Khyerbari Tea Co. Ltd. & Anr.

Vs

The State of Assam

Writ Petition No. 134 of 1962

(P.B. Gajendragadkar, A.K. Sarkar, K.N. Wanchoo, K.C. Das Gupta, N. Rajgopala Ayyangar JJ)

13.12.1963

JUDGMENT

GAJENDRAGADKAR J. –

The present writ petition by which the two petitioners Khyerbari Tea Co. Ltd., and Mr. Sudhir Chandra Guha, Manager of the said Company, seek to challenge the validity of the Assam Taxation (On Goods Carried by Road or on Inland Waterways) Act, 1961 (No. 10 of 1961) (hereinafter called 'the Act'), is a sequel to the decision of this Court in the case of Atiabari Tea Co., Ltd. v. The State of Assam ([1961] 1 S.C.R. 809.). To this petition have been impleaded three respondents, the State of Assam, the Commissioner of Taxes, the taxing authority appointed under s. 6 of the Act, and the Superintendent of Taxes, Dhubri Division. We will refer to the State of Assam as the respondent hereafter. The respondent had passed a similar Act No. 13 of 1954 which had received the assent of the Governor on the 9th April, 1954. The validity of the said Act was challenged by the petitioners and certain other producers of tea by filing writ petitions before the Assam High Court. The Assam High Court dismissed the writ petitions and held that the impugned Act of 1954 was valid. The said judgment was pronounced by the High Court on the 6th of June, 1955. The petitioners whose writ petitions had been dismissed, then preferred appeals to this Court by special leave, and they also moved this Court by writ petitions under Art. 32 of the Constitution. These matters were heard by this Court in the case of Atiabari Tea Co. Ltd. ([1961] 1 S.C.R. 809.) and by its judgment delivered on the 26th September, 1960, the said impugned Act was struck down as being unconstitutional. Thereafter, the Act with which we are concerned in the present proceedings was passed by the Assam Assembly. It received the assent of the President on the 6th April, 1961. The relevant terms of the Act are, on the whole, substantially similar to the terms of the earlier Act which was struck down. The Act has made certain additional provisions to which we will refer later. The petitioners contend that the operative provisions of the Act are invalid, and so, they pray for issue of an appropriate writ or order directing the respondent not to enforce the operative provisions against them. Petitioner No. 1 is a company and as such, it has no right to move this Court under Art. 32. This position is conceded by Mr. Mazumdar for the petitioners. Petitioner No. 2 who is the Manager of Petitioner No. 1 is, however, a citizen of India and as such, he is entitled to challenge the validity of the Act inasmuch as the respondent threatens to take action in pursuance of the material provisions of the Act against the company of which he is the Manager. Mr. Setalvad does not dispute the right of petitioner No. 2 to move this Court by a petition under Art. 32.

After the Act was passed and it came into force, the question about the scope and effect of the provisions contained in Part XIII of the Constitution which had been dealt with by this Court in the case of Atiabari Tea Co. ([1961] 1 S.C.R. 809.) came to be considered by a larger Bench in the case of the Automobile Transport (Rajasthan) Ltd. v. The State of Rajasthan ([1963] 1 S.C.R. 491.), and

the decision of this larger Bench was pronounced on the 9th April, 1962. Since the Act has been passed by the Assam Legislature with the previous sanction of the President directly as a result of the decision of this Court in the case of Atiabari Tea Co., the present proceedings can be appropriately described as an after-math of the said decision.

It appears that 487 persons moved the Assam High Court by writ petitions under Art. 226 of the Constitution impeaching the validity of the Act. These writ petitions were considered by a Division Bench of the said High Court and they were allowed on the 1st August, 1963. The two learned Judges who constituted the Division Bench have delivered concurring judgments and held that the Act is invalid. On some of the points urged by the petitioners before them, the two learned Judges have differed, but, in the result, they agreed in taking the view that the operative provisions of the Act were unconstitutional. The respondent State of Assam then moved the High Court for certificates to enable it to come to this Court in appeal against the decision of the High Court in the said 487 writ petitions. The High Court has granted certificates, but the said appeals will take long to become ready; and so, 12 of the petitioners who are respondents in some of the said appeals were allowed to intervene in the present proceedings. In fact, by arrangement between Mr. Mazumdar who appeared for the petitioners before us and Mr. Pathak who represents the interveners, the principal argument has been urged before us by Mr. Pathak and we expressly told Mr. Pathak that since our decision on the present writ petition would govern the decision of the appeals which the respondent is going to bring to this Court against the decision of the Assam High Court, we would permit him to raise all points in support of the view taken by the Assam High Court and would not confine him to the points which have been taken by the petitioners in their petition before us. In fact, the Assam Judgments in question have been filed by the Interveners, and Mr. Pathak has invited our attention to the main findings recorded in those judgments. Normally, counsel for interveners is not allowed a right of reply, but having regard to the fact that Mr. Mazumdar requested us to allow Mr. Pathak to lead him in the present proceedings, we have allowed both Mr. Pathak and Mr. Mazumdar to open the case, and have heard both of them in reply.

Petitioner No. 2's case is that petitioner No. 1' the company, carries on the business of manufacturers' wholesale dealers and exporters of tea at Jalpaiguri in the State of West Bengal. The business of the said garden is managed by petitioner No. 2 and is subject to the control and direction of the company. Naturally, the remuneration and prospects of petitioner No. 2 depend upon the good and economical management and the prosperity of the business of the Company. The petition avers that at all material times the company exported the tea grown and manufactured by it in its tea garden by Railway from Garopara Railway Station in the district of Jalpaiguri to the Calcutta port. It is common ground that Calcutta Port is the principal tea market in the country for sale for consumption at home as well as for export overseas. According to the petition, the tea was delivered packed in chests to the North Eastern Railway Administration at Garopara Rly. Station and the rate charged by the said Administration was paid to it for carrying the goods to Calcutta. It is clear that both the booking station and the station of destination are in the State of West Bengal. When the tea thus travels from Garopara to Calcutta, it has to traverse a short distance of about 67 miles through Assam to Dhubri Ghat, on the bank of the River Brahmaputra. It appears that by an arrangement between the Railway and the I.G.N. and R.S.N. Co. Ltd. these goods are taken over by ferries on inland waterways and are transhipped to steamers at the said Ghat. The steamers then carry the goods through the Brahmaputra in Assam up to Mankachar; the distance between Dhubri-Ghat and Mankachar is about 1 1/2 to 2 miles. In their journey, the steamers cover a distance of about 572 miles in Pakistan territory, and then they reach the Calcutta Port. The total distance covered by the journey of the goods is about 689 miles. Petitioner No. 2 contends that the material provisions of the Act are invalid, because the Assam Legislature was not competent to enact the said provisions. It is

also urged that the said provisions are unconstitutional because they constitute an unreasonable restriction on the freedom of trade guaranteed by Art. 301, as well as petitioner No. 2's fundamental right guaranteed by Art. 19(1)(g) of the Constitution. The validity of the Act is also challenged on some other grounds which would be dealt with later.

These pleas are denied by the respondent and it is urged on its behalf that the Act is constitutional, that it has been passed under Art. 304(b) after obtaining the previous sanction of the President; that its material provisions are in no sense unreasonable and that the restrictions imposed by them on the freedom of trade are reasonable restrictions and are required in the public interest. It is also alleged that the said restrictions are reasonable and in the interests of the general public and as such, they are saved by clause (6) of Art. 19.

Before dealing with these contentions, it is necessary to indicate at the outset the effect of the two judgments to which we have already referred. In the case of the Atiabari Tea Co. Ltd. ([1961] 1 S.C.R. 809.), three views were expressed. Sinha C.J., held that the freedom conferred by Art. 301 did not mean freedom from taxation simpliciter but only from the erection of trade barriers, tariff walls and imposts which had a deleterious effect on the free flow of trade, commerce and intercourse. According to his view, the earlier Assam Act did not contravene Art. 301 and was valid. This view put a somewhat narrow construction on the scope and effect of the provisions contained in Art. 301.

Shah J., on the other hand, placed a very wide construction on the said provision and held that the freedom of trade guaranteed by the said Article included not only freedom from discriminative tariffs and trade barriers but also from all taxation on commercial intercourse. As such, he held that the said Act was unconstitutional.

The majority view was that the freedom of trade guaranteed by Art. 301 was wider than that contained in s. 297 of the Government of India Act, 1935, which meant that taxes which directly and immediately impeded the freedom of trade would come within the mischief of Art. 301. According to this view, Art. 301 provides 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; and if any Act imposes any direct restrictions on the movement of goods, it attracts the provisions of Art. 301. On the majority view, if the impugned tax imposes a restriction on the movement of trade, the Act could be sustained if it complied with the provisions of Art. 304(b). In regard to the Act with which the Court was then concerned, the majority judgment observed that 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).

In the Automobile Transport (Rajasthan) Ltd. case ([1963] 1 S.C.R. 491.), the majority view expressed by Das J. on behalf of himself and Kapur & Sarkar JJ was that if a tax is compensatory in character, it cannot be said to fall within the mischief of Art. 301. According to this view, a clarificatory rider was added to the majority view expressed in the case of the Atiabari Tea Co. Ltd. ([1961] 1 S.C.R. 809.) by providing that regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by Art. 301, and such measures need not comply with the requirements of the provisions of Art. 304(b).

Subba Rao J., who delivered a separate judgment concurring with the conclusion reached by Das J., preferred to emphasise that taxing statutes which would escape the mischief of Art. 301 could be appropriately described as regulatory. He, therefore, held that the Rajasthan Motor Vehicles Taxation Act (No. 11 of 1951) with which the Bench was dealing, was regulatory in character and as such, not unconstitutional. In other words, whereas Das, Kapur and Sarkar JJ., upheld the validity of the Act on the ground that it was either compensatory or regulatory, Subba Rao J., preferred to base his decision mainly on the ground that it was regulatory.

