

COMMISSIONER OF TRADE TAX, U.P.

v.

M/S. UPPER DOAB SUGAR MILLS LTD.

MARCH 15, 2000

[S. RAJENDRA BABU AND S.N. PHUKAN, JJ.]

U.P. Sales Tax (Amendment) Act, 1995/U.P. Sales Tax Act, 1948 :

S.39(2) & (3)/ss.3-A, 4 and 22—Applications for review/rectification—Orders—Limitation—Alcohol—Rectified spirit and denatured spirit—Turnover held by Tribunal not taxable—Turnover made taxable by Amendment Act—Provision for review and rectification of orders inconsistent with amended provisions—High Court holding that orders for review to be passed within the time prescribed under s.39(3)—Held, no time limit has been fixed to dispose of application for review—Specific period mentioned in s.39(3) is for purposes of rectification—Validating Act.

Validating Act—Held, a validating Act can render ineffective judgments and orders of a competent court or authority provided it by retrospective legislation removes the cause of invalidity or basis which led to the judgments.

The turnover of rectified spirit and denatured spirit in respect of assessment years 1974-75 to 1976-77 and 1978-79 to 1983-84, was held to be non-taxable under the U.P. Sales Tax Act, 1948 by the Trade Tax Tribunal. Sections 3-A and 4 of the Act were amended by the U.P. Sales Tax (Amendment) Act, 1995, making provisions to remove certain defects pointed out by the Tribunal or other authorities, and the turnover of alcohol was made taxable. Section 39 of the Amendment Act validated the proceedings in respect of assessment, levy or collection of any tax or the order passed imposing any penalty or making any demand which was consistent with the amended provisions of the Principal Act and provided for review and rectification of the order which was inconsistent with the Principal Act, as amended by the Amendment Act. Consequently, Revenue filed review applications before the Tribunal, which allowed the same. But, the High Court, in revision set aside the orders of the Tribunal holding the same to have been passed beyond the time prescribed under s.39 of the Amendment Act. The High Court was of the opinion that, in view of provisions of s.39 of the Amendment Act and s.22 of the Principal Act, the applications were to

A be filed by 30.9.1995 and orders of review or rectification were to be made within the time prescribed under s.39(3) of the Amendment Act. Aggrieved, Revenue filed the present appeals.

Allowing the appeal, the Court

B HELD : 1.1. No time limit has been fixed to dispose of an application
for review as provided under Section 39(2) of the U.P. Sales Tax (Amendment) Act, 1995 but a specific date has been prescribed therein within which the application has to be made; whereas in section 39(3), specific period is mentioned for purposes of rectification. Section 22 of the U.P. Sales Tax Act, 1948 provides for rectification of mistakes; whereas Section
C 39(2) of the Amendment Act enables the Authority, Tribunal or the Court to review, as may be necessary to give effect to the provisions of the Principal Act; the requirement being that the application for review was to be made before September 30, 1995. [463-D]

D 1.2. The scope of rectification is different from the scope of review though sometimes they may overlap. From the scheme of the Amendment Act, it is clear that both the powers of review and rectification were conferred upon different authorities to modify the earlier order to give necessary effect to the provisions of the Principal Act as amended by the Amendment Act. When two specific and independent powers have been
E conferred upon the authorities, both the powers can be exercised alternatively. The scheme of the Amendment Act is that an application will have to be made to an authority within the specified date for review of the assessment order or such other order, as the case may be, for varying the same to bring it in terms with the Amendment Act while the period of making the
F order pursuant to rectification is coalesced with Section 39 of the Amendment Act imposing certain limitations of time. Those limitations cannot be read into sub-section (2) of Section 39 of the Amendment Act. [463-E-H]

G 2. A validating Act can render ineffective judgments and orders of a competent court or an authority, provided, by retrospective legislation, it removes the cause of invalidity or the basis which had led to the judgments. In the instant case, provisions have been made in the U.P. Sales Tax (Amendment) Act, 1995 to remove certain defects, which had been pointed out by the Trade Tax Tribunal or other authorities on earlier occasions. Thus, it enabled the turnover relating to alcohol to be brought to taxation.

H [462-H, 463-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2878 of 1998. A

From the Judgment and Order dated 7.7.97 of the Allahabad High Court in T.T.R. No. 556 of 1997.

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Civil Appeal Nos. 2884, 2880, 2881, 2882, 2883 and 2879/98. B

From the Judgment and Order dated 7.7.97 of the Allahabad High Court in T.T.R. Nos. 551, 555, 552, 554, 557 and 550 of 1997.

