(2018) 07 MP CK 0097

In the Madhya Pradesh High Court

Case No : Writ Petition No.3236 Of 2017

Jindal Agro Oils Balwada & Others APPELLANT

Vs

State Of Madhya Praesh & Others RESPONDENT

Date of Decision : 12-07-2018

Acts Referred:

Madhya Pradesh Value Added Tax (Second Amendment) Act, 2014 — Section 3
Madhya Pradesh Vat Act, 2002 — Section 4, 14, 14(1)(a)
Constitution of India, 1950 — Article 226, 348(3)

Citation : (2018) 07 MP CK 0097

Hon'ble Judges : Pankaj Kumar Jaiswal, J;Sunil Kumar Awasthi, J

Bench : Division Bench

Advocate : Anand Mohan Mathur, Abhinav P. Dhanodkar, Vivek Patwa

Final Decision : Dismissed

Judgement

In this writ petition under Article 226 of the Constitution of India, 1950, the petitioners are challenging the constitutional validity of Madhya Pradesh

Value Added Tax Amendment (Validation) Act, 2017; and prayed that the same be declared as ultra vires, unconstitutional and illegal.

2. The petitioners in this writ petition are registered dealers under the provisions of Madhya Pradesh Value Added Tax Act, 2002 (for short, VAT

Act') and are engaged in the business of manufacture and sale of cotton seed oil from cotton seeds having their respective units at various places in

District Khargone and District Dhar. Cotton seed oil manufactured and sold by the petitioners is taxable commodity specified in Entry No.31 of Part-

II, Schedule II of the VAT Act, taxable at the rate specified in Schedule II. During the course of manufacture / extraction of the cotton oil from the

cotton seeds, â??Oil Cakeâ? is a by-product generated as a result of such process. Manufacture or extraction of cotton oil is not possible without generation of â??Oil Cakeâ? as a byproduct. â??Oil Cakeâ? is a commodity declared tax free under Section 16 by specifying in Entry No.3 of

Schedule I of the VAT Act (as it stood prior to 01.04.2015).

3. For the purpose of manufacture of oil, the petitioners are required to purchase cotton seeds from registered dealers within the State of Madhya

Pradesh as also from the dealers outside the State of Madhya Pradesh, after payment of tax at the rate applicable. Such purchases of raw material

from the registered dealer within the State of Madhya Pradesh, after payment of tax i.e. Input Tax for consumption or use of manufacture of oil,

entitle the petitioners to Rebate of Input Tax (ITR) from the tax payable on sale of oil by such manufactures. Such Input Tax Rebate (ITR) is

available to the petitioners, in accordance with Section 14 (1) (a) (2) of the VAT Act, without any rider regarding proportionate dis-allowance of ITR

in proportion to the generation of the tax commodity viz. â??Oil Cakeâ?? declared tax free under Section 16 of the VAT Act.

4. All the petitioners herein have filed their respective returns with effect from 01.04.2006 and have claimed the full Rebate of Input Tax (ITR) in

respect of purchases of raw material oil seeds made by them, after payment of tax to the selling dealers. The respondent No.2 rejected the claims of

ITR on the basis of the circular issued by the Commissioner of Commercial Tax on the ground that manufacture of oil results in generation of a tax

free commodity, viz. â??Oil Cakeâ?, the benefit of ITR is available on proportionate basis i.e. no ITR will be available to the extent of generation of

tax free commodity â??Oil Cakeâ?. The matter travelled up to the High Court. The Division Benches of Madhya Pradesh High Court, Bench at

Gwalior and Principal Seat at Jabalpur in the case of Ruchi Soya Industriesv. State of MPreported in (2014) 24 STJ 235 and M/s. Shri RamAgro

Industriesv. Commissioner of CommercialTaxreported in (2014) 24 STJ 498 and Indore Bench of Madhya Pradesh High Court in the case of M/s.

