
(1972) 03 AP CK 0018

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3380 of 1971

S. M. Palaniappa Devar and Sons

APPELLANT

Vs

Commercial Tax Officer and Another

RESPONDENT

Date of Decision : 06-03-1972

Acts Referred:

Constitution of India, 1950 — Article 200, 226

Citation : (1973) 31 STC 34

Hon'ble Judges : Sriramulu, J;Gopal Rao Ekbote, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddy, for the Appellant; Fifth Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Sriramulu, J.—For the assessment year 1965-66, the Commercial Tax Officer, Tirupathi, determined the net taxable turnover of the petitioner at Rs. 4,79,136.26, of which Rs. 4,66,181.21 represented the turnover of watery coconuts and, on that turnover, levied the tax in accordance with the rates specified in the Andhra Pradesh General Sales Tax Act (hereinafter called the "principal Act"). Against the said order, the petitioner filed Writ Petition No. 2159 of 1966 in this court on 28th December, 1966, contending that watery coconuts being "declared goods" were not exigible to tax as they were not included in the Third Schedule to the principal Act. Accepting that contention, this court, by its order dated 19th December, 1970, set aside the assessment on watery coconuts and re-fixed the net taxable turnover at Rs. 12,955.05 and the tax payable thereon at Rs. 411.47 as against the tax of Rs. 9,731.82 already paid by the petitioner. The amount of excess tax of Rs. 9,320.35, which was already paid by the petitioner, was directed to be refunded and, accordingly, it was refunded to the petitioner.

2. The controversy whether watery coconuts were "oil-seeds" or not, has been set at rest by the order of this court in Writ Petition No. 1196 of 1965, since

reported in 28 S.T.C. 110, Tagoob Mohammad of Kanchili v. The Commercial Tax Officer, Srikakulam. Following that decision this court in Writ Petition No. 337 of 1967 held that watery coconuts were not liable to be taxed for the assessment year 1964-65, since watery coconuts were not included in Schedule III containing the list of "declared goods" exigible to tax. Following the said decision, the contention of the petitioner in regard to the assessment year 1965-66 was accepted by this court in Writ Petition No. 2159 of 1966 and in pursuance of the order of this court, the Commercial Tax Officer refunded the amount of excess tax already paid by the petitioner.

3. In order to get over the above decisions, the State Government amended the principal Act by enacting the Andhra Pradesh General Sales Tax (Amendment) Act, 1971 (hereinafter referred to as the "Amending Act"). The Amending Act received the Governor's assent on 17th April, 1971 and has come into force on 19th April, 1971.

4. The Commercial Tax Officer, applying the provisions of the Amending Act, issued notice dated 20th July, 1971, to the petitioner purporting to reopen the assessment for the assessment year 1965-66 by levying tax on the turnover of watery coconuts of Rs. 4,66,181.21.

5. The petitioner then approached this court by this writ petition filed under Article 226 of the Constitution of India, seeking the issue of a writ of prohibition, prohibiting or restraining the Commercial Tax Officer from revising the assessment as proposed in the said notice. Meanwhile, the Commercial Tax Officer, by his order dated 1st September, 1971, revised the assessment as proposed in the notice, by including the turnover of watery coconuts of Rs. 4,66,181.21, which was excluded by the order of the High Court dated 19th December, 1970, passed in Writ Petition No. 2159 of 1966.

6. The petitioner then filed W.P.M.P. No. 737 of 1972 for amendment of the writ petition by seeking a writ of certiorari for quashing the reassessment order passed by the Commercial Tax Officer on 1st September, 1971. We have, by our order of even date, allowed the amendment.

