
Magistrate recorded further/additional evidence of the complainant and again passed the order of summoning on 5th November, 1999. In my opinion, the learned Magistrate exceeded his jurisdiction while recording further/additional evidence (treating it as preliminary evidence) and thereafter passing fresh order of summoning against the accused, especially when, the preliminary evidence had already been recorded and the order of summoning had already been passed on the basis of the preliminary evidence already recorded.”

(10) In my opinion, this action of the learned Magistrate has resulted in miscarriage of justice and require interference by this Court, in exercise of its inherent powers under section 482 Cr.P.C.

(11) For the reasons recorded above, these petitions are allowed and the order dated 5th Novemeber, 1999 passed by the learned Magistrate and susbsequent proceedings taken thereon are ordered to be quashed. The learned Magistrate would now proceed with the matter in accordance with law. The learned Magistrate shall deal with the application dated 9th March, 1999 in accordance with law.

(12) Since the trial court file was summoned in this Court, the office is directed to send back the file to the learned trial Court immediately with a copy of this order for strict compliance.

(13) Complainant-respondent M/s Shreyans Spinning Mills, through its counsel, is directed to appear before the learned trial Magistrate on 22nd December, 2000 for further proceedings in accordance with law.

S. C. K.

Before G. S. Singhvi and Nirmal Singh, JJ

M/S AMRIT BANASPATI CO. LTD.—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS—*Respondents*

CWP No. 304 of 2000

22nd December, 2000

Punjab General Sales Tax Act, 1948—S. 14-B—Constitution of India, 1950—Arts. 14, 19 (1) (G), 226, 246 (3) and 301—Amendment

in Section 14-B prevention of evasion of sales tax—Amended provision 14-B (7) (iii) provides levy of penalty equivalent to 50% of the values of goods as mandatory irrespective of the fact that the goods may not be liable to tax makes the provision unconscionable—The amendment only varied the degree of imposition of penalty—This cannot be treated as an additional restriction on the petitioner's right—Amendment not bad for want of prior Presidential sanction—State legislative has power to enact law—S. 14-B(7) (iii) declared unconstitutional being violative of Articles 14 and 19 (i) (g) of the Constitution—However, S. 14-B(6) (ii) held to be intra vires the provisions of the 1948 Act.

Held, that neither of the provisions of S. 14-B contemplate imposition of penalty on the presumption of evasion of tax. Therefore, Section 14-B (6) (ii) cannot be declared *ultra vires* to the powers of the state. The same must be held to be within the legislative competence of the State. The detention of the goods till the final adjudication of the matter may appear to be a bit harsh, but on that ground alone the provision cannot be declared unconstitutional because the object underlying it is to prevent the evasion of tax and a person, who fails to produce the required documents *prima facie* showing the genuineness of the transaction, cannot complain of hardship or seek invalidation of a provision which is otherwise constitutionally valid.

(Para 21)

Further held, that in the case in which the goods are detained u/s 14-B (6) (ii) the competent authority has no option but to impose penalty, once it is proved that the incharge of the goods had failed to produce documents at the time of entry into or exit from the State, this provision is founded on the assumption that the person carrying the goods without the relevant documents is guilty of evading the tax. Ordinarily, no exception could have been taken to such a provision, but the mandatory imposition of penalty equivalent to 50% of the value of the goods irrespective of the fact that the goods may not be liable to tax makes the provision unconstitutional. the incidence of penalty contemplated by S. 14-B (7) (iii) is relatable to an attempt to evade the tax, but to the incidence of non-production of relevant documents at the time of entry into or exit from the State of Punjab. The provision is violative of Articles 14 and 19 (1) (g) of the Constitution of India, insofar as it makes the levy of penalty equivalent to 50% of the value of the goods as mandatory irrespective of the nature of the transaction under which the goods are being transported.

(Para 23)

M. L. Sarin, Senior Advocate with

Hemant Sarin, Advocate and Sarvshri B. K. Jhingan, Avniash Jhingan, D. S. Brar, K. L. Goyal, G. R. Sethi, Kishan Singh, M. K. Dogra, and S. N. Chopra, Advocates, *for the Petitioner.*

↳ Rupinder Khosla, Deputy Advocate General, Punjab, *for the Respondents.*

JUDGMENT

G. S. Singhvi, j

(1) Whether the amendments made in Section 14-B of the Punjab General Sales Tax Act, 1948 (for short, the 1948 Act) *vide* notification dated 29th September, 1999 to check the evasion of tax by the dealers in connivance with the transports are *ultra vires* to the legislative powers of the State under Article 246 (3) read with Entry 54 of List-II of the Seventh Schedule of the Constitution and are violative to the petitioners' fundamental right to trade and business guaranteed under Article 19 (1) (g) of the Constitution of India or infringe their right to freedom of trade, commerce and intercourse guaranteed under Article 301 of the Constitution is the main question that arises for consideration in these petitions filed for grant of a declaration that sub-sections (6) (ii) and (iii) of Section 14-B of the 1948 Act are unconstitutional and also for quashing of the action taken by the authorities of the Excise and Taxation Department, Punjab to retain their goods/vehicles.

(2) The respondents have controverted the petitioners assertion that the State does not have the power to take the legislative measures like those contained in the notification dated 29th September, 1999 by stating that the power conferred upon the State to legislate on the subject of levy and collection of sales tax includes the power to legislate on ancillary and incidental matters and the provisions made for plugging the evasion of tax by unscrupulous traders falls within the ambit of Entry 54 of List-II of the Seventh Schedule read with Article 246(3) of the Constitution.

(3) According to the respondents, the amended provisions are meant for checking the evasion of sales tax by collecting information through electronic net work installed at Information Collection Centres established at major and strategic places on the Inter-State Borders

with the neighbouring States. These centres collect data of goods transported in and out of the State of Punjab and such data are verified from the account books of dealers of Punjab in order to establish their accountability at the time of assessment. The respondents have also pleaded that the impugned provisions do not encroach upon the right of the petitioners to carry on trade and business or their freedom of trade and commerce.

(4) Before adverting to the arguments of the learned counsel for the parties, we may notice the relevant statutory provisions. Section 14-B was inserted in the 1948 Act by Punjab Act No. 29 of 1954 with effect from 2nd December, 1954. This was first substituted by Punjab Act No. 28 of 1965 with effect from 1st April, 1966 and again by Punjab Act No. 9 of 1974. Sub-section (6) of Section 14-B, except its proviso, was again substituted,—*vide* Punjab Act No. 1 of 1994 with effect from 29th September, 1993. The last substitution has been made,—*vide* notification dated 29th September, 1999. For the purpose of determining the constitutionality of Section 14-B(6) (ii) and (7) (iii), it would be useful to refer to unamended Section 14-B (6) and (7) and amended Section 14-B(1) to (7). The same read as under :—

Unamended Section 14-B (6) and (7)

“(6) If the officer incharge of the check-post or barrier or other officer as mentioned in sub-section (2) has reasons to suspect that the goods under transport are meant for trade and are not covered by proper and genuine documents as mentioned in sub-section (2) or sub-section (4), as the case may be, the driver of other person incharge of the goods vehicle or vessel required to stop the vehicle or vessel, under sub-section (3) fails to stop the same, or that the person transporting the goods is attempting to evade payment of tax due under this Act, he may for reasons to be recorded in writing and after hearing the said person, the driver, or other person incharge of the goods vehicle, order the detention of the vehicle or vessel along with the goods for such period as may reasonably be necessary and shall allow the same to be transported only on the owner of goods or his representative or the driver or the other person incharge of the goods vehicle or vessel on behalf of the owner of the goods furnishing to

his satisfaction a security or cash security or bank guarantee or crossed bank draft for securing the amount of tax, in the prescribed form and manner, for an amount which shall not be less than fifteen per centum and not more than thirty per centum of the value of goods :

Provided that where any goods are detained, a report shall be made immediately and in any case within twenty-four hours of the detention of the goods by the officer detaining the goods to the Assistant Excise and Taxation Commissioner, incharge of the district seeking the letter's permission for the detention of the goods for a period exceeding twenty four hours, as and when so required, and if no intimation to the contrary is received from the latter, the former may assume that his proposal has been accepted.

