

**(2009) 09 GAU CK 0004**

**In the Gauhati High Court**

**Case No :** Writ Petition (C) No"s. 134, 159 and 170 of 2005

Freight Couriers and Others

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

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**Date of Decision :** 23-09-2009

**Acts Referred:**

Assam General Sales Tax Act, 1993 — Section 3(1), 42, 44, 44(5)  
Constitution of India, 1950 — Article 14, 19(1), 226, 246, 264  
Tripura Sales Tax (Amendment) Act, 1984 — Section 36A  
Tripura Sales Tax Act, 1976 — Section 13, 13A, 14, 2, 25  
Tripura Sales Tax Rules, 1976 — Rule 25, 46A, 46A(3), 63(1A), 63A

**Citation :** (2009) 1 GLD 86 Supp

**Hon'ble Judges :** I.A. Ansari, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## **Judgement**

I.A. Ansari, J.—Apart from the fact that all these three writ petitions, involving identical facts, have been filed by the same petitioner, these writ petitions, as would transpire, are inextricably linked with each other and have raised common questions of law for determination. Hence, all these writ petitions have been heard, on the request made by the learned Counsel for the parties, analogously and are being disposed of by this common judgment and order.

2. The prominent questions, which this set of writ petitions has raised, are: (i) When the "transporters", as a class, do not fall within the definition of the term "dealer", in a given fiscal statute, whether it is constitutionally permissible to impose legal obligations on the functioning of the "transporters" so as to ensure that the acts or omissions of "transporters" do not help evasion of tax by "dealers" (ii) Whether contravention of such statutory obligations, imposed on the "transporters", can be made offences? (iii) Whether it is permissible for the legislature to make such provisions, in such a fiscal statute, as would enable a "transporter" to opt for composition of such offences by making payment of such sum(s), which may be recoverable as the taxable liability of the "dealer", whose

taxable consignment had been carried by the "transporter" or whose taxable liability the transporter has, helped escape assessment of. (iv) In the absence of any charging provisions, imposing taxable liability on a "transporter", whether it would be permissible for the State to recover tax, which is, otherwise, payable by a "dealer", by making payment of such taxable amount as a condition for composition of an offence, which a "transporter" may have committed?

#### Background Facts:

3. The petitioner, in all these writ petitions, is in the business of carrying goods of different "dealers", who have been carrying on business, at Agartala and at other places, in the State of Tripura. The persons, who fall within the definition of a "dealer", as given in Tripura Sales Tax Act, 1976 (in short, "the TST Act"), are required to get themselves registered, in terms of the TST Act, with the Superintendent of Taxes within whose jurisdiction such a "dealer" may be carrying on his business. For the purpose of import of goods from outside the State the "dealers" are required to be registered under the TST Act and their registration enables the authorities, under the TST Act, to assess and collect taxes from the "dealers" for the goods imported by them into the State of Tripura. Rule 64-A of the Tripura Sales Tax Rules, 1976 (in short, "the TST Rules") casts obligation on the "transporters", "carriers" and "transporting agents", who carry/transport taxable goods, in the State of Tripura, to apply for registration in a prescribed format. The petitioner accordingly applied for, and was granted, registration as a "transporter"/"carrier" of taxable goods in the State of Tripura.

4. Being a registered "transporter", the petitioner is required to obtain Form Number XIV from the Superintendent of Taxes concerned in order to enable the petitioner transport goods from one place to another in the State of Tripura. Under the scheme of the relevant statute and the rules framed thereunder, the names of importing "dealer", with the dealer's registration number, place of dispatch, contents, weight, value, details of consigner's invoice and some other particulars, are required to be filled up by the "transporter" in Form XIV prior to transacting business as a "transporter". Two copies of such filled up forms are required to be surrendered at the entry point of the sales tax check post at Churaibari. The authorities concerned, upon collecting the Form aforementioned at Churaibari, transmit one copy of the Form to the respective Superintendent of Taxes, who had issued the Form, so as to enable the Superintendent verify the record of transportation of goods by the registered "dealer". Under the scheme of the relevant statute and the rules, a "transporter", "carrier" and transporting agent, such as, the petitioner firm, has the obligation to obtain Form No. XVIII in respect of taxable goods, which a "transporter" carries, on the import of goods into the State of Tripura, from one place to another within the State of Tripura. Form No. XVIII too is issued by the Superintendent of Taxes in favour of the importing "dealer", who imports the goods, which a "transporter", "carrier" or "transporting agent", as the case may be, may bring into the State of Tripura

and carry the same from one place to another. Amongst other requirements, which Rule 64-A embodies, it is one of the requirements that the "transporter", "carrier" and "transporting agent" shall maintain, in a Register, in Form No. XXII, a true and correct account of every consignment of goods transported into the State of Tripura and, in Form No. XXIII, of all goods transported outside Tripura.

5. Let me, now, set out the facts of each of the present three writ petitions.

WP(C) No. 134/2005:

6. By order, dated 13.8.98, the petitioner, which is a registered partnership firm, was directed by the Superintendent of Taxes, Charge V, to deposit a sum of Rs. 94,701/- on the ground that the petitioner, as a "transporter", had delivered as many as 58 numbers of consignments of taxable goods, on being imported into the State of Tripura, without declaration form, as is required to be given in Form No. XV111, and that the petitioner had failed to maintain a Register, in Form No. XXH, reflecting true and correct account of every consignment of goods imported into Tripura and delivered by the petitioner, as "carrier" or "transporter", to the consignee, and the petitioner has, thus, committed offences under Sections 29(4), 29(5), 29(6) and 29(12) of the TST Act. The taxable liability of the said consignments were assessed at Rs. 31,560.14/- and another sum of Rs. 63,134/- was assessed as composition amount of the offences committed u/s 29. As reflected by the proceedings, recorded in the order, dated 13.8.1998, aforementioned, pursuant to reasonable opportunity given to the petitioner to satisfy the authorities concerned by producing relevant materials that no such offences, as alleged, had been committed by the petitioner, the Superintendent of Taxes concluded that the petitioner, as a "transporter", having not been able to produce requisite materials, shall be held to have committed offences under Sections 29(4), 29(5), 29(6) and 29(12) of the TST Act. The proceedings, as recorded in the impugned order, 13.8.2009, further reflect that according to the Superintendent of Sales Tax, the petitioner's representative was informed about the provisions of Section 32 of the TST Act, relating to composition of offences committed under the penal provisions aforementioned, and, on being so informed, the petitioner's representative, as a "transporter", admitted guilt and opted to compound the offences instead of facing prosecution and incurring punishment. The petitioner was, therefore, as already indicated above, held liable to pay, in all, a sum of Rs. 94,701/- as total liability of the said 58 numbers of consignments, the taxable liability being Rs. 31,567/- and another sum of Rs. 63,134/- being composition amount. A notice of demand, in terms of Section 25 of the Tripura Sales Tax Rules, was accordingly raised by the Superintendent of Taxes.