Jindal Agro Oil v. Commissioner of Commercial Tax reported in (2014) 24 STJ 685 held that benefit of ITR is available on the entire amount of tax

paid on raw material without any deduction on proportionate basis to the extent of generation of tax free commodity â??Oil Cakeâ? and the principle

of apportionment cannot be invoked. The orders imposing liability was quashed by holding that on the purchase made by the manufacture with regard to raw material, he is entitled to the benefit of setoff on the entire amount of tax and the principle of apportionment cannot be invoked on the ground

that during the process of manufacture of tax free by-product is also produced. Tax paid and amount refundable be refunded to the assessee, in

accordance with law.

5. After the aforesaid judgment, the Governor of Madhya Pradesh has promulgated an Ordinance being Madhya Pradesh Value Added Act

(Amendment) Ordinance, 2014 with effect from 16.09.2014 by inserting an explanation below Sub Clause (6) of Clause (a) of Sub Section (1) of

Section 14 of the Act in following terms: -

â??Explanation : where a manufacturing process results in the manufacture of Schedule I as well as Schedule II goods, Input Tax Rebate should be

computed after apportioning the Input Tax in proportion to the value of Schedule I and Schedule II goods so manufactured.â??

6. The above amendment then became an Act vide Madhya Pradesh Value Added Tax (Second Amendment) Act, 2014 with the modification that

the explanation inserted in the Act by Ordinance has been given a retrospective effect from 01.04.2006. The effect of the above amendment is that

the petitioners are deprived of the benefit of ITR in respect of Input Tax paid by them for purchase of raw material used or consumed by them for / in

the manufacture of Schedule II goods, viz. 'oil' from oil seeds, which was available to the petitioners in terms of Section 14 (1) (a) (2) of the Act, as

interpreted this Court in the above judgments. The said retrospective amendment introduced with retrospective effect was being challenged on the

ground that the amendment with retrospective effect has an effect of taking away benefit of full ITR from the date of its insertion and reduced it on

proportionate basis in proportion to the value of the generation of Schedule I goods, which indirectly amounts to rebate of tax with retrospective effect

or withdrawal of the benefit with retrospective effect, which is not permissible in law.

7. Section 3 of the Madhya Pradesh Value Added Tax (Second Amendment) Act, 2014 provides, as under: -

â??3. Amendment of Section 14

In Section 14 of the Principal Act, - (i) in sub-section (1), in clause (a), after the second proviso, the following explanation shall be inserted, namely:

â??Explanation : where a manufacturing process results in the manufacture of Schedule I as well as Schedule II goods, Input Tax Rebate should be

computed after apportioning the Input Tax in proportion to the value of Schedule I and Schedule II goods so manufactured.â??

(ii) for sub-section (3), the following sub-section shall be substituted, namely:

â??(3) The input tax rebate by a registered dealer under this section shall be adjusted in such manner as may be prescribed towards the tax, interest

and penalty payable by him under this Act or under the Central Sales Tax Act, 1956 (No. 74 of 1956). The balance, if any, may be carried over for

adjustment in the subsequent year and if not carried over, shall be granted by way of refund after assessment of the relevant financial year.â??

(iii) in sub-section (6), in clause (ix), for full stop, the semi colon shall be substituted and thereafter the following clause shall be inserted, namely, -

â??(x) in respect of goods, the bill, invoice or cash memorandum of which does not indicate registration certificate number of the purchasing

registered dealer as mentioned therein by the selling registered dealer.â??

8. Section 14 (1) (a) and Clause II of M.P. VAT Act, which deals with the rebate of input tax is relevant which reads as under :-

â??Sec.14 : Rebate of input tax

(1) Subject to the provisions of sub-section (5) and such restriction and conditions as may be prescribed, a rebate of input tax as provided in this

Section shall be claimed by or be allowed to a registered dealer in the circumstances specified below,(a) Where a registered dealer purchases any

goods specified in Schedule II other than those specified in Part III of the said Schedule within the State of Madhya Pradesh from another such dealer

after payment to him input tax for,-

(1) ....