(7) The officers detaining the goods shall record the statement, if any, given by the owner of the goods or his representative or the driver or other person incharge of the goods vehicle or vessel and shall require him to produce proper and genuine documents as referred to in sub-section (2) or sub-section (4), as the case may be, before him in his office on a specified date on which date the officer shall submit the proceedings along with the connected records to such officer as may be authorised in that behalf by the State Government for conducting necessary enquiry in the matter. The said officer shall, before conducting the enquiry, serve a notice on the owner of the goods and give him an opportunity of being heard and if, after the enquiry, such officer finds that there has been an attempt to evade the tax due under this Act, he shall, by order, impose on the owner of the goods, a penalty, which shall be not less than fifteen per centum and not more than thirty per centum of the value of the goods, and in case finds otherwise, he shall order the release of the goods."

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Amended Section 14-B (1) to (7)

"14-B. (1) If with a view to prevent of check avoidance or evasion of tax under this Act, the State Government considers it necessary so to do, it may, by notification, direct for the

establishment of a check post or information collection centre or both at such place or places, as may be specified in the notification.

- (2) The owner or person incharge of a goods vehicle shall carry with him a goods vehicle record, a trip sheet or a log-book, as the case may be, and a goods receipt and a sale bill or cash memo, or delivery note containing such particulars, as may be prescribed, in respect of such goods meant for the purpose of trade, as are being carried in the goods vehicle and produce a copy of each of the aforesaid documents to an officer incharge of a check post or information collect centre or any other officer not below the rank of an Excise and Taxation Officer checking the vehicle at any place :

Provided that a dealer selling the goods from within the State or outside the State in the course of inter-state trade or commerce, shall also furnish a declaration with such particulars, as may be prescribed.

- (3) At every check post or information collection centre or at any other place when so required by an officer referred to in sub-section (2), the driver or any other person incharge of the goods vehicle shall stop the vehicle keep it stationary, as long as may reasonably be necessary, and allow the officer incharge of the check post or the information collection centre or the aforesaid officer to chek the contents in the vehicle by breaking open the package or packages, if necessary, and inspect all records relating to the goods carried, which are in the possession of the driver or any other person, as may be required by the aforesaid officer, and if considered necessary, such officer may also search the goods vehicle and the driver or other person incharge of the vehicle or of the goods.
- (4) The owner or person incharge of a goods vehicle entering the limits or leaving the limits of the State of Punjab shall stop at the nearest check post or information collection centre, as the case may be, and shall furnih in triplicate a declaration mentioned in sub-section (2) alongwith the documents in respect of the goods carried in such vehicle

before the officer incharge of the check post or information collection centre. The officer incharge shall return a copy of the declaration duly verified by him to the owner or person incharge of the goods vehicle to enable him to produce the same at the time of subsequent checking, if any :

Provided that where a goods vehicle bound for any place outside the State of Punjab passes through the State, the owner or the person incharge of such vehicle shall furnish, in duplicate, to the officer incharge of the check post or information collection centre, a declaration in respect of his entry into the State of Punjab in the prescribed form and obtain from him a copy thereof duly verified. The owner or person incharge of the goods vehicle, shall deliver within forty-eight hours the aforesaid copy to the officer incharge of the check post or information collection centre at the point of its exit from the State, failing which, he shall be liable to pay a penalty to be imposed by the officer incharge of the check post or information collection centre not exceeding two thousands rupees or twenty per cent of the value of the goods, which-ever is greater :

Provided further that no penalty shall be imposed unless the person concerned has been given a reasonable opportunity of being heard.

- (5) At every station of transport of goods, bus stand or any other station or place of loading or unloading of goods, when so required by the Commissioner or any other person appointed to assist him under sub-section (1) of section 3, the driver or the owner of goods vehicle or the employee of transport company or goods booking agency, shall produce for examination, transport receipts and all other documents and account books concerning the goods carried, transported, loaded, unloaded, consigned or received for transport, maintained by him in the prescribed manner. The Commissioner or the person so appointed shall, for the purpose of examining that such transport receipts or other documents or account books are in respect of the goods carried, transported, loaded, unloaded or consigned or

received for transport, have the powers to break open any package, or packages of such goods.

- (6) (i) If the officer incharge of the check post or information collection centre or any other officer as mentioned in sub-section (2), has reasons to suspect that the goods under transport are meant for trade and are not covered by proper and genuine documents as mentioned in sub-section (2) or sub-section (4) or the driver has not stopped the vehicle as required under sub-section (3) or that the person transporting the goods is attempting to evade payment of tax, he may, for reasons to be recorded in writing and after hearing the person concerned order the detention of the goods alongwith the vehicle for such period, as may reasonably be necessary. Such goods shall be released on furnishing a security or executing a bond with sureties in the prescribed form and manner by the consignor or consignee, if registered under the Act to the satisfaction of the officer detaining the goods and in case the consignor or the consignee is not registered under the Act, then on furnishing a security in the form of cash or bank guarantee or crossed bank draft, which shall be thirty per cent of the value of the goods, rounded upto the nearest hundred.
- (ii) If the owner or the person incharge of the goods has not submitted the documents as mentioned in sub-section (2) and sub-section (4) at the nearest check post or information collection centre, in the State of Punjab, as the case may be, on his entry into or exit from the State, such goods shall be detained and shall be released only after the matter is finally decided under clause (iii) of sub-section (7).
- (7) (i) The officer detaining the goods shall record the statement, if any, given by the consignor or consignee of the goods or his representative or the driver or other person in-charge of the goods vehicle and shall require him to prove the genuineness of the transaction before him in his office on a specified date on which date, the officer shall submit the proceedings along with the concerned records to such officer, as may be authorised in that behalf by the State Government for conducting necessary enquiry in the matter.

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- (ii) The officer authorised by the State Government shall, before conducting the enquiry, serve a notice on the consignor or the consignee of the goods detained under clause (i) of sub-section (6), and give him an opportunity of being heard and if, after the enquiry, such officer finds that there has been an attempt to avoid or evade the tax due under this Act, he shall, by order, impose on the consignor or consignee of the goods, a penalty, which shall not be less than twenty per cent and not more than thirty per cent of the value of the goods and in case he finds otherwise, he shall order the release of the goods.
- (iii) The officer referred to in clause (ii) before conducting the enquiry, shall serve a notice on the consignor or consignee of the goods detained under clause (ii) of sub-section (6) and give him an opportunity of being heard and if, after the enquiry such officer finds that the documents as required under sub-sections (2) and (4), were not furnished at the check post or information collection centre, as the case may be, he shall by order, impose on the consignor or consignee of the goods, a penalty which shall be fifty per cent of the value of the goods.
- (iv) The officer incharge of a check post or information collection centre or any other officer referred to in sub-section (2), may receive the amount of cash security as referred to in clause (i) of sub-section (6) and the amount of penalty imposed under sub-section (4) and clauses (ii) and (iii) of sub-section (7) against a proper receipt in the prescribed manner."

