

(1995) 02 KL CK 0009

In the High Court Of Kerala

Case No : W.A. No's. 1101/91, 1104/91 and 1105/91, etc, of 1991

M.R.F. Limited

APPELLANT

Vs

The Assistant commissioner, Sales Tax and Others

RESPONDENT

Date of Decision : 24-02-1995

Acts Referred:

Central Sales Tax Act, 1956 — Section 5
Constitution of India, 1950 — Article 14, 19(1), 301
Income Tax Act, 1961 — Section 190, 207
Kerala General Sales Tax Act, 1963 — Section 10, 16, 17, 18, 19
Sales Tax Rules — Rule 21, 21(7)

Citation : (1995) 02 KL CK 0009

Hon'ble Judges : M.M. Pareed Pillay, C.J;T.V. Ramakrishnan, J;P. Shanmugam, J

Bench : Full Bench

Advocate : S.A. Nagendran and K.B. Subhagamony, for the Appellant; S. Vijayan Nair, Government Pleader, for the Respondent

Judgement

T.V. Ramakrishnan, J.—These writ appeals are against the common judgment rendered by a learned Single Judge in a batch of Original Petitions which is reported as *Dunlop v. State of Kerala* 1991 (2) KLT 852

2. The Appellants in all the appeals except in one are the Petitioners in the batch of Original Petitions filed challenging the constitutional validity of Sections 29A(2B) of the Kerala General Sales Tax Act, 1963 (hereinafter referred to as "the Act") and a circular, produced as Ext. P-2 in O.P. 8438/1989, issued in implementation of the above Sub section. In some of the Original Petitions, the validity of Sub section (2A) of Section 29A was also under challenge. The learned Judge substantially upheld the validity of the impugned provisions and the circular except to the extent of a small portion of Section 29A(2B) of the Act. It was thus found that the only provision to be struck down is the authorisation given in Section 29A(2B) to detain the goods and deal with them in the manner provided for as if the transport of goods was an attempt to evade payment of tax in cases where the officer has reason to believe that the dealer has at any time

defaulted payment of any tax. To that extent, the portion of Section 29A(2B) was struck down as unconstitutional. In all other respects all the Original Petitions were dismissed by the learned Single Judge. Appeals have been filed by all the Petitioners reiterating the contentions raised in the Original Petitions and rejected by the learned Single Judge.

3. W.A. 1392/91 is an appeal filed by the State specifically against the judgment in O.P. 3904/90, to the extent it has partially struck down the provisions in Section 29A(2B) of the Act.

4. Sub-section (2B) of Section 29A is in the following terms:

(2B) If such officer has reason to believe that the tax payable for the sale or purchase of the goods under transport is not paid or the dealer whose goods are transported has not paid any tax in accordance with the procedure prescribed or has at any time defaulted payment of any tax for any period such officer may allow the transport of the goods only after realising the tax due on the turnover of the goods transported. If such dealer or driver or person incharge of the goods refuses to pay the tax aforesaid, the goods shall be detained by such officer and shall be dealt with in the manner provided in this Section as if the transport of goods were an attempt to evade payment of tax due under this Act.

5. The circular under challenge is one issued by the Board of Revenue u/s 3(1A) of the Act. Clause (5) of the circular which is under direct challenge declares that Sub-section (2B) of the Act empowers the officers who are authorised to invoke the provisions of Section 29A to demand and collect advance tax on the turnover of goods transported if they have reason to believe that tax payable on the consignment is not paid or dealer has defaulted payment of taxes. The circular further details the instructions to be strictly followed by the officers in implementation of the provisions contained in Section 29A(2B) of the Act. The relevant portions of the instructions are thus:

5(i) Sub-section (2B) empowers the officers who are authorised to invoke the provisions of Section 29A to demand and collect advance tax on the turnover of goods transported if they have reason to believe that tax payable on the consignment is not paid or dealer has defaulted payment of taxes.

** ** * (ii) (a) In the case of goods taxable at the last purchase point like rubber, pepper, arecanut, no transport outside the State through the border check posts should be allowed without collecting the tax due on the consignment. But dealers may at their option remit the tax due on the consignment to their Assessing Authority by means of Demand Draft, remittance in cash to the office, or remittance into the Treasury. Then the Assessing Authority should endorse in the Delivery Note to be accompanied the transport the details of payment of tax with the Demand Draft/Receipt or Chalan No. and amount, making the carbon impression in all the copies of the Delivery Note at the left hand side of the Delivery Note below the Serial No. with the signature and seal of the Assessing Authority. If such an endorsement is available in the

Delivery Note, the Check post Inspector should allow the transport, without collection of advance tax....

(b) In the case of goods taxable at the sale point advance tax need be collected only when a request is received by the Check post Inspector from the Assessing Authority showing that the dealer is in default and requesting him to realise the advance tax or if the dealer has no sales tax registration or if the registration details shown are incorrect or suspicious and when the turnover exceeds the assessable limit.

