

(2004) 08 KAR CK 0032

In the Karnataka High Court

Case No : Writ Petition No. 1701 of 2000

Riddhi Siddhi Starch and Chemicals Ltd.

APPELLANT

Vs

Additional Deputy Commissioner of Commercial Taxes and
Others

RESPONDENT

Date of Decision : 09-08-2004

Acts Referred:

Central Sales Tax Act, 1956 — Section 9 (2)

Karnataka Sales Tax Act, 1957 — Section 12 (3), 18 AA (2) (ii)

Citation : (2004) 4 KCCR 408 SN : (2006) 146 STC 513

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

**Advocate : G. Sarangan, M. Thirumalesh and G. Rabinathanm, for the
Appellant; B. Anand, Government Advocate, for the Respondent**

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The petitioner, assailing the legality and validity of the order dated December 14, 1999 passed for the assessment year 1996-97 u/s 18-AA(2)(ii) of the Karnataka Sales Tax Act, 1957 read with Section 9(2) of the Central Sales Tax Act, 1956 and the accompanying demand notice in form 6 dated December 16, 1999, vide, annexure C, has presented the instant writ petition. Further, the petitioner has sought for a declaration declaring that, the provisions of clause (ii) of Sub-section (2) of Section 18-AA of the Karnataka Sales Tax Act, 1957 have no applicability to amounts collected by way of or purporting to be by way of CST in excess of A the prescribed rate of tax. Further, the petitioner has sought to quash the provisions of clause (ii) of Sub-section (2) of Section 18-AA of the Karnataka Sales Tax Act, 1957, as violative of article 14 of the Constitution of India. The petitioner has also sought for a writ of prohibition, restraining the first respondent from proceeding further for recovery of tax pursuant to the impugned order dated December 14, 1999 passed for the assessment year 1996-97 u/s 18-AA(2)(ii) read with Section 9(2) of the Central Sales Tax Act, 1956 along with the accompanying demand notice dated December 16, 1999 vide annexure C.

2. The brief facts of the case are as follows:

It is not in dispute that, the petitioner is a public limited company and a registered dealer under the Karnataka Sales Tax Act, 1957 (hereinafter referred to as "the KST Act") and the Central Sales Tax Act, 1956 (hereinafter referred to as "the CST Act"). The petitioner had filed its annual returns in prescribed form No. 4 which discloses their total and taxable turnover respectively, for the assessment year 1996-97. The first respondent herein issued a call notice as envisaged u/s 27(1) read with Section 18(2) of the KST Act, calling upon the petitioner to produce the books of accounts in order to verify the correctness of their returns. The petitioner produced its books of accounts, sales bills and other connected documents. After thorough evaluation of the material made available by the petitioner such as sales bills and other documents, it was revealed that, the petitioner had effected inter-State sale of the commodities such as dextrose, dextrin, hydrol, liquid glucose, starch, gluten, corn steep liquor, germs, husk and empty gunny bags totally amounting to a sum of Rs. 12,96,892. Since the sale of these items were not supported by form C declaration, the first respondent proposed to levy tax at the rate of ten per cent.

3. Accordingly, a proposition notice was issued u/s 12(3) of the KST Act read with Section 9(2) of the CST Act. After receipt of the said proposition notice, the petitioner has given reply stating that, since the rate of tax for the above mentioned items u/s 8(5) of the CST Act has been reduced to 11/2 per cent as per Notification No. FD 122 CSL 82(ii), Bangalore, dated 22nd August 1983 and has been cancelled with effect from April 1, 1997, "C" forms were not required. After considering the reply filed by the petitioner, the first respondent herein issued a revised notice in form 31-A dated August 9, 1999 communicating to the petitioner that, the first respondent intended to propose tax for the aforesaid items at the rate of twelve per cent in respect of items Nos. 1 to 7 and 9, mentioned therein, stating that, the inter-State sales bills revealed that the petitioner has collected four per cent tax on sale of the aforesaid items instead of two per cent, thus, contravening the provisions of Section 18 of the KST Act read with Section 9(2) of the CST Act. In view of excess collection, the petitioner had illegally and unjustly enriched itself by retention of such excess tax collected by it and without paying it over to the Government, attracted the charging of interest as envisaged u/s 18-AA(2)(ii) of the KST Act. Be that as it may.

