

**(1975) 07 MAD CK 0022**

**In the Madras High Court**

**Case No : T.C. No"s. 388 to 390 of 1970**

K. Somasundaram

APPELLANT

Vs

The State of Madras

RESPONDENT

**Date of Decision : 30-07-1975**

**Acts Referred:**

Tamil Nadu General Sales Tax Act, 1959 — Section 15, 16, 19, 21, 53

**Citation : (1977) 75 STC 386**

**Hon'ble Judges : V. Ramaswami, J;Sethuraman, J**

**Bench : Division Bench**

**Advocate : K. Srinivasan and K.C. Rajappa, for the Appellant; K. Venkataswami, Additional Government Pleader No. 1, for the Respondent**

**Final Decision : Dismissed**

## Judgement

V. Ramaswami, J.—The petitioner, the assessee, which was a firm of partnership and which has since been dissolved, was dealing in hardware, paints, cement, etc. and carrying on business at Erode. For the assessment year 1963-64, by an order dated 15th October, 1964, its taxable turnover was determined at Rs. 6,09,568.55. For the assessment year 1964-65, the taxable turnover was determined at Rs. 6,25,089.28 by an order dated 12th January, 1966. On 8th April, 1966, the car of the manager of the firm was intercepted at Hosur check post and certain anamath accounts relating to the business of the assessee were found being transported from Erode to Bangalore. These accounts disclosed escaped turnover of the assessee. Accordingly, after issuing the necessary notices, reassessment proceedings were initiated u/s 16(1) of the Tamil Nadu General Sales Tax Act, 1959. Ultimately, the suppressed turnover for the assessment year 1963-64 was determined at Rs. 3,23,403.12 and a revised assessment was made on 19th May, 1966. In respect of the assessment year 1964-65, the suppressed turnover was found to be Rs. 2,63,384.14 and a revised assessment was made on 31st May, 1966. For the assessment year 1965-66, the assessee submitted a return disclosing a taxable turnover of Rs.

7,07,764.11 in form A-2. On the ground that there was a number of discrepancies in the entries in the account books and the evidence shown in the anamath accounts recovered on 8th April, 1966, the account books were not relied on and the taxable turnover was determined at Rs. 10,56,384.23 by an order dated 30th June, 1966. In respect of these three years, the assessing authority also levied penalties.

2. The petitioner-assessee preferred three appeals before the Appellate Assistant Commissioner. Though their objections against the reassessments for 1963-64 and 1964-65 and the preassessment notice in respect of 1965-66 related to the merits of the case, at the stage of the appeals the assessee also contended that the firm was dissolved on 30th April, 1966, long before the orders under appeal and that therefore the said orders were bad in law. This was on the ground that the Supreme Court in *State of Punjab v. Jullundur Vegetables Syndicate* [1966] 17 S.T.C. 326 (S.C.) had held that unless there is a statutory provision permitting assessment of a dissolved firm no assessment of a firm after its dissolution can be made. The petitioner-assessee contended before the appellate authority that there was no specific provision in the Tamil Nadu General Sales Tax Act, 1959, to assess a firm after its dissolution. The Appellate Assistant Commissioner rejected this contention on the ground that the deed of dissolution had not been registered and that further Sections 15, 19 and 53(c) and (d) of the Act read with Rule 40 of the Tamil Nadu General Sales Tax Rules clearly provided for assessment of dissolved firms. On the merits, after giving certain reliefs and reducing the penalties, the appellate authority confirmed the orders of the assessing authority. The order of the Appellate Assistant Commissioner is dated 21st October, 1966.

3. The petitioner preferred further appeals before the Tribunal. When those appeals were pending, the Tamil Nadu Legislature passed the Tamil Nadu General Sales Tax (Amendment) Act (12 of 1968). By this Act, Section 19-A was introduced in the principal Act with retrospective effect from 1st April, 1959. It also contained a section regarding validation of past levy. Though a ground relating to want of jurisdiction to make an assessment or reassessment of a dissolved firm was raised in the grounds of appeal, it does not appear to have been pressed at the time of arguments before the Tribunal, as we do not find any discussion in the order of the Tribunal on this question. The appeals were disposed of by the Tribunal only on the merits. The order of the Tribunal is dated 24th December, 1969.

