Atiabari Tea Co. Ltd.

Vs

The State of Assam and Others (and Connected Petition and Appeals)

Petitions Nos. 246 of 1956 and 2 of 1959

(CJI B.P. Sinha, P.B. Gajendragadkar, K.N. Wanchoo, K.C. Das Gupta, J.C. Shah JJ)

26.09.1960

JUDGMENT

SINHA C.J. -

These appeals on certificates granted under Art. 132 of the Constitution by the High Court of Judicature in Assam and Writ Petitions under Art. 32 of the Constitution impugn the constitutionality of the Assam Taxation (on Goods Carried by Roads or Inland Waterways) Act, (Assam Act XIII of 1954), which hereinafter will be referred to as the Act. The appellants moved the High Court under Art. 226 of the Constitution challenging the validity of the Act. The High Court by its judgment and order dated June 6, 1955, dismissed the writ petitions. Thereupon, the appellants obtained the certificates that the cases involved substantial questions of law as to the interpretation of the Constitution. The petitions under Art. 32 of the Constitution were moved in this Court for the same purpose of challenging the vires of the Act. The appellants and the petitioners will, in the course of this judgment, be referred to, for the sake of convenience, as the appellants. The State of Assam, the Commissioner of Taxes, appointed under s. 6 of the Act and the Superintendent of Taxes are the respondents to the appeals and the writ petitions.

It appears that the appellants are growers of tea in West Bengal or in Assam and carry their tea to the market in Calcutta from where the tea is sold for consumption in the country or is exported for sale out of the country. The sale of tea inside Assam bears a very small proportion to the tea produced and manufactured by the appellants. Thus the bulk of tea produced and manufactured is carried out of Assam, either for internal consumption in India or for export abroad. Besides the tea carried by rail, a large quantity of tea is carried by road or by inland waterways from Assam to Bengal and in some of these cases, from one part of West Bengal to another part of the same State through inland waterways, only a few miles of which pass through the territory of the State of Assam. The Assam legislature passed the Act which received the assent of the Governor of Assam on April 9, 1954, and came into force on and from June 1, 1954. The purpose of the Act is to levy taxes on certain goods carried by road or inland waterways in the State of Assam. On June 30, 1954, the second respondent, the Commissioner of Taxes, Assam, in exercise of the powers conferred upon him by sub-s. (3) of s. 7 of the Act, published a notification in the Assam Government Gazette bearing date June 21, 1954, by which he notified for general information that the return under the aforesaid Act and the rules made thereunder for the period commencing June 1, 1954 to September 30, 1954, should be furnished by October 30, 1954. The said notification also demanded the furnishing of quarterly returns before January 30, 1955 and April 30, 1955, for the quarters ending December 31, 1954 and March 31, 1955, respectively. The appellants in some of the cases, in pursuance of demand notices, submitted returns to the third respondent, the Superintendent of Taxes. In the prescribed form in respect of tea despatched and carried up to September 30, 1954,

under protest. They also paid the tax demanded under protest. The appellants moved the High Court of judicature in Assam under Art. 226 of the Constitution challenging the validity of the said Act and praying for the issue of a writ of mandamus directing the respondents to forbear from giving effect to the provisions of the Act and the notification issued under the Act and/or a writ of prohibition or any other appropriate writ restraining them from taking steps under the provisions of the Act. The appellants challenged the validity of the Act mainly on the grounds that (1) the Act, rules and the notifications under the Act were ultra vires the Constitution, because the Act was repugnant to the provisions of Art. 301 of the Constitution as the tax on carriage of tea through the State of Assam had the effect of interfering with the freedom of trade, commerce and intercourse; (2) that tea being a controlled industry under the provisions of the Tea Act XXIX of 1953, the Union Government alone had the power to regulate the manufacture, production, distribution or transport of tea and the jurisdiction of the Assam legislature was thus completely ousted; (3) that the tax under the Act was nothing but a duty of excise, in substance, though not in form, and was thus an encroachment on the Central legislative field within the meaning of entry 84 of the Union List. The impugned Act Was also challenged on the ground that it was discriminatory and thus void under Art. 14 of the Constitution. The competence of the Assam Legislature to legislate on the subject was also questioned.

The respondents opposed those petitions under Art. 226 of the Constitution in the High Court. It was denied by the State that the Act or the rules made thereunder or the notifications issued thereunder were ultra vires the Constitution or that the Act contravened the provisions of Art. 301 of the Constitution or that it was an encroachment on the sphere of the Union Legislature or was in any was in conflict with the provisions of the Tea Act XXIX of 1953. The case of the respondents was that the Act was in pith and substance, a legislation to levy tax on certain classes and types of goods carried by road or inland waterways, strictly within entry no. 56 of the State List. It was also asserted that the Act was within the legislative competence of the Assam Legislature and was not within the terms of the prohibition contained in Art. 301 of the Constitution.

These petitions were heard by a Special Bench of the Assam High Court, which, by its judgment and order dated June 6, 1955, dismissed them holding that the Act was not unconstitutional. Two separate, but concurring judgments, were delivered by Sarjoo Prasad, C.J. and Ram Labhaya, J. The Learned Chief Justice, the course of his judgment, held that the Act contemplated imposition of a tax on transport or carriage of goods within the meaning of entry 56 of List II and did not amount the interference with the freedom of trade and commerce within the meaning of Art. 301 of the Constitution; that the pith and substance of the impugned act was that is was a taxing legislation which was not directly concerned with trade and commerce, though it might indirectly entrench on the field of trade and commerce, and that Art. 301 was not directly concerned with taxing laws. He also held that the impost levied by the Act was not in the nature of an excise duty and that there was no substance in the contention that it encroached upon entry 84 of the Union List I. It was also held that the impugned Act did not, in any way, come in conflict with the control of the tea industry introduced by the Central Legislation, namely, the Tea Act XXIX of 1953.

Ram Labhaya, J., examined the provisions of the impugned Act in great detail and came to the conclusion that the element of carriage was expressly made a condition of liability to tax under the impugned Act and it was, therefore, distinguishable from a duty of excise and came directly under entry 56 of List II. On the crucial question arising in this case, his conclusion was that taxation per se has not the effect of abridging or curtailing the freedom contemplated by Art. 301; that Arts. 302 and 304 restrict the powers of Parliament and the State Legislatures in the matter of legislation under entries 42 of List I, 26 of List II and 33 of List III and that restrictions properly so called on

the movement of goods and traffic must find their justification from the provisions of Part XIII of the Constitution; that the impugned Act made provision for taxation which did not directly impinge upon that freedom of trade, commerce and intercourse within the meaning of Art. 301. His view also was that in some cases taxation may have the effect of placing restriction on movement of goods and traffic, and if it has that effect, it comes within the mischief of Art. 301. In the result, his conclusion was that the impugned Act in its pith and substance fell within the ambit of entry 56 of list II. He also examined the terms of the Union legislation, Tea Act No. XXIX of 1953, and came to the conclusion that the impugned Act did not trespass upon the field of controlled industry of tea. His conclusion with reference to the argument of discrimination based on Art. 14 was that there was no proof forthcoming of any real discrimination between persons and things. With these conclusions Deka, J., the third judge entirely agreed. From the judgment of the High Court the appellants have come up in appeal on certificates granted by the High Court. The two petitions under Art. 32 of the Constitution were filed on behalf of two other producers of tea. They raise the same questions as arise for determination in the three appeals from the decision of the Assam High Court. They have all been heard together and will be dealt with by a common judgment.

Mr. Chatterjee, on behalf of the appellants, contended that the impugned Act imposed fetters on the free flow of trade and commerce in respect of tea and jute, the two commodities dealt with by the Act and, therefore, contravened the provisions of Art. 301 of the Constitution; that the legislation was beyond the legislative competence of the Assam Legislature and was not authorised by entry 56 in List II; that the tea industry was a controlled industry as declared by Parliament and directly came under entry 52 of List I; that it was colourable piece of legislation which, in its true effect, was a levy of a duty of excise which could only be done by the Union Legislature, and finally, that it contravened Art. 14 of the Constitution.

The Learned Attorney General on behalf of the State of Assam as also of the Union contended, on the other hand, that taxation simpliciter was not within the terms of Art. 301. Taxation as such is not a restriction within the meaning of Part XIII. It is an attribute of sovereignty, which is not justiciable. The power to tax is a peculiar legislative function with which the courts are not directly concerned and that, therefore, the freedom contemplated by Art. 301 does not mean freedom from taxation and that taxation is not included within the connotation of the terms. "Restriction" in the context of Part XIII meant legislation which had the effect of impeding the free flow of goods and traffics by erection of tariff walls, for example, a tariff wall, if erected by a legislature, may be justiciable, but not legislation simply imposing a tax for purposes of revenue. He further contended that Part XII of the Constitution is a self contained part dealing with finance etc., even as Part XIII is a self contained part dealing with trade, commerce and intercourse within the territory of India. He emphasis that the American and Australian decision are no guide the decision of the points in controversy in the present case, was the framework of their respective constitutions was entirely different from the Indian Constitution. Particularly, the Australia Constitution did not contain anything corresponding to Parts III and XII of our Constitution. According to his contention "freedom" in Part XIII meant freedom from discriminatory taxation and freedom from trade barriers. The Advocate-General of the several States who appeared in this case supported the view point stressed by the Learned Attorney-General.

The most important question that falls to be determined in this batch of cases is whether the impugned Act infringes the provision of Part XIII of the Constitution, with particular reference Art. 301. Part XIII is headed "Trade, Commerce and Intercourse within the Territory of India". Article 301, which is the opening article in this Part is in very general terms, which are as under :-

> "Subject to the other provisions of this part, trade, commerce and intercourse throughout the territory of India shall be free".

It is clear that this Part is not subject to the other provisions of the Constitution and the generality of the words used in Art. 301 is cut down only by the provision of the other Articles of this Part ending with Art 307. It has not been and it could not be contended that the generality of the expression used on Art. 301 admit of any exception or explanations not occurring in this Part itself, nor has it been contended that trade, commerce and intercourse are subject to any other fetters. All parties are agreed that trade, commerce and intercourse throughout the territory of India have been emphatically declared by the Constitution to be free, but there is a wide divergence of views of the answer to the question "free from what ?" It has been contended on behalf of the appellants that the answer to this question must be that trade, commerce and intercourse throughout India, shall be free from everything including taxation. On the other hand, the contention on behalf of the Union Government is that the freedom envisaged by Art. 301 does not include immunity from taxation and that freedom means that there shale be no trade barriers or tariff walls shutting out commodities, traffic and intercourse between individuals, and no shutting in.

In order fully to appreciate the implications of the provisions of Part XIII of the Constitution, it is necessary to bear in mind that history and background of those provisions. The Constitution Act of 1935 (Government of India Act, 26 Geo. 5, Ch. 2) which envisaged a federal constitution for the whole of India, including what was then Indian India in certain restrictions British India, which could not be fully implemented and which also introduced full provincial autonomy enacted s. 297 prohibiting certain restrictions on internal trade in these terms :-

> "297. - (1) No Provincial Legislature or Government shall -
>
> (a) by virtue of the entry in the Provincial Legislature List relating to trade and commerce within the Province, or the entry in that list relating to the production, supply, and distribution of commodities, have power to pass any law or take any executive action prohibiting or restricting the entry into, or export from the province of goods of any class or description; or
>
> (b) by virtue of anything in this Act have power to impose any tax, cess, toll or due which, as between, goods manufactured or produced in the Province and similar goods not so manufactured or produced, discriminates in favour of the former, or which, in the case of goods manufactured or produced outside the province, discriminates between goods manufactured or produced in one locality and similar goods manufactured or produced another locality.
>
> (2) Any law passed in contravention of this Section shall, to the extent of the contravention, be invalid."

It will be noticed that prohibited contained in the section quoted above applied only to Provincial Governments and Provincial Legislature with reference to entries in the Provincial Legislative List relating to trade an commerce within the Province and to production, supply and distribution commodities. That section dealt with prohibitions or restrictions in respect of import into or export from a Province, of goods generally. It also dealt with the power to impose taxes etc. and prohibited discrimination against goods manufactured or produced outside a Province or goods produced in different localities. Part XIII of the constitution has introduced all those prohibitions, not only in

respect of State Legislatures, but of Parliament also. In other words, Part XIII enlarges the scope of the inhibitions and lays down the limits within which the Union Parliament or a State Legislature may legislate with reference to trade, commerce and intercourse inter-State, intra-State and throughout the territory of India.

In this connection it has got to be remembered that before the commencement of the Constitution about two-third of India was directly under British rule and was called 'British India' and the remaining about one third was being directly ruled by the Princes and was known as 'Native States'. There were a large number of them with varying degrees of sovereignty vested in them. Those rulers had, broadly speaking, the trappings of a Sovereign State with power to impose taxes and to regulates the flow of trade, commerce and intercourse. It is a notorious fact that many of them had erected trade barriers seriously impeding the free flow of trade, commerce and intercourse, not only shutting out but also shutting in commodities meant for mass consumption. Between the years 1947 and 1950 almost all the Indian States entered into managements with the Government of India and ultimately merged their individualities into India tax one political unit, with the result that what was called British British India, broadly speaking, became under the Constitution, Part A States, and subject to certain exceptions not relevant to our purpose, the native States became Part B States. We also know that before the Constitution introduced the categories of Part A States, Part B States and Part C States (excluding Part D relating to other territories), Part B Stated themselves, before their being constituted into so many units, contained many small States, which formed themselves into Unions of number of States, and had such trade barriers and customs posts, even inter se. But even after the merger, the Constitution had to take notice of the existence of trade barriers an therefore had to make transitional provisions with the ultimate objective of abolishing them all. Most of those Native States, big or small, had their own taxes, cases, tolls and others imposts and duties meant not only for raising revenue, but also as trade barriers and tariff walls. It was in the back ground of these factors and circumstances that the Constitution by Art. 301 provided for the abolition of all those trade barriers and tariff walls. When for the first time in the history of India the entire territory within the geographical boundaries of India, minus what became Pakistan, was knit into one political unit, it was necessary to abolish all those trade barriers and custom posts in the interest of national solidarity, economic and cultural unity as also of freedom of trade, commerce intercourse.