4. The petitioner sought for extension of time to seek legal advice and after obtaining the legal opinion, petitioner came to know that, there was a separate notification issued by the Government in exercise of the power conferred u/s 8(5) of the CST Act, 1956 in which CST payable on inter-State sale of the goods, namely, (1) liquid glucose, (2) dextrin (3) maize starch (4) gluten (5) grits (6) maize husk (7) oil cake (8) corn steep liquor (9) dextrose and (10) corn oil manufactured in Karnataka from tapioca, jowar and maize or their products as end-products or by-products was reduced to 11/2 per cent as per Notification dated 22nd August, 1983. After nearly twenty-one days from the date of issue of

the proposition notice, the petitioner filed reply and paid up the amount of CST and the excess collection aggregating to Rs. 15,16,122 by cheques and it is their case that, they have not retained any amounts or utilised them for any other purpose. The assessing authority held that, the collection of CST in excess of the prescribed rate of tax constituted contravention of Section 18 of the KST Act read with Section 9(2) of the CST Act and regularised the payment of Rs. 15,16,122 made by the petitioner earlier. Further the assessing authority has invoked clause (ii) of Sub-section (2) of Section 18-AA of the KST Act, and passed the order under the above provisions levying interest of Rs. 13,92,589 and issued demand notice in form 6 dated December 16, 1999 demanding payment of interest. Assailing the correctness of the order passed by the first respondent vide annexure C and levy of interest as per demand notice in form 6, and also challenging the provisions of Sub-clause (ii) of Sub-section (2) of Section 18-AA of the KST Act as devoid of authority, the petitioner felt necessitated to approach this Court by presenting the instant writ petition.

5. The principal submission canvassed by Sri Sarangan, learned Senior Counsel appearing for petitioner is that, the amendment of Section 9 of the CST Act, 1956 introduced by the Central Act No. 10 of 2000 was only with prospective effect and not with retrospective effect. To substantiate the said submission, he based his A submission on the expressions used in the said provision and the judicial pronouncements. On the basis of expressions used, he submitted that, the expressions used in the Central Act No. 10 of 2000 may be compared with the expressions used in other amended Acts where the amendments were introduced with retrospective effect. On the basis of judicial pronouncements, he submitted that it has been held by courts that, for an amendment to have retrospective effect, the first requirement is that, the provisions of the statute which are amended should be given retrospective effect and the second requirement is that a validation clause is introduced validating the actions taken as if the amended provisions existed when such actions had been taken and applied to those actions. Further he submitted, assuming but not conceding, that the amendment to Section 9 introduced by the Central Act No. 10 of 2000 is retrospective, such retrospective amendment is liable to be held unreasonable, unconstitutional and violative of article 19(1)(g) of the Constitution of India. He submitted that, the expression used in the amended Act, is only with prospective effect from May 12, 2000 and not retrospective.

6. Further, he vehemently submitted that, the expressions employed in this bill for all the amendments are "shall be substituted", "shall be inserted", which clearly mean that the amendments are introduced only with prospective effect. If the Parliament intended that the amendments should be retrospective, then, the expressions used should have been "shall and shall always be deemed to have been inserted/substituted", "shall always be deemed to have been inserted/substituted". Further, it is also stated in the "Notes on clauses" that, the amendments would take effect from the date on which the Finance Act, 2000 receives the assent of the President. The said amendment Act received the

assent of the President of India on May 12, 2000. The amendments to Section 9 of the CST Act were introduced by Section 119 of the amendment Act. Section 119 of the amendment Act has not been given any retrospective effect. Only sections 2 to 77 according to Chapter I-Preliminary (2), were given retrospective effect from April 1, 2000. Further, he submitted that, the expressions used for amendments to Section 9 in the Finance Act, 2000, are also that "shall be substituted", "shall be inserted" and not "shall always be deemed to have been substituted/inserted" to give the amendments any retrospective effect. Therefore, he specifically submitted that, as per the expression used for amendments introduced to Section 9 of the CST Act by the Finance Act, 2000 (Central Act No. 10 of 2000) all the amendments are only with prospective effect and not retrospective. To substantiate his submission, he placed reliance on the following judicial pronouncements for an amendment with retrospective effect and submitted that it is not enough that only a validation clause is inserted but the first and foremost requirement is that, the provision of the Act which is amended is given retrospective effect.

(i) Gill and Company (P.) Limited v. Commercial Tax Officer, II circle, Gadag reported in [1973] 31 STC 336 (Mys) [FB].

(ii) Kanthi Enterprises Vs. Deputy Commissioner of Commercial Taxes and Another, .