(2) consumption or use for/in the manufacture or processing or mining of goods specified in Schedule II for sale within the State of Madhya Pradesh

or in the course of inter-state trade or commerce or in the course of export out of the territory of India; or

(5) Consumption or use for/in the manufacture or processing or packaging of goods declared tax free under Section 16, for sale in the course of export

out of the territory of India; or (5-a) Consumption or use for/in the manufacture or processing or packaging, other than mentioned in sub-clause (5) above, and in connection with sale of goods declared tax free under Section 16; or (5-b) Consumption or use as plant, machinery, equipment and parts

thereof for/in generation, transmission or distribution of electrical energy; or]

(6) No input tax rebate under sub-section (1) shall be claimed or be allowed to a registered dealer,(i) in respect of any goods specified in Schedule II

purchased by him from another such dealer for sale but given away by him by way of free sample or gift or given to or received by him by way of

replacement;

(ii) in respect of goods specified in Schedule II for use or consumption for manufacture or processing or mining of goods but the goods manufactured

or processed or mined are given away by him by way of free sample or gift or given to or received by him by way of replacement;

(iii) in respect of goods purchased by him from another such dealer who opts for the composition of tax under the provisions of Section *[11 and 11-

A]; (iv) who opts for composition under Section *[11 and 11-A];

(v) â?¦............[Omitted]

(vi) in respect of plant, machinery, equipment and parts thereof, as may be notified by the State Government.

(vii) in respect of goods, the amount of bill, invoice or cash memorandum of which exceeds rupees forty thousand any payment of which has not been

made by crossed cheque;

(viii) in respect of goods, the amount of tax included in bill, invoice or cash memorandum of which exceeds rupees one thousand and it has not been

authenticated in accordance with the provision of subsection (1-A) of Section 40;

(ix) in respect of goods notified under Section 9-Aâ??

9. In Serial No.3 of Schedule â?" I â??de-oiled cakeâ? including soyameal and cotton â??seed oil cakeâ? was substituted by VAT (Amendment)

Act, 2011 w.e.f. 1.4.2011. Relevant part of Sr. No.3 of VAT Schedule â?" I, reads as under :-

â??3. Aquatic feed, poultry feed and cattle feed including feed supplements, concentrates and additives, grass, hay, straw, [de-oiled cake including

soyameal, cotton seed oil cake and mustard oil cake]â??

10. By VAT (Amendment) Act 2011 the word â??excluding cotton seed oil cake and mustard oil cakeâ? is substituted w.e.f 1.4.2011. Serial No.31

of VAT Schedule â?" II is relevant which reads as under:-

â??31. Edible oils, oil cake, but [excluding cotton seed oil cake and mustard oil cake]â??

In this particular case also the provisions regarding incidence of tax has not been amended. 11. That as already held in the case of Ruch Soya (supra),

the benefit of ITR is available on the entire amount of tax paid on raw material without any reduction on proporti0nate basis to the extent of generation

of tax free commodity â??oil cakeâ?? and the plea of apportionment cannot hold good.

12. The Division Bench of this Court vide order dated 12.08.2016 allowed Writ Petition No.8118/2015 by holding that Explanation to Section 14 of the

VAT Act, 2002 is introduced by MP VAT Amendment Act, 2014 and amended in 2015, would apply prospectively; and observed that the legislature

has power to validate the judicial invalid levy retrospectively by bringing Validation Act. Paragraphs No.28 to 31 of order dated 12.06.2016 passed in

Writ Petition No.8118/2015 read, as under: -

â??28. The 2014 amendment was obviously introduced for the purpose of rectifying the obvious error in Section 14. The object which cannot be

introduced by Explanation since an Explanation cannot be read as changing or as interfering with the incidence of the levy. It is not for us, particularly

when legislative clarity is required since the statutory provision imposes a tax, to untangle the legislative confusion.

29. It appears that the only object of enacting the amended provision is to nullify the effect of the judgment which became conclusive and binding on

the parties to enable the State Government to grant the benefit of ITR without deduction of proporti0nate basis to the extent of tax free commodity

â??oil cakeâ??.

30. In the circumstances, Explanation to Section 14 of the M.P. VAT Act, as introduced by Amendment Act of 2014 and amended in 2015, would

apply prospectively. However, the legislature has power to validate the judicial invalid levy retrospectively by bringing Validation Act.

