

Babu Ram and others *v.* The State of Haryana and others
(J. M. Tandon, J.)

of the relief, interim or otherwise, are sufficiently dealt with under the provisions.”

(7) Adverting to the facts of the present case it is clear that the Court came to the conclusion that the plaintiff could not be given the relief claimed by him under sub-section (2). It was, therefore, incumbent upon it to return the plaint to the plaintiff under the proviso with a direction that it should be presented after serving notice as required by sub-section (1). In my view, the trial Court has not interpreted sub-section (2) of section 80 correctly. Consequently I accept the revision petition, set aside the order of the trial Court and direct it to return the plaint to the plaintiff for presenting the same after complying with the requirements of sub-section (1) of section 80 of the Code. No order as to costs.

H. S. B.

Before; Prem Chand Jain, A.C.J. & J. M. Tandon, J.

BABU RAM AND OTHERS,—Petitioners.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

C.W.P. No. 7208 of 1976

May 29, 1984

Haryana General Sales Tax Act (20 of 1973)—Section 38—Haryana General Sales Tax Rules, 1975—Rule 53—Constitution of India 1950—Article 246(3) and Entry 54 of List II of Seventh Schedule—Clearing/forwarding agents rendering services for booking/taking delivery of consignments on behalf of their clients on payment of remuneration—Section 38 requiring such agents to take out a licence and to furnish prescribed information of goods handled by them—Penalty provided for contravention of the provisions—Section 38 and Rule 53—Whether ultra vires the powers of the State Legislature.

Held, that the Legislature is competent to legislate with respect to matters incidental and ancillary to the main provision subject to the condition that they relate to the powers otherwise conferred by the primary head of the Schedule. Incidental and ancillary power

to legislate under Entry 54, list II of Seventh Schedule cannot be extended to cover a complete stranger to the sale or purchase of goods. Section 38 of the Haryana General Sales Tax Act, 1973 provides that a clearing or forwarding agent or *Dalal* shall not carry on his business unless he obtains a licence from the Assessing Authority and further it is incumbent for him to furnish to the Assessing Authority the particulars and information in respect of the transaction of the goods in such form and manner as may be prescribed. In the event of contravention, he is liable to pay penalty of an amount equivalent to 20 per cent of the value of the goods in respect of which no particular or information has been furnished. A clearing or forwarding agent or *Dalal* is a stranger to the transaction of sale or purchase of goods he is not liable to pay sales-tax nor is he responsible for its evasion inasmuch as he is not a dealer. This apart, there is hardly any justification to raise a presumption of evasion of sales-tax in the transactions in respect of which an agent or *Dalal* is required to furnish particulars and information to the Assessing Authority under section 38 of the Act. Similarly, it would be wrong to assume evasion of sales-tax in the transactions, the particulars and information of which an agent or *Dalal* has failed to furnish to the Assessing Authority. Moreover, the responsibility regarding the evasion of sales-tax, if any, is that of the dealer and it cannot be justifiably foisted on the agent or *Dalal*. There being no liability of the agent or *Dalal* to pay the sales-tax or an attempt on his part or suspicion against him to escape its payment, it cannot be held that provisions contained in section 38 of the Act are *intra vires* the State Legislature being ancillary and incidental to the power to levy sales-tax under Entry 54, List II of VII Schedule to the Constitution. Section 38 of the Act is, therefore, *ultra vires* the State Legislature as it is neither covered by Entry 54 List II of Seventh Schedule directly nor is it ancillary or incidental thereto. Rule 53 being consequential to section 38 of the Act is also unconstitutional.

(Paras 20 & 23).

Case referred by Hon'ble Mr. Justice Prem Chand Jain, to the larger Bench on 19th October, 1982 for the decision of an important question of law involved in this case. The larger Bench consisting Hon'ble the Acting Chief Justice, Mr. Prem Chand Jain and The Hon'ble Mr. Justice J. M. Tandon, finally decided the case on 29th May, 1984.

Petition under Articles 226/227 of the Constitution of India, praying that this Hon'ble Court may be pleased to issue :—

(a) rule nisi;

(b) a writ in the nature of *Mandamus* declaring the provisions of Section 38 and Rule 53, as *ultra vires* the Constitution of India;

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- (c) *a writ in the nature of prohibition be issued restraining the respondents from compelling the petitioners to file the returns;*
- (d) *ad-interim order staying further proceedings before respondents Nos. 2 and 3 including filing of the monthly returns by the petitioners, be granted pending disposal of this writ petition;*
- (e) *costs of this petition be allowed.*

Further, praying that any writ, order or direction, which this Hon'ble Court may deem fit, in the circumstances of the case, be issued.