The minority view which has been expressed by Hidayatullah J., on behalf of himself and Ayyangar and Mudholkar JJ., assumed that though regulatory taxing statutes may be said to fall outside Art. 30, compensatory taxing statutes cannot make the same claim. According to this view, if a taxing statute was sought to be justified on the ground that the tax imposed by it was compensatory in character, that could be done only by adopting the procedure prescribed by Art. 304(b). It may be noticed that the scope of the regulatory statutes as discussed by Hidayatullah J., is much narrower than the scope of the regulatory statutes as considered by Subba Rao J.

In the result, the majority view expressed in the case of the Atiabari Tea Co. ([1961] 1 S.C.R. 809.), was substantially accepted by the majority of the learned Judges constituting the larger Bench which heard the Automobile Transport (Rajasthan) Ltd. ([1963] 1 S.C.R. 491.) case, but a corollary was added to the said view as we have just indicated.

The majority view in the Atiabari case ([1961] 1 S.C.R. 809.) proceeded on the basis that the Australian decisions which dealt with the scope and effect of s. 92 of the Australian Constitution would be of no assistance in construing the effect of the provisions in part XIII of our Constitution, because the legislative, historical and political background, the structure and the effect of the relevant provisions contained in Part XIII were in material particulars different from those of s. 92 of the Australian Constitution; s. 92 is absolute in terms and on its literal construction, admits of no exceptions. The Australian decisions, therefore, had to introduce distinctions, such as compensatory or regulatory tax laws in order to take laws answering the said description out of the purview of s. 92. In our Constitution, however, though Art. 301 is worded substantially in the same way as s. 92, Art. 302 and 304 provide for reasonable restrictions being imposed on the freedom of trade subject to the requirements of the said two Articles, and so, the problem facing judicial decisions in Australia and in this country in regard to the freedom of trade and the restrictions which it may be permissible to impose on it, is not exactly the same. The moniority view expressed by Hidayatullah J., has pointedly referred to this aspect of the matter. That, in brief, is the position of the two decisions of this Court in Atiabari Tea Co. Ltd. ([1961] 1 S.C.R. 809.) and Automobile Transport (Rajasthan) Ltd. ([1963] 1 S.C.R. 491.) cases respectively.

It would immediately be noticed that though the majority view in the Automobile Transport (Rajasthan) case ([1963] 1 S.C.R. 491.) substantially agreed with the majority decision in the case of Atiabari Tea Co. ([1961] 1 S.C.R. 809.), there would be a clear difference between the said two views in relation to the scope and effect of the provisions of Art. 304(b). According to the majority view in the case of Atiabari Tea Co., if an Act is passed under Art. 304(b) and its validity is impeached, then the State may seek, to justify the Act on the ground that the restrictions imposed by it are reasonable and in the public interest, and in doing so, it may, for instance, rely on the fact that the taxes levied by the impugned Act are compensatory in character. On the other hand, according to the majority decision in the Automobile Transport (Rajasthan) ([1963] 1 S.C.R. 491.) case, compensatory taxation would be outside Art. 301 and cannot therefore, fall under Art. 304(b). If in the present case it has been urged before us that the tax levied by the Act is compensatory in

character, it would have been necessary to consider the question once again by constituting a larger Bench. It will be recalled that the Act with which we are concerned has been passed by the Assam Legislature directly as a result of the decision of this Court in Atiabari Tea Co.'s case ([1961] 1 S.C.R. 809.) that decision was that if the tax imposed by the Act was compensatory in character then the Act could be sustained only if it was passed after complying with the provisions of Art. 304(b). The Assam Legislature has accordingly adopted the said procedure and passed the Act. If the Act had been compensatory in character, it would have become necessary for us to consider the whole position once again, because it would obviously be unfair and unjust that the earlier Act should have been struck down though it was compensatory in character and in testing the validity of the present Act, it should be open to the petitioners to contend that its compensatory character is irrelevant to the enquiry under Art. 304(b). In the present case, the Assam High Court which dealt with the 487 writ petitions has found that the Act is not compensatory, and Mr. Setalvad has not urged before us that the Act is in fact compensatory. That is why we are proceeding to deal with the merits of the dispute between the parties in the present case on that basis. The main question, therefore, would be that the tax imposed by the Act not being compensatory in character, are there any reasons to justify the respondent's contention that the restrictions imposed by it are reasonable and in the public interest ?

Let us then consider the broad features of the Act and its material provisions before dealing with the several points urged before us. The Act consists of 34 sections. As we have already noticed, the Bill was introduced after obtained the previous sanction of the President, and the Act has been passed in accordance with the provisions of Art. 304(b). The preamble to the Act provides that the Act has been passed to provided for the levy of a tax on certain goods carried by road or on inland water-ways in the State of Assam and to validate certain taxes imposed on goods carried by road or on inland water-ways and for certain other connected matters. Section 1(3) provides that the Act shall be deemed to have had effect as from the 24th April, 1954, and shall remain in force till the 31st March, 1962. In other words, the Act takes effect from the date when the earlier Act was to have taken effect, and its life continues for one year after it received the assent of the President and became effective. Section 2, inter alia, defines a producer as meaning "a producer of tea and includes the person in charge of the garden where tea is produced." The Act is concerned with tea and jute, but in the present proceedings, we are dealing with the petitioners whose interest lies in tea. Section 3 of the Act deals with the liability to tax, and since its validity is seriously impugned by the petitioners, it is necessary to read it :

> "(1) Subject to the provisions of this Act, there shall be levied a tax on (a) manufactured tea and (b) jute in bales carried by motor vehicle, cart, trolley, boat, animal and human agency or any other means except railways and airways in such manner and in respect of such period and at such rate as specified in the Schedule.
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> (2) Such tax levied on manufactured tea shall be realised from the producer and that levied on jute shall be realised from the dealer;
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> Provided that where tea is sold at the factory premises, the producer shall be liable for realisation of tax from the purchaser with effect from such date as the Government may, by notification, appoint, for the carriage of such tea as provided in this section and the producer shall be liable for the payment of such tax notwithstanding the fact that the tea is not carried by the producer;
>
> Provided further that no tax shall be levied under this Act on any jute or tea in

respect of which such tax has already been paid."

Section 4 provides that the tax shall be charged on the total net weight carried during a return period. Section 5 deals with the problem of determining the weight. Section 6 prescribes the taxing authorities. Section 7 requires the return to be submitted by the producer and makes appropriate provisions in that behalf. Section 8 deals with licensing; s. 9 covers the problem of assessment and it provides that the Commissioner may, by an order in writing, assess the producer and determine the tax payable by him on the basis of his return. Section 10 deals with cancellation of assessment; s. 11 makes a provision for assessment in cases of evasion and escape and authorises the Commissioner within two years of the expiry of the period in question to serve on the producer a notice requiring him to furnish a return, and empowers him to proceed to assess or re-assess the producer as provided by it. Section 12 deals with rectification. Section 13 provides for penalty for non-submission of returns and evasion of taxes. Under s. 14 it is provided that assessment is no bar to prosecutions and penalties. Section 15 makes the tax payable by the representative of a decreased producer. Sections 16 and 17 deal with appeals and revision, while s. 18 prescribes for the computation of the period of limitation for the said two remedies. The notice of demand is provided for by s. 19, and the period when the tax is to be paid is laid down by s. 20. Section 22 prescribes the mode of recovery; s. 23 provides for refunds; and s. 24 for employers' prosecution for failure to furnish returns. Section 25 provides that no court shall take cognizance of any offence under the Act or under the rules made under it, except with the previous sanction of the Commissioner. Section 26 permits composition of offences. Section 27 imposes an obligation on the producer to maintain and preserve account books; s. 28 confers power on appropriate authorities to require the production of accounts. Section 29 bars civil suits. Section 30 empowers the appropriate authority to take evidence; s. 31 deals with the delegation of powers; s. 32 confers power on the Government to make rules; s. 33 repeals the earlier Act of 1954 and s. 34 makes provisions by way of validation. Since this last section has also been challenged, it is necessary to read it :

> "34.(1) Any rule made, any liability incurred, any tax levied or realised, any returns furnished, and proceedings commenced, any notification published, any action taken or anything whatsoever done under the provisions of the Act repealed, shall be deemed to have been made, incurred, levied, realised, furnished, commenced, published, taken or done under the corresponding provisions of this Act.
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> (2) Notwithstanding anything contained in any judgment, decree or order of any court, all taxes imposed or realised or purporting to have been imposed or realised under the Act repealed shall for all purposes be deemed to be, and to have been, validly imposed or realised and accordingly -
>
> (a) no suit or other proceeding shall be maintained or continued in any court against the Government or any person or authority whatsoever for the refund of any taxes so paid; and
>
> (b) no court shall enforce any decree or order directing the refund of any taxes so paid."

The Schedule to the Act gives the rates for respective periods and these rates correspond to the rates prescribed by the earlier Act for the period covered by it and prescribes new rates for the period thereafter. Rules have been made under s. 32(1) and Forms prescribed for the making of returns. That, in brief, is the scheme of the Act.

It has been urged before us by Mr. Pathak that s. 3 which is the charging section, is outside the legislative competence of the Assam Legislature. The Act purports to have been passed by virtue of the legislative power conferred on the State Legislature under Entry 56 in List II of the Seventh Schedule. This Entry reads thus : "Taxes on goods and passengers carried by road or on inland waterways." It will be recalled that Entry 30 in List I deals with carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels, and so, Entry 56 in List II does not cover cases falling under Entry 30 in List I. It is only in regard to goods and passengers carried by road or inland waterways that the State Legislature can pass a law imposing taxes. Mr. Pathak's contention is that s. 3 read with the proviso to sub-section (2) clearly contemplates that the primary and the sole liability to pay the tax on tea has been placed on the producer even in cases where the tea in question may have been sold at the tea garden before it is carried. In other words, the contention is that in cases where tea is carried by the purchaser, it is only the purchaser of the tea which is carried who can be taxed, and since the producer is taxed even in such cases, the taxation itself is beyond the legislative competence of the State Legislature. This argument proceeds on the assumption that the proviso lends colour to the construction of s. 3(2). Section 3(1) is enacted in terms of Entry 56 and it purports to indicate what the taxable event is. Section 3(2) makes the producer liable to pay the tax and the proviso to s. 3(2) enables the producer to recover the tax from the purchaser with effect from such date as the Government may, by notification, appoint; this date was notified as 1st May, 1961. It is clear that the proviso is prospective, but Mr. Pathak suggests that the proviso can be explained only on the basis that s. 3(2) includes cases where tea has been sold by the producer before it is carried, and in that sense the producer has been made liable to pay the tax even in regard to tea which has been sold by him before it is carried.

