# Commissioner Of Sales Tax, U.P vs Bijli Cotton Mills, Hathras on 20 March, 1964

## Equivalent citations: 1964 AIR 1594, 1964 SCR (7) 383, AIR 1964 SUPREME COURT 1594

## Author: J.C. Shah

## Bench: J.C. Shah, P.B. Gajendragadkar, K.N. Wanchoo, N. Rajagopala Ayyangar, S.M. Sikri

PETITIONER:
COMMISSIONER OF SALES TAX, U.P.

Vs.

RESPONDENT:
BIJLI COTTON MILLS, HATHRAS

DATE OF JUDGMENT:
20/03/1964

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
AYYANGAR, N. RAJAGOPALA
SIKRI, S.M.

CITATION:
1964 AIR 1594 1964 SCR (7) 383
CITATOR INFO :
F 1966 SC1113 (12)
RF 1977 SC 513 (5)

ACT:
Sales Tax-Reference under Act pending before High Court Impugnedlegislation in relation to the matter in reference amended-High Court whether can take cognisance of amended legislation-U.P. Sales Tax Act, 1948 (U.P. Act 15 of 1948), ss. 3A, 31.

HEADNOTE:
The respondent is a manufacturer of cotton yarn and is

registered as a dealer under the U.P. Sales Tax Act, 1948. This act came into force on April 1, 1948. Under this Act, sales tax was payable on sales of cotton yarn at a uniform rate of 3 pies in a rupee. Under s. 3(A) of the Act the Government of U.P. issued a notification declaring that with effect from June 9, 1948, the Sales Tax would be charged at the rate of six pies per rupee in respect of sales of the cotton yam. In the present case, the assessee had opted under s. 7 of the Act to be assessed on the turnover of previous year. The Sales Tax Officer held on the basis of the notification dated June 9, 1948, that the rate of three pies per rupee in respect of sales of cotton yarn was to apply in the year of assessment for the first 69 days and for the remaining part of the year the rate of six pies per rupee was to apply. The decision of the Sales Tax Officer was affirmed by the Judge (Revisions) Sales Tax. The Judge referred the case to the High Court. On reference the High Court held on the basis of its judgment in Modi Food Products Ltd. that the rate of three pies per rupee would apply for the assessment of 1948-49 because the assessee had opted under s. 7 to be assessed on the basis of the turnover of the previous year. In the meantime the legislature of Uttar Pradesh by Act III of 1963 enacted s. 31 which makes Sales-tax exigible from an assessee who has opted to pay tax on the turnover of the previous year, as if the altered rates were in force during the previous year. The amendment is given retroactive operation and applies to assessments pending or closed. The question for consideration before this Court was whether this Amending Act would apply to the present assessment.

Held:(i) The law found incorporated in s. 31 by Amending Act III of 1963 would apply to the present case. This Court in giving its opinion on the question in the light of the amending Act is seeking to apply a legislative provision which was, by express enactment, in force at the time when the liability arose, for s. 31 enacted by Act III of 1963 is to be deemed to have been in operation at all material times in supersession of the previous law declared by this Court in Modi Sugar Mills Ltd.'s case. This Court is, therefore, not seeking to apply any law to the question posed before the High Court which was not in force on the date of the transaction which is the subject-matter of the reference

Modi Food Products Ltd. v. Commissioner of Sales-tax, U.P. A.I.R.. 1956 All. 35 and Commissioner of Sales-tax, U.P. v. Modi Sugar Mills Ltd., [1961] 2. S.C.R. 189 explained.

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(ii)When the question has been referred to the High Court and in the meantime the law has been amended with retroactive operation, it would be the duty of the High Court to apply the law so amended as if it applies. By taking notice of the law which has been substituted for the original provision, the High Court is giving effect to the

legislative intent and does no more than what must be deemed to be necessarily implicit in the question referred by the Tribunal, provided the question is couched in terms of sufficient amplitude to cover an enquiry into the question in the light of the amended law, and the enquiry does not necessitate investigation of fresh facts.
M/s. Chatturam Horilram Ltd. v. Commissioner of Incometax, Bihar and Orissa, [1955] 2 S.C.R. 290 and M/s. Rampur Distillery Chemical Works Ltd. v. Commissioner of Income-tax, U.P., I.T. Reference No. 362/58 dt. 17-1-64, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 546 of 1962. Appeal by special leave from the judgment and decree dated December 17, 1958 of the Allahabad High Court in Misc. Case No. 152 of 1952.

