

(SUPREME COURT OF INDIA)

(1) Commercial Tax Officer and Others (2) State of Madhya Pradesh and others

Vs

(1) Swastik Roadways and Another (2) M/s. United Transport Road Services

HON'BLE JUSTICE P. VENKATARAMA REDDI AND HON'BLE JUSTICE S. H. KAPADIA

13/02/2004

Civil Appeal No 9143 of 1996 (With C.A. No. 1783 of 1997)

JUDGMENT

The Order of the Court is as follows  
Hon'ble Justice Kapadia

These two civil appeals raise an important question of constitutional significance centering around Entry 54 of List II of the Seventh Schedule to the Constitution of India as also the extent and purport of the ancillary power vested in the State Legislature which has enacted the Madhya Pradesh Commercial Tax Act, 1994 (hereinafter referred to as "the Act"). The said Act levies tax on sale and purchase of goods. Purportedly, under the ancillary powers/powers incidental to the levy of tax on sale and purchase of goods sections 57m 58 and 59 are enacted. Under section 57 the commissioner is empowered to call for information from clearing and forwarding agents to give certain particulars in respect of transaction with any dealer. By the impugned judgment, the Madhya Pradesh High Court has struck down the provisions of sections 57, 58 and 59 of the said Act on the ground of lack of legislative competence, relying on, the following the judgment of this Court in the case of State of Haryana v. Sant Lal & Anr. reported in [ ].

2. The original petitioners Swastik Roadways were carrying on business of clearing and forwarding agents. They used to receive goods for being consigned to places outside the area of their operation. They also used to receive goods from place to place outside their principal place of business for delivery to consignees. In short, they were clearing and forwarding agents engaged in the business of transporting goods.

3. On 1st April, 1995, the Madhya Pradesh Commercial Tax Act, 1994 came into force. It received the assent of the President on 7th January, 1995. In the present case as stated above sections 57, 58 and 59 have been challenged. As per the said three sections the petitioners were required to furnish information including the statement of accounts to the Commissioner as he may require in respect of transactions of any dealer with them (clearing and forwarding agents) provided clearing and forwarding agents handled the documents of title to the goods or provided they transported the goods. By virtue of section 57(2), in case of failure to furnish information a penalty is provided of an amount equal to three times the amount of tax payable in respect of the goods involved in the transaction and which appear to have been evaded by the owner of the goods. Section 58 speaks of control on clearing and forwarding agents to prevent or check evasion of tax. Further the State Government is empowered to issue directions in all regard, in order to ensure that such persons maintain registers concerning their business and send intimation about such business in a proforma.

4. By the impugned judgment, the High Court took the view that by virtue of these provisions, the carriers and clearing and forwarding agents were sought to be treated as dealers though they have nothing to do with the sale or purchase of goods, and for evasion of tax by their principal, they were sought to be penalised to the extent of a sum equal to three times the amount of tax payable in respect of the goods involved in the transaction. Following the judgment of the Supreme Court in the case of Sant Lal (supra), the High Court struck down the above three provisions as unconstitutional and beyond the powers of the State Legislature under Entry 54 of List II of the Seventh Schedule to the Constitution of India. Being aggrieved, the Department has come by way of appeal to this Court.

