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(1969) 01 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jurisdiction Cases No''s. 520 and 759 of 1967 and 6 and 34 of 1968

Hansraj Bagracha and Others — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 04-01-1969

Acts Referred:
Bihar Sales Tax Act, 1959 — Section 3A, 42, 46, 46(1), 5A
Bihar Sales Tax Rules, 1959 — Rule 31B, 8C
Central Sales Tax Act, 1956 — Section 15
Constitution of India, 1950 — Article 301, 304

Citation : AIR 1970 Patna 59

Hon'ble Judges : S.C. Misra, C.J;B.D. Singh, J

Bench : Division Bench

Advocate : A.K. Sen, Dilkishore Prasad Singh, S.B. Sanyal, Braj Kishore Prasad No. 2, Choudhary, S.N. Mishra and Kamal Nayan Choubey, for the Appellant; A.G. and S. Sarwar Ali and P.K. Bose, for the Respondent

Final Decision : Dismissed

Judgement

B.D. Singh, J.—These four writ applications were heard together on the request of the parties because common questions of law are involved in all of them, and this judgment will govern all of them. The various petitioners are dealers in raw jute and they have filed applications under Articles 226 and 227 of the Constitution of India challenging Section 3A read with Sections 5A and 42 and 46 of the Bihar Sales Tax Act, 1959 (Bihar Act 19 of 1959) (hereinafter referred to as ''the Bihar Act'') and Rule 31B of the Bihar Sales Tax Rules, 1959 (hereinafter referred to as ''the Bihar Rules'') which rule was introduced after filing of the application in C. W. J. C. 520. During the pendency of the hearing of the applications the State of Bihar have further amended the Bihar Rules by inserting Rule 8C published in Notification No. LSH-2058/67-3482-F. T. issued by the State of Bihar in the Bihar Gazette dated the 6th of April 1968. The petitioners have challenged the said Rule 8C also.

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2. In order to appreciate the questions involved in these applications it will be necessary to summarise the facts mentioned in the application in C. W. J. C. 520. As indicated above, the petitioners are dealers in raw jute. In this application the business of Hansraj Bagrecha has been stated to be mainly of two categories, viz., (a) buying raw jute from the agriculturists or Farinas in West Bengal bringing it to Bihar at Kishanganj Railway Station and re-exporting it to West Bengal to the purchasers there who are either merchants or mill owners; and (b) buying goods from jute growers in Bihar and exporting it to the merchants or mill owners in West Bengal. Under the Bihar Act, which came into force with effect from 1-7-59, there was no provision for charging purchase tax from, the dealers in jute, but two new sections, namely, Sections 3A and 5A were introduced with effect from 1-4-67 by Sections 16 and 18 respectively of the Bihar Finance Act, 1966, and certain changes were also made in other sections like Sections 2 and 38 of the Bihar Act, Sections 3A and 5A run as follows :--

"3A. Goods liable to purchase tax --The State Government may from time to time, by notification declare any goods to be liable, to purchase tax on turnover of purchases :

Provided that general sales tax and Special Sales Tax shall not be payable on the sale of goods or class of goods declared under this section."

"5A. Point in the series of purchases at which purchase tax shall be levied.--The purchase tax on goods declared u/s 3A, shall be levied at the point of purchase made from a person other than a registered dealer."

By Notification No. 10523 FT. dated 14-9-66, which came into force from 15-9-66, the Governor of Bihar declared "jute" as liable to purchase tax at the rate specified in the notification. A copy of the said notification is marked as Annexure ''A'' to the application. However, by an order referred in letter dated 24-11-66 issued by the Government of Bihar in the Finance Department, the schemes of levy of purchase tax on jute was stayed (vide Annexure B).

Subsequently, the State of Bihar withdrew the stay order and decided to impose purchase tax on jute at the rate of 2 per cent to be realised from the first purchaser in the transaction. Accordingly the authorities of the Sales Tax Department sought to levy the purchase tax from 1-7-67. Thereafter the Superintendent of Commercial Taxes addressed letters to the Railway authorities, Kishanganj, prohibiting from loading of any goods or despatching them from any railway station within the Purnea district of Bihar, by making restriction on the ground that no despatches should be allowed to be made in fictitious or ''benami'' names, and in order to recognise a genuine trader, registration certificate issued by the Superintendent of Commercial Taxes should be taken as a vital proof and jute should be booked only on production of such certificate. Accordingly by a letter dated the 10th of July, 1967, the Station Master, Kishanganj informed the Secretary, Jute Merchants Association, Kishanganj, to produce the certificate before loading was commenced and also stated therein

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that in case of failure wagon allotted will be cancelled and the registration fee shall also be forfeited and necessary demurrage will be charged. A copy of the letter is marked Annexure D.

The petitioner also wanted to despatch jute and he requested the Railway authorities, Kishanganj to despatch the same, in specified form, which was refused by the letter with an endorsement which reads :

"In this connection a registration certificate issued by the Superintendent, Commercial Taxes, Purnea is required for the movement of jute from the place."

Hence, the petitioner has filed the aforesaid application, which was admitted on 1-9-67, wherein he has challenged the provisions contained in Sections 3A and 5A of the Bihar Act which have been quoted above, and has also challenged Rule 31B of the Bihar Rules which reads as follows :--

"31B. Conditions regarding despatch of certain class of goods -- (1) No person shall tender at any railway station, steamer station, airport, post office or any other place, whether of similar nature or otherwise, notified u/s 42, any consignment of such goods, exceeding such quantity, as may be specified in the notification, for transport to any place outside the State of Bihar, unless such person has obtained a despatch permit in Form XXVIIID from the appropriate authority referred to in the Explanation to Rule 31 and no person shall accept such tender unless the said permit is sur rendered to him.

(2) An application for the said permit shall be made in Form XXVIIIC, in triplicate, to the appropriate authority. The said authority shall, on receipt of such application and on being satisfied about the particulars furnished in triplicates countersign all the three copies of the application and prepare a permit in form XXVIIID. One copy of the countersigned application and the permit shall be retained by the said authority and the other two copies shall be returned to the applicant. The consignment shall, thereafter, be tendered accompanied with one copy of such application and permit for transport, at any place referred to in Sub-rule (1)."

He has also challenged the aforesaid Rule 8C which reads as follows :--

"8C. Determination of stage of levy of tax on purchases of declared goods. -- (1) The first purchase of goods declared u/s 14 of the Central Sales Tax Act, 1956, shall be leviable to tax in terms of sections 3, 3A and 5A of the Act and no subsequent sales or purchases in respect of the said goods shall be liable to any tax under the Act.

(2) A dealer who claims deduction from his gross turnover on the ground that the goods purchased by him are exempt by virtue of Sub-rule (1) shall produce evidence to the satisfaction of the prescribed authority."

On the main issue the question at the bottom is not one of refund of a wrong levy but of competence of the authorities concerned to demand or levy tax on

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inter-State sales or outside sales.

3. Mr. A. K. Sen, learned Counsel appearing on behalf of the petitioners in all the cases, has contended : (i) the levy of purchase tax on jute by Sections 3A and 5A of the Bihar Act contravenes Section 15 of the Central Sales Tax Act, 1956 (No. 74 of 1956) (hereinafter referred to as ''the Central Act'') inasmuch as it involves a multi-point tax on a declared commodity. Hence, he submitted that Sections 3A and 5A of the Bihar Act are void and inoperative, (ii) The purchase tax, even if valid, cannot be levied on outside sale and on purchases made in Bihar in the course of inter-State trade. (iii) The assessment was done" in any event without giving opportunity to the petitioner to prove that the transactions were outside sale and inter-State sale and not liable to tax. (iv) In cases where there is no assessment the demand for tax from these persons and directing them for getting themselves registered as dealers was illegal and void, (v) Rules 31B and 8C of the Bihar Rules are ultra vires and void because (a) they are in excess of Section 42 of the Bihar Act, and (b) they constitute unreasonable restriction on the freedom, of trade and commerce inter-State.

