A TRIPURA GOODS TRANSPORT ASSOCIATION AND ANR.

v.

COMMISSIONER OF TAXES AND ORS.

DECEMBER 18, 1998

B [K. VENKATASWAMI AND A.P. MISRA, JJ.]

Sales Tax—Tripura Sales Tax Act, 1976/Tripura Sales Tax Rules, 1976 as amended by Tripura Sales Tax [11th Amendment] Rules, 1994—Sections 29,30,32,36A,38B/Rules 46A(3);63A; 64A; Form XXIV—Constitutionally of—

C *Held, they are within the legislative competence of the State and would fall under List II of Entry 54 of the Seventh Schedule to the Constitution—The obligation cast on the transporter regarding maintenance of accounts and disclosure of the quantity value, weight of the goods is only to help the authorities to check the evasion of tax—Such obligation has no co-relation*

D *with the sale and purchase of the goods or to treat transporter as dealers-Impugned provisions not being charging Sections, no tax liability placed on the transporters—Constitution of India, 1950-Seventh Schedule, list II, Entry 54.*

Constitution of India 1950:

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Article 246-Seventh Schedule List II, Entry 54-State Legislation-Legislative Competence of-Held, if any legislature makes any ancillary or subsidiary provision which incidentally transgresses over its jurisdiction for achieving the object of such legislation, then it would be a valid piece of legislation-Entries to be given their fullest meaning and widest amplitude

F *and be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended within it.*

Art. 301,304(b)-Tripura Sales Tax Act, 1976-Sections 38;38B-Constitutionality of-Requirement of Section 38B for a transporter operating its transport business relating to taxable goods in Tripura to obtain certificate

G *of Registration from the Commissioner of Taxes-Held, not violative of Art, 301 of the Constitution-Transporters required to obtain certificate of Registration to check evasion of tax.*

The appellant-association was doing the business of transporting goods within and outside the State of Tripura. The Tripura Sale Tax [11th Amendment]

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Rules, 1994, Sections 29, 32 and 36A of the Tripura Sales Tax Act, 1976 and the notification dated 23rd September, 1994 and 15th October, 1994 introduced certain provisions as a result of which the appellants who were the transporters in Tripura were required to comply with various formalities as prescribed under the Act and the Rules. The appellants were required to obtain a "Certificate of Registration", to maintain accounts according to the prescription made under Section 36A of the Act for carrying on transport business while entering into or going outside the State of Tripura and making the declaration in Form XXIV. The appellants challenged the amendments by way of a writ petition as being beyond the legislative competence of the State Legislature and *ultra-vires* the Constitution offending Articles 14,19(1)(g), 246, 265, 286,300A and 301 of the Constitution. Single Judge of the High Court dismissed the writ petition of the appellants except the challenge regarding constitutional validity of Rule 63A(2). The decision of the Single Judge was upheld by the Division Bench in appeal. Hence the present appeal.

On behalf of the appellants, it was contended that the impugned provisions lacked legislative competence as the obligation cast under it on the transporters could only be on a dealer. It was submitted that the appellants were mainly the transporters carrying goods of the consignor to the consignee and were neither a dealer nor doing any business of sale or purchase of any goods. Hence the obligations cast on the transporters including punishment for the offences relating to contravening of any the provisions of the Act were beyond the legislative competence of the State legislature under List II of Entry 54 of the Seventh Schedule of the Constitution of India. It was further contended that the impugned provisions impeded free flow of trade and business of the appellants and hence violative of Article 301 of the Constitution of India as it cast an obligation on the transporters to obtain Certificate of Registration under the Act when any goods were brought within or sent outside the State of Tripura and further to fill Form XXIV.

On behalf of the respondents, it was contended that none of the impugned provisions required the appellant-transporter to perform any of such obligations so as to construe it to be that which could only be on a dealer. The said provisions were only to streamline assessment and to check evasion of sales tax. It was further contended that the offence and penalties referred to in the impugned provisions were only a mechanism to make collection of tax more effective and purposeful.

Dismissing the appeals, this court

A HELD. 1.1. If any legislature makes any ancillary or subsidiary provision which incidentally transgresses over its jurisdiction for achieving the object of such legislation then it would be a valid piece of legislation. [636-A-B]

Express Hotels Private Ltd. v. *State of Gujarat & Anr.*, [1989] 3 SCC
B 677; *Elel Hotels and Investments & Ors.* v. *Union of India,* [1989]3 SCC 698 and *P.N. Krishna Lal & Ors* v. *Government of Kerala & Anr.*, [1995] Suppl. 2 SCC 187, relied upon.

1.2. Every taxing statute provides such mechanism as it deem fit to check evasion of tax. In doing so, if any obligation is cast on any person
C having connection with consignor or consignee in relation to such goods, may be other than a dealer, to preform such obligation in aid, to check evasion cannot be construed to be beyond the competence of States Legislature. Neither Section 29,30,32 and 36A of Tripura Sales Tax Act, 1976 nor Rules 46A, 63A and 64A of Tripura Sales Tax Rules, 1976 lack any legislative competence. They are not charging Sections and no tax liability is placed on
D the transporters. They are within the legislative competence of the State and would fall under List II of Entry 54 of the Seventh Schedule to the Constitution of India. [640-F-H]

Sodhi Transport Co. & Ors. v. *State U.P. & Ors* [1986] 2 SCC 486,
E referred to.

