

## **State Of Haryana And Ors. vs Sant Lal And Anr. on 9 September, 1993**

**Equivalent citations: I(1994)BC104(SC), JT1993(5)SC425, 1993(3)SCALE718, (1993)4SCC380, [1993]SUPP2SCR238, [1993]91STC321(SC), 1993 AIR SCW 3615, 1993 (4) SCC 380, 1994 BRLJ 44, (1994) 27 STA 1, 1994 UPTC 1 89, (1994) 1 BANKCAS 104, (1993) 5 JT 425 (SC)**

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**Bench: B.P. Jeevan Reddy, S.P. Bharucha**

### **JUDGMENT**

S.P. Bharucha, J.

1. This is an appeal by special leave against the judgment and order of a Division Bench of the Punjab & Haryana High Court whereby the writ petition filed by the respondents was allowed and Section 38 of the Haryana General Sales Tax Act, 1973 and Rule 53 of the Haryana General Sales Tax Rules, 1975 were struck down as unconstitutional.

2. The respondents claimed in their writ petition to be clearing and forwarding agents. They rendered to their clients the service of booking and taking delivery of consignments at the railway stations at Sirsa and Hissar. On the instructions of their clients they arranged for booking of consignments to be transported by railway from the aforesaid railway stations and obtained the necessary documents in the names of their clients; similarly, they took delivery of consignments on behalf of their clients at the aforesaid railway stations and handed over the same and the documents relative thereto to their clients. For such services they were remunerated by their clients. By virtue of Sub-section (1) of the said Section 38 of the Haryana General Sales Tax Act, 1973 (hereinafter referred to as 'the said Act') they were obliged to furnish information in respect of such consignments to, and by virtue of Sub-section (2) they were debarred from carrying on their business unless they obtained a licence for the purpose from the assessing authority under the said Act. Sub-section (3) made them liable to the imposition of a penalty in an amount equivalent to 20 per cent of the value of the goods in respect of which particulars and information had not been furnished. Rule 48 of the Haryana General Sales Tax Rules, 1975 (hereinafter referred to as 'the said Rules') was made with reference to the said Section 38. It was contended in the writ petition that the respondents did not in the course of their business come across invoices or cash memos so that they were not in a position to ascertain the value of the goods booked or taken delivery of through them.

The obligation imposed upon them by the said Section 38 was therefore, not possible of performance. The petitioners in their written statements before the High Court do not appear to have controverted the averment that the respondents in the course of their business did not get all the information which they were required by the said Section 38 to furnish and for breach of which obligation they were exposed to a penalty. In the written statements the petitioners contended that the respondents were known as 'dalals' in common parlance and carried on the well established business of acting at railway stations on behalf of the various types of dealers. The dealers sent their goods for booking at the railway stations through 'dalals' and all the formalities were performed by the 'dalals' for sending the goods to their destinations. Similarly, when goods of the dealers were received at the railway stations, the delivery was taken by the dealers through the 'dalals'. It had been observed that, generally, bogus transactions were carried on by various dealers. The goods were booked in assumed names and these were addressed to consignees in assumed names and in this way the revenue of the State in the form of tax was jeopardised. It was contended that the trade of getting the goods booked with the railways on behalf of the dealers and getting the delivery of the goods from the railway by the dealers through the 'dalals' is ancillary and incidental to the business of sale and purchase of goods. The State Legislature is empowered under Entry 54 of the List II in the VII Schedule to the Constitution to enact law for taxation on the sale or purchase of goods. The livelihood of the petitioners is not taken away in any way". The High Court found that the respondents were admittedly neither dealers nor liable to pay sales tax under the said Act. No foundation, however remote, had been laid in the written statements to warrant the finding that the respondents were not strangers to the sale or purchase of goods handled by them on behalf of their clients. The question, therefore, was whether the State Legislature was competent to legislate in respect of the respondents. The High Court, after reference to various authorities, held that a clearing or forwarding agent or 'dalal' was a stranger to the transaction of sale or purchase of the goods. He was not liable to pay sales tax nor was he responsible for its evasion inasmuch as he was not a dealer. This apart, there was no justification to raise a presumption of evasion of sales tax in the transactions in respect of which an agent or 'dalal' was required to furnish particulars and information under the said Section 38. Similarly, it was wrong to assume evasion of sales tax in the transactions the particulars and information of which an agent or 'dalal' had failed to furnish. Moreover, the responsibility in regard to the evasion of sales tax was that of the dealer and it could not justifiably be foisted on the agent or 'dalal'. There being no liability upon the agent or 'dalal' to pay the sales tax or an attempt on his part or suspicion against him to escape its payment, it could not be held that the provisions contained in said Section 38 were intra vires the State Legislature being ancillary and incidental to the power to levy sales tax under Entry 54, List II of the Seventh Schedule to the Constitution. The High Court, therefore, allowed the writ petition and struck down the said Section 38 and the said Rule 53 as unconstitutional.