4. In order to support his above contentions he has submitted that the Bihar Act or the Rules made thereunder does not contain any provision for conveying information to every succeeding purchaser coming within a series of sales and purchases of declared goods, to know whether the purchase tax on the declared goods in question has already been paid or not, or accounted for in the return of a purchaser or not. He has drawn our attention to paragraphs 6 to 14 of the supplementary affidavit dated 25-9-68 sworn on behalf of the petitioners in C. W. J. C. 6 of 1968, by Kesari Chand Surana, an attorney of the petitioners; and has urged that the levy of purchase tax in question under Sections 3A and 5A of the Bihar Act does not ensure that the tax will be levied at only one point and will not be levied at more than one point, inter alia, because of the intervention of non-registered dealers : According to him, this is only possible if the levy was on the last purchase before the consumption or export by way of inter-State trade or commerce. In order to support his contention he has relied on a decision of the Supreme Court in Bhawani Cotton Mills Ltd. Vs. State of Punjab and Another, . In that case the question involves was the levy of purchase tax on cotton and their Lordships were dealing with Sections 2 to 12 and 27 of the Punjab General Sales Tax Act (Act 46 of 1948) and Rules 20, 27, 27A and 48 to 55 of the Rules framed thereunder. The simple question before their Lordships was whether the provisions of the Act, specially those of Section 5(1), second proviso, and Section 5(2)(a)(vi) were invalid as being opposed to Section 15 of the Central Act. Leained Counsel has referred to paragraphs 12, 17, 19, 20 and 21 of the said judgment. He has laid special emphasis on paragraph 20 wherein their Lordships have observed :--

"Counsel, for the respondent, has pointed out that, if a dealer wants to claim exemption, under Sub-clause (vi) of Section 5 (2) (a), Rule 27A provides for his getting a declaration from the dealer to whom the goods are resold, in which

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case, the dealer is absolved from the liability to pay tax. We have gone through the various statements contained in the said Rule, as well as the Forms, to which it refers, but they are not decisive, either way. There will also be cases where a non-registered dealer may have intervened and even if such dealer intervene, it is clear that u/s 15(a) of the Central Act, the tax cannot be levied at more than one stage. There is no machinery by which a dealer can ascertain whether his vendor, of the declared goods has paid the tax already. Even otherwise it will be seen that if a dealer, A, sells the declared goods, to B, six months after the close of the year (B being a registered dealer), A becomes liable to purchase tax, But, if B sells the identical declared goods, again, after the period mentioned in Sub-clause (vi), he will also be liable to pay purchase tax. That means, in respect of the same item of declared goods, more than one person is made liable to pay tax and the tax is also levied at more than one stage. That is not permissible, u/s 15(a) of the Central Act. If goods are resold to a non-registered dealer within the period, Sub-clause (vi), will not help the original purchaser. We may also point out, at this stage, that Sub-clause (vi) of Section 5 (2) (a), negatives the assumption that the normal rule, under the Act, in respect of declared goods, is to levy the tax on the first purchaser."

Learned Counsel, therefore, submitted that in the case before their Lordships of the Supreme Court, the Act clearly provided by express language that the tax was to be levied only at one point, but nevertheless their Lordships struck down the levy on the ground that the Act, and the rules did not provide for making impossible for the levy to be made at more than one point, because of lack of machinery by which a dealer could ascertain whether his vendor of the declared goods had paid the tax already. He has contended that the case of Niamat Rai Milkh Raj Ahuja Vs. State of Punjab and Another, provides a clear example of single point levy. In that case it was observed that the purchase by the last dealer liable to pay tax under the Punjab General Sales Tax Act. 1948, as amended with retrospective effect from 1st October, 1958, by the Punjab General Sales Tax (Amendment and Validation) Act, 1967, will be the purchase by the dealer who himself consumes it or sells it to a consumer or to a dealer in the course of inter-State trade or commerce so that as long as the goods remain with him in the condition he purchased them, he does not become liable to pay the tax. Every dealer will thus be able to know whether he is liable to pay the tax under the Act or not and the stage having been prescribed, no machinery is required to be prescribed to ascertain that stage. In that case at p. 372 their Lordships have also referred to the decision reported in Bhawani Cotton Mills Ltd. Vs. State of Punjab and Another, and have observed :--

"The next contention of Mr. Srinivasan was that "taxable turnover'' is defined by Section 5(2) of the Punjab Act after giving certain deductions and one of them being u/s 5(2)(a)(vi). Since Section 5(2)(a)(vi) has not been amended, taxable turnover cannot be ascertained with the consequence that no purchase tax can be levied. Therefore, it is maintained that the infirmity, which was pointed out by the Supreme Court decision in Bhawani Cotton Mills Ltd. Vs. State of Punjab and

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Another, , still persists. In my opinion, this contention is not sound. The real basis of the Supreme Court decision was that no stage had been fixed for the levy of the tax, and, therefore, it was not possible to determine who was liable for it under the Act ....."

Their Lordships further at pages 373-74 observed :--

"I may point out that all these infirmities, that were pointed out by their Lordships of the Supreme Court, have been removed by the Amending Act. The Amending Act added Sub-section (3) to Section 5 with effect from the 1st of October, 1958. This provision provides that ''in respect of declared goods, tax shall be levied at one stage and that stage shall be in the case of goods liable to purchase tax, the stage of purchase of such goods by the last dealer liable to pay tax under this Act''. Thus it is clear that only one single stage for the levy of purchase tax has been prescribed. It is not difficult for any dealer to ascertain whether he is the last purchaser liable to pay tax. The contention, that the "last dealer liable to pay tax under this Act" has not been defined, is of no consequence. This expression was not even defined in the Mysore, Madras, Andhra Pradesh and U. P. Acts, which were noticed by their Lordships of the Supreme Court in Bhawani Cotton Mills Ltd. Vs. State of Punjab and Another, , vis-a-vis the Punjab Act, which was struck down. Their Lordships compared the Punjab Act and these other Acts to show that the provisions of the Punjab Act were defective, the implication being that the provisions of the Madras and other Acts were not defective. In the Madras Act, Section 4 read with Second Schedule, ''cotton'' was specified as liable to a single point tax ''at the point of last purchase in the State''. In a case that went to the Supreme Court and is reported as State of Madras Vs. T. Narayanaswami Naidu and Another, , in assessing the assessee, who was a dealer in cotton and cotton goods, the Commercial Tax Officer did not exempt purchase to the extent of Rs. 2,27,250 on the ground that cotton of that value was in stock on the last day of the assessment year with the assessee and was liable to be taxed as last purchase. The Appellate Assistant Commissioner (Commercial Taxes) upheld the order, but the Sales Tax Appellate Tribunal accepted the appeal and remanded the case to the Appellate Assistant Commissioner for disposal afresh in the light of observations made by it. The department filed a revision in the Madras High Court which was dismissed State of Madras Vs. T. Narayanaswami Naidu and Another, . The learned Judges observed : The stage of last purchase or last sales in a State will be reached just before the goods are caught up in the stream of export and go outside the State, or just before the goods find their way to a factory when they are manufactured into some other goods." The State of Madras obtained special leave to appeal to the Supreme Court and that appeal was dismissed on April 12, 1967. The judgment is reported in State of Madras Vs. T. Narayanaswami Naidu and Another, . Their Lordships held that u/s 4 of the Act read with Second Schedule thereto ''a dealer is not liable to pay a tax on purchases of cotton until purchases acquire the quality of being the last purchases inside the State. In other words, when he files a return and declares the stock-in-hand, the stock-in-hand cannot

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be said to have been acquired by last purchase because he may still during the next assessment year sell it or he may consoime it himself or the goods may be destroyed, etc. He would be entitled to claim before the assessing authorities that the character of acquisition of the stock-in-hand was undetermined; in the light of subsequent events it may or may not become the last purchase inside the State. In our view, this construction is in consonance with Section 15 of the Central Act''.

It is thus apparent that "the last purchase by a dealer liable to pay tax under this Act" will be the purchase by the dealer who himself consumes it or sells it to a consumer or to a dealer in the course of inter-State trade or commerce so that as long as the goods remain with him in the condition he purchased them, he does not become liable to pay the tax. Every dealer will thus be able to know whether he is liable to pay the tax under the Act or not and the stage having been prescribed, no machinery is required to be prescribed to ascertain that stage."

5. Learned Counsel, therefore, submitted that this is the only way by which a single point levy can be validly imposed by a purchase tax or a sales tax on a declared goods. He also contended that Rule 8C which was introduced on 6-4-68 In the midst of the hearing of the case in order to cure the infirmities of Section 5A which is "headed as "Determination of stage of levy of tax on purchases of declared goods" indicating the stage of purchase which will bear the levy, that is, the first purchase, has singularly failed to achieve the object inasmuch as Section 5A of the Bihar Act gives the nomenclature of ''seller'' only i. e., non-registered and not that of the ''purchaser''. Therefore, he contended that the first purchase might be by a non-registered to non-registered and so on and registered dealer may intervene at the fifth stage. Thus the stage of first purchase set out in Rule 8C becomes redundant. If, according to Rule 8C, first purchase alone is to be taxed, then there may be a case in which the first purchaser is a non-registered dealer and if tax is levied on him, the said tax will be ultra vires. Further, he argued that it is well settled that under Entry 54 of list II of the second schedule to the Constitution, a State cannot levy Sales Tax on the goods which are sold to purchasers outside the State or on transactions of sales and purchases within the State which are in course of inter-State trade and commerce. He has referred to the following decisions on this point :

The Bengal Immunity Company Limited Vs. The State of Bihar and Others, ; Ben Gorm Nilgiri Plantations Company, Coonoor and Others Vs. Sales Tax Officer, Special Circle, Ernakulam and Others, ; Shankerjee Raut Gopalji Raut Vs. State of Bihar, ; State of Madras v. A, Habibur Rahman & Sons AIR 1968 SC 339; Shree Bajrang Jute Mills Ltd. Vs. State of Andhra Pradesh, .

He submitted that the principle to be deduced from the above decisions is that where goods are sold by a Bihar seller to a purchaser outside Bihar who delivers his goods outside Bihar, It Is not a case of inter-State trade at all, but a case of outside sale altogether, and the State of Bihar will be incompetent to levy any tax

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on it Where a seller enters into a contract with a purchaser to deliver goods outside Bihar, such as jute mills in West Bengal, and pursuant to that contract the purchaser purchases goods in Bihar and sends the goods to West Bengal, the sale and purchase in Bihar is occasioned by the prior contract of the purchaser to sell and deliver the goods in West Bengal and the transaction becomes a transaction In course of inter-State trade and commerce. He urged that if a contract of sale or purchase entered in Bihar occasions the transport of goods from Bihar to any place outside Bihar for delivery there, that will be a sale or purchase in course of inter-State trade and commerce.