On the other hand, Mr. Setalvad argues that s. 3(2) is confined to cases where the producer himself carries tea and his suggestion is that the proviso which has been added by the present Act and which was not included in the earlier Act seeks to make the purchaser liable to pay the tax in case tea which is carried has been purchased by him before it leaves the garden. He wants us to read the proviso as creating an obligation on the purchaser to pay the tax and as making the producer liable to recover the tax from the purchaser as the Agent of the State. In support of his argument that s. 3(2) cannot be read to included cases where tea has been sold before it is carried, Mr. Setalvad has referred us to the fact that when the corresponding provision in the earlier Act was construed by the Assam High Court, it was held that where tea is sold before it is carried, the producer is not liable and no tax can be recovered from him, vide H.P. Barua v. State of Assam (A.I.R. 1955 Assam 249.). He also emphasises the fact that the proviso is prosective in operation, and so, it indicates that it cannot lend colour to the construction of section 3(2).

It is, however, not easy to accept Mr. Setalvad's construction. The words used in the proviso show that the producer has been made liable for realisation of the tax from the purchaser, but there are no words imposing a liability on the purchaser to pay the tax and no penalty is prescribed in case he fails to pay the tax to the producer. The relevant forms prescribed for making returns, also continue to be the same as under the old Act and do not contemplate cases where the purchaser may have to make returns. In the present proceedings, we are not concerned with the case of any purchaser, and so, it is unnecessary for us to pronounce a definite opinion on the construction of s. 3. We would, therefore, proceed to deal with Mr. Pathak's argument on the basis that s. 3(2) makes the producer liable even in cases where tea has been sold by him to a purchaser before it is carried away from the garden.

This argument of legislative incompetence seems to assume that Entry 56 requires that the tax must

be levied by the State legislature on goods which are carried only against the owner of the goods that are carried, or against the persons who carry them. We do not see any justification for introducing such limitations in the said Entry. It is hardly necessary to emphasise that Entries in the three Lists in the Seventh Schedule which confer legislative competence on the respective Legislatures to deal with the topics covered by them must receive the widest possible interpretation; and so, it would be unreasonable to read in the Entry any limitation of the kind which Mr. Pathak's argument seems to postulate. Besides, it is well-settled that when a power is conferred on the Legislature to levy a tax, that power itself must be widely constructed; it must include the power to impose a tax and select the articles or commodities for the exercise of such power; it must likewise include the power to fix the rate and prescribe the machinery for the recovery of the tax. This power also gives jurisdiction to the Legislature to make such provisions as, in its opinion, would be necessary to prevent the evasion of the tax. In imposing taxes, the legislature can also appoint authorities for collecting taxes and may prescribe the procedure for determining the amount of taxes payable by any individual; all these provisions are subsidiary to the main power to levy a tax and, therefore, once it is shown that the tax in question has been levied on goods carried, it would be open to the legislature to prescribe the machinery for recovering the said tax. As was observed by Chief Justice Marshall in M'Culloch v. Maryland ([1819] 4 L. ed. 579, 607.) "the power of taxing the people and their property is essential to the very existence of 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 statement of the law must, however, be read subject to the condition that even tax statutes have to satisfy the test of reasonableness prescribed by clause (6) of Art. 19, and the fundamental right of equality before law guaranteed by Art. 14 as well as the test prescribed by Art. 301.

Reverting then to s. 3(1), we ought to add that the said section in terms expressly makes the carriage of goods the taxable event, and s. 3(2) makes the producer liable to pay the tax only on goods carried. If the goods produced in the tea garden are not carried, there is no occasion to pay the tax. That being so, the fact that the Legislature has adopted the machinery of making the producer responsible for the payment of the tax and liable for it in that sense cannot introduce any element of legislative incompetence which would vitiate the statute.

It may be conceded that when the legislature constructs a machinery for the recovery of the taxes which it is within its competence to impose, the said machinery should have some rational or intelligent connection with the tax. In the absence of a rational nexus between the producer and the tax on goods carried, it may be open to a citizen to contend that the tax is not one justified by Entry 56. But can we say that between the producer of tea and the tax which is levied on the tea carried from his garden, there is no rational nexus ? Considerations of administrative convenience as well as considerations of facility in recovering the tax cannot be treated as irrelevant in this context. The tea which is taxed has been produced by the producer and even when he sells it to a purchaser, it is obvious that it would be carried away and not left with the producer, and so, the legislature may have though that it would be appropriate to make the producer liable to pay the tax.

It may also be relevant to bear in mind that the cases of sale of tea before it is carried cannot be too many. As we have already seen, the earlier Act did not include the proviso and that seems to suggest that usually, it is the producers who produce the tea in their gardens and carry it to Calcutta either for sale, or for home consumption, or for export. In fact, the petitioners before us are producers who have carried their own product from their tea gardens to Calcutta, and we were told that amongst the 487 persons who moved the Assam High Court by their writ petitions, not one was a purchaser; everyone was a producer who carried his own goods. Apart from these facts, however, it is

impossible to sustain the argument that it is not competent to the legislature to devise a proper and appropriate machinery to recover a tax which it is competent to the legislature to levy.

This question has been frequently considered by this Court and the power of the Legislature to create appropriate machinery to recover a tax, or to prevent the evasion of the payment of the tax has been consistently recognised. In R.C. Jall v. Union of India ([1962] Supp. 3 S.C.R. 436.) while dealing with the question about the power of the legislature to decide at what stage and from whom excise duty should be recovered, this Court held that subject always to the legislative competence of the taxing authority, the tax can be levied at a convenient stage so long as the character of the impost is not lost. The method of collection does not effect the essence of the duty but only relates to the machinery of collection for administrative convenience. While enunciating this principle, this Court, however, took the precaution of adding that "whether in a particular case the tax ceases to be in essence an excise duty and the rational connection between the duty and the person on whom it is imposed ceased to exist, is to be decided on a fair construction of the provisions of a particular Act".

In Sardar Baldev Singh v. Commissioner of Income-tax, Delhi & Ajmer ([1961] 1 S.C.R. 482.), this Court was called upon to consider the validity of s. 23A of the Indian Income-tax Act, 1922. At the relevant time, the said section gave power the appropriate authority to make an order that the undistributed portion of the assessable income of the company shall be deemed to have been distributed as dividends and provided that thereupon the proportionate share thereof of each shareholder shall be included in his income for assessment. The argument which was urged before this Court was that the Company and its shareholders are different persons and, therefore, s. 23A was invalid inasmuch as under entry 54 of List I a law could be passed imposing a tax on a person on his own income. This argument was, however, rejected because this Court took the view that the Entries in the Lists should be read in a very wide manner so as to include all subsidiary and ancillary matters. That is why Entry 54 was held to authorise not only the imposition of a tax, but also an enactment which prevents the tax being evaded.

Similarly, in the Orient Paper Mills Ltd. v. The State of Orissa ([1962] 1 S.C.R. 549.), this Court has observed that the power to legislate with respect to a tax comprehends the power to impose the tax, to prescribe machinery for collecting the tax, to designate the officers by whom the liability may be enforced and to prescribed the authority, obligations and indemnity of those officers. Therefore, we do not think Mr. Pathak is right in contending that merely because in a few cases where tea may be sold at the garden before it is carried, the producer is made liable to pay the tax, s. 3 itself is outside the legislative competence of the Assam Legislature.

Then, Mr. Pathak argues that the Act which has been passed under Art. 304(b) cannot act retrospectively. The argument is that when an Act is passed under Art. 304(b) after introducing the Bill with the previous sanction of the President, it must always and in every case operate prospectively. The scheme of Part XIII according to Mr. Pathak, clearly shows that if the State Legislature wants to avail itself of the provisions of Art. 304(b), it cannot purport to pass an Act in the first instance without taking recourse to Art. 304(b) and if the said Act is struck down, then take recourse to the said Article and make the law retrospective. If the State Legislature makes a law without taking recourse to Art. 304(b) and the law is struck down, the matter must end there and the provisions of the said law cannot be revived by a subsequent law passed under Art. 304(b) by making its operation retrospective. If such a process is allowed, it would materially affect the significance and the validity of the provisions contained in Art. 301; that is one aspect of the matter.

The other aspect of the argument is that a law passed under Art. 304(b) really imposes restrictions

and so, the principle that a law creating prohibitions can operate only prospectively, must govern the present case. In support of this argument, Mr. Pathak has relied on the decision of the Privy Council in the case of Punjab Province v. Daulat Singh (73 I.A. 59.). In that case, the Privy Council had occasion to deal with s. 5 of the Punjab Alienation of Land Act (Indian Act XIII of 1900) considered in the light of the provisions of s. 298 of the Government of India Act, 1935. Section 298(2) provides that nothing in this section shall affect the operation of any law which (a) prohibits, either absolutely or subject to exceptions, the sale or mortgage of agricultural land therein described. The Privy Council held that s. 5 of the impugned Act which created such a prohibition could not operate retrospectively because the word "prohibits" can only mean the forbidding of a transaction, and such a direction is appropriate only in respect of transactions to take place subsequently to the date of the direction, and cannot include an attempt to reopen or set aside transactions already completed, or to vacate titles already acquired. It would thus be seen that this decision turned essentially upon the use of the word "prohibits" in s. 298(2), and so, it would be unreasonale to extend the said decision to the cases falling under Art. 304(b) particularly when the restriction imposed is not of such a character as to amount to prohibition.