C. B. Agarwala and C. P. Lal, for the appellant. S. K. Kapur, S. K. Mehta and K. L. Mehta, for the respondent.

March 20, 1964. The Judgment of the Court was delivered by SHAH, J -Bijli Cotton Mills-respondent in this appeal-is a manufacturer of cotton yarn and is registered as a dealer under the U.P. Sales Tax Act (15 of 1948). Under the U.P. Sales Tax Act (15 of 1948) which came into force on April 1, 1948, sales-tax became payable on sales of diverse commodi- ties including cotton yarn at a uniform rate of three pies in a rupee. By Act 25 of 1948, s. 3-A was incorporated in Act 15 of 1948 conferring upon the Provincial Government power to declare by notification that the proceeds of sale of any goods or class of goods shall not be included in the turnover of any dealer except at such single point in the series of sales by successive dealers as the State Government may specify. By s. 7 as amended by Act 25 of 1948, a dealer had the option to submit his return on the basis of the turnover of the sales in the previous year or on the basis of turnover of the sales in the current year. The respondent company opted to be assessed on the basis of the turnover of the previous year ending March 31, 1948. In exercise of the power under s. 3-A of the Act the Government of U.P. issued a notification declaring that with effect from June 9, 1948, the proceeds of goods entered in column 2 of the schedule to the said notification (which included cotton yarn) shall not be included in the turnover of any dealer except at the point in the series of sales by successive dealers, and that with effect from June 9, 1949, the rate of tax in respect of the turnover of the aforesaid goods shall be as set out in the schedule. As a result of the notification the sale of cotton yarn became taxable at a single point i.e. at a point of sale by the importer if the goods were imported from outside Uttar Pradesh and at a point of sale by the manufacturer, if manufactured in Uttar Pradesh, and the rate of tax in respect of cotton yarn was fixed, since the date of notification, at six pies per rupee.

The Sales-tax Officer, Hathras in assessing the respondent company to sales-tax for the assessment year 1948-49 held that because of the notification issued by the Government, the rate of three pies per rupee in respect of sales of cotton yarn was to apply in the year of assessment for the first 69

days and for the remaining part of the year the rate of six pies per rupee was to apply, and on that account notwithstanding that the assessee had opted under s. 7 to be assessed on the basis of the turnover of the previous year, the rate of three pies was applicable to -the assessable turnover for the first 69 days and for the rest of the year the rate applicable was six pies per rupee. This order was modified in appeal by the Judge (Appeals) Sales Tax, Meerut, who directed assessment of tax on the turnover at a uniform rate of three pies per rupee. But the order of the ap- pellate court was reversed by the Judge (Revisions) Sales Tax, U.P. who restored the order of the Sales-tax Officer. The Judge (Revisions) Sales Tax at the instance of the respondent company then referred to the High Court of Judicature at Allahabad the following question:

> "Whether the assessees who had elected the previous year are liable to pay tax in the assessment year 1948-49 according to the rates prevailing during the year", and the High Court following its judgment in Modi Food Products Ltd. v. Commissioner of Sales Tax, U.P.(1) answered the question as follows:
>
> "all sales of the assessee during the previous year which corresponded with the calendar year 1947 have to be taxed at the flat rate of 3 pies per rupee when making the assessment for the assessment year 1948-49".

With special leave, the Commissioner of Sales Tax, U.P. has appealed to this Court against the order of the High Court. It may be observed that the judgment of the Allahabad High Court in Modi Food Products Ltd.'s case(1) was confirmed by this Court: Commissioner of Sales Tax, U.P. v. The (1) A.I.R. 1956 All. 35.