He further submitted that if there is a completed sale or purchase in the State of Bihar and then the purchaser enters into a contract with outside purchasers for sale and delivery thereof, such a transaction will not become a sale or purchase in course of inter-State trade or commerce, and the first purchase will be liable either to sales tax or purchase tax. as the case may be.

Learned counsel has drawn our attention to Annexure H series to the supplementary affidavit dated 18-4-68, sworn by Komal Singh, Karpardaz, on behalf of the petitioners in C. W. J. C. 6 of 1968, and has contended that those clearly indicate contract entered into with the Jute mills in the West Bengal for supply of raw jute from Bihar to the jute mills in West Bengal and in pursuance of such contract the petitioners buy in Bihar raw jute and send the same to the jute mills in West Bengal. There is no counter-affidavit filed on behalf of the State regarding those contracts. All that is stated on behalf of the State is that the petitioners can get refund of any tax which may be levied on such inter-State transactiona According to learned Counsel, this is not enough. The question is not one of refund of wrong levy but of competence of the authorities concerned to demand or levy tax on niter-State sales or outside sales. Cases of outside sales are clearly given in C. W. J. C. 520 in which the petitioners have clearly stated that the goods were brought in Bihar and transported to Kishanganj for being despatched to West Bengal, Kishanganj being the only rail head of the jute growing areas both in West Bengal and in Bihar. In this connection he has referred to a decision of the Supreme Court in Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others, wherein their Lordships have observed that a citizen is entitled to challenge the demand for levy of sales tax on inter-State sales made by the State, and he cannot be asked to wait for the wrong levy and then go on exhausting his remedies under the Act to challenge the levy etc. He has also referred to a later decision in Tata Engineering and Locomotive Company Ltd. Vs. Assistant Commissioner of Commercial Taxes and Another, where their Lordships have held that where the assesses to a sales tax proceeding claimed exemption in respect of sales effected from their stock-yards in the various States, asserting that the goods in the stock-yards were still those of the assessee and that neither the property in them had passed to any one, nor had they been appropriated to contract of sale and the Assistant Commissioner of Sales Tax without giving an opportunity to the Assessee did not allow any exemption thereon and the Assessee having filed a writ petition in the High

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Court, which summarily dismissed the application, their Lordships observed that the High Court ought to have exercised jurisdiction in that case.

6. Learned counsel drew our attention to the application in C. W. J. C. 520 and submitted that the original order of the Sales Tax authorities given to the Kail-way authorities mentioned in Annexure D not to book any goods from Kishanganj to outside Bihar without the consignor''s producing a sales tax registration certificate under the Bihar Act, will clearly amount to forcing the consignor to register himself as a registered dealer under the Act. In other words, the Sales Tax authorities were making it (registration) a condition precedent for allowing any citizen to consign goods from Bihar State to any place outside the State. According to him, this is clearly bad and has no authority under the law. No State can require a consignor whether he was sending goods in the course of inter-State sales or in fulfilment of outside sales, to register himself as a dealer. A dealer can be registered only in respect of sales in Bihar coming upto a required turnover, even for sales in Bihar. a man whose turnover does not come up to the statutory level, i. e. Rs. 15,000, cannot be required to register himself as a dealer. He further added that there cannot be a blanket order that every man who wants to send goods outside Bihar must register himself as a dealer under the Bihar Act to enable him to consign the goods. He laid emphasis that neither the Bihar Act provides for it, nor could it provide for it, as it will be clearly beyond the jurisdiction of the Bihar State Legislature to require all consignors, irrespective of their sales being inter-State or outside the State, to be registered as a dealer under the Bihar Act .

7. Further, he contended that the notification clearly impedes the movement of goods from Bihar to outside Bihar and unless it is authorised by a law as provided under Article 302 or Article 304 of the Constitution of India and passed in the public interest, such a restriction would be illegal.

8. He invited our attention to the fact that at the time when the applications were filed there was only the order on the Railway authorities not to book consignments of jute from Bihar to outside Bihar without the consignor being registered as a dealer under the Bihar Act After the application in C. W. J. C. 520 was admitted, the State of Bihar by notification dated 26-12-67 introduced Rule 31B in the Bihar Rules u/s 46 of the Bihar Act. He urged that Rule 31B Is clearly in conflict with Section 42 of the Act. Section 42 of the Act runs :--

"42. Restriction on movement -- (1) No person shall transport from any railway station, steamer station, airport, post office or any other place, whether of similar nature or otherwise, notified in this behalf by State Government, any consignment of such goods, exceeding such quantity, as may be specified in the notification, except in accordance with such conditions as may be prescribed and such conditions shall be made with a view to ensuring that there is no evasion of tax payable under this Act

(2) Any authority or officer who may be authorised by the State Government in

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this behalf, may. for the purpose of verifying whether any goods are being transported in contravention of the provision of Sub-section (1) and subject to such restrictions as may be prescribed intercept, detain and search any road vehicle or river craft or any load carried by persons."

He has submitted that the provisions contained in the above section clearly indicate that it prohibits only a person transporting from any railway station, steamer station, airport, post office or any other place notified in this behalf by the State Government any consignment of such goods exceeding such quantity as may be prescribed in the notification itself, whereas Rule 31B, according to him. purports to prohibit a person from tendering at any railway station, steamer station, airport, post office etc. unless the consignor has obtained a despatch permit as mentioned in the said Rule. He emphasised that prohibition against a person from transporting from a railway station etc. is quite different from prohibition against a person tendering the goods at the railway station etc. for despatch outside the State. He argued that Section 42 read with Rule 31 which is specifically covered by Section 42, clearly shows that Section 42 was meant only against a person transporting goods etc. which have Come to a railway station etc. from that railway station by the person who has received the goods himself, either by a vehicle or by a river craft or physically by persons. He further submits that the scope of Section 42 is also clear from Clause (2) of the section, which authorises the authorities to verify whether the goods are being transported in contravention of Section 42 by intercepting detaining and searching any road vehicle or aircraft or any load carried by persons. The prohibition being against transport from the station by vehicles etc. the power of enforcement relates to the interception, detention and search of the vehicle etc. According to him. Section 42 does not give the power to search railways or to prevent the booking on the railways. Therefore, he submitted that Rule 3lB is clearly outside Section 42, and has gone beyond the scope of the said section and is in conflict with it Thus, the said rule is ultra vires of the Act itself. He has referred to relevant portion of Section 46 of the Act which gives power to make rules, which reads as follows :--

"46. Power to make rules -- (1) The State Government may, subject to the condition of previous publication, make rules for -

(i) all matters expressly required or allowed by the Act to be prescribed and generally for carrying out the purpose of this Act and regulating the procedure to be followed, forms to be adopted and fees to be paid in connection with proceedings under this Act and all other matters ancillary or incidental thereto :

(ii) any other matter for which there is no provision or no sufficient provision is in the opinion of the State Government necessary for giving effect to the purposes of this Act."

He contended that the above provision of Section 46 only gives the power to make rules for matters specifically required or allowed by the Act to be

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prescribed and generally for carrying out the purpose of the Act. The restrictions provided by Rule 31B are not specifically, provided by the Act the specific prescriptions being u/s 42, only for the verification of the goods and the places. The general purposes of the Act cannot also provide for a ban on consignment of goods or prevent the booking on railways, for the Act nowhere discloses such a purpose, the Act being only to tax sales inside the State of Bihar, In fact Rule 31B cannot stand on Section 46 alone and. therefore, It takes the aid of Section 42 for the purpose of relating It to the goods and the Station notified u/s 42.

9. He also drew our attention to an order made on 23rd of October, 1967 (vide No. STGL-AR 1017/67-1124-F.T.) mentioning the article ''Jute'' and the quantity as 800 kgs. being the subject of restriction u/s 42 of the Act, which shows clearly that jute of the quantity of 800 kgs. required permit for transfer from notified stations by vehicles or by persons, but it did not prescribe permits to be required for despatching goods from notified stations. That is why Rule 31B takes the aid of this notification and tries to create a new restriction, not authorised by the Act, for putting a general ban on all consignments of jute of the required quantity from notified stations to any other place. This, according to him is clearly contrary to the Act itself.