A similar argument was in fact rejected by this Court in the case of M.P.V. Sundararamier & Co. v. The State of Andhra Pradesh ([1958] S.C.R. 1422.). What was urged before this Court in that case was that the principle laid down by the Privy Council in the case of Punjab Province (73 I.A. 59.) should be extended to a law to which Art. 286(2) of the Constitution applied. In rejecting this contention this Court observed that the Privy Council's decision proceeded solely on the connotation of the word "prohibits" in s. 298(2) of the Government of India Act, 1935, and can be of no assistance in the construction of Art. 286(2) wherein the word does not occur. What this Court has observed about Art. 286(2) as it formerly stood in the Constitution applies with greater force to Art. 304(b). It is true that there are some provisions in the Constitution which prohibit retrospective legislation as, for instance, Art. 20(1) & (2) vide M/s West Ramnand Electric Distribution Co. Ltd. v. State of Madras ([1963] 2 S.C.R. 747 p. 761.). But Art. 304(b) cannot be construed to mean that a law passed under it must in every case be prospective. If a Statute is passed under Art. 304(b) retrospectively, its reasonableness may, of course, fall to be considered on the merits in a given case but that is not to say that in no case can a statute be passed under the sain Articles to operate retrospectively.

Then as to the argument about the scheme of Part XIII, we do not see how a statute passed under Art. 304(b) would always and necessarily defeat the said scheme if its provisions are made retrospective. It is not disputed by Mr. Pathak that a taxing statute can be passed retrospectively, and it is conceded that if such a statute is passed, it would not be possible for any person to challenge its validity on the ground that it affects the citizens' fundamental right under Art. 19(1)(g). If such a challenge is made, it would be easily met by the plea that a taxing statute, though retrospective in its operation, can be reasonable and in the public interest within the meaning of clause (6) of Art. 19. Therefore, if a taxing statute can, in a given case, operate retrospectively and its validity cannot be successfully challenged under Art. 19, we do not see how a similar challenge could be sustained against a taxing statute which has been passed under Art. 304(b). The freedom of trade guaranteed by Art. 301 is no doubt of very great importance to the political and economic unity of the country; but the freedom guaranteed to the individual is no less important; just as in the case of a challenge to the validity of a statute under Art. 19 the court has to consider whether the restrictions imposed by the statute are reasonable and in the interests of the general public, so in dealing with a challenge to the validity of a statute passed under Art. 304(b) the court has to consider whether the restrictions imposed by it are reasonable and are required in the public interest. The impact of the restrictions on the individual's right has to be judged in one case, whereas the impact of the restrictions on the

freedom of trade has to be judged in the other; but basically, it is the invasion of a guaranteed right whose validity is being examined in either case; and so, if the law can be retrospective in one case, there is no reason why it cannot be retrospective in the other. We are, therefore, satisfied that there is no substance in the plea raised by Mr. Pathak that the Act is invalid solely because it operates retrospectively.

It is then faintly suggested that the retrospective operation of s. 3, in substance, changes the character of the tax. The argument is that the proviso to s. 3(2) enables the producer to recover the tax from the purchaser in case the goods are sold to a purchaser before they are carried, whereas such a provision did not exist in the past and in that sense, the retrospective operation changes the character of the tax. We have already noticed that the proviso in question is not retrospective in operation, and so, this argument has to be tested by reference to the remaining portion of s. 3(2). Thus tested, it is difficult to accept it as sound. In this connection, we may refer to the recent decision of this Court in Rai Ramkrishna v. State of Bihar ([1964] 1 S.C.R. 897.) where a similar plea was rejected and it was pointed out that this Court has consistently held that the mere fact that a validating statute operates retrospectively does not justify the contention that the character of the tax sought to be recovered by such retrospective operation is necessarily changed.

The next question to consider in dealing with the validity of the Act which has been passed under Art. 304(b) is the extent of the dispute that is justifiable in law. Art. 304(b) provides that notwithstanding anything in Art. 301 or Art. 303 the Legislature of a State may by law impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest, provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President. It would thus be clear that an Act passed under Art. 304(b) can be held to be valid if it is shown that the restrictions imposed by it are reasonable and in the public interest. It is true that before a Bill is introduced in that behalf, the previous sanction of the President has been obtained; but that does not take away the jurisdiction of the Court to consider the question as to whether the Act passed with the previous sanction of the President satisfies the requirements of Art. 304(b). Since Art. 304(b) permits restrictions to be imposed on the freedom of trade, the Constitution has made it clear that the said restrictions can be sustained only if they are reasonable and are required in the public interest. This position is not disputed by Mr. Setalvad before us. It is true that in the case of Atiabari Tea Co. ([1961] 1 S.C.R. 809.), whilst contrasting the provisions of Art. 302 with those of Art. 304(b) the majority judgment has observed that prima facie the requirement of public interest may be said to have been satisfied by the previous sanction of the President and it is only the reasonableness of the restrictions which may fall to be considered in proceedings before the Court. However, this point did not directly arise for the decision of the Court, and so, those observations should not be read as definitely expressing the opinion that the requirement of public interest does not become the subject-matter of adjudication in proceedings before the Court when the validity of an Act passed under Art. 304(b) is questioned.

That takes us to the question about the onus of proof in these proceedings. It may be that in most cases, the question about the onus of proof would turn out to be merely of academic importance, because when one considers the reasonableness of a given restriction, one inevitably enquires also whether the said restriction is not unreasonable; but since the point about the onus has been argued before us, it is necessary that we should deal with it. Mr. Setalvad contends that in dealing with the question about the constitutionality of any statute, we must draw an initial presumption in favour of the constitutionality of the statute, and he suggests that this initial presumption will cover even the requirement that the restriction must be reasonable and in the public interest as required by Art.

304(b). The same argument has been urged by him in regard to the presumption in so far as the petitioners' fundamental right under Art. 19(1)(g) is concerned. He urges that in determining the content of the individual's fundamental right under Art. 19(1)(g), we must take into account Art. 19(1)(g) as well as the limitations placed on it by clause (6) of Art. 19. The fundamental right to carry on the trade is not an absolute right; it can be regulated and controlled by law which imposes restrictions on the said right, provided the said restrictions are reasonable and in the interests of the general public, and so, the contention is that when we speak about the initial presumption of constitutionality, it means that the court should assume that the restrictions imposed by the statute are reasonable and in the interests of the general public, unless the contrary is shown.

On the other hand, Mr. Pathak strenuously argues that the initial presumption would be rebutted as soon as it is shown that the fundamental right under Art. 19(1)(g) is invaded by a statute, or the freedom of trade guaranteed by Art. 301 is assaulted by the impugned statute. Once a citizen shows that the impugned statute invades either his individual fundamental right, or the right of freedom of trade, the presumption has worked itself out and the onus shifts of the State to show that the invasion amounts to a restriction which is reasonable, or it is in the interests of the general public.

It may be conceded that, prima facie, there is some force in the argument raised before us by Mr. Setalvad. If the freedom guaranteed to an individual citizen is not absolute and its content must be determined by reading Art. 19(1)(g) and clause (6) of Art. 19 together, it can perhaps be said that the initial presumption cannot be rebutted merely by showing that the freedom under Art. 19(1)(g) has, prima facie, been invaded. But we do not think it necessary to pursue this matter any further, because we are satisfied that the question raised by Mr. Setalvad is concluded against him by a decision of this Court.

In Saghir Ahmad v. State of U.P. ([1955] 1 S.C.R. 707, 726.) where this Court was dealing with the invasion of the citizens' fundamental right under Art. 19(1)(g), it has been observed that when the enactment on the fact of it is found to violate a fundamental right guaranteed under Art. 19(1)(g), it must be held to be invalid, unless those who support the legislation can bring it within the purview of the exception laid down in clause (6) of Art. 19. If the respondents do not place any materials before the Court to establish that the legislation comes within the permissible limits of clause (6), it is surely not for the appellants to prove negatively that the legislation was not reasonable and was not conducive to the welfare of the community. It is true that on several occasions, this Court has generally observed that a presumption of constitutionality arises where a statute is impeached as being unconstitutional, but as has been held in the case of Saghir Ahmad ([1955] 1 S.C.R. 707, 726.) in regard to the fundamental right under Art. 19(1)(g) as soon as the invasion of the right is proved, it is for the State to prove its case that the impugned legislation falls within clause (6) of Art. 19. The position may be different when we are dealing with Art. 14, because under that Article the initial presumption of constitutionality may have a larger sway inasmuch as it may place the burden on the petitioner to show that the impugned law denied equality before the law, or equal protection of the laws. We may in this connection refer to the observations made by this Court in the case of Hamdard Dawakhana (Wakf) Lal Kuan, Delhi v. Union of India ([1960] 2 S.C.R. 671, 679.). Another principle which has to be borne in mind in examining the constitutionality of a statute, it was observed, is that it must be assumed that the legislature understands and appreciates the needs of the people and the laws it enacts are directed to problems which are made manifest by experience and that the elected representatives assembled in a legislature enact laws which they consider to be reasonable for the purpose for which they are enacted. Presumption is, therefore, in favour of the constitutionality of an enactment. It is significant that all the decisions to which reference is made in support of this statement of the law are decisions under Art. 14 of the Constitution. Mr. Setalvad has

fairly conceded that in view of the decision of this Court in the case of Saghir Ahmad ([1955] 1 S.C.R. 707, 726.), it would not be open to him to contend that even after the invasion of the fundamental right of a citizen is proved under Art. 19(1)(g), the onus would not shift to the State. In our opinion, the said decision is a clear authority for the proposition that once the invasion of the fundamental right under Art. 19(1) is proved, the State must justify its case under cl. (6) which is in the nature of an exception to the main provisions contained in Art. 19(1). The position with regard to the onus would be the same in dealing with the law passed under Art. 304(b). In fact, in the case of such a law, the position is somewhat stronger in favour of the citizen, because the very fact that a law is passed under Art. 304(b) means clearly that it purports to restrict the freedom of trade. That being so, we think that as soon as it is shown that the Act invades the right of freedom of trade, it is necessary to enquire whether the State has proved that the restrictions imposed by it by way of taxation are reasonable and in the public interest within the meaning of Art. 304(b). This enquiry would be of a similar character in regard to cl. (6) of Art. 19.

