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KAMAL KUMAR AGARWAL

v.

COMMISSIONER OF COMMERCIAL TAXES, WEST  
BENGAL & QRS.

(Civil Appeal No. 2757 of 2010)

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MARCH 26, 2010

**[S.H. KAPADIA AND AFTAB ALAM, JJ.]**

C           *Sales Tax – West Bengal Sales Tax Act, 1994 – s.68(3)*  
D   – *West Bengal Sales Tax Rules, 1995 – r.211A(6) – Transport*  
E   *from port, airport etc., of consignment of goods despatched*  
F   *from any place outside West Bengal and bound for any place*  
   *outside West Bengal – Regulatory measures to avoid tax*  
   *evasion – Consignment of imported goods to be transported*  
   *through State of West Bengal to Mumbai – Appellant was the*  
   *Customs House Agent (CHA) of the importer – Declaration*  
   *made by appellant in prescribed format as per r.211A before*  
   *taking delivery of the goods – Penalty imposed on appellant*  
   *for failure to produce the endorsed counter-signed copy of the*  
   *declaration before the Assessing Authority – Justification of*  
   *– Held: Justified – With the making of the Declaration, the*  
   *appellant undertook the obligation to transit the consignment*  
   *to a destination outside the State, for which the proof was the*  
   *countersigned copy of the Declaration – Non-production*  
   *thereof, raised a legal presumption of tax evasion, which the*  
   *appellant failed to rebut.*

G           **The scope and effect of Section 68(3) of the West**  
   **Bengal Sales Tax Act, 1994 read with sub-Rule (6) of Rule**  
   **211A of the West Bengal Sales Tax Rules, 1995 came up**  
   **for consideration in the present appeal.**

H           **Appellant was appointed by an importer as its**  
   **Customs House Agent [CHA]. The consignment of**  
   **imported goods was to be thereafter transported to**

Mumbai through the State of West Bengal. Appellant A  
made declaration in prescribed format as per r.211A  
before taking delivery of the goods. The goods passed  
through the sales tax barrier at Haldia (the first  
checkpost) and, ultimately, through the exit checkpost at  
Chichira, and were finally received by the consignee B  
(importer).

The Assistant Commissioner of Commercial Taxes  
issued show-cause notice to the appellant alleging  
contravention of Section 68 of the Act in respect of C  
transportation of the goods from *Haldia* to *Chichira*. It was  
alleged that the appellant failed to produce the endorsed  
copy of the prescribed Declaration in terms of Rule 211A.

Appellant disputed the maintainability of the notice  
stating that the subject goods could be moved only by D  
the owner or the importer, directly by itself or through its  
transporter, and that appellant being a CHA, he had no  
role to play in the movement of the goods. He submitted  
that he was appointed by the importer only to get the  
documents cleared from the Customs and Port E  
authorities and not for movement of the goods and that  
he was not required to keep an endorsed copy of the  
said Declaration. The appellant contended that under  
Rule 211A, the endorsed copy was returned to the person  
transporting the goods for onward movement to its final F  
destination.

The Assistant Commissioner of Commercial Taxes  
imposed penalty on the appellant for failure to produce  
the endorsed copy of the prescribed Declaration in terms  
of Rule 211A. The order was upheld by the West Bengal G  
Taxation Tribunal as well as the High Court. Hence the  
present appeal.

Dismissing the appeal, the Court

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**A HELD: 1.1. The West Bengal Sales Tax Act, 1994 has been enacted to consolidate and amend the laws relating to the levy of tax on sale or purchase of goods in the State of West Bengal. [Para 9] [1050-E-F]**

**B 1.2. To ensure that there is no evasion of tax, Section 68 of the Act (which occurs in Chapter VIII of the Act), inter alia, states that no person shall transport from any Port or any checkpoint or from any other place any consignment of goods, except in accordance with such restrictions and conditions, as may be prescribed. The important words which occur in Section 68(1) of the Act are “no person”. It does not refer to the word “transporter”. This aspect is of some significance because Section 68(1) of the Act puts a restriction on the movement of goods. The checkpoints are designed and meant to prevent the evasion of sales tax and other dues. This restriction stands lifted subject to the compliance of certain provisions of the Act. Under Section 68(3) of the Act, any consignment of goods may be transported by any person after he furnishes in the prescribed manner such particulars in such Form as may be prescribed. The expression “any person” in sub-section (3) of Section 68 of the Act would include, a clearing and forwarding agent, a transporter or any person who makes a Declaration in the prescribed manner. Therefore, sub-section (3) is not confined to a transporter, as is sought to be argued on behalf of the appellant. Secondly, sub-section (3) indicates that any consignment of goods may be transported by any person after he furnishes particulars in the prescribed Form. [Para 9] [1050-H; 1051-A-E]**

**G 1.3. Rule 211A of the West Bengal Sales Tax Rules, 1995 occurs in Chapter XV of the Rules, which deals with restrictions on transport of any consignment of goods, regulatory measures for movement of such goods in transit through West Bengal, interception, search, seizure**

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and penalty for contravention, and certain measures to prevent evasion of tax on sales within West Bengal. Both Chapter VIII of the Act and Chapter XV of the Rules deal with regulatory measures to avoid tax evasion. Therefore, the machinery provisions under the Act constitute an integral part of the charging provisions. These regulatory measures are intended to ensure that there is no evasion of tax. Therefore, one cannot read the Act by segregating the machinery provisions from the charging provisions. [Para 9] [1051-E-G]

1.4. Rule 211A of the Rules deal with procedure for transport from Port, checkposts, etc., of any consignment of goods despatched from any place outside West Bengal and bound for any place outside West Bengal. In the present case, the subject-goods have come from Hamburg, a place outside West Bengal. They passed through the customs barrier, the port barrier and the sales tax barrier at Haldia [which is the first checkpost] and, ultimately, were bound for Mumbai through the exit checkpost at Chichira. In short, the goods were meant to be in transit through the State of West Bengal and they were bound for Mumbai, which is a place outside West Bengal. In such a situation, Rule 211A of the Rules was applicable. [Para 9] [1051-H; 1052-A-C]

*State of West Bengal vs. O.P. Lodha & Anr. (1997) 105 STC 561 (SC)*, referred to.