5. Mr. P.C. Sen, learned counsel appearing on behalf of the appellants submitted that there is a very narrow controversy in this case. He submitted that both sides agreed that the impugned Act is enacted to levy tax on sale and purchase of goods. That both sides agreed that the incidence of tax is on the dealer. However, the dispute is whether clearing and forwarding agents have proximate connection with sale and purchase of goods or with evasion of tax by the dealers. Mr. Sen contended that in an appropriate case of tax evasion by the dealer, the Commissioner has to make a necessary enquiry and therefore under section 57(1) of the Act, the Commissioner is empowered to call upon clearing or forwarding agent or the transporter to furnish requisite details in order to control tax evasion. That similarly section 58 gives power to the State Government to direct the clearing and forwarding agents to maintain a register in order to check or prevent tax evasion. Mr. Sen contended that sections 57 and 58 are a part of machinery sections which help the assessing officer to compute the tax and which helps the Department to check and prevent tax evasion. Mr. Sen contended that under Entry 54 of List II, the State is empowered to make a law imposing tax on sale and purchase of goods. He contended that the impugned provisions are incidental or ancillary to the power of the State to impose tax on sale or purchase of goods. He contended that clearing and forwarding agents have a close and proximate connection with sale and purchase of goods. He, therefore, submitted that imposition of penalty on clearing and forwarding agents is leviable if they did not cooperate in the enquiry against the dealer for tax evasion. He, therefore, submitted that provisions of Section 57, 58 and 59 are intra vires Entry 54 of List II of the Seventh Schedule to the Constitution of India. In this connection Mr. Sen has relied upon the judgment of the Apex Court in State of Rajasthan & Anr. v. D.P. Metals reported in . He also relied upon the judgment of this Court in the case of Tripura Goods Transport Association & Anr. v. Commissioner of Taxes & Ors. reported in [ ]. Mr. Sen further contended that the judgment of the Supreme Court in the case of Sant Lal (supra) had no application to the facts of the present case as in that case transporters clearing and forwarding agents

were required to obtain a license from the competent authority for carrying business and consequently it was held by the Apex Court that the State Legislature had no power to enact the law of that nature under Entry 54 of list II of the Seventh schedule to the Constitution of India.

6. Per contra, Mr. Sanghi, learned counsel for the respondents submitted that the impugned provisions seek to impose liabilities for tax evasion by the dealers on clearing and forwarding agents who have no connection with the transaction of sale and purchase of goods. He contended that the Act empowered the government to impose tax on sale and purchase of goods. That the said Act empowered the government to levy tax on the dealers. However under the impugned Act, clearing the forwarding agents who have no connection with the transaction of sale or purchase of goods are made liable to pay tax in the form of penalty. In this connection reliance was placed on section 57(2) under which clearing and forwarding agents are penalised for not furnishing statement of accounts to the Commissioner under section 57(1). That under section 57(2) penalty is leviable at the rate of three times the amount of tax payable in respect of the goods involved in the transactions which tax is evaded by the owner. It was, therefore, contended on behalf of the respondents that in the guise of penalty the State Government is not empowered to recover the tax from persons who have no connection with the transaction of sale and purchase of goods. Mr. Sanghi Contended that although machinery provision is a part of the taxing statute and although the State is empowered to make regulatory measures, it cannot make a person liable if tax cannot be imposed on such a person. Mr. Sanghi, learned counsel for the respondents contended that the State cannot penalise any and every person for evasion of tax if such person is not remotely connected to the taxable transaction. He contended that clearing and forwarding agents do not have any proximate connection with the sale and purchase of goods. He contended that there is no proximate nexus between clearing and forwarding agent on one hand and evasion of tax on the other hand. He contended that it is the dealer, who is responsible for evasion of tax if any, for which a clearing and forwarding agent cannot be held responsible. Mr. Sanghi submitted that the judgment of the Supreme Court in Sant Lal's case was clearly applicable to this case and, therefore, the High Court was right in striking down sections 57, 58 and 59 of the said Act and rule 75 of the Rules as ultra vires Entry 54 of List II of the Seventh Schedule to the Constitution of India. Mr. Sanghi further contended that under section 57(1) and under section 58(1) every clearing and forwarding agent is required to furnish particulars including statement of accounts in respect of transactions of any dealer. He submitted that clearing and forwarding agents have no connection with sale and purchase of goods by the dealers and in the circumstances the Commissioner cannot call upon clearing and forwarding agents to furnish particulars of transactions of dealers. Mr. Sanghi, therefore, contended that in the guise of penalty and in the guise of providing machinery to regulate tax evasion, persons who have no connection with sale and purchase of goods are sought to be made liable and, therefore, the impugned provisions of the Act and rule 75 of the Rules are ultra vires Entry 54 of List II of the Seventh Schedule of the Constitution.

