A

SODHI TRANSPORT CO. & ANR. ETC. ETC.

v.

STATE OF U.P. & ANR. ETC. ETC.

MARCH 20, 1986

B

[E.S. VENKATARAMIAH AND M.P. THAKKAR, JJ.]

Uttar Pradesh Sales Tax Act, 1948/ Uttar Pradesh Sales Tax Rules, 1948: s. 28-B/r.87 - Constitutional Validity of - Goods - Transit of through the State - Failure to surrender transit pass at check-post - Presumption of sale of goods within the State - Whether arises.

C

Indian Evidence Act, 1872: s.4 - Rebuttable presumption - Provision of taxing statute creating a rebuttable presumption - Effect of.

Words and Phrases: 'Shall presume' - Meaning of - s.4, Indian Evidence Act/s.28-B Uttar Pradesh Sales Tax Act, 1948.

D

Section 28 of the Uttar Pradesh Sales Tax Act, 1948 authorises the State Government to establish checkposts and barriers with a view to preventing evasion of tax or other dues payable under the Act in respect of sale of goods in the State. Section 28-B, added by the U.P. Act 1 of 1973, makes provision for the procedure to be followed by persons who intend to transport goods from outside the State by road through the State to destinations outside the State. It provides that when a vehicle coming from any place outside the State and bound for any other place outside the State passes through the State, the driver or the other person in-charge of such vehicle shall obtain in the prescribed manner a transit pass from the officer in-charge of the first checkpost or barrier after his entry into the State and deliver it to the officer in-charge of the checkpost or barrier before exit from the State. If he fails to do so it shall be presumed that the goods carried thereby have been sold within the State by the owner or person in-charge of the vehicle. Rule 87 of the Uttar Pradesh Sales Tax Rules 1948, inserted by the U.P. Sales Tax (First Amendment) Rules, 1974 provides that a person who wishes to obtain a transit pass shall make an application in

E

F

G

H

A the prescribed form to the officer in-charge of the checkpost concerned. It also provides for the issue of transit pass in triplicate and for inspection of the documents, consignments and goods to ensure that the statements are true.

The appellants, who claim to be engaged in the business of transport of goods belonging to others for hire and who in B the course of their business have to carry goods from one State to another State along roads lying in the State of Uttar Pradesh, questioned the validity of s.28-B of the Act and r.87 of the Rules by filing writ petitions before the High Court. Their contentions were (i) that s.28-B and r.87 were outside the scope of Entry 54 of the Seventh Schedule of the C Constitution, (ii) that they infringed freedom of trade, commerce and intercourse guaranteed under Art. 301 of the Constitution, and (iii) that they imposed unreasonable restrictions on the freedom of trade guaranteed under Art. 19(1)(g) of the Constitution. The High Court having upheld the constitutional validity of the impugned provisions appeals D were preferred to this Court by special leave.

In the writ petitions under Art. 32 of the Constitution in addition to the contentions raised in the High Court, it was submitted that the rule of presumption contained in s. 28-B of the Act virtually made a person, who had not E actually sold the goods, liable to pay sales tax, and that a transporter being just a transporter could not be treated as a dealer within the meaning of that expression as it was defined in the Act at its commencement.

Disposing of the appeals and writ petitions, the Court,

F

HELD : 1. The decision of the High Court upholding the constitutionality of s. 28-B of the Uttar Pradesh Sales Tax Act, 1948 and r.87 of the Uttar Pradesh Sales Tax Rules, 1948 does not call for any interference. [957 D]

G The Act is traceable to Entry 54 in List II of the Seventh Schedule to the Constitution. Section 28-B of the Act and r.87 of the Rules are enacted to make the law workable and to prevent evasion of tax. They fall within the ambit and scope of the power to levy the tax itself. When the legislature has the power to make a law with respect to any

H

subject it has all the ancillary and incidental powers to make that law effective. [949 D; 950 E; 949 E]

Sardar Baldev Singh v. Commissioner of Income Tax Delhi & Ajmer [1961] 1 S.C.R. 482 referred to.