31. For these reasons, we are of the view that the Explanation to amendment of Section 14 would apply prospectively. The writ petition is allowed.

There shall be no orders as to costs.â??

13. After the judgment dated 12.08.2016 passed in Writ Petition No.8118/2015,

the State Government in exercise of powers conferred under Article

348 (3) of the Constitution of India, 1950, validated the amendment made by Madhya Pradesh Value Added Tax (Second Amendment) Act, 2014 in

Section 4 of VAT Act with retrospective effect by bringing Madhya Pradesh VAT Amentment (Validation) Bill, 2017. As per Clause (2) of the

validation, the amendment in Section 14 of VAT Act came into force with effect from 01.04.2006, that is, the date prior to the date of publication of

the Madhya Pradesh VAT (Second Amendment) Act, 2014.

14. The State Government in order to obviate the difficulties, proposed to enact a Validation Act to make the explanation inserted by the Madhya

Pradesh VAT (Second Amendment) Act, 2014.

15. In the statement of objects and reasons it has been stated: -

â??In order to explain input tax rebate in case of manufacture of taxable as well as tax free goods from inputs, an explanation after second proviso to

clause (a) of sub-section (1) of Section 14 of the Madhya Pradesh VAT Act, 2002 (No.20 of 2002) was inserted by the Madhya Pradesh VAT

(Second Amendment) Act, 2014 (No.3 of 2015) with retrospective effect from 1st April, 2006. In Writ Petition No.8118/2015 M/s. Jindal Agro Oils,

Balwada and 35 others versus State of Madhya Pradesh, Honâ??ble High Court of Madhya Pradesh Bench Indore has held that the said

amendment shall be applicable prospectively and also that the Legislature has power to validate judicial invalid levy retrospectively by bringing

validation Act.

2. There is belief that in case of manufacture of taxable as well as tax free goods proportionate input tax rebate on inputs is permissible, especially in

view of specific provisions of admissibility of full amount of input tax rebate in case of taxable goods and of the amount which is in excess of 4

percent in case of tax free goods, proportionate input tax rebate was being allowed since beginning i.e. from 1st April, 2006. The decision of

Honâ??ble High Court shall create difficulties to State Government and shall give rise to series of litigation, as the manufacturers of taxable as well

as tax free goods shall claim full input tax rebate even in respect of tax free goods, resulting in refund.

3. In order to obviate the difficulties, it is proposed to enact a Validation Act to make the explanation inserted by the Madhya Pradesh VAT (Second

Amendment) Act, 2014 (No.3 of 2015) effective retrospectively from 1st April, 2006 to 6th January, 2015, that is, the date prior to the date of

publication of the Madhya Pradesh VAT (Second Amendment) Act, 2014 (No.3 of 2015).â??

16. Clause 1 to Clause 3 of the Madhya Pradesh VAT Amendment (Validation) Bill, 2017 reads, as under: -

â??1. (1) This Act may be called the Madhya Pradesh VAT Amendment (Validation) Act, 2017.

2. It shall be deemed to have come into force from 1st April, 2006 to 6th January,2015, that is, the date prior to the date of publication of the Madhya

Pradesh VAT (Second Amendment) Act, 2014 (No.20 of 2015) in the official gazette.

2. The Amendment, that is, insertion of explanation after second proviso to clause (a) of sub-section (1) of Section 14 of the Madhya Pradesh VAT

Act, 2002 (No.20 of 2002) (herein after referred to as the principal Act), made by the Madhya Pradesh VAT (Second Amendment) Act, 2014 (No.3

of 2015) (here in after referred to as the amending Act) shall be deemed to have come into force from 1st April, 2006 to 6th January, 2015, that is, the

date prior to the date of publication of the Madhya Pradesh VAT (Second Amendment) Act, 2014 (No.3 of 2015).

3. Notwithstanding anything contained in any judgment or order of any court, any action taken or purported to have been taken in pursuance of

explanation after second proviso to clause (a) of sub-section (1) of Section 14 of the principal Act, inserted by the amending Act, shall, for all purposes

be deemed to be and have always been validly taken as if the explanation as inserted by the amending Act was enforced at all material times when

such action was taken, and accordingly â?