3. To appreciate the controversy in the appeal, the said Section 38 must be reproduced:

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.

(2) No clearing or forwarding agent, Dalai or any other person transporting goods within the State shall carry on his business unless he obtains from the assessing authority, on payment of a fee not exceeding fifty rupees, a licence in the form and manner and subject to such conditions as may be prescribed.

(3) If any clearing or forwarding agent or Dalai 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 of, or taking delivery of, consignments of goods at a Railway. Station booking agency, goods transport company office, or any place of loading or unloading of goods or contrives, makes and concludes bargains and contracts for or on behalf of any dealer for a fee, reward, commission, remuneration or 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 despatch to other places or gives delivery of any consignment of such goods to the consignee."

4. Section 2(c) of the said Act defines 'dealer' thus:

"dealer" means any person including a department of Government who carries on, whether regularly or otherwise, trade, whether with or without a profit motive, directly or otherwise whether for cash, deferred payment, commission, remuneration or other valuable consideration, of purchasing, selling, supplying or distributing any goods in the State, or importing into, or exporting out of, the State, any goods irrespective of the fact that the main place of business of such person is outside the State and where the main place of business of such person is not in the State, includes the local manager or agent of such person in the State in respect of such business;

Provided that a person or a member of his family who sells within the State exclusively the agricultural produce grown by himself or grown on any land in which he has an interest whether as owner, usufructuary, mortgagee, tenant or otherwise, shall not be deemed to be a dealer.

5. Explanation (ii) to Section 2(c) read thus:

(ii) a factor, a broker, a commission agent, a deal credere agent, a dealer's agent, an auctioneer or any other mercantile agent by whatever name called and whether of the same description as hereinbefore mentioned or not, who carries on any trade as principal or agent or in any other capacity, is a dealer.

6. Section 6 is the charging section of the said Act and it imposes on a dealer whose gross turnover exceeds the taxable quantum the liability to pay tax on the sale or purchase of goods by him in the State of Haryana at the stages and rates therein mentioned. Section 37 provides for the establishment of check posts or barriers and the inspection of goods in transit. It is a very detailed provision which, among other things, makes the driver or any other person in charge of a goods carrier to produce proper and genuine documents relating to the goods and also makes him liable to penalty in the event that the revenue officer concerned finds that there has been an attempt to evade tax due under the said Act, such penalty being of an amount not less than 10 per cent and not more than 25 per cent of the value of the goods.

7. Rule 53 of the said Rules reads thus:

53. Furnishing of information by clearing and forwarding agents Section 38 - Every clearing or forwarding agent or Dalai shall, as required under Sub-section (1) of Section 38, furnish to the assessing authority granting the licence a return in form ST 43 for every month within a period of ten days of close of each month regarding the consignments handled by him during the month and shall keep and maintain true and correct record in form ST 44 in respect of consignments of goods handled by him. Rule 48 provides for the licensing of clearing and forwarding agent, and it reads thus:

48. Licensing of clearing and forwarding agent, etc. [Section 38]-

(1) Application for licence required to be obtained under Section 38 shall be in form ST 40 and shall be to the assessing authority of the area in which the place of business of the forwarding or clearing agent or dalai or the person transporting goods is located, within a period of thirty days of the coming into force of these rules.

(2) The application shall be accompanied by a treasury receipt for five rupees on account of fee.

(3) When the assessing authority after making any enquiry that he may consider necessary, is satisfied that the applicant has correctly given the requisite information, that he has deposited the licence fee into the appropriate Government treasury and that the application is in order he shall issued a licence in form ST 41.

