COMMERCIAL TAX-OFFICER, BANGALORE, ETC. ETC. A

*v.*

SRI VENKATESWARA OIL MILLS & ANR. ETC. ETC.

*March* 16, 1973

[K. S. HEGDE, P. JAGANMOHAN REDDY AND H. R. KHANNA, JJ.]

*Central Sales Tax (Amendment) Act, 1959, s. 10 and Mysore Sales Tax Rules 1957, r. 38—Retrospective amendment—In correcting mistakes it is the law as amended that has to be applied—Rule 38 has to be read with s. 10 of amending Act—Assessees cannot have advantage of s. 10(1) without discharging burden placed on them in s. 10(2).* B

After the decision of this Court in *Yadalam Lakshminarasimhiah Setty's* case the President of India on June 9, 1969 promulgated the Central Sales Tax (Amendment) Ordinance 1969 with the object of superseding the effect of that decision and to bring to tax sales effected by every dealer in the course of inter State trade or commerce notwithstanding the fact that no tax could have been levied under the sales-tax law of the appropriate State if that sale had been an intra State sale. That provision was given retrospective effect but s. 10(1) of the Amendment Act provided that if during the relevant period a dealer had not collected sales-tax on the ground that sales-tax was not leviable on the sale in question under the unamended Act he would not be liable to pay sales-tax under the amended Act. The burden of proving, however, that no sales-tax had been collected was placed by s. 10(2) on the dealer. The Ordinance was replaced by the Central Sales Tax (Amendment) Act, 1969. After the Amendment Act came into force the sales-tax authorities sought to reopen under r. 38 of the Mysore Sales Tax Rules 1957 the assessments made on certain dealers on the ground that these assessments suffered from mistakes apparent on the record. In writ petitions filed by the dealers, the High Court of Mysore accepted their contention that the Sales Tax Officer had no jurisdiction to reassess the assessees as it was impermissible for him to receive any additional evidence with a view to decide the question whether the assessees had collected sales-tax on the turnover in question and consequently he could not take any assistance from rule 38. Allowing the appeals by special leave filed by the Revenue. C D E

HELD : It is well settled that if a subsequent legislation is given retrospective effect and is deemed to have been in force at the time when the order to be rectified was made, then the law to be applied is the amended law. In other words, for finding out whether there is a mistake apparent on the record the authority has to look to the amended law and not to the law that was in force at the time the original order was made. [748H] E

Rule 38 of the Mysore Sales Tax Rules must be read with s. 10 of the Amendment Act. If so read it is clear that the assessing authorities before reassessing the dealers should afford them the opportunity to satisfy them that they have not collected the tax. If the impact of s. 10 is ignored, as the High Court had done, then the assessments in question are liable to be reopened whether the assessees had collected tax or not. The assessees cannot have the benefit of s. 10(1) but not the burden of proof placed on them under s. 10(2). [746E] G

*Yadalam Lakshminarasimhiah Setty and Sons* v. *State of Mysore*, 13 S.T.C. 583; *State of Mysore* v. *Yadalam Lakshminarasimhiah Setty and Sons*, 16, S.T.C. 231 (S.C.) *M. K. Venkatachalam, Income-tax Officer and Anr.* v. *Bombay Dying and Manufacturing Co. Ltd.*, 34 I.T.R. 143 and H

A *Malnad Arecanut Syndicate (P) Ltd. represented by its Manager K. Rama Rao, Arecanut Merchants, Shimoga* v. *Commercial Tax Officer, Shimoga and Ors.* Writ Petition No. 5223 of 1969—Civil Appeal No. 2632 of 1972, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2593, 2594-2596, 2599, 2601-2605, 2609-2614, 2615, 2616, 2618,
B 2619-2627, 2628, 2629-2631, 2632 and 2634 of 1972.

Appeals by special leave from the judgment and order dated October 12 and 13, 1971, November 15, 1971, October 25, and 13, 1971 and November 18, 1971 of the Mysore High Court at Bangalore in Writ Petitions Nos. 3978 of 1970, 1003-1005 of 1971, 5542, 6343, 6428, 6466, 6469, 6790, 6988, 7035, 7057,
C 5504, 5514, 5525, 6001, 6082, 6110, 5959, 6111, 6775, 2779, 5538, 5540, 6080, 6081 and 6084 of 1969, 2780, 2925, 2926, 3347/70, 5006 of 1970, 997 and 998 of 1971, 844 of 1971, and 699 of 1969.