(a) all acts, proceedings or things done or taken in connection with the explanation as inserted by the amending Act, shall, for all purposes be deemed

to be and have always been validly done or taken in accordance with law;

(b) no suit or other proceedings shall be maintained or continued in any court against the State Government or any person or authority whatsoever for

the actions taken;

(c) no court shall enforce any order annulling the actions so taken.â??

17. Shri Anand Mohan Mathur, learned Senior Counsel for the petitioners has

submitted that the judgment of this Court in the case of M/s. Jindal Agro

OilsBalwada & others v. The State of Madhya Pradesh & another (supra) covers the whole issue. There is no change and the Legislature has neither

added any provision or substituted any provision by which the basis of the judgment has been removed by valid Validation Act. He further submitted

that the Legislature has only made the Explanation retrospectively from 1st April, 2006 to 6th January, 2015.

18. To support the aforesaid contentions, he has drawn our attention to paragraphs No.9, 15, 16, 18, 21, 22, 25, 26, 27, 29 and 30 of the decision of this

Court in the case of M/s. Jindal Agro Oils Balwada & othersv. The State of Madhya Pradesh & another (supra); and submitted that Validation Act

cannot take away the statutory right with which any person under the statute has been clothed or set at naught the working of an Act by becoming an

hindrance in the interpretation of a statute. It is also submitted that the object of an Explanation to a statutory provision has been culled out from the

earlier judicial decisions and succinctly restated in the case of S. Sundaram Pillai v. V.R. Pattabiraman reported in (1985) 1 SCC 591; and submitted

that the impugned Validation Act has been passed by only saying that the Explanation will apply from 01.04.2006 to 06.01.2015 and is contrary to the

ratio laid down by this Court in the case of M/s. Jindal Agro Oils Balwada & others v. The State of Madhya Pradesh &another (supra).

19. He lastly submitted that the Validation Act amounts to overriding the judgment of this Court in the case of M/s. Jindal Agro Oils Balwada &

others v. The State of Madhya Pradesh & another (supra) and submitted that the law on the subject is well settled by the Apex Court in the recent

judgment of ChevitiVenkanha Yadav v. State of Telangana & othersreported in (2017) 1 Supreme Court Cases 283; and prayed that the same be

declared as ultra vires.

20. Per contra, Shri Vivek Patwa, learned Government Advocate for the respondent / State of Madhya Pradesh has submitted that the Validation Act

is as per legal provisions of law. The action of the State Government in bringing the Validation Act is just, legal and proper in the eyes of law. Such an

exercise of power to amend a statute is not an incursion on the judicial power of the Court, but is a statutory exercise of the constituent power to

suitably amend the law and to validate the actions, which have been declared to be invalid. He submitted that the Apex Court in the case of State of

TamilNadu v. Arooran Sugars Limited reported in AIR 1997 SC 1915 has held that â??it is open to the legislature to remove the defect pointed out by

the Court or to amend the definition or any other provision of the Act in question retrospectively. In this process it cannot be said that there has been

an encroachment by the legislature over the power of the judiciary. A Courtâ??s directive must always bind unless the conditions on which it is

based are so fundamentally altered that under altered circumstances such decisions could not have been given. This will include removal of the defect

in a statute pointed out in the judgment in question, as well as alteration or substitution of provisions of the enactment on which such judgment is based,

with retrospective effectâ??; and prayed for dismissal of the writ petition.