(4) The licence shall be held subject to the conditions set forth therein and the provisions of the Act and these rules.

(5) A record of the licences issue shall be kept in a register in form ST 42. Rule 52 empowers the assessing authority granting such licence to cancel it in case of breach of the said Rules, failure to furnish any information as required under Rule 53 or furnishing of false information.

8. The application for the grant of such a licence is required to be made in Form ST 40 prescribed in the said Rules. It is required to be made by the person in charge of "the business of clearing/forwarding/transporting goods". Among other things, it required information regarding the goods carriers owned by the applicant and the route permit on which they are authorized to operate. Form ST 41 is the form to be filled in for a licence authorising a person to function as "a clearing or forwarding agent, dalal or for transporting goods within the State of Haryana". It also seeks information about the goods carrier owned by the applicant. Form ST 43 prescribes the format of the "monthly return of clearing/forwarding house/dalal". It requires the agent or 'dalal' not only to give the name and full address of the consignor and the consignee but also their registration certificate numbers, presumably under the said Act. And it requires, inter alia, a statement of the weight of the goods consigned. Form ST 44 is the record that the "clearing/forwarding agent/dalal" must keep in respect of the goods handled by him. It also requires the recording of, inter alia, the weight of the consignments and the numbers of the registration certificates under the said Act of the consignor and the consignee. Form ST 45 provides the format of the booking and delivery register. Here again, the registration certificate numbers of the consignor and the consignee are required to be noted as also the weight and value of the goods in the consignments. Form ST 46 prescribes the format for the return of goods transported or delivered during a particular month. The information required to be furnished is substantially similar to that which is to be noted in the booking and delivery register in Form ST 45.

9. Sub-section (1) of the said Section 38 requires every clearing or forwarding agent, 'dalal' or 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 to furnish to the assessing authority such particulars and information as may be prescribed. What precisely is meant by the phrase 'documents of title to goods' is not made clear in the said Act, but it would appear that it is only that clearing or forwarding agent or 'dalal' or other person transporting goods who handles documents of title to goods who is required to furnish the requisite particulars and information. However, Sub-section (2) of the said Section 38 debars all clearing or forwarding agents, 'dalals' or other persons transporting goods within the State from carrying on their business unless they are licensed under the said Act and the penalty that is provided for in Sub-section (3) is applicable to any clearing or forwarding agent, 'dalal' or person transporting goods if he contravenes the provisions of

Sub-sections (1) or (2), Therefore, it would appear that a clearing or forwarding agent or 'dalal' or other person transporting goods within the State, even though he may not be handling documents of title to goods, is obliged to take licence under the said Act though he may not be liable to the penalty as hereinafter explained. Under the provisions of Sub-section (3) the Commissioner or any person appointed to assist him may impose the penalty after giving the person proposed to be penalized a reasonable opportunity of being heard and that penalty shall be of an amount equivalent to 20 per cent of the value of goods in respect of which no particulars and information has been furnished. There is no discretion in the matter of the quantum of the penalty. But, since it is to be calculated as a percentage of the value of the goods in respect of which no particulars or information have been furnished, it cannot be imposed for the failure of a clearing or forwarding agent or 'dalal' or person transporting goods who does not handle documents of title to take a licence under Sub-section (2). The word 'dalal' is defined in the Explanation to the said Section 38 to include a person who renders the service of booking or taking delivery of consignments, but it also includes a person who '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'. It is, therefore, not only a person who renders the service of booking or taking delivery of goods who is required to be licenced under Sub-section (2) of Section 38 but also any person who 'makes and concludes bargains and contracts' of whatsoever nature for or on behalf of any dealer for consideration and who, therefore, may fall within the definition of 'dealer' in the said Act. A 'person transporting goods' is also defined by the Explanation to the said Section 38 and it includes, besides the owner of the goods, his manager, agent, driver and employee. It is, therefore, necessary that the owner of the goods, which would in the context mean the dealer himself, should be licenced under Sub-section (2) and, besides him, his manager, driver employee, if they book or take delivery of his goods.

