**(1983) 01 AHC CK 0036**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 144 of 1980 Connected With Writ Petition No''s. 305 of 1980, 53, 157, 466, 534, 541, 547, 554, 567, 570, 580, 585, 589, 592, 607, 609, 619, 634, 639, 723, 739, 747, 823, 836, 845, 850, 853 and 906 of 1981 and 25, 104,

Jain Shudh Vanaspati Ltd. APPELLANT

Vs

State of U.P. and Others RESPONDENT

**Date of Decision :** 13-01-1983

**Acts Referred:**
Constitution of India, 1950 — Article 13, 134A, 14, 141, 19

**Citation :** (1983) 53 STC 54

**Hon'ble Judges :** R.M. Sahai, J;H.N. Seth, J

**Bench :** Division Bench

**Advocate :** Raja Ram Agarwal and R.K. Agrawal, for the Appellant; K. Parasaran, Solicitor-General of India, for the Respondent

**Final Decision :** Allowed

## Judgement

R.M. Seth, J.—Petitioners in all these petitions under Article 226 of the Constitution are aggrieved by the action of the respondents in detaining their goods in the purported exercise of powers u/s 28-A of the U.P. Sales Tax Act as substituted by the U.P. Sales Tax (Amendment) Act, 1979 (U.P. Act 33 of 1979) (hereinafter referred to as the new Section 28-A). They question the validity of the action of the respondents inter alia on following grounds:

1. Section 28-A of the U.P. Sales Tax Act as substituted by U.P. Act No. 33 of 1979 is constitutionally invalid and as such it cannot be relied upon for sustaining the action of the respondents; and

2. There being no valid notification by the State Government specifying the quantity, measure or value of goods as contemplated by Section 28-A(1), in existence, the respondents could not, in exercise of powers u/s 28-A(6) of the Act detain the goods of the petitioners.

 

2. Before these petitions could be taken for hearing, the Governor of Uttar Pradesh, presumably with a view to set at rest the controversy with regard to validity of the new Section 28-A as also that of the action of the respondents in detaining the goods belong to the petitioners, promulgated an Ordinance entitled as "the. U.P. Sales Tax (Amendment and Validation) Ordinance, 1982 (U.P. Ordinance No. 35 of 1982) on 6th October, 1982, making certain amendments in the new Section 28-A and providing that reference in the U.P. Sales Tax Rules, 1948, to Section 28-A of the Act would be deemed to be reference to Section 28-A as substituted by the 1979 Act and that notification dated 29th March, 1974, as amended by notification dated 19th November, 1974 (specifying the quantity, measure and value of goods for purposes of Section 28-A(1) of the Act as it then stood) shall continue to be in force and deemed to have remained in force as if the same had been issued under Sub-section (1) of Section 28-A of the Act as substituted by U.P. Act 33 of 1979.

3. The learned counsel for the petitioners then questioned the validity of the U.P. Ordinance No. 35 of 1982 as well. They contended that the said Ordinance also was constitutionally invalid and that in any case it did not succeed in achieving its objective.

4. The learned counsel appearing for the petitioners as also the learned Solicitor-General who appeared for the respondents requested that this Court should, before it proceeds to express its opinion on the question whether in each individual petition, the respondents have proceeded to detain the goods belonging to the various petitioners in consonance with the provisions contained in the new Section 28-A, pronounce upon the validity of the said section and also determine as to whether any valid notification by the State Government specifying the quantity, measure or value of the goods, contemplated by the new Section 28-A(1) of the Act enabling the respondents to exercise powers to detain the petitioners'' goods u/s 28-A(6) of the Act is in existence. We have accordingly heard the learned counsel for the petitioners and the learned Solicitor-General on the aforementioned aspects of the case in detail and are proceeding to express our opinion thereon.

5. In our opinion, it would, before dealing with the submissions in regard to the constitutionality of the new Section 28-A and effectiveness of the notification contemplated by that section, be convenient to trace the changes brought about by the State Legislature in regard to Sections 28 and 28-A to 28-D of the U.P. Sales Tax Act.

6. With a view to prevent evasion of tax or other dues payable under the Act, the State Legislature introduced Section 28 in the U.P. Sales Tax Act in the year 1956 and made provisions for the establishment of check posts and other incidental matters. This section was substituted in a modified form in the year 1972.

7. Once again the legislature stepped in the year 1973 and sought to achieve the general objective underlying Section 28 of the Act as it then stood, by

 

substituting a new Section 28 in place of the existing Section 23 and further introducing Sections 28-A to 28-D in the Sales Tax Act. The provisions contained in the newly substituted Section 28 were limited merely to empowering the State Government to establish check posts at various places in the State with a view to prevent evasion of tax or other dues payable under the Act in respect of sale of such goods within the State as were to be imported therein from outside. Sub-section (1) of Section 28-A of the Act ran thus;

28-A. Import or receipt of goods by road from outside the State against declaration.-(1)(a). Any person who seeks to import by road into the State from any place outside the State such goods, which exceed such quantity, measure or value as the State Government may, by notification in the Gazette, specify or to whom such goods are sought to be sent by road into the State from any place outside the State, shall furnish to the exporting dealer or the sender of the goods, as the case may be (hereinafter in this section referred to as the consignor), a declaration in the prescribed form in two copies, duly filled in and signed by him.

(b) The forms of declaration may be obtained by any person on payment of the prescribed fee from the assessing authority having jurisdiction over the area where his principal place of business is situated or, in case no business is carried on by him, where he ordinarily resides.

8. Sub-section (2) thereof then placed an obligation upon the driver or other person in-charge of any vehicle carrying such goods to obtain from the consignor the copies of the declaration referred to in Sub-section (1), verified in the prescribed manner by the consignor and such other documents containing such particulars as were to be prescribed and carry the same with him and to, before crossing any check post or barrier established u/s 28, deliver one of the copies of the said declaration to the officer-in-charge of the check post who was to issue a receipt in respect of the copy of the declaration received by him. Sub-section (4) empowered the officer-in-charge of the check post or barrier or any other authorised officer to detain or seize the goods in the vehicle as exceeded the quantity, measure or value specified in the notification issued under Sub-section (1) if, (i) they were not shown in the documents referred to in Sub-section (2) or in respect whereof there were no such documents, or (ii) in respect whereof the said documents were false or were reasonably suspected to be false. The State Government further issued the notification contemplated by Section 28-A(1) specifying the quantity, measure and value of the goods on 29th March, 1974. It also made certain amendments therein vide notification dated 19th November, 1974. By Section 28-B the State Legislature made provision for issue of transit pass in respect of goods carried in a vehicle coming from any place outside the State and bound for any other place outside the State, was to pass through the State. Likewise Section 28-C made provisions regulating delivery and carriage of goods from railway station. By Section 28-D certain provisions of Sections 13 and 13-A were made applicable in relation to goods or documents seized or produced

 

u/s 28-A or Section 28-C of the Act.

9. Constitutional validity of Section 28-A as introduced in the year 1973 was questioned before this Court in the case of Synthetics and Chemicals Ltd., Bareilly v. State of U.P. 1978 UPTC 624 . This Court observed that the said section assumed that all goods carried in a vehicle crossing the check post were goods which had been sold within the State of U.P. and in respect of which the liability to pay sales tax had arisen. It was on this footing that the section authorised the Check Post Officer to, unless specified documents were produced at the check post or barrier, seize and detain the goods as also to give an option to the affected persons to furnish security in the amount of penalty liable to be imposed. The penalty extended to three times of the amount of tax sought to be evaded. The court opined that the decision of the Supreme Court in the case of The Check Post Officer and Others Vs. K.P. Abdulla and Bros., was decisive in this respect and held that on a parity of reasoning the provision contained in Section 28-A and Section 28-C authorising seizure and detention and imposition of penalty, on the underlying assumption that the goods had been sold and liability to tax had arisen, could not be legislated in respect of the matters ancillary or incidental to the prevention of evasion of tax. Since these provisions were clearly outside the purview of entry 54 of List II of the Seventh Schedule to the Constitution they were ultra vires. The court also distinguished a Full Bench decision of the Punjab and Haryana High Court in the case of Moot Chand Chuni Lal v. Assistant Excise and Taxation Officer [1977] 40 STC 238 (FB) wherein the provisions of the Punjab General Sales Tax Act, 1948, in respect of similar subject-matter had been held to be valid. It observed that after its re-enactment in the year 1974 the provisions of the Punjab General Sales Tax Act, 1948, were clearly distinguishable from those contained in the U.P. Sales Tax Act, inasmuch as the U.P. Sales Tax Act did not require that before detaining the goods there should be a finding that the goods were meant for trade and that in respect thereof any attempt was being made to evade payment of tax. The power of seizure and detention of the goods under the Act arose if the same were not shown in the documents or the documents were lacking or were false, irrespective of the question whether the goods were meant for sale. Penalty was imposable merely because the goods were willfully omitted from the documents and even the goods carried by a person as his personal luggage or only for his personal consumption had equally been made liable to be seized and detained.