7. In view of the above arguments the point for determination is: Whether the High Court was right in holding that the clearing and forwarding agent had no proximate connection with the transaction of sale and purchase of goods or with the evasion of tax by the dealer and consequently the impugned provisions of sections, 57, 58 and 59 were beyond the legislative competence of the State legislature under Entry 54 of List II of the Seventh Schedule of the Constitution of India?

8. To appreciate the scope of the controversy involved in this case, we quote some of the provisions of the said Act, as under:-

*"Section 57: Furnishing of information by bank and clearing and forwarding agents.-(1) Every bank including, any branch of a bank and every clearing or forwarding agent shall, if so required by the Commissioner, furnish such particulars including statement of accounts and affairs verified in the manner, specified by the Commissioner as he may require in respect of transaction of any dealer with such bank or with such clearing or forwarding agent which during the course of its business handle documents of title to goods or transports goods.*

*(2) If any clearing or forwarding agent contravenes the provisions of sub-section (1), the Commissioner may, after giving such agent a reasonable opportunity of being heard, direct him to pay, by way of penalty, a sum equal to three times the amount of tax payable in respect of the goods involved in the transactions referred to in sub-section (1) and which appear to have been evaded by the owner of such goods due to the failure of such agent to furnish information pertaining thereto required of him by the Commissioner under sub-section (1).*

*Section 58 : Control on clearing and forwarding agents to prevent or check evasion of tax.- (1) The State Government may, if it is satisfied that it is necessary so to do with a view to prevent or check evasion of tax under this Act in any place or places in the State, direct that-*

*(i) every clearing and forwarding agent who during the course of his business handles documents of title to goods or transports goods or despatches or takes delivery of goods and who has his place of business at such places as may be notified by the State Government, shall send an intimation about his business in the prescribed form to the prescribed authority and in the prescribed manner before the prescribed date; and \**

*(ii) every such clearing and forwarding agent shall maintain a register in such form and containing such particulars of his business as may be prescribed which shall be open to inspection by the Commissioner.*

*(2) if any clearing or forwarding agent on being directed to do so under sub-section(1) contravenes the provisions thereof, the Commissioner may, after giving such agent a reasonable opportunity of being heard, direct him to pay, by way of penalty a sum not exceeding five hundred rupees.*

*Section 59: Clearing and forwarding agents defined.-For the purpose of Section 57 and 58 clearing and/or forwarding agent includes a person engaged in collecting goods from any place inside the State including railway premises and arranging for the transport and/or delivery of such goods to the principal or any other person or carrier of goods for and on behalf of the principal and in the process of collection transport or delivery handles documents of title to such goods." \**

9. Briefly it may be stated that 'sale price' is defined under Section 2(u) of the Act to mean the amount payable to a dealer as consideration for sale of goods less discount but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or installation, when such cost is separately charged. Therefore, cost of freight or installation at the time of or before the delivery, separately charged, is excluded from the sale price. Section 5 deals with incidence of tax on the dealer whose turnover exceeds the prescribed limit. Section 6 empowers the Commissioner to determine the liability of the dealer. Section 9 deals with levy of tax payable by a dealer on the taxable turnover relating to goods specified in Schedule II. Section 27 deals with assessment of tax. Section 28 deals with escapement of sale or purchase of goods, chargeable to tax, from assessment on account of a wrong deduction

claimed and granted. It deals with re-opening of such completed assessments after reasonable opportunity to the concerned dealer. It empowers the Commissioner to impose penalty on such defaulting dealers. Similarly, section 29 empowers the Commissioner to make re-assessments in cases where the Department has passed an order, which is prejudicial to the interest of the revenue. Section 57 inter alia empowers the Commissioner to call upon clearing and forwarding agents to furnish such particulars as he may require in respect of transaction between any dealer and such clearing and forwarding agent. That in the event of contravention, a fixed penalty is leviable on the clearing and forwarding agent equal to three times and amount of tax payable in respect of the goods involved in the transaction and which tax is evaded by the owner of such goods. Under section 58, the State Government is empowered to direct the clearing and forwarding agents to maintain a register and give intimation about his business in the prescribed format. By rule 75, form 60 is prescribed for intimation of particulars of business of clearing and forwarding agent and form 61 is the prescribed register.

