(2015) 08 KAR CK 0390

In the Karnataka High Court

Case No : Writ Petition Nos. 51802/2014, 18973/2013, 16381, 17763-17773/2014, 18971, 35211, 20193, 20206-216, 21946, 22801, 22804-22809, 23292, 28355-28366, 28375, 33437-33447, 24062-24073, 38264, 29800-29811/2013, 9077 and 11329-11331/2015 (T-RES)

Ciftech Solutions Pvt. Ltd. and Others — APPELLANT

Vs

State of Karnataka and Others — RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Income Tax Act, 1922 — Section 34
Income Tax Act, 1961 — Section 149, 150
Karnataka Value Added Tax Act, 2003 — Section 32, 35, 38, 39, 39(1)

Citation : (2015) 08 KAR CK 0390

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : G. Rabinathan and M. Thirumalesh, for the Appellant; A.S. Ponnanna, A.A.G and T.K. Vedamurthy, HCGP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar, J—In these batch of writ petitions, the petitioners have sought for a declaration in the nature of writ of certiorari to declare the first and second provisos to sub-section (1) of Section 40 of the Karnataka Value Added Tax Act, 2003 substituted by Act No. 54/2013 with effect from 01.04.2005 as being beyond legislative competence and thus, illegal, invalid and ultra vires of the Constitution of India and consequently, to quash the respective re-assessment orders.

2. I have heard the arguments of Sriyuths Aravind Kamath, Keshava Bhat A, Thirumallesh M, Suryakanth C.S., T.N. Keshava Murthy and K.J. Kamath appearing for petitioners and Sri A.S. Ponnanna, learned Addl. Advocate General appearing along with Sri T.K. Vedamurthy HCGP for respondent - State.

3. It is the contention of learned Advocates appearing for the petitioners that right accrued to the assessee by virtue of limitation under Section 32 of the Karnataka Value Added Tax Act, 2003 (for short ''Act''), the assessee is not required to maintain books of account beyond five years i.e., after the end of five years of the accounting year prescribed under Section 40 and by virtue of the amended provision, the time barred assessments cannot be re-opened. It is also contended that on expiry of the limitation prescribed under Section 40, the assessee would have the benefit of deemed assessment under Section 38 and as such, the consequential assessment order is without jurisdiction.

4. It is also contended that first and second provisos to sub-section (1) of Section 40 of the Act was inserted by Act No. 17/2012 prospectively with effect from 01.04.2012 by way of substitution of the then existing provision and yet again, it was substituted by Act No. 54/2013 with retrospective effect from 01.04.2005 and as such, re-assessment orders passed are without jurisdiction.

5. It is contended that impugned amendment introducing the first and second provisos to Section 40(1) by Act No. 17/2012 is beyond legislative competence as the same in effect seeks to increase the period of limitation. It is contended that the impugned amendment cannot be construed to authorise the revenue to commence assessment or re-assessment proceedings which before the introduction of the amendment, had by the expiry of the period provided under the unamended Section had become final or time barred. By amendment, the time barred assessment cannot be re-opened and no life can be infused into the tax period in respect of which the limitation prescribed under the unamended law had expired. The retrospective amendment brought to Section 40 is illegal, unconstitutional and ultra vires of the Constitution. It is also contended where a statute alters the rights of the parties or creates fresh liability in regard to the person or creates or imposes obligation upon the persons and thereby alter the existing law, such law cannot be made applicable retrospectively until and unless the statute itself declares to be so by clear and precise words. It is also contended that State Legislature has used the word ''substitution'' and such amendment to the existing provision by substitution cannot be given retrospective effect as law cannot be revived after the expiry of the limitation period for the reason that when the law itself was not in force at the time of amendment, any amendment made thereto by substitution also cannot be given effect and the position earlier to the amendment stands unaltered. In support of their submissions, they have relied upon the following judgments:

6. Per contra, Sri A.S. Ponnanna, learned Additional Advocate General would contend that the legislature has power to legislate prospectively as well as retrospectively and unless there is embargo in the Act not to re-open the assessment, then retrospectivity cannot be given effect to as otherwise, the legislature has such power.