1.3. Under Section 29(4) and Section 30, the offences in case committed by transporter are relatable to checking of evasion of tax, then composition of offence under Section 32 would also confine itself within this sphere. None of the provisions in any way place any liability on the transporter which
F is otherwise on a dealer under the Act. Similarly, the maintenance of accounts by the transporters, carries etc. under Section 36A is only to render help to the authorities in checking the evasion of tax. This does not put any such obligation on the transporter to hold that these provisions transgress the legislative competence of the State Legislature. [638-G-H]

G 2.1. Maintaining accounts of goods transported into or outside Tripura in the prescribed manner and to furnish in the prescribed manner such information as the Commissioner requires including filling of Form XXIV is only to check evasion of tax with the help and aid of such transporter or carrier etc. Such obligation is cast only for identifying the consignor or consignee to fix liability on him in correlation with the goods carried by such
H transporter further requiring the disclosure of such goods with its quantity,

value, weight, to help the taxing authority to assess such goods on such escaping dealer. This helps the taxing authorities in collecting taxes, imposing penalties including punishing one for the offences committed. [637-D-F] A

2.2. The maintenance of accounts by the transporter under Section 36A is only to help the taxing authority to trace the dealer, fix the goods transported correlating with such dealers transporting such goods for fixing taxable liability in this regard. There is no provision, which fixes any liability on the transporters, carriers etc., which is on a dealer. Liability if at all, is only if such transporters, carriers etc. do not disclose what is required and what is within his knowledge to help the authorities to collect the tax from escaping dealers which, but for this, would escape. [638-A-B] B C

3.1. Section 29 speaks of offences covering both dealers and non-dealers as is evident by the opening word 'whoever' Sub-section (4), obligates a person to produce any accounts, evidence or documents or to furnish any information as required by the concerned authority. Of course, all this would be what one is required to maintain and in the case of transporters, carriers etc. what the relevant provisions require him to do. If he is required to maintain or produce some document which he has to maintain under a statute, and if he does not produce it, then of course he should be made liable for the offence. It is only on his failure to do this, it is treated as an offence. Such information and documents sought are either with or within the knowledge of transporter. This is for the sole objective of ascertaining a consignor and consignee of the taxable goods which the transporter is carrying. Such requirement has no correlation with the sale and purchase of the goods or to treat a transporter as dealer and consequently, no obligation is cast on him to pay any tax, interest or penalties which a dealer is required to pay. [638-B-E] D E F

3.2. Similarly Section 30 refers to offence only when a false declaration is made in connection with any proceedings under this Act, which he either knows or believes to be false or does not believe to be true. Again, the conviction under it is only for making false declaration which is within his knowledge. This provision is only to see that the correct statement of facts are brought out. [638-E-F] G

3.3. It is by virtue of Rule 46A that transporter is required at the check post to disclose complete accounts of the goods carried by him in Form XXIV. This Form requires to disclose the name and address of the consignor, whether a registered dealer or not, place of despatch and destination of the H

A goods, lorry number description of consignment, quantity, weight value, consignor,s invoice number and date railway receipt or bill of lading and in case goods are sent outside the State, the permit number and date authorising such export under Rule 47C. Such information are required solely for the purpose of checking the evasion of tax. The information, which the transporter has to give so far with reference to the quantity weight and B value of the good, would be based on the basis of the documents, paper etc. as disclosed by the consignor. By making truthful declaration, believing the statement to be true based on information of the consignor, the offence is not drawn unless there is connivance between the transporter and the consignor. [639-B-H]

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4. Sub-rule (3) of Rule 63A gives an option to the transporter in case goods carried by him is in contravention of any provisions of the Act and the Rules, if he so desires, to opt for composition of offence. A transporter can always intimate within the time specified under sub-rule (3) to a dealer or owner of the goods to come and pay the amount fixed under Section 32 it is D open to a transporter not to opt for composition of offence. If no liability is fastened on him, then the authorities may proceed to take action under sub-rule (4) By following the procedure therein, the seized goods are auctioned to recover the liability of a dealer to tax penalty etc. under the Act. It is significant that sub-section (1) of Section 38A records that in case any balance amount is left after the said auction, the same is to be returned to E the person from whom such goods are seized or to the owner of such goods. It is with the scheme of the Act, to collect the tax and penalty by this mechanism, what otherwise would have escaped assessment. [642-C-E]

5.1. The requirement of Section 38B for a transporter operating its F transport business relating to taxable goods in Tripura to obtain 'Certificate of Registration' from the Commissioner of Taxes, is not violative of Article 301 of the Constitution. [642-F]

5.2. Section 38B has been brought in for carrying out the purpose of Section 38, which basically is to check evasion of tax. Under it, the barriers, G check-post are set up, the officers are empowered to check any vehicle, seize goods being carried in contravention of any provision of the Act and the Rules. Thus the requirement of 'Certificate of Registration' by a transporter is also for the same purpose. It only applies to such transporters doing transport business relating to taxable goods in Tripura only. This certainly cannot be construed to be violative of Article 301 of the Constitution. Article H 301 provides freedom of trade, commerce and intercourse. This Article is

subject to the other provisions of this part, namely, part XIII which covers Articles 301 to 307. Article 304(b) empowers the State Legislature to impose such reasonable restriction on the freedom of trade, commerce or intercourse with or within the State as may be required under the public interest. When a provision is made for a Certificate of Registration which in the present case is brought in by amendment, it is really for checking the evasion of tax. By such registration of transporter or carriers it becomes feasible for the authorities to trace out such dealer escaping tax, through such transporters. [642-G-H; 643-A-B]

State of Bihar and Ors **v.** *Harihar Prasad Debuka and Ors.,* **[1989] 2 SCC 192, relied upon.**

State of Haryana and Ors. **v.** *Sant Lal and Anr.,* **[1993] 4 SCC 380, distinguished.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6436 of 1998.

From the Judgment and Order dated 4.6.96 of the Assam High Court in W.A.No.62 of 1995.

M.L. Lahoty, Paban K. Sharma and Himanahu Shekhar for the Appellant.

Raskeh Dwivedi, Ms. Vimla Sinha and Gopal Singh for the Respondents.

The Judgment of the Court was delivered by

MISRA, J. Leave granted.

