had even disappeared from the land of its birth. And from that angle, there is no doubt the judgment would be widely welcomed and warmly received by the litigant public and the legal circles.

C. P. Gupta.

Automobile Transport (Raj.) Ltd. *v.* State of Rajasthan* —Validity of Rajasthan Motor Vehicles Taxation Act, 1951 under Article 301 of the Constitution.

After its decision in *Atiabari Tea Co. Ltd.* v. *State of Assam*,[1] the Supreme Court was again faced with the validity of a State tax statute under Part XIII of the constitution of India in *Automobile Transport (Raj.) Ltd.* v. *State of Rajasthan*.[2] The *Automobile* case involved the constitutional validity of the Rajasthan Motor Vehicles Taxation Act, 1951 (Rajasthan Act XI of 1951), imposing taxes on the plying of motor vehicles.[3] It was argued for the motor companies [4] that the Act violated freedom of trade, commerce and inter-course guaranteed under Art. 301 of the Constitution, and that since no presidential assent was obtained as required by Art. 304(b) of the Constitution, the Act was void. The majority of the Court, however, found the Act valid under Art. 301.

So much has been written on the scope of Art. 301 as far as taxation laws are concerned, that no useful purpose will be served in stating arguments either for or against the Supreme Court's view in both the *Atiabari* and *Automobile* cases. In the labyrinth of the several [5]

* Decided on April 9, 1962. Not yet reported. A comment on the decision of the Rajasthan High Court in the same case appears by the same writer in 1 J.I.L.I. 190. See *infra* footnote 31.

1. 1961 S.C. 232, hereinafter called the *Atiabari* case. The case involved the Assam Taxation (on goods carried by Roads or Inland Waterways) Act imposing tax on tea carried by road or inland waterways. The majority of the Supreme Court found the Act as imposing direct restrictions on the movement of trade and commerce. Since presidential assent as required by Art. 304(b) was not obtained, the Court declared the Act invalid as infringing Art. 301 of the Constitution.

2. Hereinafter called the *Automobile* case.

3. Section 4 of the Act was the charging section which provided that "no motor vehicle shall be used in any public place or kept for use in Rajasthan unless the owner thereof has paid in respect of it, a tax at the appropriate rate specified in the Schedules." The rate of tax was Rs. 12/- per seat per year on private cars. The highest tax was on goods vehicle; it was Rs. 2,000/- per year for a goods vehicle with a loading capacity of over five tons.

4. The three motor companies which were appellants in the case were: The Automobile Transport (Raj.) Ltd.; The Rajasthan Roadways Ltd; and Framji C. Framji and others.

5. For cases which held that state tax laws came within the purview of Art. 301, see the High Court's opinion on the case under comment, A.I.R. 1958 Raj. 114;

views some golden thread had to be found. The Supreme Court has done it in the two cases referred to above; and it can be said that the fluid state of the constitutional law in the area of freedom of trade and commerce has taken some shape. By upholding the Rajasthan law in the case under comment the majority of the Court has done well in the application of the constitutional law laid down by the Court to the facts of the case. Judged in the light of India's road development, a contrary approach would not have been in the national interest.[6]

The view of the Supreme Court regarding the scope of Art. 301 with particular reference to tax laws is considered first. Section II considers the validity of the particular tax in question under the constitutional principles laid down by the court.

I

The matter in issue in the *Automobile* case required the Court to consider the scope of Art. 301 [7] of the Constitution.

In the *Atiabari* case three opinions were expressed as to the scope of Art. 301. The first and the narrowest was the view of the Chief Justice B. P. Sinha. He stated that taxation simpliciter was not within the coverage of Art. 301. He made a distinction between taxation as such for the purpose of revenue and taxation for purposes of making discrimination or giving preference. It was only the latter which could be said to impose impediments on the freedom of trade and commerce and therefore falling within the purview of Art. 301. The Article had nothing to do with the former taxes.