WP(C) No. 159/2005:

7. By order, dated 23.10.1998, the petitioner, which is a registered partnership firm, was directed by the Superintendent of Taxes, Charge IV, Kailasahar, Agartala, to deposit a sum of Rs. 8,02,281/- on the ground that the petitioner, as

a "transporter", had delivered as many as 16 numbers of consignments of taxable goods, on being imported into the State of Tripura, without declaration form, as is required to be given in Form No. XVIII, and that the petitioner had failed to maintain a Register, in Form No. XXII, reflecting true and correct account of every consignment of goods imported into Tripura and delivered by the petitioner, as "carrier" or "transporter", to the consignee, and the petitioner has, thus, committed offences under Sections 29(4), 29(5), 29(6) and 29(12) of the TST Act. The taxable liability of the said consignments were assessed at Rs. 2,67,427/- and another sum of Rs. 5,34,854/- was assessed as composition amount of the offences committed u/s 29. As reflected by the proceedings, recorded in the order, dated 23.10.1998, aforementioned, pursuant to reasonable opportunity given to the petitioner to satisfy the authorities concerned by producing relevant materials that no, such offences, as alleged, had been committed by the petitioner, the Superintendent of Taxes concluded that the petitioner, as a "transporter", having not been able to produce requisite materials, shall be held to have committed offences under Sections 29(4), 29(5), 29(6) and 29(12) of the TST Act. The proceedings, as recorded in the impugned order, 23.10.1998, further reflect that according to the Superintendent of Sales Tax, the petitioner's representative was informed about the provisions of Section 32 of the TST Act, relating to composition of offences committed under the penal provisions aforementioned, and, on being so informed, the petitioner's representative, as a "transporter", admitted guilt and opted to compound the offences instead of facing prosecution and incurring punishment. The petitioner was, therefore, as already indicated above, held liable to pay, in all, a sum of Rs. 8,02,281/- as total liability of the said 16 numbers of consignments, the taxable liability being Rs. 2,67,427/- and another sum of Rs. 5,34,854/- being composition amount. A notice of demand, in terms of Section 25 of the Tripura Sales Tax Rules, was accordingly raised by the Superintendent of Taxes.

WP(C) No. 170/2005:

8. By order, dated 22.10.98, the petitioner, which is a registered partnership firm, was directed by the Superintendent of Taxes, Charge IV, Kailasahar, Agartala, to deposit a sum of Rs. 5,23,011/- on the ground that the petitioner, as a "transporter", had delivered as many as 16 numbers of consignments of taxable goods, on being imported into the State of Tripura, without declaration form, as is required to be given in Form No. XVIII, and that the petitioner had failed to maintain a Register, in Form No. XXII, reflecting true and correct account of every consignment of goods imported into Tripura and delivered by the petitioner, as "carrier" or "transporter", to the consignee, and the petitioner has, thus, committed offences under Sections 29(4), 29(5), 29(6) and 29(12) of the TST Act. The taxable liability of the said consignments were assessed at Rs. 1,74,337/- and another sum of Rs. 3,48,674/- was assessed as composition amount of the offences committed u/s 29. As reflected by the proceedings, recorded in the order, dated 22.10.1998, aforementioned, pursuant to reasonable opportunity given to the petitioner to satisfy the authorities

concerned by producing relevant materials that no such offences, as alleged, had been committed by the petitioner, the Superintendent of Taxes concluded that the petitioner, as a "transporter", having not been able to produce requisite materials, shall be held to have committed offences under Sections 29(4), 29(5), 29(6) and 29(12) of the TST Act. The proceedings, as recorded in the impugned order, 22.10.1998, further reflect that according to the Superintendent of Sales Tax, the petitioner's representative was informed about the provisions of Section 32 of the TST Act, relating to composition of offences committed under the penal provisions aforementioned, and, on being so informed, the petitioner's representative, as a "transporter", admitted guilt and opted to compound the offences instead of facing prosecution and incurring punishment. The petitioner was, therefore, as already indicated above, held liable to pay, in all, a sum of Rs. 5,23,011/- as total liability of the said 16 numbers of consignments, the taxable liability being Rs. 1,74,337/- and another sum of Rs. 3,48,674/- being composition amount. A notice of demand, in terms of Section 25 of the Tripura Sales Tax Rules, was accordingly raised by the Superintendent of Taxes.

9. With the help of these writ petitions, made under Article 226 of the Constitution of India, the petitioner has put to challenge the impugned orders aforementioned, which have been passed by the Superintendent of Taxes and also the notices of demands raised in these cases as orders passed, and notices issued, without authority of law.

Respondents' Case:

10. The petitioner has delivered taxable consignments without requisite permit as is required under the TST Act, 1976, and the Rules framed thereunder. It is for transportation of such taxable consignments and delivery thereof to the consignor/consignee that notices were issued to the petitioner as to why the petitioner shall not be proceeded against for transportation of taxable consignments without obtaining requisite permits and thereby helping evasion of tax. The representative of the petitioner appeared before the Superintendent of Taxes concerned and, despite obtaining time, failed to produce necessary documents to support transportation and delivery of the said consignments with requisite permits. In such circumstances, the petitioner's representative was informed by the authority concerned that the petitioner's acts and omissions were punishable under Sections 29(1), 29(4), 29(5), 29(6), 29(12) and Section 30 of the TST Act, 1976. The representative of the petitioner informed the authorities concerned that the petitioner was not willing to face prosecution and incur punishment and, therefore, opted for composition. As the petitioner's representative opted for composition, the impugned orders were passed against the petitioner firm and in terms of the orders, which were so passed, the notice of demands were duly issued. The orders, impugned in these writ petitions, and the notices of demands are wholly in accordance with law and may not, therefore, be interfered with.

Submissions:

11. I have heard Mr. Somik Deb, learned Counsel, for the petitioners, and Mr. NC Paul, learned Government Advocate, appearing on behalf of the respondents.

12. Appearing on behalf of the petitioners, Mr. Somik Deb, learned Counsel, has submitted that the demand for payment of tax and also the composition amount, in the present cases, are wholly without jurisdiction inasmuch as the petitioner, being a "transporter", cannot be treated as a "dealer" and could not have, therefore, been directed to make payment of the taxable liability of the "dealer" of the goods, which the petitioner, as a "transporter", had allegedly carried. This apart, the submission of Mr. Deb is that contrary to what has been recorded in the impugned orders of assessment, the petitioner's representative never opted to compound the alleged offences and, under the scheme of the TST Act and the Rules framed thereunder, unless a person, who may be prosecuted, opts to get the offence, if any, committed by him compounded in order to avoid his prosecution, no authority is derived by the authorities concerned to compound the offence. In other words, according to Mr. Deb, the petitioner's representative had not opted for composition and, in such circumstances, no order, such as the impugned ones, could have been passed compounding the offences allegedly committed by the petitioner.

13. It is the submission of Mr. Deb that the liability to pay tax is on a "dealer" and unless a person falls within the definition of "dealer", as given in Section 2(b) of the TST Act, he does not become amenable to Section 3, which is the charging Section, and unless a person falls within the ambit of Section 3 (which is the charging Section), no taxable liability can be imposed on him and he cannot be made to pay, directly or indirectly, anyone else's tax liability.