21. We have heard the learned counsel for the parties and perused the record.

22. The object and reason to bring the said Validation Act is that there is belief that in case of manufacture of taxable as well as tax free goods

proportionate Input Tax Rebate on inputs is permissible, especially in view of specific provisions of admissibility of full amount of Input Tax Rebate in

case of taxable goods and of the amount which is in excess of 4% in case of tax free goods, proportionate Input Tax Rebate was being allowed since

beginning i.e. from 1st April, 2006. The decision of High Court in the case of M/s. Jindal AgroOils Balwada & others v. The State of MadhyaPradesh

& another (supra) shall give rise to series of litigation, as the manufacturers of taxable as well as tax free goods shall claim full Input Tax Rebate even

in respect of tax free goods, resulting in refund as per their own calculation and assessment. Therefore, in order to obviate the difficulties, it is

proposed to enact a Validation Act to make the explanation inserted by the Madhya Pradesh VAT (Second Amendment) Act, 2014 effective

retrospectively from 1st April, 2006 to 6th January, 2015, that is, the date prior to the date of publication of the Madhya Pradesh VAT (Second

Amendment) Act, 2014.

23. The object to enact the Validation Act is just to avail the remedy with a view to remove the defect or lacuna of the provisions of the VAT Act so

that the Public Exchequer can be secured adequately, because by inserting an explanation in statute, the main provision of the VAT Act has not been

defeated but simply the explanation has been inserted to clarify the position retrospectively, so that no tax evasion can be made by any tax payer.

24. It is pertinent to mention here that the Division Bench of this Court has decided the controversy on the strength of Supreme Court judgment while

interpreting Section 14 (a) framed under the provisions of Bombay Sales Tax Act, 1959, whereas in the State of Madhya Pradesh there was no

explanation regarding Input Tax Rebate on the entire raw material, even if the by-product is tax free has been mentioned in Schedule-I, therefore, it

has become necessary for the State Government to clarify the position by bringing the Validation Act vide impugned notification retrospectively and

the same has been done, in accordance with law.

25. Since there was a need of explaining the VAT Act regarding the Input Tax Rebate on the entire raw material, whereas by-products are both

taxable and nontaxable, therefore, using the powers conferred under the Constitution, the amending notification has been issued providing explanation

for Input Tax Rebate which shall be computed after apportioning the Input Tax in proportion to the value of Schedule-I and Schedule-II goods so

manufactured.

26. The law relating to the retrospective operation of the amending Act, if the same has been made for the purpose of explanation has already been

clarified by the Apex Court in the case of Binani Industries Kerala v. Assistant Commissioner of Commercial Tax,Bangalore reported in (2007) 15

SCC 435.

27. It is well settled law that validating act cannot validate and effect if it simply deem legal consequences, without amending law from which the said

legal consequence could follow.

28. In the case of Cheviti Venkanha Yadav v. State of Telangana & others (supra), the Apex Court has held that, if the legislature has the power to

enact law and that too with retrospective effect, the contention that the enactment is a colourable exercise of power must fail and should be rejected.

In that context, the Apex Court held: -

â??26. The second issue that emanates for consideration is whether the base of the earlier judgment has really been removed. Before stating the

factual score it is necessary to state how this Court has viewed the said principle. In Shri Prithvi Cotton Mills Ltd.and another v. Broach Borough

Municipality and others [(1969) 2 SCC 283], the Constitution Bench while dealing with the legislation which intended to validate the tax declared by

law to be illegal, opined that when a Legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid

law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition,

of course, is that the Legislature must possess the power to impose the tax, for if it does not, the action must ever remain ineffective and illegal.

Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind, for that tantamount to reversing the

decision in exercise of judicial power which the Legislature does not possess or exercise. A courtâ??s decision must always bind unless the

conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Thereafter, the

Court proceeded to state that validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being

removed and are in fact removed and the tax thus made legal. The legislature does it many a way. One of the methods it may adopt is to give its own

meaning and interpretation of the law under which tax was collected and by legislative fiat makes the new meaning binding upon courts. On such

legislation being brought, it neutralizes the effect of the earlier decision as a consequence of which it becomes ineffective. The test of validity of a

validating law depends upon whether the Legislature possesses the competence which it claims over the subject-matter and whether in making the

validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the validating law for a valid

imposition of the tax.

