Shri Ram Piara, who had lodged a complaint with the Department was impleaded as a respondent with one other on the orders of the Court as the writ petitions made certain allegations that these persons had reported against the petitioners because of certain political rivalaries or other old enmities. Shri Ram Piara has been attending most of the hearings in this case to avoid the risk of being censured or criticised as he apprehended that his absence could be made use of by the petitioners to mis-state or exaggregate facts. As long as the complainant-respondent has been able to convince the Custodian-General, of Evacuee Property, Respondent No. 1 that there were grounds for looking further into the sales set up by the petitioners, there was no further need of our looking into the mutual recriminations and grudges between Shri Ram Piara and members or relations of the Kairon family and if Shri Ram Piara succeeds in his mission he would have the satisfaction of retrieving for the common pool a good deal of evacuee property. The genuineness or otherwise of the sales is however a matter which is yet to be decided by the Rehabilitation authorities and the question of costs must abide the final decision on that point.

(15) There are no sufficient grounds for interference in the exercise of our writ jurisdiction.

(16) For reasons given above, I dismiss the writ petitions and leave the parties to bear their own costs.

P. C. PANDIT, J.—I agree.

R. N. M.

FULL BENCH

Before Harbans Singh, CJ., R. S. Narula and Prem Chand Jain, JJ.

AMAR SINGH,—*Appellant.*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 447 of 1970

December 24, 1970.

Punjab Passengers and Goods Taxation Act (XVI of 1952 as amended in its application to the State of Haryana)—Section 3(3), 4, Proviso, 8 and 9(7)—Constitution of India (1950)—Article 14, 245(1), 246(1), Entry 23,

List I and Entry 56 of List II, Schedule Seventh—Levy of goods tax by State of Haryana on that portion of Highway which passes through the State—Whether beyond the legislative competence of the State Legislature—Section 4 Proviso—Payment of lumpsum goods tax under—Whether hit by Article 14—Punjab Passengers and goods Taxation Rules (1952)—Rule 9—Notification giving retrospective effect to—Whether ultra vires—*Rule 9 Proviso—Persons neither loading nor unloading goods from a vehicle in a particular territory—Mere passing the vehicle through such territory—Whether amounts to "plying" the vehicle—State Government having claimed the goods-tax in lumpsum—Whether can claim such tax on proportionate freight.*

Held, that goods tax imposed on the portion of National Highways which passes through a State is within the scope of entry 56 of List II of Seventh Schedule, Constitution of India. No doubt all National Highways vest in the Union of India and under Entry 23 of List I right to legislate in respect thereof vests in the Parliament, but this Entry does not provide for making any laws for the imposition of tax. On the other hand State Legislature has the exclusive power to make laws in respect of any of the matters enumerated in the List II of Seventh Schedule of the Constitution. Under the scheme of the entries in the three Lists of the Seventh Schedule, taxation is regarded as a distinct matter and separately set out. It is, therefore, clear that no law for imposing a tax can be passed by the Parliament under Entry 23 of List I of the Seventh Schedule, which relates to National Highways. The State legislature having jurisdiction to make laws for levy and recovery of taxes on goods carried by road, no provision of Punjab Passengers and Goods Taxation Act, as amended in its application to the State of Haryana outsteps that jurisdiction or encroaches upon parliamentary field of legislation. Hence the levy of goods tax in respect of that portion of National Highway which passes through State of Haryana under section 3(3) of the Act, is not beyond the legislature competence of the State Legislature.

(Para 5)

Held, that the manner in which lumpsum goods tax has to be fixed under proviso to section 4 of the Act is not left to the unguided and arbitrary discretion of the executive authorities, but is controlled by the guiding principle contained in the proviso inasmuch as it lays down that the lumpsum has to be "in lieu of the tax chargeable on freight". This clearly shows that the quantum of lumpsum to be fixed under the proviso to section 4 must have relation with the quantum of tax chargeable on freight and is not to be fixed arbitrarily. The proviso is, therefore, valid and not hit by Article 14 of the Constitution. **(Para 13)**

Held, that the rule making provisions in the Act confer no power on the Sate Government to give retrospective effect to the rules framed by it prescribing the lumpsum in lieu of the tax chargeable on freight which may be recoverable by the Government in the case of public carriers. It, therefore, follows that the notification giving retrospective effect to rule 9 of Punjab Passengers and Goods Taxation Rules, 1952, is *ultra vires* the rule making authority of the State and is invalid and unenforceable to the extent of retrospectivity. **(Para 15)**

Held, that a person who neither loads nor unloads any goods in a particular territory nor makes regular trips between any two points within that territory, nor "handles" any goods within that territory but merely passes through a portion of that State cannot be said to be plying his vehicle in that State for the purposes of sections 8 and 9(7) of Punjab Passengers and Goods Taxation Act and for the purpose of the proviso to Rule 9 of Punjab Passengers and Goods Taxation Rules. (Para 23)

Held, that lumpsum tax can be claimed only if the right to claim tax on the basis of proportionate freight is given up. Lumpsum claim can be made in substitution of the other claim. The State Government having exercised its option to claim tax only on lumpsum basis cannot subsequently turn round to make a demand under the other alternative mode provided in rules. (Para 25)

Appeal under Clause X of the Letters Patent Appeal against the Judgment of the Hon'ble Mr. Justice Bal Raj Tuli, passed in Civil Writ No. 2702 of 1969, on 22nd May, 1970.

M. S. RATTA AND K. G. BHAGAT, ADVOCATES, for the appellant.

J. N. KAUSHAL, ADVOCATE-GENERAL, HARYANA, for the respondents.

JUDGMENT

R. S. NARULA, J.—This judgment will dispose of 123 connected appeals preferred under clause 10 of the Letters Patent by the unsuccessful writ petitioners against the common judgment of a learned Single Judge of this Court dismissing their separate petitions for the issuance of appropriate orders under Article 226 of the Constitution directing the State of Haryana and the Excise and Taxation authorities of that State to desist from claiming from the appellants goods tax under the Punjab Passengers and Goods Taxation Act, 1952 (as subsequently amended in its application to the State of Haryana) (hereinafter called the Act) without any authority of law, and quashing the notification, dated April 21, 1969 (Annexure 'A'), issued by the Government of Haryana under section 22 of the Act amending the proviso to rule 9 of the Punjab Passengers and Goods Taxation Rules, 1952 (hereinafter called the 1952 Rules).

(2) Counsel for both sides are agreed that the judgment in Letters Patent Appeal 447 of 1970, arising out of the dismissal of Civil Writ 2702 of 1969, will automatically govern other appeals without the separate facts of the petitions giving rise to those

appeals being noticed, as they agreed before the learned Single Judge in respect of the decision of Civil Writ 2702 of 1969. I am, therefore, setting out below the relevant admitted facts leading to the filing of this appeal.

(3) Appellant holds a regular public carrier permit in respect of truck No. MPO-1796 on the basis of which he carries goods by that truck on the Delhi-Bombay/Delhi-Madhya Pradesh route via Faridabad, Ballabgarh, Hodel, Palwal and Agra on National Highway No. 2. The permit has been countersigned by the Haryana Transport Authority for about forty miles of National Highway No. 2 which lies within the territory of that State with a corridor condition, i.e., subject to the condition that no goods shall be loaded or unloaded within the territory of Haryana. The State of Haryana issued notification, dated April 21, 1969, amending rule 9 of the 1952 Rules on the basis of which a lumpsum of Rs. 1,215 per annum was claimed from the appellant as annual tax under the Act. The grounds on which it was claimed by the appellant that he was not liable to pay any goods tax to the State of Haryana under the Act were repelled by the learned Single Judge, and it was held as below:—

(1) After the amendment of sub-section (3) of section 3 of the Act by Haryana Ordinance No. 5 of 1967, and subsequently by the President's Act 11 of 1967, and Haryana Legislature Act 12 of 1969, persons plying their vehicles on the National Highway passing through the State of Haryana under corridor conditions were liable to pay tax under the Act;

(2) Sub-section (3) of section 3 as amended by the State of Haryana is constitutionally valid and is not *ultra vires* Articles 301 of the Constitution;

(3) In view of the decision of their Lordships of the Supreme Court in *Messrs Sainik Motors, Jodhpur and others* v. *State of Rajasthan* (1), the Haryana State has the right to levy tax on the goods transported through its territory by the motor vehicles even when the goods are neither loaded nor unloaded within its territory;

(1) A.I.R. 1961 S.C. 1480

The judgment of the Supreme Court in *Atiabari Tea Co., Ltd.* v. *The State of Assam and others* (2), has no application to this case as the tax in the *case of Atiabari Tea Co. Ltd.* (2) was imposed directly on the movement of goods in the course of passage through the territory of Assam on the owner, producer or manufacturer of the goods. No complaint has been made in the present case by the owners or dealers of the goods transported by the vehicles of the appellants that the tax imposed on the transportation of their goods had the effect of restricting, obstructing or hampering the freedom of trade guaranteed by Article 301 of the Constitution. Therefore, the business of transportation of goods from one State to another, or within the same State has not been affected by the imposition of the tax under sub-section (3) of section 3 of the Act as amended. Inasmuch as the tax is, therefore, not directly on the appellants' business of transporting goods, section 3(3) of the Act imposing that tax cannot be said to be hit by any part of Article 301 or Article 304 of the Constitution;

