

(2011) 09 DEL CK 0457

In the Delhi High Court

Case No : Writ Petition (C) No's. 274 and 3001 of 2010

Dharam Pal Satya Pal Ltd.

APPELLANT

Vs

The Commissioner, Value Added Tax and Another

Reliance Infrastructure Ltd. Vs Commissioner of Trade Taxes
and Others

RESPONDENT

Date of Decision : 02-09-2011

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11, 11A
Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 265
Delhi Sales Tax Act, 1975 — Section 106, 106(2), 43, 44, 46
Delhi Value Added Tax Act, 2004 — Section 106, 106(2), 106(3), 16, 34
General Clauses Act, 1897 — Section 6
Gold (Control) Act, 1968 — Section 115(2)
Income Tax Act, 1922 — Section 24(2), 35, 35(5)
Income Tax Act, 1961 — Section 297

Citation : (2011) 185 DLT 76 : (2011) 188 ECR 114 : (2011) 46 VST 138

Hon'ble Judges : Manmohan, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Kailash K. Ahuja, for Commissioner of VAT in WP C Nos. 274, 3001 of 2010, 8620, 10287, 10311 and 10312 of 2009 and Avnish Ahlawat, for Dy. Commissioner, GNCTD in WP C No. 974 of 2010, S. Ganesh, Ruchir Bhatia, Sumit Batra, Sushil Verma, in WP C Nos. 274 and 3001 of 2010, P.K. Sahu, Prashant Shukla, D.M. Singh, in WP C Nos. 8620, 10287, 10311 and 10312 of 2009, Rajesh Jain and Neetika Khanna, in WP C No. 974 of 2010, for the Appellant; Parag P. Tripathi, ASG, Shadan Farasat, S.B. Jain for Commissioner of Trade Tax, Kailash K. Ahuja, for Commissioner of VAT in WP (C) Nos. 274, 3001 of 2010, 8620, 10287, 10311 and 10312 of 2009 and Avnish Ahlawat, for Dy. Commissioner, GNCTD in WP (C) No. 974 of 2010, for the Respondent

Final Decision : Disposed Off

Judgement

Dipak Misra, C.J.—In this batch of writ petitions, the centripetal issue that has emerged for consideration is whether the Commissioner under the Delhi Value Added Tax Act, 2004 (for brevity, "the DVAT Act") can exercise suo motu power

of revision u/s 74A of the DVAT Act in respect of assessments that have been completed under the Delhi Sales Tax Act, 1975 (for short, "the DST Act"). Be it noted, when these petitions were listed before the Division Bench, the learned Counsel for the Assessee - Petitioner contended that in view of the decisions rendered in International Metro Civil Contractors Vs. Commissioner of Sales Tax/VAT and Deputy Commissioner Sales Tax/VAT, Special Zone, and L.G. Electronics (India) Ltd. Vs. Commissioner of Trade and Taxes, and also regard being had to the terms employed u/s 106 of the DVAT Act which deals with repeal and savings, a suo motu revisional power could not have been exercised. Combating the said submissions, it was urged by the learned Counsel for the Department that in accordance with the law laid down in the aforesaid decisions, an amendment had been brought into force from the date of enactment of the DVAT Act, i.e., 1.4.2005 and, therefore, the suo motu power of revision was kept alive at the commencement of the statute. Hence, there is no illegality in the initiation of the revisional proceeding. The learned Counsel also contended that the interpretation placed by the Division Bench on Section 106 of the DST Act is not correct if the language employed in the said provision is appositely appreciated with studied scrutiny.

2. After hearing the learned Counsel for the parties at length and regard being had to the submissions, the Division Bench thought it appropriate to refer the matter to a larger Bench and, accordingly, in the concluding paragraphs, it stated as follows:

23. From the submissions raised at the Bar, it is noticeable that the legislature has initially introduced Section 74A w.e.f. 24.11.2005 and after the decision was rendered in International Metro Civil Contractors (supra) has brought the said Section into effect from 1.4.2005. The question that emerges is whether by such incorporation with retrospective effect the revisional power is saved. That apart there has been a debate with regard to the interpretation placed by the Division Bench u/s 106 of the Act. Additionally, a further cavil has been raised with regard to the applicability of Bengal Act to Delhi.

24. In view of the aforesaid, we are disposed to think that the decisions rendered in International Metro Civil Contractors (supra) and LG Electronics (India) Ltd. (supra) require reconsideration by a larger Bench apart from the fact that there has to be an authoritative pronouncement of law on this score. We are disposed to think so as the legislature has presumed that the Division Bench possibly would have upheld the action had the amendment would have come into effect w.e.f. 1.4.2005. That apart, learned Additional Solicitor General has seriously contended that the interpretation placed on Section 106 is not correct and the said submission has been seriously opposed by Mr. Ganesh, learned senior counsel for the Petitioners. Ordinary, we would have proceeded to address the same but the first question, we are inclined to think, really requires to be addressed.

3. On the basis of the aforesaid order, the matters have been placed before us.

4. Keeping in view the commonality of the controversy, we think it appropriate to exposit the facts from W.P.(C) No. 3001/2010. Invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the Petitioner, a company incorporated under the Companies Act, 1956, has called in question the legality and validity of the initiation of the revisional proceedings against the Petitioner by issuance of notice dated 08.04.2010 u/s 74A read with Section 106 of the DVAT Act by the Commissioner, Trade Taxes, Delhi, the first Respondent herein, purporting to revise the orders of the Additional Commissioner dated 14.01.2008 and 25.11.2008 and to restore the order passed by the assessing authority on 30.03.2006. It is pleaded that the orders of the assessing authority as well as that of the first appellate authority relate to the assessment year 2004-05 to which the DST Act is applicable and not the provisions of the DVAT Act which came into force with effect from 01.04.2005. It is contended that the initiation of the revisional proceedings against the Petitioner is wholly without jurisdiction and without proper authority of law inasmuch as the power of revision engrafted in Section 74A of the DVAT Act cannot be pressed into service in respect of orders passed under the provisions of the DST Act. That apart, the provision of Section 74A of the DVAT Act has no application at all to the year 2004-05 during which the said provision had not come into force. It is urged that the proceedings being fundamentally unsustainable are ab initio void and, hence, deserve to be lanced in exercise of the inherent and equitable jurisdiction of this Court.

5. It is put forth that if Section 74A is read in conjunction with Section 106 of the DVAT Act, it is clear as day that the power of suo motu revision does not rest any more with the first Respondent and, therefore, recourse to the same could not have been taken for initiating a suo motu revision. Be it noted, certain aspects have been highlighted with regard to the merits of the case or initiation which need not be adverted to while answering this reference as we are only concerned with the existence of inherent jurisdiction for exercise of power of the revisional authority for initiation of the proceeding.

6. A counter affidavit has been filed by the answering Respondents contending, inter alia, that after the decisions rendered in International Metro Civil Contractors (supra) and LG Electronics (India) Ltd. (supra), Section 74A of the DVAT Act has been amended by the Amendment Act, 2009 whereby Sub-section (5) has been inserted to the said section as a consequence of which Section 74A has become operational with effect from 01.04.2005. It is put forth that the result of the aforesaid amendment is that the defect pointed out by this Court in the aforesaid two decisions stand obliterated and as a fallout thereof, the legislative intention becomes clear to confer the power of suo motu revision on the Commissioner. Reference has been made to Section 106 of the DVAT Act to highlight that the power rests with the Commissioner for exercise of suo motu power under the DVAT Act in respect of the orders passed under the DST Act. Quite apart from the above, various aspects have been highlighted to show how the petition is totally devoid of merit.