R. P. Sawhney, Advocate, for the Petitioner.

Gopi Chand, Advocate, for the Respondent.

JUDGMENT

J. M. Tandon, J.

(1) The petitioners are clearing/forwarding agents and render their services for booking and/or taking delivery of consignments at the Railway Stations on behalf of their clients on payment of remuneration. According to the petitioners, the normal practice of their trade is that on the instructions of their clients, they arrange booking of the goods to be transported by railway and get the necessary documents in the name of their clients. They also take delivery of the consignment on behalf of their clients against the railway receipt and hand over the goods and documents to their clients.

The Haryana General Sales Tax Act, 1973, (hereinafter the Act) came into force in the State of Haryana on May 5, 1973. Section 38 of the Act reads:—

“38. Furnishing of information by clearing and forwarding agents, etc.—

- (1) clearing or forwarding agent, *dalal* or any other person transporting goods within the State, who, during the course of his business, handles documents of title to goods for or on behalf of any dealer, shall furnish to

the assessing authority the particulars and information in respect of the transaction of the goods in such form and manner, as may be prescribed.

- (2) No clearing or forwarding agent, *dalal* or any other person transporting goods within the State shall carry on his business unless he obtains from the assessing authority, on payment of a fee not exceeding fifty rupees, licence in the form and manner and subject to such conditions, as may be prescribed.
- (3) If any clearing or forwarding agent or *dalal* or person transporting goods within the State contravenes the provisions of sub-section (1) or sub-section (2), the Commissioner or any other person appointed to assist him under sub-section (1) of section 3, may after giving the person concerned a reasonable opportunity of being heard, direct him to pay by way of penalty an amount, equivalent to twenty per centum of the value of goods in respect of which no particulars and information has been furnished under sub-section (1).

Explanation.—For the purpose of this section—

- (i) '*dalal*' shall include a person who renders his services for booking of, or taking delivery of, consignments of goods at a railway station, booking agency, goods transport company office, or any place of loading or unloading of goods or contrives, makes and concludes bargains and contracts for or on behalf of any dealer for a fee, reward, commission, remuneration or otherwise;
- (ii) person transporting goods' shall, besides the owner, include, the manager, agent, driver, employee of the owner or person incharge, of a place of loading or unloading of goods (or of a Railway out agency, city booking office or city booking agency, when run by a private person under a contract with the Railways but excluding a rail head or a post office) or of a goods-carrier carrying such goods or a person who accepts consignments of such goods for despatch to other

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places or gives delivery of any consignment of such goods to the consignee.”

The Haryana General Sales Tax Rules, 1975, (hereinafter the Rules) made under section 64 of the Act came into force on November, 5, 1975. Rule 53 of the Rules reads:—

“53. Furnishing of information by clearing and forwarding agents.

Every clearing or forwarding agent or *Dalal* shall, as required under sub-section (1) of section 38, furnish to the assessing authority granting the licence a return in form S.T. 43 for every month within a period of ten days of close of each month regarding the consignments handled by him during the month and shall keep and maintain true and correct record in form S.T. 44 in respect of consignments of goods handled by him.”

Entry 54 of List 11 of VII Schedule of the Constitution reads:—

Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92-A of List I.”

(2) The Act has been made by the State Legislature in exercise of power conferred under Entry 54 reproduced above read with Article 246(3) of the Constitution. The petitioners have challenged the *vires* of section 38 of the Act and rule 53 of the Rules in the present writ.

(3) The learned counsel for the petitioners has argued that section 38 of the Act and rule 53 of the Rules are outside the competence of the State Legislature being beyond the scope of Entry 54 of List II of VII Schedule inasmuch as they relate to persons (like petitioners) who are not in any way connected with the sale or purchase of goods. The argument proceeds that the petitioners work for remuneration as carriers of goods to and from railway station on behalf of their clients. They are not liable for the payment of sales-tax under the Act. The State Legislature cannot legislate under Entry 54, List II of VII Schedule of the Constitution for utilising the services of strangers to the sale or purchase of goods like the petitioners for purposes of detection of evasion of sales-tax by others.

