State Of Uttar Pradesh And Ors vs Modi Industries Limited on 4 January, 1977

Equivalent citations: 1977 AIR 513, 1977 SCR (2) 548, AIR 1977 SUPREME COURT 513, 1977 (1) SCC 697, 1977 TAX. L. R. 1747, 1977 (1) SCJ 384, 1977 2 SCR 548, (1977) 7 S C R 548, 1977 SCC (TAX) 240, 1977 40 STC 73, 1977 9 STA 1, 1977 UPTC 158, 1977 U J (SC) 112

Author: P.N. Shingal

Bench: P.N. Shingal, V.R. Krishnaiyer

PETITIONER:
STATE OF UTTAR PRADESH AND ORS.

Vs.

RESPONDENT:
MODI INDUSTRIES LIMITED

DATE OF JUDGMENT04/01/1977

BENCH:
SHINGAL, P.N.
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SHINGAL, P.N.
KRISHNAIYER, V.R.

CITATION:
1977 AIR 513 1977 SCR (2) 548
1977 SCC (1) 697

ACT:
U.P. Sales Tax Act, 1948--S. 31--Scope of.

HEADNOTE:
The respondent filed its sales tax returns for the assessment years 1948-49 and 1949-50 on the basis of its turnover of two previous years. In respect of certain commodities, the rate of sales tax was enhanced with effect from certain dates falling within the assessment years.

The High Court on reference took the view that the dealer who had chosen to be assessed on the basis of its turnover of the previous year of assessment, was liable to be assessed at the rule prevailing on the first day of the relevant assessment year and that any change in the rate

during the assessment year could not be applied to that assessment.

The assessee, who had paid tax at the enhanced rate, applied for refund of the excess tax together with interest thereon under s. 11(6) of the U.P. Sales Tax Act, 1948. The Additional Judge (Revisions), however, rejected the application holding that refund was not permissible in view of s. 31 introduced by the Amending Act (U.P. Act 3 of 1963). That section provided that where a dealer opted to be assessed to tax on the basis of his turnover of the previous year, he shall be assessed to tax at such.rates as are prevalent during the year for which the assessment is being made, and if the rates of tax are altered during such assessment year, the dealer, in respect of the turnover of such goods, shall be liable to pay tax at the altered rates, as if the altered rates were in force during the previous year also proportionately for the number of days involved as they were in force during the assessment year. According to sub-section (2) of that section the assessments made at the enhanced rates in accordance with the notification dated April 9, 1948 were to be deemed to be good and valid as if they had been duly made and as if the amendment made by the insertion of s. 31 had been in force on all material dates. It was expressly provided by the sub-section that that was to be so notwithstanding any judgment, decree or order of any court.

The High Court quashed the order of assessment on the ground that the Revising Authority was not free to take a different view from the one expressed by it (High Court) on any ground whatsoever, including the ground of any subsequent amendment of the law.

Allowing the Appeal to this Court,

HELD: There is nothing wrong with the view taken by the Revising Authority. When S. 31 of the Act is valid, and is retroactive .and the Legislature has shown the intention of restoring the assessments and orders made before the amendment as good and valid in law as if they had been duly made. that was enough to set the controversy at rest. The amendment made by S. 31 was retroactive and applied to assessments pending or closed as if the Amending Act had been in force at all material times. [554C-D; 552C]

Commissioner of Sales Tax, U.P.v. Bijli Cotton Mills, Hathras, [1964] 7 S.C.R. 383 referred to.

(a) Section 31 was sought to be applied to the facts of the case when the Additional Judge (Revisions) was in seisin of the case for the purpose of passing the necessary orders to dispose it of finally in conformity with the judgment of

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the High Court. If he had passed an order under s. 11(6) of the Act as directed by the High Court, that would have been of no consequence and would have been inoperative because of s. 31(2). [553B-C & F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1694 of 1971. (From the Judgment and Decree dt. 11-2-70 of the Allaha- bad High Court in Civil Misc. Writ No. 973 of 69). S.C. Manchanda and O.P. Rana for the Appellants.