6. All the Appellants are dealers in goods taxable at the last purchase point. Goods involved in all cases are of that kind. In respect of such goods, admittedly, liability for tax under the Act will arise only when the quality of last purchase attaches to the transaction of purchase effected within the State. In the light of the provisions contained in Sections 2(xxvi) and 8 of the Act, such quality of last purchase will attach to the transaction of purchase when goods are exported or despatched out of the State or used for some purpose within the State which would make the purchase by the concerned dealer to be the last purchase. In all these appeals, the claim of the department is that goods detained are goods in respect of which tax under the Act has become payable as they are sought to be despatched outside the State. Before the introduction of Sub section (2B), in such cases, there was no provision which makes it obligatory to pay tax payable before transport of goods out side the State. Tax payable need have been paid only in the normal course within 15 days from the last date of the month in which goods were actually transported. As a result, it was possible for dishonest dealers to evade payment of tax by using false documents in the name of either reputed dealers or bogus dealers. It is alleged that the detailed enquiry made by the State revealed that there had been large scale evasion of tax by dishonest dealer"s using forged documents taking advantage of the time available for payment of tax as per the other provision of the Act. It was found to be an evil affecting the economy of the State and State wanted the same to be checked by appropriate amendment of the law. In this connection, it may be useful to note the objects and reasons for amending and incorporating Sub-sections (2A) and (2B) in Section 29A of the Act given in the Bill which is as follows:

In para 75 of his budget speech for 1989-90 the Finance Minister has stated that there is at present no provision to confiscate or seize, the vehicle involved in the clandestine transport of goods and that necessary legislation will be brought to confer necessary powers on the sales tax authorities for confiscation or seizure of the vehicles involved in clandestine transport of goods and thereby check tax evasion effectively. For giving effect to the said proposal Government decided to amend Section 29A of the Act suitably.

We may also relevantly note the averments in the counter affidavit filed by the Deputy Secretary, Taxes Department on behalf of 2nd and 3rd Respondents, dealing with the circumstances under which the impugned provisions were incorporated in the Act. Thus, it is stated that the impugned provisions were

incorporated as part of Section 29A, when the Government found large scale evasion of tax in the purchase and sale of certain goods especially rubber, papper, arecanut, etc., by using forged documents like Form 26 prescribed under the Sales Tax Rules (herein after referred to as "the Rules") and "N" Forms issued by the Rubber Board under the Rubber Act and Rules. It is also stated that on enquiry, Government has found out various instances where transportation of huge quantities of goods on which tax was payable at the point of last purchase, have taken place clandestinely using either unauthorisedly printed forms or documents forged in the name of bogus or reputed dealers. In many cases, it was found that dealers in whose name the bills were produced denied the transactions claiming that somebody had clandestinely transported the goods in their name, without their knowledge. It is also stated that existing provisions in the Act incorporated with the object of checking evasion of tax were found to be totally insufficient for the purpose.

7. Mainly the Appellants have raised the following common contentions: (1) The impugned provisions imposed unreasonable restriction on the free movement of goods in the course of trade and commerce by insisting upon payment of tax at the check-posts when goods are taken out of the State even before tax in respect of such goods becomes payable in accordance with the procedure prescribed under the Act. The provision contained in Section 29A(2A) and (2B) goes against the scheme of levy, assessment and recovery of tax under the Act. As such, the provisions are illegal and violative of Article 301 of the Constitution of India. (2) Ext. P-2 circular is beyond the powers on the Board of Revenue u/s 3(1A) of the Act inasmuch as Clause (5) of the circular authorises collection of advance tax for the collection of which there is no provision in the Act. In the circumstances, it is a restriction imposed illegally. The scope and effect of Clause (5) of the circular goes far in excess of the scope and effect of Section 29A(2B) of the Act itself. It cannot be treated as a circular issued in implementation of Section 29A(2B). (3) The action of the authorised officers based upon Ext. P-2 circular, in detaining the goods belonging to the Petitioners and transported through check-posts supported by valid documents as provided under Sub-section (2) of scction 29A is totally illegal and ultra vires.

8. The learned Senior Government Pleader has reiterated with force the contentions raised before the learned Single Judge which were substantially accepted and rejected in part by the learned Single Judge.

9. We may now proceed to consider the above contentions in seriatum.

Contention Nos. 1 and 2: Briefly stated the first contention was that Sub-section (2B) in so far as it authorises the check-post authorities to demand and collect tax on the sale or purchase of goods transported even before the expiry of the period fixed for filing monthly return and payment of tax as provided in Rule 21(7) of the Rules, imposed illegal and unreasonable restrictions in the matter of free movement of goods in the course of trade and commerce carried on by the Petitioners and as such violative of Article 301 of the Constitution of India. In

effect the provision compels payment of tax even before it becomes payable in accordance with the provisions of the Act. The basic submission in support of the contention therefore was that the 1st part of the impugned provision authorises collection of tax even before it becomes payable in accordance with the procedure prescribed by the Act and the Rules and as such it is illegal being contrary to the scheme for assessment and collection of tax contained in the Act and Rules.