That naturally takes us to the question as to whether the respondent has shown that the restrictions imposed by the Act by levying a tax on the movement of tea can be said to be reasonable and in the public interest. The decision of this question will inevitably involve the balancing of the importance of freedom of trade as against the requirements of public interest. Art. 304(b) necessarily postulates that considerations of public interest may require and justify the imposition of restrictions on the freedom of trade, provided they are reasonable. In determining the reasonableness of the restrictions we will have to bear in mind again the importance of freedom of trade and the requirements of public interest. It is a question of weighing one relevant consideration against another and harmonising both the competing interests so as to serve the public interest in the end. This process of assessment may not always be easy, but, nevertheless, we must try to weigh the pros and cons urged before us by both the parties and decided whether the tax levied by the Act satisfies the requirement prescribed by Art. 304(b). In support of his case, Mr. Pathak has emphasised the fact that the producer has been made liable for goods even when they are sold before they are carried. In other words, the argument which he urged in support of his case that the Act was beyond the legislative competence of the State Legislature, has been again pressed by him into service in support of the plea that the restriction is unreasonable. We are not impressed by this plea.

It is then urged that the serious infirmity in the Act is that it levies a flat rate in respect of goods carried. Normally, the method which should have been adopted by the Act is what is sometimes described as the ton-mileage method, i.e., levy the tax according to the weight of the goods carried and the distance over which they are carried. Since the Act imposes a flat rate merely on the weight, the burden imposed by it is unreasonable.

On the other hand, Mr. Setalvad strongly urges that the tax constitutes a reasonable restriction in the public interest, because it purports to raise revenue for public purposes. As we have already seen, tax laws have to stand the scrutiny of Art. 19. That being so, as soon as the validity of a tax law is challenged under Art. 19, the State would be entitled to rely on the fact that the revenue raised by the tax law serves public purpose and that is its basic justification for being treated as a reasonable restrict on the individual's fundamental right under Art. 19(1)(g). It would, therefore, follow that the consideration on which Mr. Setalvad relies is not irrelevant, though its significance and importance cannot be over-rated. In this context, it may, however, be legitimate to bear in mind that the revenue is required by the State to raise money in order to carry on the function of government and to sustain the manifold welfare activities undertaken by it. Similarly, the fact that the President has given previous sanction to the introduction of the Bill may conceivably be relevant, because the Constitution seems to contemplate that the sanction of the President would indicate that the Central

Government had applied its mind to the problem and had come to the conclusion that the proposed tax is reasoable and in the public interest. But we must hasten to add that the significance of his consideration cannot also be exaggerated.

Mr. Setalvad urges that evidence in the case shows that the State has levied the tax on the goods carried because it wants to utilise the income for the purpose of keeping the roads in order and to meet the huge expenses incurred in maintaining the waterways in the State. In the affidavit filed on behalf of the respondent, details have been given about the expenditure incurred by the State on roads and waterways from year to year, and the revenue received by it form the carriage tax during the same period. The affidavit points out that tea and the jute are the main products of the State of Assam and in order to have a regular and easy flow of trade, the State has to maintain the roads. The trade in these commodities through waterways is cheaper and, therefore, the State has also to incur large sums on maintaining the waterways. The statement filed in the affidavit clearly shows that every year the expenditure incurred is very much more than the revenue received from carriage tax. It may perhaps be that since the ton-mileage method has not been adopted in imposing the tax, the State may not be able to claim that the tax is compensatory in character. Usually, compensatory character may be claimed for a tax of this kind, provided the extent of the service rendered by the State by raising the tax is shown and it is also proved that the recovery of the tax has some relation to the rendering of the said service. That is why Mr. Setalvad has not argued that the tax in question is compensatory in character. He, however, suggests that under Art. 304(b) it would be open to him to sustain the restriction imposed by the tax on the ground that the tax is levied not merely to raise general revenue for the State which itself is a public purpose, but that the tax is raised and utilised for keeping the waterways and the roads in good condition in the State. In our opinion, there is considerable force in these contentions.

Then we turn to the main point urged by Mr. Pathak that the flat rate introduces an element of unreasonableness in the levy of the tax. It is necessary be bear in mind that having regard to the interests of the trade as a whole, a flat rate may in some cases be reasonable. If different rates are levied by reference to the distance over which the tea is carried before it reaches the Calcutta Port, it would obviously mean that some producers of tea would have to pay more taxes than others and that would introduce an element of unfair competition between the producers of tea considered as a class. We are referring to this aspect of the matter to emphasise the fact that the legislature has to consider several relevant factors before deciding how a particular tax should be levied. The law of taxation is in the ultimate analysis the result of the balancing of several complex considerations, and so, it would be unreasonable to insist upon the application of a general rule that if a tax is levied at a flat rate, it must be treated as unreasonable. In the present case, the legislature may have considered the requirements of the trade carried on by the producers of tea and may have thought that a flat rate would be just and fair to the trade as a whole. These are questions which must normally be left to the legislature to decide. Therefore, we do not think that the main ground on which the reasonableness of the tax levied by s. 3 was impeached by Mr. Pathak, can be sustained.

Mr. Pathak further contended that s. 34 of the Act is unconstitutional inasmuch as it is discriminatory and imposes an unreasonable restriction on the citizens' fundamental right to trade under Art. 19(1)(g). We have already cited s. 34. The argument that the restriction imposed by s. 34 is unreasonable, proceeds on the assumption that sub-section (2) prohibits a producer from ventilating his grievance against irregular, excessive, or illegal, levy of the tax before any forum, and such a prohibition, it is urged, is patently unreasonable. We are satisfied that the assumption on which the argument is founded is completely misplaced. What s. 34(2) prohibits is merely a suit or the other proceeding in any court. It does not prohibit the remedy of an appeal or revision

specifically provided by sections 16 & 17 of the Act.

Then it is urged that s. 34(1) makes an invidious distinction between producers who had been ordered to pay the tax under the earlier Act and who took no steps to challenge the said levy either by an appeal or revision, and those who had adopted the remedy of an appeal or revision under the said Act. In the case of the latter category of producers the appeals and revisions would be continued and dealt with as though the said proceedings had been adopted under the relevant provisions of the Act, whereas assessments which had been closed under the earlier Act cannot be reopened by the producers by filing an appeal or revision after the Act was passed. We do not think there is any substance in this argument. Persons who had taken proceedings by way of appeal or revision under the earlier Act are, on this argument, treated as of the same class as persons who had taken to such proceedings, and that, in our opinion, is not justified because the two categories are not same or similar in character. Besides, an argument of this kind is purely hypothetical and not based on any material facts. It is very difficult to assume that producers who were taxed under the earlier Act paid the tax without preferring an appeal or revision though they had a grievance against the validity or regularity of the assessment order. Therefore, we do not think the challenge to the validity of s. 34 can be sustained.

A similar challenge has been made against the validity of s. 24 which prescribes punishment for the three categories of offences specified by it under clauses (1), (2) & (3). The argument is that since the earlier Act was struck down as unconstitutional, if any producer had knowingly submitted false returns or had knowingly produced incorrect account, or had contravened the relevant provision of s. 8(1), it could not be said that he was guilty of any offence, and so, he could not have been prosecuted under the corresponding provision of the earlier Act which also was s. 24, that being so, s. 24, of the present Act which purports to operate retrospectively would be invalid. There may be some force in this contention; but we do not see how the petitioners can be permitted to challenge the validity of s. 24 when it is not alleged by them that any action is proposed to be taken against them under the said section. In dealing with petitions under Art. 32, this Court would naturally confine the petitioners to the provisions of the impugned Act by which their fundamental rights are either affected or threatened. That is why we are not satisfied that it is necessary to decide the question about the validity of s. 24 in the present proceedings.

That takes us to the question whether the tax levied by the Act can be said to be discriminatory and as such, unconstitutional because it has selected only tea and jute as objects of taxation. The argument appears to be that the legislature should have taxed other commodities along with tea and jute and in so far as only tea and jute have been selected for the purpose of taxation, Art. 14 has been contravened. This argument is entirely fallacious. It is not disputed that tea and jute are the main products of the State of Assam and it is not surprising that the Assam Legislature, therefore, levied tax on the said two articles. Besides, the legislature which is competent to levy a tax must inevitably be given full freedom to determine which articles should be taxed, in what manner and at what rate, vide Raja Jagannath Baksh Singh v. The State of U.P. ([1963] 1 S.C.R. 220.). It would be idle to contend that a State must tax everything in order to tax something. In tax matters, "the State is allowed to pick and choose district, objects, persons, methods and even rates for taxation if it does so reasonably. The Supreme Court of the United States of America has been practical and has permitted a very wide latitude in classification for taxation" (Willis on 'Constitutional Law' p. 587.). This approach has been approved by this Court in the case of East India Tobacco Co. v. State of Andhra Pradesh ([1963] 1 S.C.R. 404, 409.).