K. Sen, J.P. Goyal and Shreepal Singh, for the Re- spondent.

The Judgment of the Court was delivered by SHINGHAL J. This appeal by the State of Uttar Pradesh and three sales tax officers is directed against the judgment of the Allahabad High Court dated February 11, 1970. The High Court has granted a certificate of fitness under clause (c) of article 133(1) of the Constitution. Respondent Modi Industries Limited. hereinafter referred to as the dealer, was known earlier as the Modi Sugar Mills Ltd. It manufactured various articles like sugar, oil, vanaspati and soap. It exercised the option under section 7 (as it stood prior to its amendment by section 7 of U.P. Act XIX of 1956) of the U.P. Sales Tax Act, 1948, hereinaf- ter referred to as the Act, to submit its returns of sales- tax on the basis of its turnover of the previous yearns and filed the returns accordingly. The assessment years for which the returns were filed were 1948-49 and 1949-50, and the corresponding previous years were November 1, 1946 to October 31, 1947, and November 1, 1947 to October 31, 1948 respectively. The rate of sales tax for certain commodities was enhanced during the assessment year 1948-49, with effect from June 9, 1948, and for some other commodities with effect from July 1, 1948. The dealer contended that sales tax on its entire turnover of the two previous years should be assessed at the old rate of 3 pies per rupee and not at the enhanced rate of 6 pies per rupee because the enhancement was made after both the previous years had ex- pired. The Sales Tax Officers rejected that contention and assessed 'the sales tax at the enhanced rates. The appel- late authority however upheld the dealer's contention and the matter went up in revision to the Judge (Revisions). He upheld the order of the Sales Tax Officer. The dealer applied for a reference under section 11 (1) and the fol- lowing two questions of law were referred to the High Court,-

"(1) Whether the enhanced rate under notifica-

tions dated 8th Jane, 1948 and 30th June, 1948 issued under section 3-A of the U.P. Sales Tax Act. 1948 are ap-

plicable to the-sales of goods mentioned in paragraph 2 above which took place before 8th June 1948 and 30th June, 1948.

(2) Whether sub-section (ii) of section 3-A of the U.P. Sales Tax Act, 1948, empowers Provincial Government to fix the rate of sales tax in respect of an assessment year or in respect of certain specified sales only ?"

By its judgment dated July 24, 1961, the High Court answered question No. 1 in favour of the dealer, but declined to answer the other question. The High Court took the view that the dealer who had chosen to be assessed on the basis of its turnover of the previous year was liable to assess- ment, on the entire turnover of the previous year, at the rate prevailing on the first day of the relevant assessment year and that any change in the rate of the sales tax during the course of the assessment year could not be applied to that assessment. The dealer filed an application under section 11(8) of the Act for a direction for the payment of interest on the amount which had become refundable as a result of the judgment of the High Court. The High Court held in its order dated February 22, 1966 that the dealer was entitled to interest at the rate of two per cent on the refundable amount. The dealer accordingly made an application to the Revising Authority on October 11, 1968 to pass an order under sub-section (6) of section 11 for a refund of Rs. 3,48,420/13 with interest at two percent per annum. The Additional Judge (Revisions) Sales Tax however dismissed the application by his order dated December 28, 1968, as he took the view that that was not permissible because of the insertion of section 31 in the Act by the Uttar Pradesh Bikri Kar (Sanshodhan) Adhiniyam, 1962 (U.P. Act III of 1963) hereinafter referred to as the Amending Act. The dealer felt aggrieved and filed a writ petition under article 226 of the Constitution. It is that petition which has been allowed by the impugned judgment of the High Court dated February 11, 1970 by which the order of the Additional Judge (Revisions) Sales Tax Meerut, dated Decem- ber 28, 1968, has been quashed and a direction has been given to him to pass an appropriate order under section 11 (6) of the Act in accordance with the law and in the light of the observations made by the High Court. This is why the State of Uttar Pradesh and others have come up to this Court in appeal.

We have made a mention of the facts bearing on the controversy, and we may as well refer to the relevant provi- sions of the law.

The Act came into force on April 1, 1948. It provided for payment of the sales tax on several commodities at a uniform rate of 3 pies in the rupee. Section 3-A was in- serted by Act XXV of 1948 conferring certain powers on the Provincial Government. The provincial Government issued a notification under that section declaring. inter alia, that with effect from June 9, 1948 the rate of sales tax in respect of the turnover of the goods specified in the noti- fication shall be as stated in the schedule to the notifica- tion. The rate of tax was thus enhanced to 6 pies per rupee. The enhancement of the tax was challenged on the ground that it was not permissible in the case of an asses- see who had taken the option to submit his return on the basis of the turnover of the sales in the previous year as he was liable to pay the tax according to the rates pre- vailing- during the assessment year. That case came up to this Court at the instance of the present respondent, which was then known as the Modi Sugar Mills Limited. and it was held in Commissioner of Sales Tax, Uttar Pradesh v. The Modi Sugar Mills Ltd. (1) that the assessee who had (1) [1961] 2 S.C.R. 189.