The second and the intermediate view was that of the majority expressed by Gajendragadkar, J.[8] He stated that:

> "restrictions freedom from which is guaranteed by Art. 301, would be such restrictions as directly and immediately restrict or impede the free *flow or movement* of trade." [9]

Bombay v. *Chamarbaugwala*, A.I.R. 1956 Bom. 1. For cases contra, see *H.P. Barua* v. *State of Assam*, A.I.R. 1955 Assam. 249; *M.K. Parmeswaran* v. *Sub-Magistrate*, A.I.R. 1958 Ker. 52; and *Atma Ram Budhia* v. *State of Bihar*, A.I.R. 1952 Pat. 359.

Also refer to the following articles: Rice, *Division of Power to Control Commerce Between Centre and States in India and in the United States*, 1 J.I.L.I. 151; Derham, *Some Constitutional Problems Arising Under Part XIII of the Indian Constitution, ibid.*, p. 523; Ramaswamy, *Indian Constitutional Provisions Against Barriers to Trade and Commerce examined in the light of Australian and American Experience*, 2 J.I.L.I. 321.

6. See *infra*.

7. It reads: "Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free."

8. Wanchoo, J., and Das Gupta, J., with him.

9. A.I.R. 1961 S.C. 254. Emphasis supplied.

S.K. Das, J. felt that the view of Shah, J. was based on a purely textual interpretation of the relevant articles in Part XIII, while according to that learned judge there was such a mix up of exception upon exception in the series of articles in Part XIII that a purely textual interpretation might not disclose the true intendment of the articles. He added that even textually one had to ascertain the true meaning of the word "free," and pointed out that even though in Sec. 92 of the Australian Constitution the expression used was "absolutely free," yet Lord Porter in *Commonwealth of Australia* v. *Bank of New South Wales* [15] stated that regulation of trade, commerce and intercourse among the States was compatible with its absolute freedom and that Sec. 92 of the Australian Constitution was violated only when a legislative or executive act operated to restrict such trade, commerce and intercourse directly and immediately as distinct from creating some indirect or inconsequential impediment which might fairly be regarded as remote.

According to S. K. Das, J., many regulations instead of really adversely affecting the freedom of trade and commerce, facilitated the free flow of trade and commerce. He gave the example of a toll or tax for the use of a road or a bridge so that it could be provided in the absence of which a trader may have to take more expensive or less convenient route. He pointed out that there was a distinction between "freedom" and "restriction" and that alone was a restriction which in reality hampered or burdened trade and commerce. In regard to what in a given situation would be a restriction. S. K. Das J's observation was;

> "It is the reality or substance of the matter that has to be determined. It is not possible *a priori* to draw a dividing line between that which would really be a charge for a facility provided and that which would really be a deterrent to a trade, but the distinction, if it has to be drawn, is real and clear. For the tax to become a prohibited tax it has to be direct tax the effect of which is *to hinder the movement part of trade.* So long as a tax remains compensatory or regulatory it cannot operate as a hindrance ".[16]

Pointing out the practical difficulties in giving effect to the widest view, S. K. Das, J. stated that it would :

> "stop or delay effective legislation which may be urgently necessary.....Even such legislation as imposes traffic regulations would require the sanction of the President.....If the widest view

15. 1950 A.C. 235.
16. Emphasis added.

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> "stop or delay effective legislation which may be urgently necessary.....Even such legislation as imposes traffic regulations would require the sanction of the President.....If the widest view

15. 1950 A.C. 235.
16. Emphasis added.

> is accepted, then there would be for all practical purposes an end of State autonomy even within the fields allotted to them under the distribution of powers envisaged by our Constitution.....In our view the concept of freedom of trade commerce and intercourse postulated by Art. 301 must be understood in the context of an orderly society and as part of a Constitution which envisages a distribution of powers between the States and the Union....."

On the other hand, the learned Judge also rejected the narrow interpretation of Art. 301 that tax laws were outside its purview. He affirmed the majority view in the *Atiabari* case (already stated) but ventured to suggest the following clarification to it:

> "Regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by Art. 301 and such measures need not comply with the requirements of the proviso to Art. 304(b) of the Constitution."