The appellant-Association which is doing the business of transporting goods within and outside the State of Tripura, is aggrieved by the judgment of the Gauhati High Court dismissing writ Appeal challenging the constitutional validity of the Tripura Sales Tax [11th Amendment] Rules, 1994, (for short 'the Rules') and Sections 29, 32 and 36A of the Tripura Sales Tax Act, 1976, (for shot 'the Act') including notifications dated 23rd September, 1994 and 15th October, 1994. By means of the aforesaid 11th Amendment, sub-rule (3) has been inserted after sub-rule (2) of Rule 46-A of the Tripura Sales Tax Rules, 1976, (for short 'Principal Rules'), sub-rule (IA) has been inserted after sub-rule 63-A (1), sub-rule (2) in Rule 63A has been substitution in place of old sub-rule (2) of the principal Rules and Rule 64A has been substituted for the old sub-rule 64A. The resultant effect of such amendment is that the appellant,

A who are working as Transporters in Tripura, are required to obtain a Certificate of Registration and to comply with various other formalities as prescribed under the Act and the Rules, *viz.*, to maintain accounts according to the prescription made by the respondents under Section 36A of the Act for carrying on transport business while entering into or going outside the State of Tripura including making the declaration in Form XXIV, which is challenged B to be beyond the legislative competence of the State Legislature and *ultra vires* the Constitution offending Articles 14, 19(1)(g), 246,265, 286, 300A and 301 of the Constitution of India. The challenge is based on the ground that the appellants are Transporters and are not dealers within the meaning of Section 2(b) of the said Act, hence obligation cast on them under the Act and C Rules are beyond the legislative competence of the State legislature.

By a reasoned order, the learned Single Judge was pleased to dismiss the writ petition of the appellants, except the challenge to the validity of Rule 63A(2) of the principal Rules. However, the challenge made by the appellants regarding constitutional validity of Section 36A, which requires a carrier to D maintain proper accounts of goods transported to or outside Tripura in the manner prescribed, was not entertained by the learned Single Judge. In appeal before the Division Bench, though foundation was laid but specific prayer for declaration of Section 36A as ultra vires was not made due to inadvetence, hence the appellants sought amendment to the prayer at the appellate stage E which was granted, accordingly it was incorporated at the appellate stage. The Division Bench also dismissed the appeal of the appellants. Aggrieved by the same, the present appeal is filed.

Learned counsel for the appellants Mrs. M.L. Lahoty, made two-fold submissions in support of the challenge. First, the obligation cast under it on F the Transporters could only be on a dealer and since the Transporters are neither trading in sale no purchase of any goods hence not a dealer as defined under Section 2(b) of the Act, hence the impugned provisions lack legislative competence. Secondly, when it further casts an obligation on such transporters to obtain certificate of registration under the said Act, when any G good is brought within or sent outside the State of Tripura and further to fill Form XXIV, impedes free flow of trade and business of the appellants, hence violative of Article 301 of the Constitution of India.

In support of his first submission, he submitted that Sec. 29 refers to offences and penalties not confined to dealers as it begins with the word H 'whoever', which includes the transporters. As per sub-clause (4) whoever

fails, when required by or under the provisions of this Act to produce any accounts, evidence or documents or to furnish any information, are liable for conviction by a Judicial Magistrate, punishable with imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both. Composition of offences is conferred under Section 32. The Commissioner may, under it, either before or after institution of criminal proceedings, accept from the person who has committed or is reasonably suspected of having committed an offence under the Act or the Rules made thereunder, by way of composition of offence on such terms and conditions as prescribed, and on payment of such sum as determined by the Commissioner, no further proceedings is to be taken against such person in respect of the such offence. Reference was also made to Section 36A, which requires maintenance of accounts by a carrier including Transporter, the class to which the appellants belongs. This puts an obligation on the Transporter to maintain proper account of goods transported to or outside Tripura in the manner prescribed and is liable to furnish in the prescribed manner such information as the Commissioner may require relating to the transportation of such goods. Reference is also made to Section 38B, which required the Transporter, Carrier or Transporting Agent operating its transport business relating to taxable goods in Tripura to obtain a Certificate of Registration in the prescribed manner from the Commissioner of Taxes on payment of such fees as may be prescribed.

To appreciate this controversy, Section 29(1) and (4), Sections 30, 32, 36A and 38B are quoted hereunder :

Section 29 :

"29. Offences and penalties (1) Whoever -

(1) Carries on business as a dealer and acts in contravention of any of the provisions of this Act, or

(2) fails, without reasonable cause, to submit in due time any return as required by or under the provisions of this Act, or submits a false return; or

(3) fails, when required by or under the provisions of this Act to keep accounts or records of sales; or

(4) fails, when required by or under the provisions of this Act to produce any accounts, evidence or documents or to furnish any information; or

A (5) fails or neglects to comply with any requirement made of him under the provisions of this Act; or

(6) knowingly produces incorrect accounts registers or documents, or knowingly furnishes incorrect information; or

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shall, on conviction before a Judicial Magistrate and in addition to any tax including interest, if any, or penalty or both that may be due from him, be punishable with imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both, C and when the offence is a continuing one, with a daily fine not exceeding fifty rupees during the period of continuance of the offence.

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Section 30 :

D "30. False statement in declaration : Whoever makes statement in verification or declaration in connection with any proceedings under this Act which is false, and which he either knows or believes to be false, or does not believe to be true, shall on conviction before a Judicial Magistrate, be punishable with simple imprisonment which may extend to six months or with fine which may extend to one E thousand rupees, or with both."

Section 32 :

"32. Composition of offences : (1) Subject to such conditions as may be prescribed, the Commissioner may, either before or after F institution of criminal proceedings under this Act, accept from the person who has committed or is reasonable suspected of having committed an offence under this Act or the rules made thereunder, by way of composition of such offence

(a) Where the offence consist of the failure to pay, or the evasion G of any tax recoverable under this Act, in addition to the tax including interest, if any, or penalty or both so recoverable, a sum of money not exceeding one thousand rupees or double the amount of the tax recoverable, whichever is greater, and

(b) in any of the case a sum of money not exceeding one thousand H rupees in addition to tax recoverable.

