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M/S. A.B.C. (INDIA) LTD.

v.

STATE OF ASSAM AND ANR.

AUGUST 4, 2005

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[S.N. VARIAVA AND DR. AR. LAKSHMANAN, JJ.]

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Assam General Sales Tax Act, 1993—Sections 3(1), 14, 42, 44, 46-A and 72(1)—Clearing, booking or forwarding agents or any transporter obliged to furnish complete particulars and accounts—Liable for penalty in case of non-compliance —Provisions challenged in writ petition—Single Judge allowed writ petition—Division Bench allowed writ appeal of the respondent—Thereafter, Act amended making it a statutory obligation of every transporter or agent engaged in transport of taxable goods to obtain a Certificate of Registration along with addition of certain new Rules—Writ petition filed in this court tagged along with pending appeal—Held, as per accepted norms of taxation whatever is an ancillary or subsidiary provision necessary for achieving the object of a tax statute is covered by Entry 54 of List II of the Seventh Schedule to the Constitution—Obligation imposed upon transporters is also a part of preventive measures against evasion of taxes—No liability imposed upon the transporters, carriers etc. to pay any sales tax—No irregularity in calling for books of accounts, documents, evidence etc. so as to make proper verification and scrutiny for purposes of tax—Insertion of Section 46-A is to achieve the object of sealing loopholes of avoidance and evasion of sales tax by fictitious dealers with the help of transport companies—No infringement of any fundamental right—Constitution of India—Article 14, 19(1)(g), 21, 32, and 300A—Seventh Schedule, List II, Entry 53 and 54—Tripura Sales Tax Act, 1976—Haryana General Sales Tax Act, 1973.

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The appellant being engaged in the business of transportation of goods, filed a writ petition in the High Court challenging the provisions of Sections 42 and 44 of the Assam General Sales Tax Act, 1993. Under Section 42 of the Act, every clearing, booking or forwarding agent or any other person transporting goods, who during the course of his business handled documents of title to goods for or on behalf of any dalal or a person holding certificate under Section 14 was obliged to furnish to the prescribed authority true and complete particulars and information and to maintain true and complete accounts, registers, documents etc. The

section also provided for levy of penalty at the rate of three time of tax calculated on the value of the goods in respect of which no particulars or information were furnished or no cash memo or bill or challan was produced before the prescribed authority or rupees one thousand whichever is greater. Section 44 of the Act empowered any authority appointed under Section 3(1) of the Act that if he had reason to suspect that any dealer was attempting to evade tax or that any person transporting goods or any other person had kept his accounts in such a manner as is likely to cause evasion of tax payable under the Act, such authority could for reasons to be recorded in writing, seize such accounts and registers or documents. Power had also given to the authority to enter into and search any place of business of any dealer. The section empowered the authority to impose a penalty equal to three times the amount of tax calculated on the value of such goods and to release the goods as soon as the penalty was paid in case the dealer or the person in-charge of the goods failed to produce any evidence or satisfy the said authority regarding the proper accounting of the goods.

Notices were issued to the appellant company, after the Sales Tax Department searched its premises and godowns, to produce the documents to satisfy the authority about the proper accounting of the seized goods. The appellant challenged the legality of one such notice by way of a writ petition, which was allowed by the Single Judge, following a judgment of this Court. The said provisions were held to be prospective in nature; therefore, demand of books of account prior to the enactment was not justified. The respondent preferred a writ appeal relying upon a later judgment of this Court, and it was allowed. Hence this appeal.

The respondent - State taking advantage of the impugned judgment inserted Section 46-A in the Assam Act and thereby made it a statutory obligation of every transporter, carrier or transporting agent engaged in transport business relating to taxable goods in Assam to obtain a Certificate of Registration. Certain new Rules were also inserted by exercising the power under Section 72(1) of the Act. The Assam Chamber of Inter-State carriers challenged the amendments as being repugnant to Articles 14, 19(1)(g), 21 and 300A of the Constitution of India, by preferring a writ petition before this Court and the same was tagged along with the appeal.

A The appellant contended that the earlier judgment of this Court clearly laid down that in a valid State Legislation on sales tax, the scope/ ambit to Entry 54, List II in the Seventh Schedule could not be stretched to cover the persons who are neither “dealer” nor had any nexus with the transaction of sale of goods; that the Division Bench failed to appreciate that the facts and circumstances as also the provisions of the Tripura Sales Tax Act and Rules framed thereunder were totally distinct and as the later judgment of this Court concerned that Act, so it could not be made the basis of the impugned judgment; that the provisions of the Haryana General Sales Tax and Assam General Sales Tax Act are similarly worded and as the earlier judgment of this Court concerned the Haryana Act, it was applicable to the present case; and that it was carrying goods on behalf of dealers and had no nexus with the sale of goods, not being a dealer as per the Act, therefore the provisions contained in Section 42 so far as the transporters were concerned were unjustified.

D The respondent-State contended that their action was justified as transportation was a part of the business, which could be termed as ancillary to the business, therefore it had the authority and jurisdiction to issue the notices.

E The writ petitioner contended that the transporters are neither dealers under the Act nor they in any way were even remotely concerned/ associated with the sale/purchase of taxable goods; and that the transporters do not handle the documents of title of goods.

F Dismissing the matters, the Court

G HELD : 1.1. As per the accepted norms of taxation the jurisdiction whatever is an ancillary or subsidiary provision necessary for achieving the object of a tax statute is covered by Entry 54 of List II of the Seventh Schedule to the Constitution of India. The Entries in the Legislative List have a very wide meaning and scope and should have a broad interpretation so as to make provisions in the Act workable and in the interest of the revenue. The obligation imposed upon the transporters under Sections 42 and 44 of the Act is also a part of such preventive measures against any evasion of taxes and the same should not be read in a narrow sense. [54-F-H; 55-A]

1.2. The transporters are not strangers to the sale or purchase of goods, to the contrary, they are parts and parcels and are directly involved in storing the goods purchased or sold by, and in many cases such transactions are fictitiously carried on in false name and address besides false classifications *vis-à-vis* transportation of such goods in and outside of the State making themselves party to the episode of such fictitious transactions for the sole purpose of evasion of tax by the dealers purchasing and selling such goods. [55-A-B]

Tripura Goods Transport Association & Anr. v. Commissioner of Taxes & Ors., [1999] 2 SCC 253 and *State of Haryana & Ors. v. Sant Lal & Anr.*, [1993] 4 SCC 380, relied on.