10. Although the State of U.P. did not accept the decision of this Court in Synthetics and Chemicals Ltd., Bareilly''s case 1978 UPTC 624 and it questioned its correctness by way of appeal before the Supreme Court, the State Legislature, with a view to do away with its objectionable features pointed out in Synthetics and Chemicals Ltd., Bareilly''s case 1978 UPTC 624 proceeded to enact U.P. Act No. 33 of 1979 and substituted Section 28-A by the new Section 28-A which reads thus :

28-A. Import of goods into the State against declaration.-(1) Any person (hereinafter in this section referred to as the importer) who intends to bring, import or otherwise receive, into the State from any place without the State, any goods liable to tax under this Act in such quantity or measure or of such value as exceeds the quantity, measure or value notified by the State Government in that behalf, in connection with business shall obtain the prescribed form of declaration on payment of the prescribed fee from the assessing authority having jurisdiction over the area where his principal place of business is situated or in case there is no such place where he ordinarily resides.

Explanation.-For the purposes of this Sub-section it shall be presumed that the goods were intended to be brought, imported or otherwise received into the State in connection with business unless the contrary is proved.

(2) Where such goods are to be consigned by road,-

(a) The importer shall furnish to the consignor the declaration in the prescribed form in duplicate duly filled in and signed by him and the driver or any other person in-charge of any vehicle carrying any such goods shall carry with him the copies of such declaration duly verified by the consignor in the prescribed manner together with such other documents as may be prescribed and shall before crossing any check post or barrier established u/s 28, deliver one copy of such declaration to the officer-in-charge of such check post or barrier and the other copy of the declaration and the remaining documents along with the goods to the importer or his agent;

(b) the officer-in-charge of the check post or barrier shall grant a receipt for the copy of declaration delivered to him and it shall not be necessary for the driver or the person in-charge of the vehicle to deliver any copy of the declaration at any other check post or barrier that he may cross, if he shows such receipt to the officer-in-charge of such-other check post or barrier ;

(c) where such goods are brought into the State from without by a road on which no check post or barrier is established or, where for any other reason a copy of the declaration could not be delivered at a check post or barrier as aforesaid, the consignee shall after obtaining delivery of such goods, submit to the assessing authority one copy of the declaration by the next working day;

(d) the importer shall preserve the other copy of the declaration and other documents delivered to him or to his agent under Clause (a) for such period as may be prescribed and produce them before the assessing authority whenever demanded by it within such period.

(3) Where such goods are consigned by rail, river, air or post the importer shall not-

(a) obtain or cause to be obtained delivery thereof unless he furnishes or causes to be furnished to such officer as may be authorised in this behalf by the State Government a declaration in the prescribed form in duplicate duly filled in and signed by him for endorsement by such officer; or

 

(b) after taking delivery, carry the goods away or cause the goods to be carried, away from the railway station, steamer or boat station, airport or post office, as the case may be, unless a copy of the declaration duly endorsed by such officer is carried with the goods.

(4) Where such goods are brought into the State as personal luggage, the person bringing them shall carry with him the declaration in the prescribed form duly filled in and signed by the importer and the importer shall submit the same for endorsement by the officer referred to in Sub-section (3), by the next working day.

(5) The driver or other person in-charge of any vehicle carrying any goods referred to in the preceding Sub-sections shall stop the vehicle at every such check post or barrier or, when so required by an officer authorised under Sub-section (2) of Section 13, at any other place and keep it stationary for so long as may be considered necessary by the officer-in-charge of the check post or barrier or the officer authorised under Sub-section (2) of Section 13, as the case may be and allow him to search the vehicle and inspect the goods and all documents referred to in the preceding Sub-sections and shall, if so required, give his name and address and the names and addresses of the owner of the vehicle and of the consignor and the consignee of the goods.

(6) Where the officer making the search or inspection under this section finds any person transporting or attempting or abetting to transport any goods to which this section applies without being covered by proper and genuine documents referred to in the preceding Sub-sections and if for reasons to be recorded he is satisfied after giving such person an opportunity of being heard that such goods were being so transported in an attempt to evade assessment or payment of tax due or likely to be due under this Act, he may order detention of such goods.

(7) The provisions of Sub-sections (2), (6) and (8) of Section 13-A shall mutatis mutandis apply to such detention as they apply to seizure under that section.

(8) Nothing contained in this section shall be construed to impose any obligation on any railway administration or railway servant or the post office or any officer of the post office, or to empower any search, detention or seizure of any goods while on a railway as defined in the Indian Railways Act, 1890, or in a post office as defined in the Indian Post Office Act, 1898.

and omitted Sections 28-C and 28-D from the statute book.

11. The petitioners then filed the present writ petitions contending inter alia that the new Section 28-A continues to suffer from the same vice with which the section as it stood prior to its substitution by the new section as pointed out in Synthetic and Chemicals'' case 1978 UPTC 624 suffered. As stated earlier, the State Government, with a view to settle the controversy with regard to the constitutional validity of Section 28-A, enacted the Ordinance entitled as, "The

 

Uttar Pradesh Sales Tax (Amendment and Validation) Ordinance, 1982 (U.P. Ordinance No. 35 of 1982) on 6th October, 1982, Sections 2 and 3 whereof ran thus :

2. Amendment of Section 28-A of U.P. Act XV of 1948. In Section 28-A of the Uttar Pradesh Sales Tax Act, 1948, hereinafter referred to as the principal Act,-

(a) in Sub-section (1), for the explanation, the following proviso shall be substituted, namely :-

Provided that where the importer intends to bring, import or otherwise receive such goods otherwise than in connection with business, he may in the like manner obtain the prescribed form of certificate.

(b) in Sub-section (2), (3) and (4), after the word ''declaration'' wherever it occurs, the words ''or certificate'' shall be inserted.

3. Validation.-(1) In Chapter XIV of the Uttar Pradesh Sales Tax Rules, 1948, as substituted by the Uttar Pradesh Sales Tax (First Amendment) Rules, 1974, the references to Section 28-A shall be deemed to be references to Section 28-A of the principal Act as substituted by the Uttar Pradesh Sales Tax (Amendment) Act, 1979.

(2) Notification No. ST-II-3983/X-900(112)-72 dated March 29, 1974, as amended by Notification No. ST-II-8118/X-900(112)-72 dated November 19, 1974, shall continue to be in force and be deemed to have remained in force as if the same had been issued under Sub-section (1) of Section 28-A of the principal Act as substituted by the Uttar Pradesh Sales Tax (Amendment) Act, 1979 (U.P. Act No. 33 of 1979).

12. Sri Raja Ram Agarwal, the learned counsel appearing for the petitioners, invited our attention to entry No. 54 of List II of the Seventh Schedule to the Constitution whereunder the State Legislature has been authorised to legislate in respect of taxes on the sale or purchase and contended that the provisions contained in Section 28-A of the U.P. Sales Tax Act as introduced by U.P. Act No. 33 of 1979 transgress the limits within which legislation can be made under the said entry and are as such unconstitutional. According to him the scheme underlying Section 28-A of the Act is that any person who intends to bring, import of otherwise receive into the State from any place outside the State any goods liable to tax under the Act, in such quantity or measure or value as exceeds the quantity, measure or value notified by the State Government in that behalf, in connection with his business, he is required to obtain the prescribed form of declaration on payment, of the prescribed fee from the concerned assessing authority and to, where such goods are consigned by road, furnish to the consignor the declaration in the prescribed form signed by him. The driver or any other person in-charge of the vehicle carrying such goods has to carry the declaration and to deliver one copy thereof to the officer-in-charge of the check post or the barrier. The section contemplates that even where a person brings

 

the specified goods in excess of the quantity, measure or value notified by the State Government as his personal luggage, he has to carry with him the declaration in the prescribed from duly filled and signed by the importer. The officer at the check post has been empowered to seize and detain the goods where they are not accompanied by copy of the declaration mentioned above and other prescribed documents. The matter is then reported to the assessing authority u/s 13-A of the Act who can impose a penalty on the person importing the goods, u/s 15-A(o) of the Act. According to the learned counsel, the expression "any person who intends to bring, import or otherwise receive into the State from any place without the State any goods liable to tax under this Act" is very wide and it covers within its ambit even such persons who have nothing to do with the sale or purchase of goods inside the State of Uttar Pradesh. Such persons have also been obliged to make a declaration in the prescribed form and in case the goods imported by them are not accompanied by such declaration, the goods are liable to be seized and detained and they are also liable to be penalised u/s 15-A(o) of the Act for contravention of the provisions contained in Section 28-A of the Act. The learned counsel contends that a provision conferring power on an authority to seize and detain the goods and to levy penalty even if the goods are not sold inside the State of Uttar Pradesh cannot be said to be incidental or ancillary to the power to levy sales tax. A person carrying his own goods even as personal luggage from another State for consumption, if he is unable to produce the declaration contemplated by Section 28-A, stands in danger of having his goods seized and detained and can also be made liable to pay a penalty u/s 15-A(o) of the Act. Such a power, according to him, cannot be said to be ancillary or incidental to the power to legislate in respect of taxes on sales or purchases.