It is in the background of those facts an circumstances that we have to determine the ambit of the freedom contemplated by Art. 301. That Article envisages freedom of trade and commerce with reference to different parts of India as also freedom of movement of individuals in relation to their trade and other activities. Hence, Art. 301 has reference not only to trade an commerce, a ordinarily understood in common parlance, by also in relation to individuals who have to over with their goods and commodities throughout the length and breadth of the country. Movement of traffic in goods an commodities as also of persons can be by railway or airways, by road or by in land waterways etc. carriage of goods and passengers by railway, by sea or by air or by national waterways so covered by entry 30 of List I and taxes on railway fares and freights and terminal taxes on goods or passengers carried by railway, sea or air come under the purviews of entry 89 in the same List. On the other hand, taxes on goods and passengers carried by road or in land waterways come under entry 56 of List II (State List). It will thus be seen that the Constitution makers contemplated taxes on goods and passengers to be imposed by the parliament on journey is covered by railway or by sea or by railway or by sea or by air; and by State Legislatures on journeys by road or inland waterways. The power to tax is inherent in sovereignty. The sovereign State, in some cases the Union, in other cases the State, has the inherent power to impose taxes in order to raise revenue for purposes of State. Such a sovereign power ordinarily is not justiciable, simply because the State which determines, through the Legislature, what taxes to impose, on whom and to what extend. The

judicial department of the State is not expected to deal with such matters, because it is not for the courts to determine the policy and incidence of taxation. This power of the State to raise finances for Government purposes has been dealt with by Part XII of the Constitution, which contains the total prohibition of levy or collection of tax, except by authority of law (Art. 265). This Part also deals with the distribution of revenue between the Union and the States. It does not clearly demarcate the taxing authority as between the Union and the States and therefore had to indicate in great detail what taxes shall be levied for the benefit of the Union for the benefit of the States and what taxes may be levied and collected by the union or for the benefit of the States and the principle according to which those revenues have to be distributed amongst the constituent states of the Union. In short, Part XII is a self contained series of provisions relating to the finances of the Union and of the States and their inter relation and adjustments (ignoring the provisions in Chapter 2 of that pay relating to borrowing and Chapter 3 relating to property contracts etc.). Likes Part XIII, Part XII also is not expressed to be subject to the other provisions of the Constitution. Hence, both Parts XII and XIII are meant to be self contained in their respective fields. It cannot, therefore, be said that the one is subject to the other. But it has been argued on behalf of the appellants that the provisions of Art. 304 indicate that taxation is within the purviews of the overriding provisions, as they have been characterised, of Art. 301. But a close examination of the provisions of Art. 304 would show that it is divided into two parts, viz., (1) dealing with imposition of discriminatory taxes by a state Legislature; and (2) relating to imposition of reasonable restrictions, thus showing that imposition of taxes, discriminatory or otherwise, is a class part from, imposition of reasonable restrictions on freedom of trade, commerce and intercourse. The second part of Art. 304 dealing with imposition of reasonable restrictions on freedom of trade, commence and intercourse by a States Legislature is on a line with the imposition by Parliament of such restricts between one State and another or within any part of the territory of India in public interest, contained in Art. 302. The provisions of Art. 303 further make it clear that the giving of preference to one State over another or discrimination between one State and another are clearly within the purview of Part XIII that is to say, they are calculated it impede the freedom of trade, commerce and intercourse. There is prohibition against Parliament as also against the Legislature of State making any law giving preference to one State one another or making or authorising the making of any discrimination between one State an another. But the most significant words in connection with giving preference or making discrimination as envisaged in Art. 303 are with reference to "any entry relating to trade and commerce in any of the lists in the Seventh Schedule" that is to say, entry 42 in List I, ent__ry 26 in List II' and entry 33 in List III of the Seventh Schedule. Hence, any legislation under those entire which has the effect of directly interfering with trade, commerce and intercourse being free throughout the territory of India has to be struck down as infringing the provisions of Art.01. But in this matters also the Constitution makers had before them situations of emergency, say for example, created by brought or over flooding resulting in scarcity of commodities like foodgrains etc. In such a situation, Parliament has been armed with the power to grant preference to one State over another or to make a discrimination as between two and more States if the Law dealing with such a situation declares with it is necessary to do so in order to deal with an emergency like the one referred to above. In this connection it may not be emphasised that Art. 303 has to been very accurately worded inasmuch as the non obstante clause, with which the Article opens, has reference only to Art. 302, which empowers Parliaments to impose by law restrictions on the freedom of trade, commerce or intercourse, inter-State or intra-State in public interest. But the non obstante clause is immediately followed by reference not only to Parliament but also to the Legislature of a State which are armed with the power of giving preference or making discrimination as aforesaid in respect of the entries relating to trade and commerce in any of the lists in the Seventh Schedule. Here, no reference is made to intercourse. But as the present controversy is not concerned with the freedom of inter

course, a distinguished from the freedom of trade and commerce, no more need be said about that omission.

Learned counsel for the appellants vehemently argued that the freedom, contemplated by Art. 301 must be construed in its most comprehensive sense of freedom from all kinds of impediments, restraints and trade barriers, including freedom from all taxation. In my opinion, there is no warrant for such an extreme position. It has to be remembered that trade, commerce an intercourse include individual freedom of movement of every citizen of India from State to State, which is also guaranteed by Art. 19(1)(d) of the Constitution. The three terms used in Art. 301 include not only free buying and selling, but also the freedom of bargain and contract and transmission of information relating to such bargains and contract as also transport of goods and commodities for the purposes of production, distribution and consumption in all their aspects, that is to say, transportation by land, air or water. They must also include commerce not only in goods and commodities, but also transportation of men and animals by all means of transportation. Commerce would thus include dealings over the telegraph telephone or wireless and every kind of contract relating to sale, purchase, exchange etc. of goods and commodities.

Viewed in this all comprehensive sense taxation on trade, commerce and intercourse would have many ramifications and would cover almost the entire field of public taxation, both in the Union and in the State Lists. It is almost impossible to think that the makers of the Constitution intended to make trade, commerce and intercourse free from taxation in that comprehensive sense. If that were so, all laws of taxation relating to sale and purchase of foods on carriage of goods an commodities, men and animals, from one place to another, both inter-State and intra-State would come within the purview of Art. 301 and the proviso to Art. 304(b) would make it necessary that all bills or Amendments or pre-existing laws shall have to go thereof the gamut prescribed by that proviso. That will be putting too great an impediment to the power of taxation vested in the States and reduce the States' limited sovereignty under the Constitution to a mere fiction. That extreme position has, therefore, to be rejected as unsound.

In this connection, it is also pertinent to bear in mind that all taxation is not necessarily an impediment or a restraint in the matter or trade, commerce and intercourse. Instead of being such impediments or restraints, they may, on the other hand, provide the wherewithals also to improve different kinds of means of transport, for example, in cane growing areas, unless there are good roads, facility for transport of sugarcane from sugarcane fields to sugar mills may be wholly lacking or insufficient. In order to make new roads as also to improve old ones, cess on the grower of cane or others interested in the transport of this commodity has to be imposed, and has been known in some parts of India to have been imposed at a certain rate per maund or ton of sugarcane transported to sugar factories. Such an imposition is a tax on transport of sugarcane from one place to another, either inter-State or intra-State. It is the tax thus realised that makes it feasible for opening new means of communication or for improving old ones. It cannot therefore, be said that taxation in every case must mean an impediment or restraint against free flow of trade and commerce. Similarly, for the facility of passengers and goods by motor transport or by railway, a surcharge on usual fares or freights is levied, or may be levied in future. But for such a surcharge, improvement in the means of communication may not be available at all. Hence, in my opinion, it is not correct to characterise a tax on movement of goods or passengers as necessarily connoting an impediment, or a restraint, in the matter of trade and commerce. That is another good reason in support of the conclusion that taxation is not ordinarily included within the terms of Art. 301 of the Constitution.

In my opinion, another very cogent reason for holding that taxation simpliciter is not within the

terms of Art. 301 of the Constitution is that the very connotation of taxation is the power of the State to raise money for public purposes by compelling the payment by persons, both natural and juristic, of monies earned or possessed by them, by virtue of the facilities and protection afforded by the State. Such burdens or imposts, either direct or indirect, are in the ultimate analysis meant as a contribution by the citizens or persons residing in the State or dealing with the citizens of the State, for the support of the Government, with particular reference to their respective abilities to make such contributions. Thus public purpose is implicit in every taxation, as such. Therefore, when Part XIII of the Constitution speaks of imposition of reasonable restrictions in public interest, it could not have intended to include taxation within the generic term "reasonable restrictions". This Court has laid down in the case of Ramjilal v. Income Tax Officer, Mohindargarh ([1951] S.C.R. 127, 136) that imposition and collection of taxes by authority of law envisaged by Art. 265 is outside the scope of the expression "deprivation of property" in Art. 31(1) of the Constitution. Reasonable restrictions as used in Part III or Part XIII of the Constitution would in most cases be less than total deprivation of property rights. Hence, Part XII dealing with finance etc. as already indicated, has been treated as a Part dealing with the sovereign power of the State to impose taxes, which must always mean imposing burdens on citizens and others, in public interest. If a law is passed by the Legislature imposing a tax which in its true nature and effect is meant to impose an impediment to the free flow of trade, commerce and intercourse, for example, by imposing a high tariff wall, or by preventing imports into or exports out of a State, such a law is outside the significance of taxation, as such, but assumes the character of a trade barrier which it was the intention of the Constitution makers to abolish by Part XIII. The objections against the contention that taxation was included within the prohibition contained in Part XIII may thus be summarised : (1) Taxation, as such, always implies that it is in public interest. Hence, it would be outside particular restrictions, which may be characterised by the courts as reasonable and in public interest. (2) The power is vested in a sovereign State to carry on Government. Our Constitution has laid the foundations of a welfare State, which means very much expanding the scope of the activities of Government and administration, thus making it necessary for the State to impose taxes on a much large scale and in much wider fields. The legislative entries in the three Lists referred to above empowering the Union Government and the State Governments to impose certain taxations with reference to movements to impose certain taxations with reference to movement of goods and passengers would be rendered ineffective, if not otiose, if it were held that taxation simpliciter is within the terms of Art. 301. (3) If the argument on behalf of the appellants were accepted, many taxes, for example, sales tax by the Union and by the States, would have to go through the gamut prescribed in Arts. 303 and 304, thus very much detracting from the limited sovereignty of the States, as envisaged by the Constitution. (4) Laws relating to taxation, which is essentially a legislative function of the State, will become justiciable and every time a taxation law is challenged as unconstitutional, the State will have to satisfy the courts - a course which will seriously affect the division of powers on which modern constitutions, including ours, are based. (5) Taxation on movement of goods and passengers is not necessarily an impediment.

That conclusion leads to a discussion of the other extreme position that taxation is wholly out of the purview of Art. 301. That extreme position is equally untenable in view of the fact that Art. 304 contains, and Art. 306, before it was repealed in 1956, contained, reference to taxation for certain purposes mentioned in those Articles. But Art. 306, which now stands repealed, contained references to tax or duty on the import of goods into one State from another or on the exports of goods from one State to another. Such imposts were really in the nature of impediments to the free flow of goods and commodities on account of customs barriers, which it was the intention of Art. 301 to abolish. Similarly, Art. 304 while recognising the power of a State, insists that a similar tax is

imposed on goods manufactured or produced within the State. The Article thus brings out the clear distinction between taxation as such for the purpose of revenue and taxation for purposes of making discrimination or giving preference, both of which are treated by the Constitution as impediments to free trade and commerce. In other words, so long as the impost was not in the nature of an impediment to the free flow of goods and commodities between one State and another, including in this expression Union territories also, its legality was not subject to an attack based on the provisions of Part XIII. But that does not mean that State Legislatures derive their power of taxation by virtue of what is contained in Art. 304. Article 304 only left intact such power of taxation, but contained the inhibition that such taxes shall not be permitted to have the effect of impeding the free flow of goods and commodities.

Article 301, with which Part XIII commences, contains the crucial words "shall be free" and provides the key to the solution of the problems posed by the whole Part. The freedom declared by this Article is not an absolute freedom from all legislation. As already indicated, the several entries in the three Lists would suggest that both Parliament and State Legislatures have been given the power to legislation respect of trade, commerce and intercourse, but it is equally clear that legislation should not have the effect of putting impediments in the way of free flow of trade and commerce. In my opinion, it is equally clear that the freedom envisaged by the article is not an absolute freedom from the incidence of taxation in respect of trade, commerce and intercourse, as shown by entries 89 and 92 A in List I, entries 52, 54 and 56 to 60 in List II and entry 35 in List III. All these entries in terms speak of taxation in relation to different aspects of trade, commerce and intercourse. The Union and State Legislature, therefore, have the power to legislate by way of taxation in respect of trade, commerce and intercourse, so as to erect trade barriers, tariff walls or imposts, which have a deleterious effect on the free flow of trade, commerce and intercourse. That freedom has further been circumscribed by the power vested in Parliament or in the Legislature of a state to impose restrictions in the public interest. Parliament has further been authorised to legislate in the way of giving preference or making discrimination in certain strictly limited circumstances indicated in cl. (2) of Art. 303. Thus, on a fair construction of the provisions of Part XIII, the following propositions emerge : (1) trade, commerce, and intercourse throughout the territory of India are not absolutely free, but are subject to certain powers of legislation by Parliament or the Legislature of a State; (2) the freedom declared by Art. 301 does not mean freedom from taxation simpliciter, but does mean freedom from taxation which has the effect of directly pending the free flow of trade, commerce and intercourse; (3) the freedom envisaged in Art. 301 is subject to non-discriminatory restrictions imposed by Parliament in public interest (Art. 302); (4) even discriminatory or preferential legislation may be made by Parliament for the purpose of dealing with an emergency like a scarcity of goods in any part of India (Art. 303(2)); (5) reasonable restrictions may be imposed by the Legislature of a State in the public interest (Art. 304(b)); (6) non-discriminatory taxes may be imposed by the Legislature of a State on goods imported from another State or other States, if similar taxes are imposed on goods produced or manufactured in that State (Art. 304(a)); and lastly (7) restrictions imposed by existing laws have been continued, except in so far as the President may by order otherwise direct (Art. 305).