7. We have heard Mr. S. Ganesh, Sr. Advocate with Mr. Ruchir Bhatia, Mr. Sumit Batra, Mr. Sushil Verma, Mr. Rajesh Jain, Ms. Neetika Khanna, Mr. P.K. Sahu, Mr. Prashant Shukla, Mr. D.M. Sinha, advocates for the Petitioners and Mr. Parag P. Tripathi, learned ASG with Mr. Shadan Farasat, Mr. S.B. Jain, Ms. Avinish Ahlawat and Mr. Kailash K. Ahuja, Advocates for the Respondents.

8. The submission of Mr. Ganesh, learned senior counsel appearing on behalf of the Petitioner, is that the DST Act was repealed on 01.04.2005 and the DVAT Act was brought into force and in the absence of any provision in the Act especially Section 106 which deals with repeal and savings, suo motu revision u/s 74A of the DVAT Act cannot be initiated. The learned senior counsel has heavily relied on the Division Bench decisions in International Metro Civil Contractors (supra) and LG Electronics (India) Ltd. (supra). It is urged by him that Section 106(3) of the DVAT Act refers to the power conferred under the DST Act and Section 106(2) refers to the term "right" and the said term cannot be interpreted to include the "power" to vest jurisdiction upon the Commissioner to exercise the suo motu power of revision. Section 106 of the DVAT Act is an exhaustive provision on the subject of savings and on a keen scrutiny of the said provision, it would be quite vivid that the same does not save the exercise of power of suo motu revision. The learned senior counsel has canvassed that after the decision rendered in International Metro Civil Contractors (supra), the legislature by the subsequent amendment has made Section 74A of the DVAT Act retrospectively applicable with effect from 01.04.2005 and as a consequence of which the power to exercise suo motu revisional power gets extended in respect of orders passed under the DVAT Act from 1st April, 2005 but definitely it does not confer power upon the Commissioner to initiate suo motu revisional proceeding that stood concluded under the DST Act. It is his further submission that Section 6 of the General Clauses Act, 1897 has no application to the instant case as the same only applies to the repeal of central enactment and not to the repeal of a state enactment. That apart, contends Mr. Ganesh, when there is a saving clause in the repealing enactment, Section 6 of the General Clauses Act would have no application and the matter has to be decided exclusively on the interpretation of the saving provision. The language employed u/s 106 of the DVAT Act excludes the applicability of the provision enshrined u/s 6 of the General Clauses Act as the language employed in the said section clearly intends to the contrary. Section 6 creates a fiction to the effect that for the purpose of savings, the provision of the repealed act would apply as if the repealing act had not been passed but in the instant situation, in contrast, Section 106 of the DVAT Act creates a fiction for the purpose of saving that the provisions of the repealing act would apply as if the provisions of the repealing act were in force and, therefore, there is a complete scheme inherent under the said provision and nothing else can be allowed into the said realm. Quite apart from the above, the learned senior counsel has submitted with immense force that the provision of Section 6 of the General Clauses Act is not applicable to Delhi.

9. It is also canvassed by Mr. S. Ganesh, learned senior counsel, that the

legislature clearly intended to put the controversy that had arisen under the DST Act to rest and, therefore, the same cannot be allowed to be re-opened by taking recourse to Section 74A of the DVAT Act and further the decision in International Metro Civil Contractors (supra) has not been appositely appreciated and its ratio decidendi has been erroneously applied to mean that by making Section 74A applicable from the commencement of the DVAT Act, the power of exercise of suo motu revision is saved. The learned senior counsel would further submit that the language employed in Section 74A is absolutely restricted and confined and, therefore, the action taken under the DVAT Act does not pertain even remotely to any order of assessment that has attained finality under the DST Act.

10. To buttress his submissions on the various aspects, he has placed reliance on the decisions in Ravula Subba Rao and Another Vs. The Commissioner of Income Tax, Madras, Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Vs. Janatha Expeller Company, , Indira Sohanlal Vs. Custodian of Evacuee Property, Delhi and Others, , Thyssen Stahlunion Gmbh Vs. Steel Authority of India Ltd., Hari Shankar v. Rao Girdhari Lal Chowdhary, AIR 1963 SC 698, State of Kerala Vs. K.M. Charia Abdullah and Co., , Kailash Nath Agarwal and Others Vs. Pradeshia Industrial and Investment Corporation of U.P. Ltd. and Another, , Ram Kanai Jamini Ranjan Pal Pvt. Ltd. Vs. Member, Board of Revenue, W. Bengal, , Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others, Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others, G.K. Choksi and Company Vs. Commissioner of Income Tax, Gujarat, and Hindustan Construction Company Ltd. Vs. The State of Haryana and Others,

11. Mr. N.K. Kaul, learned senior counsel, Mr. P.K. Sahu and the other learned Counsel appearing for the Petitioners have supported the contentions raised by Mr. Ganesh. Additionally, in certain cases, it has been urged that there is no justification for exercising the suo motu power of revision.

12. Mr. Parag Tripathi, learned Additional Solicitor General appearing for the Respondents, per contra, submitted that this Court in International Metro Civil Contractors (supra) and LG Electronics (India) Ltd. (supra) interfered as Section 74A was brought in the statute book on 16.11.2005 and, therefore, when the amendment was brought with effect from 1.4.2005, it would convey that the intention of the legislature became quite clear that the exercise of suo motu power of revision was kept alive at the time of commencement of the statute. The learned Counsel for the revenue further submitted that Section 106 has to be read in conjunction with the amendment and the conjoint reading of the said provisions would make it clear as crystal that the legislature intended that the suo motu power of revision would be applicable to the proceedings under the DST Act. It is also canvassed by him that the Division Bench in International Metro Civil Contractors (supra) has not correctly interpreted Section 106 of the DVAT Act regard being had to the fact that Section 74A of the Act had already been brought on the statute book with effect from 16.11.2005. Elaborating the said submission, it is contended by Mr. Tripathi that by the time Section 74A was

incorporated in the statute book, if the power to initiate suo motu revision existed and the limitation did not expire, a right is accrued in favour of the revenue to do so in exercise of power u/s 74A of the Act. It is urged by him that when a repeal is followed by re-enactment and unless a different intention bears, the applicability of Section 6 of the General Clauses Act is protected even when the re-enactment has a saving clause of its own. The learned Counsel for the revenue has submitted that by virtue of the notification dated 31st May, 1951 issued by the Ministry of Home Affairs, the provisions of the Bengal General Clauses Act, 1891 have been made applicable to the State of Delhi and Section 8 of the said Act is *pari materia* to Section 6 of the General Clauses Act.

13. It is further submitted that the decision rendered in *International Metro Civil Contractors (supra)* does not lay down the correct law as it concludes that the intention of the legislature was to do away with the right of the Department to revise any erroneous order of assessment as there was no intention of the legislature to preserve the same and further it has erred in holding that Section 106(3) creates a deeming fiction to the effect that anything done or any action taken under the repealed Act is to be deemed to have been done or taken under the DVAT Act and as revision is neither an enabling power nor a substantive right, it is not protected u/s 106(2) of the DVAT Act.

14. The learned Additional Solicitor General, to bolster his submissions, has placed reliance on *T.S. Baliah Vs. T.S. Rengachari, Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another, Commissioner of Income Tax Vs. Shah Sadiq and Sons, , Bansidhar and Others Vs. State of Rajasthan and Others, , Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc., , Kolhapur Canesugar Works Ltd. (supra), Shiv Shakti Co-Housing Society (supra), Gammon India Ltd. Vs. Spl. Chief Secretary and Others, Kalawati Devi Harlalka Vs. Commissioner of Income Tax, West Bengal and Others, and M/s Maheshwari Agencies v. State of U.P. and Ors., (2010) UPTC 872 (All)*.