(5) The State of Haryana not having claimed the tax as a compensatory measure, but having claimed it only in order to boost up the general revenue of the State, which itself is a public purpose and the tax being on the goods carried by the transporters and not on the transporters or their vehicles; appellants have no right to complain about the unreasonableness of the rate of tax as it is not a tax on them;

(6) The argument advanced by the appellants to the effect that the part of the National Highway passing through Haryana could not be said to be a "joint route" within the meaning of that expression used in the Act, has to be stated only to be rejected, as the argument that a joint route can only be that route on which one of the termini is in the State itself is no more valid after the amendment of sub-section (3) of section 3;

(7) The imposition of tax by the Haryana State is duly authorised by entry 56 in List II of the Seventh Schedule

(2) A.I.R. 1961 S.C. 232

to the Constitution and the fact that the tax is in respect of the goods carried over a National Highway makes no difference as a tax under the aforesaid entry cannot be limited to the carriage of goods on the road within the State owned by the State itself;

(8) The impugned notification of the Haryana Government, dated April 21, 1969, is not hit by Article 14 of the Constitution as the classification of motor vehicles under categories (bb) and (bbb) in the proviso to rule 9 by the impugned amendment of that proviso is not discriminatory in character in view of the historical and geographical background in the light of section 74 of the Punjab Reorganisaton Act, 1966. The basis of the classification is reasonable and is justified on historical and geographical grounds, and it cannot be said that the motor vehicles registered in the State of Punjab have been unduly favoured by the State of Haryana, and the vehicles registered in any other Union Territory or State have been meted out a hostile treatment;

(9) The proviso to rule 9 and the proviso to section 4 of the Act only give an option to the owner of a motor vehicle to make lumpsum payment in lieu of the tax due from him under section 3 of the Act, but the State Government cannot enforce the payment thereof if the owner of a vehicle is not willing to pay the same in which case the State Government can only levy a tax under section 3 of the Act, and cannot insist on recovery on lumpsum basis; and

(10) Amendment of rule 9 was within the jurisdiction of the rule-making authority and the retrospective effect given to the rules does not cause any prejudice to the appellants as the option to adopt the lumpsum basis of payment is of the appellants and not of the State.

(4) In the appeals before us Mr. Ratta confined his submissions only to the following eight points:—

(1) Sub-section (3) of section 3 of the Act insofar as it purports to authorise the levy and recovery of goods tax by the

State of Haryana in respect of the goods carried over that portion of the National Highway which falls within the territory of that State is beyond the legislative competence of the State Legislature as Parliament has under Article 246(1) of the Constitution the exclusive power to make laws with respect to National Highways covered by entry 23 in the Union List;

(2) Section 3(3) of the Act is *ultra vires* Article 301 of the Constitution as it imposes a restriction on inter-State trade and commerce and this provision is not saved by Article 304 of the Constitution as the mandatory requirements of the proviso to that Article have not been fulfilled inasmuch as the bill of the Haryana Amendment Act (12 of 1969) was moved in the State Legislature without the previous sanction of the President of India;

(3) Even otherwise the restriction on the freedom of inter-State trade and commerce imposed by section 3(3) is not saved by Article 304 of the Constitution as the restriction is not a reasonable one;

(4) The appellants are not liable to pay the impugned tax as the corridor portion of their route falling within the State of Haryana does not fall within the definition of "joint route" as contained in the explanation to section 3(3) of the Act;

(5) The proviso to section 4 of the Act authorising the Government to recover a lump sum in lieu of tax chargeable on freight vests in the executive an unguided and uncontrolled discretion and amounts to the Legislature having abdicated its functions to the executive which has resulted in the violation of the guarantee of equal protection of laws enshrined in Article 14 of the Constitution;

(6) The notification of the Haryana Government, dated April 21, 1969; is void under Article 13(2) of the Constitution as it violates Article 14 inasmuch as it suffers from invidious discrimination against the owners of vehicles registered in States other than the State of Punjab as compared with vehicles registered in Punjab. The differentia between

the classification of vehicles covered by clause (bb) of the proviso to rule 9 on the one hand and clause (bbb) of that proviso on the other has no rational relationship or nexus with the objects of the Act or even with section 4 thereof;

(7) Neither the proviso to section 4 nor section 22 of the Act has vested any jurisdiction in the State Government to give retrospective effect to the rules made thereunder. The notification of the State Government, dated April 21, 1969, amending rule 9 is, therefore, invalid as it expressly purports to give effect to the impugned amendment retrospectively with effect from January 1, 1968; and

(8) In any view of the matter, the appellants are neither liable to register their vehicles nor liable to pay any tax under sections 3(3) and 4 of the Act read with the notification of the Haryana Government, dated April 21, 1969, as the appellants neither (i) "transport" goods, nor (ii) "operate" their vehicles, nor (iii) "ply" their trucks within the territory of the State of Haryana within the true scope and correct meaning of the expression "transport", "operate" and "ply" in the context in which these words have been used in the Act and the Rules.

(5) Entry 23 in List I of the Seventh Schedule to the Constitution states:—

"Highways declared by or under law made by Parliament to be national highways."

Section 4 of the National Highways Act (XLVIII of 1956) (hereinafter called the 1956 Act) provides that all National Highways shall vest in the Union, and that for the purposes of that Act "Highways" include lands, bridges, fences, etc., appurtenant to the High ways. By operation of section 2 each of the Highways specified in the Schedule to the 1956 Act such portions thereof as are situate within any municipal area has been declared to be a National Highway. National Highway No. 2 has been described at serial No. 3 of the Schedule to the said Act as the Highway connecting Delhi, Mathura, Agra, Kanpur; Allahabad; Banaras, Mohania, Barhi and Calcutta. The argument of Mr. Ratta was that the portion of the National Highway No. 2 which passes through Haryana also vests in the Union of India under section 4 of the 1956

Act, and, therefore, the right to legislate in respect thereof vests exclusively in the Parliament and the right of the State Legislature to legislate in connection therewith is specifically excluded by Article 246(1) of the Constitution. Article 246(1) no doubt states that the Parliament has the exclusive power to make laws with respect to any of the matters enumerated in the Union List, and that the State Legislature has no jurisdiction to make laws with respect to matters enumerated in that List. Clause (3) of Article 246 further provides that the State Legislature has the exclusive power to make laws with respect to any of the matters enumerated in the State List. Entry 56 in the State List reads:—

> "Taxes on goods and passengers carried by road or on inland waterways."

It was not disputed and could not in fact be disputed in view of the various authoritative pronouncements of their Lordships of the Supreme Court that the impugned tax was within the scope of entry 56 reproduced above, and could, therefore, be levied by the State Legislature. Mr. Ratta's submission was that wherever an entry in the Union List overlaps an entry in the State list, the power of the State Legislature to make laws is abrogated to the extent to which the power is covered by any entry in the Union List. Mr. Ratta submitted that though the State Legislature could make laws for imposing tax on goods carried by road, the power to make such laws in respect of roads which are National Highways stands excluded because of the special provision for making laws in respect of National Highways in entry 23 of List I. It is unnecessary to probe any further into this argument as it appears to us to be plain that entry 23 in the Union List does not provide for making any laws for the imposition of a tax. Their Lordships of the Supreme Court have held in *M.P. V. Sundararamier & Co., v. The State of Andhra Pradesh and another* (3), that under the scheme of the entries in the three Lists of the Seventh Schedule taxation is regarded as a distinct matter and is separately set out. In the Union List substantive legislative entries are 1 to 81. Entries 82 to 92-A authorise the Parliament to make taxation laws. Entries 93 to 95 cover miscellaneous matters. Entry 96 auhorises the making of laws for levy of fees and entry 97 is a residuary one. Similarly entries 1 to 44 in the State List are substantive entries, entries 45 to 63 are tax entries, entries 64 and 65 cover miscellaneous matters, and entry 66

(3) A.I.R. 1958 S.C. 468

relates to making of laws for levying fees. It is, therefore, clear that no law for imposing a tax can be passed by the Parliament under entry 23. The State Legislature having the exclusive jurisdiction to make laws for levy and recovery of taxes on goods carried by road, it cannot be successfully argued that any provision in the Act outsteps that jurisdiction or encroaches upon the parliamentary field of legislation. In this view of the matter, it is unnecessary to deal with the judgments of the Supreme Court in *Saghir Ahmad and another* v. *State of U. P. and others* (4), and *Indu Bhushan Bose* v. *Rama Sundari Debi and another* (5), and with the judgment of the Punjab High Court in *Surrendara Transport and Engineering Co. Ltd., Kalka and others* v. *State of Punjab* (6), which were cited before us by Mr. Ratta in order to emphasise that the State cannot legislate in respect of matters covered by the Union List. The first contention of learned counsel for the appellants, therefore, fails.