After having discussed the arguments for and against the proposition that Art. 301 includes within its large sweeps taxation simpliciter, I now proceed to discuss the terms of the impugned Act in order in order to find out whether in the light of the discussion above, any of its provisions are liable to be struck down as unconstitutional, because they infringe Art. 301, as contended on behalf of the appellants. The Act, as the preamble shows, is intended to "impose a tax on certain goods carried by road or inland waterways". "Dealer" has been defined in s. 2(4) as under :-

> "'Dealer' means a person who owns jute in bales before it is carried by motor vehicle, cart, trolley, boat, animal and human agency or any other means except railways or airways and includes his agent."

Producer has been defined by cl. (12) of s. 2 as follows :-

> "'Producer' means a producer of tea and includes the person in charge of the garden where tea is produced".

Section 3, which is the charging section, provides that manufactured tea in chests carried by motor vehicle, etc., except railways and airways, shall be liable to a tax at a certain rate per pound of such tea and that this tax shall be realised from the producer. It also provides that jute carried in bales by motor vehicle, etc., except railways and airways, shall be liable to a tax at a certain rate per maund on such jute, which shall be realised from the dealer. It is not necessary to set out the rate of taxes aforesaid, because no argument was advanced to the effect that they were oppressive or excessive. The tax on manufactured tea in chests is to be paid by the producer, which term includes the person in charge of the garden where tea is produced. This provision has occasioned the argument that it is an excise duty in the garb of a tax and will be dealt with later in the course of this judgment. The tax on jute carried in basis made realisable from the dealer which means person who owns the jute in bales. Section 6 lays down the taxing authorities. Section 7 requires every producer and dealer to furnish returns of such tea or such jute as have been made liable to tax under s. 3, as aforesaid. Section 8 makes provision for licensing of balers, which means persons who own or possess a pressing machine for the compression of jute into bales. Section 9 lays down the procedure of assessment and s. 10 the procedure for cancellation of assessment in certain circumstances. Section 11 lays down the procedure for assessment in such cases as have escaped assessment or there has been an evasion of the tax. It is not necessary to refer to the other provisions of the Act, because they are not relevant to the arguments advanced at the Bar. It will be seen from the bare summary of the relevant provisions of the statute that it is a taxing statute simpliciter without the least suggestion even of any attempt at discrimination against dealers and producers outside the State of Assam or of preference in favour of those inside the State. On the face of it, therefore, the Act does not suffer from any of the vices against which Part XIII of the Constitution was intended. It has not been suggested that the Act imposes a heavy burden on the dealer or the producer as the case may be. On the terms of the Statute, it cannot be said that it is intended to put obstacles or impediments in the way of free flow of traffic in respect of jute and tea. On the face of it, it would not be in the interest of the State of Assam to put any such impediments, because Assam is a large producer of those commodities and the market for those commodities and the market for those commodities is mainly in Calcutta. In those circumstances, it is difficult, if not impossible, to come to the conclusion that the Act comes within the purview of Art. 301 of the Constitution. If that is so, no further consideration arising out of the other provisions of Part XIII of the Constitution calls for any decision.

Having thus disposed of the main ground of attack against the constitutionality of the Act based on Art. 301 of the Constitution, it is necessary to advert to the other contentions raised on behalf of the appellants. It has been contended that the Act is beyond the legislative competence of the Assam Legislature. We have, therefore to address ourselves to the question whether or not it is covered by any of the entries in List II of the Seventh Schedule. Entry 56, in its very terms, "Taxes on goods and passengers carried by rail or in inland waterways", completely covers the impugned Act. There is no occasion in this case to take recourse to the doctrine of pith and substance, inasmuch as the Act is a simple piece of taxing statute meant to tax transport of goods, in this case jute and tea, by road

or on inland waterways. In my opinion, it is a very simple case of taxation completely covered by entry 56, but the argument against the competence of the Assam Legislature has been sought to be supported by the subsidiary contention that though in form it is a tax on the transport of goods within the terms of entry 56, in substance it is an imposition of excise duty within the meaning of entry 84 in List I of the Seventh Schedule, but, in my opinion, there is no substance in this contention for the simple reason that so long as jute or tea is not sought to be transported from one place to another, within the State or outside the State, no tax is sought to be levied by the Act. It is only when those goods are put on a motor truck or a boat or a steamer or other modes of transport contemplated by the Act, that the occasion for the payment of tax arises. A similar argument was advanced in the case of The Tata Iron & Steel Co. Ltd. v. The State of Bihar ([1958] S.C.R. 1355), and Das, C.J., delivering the majority judgment of the Court, disposed of the argument that the tax in that case was not on sale of goods, but was, in substance, a duty of excise, in these terms :

> "This argument, however, overlooks the fact that under cl. (ii) the producer or manufacturer became liable to pay the tax not because he produced or manufactured the goods, but because he sold the goods. In other words the tax was laid on the producer or manufacturer only qua seller and not qua manufacturer or producer as pointed out in Boddu Paidanna's case (1942) F.C.R. 290. In the words of their Lordships of the Judicial Committee in Governor General v. Province of Madras, 72 I.A. 91 at p. 103, 'a duty of excise is primarily a duty levied on a manufactured or produced. It is a tax on goods not on sales or the proceeds of sale of goods'. If the goods produced or manufactured in Bihar were destroyed by fire before sale the manufacturer or producer would not have been liable to pay any tax under s. 4(1) read with s. 2(g), second proviso. As Gwyer, C.J., said in Boddu Paidanna's case, supra, at p. 102, the manufactures or producer would be liable, if at all, to a sales-tax because he sells and not because he would be free from liability if he chose to give away everything which came from his factory'." (See p. 1369 of the Report). The observations quoted above completely cover the present controversy. The Legislature has chosen the dealer or the producer as the convenient agency for collection of the tax imposed by s. 3, but the occasion for the imposition of the tax is not the production or the dealing, but the transport of those goods. It must, therefore, be held that the Act does what it sets out to do, namely to impose a tax on goods carried by road or on inland waterways.

Another line of argument directed to the same end, namely, of attacking the competence of the Assam Legislature was that it impinged on the provisions of the Tea Act, XXIX of 1953. It was argued that the tea industry was a controlled one within the competence the Union Legislature. The Tea Act declared that it was expedient in the public interest that the Union should take the tea industry under its control. With a view to controlling the industry in public interest the Act established the Tea Board (s. 4) whose function it was, inter alia, to regulate the production and extent of cultivation of tea, of improving the quality of tea, of promoting co-operative effort among growers and manufacturers of tea, etc., etc. (s. 10). With the objectives aforesaid, Chapter III lays down provisions for the control over the extension of tea cultivation and Chapter IV deals with provisions for control over the export of tea and tea seed. Chapter V lays down provisions for the imposition of duty of customs on export of tea outside India and the proceeds of the cess thus levied have to be credited to the Consolidated Fund of India. Out of that Fund, called the Tea Fund, the expenses of the establishment created by the Tea Act have to be met. The rest of the provisions of the Act are meant to implement the main provisions of the Act. There are no provisions of the Tea Act which can be said to come into conflict with the provisions of the impugned Act. In our

opinion, therefore, this ground of attack also fails.

A third line of argument against the constitutionality of the Act was that it is extra-territorial in its operation in so far as it purports to tax producers and dealers who may not be residents of the State of Assam. This argument has been advanced in the interest of the appellants and petitioners from West Bengal, who have to carry their goods by road or on waterways passing through the territory of Assam, from one part of West Bengal to another. So far as this group of cases is concerned, the main grievance of the appellants is that no doubt their goods have to pass through a portion of the territory of Assam, but the goods have been produced, packed and transported as merchandise from one part of West Bengal to another part of the same State. It is not denied that there is some real and substantial nexus to support the taxing statute, but it is contended that relatively to the whole journey to be covered by the merchandise, the portion of the territory of Assam covered in that journey is very small. But in judging the validity of a legislation with reference to the contention based on extra-territoriality it is not relevant to consider the question of the proportion between the extent of territorial nexus to the whole length of the journey. If goods belonging to or carried by the appellants traverse any of the territory of Assam the taxation cannot be successfully assailed on this ground, once it is held that it was within the legislative competence of the Legislature imposing the tax in question. See in this connection the observations of this Court in The Tata Iron and Steel Co. Ltd. v. The State of Bihar ([1958] S.C.R. 1353) at pp. 1369 to 1371, where Das, C.J., speaking for the majority of the Court, has examined the theory of nexus with reference to a large body of case-law bearing on the question. I respectfully adopt that line of reasoning and hold that the Act does not suffer from the vice of extra-territoriality. It is true that the incidence of taxation may fall upon persons not ordinarily residing in the State of Assam or upon goods not produced in Assam, but, in this connection, it is enough to point out that what has been said above in respect of the tax being in the nature of a duty of excise applies which equal force to this part of the argument also. The tax is leviable from such goods as traverse in their journey any part of the territory of Assam, not because the owners or the producers are residents of Assam, but because the waterway or the roadway situate in the territory of Assam has been utilised for a portion of the journey. It is clear, therefore, that there is no infirmity attaching to the Act on the ground that it is extra-territorial in its operation.

It only remains to consider the last ground of attack, namely, that the Act is discriminatory in character and thus infringes Art. 14 of the Constitution. In this connection, it has been argued that only tea in chests and jute in bales have been selected for taxation, leaving the same commodities in other hands or in other forms, or in other receptacles free from the incidence of the taxation in question. The Legislature has chosen to tax the transport over land or over waterways of those commodities, in chests or in bales, apparently because those are the most convenient and usually employed methods of packing for carriage of those goods to long distances. Hence, it is not a case of choosing for the purposes of taxation one class of goods in preference to another class of the same variety. The Legislature was out to tax the transport of those commodities and must be presumed to have selected the most convenient way of doing it. It has not been suggested that any large amount of such commodities is transported over long distances, otherwise than in chests or bales. Furthermore, if the Legislature has to tax something, it is not bound to tax that thing in all its forms and varieties. It may pick and choose with a view to raising such amount of revenue as it sets out to do. It is not for the courts to say that there were other ways of doing the thing or that all forms and varieties should have been brought under the scope of the taxation. It is open to the Legislature to impose a tax in a form and in a way which it deems most convenient for the purposes of collection and calculation of the tax.

As all the grounds of attack raised against the constitutionality of the Act fail, the appeals and the

petitions, in my opinion, should be dismissed with costs.

I have deliberately refrained from making references to or relying upon decisions from other countries like the U.S.A. or Australia, because the cases decided in those countries cannot be any guide for the solution of the problems raised in this case inasmuch as the framework of the Constitution in those countries is not in pari materia with ours. Any precedents deciding cases on the construction of statutes, which are worded differently from ours, cannot, in my opinion, be a safe guide for the decision of controversies raised in terms of our Constitution.

I regret to have to differ from the majority of the Court, but my only justification for taking a different view is that my reading of Part XIII of the Constitution does not justify the inference that taxation simpliciter is within the terms of Art. 301 of the Constitution.

GAJENDRAGADKAR J. -

The vexed question posed by the construction of the provisions of Part XIII of the Constitution which has been incidentally discussed in some reported decisions of this Court falls to be considered in the present group of cases. This group consists of three appeals brought to this Court with a certificate issued by the Assam High Court under Art. 132 and two petitions filed under Art. 32. The three appellants are tea companies, two of which (Civil Appeal No. 126 of 1958 and Civil Appeal No. 128 of 1958) carry on their trade of growing tea in the District of Sibsagar in Assam while the third (Civil Appeal No. 127 of 1958) carries on its trade in Jalpaiguri in West Bengal. All the three companies which would be described hereafter as the appellants carry their tea to Calcutta in order that it may be sold in the Calcutta in order that it may be sold in the Calcutta market for home consumption or export outside India. Tea produced in Jalpaiguri has also to pass through a few miles of territory in the State of Assam, while the tea produced in Assam has to go all the way through Assam to reach Calcutta. It appears that a very small proportion of tea produced and manufactured in Assam finds a market in Assam itself; bulk of it finds its custom in the market at Calcutta. Besides the tea which is carried by rail substantial quantity has to go by road or by inland waterways and as such it becomes liable to pay the tax leviable under the Assam Taxation (on goods carried by Roads or Inland Waterways) Act, 1954 (Act XIII of 1954) (hereafter called the Act). The Act has been passed by the Assam Legislature in order to provide for the levy of a tax on certain goods carried by road or inland waterways in the State of Assam and it has received the assent of the governor on April 9, 1954. On behalf of the State of Assam, which will be described hereafter as respondent, its officers required the appellants to comply with the several requirements imposed by the Act, and made tax demands on them in respect of the tea carried by them. The tax thus demanded was paid by the appellants under protest, and soon thereafter petitions were filed in the Assam High Court under Art. 226 challenging the validity of the Act as well as the tax demands made by the officers of the respondent. By their respective petitions the appellants prayed that a writ of mandamus should issue directing the respondent and its officers to forbear from giving effect to the provisions of the Act and from otherwise enforcing it against the appellants. The petitioners also claimed alternatively a writ of prohibition or any other appropriate writ restraining the respondent and its officers from enforcing the Act against the appellants. That is how the validity of the Act cam before the Assam High Court for judicial scrutiny.