15. First we shall advert to the analysis made and the view expressed by the Division Bench in *International Metro Civil Contractors (supra)* which has been followed in *LG Electronics (India) Ltd. (supra)*. The Division bench in the first case came to hold that on the repeal of the DST Act coupled with the omission of the revisionary power of the Commissioner under the DVAT Act, the said power got completely obliterated and effaced and did not survive after 1.4.2005 and hence, no action could be taken against the Assessee. The Bench, taking note of the fact that Section 74A of the DVAT Act was inserted on 16.11.2005, held that the same did not resuscitate or resurrect the long-dead revisionary power conferred on the Commissioner u/s 46 of the DST Act as it had no retrospective effect and the legislature, by amendment, having brought Section 74A of the DVAT Act, could not have really bestowed on the Commissioner the revisionary power. It is worth noting that the Division Bench referred to Section 46 of the DST Act and Section 106 of the DVAT Act and addressed the meat of the matter

as follows:

Coming to the meat of the matter, we are required to consider whether, after the DVAT Act came into force, the Revenue could issue the show cause notice dated July 18, 2007 seeking to revise the assessment order dated March 31, 2003. To answer this question, we would need to consider the following three issues:

1. Whether any proceedings for revising the assessment order were at all initiated by the Revenue before March 31, 2005 when the DST Act and the Works Contract Act were repealed? If not, the impact thereof.
2. If the answer to the above question is in the affirmative, whether the proceedings initiated by the Revenue were saved by the DVAT Act on the repeal of the DST Act and the Works Contract Act on March 31, 2005?
3. What is the effect (if any) of the omission, in the DVAT Act, of the power to revise an assessment that was available to the Commissioner u/s 16 of the Works Contract Act read with Section 46 of the DST Act.

16. While dealing with the first question, the Bench referred to the decisions in *Gajraj Singh* (supra) and *Gammon India Ltd.* (supra) and opined thus:

The effect of this is, quite clearly, that the process of a revisionary proceeding, not having been initiated by the Revenue, dies a natural death on the repeal of the DST Act and the Works Contract Act - unless the right of the Revenue is otherwise saved by the DVAT Act; an issue that we will presently consider.

X X X

Applying the law laid down by the Supreme Court, it must be held that by virtue of Section 106(2) of the DVAT Act since the previous operation of the DST Act and the Works Contract Act was saved, the assessment order being a transaction past and closed under those statutes, was also saved. As far as Section 106(3) of the DVAT Act is concerned, the deeming provision only means that an order passed under the repealed statute would have to be dealt with as if the repealing Act was in force on that day and the powers and jurisdiction of the authorities under the repealing Act must also be deemed to have been in force on the date when that order was passed. But, it must be remembered that the DVAT Act did not provide for any revisionary power and so, no such power or jurisdiction was available on the date of the assessment order, if the deeming fiction is taken to its logical conclusion. However, it is not necessary for us to go to that extent, because the next issue that we are required to consider is the right or entitlement (if any) of the Revenue to revise the order of assessment. Is that saved by the provisions of the DVAT Act, even if everything is assumed in favour of the Revenue?

Thereafter, the Bench came to hold that since before the order dated 12.8.2004 could be acted upon, its operation had been stayed by the Court on 20.9.2004 in a miscellaneous application filed by the Petitioner in the first writ petition and the

revenue did not take any steps to have that stay lifted or vacated which, therefore, continued till 18.11.2005 by which time the DST Act and the Works Contract Act were repealed, there was no operative order as on 1.4.2005 as far as the Petitioner was concerned. Further, relying upon the decision in *Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras*, the Bench opined that as the order dated 12.8.2004 was set aside by the Court on 3.11.2006 in the second writ petition, no proceedings for revising the assessment order were pending on 1.4.2005 thereby resulting in restoration of the position as it stood on the date of the passing of the order which has been quashed. As a consequence, it was eventually held that even if the Commissioner had any right (assuming it to be a right) to revise the assessment order, since neither he nor his delegate ever exercised that right till 1.4.2005, the right stood extinguished when the DST Act and the Works Contract Act were repealed.

17. While dealing with the second question, namely, whether the revisionary proceedings (if they were initiated) were saved by the DVAT Act, the Bench looked into two "sub-issues" and, thereafter, addressed whether notwithstanding anything else, Section 106(3) of the DVAT Act comes to the rescue of the revenue and whether Section 106(2) of the DVAT Act saves the previous operation of the DST Act. The Division Bench referred to the decision in *Indira Sohanlal (supra)* and came to hold that even if revisionary proceedings had been initiated in respect of the Petitioner u/s 46 of the DST Act, they would have to be dealt with under the DVAT Act, but as the Legislature would have it, the DVAT Act did not provide for revisionary proceedings in the first instance. These were introduced with effect from 16.11.2005. Consequently, even if it were to be argued that the revisionary proceedings initiated by the Revenue were somehow or the other "saved", they died a legal death because they could not be dealt with under the DVAT Act since no revisionary jurisdiction was provided for under the DVAT Act when enacted and enforced on 1.4.2005.

18. After so stating, the Bench referred to the decisions in *Bishambar Nath Kohli and Others Vs. State of Uttar Pradesh and Others*, and *Gajraj Singh (supra)* and expressed the view that by virtue of Section 106(2) of the DVAT Act since the previous operation of the DST Act and the Works Contract Act was saved, the assessment order being a transaction past and closed under those statutes, was also saved. As far as Section 106(3) of the DVAT Act is concerned, the deeming provision only means that an order passed under the repealed statute would have to be dealt with as if the repealing Act was in force on that day and the powers and jurisdiction of the authorities under the repealing Act must also be deemed to have been in force on the date when that order was passed. Thereafter, the Bench proceeded to lay down that it must be remembered that the DVAT Act as originally enacted did not provide for any revisionary power and so, no such power or jurisdiction was available on the date of the assessment order, if the deeming fiction is taken to its logical conclusion.

19. After so stating, the Bench adverted to three kinds of revisionary powers and referred to the decisions in *Siemens India Ltd. Vs. The State of Maharashtra*, *Hari Shankar (supra)*, *Swastik Oil Mills Ltd. Vs. H.B. Munshi*, *Deputy Commissioner of Sales Tax, Bombay*, *Shiv Shakti Coop. Housing Society (supra)* and *Hindustan Construction Company Ltd. (supra)* and eventually held thus:

The power of revision is an enabling power available to a superior authority to correct an error committed by a subordinate authority. *Shiv Shakti (supra)* is not limited in its application to Section 115 of the CPC but follows the law earlier laid down, generally, on the revisionary power of an authority.

The power of revision being only an enabling power and not a substantive right, it is not saved by Section 106(2) of the DVAT Act, which only saves a "right" or an "entitlement", both being synonymous. Consequently, whichever way one considers the problem, the assessment order dated March 31, 2003 could not have been re-opened by the Revenue in the manner that we are concerned with.

(Underlining by us)

20. Be it noted, after dealing with second issue, the Division Bench proceeded to address the third issue which pertains to the effect of omission of a provision in a legislation subsequent to the repeal of an earlier legislation. The Bench noted the fact that no revisionary proceedings were initiated by the revenue till 1.4.2005 and, thereafter further referred to the certain aspects in *Gajraj Singh (supra)*, *Kolhapur Canesugar Works Ltd. (supra)*, *Shiv Shakti Coop. Housing Society (supra)* and *Gammon India Ltd. (supra)* and opined that where an existing power is not conferred on the given authority by the repealing statute, it cannot survive the repeal; nor can its ghost be invoked to revive a right / power that gets closed on the repeal of an enactment. Furthermore, if a power does survive, it does so under the new statute and not under the repealed statute.

21. It is worth noting, a contention was advanced by the revenue that as the Assessee had incurred a liability to pay the tax, all subsequent actions taken by the revenue to recover the tax are permissible and, hence, the initiation by revisional proceeding could survive. The Bench did not accept the submission on two counts, namely, the question of the liability of the Assessee to pay tax had come to an end on the passing of the assessment order, which gave it an entitlement to a refund and, secondly, the liability of the Assessee to tax would have arisen, if at all, only after the revision of the assessment order and until then the revenue was liable for a refund.