2.1. If one reads Section 68(3) of the Act along with Rule 211A(1) of the Rules, one finds that 'any person', before taking delivery of the consignment from any port, etc., is required to make a Declaration in the prescribed Form and only on making the requisite Declaration, such 'any person' is allowed to transport the consignment of goods through West Bengal to a place outside the State. In other words, no person will be able to transit the

A consignment of goods through the State of West Bengal  
without making a Declaration in the prescribed Form.  
Before taking delivery of such goods, such a person  
shall make a Declaration in the Form appended to Rule  
211A(1) of the Rules. Such a Declaration, therefore, is a  
B condition precedent for taking delivery of the goods from  
Port, Airport, etc., to any place outside the State of West  
Bengal. In Rule 211A(1) of the Rules, the words used are  
“any person”. These words include, a clearing and  
forwarding agent, a transporter and Customs House  
C Agent or any other person, who makes a Declaration in  
the Form prescribed. In this connection, clause (4) of the  
Declaration is equally important. It mandates a statutory  
obligation on the declarant, who takes delivery of the  
consignment to transport such consignment to its  
D destination outside West Bengal [which, in the present  
case, is Mumbai]. The declarant could be an importer or  
a clearing and forwarding agent or any person taking  
delivery of the consignment. This obligation is imposed  
on the declarant so that, in the event of detection of tax  
E evasion, it would not be open to the declarant to deny his  
liability which under the Scheme of the Act is an absolute  
liability in the sense that if the declarant commits breach  
of his obligation under the Act read with the Rules, then  
a legal presumption is drawn against him, of course,  
subject to rebuttal. [Para 10] [1052-D-H; 1053-A-C]

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2.2. In the present case, the appellant was the  
declarant. He had appended his signature on the  
Declaration prescribed under Rule 211A(1) of the Rules.  
Under the procedure prescribed in the Rules, the  
G declarant, before taking delivery of the goods from the  
port, has to make a Declaration in the prescribed Form  
in which he undertakes unequivocally to transport such  
consignment to its destination outside the State of West  
Bengal. With such Declaration, the appellant becomes  
H liable for a breach if he fails to produce the counter-

signed copy of the Declaration before the Assessing Authority. The Declaration is in triplicate. One copy duly endorsed remains with the Sales Tax Authority at the first checkpost which, in the present case, is at Haldia. The remaining two counter-signed copies of the Declaration in the prescribed Form are carried by the declarant to the exit checkpost where one copy is retained by the Authority and the other is given to the declarant. In the present case, the endorsed counter-signed copy of the Declaration was not produced by the appellant in the impugned proceedings before the Assessing Authority. Non-production thereof raises a legal presumption of tax evasion. The reason is that when countersigned copy of the Declaration is not produced, law presumes, unless otherwise proved, that goods in question have been consumed, used or otherwise disposed of within the State. In the present case, there is no evidence whatsoever to rebut that presumption. There is no material to indicate that the goods had crossed the border at Chichira, except a confirmation from the consignee that it has received the goods in question. This Court cannot accept such confirmation from the consignee primarily because, under the Act, the importer/consignee is not liable for the breach. The consignee is not the declarant. In the present case, the consignee [importer] has not undertaken any obligation to take the goods in transit through the State of West Bengal to its destination outside the State. If one reads carefully Section 68 of the Act, one finds that the provisions of said section contemplate a regulatory measure to ensure that there is no evasion of tax. Even if Section 68 of the Act is treated as a machinery section, even then the said Section has been enacted to ensure that there is no evasion of tax. In that sense, if one examines the Scheme of the Act, it becomes clear that non-production of the endorsed counter-signed copy of the Declaration before the Competent Authority would give rise to a legal

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A presumption of tax evasion, subject to such presumption being rebutted. [Para 10] [1053-C-H; 1054-A-D]

3.1. On behalf of the appellant, it was urged that, under the Scheme of the Act, the word “transporter” has been defined by way of an *Explanation* to Section 72 of the Act. This argument was advanced to demonstrate that Sections 68, 71B and *Explanation (a)* to Section 72 of the Act are applicable only to a transporter, i.e., the owner or any person having possession or control of a goods vehicle or the driver or any other person in charge of such vehicle, who transports the goods on account of any other person or on his own account and, therefore, the said provisions do not apply to CHA. There is no merit in this argument. The appellant, as a declarant, could be an importer, a clearing and forwarding agent, etc., who undertakes the delivery of the consignment for the purpose of transporting such consignment of goods to its destination outside West Bengal. Once such a Declaration is made by the appellant, he is a transporter, even assuming that the said provisions, namely, Sections 68, 71B and *Explanation (a)* to Section 72, are applicable only to a transporter. [Para 11] [1054-E-H]