10. Learned counsel has advanced some more points for consideration in addition to his contentions which have been set out in paragraph 3 ante. He has urged that Section 46(1)(ii) of the Act is ultra vires of the Legislature in abdicating its function. According to him, by giving wider power to the rule-making authorities by providing therein that the State Government may make rules for any other matter for which there is no provision or no sufficient provision which in the opinion of the State Government is necessary for giving effect to the purpose of this Act, amounts to abdicating the legislative function. He submitted that such powers cannot be enlarged by the Executive authorities. Powers have to be specifically mentioned by the Legislature, otherwise, it will be subject to attack on the ground of excessive delegation. In order to support his contention he has relied on a decision of the Supreme Court in Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others, where their Lordships while dealing with the subject on the delegated legislation have quoted with approval the observations made in Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others, which read as follows :--

"The Constitution confers a power and Imposes a duty on the legislature to make laws. The essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its function in favour of another But in view of the multifarious activities of a welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to the executive or any other agency. But there is a danger inherent in such a process of delegation. An over-burdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may not lay

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down any policy at all; it may declare its policy in vague and general terms; it may not set down any standard for the guidance of the executive; it may confer an arbitrary power on the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation. This self-effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation. It is for a Court to hold on a fair, generous and liberal construction of an impugned statute whether the legislature exceeded such limits. But the said liberal construction should not be carried by the courts to the extent of always trying to discover a dormant or latent legislative policy to sustain an arbitrary power conferred on executive authorities. It is the duty of the Court to strike down without any hesitation any arbitrary power conferred on the executive by the legislature."

He has further relied on another decision of the Supreme Court in Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, where their Lordships were dealing with Section 3(d) of the Drugs and Magic Remedies (Objectionable Advertisements) Act (1954). Their Lordships in that case observed that when the delegate is given the power of making rules and regulations in order to fill in the details to carry out and subserve the purposes of the legislation the manner in which the requirements of the statute are to be met and the rights therein created to be enjoyed, it is an exercise of delegated legislation. But when the legislation is complete in itself and the legislature has itself made the law and the only function left to the delegate is to apply the law to an area or to determine the time and manner of carrying it Into effect, it is conditional legislation. Their Lordships further observed that the words "or any other disease or condition which may be specified in the Rules made under this Act" in Section 3(d) of the Act are vague. They confer uncanalised and uncontrolled power to the executive. Parliament has established no criteria, no standards and has not prescribed any principle on which a particuar disease or condition is to be specified in the schedule. The power of specifying diseases and conditions as given in Section 3(d) was, therefore, held to be going beyond permissible boundaries of valid delegation. Accordingly their Lordships in paragraph 35 at page 368 held :--

"We are of the opinion therefore, that the words ''or any other disease or condition which may be specified in the rules made under this Act'' confer uncanalised and uncontrolled power to the Executive and are therefore ultra vires ....."

11. He further submitted that Clause(ii) of Section 46 (1) of the Act should be read along with Sub-section (1) and the meaning of Sub-clause (iii) should be restricted to the specific provisions contained in the Act. He contended that these two provisions contained in Sub-clauses (i) and (ii) cannot be splltted in order to give Sub-section (ii) substantive power or making substantive provisions of the Act. He urged that Section 46 of the Act cannot give rise to the powers contained

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u/s 42 of the Act. If Section 42 was not there they could not have introduced Rule 31B on the basis of Section 46 of the Act. But if we refer to the notification by which Rule 31B has been Introduced, Section 46 of the Act is clearly mentioned therein. He added that Section 46(2) is also bad because it does not specify the goods which are to be subject of restriction or prohibition nor does it Indicate the principles by which the goods can be selected for such prohibition. He also submitted that Section 42 of the Act is also bad on the same ground, namely, it does not specify the goods which are to be subject of restriction etc. According to him, these sections suffer from the defect of excessive delegation. He has also referred to a decision of the Supreme Court in LaLa Hari Chand Sarda Vs. Mizo District Council and Another, where their Lordships were dealing with Section 3 of the Lushai Hills District (Trading by Non-Tribats) Regulation (2 of 1953) and the Rules 4, 5 and 7 made thereunder and Articles 14, 19(1)(g) and 19(6) of the Constitution of India and its Schedule 6 paragraph 10(2)(d), Their Lordships at page 834 observed :--

".....The Regulation contains no provisions on the basis of which an applicant would know what he has to satisfy in order to entitle him to a licence. The power to grant or not to grant is thus entirely unrestrained and unguided. The Regulation leaves a trader not only at the mercy of the committee but also without any remedy. Therefore even if the Sixth Schedule can be said to contain a policy and the Regulation may be said to have been enacted in pursuance of such a policy the analysis of the Regulation shows that that is not sufficient. Even if a statute lays down a policy it is conceivable that its implementation may be left in such an arbitrary manner that the statute providing for such implementation would amount to an unreasonable restriction. A provision which leaves an unbridled power to an authority cannot in any sense be characterised as reasonable. Section 3 of the Regulation is one such provision and is therefore liable to be struck down as violative of Article 19(1)(g)."

12. He referred to Notification No. STGL-AR-1018/67-13361-F.T. dated 26-12- 67 under which an order was made both u/s 42 and Rule 31B prohibiting transport of jute of the quantity of 800 kgs. to any place outside the State of Bihar from the stations mentioned in that notification. The relevant part of the said notification reads as follows :--

"In exercise of the powers conferred by Section 42 of the Bihar Sales Tax Act, 1959 (Bihar Act XIX of 1959) read with Eule 31B of the Bihar Sales Tax Rules, 1959, the Governor of Bihar is pleased to notify that no person shall tender at any railway station mentioned in Schedule II, any consignment of goods mentioned in Schedule I, exceeding the quantity specified in the corresponding entry in the third column of the said schedule I, for transport to any place outside the State of Bihar and no person shall accept such tender except in accordance with the conditions prescribed in Rule 31B of the Bihar Sales Tax Rules, 1959."

He submitted that it is clearly an executive order restricting the movement of

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goods by putting a ban on the booking of .jute of the required quantity from notified railway stations without any legislative authority. Under Article 304 of the Constitution, such legislative authority required prior approval of the President and also would have to satisfy the condition of "public interest". In order to support his contention he has relied on a decision of the Supreme Court in Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam, wherein their Lordships have laid down that it was for the State Government to discharge the onus of satisfying the condition that any restriction imposed by law was in public interest. He also referred to another decision of the Supreme Court in Kalyani Stores Vs. The State of Orissa and Others, wherein it was held that a levy of tax for fiscal purposes does not ipso facto amount to public interest, and if such tax levy contravenes Article 301 read with Article 304 of the Constitution of India, it must satisfy the condition of public interest.

It was also contended that although assent of the President for the Sales Tax Act, 1959 was obtained on 28-4-1959, further assent of the President will be required under proviso to Article 304 of the Constitution, as Section 42 of the Act is now being used for completely new purpose. At the time when the said sanction was obtained, there was no purchase tax in contemplation. Therefore, the President while giving the sanction could not have applied his mind regarding the desirability of the purchase tax or from the point of view of public interest and reasonableness of the restriction imposed by Section 42 of the Act to the movements of goods in order to prevent evasion of purchase tax. The sanction having not been freshly obtained, Rule 31B framed u/s 42 of the Act, for altogether new purpose, is invalid. On that account Section 42 also is ultra vires. Rule 31B places complete embargo on the exit of goods, unless certain formalities are complied with. Reliance was placed on a decision of the Supreme Court in Atiabari Tea Co., Ltd. Vs. The State of Assam and Others, where Articles 301 and 304(b) of the Constitution came up for consideration, while testing the validity of Assam Taxation (on Goods carried by Roads or Inland Waterways) Act (13 of 1954). In this case majority view of their Lordships is that the provision contained in Article 301 guaranteeing the freedom of trade, commerce and intercourse is not a declaration of a mere platitude, or the expression of a pious hope of a declaratory character, it is not also a mere statement of a directive principle of paramount importance that the economic unity of the country will provide the main sustaining force for the stability, and progress of the political and cultural unity of the country. Their Lordships, further, observed that although the power of levying tax is essential for the very existence of the Government, its exercise must inevitably be controlled by the constitutional provisions made in that behalf. It cannot be said that the power of taxation, per se, is outside the purview of any constitutional limitations. Article 301 read in its proper context, and subject to the limitations prescribed by the other relevant Articles in part XIII, must be regarded as imposing a constitutional limitation on the legislative power of Parliament and the Legislatures of the States. Wherever it is held that Article 301 applies the legislative competence of the Legislature in question will

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have to be judged in the light of the relevant Articles of part XIII. Their Lordships further expressed their view that Article 301 applies not only to inter-State trade, commerce and intercourse, and their Lordships at page 255, paragraph 54, have held :--

"..... It is common ground that before the Bill was introduced or moved in the State Legislature the previous sanction of the President has not been obtained; nor has the said infirmity been cured by recourse to Article 255 of the Constitution. Therefore we do not see how the validity of the tax can be sustained. In our opinion the High Court was in error in putting an unduly restricted meaning on the relevant words in Article 301. It is clear that in putting that narrow construction on Article 301 the High Court was partly, if not substantially, influenced by what it thought would be the inevitable consequence of a wider construction of Article 301. As we have made it clear during the course of this judgment we do not propose to express any opinion as to the possible, consequence of the view which we are taking in the present proceedings. We are dealing in the present case with an Act passed by the State Legislature which imposes a restriction in the form of taxation on the carriage or movement of goods, and we hold that such a restriction can be imposed by the State Legislature only if the relevant Act is passed in the manner prescribed by Article 304(b)."

In my opinion, this case does not help the petitioners because their Lordships were not laying down the general principles of law, as their Lordships have made it clear that they did not propose to express any opinion as to the possible consequence of the view which they took in that case. Besides, Section 42 or Section 46 has not been amended Had they been so amended fresh assent might have been required depending upon the nature of its amendment.