22. After so holding, the Division Bench proceeded to state as follows:

The intention of the legislature was clear on 1st April, 2005 that it did not wish the Commissioner to have the power of revision, otherwise it would certainly have been provided for. In any event, we cannot read into the repealing statute a substantive provision that is not provided for.

Thereafter, the Division Bench referred to the decision in *Southern*

Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others, and opined thus:

The consequence of this is that the repeal of the DST Act and the Works Contract Act coupled with the omission of the revisionary power of the Commissioner under the new enactment, that is, the DVAT Act completely obliterated or effaced that power such that it did not survive after 1st April, 2005. There is nothing in the DVAT Act to suggest that the power was intended to survive or be acted upon.

It is true that a fresh power of revision was conferred on the Commissioner by an amendment brought about to the DVAT Act on November 16, 2005 when Section 74A was inserted in that Act but this did not resuscitate or resurrect the long-dead revisionary power conferred on the Commissioner u/s 46 of the DST Act. It had no retrospective effect.

23. The Division Bench in International Metro Civil Contractors (Supra) placed reliance on Gajraj Singh (Supra) wherein it has been held that rights of action which are dependent upon a statute, and which are still inchoate and not perfected by final judgment, are lost by the repeal of the statute from which they stem. It has been observed in Gajraj Singh (Supra) that the repeal of statute operates to divest all rights accruing under the repealed statute and all proceedings not concluded prior to the repeal, since inchoate rights are by definition not vested rights and are understood to arise from the statute and fall with its repeal. The Bench also referred to the decision in Gammon India Limited (Supra) which states that the proceedings which might not have culminated into a final judgment prior to the repeal would abate at the consummation of the repeal. Relying on the same, the Bench observed that the process of a revisionary proceeding, not having been initiated by the Revenue, dies a natural death. The Bench also opined that even if the Commissioner had any right to revise the assessment order, the "right" stood extinguished when the DST Act was repealed. Reliance was placed on Indira Sohanlal (supra) and the opinion has been expressed, as has been indicated herein before, that even if a revisionary proceeding had been initiated in respect of the Assessee u/s 46 of the DST Act, the said power died a legal death as the legislature did not provide for revisionary proceedings in the first instance.

24. Reliance was placed on Hari Shanker (supra) wherein a distinction between an appeal and a revision was drawn stating that the right of appeal carries with it a right of rehearing on law as well as fact, unless the statute conferring the right of appeal limits the rehearing in some way but the power to hear a revision is generally given to a superior Court so that it may satisfy itself that a particular case has been decided according to law. Eventually, the Bench opined that the power of revision, being only an enabling power and not a substantive right, is not saved by Section 106(2) of the DVAT Act, which only saves a "right" or an "entitlement", both being synonymous. On the basis of the aforesaid analysis, the Division Bench has held that the power of revision earlier available with the Commissioner has suffered a legal death.

25. It is seemly to note here that the aforesaid judgment was assailed before the Apex Court in SLP(C) No. 7470/2008 titled Commissioner Value Added Tax, New Delhi and Anr. v. International Metro Civil Contractor and their Lordships, vide order dated 31.3.2008, had passed the following order:

Having regard to the facts of the present case we are of the view that the Commissioner ought not to have interfered with the Assessment Order u/s 46 of the Delhi Sales Tax Act particularly when the requirements of that Section do not stand complied with. We make it clear that the larger issue regarding the applicability of Delhi Value Added Tax Act 2004 as also question of repeal of Delhi Sales Tax Act and related issues discussed in the impugned judgment of the High Court are kept open.

As far as the cost is concerned we are of the view that in the facts and circumstances of the case it would not be proper to impose the cost of rupees twenty six lakhs on the Department. Ultimately it is the tax payer who has to bear the burden. The order passed by the High Court as far as cost is concerned stands cancelled.

The SLP is disposed of accordingly.

In view of the aforesaid, the legal issue that has been raised by the learned Counsel for the parties has been kept open and, hence, we proceed to dwell upon the same.

26. The heart of the matter is whether the Division Bench has correctly interpreted Section 106 of the DVAT Act to come to the conclusion that by insertion of Section 74A from 16.11.2005 in the DVAT Act, the same did not resuscitate or resurrect the long-dead revisionary power conferred on the Commissioner u/s 46 of the DST Act. That apart, the question that emanates for consideration is whether by incorporating Section 74A with effect from 1.4.2005 the legislature made its intendment clear to invest the power of revision in respect of assessments framed under the DST Act with the Commissioner.

27. To appreciate the controversy, it is apposite to refer to Section 46 of the DST Act, which reads as follows:

46. Revision of orders prejudicial to revenue. - The Commissioner may call for and examine the records of any proceeding under this Act and if he considers that any order passed therein by any person appointed under Sub-section (2) of Section 9 to assist him is erroneous in so far as it is prejudicial to the interests of Revenue, he may, after giving the dealer an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment and penalty (if any) imposed or canceling the assessment and penalty (if any) imposed and directing fresh assessment:

PROVIDED that a final order under this section shall be made before the expiry of

five years from the date of the order sought to be revised.

28. On a plain reading of Section 46 of the DST Act, it is manifest that the said provision confers power on the Commissioner to exercise suo motu power of revision against an order passed by an officer subordinate to him and covered by Section 9(2) of the DST Act, if the said order was prejudicial to the interest of the revenue. It is worth noting, in the said provision, no time limit was fixed for initiation of the proceeding. However, a period was fixed for passing the final order on the said revision within five years. If the scheme of Section 46 is appositely understood, it clearly conveys that the proceeding has to be initiated and completed within a span of five years. That would be a reasonable approach to understand the schematic import of the provision.

29. At this juncture, we think it apt to refer to Section 47 of the DST Act. It is as follows:

47. Revision of other orders: (1) In the case of any order, other than an order referred to in Section 44 or to which Section 46 applies, passed by a person appointed under Sub-section (2) of Section 9 to assist him, the Commissioner may, either on his own motion or on an application filed in accordance with such rules as may be prescribed, call for the record of any proceeding under this Act in which any such order has been passed and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such orders thereon, not being an order prejudicial to the dealer, as he thinks fit:

PROVIDED that the Commissioner shall not revise any order under this Sub-section,-

(a) where an appeal against the order is pending before the appellate authority u/s 43; or

(b) where if such appeal lies, the time within which it may be filed has not expired; or

(c) where in the case of the second appeal, the dealer has not waived his right of appeal.

(2) The Commissioner shall not on his own motion revise any order under this section after the expiry of two years from the date of the order sought to be revised.

(3) In the case of an application for revision under this section by the dealer, the application shall be made within two years from the date on which the order in question was communicated to him or the date on which he otherwise comes to know of it, whichever is earlier.

On a scrutiny of the anatomy of the aforesaid provision, it is clear as day that the said provision covers cases which are not governed by Section 46. An order u/s 47 cannot be prejudicial to the interest of the dealer. The said provision confers a right on the dealer to apply for revision within two years from the date of

communication of the order of assessment, subject to conditions stipulated in the said provision. It also conferred a power on the Commissioner to revise the order suo motu. For the said purpose, the period fixed was two years from the date of the order that was sought to be revised. Thus, there was a clear distinction between Sections 46 and 47 of the DST Act.

30. The DVAT Act came into force on 1.4.2005 repealing the DST Act, as has been stated hereinbefore. Initially there was no provision within the DVAT Act conferring power of revision on the Commissioner. Section 74A was inserted in the DVAT Act with effect from 16.11.2005. The said provision has been further amended making it effective from 1.4.2005 when the DVAT Act came into force.