It is, of course, true that the validity of tax laws can be questioned in the light of the provisions of

Arts. 14, 19; and Art. 301 if the said tax directly and immediately imposes a restriction on the freedom of trade; but the power conferred on this Court to strike down a taxing statute if it contravenes the provisions of Arts. 14, 19 or 301 has to be exercised with circumspection, bearing in mind that the power of the State to levy taxes for the purpose of governance and for carrying out its welfare activities is a necessary attribute of sovereignty and in that sense it is a power of paramount character. In what cases a taxing statute can be struck down as being unconstitutional is illustrated by the decision of this Court in K. T. Moopil Nair v. The State of Kerala ([1961] 3 S.C.R. 77.). In that case, a careful examination of the scheme of the relevant provisions of the Travancore-Cochin Land Tax Act (No. 15 of 1955) satisfied this Court that the said Act imposed unreasonable restrictions on the fundamental rights of the citizens, conferred unbridled power on the appropriate authorities, introduced unconstitutional discrimination and in consequence, amounted to a colourable exercise of legislative power. It is in regard to such a taxing statute which can properly be regarded as purely confiscatory that the power of the Court can be legitimately invoked and exercised. In our opinion, it would be idle to suggest that a tax imposed by the Act in the present case should be struck down because it has taxed only tea and jute.

The next contention to which reference must be made is that the Act is a colourable exercise of legislative power and should also be regarded as confiscatory for the reason that it has been passed substantially for the purpose of validating the recoveries made under the earlier Act and enforcing the assessment orders passed under the Act. We have already seen that the Act is retrospective in character and came into force from the date on which the earlier Act was applied. We have also noticed that the prospective operation of the Act was limited to one year from the date on which it was published. In fact, a subsequent Act had been passed by the Assam Legislature (Act No. 16 of 1962) and this Act has adopted a somewhat different procedure and prescribed a different machinery for the recovery of the tax imposed by it. Section 3 of the Act makes the owner liable to pay the tax and s. 2(7) defines the owner as meaning the owner of a taxable vehicle and includes in that category the four types of persons specified by clauses (a) to (d) of s. 2(7). The argument, therefore, is that the Act was deliberately passed by the legislature merely for the purpose of recovering dues to which it had originally made a claim under the earlier Act which was unconstitutional and that, it is suggested, makes the Act open to the charge that it represents a colourable exercise of legislative power. We are satisfied that there is no substance in this argument. It is not disputed that the power to make a law necessarily includes the power to make the provisions of the law retrospective. It is also not disputed that it is within the competence of a legislature to pass validating Acts, because the power to pass such validating Acts is essentially subsidiary to the main power of legislation on the topics included in the relevant List. Therefore, if the legislature felt that the infirmity in the earlier Act could be cured and it proceeded to comply with the requirements of Art. 304(b), it cannot be said that a law passed under Art. 304(b) is void, because the legislature has thereby attempted to recover taxes which could not be recovered under the earlier Act owing to the constitutional infirmity in the said Act. The exercise of legislative power which has resulted in the passing of the present Act cannot, in our opinion, be said to be colourable in any sense.

Is the Act extra-territorial in its application ? That is the next question which calls for an answer, In support of the plea of extra-territoriality, it is urged that the petitioners are all residents of Bengal, that they carry on their tea business in Calcutta, and it is only on the very narrow ground that in its passage from tea garden to Calcutta the tea in question has to cross a distance of a mile and a half in Assam that the tax purports to make the producers from Bengal liable under s. 3(2). This argument also is entirely misconceived. Entry 56 in List II empowers the Assam Legislature to levy a tax on goods carried. Whether the goods are carried for a long distance or a short distance cannot effect the

question of the legislative competence of the legislature. It is the carriage goods through Assam that in the taxing event and since the physical carriage of goods through a part of Assam is not denied, it is difficult to see how a challenge to the validity of the Act on the ground that it is extra-territorial in character could be sustained. The doctrine of nexus has been applied in considering the validity of tax statutes in this country in the Tata Iron & Steel Co. Ltd. v. The State of Bihar ([1958] S.C.R. 1355.). Das C.J., who spoke for the Court has examined the genesis of the doctrine of nexus, has considered the relevant judicial decisions bearing on the point and has expressed the conclusion of the Court that the said doctrine can be invoked to sustain the validity of tax statutes. The nexus in question must be rational, but it would be impossible to accede to the argument that the sufficiency of nexus can be a matter for adjudication before the Court. In the present case, undoubtedly, tea has been carried over a part of the inland waterways in Assam and that satisfies the test of nexus. The argument of extra-territoriality must, therefore, fail.

Mr. Mazumdar has urged before us three subsidiary points in addition to the points argued by Mr. Pathak. He contends that the tax levied by the Act is invalid because a tax can be levied on goods carried only if the said goods join the mass of goods in the taxing State. In the present case, the goods had not entered the mass of goods in the State of Assam at any stage; they just travelled for a very short distance on their way from the tea garden to the Calcutta Port and that cannot attract a tax under Entry 56 of List II. In support of this argument, Mr. Mazumdar has invited our attention to the decision of this Court in The Central India Spinning and Weaving and Manufacturing Co. Ltd., the Empress Mills, Nagpur v. The Municipal Committee, Wardha ([1958] S.C.R. 1102.). In that case, this Court was considering the scope and effect of s. 66(1)(c) of the C.P. and Berar Municipalities Act, 1922, and the decision turned upon the true interpretation of the words "imported into". In that connection, the legislative history of the octroi duty was examined and it was held that the concept of import requires that the goods which are brought into must mix up with the mass of the property in the local area where the goods are alleged to have been imported. If the goods are just carried and not mixed with the mass of the property in the area through which they are carried, they cannot be said to have been imported into that area. We do not see how this decision which turned essentially upon the true significance of the concept of import can have any relevance where the tax with which we are concerned is a tax on goods carried. The word "carried" is of much wider denotation, and it would be unreasonable to limit its scope by introducing considerations which are relevant in dealing with the question of the import. Therefore, we do not think that the attempt to challenge the validity of the Act on the ground that the carried goods which are taxed do not join the mass of goods in the State of Assam, can succeed.

Mr. Mazumdar has also urged that so far as the petitioners' goods are concerned, they are substantially carried by the railway and should, therefore, be held to be outside the purview of s. 3 of the Act. We have already seen that the operation of the Act is confined to the goods carried by road or by an inland waterways and the goods carried entirely by the railway are outside its scope. The question which Mr. Mazumdar has raised before us is that having regard to the long distance which the tea chests have travelled between the tea gardens and the Calcutta Port, it should be held that a short distance of 1 1/2 to 2 miles which they travelled by inland waterways does not alter the character of their journey; it is, on the whole, a journey made by the railway, and so, the goods must be deemed to have been carried by railways throughout. This argument also is misconceived. As we have just indicated, the length of the distance over which the goods are carried has no relevance to the point. It is the physical fact of carriage of goods through a part of Assam that attracts the levy of the tax imposed by s. 3. Besides, the definition of railway to which Mr. Mazumdar invited our attention contained in s. 3 of the Indian Railways Act (No. 9 of 1890) itself shows that the carriage of the goods over the inland waterways cannot be brought within the scope of the definition. Section

3(4) defines the railway as meaning a railway, or any portion of a railway, for the public carriage of passengers, animals or goods, and includes, inter alia, all ferries, ships, boats and rafts which are used on inland waters for the purposes of the traffic of a railway and belong to or are hired or worked by the authority administering the railway. It is common ground that the ferries by which tea chests of the petitioners are carried over the inland waterways in Assam do not belong to the railway, nor are they hired or worked by the authority of the railway to which the goods were consigned for carriage. In fact, s. 74E of the Railway Act which, after amendment, has become s. 76D in 1961, clearly brings out the fact that when any goods are tendered to a railway administration for carriage by railway and have been booked through over a railway or any other transport system not belonging to the railway administration, the person who tenders the goods shall be deemed to have contracted with the railway and the said other transport system separately. Therefore, the argument based on the fact that the goods have been entrusted to the railway for through carriage, and so, the carriage of the goods should be held to be outside the purview of s. 3 of the Act, cannot be sustained.

That leaves only one more point urged by Mr. Mazumdar to be considered. Mr. Mazumdar contends that the tax is invalid for the reason that tea which is one of the objects taxed has been covered by the Central Tea Act (Act No. 29 of 1953) and he argues that since the Central Act has been passed by reference to the relevant Entry in List I in the Seventh Schedule, it is not open to the State Legislature to pass a taxing statute in respect of tea. It is true that the Tea Act has made several provisions in regard to tea and has constituted a Board to deal with the problems enumerated in the other provisions of the said Act; but one has merely to glance through the relevant provisions of the Tea Act to realise that the scope and purpose of the said Act is entirely different from the scope and purpose of the taxing Act with which we are concerned. The pith and substance of the taxing statute is the levy of a tax on tea which is carried in the State of Assam and the right of levy such a tax cannot be said to have been taken away merely by the fact that a Tea Act had been passed by the Central Legislature which is referable to the relevant Entry in List I of the 7th Schedule. The power to levy a tax which has been conferred on the State Legislature by Entry 56 cannot, therefore, be said to be controlled by the Tea Act in question. It would be noticed that List I does not contain any Entry by which the Central Legislature can pass an Act levying a tax on goods carried which can be said to control Entry 56 in List II. That being so, we, must hold that there is no substance in the argument that the State Legislature has no power to levy a tax on tea which is carried over a part of the area of the State of Assam.

A similar argument was urged by Mr. Mazumdar on the strength of the provisions contained in the River Boards Act, 1956 (No. 49 of 1956). Mr. Mazumdar suggested that the Brahmaputra River over a part of whose stream the tea chests are carried is governed by the provisions of the River Boards Act and that imposes a ban on the power of the Assam Legislature to pass an Act in respect of goods carried over the Brahmaputra River. What we have said about the objection raised by Mr. Mazumdar on the strength of the Tea Act applies with equal force to the present argument.

The result is, the petition fails and is dismissed with costs.

SARKAR J. –

I agree that the petition fails but I wish to say a few words of may own.