14. Drawing attention of this Court to the definition of "dealer", as given in Section 2(b), Mr. Deb submits that a "transporter" does not fall within the definition of "dealer" inasmuch as he does not sell or purchase any goods, taxable or non-taxable, and unless a person sells or purchases taxable goods, he cannot be treated as a "dealer".

15. Section 32, according to Mr. Deb, cannot be applied to a "transporter" inasmuch as the provisions for composition of offence, u/s 32, require payment of tax by the person, who opts for composition, and since a "transporter" is not a "dealer", he is not liable to pay sales tax and, hence, there is no question of his opting to compound any offence(s) under the TST Act and, consequently, he can also not be made liable to pay tax by taking recourse to Section 32.

16. What, in effect, Mr. Deb submits is that tax is to be paid by a "dealer" as defined in Section 2(b) and since a "transporter" does not fall within the definition of "dealer", the question of applying to a "transporter" the provisions of Section 32, which embodies provisions for composition of offences, does not arise and he, as a "transporter", cannot be made liable to pay tax by taking recourse to Section 32, when he is, otherwise, not a "dealer" and not being a "dealer", does not have, in the light of the provisions of Section 3, the liability to

pay tax.

17. Referring to the provisions of Section 13-A, which has been introduced by Tripura Sales Tax (Eighth Amendment) Act, 2000, with effect from 20.8.2000, Mr. Deb submits that it is Section 13-A, which has, for the first time, made the provisions for imposition of liability to pay tax on the "transporter" if the "transporter" has delivered taxable goods to any person without obtaining permit from the "dealer" or if the "transporter" has concealed actual number of consignments transported by him. This apart, contends Mr. Deb, Section 13-A has also made provisions for imposing penalty on "transporter" inasmuch as Section 13-A has provided that if the Commissioner is satisfied that any "transporter" has delivered taxable goods to any person without obtaining from the "dealer" a copy of the valid permit or if the "transporter" has concealed actual number of consignments transported, then, the Commissioner may direct such "transporter" to pay, in addition to tax, by way of penalty, a sum, which may extend to 150% of the tax involved.

18. Before Section 13-A came to be introduced, points out Mr. Deb, the provisions, as regard penalty for concealment of turnover and evasion of tax by a "dealer", did exist in Section 13, but Section 13 was applicable to "dealers" only and, consequently, no liability to pay tax, u/s 13, could have been imposed on a "transporter". It was in order to remove this difficulty or deficiency in the scheme of the statute, in question, that Section 13-A was, contends Mr. Deb, introduced so that the State can realize the tax evaded by a "dealer" by recovering not only the tax, but also penalty from the "transporter", who had transported such taxable goods and helped thereby evasion of tax by a "dealer". Thus, the purpose of introducing Section 13-A, according to Mr. Deb, was aimed at enabling the State realize, from the "transporter", not only penalty for helping the "dealer" in evading tax, but also recovering, from the "transporter", such sum, which was not the taxable liability of the "transporter", but of the "dealer".

19. In other words, Mr. Deb's contention is that the provisions, as contained in Section 13-A, had to be introduced in order to enable the State impose taxable liability and penalty on a "transporter" if he helps in evasion of tax, Haydon's rule, as propounded in Heydon's case (1584) 3 Co. Rep 7a, is, according to Mr. Deb, squarely applicable to the case at hand inasmuch as it was the defect, shortcoming or mischief with which Section 13 suffered from that Section 13-A has been introduced so that the tax, which was not, otherwise, recoverable from a "transporter", can be recovered from the "transporter" by making him pay for the taxable liability of the dealer, who evaded payment of tax and whose evasion of tax was helped by the "transporter". Mr. Deb submits that in order to make these provisions of recovery more rigorous that the provisions for imposition of penalty on the "transporter" to the extent of 150% of the tax involved have been made in addition to the taxable liability. In support of his submission that Hayden's Rule is attracted to the case at hand, Mr. Deb has referred to Ameer Trading Corporation Ltd. Vs. Shapoorji Data Processing Ltd., and Collector of

Central Excise, Ahmedabad Vs. Orient Fabrics Pvt. Ltd., The State, contends Mr. Deb, cannot, therefore, in the present cases, realize, by taking recourse to Section 32, taxable liability of the "dealer" in respect of a transaction, which had taken place, when Section 13A was not in the statute book. Mr. Deb also contends that in respect of a transaction, which had taken place before 20th of August, 2000, (when Section 13-A was not in force), the question of applying Section 32 and thereby imposing, on the "transporter", the liability to pay tax or penalty or both did not arise at all. In the present case, therefore, submits Mr. Deb, the impugned orders and the notices of demands were wholly without jurisdiction and may not be sustained.

20. Opposing the submissions made on behalf of the petitioners, Mr. NC Paul, learned Government Advocate, has submitted that Section 32 gives ample jurisdiction to the Commissioner to compound offences committed u/s 29 and thereby realize from a "transporter" the tax, which was, otherwise, payable by the "dealer", but cannot be realized due to concealment of the fact of transportation of taxable consignments by the "transporter" as well as the "dealer", whose taxable consignment had been transported by the "transporter". In the present cases, contends Mr. Paul, the petitioners' representatives had opted for composition in order to avoid prosecution and it was in such circumstances that the offences were compounded and the impugned orders were passed. Such orders, reiterates Mr. Paul, were wholly within the jurisdiction of the taxing authority and, hence, the orders may be maintained.

21. Controverting the submissions, made on behalf of the State, Mr. Deb further submits that even after Section 13-A has been introduced, the State cannot impose payment of liability of tax on the "transporter" inasmuch as the liability to pay tax, u/s 3, still remains on the "dealer" alone and the "transporter", not being a "dealer", cannot be saddled with the liability to pay tax and, it is for this reason, that the vires of Section 13-A has been put to challenge in a number of other writ petitions, which are pending in this Court. Notwithstanding the challenge to the constitutionality of Section 13-A made in some writ petitions, Mr. Deb concedes that in the case at hand, there is no impediment in deciding the question as to whether Section 32 could have been resorted to in the case of a "transporter" as have been done in the present cases.

Analysis:

22. The controversy, raised in this set of writ petitions, calls for a careful analysis of the relevant provisions of the TST Act and the Rules framed thereunder and also the scheme of legal obligations cast on a "transporter" and consequences flowing from the contravention thereof.

23. There can be no doubt, as contended by Mr. Deb, that Section 13 imposes taxable liability only on a "dealer" and on none others. It is also true that a "transporter" does not fall within the definition of "dealer" as given in Section 2(b). The question, therefore, which arises for determination, is : Whether

Section 29, which creates offences and provides punishment for such offences, can be applied to a "transporter". This would, obviously, require examination not only of Section 29, but also of, at least, some of those provisions, which impose certain obligations on a "transporter".

24. Let me point out, at the very outset, that a "transporter", according to Section 2(p), which has been introduced by Tripura Sales Tax (Eighth Amendment) Act, 2000, means a registered transport company, a carrier or a transporting agent, operating transport business, in Tripura, in taxable goods. As already indicated above, the definition of "transporter" has been introduced in the Tripura Sales Tax Act (Eighth Amendment) Act, 2000, on 20.8.2000.