2. Taxation laws usually consist of three parts - charging provisions, machinery provisions and provisions providing for recovery of the tax. The provisions of s. 28-B of the Act and r.87 of the Rules are just machinery provisions. They do not levy any charge by themselves. They ensure that a person who has brought goods inside the State and who has made a declaration that the goods are brought into the State for the purpose of carrying them outside the State should actually take them outside the State. If he hands over the transit pass while taking the goods outside the State then there would be no liability at all. [949 F; 950 C; 949 D; 950 C-D]

Whitney v. Commissioner of Inland Revenue (1925) 10 T.C. 88 and **Gursahai Saigal v. Commissioner of Income-tax, Punjab** [1963] 3 S.C.R. 893 referred to.

3. The words 'it shall be presumed that the goods carried thereby have been sold within the State' contained in s. 28-B of the Act only require the authorities concerned to raise a rebuttable presumption that the goods must have been sold in the State if the transit pass is not handed over to the officer at the checkpost or the barrier near the place of exit from the State. The transporter concerned is not shut out from showing by producing reliable evidence that the goods have not been actually sold inside the State. 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. [951 E; 956 B, D]

A presumption is not in itself evidence but only makes a prima facie case for the party in whose favour it exists. It indicates the person on whom burden of proof lies. When presumption is conclusive it obviates the production of any other evidence to dislodge the conclusion to be drawn on proof of certain facts. But when it is rebuttable it only points out the party on whom lies the duty of going forward with evidence on the fact presumed, and when that party has produced

A evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of presumption is over. Then the evidence will determine the true nature of the fact to be established. [954 F; 955 A]

Woodroffe & Amir Ali's Law of Evidence, Vol. I 14th Edn. 299, **W.S. Holdsworth's 'A History of English Law** . Vol. IX, B 140 and **Izhar Ahmad Khan v. Union of India** [1962] Supp. 3 S.C.R. 235, referred to.

4. The words 'shall presume' require the Court to draw a presumption referred to in a law unless the fact is disproved. They contain a rule of rebuttable presumption in respect of C matters with reference to which they are used, and do not lay down a rule of conclusive proof. These words occur in statutes wherever facts are to be ascertained by a judicial process. [953 E-G]

D 5. 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 cannot be considered as conferring on the authority concerned the power to levy a tax which the legislature cannot otherwise levy. Such a rule of presumption which has the effect of shifting the burden of proof cannot be E termed unconstitutional when the person concerned has the opportunity to displace the presumption by leading evidence. [955 G; 956 A]

6. It cannot be said that a transaction which is proved F to be not a sale is being subjected to sales tax. The authority concerned before levying sales tax arrives at the conclusion by a judicial process that the goods have been sold inside the State and in doing so relies upon the statutory rule of presumption contained in s. 28-B of the Act which may be rebutted by the person against whom action is taken under that section. Once a finding is recorded that a person has G sold the goods which he had brought inside the State, then he would be a dealer according to the definition of the word 'dealer' in the Act subject to fulfilment of other conditions prescribed in this behalf. [956 D-F]

H In the instant case, the assessing authorities made assessments ex-parte in some cases proceeding on the basis that s. 28-B contains a rule of conclusive presumption. The

assessees also failed to realise the meaning of that section and did not attempt to rebut the presumption. Even genuine transporters who were not at all engaged in the business of purchase and sale of goods and had not effected any sale of goods, were found in many cases liable for large amounts of tax which they could have avoided if the authorities and the assessees had realised the true effect of the provisions. [957 E-G]

[To meet the ends of justice the Court approved the scheme evolved by the State providing for withdrawal and re-examination by the respondents of all the assessment orders ex-parte or otherwise in respect of the period prior to 1.6.1979, issuance of fresh notices to the assessees/appellants/petitioners and finalisation of assessment proceedings by the authorities keeping in mind the rebuttable presumption contained in s. 28-B, withdrawal of ex-parte orders of assessment passed after 1.6.1979 and issuance of fresh notices giving opportunity to transporters/assessees to present their cases, and completion of assessment proceedings within five months from the date of the judgment.] [960 C; 959 C,D,F; 960 A]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3376-80 and 3382 of 1982 etc. and W.P. Nos. 663, 9433 of 1981 etc.

From the Judgment and Order dated 25th May, 1982 of the Allahabad High Court in Civil Misc. Writ Petition Nos. 363, 339, 546, 301, 362 and 544 of 1981 respectively.