The learned Senior Counsel submitted, assuming but not conceding that, the amendment to Section 9 introduced by the Central Act No. 10 of 2000 is retrospective, such retrospective amendment is liable to be held unreasonable, unconstitutional and violative of article 19(I)(g) of the Constitution of India. To substantiate his submission, he placed reliance on the judgment of the honourable Supreme Court of India in the case of India Carbon Ltd. etc. Vs. State of Assam, , wherein, the honourable Supreme Court held at paragraphs 13 and 14 as follows:

13. There is no substantive provision in the Central Act requiring the payment of interest on Central sales tax. There is, therefore, no substantive provision in the Central Act which obliges the assessee to pay interest on delayed payments of Central sales tax.

14 The provision relating to interest in the latter part of Section 9(2) can be employed by the States' sales tax authorities only if the Central Act makes a substantive provision for the levy and charge of interest on Central sales tax and only to that extent. There being no substantive provision in the Central Act requiring the payment of interest on Central sales tax the States' sales tax authorities cannot, for the purpose of collecting and enforcing payment of Central sales tax, charge interest thereon.

7. Further, he vehemently submitted that, prior to amendment of Section 9 of the Central Act by Act No. 10 of 2000, there was no provision prescribing payment of interest on delayed payment of Central sales tax. It is not the case

therefore, that the amendment by Central Act No. 10 of 2000 was to cure any defect in the provisions of Section 9 struck down by courts so that it could be said the amendment is curative legislation. On the contrary, if the amendment is interpreted to be retrospective in effect, it would, for the first time, be imposing a burden of payment of interest for the past period which was not contemplated by any provisions of the GST Act. Therefore, even if the amendments are to be interpreted as retrospective in A effect, in view of the fact that it seeks to impose an unforeseen and unreasonable burden of interest, the amendment is liable to be struck down as unconstitutional and violative of article 19(1)(g) of the Constitution of India.

8. The learned Senior Counsel appearing for the petitioner placed reliance on the judgment of the honourable Supreme Court of India in the case of *Bakhtawar Trust and Others Vs. M.D. Narayan and Others*, , in which, the relevant portion of the judgment rendered in the case of *Hindustan Gum and Chemicals Ltd. Vs. State of Haryana and Others*, is extracted, reads as follows:

It is now well-settled that it is permissible for a competent Legislature to overcome the effect of a decision of a court setting aside the imposition of a tax by passing a suitable legislation amending the relevant provisions of the statute concerned with retrospective effect, thus taking away the basis on which the decision of the court had been rendered and by enacting an appropriate provision validating the levy and collection of tax made before the decision in question was rendered.

Therefore, he submitted that, it is open for the legislation to change the very basis of the provision retrospectively and to validate the levy and collection of tax. However, he submitted that this fact is not coming forth from the amended provision on which reliance has been placed by the respondents in their statement of objections. Therefore, he respectively submitted that, Central Act No. 10 of 2000 is prospective in nature and not retrospective and that, the amendment could not be said to have overcome the defect pointed out by the honourable Supreme Court of India in the case of *India Carbon Ltd. etc. Vs. State of Assam*, . Hence, the stand taken by respondents in their objections is liable to be held as having no merits and not keeping with the principles governing interpretation of statutes. Therefore, he respectfully submitted that, the writ petition filed by the petitioner is liable to succeed and this is a fit case to quash the amended provision of clause (ii) of subsection (2) of Section 18-AA of the KST Act as violative of article 14 of the Constitution of India.

9. Per contra, the learned Government Advocate appearing for respondents, inter alia, contended and substantiated the order passed by the assessing authority stating that, the demand of interest on delayed payments is in strict compliance of the mandatory provisions of the KST Act and no error or illegality as such has been committed by respondents and the writ petition filed by the petitioner is an ill founded and misconceived one bereft of both merits and bona fides. He submitted that, a reading of the petition shows that the petitioner has not made

out any case much less a prime facie one which calls for interference by this Court under its extraordinary jurisdiction and there is no cause of action and the one alleged is false. In the objections, it is stated that, the said demand has been made after following the mandatory provisions of the Act and Rules of KST Act and the petitioner, being a public limited company has collected tax from its customers at the rate of four per cent contravening the provisions of Section 18(1) of the KST Act read with Section 9(2) of the CST Act. He submitted that, by virtue of such excess collection, the petitioner has illegally and unjustly enriched itself. Therefore, the retention of such excess tax collected by the petitioner without paying it over to the Government attracted the charging of interest on the retained amount u/s 18-AA(2)(ii) of the KST Act. He submitted that, the reliance placed by the learned Senior Counsel appearing for the petitioner in the case of India Carbon Ltd. etc. Vs. State of Assam, , is not at all applicable to the facts of the case on hand. He submitted that, in the absence of any substantive provision for collection of interest, the Parliament has enacted amendment to Section 9(2) of the CST Act by Act No. 10 of 2000 as Section 9(2-A) of the CST Act with retrospective effect. This retrospective effect was given to the said Act with regard to collection of interest, which is just, reasonable and justifiable for the reason that, no dealer/person can unjustly enrich himself and be deemed to have the right to retain and enjoy the taxes collected in contravention of the relevant taxing provisions at the cost of the State without paying any interest on the taxes so retained and withheld by the dealers as to whether for the past or for the current year. Therefore, there is no unreasonableness in demanding the interest on the amount withheld or retained unjustly by the petitioner without any authority of law for any period.