(5) Shri M.L. Sarin, Senior Counsel, and Sarvshri B. K. Jhingan, D.S. Brar, K. L. Goyal, G. R. Sethi, Kishan Singh, M. K. Dogra and S. N. Chopra, learned counsel for the petitioners, argued that sub-sections (6) (ii) and (7) (iii) of Section 14-B should be declared *ultra vires* to the legislative power of the State because the subject-matter of these provisions falls under Entry 92-A of List-I of the seventh Schedule and not under Entry 54 of List-II. They further argued that the impugned provisions should be declared violative of Article 19 (1) (g) of the Constitution of India because the same are confiscatory in nature and impinge upon the fundamental right of the petitioners to carry on their trade and business without any restriction. Learned counsel then argued that Section 14-B (7) (iii) may be declared violative of Articles 14 and 19(1) (g) of the Constitution because it provides levy

of penalty equivalent to 50 per cent of the value of the goods without laying down guidelines for exercise of the power by the concerned authority. Learned counsel submitted that most of the transactions entered into by the petitioners involve inter-State transfer of goods and such transactions are exempt from tax in view of Section 5(3) of the Central Sales Tax Act, 1956 (for short, the 1956 Act), but the officers of the Excise and Taxation Department, Punjab are harassing them by detaining the goods and vehicles and not releasing the same despite the production of documents showing that transportation of the goods is a part of the transactions involving inter-State sale of goods or export out of India and no sales tax is payable in respect of such transaction. Another submission of the learned counsel is that the impugned amendment should be declared unconstitutional because it has been enforced without seeking Presidential sanction in terms of Art. 304 (b) of the Constitution. In support of their arguments, learned counsel relied on the decisions of the Supreme Court and various High Courts in *The Check Post Officer, Coimbatore, and others v. K.P. Abdulla and Bros.* (1), *Dunlop India Limited v. The State of Punjab and others* (2), *The State of Punjab and others v. Dunlop India Limited* (3), *Babu Ram Golyani and others v. State of Haryana and others* (4), *State of Haryana and others v. Sant Lal and another* (5), *Prakash Roadlines (P) Ltd. v. Commissioner of Commercial Taxes in Karnataka* (6) *State of Karnataka v. B. M. Ashraf and Co.* (7), *Nipha Exports Pvt. Limited v. State of Haryana and others* (8), *Steel Authority of India Ltd. v. State of Orissa and Ors.* (9), and *M/s Nathpa Jhakri Jt. Venture v. State of Himachal Pradesh and Ors.* (10),

(6) Shri Rupinder Khosla, learned Deputy Advocate General, argued that the power vested in the State under Entry 54 of List-II of the Seventh Schedule of the Constitution to enact law for levy and collection of tax includes the power to enact law, which are ancillary to the purpose of the impugned statute and, therefore sub-sections (6) (ii) and (7) (iii) of Section 14-B, which have been enacted for checking

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- (1) (1971) 27 STC I
 - (2) (1972) 30 STC 597
 - (3) (1974) 33 STC 168
 - (4) (1984) 57 STC 17
 - (5) (1993) 91 STC 321
 - (6) (1991) 83 STC 49
 - (7) (1997) 107 STC 571
 - (8) (1998) 108 STC 337
 - (9) JT 2000 (2) SC 402
 - (10) JT 2000 (3) SC 189

evasion of tax and for plugging the loopholes in the system devised for checking the evasion of tax, cannot be declared beyond the legislative competence of the State. He referred to the objects and reasons contained in the Bill presented in the State Legislative for enactment of sub-sections (6) (ii) and (7)(iii) of Section 14-B and submitted that the right of the State to take appropriate measures to curb the tendency among the dealers to evade tax cannot be questioned by the dealers and transporters. He pointed out that the amount of tax etc. collected under the 1948 Act. till 1993-94 was less than Rs. 1100 crores, and after the amendment of Section 14-B(6) in 1993-94 it registered an increase of almost 90 crores. Thereafter, there has been constant increase in the collection of tax during the years 1994-95 to 1999-2000, indicating the effectiveness of the legislative measures adopted by the State to check evasion of taxes. Shri Khosla stated that immediately after the issuance of notification dated 29th September, 1999, the State Government had opened 27 Information Collection Centres, (for short, I.C.C.) to check the evasion of tax and the petitioners cannot complain of non-availability of I.C.Cs. on the issue of Professional sanction. Learned Deputy Advocate general submitted that the impugned amendment does not alter the basic character of the existing Statute and, therefore, the absence of Presidential assent cannot be made a ground for its invalidation. In support of his arguments, Shri Khosla relied on the decisions in *Mool Chand Chuni Lal v. Shri Manmohan Singh, Assistant Excise and Taxation Officer, Octrio In-Charge, Shambhu Barrier, District Patiala, and another* (11), *State of Madras v. N. K. Nataraja Mudaliar* (12), *State of Tamil Nadu and another v. Sitalakshmi Mills Ltd. and others* (13), *Syed Ahmed Aga etc. v. The State of Mysore and another* (14), *Punjab Traders and others v. State of Punjab and others* (15), *Subodhaya Chit Fund (P) Ltd. and another v. Director of Chits, Madras and another*, (16).

(7) We have thoughtfully considered the respective submissions. The ambit and scope of various entries included in the three Lists of the Seventh Schedule has been considered by the Courts in various cases. In one of the earliest decisions in *United Provinces v. Mt. Atiqa Begum* (17), the Federal Court of India examined the scope of the Lists

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- (11) (1977) 40 STC 238
 - (12) (1968) 27 STC 376
 - (13) (1974) 33 STC 200
 - (14) AIR 1975 STC 1443
 - (15) AIR 1990 SC 2300
 - (16) AIR 1991 SC 998
 - (17) AIR 1941 FC 16

under the Government of India Act, 1935, Gwyer, C.J., speaking for the Court, observed that, "none of the items in the Lists is to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it." In *Navichandra Mafatlal, Bombay v. Commissioner of Income Tax, Bombay City*, (18), the word 'income' appearing in entry 54 of List-I of the Seventh Schedule of the Government of India Act, 1935, came up for consideration before a Constitution Bench of the Supreme Court. Their Lordships approved the dictum laid down by Gwyer, C.J., and held that the word 'income' should be given widest connotation in view of the fact that it occurs in a legislative head conferring legislative power. Some of the observations made by the Supreme Court in the context of interpretation of legislative entries read as under :—

"The rules which apply to the interpretation of other statutes apply equally to the interpretation of a constitutional enactment subject to this reservation that their application is of necessity conditioned by the subject-matter of the enactment itself. *None of the items in the Lists is to be read in a narrow or restricted sense and each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it.* It is, therefore, clear that in construing an entry in a list conferring legislative powers in the widest possible construction according to their ordinary meaning must be put upon the words used therein.The cardinal rule of interpretation, however, is that the words should be read in their ordinary, natural and grammatical meaning subject to this rider that in construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude."

(8) In *M/s Chowringhee Sales Bureau (P) Ltd. v. C.I.T. West Bengal* (19), a three Judges Bench of the Supreme Court interpreted the word 'sale' used in Entry 48 of List-II of the 7th Schedule in the context of an argument that 'auction sale' does not fall within the scope

(18) AIR 1955 SC 58

(19) AIR 1973 SC 376

of Bengal Finance (Sales-tax) Act, 1941. While rejecting the plea of the petitioner, their Lordships of the Supreme Court held as under :—

“We find ourselves unable to agree with the above observations.

An auction sale in view of the provisions of Section 4 read with Section 64 of the Sale of Goods Act would have to be considered to be sale for the purpose of Sale of Goods Act. There is nothing in Entry 48 which restricts the power of the legislature in the matter of the imposition of the sales tax to the levy of such tax on the owner of the goods on whose behalf they are sold or the purchaser only. Where transaction is one of sale of goods as known to law, the power of the legislature to impose a tax thereon, in our view, is plenary and unrestricted subject only to any limitation which might have been imposed by the Government of India Act or the Constitution. In view of the wide amplitude of the power of the State or Provincial Legislature to impose tax on transactions of sale of goods, it would, in our opinion, be impermissible to read a restriction in Entry 48 on the power of the State Legislature as would prevent the said legislature from imposing tax on an auctioneer who carries on the business of selling goods and who has in the customary course of business, authority to sell goods belonging to the principal. What is sought to be taxed is the transaction of the sale of goods. If there is a close and direct connection between the transaction of sale and the person made liable for the payment of sales tax, the statutory provisions providing for such levy of sales tax would not offend entry 48. It cannot be disputed that there is a close and direct connection between an auctioneer and the transaction of auction sale. As such, the definition of the word “dealer” in Explanation 2 of Section 2(c) of the Bengal Act cannot be deemed to be *ultra vires* the power of the provincial or State Legislature on the ground that the legislature purports to levy tax on a person who is neither a seller nor a purchaser. It was, in our opinion, within the competence of the Provincial Legislature to include within the definition of the word “dealer” an auctioneer who carries on the business of selling goods and who has in the customary course of business authority to sell belonging to the principal.”