(4) The learned counsel for the State has contended that the petitioners being clearing/forwarding agents are not strangers to the sale or purchase of goods inasmuch as they carry the goods to and from railway station on behalf of their clients in the course of such sales or purchase. The argument proceeds that assuming that the petitioners as clearing/forwarding agents are not in any way connected with the sale or purchase of goods, the State Legislature is competent to enact section 38 of the Act affecting them being ancillary and incidental to the main provision of the Act which is admittedly covered by Entry 54, List II of VII Schedule.

(5) The first point to be considered is whether the petitioners are in any way connected with the sale or purchase of goods in terms of Entry 54, List II of VII Schedule or not.

(6) The excise and Taxation Officer has made the following averments in the written statement filed on behalf of the State:

“ *Dalal*’ in common parlance is a well established business. These *Dalals* (the petitioners) act at the Railway Station on behalf of their clients, i.e., the various types of dealers. The dealers send their goods for booking to the Railway Station through these *dalals* and all the formalities at the Railway Station are performed by these *Dalals* for sending the goods to their destination. Similarly, when some goods of the dealers are received at the Railway Stations, the delivery is taken by the dealers through these *Dalals*. It has been observed that generally the bogus transactions are carried on by various dealers. The goods are booked by firms in assumed names and these are addressed to the consignee firm in assumed name and by this way the revenue of the State in the form of tax is jeopardised. Because of these bogus transactions the department could not net in the real person. In order to bring in within the forecorners of the taxation law so as to check evasion of tax and to safeguard the revenues of the State, section 38 was incorporated in the Haryana General Sales Tax Act, 1973 (hereinafter referred to as the Act). In view of the provisions of section 38 of the Act the duty has been cost upon the *dalals* to get a licence and maintain information in form S.T. 44 and supply it to the department monthly in form S.T. 43 because *dalals* very well-know who are the real dealers. * * * * *

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The intention behind the enactment of section 38 of the Act is not to penalise the petitioners but to check the evasion of tax which is done through bogus transactions and in the fictitious names. * * * *

* * * * *

It is further relevant to mention here, that the trade of getting the goods booked with the railways on behalf of the dealers and getting the delivery of the goods from the railway by the dealers through the *Dalals* is ancillary and incidental to the business of sale and purchase of goods. The State Legislature is empowered under entry 54 of List II in the Seventh Schedule to the Constitution of India to enact law for taxation on the sale or purchase of goods. * * * *

The livelihood of the petitioners is not taken away in any way. Rather the petitioners by getting the licence and rendering the monthly returns would help the State in the detection of the bogus transactions and lead to the arresting of the evasion of tax. This detection of evasion of tax would rather be beneficial for the welfare of the society. Hence in this way they would be helping the State to give impetus in the recovery of the tax on such transactions which are carried on by some dealers in bogus names.”

(7) The case of the petitioners is that they are not in any way connected with the sale or purchase of goods. The nature of work done by them supports their plea. The petitioners are admittedly neither dealers nor liable to pay sales-tax under the Act. No foundation, however, remote has been laid in the written statement filed on behalf of the State to warrant a finding that the petitioners are not strangers to the sale or purchase of goods handled by them as clearing/forwarding agents on behalf of their clients. Section 38 of the Act involving the petitioners has been enacted solely for the purpose of getting their help for the detection of bogus transactions entered into by others (dealers).

(8) The next point that arises for consideration is whether the State Legislature is competent to legislate directly involving the petitioners who as clearing/forwarding agents and *Dalal* are

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strangers to the sale or purchase of goods and are also not responsible for the payment of sales tax or evasion thereof under Entry 54, List II of VII Schedule.

(9) In *Orient Paper Mills Ltd. v. State of Orissa and others*, (1), it was held:—

The diverse heads of legislation in the Schedule to the Constitution demarcate the periphery of legislative competence and include all matters which are ancillary or subsidiary to the primary head. The Legislature of the Orissa State was, therefore, competent under Schedule 7, List 2, item 54 to exercise power in respect of the subsidiary or ancillary matter of granting refund of tax improperly or illegally collected. If competence to legislate for granting refund of sales tax improperly collected be granted, there is no reason to exclude the power to declare that refund shall be claimable only by the person from whom the dealer has actually realised the amounts by way of sales tax or otherwise.”

(10) In *R. Abdul Quader and Co. v. Sales Tax Officer, Second Circle, Hyderabad*, (2), it was held that if a dealer has collected anything from a purchaser which is not authorised by the taxing law, that is a matter between him and the purchaser, and the purchaser may be entitled to recover the amount from the dealer. But unless the money so called is due as a tax, the State cannot by law make it recoverable simply, because it has been wrongly collected by the dealer. This cannot be done directly for it is not a tax at all within the meaning of Entry 54 of List II, nor can the State Legislature under the guise of incidental or ancillary power do indirectly what it cannot do directly.