27. In Bhubaneshwar Singh and another v. Union of India and others [(1994) 6 SCC 77] in view of Section 3 of the Coking Coal Mines (Emergency

Provisions) Act, 1971 which has promulgated in the year 1971 the custodian being appointed by the Central Government took over the management of

Coking Coal Mines and the said mines remained under the management of the Central Government through the custodian during the period from

17.10.1971 to 30.04.1972. The Coking Coal Mines (Nationalisation) Act, 1972 came into force w.e.f. 1.5.1972, and the right, title and interest of the owners in relation to Coking Coal Mines stood transferred to and vested absolutely in the Central Government free from all encumbrances. The

provisions of the said Act were challenged before this Court in the case of Tara Prasad Singh and others v. Union of India and others [(1980) 4 SCC

179] and the Constitution Bench upheld the validity of the said Act. The writ petitioner before the High Court making a grievance that the Custodian

had debited the expenses for raising the coal while the Coking Coal Mine was under the Management of the Custodian but had not credited the price

for the quantity of the coal raised, which was lying in stock on the date prior to the date the said Coal Mine vested under the Central Government. The

High Court allowed the writ petition and a direction was issued that account be recast and payment be made to the petitioner. The appeal before this

Court by special leave was dismissed, as this Court was of the view that sale price of stock of extracted coal lying at the commencement of the

appointed date had to be taken into account for determining the profit and loss during the period of management of the mine by the Custodian. After

the appeal preferred by the Coal Fields was dismissed, Coal Mines Nationalisation Laws (Amendment) Ordinance, 1986 was promulgated and later on

replaced by Coal Mines Nationalisation Laws (Amendment) Act, 1986 came into force. By Section 4 of the Amendment Act, sub-section (2) was

introduced in Section 10 of the Coking Coal Mines (Nationalisation) Act, 1972. The said provision declared that the amounts specified in the fifth

column of the First Schedule against any coking coal mines or group of coking coal mine specified in the second column of the said schedule are

required to be given by the Central Government to its owner under sub-section (1) shall be deemed to be included, and deemed always to have

included, the amount required to be paid to such owner in respect of coal in stock or other assets referred to in clause (j) of Section 3 on the date

immediately before the appointed day and no other amount shall be paid to the owner in respect of such coal or other assets. Section 19 was the

validating provision.

28. The writ petition was filed questioning the validity of the said ordinance primarily on the ground that it purported to nullify the judgment rendered in

the case of Central Coal Fields Ltd. v. Bhubaneswar Singh and others [(1984) 4 SCC 429]. The Court referred to the provisions and opined that:-

â??13.â?¦if sub-section (2) as introduced by the Coal Mines Nationalisation Laws (Amendment) Act, 1986 in Section 10 had existed since the very

inception, there was no occasion for the High Court or this Court to issue a direction for taking into account the price which was payable for the stock

of coke lying on the date before the appointed day. The authority to introduce sub-section (2) in Section 10 of the aforesaid Act with retrospective

effect cannot be questioned. Once the amendment has been introduced retrospectively, courts have to act on the basis that such provision was there

since the beginning. The role of the deeming provision need not be emphasized in view of series of judgments of this Court. Hence reading sub-section

(2) of Section 10 along with Section 19, it has to be held that respondents are not required to take into account the stock of coke lying on the date prior

to the appointed day, for the purpose of accounting during the period when the mine in question was under the management of the Central

Government, because it shall be deemed that the compensation awarded to the petitioner included the price for such coal lying in stock on the date

prior to the appointed day. Neither any compensation is to be paid for such stock of coal nor the price thereof is to be taken into account for the

purpose of subsection (1) of Section 22 of the Coking Coal Mines (Nationalisation) Act, 1972.â??

Being of this view, the Court dismissed the writ petition.

29. In State of Himachal Pradesh v. NarainSingh [(2009) 13 SCC 165] while dealing with the validation of statute the Court ruled that:-

â??26. It is therefore clear where there is a competent legislative provision which retrospectively removes the substratum of foundation of a

judgment, the said exercise is a valid legislative exercise provided it does not transgress any other constitutional limitation.â??

To arrive at the said conclusion, the two-Judge Bench reproduced from the decision in Constitution Bench in State of T.N. v. Arooran Sugars Ltd .