2. There cannot be any irregularity to call for books of accounts, documents, evidence etc. as the same is necessary for the tax authorities to make proper verification and scrutiny of the genuineness of the transactions. Issuance of notice for verification of a transaction is a formal step and the same is required for proper verification and scrutiny of the genuineness of the transaction to safeguard the interest of the State revenue. [55-D-E]

Tripura Goods Transport Association & Anr. v. Commissioner of Taxes & Ors., [1999] 2 SCC 253, relied on.

3. Sections 42 and 44 of the Act do not impose any liability upon the transporters, carriers etc. to pay any sales tax under the Act. The said sections are basically meant to check the tax evasion. The requirement of maintenance of documents and the certificate of registration by a transporter or any such agent is only for similar purpose as incorporated under Sections 36A and 38B of the Tripura Sales Tax Act, 1976 which has been held to be a valid piece of legislation. [56-B-C]

Tripura Goods Transport Association & Anr. v. Commissioner of Taxes & Ors., [1999] 2 SCC 253 and *State of Haryana & Ors. v. Sant Lal & Anr.*, [1993] 4 SCC 380, relied on.

4.1. The Assam Act is completely distinguishable from the Haryana Act. There is a marked difference between the provisions of Haryana and Tripura laws inasmuch as Section 38 of the Haryana General Sales Tax Act, 1973 does not clearly define the person dealing with "documents of

A title of goods". The provisions of Section 38 of the Haryana General Sales Act have been declared to be *ultra vires* primarily on the ground that the transporters/carriers were specifically excluded from the definition of "person transporting goods" in the explanation appended to Section 38 of the Act. For this ambiguity alone, Section 38 of the Haryana General Sales Tax Act was struck down. In the later case this Court upheld the analogues provisions contained under Section 36A and 38B of the Tripura Sales Tax Act as the said provisions clearly defined the expression "dealer" and "documents of title to goods" have been clearly defined and in that view, this Court upheld the legality of Section 36A and Section 38B of the Tripura Sales Tax Act. [56-G-H; 57-A-C]

C 4.2. Explanation II to Section 42 of the Act excludes only person in-charge of a rail head or a post office from the definition of "person transporting goods". This Explanation clearly states that person in charge of a goods carrier carrying such goods would be included in the definition of "person transporting goods". It is only due to the reason that Sections 36A and 38B of the Haryana General Sales Tax Act were declared as *ultra vires* and illegal. [57-C-D]

Tripura Goods Transport Association & Anr. v. Commissioner of Taxes & Ors., [1999] 2 SCC 253, relied on.

E 5. The Assam Act, in all its spirit and content is analogous to the Tripura Sales Tax Act and not similar to the Haryana General Sales Tax Act inasmuch as the Assam Act clearly defines the expressions "document of title to goods" and there is no disparity amongst such agents dealing with documents of title to goods. Explanaion II to Section 42 of the Act was never misinterpreted by the High Court while holding the transporters to be dealers under the Assam Act. It is a misconception that the expression "goods carrier" in the Assam Act is qualified by the expression "other than" which qualifies the expression "a rail head or a post office". The preposition of appearing before the expression "a goods carrier carrying such goods" clearly shows that this expression is directly related to the words "person in-charge" giving the meaning that person in-charge of a goods carrier carrying such goods is included in the definition of "person transporting goods". [57-E-G]

H 6. If a clearing or forwarding agent or dalal or a person transporting the goods is indeed reasonably and proximately connected with the sale

occasioning the liability to the sales tax, it would be a legitimate requirement for such person to obtain licence and maintain and furnish such information and particulars to the assessing authority as in the course of his business he may come to possess. Every clearing or forwarding agent or dalal or person transporting goods who comes into possession of the particulars and information is not required to furnish particulars. It is only such clearing or forwarding agents or other persons transporting the goods who can be required to obtain licence and would be liable to penalty for breach of such provisions. The meaning of the words "documents of title to goods" is not clearly defined. Provisions of the Act cannot have any application to those persons who do not handle documents of title. The provisions of the Act cannot have any application to all and the State Legislature will have no power to legislate in respect of such persons. The matters which are not ancillary or subsidiary or the legislative entry cannot be legislated upon under the entry. [58-C-F]

7. There is no exclusion of any transporter/carrier from the definition of person dealing in "documents of title to goods". The Division Bench while considering the impugned judgment took into consideration both the judgments of this Court and held that Sections 29, 36A and 38B of the Tripura Sales Tax Act are in substance similar to Section 42 and 44 of the Assam Sales Tax Act and upheld the provisions of the Assam Act is consonance to the later judgment of this Court. [58-G-H; 59-A]

Tripura Goods Transport Association & Anr. v. Commissioner of Taxes & Ors., [1999] 2 SCC 253, relied on.