7. It is contended that when a subsequent Act amends an earlier one in such a way as to incorporate itself or to be a part of itself into the earlier Act, then the

earlier Act must be thereafter be read and construed as if altered words had been written into the earlier Act. He would submit that the State Legislature while amending Section 40 of the Act repealed earlier amendment made to Section 40 of the Act with effect from 01.04.2011 and substituted new provision by Act No. 17/2012 in the said place. Hence, the amendment is to be treated as retrospectively amended and therefore, the assessing authorities were right in law in invoking said amended provision and conclude the reassessment within period prescribed under the amendment Act. It is also contended that whenever an amendment Act has to be applied subsequent to the date of amendment, the various unamended provision of the Act have to be read along with the amended provision as though they are part of it. He would submit that amended part of the provision have got incorporated into the Act and as such, the provision of Section 40 of the Act as such should be read.

8. It is also contended that Rule of strict consideration of a taxing statute applies primarily to charging provisions in a taxing statute and has no application to a provision not creating any charge but laying down the machinery for its calculation or its procedure for its collection and such machinery provisions have to be construed by the ordinary rule of construction. He would submit that machinery provisions should be so construed so as to effectuate the liability imposed by the charging section and to make the machinery workable and the point of limitation to conclude the assessment is a matter of procedure. It is contended that intention of the legislature to amend Section 40 of the Act is to make it applicable retrospectively and said amendment cannot be considered as prospective in nature in view of the fact that the amendment made to Section 40 of the Act is to extend the period of limitation for concluding the assessment upto 31.03.2007, therefore, it cannot be treated as prospective in nature. It is also contended that impugned orders being appealable, this Court should refrain from examining the claim on merits since the petitioners have efficacious and alternate remedy available by way of appeal. Hence, he prays for dismissal of the writ petitions.

In support of his submission, he has relied upon the following judgments;

9. Having heard the learned Advocate appearing for the parties, this Court is of the considered view that it will have to be examined as to:

"Whether Section 40 of the Act suffers from the vice of constitutional validity on any ground whatsoever and as such, the consequential reassessment orders passed by the jurisdictional assessing Officers are liable to be set aside or quashed?"

ANALYSIS OF STATUTORY PROVISIONS:

10. Karnataka Sales Tax Act, 1957 came to be replaced by the Karnataka Value Added Tax Act, 2003 with effect from 01.04.2005. Section 38 of the Act provides deemed assessment namely, every dealer is deemed to have been assessed to tax based on the return filed by him under Section 35 except in any case where

the Commissioner may notify the dealer of any requirement of production of accounts in support of a return filed for any period. Section 39(1) of the Act provides for re-assessment of the deemed assessment and Section 39(2) provides for further re-assessment within a period of three years if any further evidence comes to the notice of the prescribed authority or the prescribed authority has reason to believe that whole or any part of the turnover has escaped re-assessment to tax or tax has been under re-assessed or has been re-assessed at a lower rate or any deductions or exemptions have been wrongly allowed. Section 40 of the Act provides for limitation to conclude the assessment under Section 38 or re-assessment under Section 39 of the Act, of which this Court is concerned with in these writ petitions. Hence, Section 40 of the Act as it existed prior to 01.04.2011, with effect from 01.04.2011, with effect from 01.04.2012 and the amendment brought about by Act No. 54/2013 are extracted herein below:

"Prior to 1.4.2011

40. Period of limitation for assessment.--

(1) An assessment under Section 38 or re-assessment under Section 39 of an amount of tax due for any prescribed tax period shall not be made after the following time limits.--

(a) five years after the end of the prescribed tax period; or

(b) three years after evidence of facts, sufficient in the opinion of the prescribed authority to justify making of the re-assessment, comes to its knowledge.

whichever is later."