Since conflicting views have been expressed with regard to the question whether taxation laws came within the purview of Art. 301, it would be appropriate here to state briefly the arguments made before the Court in the *Atiabari* case for the proposition that Part XIII does not apply to tax laws and the answers of the Court in that case to those arguments:

(a) It was argued before the Court that the power to levy tax is an essential part of sovereignty and that this power is not subject to judicial review. The answer of the Court was that "although the power of levying tax is essential for the very existence of the government, its exercise must inevitably be controlled by the constitutional provisions made in that behalf." [17]

(b) That tax laws are governed by the provisions of Part XII alone and not by Part XIII. This argument was rejected by the court for "the power to levy taxes is ultimately based on Art. 245 and the said power in terms is subject to the provisions of the Constitution."[18]

(c) It was contended that Art. 301 operates only in respect of the entries relating to trade and commerce in the Seventh Schedule, that is non-tax entries,[19] since Art. 303(1) expressly refers to those entries. Without expressing any conclusive opinion on the scope of

17. A.I.R. 1961 S.C. 232, 248.

18. *Ibid.*, pp. 248-9.

19. Entries in the three legislative lists of the VII Schedule which do not refer to taxation.

Art. 303(1), the answer of the court was that the limitation introduced in Art. 303(1) cannot circumscribe the scope of Art. 301 or otherwise affect its construction.

(d) It was also argued that the test of pith and substance should be applied in determining the validity of a law under Art. 301. In other words, Art. 301 applied only to laws whose "pith and substance" was with respect to trade and commerce, that is laws passed under entries 41 and 42 of List I, 26 of List II and 33 of List III, in the Seventh Schedule—all non-tax entries.[20] This argument also did not find favour with the Court, for it observed that the test was generally and more appropriately applied when a dispute arose as to the legislative competence of the Legislature, and it had to be resolved by reference to the entries to which the impugned legislation was relatable.[21]

The concurring opinion of Subba Rao, J., in the *Automobile* case is in substantial agreement with the views of S. K. Das, J. Thus he stated :

> "Of all the doctrines evolved (in America or Australia), in my view, the doctrine of 'direct and immediate effect' on the freedom would be a reasonable solvent to the difficult situation that might arise under our Constitution. If a law, whatever, may have been its source, directly and immediately affects the *free movement of trade* it would be restriction on the said freedom. But a law which may have only indirect and remote repercussion on the said freedom cannot be considered to be a restriction on it. Taking the illustration from taxation law, a law may impose a tax on the movement of goods or persons by a motor-vehicle; it directly operates as a restriction on the free movement of trade, except when it is compensatory or regulatory. On the other hand, a law may tax a vehicle as property, or the garage wherein the vehicle used for conveyance is kept. The said law may have indirect repercussion on the movement, but the said law is not one directly imposing restriction on the free movement.....if the provisions show that the tax is on property, the reasonableness of the tax may have to be tested against the provisions of Art. 19 of the Constitution." [22]

20. This was the arguement adopted by some of the High Courts to save tax laws from the operation of Art. 301. See for instance, *Parmeswaran* v. *Sub-Magistrate*, A.I.R. 1958 Ker. 52 ; *Atma Ram Budhia* v. *State of Bihar*, A.I.R. 1952 Pat. 359.

21. *Supra*, 17 at p. 256.

22. Emphasis added. In his earlier part of his opinion he refuted the contention that the court cannot determine the reasonableness of a taxing law under Art. 19.

To the argument advanced by the States that the laws made under entry 42 of List I, entry 26 of List II and entry 33 of List III, of the Seventh Schedule to the Constitution only were subject to freedom declared by Art. 301, his reply was: "Firstly, the article does not restrict the freedom to the area covered by those entries, and, secondly, laws made under the other entries may more effectively and directly affect the movement of trade".

It may be noted that whereas in the opinion of S. K. Das, J., there is occasional reference to the Australian cases on the subject and no reference at all to the American cases, Subba Rao, J., reaches his conclusions after brief consideration of the American and Australian decisions.