8.1. Section 46A of the Assam Act has been inserted only for achieving the objective of sealing loopholes of avoidance and evasion of sales tax by the fictitious dealers with the help of transport companies. Normally the transporters are not liable to pay tax but liability of the transport arises only if the transporter or carrier does not disclose the particulars required under Section 46A read with Rule 21A of the Rules thereunder. The newly inserted Section 46A of the Act is legally sound and analogous to Section 38B of the Tripura Sales Tax Act, 1976, moreover that Section has been upheld by this Court. [60-G-H; 61-A]

8.2. The obligation imposed upon the transporters under Sections 42 and 44 and 46A of the Assam Act is also a part of such preventive

A measures against any evasion of taxes and the same should not be read in a narrow sense. Section 46A and Rule 21A of the Assam Act and the Rules framed thereunder respectively are valid piece of legislation for the purpose of checking evasion of taxes by making the transporters/carriers accountable for the part they play in the transaction of sale and purchase of goods. [61-B-C]

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8.3. The insertion of Section 46A and Rule 21A have in no way infringed the fundamental rights of the petitioners as the inserted provisions are analogous to those of Section 38 B of the Tripura Sales Tax Act, 1976 which have since been upheld by this Court. The State Legislature had the jurisdiction and competence under Entry 53 of List II of the VII Schedule to the Constitution of India to legislate such provisions as contained in Section 46A of the Act, 1993. [61-D-E]

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Tripura Goods Transport Association & Anr. v. Commissioner of Taxes & Ors., [1999] 2 SCC 253, relied on.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2768 of 2000.

From the Judgment and Order dated 4.1.2000 of the Gauhati High Court at Assam in W.A. No.197 of 1996.

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W.P. (C) No. 622 of 2000.

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M.L. Lahoty, Paban K. Sharma, Ms. Poli Kataki and Himanshu Shekhar for the Appellant.

Krisna Sarma, V.K. Sidhartha and Ms. Namarata Chadda for M/s. Corporate Law Group for the Respondents.

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The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. : In Civil Appeal No. 2768 of 2000.

This is an appeal filed against the judgment and order dated 4.1.2000 passed by the Gauhati High Court in Writ Appeal No. 197 of 1996. The

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Division Bench while allowing the appeal filed by the State of Assam held that the controversy raised in the matter was covered by the decision of this Court in the case of *Tripura Goods Transport Association & Anr. v. Commissioner of Taxes & Ors.*, [1999] 2 SCC 253 and not in the case of *State of Haryana & Ors. v. Sant Lal & Anr.*, [1993] 4 SCC 380.

The respondents filed a writ petition in the High Court challenging the seizure of books of accounts and documents made by the authorities at the offices and godowns of the respondents under the provisions of the Assam General Sales Tax Act, 1993 (hereinafter referred to as "the Act"). The respondents have also prayed for a declaration that Sections 42 and 44 of the Act, as *ultra vires*.

The short facts for the purpose of disposal of this civil appeal are as follows:

The respondent is a company registered under the Companies Act engaged in the business of transportation of goods on behalf of the customers throughout the country. A Bill, namely, Assam General Sales Tax Bill, 1993 was passed in the Assam Legislative Assembly and the Bill received the assent of the Governor on 14.5.1993 and became an Act (Assam Act No. XII of 1993), for short "the Act, 1993". This Act has repealed all the earlier four Sales Tax Acts.

Sections 42 and 44 of the Assam General Sales Tax Act, 1993 read as under:

"Section 42 : Furnishing of information by clearing and forwarding agent etc.

- (1) Every clearing, booking or forwarding agent or any other person transporting goods who during the course of his business handles documents of title to goods for or on behalf of any dalal or a person holding certificate under Section 14 shall furnish to the prescribed authority true and complete particulars and information and shall maintain true and complete accounts, registers and documents in respect thereof, and if the prescribed authority considers that such accounts, registers and documents are not sufficiently clear and intelligible the said authority may direct any clearing, booking or forwarding agent or dealer or the persons transporting

A goods to produce and maintain accounts in such manner as may be required.

(2) Such accounts shall, on demand, be produced before the prescribed authority who may take or cause to be taken such extracts as he may consider necessary.

B (3) A person transporting goods shall carry a declaration in such form as may be prescribed, supported by either a cash memo, a bill or a challan, in case the movement is otherwise a result of sale, in respect of goods which is being transported on a goods carrier, or a vessel and shall produce such challan, cash memo or bill along with the aforesaid declaration on demand before the prescribed authority.

C (4) If any clearing, booking or forwarding agent or dalal or D person transporting goods contravenes the provisions of sub-section (1) of Section 3 in a manner which is likely to lead to evasion of any tax payable under this Act, the prescribed authority may, without prejudice to any action under Sections 61 and 62 of this Act on the charge of E abatement, after giving the person concerned an opportunity of being heard, direct him to pay by way of penalty, an amount which shall be equal to three times the amount of tax calculated on the value of goods in F respect of which no particulars or information or correct particulars or information has been furnished under sub-section (1) or no cash memo or bill or challan has been produced before the prescribed authority under sub-section (3) or rupees one thousand whichever is greater:

G Provided that notwithstanding anything contained in this sub-section where the circumstances of the case or the checking the goods carrier or vessels demands any action relating to inspection, search and seizure of the goods loaded on the goods carrier or vessel, by the prescribed authority, the provisions of sub-sections (3), (5), (6) and (7) of Section 44 shall mutatis mutandis apply.

H *Explanation* : - For the purpose of this sub-section

- (i) "Dalal" shall include a person who renders his services for booking of or taking delivery of consignment 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 other valuable consideration or otherwise. A B
- (ii) 'person transporting goods' shall, besides the owner, include the manager, agent, driver, employee of the owner, or person in charge of a place of loading or unloading of goods other than 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 dispatch to other places or gives delivery of any consignment of such goods to the consignee. C

Section 44 - Production, inspection and seizure of accounts documents and goods and search of premises — D

(1) Subject to such Rules as may be made by the State Government under this Act, any authority, appointed under sub-section (1) of Section 3, may, either before or after assessment, require any dealer to produce before it or him any accounts, registers or documents or to furnish any information relating to the financial transactions of the dealer, the profit derived from such transactions and the stock of goods produced, raised, processed, manufactured, bought, sold or delivered by such dealer and the dealer shall comply with such requirement. E