Between 01.04.2011 to 31.03.2012 as amended by Act No. 12/2011

"40. Period of limitation for assessment.--

(1) An assessment under Section 38 or re-assessment under Section 39 of an amount of tax due for any prescribed tax period shall not be made after the following time limits.--

(a) four years after the end of the prescribed tax period; or

(b) three years after evidence of facts, sufficient in the opinion of the prescribed authority to justify making of the re-assessment, comes to its knowledge.

whichever is later.

Provided that an assessment or reassessment relating to any tax period ending 31st day of March, 2007 shall be made within a period of five years after the end of the prescribed period."

By Act No. 17/2012 Section 40 of the Principal Act came to be amended with effect from 01.04.2012 and Sub-section (1) and (2) came to be substituted as under:

"40. Period of limitation for assessment:

(1) An assessment under Section 38 or re-assessment under Section 39 of an amount of tax due for any prescribed tax period shall not be made after five years after the end of the prescribed tax period.

Provided that an assessment or reassessment relating to any tax period upto the period ending 31st day of March, 2007, shall be made within a period of eight years after the end of the prescribed tax period.

Provided further that an assessment or reassessment relating to any tax period commencing from 1st day of April, 2007 upto the period ending 31st day of March, 2012 shall be made within a period of seven years after the end of the prescribed tax period.

(2) Notwithstanding anything contained in sub-section (1), if any tax is, not paid by a dealer who has failed to get registered though liable to do so or fraudulently evaded attracting punishment under Section 79, an assessment or reassessment may be made within eight years from the end of the prescribed tax period;

Provided that an assessment or reassessment relating to any tax period upto to the period ending 31st day of March, 2007 shall be made under this sub-section within a period of ten years after the end of the prescribed tax period."

The above amendment came to be further amended by Act No. 54 of 2013 whereunder sub-section (1) and (2) of Section 40 was deemed to have been substituted with effect from 01.04.2005.

11. Perusal of the above provisions would indicate that by Act No. 17 of 2012, sub-sections (1) & (2) of Section 40 came to be substituted and two provisos were introduced, whereunder the period of limitation for assessment or re-assessment was enhanced from five years to eight years relating to any tax period upto the period ending 31.03.2007 namely, such assessment or re-assessment should be made within a period of eight years after the end of the prescribed tax period. Likewise, as per Second proviso to sub-section (1) of Section 40, an assessment or reassessment relating to any tax period commencing from 01.04.2007 upto the period ending 31.03.2012 ought to be made within a period of seven years after the end of the prescribed tax period. By Act No. 54 of 2013 the substitution of first and second proviso to sub-section (1) of Section 40 of the Act inserted by Act No. 17 of 2012 deemed to have been substituted with effect from 01.04.2005. It is these two amendments which are impugned in the present writ petitions.

12. As could be seen from Act No. 17 of 2012 as well as Act No. 54 of 2013, amendment to Section 40 in the Principal Act has been brought about by substituting in the first instance, sub-sections (1) and (2) of Section 40 of the Principal Act with effect from 01.04.2012. In the subsequent amendment brought

about i.e., by Act No. 54/2013, sub-sections (1) and (2) of Section 40 is deemed to have been substituted with effect from 1st April, 2005. Thus, the word ''substitution'' occurring in the amendment Act No. 54/2013 acquires significance. In normal parlance the word ''substitution'' means repeal of the earlier provision or to put it differently, the new provision is brought in place of the old provision. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. It has been held by the Hon''ble Apex Court in the case of Zile Singh Vs. State of Haryana and Others, AIR 2004 SC 5100 : (2004) 8 JT 589 : (2005) 141 PLR 85 : (2004) 8 SCALE 659 : (2004) 8 SCC 1 : (2004) AIRSCW 5842 : (2004) 7 Supreme 385 to the following effect:

"24. The substitution of one text for the other pre-existing text is one of the known and well-recognised practices employed in legislative drafting "Substitution" has to be distinguished from "supersession" or a mere repeal of an existing provision.

25. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (see Principles of Statutory Interpretation, ibid., p.565). If any authority is needed in support of the proposition, it is to be found in West U.P. Sugar Mills Assn., v. State of U.P., State of Rajasthan v. Mangilal Pindwal, Koteswar Vittal Kamath v. K. Rangappa Baliga and Co., and A.L.V.R.S.T Veerappa Chettiar v. S. Michael. In West U.P. Sugar Mills Assn., case a three-Judge Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centering around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In Mangilal Pindwal case this court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In Koteswar case a three-Judge Bench of this Court emphasised the distinction between "supersession" of a rule and "substitution" of a rule and held that the process of substitution consists of two steps: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place."

13. There cannot be any dispute to the proposition that a taxing statute is to be strictly construed. In a taxing statute, one has to look merely at what is clearly said. There is no room for any intendment. Nothing is to be read in. Nothing is to be implied. One can only look fairly at the language used. It is not the function of a Court of law to give to the words used in a statute a strained and unnatural meaning to cover the loop holes through which the tax payer may find escape or to transactions which the legislature had thought of them would have been covered by appropriate words. In interpreting a taxing statute, equitable considerations would be alien. The Court would look squarely at the words of the

statute and interpret them. It would interpret a taxing statute in the light of what is clearly expressed. It is not the exercise which would be undertaken by the Courts to imply anything which is not expressed in the provision or in other words the Courts would not undertake to supply the deficiency in the provision if any. It has been held by the Hon''ble Apex Court in the case of Geo Miller and Co. Pvt. Ltd. and Others Vs. State of M.P. and Others, AIR 2004 SC 3552 : (2004) 5 SCALE 747 : (2004) 5 SCC 209 : (2004) 2 SCR 27 Supp : (2004) 136 STC 241 : (2004) AIRSCW 3427 : (2004) 4 Supreme 746 to the effect:

"30. It is a well-settled position of law that in interpreting taxing statutes, one must have regard to the strict letter of the law. If the person/entity sought to be taxed comes within the letter of the law he must be taxed".

14. Yet again, the Hon''ble Apex Court while examining the significance and effect of the expression ''substitute'' in the case of Emp., MGMT of Ramkanali Colliery of M/s. BCCL Vs. Workmen by Secy. Rasht. Colliery Mazdoor Sangh and Another, AIR 2001 SC 1945 : (2001) 90 FLR 182 : (2001) LabIC 1350 : (2001) 1 LLJ 1407 : (2001) 3 SCALE 14 : (2001) 4 SCC 236 : (2001) SCC(L&S) 689 : (2001) 2 SCR 847 : (2001) 2 SCT 411 : (2001) AIRSCW 1556 : (2001) 3 Supreme 44 has held that it is a matter of legislative practice to provide while enacting an amending Act that an existing provision shall be deleted and a new provision substituted. If there is both repeal and introduction of another provision in place thereof by a single exercise, the expression ''substituted'' is used. It is held such deletion has the effect of the repeal of the existing provision and also provides for introduction of a new provision.

15. Keeping these principles in mind, when the impugned provisions are examined, it would be clear that the State Legislature while amending Section 40 of the Act repealed the earlier amendment made to Section 40 of the Act with effect from 01.04.2011 and substituted the new provision of law namely Act No. 17 of 2012 in its place. By virtue of such substitution, the period of limitation of five years for assessment made under Section 38 or reassessment made under Section 39 stood enhanced to eight years relating to any tax period upto the period ending 31st March, 2007 and for the period commencing from 01.04.2007 to the period ending 31st March, 2012, it was enhanced to seven years. Same has been impugned on the ground that it enables the prescribed authority to reopen the assessment already concluded and which had attained finality and which could not have been reopened or reassessed in view of the bar of limitation contained in the unamended provision and as such, there cannot be retrospective operation of the said provision.