10. Rule 48 of the said Rules speaks of the licence that the clearing or forwarding agent or 'dalal' or person transporting goods has to obtain. It states that 'the licence shall be held subject to the conditions set forth therein and the provisions of the Act and these rules'. Rule 52 empowers the assessing authority granting the licence to cancel it in case of breach of the said Rules or failure to furnish information as required under Rule 53 or on the furnishing of false information. Rule 53 requires the clearing or forwarding agent or 'dalal' to furnish to the assessing authority returns in the prescribed form regarding the consignments handled by him from month to month and to keep and maintain a true record thereof. Reading the said Section 38 with the afore-mentioned rules makes it clear that for breach of the provisions of the said Rules the licence that is mandatory for carrying on the business of a clearing or forwarding agent or 'dalal' or transporter of goods can be cancelled, in which event the clearing or forwarding agent or 'dalal' or person transporting goods stands to lose his livelihood. This provision is applicable also, having regard to the definition of 'person transporting goods', to an employee of the owner of the goods who books or receives them, so that he too stands in danger of losing his employment. The forms which have been referred to require the clearing and forwarding agent, 'dalal' and person transporting goods to maintain records of and furnish information regarding the numbers of the registration certificates under the said Act of the consignor and the consignee. It is not clear from the said Act or otherwise that the clearing or forwarding agent or 'dalal' or person transporting goods would necessarily have this information. 'The clearing or forwarding agent, 'dalal' and person transporting goods is also required to maintain a record of and furnish information regarding the weight and value of the goods booked or taken

delivery of through him. It is not clear how he can state, otherwise than on the information, if any, provided by the dealer, what the weight or value or, indeed, the content of the consignment is.

11. Mr. A.M. Singhvi, learned Counsel for the appellants, submitted that the provisions contained in the said Section 38 and the said Rules were machinery provisions designed to ensure recovery of the tax imposed by the said Act. He submitted that it was well established that legislative entries had to be given the widest possible meaning. In his submission, the said Section 38 and the said Rules were ancillary and incidental to the levy of the tax under the said Act and necessary to prevent the evasion thereof.

12. In *Navinchandra Mafatlal v. CIT*, the observations of Gwyer, C.J. in *United Provinces v. Mt. Atiqa Begum*, were approved, namely, that entries in legislative lists were not to be read in a narrow or restricted sense and each general word therein should be read to extend to all ancillary or subsidiary matters which could fairly and reasonably be said to be comprehended in it. In *Baldeo Singh v. CIT*, this Court held that legislative entries had to be read in a very wide manner and so as to include all subsidiary and ancillary matters. An entry authorising the imposition of a tax should be read as also authorising an enactment which prevented the tax from being evaded. If it were not to be so read then the admitted power to tax might often be made infructuous by ingenious contrivances. Experience had shown that attempts to evade tax were often made.

13. There can, therefore, be no doubt that the State Legislature had by reason of Entry 54 of List II in the Seventh Schedule to the Constitution the power to legislate in respect of taxes on the sale or purchase of goods, and it had, therefore, the power to legislate with respect to the imposition of a sales tax, to prescribe the machinery for the collection of such tax, to designate officers by whom such liability could be enforced and in respect of all matters ancillary or subsidiary thereto which could fairly and reasonably be said to be comprehended within the legislative entry. Having regard to the analysis of the said Section 38 and the relevant rules and forms made hereinabove, the question is whether the same can be said to be ancillary or subsidiary matters which are fairly and reasonably comprehended within the power to levy sales tax.

14. If a clearing or forwarding agent or 'dalal' or person transporting goods is indeed reasonably and promptly connected with the sale occasioning the liability to the sales tax, it is legitimate to require him to licence himself under the said 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 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.

15. As is clear from a reading of Sub-section (1) of the said Section 38, it is 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 under the said Act and Rules for the sub-section itself casts that obligation only upon such clearing or forwarding agents, 'dalals' or persons transporting goods who during the course of their business handle 'documents of title to goods for or on behalf of any dealer. It is, therefore, at best, only such clearing or forwarding agents or 'dalals' or other persons transporting goods who handle documents of title to goods for or on

behalf of dealers who can be said to have a connection with the transaction of sale thereof. It is only such clearing or forwarding agents, 'dalals' or other persons transporting goods who can be required to obtain from the assessing authority under the said Act a licence for carrying on their business and be made liable to cancellation of such licence and penalty for breach of their obligations under the said Act. However, inasmuch as the said Act does not define what precisely it means by the expression 'documents of title to goods', it is unclear which class of forwarding or clearing agents or 'dalals' or persons transporting goods it intends to bring within the ambit thereof. To clearing and forwarding agents, 'dalals' and other persons transporting goods who do not handle documents of title to goods for or on behalf of any dealer, the provisions of the said Act can have no application at all. In respect of such persons the State Legislature has no power of legislation under the legislative entry concerned. Qua them the legislation is not in respect of any matter ancillary or subsidiary to the legislative entry which entitles the State Legislature to impose a tax on the sale of goods.