Adarsh Kumar Goel, Additional Advocate General, (U.P.), Niti Dikshit, Prashant Kumar, Pradeep Misra, S.N. Bhat, Kavin Gulati, Ms. Alka Agrawal and Ajay Agrawal for the Appellants. C

Vijay Hansaria, Dhruv Agarwal and Praveen Kumar for the Respondents.

The Judgment of the Court was delivered by D

RAJENDRA BABU, J. In these batch of cases, the question for consideration is the interpretation of Section 39 of the Uttar Pradesh Sales Tax (Amendment) Act, 1995 [U.P.Act No.31 of 1995] [hereinafter referred to as 'the Amendment Act']'. The turnover in respect of rectified spirit and denatured spirit was held to be non-taxable under the U.P. Sales Tax Act, 1948 [hereinafter referred to as 'the Principal Act'] by the Trade Tax Tribunal, Muzaffar Nagar [hereinafter referred to as 'the Tribunal'] in respect of assessment years 1974-75 to 1983-84, except 1977-78, as there was no levy on such items at the relevant point of time. An application was filed by the Department before the Tribunal for review on the basis of the amendment of Sections 3-A and Section 4 of the Principal Act as amended by the Amendment Act. By amendment to Section 3-A of the Principal Act, a specific clause was added to bring the turnover of alcohol as defined under the United Provinces Sale of [Motor Spirits, Diesel Oil and Alcohol] Taxation Act, 1939, amongst other goods, at such point and at such rate not exceeding twenty six percent, as the State Government may, by notification declare. The result is that in the Principal Act sale of alcohol as defined in the U.P. Sale of [Motor Spirits, Diesel Oil and Alcohol] Taxation Act, 1939 became taxable. The review applications filed on behalf of the Revenue was opposed by the respondents on various grounds. The Tribunal, however, E
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A rejected the contentions raised on behalf of the respondents and allowed the review application of the Department and levied the tax on the turnover of the respondents.

B The matter was carried in revision to the High Court. The learned Single Judge took the view that the provisions of Section 39 of the Amendment Act merely enabled the Assessing, Appellate or Revising Authority to rectify the orders passed prior to the commencement of the said section in conformity with the amendment made in the Principal Act within a time frame. It was observed that Section 39(2) of the Amendment Act made abundantly clear that an application has to be filed by September 30, 1995 and orders of review or rectification are to be made either within one year from the commencement of Section 39 or within the period prescribed in Section 22 of the Principal Act, that is, three years from the date of the order sought to be rectified and proviso to Section 22 has no application to such a case. The period prescribed by Section 22(1) is three years and there is no other period and, therefore, the learned Single Judge held that the question of extension of the period of limitation for the passing of the order as provided under the proviso to Section 22 has no relevance while interpreting the provisions of Section 39 of the Amendment Act. He took the view that such orders of review or rectification should have been passed on or before March 14, 1996 and not beyond that time. In the present case the orders of the Tribunal had been passed on March 22, 1997, as such, the same were held to have been made beyond time as prescribed under Section 39 of the Amendment Act. This order is called in question in these appeals.

F For purposes of clear understanding, we may set out the relevant provisions here under:

“Section 22 of the Principal Act:

G *Section 22. Rectification of mistakes. - (1) The Assessing, Appellate or Revising Authority or the Tribunal may, on its own motion or on the application of the dealer or any other interested person rectify any mistake in its order, apparent on the record within three years from the date of the order sought to be rectified:*

H Provided that where an application under this sub-section has been

made within such period of three years, it may be disposed of even beyond such period: A

Provided further that no such rectification as has the effect of enhancing the assessment, penalty, fees or other dues shall be made unless reasonable opportunity of being heard has been given to the dealer or other person likely to be affected by such enhancement. B

(2) Where such rectification has the effect of enhancing the assessment, the authority shall serve on the dealer a revised notice of demand in the prescribed form and therefrom all the provisions of the Act and the Rules framed thereunder shall apply as if such notice had been served in the first instance.” C

“Section 39 of the Amendment Act:

Section 39. Validation.-(1) Notwithstanding anything in any judgment, decree or order of any court or authority, any notification issued or anything done or any action taken before the commencement of this section which conforms to the provisions of the Principal Act as amended by this Act shall be deemed to be and always to have been valid and lawful as if the provision of this Act were in force at all material times. D E