(2) On payment of such sum as may be determined by the Commissioner under Sub section (1) no further proceeding shall be taken against the person concerned in respect of the same offence." A

Section 36A:

"36A. Maintenance of Accounts by Carriers : (1) Notwithstanding anything contained in any other Act, any transporter, carrier or transporting agent operating its transport business in Tripura, shall maintain proper account of goods transported to or outside Tripura through it in the manner prescribed and shall on demand by the Commissioner be liable to furnish in the prescribed manner such information as the Commissioner may require relating to the transportation of such goods and shall also be bound to produce books of accounts for inspection and examination by the Commissioner." B C

Section 38B:

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"38B. For carrying out the purpose of section 38 every Transporter, carrier of Transporting Agent operating its transport business relating to taxable goods in Tripura shall be required to obtain a Certificate of Registration in the prescribed manner from the commissioner of Taxes on payment or such fees as may be prescribed."

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The Transporter has to make a declaration in Form XXIV, which is an obligation cast on such Transporter by virtue of Section 38(2) read with sub-rule (3) of Rule 46A, which requires the Transporter to obtain Form XXIV from the superintendent of Taxes on payment of such fees as may be specified by Commissioner. Transporter is further obliged to maintain a register of the accounts of such forms serially. Rule 63A read with Section 38(3) confers power to search at any place on the Officer-in-charge of a check post, Superintendent of Taxes or any officer specially empowered by the Commissioner to intercept, detain and search any vehicle or place suspected of being used for contravening provisions. Sub-rule (IA) of this Rule 63A read with Section 38(4) gives power of seizure on the aforesaid officer at the check post when goods are being carried in contravention of any provision of the Act or the Rules. Under sub-rule (2) the person, from whom such goods are seized, has to make a declaration of the value of such seized taxable goods. Such declaration is to be submitted to the Superintendent of taxes with copies of the relevant bills, invoice, and consignment note issued by the consignor and other documents in support of the basis on which the F G H

A value is declared. Sub-rule(3) gives an option to the persons from whom such goods are seized to opt for composition of such offence under Section 32 and then to pay for the composition of the offence so determined within seven days from the date of composition of the offence. In case he does not opt, then such goods are liable to be auctioned in terms of sub-rule(4). Next reference was to Rule 64A which requires registration of Transporter. Rules
B 46-A, Rule 63A and Rule 64A are quoted hereunder :

Rule 46-A :

"46-A. (1) Every declaration to be given under sub-section (2) of section 38 shall contain a correct and complete accounts of the goods
C carried by the transporter and shall be in Form XXIV in duplicate, and duly signed by him :

Provided that if the space provided in Form XXIV is not sufficient for making the entries separate annexure may be attached to the form for the purpose which should be duly signed by him.

D (2) The Officer-in-charge of the check post or the barrier on being satisfied about the correctness of the statement made and particulars contained in the declaration in Form XXIV, shall seal it with his official seal and give a permit. One copy of the permit shall there upon be returned to the transporter and the other shall be retained by the
E Officer-in-charge:

Provided that a transporter who has obtained a permit at the first check post or barrier under sub-rule (2) shall not be required to make any further declaration at other checkposts of barrier in respect of only so much of the consignments to which the permit relates.

F (3) The transporter shall obtain Form XXIV from the Superintendent of Taxes concerned on payment of such price as may be specified by the Commissioner.

The Form shall be serially numbered and account shall be maintained in register. No other Form XXIV except those supplied from the office
G of Superintendent of Taxes shall been entertained with effect from such date as the Commissioner may notify by publication in the local newspapers and Official Gazette."

Rule 63A :

H "63A. (Power to search at any place by Officer-in-charge of a check

post, Superintendent of Taxes or any officer specially empowered by the Commissioner.

(1) Notwithstanding anything contained in any other provision of these Rules, at every check post or barrier or at any other place, when so required by the Officer-in-charge of such check post or barrier, by any Superintendent of Taxes or by any officer empowered by the Commissioner of Taxes in this behalf for the purpose of preventing the evasion of taxes payable under the Act, the driver or any other persons in charge of goods vehicles shall stop the vehicle and keep it stationary as long as may be required by such officer to search the goods vehicle or part thereof, examine the contents therein and inspect all records relating to the goods carried which are in the possession of such driver or other person in charge thereof, who shall if so required, give his name and address and the name and address of the owner of the vehicle as well as those of the consignor and consignee of the goods.

IA -On search, as aforesaid, if it is found that the goods are being carried in contravention of any provision of the Act or the Rules, such officer conducting search may seize the goods found in the vehicle alongwith any container or material used for packing.

(2) When any taxable goods are seized, the person from whom such goods are seized shall make a declaration in respect of the value of the seized taxable goods and this value shall be the retail prices or the aggregate of retail prices of such goods at which these are likely to be sold in Tripura at the relevant time. Such declaration shall be submitted to the Superintendent of Taxes with copies of the relevant bills, invoice, and consignment note issued by the consignor and other documents in support of the basis of the value declared. The copies so furnished may be returned to the person after the Superintendent satisfies himself about the value of the goods declared.

(3) When the person from whom the taxable goods are seized opts for composition of such offence under Section 32 within a period of 15 days from the date of seizure of the goods, the amount of composition money so determined shall be payable within 7 days from the date of composition of the offence by payment into Government treasury. Upon production of the receipted copy of the challan in support of payment to the Superintendent the seized goods be released.

(4) If the person from whom the goods are seized does not opt for

composition of the offence within a period of 15 days from the date of seizure or having compounded the offence, does not pay the amount in due time as provided in sub-rule (3) the Superintendent with the previous sanction of the Commissioner, shall issue a proclamation in form No. XXI for auction for sale of such seized goods on a fixed date, place and time. The description of the taxable goods shall be mentioned in the proclamation. The proclamation shall be published at least one local newspaper. The auction shall be conducted by the Superintendent or any other official authorised by the Commissioner.