3.2. Section 68 imposes a restriction when it says that no person shall transport any consignment of goods from any Railway Station, Airport, Port, etc., except in accordance with such conditions and restrictions, as may be prescribed. In other words, the restriction on movement of goods under sub-section (1) of Section 68 of the Act can only be lifted in a situation falling under sub-sections (3) and (4) of Section 68 of the Act. Under sub-section (3), any person, who seeks delivery of the consignment, is required to undertake an obligation that he is undertaking that delivery for transporting such consignment to its destination outside West Bengal. Section 71B of the Act is consequential upon

contravention of provisions of Section 68 when goods transported are not available. It says that where the goods are transported by a person in contravention of restrictions or conditions prescribed under Section 68 of the Act read with Rule 211A of the Rules, including the Declaration therein, and if such goods are not available for seizure, the Prescribed Authority shall, after giving reasonable opportunity of being heard, impose a penalty. That penalty is an amount not exceeding twenty five per cent of the value of such goods. [Para 11] [1055-A-D]

3.3. Section 71B read with Section 68 of the Act indicates that if the declarant undertakes delivery of the consignment with an obligation to transport such consignment of goods to its destination outside West Bengal and if he contravenes any restrictions or conditions prescribed under Rule 211A of the Rules read with the Declaration, then such person becomes liable to pay penalty on *ad valorem* basis. In the present case, the appellant has not produced before the Assessing Authority any evidence to show that the consignment, whose delivery has been taken from the Customs Port, has gone out of West Bengal. He has not produced the endorsed countersigned copy of the Declaration before the Assessing Authority. In such a case, law presumes that the subject-goods have been sold unauthorisedly within the State of West Bengal and that is the sole reason why penalty has been imposed on *ad valorem* basis, i.e., on certain percentage of the value of the goods. [Para 11] [1055-E-H]

3.4. It was open to the assessee to prove to the contrary and rebut the above legal presumption. However, he has failed to do so. Further, when the appellant signs the Declaration in terms of Rule 211A(1) of the Rules, he, inter alia, undertakes an obligation to act as a transporter. [Para 11] [1056-A-B]

A 4. There is no merit in the submission of the appellant  
 that sub-rule (6) of Rule 211A applies to a transporter and  
 not to a CHA. If one reads sub-rule (6), it becomes clear  
 that the said sub-rule refers to copies of the Declaration  
 duly countersigned under sub-rule (4) to be produced  
 B before the Prescribed Authority at the exit checkpost.  
 Sub-rule (4), in turn, refers to a Declaration being made  
 under sub-rule (2) which, in turn, refers to the Declaration  
 made under sub-rule (1) of Rule 211A of the Rules.  
 Therefore, under sub-rule (4), such a Declaration is  
 C required to be countersigned by the Prescribed Authority  
 and two copies thereof are returned to the declarant  
 under sub-rule (1). In other words, sub-rule (6) applies to  
 a declarant who could be a transporter, CHA, clearing and  
 forwarding agent or any person taking delivery of the  
 D consignment of goods from the Port for despatch of the  
 same outside West Bengal. Further, clause (4) of the  
 Declaration refers to an obligation being undertaken by  
 the declarant that the delivery is required to be taken by  
 him for transporting such consignment to its destination  
 outside West Bengal. Hence, with the making of the  
 E Declaration, the appellant undertook the obligation to  
 transit the consignment to the destination outside the  
 State for which the proof was the countersigned copy of  
 the Declaration. [Para 12] [1058-A-E]

F Case Law Reference:

(1997) 105 STC 561 (SC) referred to Para 9

CIVIL APPELLATE JURISDICTION : Civil Appeal No.  
 2757 of 2010.

G From the Judgment & Order dated 17.12.2007 of the High  
 Court of Judicature at Calcutta in W.P.T.T. No. 633 of 2007.

H P.N. Mishra, M. Chandrasekharan, Sunil Gupta, Ritesh  
 Agrawal, Siddharth Sengar, Tara Chandra Sharma, Neelam

Sharma, Rupesh Kumar, Amarjeet Singh, Jatin Zaveri, Vibha Narang for the appearing parties. A

The Judgment of the Court was delivered by

**S.H. KAPADIA, J.** 1. Leave granted. B

2. Heard learned counsel on both sides.

3. In this civil appeal arising out of special leave petition, we are required to consider the scope and effect of Section 68(3) of the West Bengal Sales Tax Act, 1994 ['Act', for short] read with sub-rule (6) of Rule 211A of the West Bengal Sales Tax Rules, 1995 ['Rules', for short]. C

4. On 8th September, 2001, M/s. Sanman Trade Impex Private Limited, Mumbai, appointed the appellant as it's Customs House Agent [CHA] to clear the consignment of goods imported from Hamburg. To enable the appellant to clear the consignment, M/s. Sanman Trade Impex Private Limited sent all the relevant documents required for getting the goods cleared from Kolkata to Mumbai. M/s. Sanman Trade Impex Private Limited also forwarded copy of the Declaration in Form 44A, duly endorsed, to the appellant to be produced before the Sales Tax Authority posted at Haldia [for short, 'first checkpost']. M/s. Sanman Trade Impex Private Limited appointed M/s. Brahmaputra Roadways, Kolkata, as it's transporter for onward transportation of imported goods from Kolkata to Mumbai. According to the appellant, the imported goods were to be handed over by him to the transporter, M/s. Brahmaputra Roadways, along with all the necessary documents for onward transportation of goods to it's final destination after getting the goods duly cleared from the Customs and Port Authorities. According to the appellant, the goods were duly received by M/s. Sanman Trade Impex Private Limited on 30th October, 2001, which fact is duly certified by the letter from M/s. Sanman Trade Impex Private Limited informing him that the subject-goods have been received by it intact and in good condition. D  
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A 5. On 24th August, 2001, M/s. Paluck Trade Links, New  
Delhi, appointed the appellant as it's CHA to clear the  
consignment imported by it from London. At this stage, we may  
state that, in this civil appeal, we are concerned with two items,  
namely, Soda ash imported from Hamburg and Aluminium  
B Scrap imported from London. To continue the chronology of  
facts, M/s. Paluck Trade Links, New Delhi, also appointed M/  
s. Brahmaputra Roadways as it's transporter for onward  
transportation of the imported goods from Kolkata to Delhi. On  
July 30, 2002, a show-cause notice was issued to the appellant  
C by the Assistant Commissioner of Commercial Taxes alleging  
contravention of Section 68 of the Act. The appellant was asked  
to explain as to why penalty should not be levied for such  
contravention. In reply, the appellant contended that he had no  
obligation or liability under Section 68 of the Act in respect of  
D transportation of goods from Haldia to Chichira [exit checkpost].  
According to him, the goods could be moved only by the owner  
or the importer directly by itself or through it's transporter.  
According to the appellant, a CHA has no role to play in the  
movement of goods. He submitted that he was appointed by  
E the importer only to get the documents cleared from the  
Customs and Port Authorities and not for movement of goods  
for which it is the importer who appoints a transporter.  
Therefore, according to him, the notice was not maintainable  
in terms of Section 68 of the Act. The appellant further submitted  
F that he was not required to keep an endorsed copy of the said  
Declaration. In this connection, reliance was placed on Rule  
211A(6) of the Rules. According to the appellant, under Rule  
211A(6) of the Rules, the endorsed copy had to be returned to  
the person transporting the goods for onward movement to it's  
final destination. Hence, according to him, the show-cause  
G notice was not maintainable.