4. Neither the learned counsel for the petitioner nor the learned counsel for the revenue was able to assert that either the ground was pressed, but the Tribunal did not consider, or it was given up in view of the amending Act. But, since the question was directly raised by the petitioner in these revision petitions, we proceed to consider the same.

5. It was contended by the learned counsel for the petitioner that since the assessment orders and the reassessment orders and the levy of penalty were

made at a time when there was no provision for assessment of a dissolved firm, those orders were non est in law. The validation provision contained in the amending Act and the introduction of Section 19-A with retrospective effect did not have the effect of validating the levy of penalty whatever may be said of the assessment or reassessment to tax. In this connection, he referred to the absence of the word "penalty" in Section 5 and the reference to that word in Section 19-A(b).

6. Section 19-A, which was inserted by the amending Act with retrospective effect from 1st April, 1959, reads as follows :

Where a dealer is a Hindu undivided family, firm, or other association of persons and such family, firm or association is partitioned, or dissolved, as the case may be,-

(a) the tax payable under this Act by such family, firm, or association of persons for the period up to the date of such partition or dissolution shall be assessed as if no such partition or dissolution had taken place and all the provisions of this Act shall apply accordingly; and

(b) every person who was at the time of such partition, or dissolution a member or partner of the Hindu undivided family, firm or association of persons and the legal representative of any such person who is deceased shall, notwithstanding such partition or dissolution, be jointly and severally liable for the payment of the tax, penalty or other amount payable under this Act by such family, firm or association of persons, whether assessment is made prior to or after such partition, or dissolution.

7. The validation provision contained in Section 5 of the amending Act is as follows:

Notwithstanding anything contained in any judgment, decree or order of any court or other authority, all taxes levied or collected or purporting to have been levied or collected under the principal Act before the date of publication of this Act in the Fort St. George Gazette, in respect of any Hindu undivided family, firm or other association of persons, after its partition or dissolution, as the case may be, shall for all purposes be deemed to be and to have always been, validly levied or collected in accordance with law as if Section 3 had been in force at all material times when such tax was levied or collected and accordingly,-

(a) all acts, proceedings or things done or taken by any authority, officer or person in connection with the levy or collection of such tax shall, for all purposes, be deemed to be and to have always been, done or taken in accordance with law;

(b) no suit or other proceeding shall be maintained or continued in any court for the refund of any tax so paid ;

(c) no court shall enforce any decree or order directing the refund of any tax so paid.

8. Section 19-A thus enables an assessment being made on a dissolved firm as if no such dissolution had taken place and every person who was at the time of dissolution a partner of the firm and the legal representative of any such person, who is deceased, shall, notwithstanding the dissolution, be jointly and severally liable for the payment of the tax, penalty or other amount payable under the Act. Section 5 validates the "levy and collection of all taxes" on dissolved firms made before the publication of the amending Act by deeming such levy and collection as having been made in accordance with Section 19-A of the Act, notwithstanding anything contained in any judgment, decree or order of any court or other authority.

9. It is well-settled that the legislatures under our Constitution have the power to make laws prospectively as well as retrospectively. But they cannot declare any decision rendered in exercise of its powers by a court of law, in a matter brought before it, to be void or of no effect, for, that would tantamount to reversing the decision of a court of law rendered in exercise of a judicial power, which a legislature does not possess or exercise. But, in tax matters, an invalid assessment, or the decision of a court holding a tax to be invalidly imposed because of either want of power to make, or of jurisdiction, or of invalidity of the Rules, could be validated, or the decision made ineffective by removing the basis of the illegality or invalidity and making the levy legally valid. The legislature achieves this end by re-enacting, with retrospective effect, a valid and legal taxing provision and, then by a fiction, make the tax already collected stand under the re-enacted law. These principles could be culled out from the decisions of the Supreme Court in *Janapada Sabha Chhindwara Vs. The Central Provinces Syndicate Ltd. and Another*, *The Municipal Corporation of The City of Ahmedabad and Another Vs. The New Shrock Spg. and Wvg. Co. Ltd. etc. etc.*, *Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others*, and *State of Tamil Nadu v. M. Rayappa* AIR 1971 S.C. 231.