31. The Division Bench in *International Metro Civil Contractors* (supra) dealt with a case which arose within a period from 1.4.2005 till 16.11.2005 and came to the conclusion that the power of revision did not exist at that time. It is apt to note that the decision in *International Metro Civil Contractors* (supra) proceeded on the foundation that the right of revision is distinct from the right of appeal and the right to revise is only an enabling power and not a right and because of the aforesaid analysis, it came to hold that Sub-section (2) of Section 106 did not save the "power". The Division Bench noticed that the inclusion of power in Sub-section (3) of Section 106 and the absence of the expression "of the power" in Sub-section (2) could only lead to a singular conclusion that the power was not saved by Sub-section (2) of Section 106 of the DVAT Act.

32. At this juncture, we think it appropriate to refer to Section 74A of the DVAT Act as it stands today. The said provision reads as follows:

74A Revision.

(1) After any order including an order under this section or any decision in objection is passed under this Act, rules or notifications made there under, by any officer or person subordinate to him, the Commissioner may, of his own motion or upon information received by him, call for the record of such order and examine whether: -

(a) any turnover of sales has not been brought to tax or has been brought to tax at lower rate, or has been incorrectly classified, or any claims incorrectly granted or that the liability to tax is understated, or (b) in any case, the order is erroneous, insofar as it is prejudicial to the interest of revenue, and after examination, the Commissioner may pass an order to the best of his judgment, where necessary.

(2)(a) For the purpose of the examination and passing of the order, the Commissioner may require, by service of notice, the dealer to produce or cause to be produced before him such books of accounts and other documents or evidence as he thinks necessary for the purposes aforesaid.

(b) Notwithstanding anything contained to the contrary in Section 34, no order under this section shall be passed after the expiry of four years from the end of

the year in which the order passed by the subordinate officer has been served on the dealer.

(c) Notwithstanding anything contained to the contrary in Section 34, where in respect of any order or part of the said order passed by the subordinate officer, an order has been passed by any authority hearing the objection or any appellate authority including the Tribunal or such order is pending for decision in objection or in appeal, or an objection or an appeal is filed, then, whether or not the issues involved in the examination have been decided or raised in the objection or the appeal, the Commissioner may, within five years of the end of the year in which the said order passed by the subordinate officer has been served on the dealer, make a report to the said objection hearing authority or the appellate authority including the Tribunal regarding his examination or the report or the information received by him and the said appellate authority including the Tribunal shall thereupon, after giving the dealer a reasonable opportunity of being heard, pass an order to the best of its judgment, where necessary.

(3) If the Commissioner has initiated any proceeding before an appropriate forum against an issue which is decided against the revenue by an order of the Tribunal, then the Commissioner may, in respect of any order, other than the order which is the subject matter of the order of the Tribunal, call for the record, conduct an examination as aforesaid, record his findings, call for the said books of account and other evidence and pass an order as provided for under this section as if the issue was not so decided against the revenue, but shall stay the recovery of the dues including the interest or penalty, insofar as they relate to such issue until the decision by the appropriate forum and after such decision, may modify the order of revision, if necessary.

(4) No proceedings under this section shall be entertained on any application made by a dealer or a person.

(5) Notwithstanding anything contained in any judgment, decree or order of any court, the provisions of this section shall be deemed to have come into effect with effect from the 1st April, 2005.

33. The submission of Mr. Ganesh, learned senior counsel, is that the power of revision exercised u/s 74A has to be restricted to an order passed under the DVAT Act on certain conditions precedent being satisfied. For the aforesaid purpose, he has laid emphasis on the words "any decision in objection is passed under this Act, rules or notification made thereunder" and if the said terms are read in the context of Section 106 which deals with repeal and savings, it cannot telescope its horizon to an order under the DST Act. Per-contra, Mr. Tripathi, learned Additional Solicitor General, would contend that a conjoint reading of Section 74A and Section 106 would categorically convey that the power of exercise of suo motu revision has been saved and an order passed under the DST Act is deemed to be an order under the DVAT Act.

34. In this context, we may profitably reproduce Section 106 of the DVAT Act. It

is as follows:

106. Repeal and savings.

(1) The Delhi Sales Tax Act, 1975 (43 of 1975), the Delhi Tax on Entry of Motor Vehicles into Local Areas Act, 1994 (4 of 1995), the Delhi Sales Tax on Works Contract Act, 1999 (9 of 1999), and the Delhi Sales Tax on Right to Use Goods Act, 2002 (13 of 2002) as in force in Delhi (referred to in this section as the "said Acts"), are hereby repealed.

(2) Notwithstanding Sub-section (1) of this section, such repeal shall not affect the previous operation of the said Acts or any right, title, entitlement, obligation or liability already acquired, accrued or incurred there under.

(3) For the purposes of Sub-section (2) of this section, anything done or any action taken including any appointment, notification, notice, order, rule, form or certificate in the exercise of any powers conferred by or under the said Acts shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the date on which such thing was done or action was taken, and all arrears of tax and other amounts due at the commencement of this Act may be recovered as if they had accrued under this Act.

(Emphasis supplied)

35. The aforesaid provision is required to be scrutinized and understood from a proper perspective. The Division Bench in *International Metro Civil Contractors (supra)* and *L.G. Electronics (India) Ltd. (supra)* has expressed the view that when the provision of Section 74A came into force on 16.11.2005, no revisionary jurisdiction could have been invoked prior to the said date, as the said provision was not there when the Act came into force on 1.4.2005. That apart, the Bench also opined that where existing power is not conferred on the given authority by the repealing statute, it cannot survive and the introduction of Section 74A in the Act cannot also resurrect the said power. Thus, the test would be whether a right had accrued or vested in favour of the Assessee and whether in law there was any obligation or any liability had been acquired, accrued or incurred under the DST Act and further the impact and import of the incorporation of Section 74A in the Act would have to be analysed.

36. In this context, we may refer with profit to the term "obligation" found in Ramanatha Aiyar's Law Lexicon, page 1335. The word "obligation" has been defined as under:

"OBLIGATION" includes every duty enforceable by law.

37. At this juncture, we may refer with profit to the exact connotative expanse of the terms, namely, "liability" and "liability incurred". The term "liability" encapsulates the concept of one being liable/duty bound to fulfill the obligation or obligated to satisfy a thing in law.

38. The Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edition 2005, defines "liability" in the following terms:

The condition of one who is subject to a duty which may be judicially enforced; that for which one is liable.

An obligation to do a particular thing; obligation to pay money.

The term "liability" is one of at least double signification. In one sense it is the synonym of duty, the correlative of right; in this sense it is the opposite of privilege or liberty. If a duty rests upon a party, society is now commanding performance by him and threatening penalties. In a second sense, the term "liability" is the correlative of power and the opposite of immunity. In this case society is not yet commanding performance, but it will so command if the possessor of the power does some operative act. If one has a power, the other has a liability. It would be wise to adopt the second sense exclusively. Accurate legal thinking is difficult when the fundamental terms have shifting senses." WILLIAM R. ANSON, Principles of the Law of Contract 9 (ARTHUR L. CORBIN ed., 3d Am. Ed. 1919).

"LIABILITY" or responsibility is the bond of necessity that exists between the wrongdoer and the remedy of the wrong. This vinculum juris is not one of mere duty or obligation; it pertains not to sphere of ought but to that of must." JOHN SALMOND, Jurisprudence 364 (GLANVILLE L. WILLIAMS ed., 10th ed.1947).

A broad term; it may be employed as meaning the state of being liable, that for which one is responsible or liable, obligation in general; that condition of affairs which gives rise to an obligation to do a particular thing to do enforced by action; responsibility; legal responsibility. See also 21 Cal. 319.

"LIABILITY", as defined in Abb. Law Dict. Means, "amenability or responsibility to law; the condition of one who is subject to a charge or duty which may be judicially enforced.

39. Thus, the term "liability" is of large and comprehensive signification, and when construed in its usual and ordinary sense, it expresses the state of being under obligation in law or in justice.