The dissenting opinion of Mr. Justice Hidayatullah extensively reviews the Australian decisions and surveys the Indian scene before the coming into operation of the Constitution of India. His conclusions on the scope of Art. 301 so far as taxation laws are concerned are somewhat the same as those in the two other opinions mentioned earlier, though according to him a tax of a general character payable by all and sundry cannot be said to impinge directly and immediately on trade and commerce. Thus he stated :

> "Taxes which are general and for revenue purposes which fall on those engaged in trade, commerce and intercourse in the same way as they fall on others not so engaged cannot normally be within the reach of Part XIII. A motor transport owner cannot claim that he will not pay property tax in respect of his garage buildings or electricity tax for electricity he consumes in lighting them, or income-tax on his profits. Part XIII has nothing to do with such taxes even though they fall upon tradesmen."

Even if a tax is laid upon trade and commerce directly, it will still be outside the purview of Art. 301 if it is of a regulatory or compensatory nature.

It may be noted that the majority opinion in the *Atiabari* case held that the freedom guaranteed by Art. 301 of the Constitution covers the movement part of trade and commerce. It was stated :

> "When Art. 301 provides that trade shall be free throughout the territory of India primarily it is the movement part of the trade that it has in mind and the movement of the transport part of trade must be free subject of course to the limitations and exceptions provided by the other Articles of Part XIII".[23]

23. A.I.R. 1961 S.C. 232, 253.

(2) Only those taxes come within the purview of Art. 301 as directly and immediately impinge the movement part of trade and commerce.

(3) Even if a law or tax is operating on or affecting trade and commerce directly and immediately, it will be beyond Art. 301 if it is regulatory or compensatory in character. Thus traffic laws, though they may operate directly on trade and commerce, really facilitates the flow of trade and commerce, and are regulatory in character. This is an advance from the state of the view of the majority of the Supreme Court in the *Atiabari* case.

(4) Since such measures as price control or licensing do not impinge directly on the movement part of trade, they do not come within Art. 301, though they may have indirect effect on trade and commerce. Similarly property taxes do not directly operate on the movement of trade.

Applying these principles to the facts of the case there was no doubt that the tax law in question was affecting or operating on the movement of trade and commerce. However, S. K. Das, J., found the tax compensatory, and Subba Rao, J., agreed with his conclusion,[28] and, therefore, the law was upheld by the Supreme Court. This takes us to the second part of the problem, *viz.*, the test to find out whether a particular law is compensatory or otherwise.

II

In laying down the test for determining whether a tax is of compensatory nature or not, S. K. Das, J. said:

> "It seems to us that a working test for deciding whether a tax is compensatory or not is to enquire whether the trades people are having the use of certain facilities for the better conduct of their business and paying not patently much more than what is required for providing the facilities. It would be impossible to judge the compensatory nature of a tax by a meticulous test, and in the nature of things that cannot be done. Nor do we think that it will make any difference that the money collected from the

28. It may be noted that Subba Rao, J. does not use the word "compensatory" but "regulatory" with reference to the validity of the law in question. It is presumed that this difference in terminology does not connote any difference in substance. A tax law, for instance, the tax on road transport in question here, in order to be regulatory must be compensatory in nature. The tax both facilitates and burdens trade and commerce. If it is more than compensatory, it cannot be regarded as regulatory.

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tax is not put into a separate fund so long as facilities for the trades people who pay the tax are provided and the expenses incurred in providing them are borne by the State out of whatever source it may be. In the cases under our consideration the tax is based on passenger capacity of commercial buses and loading capacity of goods vehicles; both have some relation to the wear and tear caused to the roads used by the buses. In basing the taxes on passenger capacity or loading capacity, the Legislature has merely evolved a method and measure of compensation demanded by the State, but the taxes are still compensation and charge for regulation."