L P(D)ISCI--13 Modi Sugar Mills Ltd.(1) But the Legislature of the State of Uttar Pradesh has, since that judgment was pronounced, en- acted validating legislation by Act III of 1963 which has provided by s. 7 of the Amending Act that:

> "After section 30 of the Principal Act, the following, shall be added and be deemed to have been added with effect from the first day of April, 1948, as new section 31 :
>
> '31 (1) Where any dealer has, in accordance 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
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> -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 on any goods or class of goods arc 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 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 provisions 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 purpose 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.' "

> Section 31 makes sales-tax exigible from an assessee who has, opted to pay tax on the turnover of the previous year, as if the altered rates were in force during the previous year. The turnover of the previous year must therefore be broken up, the new rate of tax being applicable proportionately for the (1) [1961] 2 S.C.R. 189.

same number of days in the previous year as were in force in the assessment year. The amendment is retroactive, and applies to assessments pending or closed, as if the validating Act had been in force at the material date.

This Court had in the Modi Sugar Mills Ltd.'s case(1) held -that where the assessee had elected to submit his return on the turnover of the previous year under s. 7 of Act 15 of 1948 as amended by Act 25 of 1948 he was liable to be assessed to -sales-tax at the rate in force on the first day of the year of assessment, because the liability arises on that date, and any subsequent enhancement of the rate by virtue of a notification under s. 3-A does not alter that liability. The view expressed by the Court has been modified by express legislation operative retrospectively. The liability to tax of the turnover of the previous year which is regarded as the fictional turnover of the year of assessment has to be determined on the basis that the rates applicable in the year of assessment were fictionally projected on the taxable turnover.

Mr. Kapur appearing on behalf of the respondent company submitted that in answering the question referred by the Judge (Revisions) this Court was bound to give its opinion in the light of the law applicable to the transaction as it prevailed at the date on which the reference was made and not of any subsequent amendment of the Act. Counsel submits that as the High Court exercises an advisory jurisdiction, so does this Court in appeal against the order of the High Court, and its advice can only be tendered on the question referred and in the light of the law as was applicable at the date when the reference was made. Counsel says that if the law as amended is to be taken into consideration, in substance this Court would be answering a question other than the one which was referred by the Judge (Revisions) Sales Tax. In our view there is no substance in this contention. The question referred to the High Court posed a problem as to the liability of the respondent company to be assessed for the assessment year 1948-49. Two rival views were propounded before

the Judge (Revisions) Sales Tax. One was that the rates applicable to the fictional turnover for the year of assessment were those prevalent in the year 1948-49 and for the purpose of assessment they had to be applied to the turnover in the same proportion in which they would have applied if the option had not been exercised. That was the contention of the Sales Tax X X Department. The contention of the assessee was that having opted for the turnover of the previous year, the rates applicable to the turnover would be crystalised on the first day of the year of assessment and any modification since the commencement of the year in the rates would be inapplicable. This Court in the Modi Sugar (1) [1961] 2, S.C.R. 189.

Mills Ltd.'s case(1) accepted the contention raised by the assessee. But for the amendment, the question which was posed by the Judge (Revisions) Sales Tax would have to be answered as it was answered by the High Court. The Legislature has,. however, amended the Act and has declared that notwithstanding the option exercised 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 has expressly stated that this rule will prevail as if it was in force during the assessment year and all assessments will be made in the light of this amended rule. In answering the question which was submitted by the Judge (Revisions) Sales Tax, therefore, the law enacted by the Legislature is the law found incorporated in s. 31 by Amending Act III of 1963. This Court in giving its opinion on the question in the light of the amending Act is seeking to apply a legislative provision which was, by express enactment, in force at the time when the liability arose, for s. 31 enacted by Act III of 1963 is to be deemed to have been in operation at all material times in supersession of the previous rule declared by this Court. This Court is, therefore, not seeking to apply any law to the question posed before the High Court which was not in force. on the date of the transaction which is the subject-matter of the reference.