25. Before coming into force of Tripura Sales Tax (Eighth Amendment) Act, 2000, the definition of "transporter" did not exist in the statute, in question. In view of the fact that in the case at hand, we are confronted with a situation, where we have to determine the application of Section 32 to the case of a "transporter", we have to, first, ascertain as to what the expression "transporter", used in the TST Act, conveyed during the period, when the expression "transporter" had not been specifically defined in the statute. Obviously, in such circumstances, the word "transporter" has to be given its ordinary meaning. According to the Concise Oxford Dictionary (Eighth Edition), a "transporter" means (1) a person or device that transports, (2) a vehicle used to transport other vehicles or large pieces of machinery, etc., by road. According to Chambers English Dictionary (Deluxe Edition), a "transporter" means someone or something that transports, esp. a large vehicle for carrying heavy goods. Webster's New English Twentieth Century Dictionary (Second Edition) defines the word "transporter", as one, who or that which transports or removes. Thus, the word "transporter" means, inter alia, a person, who transports.

26. Before proceeding further, let me take note of Section 30 of the TST Act. Section 30 reads:

30. False statement in declaration:

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

27. From a bare reading of the provisions embodied in Section 30, it becomes clear that while making any statement in a proceeding under the TST Act, "whoever" makes a statement, which is false and which he either knows or believes to be false, or knows or believes to be false, or does not believe to be true, shall be punishable, on conviction before a Judicial Magistrate, with simple imprisonment, which may extend to six months or with fine, which may extend to one thousand rupees, or with both. In short, while verifying or declaring a

fact, in any proceeding, under the TST Act, "whoever" makes a statement, which is false and which he either knows or believes to be false, or knows or believes to be false, or does not believe to be true, commits an offence u/s 30 and is liable to be punished accordingly.

28. The question, therefore, is as to whether the expression "whoever", appearing in Section 30, could have validly included, within its fold, a "transporter", when Section 13-A did not exist on stature.

29. Similarly, the question, which stares at us, is; whether Section 29, which provides for offences and penalties, apply exclusively to dealer or, whether a "transporter" was also covered by the penal provisions, contained u/s 29?

30. It may, now, be noted that Sub-section (1) of Section 29 stands divided into several clauses; Clauses (4), (5), (6) and (12) are of relevance to our case. Section 29(1)(4) provides that "whoever" fails, when required by, or under the provisions of the TST Act, to produce any accounts, evidence, or documents, or to furnish any information, shall, on conviction before a Judicial Magistrate and in addition to any tax including interest, if any, or penalty or both that may be due from him, be punishable with imprisonment, which may extend to six months or with fine not exceeding one thousand rupees or with both, and when the offence is a continuing one, with a daily fine not exceeding fifty rupees during the period of continuance of the offence. Similarly, Section 29(1)(5) lays down that "whoever" fails, or neglects, to comply with any requirement made of him under the provisions of the TST Act, shall, on conviction, be liable for punishment to the same extent as a person, who commits an offence u/s 29(1)(4). Moreover, Section 29(1)(6) lays down that "whoever", knowingly produces incorrect accounts, register or document or knowingly furnishes incorrect information, shall be liable for punishment to the same extent as a person, who commits an offence u/s 29(1)(4). Further more, "whoever" aids or abets any person in the commission of any offence, specified in Clauses (1) to (11) of Section 29, shall be punished, according to Section 29(1)(12), to the same extent as prescribed in respect of offences, which fall under various clauses of Sub-section (1) of Section 29.

31. Thus, while the failure to produce any accounts, evidence or documents, or to furnish information, has been made an offence u/s 29(1)(4), the failure or neglect to comply with any of the requirements made under the provisions of the TST Act has been made an offence u/s 29(1)(5). Similarly, while the act of knowingly producing incorrect accounts, register or documents or the act of knowingly furnishing any incorrect information has been made an offence u/s 29(1)(6), the act of aiding or abetting any of these offences are punishable u/s 29(1)(12).

32. For the purpose of finding out a correct answer to the question as to whether Clauses (4), (5), (6) and (12) of Sub-section (1) of Section 29 or whether Section 30 could have been applied to a "transporter" before Section 13-A came

to be introduced, let me refer to some of those provisions if the TST Act and the Rules thereunder, which had imposed legal obligations on the "transporters", even before Section 13-A was introduced. My search for some of the prominent provisions, contained in the TST Act and the TST Rules, which impose certain obligations on the "transporters", bring me, first, to Section 36-A, which was introduced by Tripura Sales Tax (Third Amendment) Act, 1984 Section 36-A reads as under:

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

33. A bare reading of Section 36-A shows that Section 36-A imposes an obligation on a "transporter", "carrier" or "transporting agent" to maintain proper account of goods, which "transporter", "carrier" or "transporting agent", as the case may be, moved, transported to, or outside, Tripura. Section 36-A further requires a "transporter", "carrier" or "transporting agent", to furnish, on demand made by the Commissioner, such information as the Commissioner may require as regards transportation of the goods. Section 36-A further makes it an obligation of a "transporter", "carrier" or "transporting agent" to produce the books of accounts for inspection and examination by the Commissioner if so demanded by the Commissioner.

34. In the backdrop of the above statutory obligations, which Section 36A imposes on a "transporter", when one dispassionately reads the? penal provisions contained in Sections 29(1)(4), 29(1)(5), 29(1)(6), 29(1)(12) and Section 30, what becomes transparent is that the expression "whoever", occurring in these provisions, was, and still remains, squarely applicable to even a person, who, in the ordinary sense of the term, functioned as a "transporter" by carrying taxable goods from one place to another either on its import into the State of Tripura or while exporting such goods outside Tripura or transporting such goods from one place to another on its import in the State of Tripura. Thus, violation of an obligation, cast on a "transporter" by the TST Act and the Rules framed thereunder, constituted, in the past, and still constitute, offences and were accordingly punishable, and are still punishable, under Sections 29 and 30.

35. Thus, having been imposed the obligation to maintain accounts and furnish, in the prescribed form, such information as the Commissioner may require relating to transportation of goods and also having been imposed the liability to produce books of accounts for examination and inspection by the Commissioner, when Section 30 came to be attracted, the vires of Section 36-A was put to challenge in Tripura Goods Transport Association and Another Vs. Commissioner

of Taxes and Others, on the ground that the taxable liability under the TST Act being of the "dealer", no obligation to maintain accounts and/or furnish particulars, as required u/s 36-A, could have been imposed on a "transporter". These provisions, it was contended in Tripura Goods Transport Association (supra), were ultra vires the constitutional provisions. Similarly, and on the same reasoning, provisions of Sections 29 and 32 as well as Rules 46-A(3), 63-A and 63-A(2) were also challenged, in Tripura Goods Transport Association (supra), for, the resultant effect of such amendments was that those, who were working as "transporters" in Tripura, were required to obtain a certificate of registration and also to comply with various other formalities prescribed under the TST Act and the TST Rules with regard to, mainly, maintaining accounts, as prescribed, for carrying on transportation business. The Apex Court, however, in Tripura Goods Transport Association (supra), held these provisions as constitutional.