elected to submit his return on the turnover of the previous year was liable to be assessed to sales tax at the rate force on the first day of the year of assessment because the liability arose on that date, and any subsequent enhance- ment of the rate by the notification under section 3-A did not alter the liability, The Legislature however passed the Amending Act and inserted the following as section 31,--

> "31(1) Where any dealer has, in accord- ance with the provisions of Section 7, as it stood prior to its amendment by Section 7 of U.P. Act XIX of 1956, opted to be assessed to tax on the basis of his turnover of the previ- ous year, he shall be assessed to tax at such rates as are prevalent during the year for which the assessment is being made, and if the rates of tax on any goods or class of goods are altered during such assessment year, the dealer, in respect of the turnover of such goods, shall be liable to pay tax at the altered rates, as if the altered rates were in force during the previous year also propor- tionately for the same number of days as they are in force during the assessment year. (2) Notwithstanding any judgment, decree or order of any court, all assessments or orders made, actions or proceedings taken, directions issued, jurisdictions exercised or tax levied or collected by any officer or authority purporting to act under the provi-

sions of sub-section (1) of Section 7, as it stood prior to its amendment by Section 7 of U.P. Act XIX of 1956, shall be deemed to be good and valid in law as if such assessments, orders, actions, proceedings, directions, jurisdictions and tax have been duly made, taken, issued, exercised, levied or collected, as the case may be, under or in accordance with the said provisions of this Act as amend- ed by the Uttar Pradesh Bikri Kar (Sanshodhan) Adhiniyam, 1962 and as if the amendment so made had been in force on all material dates. Explanation--For the purposes of this section the expression "previous year" shall have the meaning assigned to it in sub-clause (ii) of clause (j) of Section 2 of this Act, as it stood prior to its amendment by Section 2 of the U.P. Act XIX of 1956."

The validity of the aforesaid section 31 of the Act came up for consideration in this Court in Commissioner of Sales Tax, U.P. v. Bijli Cotton Mills Hathras(1) and was upheld. It was held that as the Legislature had amended the Act and declared that notwithstanding the option exer- cised by the assessee the tax would have to be computed in the light of the rates prevailing in 1948-49 as if they were projected upon the turnover of the previous year, the Legislature had expressly stated that that rule would pre- vail as if it were in force during the assessment year and all assessments would be made in the light of the amended provision. It was observed that in taking that view this Court was seeking to apply a legislative provision which was, by express enactment, in force at the time when the liability (1) [1964]7 S.C.R. 363.

arose, for section 31 incorporated by the Amending Act was to be deemed to have been in operation at all material times in supersession of the previous rule declared by this Court. It was held further that this would be the position even if the laws were amended with retroactive operation during the pendency of a reference to the High Court. It was accordingly held that "if the law which the Tribunal seeks to apply to the dispute is amended, so as to make the law applicable to the transaction in dispute, it would be bound to decide the question in the light of the law so amended." The validity and the retroactive operation of section 31 have therefore been placed beyond challenge by the aforesaid decision in Bijli Cotton Mills' case and have in fact not been challenged by counsel for the dealer. It may be mentioned that in its judgment in Bijli Cotton Mills' case this Court took notice of its earlier decision in the Modi Sugar Mills' case (supra) so that it is well settled that the amendment made by section 31 is retroac- tive and applies to assessments pending or closed as if the Amending Act had been in force at material times. The question is whether the judgment of the

High Court dated July 24, 1961 answering question No. 1 of the afore- said reference by stating that the sales tax had to be charged from the dealer for the assessment year 1948-49 at the rate applicable to the various commodities on April 1, 1948, and for the assessment year 1949-50 at the rate applicable on April 1, 1949, was binding on the Additional Judge (Revisions) in spite of the amendment made by the Amending Act by insertion of section 31 in the Act ? The High Court has taken'the view in its impugned judgment dated February 11, 1970 that the Revising Authority was not free to take a different view from the one expressed by it (High Court) on "any ground whatsoever", including the ground of any subsequent amendment in the law, and that it was bound to decide the case in conformity with the judgment of the High Court. The High Court has expressed its view as follows ,--

> "The judgment of the High Court may be said to have become erroneous as a result of the amendment but so long as the judgment stands, it is binding upon the parties and the revising authority has no option except to give effect to it in its c, order passed under section 11(6)."

