpliciter was not within the terms of Art. 301. Taxation as such is not a restriction within the meaning of Part XIII. It is an attribute of sovereignty, which is not justiciable. The power to tax is a peculiar legislative function with which the courts are not directly concerned and that, therefore, the freedom contemplated by Art. 301 do not mean freedom from taxation and that taxation is not included within the connotation of the terms. "Restriction" in the context of Part XIII meant legislation which had the effect of impeding the free flow of goods and traffics by erection of tariff walls, for example, a tariff wall, if erected by a legislature, may be justiciable,

but not legislation simply imposing a tax for purposes of revenue. He further contended that Part XII of the Constitution is a self contained part dealing with finance etc., even as Part XIII is a self contained part dealing with trade, commerce and intercourse within the territory of India. According to the respondents' contention, "freedom" in Part XIII meant freedom from discriminatory taxation and freedom from trade barriers.

It has been contended on behalf of the appellants that trade, commerce and intercourse throughout India, shall be free from everything including taxation. On the other hand, the contention on behalf of the Union Government and the State Government is that the freedom envisaged by Art. 301 does not include immunity from taxation and that freedom means that there shall be no trade barriers or tariff walls shutting out commodities, traffic and intercourse between individuals, and no shutting in.

For issue 2-

Appellants- The legislation was beyond the legislative competence of the Assam Legislature and was not authorized by entry 56 in List II and that the tea industry was a controlled industry as declared by Parliament and directly came under entry 52 of List I.

Judgment- Entry 56, in its very terms, "Taxes on goods and passengers carried by rail or in inland waterways", completely covers the impugned Act. There is no occasion in this case to take recourse to the doctrine of pith and substance, in as much as the Act is a simple piece of taxing statute meant to tax transport of goods, in this case jute and tea, by road or on inland waterways.

For issue 3-

Appellants- It was colorable piece of legislation which, in its true effect, was a levy of a duty of excise which could only be done by the Union Legislature.

Judgment- There is no substance in this contention for the simple reason that so long as jute or tea is not sought to be transported from one place to another, within the State or outside the State, no tax is sought to be levied by the Act. It is only when those goods are put on a motor truck or a boat or a steamer or other modes of transport contemplated by the Act, that the occasion for the payment of tax arises.

The Legislature has chosen the dealer or the producer as the convenient agency for collection of the tax imposed by s. 3, but the occasion for the imposition of the tax is not the production or the dealing, but the transport of those goods. It must, therefore, be held that the Act does what it sets out to do, namely to impose a tax on goods carried by road or on inland waterways.

### **Judgment**

In that view, the Assam Taxation (on Goods carried by Roads or Inland Waters) Act, 1954, must be regarded as an infringement in the guarantee of freedom of trade and commerce under Art. 301, because the Bill moved in the Assembly had not received the assent of the President as required under Art. 304(b) proviso and the Act has not been validated by the assent of the President under Art. 255(c).

In view of the majority judgment, the appeals and the writ petitions are allowed with costs – one set of hearing fees.

### **Analysis**

The case was not in support of the State, that is, the SC

didn't uphold the Act, only because it didn't fulfill the proviso of Art. 304(b) and Art. 255(c) which required the sanction of the president before the bill is moved in the Legislature of a State. Otherwise the nature of the tax was neither discriminatory nor unreasonable, as mentioned by the majority of the judges, to invalidate the Act.

In this case, it was held that taxes are not restrictions on the freedom of trade, commerce and intercourse; rather they help in the smooth running of the economy and of the trade, commerce of the country.

But this judgment was reversed, or rather we can say rectified, in the case of Automobile Transport Ltd.[\[4\]](#), where it is said that the nature of the tax which is not a restriction on the freedom of trade and commerce and is reasonable should be regulatory and compensatory taxes only. Other than this any other tax is a barrier to the freedom of trade, commerce and intercourse.

[\[1\]](#) CA Debates, Vol IX- pg. 1130

[\[2\]](#) CA Debates, Vol IX- pg. 1130

[\[3\]](#) Atiabari Tea Co. v. State of Assam (AIR 1961 SC 232)

[\[4\]](#) AIR 1962 SC 1406