(5) The auction shall be governed by the conditions laid down in the proclamation (Form N. XXI)."

Rule 64A

"64A. Registration of Transporter etc.

(1) No transporter, carrier or transporting agent shall operate its transport business in Tripura relating to taxable goods without being registered with the Commissioner of Taxes in such a manner as he may direct.

(2) A transporter, carrier or transporting agent already operating transport business in Tripura relating taxable goods shall, within a period of 30 (thirty) days from the date of commencement of these rules (Eleventh Amendment) apply to the Commissioner of Taxes for registration.

(3) If a transporter, carrier or a transporting agent carries or transports any taxable goods in contravention of the provisions of the Act or the rules, his registration shall be liable to be cancelled or suspended for such period as may be determined by the Commissioner of Taxes after giving him a reasonable opportunity of being heard.

(4) Every transporter, carrier or transporting agent operating its transport business in Tripura shall maintain a Register in Form No. XXII a true and correct account of every consignment of goods transported into Tripura, and in Form No. XXIII of goods transported outside Tripura, through it.

(5) No taxable goods shall be delivered by the transporters carriers or transporting agents unless the requirement laid down in Rule 46 and 47 have been complied with.

(6) No delivery of taxable goods shall be given by the transporter without obtaining a copy of declaration in Form XVII-signed by the superintendent of Taxes/Inspector of Taxes."

Learned counsel for the appellants vehemently urged that the appellants are mainly the Transporters carrying goods of the consignor to the consignee and are neither a dealer nor doing any business of sale or purchase of any goods, hence the aforesaid obligations cast on the transporters including punishment for the said offences are beyond the legislative competence of the State Legislature under List II of Entry 54 of the Seventh Schedule of the Constitution of India.

Learned senior counsel for the respondents, Mr. Rakesh Dwivedi, submits that none of the said provisions require the appellants (Transporter) to perform any of such obligations so as to construe it to be that which could only be on a dealer. The aforesaid provisions are only to streamline assessment and to check the evasion of sales tax. The said obligation casts on the Transporters to achieve such purpose, is a necessary concomitant of any taxing statute. He submits that the offence and penalties referred to in Section 29(4), which is strongly relied by learned counsel for the appellants, when read with other sub-clauses of that Section and further read with Section 30, reveal that it is only a mechanism to make collection of tax more effective and purposeful. Sub-section (4) of Section 29 constitute offence only when one fails to produce such account or form as he is required under the law when required by the concerned authority. This is a necessary corollary for which an obligation is cast on the Transporters to do certain thing. This threat of offence is only to keep him on guard so that he may not fail to produce such documents as required, but for this the very objective to trace a real dealer for tax and penalty would be defeated. Thus this obligation cast on the Transporter is really in aid to the taxing authorities. Section 30 constitutes offence when a false statement is declared. This is followed by the composition of offences under Section 32. Section 36A requires the maintenance of accounts. Similar is the position with respect of the aforesaid Rules. They are all in aid of the mechanism evolved to check evasion of tax. Next requirement of obtaining a Certificate of Registration under Section 38B and making declaration on Form XXIV under sub-Rule 3 of Rule 46-A could not be construed as to constitute an inference that it impedes any free flow of trade or business while entering into and going out of the State of Tripura.

Thus, the question for consideration with respect to the first submission

A is, whether such provisions could be held to be beyond the legislative competence of the State Legislature? The law in this regard is well-settled, if any legislature makes any ancillary or subsidiary provision which incidentally transgresses over its jurisdiction, for achieving the object of such legislation then it would be a valid peace of legislation.

B In *Express Hotels Private Ltd.* v. *State of Gujarat & Anr.*, [1989] 3 SCC 677, this Court held :

> "We are dealing with an entry in a Legislative List. The entries should not be read in a narrow or pedantic sense but must be given their fullest meaning and the widest amplitude and be held to extend to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in them."

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In *Elel Hotels and Investments Ltd. & Ors.* v. *Union of India* , [1989] 3 SCC 698, this Court held :

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> " ... In interpreting expressions in the legislative lists a very wide meaning should be given to the entires. In understanding the scope and amplitude of the expression 'income' in Entry 82, List I, any meaning which fails to accord with plenitude or the concept of 'income' in all its width and comprehensiveness should be avoided. The cardinal rule of interpretation is that the entires in the legislative lists are not 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. The widest possible construction, according to the ordinary meaning of the words in entry, must be put upon them..."

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In *P. N. Krishna Lal & Ors.* v. *Government of Kerala and Anr.*, [1995] Suppl. 2 SCC 187, this Court held :

> "... The legislature derives its power under Article 246 and other related articles in the Constitution. The language of an entry should be given the widest meaning fairly capable to meet the need of the Government envisaged by the Constitution. Each general word should extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended within it. When the vires of an enactment is impugned, there is an initial presumption of its constitutionality. If there exists any difficulty in ascertaining the limits of the legislative

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power, it must be resolved, as far as possible in favour of the legislature, putting the most liberal construction on the legislative entry so that it is *intra vires*." A