13. The learned counsel for the petitioners tried to support his submission with reference to various observations made by the Supreme Court in the case of The Check Post Officer and Others Vs. K.P. Abdulla and Bros., and those made by this Court in the case of Synthetics and Chemicals Ltd., Bareilly v. State of U.P. 1978 UPTC 624 wherein the provision of Section 28-A, as it stood prior to the enactment of U.P. Act No. 33 of 1979, had been declared to be ultra vires. According to the learned counsel, the new Section 28-A continues, in this regard, to suffer from the same vice with which, Section 28-A, prior to its substitution in the year 1979, suffered.

14. The learned Solicitor-General appearing for the respondents submitted that the provisions contained in the substituted Section 28-A are in fact incidental and ancillary to the subject-matter of taxes on sale or purchase of goods. According to him the substituted Section 28-A differs on material particulars from the one as it stood prior to its substitution and its scope has been considerably narrowed down and the provision as it now stands falls squarely within the field in which entry 54 of List II of the Seventh Schedule to the Constitution operates. It is now well-settled that a legislative entry not merely enunciates the power but it specifies the field of legislation and that the widest import and significance

 

should be attached to it. Power to legislate on a specified topic includes powers to legislate in respect of matters which may fairly and reasonably be said to be comprehended therein. According to him the provisions contained in Section 28-A do not directly deal with the subject-matter of taxes on sale and purchase of goods. If at all, they can be justified only if they concern matters which may fairly and reasonably be said to be ancillary or incidental to the subject-matter of taxes on sale and purchase of goods.

15. In order to resolve the aforementioned controversy, it is, in our opinion, necessary to appreciate the scope and ambit of the field in which the new Section 28-A operates and how it differs from the section which had been declared void by this Court in Synthetics and Chemicals'' case 1978 UPTC 624.

16. A perusal of the new Section 28-A(1) shows that it obliges only such persons to comply with its provisions where-

(i) they intend to bring, import or otherwise receive into the State from any place outside the State goods in connection with their business ;

(ii) the goods so imported are liable to tax under the Act; and

(iii) are in excess of such quantity, measure or value notified by the State Government in that behalf.

17. Further the powers to seize and detain such goods has been conferred upon the authority only where the concerned officer is, for reasons to be recorded and after giving the concerned person an opportunity of being heard, satisfied that such goods were being so transported in an attempt to evade assessment or payment of tax due or likely to be due under the Act.

18. There has been some controversy before us with regard to the meaning, scope and ambit of the expression "any goods liable to tax" used in Section 28-A(1) of the Act. Use of the expression appears to be unhappy inasmuch as there is no provision in the Act which makes any particular goods as such liable to tax under the Act. A perusal of Sections 3-A to 3-D of the Act shows that it is a dealer who has been made liable to pay tax on the turnover of his sales or purchases of goods. Section 4 of the Act makes a provision for exempting, in certain circumstances, the turnover of sale and purchase of goods from payment of tax. It inter alia provides that sale or purchase of any goods by All India Spinners'' Association or Gandhi Ashram, Meerut and their branches, or by such other persons or class of persons as the State Government may, by notification in the Gazette, exempt. It thus appears that the Act contemplates that even though the turnover of sale or purchase of goods may be taxable in the hands of a particular dealer, the same goods may not be so taxable in the hands of another dealer. In the circumstances, "any goods liable to tax under the Act" cannot be identified as any particular goods in respect whereof tax can be levied under the U.P. Sales Tax Act. In the circumstances the said provision has necessarily to be understood in the context of turnover of goods and the person

 

in whose hands such turnover becomes liable to be taxed under the Act. In our opinion, it is only such goods which can, as contemplated by new Section 28-A(1), be said to be liable to tax as are intended to be sold or purchased inside the State by a person in whose hands the turnover thereof is liable to be taxed. In a case where goods are not intended to be sold by a person inside the State, no question of its turnover becoming liable to tax can possibly arise. It will not be possible to consider them as goods liable to tax even though the turnover of similar goods in the hands of some other person may be so liable. It thus appears that one of the necessary conditions for applicability of Section 28-A(1) and for obliging the persons importing goods to obtain requisite declaration is that such person should be importing into or otherwise receiving in the State goods which are intended to be sold inside the State in such circumstances that the turnover thereof can be taxed in accordance with the provisions of the Act. This conclusion is strengthened by the provision made in the section to the effect that for its applicability the concerned goods should not only be liable to tax under the Act but they should also have been imported by such person in connection with his business.

19. The learned counsel for the petitioners contended that while it is true that the new Section 28-A requires only such persons who import goods in connection with their business to obtain the requisite declaration form and to comply with the provisions contained therein, but then there is no reason to limit the scope of the expression "business" merely to the business of selling or purchasing goods inside the State. The expression "business" is wide enough to cover any business in which the goods imported by the businessman may be disposed of or dealt with even otherwise than by way of sale or purchase as well. This according to him shows that the expression "goods liable to tax" has been used in the section in the wider sense and not in the sense expressed above.

20. We are unable to interpret the expression "business" used in the new Section 28-A in the sense suggested by the learned counsel. In our opinion, in the context of importing in connection with the business goods liable to tax under the Act (as explained above), the expression "business" obviously means a business whereunder the goods are imported in the State for being sold in such circumstances that their turnover becomes liable to be taxed under the Act, i. e., in connection with the business carried on by a dealer as defined in Section 2(c) of the Act. Viewed in this light, Section 28-A(1) merely requires a dealer as defined in Section 2(c) of the Act to comply with its provisions when he imports goods inside the State of Uttar Pradesh that are intended for sale in Uttar Pradesh in such circumstances that their turnover is liable to be taxed under the the Act and not otherwise.

21. The view taken by us above stands further fortified by the circumstance that Sub-section (6) of Section 28-A empowers the officer making the search or inspection at the check post, to detain the goods only if following two conditions co-exist:-

 

(i) that the goods that are being transported are not covered by proper and genuine documents [a declaration contemplated by Section 28-A(1) and other prescribed documents]; and

(ii) that if for reasons to be recorded he is satisfied, after giving such person an opportunity of being heard, that such goods are being so transported in an attempt to evade assessment or payment of tax due or likely to be due under the Act.

22. The section does not authorise the officer making the search to detain the goods merely because such goods are not covered by proper and genuine documents. He is enabled to detain the goods only if apart from their not being covered by proper and genuine documents there is material on which he can feel satisfied that such goods were being so transported in an attempt to evade assessment or payment of tax due or likely to be due under the Act. The question of making any attempt to evade assessment or payment of tax due or likely to be due under the Act can arise only if the goods that are being imported in the State are intended to be sold by the dealer importing the same and not otherwise.

23. The learned counsel for the petitioners submitted that according to Sub-section (4) of the new Section 28-A, even when goods are brought into the State as a personal luggage the person bringing them has to carry with him a declaration in the prescribed form duly filled in and signed by the importer. It shows that Section 28-A was intended to cover within its sweep all cases where the goods are imported in the State irrespective of whether they are imported by a dealer for purposes of sale or otherwise. This provision, therefore, militates against the scope of the section as explained by us above. We are unable to accept this submission. Mere perusal of the section shows that it obliges an importer to make necessary declarations in case where the goods have been consigned to regular transport agencies which undertake to transport goods from one place to another as also to such persons who import goods liable to tax as their baggage, whereas Sub-section (2) makes provision for the cases wherein the goods are consigned by road, Sub-section (3) provides for such cases where the goods are so consigned by rail, river, air or post. Sub-section (4) makes provision for obtaining the declarations in cases where such goods are not consigned to any agency contemplated by Sub-rule (2) or (3) but are brought inside the state as somebody''s personal baggage. Sub-section (4) of Section 28-A runs thus:

Where such goods are brought into the State as personal luggage, the person bringing them shall carry with him the declaration in the prescribed form duly filled in and signed by the importer and the importer shall submit the same for endorsement by the officer referred to in Sub-section (3) by the next working day.

24. Use of the words "such goods" in this Sub-section is not without significance.

 

In any context, "such goods" obviously means, goods of the nature specified in Section 28-A, i. e., goods liable to be taxed, if carried in quantity, measure or value as exceeds the quantity or value notified by the Government in that behalf in connection with the business of the person for whom the same was being imported. This Sub-section, therefore, does not cover within its ambit the goods brought inside the State as personal luggage which were not intended for sale by a dealer. In our opinion, there is nothing in this Sub-section which militates against our analysis of Section 28-A indicated above.