(6) Article 301 of the Constitution states that subject to the other provisions of Part XIII of the Constitution, trade, commerce and intercourse throughout the territory of India shall be free. Article 302 authorises the Parliament by law to impose restrictions on the freedom of trade, commerce or intercourse between one State and another in the public interest. Article 304 is an exception carved on the guarantee contained in Article 301 (as well as Article 303 with which we are not concerned). Clause (b) of Article 304 authorises the Legislature of a State, notwithstanding anything contained in Article 301, to make laws for imposing such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest. The validity of laws made under Article 304 is, however, subject to the mandatory requirements of its proviso having been fulfilled. The proviso states that no bill or amendment for purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President. It has been held by their Lordships of the Supreme Court in the case of *Saghir Ahmed and another* v. *State of U.P. and others* (supra) (4) (paragraph 31 of the A.I.R. report) that the proviso expressly insists on the sanction of the President being taken previous to the introduction of the bill, and that subsequent sanction of the President cannot validate an act hit by the

(4) A.I.R. 1954 S.C. 728
(5) 1969 (2) Supreme Court Cases 289
(6) I.L.R. 1955 Punjab. 58=A.I.R. 1954 Punjab. 264

proviso which contravenes the guarantee contained in Article 301. Section 3 of the Act is the charging section. Sub-section (1) thereof states *inter alia,* that there shall be levied, charged and paid to the State Government a tax on all fares and freights in respect of all goods transported by motor vehicles at certain specified rates. The relevant part of sub-section (3) as amended up-to-date provides that where goods are transported by a motor vehicle operating on a joint route, the tax shall be payable in respect of the distance covered within the State at the rate laid down in sub-section (1), and shall be calculated on such amount as bears the same proportion to the total freight as the distance covered in the State bears to the total distance of the journey. A "joint route" has been defined in the explanation to sub-section (3) of section 3 in the following words :—

> "For the purpose of this sub-section 'joint route' means a route which lies partly in the State of Haryana and partly in any other State or Union Territory."

In view of the majority decision of their Lordships of the Supreme Court *Atiabari Tea Co. Ltd.* v. *The State of Assam and others,* (2), it is clear that a taxing statute is capable of placing a restriction on freedom of inter-State trade and commerce within the meaning of Article 301. Good deal of arguments were advanced before the learned Single Judge on the question whether the imposition of the impugned tax did or did not amount to such a restriction. All those arguments were heard and disposed of by the learned Single Judge on the assumption that the previous sanction of the President had in fact not been obtained before passing the Haryana Act 12 of 1969. Learned Advocate-General for the State of Haryana, however, pointed out to us at the very outset that the said assumption was not correct, and that in fact prior sanction of the President had been obtained before introducing the bill of Haryana Act 12 of 1969 in the Haryana Legislature. Legislative history of the relevant provision contained in section 3(3) of the Act may be traced at this stage to deal with the second submission of Mr. Ratta. The principal Act (Punjab Act 16 of 1952) was amended by various subsequent amending Acts up to the time of the reorganisation of the State of Punjab. No provision in the original Act and none of the amending Acts passed by the Punjab Legislature has been impugned before us.

(7) After the formation of the State of Haryana Ordinance 5 of 1967 was promulgated by the Governor of Haryana on July 21,

1967. The amended sub-section (3) of section 3 along with the explanation thereto was substituted for the corresponding provision in the principal Act, by this Ordinance, and the same provision continued to be kept in the statute book by the subsequent legislation to which reference will hereinafter be made. The Ordinance stated clearly :—

> "Whereas the Legislature of the State of Haryana is not in session, and the Governor is satisfied that the circumstances exist which render it necessary for him to take immediate action; and whereas the *instructions of the President of India* to promulgate the Ordinance have been obtained ; "now, therefore; in exercise of the powers — — — "

The citation in the Ordinance (the correctness of which has not been disputed) about instructions of the President having been obtained by the Governor before promulgating the Ordinance fully satisfies the requirement of previous sanction envisaged by the proviso to Article 304 in view of proviso (a) to clause (1) of Article 213, which is in the following terms :

> "Provided that the Governor shall not without instructions from the President, promulgate any such Ordinance if—
>
> (a) a Bill containing the same provision would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature."

(8) After the President's rule ended in Haryana, letter, dated September 27, 1967, on the following subject was addressed to the Government of India for obtaining the sanction of the President under proviso to Article 304(b) of the Constitution to the introduction of the bill mentioned in the "subject" in the State Legislature:—

> "Subject:—The Punjab Passengers and Goods Taxation (Haryana Second Amendment) Bill, 1967—Previous sanction of the President, under the proviso to Article 304(b) of the Constitution, to its introduction in the State Legislature."

The Government of India in its reply, dated October 16, 1967 (original shown to us by the Advocate-General, Haryana), conveyed the

sanction of the President to the introduction of the above-mentioned bill in the State Legislature. It is, however, unnecessary to refer any further to the said correspondence because Haryana once again went under President's rule under proclamation, dated November 21, 1967, issued under Article 356 of the Constitution, before the bill of the intended Act could be introduced in the Legislature. As the life of the Haryana Ordinance 5 of 1967, was about to run out, President's Act No. 11 of 1967, was passed by the President exercising the functions of the Haryana State Legislature on December 30, 1967. This was called the Punjab Passengers and Goods Taxation (Haryana Second Amendment) Act (11 of 1967). The very heading of the Act states :—

> "Enacted by the President in the Eighteenth Year of the Republic of India."

The opening part of the Act is in the following terms:—

> "In exercise of the powers conferred by section 3 of the Haryana State Legislature (Delegation of Powers) Act, 1967 (30 of 1967), the President is pleased to enact as follows :—"

Inasmuch as Act 11 of 1967, was enacted by the President of India himself as he had assumed the powers of the State Legislature during the President rule, there was no question of obtaining any prior sanction of the President. Those powers had been assumed by the President under section 3 of Haryana State Legislature (Delegation of Powers) Act (30 of 1967). Section 3 of that Act provided:—

> "(1) The power of the Legislature of the State of Haryana to make laws, which has been declared by the Proclamation to be exercisable by or under the authority of Parliament, is hereby conferred on the President.
>
> (2) In the exercise of the said power, the President may, from time to time, whether Parliament is or is not in session, enact as a President's Act a Bill containing such provisions as he considers necessary:
>
> Provided that before enacting any such Act the President shall, whenever he considers it practicable to do so, consult a committee constituted for the purpose, consisting of—"

The amendment made to section 3(3) of the Act by the Haryana Ordinance was carried into the Act by section 2 of the President's Act (11 of 1967). In fact the official Haryana Government gazette notification shows that before enacting Act 11 of 1967, the President had consulted the Advisory Committee constituted for the purpose under the proviso to sub-section (2) of section 3 of the Delegation of Powers Act, 1967. The President's rule during which Act 11 of 1967 was passed came to an end in May, 1968. Before the expiry of the life of the President's Act, the question of the sanction of the President under the proviso to Article 304(b) was again taken up by the State in its letter, dated July 26, 1968, addressed to the Central Government with which a copy of the bill which ultimately became Haryana Act 12 of 1969, was sent to the Central Government. The office copy of the letter, dated July 26, 1968, and the copy of the bill of the enactment in question have been shown to us. In the Central Government's reply, dated September 19, 1968 (original shown to us by the Advocate-General), Under Secretary to the Government of India stated that he had been directed to convey the sanction of the President under the proviso to Article 304(b) of the Constitution to the introduction of the bill in question in the State Legislature. It was after obtaining the said prior sanction of the President of India that the bill of Haryana Act 12 of 1969, was introduced in the State Legislature and was ultimately passed on February 23, 1969. We asked the learned counsel for the appellants to see the original communication referred to above. After he had seen the same, he gave up the argument relating to the invalidity of the amendment to sub-section (3) of section 3 of the Act on the ground of want of prior sanction of the President of India required under the proviso to Article 304(b) of the Constitution. From the acts narrated above, we are satisfied that the requisite sanction of the Presidest had been obtained before introducing the bill of Haryana Act 12 of 1969, in the State Legislature, and that no question of obtaining any such sanction arose in connection with the passing of the President's Act 11 of 1967. It is also clear that necessary action in this behalf had also been taken before the promulgation of Haryana Ordinance 5 of 1967 (during the President's rule) as required by the first proviso to Article 213(1) of the Constitution. Thus there is no merit even in the second contention of Mr. Ratta.

(9) An ancillary argument advanced by the learned counsel for the appellants in connection with this point was that the Court cannot be asked to see the Government records to prove that the State had obtained the requisite prior sanction of the President, and

that the factum of such sanction having been obtained must be incorporated in the notification of the relevant statute at the time of its publication in the official gazette and that in any case detailed reference to the facts and documents relating to the obtaining of such sanction ought to have been mentioned in the return of the State. There is no force in either of these two submissions. The point of want of consent had not been specifically taken up by the appellants in their writ petitions. The respondents appear to have been taken by surprise when this point was permitted to be argued at the hearing of the writ petitions before the learned Single Judge. Obviously, they could not at that time search for the relevant records and plead necessary facts and show the relevant documents to the Court. Nor does any law require publication of the prior consent required to be obtained by the State under the proviso to Article 304(b) of the Constitution. In fact indication is to the contrary in the judgment of the Orissa High Court in *Ahmed and others* v. *The State of Orissa and others*, (7).

(10) It was lastly contended in connection with this submission of the appellants that even before amending rule 9 the Haryana Government should have obtained the sanction of the President as rule 9 placed a restriction on inter-State trade and commerce. We are unable to agree with this submission for the simple reason that the restriction has been placed by sections 3 and 4 of the Act and not by the rules framed under the Act which merely prescribe the manner and procedure of the recovery of the tax. In this view of the matter, it is unnecessary to deal with the cases cited by Mr. Ratta including the judgment of their Lordships of the Supreme Court in *Kalyoni Stores* v. *State of Orissa and others*, (8), in support of the proposition that even before making a rule imposing a restriction on inter-State trade and commerce, the sanction of the President is necessary.