In considering the reasonableness of the tax, S. K. Das, J. referred to the High Court judgment wherein it was stated that "in 1952-53 income from motor vehicles taxation under the Act was in the neighbourhood of 34 lakhs. In that very year, the expenditure on new roads and maintenance of old roads was in the neighbourhood of 60 lakhs. In 1954-55, the estimated income from the tax was 35 lakhs, while the estimated expenditure was over 65 lakhs. It is obvious from these figures that the State is charging from the users of motor vehicles something in the neighbourhood of 50 per cent. of the cost it has to incur in maintaining and making roads."[28a]. It was also pointed out by the High Court that in the case of a goods vehicle, the tax was Rs. 2,000 per year for a goods vehicle with a load capacity of over five tons, *i.e.* 135 maunds. Assuming that such a vehicle could be reasonably used for 200 days in a year, the tax amounted to Rs. 10 per day for about 140 maunds of goods carried over any length of the roads in Rajasthan. This worked out to be about Re. 1 for 14 maunds, *i.e.* almost an anna a maund.

To determine whether the tax in question is compensatory or not, the matter will have to be examined from three points of view: (i) from the point of view of formula used in imposing the tax; (ii) from the point of view of result, *i.e.* the relationship between the total amount collected through the tax and the expenditure involved in providing the facilities; and (iii) from the point of view of *account* to which the tax collected was going.

There is a difference in approach on the above points between the Australian and American cases. S. K. Das, J., refers to the two Australian decisions, *Armstrong* v. *State of Victoria* (No. 2)[29] and

28a. A.I.R. 1958 Raj. 117.
29. (1957-58) 99 C.L.R. 28.

Commonwealth Freighters Pty. Ltd. v. *Sneddon*[30] in support of his proposition that the tax imposed is for the service provided by the State, though the facts in those two Australian cases were quite dissimilar[31] to the facts in the case under comment.[32] It will be useful to examine the Australian and American decisions in considering the correctness of the majority approach.

Firstly, with regard to the formula used in imposing tax, whereas the tax in the *Armstrong*[33] and *Commonwealth Freighters* cases was at a rate per mile of the highway travelled, in the *Automobile* case it was at a consolidated rate. The High Court of Australia in *Hughes and Vale Pty. Ltd.* v. *State of N.S.W.*[34] (No. 2) had declared a consolidated tax

30. (1959–60) 102 C.L.R. 280.

31. Subba Rao, J. in his concurring opinion reviews the Australian decisions and also refers to the Australian decisions mentioned above without considering the facts and decision reached in those cases.

The Rajasthan High Court when the case under comment was before it also referred, in support of its proposition that a tax having indirect impediment on trade and commerce does not fall within the coverage of Art. 301, to *Hughes & Vale Proprietary Ltd.* v. *State of N.S.W.* (No. 1), 93 C.L.R. 1, which was not a tax case and the Act in question was declared invalid by the Privy Council because of its licensing provisions. Further, the Rajasthan High Court did not consider the subsequent case, *Hughes & Vale Pty. Ltd.* v. *State of N.S.W.* (No. 2) 93 C.L.R. 127, decided in 1955, in which a somewhat similar tax as in the *Automobile* case was declared invalid by the Australian High Court.

32. Analysing the *Armstrong* (case No. 2) Dixon, C.J., in the *Commonwealth Freighters* case stated: "But from the decisions both by the minority and by the majority of the court certain features emerged which the road charge preserved, features on which the decision in favour of its validity may be taken to depend. First and formost, it was a charge at a rate per mile of the highway or highways travelled.....Thirdly, the charge was calculated by reference to the tare weight of the vehicle and a portion of the load capacity.....Sixthly, there was no reason to suppose that the rate comprised or would yield any element representing capital cost. Seventhly, although the actual computation or estimation of the rate might be the result of a survey of the average cost of maintenance for all roads, that would not necessarily derogate from its fairness or reasonableness at a ton-mileage charge levied on heavier traffic likely to use predominantly main highways....Last and perhaps most important feature of all, the law required that all moneys received from the charge should be payable to a road maintenance account and should not be applied otherwise than upon maintenance of public highways." 102 C.L.R. 292-3.