25. The aforesaid analysis of Section 28-A of the U.P. Sales Tax Act, as it stands after the substitution made by U.P. Act No. 33 of 1979, shows that the obligation to make declaration and submit the declaration forms to the carrier of the goods have been placed only upon the dealers importing the goods liable to tax in excess of the quantity, measure or value notified by the State Government, in connection with their business and the power of the officer making search or inspection at the check post to detain the goods and forward the same to the assessing authority for adjudication of penalty can be exercised only where such officer is, for reasons to be recorded in writing, satisfied that such goods were being imported with a view to evade assessment or payment of tax due or likely to be due under the Act. The section does not require any person carrying the goods not liable to tax or goods which are not intended to be sold, to make any declaration. It also does not authorise the officer at the check post to seize such goods merely because they are not accompanied by the declaration form or other prescribed documents. The provisions contained in Section 28-A have thus been made with a view to check any attempt on the part of the dealers to evade payment of tax due or likely to be due under the Act. In our opinion, a provision which is directly aimed at preventing evasion of payment of tax on sales or purchases to be made inside the State is a provision which is ancillary or incidental to the subject-matter of taxes on sales or purchases of goods as contemplated by item No. 54 of List II of the Seventh Schedule to the Constitution.

26. So far as Section 28-A as it stood prior to its being substituted by U.P. Act No. 33 of 1979 and which had been declared to be ultra vires by this Court is concerned, it obliged all persons who sought to import into the State in excess of the quantity, measure or value specified in the notification by the State Government to make the declaration in the prescribed form irrespective of whether those goods were intended to be sold inside the State or whether any attempt to evade payment of tax in respect thereof was being made. Sub-section (4) of Section 28-A empowered the Check Post Officer to detain and seize the goods merely because those goods were not accompanied by the prescribed documents and the declaration form or in respect thereof the said documents were false or were reasonably suspected to be false. The person carrying the goods either without documents or on the basis of false documents was made liable to penalty irrespective of whether those goods were intended to be sold inside the State and whether or not there was any attempted evasion of payment

 

of sales tax. It was in these circumstances that it was pointed out by a Division Bench of this Court in Synthetics and Chemicals Ltd.''s case 1978 UPTC 624 that Section 28-A as it then stood proceeded on the assumption that all goods carried in a vehicle crossing the check post were goods which had been sold within the State and in respect of which liability to pay sales tax had arisen and on that footing authorised the Check Post Officer, unless the specified documents were produced at the check post or barrier, to seize and detain the goods and gave option to the affected person to furnish security in the amount of penalty liable to be imposed. This Court referred to the following observation made by the Supreme Court:

A provision so enacted on the assumption that goods carried in a vehicle from one State to another must be presumed to be transported after sale within the State is unwarranted. In any event power conferred by Sub-section (3) to seize and confiscate and to levy penalty in respect of all goods which are carried in a vehicle whether the goods are sold or not is not incidental or ancillary to the power to levy sales tax. A person carrying his own goods even as personal luggage from one State to another or for consumption, because he is unable to produce the documents specified in Clauses (i), (ii) and (iii) of Sub-section (3) of Section 42 stands in danger of having his goods forfeited. Power under Sub-section (3) of Section 42 cannot be said to be ancillary or incidental to the power to legislate for levy of sales tax.

and held that on a parity of reasoning, the impugned provisions of the U.P. Sales Tax Act authorising seizure and detention and imposition of penalty, on the underlying assumption that the goods have been sold and liability to tax has arisen, cannot be said to be legislation in respect of matters ancillary or incidental including prevention of evasion of tax. These provisions are clearly outside the purview of entry 54 of List II of the Seventh Schedule to the Constitution and are ultra vires.

27. The provision contained in Section 28-A as it stands after enactment of U.P. Act No. 33 of 1979 are materially different. It cannot be said that there is any assumption underlying therein that the goods to which the provision of Section 28-A applies have actually been sold inside the State and the section does not authorise the sales tax authorities either to seize the said goods or to penalise the importer thereof on any such assumption. Its present basis is the attempt to evade tax. The power to detain the goods and levy penalty in respect thereof cannot be exercised merely for the reason that the said goods were not accompanied by the requisite documents or that the documents accompanying them were false. This power can be exercised only if the goods detained are not accompanied by the requisite documents or that the documents accompanying them are false and if there is material before the detaining authority to indicate that the goods are being imported in an attempt to evade assessment or payment of tax due or likely to be due under the Act. The instant case, therefore, in our opinion, clearly falls outside the ratio of the case of The Check Post Officer

 

and Others Vs. K.P. Abdulla and Bros., as decided by the Supreme Court.

28. The provisions in this regard contained in Section 28-A, as they stand after enactment of U.P. Act No. 33 of 1979, are similar to those contained in Section 14-B(7) of the Punjab General Sales Tax Act as amended by the Punjab General Sales Tax (Amendment) Act (9 of 1974) which, as held by a Full Bench of the Punjab and Haryana High Court in the case of Mool Chand Chuni Lal v. Assistant Excise and Taxation Officer [1977] 40 STC 238 (FB)can be fully justified as a provision which is incidental and ancillary to the power to legislate on the subject-matter of taxes of sales or purchase of goods as contemplated by entry 54 of List II of the Seventh Schedule. Before parting with this aspect of the case, we may point out that the Division Bench in the case of Synthetics and Chemicals Ltd. 1978 UPTC 624 while holding the provisions contained in Section 28-A of the U.P. Sales Tax Act as they stood prior to the enactment of U.P. Act No. 33 of 1979, pointed out the difference between the provisions contained in the U.P. Act as it then stood and those contained in the Punjab General Sales Tax Act which had been considered by the Full Bench of the Punjab and Haryana High Court in Mool Chand Chuni Lal''s case [1977] 40 STC 238 (FB) in the following words:

Mr. Advocate-General invited our attention to a Full Bench decision of the Punjab and Haryana High Court in Mool Chand Chuni Lal v. Assistant Excise and Taxation Officer [1977] 40 STC 238 (FB). Section 14-B of the Punjab General Sales Tax Act, 1948, originally authorised the concerned officer to seize any goods not covered by the specified documents. This provision was struck down as ultra vires in Dunlop India Ltd. [1972] 30 STC 597(ALL) noticed above. Thereafter these provisions were repealed and re-enacted. After re-enactment the power to seize the goods was coupled with a condition precedent. The condition precedent was that the authorised officer should record a finding that there has been an attempt to evade the tax due under the Act. The goods which could be detained were such as were meant for trade and were not covered by proper documents. The Full Bench ruled that a scheme or device to evade tax may start operating long before the actual liability to pay the tax arises. As soon as the scheme or device is set in motion, there is an attempt to evade the tax due under the Act and it will not be necessary to wait till the liability to pay the tax actually arises. If an attempt to evade tax is discovered earlier, the liability to be subjected to penalty is straightaway attracted. The affected dealer was to be heard before the goods were seized or detained. The detaining officer had to record a finding that there was an attempt to evade the tax payable under the Act. The finding that there is an attempt to evade tax was not to be made solely for the reason that the specified documents were inaccurate or incomplete or lacking. The finding had to be that the goods were meant for trade and were not covered by proper and genuine documents.

Under the U.P. Act there is no requirement that there should be a finding that the goods were meant for trade and in respect of them there is an attempt to evade payment of tax. The power of seizure and detention accrues if the goods are not shown in the documents or the documents are lacking or are false, irrespective of the question whether the goods were meant for sale. Penalty is imposable merely because the goods are ''wilfully omitted'' from the documents. The goods that may be carried by a person as his personal luggage or only for his personal consumption were equally liable to be seized and detained. The Punjab Full Bench case after the re-enactment of the material and relevant provisions in 1974 is clearly distinguishable.

29. The distinction pointed out by the Division Bench as between Section 28-A of the U.P. Sales Tax Act as it stood prior to enactment of U.P. Act No. 33 of 1979 and the provisions of the Punjab General Sales Tax Act applies equally to those provisions and the provisions contained in Section 28-A as they stand after enactment of U.P. Act No. 33 of 1979.

30. The learned counsel for the petitioners contends that up till now the officers at the check posts have been acting on the assumption that they are entitled to detain the goods and to impose penalty in respect thereof merely for the reason that the goods were not accompanied by the requisite declaration forms or other prescribed documents. This shows that the departmental authorities themselves have been interpreting Section 28-A of the Act as it stands after its enactment by U.P. Act No. 33 of 1979 as enabling them to detain the goods merely because the same were not accompanied by the requisite declaration forms as contemplated by Section 28-A(1) of the Act.