16. Statutes of limitation are regarded as procedural. The object of a statute of limitation is not to create any right but to prescribe periods with which legal proceedings may be instituted for enforcement of rights which exists under the substantive law. For instance, to recover the arrears of rent if the limitation prescribed has expired, it still remains "lawfully payable", though not "lawfully recoverable" and as such a plaintiff can sustain a suit for ejectment on the

ground of arrears of rent.

17. Fiscal legislation imposing liability is generally governed by the normal presumption that it is not retrospective and it is cardinal principle of tax law that the law applied is that in force as on the date of enforcement unless otherwise provided expressly or by necessary implication. For this proposition the judgment of the Hon''ble Apex Court in the case of Reliance Jute and Industries Ltd. Vs. Commissioner of Income Tax, West Bengal, AIR 1980 SC 251 : (1979) 13 CTR 186 : (1979) 120 ITR 921 : (1980) 1 SCC 139 : (1980) 1 SCR 906 : (1980) 12 UJ 255 can be looked up.

18. Law of limitation is intended to give certainty and finality to legal proceedings. It has been held by the Hon''ble Apex Court in K.M. Sharma Vs. Income Tax Officer, Ward 13(7), New Delhi, AIR 2002 SC 1715 : (2002) 174 CTR 210 : (2002) 254 ITR 772 : (2002) 4 JT 10 : (2002) 3 SCALE 383 : (2002) 4 SCC 339 : (2002) 2 SCR 1047 : (2002) 122 TAXMAN 426 that a fiscal statute and more particularly, a provision regulating period of limitation must receive strict construction. It has been held to the following effect:

"14. A fiscal statute more particularly, on a provision such as the present one regulating period of limitation must receive strict construction. Law of limitation is intended to give certainty and finality to legal proceedings and to avoid exposure to risk of litigation to litigant for an indefinite period on future unforeseen events. Proceedings, which have attained finality under existing law due to bar of limitation cannot be held to be open for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings, which had already been concluded and attained finality. The amendment to sub-section (1) of Section 150 is not expressed to be retrospective and, therefore, has to be held as only prospective. The amendment made to sub-section (1) of Section 150 which intends to lift embargo of period of limitation under Section 149 to enable authorities to reopen assessments not only on the basis of orders passed in proceedings under the IT Act but also on order of a Court in any proceedings under any law has to be applied prospectively on or after 1.4.1989 when the said amendment was introduced to sub-section (1). The provision in sub-section (1) therefore can have only prospective operation to assessments, which have not become final due to expiry of period of limitation prescribed for assessment under Section 149 of the Act."

19. Under some what similar circumstances, the issue relating to re-opening the assessment under the provisions of the amended Rule namely, Bengal Sales Tax Rules, 1941 came up for consideration before the Hon''ble Apex Court in the case of Commercial Tax Officer and others Vs. M/s. Biswanath Jhunjhunwala and another, (1996) 6 AD 616 : AIR 1997 SC 357 : (1996) 7 JT 600 : (1996) 6 SCALE 211 : (1996) 5 SCC 626 : (1996) 5 SCR 286 Supp : (1996) AIRSCW 3721 : (1996) 6 Supreme 436 whereunder the assessments concluded on 17.02.1969 and 26.03.1969 was sought to be re-opened on 07.11.1974 under the provisions of the amended sub-rule (5) of Rule 80. The said Rule prior to

amendment and subsequent to amendment was as under:

"Prior to amendment:

"80.(5) The Commissioner or any other authority to whom power in this behalf has been delegated by the Commissioner, shall not, of his own motion, revise any assessment made or order passed under the Act or the rules thereunder if -

xxx

(ii) the assessment has been made or the order has been passed more than four years previously."