The petition challenges the validity of the Assam Taxation (on Goods Carried by Road or on Inland Water-ways) Act, 1961. (Act 10 of 1961), passed by the Legislature of the State of Assam. There

are two petitioners, one of whom is a limited company and cannot, therefore, admittedly maintain the petition which is under Art. 32. It is conceded that the petition is maintainable by the other petitioner, an officer of the Company, as he is interested in the rights of the Company. No question of the competency of the petition was, therefore, raised on behalf of the respondents who are the State of Assam and two of its officers concerned with the collection of the tax under the Act.

The petitioner Company is the owner of a tea estate in Jalpaiguri in the State of West Bengal. One of the grounds on which the validity of the Act is challenged is that the Act imposes an unreasonable restriction on the trade of the Company. The respondents contend that the Act is valid in view of the provisions of Art. 304(b) and also cl. (6) of Art. 19 of the Constitution. They say that the restriction imposed by the Act is reasonable. Article 301 of the Constitution provides that subject to the other provisions of Part XIII, trade, commerce and intercourse throughout the territory of India shall be free, and the relevant part of Art. 304 is in these terms :

> "Notwithstanding anything in article 301........... the Legislature of a State may by law -
>
> #(a).....................##
>
> (b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest :
>
> Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President."

It is not in dispute that the sanction of the President contemplated in the proviso to Art. 304(b) had been obtained in connection with the impugned Act. That Act had, however, a predecessor which bore the same title and was Assam Act 13 of 1954 but for which no sanction of the President under Art. 304(b) had been obtained. In Atiabari Tea Co. Ltd. v. The State of Assam ([1961] 1 S.C.r. 809.), this Court by a majority held that as Act 13 of 1954 imposed a tax on the carriage of goods is constituted a direct restriction on the free movement of trade and as no sanction of the President had been obtained in respect of it, it was void. No question arose there as to the reasonableness of the restriction imposed by the Act. The other members of the Court who constituted the minority expressed dissenting opinions but no useful purpose will be served by referring to them. As a result of the opinion of the majority Act 13 of 1954 became void.

Article 301 and the succeeding articles in Part XIII, including Art. 304, were again considered by another and a larger bench of this Court in The Automobile Transport (Rajasthan) Ltd. v. The State of Rajasthan ([1963] 1 S.C.R. 491.). Das J., with whose judgment Kapur J., and myself were associated, accepted the interpretation of Art. 301 by the majority in the Atiabari Tea Co. case ([1961] 1 S.C.R. 809.) as correct, but stated that regulatory measures such as rules laying down speed limit or lights to be carried by, vehicles and other rules of the road as also measures imposing compensatory taxes such as, taxes collected for maintaining the roads or bridges, were not restrictions within Art. 301 as such measures really facilitated trade rather than restrict it. It was, therefore, said by Das J., that such measures need not comply with the requirements of the proviso to Art. 304(b) of the Constitution of India. As I apprehend the judgment of Subba Rao J., in that case, he seems to have taken the same view though he used the description 'regulatory measure' to include measures laying down the rule of the road as also measures intended to raise funds for

construction and maintenance of roads. This was the opinion of the majority of the Court in that case. It is unnecessary to refer to the other opinion expressed in it.

Neither of these cases, however, has any bearing on the case in hand for it is not contended by the respondents that the impugned Act was a compensatory measure. It was of course not a regulatory measure as laying down a rule of the road. Indeed it was not contended that the impugned Act did not impose restrictions on the movement of trade. In view of the sanction of the President which had been obtained in the present case, the only question concerning the freedom guaranteed by Art. 301 was whether the restriction imposed by the Act was reasonably required in the public interest. It was said that the impugned Act (Act 10 of 1961) is practically in the same terms as the predecessor Act of 1954 but that by itself would not bring the impugned Act within the mischief of the decision in the Atiabari Tea Co. ([1961] 1 S.C.R. 809.) case for that case held the earlier Act invalid only on the ground that the sanction of the President had not been obtained. No question was canvassed there as to the reasonableness of any restriction imposed by the Act. The sanction of the President, as already stated, was obtained for the impugned Act. I should however state here that apart from the point about the reasonableness of the restrictions imposed on trade by the Act, there were other attacks on it. These will be mentioned later.

The impugned Act came into force April 15, 1961, and imposed a tax on manufactured tea and jute carried by any means other than railway and airways. This case is not, however, concerned with any carriage of jute. The Act was given a retrospective operation as it was to be deemed to have effect from April 24, 1954, being the date on which the predecessor Act, (Act 13 of 1954), came into force. Further, the Act was to remain in force till March 31, 1962, that is, for about a year only; see s. 1(3). It has since been replaced by another Act, namely, Act 16 of 1962. It may be that as this last mentioned Act was in contemplation, the impugned Act was given a short term of life. This Act further stated that the tax collected under Act 13 of 1954 would be deemed to have been collected under the corresponding provisions contained in it.

There is one other matter to which I would like to refer before I proceed to consider the points argued at the bar. I have said that the tea estate of the petitioner Company was in West Bengal and not in Assam. Its practice was to book its tea from a railway station in West Bengal for carriage to Calcutta for sale there. Now what the railway did was to carry the tea to another of its stations called Dhubri Ghat on the river Brahmaputra situate in Assam. The railway had arranged for the trans-shipment of the tea there from its wagons to steamers belonging to a carrier company at Dhubri Ghat and these steamers carried the tea by inland waterways to Calcutta. The steamers in the course of their journey passed through one and a half mile or two miles of Assam waterways, about the 572 miles of Pakistan waterways and 165 miles of West Bengal waterways, before reaching Calcutta. The tax was levied in respect of the carriage of the tea for about two miles on Assam waterways.

At the hearing in this Court learned counsel appearing in support of the petition really attacked only two sections of the impugned Act, namely, ss. 3 and 34. Section 3, which is the charging section, is in these terms :

> S. 3. (1) Subject to the provisions of this Act, there shall be levied a tax on (a) manufactured tea and (b) Jute in bales carried by motor vehicle, cart, trolley, boat, animal and human agency or any other means except railways and airways in such manner and in respect of such period and at such rate as specified in the Schedule.
>
> (2) Such tax levied on manufactured tea shall be realised from the producer and that

levied on jute shall be realised from the dealer :

Provided that where tea is sold at the factory premises, the producer shall be liable for realisation of tax from the purchaser with effect from such date as the Government, by notification, appoint, for the carriage of such tea as provided in this section and the producer shall be liable for the payment of such tax notwithstanding the fact that the tea is not carried by the producer :

#X X X X X X##

The first contention was that the section was beyond the legislative competence of the State Legislature. It is not in dispute that the Act had been passed under the powers contained in Item 56 of List II in the Seventh Schedule to the Constitution which authorised a State Legislature to pass laws imposing "taxes on goods and passengers carried on roads or on inland waterways". It was said that under this entry a tax could be levied only on the person who carried the goods but the proviso to s. 3(2) showed that even where a producer was not himself carrying the tea, he was liable for the tax and, therefore, the Act levied the tax not really on goods carried by road or waterways and was for that reason, ultra vires the State Legislature and void. It may be that there is nothing in s. 3 imposing directly a tax on the purchaser of the tea even when he is the person carrying it. It seems to me however that under Item 56 of List II it was competent for the legislature to provide for the tax being realised from the producer in the way it has been done in the Act. It is well-known that the entries in the legislative lists have to be read with all possible width and amplitude. An entry authorising the levy of a tax of a particular kind would justify that levy in the manner best suited for collecting it. The purchasers of tea would be mostly parties in Calcutta. The State of Assam may find it difficult to realise the tax from them. It may, therefore, legitimately provide that the tax may be realised from the producer even where he does not carry the tea for otherwise the tax may be evaded. Then again, under s. 3 tax is leviable only when tea has been carried by road or inland waterways. It is clear, however, that it was the action of the producer, namely, the sale by him, which alone caused the carriage of the tea; without the sale there would have been no occasion for the purchaser to carry the tea. If he did not actually carry the tea himself, he certainly brought about its carriage. Therefore, he might under Item 56 of List II be made liable for the carriage of the tea just as much as the person actually carrying it. I am unable to see why the words of Item 56 of List II would not cover both.

I do not think it necessary to decide the question raised at the bar whether the producer mentioned in sub-s. (2) of s. 3 refers only to a producer who himself carries the tea produced by him. Even if the word 'producer' in that sub-section includes one who does not himself carry the tea, a tax can be legitimately levied on him when the tea is carried as a result of its sale by him and for facility of collection of the tax.

It was next said that the proviso in s. 3 may, if effect is given to it from a past date, impose a tax on a producer which he could not collect from the purchaser. It was pointed out that if he was made liable by the notification mentioned in the proviso in respect of sales which had already taken place, he would have to pay the tax personally as the sales having taken place, he could no more collect the tax from the purchaser. It was contended that this would make the restriction put by the Act unreasonable and also make the provision incompetent as outside Item 56 of List II for the reasons earlier mentioned. It was also said that this would create a discrimination between producers hit by such retrospective notification and those whose sales came after the date when the notification was published. All these reasons, it was contended, would make the proviso illegal and void. I think the

whole contention is imaginary and unfounded. It is based on the notification being given a retrospective effect but I am clear in my mind that under the proviso a notification cannot be issued with retrospective effect. Under the proviso the producer is made liable for realisation of the tax from the purchaser from a date appointed by the notification. The notification, therefore, necessarily contemplates a situation in which the producer can collect the tax from a purchaser. He cannot of course do so in respect of past sales. Therefore, the notification if it appointed a past date would be incompetent.