10. Sub-section (2B) of Section 29A authorises detention of goods sought to be transported through check-posts in three contingencies. If the officer empowered has reason to believe (i) that tax payable for the sale or purchase of goods under transport is not paid, or (ii) that the dealer, whose goods are transported, has not paid any tax in accordance with the procedure prescribed, or (m) that the dealer has, at any time, defaulted payment of any tax for any period. The Appellants are mainly aggrieved by the power of detention conferred by the 1st part of the Sub section. It was submitted that in the case of goods on which tax is payable at the point of last purchase such as rubber, pepper, arecanut etc., the 1st part of the Sub section compels payment of tax even before it becomes payable after assessment when goods are sought to be transported through check-post and authorises detention on default of such payment.

11. In order to appreciate properly the contentions, it is necessary to understand the scheme of the provisions contained in the Act before incorporation of the impugned provisions in the Act and the precise legal effect of those provisions especially Sub section (2B) of Section 29A of the Act. A close scrutiny of the relevant provisions of the Act dealing with levy, assessment and payment of tax under the Act would indicate that the scheme of the Act is to levy tax on every transaction of sale or purchase effected by a dealer having assessable turnover. Though Section 5 in terms states that every dealer shall pay tax on the taxable turnover, in effect it is a direction to pay tax on the aggregate amount for which goods are either brought or sold after making permissible deductions in the light of the meaning given to the word "taxable turnover". In the circumstances, taxing event can only be considered as each sale and purchase, though taxable turnover is indicated as the basis for assessment of tax. The effect of statutory levy of tax on sale or purchase effected by dealers who have assessable turnover is to subject simultaneously such dealers to the liability to pay tax in accordance with the procedure prescribed by the Act and Rules for assessment and payment of tax. Section 7, and Sections 16 to 23 would clearly show that actual payment of tax payable under the Act is statutorily deferred in the normal course till a self-assessment or a final assessment is made in accordance with the provisions in Sections 7 and 23 and Rule 21(7) of the Rules. In other words, the quantification of the tax liability and its payment alone is statutorily postponed to a later date. The wording of Section 17 which states that "every dealer who is liable to pay tax under this Act shall submit such return or returns relating to his turnover in such manner and within such period as may be prescribed"

would clearly show that dealer who is to submit returns is only a dealer who is already liable to pay tax under the Act. As such, it is clear beyond any doubt that taxing event is the sale or purchase effected by a dealer who has assessable turnover and such a dealer becomes liable to pay tax under the Act immediately on the conclusion of each sale or purchase though as per the further provisions in the Act he need actually pay the tax only on self-assessment or final assesment as the case may be. Liability to pay tax arises on the completion of the taxing event, though payment of such tax is statutorily deferred to a later date. This in our view is the scheme for levy, assessment and payment of tax as per the provisions of the Act in normal circumstances.

12. We find support for the above view which we are taking, in the following observation of the Supreme Court in *State of Rajasthan and Ors. v. Ghasilal*.

Section 3 the charging Section read with Section 5 makes tax payable i.e. creates liability to pay tax. That is the normal function of a charging Section in a taxing statute. But till tax payable is ascertained by the assessing authority u/s 10 or by the Assessee u/s 7(2) no tax can be said to be due within Section 16(1) (b) of the Act for till then there is only a liability to be assessed to tax.

(emphasis added)

In a very early decision reported in ILR 1962 Mad 1125 (*A.P. Mariappa Mudaliar v. The State of Madras*) a Division Bench has stated the legal positions lucidly in the following words:

Section 3, the charging Section, of the principal Act provides that every dealer shall pay for each year a tax on his total turnover for that year calculated at two per cent of such turnover. The taxable event under the Act is either sale or purchase and the scheme of the Act is that each transaction of sale or purchase by a dealer attracts tax at the point of time when the transactions take place though for the purpose of convenience the computation of the turnover is made annually. The liability to pay tax therefore arises on the happening of the taxable event though collection may be postponed till after the total turnover is determined, the tax levied and the actual demand made. A sum of money is said to be payable when a person is under an obligation to pay it. The word payable may, therefore, signify an obligation to pay at a future time.

Further it is useful to note the oft quoted observation of Lord Dunedin in *Whitney v. Inland Revenue Commissioners* 1926 A.C. 37 which reads thus:

Now there are three stages in the imposition of tax; there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable Next there is the assessment. Liability does not depend on assessment. That ex-hypothesi, has already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly comes the method of recovery if the person taxed does not voluntarily pay.