In *Commissioner of Commercial Taxes and others v. Ramkishan Shrikishan Jhaver and others* (20), the Supreme Court considered the challenge to the validity of Section 41 of the Madras General Sales Tax Act, 1959. While upholding the competence of the State Legislature to enact sub-sections (2) and (3) of Section 41, under which power was given to the State machinery to make search and seizure, was not *ultra vires* to the legislative power of the State, their Lordships held that clause (a) of the second proviso to Section 41(4), which empowers the recovery of tax on goods found in the dealer's office etc., even before its sale which is the taxable event, is repugnant to the entire scheme of the Act and is void for repugnancy. Their Lordships further held that clause (a) is not severable from the other parts of sub-section (4) and, therefore, the same is unconstitutional. Some of the observations made in that decision are extracted below :—

“While making a law under any entry in the Schedule to the Constitution it is competent to the Legislature to make all such incidental and ancillary provisions as may be necessary to effectuate the law ; particularly, in the case of a taxing statute, it is open to the Legislature to enact provisions which would evasion of tax. It is under this power to check evasion that provision for search and seizure is made in many taxing statutes. The Legislature has therefore power to provide for search and seizure in connection with taxation laws in order that evasion may be checked.

The provisions of Section 41(2) and (3) of the Madras General Sales Tax Act, 1959 are reasonable restrictions on the fundamental right to hold property and to carry on trade under Article 19(1) (f) and (g) of the Constitution and are protected by clauses (5) and (6) of Article 19.

Though sub-section (2) of Section 41 of the Madras General Sales Tax Act, 1959, does not in terms provide for search, the power of search is implicit in the sub-section with reference both to the accounts etc. maintained by the dealer and the goods in the possession of the dealer. But the main part of sub-section (2) does not give to the officer any power of inspecting the residential premises of the dealer and it cannot, therefore, be read as giving the power of search of the residential house of the dealer.

By the fact that Section 41(2) gives power to the Government to empower any officer to make a search, it cannot be considered as conferring an arbitrary power, for the Government will see that officers of proper status are empowered. It cannot be said that an Assistant Commercial Tax Officer or an Inspector of the Revenue Department or a Sub-Inspector of the Police Department, empowered by the Government to make searches, is not an officer of proper status to make searches under Section 41 (2) of the Act.

Further, the provisions of the Code of Criminal Procedure, so far as may be, apply to all searches made under sub-section (2) of Section 41 of the Act, and, therefore, Section 165 of the Code of Criminal Procedure would apply *mutatis mutandis* to searches made thereunder. The safeguards under Section 165 which apply to searches under Section 41 (2) are ; (i) the empowered officer must have reasonable grounds for believing that anything necessary for the purpose of the recovery of tax may be found in any place within his jurisdiction; (ii) he must be of the opinion and such thing cannot be otherwise got without undue delay ; (iii) he must record in writing the grounds for his belief; and (iv) he must specify in such writing so far as possible the thing for which search is to be made. In view of these and other safeguards provided in Chapter VII of the Code of Criminal Procedure, it cannot be said that sub-section (2) is an unreasonable restriction on the fundamental right to hold property and to carry on trade.

If in relation to a search under sub-section (2), the safeguards are not followed, anything recovered on such a defective search must be returned.

The proviso to sub-section (2), of Section 41 provides for something independent of the main part of the sub-section.

Where a search warrant issued by a Magistrate is shown to be defective because he had not applied his mind to the question of issuing it, anything recovered on the basis of such a warrant from the search of a residential house must be returned.

The provisions in sub-section (3) requiring (i) that the officer should record his reasons in writing, which has to be done

before the accounts are seized; (ii) that the dealer should be given a receipt, which means that the receipts must be given as and when the accounts etc. are seized; (iii) that the accounts etc. seized should be retained only so long as may be necessary for their examination and for any enquiry or proceeding under the Act; and (iv) that such accounts should not be kept for more than 30 days at a time except with the permission of the next higher authority, are sufficient safeguards, and the restriction under sub-section (3), if any, on the right to hold property and the right to carry on trade, must be held to be a reasonable restriction."

(9) In *The Check Post Officer, Coimbatore v. K.P. Abdulla (supra)*, a Constitution Bench of the Supreme Court considered the challenge to the vires of Section 42(3) of the Madras General Sales Tax Act, 1959, under which the Check Post Officer was empowered to confiscate the goods and levy penalty in lieu of confiscation if the driver did not carry with him the documents specified in the section. Some of the observations made in that case which have been heavily relied upon by the learned counsel for the petitioners are reproduced below :—

"Entry 54 of List II of the Seventh Schedule to the Constitution authorises the State Legislature to legislate in respect of taxes on the sale or purchase of goods. A legislative entry does not merely enunciate powers: it specifies a field of legislation and the widest import and significance should be attached to it. Power to legislate on a specified topic includes power to legislate in respect of matters which may fairly and reasonably be said to be comprehended therein.....A taxing entry, therefore, confers power upon the Legislature to legislate for matters ancillary or incidental including provisions for preventing evasion of tax. Sub-sections (1) and (2) of Section 42 are intended to set up machinery for preventing evasion of sales tax. But, in our judgment, the power to confiscate goods carried in a vehicle cannot be said to be fairly and reasonably comprehended in the power to legislate in respect of taxes on sale or purchase of goods. By sub-section (3) the officer in charge of the check post and barrier has the power to seize and confiscate any goods which are being carried in any vehicle if they are not covered by the documents specified in the three sub-clauses. Sub-section (3) assumes that all goods carried in a vehicle near a check post are

goods which have been sold within the State of Madras and in respect of which liability to pay tax has arisen, and authorises the Check Post Officer, unless the specified documents are produced at the check post or the barrier, to seize and confiscate the goods and to give an option to the person affected to pay penalty in lieu of confiscation. A provision so enacted on the assumption that goods carried in a vehicle from one State to another must be presumed to be transported after sale within the State is unwarranted. In any event power conferred by sub-section (3) to seize and confiscate and to levy penalty in respect of all goods which are carried in a vehicle whether the goods are sold or not is incidental or ancillary to the power to levy sale tax. A person carrying his own goods even as personal luggage from one State to another or for consumption, because he is unable to produce the documents specified in clauses (i), (ii) and (iii) of sub-section (3) of Section 42, stands in danger of having his goods forfeited. Power under sub-section (3) of Section 42 cannot be said to be ancillary or incidental to the power to legislate for levy of sales tax."

(10) In *R.S. Joshi, Sales Tax Officer, Gujarat v. Ajit Mills Limited and another* (21), a seven Judges Bench of the Supreme Court examined the constitutional validity of Sections 37(1)(a) and 46(2) of the the Bombay Sales Tax Act, 1959 (as applicable to the State of Gujarat), under which the State was empowered to forfeit any sum collected by way of tax in contravention of Section 46 of the Act. The High Court of Gujarat had struck down the provision by holding that the State did not have the power to enact such a law. The Supreme Court reversed the judgment of the High Court and held that the two provisions were not ultra vires to the powers of the State Legislature inasmuch as the same fell within the range of ancillary or incidental power of the State Legislature under Entry 54 read with Entry 64 of List-II of the 7th Schedule of the Constitution of India. Their Lordships further held that it is permissible for the State Legislature to enact that sums collected by the dealers by way of sales tax, but are not eligible under the State Law and prohibited by, should be forfeited to the public exchequer punitively.

