

A **SALES-TAX OFFICER, CIRCLE-I, JABALPUR**

v.

HANUMAN PRASAD

October 11, 1966

[J. C. SHAH, V. RAMASWAMI AND V. BHARGAVA, JJ.]

B *Madhya Pradesh General Sales Tax Act (M. P. Act 2 of 1959) ss. 19(1) and 52—Assessment under repealed Act—Reassessment—Period of limitation—Amendment of s. 19(1)—Proviso—Effect.*

C Pending assessment to Sales-tax of respondent's turnover under the Central Provinces and Berar Sales Tax Act, 1947, the Madhya Pradesh General Sales Tax Act, 1958, came into force repealing the former Act. Thereupon, the respondent was assessed to tax under s. 11-A(1) of the repealed Act. After more than three years from this assessment, the Sales Tax Officer issued a notice for reassessment under s. 19(1) of the new Act, which provided five years period for reopening escaped assessment. The respondent objected that his sales had been assessed under the repealed Act, where the limitation of three years for reassessment was prescribed and the proviso to s. 19(1) of the new Act preserved the rights acquired under the repealed Act. The Sales-tax Officer rejected the objection. The respondent filed a writ petition in the High Court which was allowed. Thereafter, the principal clause of s. 19(1) was amended retrospectively to include assessments under the repealed Act. In appeal to this Court the appellants Sales-tax Officer, contended that the main clause of s. 19(1) was applicable and that by the subsequent amendment to s. 19(1), the principal clause became applicable to cases assessed under the repealed Act and not the proviso.

E **HELD :** The appeal must be dismissed.

The mere enforcement of the new Act by the time the order of assessment was passed by the Sales-tax Officer could not lead to the conclusion that the assessment was made under the new Act and not under repealed Act. [833 H]

F The assessment, after enforcement of the new Act, was an assessment in accordance with the rights and liabilities of the respondent under the repealed Act; so the proviso to s. 19(1) of the new Act was applicable. The proviso to s. 52 of the new Act also preserved this right of the respondent. [834 E]

Even if the effect of the subsequent amending Act was that under the principal clause of s. 19(1) the reassessment could be taken up within a period of five years, that provision became ineffective because of the continued existence of the proviso.

G A proviso is added to a principal clause primarily with the object of taking out of the scope of that principal clause what is included in it and what the Legislature desires should be excluded. [835 D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 548 of 1965.

Appeal by special leave from the judgment and order dated February 28, 1963 of the Madhya Pradesh High Court in Misc. Petition No. 381 of 1962.

H A. P. Sen, Advocate-General, Madhya Pradesh and I. N. Shroff, for the appellant.

Yogeshwar Prasad and M. V. Goswami, for the respondent.

The Judgment of the Court was delivered by

Bhargava, J. The respondent was a registered dealer carrying on the business of selling goods liable to sales-tax under the Central Provinces and Berar Sales Tax Act, 1947 (hereinafter referred to as "the repealed Act"). For the period from 3rd November, 1956 to 23rd October, 1957, the respondent filed his return, which was not accepted by the Sales-tax Officer, who, on March 10, 1959, issued a notice in Form XII to the respondent. Subsequent to this notice, on May 23, 1959, the turnover of the sales of the respondent was assessed to tax under s. 11(4)(a) of the repealed Act. In the meantime, on April 1, 1959 the Madhya Pradesh General Sales Tax Act, 1958 (Act No. II of 1959) (hereinafter referred to as "the new Act") came into force. On October 23, 1962, the Sales-tax Officer discovered that part of the turnover of the respondent for the period mentioned above had escaped assessment and issued a notice under s. 19(1) of the new Act. The respondent raised a preliminary objection that his sales had been assessed under the repealed Act, under which the limitation of a period of three years was prescribed by section 11-A for assessment of escaped turnover. The Sales-tax Officer rejected that objection by his order dated 29th October, 1962, and decided to proceed with the reassessment. Thereupon, the respondent moved a petition under Articles 226 and 227 of the Constitution before the High Court of Madhya Pradesh, Jabalpur, praying for the quashing of the order of the Sales-tax Officer dated 29th October, 1962, and the notice dated 23rd October, 1962. The High Court held that the period of limitation governing the proceedings instituted by the notice dated 23rd October, 1962, was that laid down under s. 11-A(1) of the repealed Act, so that the proceedings were barred by time. The notice dated 23rd October, 1962, and the subsequent order dated 29th October, 1962 were consequently quashed. The Sales-tax Officer of Jabalpur has now come up to this Court in this appeal by special leave against this order of the High Court.