13. While ascertaining the precise legal effect of the impugned provisions, it is relevant to note that the specific case of the learned Government Pleader is that 1st part of Sub-section (2B) is a special provision making the tax liability incurred in respect of sale or purchase of goods sought to be transported through check post, payable immediately even before assessment and authorising collection of such tax payable if not already paid, by the check post authorities as a measure to suppress evasion of tax. In fact, the Petitioners have also challenged the constitutionality of the provisions on the assumption that it authorises collection of tax even before assessment and have prayed either for quashing the impugned provisions and the circular to the extent it authorises such collection of to read down the provisions and the circular as authorizing collection of tax already assessed and not paid. It was submitted that tax becomes payable only when it is assessed and as such the words "tax payable" used in the Sub section should be given the meaning of tax assessed and as such payable immediately.

14. In the light of the above rival contentions, it is necessary to consider about the proper meaning to be assigned to the word "payable" used in the Sub section. According to Supreme Court, the word "payable" is somewhat indefinite in import and its meaning must be gathered from the context in which it occurs [See New Delhi Municipal Committee Vs. Kalu Ram and Another,]. A Full Bench of the High Court of Madras has also held that the word payable has "both a primary and a secondary meaning, or a "basic" and "extended meaning". After referring to the several dictionary meanings, the Full Bench has held that the term "payable" has two meanings (i) owing, and (ii) payable at a particular point of time, and when the term is used without any qualification, payable means "payable at once" [see S.P.L.P. Narayanan Chettiar Vs. M.A.R. Annamalai Chettiar,]. The meaning of the word "payable" has been given in "Black's Law Dictionary" as thus:

Payable-Capable of being paid; suitable to be paid; admitting or demanding payment; justly due; legally enforceable. A sum of money is said to be payable when a person is under an obligation to pay it. Payable may therefore signify an obligation to pay at a future time, but, when used without qualification, term normally means that the debt is payable at once, as opposed to owing.

It is clear from the above extract that the word "payable" may signify "an obligation to pay at a future time" as well as "an obligation to pay at once".

15. It is a well settled principle of interpretation that where two meanings could be attributed to an expression or phrase an interpretation which would give the appropriate meaning in the context in which the phrase occurs should be adopted by the Courts [Narayanan v. Annamalai AIR 1961 Mad 313 (F.B.)]. It is equally well settled that when alternative constructions are open, a statute should be so construed as to give effect to its object or policy and the courts to the extent the language permits will be slow to adopt such a construction which may result in its object being defeated [see Shanti Prasad Jain Vs. The Director of

Enforcement,]. Over and above the above general principle, it is also relevant to note certain principles particularly applicable to taxing statutes. It is by now well settled that the well known rule of strict construction applicable to taxing statutes applies primarily to charging provisions in a taxing statute and has no application to a provision not creating a charge but laying down machinery for its calculation or procedure for its collection and such machinery provisions have to be construed by the ordinary rule of construction [see *Gursahai Saigal Vs. Commissioner of Income Tax, Punjab*, , *Murarilal Mahabir Prasad and Others Vs. Shri B.R. Vad and Others*, ; *Associated Cement Company Limited Vs. Commercial Tax Officer, Kota and Others*,]. Yet Anr. important consideration in construing a machinery Section is that it should be so construed as to effectuate the liability imposed by the charging Section and to make the machinery workable [See *N.B. Sanjana, Assistant Collector of Central Excise, Bombay and Others Vs. The Elphinstone Spinning and Weaving Mills Company Ltd.*, , *Commissioner of Income Tax, Central, Calcutta Vs. National Taj Traders*,]. The above principles laid down in the decisions of the Supreme Court would indicate that machinery provisions in a taxing Act and provisions enacted to suppress tax evasion are construed liberally to effectuate their object. Further, it may be useful to note the rule of interpretation which is to be followed when a particular enactment and a general enactment in the same statute is contended to be contradictory. This is especially relevant in view of the specific contentions raised by the Appellants that Sub-section (2B) of Section 29A is contradictory to the other provisions in the Act regarding assessment and collection of tax. The relevant rule has been stated thus in *Crises on Statute Law*:

The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.

(5th Edn., page 205)

The rule of course as pointed out by Maxwell on "Interpretation of Statutes" can be applied only when there is no intention to the contrary expressed in the general enactment either express or impliedly (see 11th Edition, pages 168 and 169). It is also relevant to note what Lord Coke has stated in *In Re: Heydon's* case which is to the following effect:

To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope, and object of the whole Act; to consider, 1. What was the law before the Act was passed; 2. What was the mischief or defect for which the law had not provided; 3. What remedy Parliament has appointed; and 4. The reason of the remedy.

The above principles have been referred to and relied upon with approval by the Supreme Court in *Commissioner of Income Tax, Patiala and Others Vs. Shahzada*

Nand and Sons and Others, while interpreting the Income Tax Act, a taxing statute itself.