10. According to the respondents, section 57 (2) is bad in law as it seeks to levy and recover the tax on sale of goods in the form of penalty from clearing and forwarding agents who have no proximate connection with the sale or purchase of goods or payment of tax. This argument of the respondents has been accepted by the High Court in the impugned judgment. In this connection reliance is placed on the judgments of this Court in Sant Lal's case (supra) and on *The Check Post Officer & Ors. v. K.P. Abdulla & Bros.* reported in [ ].

11. We do not find any merit in the arguments advanced on behalf of the respondents. **The power to levy a tax includes all incidental powers to prevent the evasion of such tax. The powers such as the power to seize and confiscate goods in the event of evasion of tax and the power to levy penalty are meant to check tax evasion and is intended to operate as a deterrent against tax evaders and are therefore ancillary or incidental to the power to levy tax on the sale of goods and thus fall within the ambit and scope of Entry 54 of List II to the Seventh Schedule to the Constitution of India.** # This position in law is not disputed by the respondents. What is disputed is that when tax is sought to be recovered from the clearing and forwarding agents in the form of penalty under section 57(2), the same falls outside the ancillary or incidental powers of the State Legislature under Entry 54 of List II as the levy under the Act is on sale and purchase of goods and as there is no nexus between such sale or purchase of goods and the clearing and forwarding agents, sections 57 and 58 and especially the penalty provisions falls outside such ancillary powers. As stated above, the said Act provides not only for levy of tax on sale and purchase of goods but also provides for computation of tax incidence of tax, recovery of tax, assessment and re-assessment. The impugned provision of section 57(1) and section 58(1) operate in aid of sections 27, 28 and 29 of the Act: To illustrate, the sale price is net of cost of freight or installation. The dealer in his return is entitled to show such expense as deduction. The Commissioner is entitled to verify the claim for deduction. If the assessing authority has reason to believe in the course of assessment under section 27 or re-assessment under section 28 that deduction claimed is excessive, it can call for information from the clearing and forwarding agent. He can re-open the assessment in cases where fraud is detected in the matter of deduction on account of excessive claims of deduction being allowed and on that basis the assessing authority is empowered to levy penalty on the dealer. Such particulars will be called for if the dealer-assessee has transported the goods through the clearing and forwarding agent. Where false claims for deduction are made on taxable goods dispatched to other places by way of sale without accounting for the same, it results in tax evasion. To check such evasions, sections 57 and 58 are enacted. The information sought under section 57(1) and the maintenance of register under section 58 will therefore help the revenue to identify the nature of the

transaction to verify the claims of the dealer and to trace the taxable transactions so that a person or a transaction liable to sales tax under the State Act does not escape payment of such tax. When the Commissioner acts under section 57(1) he acts in cases where he detects such evasions. This is clear from provisions of sections 57(1) and 58(1). Under various sections of the Act, tax-evaders are sought to be penalised and by contravening the provisions of section 57 and 58 the clearing and forwarding agent also becomes liable as he facilitates such tax evasion. In the circumstances, the High Court erred in holding that there was no proximate connection between the clearing and forwarding agents and the tax evasion.