(11) In *R. Abdul Quader's case* (supra) their Lordships took notice of *Orient Paper Mill's case* (supra) and distinguished the same by making the following observations :—

“That matter dealt with a question of refund and it cannot be doubted that refund of the tax collected is always a matter covered by incidental and ancillary powers relating to the levy and collection of tax. We are not dealing

(1) 1961 S.C. 1438.

(2) 1964, 15 S.T.C. 403.

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with a case of refund in the present case. What section 11(2) provides is that something collected by way of tax, though it is not really due as a tax under the law enacted under Entry 54 of List II must be paid to the Government. This situation in our opinion is entirely different from the situation in the *Orient Paper Mills Limited's case*."

In *Ashoka Marketing Ltd. v. The State of Bihar and another*, (3), their Lordships observed :—

"Entry 54, List II of the Seventh Schedule of the Constitution comprehends the power to impose tax, to prescribe machinery for collecting the tax, to designate officers by whom the liability may be imposed to prescribe the authority, obligation and indemnity of the officer. The State Legislature may under the Entry be competent to enact a law in respect of matters necessarily incidental to 'taxes on the sale and purchase of goods'. But the provision contained in sub-sections (3), (4), and (5) compelling a dealer who has deliberately or erroneously recovered an amount from the purchaser on a representation that he is entitled to recover it to recoup himself for payment of tax, to pay over that amount to the State cannot be regarded as necessarily incidental to the entry. In effect the provision is one for levying an amount as tax which the State is incompetent to levy. A mere device cannot be permitted to defeat the provisions of the Constitution by clothing the claim in the form of a demand for depositing the money with the State which the dealer has collected but which he was not entitled to collect."

In *R. S. Joshi, etc. v. Ajit Mills Ltd. and another, etc.* (4), it was held:—

"Section 37(1) and 46, Bombay Sales Tax Act (51 of 1959) (as applicable to Gujarat State) which enact that sums collected by dealers by way of sales tax, though not exigible, shall be forfeited to the public exchequer punitively, are not beyond the legislative power conferred

(3) 1971, S.C. 946.

(4) A.I.R. 1977 S.C. 2279.

by Entry 54 read with Entry 64 of List II, and, therefore, not *ultra vires*. Nor do those provisions contravene Articles 14 and 19(1)(f) of the Constitution. The forfeiture clause in section 37(1) cannot be charged with the vice of colourability. The word 'forfeiture' must bear the same meaning of a penalty for breach of a prohibitory direction."

(12) Their Lordships took notice of *R. Abdul Quader's case* (supra) and *Ashoka Marketing's case* (supra) and made the following observations :—

"So, we largely disagree with *Ashoka* (A.I.R. 1971 S.C. 946) while we generally agree with *Abdul Qader* (A.I.R. 1964 S.C. 922). We must mention that the question as to whether an amount which is illegally collected as sales tax can be forfeited did not arise for consideration in *Ashoka*."

(13) It has already been held that the petitioners are not connected with the sale or purchase of goods. They are admittedly not dealers. The Legislature is as well competent to legislate with respect to matters incidental and ancillary to the main provision subject to the condition that they relate to the powers otherwise conferred by the primary head of the Schedule.

(14) The ratio of the authorities referred to above is suggestive that incidental and ancillary power to legislate under Entry 54, List II of VII Schedule cannot be extended to cover a complete stranger to the sale or purchase of goods like the petitioners.

(15) In *N. Pullayya v. The Government of Andhra Pradesh*, (5), a miller whose business consisted in milling rice for hire only and who was not a dealer in paddy and rice, challenged the provisions introduced in the Andhra Pradesh General Sales Tax Act, 1957, by the Andhra Pradesh General Sales Tax (Amendment) Act, 1963, in so far as they pertained to a miller, who was not a wholesale dealer or a retail dealer, on the ground that the provisions were *ultra vires* the State Legislature. The State of Andhra Pradesh took the following stand:—

"It has been observed, on verifying and checking certain transactions of millers and hullers that the hullers and

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millers are purchasing large quantities of paddy under the guise of converting it into rice for hire. The result is that a very substantial amount of tax was lost and not collected. With a view to check this evasion the impugned provisions in the Act relating to millers have been incorporated by the Amendment Act 16 of 1963. The object and purpose of these requirements as to maintenance of registers and submission of returns and the registration are that the huller or the miller who is not really a dealer will not be subjected to tax as a dealer and the huller or miller who is actually a dealer will not escape tax by the loopholes in the previous Act. To achieve these objects and to minimise if not eliminate the tax evasion by millers, these impugned provisions have been introduced."