The High Court further made the following observation,--

> "We however, express no opinion as to the course. which the department should. adopt in a situation like this, but we have no doubt in our mind that the amendment brought about by section 31 of the Act does not make the judgement of the High Court a nullity and the Judge '(Revisions) was not free to ignore it for any reason whatsoever."

The question is whether lifts view of the High Court is correct ? The answer to the question depends on the answer to the further question whether the proceedings for the assessment of the sales tax had become final after the High Court's judgment dated July 24, 1961 or whether, after that judgment, something remained to be done by the Additional Judge (Revisions) ? Sub-section (6) of section 11 of the Act provides that the High Court, upon hearing the reference, shall decide the questions of law and shall deliver its judgment thereon and shall send its copy to the Revising Authority and the Commissioner of Sales Tax, "and the Revising Authority shall thereupon pass such orders as are necessary to dispose of the case in conformity with such judgment." So while the Additional, Judge (Revisions) was in seisin of the case for the Limited purpose for passing such orders as were neces- sary to dispose it of in conformity with the judgment of the High Court, it cannot be gain said that he was in such seisin and was required, in the facts and circumstances of this case, to make an order which would make the assessment order final and binding in all respects. It was at that stage that section 31, which was inserted by section 7 of the Amending Act, was sought to be applied to the controver- sy. According to sub-section (2) of that section, the assessments made at the enhanced rates, in accordance with the notification dated April 9, 1948, were to be deemed to be good and valid as if they had been duly made, and as if the amendment made by the insertion of section 31 had been in force on all material dates. It was expressly provided by the sub-section that that was to be so notwithstanding any judgment, decree or order of any court. The order of the Additional Judge (Revisions) dated December 28, 1968 had therefore the effect of recognising the restoration of the orders of assessment which were made by the Sales Tax Officer at

the enhanced rates,and sub-section (2) of section 31 had the effect of making them "good and valid in law". It cannot be said that the Additional Judge (Revisions) erred in taking that view, and in not passing an order for giving effect to the judgment of the High Court dated July 24, 1961 which had become unenforceable by the aforesaid section 31. It has to be appreciated that even if the Additional Judge (Revisions) had passed an order under sub- section C(6) of section 11 of the Act as directed by the High Court, that would have been of no consequence and would have been inoperative because of the specific provi- sions of subsection (2) of section 31, so that the position would have been the same as if no such order had been passed at all.

The High Court has expressed the view that if its judgment (dated July 24, 1961) was considered by the depart- ment to be erroneous, it could have filed an appeal against it to this Court. under article 136 of the Constitution to have it set set aside or modified. It is not clear to us how that would have been possible when the Amending Act had not been passed till then, and was enacted some 1 1/2 years thereafter. The other suggestion of the High Court that it may have been open to the department to ask for a fresh reference to it against the order of the Revising Authority under section 11 (6) on the ground that by the amendment a fresh question of law had arisen, is also untenable because that order (dated December 28, 1968) was in favour of the department. In fact any suggestion or observation of the High Court for seeking any other mode of redress is beside the point for the State felt aggrieved against the impugned judgment of the High Court dated February 11, 1970 and has come up in appeal against it. And now that this Court is in seisin of the case, it would be a work of supererogation to require the parties, or any of them, to go back to the Additional Judge (Revisions) or the High Court for an order.

It has next been argued that the amendment made in the Act by insertion of section 31 can not possibly be implemented as no machinery has been provided to give effect to it and that it should therefore have been ignored altogether. This argument has been made with reference to this Court's decision in Modi Sugar Mills' case (supra), but it is futile because no question regarding any such machinery could possibly be said to arise for the purpose of giving effect to section 31 of the Act in the facts and circumstances of this case.

So when section 31 of the Act is dearly valid and is retoractive, and the Legislature has shown the intention of restoring the assessments and orders made under the provi- sions of sub-section (1) of section 7 (as it stood prior to its amendment by section 7 of U.P. Act XIX of 1956) as good and valid assessments in law, as if they had been duly made, that was enough to set the controversy at rest and there is nothing wrong with the view which has been taken by the Additional Judge (Revisions) in his order dated December 28, 1968.

The appeal is allowed and the impugned judgment of the High Court dated February 11, 1970, is set aside. In the circumstances of the case, the parties shall pay and bear their own costs.

P.B.R. Appeal allowed.