G.L. Sanghi, S.N. Kacker, Harbans Lal, C.S. Vaidyanathan, B.P. Singh, Ganga Dev, L.P. Aggarwala & Co., R.B. Mehrotra, E.C. Aggarwala, S.K. Sinha, Gopal Subramanium, Mrs. Shoba Dixit, C.V. Subba Rao, Madan Lokur, Sushil Kumar, N.S. Das Behl, P.H. Parekh, S.C. Jain, O.P. Sharma, G.L. Sanghi, Bishamber Lal, Mehta Dave & Co., Uma Dutta, S.N. Mehta, Ashok Grover, Rishi Kesh, R.P. Singh, H.M. Singh, D.P. Mohanty, Mrs. Rani Chabbra, Miss A. Subhashini, B.P. Maheswari, Badridas Sharma and R.A. Gupta for the appearing parties.

The Judgment of the Court was delivered by :

A

VENKATARAMIAH, J. These appeals by special leave are filed against the judgment of the High Court of Allahabad in Civil Miscellaneous Writ Petition No.339 of 1981 and connected cases delivered on May 25, 1982 holding inter alia that section 28-B of the Uttar Pradesh Sales Tax Act, 1948 (U.P. Act No. XV of 1948) (hereinafter referred to as 'the Act') and
B rule 87 of the Uttar Pradesh Sales Tax Rules, 1948 (hereinafter referred to as 'the Rules') framed by the Government of Uttar Pradesh in exercise of its powers conferred under the Act, as constitutionally valid and dismissing the Writ Petitions with costs. There are also before us a number of writ petitions presented under Article
C 32 of the Constitution in which similar contentions are raised. We are disposing of all the appeals and the connected writ petitions by this common judgment. But we are setting out the facts in one set of appeals for purposes of all these cases as the questions involved are mostly legal issues.

D The appellants who claim to be engaged in the business of transport of goods belonging to others for hire from one place to another and who in the course of their business have to carry goods from one State to another State along roads lying in the State of Uttar Pradesh filed the writ petitions out of which these appeals arise feeling aggrieved by the
E restrictions imposed on them by section 28-B of the Act and rule 87 of the Rules and the orders of assessment passed under the Act against them by the Sales Tax authorities of the State of Uttar Pradesh.

The Legislature of a State is entitled to levy tax on
F sales under Entry 54 of List II of the Seventh Schedule to the Constitution. The Act, however, came into force prior to the commencement of the Constitution. When the State of Uttar Pradesh found that there was large scale evasion of sales tax by persons engaged in trade who were bringing goods from out-side the State of Uttar Pradesh into that State the Legis-
G lature enacted certain measures by way of amendment of the Act to prevent as far as possible such evasion. First, section 28 of the Act was enacted in 1956 providing for establishment of check-posts and barriers. It was substituted by an amended section 28 by U.P. Act 11 of 1972 which inter alia provided for the establishment of check-posts and barriers at the boun-
H daries of the State and also for inspection of goods while in

transit. Even this provision was found to be inadequate. Therefore by U.P. Act 1 of 1973, the State Legislature substituted the said amended section 28 by a new section 28 and also added sections 28-A, 28-B, 28-C and 28-D to deal with the problems of evasion arising out of transactions in which goods imported into the State from outside were involved. Section 28-A deals with the provisions governing a person who imports goods by road into the State from any place outside the State. Section 28-C deals with the regulation of delivery and carrying away of the goods which are brought into the State by rail, river or air. We are not concerned with sections 28-A and 28-C in these cases. Similarly section 28-D is not material for us as it deals with cases governed by section 28-A and section 28-C. Section 28 and section 28-B which are material for these cases as they now stand read thus

> "28. Establishment of check-posts and barriers - The State Government, if it is of opinion that it is necessary so to do with a view to preventing evasion of tax or other dues payable under this Act in respect of the sale of goods within the State after their import into the State, may by notification in the Gazette direct the establishment of check-posts or barriers at such places within the State as may be specified in the notification.
>
> 28-B. Transit of goods by road through the State and issue of transit pass - When a vehicle coming from any place outside the State and bound for any other place outside the State passes through the State, the driver or other person in charge of such vehicle shall obtain in the prescribed manner a transit pass from the officer in charge of the first check-post or barrier after his entry into the State and deliver it to the officer in charge of the check-post or barrier before his exist from the State, failing which it shall be presumed that the goods carried thereby have been sold within the State by the owner or person in charge of the vehicle."