40. In First National Bank Ltd. v. Seth Sant Lal, AIR 1959 Punjab 328, it has been held thus:

14. According to Bouvier's Law Dictionary "Liability" is "the state of being bound or obliged in law or justice.

According to Anderson's Law Dictionary, "liability" means "the state of being bound or obliged in law or justice to do, pay or make good something; legal responsibility.

According to Oxford English Dictionary, "liability" means "the condition of being liable or answerable by law or equity.

"Liability" as defined in Black's Law Dictionary means, "the state of being bound or obliged in law or justice to do, pay or make good something; legal responsibility.

Webster defines liability to be the state of being bound or obliged in law or justice; responsibility.

15. The term "liability" is of large and comprehensive signification, and when construed in its usual and ordinary sense, in which it is commonly employed, it expresses the state of being under obligation in law or in justice.: see also Feil v. Coeur D'alene, 43 Lawyers Reports Annotated (N.S.) 1095 (1103): Benges Adm'r v. Bowling, 51 South Western Reporter 151.

41. The term "accrued" basically conveys an existent or a present enforceable right, a fixed right or an assessed or determined right. Thus, the concept of finality or vested right is inherent in it. There has to be a final determination, a final fixation.

42. In this context, it is apposite to refer to certain authorities where the concept of liability has been dealt with. In Kapur Chand Pokhraj Vs. The State of Bombay, , while dealing with the concept of liability, their Lordships opined as follows:

The words "liability incurred" are very general and comprehensive and ordinarily take in both civil and criminal liability. In Criminal Law the term "liability" covers every form of punishment to which a man subjects himself by violating the law of the land. There is no reason why the all comprehensive word should not carry its full import but be restricted to civil liability alone? The context does not compel any such limitation. Indeed, there is no conceivable ground to impute to the Legislature the intention to wipe out the offences committed under the repealed Act, when it expressly retained the same offences under the repealing Act. If there was any justification for preserving Civil liabilities incurred under the repealed Act, there was an equal justification to save criminal liabilities incurred under that repealed Act.

43. In Superintendent and Remembrancer of Legal Affairs to Government of West Bengal Vs. Abani Maity, , while dealing with the term "liable", it was stated that it does not necessarily always convey a sense of an absolute obligation or penalty but merely importing a possibility of attracting such obligation, or penalty, even where this word is used along with the words "shall be". Their Lordships have further stated that the court must give effect to the will and inbuilt policy of the legislature as is discernible from the object and scheme of the enactment and the language employed therein.

44. In this context, we may reproduce with profit a passage from Ishwarlal Girdharlal Parekh Vs. State of Maharashtra and Others,

It is well-known that, under the Indian income tax Act, liability to pay income tax arises on the accrual of the income and not from the computation made by the

taxing authorities in the course of assessment proceedings, and that it arises at a point of time not later than the close of the year of account, that assessments particularise the total income of an Assessee and the amount of tax payable.

45. In Commissioner of Income Tax, Bhopal Vs. Shelly Products and Another, the Apex Court has opined thus:

We find considerable force in the submission of the Revenue and it must be upheld. We have earlier noticed the scheme of the Act. Section 4 of the Act creates the charge and provides inter alia for payment of tax in advance or deduction of tax at source. The Act provides for the manner in which advance tax is to be paid and penalises any Assessee who makes a default or delays payment thereof. Similarly the deduction of tax at source is also provided for in the Act and failure to comply with the provisions attracts the penal provisions against the person responsible for making the payment. It is, therefore, quite apparent that the Act itself provides for payment of tax in this manner by the Assessee. The Act also enjoins upon the Assessee the duty to file a return of income disclosing his true income. On the basis of the income so disclosed, the Assessee is required to make a self-assessment and to compute the tax payable on such income and to pay the same in the manner provided by the Act. Thus the filing of return and the payment of tax thereon computed at the prescribed rates amounts to an admission of tax liability which the Assessee admits to have incurred in accordance with the provisions of the Finance Act and the Income Tax Act. Both the quantum of tax payable and its mode of recovery are authorized by law. The liability to pay income tax chargeable u/s 4(1) of the Act thus, does not depend on the assessment being made. As soon as the Finance Act prescribes the rate or rates for any assessment year, the liability to pay the tax arises. The Assessee is himself required to compute his total income and pay the income tax thereon which involves a process of self-assessment. Since all this is done under authority of law, there is no scope for contending that Article 265 is violated.

(Emphasis supplied)

46. From the aforesaid enunciation of law, it is graphically clear that the liability to tax is not dependent on the assessment. In fact, the liability to tax arises because of the charging section. The assessment proceedings have the effect of quantification of the amount. To elaborate, when an order of assessment is framed, a particular sum is determined. Framing of order of assessment has to stand in contradiction with the phraseology "liability accrued or incurred under the taxing statute". Liability is always created by the charging section. Regard being had to the aforesaid principles and keeping in view the language employed in Section 106(2) of the DVAT Act wherein the legislature, while repealing the DST Act, has used the terms "liability accrued" or "incurred there under", it can safely be said that such liability is subject to revision after incorporation of Section 74A in the DVAT Act which conferred the power on the competent authority to exercise suo motu power of revision. It is worth noting, the said provision was brought on the statute book initially from 16.11.2005 and

thereafter from 1.4.2005.

47. Presently we shall advert to the concept of savings provision, the words employed therein and the survival of liability incurred on the backdrop of limitation. In *M/s Shah Sadiq and Sons (supra)*, it has been held that the "savings" provision in the repealing statute is not exhaustive of the rights which are saved or which survive the repeal of the statute under which such rights had accrued. In other words, whatever rights are expressly saved by the "savings" provision stand saved, but, that does not mean that rights which are not saved by the "savings" provision are extinguished or stand ipso facto terminated by the mere fact that a new statute repealing the old statute is enacted. It has been further held that rights which have been accrued are saved unless they are taken away expressly. After so stating, their Lordships have opined thus:

The right to carry forward losses which had accrued under the repealed Income Tax Act of 1922 is not saved expressly by Section 297 of the Income Tax Act, 1961. But, it is not necessary to save a right expressly in order to keep it alive after the repeal of the old Act of 1922. Section 6(c) saves accrued rights unless they are taken away by the repealing statute. We do not find any such taking away of the rights by Section 297 either expressly or by implication.

We have referred to the aforesaid decision for the sole purpose to understand the concept of "accrued right" and "vested right".

48. In *State of Punjab v. Mohar Singh Pratap Singh*, AIR 1955 SC 84, their Lordships have opined that when a fresh legislation comes into being, it is required on the part of a court to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. Their Lordships have proceeded to state that one line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them.

49. In this context, we may refer with profit to a three-Judge Bench judgment in *S.S. Gadgil, Income Tax Officer, Bombay Vs. Lal and Company*, wherein it has been held thus: 12. In considering whether the amended statute applies, the question is one of interpretation i.e. to ascertain whether it was the intention of the Legislature to deprive a tax payer of the plea that action for assessment or re-assessment could not be commenced, on the ground that before the amending Act became effective, it was barred. Therefore the view that even when the right to assess or reassess has lapsed on account of the expiry of the period of limitation prescribed under the earlier statute, the income tax Officer can exercise his powers to assess or re-assess under the amending statute which gives an extended period of limitation was not accepted in *Income Tax Officer, Companies District 1, Calcutta and Another Vs. Calcutta Discount Co. Ltd.*,

(Emphasis supplied)

50. In *T.S. Baliah Vs. T.S. Rengachari*, , it has been held that when the repeal is

followed by fresh legislation on the same subject, the Court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. Their Lordships have proceeded to state that the question is not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. Section 6 of the General Clauses Act, therefore, will be applicable unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new statute and the mere absence of a saving clause is by itself not material.