16. Applying the above relevant principles to the case on hand, bearing in mind the fact that the impugned provision is one incorporated in the Act by way of an amendment, specifically for the purpose of suppressing evasion of payment of tax and as a provision for collection of tax under the Act, it is only just and legal to adopt that meaning of the word "payable" which would effectuate the object of the enactment and make the machinery for collection more effective. We find that adoption of the meaning canvassed for by the Appellants would totally defeat the object for which the provision was incorporated in the Act inasmuch as it may enable dishonest dealers who wanted to avoid payment of tax to remove goods beyond reach of the authorities under the Act even before payment of tax, by using documents forged in the name of bogus dealers or in the name of reputed dealers without their knowledge and thus to avoid payment of tax. If on the other hand "payable" is understood as having the alternative meaning of "a liability to pay at future time", we find that it will enable the check-post officials to demand and collect tax for payment of which liability has already been incurred on the happening of the taxable event, namely, last purchase in the case of goods on which tax is leviable at the last purchase point, before goods are attempted to be transported outside the State. Such a meaning can legitimately be assigned to the word "payable" in the context in which the word is used in the Sub section especially in view of our finding that liability to be assessed for tax and to pay the tax as assessed arises on each sale or purchase of goods. As such, we are of the view that in the context in which the word "payable" has been used in the Sub section, it should be understood as having the meaning "liable to pay at a future time". In that view, we are inclined to accept the contention of the learned Government Pleader that the Sub-section (2B) is a special provision which makes the tax payable in the normal course only after assessment, immediately payable, in cases where goods are sought to be transported beyond the limits of the State before assessment and payment of tax in the normal course and authorising officers at the check-post to demand and collect such tax if not already paid. It is a provision which directs payment of tax even before assessment in cases coming within the purview of the Sub section subject to the condition that the tax paid is to be credited to the account of the dealer to be adjusted at the time of assessment. In that sense alone it can loosely be called advance tax. As a necessary corollary, we have also to accept the contention of the Appellants that the provision authorises realisation of tax contrary to the normal procedures prescribed for assessment and collection of tax under the Act.

17. If that be the legal effect of the impugned provision, whether it will be bad in law for any of the reasons stated in the Original Petitions and the Memorandum of Appeal is the further question to be considered. In the light of our finding that the liability for tax arises on the conclusion of each sale or purchase of goods, the provision can be treated only as a provision compelling discharge of such

legal liability incurred, even before assessment in cases coming within the purview of the said Sub section. The procedure prescribed for assessment and collection of tax for which dealers have already become liable by virtue of the charging Section on a later date is a procedure prescribed by the legislature for collection of tax under the Act in the normal course. None of the Petitioners have seriously disputed the competency of the legislature to change the procedure for assessment and collection of tax levied by the charging Section, if so found necessary, for the purpose of making the machinery for collection Provided under the Act workable and more effective. Since legislative competence has not been seriously disputed, the only point to be considered is whether the impugned provisions and the circular issued for its implementation are either arbitrary and as such violative of Article 14 or are unreasonable restrictions imposed on the free movement of goods in the course of trade and commerce and as such violative of Article 301 of the Constitution of India.

18. In support of the above contention, it was submitted that the impugned provisions and the circular in question stipulates that before transportation of rubber and other goods in respect of which tax is payable at the point of last purchase, the dealer must remit the tax on the goods sought to be transported, into the treasury and get an endorsement on the delivery note from the assessing authority showing the particulars of tax paid and only on production of such delivery note, the goods shall be allowed to move out of the State. It is only after loading the goods on the vehicle or lorry, the delivery note can be prepared furnishing the registration number of the vehicle, the quantity and description of the goods, etc. Thereafter, the amount of tax on the goods loaded in the vehicle has to be remitted into the treasury or to the assessing authority. The procedure of remittance of tax and getting delivery note endorsed after loading the goods on the transport vehicle involves considerable delay compelling detention of the vehicle and payment of demurrage etc. Such payment of tax and endorsement on delivery note can be made only on Government working days and during office working hours. Thus, no transport of goods can be made on holidays which sometimes will happen 4 or 5 days at a stretch. Entrustment of cash to the drivers of the transporting vehicle and payment of cash at the check-post by the vehicle driver involves difficulties and risk and is also not in the interests of revenue particularly by reason of the corrupt practices prevailing at the check post in the State. The impugned provisions and the circular gives uncontrolled and unguided power on the check post officials to detain the goods even in cases where no attempt is made to evade payment of tax. There is no warrant for the assumption made while issuing Ext. P-2 circular that the impugned provisions authorise collection of advance tax. The impugned provision as such has no such legal effect. If the impugned provision has such a legal effect, it will be discriminatory and violative of Article, 14 of the Constitution of India so long as such collection of tax is authorised only in respect of goods taxable at the last purchase point. In a case where tax has not become actually payable and the dealer has time to pay tax as provided under the Act at the time when goods are

sought to be transported, there is no justification to come to a reasonable conclusion that there is any attempt to evade payment of tax due under the Act. Even assuming that a liability to be assessed to tax and to pay the taxes assessed arises when the goods are transported, still the dealer need only pay the tax within 15 days from the last date of the month in which transportation has taken place. In such cases also, the check post authorities can detain the goods on the basis of the impugned circular, since the circular directs collection of tax on the sale or purchase of goods sought to be transported, in case tax has not already been paid. Insistence for payment of tax even before assessment and quantification as provided in the Act can only be treated as illegal impediments arbitrarily placed in the matter of free movement of goods in the course of trade and commerce.

