(1960) 02 BOM CK 0007

In the Bombay High Court

Case No : Special Civil Application No''s. 91, 124, 300, 314, 315 of 1959

Shah Ramchand Govindji and Co. APPELLANT

Vs

G.G. Nerkar, Sales Tax Officer RESPONDENT

Date of Decision : 16-02-1960

Acts Referred:

Bombay Sales Tax Laws (Validating Provisions and Amendment) Act, 1959 — Section 6
Central Provinces and Berar Sales Tax Act, 1947 — Section 11(2), 11(2), 11(5), 11A

Citation : (1960) NLJ 429

Hon'ble Judges : H.K. Chainani, C.J;Y.S Tambe, J;S.G. Patwardhan, J

Bench : Full Bench

Judgement

Gokhale, J.—Both these applications are resisted on behalf of the respondents on the ground that the effect of the Full Bench decision has been taken away by virtue of the amendment introduced in section 11-A of the Act referred to above. In the Full Bench case of Bisesar House v. State of Bombay [1958] 9 S.T.C. 654; 60 Bom. L.R. 1395, this Court held that a notice u/s 11(2) of the Act cannot be issued more than three years after the expiry of the period for which it is proposed to make the assessment. Now, what the Legislature has done by section 6 of the Bombay Sales Tax Laws (Validating Provisions and Amendment) Act, 1959, is this. It has amended section 11-A of the Act and the said amendment is in the following terms :-

2. In section 11-A of the Central Provinces and Berar Sales Tax Act, 1947 (C.P. and Berar Act No. XXI of 1947), after sub-section (2) the following sub-section shall be inserted, namely :-

"(3)(a) Nothing in sub-sections (1) and (2) -

(i) shall apply to any proceeding (including any notice issued) u/s 11 or 22-A or 22-B, and

(ii) notwithstanding any judgment, decree or order of a Court or Tribunal, shall be deemed ever to have been applicable to such proceeding or notice.

(b) The validity of any such proceeding or notice shall not be called in question merely on the ground that such proceeding or notice was inconsistent with the provisions of sub-sections (1) and (2)."

3. Now, it is the argument on behalf of the respondents that the result of this amendment is that the decision of the Full Bench no longer holds good and, therefore, there would be no period of limitation so far as notices issued u/s 11(2) of the Act are concerned. On the other hand, it is contended on behalf of the petitioners by Mr. Chandurkar and Mr. Phadke that the Legislature had taken an erroneous view of the decision of the Full Bench and in law the amendment has not at all touched the said decision.

4. In order to test this argument, it is necessary to refer in the first instance to section 11-A(1) and (2) of the Act and it runs as follows :-

[His Lordship quoted section 11-A(1) and (2) and continued as follows] :-

Now, section 11(2) itself does not provide for any limitation, but it was argued before the Full Bench that the Court should import into section 11(2) the limitation prescribed u/s 11(5) as well as section 11-A. In support of this argument reliance was placed on a judgment of this Court in Commissioner of Income Tax, Bombay City-I, Bombay Vs. Narsee Nagsee and Co., , where the Court was dealing with the provisions of the Business Profits Tax Act and the Court held there that though section 11 of the Business Profits Tax Act did not prescribed any period of limitation, the period of limitation of four years prescribed for issuing a notice u/s 14 of that Act should be imported into section 11. Following the principle of this decision as well as the principle underlying the provision of a period of limitation u/s 11-A, the Full Bench held that a notice u/s 11(2) of the Act could not be issued more than three years after the expiry of the period for which it was proposed to make the assessment. Mr. Phadke''s contention is that the Legislature has not properly appreciated the effect of that decision. The amendment has provided that nothing in sub-sections (1) and (2) of section 11-A of the Act should apply to any proceeding, including any notice issued u/s 11 or 22-A or 22-B, and notwithstanding any judgment, decree or order of a Court or Tribunal, shall be deemed ever to have been applicable to such proceeding or notice. It is not disputed that this provision would be retrospective in its operation. But Mr. Phadke contends that there is an erroneous assumption underlying this amendment, viz., that the Full Bench decision applied the provisions of sub-section (1) of section 11-A to a notice issued u/s 11(2) and that assumption, says Mr. Phadke, being erroneous, the amendment could not in any way affect the validity of the Full Bench decision. In this connection, Mr. Phadke relies on the well-known principle that the Act of a Legislature cannot alter the law by merely betraying an erroneous opinion of it, and he relies in support of his contention on the remarks of Lord Radcliffe in the case of the House of Lords, Inland Revenue Commissioner v. Dowdell O'' Mahoney & Co. [1952] 1 All E.R. 531 Our attention has also been invited to a ruling of the Supreme Court in Hariprasad Shivshankar v. A. D. Divelkar (1956) 59 Bom. L.R.

384; AIR 1957 S.C. 121, where a similar view was taken and it was observed that legislation founded on a mistaken or erroneous assumption has not the effect of making that the law which the Legislature had erroneously assumed to be so. There is considerable force in what Mr. Phadke has argued.

5. On the other hand, it is argued on behalf of the respondents that the amendment itself clearly indicates what the Legislature intended. Under clause (ii) of sub-section (3)(a), newly introduced a specific reference is made to a judgment, decree or order of a Court or Tribunal. Our attention was also invited to the Statement of Objects and Reasons in connection with this amendment wherein a specific reference to the case of Bisear House v. Commissioner of Sales Tax, Nagpur [1958] 9 S.T.C. 654; 60 Bom. L.R. 1395, has been made, and it is contended that where the intention of the Legislature is clear, mistake in language should not prevent the Court from giving effect to the obvious intention of the Legislature. See Maxwell''s Interpretation of Statutes (10th edn.), pages 318-319. It is also pointed out that the Full Bench decision in effect applied the provisions of section 11-A(1) to section 11(2) and reference was also made in the judgment to the provisions of section 11(5). It is true that in the amendment now made there is no reference to the limitation prescribed u/s 11(5) but it is provided that the provisions of section 11-A cannot be applied to any proceedings including a notice issued u/s 11 and it is argued that if the reason underlying the decision of the Full Bench disappears, the decision itself must cease to have any validity; for, it is well-settled that when the reason for the law ceases, the law itself ceases : cessante ratione cessat lex.

6. These are, in brief, the rival arguments in support of the contentions urged on behalf of the respective parties. There is no doubt that the present legislation forcefully illustrates what may happen when omnibus legislation to amend a number of statutes is undertaken in haste. Undoubtedly the amending Act intended to provide that the three years'' limitation which this Court had imported into section 11(2) of the Act under its Full Bench decision should not apply. But as the question involved in the present case is an imported question which is likely to affect the decision of several cases under the Act, it has been urged before us that we might consider the advisability of referring the questions involved in these two applications to a larger Bench. We have decided to accede to this request and accordingly refer the following two questions to a Full Bench :-

(1) Whether in view of the amendment introduced in section 11-A of the C.P. and Berar Sales Tax Act No. XXI of 1947 by section 6 of the Bombay Sales Tax Laws (Validating Provisions and Amendment) Act, 1959, the Full Bench decision in Bisesar House v. State of Bombay [1958] 9 S.T.C. 654; 60 Bom. L.R. 1395 still holds good ?

(2) Whether a notice u/s 11(2) of the said Act can be issued more than three years the expiry of the period for which it is proposed to make the assessment ?

7. We direct that the papers in these two cases be placed before the learned

Chief Justice for constituting a Full Bench.