(11) The third argument of the learned counsel for the appellants was that even though the requirements of the proviso to Article 304(b) were satisfied in view of the information now given by the Advocate-General, the restriction imposed by amending the definition of "joint route" under section 3(3) of the Act is not a reasonable restriction within the meaning of clause (b) of Article 304 though he did not question the fact that such restriction might have

(7) A.I.R. 1955 Orissa 184 at page 185 in paragraph 5
(8) A.I.R. 1966 S.C. 1686

been required in public interest. Counsel submitted that the impugned amendment has given the tax in question the colour of being a confiscatory one as the owners of all the trucks are threatened with being made to pay more goods tax than the freight they earn over the short portion of the Highway falling in the Haryana territory. He submitted on the authority of the judgment of the Supreme Court in *Saghir Ahmed's case* (4) (paragraphs 13 and 23) (supra) and on the basis of the observations made by their Lordships of the Supreme Court in *Khyerbari Tea Co. Ltd. and another* v. *State of Assam and others,* (9), that the burden of proving reasonableness of such a restriction lies on the State. The State counsel took a preliminary objection to this argument being entertained on the ground that no such attack on the validity of the impugned provision had been made in the writ petitions against the dismissal of which the present appeals have been filed though it was not disputed that this question has been taken up in the grounds of appeal against the judgment of the learned Single Judge. A plea of this type not having been taken up in the writ petition, not having been dwelt upon before the learned Single Judge, and, therefore, not having been dealt with in the judgment under appeal, should not, in our opinion, be allowed to be raised for the first time at the appellate stage in the circumstances of this case. Foundation for a mixed plea of law and fact must be laid in the writ petition itself or at best in the reply filed to the written statement in the original proceedings. If this plea were allowed to be raised at the appellate stage, it is bound to handicap the respondents, on whom according to the appellants themselves, the burden of proving the reasonableness of the restriction lies. The reasonableness of the restriction in question has to be judged from the point of view of Article 19 as well as clause (b) of Article 304 of the Constitution. In that context it would be profitable to refer to the observations of their Lordships of the Supreme Court in *Khyerbari Tea Company's case* (9) (supra) to the effect that the State is entitled to rely in defence of an attack of this type on the fact that the revenue raised by the tax law serves public purpose and that is its basic justification for being treated as a reasonable restriction on the individual's fundamental right under Article 19(1)(g). It was further held in that case that the fact that the President had given previous sanction under Article 304(b) to the introduction of the bill may conceivably be relevant because the constitution seems to contemplate that the sanction of the President would indicate that the Central Government had applied its

(9) A.I.R. 1964 S.C. 925

mind to the problem and had come to the conclusion that the proposed tax is reasonable and in the public interest. We are not unaware of the note of warning sounded by the Supreme Court to the effect that significance of both the above mentioned considerations cannot be exaggerated. The third consideration to which the Supreme Court referred in *Khyerbari Tea Company's case* (9) (supra) is of course not available to the respondents in these appeals as it has not been claimed on their behalf that the tax in question has been levied as a compensatoy measure for keeping the Highways in improved condition because the responsibility for doing so in respect of a National Highway principally rests on the Central Government. In these circumstances, we do not appear to be called upon to deal with this new argument sought to be raised at the appellate stage, and for the reasons already stated, do not permit it to be advanced.

(12) I have already quoted the definition of "joint route" contained in the explanation to sub-section (3) of section 3 of the Act as amended in its application to the State of Haryana. The learned counsel for the appellants was not able to deny that a portion of the route over which the vehicles of the appellants carry the goods lies in the State of Haryana, and a part of that very route lies in the Union Territory of Delhi, and in the State of Madhya Pradesh etc. That being so, there is no logic whatever in the argument of Mr. Ratta to the effect that the route over which the vehicles in question travel is not a joint route within the meaning of the explanation to section 3(3). He also invited our attention to the definition of the word "route" in section 2 (28A) of the Motor Vehicles Act, 1939, read with clause (j) of section 2 of the Act. Section 2(j) of the Act states that all words and expressions used in this Act, but not defined, shall have the meaning assigned to them in the Motor Vehicles Act, 1939. Section 2(28A) of the Motor Vehicles Act states that "route" means a line of travel which specifies the highway which may be traveresed by a motor vehicle between one terminus and another. In *B. H. Aswathanarayana Singh etc.* v. *The State of Mysore and others,* (10), it was held that an inter-State route is one in which one of the termini is in one State and the other in another State. Inasmuch as both the termini in *B. H. Aswathanarayana Singh's case* (10) were in the same State, it was held that the route in question in that litigation was not an inter-State one. On that basis it was sought to be submitted by Mr. Ratta that the corridor

(10) A.I.R. 1965 S.C. 1848

portion of the road could not be termed a "joint route" as neither of the two termini of the route is situate in the State of Haryana. This part of the argument is misconceived. An inter-State route referred to in Chapter IVA of the Motor Vehicles Act is different from what is defined as "joint route" in the explanation to section 3(3). In the face of the plain words of the explanation there is no warrant to import into it the concept of inter-State route and the limitations implied thereby. The fourth contention of the learned counsel must, therefore, be summarily rejected.

(13) The fifth argument advanced on behalf of the appellants to the effect that the proviso to section 4 of the Act violates Article 14 of the Constitution cannot stand even a moment's scrutiny in view of the observations of the Supreme Court in the *case of Messrs. Sainik Motors* (1) (supra). In that case also it was contended that the power to fix lump sum in lieu of tax had been conferred upon the Government without any guidance and was, therefore, unconstitutional. The fixation of lump sums was upheld by the Supreme Court on two main grounds, viz. (i) that the payment of lump sum was not mandatory and a person could elect to pay tax calculated on the basis of actual freight charged by him; and (ii) that the fares and freights are fixed by a competent authority under the Motor Vehicles Act, and that takes into account the average earnings and the lump sum is fixed as an average of what tax would be realised if calculated on actual fares and freights. There is no doubt that while upholding the fixation of lump sums, the Supreme Court did lay a good deal of emphasis on the fact that there was no compulsion on any operator to elect to pay lump sum, if he did not choose to do so In the present case it has been vehemently argued that in view of:—

(i) the language of the second proviso to rule 9 [as amended by the Punjab Passengers and Goods Taxation (First Amendment) Rules, 1964] requiring the quarterly lump sum goods tax being paid within thirty days of the commencement of the quarter to which the payment relates, and insisting on the obtaining of a clearance certificate in prescribed form PTT 5-A in token of the tax having been paid;

(ii) the mandatory requirements of section 7—(b) introduced into the Punjab Motor Vehicles Taxation Act (4 of 1924) by section 2 of the Punjab Taxation Laws (Amendment) Act (5 of 1963) prohibiting the issue of token for the payment of motor vehicles tax under the 1924 Act unless the

authority issuing the token is satisfied that such person has paid the tax under the Goods Act of 1952, in respect of such motor vehicles for such quarterly period; and

(iii) the penal consequences of plying a truck in violation of rule 23 of the Punjab Motor Vehicles Taxation Rules, 1925, which states that no person shall drive or cause to be driven any motor vehicle unless a valid token is displayed thereon in the prescribed manner ;

there is no option with any operator to refuse to pay lump sum tax as no other manner for payment of tax has been prescribed. On the other hand, it was submitted by the learned Advocate-General for the State of Haryana that we may if necessary strike down section 7-A of the Punjab Motor Vehicles Taxation Act, 1924, as being in conflict with the requirements of section 3(1) and rule 9(i) of the 1952 Rules. The observations of the Supreme Court to the effect that (i) the payment of lump sum under the proviso to section 4 is not obligatory and a person can elect to pay tax calculated on the basis of actual freight charged; and (ii) that the lump sum figure is based on averages calculated on actual fares and freights fixed by a competent authority for upholding the vires of section 4 still remain unaffected in spite of the argument advanced on behalf of the appellants regarding the option having been taken away by rule 9. Section 7—of the 1924 Act has no application to the case of the appellants whose vehicles are neither registered in the State of Haryana nor pay Motor Vehicles Tax under that Act anywhere in Haryana. It is also significant that the manner in which lump sums have to be fixed is not left to the unguided and arbitrary discretion of the executive authorities, but is controlled by the guiding principle contained in the proviso to section 4 inasmuch as it lays down that the lump sum has to be "in lieu of the tax chargeable on freight." This clearly shows that the quantum of lump sum to be fixed under the proviso to section 4 must have relation with the quantum of tax chargeable on freight and is not to be fixed arbitrarily. If at any time a rule is framed under the proviso to section 4 whereby a lump sum is fixed which has no relation to the tax chargeable on freight so as to be not in accord with the guiding principle referred to above, or which destroys the statutory option conferred by section 4 of the Act, such notification may have to be struck down, but the issue of such an illegal notification would not impinge on the validity of the proviso to section 4. The fifth contention of Mr. Ratta also, therefore, fails.