Section 19(1) of the new Act, on which reliance was placed by the Sales-tax Officer, reads as follows :

"19. (1) Where an assessment has been made under this Act and the Commissioner, in consequence of any information which has come into his possession, is satisfied that any sale or purchase of goods chargeable to tax under this Act, during any year, has been under-assessed or has escaped assessment or assessed at a lower rate or any deduction has been wrongly made therefrom, the Commissioner may, at any time within five calendar years from the expiry of such year, after giving the dealer a reasonable opportunity of being heard and after making such enquiry as he considers necessary, proceed, in such

A manner as may be prescribed, to re-assess the tax payable on any such sale or purchase and the Commissioner may direct that the dealer shall pay, by way of penalty in addition to the amount of tax so assessed, a sum not exceeding that amount :

B Provided that in the case of an assessment made under any Act repealed by Section 52, the period of re-assessment on the ground of under-assessment, escapement or wrong deduction shall be as provided in such Act notwithstanding the repeal thereof."

C The contention on behalf of the Sales-tax Officer was that for the sake of assessing the escaped turnover, the provision applicable was that contained in the main clause of s. 19(1), and that the proviso was not applicable in this case. On the other hand, the respondent's contention was that, in his case, the assessment had been made under the repealed Act, so that the proviso was applicable and the period of limitation for issue of a valid notice was that laid down in s. 11A(1) of the repealed Act which is as follows:

D "11-A.(1). If, in consequence of any information which has come into his possession, the Commissioner is satisfied that any turnover of a dealer during any period has been under-assessed or has escaped assessment or assessed at a lower rate or any deduction has been wrongly made therefrom, the Commissioner may, at any time within three calendar years from the expiry of such period, after giving the dealer a reasonable opportunity of being heard and after making such enquiry as he considers necessary, proceed, in such manner as may be prescribed, to re-assess or assess, as the case may be, the tax payable on any such turnover; and the Commissioner may direct that the dealer shall pay, by way of penalty in addition to the amount of tax so assessed, a sum not exceeding that amount."

E The High Court has accepted the plea put forward on behalf of the respondent.

F The facts given by us above clearly show that the original assessment of the respondent was in respect of a period when the new Act had not come into force. The respondent had filed the return, and even the notice in that connection was issued by the Sales-tax Officer prior to the enforcement of the new Act. The actual order of assessment was made on 23rd May, 1959, shortly after the new Act had come into force. The mere enforcement of that Act by the time the order of assessment was passed by the

G Sales-tax Officer cannot lead to the conclusion that the assessment of the respondent was made under the new Act and not under the