19. The contention that the provisions in the Sub section are contrary to the scheme prescribed by the Act and Rules for assessment and collection of the tax cannot be countenanced at all in view of the fact that the impugned provisions are also part of the Act itself. On and after the incorporation of the above provisions, such provisions will also form part of the scheme for collection of tax prescribed by the Act itself. The said submission has therefore no force.

20. Similarly, the submission that the circular authorises collection of advance tax contrary to Sub-section (2B) and as such is in excess of the powers conferred on the Board u/s 3(1A) of the Act is also unsustainable in law. As we have already indicated, both Sub-section (2B) and the circular only authorise collection of tax for which liability has already been incurred unlike the provisions in Sections 190 and 207 contained in the Income Tax Act where tax is payable in advance during any financial year in respect of the total income anticipated and estimated even before the liability is actually incurred. In the case on hand the liability incurred is only made payable and collectable simultaneously or immediately on the happening of the taxable event and not earlier. As such, as pointed out by the learned Judge, it can only be treated as a word used in a loose sense to indicate the distinction between tax payable in the normal course after assessment and the tax payable immediately on incurring of liability.

21. In the light of our finding regarding the precise legal effect of the provisions in Sub-section (2B), we cannot also agree with the submission of the learned Counsel for the Appellants that the circular authorises something to be done contrary to the Sub section and that it is not in consonance with it. The circular in the circumstances can only be considered as one issued for the effective implementation of the authorisation given as per the Sub section and is fully within the powers of the Board u/s 3(1A) of the Act.

22. There is also no contention that any new tax burden is imposed as per the Sub-section. The challenge levelled against the Sub section that it imposes a tax on consignment sale has no basis whatsoever and has only to be rejected as has been rightly done by the learned Single Judge.

23. The Sub section only authorises collection of tax for which liability has already been incurred even before assessment. As directed in the circular, tax so collected is to be immediately accounted to the credit of the dealer whose goods are transported and no loss whatsoever is caused except that the tax is collected before the expiry of the period granted by the legislature for payment of tax in the normal course. It can at best be considered only as a withdrawal by legislation of a benefit granted by the legislature itself for a justifiable reason. The practical difficulties highlighted by the Appellants do not seem to us to be so arbitrary or insurmountable as to make the provision itself unconstitutional and invalid. With some amount of anticipation and planning, the dealers can practically avoid or overcome all the difficulties pointed out to a great extent if they wanted to do so. Anticipating the date on which goods may have to be transported, dealers can arrange for payment of tax due on the goods intended to be transported. If it is understood that goods taxable at the last purchase point which suffers tax for the first time when they are moved outside the State can be transported through check post only after payment of tax either in the normal course or before assessment, it may not be difficult to arrange for payment of tax well in advance by proper planning. Turnover in respect of such goods can be included in advance in the returns to be filed monthly before goods are attempted to be transported or in urgent cases tax can also be paid in individual cases in advance anticipating the probable date of transportation. It is not that tax can be paid only after loading the goods in the lorry. We feel that with certain amount of anticipation and planning, the practical difficulties highlighted to a disproportionate extent by counsel at the time of argument can be avoided. As such, we are not inclined to accept the contention of the Appellant that the Sub section and circular imposes unreasonable or arbitrary restriction in the matter of free movement of goods in the course of trade or commerce, violative of the freedom granted by Article 301 of the Constitution of India.

24. So also, the contention that impugned provisions in the Sub section and circular are arbitrary and violative of Article 14 must also fail for the various reasons given by the learned Judge with which we are in full agreement. The impugned provision is one incorporated in the Act with a view to prevent goods being transported outside the State before payment of tax as a measure to suppress evasion of tax. Only in cases where there is reason to believe that tax has not been paid, the provision can be invoked legally. The direction in the circular also makes the position clear. The different modes in which tax can be paid by the dealer are indicated in the circular. As regards the 2nd limb of the Sub section, the circular makes it clear that only on the basis of the instructions received from the assessing authority [clause 5(ii) (b) of the circular] goods can be detained. The provisions in Clause 5(i)(a) of the circular directs dealers to pay the tax as far as possible in the office of assessment itself so that it can easily be credited in the account of the dealers. Collection by the check post authorities is authorised only in the event of default in payment of tax to the assessing

authority. Taking note of the object and reasons for incorporating the impugned provisions in the Act, the authorisation given for collection of tax before assessment in the case of goods taxable at the last purchase point at the time when such goods are sought to be transported outside the limit of the State cannot be treated as discriminatory or arbitrary. The differentiation made in the manner of collection of tax in cases where goods taxable at the last purchase point are sought to be transported outside the limit of the State, has a reasonable nexus with the object to be achieved by the enactment of the provision, namely, suppression of evasion of tax which was found to have been going on, on a large scale in the State. Sub section does not make any discrimination between the dealers of goods taxable at the last purchase point and sought to be transported out of the limits of the State.