(14) The only ground on which the Haryana Government notification, dated April 21, 1969, has been labelled by the appellants as discriminatory is that all other relevant facts and circumstances being the same, vehicles registered in Punjab are mulcted with a liability of Rs. 600/- per annum only on account of lump sum goods tax under clause (bb), but the vehicles registered in any other State or Union Territory falling in clause (bbb) of the notification are made liable to pay Rs. 1,215/- per annum. The vehicles of the appellants being registered in the Union Territory of Delhi, or the States other than that of Punjab, and their permits having been countersigned by the authorities of the State of Haryana, goods tax at the rate of Rs. 1,215/- per annum has been claimed from them on lump sum basis under clause (bbb). Vehicles similarly passing under corridor conditions from the State of Haryana under countersignatures of the authorities of that State falling under clause (bb) are required to pay only Rs. 600/- per annum merely because they happen to be registered in the State of Punjab. This discriminatory classification, argued Mr. Ratta, has no rational relationship with the objects sought to be achieved by the proviso to section 4. Counsel argued that the lump sum has to be fixed in lieu of the tax that would normally be expected to be due on mileage/freight basis, and since there can be no distinction between the two classes of cases referred to above on the basis of mileage/freight, the rule fixing a higher rate for the appellants, i.e., clause (bbb) of the proviso in dispute, is liable to be struck down as being discriminatory. The learned Single Judge repelled this argument on the ground that the basis of classification was reasonable and justified in view of the mutual agreement between the States of Punjab and Haryana to charge only a lump sum of Rs. 600/- per annum per vehicle registered in one State and operating in the other under the counter-signatures of the authorities of the other State. No such arrangement or agreement with the State of Haryana was said to have been arrived at by any other State. The arrangement was also found by the learned Single Judge to be in consonance with the spirit of section 74 of the Reorganisation Act. It was found that the decision of the Haryana Government to charge lower rate of tax from the vehicles registered in Punjab, and the decision of the Punjab Government to similarly charge tax at the lower rate from the vehicles registered in Haryana was not a policy decision on the part of any of the Governments, but was the result of historical and geographical factors coupled with the mutual arrangement arrived at between the two Governments. It is correct that the vehicles registered in the

composite State of Punjab before its reorganisation in November, 1966, were paying only Rs. 1,215/- per annum as lump sum goods tax if they were operating under the counter-signatures of the authorities of some other State. As soon as the composite State of Punjab was split up principally into the new States of Punjab and Haryana, the object in arriving at the mutual agreement in question seems to have been to restrict the liability of the erstwhile Punjab operators to approximately the same amount which they were previously paying to the erstwhile composite State to avoid the liability being doubled unreasonably in respect of the same territory. The learned Single Judge upheld the validity of the relevant rule on historical and geographical grounds. That approach does not appear to us to be unjustified. In any event, it is not necessary to decide this question finally in the view we have decided to take of the last point urged by the counsel for the appellant.

(15) This takes me to the seventh point urged by Mr. Ratta. The law on the subject of the extent and authority of the Government to give retrospective effect to rules framed by it in exercise of powers conferred on the State by a statutory provision does not admit of any doubt. Rule 9 in question has been framed and has subsequently been amended from time to time by the State Governments concerned in exercise of the powers conferred on them under the proviso to section 4 read with sections 22(1) and 22(2) (a) of the Act. The proviso to section 4 has already been quoted. Sub-section (1) of section 22 authorises the State Government to make rules consistent with the Act for securing the payment of tax and is generally for purposes of carrying into effect the provisions of the Act. Clause (a) of sub-section (2) of section 22 vests in the State Government power to make rules without prejudice to the generality of the power conferred by sub-section (1) for prescribing the manner in which and the interval at which the tax has to be paid under sections 3 and 4. None of the provisions confers on the State Government any authority to give retrospective effect to the rules framed by it prescribing the lump sum in lieu of the tax chargeable on freight which may be recoverable by the Government in the case of public carriers. The proviso to section 4 says that the Government may accept lump sum "in the manner prescribed." Clause (g) of section 2 provides that "prescribed" means prescribed by rules framed under the Act. The provisions under which rules can be framed have already been referred to. Inasmuch as no power to give retrospective effect to such rules has been given by the Statute, it

stands concluded by the authoritative pronouncement of the supreme Court in the *Income Tax Officer, Allepy* v. *M. C. Ponnoose and others etc.*, (11) and in the *Cannanore Spinning ' Weaving Mills Ltd.* v. *Collector of Customs & Central Excise Cochin and others*, (12), that the notification in question insofar as it purported to give retrospective effect to the amendment of rule 9 is *ultra vires* the rule-making authority of the State, and is, therefore, invalid and unenforceable to that extent. The liability created by the notification of the Haryana Government would, therefore, be deemed to be effective from April 21, 1969, and not from January 1, 1968, as stated therein. To that extent, therefore, the appellants must succeed.

(16) Now I come to the last submission advanced and vehemently pressed by the learned counsel for the appellants, on the decision of which the question of the entire liability of the appellants depends. In order to appreciate the rival contentions of the parties on this issue, it is necessary to survey the scheme of the Act and the rules framed thereunder as well as to notice some of the sections of the Act and the rules, and the historical back-ground of the latest amendment made by the Haryana Legislature in section 3 of the Act.

(17) The Punjab Passengers and Goods Taxation Act (16 of 1952) was first published in the Punjab Government Gazette, Extraordinary, of September 1, 1952. This law was enacted to provide for levying a tax on passengers and goods carried by road in certain motor-vehicles. It came into force on August 1, 1952. Sub-section (1) of section 3, which was the charging provision, stated that there shall be levied, charged and paid to the State Government a tax on all fares and freights in respect of all passengers carried and goods transported by motor vehicles at the rate of one pie per anna value of the fare or freight, as the case may be, subject to certain prescribed minimums. The tax is chargeable notwithstanding the fact whether fare or freight has in fact been charged or not charged by the owners of the vehicles. Sub-section (3) and the proviso thereto as originally enacted were in the following terms :—

> "Where passengers are carried or goods transported by a motor vehicle from any place outside the State to any place within the State, or from any place within the State to any place outside the State, the tax shall be payable in respect of the distance covered within the State at the

(11) 1969 (2) Supreme Court Cases 352
(12) 1970 Unreported Judgments (Supreme Court) 104

rate laid down in sub-section (1) and shall be calculated on such amount as bears the same proportion to the total fare or freight as the distance covered in the State bears to the total distance of the journey :

Provided that where passengers are carried or goods transported by a motor vehicle from any place within the State to any other place within the State, through the intervening territory of another State, the tax shall be levied on the full amount of the fare or freight payable for the entire journey and the owner shall issue a single ticket or receipt, as the case may be, accordingly."

The right to tax goods carried by trucks on the basis of public carrier permits issued from Rajasthan and countersigned by the Punjab authorities and the Delhi transport authorities, over the corridor portion in the composite Punjab under the amended provision was questioned in this Court by one Basant Singh, a resident of Ganganagar in Rajasthan and by one Mohinder Singh of Jaipur. Both of them challenged the right of the Punjab State to levy tax on goods carried by them from Rajasthan to Delhi on the ground that they neither carried any goods from any place within the State of Punjab to any place outside that State, nor carried anything into the State of Punjab as neither of the termini was within the territory of the Punjab State. The learned Single Judge who heard the writ petition of Basant Singh dismissed the same on the ground that the goods carried by the writ petitioner were deemed to have been carried by him from that place within Punjab where his truck entered the territory of Punjab upto that other point in the State from where it left the Punjab territory. The judgment of the learned Single Judge was, however, reversed by a Division Bench of this Court (Falshaw, C.J. and H. R. Khanna, J.) in *Basant Singh* v. *State of Punjab and others*, (13). It was held by Falshaw, C.J. (as he then was), with whom Khanna, J., agreed, that the words "from any place outside the State to any place within the State or from any place within the State to any outside the State clearly referred to the starting point and the terminus of journeys. While allowing the appeal, the learned Judges observed as follows :—

"It seems to me that if the drafters of the Statute were aware of the existence of the converse case, as they evidently were, they were also aware of cases such as those of the petitioners in which the start of the journey is in one

(13) I.L.R. (1965) 1 Punjab, 540.

State, the termination in another and part of the journey lies over a road in this State, and it seems to me astonishing that they did not make provision for such a case. It is no doubt tempting to accept the argument that sub-section (3) as it stands covers such cases, but the plain fact is that it does not. As the sub-section stands, the words 'from any place outside the State to any place within the State or from any place outside the State' clearly refer to the starting point and termination of journeys. If the sub-section was intended to cover the cases of goods transported from one State to another State with an intervening passage over Punjab roads, there appears to me to be a clear case of an omission to express this intention and since tax can only be levied when duly authorised by law, and taxing statutes have to be strictly construed to an omission to cover a particular case amounts virtually to an exemption. It will, therefore, be necessary, "if this in fact is the intention of the Legislature, to amend the Act accordingly, which can easily be done either by making a specific provision for proportionate tax to be imposed in such cases, or else by inserting some provision by which a vehicle passing through the Punjab on its way from one State to another State will be deemed to be carrying goods or passengers from a place inside the State to a place outside the State. As sub-section (3) stands at present, I am of the opinion that cases like those of the petitioner and the appellant are not covered by it and I would accordingly accept the appeal of Basant Singh and the writ petition of Mohinder Singh and quash the assessment and recovery proceedings as unwarranted by law."