16. The same point can be stated differently. A clearing or forwarding agent or 'dalal' or person transporting goods does not necessarily handle the booking or receipt of goods which have been sold; they could very well be handling goods which a consignor may consign to himself from one town or village to another in the State. The said Act does not take account of this and requires all forwarding and clearing agents, 'dalals' and persons transporting goods to be licenced under the said Act. To this extent the said Section 38 goes beyond the ancillary and subsidiary powers of the State Legislature in enacting a law imposing sales tax.

17. It is difficult to hold that a clearing or forwarding agent, 'dalal' or person transporting goods can be made liable to a penalty equivalent to 20 per cent of the value of the goods 'in respect of which no particulars and information have been furnished. Given the obligation to furnish particulars and information, a penalty for evasion of tax, in addition to the tax evaded, can reasonably and fairly be imposed which bears a proportion to the quantum of tax that has escaped assessment but it cannot reasonably and fairly bear a proportion to the value of the goods the sale of which has occasioned the liability to tax. A penalty as high as that sought to be imposed could well put a smaller clearing or forwarding agent or 'dalal' or person transporting goods out of business.

18. The definition of 'person transporting goods' in the Explanation to the said Section 38 includes the manager, driver and employee of the owner of the goods. Such manager, driver or employee would be required to be licenced under Sub-section (2) of the said Section 38 and would be liable to penalty and cancellation of his licence in the event that he did not furnish the information and particulars required by Sub-section (1) provided he had handled the documents of title to the goods. It seems to us that where the owner of the goods is a company or firm the booking and taking delivery of goods and the handling of documents of title thereto would necessarily be done by one or other employee of the company or firm and it is not reasonable or fair to require all such employees to be licenced under the said Act.

19. Before we part with this judgment we must give due attention to the decision of this Court in *Chowringhee Sales Bureau (P) Ltd. v. CIT*, which was cited by Mr. Singhvi. This was a case where the definition of 'dealer' in the Bengal Finance (Sales-tax) Act, was questioned as being ultra vires the powers of the State Legislature on the ground that it purported to levy a tax on an auctioneer, a



person who was neither a seller nor a purchaser. It was held that in view of the wide amplitude of the power of the State Legislature to impose tax on transactions of sale of goods it was impermissible to read a restriction on the power of the State Legislature as would prevent it from imposing the tax on an auctioneer, who carried on the business of selling goods and had, in the customary course of business, authority to sell 'goods belonging to the principal. What was sought to be taxed was the transaction of the sale of goods. If there was a close and direct connection between the transaction of sale and the person made liable for the payment of sales tax, the statutory provision providing for such levy of sales tax was not offensive.

20. There can be no doubt that the State Legislature would be entitled to impose sales tax upon a person who carries on the business of selling goods and who has in the customary course of business authority to sell goods belonging to the principal. A clearing or forwarding agent, 'dalal' or person transporting goods does not carry on the business of selling goods and does not have, in the customary course of his business, authority to sell goods belonging to the dealer whose goods he books or receives. As we have already stated, there has to be a reasonable and proximate connection between the transaction of sale and the clearing or forwarding agent, 'dalal' or person transporting goods before the State Legislature can, in exercise of the power to levy sales tax, enact legislation concerning him. We are not satisfied that there is such close and direct connection between the transactions of sale of goods by a dealer and the clearing or forwarding agent or 'dalal' who books or receives such goods or a person who transports such goods within the meaning of the said Section 38.

21. For the aforementioned reasons we are of the view that the said Section 38 was beyond the purview of the State Legislature. Therefore, the said Section 38 must be held to be ultra vires and bad in law. Consequently, all rules and forms in the said Rules related to the said Section 38 must also be held to be bad in law.

22. The appeal, therefore, fails and is dismissed. There shall be no order as to costs.