The appellants challenged the vires of the Act on several grounds. The principal ground, however, was that the Act had violated the provision of Art. 301 of the Constitution and since it did not comply with the provisions of Art. 304(b) it was ultra vires. It was also urged that tea was a controlled industry under the provisions of Act 29 of 1953, and so it was the Union Government

alone which was competent to regulate the manufacture, production, distribution transport of the said commodity; that being so the Assam Legislature was not competent to pass the Act. The validity of the Act was further challenged on the ground that, through the Act purported to have been passed under Entry 56 of list II, in substance and in reality it was a duty of excise and as such it could be enacted only under Entry 84 of List I. According to the appellants the Act also suffered from the vice that it was violative of the fundamental right of equality before the law guaranteed by Art. 14.

The correctness of these contentions was disputed by the respondent. It urged that the Act was perfectly within the competence of the Assam Legislature under Entry 56 of List II and that the provisions of Part XIII were wholly inapplicable to it. The respondent further pleaded that Art. 14 had not been violated and that there was no substance in the argument that a controlled industry it is only the Union Government which could deal with it or that in reality the act had imposed a duty of excise.

The petitions filed by the appellants were heard by a Special Bench of the Assam High Court. All the pleas raised by the appellants were rejected by Sarjoo Prasad, C.J. and Ram Labhaya, J., who delivered separate by concurring judgments. The appellants then applied for and obtained a certificate from the High Court under Art. 132; that is how the three appeals have come to this Court, and they raise for our decision all the points which were argued before the High Court. Naturally the principal contention which has been urged before us at length enters round the applicability of Part XIII.

The two petitions filed under Art. 32 raise substantially the same question. The petitioners are tea companies which carry on the trade of growing and manufacturing tea in Jalpaiguri in West Bengal. The respondent has attempted to subject the petitioners to the provisions of the Act, and the petitioners have challenged the authority of the respondent to levy a tax against them under the Act on the ground that the Act is ultra vires. Since the principal question raised in these appeals appeared to be of considerable importance in which other States may also be interested we directed that notice should be issued to the Attorney-General of India and the Advocates-General in all the States of India. Accordingly the Attorney General appeared before us and the States of Bihar, Madras, Punjab, Rajasthan and Uttar Pradesh have also been heard.

The challenge to the vires of the Act on the ground that it contravenes Art. 301 necessarily raises the question about the construction of the relevant provisions is the said Part. Art. 301 with which Part XIII begins provides that "subject to the other provisions of this Part trade, commerce and intercourse throughout the territory of India shall be free". The appellants contend that this provision imposes a limitation on the Legislature power of the State Legislature as well as the Parliament, and the vires of the Act will have to be judged on that basis. The words used in Art. 301 are wide and unambiguous and it would be unreasonable to exclude from their ambit a taxing law which restricts trade, commerce or intercourse either directly or indirectly. On the other hand the respondent the Attorney General, and the other States have urged that taxing laws stand by themselves; they are governed by the provisions of Part XII and no provision of Part XIII can be extended to them. In the alternative it has been suggested that the provisions of Part XIII should be applied only to such Legislative entries in the Seventh Schedule which deal with trade, commerce and intercourse. This alternative argument would bring within the purview of Part XIII Entry 42 in List I which refers to inter-State trade and commerce, Entry 26 in List II which deals with trade and commerce, within the State subject to the provisions of Entry 33 in List III, and Entry 33 in List III which deals with trade and commerce as therein specified. The arguments thus presented by both

the parties appear prima facie to be logical and can claim the merit of attractive simplicity. The question which we have to decide is which of the contentions correctly respondents the true position in law. Does truth lie in one or the other contention raised by the parties, or does it lie midway between those contentions ? This problem has to be resolved primarily by adopting a fair and reasonable constructions of the relevant articles in Part XIII; but before we attempt that task it would be relevant to deal with some general considerations.

Let us first recall the political and constitutional background of Part XIII. It is a matter of common knowledge that, before the Constitution was adopted, nearly two thirds of the territory of India was subject to British Rule and was then known as British India, while the remaining part of the territory of India was governed by Indian princes and it consisted of several Indian States. A large number of these States claimed sovereign rights within the limitations imposed by the paramount power that behalf, an duty purported to exercise their legislative power of imposing taxes in respect of trade and commerce which inevitably led to the erection of customs barriers between themselves an the rest of India. In the matter of such barriers British India was governed by the provisions of s. 297 of the Constitution Act, 1935. To the provisions of this section we will have occasion later to refer during the course of this judgment. Thus, prior to 1950 the flow of trade an commerce was impeded at several points which constituted the boundaries of Indian States. After India attained political freedom in 1947 and before the Constitution was adopted the process of the merger and integration of the several Indian states with the rest of the country was speedily accomplished with the result that when the Constitution was first passed the territories of India can State of Part A States which broadly stated represented the provinces in British India, and Part B states which were made up of Indian States. This merger or integration of Indian States with the Union of India was preceded by the merger and consolidation of some of the States interests between themselves. It is with the knowledge of the trade barriers which had been raised by the Indian States in exercise of their legislative powers that the Constitution-makers framed the Articles in Part XIII. The main object of Art. 301 obviously was to allow the free flow of the stream of trade, commerce and intercourse throughout the territory of India.

In drafting the relevant Articles of Part XIII there makers of the Constitution were fully conscious that economic unity was absolutely essential for the stability and progress of the federal policy which has been adopted by the constitution for the governance of the country. Political freedom which had been won, and political unity which had been accomplished by the Constitution, had to be sustained and strengthened by the bond of economic unity. It was realised that in course of time different political parties believing in different economic theories or ideologies may come in power in the several constituent units of the Union, and that may conceivably give rise to local and regional pulls and pressures in economic matters. Local or regional fears or apprehensions raised by local or regional problems may persuade the State Legislature to adopt remedial measures intended solely for the protection of regional interests without due regards to the their effect on the economy of the nation as a whole. The object of Part XIII was to avoid such a possibility. Free movement and exchange of goods throughout the territory of India is essential for the economy of the nation and for sustaining and improving licensing standards of the country. The provision contained in Art. 301 guaranteeing the freedom of trade, commerce and intercourse is not a declaration of mere platitude, or the expression of a pious hope of a declaratory character; it is not also a mere statement of direction principle of state policy; it embodies and enshrines a principle of paramount importance that the economic unity of the country will provide the main sustaining force for the stability and progress of the political and cultural unity of the country. In appreciating the significance of these general considerations were may profitably refer to the observations made by Cardozo, J., in C.A.F. Seelig Inc. v. Charles H. Baldwin (294 U.S. 511, 523; 79 L. Ed. 1033, 1038) while he was dealing

with the commerce clause contained in Art. 1, s. 8, cl. 3 of the American Constitution. "This part of the Constitution", observed Cardozo J., "was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several states must sink or swim together and that in the long fun prosperity and salvation are in union and not division".

There is another general consideration which has been pressed before us by the learned Attorney General and the States to which reference must be made. It is argued that in determining the scope and reach of the freedom embodied in Art. 301 we should bear in mind the fact that to the extend to which the frontiers of this freedom are widened to that extent is the legislative power of the States curtailed or limited. The Legislatures of the States have plenary powers to legislate in respect of topics covered by the legislative entries in parts II and III. If the words used in Art. 301 receive the widest interpretation as contended by the appellants it would obviously mean that the states Legislature would not be able to legislate on several entries in the said Lists without adopting the procedure prescribed by Art. 304(b). In fact it would be unreasonable to impose such a limitation on the legislation power of the State Legislatures and thereby affect their freedom of action. Whilst appreciating this argument it may be pertinent to observe that what appears as curtailment of, or limitation on, the powers of the State Legislatures prescribed by Art. 304(b) may, from the point of view of national economy, be characterised as a safeguard deliberately evolved to protect the economic unit of the country; even so it may be assumed that in interpreting the provisions of Art. 301 and determining the scope and effect of Part XIII we should bear in mind the effect of our decision on the legislative power of the States and also of Parliament.

Having thus referred to some general considerations let us now proceed to examine that question as to whether as laws are wholly outside the purview of Part XIII. In support of the argument that Part XIII does not apply to tax laws the Learned Attorney-General had emphasis the fact that the power to law a tax is an essential part of sovereignty itself, and he has suggested that this power is not subject top judicial review and revenue has been held to be so. In this connection he has invited our attention to the observations made in Cooley's "Constitutional Limitations" on the power of taxation. "The power impose taxes", says the author, "is one so unlimited in force and so searching in extent, that the courts scarcely venture to declare that it is subject to any restriction whatever, except such as test in the discretion of the authority which exercises it." (Cooley's "Constitutional Limitations", Vol. 2, 8th Ed., p. 986). The author than has cited the observations of Marshall, C.J., in McCulloch v. Maryland (4 Wheat. 316, 428 : 4 L. Ed. 579, 607) where the Learned Chief Justice has stated that "the power of taxing the people an their property is essential to the very existence of the government, and may be legitimately exercised on the objects to which it is applicable to the utmost extent to which the Government may choose to carry it. The only security against the abuse of this power is found in the structure of the Government itself". Basing himself on this character of the taxing power of the state the Learned Attorney-General has asked us to hold that Part XIII can have no application to any statue imposing a tax. In our opinion this contention is well-founded. The statement of the law on which reliance has been placed is itself expressed to be subject to the relevant provisions of the constitution; for instance, the same author has observed "It is also believed that that provision in the Constitution of the United States which declares that the citizens of each states shall be entitled to all the privileges and immunities of the citizens of the several states will preclude any state from imposing upon the property which citizens of other states may own, or the business which they may carry on within its limits, any higher burdens by way of taxation than are imposed upon corresponding property or business of its own citizens" (p. 1016). Putting the same propositions in terms of our Constitution it cannot be suggested that the power of taxation can, for instance, violate the equality before the law guaranteed by Art. 14 of the constitution. Therefore the true position appears to be that, though the power of levying tax is

essential for the very existence of the government, its exercise must inevitably be controlled by the constitutional provisions made in that behalf. It cannot be said that the power of taxation per se is outside the purview of any constitutional limitations.

It is true that in Ramjilal v. Income-tax Officer, Mohindargarh ([1951] S.C.R. 127) it has been held that "since there is a special provision in Art. 265 of the Constitution that no tax shall believed or collected except by authority if law, cl. (1) of Art. 31 must be regarded as concerned with deprivation of property otherwise than by the imposition or collection of tax, and inasmuch as the right conferred by Art. 265 is not a right confer by Part III of the Constitution, it could not be enforced under Art. 32". It is clear the effect of this decision is no more than this that the protection against the imposition and collection of taxes, save by the authority of law, directly comes under Art. 265 and cannot be said to be covered by cl. (1) of Art. 31. It would be unsafe to assume that this decision is, or was intended to be, an authority for the proportion that the levy of a tax by taxing statue can for instance, violate Art. 14 of the Constitution.

The next question which need examination is whether tax laws are governed only by Part XII of the Constitution and not by Part XIII. The argument is that Part XII is a self contained do; it makes all necessary provisions, and so the validity of any taxing statute can be judged only by reference to the provisions of the said Part. Article 265 provides that "no tax shall be levied or collected except be authority of law". It is emphasised that this Article does not contemplate that its provision is subject to the other provisions of the constitution, and so there would be no justification of applying Part XIII to the taxing statutes. It is also pointed out that restrictions and other exceptions which the Constitution wanted to prescribe in respect of taxation have been provided for by Arts. 274, 276, 285, 287 and 288 and so we need not look behind the provisions of this part in dealing with tax laws. In our opinion this arguments fails to take notice of the fact that Art. 265 itself inevitably takes in Art. 245 of the Constitution when in substance it says that a tax shall believed by authority of law. The authority of law to which it refers and under which alone a tax an be levied is to be found in Art. 245 read with the corresponding legislative entries in Schedule VII. Now, if we look at Art. 245 which deals with the extent of laws made by Parliament and by the Legislatures of States it begins with the words "subject to the provisions of this Constitution"; in other words, the power of Parliament and the Legislatures of the States to make laws including laws imposing taxes is subject to the provisions of this Constitution and that must bring in the application of the provisions of Part XIII. Therefore the argument based on the theory that tax laws are governed by the provisions of Part XII alone cannot be accept. The power to levy taxes is ultimately based on Art. 245, and said power in terms subject to the provision of the Constitution.

On the other hand, the opening words of Art. 301 are very significant. The doctrine of the freedom of trade, commerce and intercourse enunciated by Art. 301 is not subject to the other provisions of the Constitution but is made subject only to the other provisions of Part XIII; that means that once the width and amplitude of the freedom enshrined in Art. 301 are determined they cannot be controlled by any provision outside Part XIII. This position incidentally brings out in bold relief the important part which the Constitution-makers wanted the doctrine of freedom of trade to play in the future of the country. It is obvious that whatever may be the content of the said freedom it is not intended to be an also freedom; absolute freedom in matters of trade, commerce and intercourse would lead to economic confusion, if not chaos and anarchy; and so the freedom guaranteed by Art. 301 is made subject to the exceptions provided by the other Articles in Part XIII. The freedom guaranteed is limited in the manner specified by the said Articles but it is not limited by any other provisions of the constitution outside Part XIII. That is why it seems to us that Art. 301, read in its proper context and subject to the limitations prescribed by the other relevant Articles in Part XIII,

must be regarded as imposing a constitutional limitation on the legislative power of Parliament and the Legislatures of the States. What entries in the Legislative lists will attract the provisions of Art. 301 is another matter; that will depend upon the content of the freedom guaranteed; but whether it is held that Art. 301 applies the Legislature competence of the Legislature in question will have to be judged in the light of the relevant Articles of Part XIII; this position appears to us to be inescapable.