31. Section 28-A(2)(c) while dealing with the goods consigned by road lays down that where such goods are brought into the State from any place outside the State by road on which no check post or barrier is established or where for other reasons, a copy of the declaration could not be delivered at the check post or barrier, the consignee has to, after obtaining delivery of the goods, submit to the assessing authority one copy of the declaration by the next working day. Like-wise Sub-section (4) of Section 28-A which concerns carriage of goods as personal luggage provides that the duly filled in and signed declaration form can be delivered to the concerned officer by the next working day. These provisions make it absolutely clear that the power to seize and detain the goods under Sub-section (6) of Section 28-A cannot be exercised merely because the goods, when they reach the check post, were not accompanied by the declaration form contemplated by Section 28-A(1). The real occasion to detain the goods under Sub-section (6) arises only if the goods are not accompanied by the requisite documents and there is material before the Check Post Officer on which he can reasonably record a satisfaction that the person importing the goods was attempting to evade assessment or payment of sales tax due or likely to be due under the Act. Obviously, if the authorities have been acting in the manner as alleged by the learned counsel for the petitioners, they have not been acting in consonance with the provisions of Section 28-A of the Act. However, the learned Solicitor- General did not accept that the sales tax authorities had been acting in the manner alleged by the learned counsel for the petitioners. He contended that

 

the question whether detention of goods in any particular case is not in accordance with the provisions contained in that section may be considered while dealing with the individual case but then any wrong conception with regard to the scope and ambit of the relevant statutory provisions will not alter its scope and meaning and in case it is found that the condition precedent for directing detention of the goods did not. exist, namely, either that there was no material on the basis of which the officer detaining the goods could come to the conclusion that the goods were being imported with a view to evade payment of tax due or likely to be due or that no reason had been recorded for arriving at such satisfaction, the order of detention of goods in such cases will have to be quashed. This particular aspect of the case will, therefore, come up for consideration only when we proceed to examine individual cases. Suffice it to say that any action on the part of the sales tax authorities, in misconception of the scope and ambit of the provisions contained in Section 28-A as it stands after its enactment by U.P. Act No. 33 of 1979, does not have any repercussion on the constitutional validity of the said provision.

32. The learned counsel for the petitioners next contended that the power to direct detention of goods u/s 28-A(6) of the Act is to be exercised in case the officer making search or inspection u/s 28-A finds any person transporting or attempting or abetting to transport any goods to which Section 28-A applies without being covered by proper and genuine documents and if for reasons to be recorded he is satisfied after giving such person an opportunity of being heard that such goods were being so transported in an attempt to evade assessment or payment of tax due or likely to be due under the Act. He contended that Section 28-A concerns itself with establishment of check posts for checking goods that are being imported into the State by persons in connection with their business. In the very nature of things the goods are checked when they are in the process of being imported inside the State and are carried to the place from where they are to be sold. The power to detain the goods in Sub-section (6) is, as explained by us, to be exercised if there is material before the checking officer on the basis of which he can record a satisfaction that the goods are being transported in an attempt to evade assessment or payment of tax due or likely to be due under the Act. He contends that at the stage at which the goods are checked and are detained, there can possibly be no question of anybody attempting to evade payment of tax due under the Act as till that stage no sale inside the State actually takes place and no question of any tax in respect of sale of such goods becoming due can possibly arise. Moreover, the expression "attempts to evade assessment or payment of tax due or likely to be due under the Act" is extremely vague and confers an arbitrary power on the checking officer to, at his sweet will, say, whenever he so likes, that any goods which have been checked by him and which are not covered by the requisite declaration or other prescribed documents, are being imported into the State with a view to evade assessment or payment of tax likely to be due. Such an arbitrary conferment of power, according to him, renders the provisions contained in Section 28-A invalid. In this

 

connection, he also submitted that the absence of a provision enabling the aggrieved person to question the detention of his goods by way of appeal before any superior authority renders the power conferred upon the Check Post Officer to detain the goods all the more obnoxious.

33. The first question that arises for consideration is whether the expression "attempt to evade assessment or payment of tax due or likely to be due" can be said to be vague and whether the power conferred upon the Check Post Officer in this regard can be said to be arbitrary. In our opinion, the expression "attempt, to evade assessment or payment of tax due or likely to be due" cannot be said to be an expression conveying vague ideas. It is, in our opinion, an expression having a definite connotation. An attempt to evade assessment or payment of tax due or likely to be due can take place in so many different ways that it is not possible for any legislature to specify all such methods of evasion in the Act. The expression does not become vague merely because all the circumstances in which such an attempt to evade assessment or payment of tax due or likely to be due have not been enumerated therein.

34. The learned counsel for the petitioners invited our attention to the decision of the Supreme Court in the case of Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others, paragraph 18, wherein the court was required to consider the question as to whether the provisions contained in Section 27 of the Gold (Control) Act, 1968, with regard to licensing of dealers was a reasonable restriction placed on the fundamental right of a person to carry on a trade. In that case the Supreme Court accepted the submission made on behalf of the petitioners that the conditions imposed by Sub-section (6) of Section 27 for the grant or renewal of licences were uncertain, vague and unintelligible and consequently wide and unfettered power was conferred upon the statutory authority in the matter of grant or renewal of licence which in the opinion of the court rendered the said provision invalid. The provision contained in Section 28-A when it provides for detention of goods on being satisfied for the reasons to be recorded that an attempt was being made to evade assessment or payment of tax due or likely to be due cannot be said to suffer from any vagueness or uncertainty and as such the facts of the instant case are clearly distinguishable from that of Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others, . So far as the reasonableness of the provision is concerned, the Supreme Court in paragraph 16 of Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others, has observed thus:

It is necessary to emphasise that the principle which underlies the structure of the rights guaranteed under Article 19 of the Constitution is the principle of balancing of the need for individual liberty with the need for social control in order that the freedoms guaranteed to the individual subserves the larger public interest. It would follow that the reasonableness of the restrictions imposed under the impugned Act would have to be judged by the magnitude of the evil which it is the purpose of the restraints to curb or eliminate.

 

35. Considering the extent of evasion of sales tax that is taking place, the right given to the sales tax authorities to detain the goods and to levy penalty in case there is material on which a satisfaction can be arrived at that the importer is attempting to evade payment of tax or other dues under the Act cannot be said to be unreasonable in the light of the principle of balancing of the need for individual liberty with the need for social control in order that the freedom guaranteed to the individual subserves the larger public interest.

36. The next case relied upon by the learned counsel for the petitioners in this connection is Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others, wherein the Supreme Court observed thus :

The more formidable objection has been taken on behalf of the petitioners against Clause 4(3) of the Control Order which relates to the granting and refusing of licences. The licensing authority has been given absolute power to grant or refuse to grant, renew or refuse to renew, suspend, revoke, cancel or modify any licence under this Order and the only thing he has to do is to record reasons for the action he takes. Not only so, the power could be exercised by any person to whom the State Coal Controller may choose to delegate the same and the choice can be made in favour of any and every person. It seems to us that such provision cannot be held to be reasonable.

No rules have been framed and no directions given on these matters to regulate or guide the discretion of the licensing officer. Practically the Order commits to the unrestrained will of a single individual the power to grant, withhold or cancel licences in any way he chooses and there is nothing in the Order which could ensure a proper execution of the power or operate as a check upon injustice that might result from improper execution of the same. Mr. Umrigar contends that a sufficient safeguard has been provided against any abuse of power by reason of the fact that the licensing authority has got to record reasons for that he does.

This safeguard, in our opinion, is hardly effective ; for there is no higher authority prescribed in the Order who could examine the propriety of these reasons and revise or review the decision of the subordinate officers. The reasons therefore, which are required to be recorded are only for the personal or subjective satisfaction of the licensing authority and not for furnishing any remedy to the aggrieved person.

37. The position in the instant case, however, is different inasmuch as the power to detain the goods cannot be exercised by the officer at the check post for any unspecified reason. He can do so only if apart from any shortcoming in production of the declaration contemplated by Section 28-A(1) and other prescribed documents, there is material before him on which he can feel satisfied that an attempt was being made to evade payment of tax or other sum due or likely to be due under the Act. Requisite satisfaction has to be arrived at on objective consideration and for reasons to be recorded by the Check Post Officer. Moreover, the provisions of Section 28-A read along with the provisions of

 

Section 13-A(2), (6) and (8) go to show that the power to detain the goods is exercised with a view to make the same available for realisation of penalty that may eventually be imposed u/s 15-A of the Act. For this purpose the detaining authority has been, u/s 13-A(6), empowered to release the said goods after obtaining from the concerned person deposit of an amount sufficient to cover the penalty likely to be imposed. The proviso added to Sub-section (6) of Section 13-A, however, empowers the Commissioner of Sales Tax or any officer authorised by him in his behalf to, for sufficient reasons to be recorded, direct that the goods be released without any deposit. The Commissioner of Sales Tax can exercise the said power either suo motu or at the instance of the person whose goods have been detained by the Check Post Officer. This section clearly envisages that in case the Commissioner of Sales Tax comes to the conclusion that no case for imposition of penalty u/s 15-A has been made out, that is, the Check Post Officer was wrong in coming to the conclusion that the goods were being imported with a view to evade assessment or payment of tax due or likely to be due under the Act, he can order release of the goods without requiring the person concerned to make any deposit. It is thus apparent that the U.P. Sales Tax Act clearly envisages that the reasons which the Check Post Officer has to record for detaining the goods are not for his persona] satisfaction; they are to be recorded on objective considerations so as to enable the Commissioner of Sales Tax to scrutinise their propriety. In this view of the matter, the petitioners, in our opinion, cannot derive any benefit from the observations made by the Supreme Court in Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others, .