6. By order dated 27th December, 2002, the Assistant  
Commissioner of Commercial Taxes imposed a penalty on the  
appellant for failure to produce the endorsed copy of the  
H Declaration in terms of Rule 211A(6) of the Rules. Being

aggrieved by the order, the appellant preferred a revision before the West Bengal Taxation Tribunal, which application stood rejected. The decision of the West Bengal Taxation Tribunal has been upheld by the High Court vide judgement dated 17th December, 2007, hence, this civil appeal is filed by the appellant.

7. For the sake of convenience, we quote hereinbelow the relevant provisions of the Act:

"68. Restriction on movement of goods.-- [1] To ensure that there is no evasion of tax, no person shall transport from any railway station, steamer station, airport, port, post office or any checkpost set up under section 75 or from any other place any consignment of goods except in accordance with such restrictions and conditions as may be prescribed.

[2] xxx xxx xxx xxx

[3] Subject to the restrictions and conditions prescribed under sub-section (1) or sub-section (2), any consignment of goods may be transported by any person after he furnishes in the prescribed manner such particulars in such form obtainable from such authority or in such other form as may be prescribed.

69. Interception, detention and search of road vehicles and search of warehouse, etc.-- For the purpose of verifying whether any consignment of goods are being or have been transported in contravention of the provisions of section 68 or section 73, the Commissioner, an Additional Commissioner, or any person appointed under sub-section (1) of section 3 to assist the Commissioner, may, subject to such restrictions as may be prescribed,--

[a] intercept, detain and search at any place, referred to in sub-section (1) of section 68, a road vehicle or river craft or any load carried by a person, or

A [b] search any warehouse or at any other place in which, according to his information, such goods so transported in contravention of the provisions of section 68 have been stored, or

B [c] intercept, detain and search at any checkpost or any other place referred to in sub-section (2) of section 73, any goods vehicle.

71. Penalty for transporting goods in contravention of section 68 or section 73.-- [1] If any goods are seized under section 70, the Commissioner or the Additional Commissioner may, by an order in writing, impose upon the person from whom such goods are seized or the owner of such goods, where particulars of the owner of such goods are available, or where there is no claimant for such goods at the time of such seizure, any person who subsequently establishes his claim of ownership or possession of such goods, after giving such person or owner, as the case may be, a reasonable opportunity of being heard, a penalty of a sum not exceeding fifty per centum of the value of such goods as may be determined by him in accordance with the rules made under this Act:

Provided that the sum of penalty that may be imposed under this sub-section shall not exceed--

F [a] thirty per centum of the value of goods if the rate of tax leviable under sub-section (1) of section 17, or sub-section (1) of section 18, or sub-section (1) of section 20, in respect of such goods does not exceed ten per centum;

G [b] fifty per centum of the value of goods if the rate of tax leviable under sub-section (1) of section 17, or sub-section (1) of section 18, in respect of such goods exceeds ten per centum.

H [2] A penalty imposed under sub-section (1) shall be paid

by the person or the owner of goods, as the case may be, into a Government Treasury or the Reserve Bank of India by such date as may be specified by the Commissioner or the Additional Commissioner in a notice to be issued for this purpose, and the date so specified shall not be earlier than fifteen days from the date of the notice:

Provided that the Commissioner or the Additional Commissioner may, for reasons to be recorded in writing, extend the date of payment of the penalty for such period as he may think fit.

71B. Penalty for contravention of the provisions of section 68 when goods transported are not available.-- [1] Where the goods are, or have been, transported by a person, dealer or casual trader in contravention of restrictions or conditions prescribed under section 68 and such goods are not available for seizure under sub-section (1) of section 70, the Commissioner, or the Additional Commissioner, shall, after giving such person, dealer or casual trader a reasonable opportunity of being heard, impose a penalty of a sum not exceeding twenty-five per centum of the value of such goods.

[2] The procedure for imposition of penalty as prescribed under section 71A shall apply mutatis mutandis in the matter of imposition of penalty under this section.

72. Regulatory measures for transport of goods through West Bengal.

[1] When a goods vehicle, transporting any goods [other than goods sales of which are tax-free under section 24], enters into West Bengal, and such vehicle transporting such goods is bound for any place outside West Bengal, the transporter of such goods shall have to make, in the prescribed manner, a declaration on the body of the consignment note or on a document of like nature that the

A goods being so transported in his vehicle shall not be unloaded, delivered or sold in West Bengal and he shall also specify in such declaration the name of the last checkpost through which the vehicle transporting such goods shall move outside West Bengal.