On behalf of the respondent it was suggested before was that the scope and extent of the application of Art. 301 can well be determined in the light of s. 297 of the Constitution Act of 1935. Section 297 reads thus :

> "297(1). No Provincial Legislature or Government shall -
>
> (a) by virtue of the entry in the Provincial Legislature List relating to trade and commerce with in the Province, or the entry in that List relating to the production, supply, and distribution of commodities, have power to pass any law or take any executive action prohibiting or restricting the entry into, or export from the Province of goods of any class or description; or
>
> (b) by virtue of anything in this Act have power to impose any tax, case, toll, or due which, as between goods manufactured or produced in the province and similar goods not so manufactured or produced, discriminates in favour of the former, or which, in the case of goods manufactured or produced outside the Province, discriminates between goods manufactured or produced in one locality and similar goods manufactured or produced in another locality.
>
> (2) Any law passed in contravention of this section shall, to the contravention, be invalid.

There is no doubt that the prohibition prescribed by this section was confined to the Provincial Governments and Provincial Legislatures and did not apply to the Central Government or Central Legislature. It is also true that he said prohibition had reference to the entries in the Provincial Legislature list relating to trade and commerce, and to production, supply and distribution, of commodities. The section also deals with prohibitions and restrictions in respect of import of goods into, or their export from a Province. Likewise discrimination against goods manufactured or produced outside the Province or goods produced in other localities is also prohibited. The argument is that when the Constitution adopted Art. 301 it had s. 297 in view and the only substantial change which it intended to make was to extend the application of the principles enunciated in the said section to the Union Government and the Union parliament, and to apply it to the territory which had subsequently become a part of India as indicated by the relevant Articles; the essential content of freedom of trade and commerce as prescribed by the said section, however, continues to be the same.

In support of this argument reliance has been placed on the observations made by Venkatarama Aiyar, J., in the case of M.P.V. Sundararamier & Co. v. The States of Andhra Pradesh ([1958] S.C.R. 1422, 1483-84). In that case the vires of some of the provisions of the Sales Tax laws Validation Act, 1956 (7 of 1956), were challenged on several grounds. In dealing with one of the points raised in support of the said challenged Venkatarama Aiyar, J., who delivered the majority judgment, considered the content of Entry 42 in List I. It had been urged before the Court that the said entry should be liberally construed and should be held, to include the power to tax, and in

support of this contention reliance was placed on certain American and Australian decisions. This argument was repelled and it was held that Entry 42 in List I is not to be interpreted as including taxation. In coming to this conclusion the learned judge made certain general observations pointing out that it would not be always safe to rely upon America or Australian decisions in interpreting the provision of our Constitution. Said the Learned judge, "the threads of our Constitution were no doubt taken from other Federal Constitution but when they were woven into the fabric of our Constitution their reach and their complexion underwent changes. Therefore, valuable as the American decisions are as showing how the question is dealt with in sister Federal Constitution great care should be taken in applying them in the interpretation of our Constitution". He made a similar comment about s. 92 of the Commonwealth of Australia Constitution Act and the decisions thereunder, and in that connection he observed : "We should also and that Art. 304(a) of the Constitution cannot be interpreted as throwing any light on the scope of Art. 301 with reference to the question of taxation as it merely reproduce s. 297(1)(b) of the Government of India Act, and as there was no provision therein corresponding to Art. 301 s. 297(1) (b) relied have implied what is now sought to be ignored from Art. 304(a)". The Learned Attorney-General has relied on these observations. It would be noticed that, incidental as these observation are, what the learned judge was considering was the scope and effect of s. 297(1)(b) of the Government of India Act, 1935, and he held that the content of the said section cannot be enlarged in the light of the provisions of Art. 304(a). No doubt the observations would seem to show that the learned judge thought that Art. 304(a) cannot throw any light on the scope of Art. 301 with reference to the question of taxation; but it is clear that the question of construing the said Articles did not fall to be considered, and was not obviously argued before the Court. With respect, it may be pointed out that in the happy phraseology adopted by the learned judge itself, in the setting of Part XIII and particularly in the light of the wide words used in Art. 301, the reach and complexion of Art. 304(a) is wider than s. 297(1)(b) and does include reference to taxation.

Then as to the merits of the argument that s. 297 of the constitution Act of 1935 should virtually determine the scope of Art. 301, we are reluctant to accept the assumption that the only change which the Constitution makers intended to make by adopting Art. 301 was to extend the application of s. 297 to the Union Government and the parliament. Just as the Constitution-makers had before them the said section they were also similar with corresponding clauses included in the Federal Constitutions of other countries. The history of judicial decisions interpreting s. 92 of the Australian Constitution must have been present to their minds as also the history of the growth and development of the American Law under the commerce clauses in the American Constitution. Besides, we feel considerable hesitation in accepting the view that the makers of the Constitution did not want to enrich and widen the content of freedom guaranteed by s. 297. They knew that the Constitution would herald a new and in spring era in the history of India and they were fully conscious of the importance of manager the economic unity of the Union of India in order that the federal form of Government adopted by the Constitution should progress in a smooth and harmonious manner. That is why we are include to hold that the broad and unambiguous words used in Art. 301 are intended to emphasise that the freedom of trade, commerce and intercourse guaranteed was richer and wider in content than was the case under s. 297; how much wider and how much richer can be determined only on a fair and reasonable construction of Art. 301 read along with rest of the Articles in Part XIII. In our opinion, therefore, the argument that tax laws are outside Part XIII cannot be accepted.

That takes us to the question as to whether Art. 301 operates only in respect of the entries relating to trade and commerce already specified. Before answering this question it would be necessary to examine the scheme of Part XIII, and construe the relevant Articles in it. It is clear that Art. 301

applies not only to inter-State trade, commerce and intercourse but also intra-State trade, commerce and inter course The words "throughout the territory of India" clearly indicate that trade and commerce whose freedom is guaranteed has to move freely also from one place to another in the same State. This conclusion is further supported by Arts. 302 and 304(b) as we will presently point to. There is no doubt that the sweep of the concept of trade, commerce and intercourse is very wide; but in the present case we are concerned with trade, and so we will leave out of consideration commerce and intercourse. Even as to trade it is really not necessary to discuss or determine what trade exactly means; for it is common ground that the activity carried on by the appellants amounts to trade, and it is not disputed that transport of goods or merchandise from one place to another is so essential to trade that it can be regarded as its integral part. Stated briefly trade even in a narrow sense would include all activities in relation to buying and selling, or the interchange or exchange of commodities and that movement from place to place is the very soul of such trading activates. When Art. 301 refers to the freedom of trade it is necessary to enquire what freedom means. Freedom from what ? is the obvious question which falls to be determined in the content. At this stage we would content ourselves with the statement that the freedom of trade guaranteed by Art. 301 is freedom from all restriction except those which are provided by the other Articles in Part XIII. What these restrictions denote may raise a larger issue, but in the present case were will confine our decision to that aspect of the matter which arises from the provisions of the Art under scrutiny. It is hardly necessary to emphasise that in dealing with constitutional questions courts should be slow to embark upon unnecessarily wide or general enquiry and should confine their decision as far as may be reasonably practicable within the narrow limits of the controversy arising between the parties in that particular case. We will come back again to Art. 301 after examining the other Articles in Part XIII.

Art. 302 confers on the Parliament power to impose restrictions on trade, commerce and intercourse. It provided that parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest. It would be immediately noticed that the reference made to a restriction on the freedom of trade within any part of the Territory of India as distinct from freedom of trade between one State and another clearly indicates that the freedom in question covers not only inter-State trade but also intra-State trade. Thus the effect of Art. 302 is to provide for an exception to the general rule prescribed by Art. 301. Restrictions on the freedom of trade can be imposed by Parliament if they are required in the public interest so that the generality of freedom guaranteed by Art. 301 is subject to the exception provided by Art. 302.

That takes us to Art. 303. It reads thus :

> "303. (1) Notwithstanding anything in article 302, neither Parliament nor the Legislature of a State shall have power to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one state and another, by virtue of any entry relating trade and commerce in any of the Lists in the Seventh Schedule.
>
> (2) Nothing in clause (1) shall prevent Parliament from making any law giving, or authorising the giving, of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so forth purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India."

The first part of this Article is in terms an exception or a proviso to Art. 302 as is indicated by the non obstante clause. This clause probities parliament from making any law which would give any preference to one state over another or would make any discrimination between one State and another by virtue of the relevant entries specified in it. In other words, in regard to the entries there specified, the power to impose restrictions cannot be used for the purpose of giving any preference to one State over another or making any discrimination in that manner. It is obvious that the reference to the Legislature of the State in this clause cannot be reconciled with the non-obstante clause; but the object of including the Legislature of a state appears to be to emphasise that like Parliament even the Legislature of a state cannot give any preference or make any discrimination.

Sub-Article (2) is an exception to sub-Art. (1) of Art. 303. It empowers the Parliament to make a law giving or authorising to give any preference or making any discrimination, but this power can be exercised only if it is declared by law made by the Parliament that it is necessary so to do for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India; in other words, it is only the parliament is faced with the task of meeting on emergency created by the scarcity of goods in any particular part of India that it is authorised to make a law making discrimination, or giving preference, in favour the part thus affected.

On behalf of the states strong reliance is placed on the fact that Art. 303(1) expressly refers to the entries relating to trade and commerce in any of the list in the Seventh Schedule, and it is urged that this gives a clear indication as to scope of the provision of Art. 301 itself. There is some force in this contention; but on the whole we are not prepared to hold that the reference to the said entries should govern the construction of Art. 301. The setting in which the said entries are referred would of course determine the scope an extent of the prohibition prescribed by Art. 303(1); but that cannot be pressed into service in determining the scope of Art. 301 itself. It is significant that Art. 303(1) does not refer to in course and in that sense inter course outside its sphere. It is likely that having authorised Parliament to impose restrictions by Art. 302 it was thought expedient to prohibit expressly the said power of imposing restrictions from being used for the purpose of giving any preference in so far as the relevant entries are concerned. It may also be that the primary object of confining the operation of Art. 303(1) to the said entries was to introduce a corresponding limitation on the power of Parliament to discriminate under Art. 302. However that may be, in our opinion limitation thus introduced in Art. 303(1) cannot circumscribe the scope of Art. 301 or otherwise affect its construction. Besides, as we will presently point out, there are other Articles in this part which indicate that tax laws are included within Art. 301, and if that be so, the reference to the said entries in Art. 303(1) cannot limit the application of Art. 301 to the said entries alone.

Articles 304 reads thus :

> "Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law -
>
> (a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that state are subject, so, however, as not to discriminate between goods so imported any goods so manufactured or produced; and
>
> (b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State a may be required in the public interest :

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

The effect of Art. 304(a) is to treat imported goods on the same basis as goods manufactured or produced in any states; and it authorises tax to be levied on such imported goods in the manner and to the same extent and may believed on goods manufactured or produced inside the State. We ought to add that this sub-Article assumes that taxation can be levied by the State Legislature on goods manufactured or produced within its territory and it provides that outside goods cannot be treated any worse. How a tax can be levied on internal goods is, however, provided by Art. 304(b). The non-obstante clause referring to Art. 301 would go with Art. 304(a), and that indicates that tax on goods would not have been permissible but for Art. 304(a) with the non-obstante clause. This incidentally helps to determine the scope and width of the freedom guaranteed under Art. 301; in other words Art. 304(a) is another exception to Art. 301.

Article 304(b) empower the State Legislature to impose reasonable restrictions on the freedom trade with other States or within its own territory. Again, the reference to the territory within the State supports the conclusion that Art. 301 covers the movement of trade both inter-State. Article 304(b) is to be read with the non-obstante clause relating to Art. 301 as well as Art. 303, and in substance it gives power to the State Legislature somewhat similar to the power conferred on the Parliament by Art. 302. The reference to Art. 303 in the non-obstante clause has presumably been made a matter of abundant caution since the Legislature of a state has been included in Art. 303(1). There are, however, obvious differences in the powers of the parliament and State Legislatures. In regard to an act which the State Legislature intends to pass under Art. 304(b) no bill can be introduced without the previous sanction of the President, and this requirement has obviously been inserted in order that regional economic pressures which may inspire legislation under the said clause should be duly examined in the light of the interest of national economy; such legislation must also be in the public interest which feature is common with the provision contained in Art. 302; such legislation must also satisfy the further test that the restrictions imposed on the powers of the State Legislatures. Thus there are three conditions which must be satisfied in passing an Act under Art. 304(b), - the previous sanction of the President must be obtained, the legislation must be in the public interest, and it must be in the public interest, and it must impose restrictions which are reasonable. It is of course true that if the previous sanction of the president is not obtained that infirmity may be cured by adopting the course authorised by Art. 255. The result of reading Art. 304(a) and (b) together appears to be that a tax an be levied by a State Legislature on goods manufactured or produced or imported in the State and thereby reasonable restrictions can be placed on the freedom of trade either with another State or between different areas of the same state. Tax legislation thus authorised must therefore be deemed to have been include in Art. 301, for that is the obvious inference from the use of the non-obstante clause.