Rule 87 of the Rules which was inserted into the Rules by

the U.P. Sales Tax (First Amendment) Rules, 1974 for the purpose of section 28-B of the Act reads thus :

> "87. Transit of goods by road through the State and issue of transit pass - (1) The driver or other person-in-charge of a vehicle shall, in order to obtain a pass under section 28-B, submit an application, in triplicate on Form XXXIV to the office-in-charge of the check-post or barrier, if any, established near the point of entry into the State, hereinafter referred to as Entry Check-Post.
>
> (2) The Officer-in-charge of the Entry Check Post shall, after examining the documents and after making such enquiries as he deems necessary, issue a pass on the duplicate and triplicate copies of the application, retaining the original himself. The pass shall specify the check-post or the barrier (hereinafter referred to as the Exit Check Post) of the State to be crossed by the vehicle or vessel and the time and date upto which it should be so crossed.
>
> (3) The driver or other person-in-charge of the vehicle or vessel shall stop his vehicle at such Exit Check Post, surrender the duplicate copy of pass and allow the officer-in-charge of the check-post to inspect the documents, consignments and goods in order to ensure that the consignments being taken out of the State are the same for which pass had been obtained. The Officer-in-charge of the Exit Check Post shall issue a receipt on the triplicate copy of the pass for the duplicate copies surrendered by the driver or other person-in-charge of the vehicle.
>
> (4) The Officer-in-charge of the Exit Check Post shall have powers to detain, unload and search the contents of the vehicle for the purpose mentioned in sub-rule (3)."

The relevant part of Form No. XXXIV which is issued in triplicate reads thus :

"TRIPLICATE

FORM XXXIV

Application for issue of Transit Pass
(To be submitted in triplicate)

(See rule 87(1) of the U.P. Sales Tax Rules, 1948)

SIR

I.....s/o Sri.....
r/o.....(full address).....hereby declare that I am the owner/driver of vehicle/truck No..... belonging to.....(Name and address of the owner/ transporting agency.)

2. I hereby declare that the consignments detailed overleaf being carried by the above vehicle are meant for destination in other States. They will not be unloaded or delivered anywhere in Uttar Pradesh.

3. My vehicle/truck will cross Uttar Pradesh.....
(name of the other State).....
Border at.....check post on or before
(date) by .....hours(time).....

Date.....
Time..... Signature
Place..... status

Transit Pass

Serial No. .....

Vehicle/truck no. ..... carrying the consignments mentioned overleaf is permitted to cross the Uttar Pradesh .....(Name of the other State) Border at.....Check Post by ..... hours .....on or before .....(date)

Place .....
Date .....
Time .....

Signature of the Officer
I/c Check Post

SEAL

*Strike out whichever is not applicable.

Certified that I have received the duplicate copy of this pass.

Place .....
Date .....
Time .....

(SEAL)"

Signature of the Officer
I/c Check Post

Now section 28 authorises the State Government to establish check-posts and barriers, if it so desires, with a view to preventing evasion of tax or other dues payable under the Act in respect of sale of goods in the State of Uttar Pradesh. Section 28-B makes provision for the procedure to be followed by persons who intend to transport goods by roads into the State of Uttar Pradesh from places out outside the State of Uttar Pradesh for the purpose of transporting them to places situated outside that State. It provides that when a vehicle coming from any place outside the State of Uttar Pradesh and bound for any other place outside the State passes through the State, the driver or other person in-charge of such vehicle shall obtain in the prescribed manner a transit pass from the officer in-charge of the first check-post or barrier after his entry into the State and deliver it to the officer in-charge of the check-post or barrier before the exit from the State. If he fails to do so, it shall be presumed that the goods carried thereby have been sold within the State by the owner or person in-charge of the vehicle. Such presumption when drawn against the owner or the person in charge of the vehicle and he is held to have sold the goods inside the State of Uttar Pradesh all the liabilities under the Act which arise in the case of a person who sells goods inside the State would arise. Rule 87 provides that a person

who wishes to get a transit pass shall make an application in Form No. XXXIV to the officer in-charge of the check-post concerned. It also provides for the issue of the transit pass in triplicate and for inspection of the documents, consignments and goods to ensure that the statements made are true.