38. The learned counsel for the petitioners submitted that u/s 28-A it is open to the State Government to confer a power to search and detain the goods on any officer of its choice. It can empower an officer of a low status as well for this purpose and this renders the statutory provision unreasonable. In the case of Commissioner of Commercial Taxes and Others Vs. Ramkishan Shrikishan Jhaver and Others, , while dealing with a similar submission, the Supreme Court observed thus:

...It also held that the State Government was given the power to empower any officer to make a search under Sub-section (2) and this meant that even an officer of low status could be empowered. Consequently the High Court struck down Sub-section (2) on the ground that it gave arbitrary power of search which could be made even by an officer of low status. It is true that search under this Sub-section can be made by any officer empowered by the Government in this behalf ; but we have no reason to think that the Government will not empower officers of proper status to make searches. In this very case, we find that the Government empowered an Assistant Commercial Tax Officer, a Revenue Inspector and a Sub-Inspector of Police to make searches. Considering the large number of dealers who are covered by the Act, it cannot be said that these officers are of such low status that they cannot be depended upon to make a search with due care and caution. We cannot also forget that in a case of this kind the Government cannot find sufficient number of officers of what may be called high status to make searches, for dealers who may be covered by the Act may be legion throughout the State and if such searches could only be made by high officers there would not be enough officers available to do so. The fact that the Act gives power to Government to empower any officer is therefore no reason to strike it down for, as we have said, the Government will see that officers of proper status are empowered. Nor do we think that an Assistant Commercial Tax Officer or an Inspector of the Revenue Department or a Sub-Inspector of the Police Department is not an officer of proper status to make searches under this provision.

39. The learned counsel for the petitioners has not been able to place any material before us to show that the officers who have been empowered by the State Government to make search and detain the goods are not officers of proper status as envisaged by the Supreme Court in Commissioner of Commercial Taxes and Others Vs. Ramkishan Shrikishan Jhaver and Others, .

40. It is true that under Sub-section (6) of Section 28-A the check posts are established with a view to check the goods that are being imported by a dealer in connection with his business and that till that time no transaction of sale or purchase in respect thereof can be said to have taken place inside the State and in that sense it is difficult to visualise a case where such goods are transported in an attempt to evade payment of tax due as envisaged by the section. Even if it be difficult to imagine a case where the goods imported from outside the State when checked at the check post can be said to be imported in an attempt to evade payment of tax due and that contingency may if at all arise very rarely, it does not mean that the power conferred on the officer of the check post to detain goods if he is satisfied about other matters enumerated in the section is bad. We are unable to accept the submission that because it is difficult to visualise a case where the goods imported from outside the State when checked at the check post were being imported in an attempt to evade payment of tax due, the power conferred to detain such goods if there was material to show that they were being imported in an attempt to evade assessment or tax likely to be due under the Act is also bad.

41. In the result we are not impressed by the submission made by the learned counsel for the petitioners that the provisions contained in Section 28-A are bad either for want of legislative competence or are invalid either as conferring vague, arbitrary and unreasonable power on the authorities competent to direct detention of goods imported in an attempt to evade assessment or payment of tax due or likely to be due under the Act.

42. The learned counsel for the petitioners next contended that the provisions contained in Section 28-A for checking and detaining the goods that are being brought inside the State of U.P. for sale and purchase therein are invalid as being voilative of articles 301 and 304 of the Constitution. Article 301 of the Constitution lays down that subject to the other provisions of Part XIII, trade,

 

commerce and intercourse throughout the territory of India shall be free. Under Article 302 it is only the Parliament which is empowered to make laws imposing restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest. Article 304, however, authorises the State Legislature to, notwithstanding anything contained in Article 301, impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within the State as may be required in the public interest. The restrictions imposed by the State Legislature to detain the goods and to penalise an attempt to evade assessment or payment of tax due or likely to be due under the U.P. Sales Tax Act is certainly a provision which can be said to have been made in public interest and as such if the said provision imposes some restrictions on the freedom of inter-State trade and commerce that would be amply justified by the provisions contained in Article 304(b) of the Constitution.

43. In support of his submission, the learned counsel for the petitioners placed reliance on the case of Hans Raj Bagrecha Vs. State of Bihar and Others, . In that case Sections 3A and 5A were introduced in the Bihar Sales Tax Act by the Bihar Finance Act, 1966, with effect from 1st April, 1967, imposing purchase tax. By a notification jute was made liable to purchase tax. In its rule-making power the State Government framed Rule 31B which provided :

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 XXVIII-D from the appropriate authority referred to in the explanation to Rule 31 and no person shall accept such tender unless the said permit is surrendered to him.

44. The State Government issued a notification under which jute exceeding 800 kg. could not be tendered for transport without a despatch permit. The instructions were also issued to the railway authorities not to load the jute goods and despatch them except on production of a registration certificate. The validity of Sections 3A and 5A levying purchase tax was questioned on the ground that they contravened the provisions contained in Article 301 of the Constitution. The Supreme Court repelled the said plea holding that the levy of purchase tax does not necessarily and in all cases violate the guarantee under Article 301 of the Constitution. However, while dealing with the validity of Rule 31B quoted above, the Supreme Court observed thus :

But, in our judgment, Rule 31B of the Bihar Sales Tax Rules, 1959 and the notification issued on December 26, 1967, are unauthorised and must be struck down. The Bihar Sales Tax Act is enacted by the legislature to consolidate and amend the law relating to the levy of tax on the sale and purchase of goods in Bihar. The State Legislature is competent in enacting sales tax legislation to make a provision which is ancillary or incidental to any provision relating to levy, collection and recovery of sales tax and purchase tax. A provision which is made by the Act or by the Rules which seeks to prevent evasion of liability to pay intra-State sales or purchase tax would therefore be within the competence of the legislature or the authority competent to make the rules. But the State Legislature has no power to legislate for the levy of tax on transactions which are carried on in the course of inter-State trade or commerce or in the course of export. Section 42 of the Bihar Sales Tax Act, 1959, prevents any person from transporting from any railway station, steamer station, airport, post office or any other place any consignment of such goods exceeding the quantity specified with a view to ensuring that there is no evasion of tax payable under the Act. But the power u/s 42 can only be exercised in respect of levy, collection and recovery of intra-State sales or purchase tax. It cannot be utilised for the purpose of ensuring the effective levy of inter-State sales or purchase tax.

and held the said rule to be ultra vires. The ratio of the aforesaid decision seems to be that although it is open to the State Legislature to authorise framing of rules concerning evasion of payment of sales tax in respect of intra-State sales, but then it is not competent to legislate or frame rules in respect of evasion of tax on inter-State transactions and as the rule covered within its ambit both inter-State and intra-State transactions it was invalid. Section 28-A, however, does not require giving of any declaration in respect of goods imported in the course of inter-State sale. It, as explained above, merely requires the person importing goods liable to be taxed (in the sense already explained) under the U.P. Sales Tax Act which concerns itself only with intra-State sales and not with inter-State sales to make the necessary declaration. It authorises the officer at the check post to detain the goods only if he is satisfied that there has been an attempt to evade assessment or payment of tax due or likely to be due under the Act, that is, under the U.P. Sales Tax Act in connection with intra-State sales only. It thus appears that Section 28-A does not suffer from the infirmity with which Rule 31B of the Bihar Sales Tax Rules, as pointed out by the Supreme Court in Hans Raj Bagrecha Vs. State of Bihar and Others, suffered. We are accordingly of the opinion that the provisions of Section 28-A of the U.P. Sales Tax Act as introduced by U.P. Act No. 33 of 1979 cannot be said to be violative of the principles contained in articles 301 and 304 of the Constitution.