(2) Subject as aforesaid, all accounts registers and documents relating to the financial transactions of a dealer, the profit derived from such transactions and all goods kept in any place of business or any dealer shall at all reasonable times, be open for inspection by any authority appointed under sub-section (1) of Section 3 and the dealer shall render all possible assistance to such authority in carrying out the inspection. F G

Explanation—Such authority may take or cause to be taken such copies of, or extracts from the accounts, registers or documents as such authority may consider necessary. H

- A (3) If any authority appointed under sub-section (1) of the
section 3 has reason to suspect that any dealer is to evade
the payment of any tax or any clearing or forwarding
B agent or a person transporting goods or any owner of a
warehouse or a godown is keeping or has kept his
accounting such a manner as is likely to cause evasion
of tax payable under this Act, such authority may for
reasons to be recorded in writing, seize such accounts,
registers or documents of the dealer or the clearing or
forwarding agent or the person transporting goods or the
C owner of a warehouse or godown as may be necessary
and shall grant a receipt for the same, such seized
accounts, registers or documents shall be retained for so
long as may be reasonably necessary for examination
thereof or for a prosecution for any offence punishable
under this Act and shall thereafter be returned to the
D person concerned in the prescribed manner:

Provided that if the seized accounts, registers or documents
are retained by any authority other than the Commissioner for
more than one hundred and twenty days, the reasons for so
doing shall be recorded in writing and the approval of the
E Commissioner shall be obtained by the authority so retaining
them.

- F (4) For the purpose of sub-section (2) or sub-section (3) any
authority appointed under sub-section (1) of section (3)
may enter and search any place of business of any dealer.

- G (5)(a) Any authority referred to in sub-section (1) shall have
the power to enter into and search any office, shop, godown
or any other place of business or any building or any place of
the dealer, or of a dalal or of an owner of a warehouse, or of
a clearing, booking or forwarding agent, or of a person
transporting goods or vessels or goods carrier and seize
any goods which are found therein but not accounted for
by the dealer or the dalal, or the owner of the warehouse, or
the clearing, booking or forwarding agent, or the person
transporting goods in his books, accounts, registers and other
H documents:

Provided that a list of all the goods seized under this sub-section shall be prepared by such officers and be signed by the officer, the dealer or the person in-charge of goods or the person in charge of the premises and not less than two witnesses.

- (b) The authority referred to in clause (a) shall, in a case where the dealer or the person in charge of goods as mentioned in clause (a), fails to produce any evidence or satisfy the said authority regarding the proper accounting of goods, impose a penalty, after giving an opportunity of being heard to the dealer or such person which shall be equal to three times the amount to tax calculated on the value of such goods shall be released as soon as the penalty is paid.
- (c) If the dealer or the person in charge of goods as mentioned in clause (a) demands time for production of necessary documents in support of proper accounting, the authority referred to in clause (a) shall release the goods on the condition that the dealer or such person deposits a security equivalent to three times the amount of tax calculated on the value of the goods in the form of a Demand Draft or a call deposit drawn on a scheduled Bank.
- (d) If penalty imposed under clause (b) is not paid forthwith or no security is furnished as provided in clause (c) or the goods are not claimed by any person, the authority referred to in clause (a) shall arrange for the safe custody of the goods.
- (e) In case the penalty imposed under clause (b) is not paid forthwith or the goods remain unclaimed for a period of fifteen days from the date of seizure, the goods so seized shall be sold by auction in the prescribed manner and the sale proceeds shall be appropriated towards the amount of penalty imposed under clause (b); the balance of the sale proceeds if any, shall be deposited in the Government Treasury and shall be refunded to the lawful claimant in the prescribed manner.
- (f) In a case where the goods have been released on the deposit of a security as mentioned in clause (c) and evidence regarding

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A proper accounting of goods to the satisfaction of the authority referred to in said clause (a) is not produced within fifteen days from the date on which security is deposited, the amount of security shall stand forfeited to the State Government. If, however, evidence or document to the satisfaction of the authority mentioned in clause (a) regarding the proper

B accounting of goods is produced within the said period of fifteen days, the security shall be released and the amount shall be refunded with the approval of the next higher authority.

(6)(i) The power conferred by sub-sections (4) and (5) shall include the power to break open the lock of any box or receptacle or any other place or premises where any accounts, registers or other documents or goods may be kept or are reasonably suspected to be kept;

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(ii) The power conferred by sub-clause (i) shall also include the power to seal any box or receptacle, godown or building where any accounts, registers or other documents or goods may be kept or are reasonably suspected to be kept;

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(7) an authority appointed under Section 3 may require the assistance of any public servant or police officer in making search and seizure or for safe custody of goods seized under the Section and such public servant or police officer shall render necessary assistance in the matter.”

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F *Section 38 of the Haryana General Sales Tax Act, 1973 reads as under:*

“Section 38—Furnishing of information by clearing and forwarding agents etc. — (1) every 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 transactions of the goods in such form and manner, as may be prescribed.

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(2) No clearing or forwarding agent, Dalal or any other person transporting goods within the State shall carry on his business unless

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he obtains from the assessing authority, on payment of a fee not exceeding fifty rupees, a license 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 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 or, 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 other valuable consideration 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 dispatch to other places or gives delivery of any consignment of such goods to the consignee."

Under Section 42 of the Act, it is an obligation on every clearing, booking or forwarding agent or any other person transporting goods who during the course of his business handles documents of title to goods for or on behalf of any dalal or a person holding certificate under Section 14 to furnish to the prescribed authority true and complete particulars and information and to maintain true and complete accounts, registers, documents

A etc. The said section also provides for levy of penalty at the rate of three times of tax calculated on the value of the goods in respect of which no particulars or information have been furnished under sub-section (1) of Section 42 of the Act or no cash memo or bill or challan has been produced before the prescribed authority under sub-section (3) or rupees one thousand whichever is greater.