7. The learned counsel, Sri S. Dasaratharama Reddy, appearing for the writ petitioner, challenged, the legality and validity of the revised assessment on the following three grounds: (1) since the Amending Act derogates the powers of the High Court and endangers its position, which it is designed to fill under the Constitution, it should not have been assented to by the Governor of Andhra Pradesh, but should have been reserved for the consideration of the President of India. Having not done so, the Amending Act is ultra vires of the Constitution and void ; (2) since Section 6 of the Amending Act has not been made retrospective even after the passing of the said Act, the Legislature cannot be said to have achieved the purpose of making the assessment or reassessment for an anterior period. Although the Legislature may have had the intention to validate the assessments previously made and to make assessments or reassessments, that

object has not been achieved by the Amending Act, in view of the language used in Sections 6 and 7 of the said Act. Sections 7 and 8 of the Amending Act are, therefore, bad in law and a reassessment u/s 8 cannot, effectively, be made; and (3) Section 8(1) of the Amending Act does not enable the Commercial Tax Officer to revise the assessment when it is merged into the order of the High Court.

8. Mr. Sastri, the learned Advocate appearing for the Government, on the other hand, contended that the Amending Act has not encroached upon the judicial powers of the High Court. On the other hand, it has followed the law settled by the High Court. The Legislature is competent to authorise the revision of assessments which were set aside in appeals or writ petitions, in view of the clear language of Section 7, which starts with a non obstante clause. The proviso to Article 200 of the Constitution is not attracted at all in this case and, therefore, the Bill did not require to be reserved for the President's assent. It is now well-settled that the Legislature is competent to reenact with retrospective effect the provisions held ultra vires by the High Court after removing the defect. The powers to validate the assessments or orders which, though initially invalid, are valid in the light of the provisions of the Amending Act is also conceded to the Legislature. The contention of the petitioner that, in the absence of retrospective effect given to Section 6 of the Amending Act, no reassessment for an anterior period can be made, is misconceived. The section, read with the schedule, expressly and clearly gives retrospectivity extending to a particular period in regard to the levy of tax on watery coconuts.

9. The general scheme of taxation envisaged under the Sales Tax Act is to levy multiple tax on each transaction of sale and purchase of goods. But this general scheme is subject to certain exceptions, one to be found in Section 5(2) and the other in Section 6 of the principal Act. Section 5(2)(a) of the principal Act lays down the rates of tax and only at the point of sale effected in the State by a dealer, on his turnover of sales of goods mentioned in Schedule I, irrespective of the "quantum of turnover. Similarly, Section 5(2)(b) of the principal Act lays down the rates of tax at the point of purchase effected in the State of the goods mentioned in Schedule II, on his turnover of purchase of such goods, irrespective of the quantum of turnover,

10. Section 6 of the principal Act is the charging section in respect of "declared goods", in respect of which a single point tax is levied, either at the point of sale or purchase, as mentioned against each of the items of goods mentioned in Schedule III. Watery coconuts were included as item 10 in Schedule II and were taxed at the rates and at the points specified therein.

11. It is necessary at this stage to notice the provisions of the Amending Act. It consists of 8 sections. It received the Governor's assent on 17th April, 1971 and became law on 19th April, 1971. Section 5(1) of the Amending Act omits item 10 and the entries relating thereto and the explanation thereunder, from the Second Schedule to the principal Act. Section 5(2) of the Amending Act says that Sub-section (1) of Section 5 shall be deemed to have come into force on 1st August,

1963. The effect of these two clauses is, that from the 1st of August, 1963, onwards, item 10 and the entries relating thereto and the explanation thereunder, did not exist in the Second Schedule.

12. Section 6 (a) of the Amending Act directs the substitution of the words "coconuts of all varieties" for the word "coconuts" found in item 5 of the Schedule III to the principal Act. Section 6(b) of the Amending Act then directs the insertion of a fresh item, i. e., item 5-A after item 5 in the Third Schedule. According to item 5-A, "watery coconuts" are taxed (i) at the point of last purchase in the State, at the rate of 2 paise in the rupee, during the period commencing on 1st August, 1963 and ending with 31st March, 1965 ; (ii) at the point of first sale in the State, at the rate of 2 paise in the rupee, during the period commencing on 1st April, 1965 and ending with 22nd December, 1966 ; and (iii) at the point of first purchase in the State, at the rate of 3 paise in the rupee, during the period commencing on 23rd December, 1966 and ending with the date immediately before the date of commencement of the Amending Act. There is also a proviso, which says that, where during the aforesaid periods any tax has been levied and collected in respect of watery coconuts and where tax has also been levied and collected in respect of coconuts formed out of such watery coconuts, the tax so levied and collected in respect of such watery coconuts shall alone be refunded. We are not concerned here with Clauses (c) and (d) of Section 6 of the Amending Act. Section 7(1) of the Amending Act reads as follows :