B [2] xxx xxx xxx xxx

[3] xxx xxx xxx xxx

C [4] The transporter shall carry with him the consignment note or the document of like nature containing the declaration duly countersigned under sub-section (3) while transporting the goods through West Bengal and produce such consignment note or document of like nature before the Commissioner at the last checkpost that he reaches before the exit of the vehicle with such goods from West Bengal, and the Commissioner shall, in the prescribed manner, endorse such consignment note or document of like nature evidencing exit from West Bengal of the vehicle transporting the same goods as are specified in such consignment note and return the same to the transporter.

E xxx xxx xxx xxx

F [5] The Commissioner may, subject to such conditions and restrictions as may be prescribed, intercept at any place, other than those referred to in sub-section (2) and sub-section (4), within West Bengal any goods vehicle and require the transporter to produce before him the declaration and other documents referred to in sub-section (2) and search such goods vehicle for verification of the goods with the declaration and other documents produced, if any, by the transporter.

G [6] Where the Commissioner or the other authority referred to in sub-section (5) is satisfied, for reasons to be recorded in writing, that the transporter has contravened the provisions of this section, he may, after giving the

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transporter a reasonable opportunity of being heard, impose, by an order to be passed in the prescribed manner, such penalty, not exceeding twenty-five per centum of the value of the goods so transported, as may be determined by him in accordance with the rules made under this Act.

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73. Measures to prevent evasion of tax on sales within West Bengal.

[1] Where a transporter carries from any place in West Bengal in a goods vehicle any consignment of goods and such vehicle is bound for any place outside West Bengal, he shall, in addition to a document of title to the goods, carry with him, in respect of such goods,--

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[a] where carriage is caused by a sale of such goods, two copies of the bill or cash memorandum issued by the seller of such goods, and a way bill in the prescribed form, or such document, containing description, quantity or weight and value of the goods and such other particulars as may be prescribed, or

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[b] where carriage is caused otherwise than by a sale of such goods, two copies of the forwarding note, delivery challan or document of like nature, by whatever name called, issued by the owner or consignor of such goods, and a way bill in the prescribed form containing such particulars as may be prescribed.

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8. We may also quote hereinbelow Rule 211A of the Rules along with the Declaration Form appended to the said Rule:

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"211A. Procedure for transport from railway station, port, airport etc. of any consignment of goods despatched from any place outside West Bengal and bound for any place outside West Bengal.-- (1) Where any consignment of

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A goods other than those referred to in the Explanation to sub-rule (1), or in sub-rule (2), of rule 210 despatched from any place outside West Bengal reaches a railway station, port, airport or post office in West Bengal and such  
B consignment of goods is bound for any destination outside West Bengal, any person shall, before taking delivery of such goods from any such place, make a declaration in the format appended to this sub-rule.

DECLARATION

C [See sub-rule (1) of rule 211A]

To

The .....

D .....Checkpost/Charge/Section/Division

I, ....., do hereby declare that --

E [1] I am a person who is importing or bringing into West Bengal/I am a person who is authorised by the importer mentioned in the invoice/bill of lading/ bill of entry/air consignment note/railway receipt/ postal receipt to take delivery of the consignment of goods despatched from ....., a place situated outside West Bengal;

F [2] the said consignment of goods has reached a railway station, port, airport or post office in West Bengal, namely,.....;

G [3] the said consignment of goods is bound for a destination outside West Bengal, namely, .....

H [4] the delivery of the said consignment is required to be taken by me for the purpose of transporting such consignment of goods to its destination outside West Bengal;

[5] the said goods shall not be, either wholly or partly, unloaded, delivered or sold in West Bengal; A

[6] the statements in this declaration are true to the best of my knowledge and belief;

I am furnishing hereunder the particulars/ information relating to the said consignment:- B

[a] name, address and sales tax registration No., if any, of the consignor outside West Bengal: .....

[b] railway receipt/bill of lading/air-consignment note/ postal receipt No. and date thereof: ..... C

[c] invoice No. and date : .....

[d] description of each commodity of the consignment: ..... D

[e] quantity/weight of each commodity in the consignment: .....

[f] value of the consignment with custom duty, freight etc.: ..... E

[g] name, address and sales tax registration No. of the consignee outside West Bengal:.....

[h] name, address, licence No. and telephone No. of the clearing and forwarding agent, if any, in West Bengal who is handling the consignment on behalf of the consignee:..... F

[i] mode of transportation of the consignment to the destination outside West Bengal after taking delivery: ..... G

[j] registration No. of the road vehicle if such goods are transported to such destination by a road H

- A vehicle: .....
- [k] railway receipt/bill of lading/air-consignment note/  
postal receipt No. and date:.....
- B [l] name of the exit checkpost: .....
- [m] approximate date by which the vehicle shall move  
outside West Bengal: .....
- [n] where the goods are being transported by a road  
vehicle,--
- C [i] whether there is any possibility of  
transhipment in West Bengal [please tick  
whichever is applicable] yes/no;
- D [ii] if yes,--
- [A] place of such transhipment :.....
- [B] vehicle No. after the transhipment is  
effected: .....
- E [C] name and address of the transporter:  
.....
- [D] consignment note No. and date:.....
- F Signature of the importer/clearing and  
forwarding agent/the person taking delivery  
of the consignment of goods from port,  
airport, railway station, post office for  
despatch of the same outside West Bengal
- G Date: .....
- Full name of the signatory  
Address of the signatory
- Note:- Please strike out whatever is not applicable.
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[2] The declaration made under sub-rule (1) shall be produced in triplicate along with a copy of invoice, railway receipt, bill of lading, air-consignment note, postal receipt or a document of like nature before the Assistant Commissioner, Commercial Tax Officer or Assistant Commercial Tax Officer posted at the checkpost situated in or around the railway station, port, airport or post office from which the delivery of the consignment of goods as referred to in sub-rule (1) is to be taken.