Article 305 saves existing laws and laws providing for State monopolies. It is unnecessary to deal with this Article. Its object clearly was not to interrupt or to affect the operation of the existing laws except in so far as the President may by order otherwise direct. Article 306 is relevant. It reads thus :

> "Notwithstanding anything in the foregoing provisions of this Part or in any other provisions of this Constitution, any State specified in Part B of the First Schedule which before the commencement of this Constitution was levying any tax or duty on the import of goods into the State from other States or on the export of goods from the State to other States may, if an agreement in that behalf has been entered into

between the Government of India and the Government of that State, continue to levy and collect such tax or duty subject to the terms of such agreement and for such period not exceeding ten years from the commencement of this Constitution as may be specified in the agreement :

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if, after consideration of the report of the Finance Commission constituted under article 280, he thinks it necessary to do so."

This Article has been subsequently deleted by s. 29 and Schedule to the Constitution (Seventh Amendment) Act, 1956, but its initial inclusion in Part XIII throws some light on the scope of Art. 301. Laws made by any State specified in Part B of the First Schedule levying any tax or duty on the import of goods into the State from other States or the export of goods from the State to other States were expressly saved by a Art. 306 because it was realised that they would otherwise be hit by Art. 301. In other words, taxing statutes or statutes imposing duties on goods would, but for Art. 306, have attracted the application of Art. 301.

Let us now revert to Art. 301 and ascertain the width and amplitude of its scope. On a careful examination of the relevant provisions of Part XIII as a whole as well as the principle of economic unity which it is intended to safeguard by making the said provisions, the conclusion appears to us to be inevitable that the content of freedom provided for by Art. 301 was larger than the freedom contemplated by s. 297 of the Constitution Act of 1935, and whatever else it may or may not include, it certainly includes movement of trade which is of the very essence of all trade and is its integral part. If the transport or the movement of goods is taxed solely on the basis that the goods are thus carried or transported that, in our opinion, directly affects the freedom of trade as contemplated by Art. 301. If the movement, transport or the carrying of goods is allowed to be impeded, obstructed or hampered by taxation without satisfying the requirements of Part XIII the freedom of trade on which so much emphasis is laid by Art. 301 would turn to be illusory. When art. 301 provides that trade shall be free throughout the territory of India primarily is the movement or the transport part of trade must be free subject of course to the limitations and exceptions provided by the other Articles of Part XIII. That we think is the result of Art. 301 read with the other Articles in Part XIII.

Thus the intrinsic evidence furnished by some of the Articles of Part XIII shows that taxing laws are not excluded from the operation of Art. 301; which means that tax laws can and do amount to restrictions freedom from which is guaranteed to trade under the said Part. Does that mean that all tax laws attract the provisions of Part XIII whether their impact on trade or its movement is direct and immediate or indirect and remote ? It is precisely because the words used in Art. 301 are very wide, and in a sense vague and indefinite that the problem of construing them and determining their exact width and scope becomes complex and difficult. However, in interpreting the provisions of the Constitution we must always bear in mind that the relevant provision "has to be read not in vacuo but as occurring in a single complex instrument in which one part may throw light on another". (Vide : James v. Commonwealth of Australia ((1936) A.C. 578, 613)). In construing Art. 301 we must, therefore, have regard to the general scheme of our Constitution as well as the particular provisions in regard to taxing laws. The construction of Art. 301 should not be determined on a purely academic or doctrinaire considerations; in construing the said Article we must adopt a realistic approach and bear in mind the essential features of the separation of powers on which our constitution rests. It is a federal constitution which we are interpreting, and so the impact of Art.

301 must be judged accordingly. Besides, it is not irrelevant to remember in this connection that the Article we are construing imposes a constitutional limitation on the power of the Parliament and State Legislatures to levy taxes, and generally, but for such limitation, the power of taxation would be presumed to be for public good and would not be subject to judicial review or scrutiny. Thus considered we think it would be reasonable and proper to hold that restrictions freedom from which is guaranteed by Art. 301, would be such restrictions as directly and immediately restrict or impede the free flow or movement of trade. Taxes may and do amount to restrictions; but it is only such taxes as directly and immediately restrict trade that would fall within the purview of Art. 301. The argument that all taxes should be governed by Art. 301 whether or not their impact on trade is immediate or mediate direct or remote, adopts, in our opinion, an extreme approach which cannot be upheld. If the said argument is accepted it would mean, for instance, that even a legislative enactment prescribing the minimum wages to industrial employees may fall under Part XIII because in an economic sense an additional wage bill may indirectly affect trade or commerce. We are, therefore, satisfied that in determining the limits of the width and amplitude of the freedom guaranteed by Art. 301 a rational and workable test to apply would be : Does the impugned restriction operate directly or immediately on trade or its movement ? It is in the light of this test that we propose to examine the validity of the Act under scrutiny in the present proceedings.

We do not think it necessary or expedient to consider what other laws would be affected by the interpretation we are placing on Art. 301 and what other legislative entries would fall under Part XIII. We propose to confine our decision to the Act with which we are concerned. If any other laws are similarly challenged the validity of the challenge will have to be examined in the light of the provisions of those laws. Our conclusion, therefore, is that when Art. 301 provides that trade shall be free throughout the territory of India it means that the flow of trade shall run smooth and unhampered by any restriction either at the boundaries of the States or at any other points inside the States themselves. It is the free movement or the transport of goods from one part of the country to other that is intended to be saved, and if any Act imposes any direct restrictions on the very movement of such goods it attracts the provisions of Art. 301, and its validity can be sustained only if it satisfies the requirements of Art. 302 or Art. 304 of Part XIII. At this stage we think it is necessary to repeat that when it is said that the freedom of the movement of trade cannot be subject to any restrictions in the form of taxes imposed on the carriage of goods or their movement all that is meant is that the said restrictions can be imposed by the State Legislatures only after satisfying the requirements of Art. 304(b). It is not as if no restrictions at all can be imposed on the free movement of trade.

Incidentally we may observe that the difference in the provisions contained in Art. 302 and Art. 304(b) would prima facie seem to suggest that where Parliament exercises its power under Art. 302 and passes a law imposing restrictions on the freedom of trade in the public interest, whether or not the given law is in the public interest may not be justiciable, and in that sense Parliament is given the sole power to decide what restrictions can be imposed in public interest as authorised by Art. 302. On the other hand Art. 304(b) requires not only that the law should be in the public interest and should have received the previous sanction of the President but that the restrictions imposed by it should also be reasonable. Prima facie the requirement of public interest can be said to be not justiciable and may be deemed to be satisfied by the sanction of the President; but whether or not the restrictions imposed are reasonable would be justiciable and in that sense laws passed by the State Legislatures may on occasions have to face judicial scrutiny. However, this point does not fall to be considered in the present proceedings and we wish to express no definite opinion on it.

Let us then examine the material provisions of the Act. As we have already pointed out the Act had

been passed providing for the levy of tax on certain goods carried by roads or inland waterways in the State of Assam. Section 2(11) defines a producer as meaning a producer of tea and including the person in charge of the garden where it is produced. Section 3 is the charging section. It provides that manufactured tea in chests carried by motor vehicles etc., except railways and airways shall be liable to tax at the specified rate per lb. of such tea and this tax shall be realised from the producer. It also makes similar provisions for jute with which we are not concerned in the present proceedings. Section 6 provides for taxing authorities and their powers. Section 7 provides, inter alia, that every producer shall furnish returns of the manufactured tea carried in tea chests in such form and to such authority as may be prescribed. Section 8 makes a provision for licensing of balers who are persons owning or possessing pressing machines for the compression of jute into bales. Section 9 prescribes the procedure for levying the assessment; and s. 10 provides for the cancellation of assessment in cases specified. Section 11 deals with the assessment in cases of evasion and escape; s. 12 with rectification, and s. 13 with penalty for non-submission of returns and evasion of taxes. Section 19 provides for notice of demand, and s. 20 lays down when tax becomes payable. This Act has been passed by the Assam Legislature under Entry 56 in List II and naturally it purports to be a tax on goods carried by roads or by inland waterways. It is thus obvious that the purpose and object of the Act is to collect taxes on goods solely on the ground that they are carried by road or by inland waterways within the area of the State. That being so the restriction placed by the Act on the free movement of the goods is writ large on its face. It may be that one of the objects in passing the Act was to enable the State Government to raise money to keep its roads and waterways in repairs; but that object may and can be effectively achieved by adopting another course of legislation; if the said object is intended to be achieved by levying a tax on the carriage of goods it can be so done only by satisfying the requirements of Art. 304(b). It is common ground that before the bill was introduced or moved in the State Legislature the previous sanction of the President has not been obtained; nor has the said infirmity been cured by recourse to Art. 255 of the Constitution. Therefore we do not see how the validity of the tax can be sustained. In our opinion the High Court was in error in putting an unduly restricted meaning on the relevant words in Art. 301. It is clear that in putting that narrow construction on Art. 301 the High Court was partly, if not substantially, influenced by what it thought would be the inevitable consequence of a wider construction of Art. 301. As we have made it clear during the course of this judgment we do not propose to express any opinion as to the possible consequence of the view which we are taking in the present proceedings. We are dealing in the present case with an Act passed by the State Legislature which imposes a restriction in the form of taxation on the carriage or movement of goods, and we hold that such a restriction can be imposed by the State Legislature only if the relevant Act is passed in the manner prescribed by Art. 304(b).

This question can be considered from another point of view. When a State Legislature passes an Act under Entry 56 of List II its initial legislative competence is not in dispute. What is in dispute is whether or not such legislative competence is subject to the limitations prescribed by Part XIII. Now what does an act passed under the said Entry purports to do ? It purports to put a restraint in the form of taxation on the movement of trade, and if the movement of trade is regarded as an integral part of trade itself, the Act in substance puts a restriction on trade itself. The effect of the Act on the movement of trade is direct and immediate; it is not indirect or remote; and so legislation under the said Entry must be held to fall directly under Art. 301 as legislation in respect of trade and commerce. In some of the decisions of this Court, in examining the validity of legislation it has been considered whether the impugned legislation is not directly in respect of the subject matter covered by a particular Article of the Constitution. This test was applied for instance by Kania, C.J., in the case of A. K. Gopalan v. The State of Madras ([1950] S.C.R. 88). It was also adopted by this Court

in the case of Ram Singh v. The State of Delhi ([1951] S.C.R. 451). It is no doubt true that the points which arose for decision in those cases had reference to the fundamental rights guaranteed by Arts. 19, 21 or 22; but we are referring to those decisions in order to emphasise that the test there adopted would in the present case lead to the conclusion that the Act with which we are concerned is invalid. The true approach according to Kania, C.J., is only to consider the directness of legislation. Now, if the directness of legislation has to be considered it is clear that the Act imposes a tax on the carriage of goods and that immediately takes it within the purview of Part XIII.

In the course of arguments the Learned Attorney-General invited us to apply the test of pith and substance, and he contended that if the said test is applied the validity of the Act can be sustained. In support of his argument he has relied on the observations made by Das, C.J., in the case of The State of Bombay v. R. M..D. Chamarbaugwala ([1957] S.C.R. 874). In that case the Court was called upon called upon to consider the validity of the Bombay Lotteries and Prize Competitions Control and Tax (Amendment) Act, 1952. The challenge to the Act proceeded on two grounds, (1) that it violated the fundamental right guaranteed under Art. 19(1)(g) and (2) that it offended against that provisions of Art. 301. The challenge on the first ground was repelled because it was held that gambling cannot be treated as trade or business under Art. 19(1)(g). This conclusion was sufficient to repel also the other ground on which the validity of the Act was challenged because, if gambling was not trade or business under Art. 19(1)(g), it was also not trade or commerce under Art. 301. On the conclusion reached by this Court that gambling is not a trade this position would be obvious. Even so, the Learned Chief Justice incidentally applied the test of pith and substance, and observed that the impugned act was in pith and substance an act in respect of betting and gambling, and since betting or gambling was not trade, commerce or business "the validity of the Act had not to be decided by the yardstick of reasonableness and public interest laid down in Arts. 19(6) and 304". In this connection it may with respect, be pointed out that what purports to be a quotation from Lord Porter's judgment in Commonwealth of Australia & Ors. v. Bank of New South Wales ([1950] S.C.R. 88) has not been accurately reproduced. In fact, referring to phrases such as 'pith and substance' Lord Porter has observed that "they no doubt raise in convenient form an appropriate question in cases where the real issue is one of subject-matter, as when the point is whether a particular piece of legislation is a law in respect of some subject within the permitted field. They may also serve useful purpose in the process of deciding whether an enactment which works some interference with trade, commerce and intercourse among the States is nevertheless untouched by s. 92 as being essentially regulatory in character" (pp. 312, 313). These observations would indicate that the test of pith and substance is generally and more appropriately applied when a dispute arises as to the legislative competence of the legislature, and it has to be resolved by reference to the entries to which the impugned legislation is relatable. When there is a conflict between two entries in the legislative lists, and legislation be reference to one entry would be competent but not by reference to the other, the doctrine of pith and substance is invoked for the purpose of determining the true nature and character of the legislation in question (Vide : Prafulla Kumar Mukherjee v. Bank of Commerce Ltd., Khulna ((1947) L.R. 74 I.A. 23)and Subrahmanyan Chettiar v. Muttuswami Goundan ([1940] F.C.R. 188). But even the application of the test of pith and substance yields the same result in the present proceedings. The pith and substance of the legislation is taxation on that carriage of goods and that clearly falls within the terms of Art. 301.

At the commencement of this judgment we have stated that the complexity of the problem which we are called upon to decide in the present proceedings has been incidentally mentioned or considered in some of the reported decisions of this Court. We may in that connection refer to two of such decisions at this stage. In The State of Bombay v. The United Motors (India) Ltd. ([1953] S.C.R. 1069), Patanjali Sastri, C.J., observed that the freedom of State trade and commerce declared in Art.

301 is expressly subordinated to the State power of taxing goods imported from sister Stated provided only no discrimination is made in favour of similar goods of local origin. According to the Learned Chief Justice the commercial unity of India is made to give way before the State power of imposing any non-discriminatory tax on goods imported from sister States. This observation would suggest that Art. 304(a) and (b) deal with taxes and to that extent it is inconsistent with the argument that tax laws are outside Part XIII.