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Section 44 of the Act empowers any authority appointed under Section 3(1) of the Act that if he has reason to suspect that any dealer is attempting to evade tax or that any person transporting goods or any other person has kept his accounts in such a manner as is likely to cause evasion of tax payable under the Act, such authority may for reasons to be recorded in writing, seize such accounts and registers or documents. Power has also given to the authority appointed under Section 3(1) of the Act to enter into and search any place of business of any dealer. The said section empowers the authority under clause (b) of sub-section (5) of Section 44 of the Act to impose a penalty equal to three times the amount of tax calculated on the value of such goods and to release the goods as soon as the penalty is paid in case the dealer or the person in-charge of the goods fails to produce any evidence or satisfy the said authority regarding the proper accounting of the goods.

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In the instant case, the officers of the Sales Tax Department made a surprise visit to the premises and godowns of the respondent-Company and searched the premises and godowns. On September 2, 1993, notices were issued to the appellant-Company to produce the documents to satisfy the authority about the proper accounting of the goods seized. The appellant challenged the legality of one of such notices before the learned single Judge of the High Court by way of filing a Writ Application (Civil Rule No. 2486 of 1983). The writ application was opposed by the State of Assam. The learned single Judge allowed the writ application following the decision of this Court in *State of Haryana v. Sant Lal* (supra). The learned single Judge was of the opinion that the provisions contained in Sections 42 and 44 of the Act are prospective in nature and, therefore, on the basis thereof the authority appointed under the Act had no jurisdiction to demand books of accounts prior to July 1, 1993.

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Aggrieved by the said order, the State of Assam preferred Writ Appeal No. 197 of 1996 before the Gauhati High Court and submitted that since the tax is levied under the aforesaid Act and whatever is ancillary or subsidiary

provision necessary for achieving the object of such legislation would be covered by Entry 54 of List II of the Seventh Schedule to the Constitution of India. It was further submitted that the entries in the Legislative List should not be read in a narrow or pedantic sense, but must be given their fullest meaning and widest amplitude and be held to be extending to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in them. The judgment in the case of *Tripura Goods Transport Association & Anr. v. Commissioner of Taxes & Ors.*, (supra) was also cited before the learned Judges of the Division Bench. According to the learned counsel appearing for the State of Assam, the said judgment squarely covers the controversy raised in the present case. The learned Judges of the Division Bench, after perusing the relevant provisions of the Act and two judgments namely, *Tripura Goods Transport Association & Anr. v. Commissioner of Taxes & Ors.* (supra) and *State of Haryana & Ors. v. Sant Lal & Anr.* (supra), was of the opinion that the case on hand would be covered by the decision of this Court in the case of *Tripura Goods Transport Association & Anr. v. Commissioner of Taxes & Ors.* (supra) in which case the earlier decision of this Court rendered in the case of *State of Haryana & Ors. v. Sant Lal & Anr.* (supra) was duly considered.

In the result, the appeal filed by the State of Assam was allowed and the order passed by the learned single Judge declaring Sections 42 and 44 of the Act as *ultra vires* was set aside and the said provisions were held to be *intra vires* of the Constitution of India.

The respondents, being aggrieved, preferred this appeal by way of special leave petition.

We heard Mr. M.L. Lahoty, learned counsel appearing for the appellant and Mr. Krishna Sarma, learned counsel appearing for the respondent-State.

Mr. M.L. Lahoty, learned counsel appearing for the appellant submitted that the judgment in the case of *State of Haryana & Ors. v. Sant Lal & Anr.* (supra) has clearly laid down that in a valid State Legislation on sales tax, the scope/ambit of Entry 54, List II in the Seventh Schedule cannot be stretched to cover the persons who are neither "dealer" nor have any nexus with the transaction of sale of goods. The transporter/carrier being stranger to the transaction of sale or purchase, they cannot be governed or regulated by a Sales Tax Legislation. He further submitted that the Division Bench of

A the High Court, however, failed to appreciate that the facts and circumstances as also the provisions of the Tripura Sales Tax Act and the Rules framed thereunder were totally distinct and different and, therefore, despite affirming the ratio of *State of Haryana & Ors. v. Sant Lal & Anr.*, (supra) this Court came to a different conclusion while upholding the validity of the provisions of the Tripura Sales Tax Act and Rules framed thereunder.

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D It was further submitted that this Court in the case of *Tripura Goods Transport Association & Anr. v. Commissioner of Taxes & Ors.* (supra) upheld the validity of the impugned provisions of the Tripura Sales Tax Act and the Rules framed thereunder inspite of the judgment of this Court in *State of Haryana & Ors. v. Sant Lal & Anr.* (supra) inasmuch as Section 38 of the Haryana General Sales Tax Act which was the subject matter of the examination before this Court in *State of Haryana's* case had expressly excluded transporters/carriers from the definition of the persons transporting goods. The Division Bench erred in holding that the case of the State is covered by the decision in *Tripura Goods Transport Association & Anr. v. Commissioner of Taxes & Ors.* (supra) and thereby upholding the validity of Sections 42 and 44 of the Assam General Sales Tax Act.

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F It was further submitted that the learned Judges of the Division Bench failed to precisely compare the provisions of the Assam General Sales Tax, 1993, more particularly, the definition of "dealer" under Section 2(10) and Section 42 of the Act as to the obligations arising therefrom for furnishing documents and maintaining books of accounts with the area expressly carved out by the Explanation II appended to Section 42 so far as the same relate to the transporter/carrier of goods as also the provisions of Section 44 authorising the authority under Section 3(1) for carrying out the search and seizure and thereafter levying penalty vide Section 44(5)(b) equal to three times the amount of tax calculated on the value of the goods.

G It was further argued that Explanation II appended to Section 38 of the Haryana General Sales Tax Act is similarly worded and almost *pari materia* to Explanation II appended to Section 42 of the Assam General Sales Tax Act and as such the ratio of *State of Haryana & Ors. v. Sant Lal & Anr.* (supra) *mutatis mutandis* applies to the present case.