[3] If no checkpost has been set up in or around the railway station, port, airport or post office from which the delivery of the consignment of goods as referred to in sub-rule (1) is to be taken, the declaration under the said sub-rule (1) shall be produced in triplicate by the person taking delivery of such goods along with a copy of invoice, railway receipt, bill of lading, air-consignment note, postal receipt or a document of like nature before the Assistant Commissioner or Commercial Tax Officer having jurisdiction over the area in which such railway station, port, airport, or post office is situated.

[4] The declaration along with a copy of documents as referred to in sub-rule (2) or sub-rule (3) produced before any of the authorities mentioned in such sub-rules shall be countersigned with his office seal by such authority and the two countersigned copies of such declaration shall be returned to the person referred to in sub-rule (1).

[5] For the purpose of section 69, the person referred to in sub-rule (1) shall, while transporting any consignment of goods on its way to destination outside West Bengal, stop his vehicles on being asked by such Assistant Commissioner or Commercial Tax Officer as the Commissioner may authorise in this behalf, at any place and present before him, on demand, the countersigned copies of the declaration referred to in the said sub-rule along with invoice, consignment note, road challan or any other document of like nature.

A [6] The two copies of the declaration duly countersigned under sub-rule (4) shall be produced before the Assistant Commissioner, Commercial Tax Officer or Assistant Commercial Tax Officer posted at the exit checkpost and such authority shall, on being satisfied upon verification of  
 B the goods being transported with those specified in such declaration, endorse such declaration, retain one copy of such endorsed declaration and return the other copy of it to the person transporting such goods for onward  
 C movement to the place of destination outside West Bengal after recording in a register the particulars given in the endorsed declaration and other connected documents and also the particulars of transshipment of the goods, if any, in West Bengal.

D [7] For the purposes of interception, detention, search and seizure by any authority under this rule, the procedure in such matters contained in the provision of rule 212 shall apply *mutatis mutandis*.

E [8] Any infringement of any provision of this rule by the person referred to in sub-rule (1) shall be deemed to be a contravention of the provisions of section 68 by the person referred to in the said sub-rule.”

F 9. The Act has been enacted to consolidate and amend the laws relating to the levy of tax on sale or purchase of goods in the State of West Bengal. Under Explanation (2) to Section 2(10) of the Act, an agent for handling or transporting of goods or handling of document of title to goods is a “dealer”. Agents of all types have been included in the definition of the word “dealer” under Section 2(10) of the Act. [See *State of West Bengal vs. O.P. Lodha & Anr.* (1997) 105 STC 561 (SC)].  
 G Section 68 occurs in Chapter VIII of the Act, which deals with maintenance of accounts; search and seizure of accounts; measures to regulate transport of goods; checkposts; seizure of goods; imposition of penalty, etc. To ensure that there is no  
 H evasion of tax, Section 68 of the Act, *inter alia*, states that no

person shall transport from any Port or any checkpoint or from any other place any consignment of goods, except in accordance with such restrictions and conditions, as may be prescribed. [See Section 68(1) of the Act] The important words which occur in Section 68(1) of the Act are "no person". It does not refer to the word "transporter". This aspect is of some significance because Section 68(1) of the Act puts a restriction on the movement of goods. The checkpoints are designed and meant to prevent the evasion of sales tax and other dues. This restriction stands lifted subject to the compliance of certain provisions of the Act. Under Section 68(3) of the Act, any consignment of goods may be transported by any person after he furnishes in the prescribed manner such particulars in such Form as may be prescribed. The expression "any person" in sub-section (3) of Section 68 of the Act would include, a clearing and forwarding agent, a transporter or any person who makes a Declaration in the prescribed manner. Therefore, sub-section (3) is not confined to a transporter, as is sought to be argued on behalf of the appellant. Secondly, sub-section (3) indicates that any consignment of goods may be transported by any person after he furnishes particulars in the prescribed Form. In this connection, we may refer to Rule 211A of the Rules. The said Rule occurs in Chapter XV of the Rules, which deals with restrictions on transport of any consignment of goods, regulatory measures for movement of such goods in transit through West Bengal, interception, search, seizure and penalty for contravention, and certain measures to prevent evasion of tax on sales within West Bengal. If one reads Chapter VIII of the Act with Chapter XV of the Rules, one finds that both Chapters deal with regulatory measures to avoid tax evasion. Therefore, in our view, the machinery provisions under the Act constitute an integral part of the charging provisions. These regulatory measures are intended to ensure that there is no evasion of tax. Therefore, one cannot read the Act by segregating the machinery provisions from the charging provisions. Rule 211A of the Rules deal with procedure for

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A transport from Port, checkposts, etc., of any consignment of goods despatched from any place outside West Bengal and bound for any place outside West Bengal. In the present case, the subject-goods have come from Hamburg, which is a place outside West Bengal. They passed through the customs barrier, the port barrier and the sales tax barrier at Haldia [which is the first checkpost] and, ultimately, were bound for Mumbai through the exit checkpost at Chichira. In short, the goods were meant to be in transit through the State of West Bengal and they were bound for Mumbai, which is a place outside West Bengal. In such a situation, Rule 211A of the Rules was applicable.