12. We also do not find merit in the contention of the respondents that since the basis of penalty was three times the tax evaded by the owner/dealer, section 57(2) falls beyond the ancillary powers to levy tax on the sale and purchase of goods. In support of it, it was argued that such penalty was indeed a tax on sale of goods. That such penalty could not have been levied on the clearing and forwarding agent, as there was no sale or purchase in his hands nor he has any authority to sell or purchases. In our view, the basis of penalty was three times the amount of tax evaded by the dealer. This basis was a measure or the yardstick. It cannot convert a penalty on the defaulting clearing and forwarding agent into a tax. The object of section 57(2) is to penalise any person who abets in or facilitates the evasion of tax. Therefore a heavy penalty is prescribed to check tax evasion, subject to the satisfaction of conditions laid down in the sub-section. The nexus between tax evasion by the owner of goods and the failure of C & F agent to furnish information required by the Commission is implicit in section 57 (2) and the concerned assessing authority has to necessarily record a finding to this effect before levying penalty under section 57(2).

13. It is next contended on behalf of the respondents that the issue of this case is similar to the issue in the case of Sant Lal (supra). We do not find any merit in this argument. In Sant Lal's case, provisions of section 38 of Haryana General Sales Tax 19 were challenged. Under section 38(2) every clearing and forwarding agent was required to obtain a license. In addition, every C & F agent had to give particulars and information in respect of "the transactions of the goods" in a prescribed format. The Act was under Entry 54 List II dealing with levy of tax on sale of goods. If there was a failure on the part of the clearing and forwarding agent to give particulars or to obtain licence, a fixed penalty calculated at 20% of the value of goods in respect of which no information was furnished as required by section 38(1) was imposed. These provisions were challenged. It was held by this Court that the power of the State Legislature was to levy tax on sale of goods and that the powers ancillary to levy of tax on sale of goods would not cover the clearing and forwarding agents who have no connection with the transaction of sale and purchase of goods. Hence the clearing and forwarding agents could not be asked to obtain a license, nor can they be penalised for not giving particulars as a licensee. In that matter, section 38 applied to all clearing and forwarding agents and transporters irrespective of the fact whether they handle documents of title to goods and whether they handle the goods of dealers or not. They were all required to obtain license, failing which they were not allowed to operate as clearing and forwarding agents and that is the main reason why section 38 was struck down. In fact section 38(2) and 38(1) were connected to each other and penalty was imposed for contravention of both the sub-sections. The Court observed at paragraph 15:- "... A clearing or forwarding agent or 'dalal' or person transporting goods does not necessarily handle the booking or receipt of goods which have been sold; they could very well be handling goods weigh a consider may consign to himself from one town or village to another in the State. The said Act does not take account of this and requires all forwarding and clearing agents, 'dalals' and persons transporting goods to be licenced under the said Act. To this extent the said Section 38 goes beyond the ancillary and subsidiary powers of the State Legislature in enacting a law imposing

sales tax."As regards sub-section (3) of Section 38 which provides for levy of penalty, it was held:-

*"It is difficult to hold that a clearing or forwarding agent, 'dalal' or person transporting goods can be made liable to a penalty equivalent to 20 per cent of the value of the goods in respect of which of particulars and information have been furnished. Given the obligation to furnish particulars and information, a penalty for evasion of tax, in addition to the tax evaded, can reasonably and fairly be imposed which bears a proportion to the quantum of tax that has escaped assessment but it cannot reasonably and fairly bear a proportion to the value of the goods the sale of which has occasioned the liability to tax. A penalty as high as that sought to be imposed could well put a smaller clearing or forwarding agent or 'dalal' or person transporting goods out of business." The approach of this Court on the question of legislative competence is also discernible from paragraph 19 wherein it was held-*