[(1997) 1 SCC 326] which is to the following effect:-

â??28. â?¦. It is open to the legislature to remove the defect pointed out by the court or to amend the definition or any other provision of the Act in

question retrospectively. In this process it cannot be said that there has been an encroachment by the legislature over the power of the judiciary. A

courtâ??s directive must always bind unless the conditions on which it is based are so fundamentally altered that under altered circumstances such

decisions could not have been given. This will include removal of the defect in a statute pointed out in the judgment in question, as well as alteration or

substitution of provisions of the enactment on which such judgment is based, with retrospective effect.â??

30. From the aforesaid authorities, it is settled that there is a demarcation between legislative and judicial functions predicated on the theory of

separation of powers. The legislature has the power to enact laws including the power to retrospectively amend laws and thereby remove causes of

ineffectiveness or invalidity. When a law is enacted with retrospective effect, it is not considered as an encroachment upon judicial power when the

legislature does not directly overrule or reverse a judicial dictum. The legislature cannot, by way of an enactment, declare a decision of the court as

erroneous or a nullity, but can amend the statute or the provision so as to make it applicable to the past. The legislature has the power to rectify,

through an amendment, a defect in law noticed in the enactment and even highlighted in the decision of the court. This plenary power to bring the

statute in conformity with the legislative intent and correct the flaw pointed out by the court, can have a curative and neutralizing effect. When such a

correction is made, the purpose behind the same is not to overrule the decision of the court or encroach upon the judicial turf, but simply enact a fresh

law with retrospective effect to alter the foundation and meaning of the legislation and to remove the base on which the judgment is founded. This

does not amount to statutory overruling by the legislature. In this manner, the earlier decision of the court becomes non-existent and unenforceable for

interpretation of the new legislation. No doubt, the new legislation can be tested and challenged on its own merits and on the question whether the

legislature possesses the competence to legislate on the subject matter in question, but not on the ground of overreach or colourable legislation.

31. Once we hold that the legislature has the power to enact the law as per its wisdom, and that too with retrospective effect, the contention that the

enactment is a colourable exercise, must fail and should be rejected. In Dharam Dutt and others v. Unionof India and others [(2004) 1 SCC 712], the

Court has highlighted that the doctrine of colourable legislation does not involve any question of bona fide or mala fides on the part of the legislature.

The whole doctrine revolves itself into the question of the competency of a particular legislature to enact a particular law. If the legislature is

competent to pass a particular law, the motives which impelled it to act are really inconsequential, unless they in the amended incarnation invite the

frown of any Article of the Constitution.â??

29. From the decision of the Apex Court in the case of Cheviti Venkanha Yadav v. State of Telangana & others (supra), it is settled that the

legislature has the power to enact laws including the power to retrospectively amend laws and thereby remove causes of ineffectiveness or invalidity.

If the legislature is competent to pass a particular law, the motive which implied it to act are really inconsequential, unless they in the amended

incarnation invite the frown of any article of the Constitution.

30. In the case in hand, we have to see whether the base of earlier judgment has been removed. This Court in Writ Petition No.8118/2015 has held

that Explanation to Section 14 of the VAT Act, 2002 is introduced by MP VAT Amendment Act, 2014 and amended in 2015, would apply

prospectively. The legislature, after the decision of the High Court, has amended the provision. By such amendment, it has been held that the

amendment would apply retrospectively with effect from 01.04.2006 i.e. the date prior to the publication of MP VAT (Second) Amendment Act,

2014.

31. As per Validation Act, it is clear that by a competent legislative provision, the substratum of foundation of a judgment has been removed with

retrospectively, the said exercise is a valid legislative exercise and it does not suffer from any invalidity.

32. In the case of State of Bihar v. Bihar Pensioners Samaj reported in AIR 2006 SC 2100, the Apex Court has held that validating act may even

make ineffective judgments and orders of competent courts provided it, by retrospective legislation, removes the cause of invalidity or the basis that

had led to those decisions / judgments.

33. For the above mentioned reasons, we do not find any merit in the writ petition; and Writ Petition No.3236/2017 filed by the petitioners is

accordingly dismissed, but without any order as to costs.