10. In this case, we are required to ascertain whether the appellant, who has signed the Declaration in the prescribed Form, has complied with the said Rule? If not, the consequence of non-compliance? If one reads Section 68(3) of the Act along with Rule 211A(1) of the Rules, one finds that 'any person', before taking delivery of the consignment from any port, etc., is required to make a Declaration in the prescribed Form and only on making the requisite Declaration, such 'any person' is allowed to transport the consignment of goods through West Bengal to a place outside the State. In other words, no person will be able to transit the consignment of goods through the State of West Bengal without making a Declaration in the prescribed Form. Before taking delivery of such goods, such a person shall make a Declaration in the Form appended to Rule 211A(1) of the Rules. Such a Declaration, therefore, is a condition precedent for taking delivery of the goods from Port, Airport, etc., to any place outside the State of West Bengal. In this connection, once again, we may emphasise that in Rule 211A(1) of the Rules, the words used are "any person". These words include, a clearing and forwarding agent, a transporter and Customs House Agent or any other person, who makes a Declaration in the Form prescribed. In this connection, clause (4) of the Declaration is equally important. It mandates a statutory obligation on the declarant, who takes delivery of the

consignment to transport such consignment to its destination outside West Bengal [which, in the present case, is Mumbai]. The declarant could be an importer or a clearing and forwarding agent or any person taking delivery of the consignment. This obligation is imposed on the declarant so that, in the event of detection of tax evasion, it would not be open to the declarant to deny his liability which, in our opinion, under the Scheme of the Act is an absolute liability in the sense that if the declarant commits breach of his obligation under the Act read with the Rules, then a legal presumption is drawn against him, of course, subject to rebuttal. It is important to note, in this connection, that the appellant in this case was the declarant. He had appended his signature on the Declaration prescribed under Rule 211A(1) of the Rules. At this stage, we may point out that, under the procedure prescribed in the Rules, the declarant, before taking delivery of the goods from the port, has to make a Declaration in the prescribed Form in which he undertakes unequivocally to transport such consignment to its destination outside the State of West Bengal. With such Declaration, the appellant becomes liable for a breach if he fails to produce the counter-signed copy of the Declaration before the Assessing Authority. The Declaration is in triplicate. One copy duly endorsed remains with the Sales Tax Authority at the first checkpost which, in the present case, is at Haldia. The remaining two counter-signed copies of the Declaration in the prescribed Form are carried by the declarant to the exit checkpost where one copy is retained by the Authority and the other is given to the declarant. In the present case, the endorsed counter-signed copy of the Declaration has not been produced by the appellant in the impugned proceedings before the Assessing Authority. Non-production thereof raises a legal presumption of tax evasion. The reason is that when countersigned copy of the Declaration is not produced, law presumes, unless otherwise proved, that goods in question have been consumed, used or otherwise disposed of within the State. In the present case, there is no evidence whatsoever to rebut that presumption. There is no material to indicate that the goods had crossed the

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- A border at Chichira, except a confirmation from the consignee that it has received the goods in question. We cannot accept such confirmation from the consignee primarily because, under the Act, the importer/consignee is not liable for the breach. The consignee is not the declarant. In the present case, the
- B consignee [importer] has not undertaken any obligation to take the goods in transit through the State of West Bengal to its destination outside the State. If one reads carefully Section 68 of the Act, one finds that the provisions of said section contemplate a regulatory measure to ensure that there is no
- C evasion of tax. Even if Section 68 of the Act is treated as a machinery section, even then the said Section has been enacted to ensure that there is no evasion of tax. In that sense, if one examines the Scheme of the Act, it becomes clear that non-production of the endorsed counter-signed copy of the
- D Declaration before the Competent Authority would give rise to a legal presumption of tax evasion, subject to such presumption being rebutted.

11. On behalf of the appellant, it was urged that, under the Scheme of the Act, the word “transporter” has been defined by
- E way of an Explanation to Section 72 of the Act. This argument was advanced to demonstrate that Sections 68, 71B and Explanation (a) to Section 72 of the Act are applicable only to a transporter, i.e., the owner or any person having possession or control of a goods vehicle or the driver or any other person
- F in charge of such vehicle, who transports the goods on account of any other person or on his own account and, therefore, the said provisions do not apply to CHA. We find no merit in this argument. As stated above, the appellant, as a declarant, could be an importer, a clearing and forwarding agent, etc., who
- G undertakes the delivery of the consignment for the purpose of transporting such consignment of goods to its destination outside West Bengal. Once such a Declaration is made by the appellant, he is a transporter, even assuming that the said provisions, namely, Sections 68, 71B and Explanation (a) to
- H Section 72, are applicable only to a transporter. The matter can

be looked at from another angle. Section 68 imposes a restriction when it says that no person shall transport any consignment of goods from any Railway Station, Airport, Port, etc., except in accordance with such conditions and restrictions, as may be prescribed. In other words, the restriction on movement of goods under sub-section (1) of Section 68 of the Act can only be lifted in a situation falling under sub-sections (3) and (4) of Section 68 of the Act. Under sub-section (3), any person, who seeks delivery of the consignment, is required to undertake an obligation that he is undertaking that delivery for transporting such consignment to its destination outside West Bengal. Section 71B of the Act is consequential upon contravention of provisions of Section 68 when goods transported are not available. It says that where the goods are transported by a person in contravention of restrictions or conditions prescribed under Section 68 of the Act read with Rule 211A of the Rules, including the Declaration therein, and if such goods are not available for seizure, the Prescribed Authority shall, after giving reasonable opportunity of being heard, impose a penalty. That penalty is an amount not exceeding twenty five per cent of the value of such goods. Section 71B read with Section 68 of the Act indicates that if the declarant undertakes delivery of the consignment with an obligation to transport such consignment of goods to its destination outside West Bengal and if he contravenes any restrictions or conditions prescribed under Rule 211A of the Rules read with the Declaration, then such person becomes liable to pay penalty on ad valorem basis. In the present case, the appellant has not produced before the Assessing Authority any evidence to show that the consignment, whose delivery has been taken from the Customs Port, has gone out of West Bengal. He has not produced the endorsed countersigned copy of the Declaration before the Assessing Authority. In such a case, law presumes that the subject-goods have been sold unauthorisedly within the State of West Bengal and that is the sole reason why penalty has been imposed on ad valorem basis, i.e., on certain percentage of the value of the goods. It