36. The ground of challenge, in Tripura Goods Transport Association (supra), was the legislative competence of the State Legislature to incorporate such provisions as aforesaid contending that such provisions of the statute and the rules were ultra vires Articles 14, 19(1)(g), 246, 264, 286, 300-A and 301 of the Constitution of India. The challenge was based on the ground that the members of the Tripura Goods Transport Association are mere "transporters" and not "dealers" within the meaning of Section 2(b) and, hence, the obligations, which the TST Act and the TST Rule cast on them, were beyond the competence of the State Legislature inasmuch as no such obligation can be cast on a person other than a "dealer". The Apex Court, however, held the impugned provisions to be valid pieces of legislation. The appeal was accordingly dismissed. Amongst others, Section 38-B was upheld, which requires every transporter, carrier or transporting agent, operating his business, relating to taxable goods, in Tripura, to obtain a certificate of registration, in prescribed manner, from the Commissioner of Taxes on payment of such fees as may be prescribed.

37. Having analyzed the provisions of the TST Act and the Rules framed thereunder, and by taking into account the entire scheme of imposition of tax, recovery thereof, penalty for evasion etc., the Apex Court pointed out, in Tripura Goods Transport Association (supra), that the impugned provisions were not charging provisions and no liability to pay tax was placed on the "transporters". The Apex Court pointed out that neither Sections 29, 30, 32, 36-A nor Rules 46-A, 63-A and 64-A lack legislative competence inasmuch as these provisions, according to the Court, in Tripura Goods Transport Association (supra), fell within the legislative competence of the State under Entry 54 of List 2 of the VIIth Schedule.

38. The Apex Court pointed out that whenever any goods are sold or purchased inside or outside a State, the incidence of tax and the quantum of tax have to be ascertained under the relevant provisions of the taxing statute and it is necessary, for this purpose, not only to fix a "dealer" and "taxable goods", but also place of sale or purchase of goods and the quantum of tax. If a "dealer",

involved in the transaction of sale, or purchase, of taxable goods, escapes attention of the taxing authority, the result would be that tax on such goods would not be paid or recovered causing thereby loss to the revenue. To oversee such possible escape, pointed out the Apex Court, in Tripura Goods Transport Association (supra), a mechanism is invariably drawn in a statute to deal with such loopholes by casting obligations on some persons to perform certain acts so as to ensure that no tax liability of a dealer escapes notice of the taxing authority.

39. Thus, according to the Apex Court, in Tripura Goods Transport Association (supra), the provisions as regards maintenance of accounts, in prescribed form, in respect of goods transported into, or outside, Tripura, and the provisions as regard furnishing of, in the prescribed manner, such information, as the Commissioner requires, including filing of form XXIV, have been made in the TST Act and the TST Rules. The sole object of all these provisions is to ensure that no tax evasion takes place. The obligation on the transporters, which the provisions, contained in the TST Act and TST the Rules, impose, are meant for identifying the consigner or consignee so as to fix their taxable liability.

40. The Apex Court pointed out, in Tripura Goods Transport Association (supra), that these provisions help the taxing authorities in the collection of taxes. The Apex Court also pointed out that if such an obligation is not cast on the transporters, then, any dealer, under a false name, can dispatch taxable goods to another person, through a transporter, evading sales tax liabilities on such goods. The Apex Court further pointed out that incorrect and incomplete declaration, in the forms, such as Form XXIV, if not made punishable, would defeat the very purpose of enacting these provisions and would help unscrupulous dealers escape their liability to pay tax. According to the Apex Court, in Tripura Goods Transport Association (supra), each of these provisions stood introduced for the purpose of ensuring that no evasion of tax takes place.

41. Coming to Section 36-A, the Apex Court pointed out that the maintenance of accounts by the transporters, u/s 36-A, was to help taxing authority trace the dealer, fix the goods transported and thereby impose taxable liability on the dealer. There is no provision, held the Apex Court, in the TST Act and the TST Rules, which fixes any liability on a "transporter", to pay tax, which a dealer is, otherwise/liable to pay. The Apex Court observes, in Tripura Goods Transport Association (supra), that the liability of transporter, carrier or transporting agent arises only when he does not disclose what is required and what is within his knowledge so as to help the taxing authority collect tax.

42. Categorically held the Apex Court, in Tripura Goods Transport Association (supra), that the expression, "whoever", which occurs in Section 29, would obviously include not only dealers, but also nor, dealers. The Apex Court pointed out that if a transporter does not discharge his legal obligations, as have been cast on him under the TST Act and the TST Rules, then, he commits an offence u/s 29 and he becomes liable for punishment, which is a legitimate tool in the hands of the State. The Apex Court reiterates that the sole object of putting

obligations on the transporters to fill up forms, maintain accounts, etc., is to ascertain a consigner or consignee of taxable goods, which the transporter may have carried. Such a requirement has no co-relation with the sale and/or purchase of goods nor is the discharge of such obligation by a transporter would make him a dealer.

43. Similarly, Section 30, points out the Apex Court, in Tripura Goods Transport Association (supra), creates offence only when false declaration is made in connection with any proceedings under the Act, and the person ("whoever" such person may be), making such a statement, either knows or believes the statement to be false or does not believe the statement to be true. Again, the conviction, u/s 30, is only for making false declaration, which is within the knowledge of the person, who makes declaration. How can such a provision constitute a ground for challenge to legislative competence, queried the Apex Court and answered by saying that these provisions are only aimed at ensuring that the correct statement of facts are brought out and one is punished only if he knows or believes a statement to be false, yet gives the statement as true or when a person does not believe to be true and yet he makes the statement to the contrary.

44. Bearing in mind the fact (as discussed above) that the TST Act and the Rules framed thereunder impose certain obligations on transporters aimed at checking evasion of tax and contravention thereof have been made offence by virtue of the provisions of Sections 29(1)(4), 29(1)(5), 29(1)(6), 29(1)(12) and Section 30, let us, now, turn to Section 32, which reads as under:

Section 32 :: Composition of offence:

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

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

(b) In any other case a sum of money not exceeding one thousand rupees in addition to tax recoverable

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

45. A patient reading of Section 32 shows that under Sub-section (1) of Section 32, a Commissioner may, before or after institution of a criminal proceeding under the TST Act, accept from the person, who has committed, or reasonably

suspected to have committed, an offence, under the TST Act and the Rules framed thereunder, by way of composition of such offence, where the offence consists of the failure to pay, or the evasion of, any tax recoverable under the Act, in addition to the tax including interest, if any, or penalty or both so recoverable, (a) sum of money not exceeding one thousand rupees or double the amount of the tax recoverable, whichever is greater, and, in any other case, (b) 7 sum of money not exceeding one thousand rupees in addition to tax recoverable.