(18) A reference to the official records shown by the learned Advocate-General for the State of Haryana reveals that it was in order to fill in the lacuna referred to by the Division Bench in *Basant Singh's case* (13). that the question of amendment of sub-section (3) of section 3 was taken in hand by the Punjab Government, soon after the Division Bench judgment was pronounced. The matter could not, however, be finalised till the reorganisation of Punjab and the string was then taken over by the State of Haryana. The State of Haryana prepared the bill on the lines on which section 3 (3) has subsequently been amended and sent up the papers to the Government of India for obtaining the sanction of the President under Article

304(b) for making the relevant amendment. Before the sanction was conveyed by the letter of the Deputy Secretary to the Government of India, dated October 16, 1967, Haryana went under the President's rule. It was in this situation that on July 21, 1967, Haryana Ordinance 5 of 1967, was promulgated by the President of India whereby the following was substituted in place of the original sub-section (3) of section 3 of the Act:—

> "Where passengers are carried or goods transported by a motor vehicle operating on a joint route the tax shall be payable in respect of the distance covered within the State at the rate laid down in sub-section (1) and shall be calculated on such amount as bears the same proportion to the total fare or freight as the distance covered in the State bears to the total distance of the journey."

As already mentioned in the course of discussion under point No. (2), the law as enacted by the Ordinance was continued in force by the President's Act of December 30, 1967, and was subsequently enacted after obtaining the President's sanction as Haryana Act 12 of 1969, on February 23, 1969. The change brought about by Haryana Ordinance 5 of 1967, was continued in force verbatim at all times thereafter.

(19) Section 4 of the Act provides that the tax shall be collected by the owner of the motor vehicle and paid to the State Government in the prescribed manner. The first proviso to section 4 authorises the State Government to accept a lump-sum in lieu of the tax chargeable on freight in the manner prescribed. Sub-section (2) of section 5 states that no goods shall be allowed to be carried in a motor vehicle unless the person in charge of the vehicle has in his possession a receipt in the prescribed form issued by the owner of the motor vehicle, showing the freight charged and denoting that the tax due under the Act has been paid Section 6 requires the owners of vehicles to keep such accounts and to submit such returns at such intervals and to such authority as may be prescribed, and lays down the procedure for assessment of the tax. Section 7 relates to the taxing authorites. Section 8 and 9 provide for registration and grant of registration certificate in the following words:—

> "8. No owner shall ply his motor vehicle in the State unless he is in possession of a valid registration certificates as provided hereinafter.

9. (1) A registration certificate shall be granted in the prescribed manner to any owner applying therefor to the prescribed authority on payment of a fee of one rupee.

(2) Every such registration certificate shall be valid without renewal till it is cancelled or suspended.

(3) No registration certificate shall be granted to any person who has not registered his motor vehicle under the Motor Vehicles Act, 1939, and if any such registration under that Act is suspended or cancelled, any registration certificate granted under this Act shall be deemed to be suspended or cancelled, as the case may be.

(4) If the prescribed authority is satisfied that any owner is liable to pay tax under the provisions of this Act in respect of any period but who has wilfully failed to apply for registration or to pay the tax, the said authority may, after giving the owner a reasonable opportunity of being heard, assess the amount of tax, if any, due from the owner, and also direct that the owner shall pay in the prescribed manner by way of penalty, a sum not exceeding five times the amount of the tax so assessed.

(5) If an owner, who has been granted a certificate of registration under sub-section (1) transfers, discontinues or closes his business he shall inform the prescribed authority within thirty days of his doing so, and the said authority shall cancel the registration certificate from the date of transfer, discontinuance or closing down of the business.

(6) (i) On the death of an owner any person claiming to be the legal representative of the deceased shall inform the prescribed authority of this fact within a period of thirty days.

(ii) The prescribed authority shall thereupon transfer the certificate in the name of the applicant.

(7) When any owner transfers any motor vehicle, the transferee shall be liable to pay tax and penalty, if any, remaining unpaid by the transferer up to the date of transfer as if he was the registered owner, and the transferee shall not ply the said motor vehicle without getting himself registered or getting his registration certificate amended, if he is already registered."

Section 10 authorises the State Government to exempt any person or class of persons from the operation of all or any of the provisions of the Act. Section 11 enjoins on the owners of vehicles a duty to furnish to the prescribed authority a table of fares and freights of public service vehicles and public carriers and other relevant information. Section 12 authorises the Government to recover tax or penalty imposed under the Act as an arrear of land revenue. Section 13 empowers the prescribed authority to enter the vehicle to inspect the same, to compel the driver of the vehicle to stop the vehicle and to let it remain stationery in order to enable the prescribed authority to carry out any duty imposed under the Act. It also provides that all accounts, registers, documents and other books of an owner of a motor vehicle shall be open to inspection by the prescribed authority at all reasonable times. Section 13-A authorises the prescribed authority to seize any license or any other relevant document held by a driver or conductor of a motor vehicle who is believed to have contravened any provision of the Act. Section 14-A empowers an Assessing Authority to impose a penalty not exceeding Rs. 500 on any person contravening or failing to comply with any provision of the Act or the rules made thereunder, if no other penalty has been specifically prescribed for such default. Section 15 and 16 provide for appeals and revisions. Section 17 originally provided for penalties to be imposed by criminal Courts for contravention of certain provisions of the Act. That provision was deleted at the time of introducing section 14-A into the Act by Haryana Act 7 of 1967. Amendments to the same effect were made in Punjab by Ordinance No. 7 of 1969. This ordinance was subsequently replaced by Punjab Act 22 of 1969. Sections 19 and 20 of the Act bar certain proceedings and excluding the jurisdiction of civil Courts in certain matters. Section 21 entitles a registered owner to apply for refund of any amount of tax paid by him in excess of the amount due from him under the Act. Section 22 confers rule making authority on the State Government, and has already been referred to.

(20) Out of the rules framed under the Act, we are concerned only with rule 9 which prescribed the lump-sum tax payable by truck operators. The relevant part of that rule as originally framed was in the follofing terms:—

> "*Method of payment of tax* : Tax shall be paid in one of the following manners:—
>
> (i) By stamping the ticket or receipt with an impressed, embossed, engraved or adhesive stamp (not already used)

issued by the State Government for the purposes of the Act and denoting that the tax due has been paid.

(ii) Where the impressed, embossed, engraved or adhesive stamps are not available:

Provided that a public carrier shall pay to the State Government the following lump-sum tax in lieu of the tax chargeable on freight:—

(a) to (d) (Different lump-sum rates of the tax were provided for vehicles plying on different routes):

Provided further that the said sum shall be deposited in cash by the owner into the Government treasury or paid by crossed cheque in favour of the appropriate Assessing Authority with due regard to the provisions of Note 4 under Rule 25 of the Subsidiary Treasury Rules. The said sum shall be payable in equal quarterly instalments within seven days of the close of the quarter to which the payment relates, subject to the following conditions:—

(Different conditions were laid down in clauses (a) to (e) for payment of the tax in different contingencies)."

The abovementioned rule was amended from time to time. In the united Punjab, the latest amendment was made by the Punjab Passengers and Goods Taxation (First Amendment) Rules, 1966, published on 28th March, 1966 in the Punjab Government Gazette No. GSR 61/P.A. 16/52/S. 22/Amd (7)66. The amendment of the first proviso to rule 9 is alone relevant for our purposes and that amendment was made by rule 2 of the amending rules of 1966, in the following terms:—

"In the Punjab Passengers and Goods Taxation Rules, 1952, in rule 9,—

(1) for the first proviso, the following shall be substituted, namely:—

'Provided that the owner of a public carrier may pay to the State Government the following lump-sum in lieu of the tax chargeable on freight:—

(a) Rs. 1,215 per annum per vehicle, other than one plying on hill routes or under counter-signatures of the

authorities in the adjoining States under the Motor Vehicles Act, 1939.

(b) Rs. 1,820 per annum per vehicle, plying on hill routes or under counter-signatures of the authorities in the adjoining States under the Motor Vehicles Act, 1939.

(c) Rs. 200 per annum per vehicle plying on Pathankot—Jammu—Srinagar route only.

(d) Rs. 450 per annum per tractor plying with public carrier permit.

(e) Rs. 610 per annum per tempo rickshaw plying with a public carrier permit."

The first proviso to rule 9, as amended up to March, 1966, underwent further amendment at the hands of the Haryana State by the coming into force of rule 2 of the Punjab Passengers and Goods Taxation (Haryana 1st Amendment) Rules, 1969, notified in the Haryana Government Gazette, dated April 21, 1969, to the following effect:—

"In the Punjab Passengers and Goods Taxation Rules, 1952, in Rule 9 in the first proviso, for clauses (a) and (b) the following clauses shall be substituted, namely:—

(a) Rs. 810 per annum per vehicle other than one plying under counter-signatures of the authorities in the adjoining States under the Motor Vehicles Act, 1939.

(b) Rs. 1,215 per annum per vehicle registered in the State of Haryana and plying under counter-signatures of the authorities in any other State under Motor Vehicles Act, 1939.

(bb) Rs. 600 per annum per vehicle registered in the State of Punjab and plying under counter-signatures of the authorities in the State of Haryana under the Motor Vehicles Act, 1939.

(bbb) Rs. 1,215 per annum per vehicle registered in the Union Territory or State other than the State of Punjab and

plying under counter-signatures of the authorities in the State of Haryana under the Motor Vehicles Act, 1939."