The validity of sections 28, 28-B and rule 87 was questioned by the petitioners who filed the writ petitions in the High Court on various grounds. Broadly the contentions were that (i) the provisions were outside the scope of Entry 54 of List II of the Seventh Schedule to the Constitution; (ii) they infringed freedom of trade, commerce and intercourse guaranteed under Article 301 of the Constitution; and (iii) they imposed unreasonable restrictions on the freedom of trade guaranteed under Article 19(1)(g) of the Constitution. The High Court rejected these contentions and dismissed the writ petitions. Hence these appeals by special leave have been filed. Some writ petitions have also been filed in this Court. All these were heard together by us.

Now the impugned provisions are just machinery provisions. They do not levy any charge by themselves. They are enacted to ensure that there is no evasion of tax. As already observed, the Act is traceable to Entry 54 in List II of the Seventh Schedule to the Constitution which reads thus : '54. Taxes on the sale or purchase of goods other than newspapers subject to the provisions of entry 92A of List I'. It is well-settled that when the Legislature has the power to make a law with respect to any subject it has all the ancillary and incidental powers to make the law effective. Taxation laws usually consist of three parts - charging provisions, machinery provisions, and provisions providing for recovery of the tax. We may refer here to the observations of Lord Dunedin in **Whitney v. Commissioner of Inland Revenue** [1925] 10 T.C. 88 (110). The learned Lord said :

> "My Lords, I shall now permit myself a general observation. Once that it is fixed that there is liability, it is antecedently highly improbable that the statute should not go on to make that liability effective. A statute is designed to be workable and the interpretation thereof by a Court should be to secure that object, unless crucial

A

> omission or clear direction makes that end unattainable. Now there are three stages in the imposition of a tax : there is the declaration of liability, that what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, ex hypothesi, has already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay."

C These observations are quoted with approval by our Court in **Gursahai Saigal v. Commissioner of Income-tax, Punjab** [1963] 3 S.C.R. 893 at 900. The provisions of section 28-B of the Act and rule 87 of the Rules which are impugned in these cases as mentioned above are just machinery provisions. They impose no charge on the subject. They are enacted to ensure D that a person who has brought the goods inside the State and who has made a declaration that the goods are brought into the State for the purpose of carrying them outside the State should actually take them outside the State. If he hands over the transit pass while taking the goods outside the State then there would be no liability at all. It is only when he does E not deliver the transit pass at the exit check post as undertaken by him, the question of raising a presumption against him would arise. We shall revert to the question of presumption again at a later stage, but it is sufficient to say here that these provisions are enacted to make the law workable and to prevent evasion. Such provisions fall within the ambit and F scope of the power to levy the tax itself. Dealing with the question of validity of section 23-A of the Indian Income Tax Act, 1922 this Court observed in **Sardar Baldev Singh v. Commissioner of Income Tax, Delhi & Ajmer** [1961] 1 S.C.R. 482 at page 493 thus :

G

> "In spite of all this it seems to us that the legislation was not incompetent. Under Entry 54 a law could of course be passed imposing a tax on a person on his own income. It is not disputed that under that entry a law could also be passed to prevent a person from evading the tax payable on H his own income. As is well-known the legislative entries have to be read in a very wide manner and

A

> so as to include all subsidiary and ancillary matters. So Entry 54 should be read not only as authorising the imposition of a tax but also as authorising an enactment which prevents the tax imposed being evaded. If it were not to be so read, B then the admitted power to tax a person on his own income might often be made infructuous by ingenious contrivances. Experience has shown that attempts to evade the tax are often made."

We shall now deal with the question relating to the presumption contained in section 28-B of the Act. It is seen C that if the transit pass is not handed over to the officer in-charge of the check-post or barrier before his exit from the State it shall be presumed that the goods carried thereby have been sold inside the State by the person in charge of the said goods. It is contended that the said rule virtually makes a person who has not actually sold the goods liable to pay D sales tax and it is further argued that a transporter being just a transporter cannot be treated as a dealer within the meaning of that expression as it was defined in the Act at the time when section 28-B was introduced into the Act. The appellants contend that the words 'it shall be presumed that the goods carried thereby have been sold within the State' in E section 28-B of the Act as meaning that it shall be conclusively held that the goods carried thereby have been sold within the State to buttress their argument that a tax is being levied on a transaction which is not a sale at all under Entry 54 of List II of the Seventh Schedule by introducing a legal fiction. This argument overlooks the essential F difference between the two sets of words set out above. The meaning of these words would become clear if we read the definitions of the words 'may presume', 'shall presume', and 'conclusive proof' given in section 4 of the Indian Evidence Act, 1872, although the said Act is not directly attracted to this case. These words mean as follows :

G

> "4. 'May presume'. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved; or may call for proof of it;

H

> 'Shall presume'. Whenever it is directed by this Act that Court shall presume a fact, it shall

A

regard such fact as proved, unless and until it is disproved;

'Conclusive proof'. When one fact is declared by the Act to be conclusive proof of another; the
B Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it."