It is now necessary to scrutinise the impugned provisions to see what are the obligations cast on the transporters, what is the purpose of such obligation, is it in any way taxing such transporters or impeding the transport business to make it beyond the legislative competence and ultra vires Article 301 of the Constitution of India? Whenever any goods is sold or purchased inside or outside the State, the incidence of tax and the quantum of tax has to be ascertained under the provisions of the relevant taxing statute. For this, it is necessary to fix a dealer, the taxable goods, place of sale or purchase of such goods and the quantum of tax. If a dealer in taxable goods transaction of sale or purchase escapes attention of the taxing authority, tax on such goods escapes with resultant loss to the State revenue. To over reach this possible escape a mechanism is invariably brought in a statute to seal such loopholes of escape, of course, casting obligations on some to perform certain acts to reach this objective. Thus, maintaining accounts of goods transported into or outside Tripura in the prescribed manner and to furnish in the prescribed manner such information as the Commissioner requires including filling of Form XXIV is only for the said objective to be achieved with the help and aid of such transporter or carrier etc. Such obligation is cast only for identifying the consignor or consignee to fix liability on them in correlation with the goods carried by such transporter further requiring the disclosure of such goods with its quantity, value, weight, to help the taxing authority to assess such goods on such escaping dealer. This helps the taxing authorities in collecting taxes, imposing penalties including punishing one for the offences committed. If such an obligation is not cast on such Transporters then any dealer under a false name, can despatch his taxable goods to another person through a Transporter escaping his sales tax liability on such goods. It cannot be denied that some such dealers and transporters do indulge in such illegal practices. This fact is brought in through the counter-affidavit filed by the respondent-State that some such consignments are booked with consignee as self; without disclosing the name, registration number and address of the consignee in the appropriate column of Form XXIV. By incorrect, incomplete declaration in such forms, if not made punishable, would defeat the very purpose of enacting these provisions and would help such clandestile dealers to escape the liability of tax. So each of these provisions are brought in to help the authorities to check the evasion of tax. B C D E F G H

A The maintenance of accounts by the Transporter under Section, 36A is only to help the taxing authority to trace the dealer, fix the goods transported correlating with such dealers transporting such goods for fixing taxable liability in this regard. There is no provision, which fixes any liability on the transporters, carriers etc., which is on a dealer. Liability, if at all, is only if such transporters, carriers etc. do not disclose what is required and what is within his knowledge B to help the authorities to collect the tax from escaping dealers which, but for this, would escape. Section 29 speaks of offences covering both dealers and non-dealers as is evident by the opening word 'whoever'. Sub-section (4), to which learned counsel referred to, obligates a person to produce any accounts, evidence or documents or to furnish any information as required by the C concerned authority. Of course, all this would be what one is required to maintain and in the case of transporters, carriers etc. what the relevant provisions require him to do. If he is required to maintain or produce some document which he has to maintain under a statute, and if he does not produce it then, of course, he should be made liable for offence. It is only on his failure to do this, it is treated as an offence, punishment as it is one D of the legitimate weapons to enforce one to help the authorities. Such information and documents sought are either with or within the knowledge of Transporter. As aforesaid, this is for the sole objective of ascertaining a consignor and consignee of the taxable goods which the transporter is carrying. Such requirement has no co-relation with the sale and purchase of the goods E or to treat a transporter as dealer and consequently, no obligation is cast on him to pay any tax, interest on penalties which a dealer is required to pay. Similarly Section 30 refers to offence only when a false declaration is made in connection with any proceedings under this Act, which he either knows or believes to be false, or does not believe to be true. Again, the conviction under it is only for making false declaration which is within his knowledge. F How can this constitute to be a ground for legislative competence ? This provision is only to see that the correct statement of facts are brought out. One is punished only if he knows or believes to be false, yet does not disclose it or even does not believe to be true, but still makes statement to the contrary. Under Section 29(4) and Section 30, the offences in case committed G by Transporter are relatable to checking of evasion of tax, then composition of offence under Section 32 would also confine itself within this sphere. We do not find any of these provisions in any way placing any liability on the Transporter which is otherwise on a dealer under this Act. Similarly, as aforesaid, the maintenance of account by the transporters, carriers etc. under Section 36A is only to render help to the authorities in checking the evasion H of tax. This does not put any such obligation on the Transporter to hold that

these provisions transgress the legislative competence of the State legislative. A

Further Rule 46A read with Section 38(2) requires every person transporting taxable goods at any check post or barrier referred to in sub-section(1), to file before the Officer-in-charge of such check -post or barrier a correct and complete declaration of the goods in such form and in such manner as may be required. It is by virtue of this Rule 46A a Transporter is B required at the check post to disclose complete accounts of the goods carried by him in Form XXIV. The question is why such requirement? Form XXIV, which is the main plank of attack by the learned counsel for the appellants is really based on the offence under Section 29(4) or Section 30 in case declaration under it is found to be false. Now, we proceed to examine what C is required to be filled by the transporters in Form No. XXIV. This Form requires to disclose the name and address of the consignor, whether a registered dealer or not, place of despatch and destination of the goods, lorry number, description of consignment, quantity, weight, value, Consignor's invoice number and date, railway receipt or bill of lading and case goods are sent outside the State, the permit number and date authorising such export under Rule 47C. D First, the question is why such information is required, if necessary, what possibly is the difficulty of the transporters, finally whether any objection by them is sustainable in law? As we have said that these informations are require solely for the purpose for checking the evasion of tax. Next, we do not find any difficulty for any transporter to disclose the names and addresses E of the consginor and the consignee, the place of destination, he would also be knowing the description of consignment being transported its quantity, weight and value also from the description as disclosed by the consignor. The information, which the Transporter has to give so far with reference to the quantity, weight and value of the goods, would be based on the basis of the documents, paper etc. as disclosed by the consignor. The fear expressed by F the learned counsel for the appellants that in case such description, specially with reference to its weight or value, is found to be wrong about which he would never be certain as he has to depend on what is disclosed by the consignor, he would be liable for punishment under Section 30. The fear expressed by learned counsel is without substance and is mere imaginary. We G have already observed that the offence is only drawn when there is false declaration, knowing the fact to be false, makes a declaration, not believing to be true yet makes declaration to the contrary. By making truthful declaration, believing the statement to be true based on information of the consignor, the offence is not drawn unless there is connivance between the transporter and the consignor. H

A He also referred to sub-rule (1A) of Rule 63A under which the goods are being carried in contravention of provisions of the Act or the Rules, is liable for seizure and under sub-rule (3) the transporter is made liable to pay for the composition of such offence in view of Section 32. The aforesaid submissions for the appellants are without any force. So far as the fear with reference to Form XXIV, as we have said above, he is aware of the same and B the same is based on the information given by the consignor. The purpose of this form rightly is to ascertain the consignor and consignee and the details of the goods for the purpose of taxing such goods under the Act. No Transporter can escape this declaration as this is one of the essential mechanisms evolved to help the taxing authorities to check the evasion. C Submission of the learned counsel, expressing the fear that, if ultimately the statement in case is found to be incorrect as per his disclosure in Form XXIV, that he would be held liable for offence is also unfounded. Apart from what we have recorded above, Column 13(i) of the said form directs the declaration to be made in the following terms :

D

> "I/We hereby declare that the above statements are true to the best of my/our knowledge and belief."