(21) By operation of rule 2 of the Punjab Passenger and Goods Taxation (First Amendment) Rules, 1964, the second proviso to rule 9 (as it originally existed) was amended so as to make it incumbent on truck-owners to pay quarterly goods tax within "thirty days of the commencement of the quarter to which the payment relates" and made it obligatory for the truck owners to obtain from the assessing authority a clearance certificate in form PTT. 5-A in token of having paid the lump-sum goods tax. In the prescribed form PTT. 5-A the assessing authority of the district concerned is required to certify that a particular vehicle owned by a particular person and covered under a specified route permit is registered under the Act and that the payment of all dues (tax, penalty, etc.), under the Act up to a given date in respect of the concerned vehicle has been made. Mention may also be made here of the fact that section 3(1) of the principal Act of 1952 had been amended in Punjab after its reorganisation so as to raise the maximum goods tax leviable under the Act up to 35 per cent of the value of the freight. After the formation of the State of Haryana, a further amendment has been made in section 3(1) of the Act by that State authorising the levy of goods tax up to 40 per cent of the value of freight. Similarly it may be noticed that by the Punjab Ordinance 7 of 1969 (subsequently replaced by the Punjab Act 22 of 1969) section 3(3) of the principal Act was amended in Punjab also to the same effect as it was amended in Haryana.

(22) Mr. Ratta divided his argument on the eighth point into two distinct compartments. First part of his submission was that the appellants are not liable to pay lump-sum tax under the proviso to section 4 of the Act read with the proviso to rule 9 of the Rules as the appellants do not "ply" their vehicles in the corridor portion of the route which falls within the Haryana territory. The validity of the proviso to section 4 has already been upheld by us in an earlier part of this judgment. The precise submission of the learned counsel for the appellants on this part of his case is that only such an owner of a public carrier can be made to pay to the State Government the "lump-sum in lieu of the tax chargeable on freight" under clause (bbb) of rule 9 who is "plying" his public carrier within the State of Haryana. It is the common case of both sides that under the condition of the permits held by the appellants they can neither load nor

unload their goods in the Haryana territory. Relying on the Division Bench judgment of this Court (D. Falshw, C.J., and Mehar Singh, J., as they then were), in *Mohan Lal Gurdial Dass* v. *State of Punjab and others* (14), counsel submitted that no one can be said to ply his vehicle within the State of Haryana unless he either loads or unloads goods within the territory of that State. Messrs Mohan Lal Gurdial Dass, truck-owners of Ganga Nagar in the State of Rajasthan had got their public carrier permit counter-signed by the Regional Transport Authority of Ambala Region, Punjab. Under the terms of the permit it could only pass through the areas of the Punjab State while transporting goods from Ganga Nagar to Delhi without loading or unloading goods in the Punjab area. They were prosecuted under section 17(1) (e) for having violated section 8 of the Act on the plea that they were plying their vehicle in the Punjab territory without its registration under the Act. The truck-owners filed a writ petition in this Court challenging their prosecution. Though a learned Single Judge of this Court dismissed the writ petition, the appeal of the truck-owners was allowed by the Letters Patent Bench on the basis of the following observations:—

> "The preamble of the Act (Punjab Passengers and Goods Taxation Act) says that it is an Act to provide for levying a tax on passengers and goods carried by road in certain motor vehicles. The Act is, therefore, for levy of tax on carriage of passengers and goods in certain motor vehicles. Registration under section 8 of the Act is also of such motor vehicles, that is to say, motor vehicles used for carriage of passengers and goods. The present case is only concerned with the motor vehicles of the appellant-firm which is a goods carrier. The question then is what is the meaning of the words 'ply' in section 8. In *The Queen* v. *Justices of Ipswich*, (15), Lord Coleridge, C.J., said " 'plying' certain seemed to imply plying for hire. Such was the example given by Johnson in his definition, and though the word might sometimes be used in other senses, that was its first and natural meaning." In *Berry Mahapatra* v. *Emperor* (16), Courtney Terrell, C.J., observed that "the word 'ply' has exactly the same meaning as to ply for hire, that is to say it means that the person driving a vehicle stops to take

(14) I.L.R. 1966 (1) Punjab. 757=A.I.R. 1966 Punjab. 261
(15) (1889) 5 T.L.R. 405
(16) A.I.R. 1936 Patna 321 (1)

up or put down passengers for reward. A person merely driving his vehicle cannot be said to be plying the vehicle." A carriage out to pick up passengers plies for hire: *Clarke* v. *Stanford,* (17), and *Allen* v. *Tunbridge* (18). This is with regard to motor vehicles or carriages for passengers and where a motor vehicle is for carriage of goods and the word used is 'ply' with regard to it as in section 8 of the Act, it obviously means when the motor vehicle is out to load or unload goods for carriage for reward. It is in this manner that the meaning of the word 'ply' is to be taken as used in section 8 of the Act.

The appellant firm, is, therefore, when it is prosecuted under section 17(1)(e) of the Act, being prosecuted for loading or unloading of goods for carriage in this State. But the complaint, of which copy is Annexure 'A' with the petition of the appellant-firm, makes no such allegation against the appellant-firm that its motor vehicle not having registration under section 8 of the Act, has been plying in this State in the sense that it has been loading or unloading goods for reward in this State. The complaint does not disclose the essential allegation of fact which is the basis of the alleged offence said to have been committed by the appellant-firm and on this ground it must be quashed, for, on the face of it, it does not disclose the offence in regard to which the appellant-firm is being prosecuted."

Though reference was no doubt made in a later part of the same judgment to the additional point submitted by the truck-owners about the goods in question not having been liable to tax under section 3(3) of the Act, as it then existed, in view of the Division Bench judgment in *Basant Singh's case* (13), (supra), we are not concerned with that aspect of the matter for deciding these appeals. Messrs Mohan Lal-Gurdial Dass succeeded on both the points and each one of them can stand independent of the other. It was on the authority of the above-mentioned judgment in the case of Messrs Mohan Lal-Gurdial Dass that Mr. Ratta submitted that it was neither necessary for the appellants to register their vehicles under sections 8 and 9 in Haryana, nor were the appellants liable to pay any tax to that State

(17) (1871) 6 A.B. 357

(18) (1871) L.R. 6 C.P. 481.

under the proviso to rule 9 as they are not "plying" their vehicles in any part of the Haryana territory. Mr. Jagan Nath Kaushal submitted in reply that the Division Bench judgment in the *case of Mohan Lal-Gurdial Dass* (14), was given in the light of the earlier decision of this Court in *Basant Singh's case* (13), and section 3(3) having since been amended; the said judgment has no impact on the post-amendment period. Though, as already stated, one of the grounds on which Messrs Mohan Lal-Gurdial Dass succeeded in their letters patent appeal was no doubt the pre-amendment phraseology of section 3, yet it cannot be denied that the other ground relating to the true scope and correct interpretation of their word "ply" still holds the field irrespective of the amendment of section 3 of the Act. Similarly at pages 157-158 of Volume 72 of Corpus Juris Secundum it has been stated that the word "ply" as a verb "imports the performance of repeated acts of the same kind, and means to make regular trips, as a vessel plies between the two places." "Ply" has also been stated in the same volume to be synonymous with "handle". Counsel submitted that the appellants do not "handle" the goods within the Haryana territory, and do not make regular trips between any two places in the Haryana territory. Mr. Kaushal could not, in this situation, press the claim for lump-sum tax against the appellants. He said that payment by lump-sum was only a concession given to the truck-operators and if it is found that lump-sum payment could not be enforced the State should be left to claim tax calculated on percentage of freight basis as envisaged by section 3(1) of the Act read with the purview of rule 9. It is here that the second part of the argument of Mr. Ratta starts. We must dispose of the first part of the argument of the learned counsel before dealing with that other aspect.

(23) Approving of the earlier Division Bench judgment of this Court in the *case of Messrs Mohan Lal-Gurdial Dass* (14), and in view of the meaning assigned to the word "ply" in Corpus Juris Secundum we have no hesitation in holding that a person who neither loads nor unloads any goods in a particular territory nor makes regular trips between any two points within Haryana nor "handles" any goods within that territory but merely passes through a portion of that State cannot be said to be plying his vehicle in that territory for the purposes of sections 8 and 9(7) and for the purposes of the proviso to rule 9. The appellants must, therefore, succeed on this part of their case.

(24) This takes me to the second half of the argument advanced on behalf of the appellants in connection with this issue. It was contended that despite the amendment of section 3(3) and the explanation thereto, the objective sought to be achieved by the amendment, i.e., to tax goods carried by all trucks merely passing through a corridor State, has not been achieved as corresponding necessary changes have not been made by the Legislature in the phraseology of the concerned provisions of the Act and the Rules. He submitted that we are not concerned with the possible intention of the Legislature, but with (what the Legislature has actually achieved by construing) the plain language of the statute. He further added that while so construing the relevant provisions, we should, in case of the slightest doubt, lean in favour of the citizens as it is settled law that a taxing statute should be strictly construed so as to leave out of its operative field subjects or persons who are not netted by its charging provision beyond reasonable doubt. He did not dispute that the precise hurdle which had been found by Falshaw, C.J., and H. R. Khanna, J., to stand in the way of the taxing provision in *Basant Singh's case* (13) (supra), has been removed by the amendment of section 3(3), but canvassed the proposition that the whole of that section and other relevant provisions have not been brought in accord with the intention behind the amendment. According to Mr. Ratta, it was necessary in order to achieve the professed object of the Legislature to substitute the words "transport", "operate" and "ply" in sections 3, 8 and 9(7) of the Act by the word "carried" or the words "carried through" or by some other such expression as may be free from the implications attached to the expressions actually used in those provisions. Section 8 of the Act prohibits the plying of a motor vehicle without registration under section 9. In the unamended Punjab Act if a motor vehicle which was required to be registered under the Act was plied in the State without such registration, the owner of the vehicle was criminally liable under section 17(1)(e) of that Act. Despite the fact that section 14-A has been introduced in the amended Act to substantially fill the gap created by the omission of section 17, Mr. Jagan Nath Kaushal maintained that the Haryana State could not insist on legally compelling the appellants to register their vehicles in its territory. He went to the length of interpreting sub-section (4) of section 9 of the Act in such a manner as to suggest that no penalty under that provision could be levied on the owner of a public carrier merely for non-registration of his vehicle under the Act. In any event, it is unnecessary to go into this aspect of the matter any further as the learned Advocate-

General made it clear that the Haryana Government is neither taking any action against the appellants for contravention of section 8 nor intends to do so. Even otherwise, in view of the interpretation placed by us on the word "ply" which occurs in section 8 of the Act it is neither necessary for the appellants to register their vehicles in Haryana nor have they rendered themselves liable to any action under section 14-A because of their failure to comply with section 8.