In the Indian Evidence Act, 1872 there are three cases where conclusive presumption may be drawn. They are sections
C 41, 112 and section 113. These are cases where law regards any amount of other evidence will not alter the conclusion to be reached when the basic facts are admitted or proved. In **Woodroffe & Amir Ali's Law of Evidence** (Vol. I) 14th Edition at page 299 it is stated thus :

D "Conclusive presumptions of law are :

'rules determining the quantity of evidence requisite for the support of any particular averment, which is not permitted to be overcome by any proof that the fact is otherwise. They consist
E chiefly of those cases in which the long experienced connection, just alluded to has been found so general and uniform as to render it expedient for the common good that this connection should be taken to be inseparable and universal. They have been adopted by common consent, from
F motives of public policy, for the sake of greater certainty, and the promotion of peace and quiet in the community; and therefore, it is that all corroborating evidence is dispensed with, and all opposing evidence is forbidden (Taylor, Ev., s.71 : Best, Ev., p. 317, s.304').

G .....

Rebuttable presumptions of law are, as well as the former,

H 'the result of the general experience of a connection between certain facts or things, the one

A

being usually found to be the companion or the effect of the other. The connection, however, in this class is not so intimate or so uniform as to be conclusively presumed to exist in every case; yet, it is so general that the law itself, without B the aid of a jury, infers the one fact from the proved existence of the other in the absence of all opposing evidence. In this mode, the law defines the nature and the amount of the evidence which is sufficient to establish a prima facie case, and to throw the burden of proof upon the other party; and if no opposing evidence is offered, the jury are C bound to find in favour of the presumption. A contrary verdict might be set aside as being against evidence. The rules in this class of presumptions as in the former, have been adopted by common consent from motives of public policy and for the promotion of the general good; yet not as D in the former class forbidding all further evidence, but only dispensing with it till some proof is given on the other side to rebut the presumption raised."

Having regard to the definition of the words 'may E presume', it is open to a court where they are used in its discretion either to draw a presumption referred to in a law or may not. The words 'shall presume' require the court to draw a presumption accordingly, unless the fact is disproved. They contain a rule of rebuttable presumption. These words i.e., 'shall presume' are being used in Indian judicial lore F for over a century to convey that they lay down a rebuttable presumption in respect of matters with reference to which they are used and we should expect that the U.P. Legislature also has used them in the same sense in which Indian courts have understood them over a long period and not as laying down a rule of conclusive proof. In fact these presumptions are not G peculiar to the Indian Evidence Act. They are generally used wherever facts are to be ascertained by a judicial process.

The history of the rules regarding presumptions is succintly given in **W.S. Holdsworth's 'A History of English Law'** (Vol.IX) at page 140 thus : H

A

> "From time to time the ordinary process of reasoning have suggested various inferences, which have been treated by the courts in different ways. Sometimes they are treated as more or less probable inferences of fact; and it is possible, though by no means certain, that in the remote past most presumptions originated as mere presumptions of fact. Just as in the case of judicial notice, the courts, as a matter of common sense, assume the existence of matters of common knowledge without further proof; so they easily drew an obvious inference from facts proved or admitted, and thus created a presumption, as common sense dictated. And just as the truisms which elementary experience teaches came to be embodied in maxims which illustrate the origins of the doctrine of judicial notice, so other maxims arose which illustrate the origins, in that same elementary experience, of some of the commonest of the presumptions known to the law. But it was inevitable that as the law developed, some of these presumptions should be so frequently drawn that they took upon themselves the character of rules of laws and we shall see that, owing to the exigencies of primitive methods of trial, the Legislature and the courts were active in creating them. Some of them were made or became only prima facie rules - rules, that is, which were rebuttable by further evidence. Others were made or became irrebuttable, and therefore, in effect rules of law. Others hovered uncertainly on the border line of rebuttable and irrebuttable presumptions....."