(11) In *Dunlop India Limited v. State of Punjab (supra)*, a learned Single Judge declared that Section 14-B(8) of the Punjab General Sales Tax Act, 1948 (as it then stood), under which the Sales Tax authorities were given power to seize the goods carried in a goods vehicle was ultra vires to the State Legislature. The learned Single Judge relied on the observations made by the Supreme Court in *Check Post Officer, Coimbatore v. K.P. Abdulla (supra)*, and held that if no tax is payable in respect of the goods carried, the question of evasion of tax does not arise and even if in Form ST XXIV a wrong figure has been stated, it cannot be concluded that there was a deliberate attempt of showing the value of the goods at a lower figure than they are actually valued with a view to avoid payment of tax. That decision was affirmed by the Division Bench in the *State of Punjab v. Dunlop India Limited (supra)*.

(12) The Constitutional validity of Section 14-B(7) and (8), as amended by Punjab Act No. 9 of 1974 was considered by a Full Bench in *Mool Chand Chuni Lal v. Shri Manmohan Singh (supra)*. The Full Bench referred to the decision of the Single Judge as well as the Division Bench in the case of *Dunlop India Limited* and of the Supreme Court in *Commissioner of Commercial Taxes v. Ramkishan Shrikishan Jhaver (supra)*, and *Check Post Officer v. K.P. Abdulla (supra)*, and held that prevention of evasion of sales tax is a power incidental or ancillary to the levy of sales tax and falls within Entry 54 of List-II of the Seventh Schedule of the Constitution and the power to detain the goods and levy of penalty in case there is an attempt to evade tax cannot be held to be without constitutional sanction. The relevant observations made in the decision of the Full Bench are as reproduced below:—

It will be noticed at once that Section 14-B(6), as it stood originally, provided for the seizure of any goods not covered by documents and Section 14-B(8) provided for the seizure of all goods in respect of which the declaration was false. The seizure might be made irrespective of the question whether there was any attempt to evade tax. The basic but unwarranted assumption underlying both the provisions for seizure, as in the case before the Supreme Court, was that the goods were transported after sale within the State. Again, as in the case before the Supreme Court, no attempt was made to specify what goods might be seized. The provisions were considered by Bal Raj Tuli, J., and the Division Bench to fall within the principles laid down in *K.P. Abdulla's case*. But the position is quite different

now. *The new provision for the levy of penalty [amended section 14-B(7)] is no longer based on any assumption that the goods were transported after sale within the State. Its present basis is the attempt to evade tax and it prescribes a condition precedent to the levy of penalty. The condition precedent is that the authorised officer should record a finding that there has been an attempt to evade the tax due under the Act. It cannot possibly be disputed that the prevention of evasion of sales tax is a power incidental or ancillary to the levy of sales tax and falls within entry 54 of List II of Schedule VII of the Constitution. Section 14-B(7), which provides for detention of goods and levy of penalty if there has been an attempt to evade the tax due under the Act, cannot, therefore, be held to be without constitutional sanction. It is further to be noticed that the goods which are to be detained are also specified in section 14-B(6) as the goods meant for trade and not covered by proper and genuine documents”.*

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“While section 14-B(8), as it stood originally, provided for the payment of the tax recoverable and a penalty, *present section 14-B(7) does not provide for recovery of the tax but provides for the imposition of penalty which is calculated not on the basis of the tax payable but on the basis of the value of the goods.* The present provision is clearly outside the rule laid down in *Commissioner of Commercial Taxes v. Ramkishan Shrikishan Jhaver*, (1967) 20 S.T.C. 453 (S.C.). It cannot for a moment be pretended that there can be no attempt to evade the tax due under the Act before the liability to pay the tax has arisen. A Scheme or device to evade the tax may start operating long before the actual liability to pay the tax arises. As soon as the scheme or device is set in motion there is an attempt to evade the tax due under the Act and it will not be necessary to wait till the liability to pay the tax actually arises. If an attempt to evade tax is discovered earlier, the liability to be subjected to penalty is straightway attracted. In our view, there is no repugnancy between the provision for levy of penalty under section 14-B(7) when an attempt to evade the tax is discovered and the general scheme of the Act which provides for the levy of tax at the point of first sale within the State.”

(13) In *Sodhi Transport Co. and Another v. State of U.P. and another* (22), the constitutional validity of Sections 28 and 28-B of the Uttar Pradesh Sales Tax Act, 1948, and Rule 87 of the Uttar Pradesh Sales Tax Rules, 1948 was considered by the Supreme Court. Section 28 empowered the State Government to establish check posts on barriers for preventing evasion of tax or other dues payable under the Act. Sections 28 and 28-B provided for obtaining of transit pass by the driver or other person-in-charge of the vehicle at the time of entry at the first check post or barrier and deliver it to the officer-in-charge of the last check post or barrier before exit with a rider that his failure to do so will give rise to presumption that the goods carried thereby had been sold within the State by the owner of the person-in-charge of the vehicle. Rule 87 contained procedure for issuance of transit pass. It was urged on behalf of the petitioners/appellant that the Sections 28 and 28-B of the Act and Rule 87 of the Rules were outside their scope of Entry 54 of List II of the Seventh Schedule to the Constitution and infringed freedom of trade, commerce and intercourse guaranteed under Article 301 of the Constitution and further they impose unreasonable restrictions on the freedom of trade guaranteed under Article 19(1)(g) of the Constitution. The Supreme Court rejected the challenge and affirmed the decision of the Allahabad High Court with the following observations :—

“Section 28B as inserted in 1973 in U.P. Sales Tax Act and R. 87 as inserted in 1974 in U.P. Sales Tax Rules are introduced to check evasion of tax and to provide a machinery for levying tax from persons (transporters) who dispose of goods inside the State and avoid tax which they are otherwise liable to pay. The law provides enough protection to them and makes provision to enable them to show that they are in fact not liable to pay any tax. Thus the said provisions are not unconstitutional. The provisions are not unreasonable and the State legislature is competent to legislate them.”

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“A statutory provision which creates a rebuttable presumption as regards the proof of a set of circumstances which would

make a transaction liable to tax with the object of preventing evasion of the tax cannot be considered as conferring on the authority concerned the power to levy a tax which the legislature cannot otherwise levy. A rebuttable presumption which is clearly a rule of evidence has the effect of shifting the burden of proof and it is hard to see how it is unconstitutional when the person concerned has the opportunity to displace the presumption by leading evidence.”

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“It is only where the presumption is not successfully rebutted, the authorities concerned are required to rely upon the rule of presumption in S. 28-B of the Act. It is, therefore, not correct to say that a transaction which is proved to be not a sale is being subjected to sales tax. When once a finding is recorded that a person (transporter) has sold the goods which he had brought inside the State, then he would be a dealer even according to the definition of the word ‘dealer’ as it stood from the very commencement of the Act subject to the other conditions prescribed in this behalf being fulfilled. There is, therefore, no substance in the contention that a transporter was being made liable for the first time after 1979 with retrospective effect to pay sales tax on a transaction which is not a sale. Tax becomes payable by him only after a finding is recorded that he has sold the goods inside the State though with the help of the presumption which is a rebuttable one.”

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The levy of sales tax on goods which are held to have sold inside the State cannot be considered as contravening Art. 301 of the Constitution. The restrictions imposed are not also shown to be unreasonable. They do not unduly hamper trade. On the other hand they are imposed in the public interest. The contentions based on Art. 301 and Art. 19(1)(g) of the Constitution are, therefore, without substance.”