25. Counsel for some of the Appellants have made a comparison between the provisions contained in Section 42 of the Tamil Nadu General Sales Tax Act, 1959 and the impugned provision to contend that the provision is too arbitrary and unreasonable to be sustained as constitutionally valid. It was submitted that Section 42 is also a provision intended to suppress evasion of tax payment and the provision only insists for accounting of sale or purchase of the goods carried through the check post in the documents mentioned in Sub section (5) of Section 42, namely, bills of sale, delivery notes and other prescribed documents. We do not think that such a comparative evaluation of the reasonableness of the provisions in the two enactments passed by two State Legislatures is justifiable to find that the impugned provision is arbitrary and unreasonable solely for the reason that the provision in question is harsher than the provision in the other statute. This is especially so in a case where the provision was specifically incorporated by way of an amendment to curb a particular kind of evasion of payment of tax as explained in great detail in the counter affidavit. As methods adopted for evasion of tax change, the legislature may also have to introduce changes in the provisions incorporated in the taxing statutes for checking evasion of payment of tax and according to us that is what has been done by the legislature in this case. As such, we cannot hold that the impugned provision is unreasonable and arbitrary on the ground that a similar provision in a different statute is comparatively less harsher or differently worded. We find no merit in the submission also.

26. The contention that unguided power has been conferred on check post officials to detain the goods is also untenable. Power of detention has been conferred on the officials only in cases where there is "reason to believe" that tax payable has not been paid as far as the first limb of the Sub section is concerned. As such, if sufficient evidence regarding payment of tax is produced before the officials, they cannot justifiably detain the goods in such cases. "Reason to believe" is a well-known term in the law of taxation, the meaning and content of which has never been understood as nebulous or vague and as such the condition precedent for the exercise of power mentioned in the Sub section cannot be held to be vague or indefinite so as to make the Sub section exposed

to the constitutional voice of arbitrariness. The circular also contains only instructions as to how the officials should satisfy themselves as to whether the tax payable has been paid. The instructions contained in the circular regarding, the manner in which and the offices in which the tax has to be paid and how the endorsements regarding payment of tax have to be made etc. can only be treated as guidelines and cannot be treated as invariable rules from which no departure is possible. The endorsement regarding payment of tax in the delivery note insisted by the circular can only be treated as one of the effective means by which payment of evidence can be verified by the check-post officials, it cannot exclude other reliable and genuine evidence regarding payment of tax in respect of the goods sought to be transported. We cannot understand the provision in Clause 5 of the circular as excluding such reliable and genuine pieces of other evidence regarding payment of tax from the purview of materials which can be relied upon by the officials to form the necessary belief that tax has been paid on the goods sought to be transported. What is statutorily required to be done before exercising the power to detain the goods under Sub section (2B) is only to be satisfied about the fact of payment of tax payable on the goods sought to be transported. As such, the statutory duty is to be discharged by the officials and the detailed instructions contained in the circular can only be treated as guidelines and cannot be treated as absolute rules intended either to restrict or enlarge or in any way control the scope of the duty statutorily vested in the officials concerned. In the view which we have taken about the legal effect of Sub section (2B), it will be open to the check post officials to demand payment of taxes in all cases where tax payable has not been actually paid before goods are sought to be transported. It is only in cases where the dealers claim that they have already paid tax or that no tax at all is payable under the Act, the question of harassment or abuse of power may arise. In such cases, if the officials detain the goods, it can only be considered as an act of harassment or abuse of power by the individual officials, for which the remedy is only to challenge such excesses before the appropriate forum and not to challenge the entire provisions as unconstitutional and illegal as has been held rightly by the learned Single Judge. As such, we do not find any merit in the said contention also. In the light of the above discussion, we find no reason to disagree with the view taken by the learned Single Judge that the impugned provision, namely, Sub section (2B) and the circular are not violative of Articles 14 and 301 of the Constitution of India.

27. Though the validity of Sub section (2A) of Section 29A was also challenged in some of the appeals, no serious arguments were advanced in substantiation of such challenge. We would accordingly hold that Sub section (2A) also as valid as has been held by the learned Single Judge.

28. As regards the second limb of Sub section (2B) also, no serious contentions were advanced and we find no reason to interfere with the view taken by the learned Single Judge in this regard also.

29. Contention No. 3.-In the view which we have taken regarding contention

Nos. 1 and 2, prima facie, we cannot hold that the detention of the goods by the check post officials was unauthorised and illegal in cases where tax was payable in the sense that goods have suffered tax and no tax was in fact paid at the time when goods were sought to be transported through the check-post. Detention of goods can be considered as illegal or unauthorised only in cases where the dealer has produced evidence regarding payment of tax or put forward a claim that no tax is payable under the Act on the goods sought to be transported. In such cases, the officials concerned may have to take an independent decision. It is open to the parties affected by such decision to question such decision in appropriate forums in accordance with law as already indicated.