51. In *Jayantilal Amrathlal Vs. The Union of India (UOI)*, the Constitution Bench, while dealing with the interpretation of Section 115(2) of the Gold (Control) Act, 1968, dealt with the submission that the notice issued under the said Act could no more be operative because under the said statute, there are no provisions for making a declaration relating to the possession of primary gold. The contention was founded on the stand that the period had expired long before the 1968 Act came into force. It was contended that the provisions in the Rules requiring a declaration to be made in respect of the possession of primary gold were inconsistent with the provisions of the Gold (Control) Act, 1968 and, therefore, notice issued under the Rules cannot be considered as being continued under the provisions of the Act. While dealing with the said stand, their Lordships observed that it is true that the Gold (Control) Act, 1968 does not purport to incorporate into that Act the provision of Section 6 of the General Clauses Act, but the provisions therein were not inconsistent with the provision of Section 6 of the General Clauses Act and hence, it was attracted. That apart, their Lordships opined that as the said Act did not exhibit a different or contrary intention, the proceedings initiated under the repealed law must be held to continue. It is worth noting that their Lordships further proceeded to opine as follows:

For ascertaining whether there is a contrary intention, one has to look to the provisions of the Gold (Control) Act, 1968. In order to see whether the rights and liabilities under the repealed law have been put an end to by the new enactment, the proper approach is not to enquire if the new enactment has by its new provisions kept alive the rights and liabilities under the repealed law but whether it has taken away those rights and liabilities. The absence of a saving clause in a new enactment preserving the rights and liabilities under the repealed law is neither material nor decisive of the question

(Emphasis supplied)

52. In *Mysore Rolling Mills (P) Ltd. Vs. Collector of Central Excise, Belgaum*, the Apex Court was dealing with the contention that a notice to show cause was issued more than a year after the last date of the period in question and was barred by limitation. Their Lordships took note of the fact that prior to 6.8.1977, Rule 9, which corresponds to Section 11-A of the Central Excise and Salt Act, 1944, provided a period of one year for taking of proceedings while Rule 10,

corresponding to the amended Section 11 of the Act, prescribed a period of three months for such purpose. The Rules stood amended on 6.8.1977 and by that time, the period of six months was substituted for the period of three months and the period of five years substituted for the period of one year. The tribunal had opined that the period of five years should be applicable to the facts of the case. While dealing with the contention that the notice was barred by limitation and the finding of the tribunal that would be covered by the period of five years, their Lordships opined thus:

5. The only other submission of the Appellant which remains for consideration is the tenability of the contention that the period of limitation under the old provision having expired the five year rule which has been applied was not available to be applied. Undoubtedly, the rule is intended to relate back and cover a period of five years from the date jurisdiction under the rule is invoked. The provision is, therefore, retrospective in operation. It is not the stand of the learned Counsel for the Appellant that only when a period of five years has elapsed from the date of introduction of the rule, jurisdiction under the rule can be exercised in respect of that preceding period of five years. Once the rule comes into existence and jurisdiction under the rule is invoked, it has got to cover a period up to five years preceding the date of issue of notice. The Tribunal has endorsed such action of the departmental authorities. The plea of limitation has no force.

(Underlining is ours)

53. In *Income tax Officer, v. Circle, Madras and Anr. v. S.K. Habibullah*, AIR 1962 SC 918, their Lordships have opined that the orders of assessment are final, subject to the provisions relating to appeals, revisions, reassessment and rectification. The right to rectify an assessment must be exercised in strict compliance with the conditions prescribed by the concerned statute. Thus, where before 1.4.1952, rectification of assessment was not permissible under Clause (1) of Section 35 of the Income Tax Act, 1922 and the power of rectification was conferred for the first time by Clause (5) of Section 35 as from 1.4.1952 and where Section 35(5) does not purport to amend Clause (1) of the said provision, their Lordships held that since the clause is left untouched by the amending statute, to uphold the exercise of the power of rectification to the assessment of firms completed before the date on which the power was invested would be unjustified and would amount to giving a larger retrospective operation than is directed and making a larger inroad upon the finality of the assessment than is permitted by the Legislature.

54. In *Reliance Jute and Industries Ltd. Vs. Commissioner of Income Tax, West Bengal*, their Lordships were dealing with a case which raised a question involving the interpretation of Section 24(2)(iii) of the Indian Income Tax Act, 1922. The Assessee therein had claimed a vested right under the said provision. In that context, their Lordships held thus:

The claim is based on a misconception of the fundamental basis underlying every income tax assessment. It is a cardinal principle of the tax law that the law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication. *Commissioner of Income Tax, West Bengal Vs. Isthmian Steamship Lines, and Karimtharuvi Tea Estate Ltd. Vs. State of Kerala*, . On that principle, it is abundantly clear that when an assessment for the assessment year 1960-61 is to be made and Section 24(2) is invoked, it is Section 24(2) as in force in that assessment year which has to be applied. That is the provision as amended by the Finance (No. 2) Act, 1957. There is no question of the Assessee possessing any vested right under the law as it stood before the amendment.

(Emphasis added)

55. We have referred to the aforesaid decision to highlight whether the Assessee had a vested right. The assessment passed under the DST Act was subject to revision. The question that would fall for consideration is whether it had attained finality. In case it has attained finality, indubitably it conferred a vested right in the Assessee. In case it is not so, it cannot be treated as a vested right as a consequence of which the revisional authority is disabled to exercise the power.

57. In *M/s. P.V. Mohammad Barmay Sons Vs. Director of Enforcement*, a two-Judge Bench of the Apex Court was considering Section 81 of Foreign Exchange Regulation Act (Act 46 of 1973) which repealed the Foreign Exchange Regulation Act, 1947. A contention was canvassed before the Apex Court that the Repealed Act is a dead corpse and no life into it could be blown with the aid of Section 81(2) of the said Act or Section 6 of the General Clauses Act. Their Lordships opined that though the 1973 Act repeals and obliterates the operation of that 1947 Act, yet the penalty, liability, forfeiture or prosecution for acts done while the repealed Act was in force were kept alive despite no action there under being taken under the repealed Act when the repealed Act was in force. It has also been expressed that the rights acquired or accrued or the liabilities incurred or any penalty, forfeiture or punishment incurred during its operation are kept alive. After so stating, their Lordships proceeded to express thus:

6. In *Tiwari Kanhaiyalal and Others Vs. The Commissioner of Income Tax, Delhi*, where prosecution was laid after the repeal of the income tax Act, 1922. The contentions raised was that saving clauses in Section 297 of 1961 income tax Act did not save the punishment incurred under the Repealed Act. Therefore, recourse to Section 6 of General Clauses Act cannot be had, was negative by this Court and held that the repeal had not affected the liability incurred u/s 52 of the income tax Act 1922 and it continued even after its repeal. The same view was reiterated in the *Commissioner of Income Tax Vs. Shah Sadiq and Sons*, Accordingly, we hold that despite repeal of Act 7 of 1947 by operation of Section 6 of the General Clauses Act read with Section 81(2), the penalty incurred by the Appellant continued to subsist and the Respondents are entitled to institute the proceedings, conduct investigation or enquiry and impose such penalty.

58. We have referred to the aforesaid decisions to highlight three aspects, namely, while interpreting a repeal and saving provision of a new enactment, the intention of the legislature is to be seen whether it intends to keep alive the old rights and liabilities or whether it manifests an intention to destroy the same, secondly, if the provision relating to repeal and saving is clear and the rights, obligations and liabilities accrued there under are saved, the reliance on General Clauses Act is not necessary and, thirdly, how the liability subsists and is governed by the limitation provided under the Repealed Act and the new Act.