*"... As we have already stated, there has to be a reasonable and proximate connection between the transaction of sale and the clearing or forwarding agent, 'dalal' or person transporting goods before the State Legislature can, in exercise of the power to levy sales tax, enact legislation concerning him. We are not satisfied that there is such close and direct connection between the transaction of sale of goods by a dealer and the clearing or forwarding agent, 'dalal' who books or receives such goods or a person who transports such goods within the meaning of the said section 38."The provisions in the present case are different and the ratio in Sant Lal's case has no application. In the present matter, a bare reading of section 57(1)(2) shows that in cases where Commissioner is satisfied about tax evasion by the dealer, he may be call upon the clearing and forwarding agent to give particulars of a transaction and if the clearing and forwarding agent fails, penalty is levied at three times the tax evaded by the dealer. The reason is that by willful disobedience to comply with the directions of the Commissioner, the clearing and forwarding agent facilitates the tax evasion by the dealers. Similarly, under section 58, the State is empowered to give directions to the clearing and forwarding agent to maintain a register in Form 61 under rule 75 which would given the details of consignor, consignee, the quantity of goods carried on a particular date and time, its value, etc. Such particulars are expected to be maintained by a clearing and forwarding agent including a transporter in the ordinary course of business even without a provision like section 58. We reiterate that in the present case, the provisions of sections 57 and 58 are to prevent/check tax evasion. The penalty provision contained in Section 57(2) unlike in the case of Sant Lal has intimate nexus with evasion of tax by the dealer whose goods or documents are handled by the clearing and forwarding agent (as defined by section 59) and whose failure to furnish information would have led to the tax evasion. The penalty provision in Sant Lal's case is materially different. "The reasonable and proximate connection" is not lacking in the present case. The decision in Sant Lal's case was distinguished in two subsequent decisions, namely, Tripura Goods Transport Association v. Commissioner of Taxes [(1999) 2 SCC 253] and State of Rajasthan v. D.P. Metals [(2002) 1 SCC 279]. In the first case, the relevant provisions of the Tripura Sales Tax Act required the persons doing transport business to obtain a certificate or registration and further required the transporter to give a complete and correct account of the goods carried by him in a prescribed form which could be scrutinised by the officer-in-charge of the check-post. The driver or any other person in-charge of the goods vehicle could be stopped and the records inspected and if it was found that the goods were being carried in contravention of the provisions of the Act or the rules, the officer conducting the search could seize the goods found in the vehicle. Punishment was provided for non-compliance with the provisions of the Act and the Rules. The contention that the sales tax legislation could not extend to them on the ground that they were not dealers doing the business of sale or purchase of goods was negatived. The legislative competence was upheld, It was*

*observed therein:-"Every taxing statute has charging sections. It lays down the procedure to assess that and penalties etc. It also provides provisions to cover pilferage of such revenue by providing such mechanism as it deems fit, in other words, to check evasion of tax and in doing so, if any obligation is cast on any person having connections with the consignor or consignee in relation to such goods, may be other than a dealer, to perform such obligation in aid, to check evasion and in case he is made liable for any offence, for his dereliction of duty or deliberate false act contrary to what he is obligated to do. In our opinion, it cannot be construed to be beyond the competence of the State legislature."* \*

The case of State of Rajasthan v. D.P. Metals which was decided by a three Judge Bench referred to Tripura Goods Transport case with approval. In the Rajasthan case, the three Judge Bench reversed the decision of the High Court holding section 78 of the Rajasthan Sales Tax Act unconstitutional on the ground of legislative incompetence. Section 78 provided for establishment of check-post and inspection of goods while in movement. Sub-section (5) of section 78 empowered the officer-in-charge of the check-post in immense on the person-in-charge of the goods, a penalty equal to 30% of the due of the goods for possession or movement of goods if they are not covered by prescribed documents such as challans, bills of sale, declaration forms etc., or for submission forms etc., or for submission of false or forged documents. The challenge to legislative competence was negated in this case also. It was however clarified that the impugned sub-section cannot relate to personal belongings which are not meant for sale. This Court observed:-

*"It is thus settled law that provisions to check evasion of tax are within the legislative competence of the States under Entry 54 of List II. This being so, the provisions to make the imposition of tax efficacious or to prevent evasion of tax are within the legislative competence...."*

*If there was legislative competence to enact Section 78(2) then the same power contained in Entry 54 of List II could enable the State Legislature to provide for consequence of non-compliance by incorporating sub-section (5) therein..."* \*