This itself clearly indicates when the liability of the offence punishable under Section 29 or Section 30 would be drawn. It only arises when such Transporter deliberately makes false declaration and not when such declaration E is true to his knowledge and belief. Learned senior counsel for the respondents fairly stated that purpose mainly is to get the disclosure of the name and address etc. of the consignor and consignee. The rest of the columns from 7 to 13 are primarily to be filled in on the basis of the information given by the consignor. Every taxing statute has charging sections. It lays down the F procedure to assess tax and penalties etc. It also provides provisions to cover pilferage of such revenue by providing such mechanism as it deem fit, in other words, to check evasion of tax and in doing so if any obligation is cast on any person having connections with consignor or consignee in relation to such goods, may be other than a dealer, to perform such obligation in aid, G to check evasion and in case he is made liable for any offence, for his dereliction of duty or deliberate false act contrary to what he is obligated to do. In our opinion, it cannot be construed to be beyond the competence of States legislature. The impugned provisions are not charging Sections, no tax liability is placed on the transporters. We find neither Sections 29, 30, 32 and 36A nor Rules 46A, 63A and 64A lack any legislative competence. They are H within the legislative competence of the State and would fall under List II of

Entry 54 of the Seventh Schedule of the Constitution of India. A

In *Sodhi Transport Co. and Ors.* v. State *of U.P. . and Ors.*, [1986] 2 SCC 486, challenge was made to the provisions of Section 28-B of the U.P. Sales Tax Act, which requires a Transporter while entering the State of Uttar Pradesh to obtain transit pass for its delivery at the exit barrier where the Transporter leave the State of Uttar Pradesh and on its failure a presumption B is drawn the goods carried inside State have been sold within the Sfate either by the owner or person incharge of the vehicle. The Court held that such goods carried have been sold within the State is a reputable presumption. The persons concerned have the opportunity to discharge the presumption by getting a finding recorded in his favour. C

Thus, if the person proves the presumption to the contrary, no liability is fasten on him. However, in case he fails to avail this opportunity or fails to prove to the contrary then he would be a dealer even according to the definition of the word 'dealer' subject to other conditions, hence it was held that there is no unconstitutionality of this provision. This Court held : D

> "The word 'it shall be presumed' in Section 28-B only require the authorities concerned to raise a reputable 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 exit from the State. A statutory provision which creates a reputable presumption E 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 reputable presumption has the effect of shifting the burden of proof. The authority concerned before levying sales tax arrives at the F 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 28B of the Act which may be rebutted by the person against whom action is taken under Section 28B. The person concerned having opportunity to displace the presumption by leading G evidence, there is no unconstitutionality in it. When once a finding is recorded that a person has sold the goods which he had brought inside the State, 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 contention that a H

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."

This is also a case where obligation is cast on the Transporter to fill up the transit form and, on his failure, an inference was drawn holding such transporter B liable to pay the tax like that by a dealer. However, in the case in hand, at no stage the transporter is held liable to pay the tax as payable by a dealer.

We have already referred to sub-rule (1A) to Rule 63A as to when the goods could be seized. Sub-rule (3) of Rule 63A gives an option to the C Transporter in case goods carried by him is in contravention of any provisions of the Act and the Rules, if he so desires, to opt for composition of offence. A Transporter can always intimate within the time specified under sub-rule (3) to a dealer or owner of the goods to come and pay the amount fixed under Section 32. In case not, it is open to a Transporter not to opt for composition of offence. If no liability is fastened on him, then the authorities may proceed D to take action under sub-rule (4). By following the procedure therein, the seized goods are auctioned to recover the liability of a dealer of tax, penalty etc. under the Act. It is significant that sub-section (1) of Section 38A records that in case any balance amount is left after the said auction, the same to be returned to the person from whom such goods are seized or to the owner of such goods. It is coherent with the scheme of the Act, to collect the tax and E penalty by this mechanism, what otherwise would have escaped assessment.

Finally, the second submission is with reference to the requirement of obtaining Certificate of Registration under Section 38B which, according to the learned counsel, impedes the free flow of trade and business of a F Transporter hence violative of Article 301 of the Constitution. For ready reference Section 38B is quoted hereunder :

"For carrying out the purposes of section 38 every Transporter, or Transporting Agent operating its transport business relating to taxable goods in Tripura shall be required to obtain a Certificate of Registration G in the prescribed manner from the Commissioner of Taxes on payment of such fees as may be prescribed."

This section, itself indicates, has been brought in for carrying out the purposes of Section 38, which basically is to check evasion of tax. Under, the barriers, check-post are set up, the officers are empowered to check any vehicle, seized H goods being carried in contravention of any provision of the Act and the

Rule. Thus, the requirement of 'Certificate of Registration' by a transporter is also for the same purpose. It only applies to such transporters doing transport business relating to taxable goods in Tripura only. This certainly cannot be construed to be violative of Article 301 of the Constitution of India. Article 301 provides freedom of trade, commerce and intercourse. This Article is subject to the other provisions of this part, namely, part XIII which covers Articles 301 to 307. Article 304(b) empowers the State Legislature to impose such reasonable restriction on the freedom of trade, commerce or intercourse with or within the State as may be required under the public interest. When a provision is made for a Certificate of Registration which in the present case is brought in by amendment as aforesaid it is really for checking the evasion of tax. By such registration of transporters or carriers it become feasible for the authorities to trace out such dealers escaping tax, through such transporters.

