

In re. The Bill to Amend Section 20 of the Sea Customs Act, 1878, and Section 3 of the Central Excises and Salt Act, 1944

Special Reference No. 1 of 1962, under Article 143(1)

[1964] 3 SCR 787 | 1963-05-10

Historical constitutional Income-tax companion: Article 289's direct State-income exemption and business-income qualification in the Sea Customs advisory reference.

Constitution of India: Articles 143(1), 245, 246, 285, 289(1)-(3), 366(28) | Seventh Schedule: List I entries 82, 83 and 84 | Sea Customs Act, 1878: section 20(2), proposed amendment | Central Excises and Salt Act, 1944: section 3(1A), proposed amendment

Nine-judge Bench; 5:4 majority. Sinha C.J. for four judges; Rajagopala Ayyangar J. separately concurring; S.K. Das J. for three dissenting judges; Hidayatullah J. separately dissenting. | B. P. Sinha C.J. | S. K. Das J. | P. B. Gajendragadkar J. | A. K. Sarkar J. | K. N. Wanchoo J. | M. Hidayatullah J. | K. C. Das Gupta J. | J. C. Shah J. | N. Rajagopala Ayyangar J.

Constitutional companion, not an assessment ruling

The reference answered customs and excise questions. The direct State-income exemption was an express interpretive premise, described as not seriously disputed, rather than an adjudicated claim by a taxpayer.

No blanket State-undertaking exemption

This opinion does not decide whether a separate statutory corporation's income belongs to the State, calculate tax, award a refund or confer exemption from every Union levy.

Read the majority separately from the dissents

Five judges answered all three questions negatively. The broader immunity endorsed in the four dissenting votes is not the Court's answer.

01 FACTS OF THE CASE

The existing customs and excise provisions expressly extended the duties to State-owned goods used for trade or business. A proposed Bill would remove that limitation and apply the duties also to State goods used for ordinary governmental purposes. On 19 April 1962, the President referred three questions under Article 143(1): whether Article 289 prevented customs on import/export of such non-trading State property, whether it prevented excise on its production/manufacture, and whether the proposed amendments were inconsistent with Article 289. The Union and several States presented opposing constitutional constructions. No taxpayer's assessment, income computation or refund was before the Court.

Source: [Presidential questions and date: PDF 9](#)

02 DISCUSSION BY THE HON'BLE COURT

Sinha C.J., speaking for four judges, construed Articles 285 and 289 within the legislative lists and federal financial scheme. The income limb of Article 289 was expressly linked to List I entry 82, taxes on income other than agricultural income; the opinion recorded that this point was not seriously disputed. From the juxtaposition of property and income it reasoned that the property limb likewise concerned direct taxation of property, not every levy economically affecting it. Clause (2)'s treatment of income from State trade or business and associated property reinforced the analysis; clause (3) preserves Parliament's role in declaring qualifying activities incidental to ordinary governmental functions. Customs and excise were characterised by import/export or manufacture/production events rather than bare ownership. Ayyangar J. expressly agreed with the Chief Justice's answers and reasoning, adding historical analysis and caution about using clause (2) to enlarge clause (1). Das J., for three judges, preferred the wider text read with Article 366(28); Hidayatullah J. also dissented, distinguishing revenue taxation from external-trade regulation. Neither dissent supplies the majority rule.

Source: [Direct State-income and property-tax reasoning: PDF 25-30](#); [Ayyangar concurrence: PDF 130-143](#)

03 JUDICIAL DECISION

By five votes to four, the Court answered all three questions in the negative. Article 289 did not preclude the Union from imposing the customs and excise duties described in the reference, and the proposed amendments were not inconsistent with that article on the referred grounds. The majority adopted the distinction between a direct tax on State property or income and a duty on a separate taxable event affecting State-owned goods. This was an advisory answer to the President, not dismissal of an assessee's appeal or an order levying a specified amount of income tax.

Source: [Chief Justice's negative answers: PDF 40](#); [Final majority answer: PDF 143](#)

04 OUTCOME / IN WHOSE FAVOUR

The Union's position on the proposed customs/excise amendments prevailed. For Income-tax research, the opinion supplies an express constitutional explanation of direct State-income immunity, subject to the Article 289 structure, rather than a general escape from all taxes connected with State assets. The Court did not identify an assessment year, settle a particular entity's ownership of income, decide a statutory corporation's entitlement, calculate liability, grant exemption under the Income-tax Act or award any refund. The income-tax discussion must therefore retain its supporting constitutional context.

Source: [Income-tax premise and scope: PDF 25-30](#); [Advisory result: PDF 143](#)

05 AKHB REVIEW POINT

AKHB analysis: distinguish the legal owner of income, the nature of the challenged levy and the relevant Article 289 clause. A tax directly on State income is not the same as customs or excise affecting State goods. Conversely, State control of a separate entity should not be assumed to establish State ownership of that entity's income; this reference does not answer that threshold question. Keep constitutional immunity separate from any statutory exemption, and test State business activity against clauses (2) and (3) and applicable legislation. For present advice, independently verify later treatment, current law and the facts. The historical Income-tax premise in this advisory opinion should not be turned into a universal exemption or an assessment-specific holding.

Source: [State trade/business and direct-tax distinction: PDF 27-30](#); [Concurrence on clause \(2\) and its history: PDF 138-143](#)

SOURCE & VERIFICATION

[Supreme Court Reports scan - public eSCR mirror](#)

All 143 pages and all four opinions read: Sinha (SCR 791-826), Das dissent (826-868), Hidayatullah dissent (868-916), Ayyangar concurrence (916-929), and final answer (929). Judicial text is unnumbered.

[Open cited source rendition](#)

Decision: 10 May 1963; 1964 is the report year. The opening fragment belongs to the preceding Madan Thathiah report and is excluded.

The rendered reference at SCR 795 confirms clause (2), despite OCR showing clause (1); the operative text identifies section 3(1A), despite the editorial docket's subsection 1(a).

Exact source hash verified. Related Article 289 notes concern distinct decisions, not duplicate renditions.

STATUTORY SCOPE

The questions concern proposed customs/excise amendments. Article 289's income limb and Entry 82 are expressly discussed as constitutional reasoning, but no charging or computation provision of the Income-tax Act is applied to an assessee. References to the Indian Income-tax Act, 1922 in Ayyangar J.'s opinion explain the Government Trading Taxation Act, 1926 antecedent, not an assessment determination.

LATER TREATMENT

Source checked 2026-10-18. Opinion as delivered on 10 May 1963; reported in 1964. Subsequent treatment and the current statutory and constitutional position have not been comprehensively verified.

IDENTIFIED SOURCE LINKS

[reported advisory opinion - PDF pages: 143](#)

SHA-256: 6399aafb21c7cd2c0343ef21a1bb13bbb7db5701cb4d2c8ea095f0f12a58ac8b

[Related note: Andhra Pradesh State Road Transport Corporation v. Income Tax Officer and Another](#)

[Related note: Adityapur Industrial Area Development Authority v. Union of India and Others](#)

AI DISCLOSURE

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