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A was open to the assessee to prove to the contrary and rebut the above legal presumption. However, he has failed to do so. Further, when the appellant signs the Declaration in terms of Rule 211A(1) of the Rules, he, inter alia, undertakes an obligation to act as a transporter. Under Section 72 of the Act, B if any person transports a consignment from any place outside the State and, in order to go to its destination at a place outside the State, seeks to pass through the State of West Bengal, he is required to make a Declaration, as prescribed in Rule 223(1) of the Rules on the body of the consignment note before the C appropriate Authority of the first checkpost for his verification and counter-signature. Further, the transporter is required to carry such a Declaration and other documents and produce them before the Prescribed Authority of the last checkpost for his verification. In our view, Section 72 of the Act read with Rule D 223(1) of the Rules has no application to the facts of the present case. Section 72, no doubt, deals with goods being transported through the State of West Bengal; however, the said section specifically refers to entry of a "goods vehicle" into West Bengal and such vehicle transporting the goods is bound for a place outside West Bengal. In the present case, we are concerned E with goods coming from Hamburg in Germany into the Port in West Bengal, hence, Section 72 of the Act has no application. Moreover, the word "transporter" has been defined specifically for the purpose of only Sections 72 and 73 of the Act and has not been defined for the entire Act. In the circumstances, it is F not open to the appellant to say that there is a clear dichotomy between a transporter and a CHA/clearing and forwarding agent. In the present case, we are concerned with the contravention of the provisions of Section 68 of the Act by a person who makes a Declaration in the prescribed Form in G terms of Rule 211A(1) of the Rules.

12. One of the key arguments advanced on behalf of the appellant herein was that Rule 211A(6) of the Rules applies to the transporter/carrier, who is in possession of two H countersigned copies of the Declaration when the goods are

being transported across the exit checkpost of West Bengal, because it is the transporter who gets back the endorsed Declaration as "a person transporting the goods for onward movement". According to the appellant, Rule 211A(8) of the Rules has no application as the said sub-rule is consequential to the applicability of sub-rule (6) of Rule 211A, which sub-rule is applicable only in the case of a transporter. In other words, according to him, sub-rule (6) casts an obligation on the transporter and not upon the CHA, whose assignment is confined to the precincts of the Customs Port. We find no merit in this submission. Under sub-rule (2) of Rule 211A of the Rules, the Declaration, in triplicate, is required to be produced along with the copy of invoice, railway receipt, bill of lading or document of like nature before the Prescribed Authority posted at the checkpost situated in or around the Railway Station, Port, Airport or Post Office from which the delivery of the consignment of goods is to be taken. Sub-rule (3) of Rule 211A of the Act deals with a situation where there is no checkpost set up in or around the Railway Station, Port, etc. We are not concerned with that situation in this case. Under sub-rule (5), it is, inter alia, provided that, in cases of interception, detention and search of vehicles falling under Section 69 of the Act, the declarant under sub-rule (1) shall, while transporting any consignment on it's way to the destination outside West Bengal, shall stop his vehicle on being asked by the Prescribed Authority to produce the countersigned copies of the Declaration referred to in sub-rule (1) of Rule 211A along with the invoice, consignment note, road challan or any other document of like nature. Therefore, sub-rule (5) squarely applies to a declarant under sub-rule (1). Under sub-rule (6), two copies of the Declaration duly countersigned shall be produced before the Prescribed Authority posted at the exit checkpost and such Authority shall, on being satisfied upon verification of the goods being transported with those specified in the Declaration, endorse such Declaration, retain one copy of such endorsed Declaration with it and return the other copy to the person transporting such goods for onward movement to the place of

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A destination outside West Bengal after recording in his register the particulars given in the Declaration. As stated above, it is the case of the appellant that sub-rule (6) of Rule 211A applies to a transporter and not to a CHA. We find no merit in this submission. If one reads sub-rule (6), it becomes clear that the

B said sub-rule refers to copies of the Declaration duly countersigned under sub-rule (4) to be produced before the Prescribed Authority at the exit checkpost. Sub-rule (4), in turn, refers to a Declaration being made under sub-rule (2) which, in turn, refers to the Declaration made under sub-rule (1) of Rule

C 211A of the Rules. Therefore, under sub-rule (4), such a Declaration is required to be countersigned by the Prescribed Authority and two copies thereof are returned to the declarant under sub-rule (1). In other words, sub-rule (6) applies to a

D declarant who could be a transporter, CHA, clearing and forwarding agent or any person taking delivery of the consignment of goods from the Port for despatch of the same outside West Bengal. Further, as stated above, clause (4) of the Declaration refers to an obligation being undertaken by the declarant that the delivery is required to be taken by him for

E transporting such consignment to its destination outside West Bengal. Hence, with the making of the Declaration, the appellant undertook the obligation to transit the consignment to the destination outside the State for which the proof was the countersigned copy of the Declaration.

F 13. Before concluding, we may state that a request was made by the learned senior counsel appearing on behalf of the appellant that, in the event of this Court rejecting this civil appeal, the Department may give the benefit of instalments to the appellant to make payment towards impugned penalty. We

G do not wish to express any opinion thereon.

14. Accordingly, we find no merit in this civil appeal, which is, accordingly, dismissed with no order as to costs.

B.B.B.

Appeal dismissed.

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