In *State of Bihar & Ors.* v. *Harihar Prasad Debuka & Ors.*, [1989] 2 SCC 192, challenge is to the notification issued under Section 31(2-a) of the Bihar Finance Act, 1981, urging the requirement that a person transporting goods exceeding the quantity notified under Section 35 on a goods carrier to carry permits in prescribed Form {XXVIII-A or XXVIII-B} in respect of the goods brought into or sent out of the State to be restrictive to free flow of trade and hence violative of Articles 301 and 304. This Court rejected the submission and upheld the notification by holding that insistence on permits was intended to prevent evasion and to facilitate assessment of sales tax. The stoppage of transporting vehicle for checking the permit for this purpose would not constitute to be violative of free trade.

Finally, learned counsel for the appellants strongly relied on a decision of this Court in State of *Haryana & Ors.* v. *Sant Lal & Anr.*, [1993] 4 SCC 380. In this case, this Court held that Section 38 of Haryana General Sales Tax Act to be *ultra vires*. This section requires that every clearing or forwarding agent, dalal or any other person transporting goods (including manager, agent, driver and employee of the owner) who handles documents of title to goods for or on behalf of any dealer to furnish to the assessing authority particulars and information in respect of transaction of the goods and to obtain licence from the assessing authority and on contravention provided high rate of penalty. The section 38 is quoted hereunder :

"38. Furnishing of information by clearing and forwarding agent etc. - (1) Every clearing or forwarding agent, Dalal or any other person

A transporting goods, within the State, who, during the course of his business, *handles documents of title to goods* for on behalf of any dealer, shall furnish to the assessing authority the particulars and information in respect of the transactions of the goods in such form and manner, as may be prescribed.

B (2) No clearing or forwarding agent, Dalal or any other person transporting goods within the State shall carry on his business unless he obtains from the assessing authority, on payment of a fee not exceeding fifty rupees, a license in the form and manner and subject to such conditions as may be prescribed.

C (3) If any clearing or forwarding agent or Dalal or person transporting goods within the State contravenes the provisions of sub-section (1) or sub-section (2) the Commissioner or any person appointed to assist him under sub-section (1) of Section 3 may, after giving the person concerned a reasonable opportunity of being heard, direct him to pay

D by way of penalty, an amount equivalent to twenty per cent of the value of goods in respect of which no particulars and information has been furnished under sub-section (1).

Explanation - For the purpose of this section -

E (i) 'Dalal' shall include a person who renders his services for booking of, or taking delivery of, consignments of goods at a Railway Station, booking agency, goods transport company office, or any place of loading or unloading of goods or contrives, makes and concludes bargains and contracts for or on behalf of any dealer for a fee, reward, commission remuneration or other

F valuable consideration or otherwise,

(ii) 'person transporting goods' shall besides the owner, include the manager, agent driver, employee of the owner of person incharge of a place of loading or unloading of goods or of a Railway out-agency, city booking office or city booking agency, when run by

G a private person under a contract with the Railways *but excluding* a rail head or a post office, or of *a goods carrier carrying such goods, for despatch to other places or gives delivery of any consignment of such goods to the consignee."*

(Emphasis supplied)

H Sub-section (1) of Section 38 of the Haryana Act requires every clearing

or forwarding agent etc. transporting goods within the State who handles documents of title to goods to be transported within the State for or on behalf of any dealer to furnish to the assessing authority such particulars and information as may be prescribed. Sub-section (2) debars all clearing or forwarding agents etc. from carrying on their business unless they are licensed. It is held that a clearing, forwarding agent or dalal etc. transporting goods within the State, even though may not be handling documents of titles to goods, is obliged to take a licence though he may not be liable to a penalty. Hence, it was held to be beyond the competence of the State legislature as it could not be in respect of any matter ancillary or subsidiary to the legislative entry which entitles the State Legislature to impose such tax. This section further imposes a penalty equivalent to 20% of the value of goods in respect of which no particulars and information have been furnished. But this decision holds that such clearing or forwarding agent has to be within a reasonable and proximate connection between the transaction of sale of such goods before the State Legislature would have competence to levy tax. The Court held :

> "If a clearing or forwarding agent or 'dalal' or person transporting goods is indeed reasonably and proximately connected with the sale occasioning the liability to the sales tax, it is legitimate to require him to licence himself under the Act and maintain and furnish such information and particulars to the assessing authority thereunder as he would in the course of his business come to possess. It is legitimate then to make him liable for such escapement of tax as has resulted from the breach by him of such obligation and to a reasonable penalty.
>
> .... However, inasmuch as the said Act does not define what precisely it means by the expression 'documents of title to goods', it is unclear which class of forwarding or clearing agents or 'dalals' or persons transporting goods it intends to bring within the ambit thereof. To clearing and forwarding agents, 'dalals' and other persons transporting goods who do not handle documents of title to goods for or on behalf of any dealer, the provisions of the said Act can have no application at all. In respect of such persons the State Legislature has no power of legislation under the legislative entry concerned. Qua them the legislation is not in respect of any matter ancillary or subsidiary to the legislative entry which entitles the State Legislature to impose a tax on the sale of goods."

We find that this decision would render no help to the appellants. The

A impugned provisions of the Haryana General Sales Tax were different than the provisions we are considerating in this case, namely, the impugned Tripura Act and the Rules. We further find that sub-para (ii) of the Explanation to Section 38 of the impunged Haryana Act specifically excluded, 'a goods carrier carrying such goods, for despatch to other places or gives delivery of any consignment of such goods to the consigneee.'

B

Hence, we hold that the requirement of Section 38B for a transporter operating its transport business relating to taxable goods in Tripura to obtain 'Certificate of Registration' from the Commissioner of Taxes, is not violative of Article 301 of the Constitution.

C

In view of the aforesaid findings, we hold that the impugned provisions of the Tripura Sales Tax Act and the Rules of 1976 are valid pieces of legislation. The appeal is, accordingly, dismissed. Costs on the parties.

M.P. Appeal dismissed.