Section 7. (1) Notwithstanding anything in any judgment, decree or order of any court or other authority to the contrary and subject to the provisions of Section 8, any assessment, Reassessment, levy or collection of any tax made or purporting to have been made, any action or thing taken or done in relation to such assessment, reassessment, levy or collection under the provisions of the principal Act before the commencement of this Act, shall be deemed to be as valid and effective as if such assessment, reassessment, levy or collection or action or thing had been made, taken or done under the principal Act as amended by this Act and accordingly-

(a) all acts, proceedings or things done or taken by the State Government or by any officer of the State Government or by any other authority in connection with the assessment, reassessment, 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 proceedings shall be maintained or continued in any court or before any authority for the refund of any such tax and;

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

13. Sub-section (2) of Section 7 of the Amending Act says that nothing in the Amending Act should be construed as preventing any person from questioning in

accordance with the provisions of the principal Act, as amended by the Amending Act, any assessment, reassessment, levy or collection of tax referred to in Sub-section (1) of Section 7, or from claiming a refund of any tax paid by him in excess of the amount due from him by way of tax under the principal Act, as amended by the Amending Act. The proviso to Section 7(2) fixes the time-limit for filing the application for any relief under that section. Section 8(1) of the Amending Act reads as follows :

Section 8. (1) Notwithstanding anything in any judgment, decree or order of any court or other authority to the contrary, the assessing authority may assess or reassess the amount of tax payable by the dealer on his turnover relating to coconuts of all varieties during the period commencing on the 1st August, 1963 and ending with the date immediately before the date of the commencement of this Act, in accordance with the provisions of the principal Act, as amended by this Act....

14. Section 8(2) fixed the time-limit of one year from the date of the commencement of the Amending Act for making the assessment or reassessment in accordance with Section 8.

15. Having noticed the provisions of the Amending Act, we will now take up the first contention raised by the learned counsel, Sri S. Dasaratharama Reddy, appearing for the petitioner that the Amending Act should have been reserved for the consideration of the President of India before it was assented to by the Governor. The proviso to Article 200 of the Constitution says that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor, would, if it became law, so derogate from the powers of the High Court as to endanger the position which that court is, by the Constitution, designed to fill. The short question that has to be decided by us is, whether the Amending Act derogates from the powers of the High Court as to endanger the position which this court is, by the Constitution, designed to fill. Before we consider this question, we may profitably refer to the decision of the Supreme Court in *Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others*, His Lordship Hidayatullah, C.J., speaking for the Supreme Court, observed 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 is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A court'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. Ordinarily, a court holds

a tax to be invalidly imposed because the power to tax is wanting or the Statute or the Rules or both are invalid or do not sufficiently create the jurisdiction. 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. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by reenacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the reenacted law. Sometimes the Legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon courts. The Legislature may follow any one method or all of them and while it does so, it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the Legislature and legal and adequate to attain the object of validation. If the Legislature has the power over the subject-matter and competence to make a valid law, it can at any time 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 for a valid imposition of the tax....

16. The Amending Act does not merely declare that the decisions of this court in the earlier writ petitions are not "binding. If the Amending Act had merely declared so, that the earlier decisions of this court are not binding, then probably, it could have been argued that the Amending Act was tantamount to reversing the decisions of this court given in the exercise of judicial powers and that the Legislature had usurped the judicial power which it did not possess or exercise.