46. Clause (a) of Sub-section (1) is clearly applicable to a "dealer" inasmuch as it is a dealer, who is liable to pay tax u/s 3 and it is he, who can be held responsible for evasion of tax. If a transporter or any other person helps such evasion of tax, such a person can be an abettor of evasion of tax, but cannot be brought within the scope of Clause (a); whereas Clause (b) applies to all other persons, who may help a dealer in evasion of tax. Considered thus, it becomes clear that to the case of a transporter, who may help in evading tax by a dealer by not discharging the obligations, which the TST Act and the Rules framed thereunder have imposed on him, Clause (b) of Sub-section (1) of Section 32 would be attracted. Sub-section (2) of Section 32 makes it clear that when an offence is compounded either in terms of Clause (a) or Clause (b) of Sub-section 32, no further proceeding can be initiated against the offender in respect of the offence, which has been compounded.

47. What emerges from an analytical study of the provisions, contained in Section 32, is that a transporter is not made liable to pay tax as a dealer inasmuch as Section 32 does not impose any taxable liability on a transporter as a dealer; rather, what Section 32 does is that it gives an escape route to a transporter, when he has committed an offence, by offering to compound the offence on payment of a sum of money not exceeding Rs. 1000/- in addition to tax recoverable from the dealer, whose consignment the transporter had transported or carried without discharging his obligations under the TST Act and the Rules framed thereunder. The Supreme Court has, therefore, in Tripura Goods Transport Association's case (supra), pointed out that u/s 29 and Section 30, since the offences, committed by a transporter, are relatable to checking of evasion of tax, composition of offence u/s 32 would also confine itself within this sphere. In no way, any of these provisions place any liability on the transporter, which is, otherwise, on a dealer under this Act. Similarly, as aforesaid, the maintenance of account by the transporters, carriers or transporting agent, u/s 36-A, is only to help the authorities concerned in checking evasion of tax. This does not put, according to the Supreme Court, in Tripura Goods Transport Association's case (supra), any such obligation on the transporter, which can make one hold that these provisions transgress the legislative competence of the State Legislature.

48. Similarly, by virtue of Section 38(2) read with Rule 46-A, a transporter is required to disclose, at the check-post, by way of filling up Form No. XXIV,

complete accounts of the goods carried by him. This form requires the transporter to disclose the name and address of the consigner, whether a registered dealer or not, place of dispatch and destination of goods, lorry number, description of consignment, quantity, weight, value, consignor's invoice number and date, railway receipt or bill of lading, and in case goods are sent outside the State, the permit number and date authorizing such export under Rule 47-C. Though the obligations, (which were so imposed on the transporters or carriers, by means of Section 38(2) read with Rule 46-A), had been challenged, in Tripura Goods Transport Association's case (supra), as unconstitutional, the Apex Court reiterated that these provisions too are aimed at checking evasion of tax and since the information, which a transporter is required to provide as regards the quantity, weight and value of the goods, would be based on the documents and papers, etc., as may have been disclosed to him by the consigner, he cannot be said to have committed an offence u/s 30 if the information, given by the transporter, turns out to be incorrect. The Apex Court pointed out that Section 30 did not, in fact, make an incorrect information, given by a transporter, an offence. What, rather, Section 30 makes an offence is when a transporter gives an information or declaration, which is false and which he either knows or believes to be false, or does not believe to be true. The fear, therefore, which had been expressed by the transporters, in Tripura Goods Transport Association's case (supra), was allayed by the Apex Court as unfounded and meaningless.

49. Turning to Rule 63-A, one may note that Rule 63A empowers the Officer-in-Charge of a check-post, or Superintendent of Tax, or any other officer, empowered in this behalf, to search the vehicles, which pass a check barrier, and Sub-rule (1-A) of Rule 63 empowers such an officer to seize such goods if such goods are found being carried without requisite documents, which are required to be produced at the check post or barrier. Sub-rule (3) of Rule 63-A provides, "On search, as aforesaid, if it is found that the goods are being carried in contravention of any provision of the Act, or the Rules, such Officer conducting search may seize the goods found in the vehicle along with any container or materials used for packing."

50. Dealing with the provisions of Sub-rule (3) of Rule 63-A, the Apex Court upheld these provisions meaning thereby that a transporter, even before Section 13-A came to be introduced by way of TST (Eighth Amendment) Act, 2000, was liable to be prosecuted for commission of offences u/s 29 and Section 30 and a transporter, who becomes so liable for prosecution, has and always had the option to offer to compound such offence(s) in terms of Section 32. While upholding these provisions in Tripura Goods Transport Association (supra), the Apex Court pointed out: "Every taxing statute has charging sections. It lays down the procedure to assess tax 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." The Apex Court laid down, in no uncertain words, that the impugned provisions are not charging provisions and no tax liability is placed on the transporters and that the obligation, cast on the transporters, are aimed at checking evasion of tax and if these legal obligations are not discharged by the transporters or if the transporters contravene these provisions, they expose themselves to prosecution for offences u/s 29 and Section 30 and such offences can be compounded by the transporters if they so opt. These legislative provisions were held by the Apex Court as valid pieces of legislation. The Apex Court has, therefore, pointed out, referring to Sub-rule (1-A) of Rule 63-A, that when the goods are seized, Sub-rule (3) of Rule 63A gives an option to the transporter(s), if the transporter so desires, if he happens to have been carrying the goods in contravention of the TST Act and the TST Rules, to opt for composition of offences. Mr. Deb's contention, therefore, that without the aid of Section 13A, which has been introduced in the statute as late as on 28.2.2000, a "transporter" could not have been, by way of composition of offence, saddled with the liability to pay such sum, as may be payable by the "dealer" in respect of the taxable consignment, which the "transporter" has transported, is wholly misplaced. Haydon's rule will apply, only when the question of applying Section 13-A to the facts of a given case arises and not when Sections 29, 30 and 32 are sought to be applied. As to when Section 13-A can be resorted to, or be applied, is an aspect, which I would deal with a little later.

51. In the light of what has been discussed above, the mechanism, which the TST Act and the TST Rules conceives, is correct maintenance of accounts by the transporters so that the taxing authorities, with the help of the provisions of the statute and the rules framed thereunder, can trace the "dealer" and fix taxable liability on him. There is, reiterates the Apex Court, in Tripura Goods Transport Association (supra), no provision, which fixes any such liability on the transporter or carrier, which is on a "dealer". The liability arises, if at all, when such transporter or carrier does not disclose what is required and what is within his knowledge so as to help the authorities collect the tax. No wonder, therefore, that Section 29 speaks of the offences, which may be committed by both, "dealers" as well as "non-dealers", and that is why, it opens with the word, "whoever".