10. An assessment on a dissolved firm was held to be invalid unless there is a statutory provision permitting such assessment-vide the decision in *State of Punjab Vs. Jullunder Vegetables Syndicate*, which arose under the East Punjab General Sales Tax Act, 1948. The Tamil Nadu General Sales Tax Act, 1959, as it was originally enacted, did not contain any specific statutory provision permitting assessment on a dissolved firm. This want of legal sanction was removed by the insertion of Section 19-A with retrospective effect from the commencement of the principal Act. By a deeming provision Section 5 validated the levy and collection made under invalid assessments before the amending Act. Thus, the absence of a statutory provision permitting assessment of dissolved firms, which was the basis of the invalidity, was removed with retrospective effect and Section 5, by creating a fiction, validated the levy and collection of tax already made.

11. The learned counsel for the assessee contended that "assessment to tax" is different from "levy of penalty". In the original enactment, both with reference to assessment to tax and levy of penalty there was no statutory provision in respect

of a dissolved firm. Section 19-A cured this defect and enabled an assessment to tax and also levy of penalty on a dissolved firm ; but the validating provision contained in Section 5 deemed only "all taxes levied or collected or purporting to have been levied or collected under the principal Act" before the amendment as having been validly levied and collected in accordance with law as if Section 19-A had been in force at all material times. The expression "taxes levied or collected" would not include levy of penalty. He also referred to Section 19-A where "penalty" is specifically included. Thus, according to the learned counsel, though the absence of a statutory power to levy penalty was conferred on the assessing authority to levy penalty on a dissolved firm u/s 19-A, the penalties levied already had not been validated by the deeming provision contained in Section 5 and, therefore, the levy of penalty in this case could not be sustained. In this connection, he also relied on the decision of this court in *M. Royappa Goundar and Another Vs. The Commercial Tax Officer and Another*, .

12. The learned counsel for the revenue, on the other hand, contended that the words "all taxes levied or collected or purporting to have been levied or collected" would include not only the sales tax payable but also the penalties levied. He also relied on the fact that no separate order levying penalty is now contemplated under the Act and, therefore, according to him, the legislature could not have intended to validate an order in part and leave off the invalidity in respect of the other part. He further contended that in this case the revenue need not even invoke the validating provision contained in Section 5, as that section dealt with assessment which had reached the stage of finality and, in respect of pending matters, the power contained in Section 19-A itself is enough to levy the penalty.

13. It is not necessary for us to go into the question whether the words "all taxes levied or collected" occurring in the validating provision contained in Section 5 would also include the levy of penalty, as we consider that this case could be decided on the basis that it is a proceeding "pending" and it had not reached the stage of finality. As can be seen from the statement of facts, at the time when the Validating Act was enacted and published, the assessment proceeding was pending before the Tribunal and had not reached the stage of finality. Since the amending provision had been given retrospective operation and was in force at the time when the Tribunal made the order, the Tribunal could not ignore to apply the amended provision. By reason of the retrospective operation, Section 19-A must be deemed to have been on the statute book when the assessment orders and the reassessment orders were made. The Tribunal was, therefore, bound to apply Section 19-A as if it was factually there from the very inception. It was not open to the Tribunal to find a solution as if the putative state of affairs remained unaltered. If the assessment itself had not been completed by the original assessing authority, the learned counsel for the assessee was prepared to agree, that the assessing authority could have invoked Section 19-A, but the fact that there was an assessment order prior to the amending Act, according to the learned counsel, made a difference. We are unable to agree with this contention.