The next case in which this question has been incidentally discussed is in Saghir Ahmed v. The State of U. P. ([1955] 1 S.C.R. 707). (In that case the impugned provisions of the U.P. Road Transport Act, 1951 (U.P. Act II of 1951), were declared to be unconstitutional on two other grounds which had no direct connection with the challenge under Part XIII of the Constitution. Even so Mukherjea, J., as he then was, who spoke for the Court, has referred to the problem raised by Part XIII as "not quite free from difficulty" and has indicated its pros and cons which were urged before the court. One of the points thus urged was that Art. 301 provides safeguards for carrying on trade as a whole as distinct from the rights of an individual to carry it on. In other words the said Article was concerned with the passage of commodities or persons either within or without the State frontiers but not directly with individuals carrying on the trade or commerce. The right of individuals, it was said, was dealt with under Art. 19(1)(g) so that the two Articles had been framed in order to secure two different objects. To the same effect are some of the observations made by Das, C.J., in the case of R. M. D. Chamarbaugwala ([1957] S.C.R. 874). It is unnecessary on the present occasion to consider whether the fields covered by Art. 19(1)(g) and Art. 301 can be distinguished in the manner suggested in the said observations. It may be possible to urge that trade as a whole moves inevitably with the aid of human agency, and so protection granted to trade may involve protection even to the individuals carrying on the said trade. In that sense the two freedoms may overlap. However, it is unnecessary to pursue this point any further in the present proceedings.

Before we conclude we would like to refer to two decisions in which the scope and effect of the provisions of s. 92 of the Australian Constitution came to be considered. We have deliberately not referred to these decisions earlier because we thought it would be unreasonable to refer to or rely on the said section or the decisions thereon for the purpose of construing the relevant Articles of Part XIII of our Constitution. It is commonplace to say that the political and historical background of the federal polity adopted by the Australian Commonwealth, the setting of the Constitution itself, the distribution of powers and the general scheme of the Constitution are different, and so it would to be safe to seek for guidance or assistance from the Australian decisions when we are called upon to construe the provisions of our Constitution. In this connection we have already referred to the note of warning struck by Venkatarama Aiyar, J., against indiscriminate reliance being placed on Australian and American decisions in interpreting our Constitution in the case of M. P. V. Sundararamier & Co. The same caution was expressed by Gwyer, C.J., as early as 1939 when he observed in The Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938 A.I.R. 1939 F.C. 1, 5) "there are few subjects on which the decisions of other Courts require to be treated with greater caution than that of federal and provincial powers, for in the last analysis the decision must depend upon the words of the Constitution which the Court is interpreting; and since no two Constitutions are in identical terms it is extremely usage to assume that a decision on one of them can be applied without qualification to another. This may be so even where the words or expressions used are the same in both cases, for a word or a phrase may take a colour from its context and bear different senses accordingly". Even so the reported decisions of this Court show that in dealing with constitutional problems reference has not infrequently been made to Australian and American decisions; and that, we think, brings out the characteristic feature of the working of the judicial process. When you are dealing with the problem of construing a constitutional provision

which is none-too-clear or lucid you feel inclined to inquire how other judicial minds have responded to the challenge presented by similar provisions in other sister Constitutions. It is in that spirit that we propose to refer to two Privy Council decisions which dealt with the construction of s. 92 of the Australian Constitution.

The first paragraph of s. 92 of the Australian Constitution, around which has grown, in the words of Lord Porter a "labyrinth where there is no golden thread", reads thus : "On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free". The part played by Frederick Alexander James, who carried on the trade of growing and processing dried fruits, in securing judicial pronouncements on the true scope and effect of the said section is wellknown. He fought three valiant legal battles in which he successfully asserted his right as a trader against legislative encroachment. In James v. State of South Australia ((1927) 40 C.L.R. 1) s. 20 of the Dried Fruits Export Control Act, 1924, was struck down. In James v. Cowan ((1932) A.C. 542) s. 28 was challenged, whereas in the last case of James v. Commonwealth of Australia ((1936) A.C. 578, 613) James had claimed a declaration that the Dried Fruits Act 11 of 1928 and 5 of 1935 and the regulations framed thereunder were invalid as offending against s. 92 of the Constitution. It is to the observations made by the Privy Council in the last case to which we wish to refer. Referring to the word "free" issued in the said section Lord Wright observed that the said word in itself is vague and indeterminate; it must take its colour from the context. Then he referred to the fact that "'free trade' ordinarily means freedom from tariffs", but he immediately added that "free" in s. 92 cannot be limited to freedom in the last mentioned sense. According to this judgment every step in the series of operations which constitute the particular transaction is an act of trade, and control under the State law of any of these steps must be an interference with its freedom as trade. In this connection it was also observed that not much help is to be got by reflecting that trade may still be free though the trader has to pay for the different operations such as tolls, railway rates and so forth; it would thus appear that the result of this decision is that imposition of tolls, railway rates and so forth might impede the freedom of trade contemplated by s. 92, which in other words supports our conclusion that a tax may amount to a restriction under Art. 301.

In the case of Commonwealth of Australia v. Bank of New South Wales ((1927) 40 C.L.R. 1) to which reference has already been made in connection with the test of pith and substance the Privy Council was examining the validity of s. 46 of Banking Act (Commonwealth) (No. 57 of 1947) in the light of the provisions of s. 92 of the Australian Constitution. In deciding the said would one of the tested which was applied by Lord Porter was : "Does the act not remotely or incidentally (as to which they will say something later) but directly restrict the inter State business of Banking", and he concluded that "two general propositions may be accepted, (1) that regulation of trade, commerce and intercourse among the States is compatible with its absolute freedom, and (2) that s. 92 is violated only when a legislative or executive act operates to restrict such trade, commerce and intercourse directly and immediately as distinct from creating some indirect or consequential impediment which may fairly be regarded as remote". This decision thus justifies the conclusion we have reached about the scope and effect of Art. 301.

In the result we hold that the Act has put a direct restriction on the freedom of trade, and since in doing so it has not complied with the provisions of Art. 304(b) to must be declared to be void. In view of this conclusion it is unnecessary to consider the other points urged in support of the challenge against the validity of the Act. The three appeals and the two petitions are accordingly allowed and writs or orders directed to be issued as prayed. The appellants and the petitioners will be entitled to their costs from the respondent.

SHAH J. -

The validity of the Assam Taxation (on Goods carried by Roads or Inland Waterways) Act, 1954 - hereinafter referred to as the Act, is challenged by certain producers of tea in the States of West Bengal and Assam. The Act was passed by the Assam Legislature and received the assent of the Governor of Assam on April 9, 1954. To the introduction of the Bill (which was enacted into the Act) in the State Legislature, the previous sanction of the President was not obtained : nor did the President assent to the Act. By s. 3 of the Act, it is provided inter alia that "manufactured tea in chests carried by motor vehicles, cart, trolley, boat, animal an human agency or any other means except railways and airways shall be liable to a tax of one anna per pound of such tea and this tax shall be realised from the producer". "Producer" is defined by s. 2 cl. (2) as meaning a producer of tea and included a person in charged of the garden where tea is produced. By s. 4, tax is charged on the total net weight carried during the return period. Section 7 provides that every producer and dealer shall furnish a return of manufactured tea carried in chests. By s. 23, cl. (3), the Commissioner of Taxes is authorised to recover taxes and penalties due under the Act as arrears of land revenue. Sections 27 and 28 impose a duty upon the producers to maintain accounts in the forms prescribed under the Act and to preserve them and to produce them wherever called upon, to the commissioner or other persons as may be appointed by the Government in that behalf. The rules framed under the Act make it obligatory upon the producers to submit quarterly returns to the Superintendent of Taxes and to maintain the registers in the forms prescribed and failure to maintain registers is penalised.

In exercise of the powers conferred by s. 7, sub-s. (3), the Commissioner of Taxes issued a notification in the Assam Government Gazette notifying for general information that returns under the Act and the Rules thereunder for the period between June 1, 1954 and September 30, 1954, shall be furnished on for before October 30, 1954, and for the subsequent quarters on or before the dates specified therein. Three producers who transported their tea by road or by in Inland waterways to Calcutta in the State of West Bengal challenged by petitions under Art. 226 of the Constitution filed in the High Court of Assam, the authority of the Legislature of the State of Assam to enact the Act on the plea that the Act violated the guarantee of freedom of trade, commerce and intercourse under Art. 301 of the Constitution. The High Court rejected the plea raised by the petitioners, and against the orders passed, three appeals with certificates of fitness under Art. 132 of the Constitution have been referred. Two other producers have challenged the vires of the Act by petitioner under Art. 32 of the Constitution presented to this court.

The principal question canvassed in these proceedings is about the competence of the Assam Legislature to enact the Act. The producers contend that by Art. 301 of the Constitution trade, commerce and intercourse being declared free throughout the territory of India, the Statue authorising imposition of restriction or burdens on that freedom by levying tax under the authority of an Act which does not conform to the conditions prescribed by the Constitution is invalid. Item 56 of List II of the seventh schedule to the Constitution authorises the State Legislature to impose taxes on goods and passengers carried by road or on inland waterways. In terms, the tax imposed by the Act is a tax on goods carried by road and inland waterways and is not of the nature of a duty of excise. If the vires of the Act are to be adjudged solely in the light of the power conferred by Art. 246 cl. (3) read with item 56 of List II of the seventh schedule, the tax must be regarded as within the competence of the State. But the exercise of legislative power of the Parliament and the State Legislatures conferred by the legislative lists is restricted by diverse provisions of the Constitution. By Art. 301, it is declared that subject to the provisions of Part XIII of the Constitution, trade, commerce and intercourse throughout the territory of India shall be free. The language of the

Article is general; it admits of no implications and of no exceptions bar those expressly imposed by Part XIII. It comprehensively sets out the guarantee of freedom and defines in terms, clear and precise, that trade, commerce and intercourse throughout the territory of India subject to the provisions of Part XIII, shall be free, i.e., trade, commerce and inter cause shall not, except to the extent expressly permitted, be prohibited, controlled, burdened or impeded. Our Constitution even though in form federal, has in diverse provisions thereof, emphasised the unity of India; and with view to promote that unity appears to have guaranteed, subject to specific restrictions, freedom of trade, commerce and intercourse throughout the territory. The Article is not merely declaratory of State policy like the directive principles defined by Part IV of the Constitution which are expressly not made enforceable by any court though the principles are "fundamental in the governance of the country". It incorporates a restriction on the exercise of power by Governmental agency - legislative as well as executive. Besides placing an irremovable ban on the executive authority, it restricts the legislative power of the parliament and the State legislatures conferred by Arts. 245, 246 and 248 and the relevant items in the legislative lists relating to trade, commerce and intercourse. On the exercise of the legislative power to tax trade, commerce and intercourse, restrictions are prescribed by certain provisions contained in Part XII, e.g., Arts. 276, 286, 287, 288 and 289 : but these restrictions do not exhaustively delimit the periphery of that power. The legislative power to tax is restricted also by the fundamental freedoms contained in Part III, e.g., Arts. 14, 15(1), 19(1)(g) and 31(1) and is further restricted by Part XIII. Article 245, cl. (1), of the Constitution expressly provides that the legislative powers of the parliament and the State Legislatures to make laws are subject to the provisions of the Constitution; and Art. 301 is undoubtedly one of the provisions to which the legislative powers are subject.

The power of taxation is essentially an attribute of the sovereignty of the State and is not exercised in consideration of the protection it affords or the benefit that it confers upon citizens and aliens. Its content is not measured by the apparent need of the amount sought to be collected, and its incidence does not depend upon the ability of the citizens to meet the demand. But it is still not an unrestricted power. By Art. 265 of the Constitution, the power to tax can be exercised by authority of law alone and the Constitution affirmatively grants the power of taxation under diverse heads under the three lists of the seventh schedule. The power of taxation has therefore to be exercised by the Legislature strictly within the limits prescribed by the Constitution, and any alleged transgression either by Parliament or the State Legislature of the limits imposed by the Constitution is justiciable.

Trade and commerce do not mean merely traffic in goods, i.e., exchange of commodities for money or other commodities. In the complexities of modern conditions, in their wide sweep are included carriage of persons and goods by road, rail, air and waterways, contracts, banking, insurance, transactions in the stock exchanges and forward markets, communication of information, supply of energy, postal and telegraphic services and many more activities - too numerous to be exhaustively enumerated - which may be called commercial intercourse. Movement of goods from place to place may in some instances be an important ingredient of effective commercial intercourse, but movement is not an essential ingredient thereof. Dealings in goods and other commercial activities which do not import a concept of movement are as much part of trade and commerce as transactions involving movement of goods. The guarantee of freedom of trade and commerce is not address merely against prohibitions, complete or partial; it is addressed to tariffs, licensing, marketing regulations, price control, nationalisation, economic or social planning, discriminatory tariffs, compulsory appropriation of goods, freezing or stand still orders and similar other impediments operating directly and immediately on the freedom of commercial intercourse as well. Every sequence in the series of operations which constitutes trade or commerce is an act of trade or commerce and burdens or impediments imposed on any such step are restrictions on the freedom of

trade, commerce and intercourse. What is guaranteed is freedom in its widest amplitude - freedom from prohibition, control, burden or impediment in commercial intercourse. Not merely discriminative tariffs restricting movement of goods are included in the restrictions which are hit by Art. 301, but all taxation on commercial intercourse, even imposed as a measure for collection of revenue is so hit. Between discriminatory tariffs and trade barriers on the one hand and taxation for raising revenue on commercial intercourse, the difference is one of purpose an not of quality; both these forms of burden on commercial intercourse trench upon the freedom guaranteed by Art. 301.