(14) In *Babu Ram Golyani and others v. The State of Haryana and others* (*Supra*), a Division Bench of this Court held that Section 38

of the Haryana General Sales Tax Act, 1973, which requires Clearing or Forwarding Agents or the Dalals to obtain licence from the Assessing Authority and to furnish details in respect of transactions and provides for penalty for contravention is *ultra vires* to the powers of the State Legislature and is not covered by Entry 54 of List II of the Seventh Schedule. That decision was approved by the Supreme Court in the State of Haryana v. Sant Lal (supra). While dismissing the appeal of the State, a two Judges Bench of the Supreme Court reiterated the proposition that the State Legislature has the power to legislate in respect of taxes on the sale or purchase of goods under Entry 54 of List II of the Seventh Schedule to the Constitution and also in respect of all matters ancillary, incidental or subsidiary thereto, but it cannot legislate on matters which do not have reasonable or proximate connection with the levy of tax. Their Lordships further held that Clearing or Forwarding Agent, Dalal, or person Transporting the Goods, does not carry on the business of selling goods and does not have, in the customary course of his business, authority to sell goods belonging to the dealer and, therefore, Section 38 of the said Act, which makes it mandatory for them to take licence, cannot be regarded as ancillary or subsidiary to the legislative entry, which entitles the State Legislature to impose a tax on the sale of goods.

(15) In *Prakash Roadlines (P) Ltd. v. Commissioner of Commercial Taxes in Karnataka* (supra), a Division Bench of the Karnataka High Court held that penalty cannot be imposed simply because the driver had failed to produce the prescribed documents immediately on demand.

(16) From the above survey of the judicial precedents, the following propositions can be deduced:—

- (i) While construing entries of Lists I, II and III of the Seventh Schedule to the Constitution, the widest possible construction according to their ordinary meaning must be put upon the words used therein so that the entries may have effect in their widest amplitude.
- (ii) The legislative entries do not merely enunciate powers. They specify a field and, therefore, widest import and significance should be attached to them.
- (iii) The power to legislate on a specified topic includes the power to legislate in respect of matters which may be fairly comprehended therein. In other words, the power to legislate

on a particular topic includes the power to legislate on ancillary and incidental matters, but not on matters which do not have reasonable or proximate connection with the topic of legislation.

- (iv) The power of the State legislature to impose tax on transaction of sale or purchase of goods includes the power to legislate on such incidental and ancillary matters, which may be necessary to effectuate the purpose of the law. — *Commissioner of Commercial Taxes and others v. Ramkishan Shrikishan Jhaver and others* (supra); *M/s. Chowringhee Sales Bureau (P) Ltd. v. C.I.T. West Bengal* (supra); *The Check Post Officer, Coimbatore, and others v. K.P. Abdulla and Bros.* (supra); *Sodhi Transport Co. v. State of U.P. and another* (supra); *State of Haryana and others v. Sant Lal and another* (supra); and *Mool Chand Chuni Lal v. Shri Manmohan Singh* (supra).
- (v) The power to enact law for prevention of the evasion of sales tax and to provide for search and seizure is incidental or ancillary to the levy of sales tax and falls within Entry 54 of List II of Seventh Schedule to the Constitution and such law cannot be declared unconstitutional on the ground that it is unreasonable or violative of Article 19(1) (g) or Article 301 of the Constitution—*Commissioner of Commercial Taxes and others v. Ramkishan Shrikishan Jhaver and others* (supra), *Mool Chand Chuni Lal v. Shri Manmohan Singh* (supra); *Sodhi Transport Co. and another v. State of U.P. and another* (supra).
- (vi) However, in exercise of the legislative power vested in it under Entry 54 of List II, the State cannot legislate on matters which do not have reasonable or proximate connection with the levy of tax. —*The Check Post Officer, Coimbatore, and others v. K.P. Abdulla and Bros.* (Supra); and *State of Haryana and others v. Sant Lal and another* (supra).
- (vii) A statutory provision which creates a rebuttable presumption as regards the proof of a set of circumstances, which would make a transaction liable to tax with the object of preventing evasion of tax, cannot be considered as conferring on the authority concerned the power to levy tax, which the legislature cannot otherwise levy. —*Sodhi Transport Co. and another v. State of U.P. and another* (supra).

(17) In the light of the above, we shall now determine whether sub-sections (6) (ii) and (7) (iii) of section 14-B of the 1948 Act are beyond the legislative competence of the State or the same are violative of the petitioners, fundamental right to trade and business guaranteed under Article 19(1) (g) or their freedom of trade, commerce and intercourse guaranteed under Article 301 of the Constitution.

(18) The primary object of Section 14-B is to prevent the evasion of sales tax. This is clearly borne out from a reading of the plain language of its various sub-sections. Sub-section (1) of Section 14-B empowers the State Government to issue notification for establishment of Check Post or I.C.C. or both at such place or places as may be specified in such notification. Sub-section (2) lays down that the owner or incharge of a goods vehicle shall carry with him the goods vehicle record, a trip sheet or a log book, a goods receipt and a sale bill/cash memo/delivery note containing the particulars, as may be prescribed, and copies of such documents are required to be produced before the Officer-in-Charge of the Check Post or I.C.C. or any other officer not below the rank of Excise & Taxation Officer, checking the vehicle at any place. Sub-section (3) requires the driver of the goods vehicle to stop and keep it stationary for a reasonable time and allow the Officer-in-Charge of the Check Post or I.C.C., to check the contents of the vehicle by breaking open the package or packages, if necessary, and inspect all records relating to the goods carried. It also authorises the Officer concerned to search the goods vehicle and the driver or other person-in-charge of the vehicle or of the goods. Sub-section (4) requires the owner or the person-in-charge of a goods vehicle, entering the limits or leaving the limits of the State of Punjab to stop at the nearest Check Post or I.C.C. and furnish in triplicate a declaration mentioned in sub-section (2) along with the documents in respect of the goods carried in such vehicle before the Officer-in-Charge of the Check Post or I.C.C., who shall return a copy of the declaration duly verified by him to the owner or the person-in-charge of the goods vehicle. Proviso to this sub-section lays down that where a goods vehicle is bound for any place outside the State of Punjab, the owner or the person-in-charge of such vehicle shall furnish in duplicate a declaration in respect of his entry into the State of Punjab in the prescribed form and obtain a copy thereof duly verified by the Officer-in-Charge of the Check Post or I.C.C. and that copy shall be delivered within 48 hours to the Officer-

in-Charge of the Check Post or I.C.C. at the exit point. A penalty of Rs. 2,000 or 20 per cent of the value of the goods has been prescribed for violation of this condition. However, before imposing such penalty, reasonable opportunity of hearing has to be given to the person concerned. Sub-section (5) makes it obligatory for the driver or owner of the goods vehicle to produce for examination, if required by the Commissioner or any other person appointed to assist him under sub-section (1) of Section 3 to do so, transport receipts and all other documents and account books concerning the goods carried, transported, loaded, unloaded, consigned or receipt for transport at every station of transport of goods. The Commissioner or the person appointed under sub-section (1) of Section 3 is empowered to break open any package or packages of such goods. Clause (i) of sub-section (6) empower the Officer-in-Charge of the Check Post or I.C.C. or any other officer mentioned in sub-section (2) to order detention of the goods alongwith the vehicle for such period, as may reasonably be necessary, if the Officer concerned has reason to suspect that the goods under transport are meant for trade and are not covered by proper and genuine documents specified in sub-section (2) or (4) or the driver has not stopped the vehicle as required under sub-section (3) or that the person transporting the goods is attempting to evade payment of tax. This power can be exercised subject to the condition that the officer must hear the person concerned and record reasons in writing for doing so. After detention, the goods are to be released on furnishing of security or executing a bond with sureties in the prescribed form by the consigner or consignee, if he is registered under the 1948 Act. If the consigner or consignee is not registered, then the goods are to be released on furnishing a security in the form of cash or bank guarantee or crossed bank draft equivalent to 30 per cent of the value of the goods. Clause (ii) of sub-section (6) also provides for detention of the goods, if the owner or the person-in-charge of the goods fails to submit documents mentioned in sub-section (2) or (4) at the nearest Check Post or I.C.C. on his entry into or exit from the State of Punjab. It further provides that such goods are liable to be released only after the matter is finally decided under Section 14-B (7) (iii). Clause (i) of sub-section (7) requires the officer detaining the goods to record the statement given by the consigner or consignee of the goods or his representative or the driver or other person-in-charge of the goods vehicle and call upon to prove genuineness of the transaction before a specified date. Thereafter, the officer concerned is