30. Some of the Appellants have a case that goods transported by them and detained by the check post officials were imported rubber purchased from the State Trading Corporation of India in respect of which Central Sales Tax payable has already been paid in the appropriate States and no further tax is payable on such goods transported by them under the Act. It is their case that there was no purchase or sale in respect of such rubber within the State. Similarly some of the Appellants have asserted that the goods transported by them were in the course of import or export as contemplated by Section 5 of the Central Sales Tax Act and as such taxable under that Act and no tax is payable under the Act. We find that neither sufficient pleadings nor materials in support of such claims are available in the case to take a final decision in regard to such claims. In all such cases, it will be open to the Appellants to move appropriate applications before the concerned assessing authorities putting forward their claims and seeking appropriate reliefs thereto. If such applications are received, the assessing authorities concerned shall pass appropriate orders granting necessary reliefs in accordance with law expeditiously. We make it clear that we have not considered the merit of the claim for refund of taxes already paid to check post officials under protest raised in some of the appeals, as we are leaving the said issue for decision by the assessing authorities.

31. In some other cases, the Appellants have contended that they have only despatched the goods to their agents outside the State on consignment basis and they are not liable to pay any tax on such goods under the Act. The claim so raised has been stoutly repudiated by the learned Government Pleader appearing for the department contending that in the light of the provisions in Section 8 read along with Section 2(xxvi), tax is payable even in such cases where purchase was effected within the State before their despatch outside the State. In such cases also, it is open to the Appellants, if they are advised to do so, to raise such questions before the appropriate forum for adjudication and grant of necessary reliefs.

32. Writ Appeal No. 1392/91.-As already indicated, this is a writ appeal filed by the State against that part of the judgment of the learned Single Judge where the 3rd limb of Sub section (2B) has been found to be ultra vires by the learned Single Judge. Though the learned Government Pleader has vehemently

challenged the sustain ability of the finding by the learned Single Judge in this regard, we find no reason to interfere with the said finding also. Learned Judge has given valid reason for holding the said Sub section as offending Articles 14, 19(1)(g) or 301 of the constitution. Apart from the reasons given by the learned Single Judge, we find that the said provision that is clearly violative of Article 14 of the constitution inasmuch as the provision in effect authorises detention of goods only in the case of dealers who are in arrears and who wanted to transport their goods through check post and not of goods belonging to those defaulters who confines their business activities exclusively within the State and do not want to take their goods outside the State. Such a classification of dealers who have kept tax in arrears and enforcement of a provision authorising detention of goods and compulsory sale of detained goods only in the case of a particular group of dealers may not be constitutionally justifiable. It is difficult to find any reasonable nexus between such a classification and the object sought to be achieved. We also find that it cannot be considered as a provision intended to suppress the mischief of evasion of tax, but is clearly a provision intended to collect arrears of tax from a particular group of defaulters of tax alone. As such we find no meat in the appeal and the appeal is only to be dismissed. We do so.

33. Incidentally, we may also note that the entire Sub section (2B) has been substituted by Finance Act, 1994 with effect from 29th July 1994 and the substituted Sub section is thus:

(2B) If such officer has reason to believe that the tax exigible on the sale or purchase of goods under transport is not paid, or the dealer whose goods are transported is in default of payment of any tax or other amount due under this Act for any period, such officer may, notwithstanding anything to the contrary contained in this Act or the rules made thereunder allow the goods to be transported after realising the tax in respect of the goods transported. If the driver or the person in charge of the goods or the dealer whose goods are under transport refuses to pay such tax, the goods shall be detained by such officer and shall be dealt with in the manner provided in this Section as if the transport of goods were an attempt to evade payment of tax due under this Act.

The learned Counsel for the Appellants has submitted that the substituted Sub section has made the position still worse and the said provision is also liable to be challenged as unconstitutional. We leave the matter there, as the substituted Sub section is not under challenge in these appeals.

34. We also note that the Board of Revenue has issued a circular No. 13/91 dated 16th November 1991 giving further instructions to the check post officials in the light of the decision of the learned Single Judge which is under appeal in these appeals. In partial modification of the impugned circular, the Board has issued in that circular various instructions to the check post officials including the following one:

(3) Dealers who own estates and factories in this State, Government owned

companies including CAMPCO and tyre manufacturing companies are permitted to transport goods without payment of advance tax provided the monthly tax is regularly paid in accordance with Rule 21.

Some of the Appellants are dealers who may fall within the scope of the above instruction and as such they may not hereafter be affected by the provisions in Sub section (2B) and the impugned circular.

Subject to the observations made above, all the Writ Appeals would stand dismissed. We direct the parties to bear their respective costs.

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