Referring to Sant Lal's case, it was observed- *".... Unlike the dalals and forwarding agents, as in Sant Lal's case, the persons referred to in Section 78(2) are persons concerned with the movement of the goods which are sold or likely to be sold..."The above observations cannot be pressed into service by the respondent to contend that clearing and forwarding agents have no connection with dispatch and transport of goods of dealers or that they cannot be compelled to give any information to the Sales Tax Department in regard to their transactions. If section 78 of Rajasthan Act was meant to check tax evasion, sections 57 and 58 of the present Act also serve the same purpose. The expression "movement of goods" in the above passage was used only to explain why the driver or other person in charge of goods vehicle could be penalised under the Sales Tax Act.* \*

As regards penalty, the Court observed in Rajasthan case;

*"... The legislature though it fit to specify a fixed rate of penalty and not give any discretion in lowering the rate of penalty. The penalty so fixed is meant to be a deterrent and we do not see anything wrong in this. The quantum of penalty under the circumstances enumerated in Section 78(5) cannot, in our opinion, be regarded as illegal. The legislature in its wisdom has thought it appropriate to fix it at 30% of the value of goods and it had the competence to so fix..."*

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Thus though in Sant Lal's case, the penalty related to value of the goods was struck down, in the Rajasthan cas, the three Judge Bench upheld the same. The penalty in the present case even stands on a better footing if tested from the angle of legislative competence. The penalty which is levied by way of deterrent against the C & F agent is directly related to the evasion of tax by the dealers resulting from the failure of the agent to furnish information. Thus, the impugned provisions are ancillary to the levy of tax on the sale or purchase of goods by dealers falling within the ambit of Entry 54, List II.

14. Learned counsel for the respondents however placed heavy reliance on the judgment of this Court in the case of K.P. Abdulla & Bros. (supra). In that matter there was a challenge to section 42 of the Madras General Sales Tax Act, 1959. Under section 42, the check post officer was empowered to stop any vehicle or boat, examine the contents of the vehicle and seize and confiscate any goods which are under transport if not covered by a bill of sale or delivery note, goods vehicle record etc. In lieu of confiscation, the person affected had the option to pay in addition to the tax recoverable on the goods, a sum of money at double the amount of tax recoverable in case they are taxable goods. The Constitution Bench affirming the judgment of the High Court, declared sub-section (3) of section 42 unconstitutional for the reason that it is not ancillary or incidental to the power to legislature on sales tax. It was observed:-

*"...Sub-section (1) and (2) of Section 42 are intended to set up machinery for preventing evasion of sales-tax. But, in our judgment, the power to confiscate goods carried in a vehicle cannot be said to be fairly and reasonably comprehended in the power to legislate in respect of taxes on sale or purchase of goods...."* \*

A provision so enacted on the assumption that goods carried in a vehicle from the one state to another must be presumed to be transported after sale within the State is unwarranted. In any event, power conferred by sub-Section (3) to seize and confiscate and to levy penalty in respect of all goods which are carried in a vehicle whether the goods are sold or not is not incidental or ancillary to the power to levy sales tax...."

Referring to sub-section (3) it was pointed out that even a person carrying his own goods was also exposed to the risk of the goods being forfeited. The ratio of this decision in our view has not application to the facts of the present case. Sections 57 & 58 do not deal with confiscation of goods at all. As far as the penalty under section 57(2) is concerned we have already noted that it is levied only on the satisfaction being reached by the concerned officer that the failure of the C & F agent to furnish the information required by the Commissioner facilitated the dealer to evade the tax. It presupposes that there was a taxable sale in respect of which the tax evasion appears to have occurred. The penalty under section 57(2), unlike section 42(3) of the M.G.S.T. Act, is not levied on a mere assumption that a taxable sale or purchase took place. The impugned sections of Madhya Pradesh Act are meant to get times information which will help the department to detect tax evasion. As observed earlier, in case of assessment or under assessment, Commissioner has a power to verify not only the transactions of sales entered into by the dealer but he has also to cross-check the figures with the clearing and forwarding agent in appropriate cases and for that purpose he can call upon the agent to give particulars such as value of goods, amount of freight, details of consignor and consignee, date of consignment, etc. Therefore, in such cases, the Commissioner, on the basis of information furnished or the particulars noted in the register of the clearing and forwarding agent can verify the quantity of goods, the value of the goods, the name of consignee, etc. in order to