(2) Where before the commencement of this section any authority or court, in any proceeding made any assessment, levy or collection of any tax or passed any order imposing any penalty or making any other demand under the Principal Act, or passed any other modifying, setting aside or quashing (wholly or in part), such assessment levy, connection, penalty or demand and such assessment or other order becomes inconsistent with the provisions of the Principal Act as amended by this Act then, subject to the provisions of sub-section (3), any party to the proceeding or the Commissioner of Trade Tax may by September 30, 1995, make an application to such authority or court for review of the assessment order and thereupon such authority or Court may review the proceeding make such order, varying or revising the order previously made, as may be necessary to give effect to the provisions of the Principal Act as amended by this Act. F G

(3) the assessing, appellate or revising authority, as the case may be, H

A may within the period specified in Section 22 of the Principal Act, whichever expires later, make any rectification in any order passed by it where such rectification becomes necessary in consequence of the amendment of the Principal Act :

B Provided that no rectification which has the assessment, penalty or other dues, shall be made unless the authority concerned has given notice to the dealer or person concerned of his intention to do so and has allowed him a reasonable opportunity of being heard.”

C It is the contention of the Department that the view taken by the High Court is erroneous and does not correctly interpret the provisions of Section 39(2) of the Amendment Act. It is submitted that the whole object of Section 39(2) is that any order passed, modified, set aside or quashed by the assessing, appellate or revising authority or by a court will have to be brought in conformity with the provisions of the Principal Act as amended by the Amendment Act. The expression “subject to the provisions of sub-section (3)” would only provide for rectification also. Otherwise, if the provisions relating to rectification alone will be applicable and there is no need to have provided for a specific provision for review at all. Review or rectification in this case would arise only to bring in conformity an order with the amended provisions, and either of these powers is distinct and separate though they have certain restrictions which have to be adhered to.

E The respondents would, however, contend that Section 39(2) and (3) have to be read together and it would mean that an application made under Section 39(2) can be disposed of only within one year from the date of enforcement of the Amendment Act or within three years of the order sought to be reviewed, whichever is later. It was further submitted that proviso to Section 22(1), which does not prescribe any limitation for passing an order on an application for rectification, is not applicable to the application made under Section 39(2) of the Amendment Act and that otherwise the whole purpose of providing limitation under Section 39(3) becomes superfluous. On that basis, the respondents sought to support the view taken by the High Court. On behalf of the respondents, certain other additional grounds were raised to which we shall advert later.

F A validating Act can render ineffective judgments and orders of a competent court or an authority provided it by retrospective legislation

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removes the cause of invalidity or the basis which had led to those judgments. In the present case, the provisions have been made in the Amendment Act to remove certain defects, which had been pointed out by the Tribunal or other authorities on earlier occasions. Thus, it enabled the turnover relating to alcohol to be brought to taxation. Section 22 of the Principal Act provides for rectification of mistakes. Proviso to Clause (1) makes it very clear that where an application under sub-section (1) has been made within the period of three years from the date of the orders sought to be rectified, such an application could be disposed of even beyond such period. In clause (3) of Section 39, with which we are concerned now, it is made clear that the Assessing, Appellate or Revising Authority, as the case may be, may within a period of one year from the date of commencement of this section or within a period specified in Section 22 of the Principal Act, whichever expires later, make any rectification in any order passed by it where such rectification becomes necessary in consequence of the amendment to the Principal Act. Section 39(2) enables the Authority, Tribunal or the Court to review as may be necessary to give effect to the provisions of the Principal Act, the requirement being that an application should be made before to that effect September 30, 1995. A specific date has been prescribed within which the application has to be made for review and no time limit has been fixed to dispose of such an application. While in Section 39(3), specific period is mentioned for purposes of rectification.

It is well known that the scope of rectification is different from the scope of review though sometimes they may overlap. From the scheme of the Amendment Act, it is clear that both the powers of review and rectification were conferred upon different authorities to modify the earlier order to give necessary effect to the provisions of the Principal Act as amended by the Amendment Act. When two specific and independent powers have been conferred upon the authorities, both the powers can be exercised alternatively. In the present case, if the interpretation adopted by the High Court is to be accepted then the provision for review becomes totally redundant or otiose and there will be no difference between the power of review and power of rectification. As stated earlier, the scheme of the Amendment Act is that an application will have to be made to an authority within the specified date for review of the assessment order or such other order, as the case may be, for varying the same to bring it in terms with the Amendment Act while the period of making the order pursuant to rectifica-

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A tion is coalesced with Section 39 of the Amendment Act imposing certain limitations of time. Those limitations cannot be read into sub-section (2) of Section 39 of the Amendment Act.

B In that view of the matter, we have no hesitation in setting aside the order made by the High Court and restoring that of the Tribunal. The appeals are allowed accordingly. In the circumstances, there shall be no orders as to costs.

R.P.

Appeals allowed.