Further, reliance was placed on another decision of the Supreme Court in The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, where also Articles 301 and 304(b) came up for consideration, while testing the constitutional validity of Sections 4, 8 and 11 of the Raiasthan Motor Vehicles Taxation Act (11 of 1951) and their Lordships at page 1422 in paragraph 14 observed :--

"After carefully considering the arguments advanced before us we have come to the conclusion that the narrow interpretation canvassed for on behalf of the majority of the States cannot be accepted, namely, that the relevant articles in part XIII apply only to legislation in respect of the entries relating to trade and commerce in any of the lists of the Seventh Schedule. But we must advert here to one exception which we have already indicated in an earlier part of this judgment. Such regulatory measures as do not impede the freedom of trade, commerce and intercourse and compensatory taxes for the use of trading facilities are not hit by the freedom declared by Article 301. They are excluded from the purview Of the provisions of part XIII of the Constitution for the simple reason that they do not hamper trade, commerce and intercourse but facilitate

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them."

Their Lordships further held at page 1424 in paragraph 17 :--

"We have, therefore, come to the conclusion that neither the widest interpretation nor the narrow interpretations canvassed before us are acceptable. The Interpretation which was accepted by the majority in the Atiabari Tea Co., Ltd. Vs. The State of Assam and Others, is correct, but subject to this clarification. Regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not. come within the purview of the restrictions contemplated by Article 301 and such measures need not comply with the requirements of the proviso to Art 304(b) of the Constitution."

13. But, in my opinion, this case also does not help the petitioners because their Lordships have clearly observed that regulatory measures do not come within the purview of restriction contemplated by Article 301 and such measures need not comply with the requirements of the proviso of Article 304(b) of the Constitution.

It was also urged that Rules 8C and 31B are bad because they are restrictions on trade, commerce and intercourse and hamper the flow of trade and in this connection reliance was placed on a decision of the Supreme Court in Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another, where their Lordships were testing the validity of Sections 5(6) and 3(1) of the Madras General Sales Tax Act (Act 9 of 1939) and Rule 16 made thereunder in the light of the provisions contained under Articles 301 and 304(a) of the Constiution of India and their Lordships at page 931 in paragraph 10 observed :--

"It is therefore now well settled that taxing laws can be restrictions on trade, commerce and intercourse, if they hamper the flow of trade and if they are not What can be termed to be compensatory taxes or regulatory measures. Sales Tax, of the kind under consideration here, cannot be said to be a measure regulating any trade or a compensatory tax levied for the use of trading facilities. Sales tax, which has the effect of discriminating between goods of one State and goods of another, may affect the free flow of trade and it will then offend against Article 301 and will be valid only if it comes within the terms of Art 304(a)."

Reference was also made to another decision of the Supreme Court in State of Madhya Pradesh Vs. Bhailal Bhai and Others, , where their Lordships were considering the validity of Sections 3 and 5(2) of the Madhya Bharat Sales Tax Act (30 of 1950) in the light of the provisions in Articles 301 and 304(a) of the Constitution and in their Lordships'' view the sales tax imposed by the notification issued on 30-4-1950 and 28-5-1950 u/s 5(2) of the Madhya Bharat Sales Tax Act on tobacco leaves, manufactured tobacco (for eating, smoking and snuffing) and tobacco used for Bidi manufacturing payable at the point of sale by the importer in Madhva Bharat directly impedes the freedom of trade and commerce guaranteed by Article 301 of the Constitution of India. Therefore, their Lordships at page 1010 in paragraph 13 held :--

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"There can therefore be no escape from the conclusion that similar goods manufactured or produced in the State of Madhya Bharat have not been subjected to the tax which tobacco leaves, manufactured tobacco and tobacco used for Bidi manufacturing, imported from other States have to pay on sale by the importer. This tax is therefore not within the saving provisions of Art 304(a). As already pointed out it contravenes the provisions of Article 301 of the Constitution. The tax hag therefore been rightly held by the High Court to be invalid. It is clear that the assessment of tax under these notifications was thus invalid in law."

Further reference was made to another decision of the Supreme Court in A. Hajee Abdul Shakoor and Company Vs. State of Madras, where their Lordships were dealing with Section 2(1) of the Madras General Sales Tax (Special Provisions) Act (11 of 1963) in relation to the provisions contained in Articles 301 and 304 of the Constitution of India where their Lordships at page 1735 in paragraph 36 have observed :--

"It has been argued for the State that the Act is not affected by the provisions of Arts, 301 to 304 of the Constitution as they affect the legislative power with respect to Acts to operate in the future and not the power to enact Acts which would operate in the past. We do not consider the contention sound. The Act makes provision for a period subsequent to the commencement of the Constitution and therefore is to be subject to the provisions of the Constitution."

Their Lordships further in paragraph 37 held :--

"We therefore hold that Sub-section (1) of Section 2 of the Act discriminates against imported hides and skins which were sold up to the 1st of August 1957 upto which date the tax on sale of raw hides and hides and skins was at the rate of 3 pies per rupee or 19/16th per cent This however does not mean that the subsection is valid with respect to sales which took place subsequent to August 1, 1957. The sub-section being void in its provisions with respect to a certain initial period, we cannot change the provision with respect to the period as enacted to the period for which it could be valid as that would be rewriting the enactment. We have therefore to hold Sub-section (1) of Section 2 void, and accordingly hold so."

14. Learned counsel, while summing up the arguments advanced on behalf of the petitioners in the four cases, pointed out that the petitioners have challenged the vires of (i) Sections 3A and 5A of the Bihar Act, (ii) Sections 42 and 46 of the Bihar Act. (iii) Rules 8C and 31B of the Bihar Rules, and (iv) the various orders and notifications made thereunder.

15. The learned Advocate General, appearing on behalf of the State of Bihar, respondent No. 1. on the other hand, contended that the Bihar Act is within the legislative competence of the Bihar Legislature, being a law made under Entry 54 of List II of the 7th Schedule of the Constitution of India, namely. "Taxes on the sale or purchase of goods etc." Therefore, he submitted that unless it

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contravenes some provisions of the Constitution or some paramount law, it cannot be invalid, however inartistically it may be complex.

16. He submitted that the petitioners have challenged sections 3A and 5A of the Act on the ground that they contravene Article 301 of the Constitution. According to him, the argument advanced on behalf of the petitioner was made on the footing mainly (i) that a law imposing tax on sale Is, per se, an impediment in the way of movement and (ii) because of the provisions of Section 42 and Rule 31B. which control movements of goods, the tax itself becomes an impediment He has contended that the Atiabari Tea Co., Ltd. Vs. The State of Assam and Others, imposed a tax with reference to movement itself and the cases reported in Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another, and State of Madhya Pradesh Vs. Bhailal Bhai and Others, were all cases of discriminatory taxes favouring one territory to the purchase of another territory. Therefore, these cases do not apply to the instant case, where no such discrimination is involved. He has further contended that a non discriminatory tax on intra-State Sales does not per se, offend Article 301 of the Constitution, unless it directly impedes the very movement or transport of the goods. He has relied on a recent decision of the Supreme Court in Andhra Sugars Ltd. and Another etc. Vs. State of Andhra Pradesh and Others, where their Lordships were testing the validity of Section 21 of the Andhra Fradesh Sugar-cane (Regulation of Supply and Purchase) Act (45 of 1961) in relation to Article 301 of the Constitution, and their Lordships observed that the tax levied u/s 21 did not discriminate against any imported cane. u/s 21. the same rate of tax is levied on purchases of all cane required for use, consumption or sale in a factory. There is no discrimination between cane grown in the State and cane imported from outside. As a matter of fact, under the Act the factory can normally buy only cane grown in the factory zone. A non-discriminatory tax on goods does not offend Article 301, unless it directly impedes the free movement or transport of the goods. Normally a tax on sale of goods does not directly impede the free movement or transport of goods. Section 21 is not exception. It does not impede the free movement or transport of goods and is not violative of Article 301.

17. The learned Advocate General urged that under the Bihar Act the tax imposed by Sections 3A and 5A is similarly non-discriminatory. It places the burden uniformly on goods without reference to the territory or the source where-from they may be derived. The tax being a tax on intra-State sale is not with reference to movement, and does not otherwise impede movement. Section 42 and Rule 31B do not impede movement at all. Even assuming that they do so the tax is not conditioned by or with reference to movement. The tax burden does not impede movement. He has pointed out that Sections 3A and 5A were made at a different point of time than sections 42 and Rule 31B, and the former were quite independent of the latter. He further added that Sections 3A and 5A are completely independent and separate and they do not depend upon the existence of Section 42 and Rule 31B. He submitted that the burden of the tax arises immediately when a first purchase by the registered dealer takes place, which

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has been made abundantly clear in Rule 8C quoted earlier. The movement may or may not take place at all of such purchased goods. They may be consumed in the State itself, and if at all they are moved, that is an event distinct and separate from the purchase. Sections 3A and 5A are not attracted to a case where the purchase is connected with movement and where the movement is in pursuance of a contract of sale or purchase, when such transactions become inter-State sales, they are expressly excluded under the provisions of Sec. 4 of the Bihar Act. The relevant provisions of Section 4 read :--

"4. Exemption -- (1) No tax shall be payable under this Act on sales or purchases of goods which have taken place.