45. We may, before parting with the aforesaid aspects of the case, point out that the learned Solicitor-General relied upon the following observations made by the Supreme Court in paragraph 24 of its judgment in the case of Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others, :

The check posts and barriers on the borders of the State of Uttar Pradesh are set up u/s 28 of the U.P. Sales Tax Act, 1948 and are designed and meant to prevent evasion of sales tax and other dues. The constitutional validity of Section 28 and its cognate provisions, Sections 28-A to 28-C has rightly, if we may say so, not been challenged before us. From the point of view either of entry 54, List II or of Article 301 of the Constitution, there is no question of any lack of competence in the State Legislature to set up the check posts and barriers on the State''s borders. These provisions, read with the requirements of Rule 83(4) of the U.P. Sales Tax Rules, 1948, require that the owner, driver or any other person in-charge of the vehicle or vessel shall, in respect of such goods carried in the vehicle or vessel as are notified under Sub-section (1) of Section 28-A, carry with him, a declaration in form XXXI, a certificate in form XXXII, a transit pass in form XXXIV in duplicate, cash memo, bill of sale or chalan and a trip-sheet in triplicate. The factual existence of these check posts or barriers on the State''s borders is not denied, nor their legality challenged. It is not suggested that the setting up of these check posts is a restriction on the freedom of trade, commerce and inter-course guaranteed under Article 301 of the Constitution, or is such as directly and immediately restricts or impedes the free flow or movement of goods. It is also not suggested that these regulatory measures in setting up the check posts on the State''s borders are such as impede freedom of trade, commerce and intercourse. Just as inter-State trade and commerce must pay its way and be subject to taxation, persons engaged in such inter-State trade or commerce are equally subject to all regulatory measures. There is no reason why the check posts or barriers set up by the State Government u/s 28 of the U.P. Sales Tax Act, 1948, cannot be utilised as a machinery for due observance of the laws, e. g., for verification and control of movement of wheat by traders on private account from the State of Uttar Pradesh to various other States.

and contended that there has been a declaration of law by the Supreme Court to the effect that the provisions contained in Sections 28-A to 28-C of the U.P. Sales Tax Act do not lack of competence in the State Legislature to enact the said provisions either from the point of view of entry 54, List II, or Article 301 of the Constitution. According to him the said declaration of law is binding upon us and it is not possible for us to entertain and accept the arguments with regard to the validity of the provisions contained in Section 28-A, put forward by the learned counsel for the petitioners. The learned counsel for the petitioners, on the other hand, submitted that the observations relied upon by the learned Solicitor-General appeared to have been made by the Supreme Court on the basis of concession made by the petitioners in those cases that the provisions contained in Section 28-A do not travel beyond the legislative field envisaged by entry 54 of List II as also that it does not contravene the provisions contained in Article 301 of the Constitution. The said observations, therefore, cannot be treated to be declaration of law binding upon this Court and should, therefore, be ignored.

46. As we have, on our own, come to the conclusion that the provisions contained in Section 28-A neither travel beyond the field covered by entry 54 of List II nor do they contravene the provisions contained in Article 301 of the Constitution and the said conclusion is perfectly in accord with the observations made by the Supreme Court quoted above, it is not necessary for us to go into the controversy as to whether these observations constitute a declaration of law contemplated by Article 141 of the Constitution which are binding upon this

 

Court.

47. In the result, our conclusion is that the provisions contained in Section 28-A as interpreted by us are constitutionally valid and they neither travel beyond the legislative field contemplated by entry 54 of List II of the Seventh Schedule nor do they contravene the provisions of articles 14, 19 and 301 of the Constitution.

48. We now proceed to consider the second ground raised by the petitioners for questioning the constitutional validity of the action of the respondents in detaining the petitioners'' goods in the purported exercise of the power u/s 28-A(6) of the U.P. Sales Tax Act, namely, whether there existed a valid notification by the State Government specifying the quantity, measure or value of goods contemplated by Section 28-A (1) and whether existence of the same was condition precedent for exercise of power u/s 28-A(6) of the Act.

49. A bare perusal of Section 28-A shows that the provisions contained in various Sub-sections of Section 28-A, including those of Sub-section (6), apply only in respect of such goods as exceed such quantity, measure or value notified by the State Government in that behalf. Existence of such notification is, therefore, a condition precedent for the exercise of any power to detain the goods u/s 28-A(6) of the Act. Indeed the learned Solicitor General appearing for the respondents did not dispute this position. Accordingly the only thing that remains to be considered is whether in fact any valid notification as contemplated by Section 28-A(1) of the Act specifying the quantity, measure or value of specified goods for the purposes of Section 28-A existed at the time when the power to seize the goods belonging to the petitioners was exercised by the respondents.

50. As already explained, Section 28-A was introduced in the Act for the first time in the year 1973 and Sub-section (1)(a) thereof provided that any person, who seeks to import by road into the State from any place outside the State such goods which exceed such quantity, measure or value as the State Government may, by notification in the Gazette, specify, had to furnish to the exporting dealer or the sender of the goods a declaration in the prescribed form. The requisite notification as contemplated by the said section was issued on 29th March, 1974, which was subsequently amended vide notification dated 19th November, 1974. The provisions contained in Section 28-A as introduced in the year 1973 were declared to be ultra vires by this Court in the case of Synthetics and Chemicals Ltd., Bareilly v. State of U.P. [1978] UPTC 624. Thereafter the State Government enacted U.P. Act No. 33 of 1979 and introduced new Section 28-A, validity whereof has been discussed and upheld by us above. However, the State Government did not issue any fresh notification as contemplated by new Section 28-A. The respondents, however, proceeded on the basis that the notification dated 29th March, 1974, as amended by the notification dated 19th November, 1974, issued under the old Section 28-A(1) of the Act which had been declared to be invalid and ultra vires by this Court in Synthetics and Chemicals Ltd.''s case 1978 UPTC 624 was available for sustaining their action under new Section 28-A(6) of the U.P. Sales Tax Act after it was substituted by U.P. Act No. 33 of 1979

 

and seized the petitioners'' goods. The petitioners then challenged the validity of the action of the respondents seizing and detaining their goods inter alia on the ground that no notification contemplated by new Section 28-A(1) existed. However, before these petitions could be taken up for hearing the Governor Of Uttar Pradesh, with a view to remove doubts with regard to validity of the action of the respondents in seizing the goods in the purported exercise of the power conferred by new Section 28-A, promulgated U.P. Ordinance No. 35 of 1982 on 6th October, 1982, providing inter alia thus:

3. Validation.-(1) In Chapter XIV of the Uttar Pradesh Sales Tax Rules, 1948, as substituted by the Uttar Pradesh Sales Tax (First Amendment) Rules, 1974, the references to Section 28-A shall be deemed to be references to Section 28-A of the principal Act as substituted by the Uttar Pradesh Sales Tax (Amendment) Act, 1979.

(2) Notification No. ST-II-3983/X-900(112)-72 dated March 29, 1974, as amended by Notification No. ST-II-8118/X-900(112)-72 dated November 19, 1974, shall continue to be in force and be deemed to have remained in force as if the same had been issued under Sub-section (1) of Section 28-A of the principal Act as substituted by the Uttar Pradesh Sales Tax (Amendment) Act, 1979 (U.P. Act No. 33 of 1979).

51. According to the petitioners despite the Ordinance promulgated by the Governor the action taken by the respondents in seizing the petitioners'' goods continued to be unconstitutional and without authority of law.

52. In the instant case it is admitted that no notification under the new Section 28-A specifying quantity, measure or value of the goods had been issued by the State Government. Notification No. ST-II-3983/X-900(112)-72 dated 29th March, 1974, as amended by the notification dated 19th November, 1974, relied upon by the respondents had been issued under the old Section 28-A(1) of the U.P. Sales Tax Act. That section was declared to be unconstitutional and void by this Court in the case of Synthetics and Chemicals Ltd., Bareilly v. State of U.P. 1978 UPTC 624. Necessary consequence of such a declaration was that all actions taken under the authority of that section including the notifications issued thereunder also became invalid and ceased to exist in the eyes of law. The legislature then enacted the U.P. Sales Tax (Amendment) Act, 1979 and introduced the new Section 28-A with effect from 27th September, 1979. It neither gave any retrospective effect to the newly substituted section nor did it attempt to validate any action taken under the section as it stood prior to its substitution and the provisions whereof had been declared to be void by this Court. Instead it made certain transitory provisions laying down that no application, suit or other proceedings shall be made or instituted in respect of any goods detained or seized or for refund of any amount of security deposit or penalty imposed under the provisions which had been declared to be invalid for a period of one year and that any proceedings so instituted were to be stayed for the same period. In this view of the matter there is no escape from the conclusion that on the date on

 

which the goods belonging to the petitioners were sought to be detained in the purported exercise of the powers under the new Section 28-A(6) of the Act, no notification specifying the quantity, measure or value of goods contemplated by the new Section 28-A(1) was in existence and consequently the action of the respondents was not authorised.

53. It was to meet the aforementioned objection that the Governor of Uttar Pradesh promulgated the Uttar Pradesh Sales Tax (Amendment and Validation) Ordinance, 1982, on 6th October, 1982, Section 3(2) whereof runs thus :

Notification No. ST-II-3983/X-900(112)-72 dated March 29th, 1974, as amended by Notification No. ST-II-8118/X-900(112)-72 dated November 19th, 1974, shall continue to be in force and be deemed to have remained in force as if the same had been issued under Sub-section (1) of Section 28-A of the principal Act as substituted by the Uttar Pradesh Sales Tax (Amendment) Act, 1979 (U.P. Act No. 33 of 1979).