H Concluding his arguments, Mr. M.L. Lahoty submitted that the transporters like the appellant-Company were not involved in any sale or

purchase of any goods. They only performed the job of transportation of goods in and outside the State of Assam and, therefore, the State Legislature had no authority and jurisdiction to enact any law in exercise of its powers conferred under Entry 54 of List II of Seventh Schedule to the Constitution of India. As such, the provisions contained in Section 42 of the Act imposing obligations on the transporters to furnish particulars and information and to maintain accounts etc. were *ultra vires*. Arguing further, learned counsel submitted that the Legislature also had no power to levy penalty on them. The transporters carrying goods on behalf of dealers had no nexus with the sale of goods and that the appellant-Company not being a dealer as per the provisions of the Act and the object of the Act being to deal with taxes in respect of sales or purchases of goods in the State of Assam, the provisions contained in Section 42 so far as the transporters were concerned were contrary to the object and the restrictions imposed under the provisions of Sections 42 of the Act so far as the transporters were concerned were unreasonable.

Learned counsel appearing for the respondent-State supported the impugned action of the respondents and submitted that the transportation being a part of the business, can be termed as ancillary to the business and in that view of the matter, the authority had jurisdiction to issue the notices—Annexure II.

On the above pleadings of the learned counsel appearing for the respective parties, the following questions require consideration:

- 1) Whether the provisions of Assam General Sales Tax, 1993 are similar to the provisions of the Haryana General Sales Tax, 1973 or they are similar to the provisions of Tripura Sales Tax Act, 1976?
- 2) Whether the provisions contained in Section 42 requiring the transporters to furnish to the prescribed authority true and complete particulars and information and to maintain true and complete accounts, registers and documents in respect thereof and provisions contained in Section 44 empowering the appointed authority to search any office, godown etc. of transporters and seize any goods found therein can sustain in law.

- A 3) If so, whether the authority can direct a transporter to comply with the requirements of Section 42 for period prior to the enactment coming into force.

B We have given our thoughtful consideration for the submissions made by the respective parties. We entirely agree with the judgment of the learned Judges of the Division Bench of the Assam High Court for the conclusion arrived at by them and reasons recorded in the judgment.

C In the present case, the appellant has challenged the validity of Sections 42 and 44 of the Assam General Sales Tax Act, 1993 along with the impugned assessment contending that the transporters are not “dealers” within the meaning of the Assam General Sales Tax Act, 1993 and hence any obligation to maintain the documents such as registers, cash memos, challans etc. as required under Section 44 of the Act could not be imposed upon them nor any provision imposing penalty and punishment for non-compliance of the same could be made and the same is beyond legislative competence. In our view, under Section 42 of the Act, it is an obligation on every clearing, booking or forwarding agent or *any other person transporting goods* who during the course of its business handles documents of titles to the goods for or on behalf of any dealer or person holding certificates under Section 14 of the said Act to furnish to the prescribed authority true and complete accounts, register, documents etc. The said Section also provides for levy of penalty at the rate of three times of tax calculated on the value of the goods in respect of which no particulars or information have been furnished under Section 42(1) of the Act or no cash memo or challan has been produced before the competent authority under Section 42(3) or Rs.1000 whichever is greater. The said Section empowers the appointed authority to enter and search any place of business of any dealer if he has reason to believe that any dealer is attempting to evade tax for that any person transporting goods for any other person who has kept in accounts in such a manner as is likely to cause evasion of tax. As per the accepted norms of taxation the jurisdiction whatever is ancillary or subsidiary provision necessary for achieving the object of a tax statute is covered by Entry 54 of List II of the Seventh Schedule to the Constitution of India. The Entries in the Legislative List have a very wide meaning and scope and should have a broad interpretation so as to make provisions in the Act workable and in the interest of the revenue. The obligation imposed upon the transporters under Sections 42 and 44 of the Act is also a part of such preventive measures against any

evasion of taxes and the same should not be read in a narrow sense. A

In our view, the transporters are not strangers to the sale or purchase of goods, to the contrary are parts and parcels and are directly involved in storing the goods purchased or sold by, and in many cases such, transactions are fictitiously carried on in false name and address besides false classifications *vis-à-vis* transportation of such goods in and outside of the State making themselves party to the episode of such fictitious transactions for the sole purpose of evasion of tax by the dealers purchasing and selling such goods. B

The judgment of this Court in *Tripura Goods Transport Association & Anr. v. Commissioner of Taxes & Ors.*, (supra) was cited before us. In that judgment, this court has specifically held such agents transporting goods to be reasonably and proximately connected to the sale transaction and hence occasionally liable under the Sales Tax Laws. It is pertinent to mention that this Court while considering the Tripura's case had taken into consideration the judgment by this Court in the case of *State of Haryana & Ors. v. Sant Lal & Anr.* (supra). The present case, in our view, is fully covered by the judgment rendered by this Court in Tripura's case. C D

In our opinion, there cannot be any irregularity to call for books of accounts, documents, evidence etc. as the same is necessary for the tax authorities to make proper verification and scrutiny of the genuineness of the transactions. Issuance of notice for verification of a transaction is a formal step and the same is required for proper verification and scrutiny of the genuineness of the transaction to safeguard the interest of the State revenue. E

We have carefully perused both the judgments. Both the judgment uphold the legality of the charging and penal provisions in issue. But this Court struck down the relevant provisions of the Haryana General Sales Tax Act, 1973 because of apparent ambiguity inherent therein. However, in course of considering the analogous provision viz Section 36A and Section 38B of the Tripura Sales Tax Act, 1976, this Court in the case of *Tripura goods Association & Anr. v. Commissioner of Taxes & Ors.* (supra) held that maintenance of accounts by the transporters is only to help the taxing authority to trace the dealer, fix the goods transported co-relating with the dealers transporting such goods for fixing tax liability in this regard. This Court further held as follows: F G H

A “If a clearing or forwarding agent or “dalal” or person
 transporting goods is indeed reasonably and proximately connected
 with the sale occasioning the liability to the sales tax, it is legitimate
 to license himself under the Act and maintain and furnish such
 information and particulars to the assessing authority thereunder as
 he would in the course of his business come to possess, it is
 B legitimate then to make him liable for such escapement of tax as
 has resulted from the breach by him of such obligation and to a
 reasonable penalty.”