(a) in the course of inter-State trade or commerce;

(b) outside the State;

(c) in the course of import of goods into, or export the goods out of the territory of India.

(2) The provisions of the Central Sales Tax Act, 1956 (LXXXIV of 1956) shall apply for determining when a sale or purchase of goods shall be deemed to have taken place in any of the ways mentioned in Clauses (a), (b) or (c) of Sub-section (1).

xx xx xx xx Therefore, complete safeguard has been provided in the Act itself for the petitioners to get exemption from the tax when the authority is satisfied that it is a case of inter-State sale or purchase as contemplated in Section 4 of the Bihar Act. Sections 3A and 5A he urged, have no application to such inter-State sales. Ac cording him, these two sections are attracted only to the transactions which are taxable as intra-State purchases, which are transactions distinct from the movement. The distinction between Intra-State sale of goods which are moved later and the sales which are In the course of inter-State trade and commerce, he submitted, has been clearly brought out in the cases reported in Ben Gorm Nilgiri Plantations Company, Coonoor and Others Vs. Sales Tax Officer, Special Circle, Ernakulam and Others, and in Shankerjee Raut Gopalji Raut Vs. State of Bihar, . In substance their Lordships have observed that the main distinction is that where the purchased goods are transported across the State borders and such movement is by virtue of or by pursuance of the terms of the contract of sale or purchase, then such a sale or purchase, becomes an inter-State sale or purchase. While after goods have been purchased and possession has been completely delivered, the subsequent transportation of the goods by the purchaser himself, without any reference to any term or condition arising from the contract of sale or purchase, is an event distinct and unconnected with the transaction of the sale or purchase itself. In such cases, the sale is clearly inter-State sale and taxable under the State law. Their Lordships in the Full Bench decision in Shankerjee Raut Gopalji Raut Vs. State of Bihar, have observed that all the three elements namely, (1) common Intention of the parties to the transaction to export, (2) actual exportation and (3) obligation to export, must

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exist and be found to bring the case within the exemption of Article 286(1)(b). In the absence of the obligation on the part of the assessee to export the goods, it cannot be held that the goods were actually exported to Nepal in pursuance of the contract of sale between the parties. Mere proximity of time between the acts connected with the sale and the acts connected with the export of goods will not be decisive. Mere export of goods soon after purchase will not suffice to show in all cases that there was an obligation to export. Some further materials have to be produced to justify such irresistible conclusion.

Relying on the above observations, the learned Advocate General has contended that the transactions in the instant cases are intra-State and they are attracted under the provisions contained in Sections 3A and 5A. These sections operated on the field of Intra-State sales unconnected in point of law with the later movement. He submitted that it is not the purchase governed by Sections 3A and 5A which cause the movement The purchase does not impede movement at all.

18. He also contended that the principles laid down by their Lordships of the Supreme Court in the case of Bhawani Cotton Mills Ltd. Vs. State of Punjab and Another, on which much reliance has been placed on behalf of the petitioners, are not applicable to the Bihar Act. Their Lordships were dealing with the Punjab Act and according to that Act it was impossible for the assessee at the end of every quarter or even at the close of the year, to know whether his purchases were taxable or not under that Act, inasmuch as the taxability of those purchases depended upon the future uncertain event, namely, whether he would be able to sell the commodity purchased by him within a period of six months from the close of the year or not. Further, the Punjab Act read with the rules and the forms, may compel a dealer to include in his returns and. pay tax regarding purchases, which are non-taxable, in violation of Section 15 (a) of the Central Act, which provides that the tax cannot be levied at more than one stage. There was no machinery by which a dealer can ascertain whether his vendor of the declared goods has paid the tax already. Under those circumstances, their Lordships struck down the orders of assessment made under the Punjab General Sales Tax Act, being inconsistent with Section 15(a) of the Central Sales Tax Act.

19. Learned Counsel, appearing for the petitioners, laid much stress upon the observations made by their Lordships in Bhawani Cotton Mills Ltd. Vs. State of Punjab and Another, , particularly in paragraph 20, which have already been quoted earlier, to show that the Act or the Rules made thereunder, in order to be valid, must provide the following :--

(a) The machinery by which a dealer can ascertain whether his vendor of the declared goods has paid the tax already in order to avoid tax at more than one Stage, and

(b) There should not be any scope for Intervention of a non-registered dealer.

He contended that, however, these two provisions will not be required only in

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those cases, where there is a provision to levy the tax on the last purchaser and in this connection he has relied on the decision of the Supreme Court reported in (1968) 22 STC 365 (Punj) (supra) where their Lordships observed at page 374.

"It is thus apparent that ''the last purchase'' by a dealer liable to pay tax under this Act ''will be the purchase by the dealer who himself consumes it or sells It to a consumer or to a dealer in the course of inter-state trade or commerce so that as long as the goods remain with him in the condition he purchased them, he does not become liable to pay the tax. Every dealer will thus be able to know whether he is liable to pay the tax under the Act or not and the stage having been prescribed, no machinery is required to be prescribed to ascertain that stages."

20. The learned Advocate General, however, contended with great force that the Bihar Act and the Rules made thereunder providing for levy of tax on the first purchase is valid. He submitted that the only thing which is required is that the stage at which the tax is to be levied either on purchase or on sale, should be definite and clearly indicated and that was the view of their Lordships both in the case of Bhawani Cotton Mills Ltd. Vs. State of Punjab and Another, as well as in the case of Niamat Rai Milkh Raj Ahuja (1968) 22 STC 365 (Punj) (supra); and in these two cases the provisions for such levy contained in Andhra Pradesh, Madras, Mysore and Uttar Pradesh have been approved by their Lordships. He has drawn our attention to the provisions contained under the Madras General Sales Tax Act, 1959, where the tax is levied both in the case of cotton yarn as well as jute at the point of the first sale. Similarly in the case of Mysore Sales Tax Act, 1957, the tax levied on the jute is on the sale by the first or the earliest of the successive dealers. He developed his argument that under the Bihar Act, like Madras and Mysore Acts, the impact of the tax is unequivocally, definitely and clearly placed, at the point of the first purchase, made from a person other than a registered dealer. The first purchase by registered dealer is clearly and definitely made by the Act as the taxable event and no subsequent purchase of the same commodity is taxable under Sections 3, 3A, 5A, 6(3) and Rule 8C.

21. He further contended that the question of machinery does not involve by itself the contravention of any provision of the Constitution or the provision of any paramount law and cannot by itself be a ground for invalidity of the Act of a competent Legislature. The question of machinery, nevertheless, is a practical question, and that may be relevant in regard to the cotton industry in the Punjab with numerous mills and cottage industries in the context of taxing law under the Punjab Act, but the same would not be relevant to the jute industries with reference to the Bihar Act, because, in the Bihar Act as soon as a registered dealer makes his first purchase, he is bound to know that his purchase is taxable. He knows it and needs no investigation. In order to support his contention he has relied on a recent unreport-ed judgment of the Supreme Court decided on 29-10-1968 in Writ Petition No. 133 of 1968 (SC) and other analogous cases, M. S. Rattan Lal & Co. v. The Assessing Authority, where their

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Lordships were considering the Punjab General Sales Tax (Amendment and Validation) Act and the Punjab Sales Tax (Haryana Amendment & Validation) Act, 1967. In that judgment their Lordships have also referred to the case of Bhawani Cotton Mills Ltd. Vs. State of Punjab and Another, and have referred to the Act as it stood on April, 1, 1960. Their Lordships have mentioned that in the Bhawani Cotton Mills Ltd. Vs. State of Punjab and Another, case the provision for taxing purchases of cotton were challenged on the ground that there was a possibility of the tax being levied at more than one stage. The learned Advocate General has drawn our attention to the passage in the judgment, where their Lordships have observed that learned counsel had showed by way of contrast how the Madras, Mysore, Andhra Pradesh and Uttar Pradesh had avoided such consequences. In the case which the learned Advocate General has referred, the amending Acts had removed the defects which were pointed out in the Bhawani Cotton Mills Ltd. Vs. State of Punjab and Another, . However, these amendments were again challenged on the same line. The amendments clearly provided that in respect of declared goods tax shall be levied at one stage and that stage will be, in the case of the goods liable to sales tax, the stage of sale of such goods by the last dealer liable to pay the tax under the Act. There was further a provision, in the case of the goods liable to purchase tax, of the stage of purchase of such goods by the last dealer liable to pay tax under the Act. In that case it was further argued that the amendments had been made retrospective but no machinery was provided to enable the dealer to discover that the goods had been taxed before, and the single stage at which tax was to be levied was still not clearly discernible. Their Lordships observed :--

"It will be seen that the matter is now In the hands of the dealer. He has to find out for himself whether he is liable to pay the tax or not. A dealer knows what he has done with his goods or is going to do with them. If he knows that he is not the last dealer having parted with the goods to another dealer or he knows that he is going to use the goods or sell them to consumers he knows when he is not liable to tax and when is. Therefore he will not include the transaction in his taxable turnover in the first case but include it in the second. Goods in the hands of a dealer are not taxed. They are only taxed on the last purchase or sale. This Information is always possessed by a dealer and by providing that he need not include in his turnover any transaction except when he is the last dealer the position is now clear. It is contended that even so the dealer may not know that he is the last dealer and may make some mistakes. The law does not take into account actions of persons who are negligent or mistaken, but only of persons who act correctly according to Law. If the dealer is clear about his own position he is now quite able to see whether he is the last purchaser liable to pay the tax or the seller liable to pay the tax. The Act by specifying the stage as the last purchase or sale by a dealer liable an option to him not to include such transactions in his return saves him from the liability to pay the tax till he is the dealer liable to pay the tax. In our opinion therefore the present provisions of the Act are quite clear and are quite sufficient to make the amended Act accord with

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the Central Act. The arguments noted in the earlier case of this Court do not therefore arise."