After amendment:

"80.(5) The Commissioner or any other authority to whom power in this behalf has been delegated by the Commissioner, shall not, of his own motion, revise any assessment made or order passed under the Act or the rules thereunder if --

xxx

(ii) the assessment has been made or the order has been passed more than six years previously."

The legality of these notices was called in question before the High Court of Calcutta and it was held that right to re-open the assessments concluded on 17.02.1969 and 26.03.1969 stood barred under the unamended provision and therefore, the notices were bad in law. It was held that by the amendment of the Rule, assessments which had been completed could be revised within six years of the date of such completion, but when the right to revise the assessments under the unamended provision of the Rule stood barred on the date of the amendment was made, such assessments could not be re-opened or revised. It was further held that said notification did not either expressly or by necessary implication confer any power of revision of assessments which stood barred on the date on which it was issued. Reversing the said finding, it came to be held by the Hon''ble Apex Court that clear meaning of the notification amending the Rule will have to be looked into and if there being no doubt about the meaning, the amendment brought about by the said notification must be given full effect. It has been held by the Hon''ble Apex Court to the following effect:

"12. What, therefore, we have to seek is the clear meaning of the said Notification. If there be no doubt about the meaning, the amendment brought about by the said Notification must be given full effect. If the language expressly so states or clearly implies, retrospectivity must be given with effect from 1st November, 1971, so as to encompass all assessments made within the period of six years theretofore, whether they have become final by reason of the expiry of the period of four years or not.

13. By reason of the said Notification, with effect from 1-11-1971, Rule 80(5)(ii) has to be read as barring the Commissioner (or other authority to whom power

in this behalf has been delegated by the Commissioner) from revising of his own motion any assessment made or order passed under the Act or the rules if the assessment has been made or the order has been passed more than six years previous to 1-11-1971. Put conversely, with effect from 1-11-1971, Rule 80(5)(ii) permits the Commissioner (or other authority) to revise of his own motion any assessment made or order passed under the Act or the rules provided the assessment has not been made or the order passed more than six years previously. This being the plain meaning, the said Notification must be given full effect. Full effect can be given only if the said Notification is read as being applicable not only to assessments which were incomplete but also to assessments which had reached finality by reason of the earlier prescribed period of four years having elapsed. Where language as unambiguous as this is employed, it must be assumed that the legislature intended the amended provision to apply even to assessments that had so become final: if the intention was otherwise, the legislature would have so stated."

20. A plain reading of the above dicta would clearly indicate that with effect from 1st November, 1971, amendment to clause (ii) of sub-rule (5) of Rule 80 of Bengal Sales Tax Rules, 1941 was brought about by notification issued on 30.03.1974 and by reason of said notification, the Commissioner or other authority was barred from revising of his own motion any assessment made or order passed under the Act or Rules if the assessment had been made or order has been passed more than six previous years to 01.11.1971. In other words, it came to be held that with effect from 01.11.1971, the amended Rule permitted the Commissioner to revise of this own motion any assessment made or order passed under the Act or the Rules provided the assessment has not been made or the order passed more than six years previously. Thus, it can be noticed that when the language of the notification indicated that the legislature intended the amended provision to apply even to assessment that it had so become final by reason of the earlier prescribed period of four years having lapsed.

21. It is well settled that no statute shall be construed to have a retrospective operation until its language is such that would require such a conclusion. The exception to this Rule is enactments dealing with procedure. The law of limitation being a procedural law, is retrospective in operation in the sense that it will also apply to proceedings pending at the time of enactment as also to proceedings commenced thereafter. However, where the right to such action is barred under the law of limitation in force before the new provision came into operation and a vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right.

22. Keeping these principles in mind, when the amended provisions are perused namely, the two provisos to sub-section (1) of Section 40 introduced by Act No. 17/2012 would indicate that any assessment or re-assessment relating to any tax period up to the period ending 31.03.2007 shall be made within a period of eight years after the end of the prescribed tax period. In other words, any

assessment or re-assessment proceedings relating to the period 31st March, 2007 if commenced, shall be concluded within a period of eight years after the end of prescribed tax period.