The next contention is that the Act must be held to be void as it had been given retrospective operation. This contention was founded on the argument that a statute contemplated by Art. 304(b) cannot be retrospective. I am unable to see why not. Without more, when a legislature has the power to pass a law it can pass a law having a retrospective operation. This, I do not think, was disputed. What was said was that the terms of Art. 304 indicated that it was not intended that a retrospective law would be passed under it. It was argued that the law contemplated there was one which put restrictions on the freedom of the flow of trade and, therefore, if the trade had once 'flown' it could not be restricted and so a retrospective effect could not be given to a law passed under the Article. I am unable to appreciate this argument. If the flow of trade in future can be restricted, then I do not see why a trade which has flown in the past cannot be restricted retrospectively. It is not disputed that a restriction which can be imposed under cl. (6) of Art. 19 can be imposed retrospectively. There is no reason why the same position should not obtain in regard to the restrictions contemplated by Art. 304(b).

It was then said that the effect of Art. 304 was to prohibit the doing of a thing and a prohibition by its very nature could only be in respect of the future and, therefore, a retrospective restriction would be outside the Article. This argument was sought to be supported by reference to Punjab Province v. Daulat Singh (L.R. 73 I.A. 59.) where the Judicial Committee said that where a legislature had power to make a law prohibiting something, it would not in exercise of that power prohibit that thing from a past date because the word 'prohibit' in the nature of it, referred only to a prospective prohibition. But I do not find any prohibition in Art. 304. The effect of Arts. 301 and 304 is that the freedom of trade is not to be restricted by law passed by a state except by a law imposing a reasonable restriction on it in the interest of the public and passed with the sanction of the President. It then comes to this that the freedom can be restricted by a law which has to satisfy the two conditions. Article 304, therefore, permits and does not prohibit. There is no scope for applying here the Punjab Province case (L.R. 73 I.A. 59.).

The next point to which I wish to refer is that the restriction imposed by the tax levied under the Act is not reasonable. A question was raised as to on whom the onus to prove the reasonableness of the restriction lies. It was said that it has been held by the Court in Saghir Ahmad v. The State of U.P. ([1955] 1 S.C.R. 707, 727.) that the onus lies on the State. It must be conceded that it does seem to have been so held there. On the other hand, however, there is a very large number of cases where it is said that there is a presumption as to the constitutionality of a statute and that, therefore, the onus of showing that it is unconstitutional is on the party so alleging : see the cases collected in Hamdard Dawakhana (Wakf) Lal Kuan v. Union of India ([1960] 2 S.C.R. 671, 679.). No doubt these cases dealt with the question of constitutionality arising from discrimination, that is, under Art. 14 of the Constitution, but I am unable to see that that makes a difference on the question of onus. These cases say that the presumption of constitutionality arises because "it must be assumed that the legislature understands and appreciates the need of the people and the laws it enacts are directed to problems which are made manifest by experience and that the elected representatives assembled in a legislature enact laws which they consider to be reasonable for the purpose for which they are

enacted. Presumption is, therefore, in favour of the constitutionality of an enactment" : Hamdard Dawakhana (Wakf) ([1960] 2 S.C.R. 671, 679.) case at p. 679. If the Legislature is to be presumed to know that an Act which makes a distinction is justified because the people with whom it is concerned are distinguished from the others by an intelligible differentia having a rational relation to the objects of the Act, that being the test to save a statute from being held to be discriminatory, then I do not see why it cannot be presumed that knowing the people and their needs, the legislature has passed a law which imposes reasonable restrictions on their activities. It was said that the restriction is permitted by cl. (6) of Art. 19 which contains an exception and that an exception has to be proved by the party who wants to take advantage of it. That does not seem to me to be a proper way of reading a constitution and this rule of construction must, in my view, give way to the rule of presumption of constitutionality. It may also legitimately be said that there is no exception; the real fundamental right is what is left after the restriction has been imposed and, therefore, the citizen alleging violation of his fundamental right must also show that the restriction is unreasonable. It is not necessary to pursue the matter further or to pronounce finally on it now because for one thing, the observation in Saghir Ahmad's ([1955] 1 S.C.R. 707, 727.) case is there and for another, nothing turns on onus in this case. I have only mentioned it as it is a matter which, to my mind, requires consideration when the question properly arises.

The first ground on which it was said that the Act imposed an unreasonable restriction was that the rates imposed by it were flat rates. The rates were prescribed in the Schedule mentioned in s. 3 and different rates were fixed for different periods of time but in respect of each period there was one rate, for example, between June 1, 1954, and June 30, 1955, the rate was one pice per pound. The point made was that the tax being a tax on carriage it becomes an unreasonable restriction if the tax did not vary with the distance over which the thing was carried. Put that way, it would really seem not a question of reasonableness but a question of legislative competence. I am wholly unable to see that Item 56 in List II requires that the tax imposed must be measured according to the distance over which the goods are carried. Tested by the scale of reasonableness also, a flat rate does not seem to me to be wanting in that quality. One may well ask why is a flat rate not reasonable ? I find no answer. Why is a rate depending on the distance carried more reasonable ? Again I find no answer. If the rate varied with distance, then it is conceivable that in many cases the burden would be much heavier. How could that have been more reasonable ? The only effect of a flat rate may be that people who carry for a short distance pay as much as those who carry a longer distance. I do not see that this can make the levy unreasonable.

Now let me look at the question from another point of view. To start with it would not be wrong to say that since a tax is collected in public interest and for public good the burden imposed by it on trade would prima facie be reasonable in the public interest. There is no reason to think that the burden imposed by this Act is onerous, that it is such as would crush the trade by putting a weight on it which it could not carry. Furthermore it has been established on the affidavit that the Government spends on roads and facilities on waterways much more than what is collected in the shape of tax on the goods carried. That also is a consideration which goes to establish the reasonableness of the levy. The petitioner has not been able to put before us anything which would destroy the effect of these considerations. The fact that the Act imposes the tax with retrospective effect cannot by itself also make the restriction unreasonable. For the reasons earlier mentioned, it may still be reasonable.

I now proceed to consider the charge of discrimination. It was said that the Act offended Art. 14 because it taxed only tea and jute and no other article. But I am unable to see that this is discrimination. The Act applies to all who are concerned with the carriage of tea and jute. No doubt

it does not apply to the carriage of other goods but as has been said, "it is for the legislature to decide on what objects to levy" : see Raja Jagannath Baksh Singh v. The State of Uttar Pradesh ([1963] 1 S.C.R. 220, 234.). The legislature must pick and choose and such picking and choosing cannot by itself amount to discrimination. Besides, it is common knowledge that tea is a very prosperous industry in Assam and is certainly more fit to bear the burden of taxation than most other industries there. The flat rate of tax imposed also creates no discrimination for it applies the same rate to all. It has not been shown that in fact a discrimination has arisen.

Then it was said that s. 34 of the Act amounted to a violation of Art. 14. That section is in these terms :-

> S. 34. (1) Any rules made, any liability incurred, any tax levied or realised, any returns furnished, any proceedings commenced, any notification published any action taken or anything whatsoever done under the provisions of the Act repealed, shall be deemed to have been made, incurred, levied, realised, furnished, commenced, published, taken or done under the corresponding provisions of this Act.
>
> (2) Notwithstanding anything contained in any judgment, decree or order of any court, all taxes imposed or realised or purporting to have been imposed or realised under the Act repealed shall for all purposes be deemed to be, and to have been, validly imposed or realised and accordingly -
>
> (a) no suit or other proceeding shall be maintained or continued in any court against the Government or any person or authority whatsoever for the refund of any taxes so paid; and
>
> (b) no court shall enforce any decree or order directing the refund of any taxes so paid.

It was first said that the sub-section prevented people from whom tax had been collected under Art. 13 of 1954, from taking proceedings in court, while those subjected to the tax only under the impugned Act were not so prevented. If by 'Proceedings in court' are meant proceedings outside those for which the Acts provide, then such proceedings cannot be taken by persons from whom tax is collected under the present Act either : see s. 29. Therefore the Act makes no discrimination as alleged. If proceedings by way of appeal and otherwise for which provision is made in the Acts themselves are to be considered, then also there is no discrimination. Under the earlier Act there were provisions for appeal etc. and if one had filed an appeal under that Act, that appeal had to be deemed to have been filed under the impugned Act. Likewise, in respect of every other kind of proceeding contemplated in the earlier Act. If one has not chosen to take these proceedings under that Act, he cannot complain. That would not be a case of discrimination by the Act but would be giving up by a party of his rights under it. Therefore the position of a tax payer is the same under both the Acts.

We were also referred to s. 24 of the Act. That section provides for prosecution for failure to do certain things required by the Act to be done. It was contended that as the section had been given retrospective operation, it had the effect of making something which was not an offence when done, an offence by an ex post facto law. It is not necessary to go into that question for it is purely academic. It has not been suggested that the petitioner has been affected by it.

Another point argued was that the Act was only a colourable exercise of legislative power under Item 56 of List II. The contention was that the Act had nothing to do with tax on carriage of goods but was really passed to retain what had been collected under an Act which this Court had declared invalid. That of course is not on the face of it wholly correct, for the Act operated prospectively also. But apart from that this contention which was based on s. 34(1) of the Act is wholly unacceptable to me. Such a contention would make it impossible to pass an Act validating a taxing statute. Such Acts have very often been passed. A validating Act is passed under the legislative power under which the invalid law had been purported to be passed and it had been held that where legislative power exists, it could not be said that the exercise of that power was colourable : Gajapatti Narayan Deo v. State of Orissa ([1954] S.C.R. 1.). See also M. P. V. Sundararamier & Co. v. The State of Andhra Pradesh ([1958] S.C.R. 1422.).

The last thing to which I with to refer is the contention that the Act was bad as it had extra-territorial operation. It was said that to the petitioner it applied only because the tea was carried over inland waterways in Assam for about a mile and a half only. Apparently, the argument is that this distance is too trivial. But it seems to me beyond question that if the goods were carried for any distance over the territory of Assam, however short that distance might be, the Assam Legislature would have full jurisdiction to impose a tax on such carriage. This point is, therefore, also without any merit.

Mr. Mazumdar raised certain other points and these have been dealt with by my brother Gajendragadkar. I do not wish to add anything to what he has said concerning them.

I would, therefore, dismiss the petition.

Petition dismissed.

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