A presumption is not in itself evidence but only makes a prima facie case for party in whose favour it exists. It is a rule concerning evidence. It indicates the person on whom the burden of proof lies. When presumption is conclusive, it obviates the production of any other evidence to dislodge the conclusion to be drawn on proof of certain facts. But when it is rebuttable it only points out the party on whom lies the duty of going forward with evidence on the fact presumed, and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed the

purpose of presumption is over. Then the evidence will determine the true nature of the fact to be established. The rules of presumption are deduced from enlightened human knowledge and experience and are drawn from the connection, relation and coincidence of facts, and circumstances.

In **Izhar Ahmad Khan v. Union of India**, [1962] Suppl. 3 S.C.R. 235 @ 257 Gajendragadkar, J. (as he then was) explains the meaning of a rebuttable presumption thus :

> "It is conceded, and we think, rightly, that a rule prescribing a rebuttable presumption is a rule of evidence. It is necessary to analyse what the rule about the rebuttable presumption really means. A fact A which has relevance in the proof of fact B and inherently has some degree of probative or persuasive value in that behalf may be weighed by a judicial mind after it is proved and before a conclusion is reached as to whether fact B is proved or not. When the law of evidence makes a rule providing for a rebuttable presumption that on proof of fact A, fact B shall be deemed to be proved unless the contrary is established, what the rule purports to do is to regulate the judicial process of appreciating evidence and to provide that the said appreciation will draw the inference from the proof of fact A that fact B has also been proved unless the contrary is established. In other words, the rule takes away judicial discretion either to attach the due probative value to fact A or not and requires prima facie the due probative value to be attached in the matter of the inference as to the existence of fact B, subject of course, to the said presumption being rebutted by proof to the contrary..."

In our opinion 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

A

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.

We are of the view that the words contained in section
B 28-B of the Act only require the authorities concerned to raise a rebuttable presumption that the goods must have been sold in the State if the transit pass is not handed over to the officer at the check-post or the barrier near the place of exist from the State. The transporter concerned is not shut out from showing by producing reliable evidence that the goods
C have not been actually sold inside the State. It is still open to him to establish that the goods had been disposed of in a different way. He may establish that the goods have been delivered to some other person under a transaction which is not a sale, they have been consumed inside the State or have been redespatched outside the State without effecting a sale within
D the State etc. It is only where the presumption is not successfully rebutted the authorities concerned are required to rely upon the rule of presumption in section 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. The authority concerned before levying sales tax arrives
E at the conclusion by a judicial process that the goods have been sold inside the State and in doing so relies upon the statutory rule of presumption contained in section 28-B of the Act which may be rebutted by the person against whom action is taken under section 28-B of the Act. When once a finding is recorded that a person has sold the goods which he had brought
F 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. A person who sells goods inside the State of Uttar Pradesh and fulfills the other conditions prescribed in that behalf is a dealer even as per
G amendments made in 1959, 1961, 1964, 1973 and 1978 to the said definition. 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
H inside the State though with the help of the presumption which is a rebuttable one.

A

The levy of sales tax on goods which are held to have been sold inside the State cannot be considered as contravening Article 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 Article 301 and B Article 19(1)(g) of the Constitution are, therefore, without substance.

The foregoing discussion disposes of the contentions regarding legislative competence or unreasonable character of the provisions contained in section 28-B of the Act and rule 87 of the Rules. They are introduced, as stated earlier, to C check evasion and to provide a machinery for levying tax from persons 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. The decision of the High Court upholding the constitutionality of D section 28-B of the Act and rule 87 of the Rules does not call for any interference. We uphold the validity of the said provisions.

This, however, does not solve all the problems posed before us by some of the parties who are involved in these E cases. We have found that in some cases the assessing authorities have made assessments ex parte without appreciating the true meaning of the rule of presumption contained in section 28-B of the Act. They have proceeded virtually on the basis that the section contains a rule of conclusive presumption. Even the assessees have failed to F realise the meaning of that section and do not appear to have made any attempt to rebut the presumption. It is noticed that in many cases even genuine transporters who are not at all engaged in the business of purchase and sale of goods and have not effected any sale of goods have been found liable for large amounts of tax, which they could have avoided, if the G authorities and the assessees had realised the true effect of the provisions contained in section 28-B of the Act. This has led to serious prejudice in many cases. When this fact was brought to the notice of the learned counsel for the State of Uttar Pradesh he very fairly submitted on behalf of the Commissioner of Sales Tax thus : H

"Whereas it was observed by the Hon'ble Court in the course of the discussion that the presumption under section 28-B is a rebuttable presumption.