Re: W.P. No. 51802/2014

23. For the assessment year 2006-07, prescribed authority issued a proposition notice dated 25.11.2013 on the ground that he desires to satisfy himself that the returns filed for the tax period 2006-07 under the CST Act, 1956 are in accordance with prescribed Rules. Thereafter, re-assessment order came to be passed on 25.03.2014 (Annexure-A) which has been questioned as one barred by limitation prescribed under Section 40 of the Act and without jurisdiction. For the tax period ended on March, 2007, the limitation for assessment under Section 38 or re-assessment under Section 39 was five years which was to end on 31.03.2012. By Act No. 12/2011 the words "four years" found in clause (a) of sub-section (1) was substituted with the words "five years". Thus, the period of four years has got enlarged to five years and as per sub-section (1) of Section 40, the limitation existed upto 31.03.2012, sub-section (1) of Section 40 was substituted by Act No. 17/2012 whereunder two provisos to sub-section (1) was added, whereby the period of limitation was extended to eight years and seven years respectively as provided under the said provisos. This amendment was further substituted by Act No. 54/2013 which indicates that sub-section (1) of Section 40 is deemed to have been substituted with effect from 1st April, 2005 itself. The said amendment would authorise making of assessment or re-assessment before the expiration of eight years from the end of the particular assessment year. Thus, it would be immaterial if the period of assessment or reassessment under unamended provision had expired. What is to be looked into is, the completion of the assessment or re-assessment under the provisos to Sub-section (1) of Section 40 which is to be done before the expiration of eight years of that particular assessment year. Thus, the assessment for the year 2006-07 could be re-opened upto 31.03.2015. In other words, such assessment or re-assessment under Section 38 or Section 39 will have to be completed within eight years of the particular assessment year.

24. Under similar circumstances, the Hon''ble Apex Court in Addl. Commissioner (Legal) and Another Vs. Jyoti Traders and Another, AIR 1999 SC 526 : (1998) 8 JT 60 : (1998) 6 SCALE 141 : (1999) 2 SCC 77 : (1998) 3 SCR 67 Supp : (1998) AIRSCW 3825 : (1998) 8 Supreme 517 was examining as to whether a completed assessment under the UP Sales Tax law can be re-opened after the prescribed period by virtue of said period having been enlarged by amending the law. In the said case, sanction given by the Commissioner of Sales Tax to re-open and notices issued pursuant to such sanction, were after more than four years with reference to assessment year 1985-86 under Section 21 of the UP Trade Tax Act, 1948 before its amendment. Such notices were under challenge before the Allahabad High Court which found favour with the assessee. On said judgment being assailed by the revenue before the Hon''ble Apex Court, appeal

came to be allowed by concluding date of amendment of proviso to Section 21(2) of the Act does not control its retrospective operation. It has been held by the Hon''ble Apex Court as under:

"25. The two decisions in the cases of The Ahmedabad Manufacturing & Calico Printing Co. Ltd. and Biswanath Jhunjhunwalla & Anr. are more closer to the issue involved in the present case before us. They laid down that it is the language of the provision that matters and when meaning is clear, it has to be given full effect. In both these cases, this Court held that the proviso which amended the existing provision gave it retrospectively. When the provision of law is explicit, it has to operate fully and there could not be any limits to its operation. This Court in Biswanath Jhunjhunwalla case said that if the language expressly so states or clearly implies, retrospectivity must be given to the provision. Under Section 34 of the Income Tax, 1922, it is the service of the notice which is sine qua non, an indispensable requisite, for the initiation of assessment or reassessment proceedings where income had escaped assessment. That is not so in the present case. Under sub-section (1) of Section 21 of the Act before its amendment, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or reassess the dealer according to law. Sub-section (2) provided that except as otherwise provided in this Section, no order for any assessment year shall be made after the expiry of 4 years from the end of such year. However, after the amendment, a proviso was added to Sub-section (2) under which Commissioner of Sales Tax authorizes the assessing authority to make assessment or reassessment before the expiration of 8 years from the end of such year notwithstanding that such assessment or reassessment may involve a change of opinion. The proviso came into force w.e.f. 19-2-1991. We do not think that Sub-section (2) and the proviso added to it leave anyone in doubt that as on the date when the proviso came into force, the Commissioner of Sales Tax could authorise making of assessment or reassessment before the expiration of 8 years from the end of that particular assessment year. It is immaterial if a period for assessment or reassessment under sub-section (2) of Section 21 before the addition of the said proviso had expired. Here, it is the completion of assessment or reassessment under Section 21 which is to be done before the expiration of 8 years of that particular assessment year. Read as it is, these provisions would mean that the assessment for the year 1985-86 could be reopened up to 31-3-1994. Authorisation by the Commissioner of Sales Tax and completion of assessment or reassessment under sub-section (1) of Section 21 have to be completed within 8 years of the particular assessment year. Notice to the assessee follows the authorisation by the Commissioner of Sales Tax, its service on the assessee in not a condition precedent to reopen the assessment. It is not disputed that a fiscal statute can have retrospective operation. If we accept the interpretation given by the respondents, the proviso added to sub-section (2) of Section 21 of the Act becomes redundant. Commencement of Act can be different than the operation of the Act though sometime, both may be the same. The proviso now added to sub-section (2) of Section 21 of the Act does not put any embargo on the Commissioner of Sales Tax not to reopen the assessment if period, as prescribed earlier, had expired before the proviso came into operation. One has to see the language of the provision. If it is clear, it has to be given its full effect. To reassure oneself, one may go into the intention of the legislature in enacting such provision. The date of commencement of the proviso to Section 21(2) of the Act does not control its retrospective operation. Earlier the assessment/ reassessment could have been completed within four years of that particular assessment year and now by the amendment adding proviso to Section 21(2) of the Act it is eight years. The only safeguard being that it is after satisfaction of the Commissioner of Sales Tax. The proviso is operative from 19-2-1991 and a bare reading of the proviso shows that the operation of this proviso relates and encompasses back to previous eight assessment years. We need not refer to the provisions of Income Tax Act to interpret the proviso to Section 21(2) the language of which is clear and unambiguous and so is the intention of legislature. We are, thus, of the view that High Court was not right in quashing the sanction given by the Commissioner of Sales Tax and notices issued by the Assessing Authority in pursuance thereof."

25. Thus, viewed from the angle of retrospective operation also, it requires to be held that in the instant case, the provisos to sub-section (1) of Section 40 having been amended with effect from 01.04.2012 by Act No. 17/2012 and subsequently, by Act No. 54/2013 sub-sections (1) and (2) of Section 40 having been held as deemed to have come into effect from 01.04.2005 itself, it has to be necessarily held that assessment/re-assessment proceedings initiated cannot be held as initiated within time prescribed under Section 40. By way of illustration, this Court has already explained in W.P. No. 51802/2014 as to how the re-assessment order is well within time and same explanation holds good for other writ petitions also.

26. For the reasons aforestated, the contentions raised by the learned Advocates appearing for the petitioners cannot be accepted and it stands rejected.

Hence, I proceed to pass the following:

ORDER

(1) Writ petitions are hereby dismissed.

(2) This order of dismissal would not come in the way of petitioners challenging the assessment/re-assessment orders before the jurisdictional appellate authority in accordance with law.

(3) In the event of such appeals being filed in accordance with the provisions of the Act within eight weeks from today, appellate authority is directed not to insist for application for condonation of delay being filed.

(4) No order as to costs.

Ordered accordingly.