59. In the present factual matrix, an order of assessment passed under the Delhi Sales Tax Act was subject to revision u/s 46 of the DST Act. The Assessee was given a right to prefer revision u/s 47 of the DST Act. The said order of assessment was subject to appeal and revision under the DST Act. The core issue that has emerged in this batch of petitions is whether by virtue of the language employed u/s 106 of the DVAT Act, the exercise of revisionary power gets totally extinguished.

60. It would not be out of place to refer to a passage from Craies on Statute Law, Seventh Edition, page 403, wherein it has been stated thus:

If the three months' limit imposed by the Act of 1885 had expired before the commencement of the Act of 1904, the offender's prosecution would have been then barred by prescription, and the new Act would not, on coming into force, have destroyed a prescription already acquired.

61. From the aforesaid pronouncements in the field, the following principles can safely be culled out:

(i) The concept of liability "accrued" or "incurred therein" and "obligation" have different connotations.

(ii) The meaning of "right accrued" and "vested right" will depend upon the language of the statute and the intention expressed by the Legislature.

(iii) The intention of the Legislature must be absolutely clear whether it intends to destroy the old liabilities and it would depend upon the entire scheme of the Act.

(iv) An order of assessment is final subject to the provisions relating to appeal, revision, reassessment and rectification.

(v) A statute is not to be interpreted to be retrospective or retroactive to touch the existing final orders.

(vi) Even if no action is taken under the repealed Act, the civil as well as the criminal liability that had incurred under the repealed statute are not obliterated and are kept alive if there is a saving provision.

(vii) A legal proceeding which could have been initiated under the repealed Act continues to subsist if the savings and repeal provision so stipulates subject to

the law of limitation. To elaborate, the right to initiate a legal proceeding can only be obliterated or effaced or meet its legal death if the period of limitation thereon has expired.

62. Regard being had to the aforesaid principles the Scheme of Section 106 of the DVAT Act is required to be scanned. The basic facet of Section 106 of the DVAT Act has to be interpreted on the touchstone of the above culled out principles. Sub-section (1) of Section 106 of the DVAT Act, as it clearly reveals, is a simple repeal of the DST Act. Sub-section (2) saves the right, title, entitlement, obligation or liability already acquired, accrued or incurred under the repealed Act. Sub-section (3) postulates that anything done under the DST Act shall be deemed to be done or taken in exercise of the power conferred by or under the DVAT Act. Thus, three situations, namely, (i) assessment completed and already revised; (ii) assessment completed and revisional power invoked but the process not completed; and (iii) assessment completed, but no revisional power invoked, do contextually emanate.

63. Thus, it is quite clear to us that Section 106(2) of the DVAT Act not only saves the right, title and entitlement but also saves the obligations and the liability. The term "obligation" includes every duty enforceable by law. It is an expression which includes not only duty but something more. The expression "liability incurred there under" has a larger canvas and makes one remain liable under law subject to statutory boundaries. The term "finality" has to be understood in its truest denotation and an order of assessment by itself does not earn the status of being final unless it is totally barred by law to be touched. Section 106(3) of the DVAT Act clearly lays a postulate that an order passed u/s 46 of the DST Act and the process of assessment leading to it is deemed to have been done in exercise of the power conferred under the DVAT Act. What is provided u/s 106(2) is that the repeal shall not affect the previous operation of the DST Act or any right, title, entitlement, obligation or liability already acquired, accrued or incurred there under. On a seemingly scanning of the provision engrafted u/s 46 of the DST Act, a suo motu revision could be initiated and concluded within five years of the order of assessment. In Sub-section (2)(b) of Section 74A of the DVAT Act, a rigor has been attached that no order under this section shall be passed after the expiry of four years from the end of the year in which the order passed by the subordinate officer has been served on the dealer. Section 74A(2)(c) carves out a period of five years under certain other circumstances. The right to a dealer would have attained finality and become a vested or ripened right after the expiry of the period of limitation under the DST Act and if the proceedings are initiated within the period of limitation, the exercise of the suo motu power of revision cannot be treated as illegal. In other words, if the time to exercise the revisionary power had not expired before coming into force of the DVAT Act, the said power could be exercised in respect of an order under the DST Act in terms of Section 74A of the DVAT Act read with Section 106 of that Act.

64. Turning to the previously mentioned three categories of cases, in the first category of cases, wherein assessment has been completed and already revised, by virtue of the language employed in Section 106(3) of the DVAT Act, the order passed has to be considered as an order passed under the DVAT Act. In the second category of cases, wherein assessment has been completed and revisional power has been invoked though the process is not completed, the Assessee has incurred the liability of the order of the Assessing Officer being scrutinized by the Commissioner which includes the revisional power and Sub-section (3) gets attracted. In the third category of cases, where the assessments are completed but no revisional power is invoked, here again Sub-section (3) of Section 106 would be attracted as if the same is deemed to be an order passed under the DVAT Act. If the order of assessment could not have been revised under the DST Act as on 1.4.2005, the power of revision conferred under the DVAT Act cannot be exercised if the time span has expired. To elaborate, if an order of assessment has attained finality in toto and a right has vested in the Assessee, no suo motu power can be exercised as the right fully accrues in favour of the Assessee without having any obligation and further having no liability.

65. Further we may note with profit that the legislature made Section 74A retrospective from the date the DVAT Act came into existence to reaffirm its intendment that it never intended not to confer the power of revision on the revisionary authority. The interpretation placed by us on the language employed u/s 106(2) and 106(3), analysis made hereinbefore on the impact of insertion of Section 74A initially from 16.11.2005 and thereafter to make the provision retrospective from 1.4.2005, clearly conveys that the legislature at all point of time intended to protect the interest of the revenue.

66. At this juncture, we may state with certitude that though a cavil was raised by learned Counsel for both the sides with regard to the applicability of the Bengal General Clauses Act, 1891 to the Government of NCT of Delhi, the same has not been adverted to by us because of the interpretation placed by us under the repeal and savings provision. The said issue is kept open.

67. In view of our aforesaid premised reasons, we proceed to record our conclusions in seriatim:

(a) The interpretation placed by the Division Bench in International Metro Civil Contractors (supra) and LG Electronics (India) Ltd. (supra) on Section 106 of the DVAT Act is not correct.

(b) The conclusion in International Metro Civil Contractors (supra) and LG Electronics (India) Ltd. (supra) to the effect that despite incorporation of Section 74A in the DVAT Act on 16.11.2005, the suo motu revisional proceeding could not be initiated at the commencement of the DVAT Act, i.e., 1.4.2005, as the legislative intendment was clear that on the date the Act came into force the provision pertaining to exercise of suo motu revisionary power did not exist in

respect of the proceedings under the DST Act as the assessment had attained finality and were closed, is incorrect.

(c) The order of assessment framed under the DST Act is deemed to be an order framed under the DVAT Act and on reading of Sections 106(2) and 106(3) in a conjoint manner, it is not correct to state that once the order of assessment has been passed, the transaction is closed and, therefore, the assessment/order is not revisable u/s 74A of the DVAT Act.

(d) The liability incurred or accrued under the DST Act has a larger expanse and a broader canvas and it would in view of Section 106(2) of DVAT Act include initiation of any legal proceeding which is permissible within the period of limitation and till then no final or vested right accrues in favour of the Assessee.

(e) The amendment brought by the legislature retrospectively incorporating Section 74A with effect from 1.4.2005 has been done to further elucidate the legislative intention and has to be given full effect to. The said amendment has been brought in the statute book by *ex abundanti cautela* and in essence, removes the anomaly and is only curative in nature.

(f) The proceeding initiated under the DST Act is saved by the DVAT Act and further the proceedings could be initiated u/s 74A during the period of limitation as stipulated u/s 74A subject to the conditions precedent stipulated therein.

(g) The decisions in *International Metro Civil Contractors* (supra) and *LG Electronics (India) Ltd.* (supra) are overruled to the extent indicated hereinabove.

68. The reference is answered accordingly. The writ petitions be listed before the appropriate Division Bench.