17. Since watery coconuts have been held to be "oilseeds" and as they were not included in Schedule III, this court held that the State Government could not validly levy the sales tax on the turnover of watery coconuts. The cause of invalidity of the levy has now been removed by the Amending Act by inserting in Schedule III an item relating to watery coconuts with effect from 1st August, 1963. Thus, the Amending Act has removed the defect which this court had pointed out in its earlier decisions. In doing so, the Legislature has accepted the verdict of this court that the levy of sales tax on watery coconuts, in the absence of that item in Schedule III to the principal Act, was illegal. By the Amending Act, it has now removed the defect or the cause of invalidity of the levy under the principal Act. It is, therefore, clear that the Legislature did not either reverse the decisions of this court, or declare that the decisions of this court are not binding, but has only removed the defect or the cause for the invalidity of the levy under the principal Act which was till then existing. Under these circumstances, we are unable to agree with the learned counsel appearing for the petitioner that the

Amending Act encroaches upon the powers of this court, or has done something which is derogatory to the powers of this court, so as to endanger its position which it is designed to fill under the Constitution. The contention of the learned counsel, therefore, fails and is rejected.

18. The next two contentions raised by the petitioner's counsel are interconnected. The short question is, whether in view of the language used in Sections 6 and 7 of the Act, can an assessment or reassessment be made for a period anterior to the commencement of the Amending Act ? The argument of the learned counsel was that in Section 5(2) of the Amending Act it has been clearly stated that the amendment shall be deemed to have come into force on 1st August, 1963. Similar language has not been used in Section 6 of the Amending Act. Section 6 of the Amending Act inserted item 5-A in Schedule III to the principal Act, but does not say from which date the insertion was effective. Hence it was submitted that though the Legislature had the intention to levy the tax on watery coconuts under item 5-A, newly inserted in Schedule III by the Amending Act from 1st August, 1963, the Legislature has not achieved the object of taxing the turnover of watery coconuts for an anterior period. The insertion of item 5-A in the Third Schedule was effective only from 19th April, 1971, on which date the Amending Act has come into force. Ordinarily, a law will be deemed to operate prospectively, unless the Act is, by express words, given retrospective operation.

19. We are unable to agree with this submission made by the learned counsel. No doubt in Sub-Clauses (a), (b), (c) and (d) of Section 6, the Legislature has not used any words as in Section 5(2), to indicate that the said insertion would be deemed to have been made on 1st August, 1963, or on a date earlier to the commencement of the Act. Clauses (i), (ii) and (iii) of the newly inserted item 5-A themselves indicate that the turnover of watery coconuts has to be taxed at the rates and at the points specified therein, on turnovers during the period anterior to the commencement of the Act. By necessary implication, therefore, we have to hold that the intention of the Legislature was to make Section 6 of the Amending Act retrospective in its operation. This is further made clear by the express language used in Section 8 of the Amending Act, which says that:

Notwithstanding anything in any judgment, decree or order of any court or other authority to the contrary, the assessing authority may assess or reassess the amount of tax payable by the dealer on his turnover relating to coconuts of all varieties during the period commencing on the 1st August, 1963 and ending with the date immediately before the date of the commencement of this Act....

20. It is not necessary that it should be expressly stated that the provisions of a statute are retrospective in operation if the intention can be gathered by necessary implication. We are fortified in our view by a Full Bench decision of the Allahabad High Court in Dila Ram and Others Vs. Atma Ram and Others,

21. The observations of the Supreme Court in Karimtharuvi Tea Estate Ltd. Vs.

State of Kerala, also lend support to our view.

22. That Section 7 applies to assessments and reassessments made for a period earlier to the commencement of the Amending Act, cannot be doubted at all, because the section says that notwithstanding anything in the judgment, decree or order of any court, any assessment, reassessment, levy or collection of any tax made or purporting to have been made, etc., shall be deemed to be as valid and effective as if such assessment, reassessment, levy or collection, etc., had been made, taken or done under the principal Act, as amended by the Amending Act. The intention of the Legislature to make it retrospective in operation is expressly and in clearer terms stated in Section 8 of the Amending Act.