The learned Advocate General has submitted that in regard to a scheme of taxation where the last sale is sought to be taxed, possibly some machinery might be needed as their Lordships of the Supreme Court in State of Madras Vs. T. Narayanaswami Naidu and Another, while dealing with sections 3 and 4 of the Madras General Sales Tax Act (1 of 1959) and its Schedule II, Item 2, in relation to Section 15 of the Central Sales Tax Act (1956) observed that Sections 3 and 4 speak of a financial year, and it is the turnover during that year that is liable to taxation in the hands of the as-sessee, but Section 4 has to be read with the second schedule, and reading Section. 4 with the second schedule, it is clear that a dealer is not liable to pay a tax on the purchases until the purchases acquire the quality of being the last purchases inside the State. When dealer files a return and declares the stock in hand, the stock in hand cannot be said to have been acquired by last purchase, because he may still during the next assessment year sell it or he may consume it himself or the goods may be destroyed, etc. He would be entitled to claim before the assessing authorities, that the character of acquisition of the stock in hand was undetermined; in the light of subsequent events it may or may not become the last purchase inside the State. Their Lordships further observed that this construction Is in consonance with Section 15 of the Central Act. Otherwise it would mean that the States could with impunity levy purchase tax on declared goods at more than one stage, i. e., on purchases in the bands of one dealer during one assessment year and purchases of the saint goods in the hands of another dealer in a subsequent assessment year, and so on.

He contended that as regards the Bihar Act, which provides for the taxation of the very first sale or purchase by a registered dealer no machinery is required because the tax is unequivocal and definite. There is no uncertainty about it. As soon as a registered dealer makes his first purchase, he is bound to know that this purchase is taxable. He knows it and ineeds no investigation.

22. As regards the contention which Was raised on behalf of the petitioners regarding the intervention of a non-registered dealer in the transaction by illustrating that the first purchase may be by a non-registered dealer or that the registered dealer may sell to another small dealer with an annual business of less than Rs. 15,000 and a registered dealer making the purchase from that unregistered dealer, the learned Advocate General urged that these submissions on behalf of the petitioners are purely hypothetical, and do not reflect the course of business in the jute industries as indicated in the various writ applications. Moreover, he stressed that all the necessary records are statutorily to be maintained by the dealers, and the slightest enauiry would easily reveal to every purchaser all the necessary information required. He has referred to paragraph 4 of the supplementary counter-affidavit filed on behalf of the State on 25-10-68 in C. W. J. C. 6. which reads as follows :--

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"That I say that the normal trade channels are as follows :

The growers generally sell to the small dealers known as ''Farias'' and sometimes direct to the registered dealer.

In all there are about 250 registered dealers and approximately about 800 ''Farias''.

A group of growers and ''Farias'' have normally settled trade relations with a group of registered dealers.

Thus people engaged in the trade are generally known to each other and the course of dealings are also channelled and known. The growers evidently never purchase the commodity and the ''Farias'' are small traders and they are unregistered because the total volume of their transactions does not reach Rs. 15000 a year. The registered dealers purchasing in small quantities sell in bulk and no unregistered small dealer does actually purchase from these registered dealers. They in their turn sell either directly or to the agents of Mills situated either in Bihar or outside Bihar. The account of trade relations and trade channels given in paragraphs 6 to 11 of the affidavit is incorrect and misleading. It is evident, therefore, that there is hardly room for ignorance or doubt as to whether the commodity which any purchaser would acquire has or has not paid the tax."

In this connection the learned Advocate General referred to the observations made by their Lordships of the Supreme Court in the aforesaid writ petition No. 133 of 1968 (SC) quoted earlier, where their Lordships held that the dealer has to find out for himself whether he is liable to pay the tax or not, that the law does not take into account actions of persons who are negligent or mistaken, but only of persons who act according to law.

23. It was also urged on behalf of the petitioners that they have mentioned specifically that their transactions are all inter-State transactions and they fall under exemption and no tax can be levied on such transactions. The learned Advocate General has urged that these allegations of fact have been explicitly denied in the counter-affidavit filed on behalf of the State of Bihar. Besides, the question whether a particular transaction is or is not exempt by virtue of Section 4 of the Bihar Act is not a question of the validity Of law, but it is purely the investigation of facts concerning individual transaction, and for their investigation machinery ig provided in the Act. These matters cannot be investigated in the writ applications, particularly when the facts alleged by the petitioners have been disputed. The question whether a transaction is an inter-State transaction or not has got to be tested in the light of the observations made by their Lordships in Shankerjee Raut Gopalji Raut Vs. State of Bihar, .

24. In view of the discussions and observations made above, I am inclined to accept the contentions of the learned Advocate General. In my view, the provisions contained under Sections 3A and 5A of the Bihar Act do not contravene Section 15 of the Central Act nor they are violative of Article 301 of

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the Constitution of India.

25. The next question is with regard to the validity of Sections 42 and 46 and Rules 31B and 8C. The learned Advocate General has contended that Section 42 by itself is inchoate, and has got to be read with one or other of the relevant rules which have been made u/s 46 of the Bihar Act which confers upon the State Government the power to make rules. Rules are delegated legislation. In this connection he has relied on a decision of the Supreme Court in The State of Uttar Pradesh and Others Vs. Babu Ram Upadhya, where their Lordships while dealing with the Police Act and the Regulations observed in paragraph 23 at pages 761-762 :--

"What then is the effect of the said proposition in their application to the provisions of the Police Act and the rules made thereunder? The Police Act of 1861 continues to be good law under the Constitution. Paragraph 477 of the Police Regulations shows that the rules in chapter XXXII thereof have been framed u/s 7 of the Police Act, Presumably, they were also made by the Government in exercise of its power u/s 46(2) of the Police Act. Under para. 479(a) the Governor''s power of punishment with reference to all officers is preserved; that is to say, this provision expressly saves the power of the Governor under Article 310 of the Constitution.

''Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act, and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction or obligation. See Maxwell ''on the Interpretation of Statutes'' 10th Edn., pp. 50-51. The statutory rules cannot be described as, or equated with, administrative directions. If so, the Police Act and the rules made thereunder constitute a self-contained code providing for the appointment of Police officers and prescribing the procedure for their removal. It follows that where the appropriate authority takes disciplinary action under the Police Act or the rules made thereunder, it must conform to the provisions of the statute or the rules which have conferred upon it the power to take the said action. If there is any violation of the said provisions subject to the question which we will presently consider whether the rules are directory or mandatory, the public servant would have a right to challenge the decision of that authority."

He submitted that the entire argument advanced on behalf of the petitioners is built on the assumption that Section 42 and Rule 31B have the effect of completely prohibiting transport or at least they make transportation of goods dependent on permit granted by the authority in their absolute discretion. He urged that the assumption, however, is entirely erroneous. Neither Section 42 nor Rules 31B and 8C require that the person who intends to transport goods should be registered as a dealer. The only requirement is that such a person shall obtain a permit before attempting to transport. According to him, Rule 31B clearly provides that once the authority is satisfied about the particulars furnished, it shall sign copies of the applications and prepare a permit and shall

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return to the applicant true copies of the application along with the permit. The rule, therefore, does not forbid transportation nor does it require that the person Intending to transport shall get himself registered as a dealer. The rule does not vest any discretion in the authority. Once the particulars are properly filled up the authority shall be bound to grant a permit. His only jurisdiction is to scrutinise the application, and the particulars which are mentioned in the application. He emphasised that such a rule does not substantially impede movement. According to him, such a measure is absolutely necessary to prevent the evasion of the tax law and he has referred to paragraph 10 of the counter-affidavit dated 2-11-67 filed on behalf of the State in C. W. J. C. 520 which reads :--

"10. That with reference to paragraphs of the petition I say that the deponent came to know on confidential enquiry that in order to evade payment of purchase tax on jute, the dealers liable to tax under the provisions of Bihar Sales Tax Act, 1959, were booking jute in the names of fictitious persons with a view to conceal their transactions and thus evade payment of tax leviable under the provisions of the Act. The deponent, therefore, wrote the letter in question making the request mentioned in the letter. Subsequently the request was modified by requesting the authorities to book jute even when a certificate from jute Merchants'' Association was produced to the effect that the consignor was carrying on business in jute."