10. Further, he vehemently submitted that, the dealer concerned obviously gets enriched at the cost of the consumer and in the name of the State. To cover this inflation and depletion of the real value of the currency, it is but reasonable, that a suitable interest be charged and recovered from the dealer, who has enjoyed the money that really did not belong to him for a long time. He submitted that, viewed from this angle, the retrospective introduction of the provision of collection of interest is not only reasonable, but also highly justified. To substantiate the said stand, he placed reliance on the judgment of the honourable Supreme Court of India in the case of Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, and submitted that in view of the well-settled law laid down by the honourable Supreme Court in the aforesaid decision, it is not a case of interference by this Court in exercise of its extraordinary jurisdiction under articles 226 and 227 of the Constitution of India. Nor the petitioner has made out any good grounds for interference by this Court by striking down clause (ii) of Sub-section (2) of Section 18-AA of the KST Act. He further submitted that, this Court should also take into consideration the fact that, the petitioner being a public limited company and an assessee has not only collected tax at the rate of four per cent for the assessment year 1996-97, but also has retained the excess sum with it till it was noticed by the first respondent

and the impugned demand notice was issued by the competent authority. This fact itself is sufficient for this Court to dismiss the writ petition filed by the petitioner at the threshold.

11. I have heard Sri Sarangan, learned Senior Counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents for considerable length of time. After thorough evaluation of the material available on records threadbare, with the assistance of the learned Counsel appearing for the parties, and after taking into consideration the contention of the learned Counsel appearing for the parties, the questions that arise for consideration in the instant writ petition are:

(i) Whether clause (ii) of Sub-section (2) of Section 18-AA of the KST Act inserted by Karnataka Act No. 4 of 1992 with effect from April 1, 1992 giving retrospective effect is constitutionally valid ?

(ii) Whether the order passed by the assessing authority--respondent No. 1 dated February 14, 1999 for the assessment year 1996-97 and the consequential demand notice dated December 16, 1999 issued are sustainable in law ?

(iii) Whether it is permissible for the petitioner to question the impugned retrospective amendment made in 1992 to Section 18-AA of the KST Act at this belated stage when he was very much aware of the said retrospective amendment made in 1992 to the said Act ?

Re: Question (i): On the arguments of the learned Counsel appearing for the parties, the question that arise for consideration is as to whether the Karnataka Legislature by the impugned amended provision has purported to nullify the judicial pronouncements per se and therefore, whether such an Act is ultra vires the competency of the State Legislature ? Here, it would be pertinent to advert to the relevant provisions of the Karnataka Sales Tax Act which read as follows:

A Provisions of Section 18-AA inserted by Karnataka Act No. 4 of 1992 with effect from April 1, 1992 are extracted below.

18-AA: Payment and disbursement of amounts wrongly collected by dealer as tax.-(1) Where any amount is collected by way of tax or purporting to be by way of tax from any person by any dealer in contravention of Section 18, whether knowingly or not, such dealer shall pay the entire amount so collected, to the assessing authority within twenty days after the close of the month in which such amount was collected, notwithstanding that the dealer is not liable to pay such amount as tax or that only a part of it is due from C him as tax under this Act.

(2) If default is made in payment of the amount in accordance with Sub-section (1),

(i) the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the properties of the dealer;

(ii) The dealer liable to pay the amount shall pay interest at the rate of two and

one half per cent of such amount for each month of default; and

(emphasis supplied by me)

(iii) The whole of the amount remaining unpaid along with the interest calculated under clause (ii) of this sub-section shall be recoverable in the manner specified in Section 13.