(16) It was held that the main provisions were meant to check evasion of sales-tax which was a power incidental and ancillary to the power to levy sales tax and they were, therefore, not *ultra vires* the State Legislature.

(17) The ratio of *N. Pullayya's case* (supra) cannot be pressed against the petitioners for the reason that therein the millers and hullers were suspected to have made purchases themselves without payment of sales-tax whereas it is not so in the present case.

(18) In *The Check Post Officer, Coimbatore, and others v. K. P. Abdulla and Brothers*, (6), the Supreme Court examined the vires of sub-section (3) of section 42 of the Madras General Sales Tax Act, 1959, which read as under :—

"The officer-in-charge of the check post or barrier, or the officer empowered as aforesaid shall have power to seize and confiscate any goods which are under transport by any vehicle or boat and are not covered by;

- (i) a bill of sale or delivery note.
- (ii) a Goods Vehicle Record, a Trip Sheet or a Log Book, as the case may be, and
- (iii) such other documents as may be prescribed under sections 43 and 44:

Provided that before ordering confiscation the officer shall give the person affected an opportunity of being heard and make an inquiry in the prescribed manner.

* * * * *

Their Lordships observed:

“Entry 54 of List II of the Seventh Schedule to the Constitution authorises the State Legislature to legislate in respect of taxes on the sale or purchase of goods. A legislative entry does not merely enunciate powers: it specifies a field of legislation and the widest import and significance should be attached to it. Power to legislate on a specified topic includes power to legislate in respect of matters which may fairly and reasonably be said to be comprehended therein. A taxing entry, therefore, confers power upon the Legislature to legislate for matters ancillary or incidental including provisions for preventing evasion of tax. Sub-sections (1) and (2) of section 42 are intended to set up machinery for preventing evasion of sales-tax. But, in our judgment, the power to confiscate goods carried in a vehicle cannot be said to be fairly and reasonably comprehended in the power to legislate in respect of taxes on sale or purchase of goods. By sub-section (3), the officer-in-charge of the check post or barrier has the power to seize and confiscate any goods which are being carried in any vehicle if they are not covered by the documents specified in the three sub-clauses. Sub-section (3) assumes that all goods carried in a vehicle near a check post are goods which have been sold within the State of Madras and in respect of which liability to pay sales tax has arisen, and authorises the Check Post Officer, unless the specified documents are produced at the check post of the barrier, to seize and confiscate the goods and to give an option to the person affected to pay penalty in lieu of confiscation. A provision so enacted on the assumption that goods carried in a vehicle from one State to another must be presumed to be transported after sale within the State is unwarranted. In any event power conferred by sub-section (3) to seize and confiscate and to levy

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penalty in respect of all goods which are carried in a vehicle whether the goods are sold or not is not incidental or ancillary to the power to levy sales tax. A person carrying his own goods even as personal luggage from one State to another or for consumption, because he is unable to produce the documents specified in clauses (i), (ii) and (iii) of sub-section (3) of section 42, stands in danger of having his goods forfeited. Power under sub-section (3) of section 42 cannot be said to be ancillary or incidental to the power to legislate for levy of sales-tax."

(19) The ratio of *K. P. Abdulla's case* (supra) was pressed in *Dunlop India Limited v. The State of Punjab and others*, (7), wherein the vires of sub-section (3) of section 14-B of the Punjab General Sales Tax Act was examined and was held to be *ultra vires* the State Legislature.