check the details of the transaction under the assessment and even trace the dealer in appropriate cases. Hence, it cannot be said that the information to be furnished by clearing and forwarding agent has no proximate connection with the sale and purchase of goods or realisation of tax in the context of the impugned provisions.

The width of legislative power in the context of tax evasion is illustrated by the case of Union of India v. Bombay Tyre International Ltd. reported in [1973] 101 ITR 101 (SC). By Act 22 of 1973 (w.e.f. 1.10.75) a new section 4 in respect of transactions effected by the assessee to or through "a related person" was introduced in the Central Excise Act 1944. The said new section 4(1)(a) provided that "value" shall be deemed to be the normal price and the normal price was defined as the price at which the goods were ordinarily sold by the assessee in the course of wholesale trade where the buyer was not a "related person" and the price was the sole consideration for the sale. However, there were three provisos to section 4(1)(a) which indicated circumstances under which normal price could vary. The third proviso to section 4(1)(a) provided that where the assessee so arranges that the goods are generally not sold by him in the course of wholesale trade except to or through a related person, the normal price of the goods sold by the assessee to or through such related person shall be deemed to be the price at which they are ordinarily sold by the related person in the course of wholesale trade at the time of removal, to dealers (not being related persons). On behalf of the assessee it was urged that the provisions, aforesaid, were whimsical and arbitrary and cannot be said to be reasonably calculated to deal with the issue of evasion or avoidance of excise. It was said that the assessment on the manufacturer by reference to the sale price charged by his distributor is wholly incompatible with the nature of excise. This argument was rejected by this Court in following terms:-

*"It is open to the Parliament to incorporate provisions in the section declaring that certain specified categories of transactions fall within the tainted class, in which an irrebuttable presumption will arise that the transactions belonging to those categories are transactions which cannot be dealt with under the usual meaning of the expression "normal price" set forth in section 4(1)(a)...." \**

In the said judgment it has been further held (vide para 45) that:

*"Now, it is well known legislative practice to enact provisions in certain limited cases where an assessee may be taxed in respect of the income or property truly belonging to another. They are cases where the Legislature intervenes to prevent the circumvention of the tax obligation by tax payers seeking to avoid or reduce their tax liability through modes resulting in the income or property arising to another..."*

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The above observation of this Court can be pertinently applied to this case.

**Accordingly we hold that the impugned section 57 and 58 of the M.P. Commercial Tax Act, 1994 have been enacted by the State legislature under the powers incidental to the power to levy tax on sale and purchase of goods under Entry 54, List II of the Seventh Schedule of the Constitution of India. #**

15. We would like to conclude our judgment by quoting the following passage from Broken Hill South Ltd. v. Commissioner of Taxation N.S.W. reported in [1969] 56 CLR 337 at page 379] which has been approved by this Court in the case of The State of Madras v. M/s. Gannon Dunkerley & Co.

(Madras) Ltd. reported in ]:-

*"In any investigation of the constitutional powers of these great Dominion legislatures, it is not proper that a Court should deny to such a legislature the right of solving taxation problems unfettered by 'a priori' legal categories which often derive from the exercise of legislative power in the same constitutional writ."* \*

**16. For the foregoing reasons, we uphold the validity of the impugned provisions of sections 57, 58 and 59 of the Act as intra vires Entry 54 of List II of Seventh Schedule to the Constitution of India. Consequently we hold that the impugned judgment of the High Court dated 16th April, 1996 in Writ Petition No. 3756 of 1995 is not correct. Accordingly, both the civil appeals are allowed with no order as to costs. #**