33. In this case the tax involved was to be paid by every commercial goods vehicle of load capacity exceeding four tons and not engaged in conveying certain specified goods at one-third of a penny per ton of the sum of—(a) the tare weight of the vehicle; and (b) forty per cent of the load capacity of the vehicle per mile of public highway travelled. This was one of the factors for upholding the particular tax in question by the Australian High Court.

34. (1954–56) 93 C.L.R. 127.

imposed at the time of registration of the motor vehicles invalid, *inter alia*, on the ground that the tax bore no reasonable relationship to the use of highway by a motor vehicle. It was stated there: "The fact is that in neither case has the tax any definite relationship to the use of the roads.....The relation between the various rates of tax is evidently not based on the amount of use which the vehicles make or are likely to make of the roads."[35] There are administrative difficulties in imposing a tax at a rate per mile and the administrative burdens which such a tax may impose alike on the tax payers themselves and the government may justify in ignoring such a key factor as mileage provided the tax is otherwise reasonable. It is difficult to provide a formula which meticuously gives exact compensation to the State for the use of its highways by a vehicle having regard to its type, weight, mileage travelled, etc. "Rough approximation rather than precision"[36] would be enough.

In the United States the Supreme Court of that country has upheld in several cases a flat tax on motor vehicles.[37] In *Capital Greyhound Lines* v. *Brice*,[38] the Court held the formula by which particular taxes were imposed to be irrelevant, so long as the tax was justified by the result.

Secondly, considering the tax from the result, the Court in the *Automobile* case took into account capital expenditure on the construction of new roads also. Thus the court found an expenditure of about Rs. 65 lakhs on maintenance of old roads and making of new roads, and income of about Rs. 35 lakhs from the tax in the year 1954-55. In the *Armstrong* case the High Court of Australia in upholding the tax had found that the rate of tax would not yield any element representing capital cost. The approach of the Australian High Court

35. *Ibid.*, pp. 181-82. In the *Automobile* case, Hidayatullah, J., in his dissenting opinion, while considering whether the tax was compensatory or not stated: "A vehicle travelling a hundred miles and another travelling only one mile have to pay an identical sum of tax. How then can it be said that it involves a fair recompense for the wear and tear of the roads". It is, however, difficult to understand his opinion. According to him, this was not a tax which the trader had to bear in common with others. But according to S. 4 of the Act which was the charging section the tax was to be paid by all the owners of vehicles whether engaged in trade or not.

36. *International Harvester Co.* v. *Evatt*, 329 U.S. 416, 422.

37. See for instance, *Hicklin* v. *Coney*, 290 U.S. 169; *Aero Mayflower Transit Co.* v. *Board of Railroad Commns.* 332 U.S. 495; *Capitol Greyhound Lines* v. *Brice*, 339 U.S. 542: *Bode* v. *Barrett*, 344 U.S. 583.

38. 339 U.S. 542.

consistently has been not to take into account the capital expenditure on roads. Thus in the *Armstrong* case it was stated by Dixon, C.J.:

> "That conception is that the charge is no more than fair recompense for the actual use made of the highway having regard, not only to the wear and tear to which every user of it contributes, but to the costs of maintenance and upkeep, its imposition may not be incompatible with the freedom guaranteed by s. 92 . . . Again, to impose the capital costs of road construction upon the traffic would not seem consistent with s. 92".[39]

The approach of the American cases is, however, different. In the United States the tax is regarded compensatory even though it is a fair contribution to the cost of constructing and maintaining of the roads.[39a] There is no reason why such an approach should not be adopted in India. The need for good roads cannot be overemphasized in the context of India's economic development.[40] Further, India compares very poorly in mileage with other countries considering her territory

39. 99 C.L.R. 46. Also see *Commonwealth Freighters Pty. Ltd.* v. *Sneddon*, 102 C.L.R. 280; *Hughes & Vale Proprietary Ltd.* v. *State of N.S.W.* (No. 2) 93 C.L.R. 127. In the *Hughes* case again it was stated by Dixon, C.J. that "It does not seem logical to include the capital cost of new highways or other capital expenditure in the costs taken as the basis of the computation." At p. 176.