(3) Notwithstanding anything contained in this Act, or in any other law for the time being in force, any amount paid or payable by any dealer Under Sub-section (1) shall, to the extent it is not due as tax be forfeited to the State Government and be recovered from him and such payment or recovery shall discharge him of the liability to refund the amount to the person from whom it was collected,

(4) Where any amount is paid or recovered by or from any dealer Under Sub-section (1) or (3), a refund of such amount or any part thereof can be claimed from Government by the person from whom, it was realised by way of tax provided an application in writing in the prescribed form is made to the Commissioner, within two years from the date of the order of forfeiture. On receipt of any such application, the Commissioner shall hold such inquiry as he deems fit and if the Commissioner is satisfied that the claim is valid and admissible and that the amount so claimed as refund is actually paid or recovered, he shall refund the amount or any part thereof, which is found due to the person concerned.

(5) Where any amount is collected by way of tax or purporting to be by way of tax in contravention of Section 18 at any time before the commencement of the Karnataka Sales Tax (Amendment) Act, 1992, the provisions of Sub-sections (3) and (4) shall apply to such amount collected.

It is crystal clear from clause (ii) of Sub-section (2) of Section 18-AA of the Karnataka Sales Tax Act, that, interest is payable on delayed remittance of amounts unauthorisedly collected by way of KST and in the instant case, it is not in dispute that the petitioner has collected sales tax from the customers at the rate of four per cent thus contravening the provision of Section 18(1) of the KST Act read with Section 9(2) of the CST Act. Further, it is not in dispute that, the amendment brought by Parliament to Section 9 of the CST Act introduced by Central Act No. 10 of 2000 was retrospective in nature from May 12, 2000. The said amendment has been brought by Parliament in the absence of any clause for payment of interest on delayed payment of interest giving retrospective effect from December 5, 2000 and taking into consideration the law laid down by the Supreme Court of India in *India Carbon Ltd. etc. Vs. State of Assam*, and that will come into force after receiving the assent of the President of India. The apex Court has held in the case of *India Carbon Ltd. etc. Vs. State of Assam*, that, collection of interest was not provided by any substantive provision under the Central Sales Tax Act. In the absence of such substantive provision, the provision under local Act entitles the State to recover the interest and further held that, the sales tax authorities of the State cannot for the purpose of collecting and

enforcing payment of Central sales tax charge interest thereon. The said flaw has been rectified by placing the bill on the floor of the Parliament by the Finance Department with regard to the absence of substantive provision for collection of interest. Thereafter, an amendment was brought to Section 9 of the CST Act by Act No. 10 of 2000 read as Section 9(2) of the CST Act with retrospective effect. Section 9(2-A) of the CST Act reads thus:

All the provisions relating to offences and penalties (including provisions relating to penalties in lieu of prosecution for an offence or in addition to the penalties or punishment for an offence but excluding the provisions relating to matters provided for in sections 10 and 10-A) of the general sales tax law of each State shall, with necessary modifications, apply in relation to the assessment, reassessment, collection and the enforcement of payment of any tax required to be collected under this Act in such State or in relation to any process connected with such assessment, reassessment, collection or enforcement of payment as if the tax under this Act were a tax under such sales tax law.

This retrospective effect was given to the State Act with regard to collection of interest, which is just and reasonable for the reason that, no dealer/person can unjustly enrich himself and deemed to have the right to retain and enjoy the tax collected in contravention of the relevant taxing provision. Therefore, I do not find any error in the impugned amendment brought to the Karnataka Sales Tax Act. Further, it is significant to note here itself that, as per Sub-clause (ii) of Sub-section (2) of Section 18-AA, the dealer liable to pay the C amount shall pay interest at the rate of two per cent and 11/2 per cent of such amount for each month of default. Where any amount is collected by way of tax or purporting to be by way of tax from any person by any dealer in contravention of Section 18, whether knowingly or not, such dealer shall pay the entire amount so collected, to the assessing authority within twenty days after the close of the month in which such amount was collected, notwithstanding that the dealer is not liable to pay such amount as tax or that only a part of it is due from him as tax under the Act.

12. In the case of Kanthi Enterprises and Others Vs. State of Karnataka and Others, , the honourable Supreme Court has held that, the retrospective provision by the Legislature is permissible and that a registered dealer cannot collect any tax more than what he would be liable to pay. The relevant portion reads as hereunder:

It is settled position that, the legislature can impose tax retrospectively though it cannot be arbitrary and unreasonable. At the first sight, it appears that, the explanation which was inserted on March 5, 1996 retrospectively with effect from April 1, 1998, casts burden of payment of tax for about eight years on the appellants. But, on a closer scrutiny, it becomes clear that, till August 18, 1995, (the date of pronouncement of High Court judgment), they could have and in fact collected the tax. The explanation was inserted on March 5, 1996 so, in effect, the retrospectivity which really affects them, is only for about six months.