52. In *Commercial Tax Officer and Ors. v. Swastik Roadways and Ors.* (2004) 3 SCC 640, the provisions of Sections 57, 58 and 59 of the Madhya Pradesh Commercial Tax Act, 1994, were put to challenge. As per the provisions, contained in Sections 57, 58 and 59, the clearing and forwarding agents (in short, "C&F agents") were required to furnish information, including statement of accounts, to the Commissioner, if required by the Commissioner, in respect of transaction of any dealer with them. By virtue of Sub-section (2) of Section 56 of the said Act, penalty was provided if there was a failure, on the part of the C&F

agent, to furnish such information as the Commissioner was entitled to obtain from them. Section 58 provided the mechanism for control of the tax authority on the functions of the C&F agents so as to prevent or check evasion of tax. Same as the present case, it was contended, in *Swastik Roadways (supra)*, that by virtue of the provisions, contained in Sections 57, 58 and 59, the C&F agents were sought to be treated as dealers and, consequently, penalized, though they had nothing to do with the sale and/or purchase of the goods and with the evasion of tax by their principal. The Madhya Pradesh High Court, relying upon the decision, in *State of Haryana and Others Vs. Sant Lal and Another*, , upheld the contention. It was contended also before the Supreme Court, on behalf of the C&F agents, in *Swastik Roadways (supra)*, that by virtue of Section 57(2), which imposes penalty if a C&F agent fails to furnish requisite information, the State was seeking to levy and recover tax on the sale of goods, in the form of penalty, from the C&F agents, who had no connection with the sale and/or purchase of goods or payment of tax thereon. The Apex Court observed, in *Swastik Roadways (supra)*, that it found no merit in the arguments of the defence. The Apex Court pointed out that the power to levy a tax includes all incidental powers to prevent 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, according to the Apex Court, in *Swastik Roadways (supra)*, 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. The information, sought u/s 57(1) and the maintenance of register u/s 58, will, therefore, help, according to the Supreme Court, in *Swastik Roadways (supra)*, the Revenue tax authorities 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 payment of sales tax under the Act, does not escape. Under various Sections of the Act, pointed out the Supreme Court, in *Swastik Roadways (supra)*, tax-evaders are sought to be penalised and by contravening the provisions of Sections 57 and 58, a clearing and forwarding agent also becomes liable as he facilitates such tax evasion. In the circumstances, the High Court, observed the Apex Court, in *Swastik Roadways (supra)*, erred in holding that there was no proximate connection between the clearing and forwarding agents, on the one hand, and the tax evasion, on the other.

53. Dealing with the merit of the contention of the respondents, in *CTO v. Sivastik Roadways (2004) 3 SCC 640*, that since the basis of penalty was three times the tax evaded by the owner or dealer, Section 57(2) falls beyond the ancillary power to levy tax on the sale or purchase of goods, the Apex Court justified such stringent provisions by holding that such provisions were necessary for, and aimed at, checking tax evasion. In this regard, the Apex Court observed, in paragraph 12 of its decision, thus:

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 has he any authority to sell or purchase. In our view, the basis of penalty was three times the amount of tax evaded by the dealer. This basis was a measure or 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 Assessing Authority concerned has to necessarily record a finding to this effect before levying penalty u/s 57(2).

(Emphasis is added)

54. In A.B.C. (India) Ltd. Vs. State of Assam and Another, , premises of the appellant-company, who carried on the business of transportation on behalf of his customers throughout the country, were searched by the officers of the Sales Tax Department, Government of Assam. Following the search, notice was issued to the appellant to produce documents so as to satisfy the taxing authorities about proper accounting of the goods seized. The appellant filed a writ petition, in this High Court, challenging the legality of one of such notices and also challenging the constitutionality of Sections 42 and 44 of Assam General Sales Tax Act, 1993 (in short, "the AGST Act"). A learned Single Judge allowed the writ petition and held the provisions, made in Sections 42 and 44, ultra vires. A Division Bench reversed the decision. The company, then, filed an appeal by Special Leave. u/s 42, obligation was cast on every clearing, booking or forwarding agent or any other person transporting goods, who, during the course of his business, handles documents of title to goods for or on behalf of any dalal or a person holding certificate u/s 14, to furnish to the prescribed authority true and complete particulars and information and to maintain true and complete accounts, registers, documents, etc. The said Section also provides for levy of penalty at the rate of three times of tax calculated on the value of the goods in respect of which no particulars or information has been furnished under Sub-section (1) of Section 42 of the Act or no cash memo or bill or challan has been produced before the prescribed authority under Sub-section (3) or rupees one thousand, whichever is greater.

55. Section 44 of the AGST Act (since stands repealed) empowered any authority, appointed u/s 3(1) of the AGST Act, if he had reason to suspect that any "dealer" was attempting to evade tax or that any person was transporting goods or any other person had kept his accounts in such a manner as was likely to cause evasion of tax payable under the AGST Act, to seize, for reasons to be

recorded in writing, such accounts and registers or documents. Power had also been given to the authority, appointed u/s 3(1) of the AGST Act, to enter into and search any place of business of any "dealer". The said Section empowered the authority, under Clause (b) of Sub-section (5) of Section 44 of the AGST Act, to impose a penalty equal to three times the amount of tax calculated on the value of such goods and to release the goods as soon as the penalty was paid in case the "dealer" or the person in-charge of the goods failed to produce any evidence or satisfy the said authority regarding the proper accounting of the goods.

56. The appellant, in A.B.C (India) Ltd. (supra), had challenged the validity of Sections 42 and 44 and also the impugned assessment contending that the "transporters" were not "dealers" within the meaning of Sections 42 and 44 of the AGST. Act and, hence, no obligation could have been imposed on them to maintain the documents, such as, registers, cash memos, challans, etc., as required u/s 44 of the AGST Act nor any provisions, imposing penalty and punishment for non-compliance with the same, could have been made and the same was beyond legislative competence. Firmly turning down these contentions, held the Supreme Court, in A.B.C. (India) Ltd. (supra), thus:

21. ...In our view, u/s 42 of the Act, it is an obligation on every clearing, booking or forwarding agent or any other person transporting goods-who during the course of its business handles documents of titles to the goods for or on behalf of any "dealer" or person holding certificates u/s 14 of the said Act to furnish to the prescribed authority true and complete accounts, registers, documents, etc. The said section also provides for levy of penalty at the rate of three times of tax calculated on the value of the goods in respect of which no particulars or information have been furnished u/s 42(1) of the Act or no cash memo or challan has been produced before the competent authority u/s 42(3) or Rs. 1000 whichever is greater. The said section empowers the appointed authority to enter and search any place of business of any "dealer" if he has reason to believe that any "dealer" is attempting to evade tax or that any person transporting goods for any other person has kept his accounts in such a manner as is likely to cause evasion of tax. As per the accepted norms of taxation the jurisdiction (sic) whatever is ancillary or subsidiary provision necessary for achieving, the object of a tax statute is covered by Entry 54 List II of the Seventh Schedule to the Constitution. The entries in the legislative list have a very wide meaning and scope and should have a broad interpretation so as to make provisions in the Act workable and in the interest of the Revenue. The obligation imposed upon the "transporters" under Sections 42 and 44 of the Act is also a part of such preventive measures against any evasion of taxes and the same should not be read in a narrow sense.