(20) In the instant case, section 38 of the Act provides that a clearing or forwarding agent or *Dalal* shall not carry on his business unless he obtains a licence from the Assessing Authority and further it is incumbent for him to furnish to the Assessing Authority the particulars and information in respect of the transaction of the goods in such form and manner as may be prescribed. In the event of contravention, he is liable to pay penalty of an amount equivalent to 20 per cent of the value of the goods in respect of which no particular or information has been furnished. A clearing or forwarding agent or *Dalal* is a stranger to the transaction of sale or purchase of goods. He is not liable to pay sales-tax nor is he responsible for its evasion inasmuch as he is not a dealer. This apart, there is hardly any justification to raise a presumption of evasion of sales-tax in the transactions in respect of which an agent or *Dalal* is required to furnish particulars and information to the Assessing Authority under section 38 of the Act. Similarly, it would be wrong to assume evasion of sales-tax in the transactions, the particulars and information of which an agent or *Dalal* has failed to furnish to the Assessing Authority. Moreover, the responsibility regarding the evasion of sales-tax, if any, is that of the dealer and it cannot be justifiably foisted on the agent or *Dalal*. The case under consideration is substantially covered by the ratio of *K. P. Abdulla's case* (supra). There being no liability of the agent or *Dalal* to pay

the sales-tax or an attempt on his part or suspicion against him to escape its payment; it cannot be held that provisions contained in section 38 of the Act is *intra vires* the State Legislature being ancillary and incidental to the power to levy sales-tax under Entry 54, List II of VII Schedule to the Constitution.

(21) In *Mool Chand-Chuni Lal v. Shri Manmohan Singh, Assistant Excise and Taxation Officer, Octroi-in-charge, Shambhu Barrier, district Patiala and another*, (8) (Full Bench) the vires of subsections (6), (7) and (8) of section 14-B of the Punjab General Sales Tax Act introduced by the Amending Act 9 of 1974 was examined. It was held:—

“It will be noticed at once that section 14-B(6), as it stood originally, provided for the seizure of any goods not covered by documents and section 14-B(8) provided for the seizure of all goods in respect of which the declaration was false. The seizure might be made irrespective of the question whether there was any attempt to evade tax. This basic but unwarranted assumption underlying both the provisions for seizure, as in the case before the Supreme Court, was that the goods were transported after sale within the State. Again as in the case before the Supreme Court, no attempt was made to specify what goods might be seized. The provisions were considered by Bal Raj Tuli, J., and the Division Bench to fall within the principles laid down in *K. P. Abdulla's case*. But the position is quite different now. The new provision for the levy of penalty [amended section 14-B(7)] is no longer based on any assumption that the goods were transported after sale within the State. Its present basis is the attempt to evade tax and it prescribes a condition precedent to the levy of penalty. The condition precedent is that the authorised officer should record a finding that there has been an attempt to evade the tax due under the Act. It cannot possibly be disputed that the prevention of evasion of sales tax is a power incidental or ancillary to the levy of sales tax and falls within the entry 54 of List II of Schedule VII of the Constitution. Section 14-B(7), which provides for detention of goods and levy of penalty if there has been an attempt to evade the tax due under the Act, cannot, therefore, be held to be without constitutional sanction. It is further to be noticed that the goods

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which are to be detained are also specified in section 14-B(6) as the goods meant for trade and not covered by proper and genuine documents.”

(22) A clearing or forwarding agent and *Dalal* cannot carry on his business without a licence under section 38 of the Act and it is necessary for him to furnish the particulars in respect of the transactions of the goods handled to the Assessing Authority and in default to suffer penalty equivalent to the 20 per cent of the value of the goods in respect of which particulars are not furnished. Keeping in view the details of the provisions contained in section 38 of the Act it is difficult to hold that it is covered by the ratio of *Mool Chand Chuni Lal's case* (supra) and *intra vires* the State Legislature being ancillary or incidental power to levy sales-tax under Entry 54, List II of the VII Schedule.

(23) In view of discussion above, section 38 of the Act is *ultra vires* the State Legislature as it is neither covered by Entry 54, List II of VII Schedule directly nor is it ancillary or incidental thereto. Rules 53 being consequential to section 38 of the Act can also be not sustained.

(24) In the result, the writ petition is allowed and section 38 of the Act and rule 53 of the Rules are struck down as unconstitutional and the respondents are restrained from compelling the petitioners to file returns as prescribed therein. No order as to costs.

Prem Chand Jain, A.C. J.—I agree.

N. K. S.

Before P. C. Jain, A.C.J. & I. S. Tiwana, J.

SOHAN LAL AHUJA,—Petitioner

versus

STATE OF PUNJAB,—Respondent.

Civil Writ Petition No. 1074 of 1984.

June 1, 1984.

Punjab Municipal Act (III of 1911)—Section 20(1)—Member of a municipal committee elected its president—Power of the Government to grant approval under section 20(1)—Scope of—Stated—Earlier removal of the member from the office of president—Whether by itself a ground for not approving his re-election.