Even if they have not passed on burden of tax to the customers during that period, the effect cannot be said to be so unreasonable, arbitrary and harsh as to invalidate the explanation. Such occasional hiccups are not unusual incidents of business. In any event neither on principle nor on authority can such a relief be granted to the appellants.

In the instant case also, there is no dispute that the petitioner-company has collected the amount at the rate of four per cent contrary to the permissible limit which is two per cent and has retained the excess collection of tax till it was noticed by the A authorities and its payment by the petitioner pursuant to the impugned demand notice. Hence, the petitioner is liable to pay interest on the delayed payment of excess collection of tax as envisaged under the mandatory provisions of the Act which came into effect from April 1, 1992.

13. The Supreme Court in the case of Bakhtawar Trust and Others Vs. M.D. Narayan and Others, at paragraph 14 page 2241 has held thus:

para 14:..... It is well-settled that the Parliament and State Legislatures have plenary powers of legislation within the fields assigned to them and subject to some constitutional limitations, can legislate prospectively as well as retrospectively. This power to make retrospective legislation enables the legislature to validate prior executive and legislative acts retrospectively after curing the defects that led to their invalidation and thus makes ineffective judgments of competent courts declaring the invalidity. It is also well-settled that a 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.

In Bakhtawar Trust and Others Vs. M.D. Narayan and Others, , the honourable Supreme Court has referred the following judgments and the relevant portions which are extracted therein are as hereunder:

Para. 16. In Shri Prithvi Cotton Mills v. Broach Borough Municipality reported in (1970) 2 SCC 388, it was held as follows:

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 an invalidity must be removed before validation can be said to take place effectively.

.....

If the Legislature has the power over the subject-matter and competence to make a valid law, it can at anytime make such a valid law and make it retrospectively so as to bind, even past transactions. The validity of a validating law, therefore, 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 or for a valid imposition of the tax.

Para. 18. In AIR 1977 1336 (SC) , it was held:

It is now settled law that when a legal fiction is enacted by the Legislature, the court should not allow its imagination to boggle but must carry the legal fiction to its logical extent and give full effect in it.....

Para. 20. In the case of Vijay Mills Company Limited etc., etc. Vs. State of Gujarat and others, , it was held:

"18. From the above, it is clear that there are different modes of validating the provisions of the Act retrospectively, depending upon the intention of the Legislature in that behalf. Where the Legislature intends that the provisions of the Act themselves should be deemed to have been in existence from a particular date in the past and thus to validate the actions taken in the past as if the provisions concerned were in existence from the earlier date, the Legislature makes the said intention clear by the specific language of the validating Act. It is open for the Legislature to change the very basis of the provisions retrospectively and to validate the actions on the changed basis. This is exactly what has been done in the present case as is apparent from the provisions of clauses (3) and (5) of the Amending Ordinance corresponding to sections 2 and 4 of the Amending Act No. 2 of 1981. We have already referred to the effect of sections 2 and 4 of the amending Act. The effect of the two provisions, therefore is not only to validate with retrospective effect the Rules already made but also to amend the provisions of Section 214 itself to read as if the power to make rules with retrospective effect were always available u/s 214 since the said section stood amended to give such power from the time the retroactive rules were made. The Legislature had thus taken care to amend the provisions of the Act itself both to give the Government the power to make the rules retrospectively as well as to validate the rules which were already made. The contention that the validating Act cannot validate Rules made or acts done prior to the date it was enacted, if accepted, will strike at the very root of the concept of retrospective validation.....

The device of validating a statute is forged precisely to adopt the law to meet the exigencies of the situations. The validation, therefore, may be done in the manner required by the needs of the time. All that is required is that the agency which validates the statute must have the power to do it. The manner and method of doing it is to be left to the authority. If the intentions are clear, the validation has to be interpreted according to the intentions. The courts have in fact held such validation regarding it to be an important weapon in the armoury of legislative devices, it is to emphasise this aspect that we have endeavoured to summarise the law on validation as above, at the cost of lengthening the judgment".

Para 24. In the case of Gurudevdatla VKSSS Maryadit and Others Vs. State of Maharashtra and Others, observed thus:

The Constitution Bench observed that the motive of the Legislature in passing a

statute is beyond the scrutiny of the courts, it is not only the propriety to follow the Constitutional Bench judgment but we are definitely of the opinion and view that by no stretch the courts can interfere with a legislative malice in passing a statute. Interference is restrictive in nature and that too on the constitutionality aspect and not beyond the same".