H repealed Act. It was under s. 52 of the new Act that the repealed

Act was repealed, and that section itself, under the proviso, laid down that such repeal shall not affect the previous operation of the said Act or any right, title, obligation or liability already acquired, accrued or incurred thereunder. There was also the further addition that subject thereto, anything done or any action taken (including any appointment, notification, notice, order, rule, form, regulation, certificate or licence) in the exercise of any power conferred by or under the said Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken in exercise of the powers conferred by or under this Act, as if this Act were in force on the date on which such thing was done or action was taken. In view of this proviso it has to be held that when this new Act came into force on 1st April, 1959, all rights, title, obligation or liability already acquired, accrued or incurred under the repealed Act by the respondent remained unaffected and intact. The rights and liabilities, which had been acquired or incurred under the repealed Act, included the right or liability to be assessed in accordance with the provisions of the repealed Act in respect of turnover of sales effected during the time when that Act was in force. The repealed Act laid down that turnover was taxable, how it was to be computed, and at what rate the tax was to be charged. These provisions clearly created rights as well as liabilities of dealers. Those rights and liabilities were thus preserved by s. 52 of the new Act. The assessment which was completed in the case of the respondent on 23rd May, 1959, was, therefore, an assessment in accordance with the rights and liabilities of the respondent under the repealed Act; and this being so, it has to be held that the proviso to s. 19(1) of the new Act was applicable to the case of the respondent. As a result of this proviso, the period of re-assessment on the ground of under-assessment, escapement or wrong deduction in the case of the respondent had to be as provided in s. 11-A(1) of the repealed Act, so that the period was three years and not five years as laid down by s. 19(1) of the new Act. The notice dated 23rd October, 1962, was clearly issued beyond the period of limitation prescribed by s. 11-A(1) of the repealed Act, and the proceedings in pursuance of it were time-barred.

In the alternative, this question may be examined in another aspect. Section 11-A(1) of the repealed Act itself created a right in favour of the respondent not to be assessed in respect of turnover that was under-assessed or had escaped assessment after the expiry of the period prescribed in that sub-section. The proviso to s. 52 of the new Act preserved this right of the respondent, and on this ground also, the Sales-tax Officer was not competent to issue the notice for re-assessment after that period of limitation had expired.

In this connection, learned counsel for the Sales-tax Officer drew our attention to two subsequent pieces of legislation that

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A amended the new Act. The first one of these is the Madhya Pradesh
 General Sales Tax (Second Amendment) Act, 1963 (Act 23 of 1963)
 (hereinafter referred to as "the Amending Act"). By section 3
 of this Amending Act, section 19(1) of the new Act was amended,
 so as to introduce some words in the principal clause of s. 19(1).
 The words introduced were : "or any Act repealed by section 52",
 B and they were to be inserted at both the places where the words
 "this Act" occurred in the principal clause. It was urged that,
 as a result of this amendment, this principal clause became appli-
 cable even to cases in which assessment had been made under the
 repealed Act, and, taking into account the effect of this subsequent
 amendment, we should hold that the Sales-tax Officer was not
 C incompetent to make the assessment when he purported to issue
 the notice on 23rd October, 1962, as the notice was issued within
 the period of five years laid down in the principal clause of s. 19(1)
 of the new Act. It is, however, significant that, though the prin-
 cipal clause of s. 19(1) was amended, the proviso to it was not
 D deleted by the Amending Act. The proviso, therefore, continued
 to remain in force. It is well-recognised that a proviso is added
 to a principal clause primarily with the object of taking out of the
 scope of that principal clause what is included in it and what the
 legislature desires should be excluded. Consequently, even if it
 be held that the effect of the Amending Act was that, under the
 principal clause of s. 19(1), the re-assessment of the under-assessed
 or escaped turnover in the case of the respondent could be taken
 E up within a period of five calendar years, that provision became
 ineffective because of the continued existence of the proviso. The
 Amending Act had not come into force when the High Court deci-
 ded the petition, and consequently, the High Court had no occa-
 sion to consider its effect. However, as we have indicated
 F above, the order made by the High Court remains unaffected even
 after this amendment, and the decision given that the limita-
 tion applicable to the case of the respondent is that laid down by
 s. 11-A(1) of the repealed Act is correct. It is true that the amend-
 ment is s. 19(1) of the new Act made by the Amending Act was
 given retrospective effect under s. 5 of the Amending Act, but that
 also is immaterial, because, even after the amendment, the pro-
 vision contained in the proviso had to prevail over the principal
 G clause of s. 19(1).

The second piece of legislation brought to our notice was the
 Madhya Pradesh General Sales Tax (Second Amendment) Act,
 1964 (Act 20 of 1964) by which also s. 19(1) of the new Act was
 slightly amended. That amendment, however, has no bearing on
 the point which we are called upon to decide in this appeal, and
 H consequently, needs no consideration.

The appeal fails and is dismissed with costs.

Y. P.

Appeal dismissed.