(25) On the question of liability to pay tax under the Act, the main-stay of Mr. Kaushal was that despite the inapplicability of the proviso to rule 9 to the case of the appellants, the principal liability to pay 40 per cent of the proportionate freight charged for the Haryana territory remains unaffected. Mr. Ratta, on the other hand, contended that the expression "goods transported" in sub-section (3) of section 3 and the word "operating" used in that provision should be interpreted in the light of the interpretation of the word "ply" used in section 8 of the Act and that we should hold that these expressions carry with them the same limitations as were referred to by the Division Bench of this Court in the *case of Mohan Lal-Gurdial Dass* **(14)**, in connection with the true scope and correct interpretation of the word "ply". He laid great emphasis on the fact that the deletion of the word "operating" from section 3(3) would convey the sense which Mr. Kaushal wants to put into the provision and argued that the Legislature cannot be deemed to have inserted a superfluous word into the statute without intending to attach a specific meaning to it. That meaning, according to the learned counsel for the appellants, must be the same as assigned by us to the expression "ply". Reference was also made to the meaning of the word "operator" given in the Shorter Oxford Dictionary, Volume Two, at page 1375, as a person "who performs the practical or mechanical operations belonging to any process, business, or investigation; a person professionally or officially so engaged." Similarly, reference was made to the meaning of the word "transportation" given at page 902 of Corpus Juris Secundum, Volume 87, with reference to *U. S. Republic Oil Refining Co.* v. *Granger, D. C. Pa.,* (19). According to the decision of that case "transportation implies the taking up of persons or property at some point and putting them down at another." The argument was that insofar as the property is neither taken up nor put down at any point in the State of Haryana, it cannot be said that the appellants "transport" any goods in Haryana. Mr. Jagan Nath Kaushal in reply referred to the history behind the

(19) 98 F. Supp. 921/933

amendment of section 3(3) to which detailed reference has already been made by me. He submitted that levy of tax on goods carried through a corridor being included in the authority of the State Legislature under entry 56 of the List II of the Seventh Schedule to the Constitution, and it being well-known that the object of the amendment to section 3 was to fill in the gap pointed out by the Division Bench in *Basant Singh's case* (13), we should construe the amended provision by which the previous corresponding provision was repealed and the new one was re-enacted so as to curb the mischief pointed out in *Basant Singh's case* (13), and to advance the object of the amendment. In this connection reliance was placed by the learned Advocate-General in the dictum of the Supreme Court in *Bengal Immunity Co., Ltd.* v. *State of Bihar and others,* (20). The rule of construction firmly established in England based on the decision in *Heydon's case* (21), was approved by the Supreme Court. The relevant part of the rule laid down in *Heydon's case* (21), was "for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st. What was the common law before the making of the Act.

2nd. What was the mischief and defect for which the common law did not provide.

3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth; and

4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to supress subtle inventions and evations for continuance of the mischief, and 'pro-private commodo', and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*!".

Same principle was later followed by their Lordships of the Supreme Court in *R. M. D. Chamarbaugwalia and another* v. *Union of India and another* (22). Their Lordships of the Supreme Court observed

(20) A.I.R. 1955 S.C. 661
(21) (1584) 3 Co Rep 7a I(V)
(22). A.I.R. 1957 S.C. 628 at P. 631

that in order to decide the true scope of the relevant statute, we must have regard to all such factors as can legitimately be taken into account in ascertaining the intention of the Legislature, such as the history of the legislation and the purposes thereof, the mischief which it intended to suppress and the other provisions of the statute, and construe the language of the relevant provision in the light of the indications furnished by them. Mr. Kaushal further referred to the imposition of a similar tax in Assam having been upheld by their Lordships of the Supreme Court in *Khyerbari Tea Co. Ltd., and another* v. *State of Assam and others* (9), (supra). Mr. Ratta, however, pointed out that neither the word "ply" nor the word "operating" had been used in the Assam Taxation (On Goods Carried by Road or on Inland Waterways) Act (10 of 1961).

(26) In the circumstances of the cases giving rise to the appeals before us, we do not appear to be called upon to decide the question whether the use of the expressions "transported" and "operating" in section 3(3) creates any impediment in the way of imposition and recovery of tax under section 3(1) and the purview of section 4 read with the purview of rule 9 or not. The appellants were at no time required to stamp their goods receipts under the purview of clause (i) to rule 9. No question of their depositing cash in the treasury under clause (ii) of that provision could, therefore, arise if and when the requisite stamps were not available. In Paragraph 11 of the writ petition, from which this appeal has arisen, the appellant had clearly stated that "the State of Haryana, had started prosecuting them for non-payment of the tax at the rate of Rs. 1,215 per annum, and had started demanding the tax under rule 9 of the Punjab Passengers and Goods Taxation Rules, 1952, as amended,—*vide* impugned notification Annexure 'A'." In the corresponding paragraph of the return of the respondents it was admitted that the appellant was being asked to pay tax under the law. It was not even claimed that any tax other than the lump sum of Rs. 1,215 per annum prescribed by the proviso to rule 9 was being demanded from the appellants. It was also denied that any prosecution proceedings had been initiated against the appellants. It does not appear to us to be possible for the respondent-State to now claim from the appellants that, since its demand for lump-sum tax has been found to be not tenable, the appellants should be deemed to have been responsible for paying tax on the basis of freight charged by them though they were in fact admittedly never required to do so. Lump-sum tax can be claimed only if the right to claim tax on the basis

of proportionate freight is given up. Lump-sum claim can be made in substitution of the other claim. The State Government having exercised its option to claim tax only on lump-sum basis cannot now turn round at this stage to make a demand under the other alternative mode provided by rule 9. In almost similar circumstances we have already held in *Gurdial Singh* v. *State of Haryana* (23), that the State cannot in such circumstances fall back on the claim for tax calculated on proportionate freight. According to the authoritative pronouncement of the Supreme Court in *Messrs Sainik Motors, Jodhpur and others* v. *State of Rajasthan* (1), the option to choose between the mode of payment lies with the assessee so far as section 4 of the Act goes. We have, therefore, no hesitation to hold that in the circumstances of the cases before us the State cannot now claim from the appellants tax on the basis of proportionate freight charged for the Haryana portion on goods already transported by them.

(27) The last submission of Mr. Ratta is that in accordance with the law settled by their Lordships of the Supreme Court in *State of Madhya Pradesh and another* v. *Bhailal Bhai* (24), and subsequently followed in *Vijai Singh and another* v. *Deputy Commissioner, Excise and Taxation (Appeals), Ajmer and Kotah Divisions, Jaipur and others,* (25), they are entitled to a direction being issued to the respondents to refund the illegally recovered goods tax on lump-sum basis from them. This claim is confined to Letters Patent Appeals 358, 363, 365, 418 and 422 of 1970, which have arisen out of the decision in Civil Writs 752, 661, 650, 653, 659, of 1970. Even the learned Advocate-General conceded that if the tax has been recovered contrary to law, the State is bound to refund the same to the persons concerned.

(28) For the foregoing reasons we allow these appeals to the limited extent that the appellants are not liable to pay any lump-sum tax under the notification dated April 21, 1969, as they do not "ply" their vehicles in the corridor portion of Haryana under their permits, in accordance with the terms of which they can neither load nor unload any goods in the Haryana territory. As a consequence, the State of Haryana is directed to refund to the appellants in Letters Patent Appeals 358, 363, 365, 418 and 422 of 1970 so much

(23) C.W. 1984 of 1969 decided on 9th November, 1970
(24) A.I.R. 1964 S.C. 1006.
(25) I.L.R. (1965) 11 Rajasthan 285.

of the goods tax as has been recovered from them under the proviso to rule 9 on lump sum basis. We also hold that no goods tax under the Act can be levied on and recovered from the appellants by the respondents in connection with the permits in question even on the alternative basis for the period which has already expired. The question of the liability of the appellants to pay such tax on the basis of proportionate freight charged for the Haryana territory in the future is left open. In the circumstances of the case parties are left to bear their own costs.

HARBANS SINGH, C.J.—I agree.

P. C. JAIN, J.—I agree.

K.S.K.

332 ILR Govt. Press, Chandigarh