23. We, therefore, reject the contention of the learned counsel and hold that Sections 6, 7 and 8 of the Amending Act are retrospective in operation and authorise, notwithstanding any order of the court or the departmental officers, to make assessments and reassessments for an anterior period. Sections 7 and 8 are, therefore, quite valid. The second contention, therefore, fails and is rejected.

24. The last contention raised by the learned counsel for the petitioner was that the Commercial Tax Officer could, in law, revise an order made by him and not the order of the High Court. The assessment order in this case had merged in the High Court's order. The Commercial Tax Officer had no jurisdiction and was not competent to revise an order which had merged in the order of the High Court. In support of this argument, the learned counsel relied upon a decision of the Madras High Court in *Ceylon Thowfeck Hotel v. The State of Madras* [1961] 12 S.T.C. 238.

25. In the above case that has been relied upon by the petitioner's counsel, the turnover of the hotel business was assessed at 4½ pies in a rupee u/s 3(1)(b) of the Madras General Sales Tax Act, 1939, prior to its amendment by the Amending Act of 1956. Following the decision of the High Court that the provision authorising the levy of tax on the turnover of a hotel, at the rate of 4½ pies in a rupee, was unconstitutional and unenforceable, the Tribunal directed the turnover to be assessed to tax at 3 pies in a rupee. The excess amount of tax due in accordance with the decision of the Tribunal was refunded to the assessee. In October, 1956, the Madras General Sales Tax (Third Amendment) Act validated the assessments under the provisions of the proviso to Section 3(1)(b) of the Act before it was amended. The Amending Act also amended Section 3(1)(b) with retrospective effect from 1st August, 1949 and authorised the levy at 4½ pies in a rupee. The Deputy Commercial Tax Officer revised the assessment and demanded the tax that was found due on the basis of the revised assessment. The Tribunal upheld the demand. On a revision, the High Court held that:

...(i) Section 17 of the Amending Act XV of 1956 could not validate the order of the Deputy Commercial Tax Officer dated 7th February, 1957. The finality of the original assessment for 1953-54 was under the order of the Tribunal dated 28th May, 1956 and Section 17 of the Amending Act did not operate to set aside that

order of the Tribunal or to revise the original assessment which the Tribunal had modified; (ii) that neither the Madras General Sales Tax Act, 1939, nor the Amending Act provided a machinery for effecting recovery of the amount refunded without a revision of assessment. Rule 18(1) provided for rectification, but that machinery was not availed of in this case and it could not have been availed of by the Deputy Commercial Tax Officer. The machinery provided for revision of assessment in Rule 17(3) could not have been availed of in this case by the assessing authority to revise not his order of assessment but that of the Tribunal....

26. In order to appreciate the above decision, it is necessary to know the exact language of Section 17(3) under which the assessment was revised by the Deputy Commercial Tax Officer in the above case. It reads as follows:

If for any reason any tax has been assessed at too low a rate in any year, the assessing authority...may at any time within 5 years next succeeding that to which the tax...relates, revise the assessment...after issuing a notice to the dealer...and after making such enquiry as he considers necessary.

27. Even on a cursory perusal of Section 17(3) of the Amending Act in that case, it becomes manifest that the language used in that Amending Act is wholly different from the language used by the Andhra Pradesh Legislature in Section 8(1) of the Amending Act, which has already been reproduced in the foregoing paragraphs of this judgment. The words "notwithstanding anything in the judgment, decree or order of any court" found in Section 8(1) of the Amending Act are not found in Section 17(3) of the Amending Act in the Madras case. Hence the decision so strongly relied upon by the learned counsel, Sri S. Dasaratharama Reddy, for the petitioner is distinguishable on facts. In the instant case, the Commercial Tax Officer had revised not the order of the High court, but his own order made earlier. We, therefore, reject this contention. No other contention was raised.

28. In the result, the writ petition fails and is dismissed with costs. Advocate's fee Rs. 100.