required to submit the proceedings along- with the records to such officer, as may be authorised in that behalf by the State Government for conducting necessary inquiry into the matter. Sub-section (2) lays down the procedure for making inquiry in a matter covered by clause (i) of sub-section (6). It lays down that the officer authorised by the State Government shall serve a notice on the consigner or the consignee of the goods detained under clause (i) of sub-section (6) and give him an opportunity of being heard. If, after making necessary inquiry and hearing the consigner or the consignee, the officer concerned comes to the conclusion that no attempt has been made to avoid or evade the tax, then he has to order the release of the goods. If, on the other hand, he comes to the conclusion that there has been an attempt to avoid or evade the tax, then he can impose penalty, which shall not be less than 20 per cent and not more than 30 per cent of the value of the goods. Clause (iii) of sub-section (7) contains the procedure to deal with the cases relating to detention of goods under clause (ii) of sub-section (6). It also postulates service of notice upon the consigner or consignee of the goods and giving him of an opportunity to be heard. If after such inquiry and giving of opportunity, the officer finds that the documents required by sub-sections (2) and (4) were not furnished at the Check Post or I.C.C., then he has to pass order imposing penalty, which shall be 50 per cent of the value of the goods, on the consigner or consignee. Clause (iv) of sub-section (7) provides for acceptance of the amount of cash security under clause (i) of sub-section (6) and the amount of penalty imposed under sub-section (4) and clausd (ii) and (iii) of sub-section (7).

(19) The above analysis of the various sub-sections of Section 14-B shows that for the purpose of achieving the object of prevention of evasion of tax leviabale under the 1948 Act; the legislature has introduced stringent provisions requiring the owner, driver or person-in-charge of the transport vehicle to carry with him documents evidencing the genuineness of the transactions and payment of tax. These provisions also deal with the cases in which the person concerned fails to produce documents and/or to prove genuineness of the transaction. Sub-section (6) (i) of Section 14-B empowers the Officer-in-Charge of the Check Post or I.C.C. to detain the goods along with the vehicle, if he has reason to suspect that the goods are meant for trade and are not covered by proper and genuine documents. In such a case, the officer concerned is required to release such goods on furnishing of security or executing a bond with sureties if the consigner

or consignee is registered under the 1948 Act. In other cases, he is required to release the goods on furnishing of a security in the form of cash or bank guarantee equivalent to 30 per cent of the value of the goods. Two statutory safeguards provided against arbitrary exercise of power under this sub-section are that the officer concerned has to record reasons in writing for detaining the goods alongwith the vehicle and also to afford opportunity of hearing to the person transporting the goods.

(20) A comparative study of the Section 14-B (6), the constitutional validity of which was considered by the Full Bench in *Mool Chand Chuni Lal v. Shri Manmohan Singh* (supra) and Section 14-B (6) (i) shows that the only difference between the two provisions is that while under the old provision the officer-in-charge of the Check Post or the Barrier could order unloading of the goods or detention thereof, if he had reason to suspect that the goods under transport were meant for trade and were not covered by proper and genuine documents or the person transporting the goods was attempting to evade payment of tax, and also empowered him to release the goods on furnishing of security or executing a bond equivalent to Rs. 1,000 or 20 per cent of the value of the goods, under the new provision the officer-in-charge of the Check Post or I.C.C. has been given power to detain the vehicle and goods with a provision for their release on furnishing of bond in case of the registered dealer on furnishing of bank guarantee or cash security in other cases. The constitutional validity of Section 14-B(6) has been upheld by the Full Bench in *Mool Chand Chuni Lal v. Shri Manmohan Singh* (supra) and we do not find any valid ground to take a different view *qua* section 14-B (6) (i) because there is no substantial difference between the two provisions and also because the petitioners have not challenged its constitutional validity.

(21) Sub-section (6) (ii) of Section 14-B also provides for detention of the goods if the owner or the person-in-charge of the goods fails to submit the documents, as mentioned in sub-sections (2) and (4), at the nearest Check Post or I.C.C. on his entry into or exit from the State. The material difference between clauses (i) and (ii) of sub-section (6) of Section 14-B is that while in the first case there is a presumption that the driver or the person-in-charge of the goods has got the relevant documents, as mentioned in sub-sections (2) and (4), and the same have been produced, but the Officer-in-Charge of the Check Post or I.C.C. has reason to suspect that the goods under transport are not covered by proper and genuine documents or the driver has not stopped the vehicle as required under sub-section (3) or that the person

transporting the goods is attempting to evade payment of tax, in the second case the owner or the in charge of the goods does not possess the relevant documents as mentioned in sub-sections (2) and (4), giving rise to a presumption that he is transporting the goods without paying the tax. The other difference between the two provisions is that while goods detained under clause (i) are required to be released on furnishing of security or executing bond with sureties or furnishing of a cash security or bank guarantee, the goods detained under clause (ii) can be released after the matter is finally decided under clause (iii) of sub-section (7). The necessity of enacting these stringent provisions arose because of large scale evasion of tax by the dealers and the existing machinery is not sufficient to curb this menace. However, neither of these provisions contemplates imposition of penalty on the presumption of evasion of tax as was the case before the Supreme Court in *K.P. Abdulla's case* (supra) and before the Single and Division Benches of this Court in the case of *Dunlop India Limited* (supra). Therefore, Section 14-B (6) (ii) cannot be declared *ultra vires* to the powers of the State by applying the ratio of the aforesaid decisions. Rather, the same must be held to be within the legislative competence of the State in view of the law laid down by the Supreme Court and by this Court in *Commissioner of Commercial Taxes and others v. Ramkishan Shrikishan Jhaver and others* (supra), *Sodhi Transport Co. and another v. State of U.P. and another* and *Mool Chand Chuni Lal v. Shri Manmohan Singh* (supra), in which it has been held that the State Legislature has power to enact law for prevention of the evasion of Sales Tax, including the power to detain the goods and the vehicles. In *Sodhi Transport Co.'s case* (supra), their Lordships of the Supreme Court further held that the Legislature can enact a law and create a rebuttable presumption about the attempt to evade the tax. Therefore, we are unable to agree with the learned counsel for the petitioners that clause (ii) of sub-section (6) of section 14-B of the 1948 Act is beyond the legislative competence of the State. The detention of the goods till the final adjudication of the matter may appear to be a bit harsh, but on that ground alone the provision cannot be declared unconstitutional because the object underlying it is to prevent the evasion of tax and a person who fails to produce the required documents *prima facie* showing the genuineness of the transaction, cannot complain of hardship or seek invalidation of a provision which is otherwise constitutionally valid.

(22) The challenge to the vires of sub-section (6) (ii) of Section 14-B on the ground that the same imposes unreasonable restriction on the petitioners right to carry on trade and business or their right to freedom of trade, commerce and intercourse also deserves to be rejected

in view of the proposition laid down in *Sodhi Transport Co. and another v. State of U.P. and another* (supra).