39a. Thus it was stated by the Supreme Court of that country in *Interstate Transit, Inc.* v. *Lindsey*, 283 U.S. 183 at 185 that: "While a State may not lay a tax on the privilege of engaging an interstate commerce . . . it may impose even upon motor vehicles engaged exclusively in interstate commerce a charge, as compensation for the use of the public highways, which is a fair contribution to the *cost of constructing and maintaining them* and of regulating the traffic thereon . . . ." Emphasis supplied. See also *Capitol Greyhound Lines* v. *Brice*, 339 U.S. 542 where the state tax was upheld even though the attorney for the State had conceded that the tax was allocated to the construction and maintenance of the State highways.

40. "To-day, more than at any time before in the economic history of this country, the value of good and ample road mileage is recognized. Although the railways have become the most important means of transport, especially from port areas, even railway interests do not dispute that, to meet the internal demands, it is not only desirable but imperative to allot a greater share to the roads in the country's transport system. Viewed from a purely economic angle roads are any day a better proposition. Thus, road construction needs only a third of the outlay needed for railways. Furthermore, the operating costs on roads work out much lower than the present average railway rate of Rs. 6.10 per ton-mile for revenue-earning traffic." Annual number 1962, Eastern Economist, *Roads and Road Transport*, p. vi of the blue pages.

and pupulation.[41] Finally, the condition of these mileage itself is described in sobering words by the Planning Commission.[42] If the states are debarred from imposing taxes which may be a fair contribution to costs of construction of highways, the road construction programme in the States would certainly get a great setback which may not be in the national interest.[43] The competition from the railways owned by the Central Government acts as a check on the States' tendency to put the tax rate at a very upward point and to have too ambitious road programmes which is an excellent check in favour of the people against too much taxation.

Thirdly from the point of view of account to which the tax collected was credited, in the *Automobile* case the amount collected was not put into a separate road fund but was going to the general revenues of the State. In the Australian decisions, one of the facts emphasised in upholding the state tax[44] was the maintenance of separate road account. The absence of such a procedure in the State tax involved in the *Automobile* case is, however, an infirmity which does not go to the root of the matter and so long as the State was spending

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41. "

Country	*Road Mileage* Per sq. mile of territory	Per 100,000 of population
U.K.	3.24	384
France	3.03	1,502
U.S.A.	1.00	1,834
Spain	0.38	251
Ceylon	0.38	115
India	0.25	82"

Road Transport Reorganisation Committee Report, 1959, p. 4.

42. "About 60% of the total mileage consists of earth roads only. Of the total road mileage in the country, about 15,000 miles constitute the National Highways but only about 2,300 miles of these have a two-lane carriage way; the rest is all one lane. There are also about 1,000 miles of National Highways which have only one lane waterbound macadam or low surface instead of cement concrete or bitumen surface The National Highways as well as the State Highways have a crust thickness of nine to ten inches which, according to technical experts, is inadequate for the present volume and intensity of traffic. Moreover there are numerous missing bridges on the arterial routes." *The Third Five Year Plan*, p. 549.

43. It may be argued that it would really not be so because even if the State motor vehicles taxation laws are declared invalid by the judiciary on the ground that they are taking into account costs of construction of the highways, they could be saved after obtaining presidential assent as proved by Art. 304(b) of the Constitution However, the difficulties involved in obtaining presidential assent are too obvious to be mentioned.

44. See *supra*, f.n. 32.

money on the maintenance of roads it seems immaterial whether a separate account is maintained or not. In the United States also in determining the compensatory nature of the tax it has been held to be immaterial whether the proceeds of the tax collected are going to the separate fund or to the general fund.[45]

Probably the majority opinion of the Indian Supreme Court in taking the liberal aspects of both the American and the Australian law was not impervious to the above mentioned economic needs of the country and the value of their forward looking decision is not lost because the differences in the ultimate stand it took from the foreign judgments it cited were not more openly articulated.

S. N. Jain

45. *Aero Mayflower Transit Co.* v. *Board of Railroad Commission*, 332 U.S. 495, 502.