Para. 32. In the case of T. Venkata Reddy and Others Vs. State of Andhra Pradesh, and Gurudevdatla VKSSS Maryadit and Others Vs. State of Maharashtra and Others, , it has been laid down that--

the intention of the Legislature in enacting a particular statute is immaterial in terms of the question relating to its validity. The intention of the Legislature in passing of a particular statute is beyond the pale of judicial review. In the present matter, the supposedly nebulous intention of the Legislature to defeat the judicial process is, therefore, outside the bounds of our consideration".

In the case of Bakhtawar Trust and Others Vs. M.D. Narayan and Others, at paragraph 31, it is observed thus:

31. It was then urged on behalf of the respondents that a perusal of the Statement of Objects and Reasons for the Validation Act shows that the intention of the Legislature was rather to render the decision of the High Court infructuous than to correct any infirmity in the legal position. For this, reliance was sought to be placed on the Statement of Objects and Reasons of the impugned enactment. It is well-settled by the decisions of this Court that, when a validity of a particular statute is brought into question, a limited reference, but not reliance, may be made to the Statement of Objects and Reasons, The Statement of Objects and Reasons may, therefore, be employed for the purposes of comprehending the factual background, the prior state of legal affairs, the surrounding circumstances in respect of the statute and the evil which the statute has sought to remedy. It is manifest that the Statement of Objects and Reasons cannot, there fore, be the exclusive footing upon which a statute is made a nullity through the decision of a court of law.

On the basis of the aforesaid decisions, I am of the view that the amended Act is constitutionally valid and does not violate articles 14 and 19(I)(g) of the Constitution of India in any manner as contended by the learned Senior Counsel appearing for petitioner.

14. The settled law in the case of India Carbon Ltd. etc. Vs. State of Assam, , is not disputed. The defect pointed out by the apex Court has been cured by a constitutional amendment of the statute and the duty of the court is to act as guardian to the statute and not to re-write or define the statute as brought out by the Parliament.

Therefore, I do not find any erroneousness or unreasonableness in bringing amendment clause (ii) to Sub-section (2) of Section 18-AA with effect from April 1, 1992 inserted by Karnataka Act No. 4 of 1992.

Re. question No. (ii):

15. It is true that the petitioner is a public limited company and a registered dealer under the KST and GST Act and it is also true that the petitioner is registered under the CST Act for the assessment year 1996-97. It has filed its annual returns in the prescribed forum disclosing their total taxable turnover. Accordingly, the first respondent has issued the call notice calling upon the petitioner to produce the books of accounts in order to verify the correctness of their returns. The petitioner has produced the books of accounts, the sales bills and other relevant material documents. On thorough verification of the sale bills and other relevant documents produced by the petitioner, by the first respondent, the same revealed that, the petitioner had effected inter-State sale of the commodities as stated supra. Accordingly, a proposition notice was issued and the petitioner has given reply to the said notice stating that the tax of the above mentioned items u/s 8(5) of the CST Act has been reduced to 11/2 per cent as per Notification No. FD 122 CSL 82(ii) Bangalore, dated 22nd August 1993 and has been cancelled with effect from April 1, 1997, "C" forms were not required. Considering the said stand taken by the petitioner in its reply, the first respondent has issued the revised form 31-A intending to propose tax for the said items at the rate of twelve per cent on item Nos. 1 to 7 and 9 as the rate of sales tax payable by the petitioner was two per cent. Whereas the petitioner had collected sales tax from its customers at the rate of four per cent thus contravening the provisions of Section 18(1) of the KST Act read with Section 9(2) of the CST Act as rightly pointed out by the learned Government Advocate appearing for respondents in her statement of objections. By virtue of such collection, the petitioner has illegally and unjustly enriched itself and retention of such excess tax collected by the petitioner without paying it over to the Government attracted charging interest on the retained amount as envisaged u/s 18-AA(2)(ii) of the KST Act. Therefore, I do not find any error or illegality much less material irregularity in the order passed by the first respondent and in issuing A the consequential demand notice for payment of interest. There is nothing unreasonable in demanding interest on the amount withheld unjustly and without any authority of law by the petitioner during the relevant period and the authorities have rightly charged suitable interest for recovery of the same from the dealer. The respondents have taken a stand in their objections statement, that the petitioner enjoyed the money that actually did not belong to him for a long time.