Whereas it was pointed out that while the Commissioner of Sales Tax had issued a circular in 1985 to the effect that ways and means will be found to ensure that inter-State transporters who are not engaged in buying or selling of goods in the Uttar Pradesh are not unduly inconvenienced but the said circular was not extant when assessments were made in numerous pre-1985 cases.

Whereas it was mentioned by the appellants and petitioners that it would be virtually impossible to produce the exit permits of pre-1979 assessments and that it would not be reasonable to treat them as dealers who had sold assessable goods in Uttar Pradesh. Now, therefore, the Commissioner of Sales Tax states as under :-

1. A large number of Civil Appeals have been preferred by way of Special Leave against the Judgment and Order of Allahabad High Court dated 25.5.82 by which the Allahabad High Court was pleased to uphold the constitutional validity of sec. 28-B of the U.P. Sales Tax Act and rule 87 of the U.P. Sales Tax Rules. A large number of writ petitions have been filed under Article 32 of the Constitution of India challenging the constitutional validity of sec. 28-B of the U.P. Sales Tax Act.

2. In the Civil Appeals, this Hon'ble Court was pleased to pass an interim order staying the recovery of sales tax for the period prior to 1.6.79. This Hon'ble Court was pleased to clarify that there would be no stay of payment of tax after 1.6.1979.

3. During the hearing of these appeals, learned counsel for the appellants pointed out that some difficulties and hardships were being faced by the

genuine transporters. Keeping in view the submissions made by the learned counsel for the appellants, this Hon'ble Court was pleased to suggest to the counsel appearing for the State to evolve a suitable method to ensure that the Act and the provisions would not operate unjustly or harshly against bona fide transporters.

4. Counsel appearing for the State of U.P. has agreed on behalf of the Respondents to re-examine all the assessments in respect of the period prior to 1.6.1979 (the date mentioned by this Hon'ble Court in the interim order). Counsel states that all assessment orders ex parte or otherwise, shall be withdrawn.

5. A fresh notice containing as far as possible relevant particulars, would be issued to the assessees/appellants/petitioners. The authorities will finalise the assessment proceedings in accordance with law. The authorities will also bear in mind that the presumption contained in section 28-B that if the transporter fails to produce the transit pass at the exit check-post, then it would be presumed that the goods carried have been sold within the State by the owner or person in charge of the vehicle, is a rebuttable presumption and it would be open to the transporter, assessee, to displace this presumption by producing adequate material or evidence.

6. In respect of the assessments after 1.6.79, the department will withdraw any ex parte orders of assessment which may have been passed. A fresh notice giving an opportunity shall be given to the transporter/assessee to present his case. The assessments made after 1.6.79 after affording an opportunity to the transporter/assessee shall not be disturbed except in accordance with law (i.e. by way of appeal or any other remedy provided under the Act).

7. The revised assessment proceedings pursuant to

A

this order may be completed within a period of 5 months from today.

8. The assessing authorities will pass fresh orders of assessment in accordance with law uninfluenced by the previous orders which may have been made.

B

9. It may be clarified that Sec. 21 of the U.P. Sales Tax Act will not be a bar to the instant re-assessments."

On going through the above proposal we feel that it would C meet the ends of justice if the cases of the appellants and petitioners are permitted to be dealt with accordingly. We give our approval to the said proposals and make an order accordingly. Any assessment made pursuant to the above orders shall not be open to question on the ground that it does not satisfy the period of limitation contained in section 21 of D the Act. We also make it clear that any person who is aggrieved by the order of assessment may question it in appeal or revision as provided by the Act on all grounds except on the ground that it had been passed beyond time. We also direct that if any of the appellants or petitioners has, depending upon the pendency of these appeals or petitions, not filed any E appeal or revision against any order passed under the Act, such appellant or petitioner may prefer such appeal or revision as the case may be on or before April 30, 1986 and if any such appeal or revision is filed it shall be disposed of by the concerned authority without raising any objection as to the period of limitation.

F

These appeals and writ petitions are disposed of accordingly. There shall be no order as to costs.

P.S.S.