54. This Sub-section merely purports to create a fiction that although the notification dated 29th March, 1974, as amended by the notification dated 19th November, 1974, had been issued under the old Section 28-A(1), which had been declared to be invalid by this Court, it will be deemed to have been issued under the new Section 28-A. It is worth noticing that the new Section 28-A as substituted by U.P. Act No. 33 of 1979 has not been given any retrospective operation and no such fiction has been created that the said section would be deemed to be in force on 29th March, 1974, when the notification in question had actually been issued. It may be that had the U.P. Legislature while enacting U.P. Act No. 33 of 1979 or the Governor of Uttar Pradesh while promulgating Ordinance No. 35 of 1982, created a fiction that Section 28-A as substituted by that Act would be deemed to have been in force on 29th March, 1974 and a further fiction that the power exercised by the State Government in issuing the notification dated 29th March, 1974, would be deemed to have been exercised under the substituted section, it could have been possible to sustain the effectiveness of the said notification. But then we fail to see as to how in the absence of creating a fiction with regard to the competency of the State Government to issue the notification on the date on which it was issued, can any life be infused into it merely by creating a fiction that it would be deemed to have been issued under a provision which was, at the relevant time, not available for sustaining the same. As already stated, neither U.P. Act No. 33 of 1979 nor U.P. Ordinance No. 35 of 1982 purport to create any fiction with regard to competency of the State Government to issue the notification dated 29th March, 1974, on the said date. In taking this view we derive considerable support from the decision of the Full Bench of the Delhi High Court in the case of P.L. Mehra, etc. Vs. D.R. Khanna etc., wherein it has been observed that a statute which is void within the meaning of Article 13(2) of the Constitution is nonexistent for all purposes, including repeal, amendment or enforceability. A decision of the Supreme Court holding a statute to be void does not repeal the statute. It is only

 

the legislature which can repeal a statute. But the declaration of voidness of a statute made by a High Court unless it is reversed by the Supreme Court has the same effect although the operation of the declaration may be confined to the territorial limits of the High Court''s jurisdiction. Within those territorial limits the statute has to be regarded as "still-born", "dead" and "non-existent" and unless it is re-enacted it will be wholly inoperative and of no legal effect. The Bench while considering the question as to how life can be infused in respect of such a void and inoperative enactment or the actions taken thereunder went on to observe thus :

A wholly void statute may be rendered operative by the legislature in any of the following ways :-

(i) the statute may he re-enacted after the vice which had led to the declaration of voidness being removed from it ;

(ii) The legislature may pass a validating Act retrospectively putting out of the way one of the competing statutes which enabled unconstitutional discrimination being practised under it and by providing that all actions should be deemed to have been taken and shall be continued under the other statute which is otherwise without blemish ;

(iii) by constitutional amendment specifically mentioning the void statute and protecting it against any attack on the ground that it violates any of the fundamental rights secured under Part III of the Constitution.

Prospective amendment of the portions of a void statute with the intention of ridding it of the vice afflicting it, ...is not one of the methods that could be adopted to achieve that result.

55. It will thus be seen that in the opinion of the Delhi High Court the second method for infusing life into an action taken under a statute declared to be void by the court was to pass a fresh legislation giving it retrospective effect and creating a fiction that all actions deemed to have been taken under the invalid Act should be deemed to have been taken under the new legislation which does not suffer from any constitutional defect. Such a course has not been adopted in the instant case.

56. The learned Solicitor-General did not bring to our notice any decision of the Supreme Court or of any other High Court, where an action taken in the absence of legal provision to sustain it, has been validated by subsequent legislation without first creating the authority under which the said action could have been taken on the date on which it was taken and thereafter creating a fiction that it would be deemed to have been taken under that authority.

57. There is yet another way in which this matter can be looked into. New Section 28-A(1) as substituted in the principal Act, by U.P. Act No. 33 of 1979, merely empowered the State Government to issue a notification specifying the quantity, measure or value of certain goods. Such a notification could be issued

 

by the State Government at any time after 27th September, 1979. Sub-section (2) of Section 3 of U.P. Ordinance No. 35 of 1982 merely purports to create a fiction that notification dated 29th March, 1974, had been issued u/s 28-A as substituted by U.P. Act No. 33 of 1979. It is obvious that the said Sub-section cannot be construed as meaning that the notification dated 29th March, 1974, would, on that date, be deemed to be issued u/s 28-A as substituted by U.P. Act No. 33 of 1979, specially when the new Section 28-A has not been made operative on that date. The Sub-section merely creates a fiction that the said notification would be deemed to have been issued under new Section 28-A of the Act. But it does not specify the date on which it would be deemed to have been so issued on or after 27th September, 1979. Since Ordinance No. 35 of 1982 has been promulgated on 6th October, 1982 and it has not been given any retrospective operation the maximum that can be said is that under Sub-section (2) it may be taken as if the notification dated 29th March, 1974, as amended by the notification dated 19th November, 1974, had been issued under the provisions of Section 28-A of the principal Act as substituted by U.P. Act No. 33 of 1979 on 6th October, 1982 and thereafter it shall continue to be in force. It is true that Sub-section (2) also uses the words "be deemed to have remained in force" signifying the Governor''s intention to treat it as being in force even prior to 6th October, 1982. But then the Ordinance has fallen short of specifying any such date on which the notification would be deemed to have been issued and whereafter it would be taken to have remained in force.

58. In the result, we are of the opinion that neither the enactment of new Section 28-A nor the promulgation of U.P. Ordinance No. 35 of 1982 has succeeded in infusing life in the notification dated 29th March, 1974, which on the date on which it was issued was absolutely without jurisdiction and in law "stillborn" and "non est".

59. The learned Solicitor-General invited our attention to the following observations made by the Supreme Court in the case of Kailash Nath and Another Vs. State of U.P. and Others, :

...This notification having been made in accordance with the power conferred by the statute has statutory force and validity and therefore the exemption is as if it is contained in the parent Act itself... and contended that as the notification dated 29th March, 1974, had been issued in accordance with Section 28-A of the U.P. Sales Tax Act as it then stood, it had statutory force and became a part of the U.P. Sales Tax Act itself. In Synthetics and Chemicals Ltd., Bareilly''s case 1978 UPTC 624 only Section 28-A had been declared to be invalid and that there is no declaration by the court in respect of part of the enactment covered by the notification dated 29th March, 1974. Accordingly, the notification dated 29th March, 1974, always continued to be in force and its validity can be sustained with the aid of U.P. Act No. 33 of 1979 and U.P. Ordinance No. 35 of 1982.

60. We are unable to accept this submission made by the learned Solicitor-General. In accordance with the observations of the Supreme Court quoted

 

above the notification dated 29th March, 1974. could be considered to be a part of the U.P. Sales Tax Act only if the same had been issued in accordance with some valid power conferred by a statute. In the instant case the notification was issued in the purported exercise of the powers under Sub-section (1) of Section 28-A of the Act as it then stood. The source of the authority to issue the said notification had been declared to be unconstitutional by this Court in Synthetics and Chemicals Ltd., Bareilly''s case 1978 UPTC 624. Accordingly, it cannot be said that the said notification had been issued under some valid statutory authority and no question of treating it as having become a part of the Act arises.

61. As we have come to the conclusion that there was no valid notification as contemplated by Section 28-A(1) in existence at the time when the goods belonging to the petitioners in all these cases were seized and detained in the purported exercise of the power u/s 28-A(6) of the Act, the seizure and detention of the petitioners'' goods became illegal and without authority of law and it is not necessary for us to scrutinise individual cases for finding out whether the power to detain the goods has been otherwise exercised in consonance with the provisions of the new Section 28-A of the Act.

62. We may, before parting with the case, point out that it was seriously argued by Sri. V.D. Singh, Advocate on behalf of some of the petitioners, that the provisions contained in U.P. Ordinance No. 35 of 1982 purporting to effectuate the notification dated 29th March, 1974, from a date prior to 6th October, 1982, was, inasmuch as the Ordinance attempted to penalise an action which on the date on which it was taken was not liable to any penalty, unreasonable and violative of articles 19 and 20 of the Constitution. However, in the view which we have taken, it is not necessary for us to express any final opinion on this part of the submission made by the learned counsel.

63. All these petitions, therefore, succeed and are allowed with costs. The respondents are directed to return the petitioners'' goods that have been seized by them forthwith. In cases where the goods have already been released on the petitioners'' furnishing security under the orders of this Court the security furnished for the purpose shall stand discharged.

64. While judgment was being delivered, the learned standing counsel appearing for the respondents prayed for grant of a certificate under Article 134A of the Constitution, that this case is fit one for appeal before the Supreme Court. He contended that the question as to whether Ordinance No. 35 of 1982 has succeeded in infusing life in the notification dated 29th March, 1974, as amended on 19th November, 1974, is a substantial question of law of general importance which needs to be decided by the Supreme Court. Having heard the counsel for the parties, we think that the question involved in the appeal proposed to be filed by the State is a substantial question of law of general public importance which needs to be decided by the Supreme Court. We certify accordingly.

 