Therefore, he submitted that particulars required for obtaining permit as provided in Rule 31B were necessary in order to find out whether there was benami transaction or not, or whether the transaction was meant for evading the tax. These are the only purposes for requiring the petitioners to obtain permit. These provisions are no more than the provisions in the nature of the check-post. It is purely a reasonable measure for regulating purpose. In order to support his contention he has relied on a decision of the Supreme Court on which reliance was also placed by the petitioners in The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, where their Lordships were dealing with the Constitutional validity of Sections 4, 8 and 11 of Rajasthan Motor Vehicles Taxation Act (11 of 1951) in relation to Articles 301 and 304(b) of the Constitution of India and their Lordships observed that the taxes imposed upon the Rajasthan Motor Vehicles Taxation Act are compensatory taxes which do not hinder the freedom of trade, commerce and intercourse assured by Article 301. They further observed that regulatory measure or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by Article 301 and such measures need not comply with the requirements of the proviso to Article 304(b) of the Constitution.

In my opinion, the contentions of the learned Advocate General are well grounded. These provisions are purely regulatory measures and they are valid. These rules have been introduced simply for plugging, the various loopholes for evasion of tax. These are not meant for levying any tax on inter-State

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transactions or for impeding genuine inter-State transactions. As indicated above Section 4 of the Bihar Act is sufficient safeguard for it Besides, Section 15(b) of the Central Act clearly provides that where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in course of inter-State trade or commerce, the tax so levied shall be refunded to such persons in such manner and subject to such conditions as may be provided in any law in force in that State. Judging from all aspects, in my view, no prejudice is caused to the petitioners and the rules framed under Sections 42 and 46 of the Bihar Act are reasonable, valid and legal.

26. It may be recalled that it was also vehemently argued on behalf of the petitioners that there is an excessive delegation of its essential legislative functions provided in Sections 42 and 46 of the Bihar Act. It is said that these sections do not define the goods in respect of which the section is to operate or the principles with reference to which the goods can be selected. Much stress was laid upon the meaning of the expression "no person shall transport from any railway station ....." occurring in Section 42 of the Act and on the expression "no person shall tender at the railway station....." occurring in Rule 31B. Learned Counsel on behalf of the petitioners urged that the word "transport" in Section 42 means only for Incoming goods from the railway station etc. According to him, if the goods from railway station is brought outside the railway station, rules can be made for ensuring evasion of tax. Section 42, in his opinion, did not provide for prohibiting tendering or booking goods from a particular railway station to other place; whereas Rule 31B by using the words "tender at the railway station" has completely prohibited the booking of the goods to be transported from one railway station to the other and thereby Rule 31B has exceeded the scope and the power, which it derived from Section 42. In my opinion, the word "transport" used in Section 42 means both incoming and outgoing and I am not inclined to give narrow construction to the word. Besides Section 46(1)(ii) by which the rules making power Is derived, is wide enough to Include such a rule which specifically provides :--

"any other matter for which there is no provision or no sufficient provision is in the opinion of the State Govt. necessary for giving effect to the purposes of this Act."

As regards this, learned counsel for the petitioners has contended that it clearly amounts to excessive delegation and surrendering of legislative power. In my view, these arguments on behalf of the petitioners cannot be accepted. Section 42 in the very nature of the things could not limit the process of scrutiny to specified goods. All goods which are subject to tax need scrutiny, and the problem of evasion is common to all of them. Unless all goods are checked up, and scrutinised it would not be possible to prevent evasion. With that object in view, in my opinion, it was necessary to give such power u/s 46(1) (ii) of the Act in order to give effect to the purposes of the Bihar Act. Otherwise rules could not have been made in order to secure evasion. In my view, this has uniformly been

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the legislative practice for giving such guidance, while granting rule making power for carrying out the purposes of the Act and the matters ancillary and incidental thereto. It will be pertinent to refer to a decision of the Supreme Court in Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam, where their Lordships were considering the validity of Section 3 of the Assam Taxation (on goods carried by road or on Inland Waterways) Act (10 of 1961). Their Lordships at page 935 in paragraph 19 observed :--

"This argument of legislative incompetence seems to assume that Entry 56 requires that the tax must be levied by the State Legislature on goods which are carried only against the owner of the goods that are carried or against the persons who carry them. We do not see any justification for introducing such limitations in the said Entry. It is hardly necessary to emphasise that Entries in three Lists in the Seventh Schedule which confer legislative competence on the respective Legislatures to deal with the topics covered by them must receive the widest possible interpretation; and so it would be unreasonable to read in the Entry any limitation of the kind which Mr. Pathak''s argument seems to postulate. Besides, it is well settled that when a power is conferred on the Legislature to levy a tax, that power itself must be widely construed; it must include the power to impose a tax and select the articles or commodities for the exercise of such power; it must likewise include the power to fix the rate and prescribe the machinery for the recovery of the tax. This power also gives jurisdiction to the Legislature to make such provisions as, in its opinion, would be necessary to prevent the evasion of the tax. In imposing taxes, the legislature can also appoint authorities for open to the legislature to prescribe the procedure for determining the amount of taxes payable by any individual; all these provisions are subsidiary to the main power to levy a tax and, therefore, once it is shown that the tax in question has been levied on goods carried, it would be open to the legislature to prescribe the machinery for recovering the said tax ...."

Similar view was taken in Caltex India Limited Vs. Presiding Officer, Labour Court and Others, , where their Lordships were considering the validity of Section 26(1) of the Bihar Shops and Establishments Act (Act 8 of 1954) and their Lordships in paragraph 4 at page 1730 held :--

"We are of opinion that there is no substance in this contention. u/s 40 of the Act, the State Government has been given the power to make rules to carry out the purposes of the Act. Clause (c) of Section 40(2) specifically empowers the State Government to frame rules to provide for the nature of misconduct of an employee for which his services may be dispensed with without notice. By virtue of that power, the State Government framed Rule 20(1) which specifies as many as 11 acts which are to be treated as misconduct on proof of which no notice as required by Section 26 (1) would be necessary."

In view of the above observations, in my opinion, there is no merit in the contentions of learned counsel for the petitioners.

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27. Now I turn to the last contention made on behalf of the petitioners that fresh assent of the President will be required under proviso to Article 304 of the Constitution, as Sections 42 and 48 of the Bihar Act are being used for completely new purpose. For that reliance was placed on the decisions reported in Atiabari Tea Co., Ltd. Vs. The State of Assam and Others, and The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, about which I have already expressed my view that these cases do not help the petitioner, because in the latter case their Lordships have clearly expressed that regulatory measures do not come within the purview of restrictions contemplated by Article 301 and such measures need not comply with the requirements of the proviso to Article 304 of the Constitution, I have already held earlier that in the instant case all these measures are regulatory in nature. Besides, Sections 42 and 46 have not been amended. Had they been so amended fresh assent might have been required depending upon the nature of its amendment. Besides in the other cases relied on by the petitioners their Lordships have not laid down the general principle of law as their Lordships have made it clear that they do not propose to express any opinion as to the possible consequence of the view which they took in that case. Further Sections 3A and 5A of the Bihar Act in themselves do not require assent, because I have already held that they do not contravene Article 301 of the Constitution. Besides, it is admitted case of the parties that the President had already given assent for the Sales Tax Act, 1959 on 24-4-1959. In my view that assent still continues to hold good. Therefore, I am not impressed with this contention also which has been raised on behalf of the petitioners. Yet this may also be examined from another aspect.

It has been contended on behalf of the State by the learned Advocate General that the problem of evasion of the tax law, and the need to prevent evasion are not necessarily related to Sections 3A and 5A imposing purchase tax. Even if those sections were to be repealed, the problem would still be there with reference to tax and sales. Assuming that instead of imposing the purchase tax a sales tax, as provided in the original Act, was levied on jute, the problem of evasion would still be the same problem. The fact that the law has shifted the burden of the tax from the seller to the purchaser makes no difference to the problem. This shifting has not made the least difference to Sections 42 and 46 under which Rule 31B has been made. In that view of the mat-ter Section 42 or Section 46 has not al-tered qualitatively, nor they have imposed a larger burden quantitatively. The very purpose of a check or a check-post is to sift and separate the movements of goods, which are in accordance with law from those which are in contravention of a law. How is it possible to know as to whether an attempted transaction is in accordance with law or is in contravention of law? It is really the process of check, which discovers and separates the goods, which are in accordance with law, from those which are in contravention of law.

28. The contention of the learned Advocate General is well founded and has got to be accepted. Therefore, the contention regarding the assent of the President raised on behalf of the petitioners also fails.

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29. Having due regard to the various matters mentioned above, in conclusion, I am satisfied that there is no merit in the contentions raised on behalf of the petitioners. If on scrutiny, the authorities are satisfied that the transactions in reality relate to inter-State transactions. certainly they trill grant permit. If on the returns filed by the petitioners, taxes are imposed even in the case of inter-State transactions, the petitioners have adequate remedy to take appropriate steps provided in the Act itself. Before having taken such steps the petitioners'' grievances cannot be met by this court in writ Jurisdiction, particularly when the facts are controverted by the respondent Besides, u/s 15(b) of the Central Act the tax imposed on inter-State transactions if so levied, shall be refunded to the petitioners. Therefore, no substantial prejudice is caused to the petitioners by the impugned orders and notifications.

30. In the result, all the four applications are dismissed with costs of Rs. 200 to be paid in each case to the State of Bihar, respondent No. 1.

Misra, C.J.

31. I agree.

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