The guarantee of freedom is again not merely against burdens or impediments on inter-State movement : nor does the language of Art. 301 guarantee freedom merely from restrictions on trade, commerce and intercourse as such. Articles 302, 303, 304 and 306, which I will presently advert to, make it abundantly clear that the freedom contemplated was freedom of trade, commerce and intercourse in all their varied aspects inclusive of all activities which constitute commercial intercourse and not merely from restrictions on "trade, commerce and intercourse as such".

Article 301 as has already been observed enunciates a fetter upon the exercise of legislative power under the entries in the lists of the servant schedule concerning or relating or trade, commerce and intercourse. The basic principle underlying Art. 301 appear to have been adopted from Constitution of the Australian Commonwealth. In the American Constitution, by the 8th section, Art. 1, power to regulate commerce is granted; but the freedom of commerce as guaranteed by our Constitution is not found enunciated in the Constitution of the United States. Section 92 of the Constitution of the Commonwealth of Australia provides by the 1st paragraph that "on the imposition of uniform duties of customs, trade, commerce and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free". That guarantee of freedom of trade, commerce and intercourse though not as extensive as the guarantee enshrined in our Constitution, is of the same pattern. But our Constitution has made a significant departure from the Australian Constitution. Whereas by s. 92 of the Australian Constitution, freedom of trade, commerce and intercourse is guaranteed among the States, i.e., at inter-State level, our Constitution has made trade, commerce and intercourse free throughout the territory of India. The freedom guaranteed by our Constitution is more pervasive : it is freedom of trade, commerce and intercourse intra-State as well as inter-State. But this extension of the area of its operation does not alter the content of that freedom. It is freedom from tax burdens as well as other impediments.

Section 92 of the commonwealth of Australia Act does not encompass the wide freedom guaranteed by our Constitution-it protects trade, commerce and intercourse from restrictions in inter -State commerce; but in my judgment, the interpretation by the judicial committee of the Privy Council in James v. Commonwealth of Australia (L.R. (1936) A.C. 578) upon the meaning of the expression "free" in s. 92 is not on that account less illuminating in the interpretation of Art. 301 of our Constitution which is largely based on that section of the Australian Constitution.

Lord Wright in delivering the judgment of the Board in James v. Commonwealth of Australia (L.R. (1936) A.C. 578) (supra) at pp. 627-628 observed :

> "'Free' in s. 92 cannot be limited to freedom in the last mentioned sense (freedom from tariffs). There may at first sight appear to be some plausibility in that idea, because of the starting point in time specified in the section, because of the sections which surround s. 92, and because proviso to s. 92 relates to customs duties. But it is clear that much more is included in the term; customs duties and other like matters constitute a merely pecuniary burden; there may be different and perhaps more

> drastic ways of interfering with freedom, as by restriction or partial or complete prohibition of passing into or out of the State.
>
> Nor does "free" necessarily connote absence of discrimination between inter-State and intra-State trade. No doubt conditions restrictive of freedom of trade among the States will frequently involve and discrimination; but that is not essential or decisive ..... A compulsory seizure of goods ..... may include indifferently goods intended for intra-State trade and goods intended for trade among the States. Nor can freedom be limited to freedom from legislative control; it must equally include executive control ..... Every step in the series of operations which constitute the particular transaction is an act of trade; and control under the State law of any of these steps must be an interference with its freedom as trade."

These observation made in the context of a guarantee against obstruction to the flow of inter state trade and commerce, involved the "conception" of "freedom from customs duties, imports, border prohibitions and restrictions of every kind : the people ..... were to be free to trade with each other, and to pass to and fro among the States, without any burden hindrance or restriction based merely on the fact that they were not members of the same State".

Freedom guaranteed by Art. 301 is however not absolute : it is subject to the provisions contained in Part XIII of the Constitution. Article 302 authorises Parliament to impose restriction the freedom of trade, commerce an intercourse between one State and another or within any part of the territory of India as may be required in the public interest. The Constitution has therefore circumscribed the guarantee under Art. 301 by authorising the Parliament to impose restrictions thereon. Such restrictions on trade, commerce and intercourse may be intra-State as well as inter-State : the only condition which the restrictions must fulfill is that they must be imposed in the public interest. The Learned Attorney-General urged that the courts are incompetent to adjudge whether the quantum, and the incidence of a tax imposed by a Legislature in exercise of its powers are in the public interest, and therefore it must be inferred that Arts. 301 and 302 do not deal with freedom from taxation and the limits which may be placed thereon. Counsel urged that in the modern political thought, exercise of the sovereign power of taxation is not restricted to collection of revenue for governmental purposes; it is resorted to for diverse purposes, often with view to secure a pattern of social order ensuring justice, liberty and equality amongst citizens. That the courts may not in adjudging upon the validity of a restriction imposed by a parliamentary statue, lightly enter upon an investigation whether the amount sought to be recovered and its incidence are in the public interest, is not a ground for holding that Art. 302 does not deal with restrictions which may be placed upon trade, commerce and intercourse by the imposition of taxes. The courts will normally upon the wisdom of the Parliament and presume that taxes are generally imposed in the public interest : but that does not exclude the jurisdiction of the court in a given case to enter upon an enquiry whether an impugned legislation satisfied that constitutional test. If an enquiry into the validity of a burden or impediment imposed on the freedom of trade, commerce and intercourse imposed otherwise than by levying a tax is within the competence of the court, the restraint which the courts put upon their own functions by raising a presumption of constitutionality in dealing with a burden imposed by a taxing statute cannot be forged into a fetter upon the jurisdiction. By cl. (b) of Art. 304, the State Legislature are invested with similar authority to impose restrictions on the freedom of trade, commerce and intercourse with or within the state as may be required in the public interest. The territorial extent of the operation of the laws which may be made under Arts. 302 and 304(b) may not from the very nature of the jurisdiction exercised by the Legislature be co-extensive, but subject thereto, the Parliament and the State Legislatures are entrusted in exercise of legislative authority

with power to restrict freedom of trade, commerce and intercourse. Why the Constitution should have enacted that the Parliamentary law may impose reasonable restrictions as may be required in the public interest and the State law may required in the public interest and the State law may impose reasonable restrictions as may be required in the public interest, it is difficult to appreciate. It is unnecessary for the purpose of these cases to enter upon a discussion whether there is any real distinction between the quality of restrictions which may be imposed by legislation by the parliament and State Legislatures exercising authority respectively under Arts. 302 and 304(b) of the Constitution. The two Articles enact that to cirucmscribe effectively the freedom of trade, commerce and intercourse, the restriction must satisfy the primary test that it is "required in the public interest". Clause (b) of Art. 304 is subject to a proviso that no Bill or amendment for the purpose of cl. (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President. The authority of the State Legislature to enact legislation imposing restrictions on trade, commerce and intercourse is therefore subject to the condition the before the Bill or amendment of a statute is moved, the previous sanction of the President must be obtained. Legislative power of the Parliament imposing restrictions on the freedom of trade, commerce and intercourse may therefore be validly exercised if the restrictions are required in the public interest. On the exercise of authority in that behalf by the State Legislatures, there are placed two restrictions, (1) that the restrictions must be reasonable and required in the public interest, (2) that the Bill or amendment imposing restriction can removed or introduced in the Legislature only with the previous sanction of the President. In this context, I may refer to Art. 255 which provides, in so far as it is material, that no Act of the Legislature of a State shall be invalid by reason only that the previous sanction required by the Constitution was not given, if assent to that Act was given under cl. (c) where the previous sanction required was that of the President, by the President. Even if the previous sanction of the President has not been obtained to the moving or introduction of the Bill or amendment falling within cl. (b) of Art. 304, the Act still would not be invalid if the President has signified his assent to the Act enacted by the Legislature.

Article 303(1) is an exception to Art. 302 as well as Art. 304(b). Notwithstanding the wide sweep of the legislative power restored by Arts. 302 and 304(b) to the Parliament and the State Legislatures to make laws imposing restrictions on the freedom of trade, commerce and intercourse, prohibition is imposed on the exercise of the power in making laws giving or authorising the giving of, any preference to one State over another or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the seventh schedule. Cl. (1) of Art. 303 emphasises the object of the Constitution, makers to safeguard the economic unity of the nation and to prevent dissemination between the constituent States in the matter of trade and commerce. It is true that under cl. (1) of Art. 302, the discrimination which is prohibited is under a law made by virtue of an entry relating to trade and commerce in the seventh schedule. But thereby, discrimination which is prohibited is not limited to discrimination under laws made under items expressly relating to the trade and commerce items of the seventh schedule. The expression "relating to trade and commerce" used in Art. 302(1) in my judgment includes all those entries in the lists of the seventh schedule which deal with the power to legislate, directly or indirectly in respect of activities in the nature of trade and commerce. By cl. (2) of Art. 303, the rigour of cl. (1) in the matter of laws to be enacted by Parliament is to a certain extent reduced. That clause authorises to the Parliament, but not the State Legislatures, to make laws not with standing cl. (1) when it is declared by law that it is necessary to make discrimination which is prohibited for the purpose of dealing with the situation arising from scarcity of goods in any part of the territory of India.

Article 304, in so far as it is material, provides that not withstanding anything in Art. 301 or Art.

303, the Legislature of a State may by law, (a) impose on goods imported from other States (or the Union territories) any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported an goods so manufactured or produced. This clause implies that notwithstanding anything contained in Art. 301 or Art. 303, the State Legislature has the power to impose tax on the import of goods to which similar goods manufactured or produced in the State are subject, provide that by taxing the goods imported from another State or Union territory, no discrimination is practiced. If Art. 301 and Art. 303 did not deal with restrictions or burdens in the nature of tax, the reason for incorporating the non-obstante clause to which Art. 304, cl. (1), is subject, cannot be appreciated. Undoubtedly, the provisions of Part XIII of the Constitution do not impose additional or independent powers of taxation; the powers of taxation are to be found conferred by Arts. 245, 246 and 248 read with the lists in the seventh schedule, and the provision of Part XIII are limited of the exercise of legislative power. The circumstance that the Constitution has chosen to deal with a specific field of taxation as an exception to Arts. 301 and 303 (which should really be Art. 303(1)) strongly supports the inference that taxation was one of the restrictions from the imposition of which by the guarantee of Art. 301, trade, commerce and intercourse are declared free.

Clause (b) of Art. 304 is subject to the proviso prescribing that previous sanction of the President shall be obtained to the moving or introduction of a bill or amendment imposing restrictions on the freedom of trade, commerce and intercourse. There is however no such condition imposed in the matter of enactment of laws imposing non-discriminative tariffs under cl. (a). But on that account, the nature of the restrictions contemplated by cls. (a) and (b) is not in any manner different. Clause (b) deals with a general restriction which includes a restriction by the imposition of a burden in the nature of tax. Clause (a) deals with a specific burden of taxation in a limited field.

Article 305 protects existing laws except in so far as the President may by order or otherwise direct, and it also validates certain enactments made before the commencement of the Constitution (Fourth Amendment) Act, 1955, and authorises the Parliament and the State Legislatures in future to make laws relating to matters referred to in sub-cl. (2) of cl. (6) of Art. 19. Article 306 of the Constitution which was repealed by the Constitution (Seventh Amendment) Act, 1956, provided, in so far as it is material, that notwithstanding anything in the foregoing provisions of Part XIII or any other provision of the Constitution, a State specified in Part B of the first Schedule which before the commencement of the Constitution was levying any tax or duty on the import of goods into the State from other states or on the export of goods from the State to other States may, if any agreement in than behalf has been entered into between the Government of India and the Government of that State continue to levy and collect such tax or duty subject to the terms of such agreement ..... The marginal note of the Article refers to the power of the States specified in Part B of the First Schedule to levy tax as power to impose restrictions on trade and commerce, and clearly supports the view that within the meaning of Art. 301, freedom was to include freedom from taxation and the restrictions contemplated by Arts. 302 and 304 contemplated imposition of burdens of the nature of taxation.

On a careful review of the various Articles, in my judgment, by Part XIII, restrictions have been imposed upon the legislative power granted by Arts. 245, 246 and 248 and the lists in the seventh schedule to the Parliament and the State Legislatures and those restrictions include burdens of the nature of taxation. Therefore, the power to tax commercial intercourse vested by the legislative lists in the Parliament or the State Legislatures, is circumscribed by Part XIII of the Constitution and if the exercise of the power does not conform to the requirements of Part XIII, it would be regarded as invalid.

As observed hereinbefore, the previous sanction of the President was not obtained to the moving of the Bill which was enacted as the impugned Act. Even though the Assam Legislature had by item 56 of the seventh schedule legislative authority to impose this tax, the State could not exercise this authority in the absence of the previous sanction of the President and the invalidity of the Act imposing the tax on goods and passengers is not cured, the President not having assented to the Act at any time after it was passed by the Assam Legislature. The argument that this view seriously restricts the "sovereignty" of the States has, in my view, little force. Even a cursory review of our constitutional provisions clearly shows that the primary object of the Constituent Assembly was to erect a Governmental machinery with a strong Central Government, with the object of building up a healthy economy, and unifying the various component State, consisting of the former British Indian Provinces and the merged Indian States, by subordinating local on parochial interest to the wider national interest. In any event, in adjudging the vires of a statue, the impact of the view which the interpretation placed by the court may produce on some cherished notion of sovereign of the component States must be ignored.

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

In the view expressed by me, I do not deem it necessary to enter upon certain subsidiary contentions such as the application of the "pith and substance doctrine" to the interpretation of the relevant clauses, the alleged violation by the Act of the equal protection clauses of the Constitution, and the effect of Act XXIX of 1953 enacted by the Parliament, which were debated at the Bar.

In the view taken, the appeals must be allowed and the Rule in the two applications made absolute, with costs.

ORDER OF COURT :

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

</html