C Thus it is seen that Sections 42 and 44 of the Act do not impose any
 liability upon the transporter, carriers etc. to pay any sales tax under the Act.
 The said sections are basically meant to check the tax evasion. Thus the
 requirement of maintenance of document and the certificate of registration
 by a transporter or any such agent is only for similar purpose as incorporated
 under Sections 30A and 38B of the Tripura Sales Tax Act, 1976 which has
 D been held to be a valid piece of legislation by this Court in the case of *Tripura
 Goods Transport Association & Anr. v. Commissioner of Taxes & Ors.*
 (supra). In our view, the present case is fully covered by the said judgment
 of this Court.

E The judgment of this Court in the case of *State of Haryana & Ors. v.
 Sant Lal & Anr.* (supra) has dealt in regard to Section 38 of the Haryana
 General Sales Tax Act, 1973 which required the clearing or forwarding agent
 or any other person transporting goods including manager, agent, driver or
 employee who within the State during the course of his business, handles
 “documents of title to goods” for or on behalf of the dealers to furnish the
 F assessing authority the particulars and information in respect of transaction
 of goods and further required to obtain a licence from the assessing authority
 in breach whereof penalty was provided for. But this Court struck down
 Section 38 of the Haryana General Sales Tax Act, 1973 primarily due to the
 reason that the meaning of the words “document of title to goods” was held
 G to be not clearly defined and so it was found that provisions of the Act cannot
 have any application to those persons who do not handle documents of title.

In our view, the Assam Act is completely distinguishable from the
 Haryana Act.

H There is a marked difference between the provisions of Haryana and
 Tripura Laws inasmuch as Section 38 of the Haryana General Sales Tax Act,

1973 do not clearly define the person dealing with “documents of title of goods”. Further, this Court declared the provisions of Section 38 of the Haryana General Sales Act to be *ultra vires* primarily on the ground that the transporters/carriers were specifically excluded from the definition of “person transporting goods” in the explanation appended to Section 38 of the Act. For this ambiguity alone, this Court has struck down Section 38 of the Haryana General Sales Tax Act. In the case of *Tripura goods Transport Association & Anr. v. Commissioner of Taxes & Ors.* (supra), this Court upheld the analogous provisions contained under Section 36A and 38B of the Tripura Sales Tax Act as the said provisions clearly defined the expression “dealer” and “documents of title to goods” have been clearly defined and in that view, this Court upheld the legality of Section 36A and Section 38B of the Tripura Sales Tax Act.

It is further seen that Explanation II to Section 42 of the Act excludes only person in-charge of a rail head or a post office from the definition of “person transporting goods”. This Explanation clearly states that person in charge of a goods carrier carrying such goods would be included in the definition of “person transporting goods”. It is only due to the reason, this Court was inclined to declare Sections 36A and 38B of the Haryana General Sales Tax Act as *ultra vires* and illegal.

The Assam Act, in all its spirit and content is analogous to the Tripura Sales Tax Act and not similar to the Haryana General Sales Tax Act inasmuch as the Assam Act clearly defines the expressions “document of title to goods” and there is no disparity amongst such agents dealing with documents of title to goods. The argument of learned counsel appearing for the appellant that Explanation II to Section 42 of the Act was misinterpreted by the High Court holding the transporters to be dealers under the Assam Act has no merits. The contention of the appellant’s counsel is based on misconception that the expression “goods carrier” in the Assam Act is qualified by the expression “other than” which qualifies the expression “a rail head or a post office”. The preposition of appearing before the expression “a goods carrier carrying such goods” clearly shows that this expression is directly related to the words “person in-charge” giving the meaning that person in-charge of a goods carrier carrying such goods is included in the definition of “person transporting goods”.

Section 38 of the Haryana General Sales Tax Act, 1973 required clearing or forwarding agent, Dalal or any other person transporting goods

A (manager, agent, driver or employee) within the State, who during the course of his business handles documents of title to goods for or on behalf of any dealer to furnish to the assessing authority the particulars and information in respect of the transactions of the goods and further required to obtain licence from the assessing authority in breach whereof heavy penalty was provided for, were held to be *ultra vires* and no proximate connection was found to be existing between the transaction of sale and the clearing or forwarding agent, dalal or other transporter. The penalty as provided was also held to be disproportionate to the quantum of escaped assessment. It was also observed in the case of *State of Harayana & Ors. v. Sant Lal & Anr.* (Supra) that the legislative entries have to be read in a wider sense so as to include all subsidiary and ancillary matters. Provisions by which evasion of tax could be prevented and further providing machinery for the purpose would be within the ambit of the legislative entry. It was further observed that if a clearing or forwarding agent or dalal or a person transporting the goods is indeed reasonably and proximately connected with the sale occasioning the liability to the sales tax, it would be a legitimate requirement for such person to obtain licence and maintain and furnish such information and particulars to the assessing authority as in the course of his business he may come to possess. But while commenting on sub-section (1) of Section 38 of the Haryana General Sales Tax Act it was observed that it was not every clearing or forwarding agent or dalal or person transporting goods who comes into possession of the particulars and information required to be furnished. It was further observed that it is only such clearing or forwarding agents or other persons transporting the goods who can be required to obtain licence and would be liable to penalty for breach of such provisions. The meaning of the words "documents of title to goods" was also held to be not clearly defined. So it was found that provisions of the Act cannot have any application to those persons who do not handle documents of title. Thus provisions of the Act cannot have any application to all and the State Legislature will have no power to legislate in respect of such persons. The matters which are not ancillary or subsidiary to the legislative entry cannot be legislated upon under the entry.