16. Viewed from this angle, the retrospective introduction of the provision for collection of interest is not only reasonable but also highly justifiable. The learned Government Advocate has placed reliance on the judgment of *Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others*, . There is considerable force in the submission made by the learned Government Advocate appearing for the respondents. He submitted that, the unjust enrichment of the dealers through excess collection of tax or excise duty at the cost of the State has to be prevented. Therefore, I do not find any good grounds to interfere with

the order passed by the assessing authority and the demand notice issued by the competent authority.

Re. Question No. (iii):

17. It is not in dispute that the retrospective amendment brought to Section 18-AA of the KST Act is during 1992. The petitioner has collected excess tax during the assessment year 1996-97. There should be no doubt that, the petitioner was well aware of the retrospective amendment brought to Section 18-AA when he collected four per cent tax in excess of the prescribed limit. Only after the assessing authority has passed the order and issued the legitimate demand notice, the petitioner has paid the tax collected by it in excess of the prescribed limit. The petitioner has kept silent about the retrospective amendment made in 1992 and has only challenged the same after the issue of the impugned demand notice. The petitioner has not properly explained the delay in questioning the retrospective amendment nor assigned cogent reasons for condoning the said delay. In view of the decision of the honourable Supreme Court of India in the case of *Rup Diamonds and Others Vs. Union of India and Others*, , the relief sought for by the petitioner is liable to be rejected on the ground of delay and laches also. Paragraphs 8 and 9 of the said judgment read thus:

Para 8 there is one more ground which basically sets the present case apart. Petitioners are re agitating claims which they had not pursued for several years. Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an unexplained, inordinate delay in preferring this writ petition which is brought after almost an year after the first rejection. From the orders in *Union of India and others Vs. P. Ripalkumar and Co., Bombay*, and *H. Patel & Co's case (W.P. No. 1465 of 1984--Bombay High Court)* it is seen that in the former case the application for revalidation and endorsement was made on March 12, 1984 within four months of the date of the redemption certificate dated November 16, 1983 and in the latter case the application for revalidation was filed on June 20, 1984 in about three months from the redemption certificate dated March 9, 1984. (underlining* is mine)

9. On a consideration of the matter we think that, apart altogether from the merits of the other grounds for rejection, the inordinate delay in preferring the claim before the authorities as also the delay in filing the writ petition before this Court should, by themselves persuade us to decline to interfere.

18. Yet another reason as to why the petitioner is not entitled to invoke the extraordinary jurisdiction of this Court as envisaged under articles 226 and 227 of the Constitution of India, is for the reason that, the petitioner being a reputed company, as claimed by them, knowing fully well, intentionally and deliberately

have collected the sales tax at the rate of four per cent very much contrary to the permissible limit and as per the notification issued they are entitled to collect only two per cent. But, the petitioner, after such excess collection of tax has retained the said amount collected from the assessment year 1996-97 till the proceedings were initiated in the year 1999. Only after issuance of the impugned demand notice, the petitioner has realised the excess collection and deposited the excess amount collected by it and now is before this Court pleading innocence in the instant writ petition by assailing the constitutional validity of the retrospective amendment. This shows that, the conduct of the petitioner is not fair or just. Therefore, the petitioner cannot evade payment of interest on delayed payment of excess collection of tax which was kept in its custody and was utilised for other purposes without remittance to the Government. Hence, the petitioner is liable to pay interest on the excess amount in its custody and the demand Here italicized made in pursuance of the order passed by the assessing authority is A just and reasonable. Therefore, on this ground also, the writ petition filed by the petitioner is liable to be dismissed.

19. Further, the writ petition filed by the petitioner is liable to be rejected on the ground that, the persons who are aggrieved by the orders passed by the Government should approach the High Court only after exhausting the remedy as provided under the law and relevant Rules. Under law, the petitioner has got an alternative, efficacious and effective remedy by way of filing an appeal before the appellate authority. The petitioner, without exhausting the alternative, effective and efficacious remedy available to it under the provisions of the Act, has approached this Court. Hence, in view of the well-settled law laid down in host of judgments by the honourable Supreme Court as well as this Court, the petitioner cannot seek for any relief on this ground also.

20. In the instant case, there is no dispute that the petitioner has collected the tax at the rate of four per cent contrary to the permissible limit and enjoyed the said amount from the assessment year 1996-97 till 2000 without remittance of the same to the Government. Hence, such persons are not entitled to take any benefits accrued in view of the subsequent law laid down by the apex Court.

21. Having regard to the facts and circumstances of the case, as stated above, and having regard to the factual legal aspect of the matter, as stated supra, I do not find any good grounds to entertain the instant writ petition. Accordingly, the writ petition filed by the petitioner is dismissed.