*A. K. Sen, S. S. Javali* and *M. Veerappa,* for the appellants (in C.A. No. 2593).

D *M. Veerappa,* for the appellants (in all other appeals).

*K. Srinivasan* and *Vineet Kumar,* for respondent No. 1 (in C.A. Nos. 2624, 2616, 2611, 2614 & 2544 & 2593) for the respondent (in C. A. Nos. 2594-2596 & 2628).

*M. C. Setalvad* and *K. N. Bhatt,* for the respondents (in
E C.A. No. 2598 in C.A. No. 2632).

*K. R. Chowdhary* and *K. Rajendra Chowdhary,* for respondent No. 1 (in C. A. No. 2598).

*S. P. Nayar* and *R. N. Sachthey,* for respondent No. 2 (in C.A. Nos. 2593, 2597-2605, 2606-2608, 2609-2614, 2615-2618, 2619-2627, 2633-2634).

F The Judgment of the Court was delivered by

HEGDE, J.—In these appeals by special leave, a common question of law arises for decision and that question relates to the scope and effect of the Central Sales Tax (Amendment) Act, 1969.

G The amendment in question came to be enacted under the following circumstances. The High Court of Mysore in *Yadalam Lakshminarasimhiah Setty and Sons* v. *State of Mysore*(1), held that under s. 8(2) of the Central Sales Tax Act, 1956, prior to its amendment by Act 31 of 1958 a "sale" in the course of inter-State trade or commerce is to be taxed at the same rate and in
H the same manner as it would have been taxed, under the appropriate State law, if it had been an intra State transaction, but

(1) 13 S.T.C. 583.

without taking into consideration the minimum turnover fixed by the State law for the purpose of determining the liability of the "dealer" to be assessed under the State sales tax law. It further held that the words "same manner" in section 8(2) relate to the calculation of the tax and not refer to the procedure to be adopted while assessing the "dealer."

This decision was affirmed by the Supreme Court in *State of Mysore* v. *Yaddalam Lakshminarasimhiah Setty and Sons.*(1) Thereafter on June 9, 1969, the President of India promulgated the Central Sales Tax (Amendment) Ordinance 1969, with the object of superseding the effect of the decision in *Yaddalam Lakshminarasimhiah Setty's* case and to bring to tax sales effected by every dealer in the course of intra State trade or commerce notwithstanding the fact that no tax could have been levied under the sales tax law of the appropriate State if that sale had been an intra State sale. The provision was given retrospective effect but it was provided in s. 10(1) of the Amendment Act :

> "Where any sale of goods in the course of inter-state trade or commerce has been effected during the period between the 10th day of November, 1964 and the 9th day of June 1969, and the dealer effecting such sale has not collected any tax under the principal Act on the ground that no such tax could have been levied or collected in respect of such sale or any portion of the turnover relating to such sale and no such tax could have been levied or collected if the amendments made in the principal Act by this Act had not been made, then, notwithstanding anything contained in section 9 or the said amendments, the dealer shall not be liable to pay any tax under the principal Act, as amended by this Act, in respect of such sale or such part of the turnover relating to such sale."

Sub-section (2) of s. 10 provided :

> "For the purposes of sub-section (1), the burden of proving that no tax was collected under the principal Act in respect of any sale referred to in sub-section (1) or in respect of any portion of the turnover relating to such sale shall be on the dealer effecting such sale."

That Ordinance was replaced by the Central Sales Tax (Amendment) Act, 1969. After the amendment came into force several Sales Tax Officers who had earlier assessed the assessees in accordance with the decision in *Yadalam Lakshinarasimhiah Setty's* case issued notices to those assessees proposing to rectify

(1) S.T.C. 231.