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The Division Bench of the Gauhati High Court while considering the impugned judgment had taken into consideration both the judgments of this Court as cited above and held that Sections 29, 36A and 38B of the Tripura Sales Tax Act are in substance similar to Sections 42 and 44 of the Assam Sales Tax Act and uphold the provisions of the Assam Act in consonance

to the judgment of this Court in the case of *Tripura goods Transport Association & Anr. v. Commissioner of Taxes & Ors.* (supra). In our opinion, there is no exclusion of any transporter/carrier from the definition of person dealing in "documents of title to goods". A

In view of the facts and circumstances of the case, the civil appeal deserves to be dismissed. The Civil Appeal is, accordingly, dismissed. However, there shall be no order as to costs. B

In Writ Petition No. 622 of 2000

As already noticed, the writ petition filed by M/s A.B.C. (India) Ltd. Was allowed by the learned single Judge of the Gauhati High Court on 20.2.1996 following the ratio laid down by this Court in the Case of *State of Haryana & Ors. v. Sant Lal & Anr.* (supra) and declared Sections 42 and 44 of the Act to be *ultra vires* so far as they related to the obligations of the transporters to furnish information and the power of search and seizure in connection with the goods transported by the transporters. Writ Appeal filed by the State of Assam was allowed. S.L.P.(C) No. 5937 of 2000 was preferred before this Court challenging the said judgment. Leave was granted by this court. The State of Assam, by taking advantage of the decision of the Division Bench dated 4.1.2000, inserted Section 46A in the Act of 1993 by Assam Act XX of 1999 giving it the effect from 2.2.2000 and thereby made it statutory obligation of every transporter, carrier or transporting agent engaged in transport business relating to taxable goods in Assam to obtain a Certificate of Registration. The said Section 46A reads as under: C
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"46A. For carrying out the purposes of Section 46 every transporter, carrier or transporting agent, operating its transport business relating to taxable goods in Assam, shall be required to obtain a Certificate of Registration in the prescribed manner from the Commissioner or any officer appointed under Section 3 to assist him, on payment of such fees as may be prescribed." F

By exercising power under Section 72(1) of the Act, consequential amendments were also made in the Assam General Sales Tax Rules, 1993 by issuing the Notification on 11.9.2000. A new Rule 21A was inserted stipulating that every transporter, carrier or transporting agent liable for registration under Section 46A within 60 days of commencement of the G
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A amending Rules was to submit application for registration. Yet another new Rule i.e. Rule 39A was inserted providing for an appeal to the Assam Board of Revenue. Rules 42 and 43 were also inserted to provide for setting up of check post and for the service of notice. The above writ petition was filed by the Assam Chamber of Inter-State Carriers challenging both the Amending Acts that is, Assam Act XX of 1999 by which Section 46A was inserted as also the Amendment Rules 2000 as the same are repugnant to Articles 14, 19(1)(g), 21 and 300 A of the Constitution of India as the State of Assam lacks legislative competency to legislate the said provisions of law.

C It was submitted by the petitioners that the transporters/carriers are neither dealers under the Assam General Sales Tax Act nor they in any way even remotely concerned/associated with the transaction of sale/purchase of any taxable goods. Furthermore, it does not handle the documents of title of goods and accordingly no liability arising out of the Assam General Sales Tax Act and the Rules framed thereunder can be fastened on any of the transporters, carriers which are members of the writ petitioners' Association. D It was submitted that as the entire controversy arising out of the judgment of the Division Bench of the Gauhati High Court dated 4.1.2000 was under consideration by this Court, the petitioners sought to file the above writ petition under Article 32 of the Constitution of India challenging the validity of the Act and the Rules framed thereunder.

E This Court issued Rule Nisi and tag this petition along with Civil appeal No. 2760 of 2000 @ S.L.P.(C) No. 5937 of 2000.

F A counter affidavit was filed by the State of Assam contending that Section 46A of the Act requires that every transporter/carrier or a transporting agent operating its transport business relating to taxable goods in Assam is to obtain a certificate of registration from the Commissioner or any Officer appointed under Section 3 of the Act to assist him, on payment of a prescribed fee.

G We have perused Section 46 A which, in our view, has been inserted only for achieving the objective of sealing loopholes of avoidance and evasion of sales tax by the fictitious dealers with the help of transport companies. Normally the transporters are not liable to pay tax but liability of the transport arises only if the transporter or carrier does not disclose the particulars required under Section 46A of the said Act read with Rule 21A H

of the Rules thereunder. The newly inserted Section 46 A of the Act, in our view, is legally sound and analogous to Section 38 B of the Tripura Sales Tax Act, 1976. It is also pertinent to mention that Section 38 B of the Tripura Sales Tax Act, 1976 has been upheld by this Court in the case of *Tripura Goods Transport Association & Anr. v. Commissioner of Taxes & Ors.*, (supra).

In our view, the obligation imposed upon the transporters under Sections 42 and 44 and 46A of the Assam Act is also a part of such preventive measures against any evasion of taxes and the same should not be read in a narrow sense. Section 46A and Rule 21A of the Assam Act and the Rules framed thereunder respectively are valid and piece of legislation for the purpose of checking evasion of taxes by making the transporters/ carriers accountable for the part they play in the transaction of sale and purchase of goods.

Thus we hold that the insertion of Section 46A and Rule 21A have in no way infringed the fundamental rights of the petitioners as the inserted provisions are analogous to those of Section 38 B of the Tripura Sales Tax Act, 1976 which have since been upheld by this Court. The State Legislature has the jurisdiction and competence under Entry 53 of List II of the VII Schedule to the Constitution of India to legislate such provisions as contained in Section 46A of the Act, 1993.

In view of the facts and circumstances mentioned above, the writ petition deserved to be dismissed. The writ petition is accordingly dismissed. No costs.

A.Q.

Matters dismissed.