The appeal before the Tribunal covered the entire point in issue and the matter could not be said to have reached the stage of finality. To such proceedings, the amended provision is to be applied, is also the ratio of certain decisions, which may be noticed hereafter.

14. State of Maharashtra and Another Vs. Champalal Kishanlal Mohta, ., is a clear authority on this question. In this case, the definition of the word "goods" in Section 2(13) of the Bombay Sales Tax Act, 1959, was altered retrospectively so that the said expression included at all relevant times standing timber agreed to be severed before sale or under the contract of sale. The amendment was made by Maharashtra Act 15 of 1967 at the time when the appeal against the assessment to sales tax was pending before the Supreme Court. The appeal was dismissed without reference to the amending Act as it appeared that the counsel for the State failed to invite the attention of the court to the amending provision. On a petition for review of the judgment filed by the State, the Supreme Court held that the amended definition was applicable and allowed the review.

15. In Jaipuria Brothers Co. Vs. State of Uttar Pradesh and Others, , the facts were these: u/s 21 of the U.P. Sales Tax Act, 1948, before it was amended by Act 19 of 1956 there could be no order of assessment or reassessment by the Sales Tax Officer, after the expiry of the period of three years prescribed by the statute. In respect of the assessment year 1948-49 the original assessment was set aside by the appellate authority on the ground that the assessee was not a dealer. But, on a further revision, by order dated 28th March, 1955, the revising authority set aside that order of the appellate authority and remanded the case to the Sales Tax Officer for fresh assessment. In the fresh assessment proceedings, it was contended by the assessee that as the original assessment was set aside by the revising authority and then the matter was remanded for fresh consideration, no proceeding in connection with that assessment was pending and the reassessment was barred because more than three years had elapsed since the end of the order of assessment. The Sales Tax Officer rejected this contention and insisted on the production of the records as directed earlier. Thereupon, the assessee filed a writ petition in the High Court of Allahabad praying for the writ of prohibition restraining the Sales Tax Officer from proceeding with the assessment and also for a writ of certiorari to quash the order of the revising authority and the proceedings taken for reassessment. The learned single Judge held that the assessment sought to be made by the Sales Tax Officer pursuant to the order of the revising authority was clearly barred by limitation in view of Section 21 of the Act. But a Division Bench reversed the order holding that the assessing officer was only acting in compliance with the direction given by the revising authority and that to such assessment proceedings the bar of limitation prescribed by Section 21 of the Act did not apply. On a further appeal, the Supreme Court held that the limitation of three years fixed u/s 21 applied on the language used in that section even to a case where assessments are sought to be made in pursuance of the directions of the appellate or revisional authority and that, therefore, the Division Bench was not

correct in allowing the appeal. But the order of the High Court was confirmed on the ground that during the pendency of the proceedings in the Supreme Court Section 21 was extensively amended to the effect that when reassessment is sought to be made in consequence of, or to give effect to, any finding or direction contained in an order of the appellate or revisional authority or under an order of the High Court, it could be done without limit of time. The Supreme Court also held that when a section is amended with retrospective effect it would apply to all pending proceedings and that when an appellate or revising authority sets aside the order of assessment and remands the case for fresh assessment, the proceeding is still pending and that to such a proceeding the amending Act would apply. If the matter could be said to be pending when an appellate or revising authority sets aside the order and remands the case for fresh disposal, it could not be said that it was not pending when the appeal or revision had not been disposed of.

16. We are of the view that the assessment proceedings and reassessment proceedings had not reached the stage of finality when they were questioned before the Tribunal in the appeals filed before it. To such a proceeding, certainly Section 19-A applied.

17. We are, therefore, of the view that both the assessment and the levy of penalty were legal and valid and that the orders of the Tribunal are not liable to be interfered with.

18. The petitions accordingly fail and are dismissed with costs. Counsel's fee Rs. 150 in each.