(23) We shall now consider the question as to whether sub-section (7) (iii) of section 14-B, which provides for imposition of penalty equivalent to 50 per cent of the value of the goods in the cases covered by Section 14-B (6) (ii), is violative of the petitioners fundamental right to equality or their right to carry on trade or business. For this purpose, it will be useful to notice the difference between the language of clauses (ii) and (iii) of Section 14-B (7). A bare reading of clause (ii) of Section 14-B (7) shows that the provision contained therein is *pari-materia* with Section 14-B (7) (unamended), which contemplated holding of an inquiry by the competent authority and giving of an opportunity of hearing to the owner before imposing penalty. The only difference between the two provisions is that while under the old provision penalty ranging from 15 to 30 per cent of the value of the goods could be imposed. Under the new provision the quantum of penalty can vary from 20 to 30 per cent of the value of the goods. This shows that the competent authority had wide range of discretion in the matter of imposition of penalty under section 14-B(7) (unamended) and this continues to be the position under Section 14-B (7) (ii). Clause (iii) of Section 14-B (7) also provides for giving of an opportunity of hearing to the consigner or consignee, but it makes it mandatory for the competent authority to impose penalty equivalent to 50 per cent of the value of the goods, in case such officer finds that the documents as required under sub-sections (2) and (4) were not furnished at the Check Post or I.C.C. This means that in the cases in which the goods are detained under Section 14-B (6) (ii) the competent authority has no option but to impose penalty, once it is proved that the incharge of the goods had failed to produce documents at the time of entry into or exit from the State. This provision is founded on the assumption that the person carrying the goods without the relevant documents is guilty of evading the tax. Ordinarily, no exception could have been taken to such a provision, but the madatory imposition of penalty equivalent to 50 per cent of the value of the goods irrespective of the fact that the goods may not be liable to tax makes the provision unconscionable. In a given case the transaction involving sale of the goods may not be liable to be taxed under the 1948 Act or under any other contemporary statute or the owner or the consigner or consignee may produce evidence to prove that no attempt had been made to evade the tax and that the non-production of the documents at the time of entry into or exit from the State was due to reasons beyond the control of the driver or the person-in-charge of the goods,

but even in such a case the competent authority will have to pass an order imposing penalty on the premise that the relevant documents were not furnished at the Check Post or I.C.C. at the time of entry into or exit from the State. This shows that the incidence of penalty contemplated by Section 14-B (7) (iii) is not relatable to an attempt to evade the tax, but to the incidence of non-production of relevant documents at the time of entry into or exit from the State of Punjab. In our opinion, this provision is violative of Articles 14 and 19 (1) (g) of the Constitution of India, is so far as it makes the levy of penalty equivalent to 50 per cent of the value of the goods as mandatory irrespective of the nature of the transaction under which the goods are being transported.

(24) In view of the above conclusion, we do not consider necessary to refer to the decisions of the Supreme Court in *State of Karnataka v. B.M. Ashraf & Co.* (supra); *Steel Authority of India Ltd. v. State of Orissa & Ors.* (supra) and *M/s Nathpa Jhakri Jt. Venture v. State of Himachal Pradesh and ors.* (supra) and of this Court in *Nepha Exports and Pvt. Ltd. v. State of Haryana* (supra), which are otherwise also not having any bearing on the decision of these petitions. However, we shall deal with the argument of the learned counsel for the petitioners that the notification dated 29th September, 1999 should be quashed because before amending Section 14-B, previous sanction of the President had not been obtained. According to the learned counsel, the parent statute had become effective after Presidential assent and, therefore, the amendment could not have been enforced without the prior sanction of the President, as contemplated by proviso to Article 304(b) of the Constitution. Learned Deputy Advocate General controverted this argument and submitted that Presidential sanction was not needed because the impugned amendments do not impose any restriction on the petitioners' freedom of trade, commerce etc.

(25) Article 304 of the Consitution reads as under :—

“304. Notwithstanding anything in Article 301 of Article 303, the Legislature of a State may by law—

(a) impose on goods imported from other States or the Union Territories any tax to which similar goods manufactured or produced in that State are subject so, however, as not to discriminate between goods so imported and goods so manufactured or produced ; and

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- (b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest.

Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President.”

A reading of the provisions reproduced above shows that it begins with a *non-obstante* clause and empowers the State Legislature to make law imposing reasonable restrictions on the freedom of trade, commerce or intercourse with or within the State, which may be in public interest. The proviso to clause (b) of Article 304 imposes a restriction on the introduction of a Bill or amendment for the purposes of clause (b) without the previous sanction of the President. In other words, the State cannot enact a law or make an amendment for imposing even a reasonable restriction on the freedom of trade, commerce or intercourse in public interest without seeking prior Presidential sanction. In abstract, the argument of the learned counsel for the petitioners may appear attractive, but on a careful reading of the provisions of Section 14-B (7) (unamended and amended) in the light of the law laid down by the Supreme Court leaves no room for doubt that the notification dated 29th September, 1999 cannot be declared bad for want of Presidential sanction. The unamended Section 14-B (6) and (7) provided for detention of goods and imposition of penalty. The amended provisions also empower the State authorities to take similar measures. The only difference between the unamended and amended provisions is that the degree of penalty, which can be imposed by the competent authority, has been varied to some extent. However, this cannot be treated as an additional restriction on the petitioner's right to freedom of trade, business and intercourse guaranteed under Article 301 of the Constitution. In *Syed Ahmed Aga etc. v. The State of Mysore and another*. (Supra), the Supreme Court held that the amendment introduced by the Mysore Silkworm Seed and Cocoon (Regulation of Produce, Supply and Distribution) (Amendment) Act (29 of 1969), was not bad for want of Presidential sanction. Some of the observations made in that decision are extracted below :—

“The Principal Act had the sanction of the President and enables orders to be passed which had the force of law enabling restrictions to be imposed by rules covered by the purposes

of the Act. The amendment only varied the form of restrictiveness without appreciably adding to its content. The amendments did not go beyond a regulation which was fully authorised by the language of the provisions of the Principal Act. Even any additional licensing involved did not go beyond the purview of the provisions of the Principal Act and the rules framed thereunder. The mere change in form, from statutory rules to statutory provisions, could hardly constitute even additional "regulation".

"There has not been a real increase in restrictions upon commerce in silkworms and cocoons by the provisions of the Amending Act which mostly cover what was already laid down by the statutory rules. If the substances of Statutory rules is converted into statutory provisions there could hardly be said to be an addition even in "regulation" imposed by the amending law."

These observations have been reiterated in *State of Bihar and others v. Harihar Prasad Debuka etc.* (23) and *M/s Punjab Traders and others v. State of Punjab and others.* (*supra*)

(26) In view of the above, we have no hesitation to reject the plea set up by the petitioners' that the impinged amendment should be quashed for want of prior Presidential sanction.

(27) In the result, the writ petitioners are disposed of in the following terms :—

- (i) Section 14-B(6) (ii) is declared *intra vires* to the provisions of the 1948 Act.
- (ii) Section 14-B(7) (iii) is partly declared unconstitutional inasmuch as it makes imposition of penalty equivalent to 50 per cent of the value of the goods as mandatory. However the State shall be free to introduce provision for imposition of appropriate penalty for non-compliance of sub-sections (2) and (4) of Section 14-B.

We also hope that the state would make appropriate provision for laying time schedule for passing of order under section 14-B (7) (iii).

(iii) During the pendency of the writ petitions, interim orders had been passed directing the release of the goods and the vehicles of the petitioners on furnishing of sureties/bank guarantees. Now the concerned authority shall be free to pass appropriate orders under section 14-B(7) (iii) and the persons aggrieved by such order shall be entitled to avail appropriate legal remedies by filing appeals etc.

R.N.R.

Before Jawahar Lal Gupta & N.K. Sud, JJ

BHUPINDER SINGH—*Petitioner*

versus

U.T. CHANDIGARH & OTHERS—*Respondents*

C.W.P. NO. 1365 OF 2000

4th January, 2001

Constitution of India, 1950—Art. 226—Chandigarh Lease Hold of Sites and Buildings Rules, 1973—Rls. 9 & 10—Allotment of plot on lease hold basis after paying 25% of the total amount—Delay of more than 2 years in handing over the physical possession of the site—Rules provide that auction purchaser becomes entitled to possession of the property on payment of 25% of bid money—petitioner failing to raise construction and utilize the property—Whether the petitioner liable to pay the instalments on the dates as fixed in the letter of allotment—Held, no—Once the respondents failed to carry out their part of the obligation, they are not legitimately entitled to enforce the obligation against the purchaser.

Held, that the auction purchaser becomes entitled to possession of the property on payment of the 25% of bid money. He can raise construction and utilize the property. It can be a source of income for him. He has then to pay the balance amount in three equal instalments. The respondents had themselves failed to carry out their part of the obligation. Once that happens, they are not legitimately entitled to enforce the obligation to pay instalments against the purchaser.

(Para 9)