A their assessments on the ground that the earlier assessments suffered from mistakes apparent on the record. The respondents in these appeals resisted those notices on the ground that he had no competence to reopen the assessment. The Sales-tax Officers rejected that contention. Thereafter the respondents in these appeals challenged the orders made by the Sales-tax Officers before B the High Court of Mysore by means of petitions under Art. 226 of the Constitution on two grounds *viz.* (1) that the Sales-tax Officer had no jurisdiction to reopen the assessment as there was no mistake apparent on the record and (2) that the said Officer was in error in coming to the conclusion that the assessee had collected tax on the turnover which was earlier considered as C exempted. The High Court accepted the first of the two aforementioned contentions *viz.* that the Sales Tax Officer had no jurisdiction to reassess the assessees as it was impermissible for him to receive any additional evidence with a view to decide the question whether the assessees had collected sales tax on the turnovers in question and consequently he could not take any assistance from the 38 of the Mysore Sales Tax Rules, 1957.

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Before proceeding to examine the question of law arising for decision, it is necessary to note that in all the cases before us except in one which will be dealt with separately, we are told that the assessees had been given opportunity to show that they had not collected sales tax in respect of the turnover with which they were E concerned, but according to the Officers concerned, the assessees had failed to discharge their burden. The finding of the assessing officers on this point is a finding of fact and was not open to review by the High Court in petitions under Art. 226 of the Constitution.

Rule 38 of the Mysore Sales Tax Rules, 1957 empowers the assessing, appellate or revising authority or the Appellate Tribunal F at any time within five years from the date of any order passed by it to rectify any mistake apparent on the record.

The High Court opined, in our opinion rightly that in order to attract the power to rectify, it is not sufficient, if there is merely a mistake in the order sought to be rectified. The mistake to be G rectified must be one apparent on the record. It is well settled that if a subsequent legislation is given retrospective effect and is deemed to have been in force at the time when the order to be rectified was made then the law to be applied is the amended law—see *M. K. Venkatachaalam, Income-tax Officer and Anr.* v. *Bombay Dyeing and Manufacturing Co. Ltd.*(1). In other words for finding out whether there is a mistake apparent on the record, H the authority has to look to the amended law and not to the law that was in force at the time the original order was made. The

(1) 34 I.T.R. 143.

High Court had accepted this principle but it proceeded to rule that for finding out whether there was a mistake apparent on the record or not, it is not permissible for the Sales Tax Officer to take any evidence whatsoever as the mistake to be rectified must be apparent on the record. On that premises it held that because it is not permissible for the assessee to adduce additional evidence to show that they have not collected tax, it is not open to the assessing authorities to reopen the assessments. This approach is neither logical nor sound in law. Section 10 of the Amendment Act mitigates the rigor of the amendment made to s. 6 of the Principal Act. But for s. 10 of the Amendment Act, every dealer would have had to pay tax on the turnovers in question whether he had collected tax or not. If the impact of s. 10 is ignored, as the High Court has done, then the assessments in question are liable to be re-opened whether the assessees had collected the tax or not. The assessees cannot have the benefit of s. 10(1) but not the burden of proof placed on them under s. 10(2). If the reasoning of the High Court is correct then it is the assessees who will be deprived of the benefit of s. 10(1) of the Amendment Act because there could not have been any finding in the original assessment orders that the assessees had not collected tax. The legislative intention is clear and beyond doubt. The law gives a further opportunity to the assessees whose assessments are sought to be reopened to satisfy the assessing authorities that they had not collected tax in respect of the turnovers in question. Rule 38 of the Mysore Sales Tax Rules must be read with s. 10 of the Amendment Act. If so read, it is clear that the assessing authorities before re-assessing the dealers should afford them reasonable opportunity to satisfy them that they have not collected tax.

For the reasons mentioned above, we allow these appeals, set aside the orders of the High Court and dismiss the Writ Petitions with costs. But in the case of *Malnad Arecanut Syndicate (P) Ltd., represented by its Manager K. Rama Rao, Arecanut Marchants, Shimoga* v. *Commercial Tax Officer, Shimoga and Ors.* (Writ Petition No. 5223 of 1969—Civil Appeal No. 2632 of 1972) we are informed that rectification proceedings are still pending before the assessing authority. If that is so, the sales tax officer shall proceed to dispose of the same according to law. The respondents shall pay the costs of the appellant in these appeals —one hearing fee.

G.C. *Appeals allowed.*