57. As regards the role of the transporters, the Apex Court, in A.B.C. (India) Ltd. Vs. State of Assam and Another, categorically held the transporters to be the part and parcel of sale : and/or purchase of goods and observed that the transporters

can also be made liable to pay a dealer's such taxable liability, which the transporter might have helped the dealer to evade. The relevant observations made by the Apex Court, in *A.B.C. India Ltd. (supra)*, read as under:

22. In our view, transporters are not strangers to the sale or purchase of goods, to the contrary are part and parcel and are directly involved in storing the goods purchased or sold by dealers, and in many cases such transactions are fictitiously carried on in false names and addresses besides false classifications vis-a-vis transportation of such goods in and outside the State making themselves party to the episode of such fictitious transactions for the sole purpose of evasion of tax by the dealers purchasing and selling such goods.

23. The judgment of this Court in *Tripura Goods Transport Assn. v. Commr. of Taxes* was cited before us. In that judgment, this Court has specifically held such agents transporting goods to be reasonably and proximately connected to the sale transaction and hence occasionally liable under the sales tax laws. It is pertinent to mention that this Court while considering Tripura case had taken into consideration the Judgment by this Court in the case of *State of Haryana v. Sant Lal*. The present case, in our view, is fully covered by the judgment rendered by this Court in Tripura case.

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26. Thus it is seen that Sections 42 and 44 of the Act do not impose any liability upon the transporter, carriers, etc. to pay any sales tax under the Act. The said sections are basically meant to check the tax evasion. Thus the requirement of maintenance of document and the certificate of registration by a transporter or any such agent is only for similar purpose as incorporated under Sections 36-A and 38-B of the Tripura Sales Tax Act, 1976 which has been held to be a valid piece of legislation by this Court in the case of *Tripura Goods Transport Assn. v. Commr. of Taxes*. In our view, the present case is fully covered by the said judgment of this Court.

58. Situated thus, what becomes crucial to remember is that Section 32 does not impose any liability to pay tax; what it does is that if a "transporter" or carrier or transporting agent commits an offence, he becomes liable for conviction u/s 29. If he opts for composition of the offence as provided in Section 32, he would become liable to pay sum(s) of money to the extent as Section 32 imposes on such a "transporter", carrier or transporting agent.

59. A careful analysis of Section 32 shows that though failure or evasion of tax can be compounded under Clause (a) of Sub-section (1) of Section 32, the act of aiding or abetting such evasion does not fall within Clause (a) of Sub-section (1) of Section 32. Except those cases, where the offence consists of failure to pay, or evasion of, tax recoverable under the TST Act, other persons, who commit any of the offences u/s 29, would fall under Clause (b) of Sub-section (1) of Section 32,

which provides for composition of offence by imposing liability to pay a sum of rupees one thousand "in addition to tax recoverable". Clause (b) does not impose any taxable liability on "transporter" nor does it create any charging provisions for payment of sales tax on the "transporter". What it does is that the amount, which is required to be paid as a taxable liability by a "dealer", makes recoverable from the "transporter" by taking resort to Clause (b) of Sub-section (1) of Section 32 if the "transporter" opts for composition of offence, which he has committed under any or all the clauses of Section 29 and u/s 30.

60. Apart from the fact that Section 32, despite being challenged, has been upheld, in Tripura Goods Transport Association (supra), the fact remains, (as can be seen on a microscopic analysis), that Clause (b) does not impose payment of tax on a "transporter". What it does is that the tax, which was payable by the "dealer", is made recoverable from the "transporter" if the "transporter", who has committed any of the offences u/s 29, opts for composition. It is one thing to say that statute imposes tax on a person and it is quite another that the statute makes it an offence for any person, who helps in concealment of a transaction of sale or purchase by a "dealer" or in concealment of taxable liability of a "dealer". Section 32 (1) (b) takes care of those cases, where a person, though not a "dealer", does an act or omit to do an act, which becomes an offence under any of the sub-section of Section 29 and u/s 30.

61. If no offence u/s 29 or Section 30 is committed, Section 32 cannot be applied. However, by virtue of Section 13-A, it is possible that even when a person has not committed an offence u/s 29 or even when such a person is not prosecuted u/s 29, the Commissioner may, in terms of Section 13-A, impose the liability, on the "transporter", to pay tax, which was liable to be paid on the consignment, in question, by the "dealer" and also impose, in addition to such liability to pay tax, penalty, which may extend to one hundred and fifty percent of the tax involved and the question of applying Heydon's rule would arise only when the provisions made in Section 13-A are sought to be taken recourse to by the Commissioner in order to make a "transporter" pay tax, which was, otherwise, payable on, the consignment, in question, by the "dealer". To the penal provisions of Sections 29, 30 and 32, Section 13-A has, therefore, no relevance

62. While the choice is with the "transporter" to opt or not to opt for composition of offence, when the "transporter" is sought to be prosecuted or may be prosecuted u/s 29 or Section 30, the fact remains that the quantum of amount, payable on such composition, is for the Commissioner to decide. Section 32 cannot be resorted to unless the person, who can be prosecuted or is being prosecuted, opts for composition.

63. What crystallizes from the above discussion is that when the State is vested with the power to impose tax, it will also be deemed to have all such ancillary or subsidiary power, which may become necessary for achieving the object of a taxing statute. The tax, which the TST Act and the TST Rules impose, is,

undoubtedly, traceable to Entry 54 List II of the Seventh Schedule to the Constitution. The power to impose tax carries with it the power to make all such regulatory measures as may be necessary in order to ensure that no tax escapes assessment. The statute may also provide for penalty to be imposed on a person, whose conduct helps in evasion of tax. When a "transporter" helps in evasion of tax by a "dealer", the penal provisions may impose a penalty to the extent of recovering an amount equivalent to the value of the taxable goods. The quantum of penalty may, in fact, be to the extent of tax recoverable or even far more than that. Such stringent provisions may be made in order not only to enable the State recover tax, but also deter persons from violating the provisions of the statute. No wonder, therefore, that Section 32 of the TST Act has provided for imposition of penalty at the rate of three times of tax calculated on the value of the goods. The provisions, so made in Section 32, were upheld in Triprura Goods Transport Association's case (*supra*). In such circumstances, and, particularly, when even Sections 29, 30 and 32 have been held to be within the legislative competence of the State, the impugned order, of assessment and the demand notices, which have been issued pursuant to the said orders of assessment, cannot be said to be without authority of law and would not, therefore, warrant interference by this Court.

64. In the present cases, apart from the fact that the composition amount could not be shown to be unreasonably high or oppressive, the impugned orders state that the petitioners had opted for composition of the offence under Sections 29(4), 29(5), 29(6) and 29(12). The petitioners, as "transporter", contend, at the time of hearing of these writ petitions, that they had not opted for composition. It, thus, becomes a disputed question of fact as to whether the petitioners had or had not, as a matter of fact, opted for composition. Such a disputed question of fact cannot be decided and determined in a writ proceeding, such as, the present one, and the resort, in such a case, must be taken by a person within the scheme of the statute itself. Considered in this light, it becomes clear that if it is the contention of the petitioners that they had not opted for composition, they have to take remedial option provided in the statute itself and not by way of a writ petition under Article 226 of the Constitution of India as has been done in the case at hand.

65. Because of what have been discussed and pointed out above, this Court finds no merit in this set of writ petitions. The writ petitions, therefore, fail and shall accordingly stand dismissed.

66. No order as to costs.