The following observation made by Jagannadhadas J., in Messrs Chatturam Horilram Ltd. v. Commissioner of Incometax, Bihar and Orissa(2) on which reliance was placed by counsel for the respondent company:

> "The High Court's jurisdiction was only to answer the particular question that was referred to it by the Income-tax Appellate Tribunal and it is extremely doubtful whether they could have taken notice of a subsequent legislation and answered a different question.", does not suggest a different rule. In Messrs Chatturam Horilram Ltd.'s case ( 2 ) a previous assessment to income- tax of the assessee fell through because the Indian Finance Act of 1939 was not in force in Chota Nagpur area where the assessee was carrying on business during the relevant assessment year. Thereafter Bihar Regulation IV of 1942 was promulgated by the Governor of Bihar with the assent of the Governor-General and thereby the Indian Finance Act of 1939 was brought into force in Chota Nagpur retrospectively as from March 30, 1939. On February 8, 1944, the Income-tax Officer issued a fresh notice under s. 34 of the Indian Income-tax Act, 1922, which resulted in the assessment of the appellant to income-tax, and the question which fell to be determined was whether the (1) [1961] 2 S.C.R. 189.

(2 ) [1955] 2 S.C.R. 290.

notice was properly issued under s. 34 of the Act. It was argued that when the High Court answered the earlier reference which negatived the claim of the Revenue to assess the assessee, Bihar Regulation IV of 1942 had in fact been enacted, and if the High Court had applied that Regulation the result would have been different, and in meeting that argument the Court observed that it was doubtful if the High Court had jurisdiction to take into consideration the subsequent legislation for answering a question other than the one which was actually raised. The doubt expressed was therefore in respect of the power of the Court to decide a question other than the question which was actually referred and not in respect of the power and indeed the duty of the High Court to apply to the question referred the law enacted with retroactive operation.

In support of his contention Mr. Kapur relied upon the observation of Desai, C.J., in M/s Rampur Distillery Chemical Works Ltd. v. The Commissioner of Income-tax, U.P.(1) to the following effect:

> "The argument was that though the High Court has to answer the question referred to it with reference to the law in force in 1957 (when the Tribunal disposed of the appeal), what that law was has to be discovered today with reference to the law existing today. What was the law in 1957 on the basis of which the Tribunal disposed of the appeal has certainly to be decided by this court today but what has to be decided is the law existing in 1957 and not deemed to exist in 1957 by virtue of an amendment in the law made in 1962."

But in that case, in the view of the High Court the amendment made by the amending statute of 1962 which came into force after the reference was made by the Income-tax Tribunal had no retrospective operation, and the question referred by the Tribunal had to be answered by the High Court in the light of the relevant law applicable at the date of the transaction. The observation relied upon has to be read in the context of the finding of the High Court as to the character of the amending legislation. The observation therefore does not assist the contention that even in cases where the relevant statute has been amended with retroactive operation, so as to apply to the transaction which forms the subject-matter of the reference, and the High Court or this Court is bound in recording its opinion on the question referred to ignore the amended law. If what counsel contends is true. the answer given by the High Court or by this Court would have no value whatever in cases where by retroactive amendment of the law, the old law has (1) I.T. Reference No. 362 of 1958 decided on Jan. 17, 1964.

been superseded and is substituted by a new statutory provision. Undoubtedly the Tribunal called upon to decide a taxing dispute must apply the relevant law applicable to a particular transaction to which the problem relates, and that law normally is the law applicable as on the date on which the transaction in dispute has taken place. 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. Similarly when the question has been referred to the High Court and in the meanwhile the law has been amended with retroactive operation, it would be the duty of the High Court to apply the law so amended if it applies. By taking notice of the law

which has been substituted for the original provision, the High Court is giving effect to legislative intent and does no more than what must be deemed to be necessarily implicit in the question referred by the Tribunal, provided the question is couched in terms of sufficient amplitude to cover an enquiry into the question in the light of the amended law, and the enquiry does not necessitate investigation of fresh facts. If the question is not so couched as to invite the High Court to decide the question in the light of the law as amended or if it necessitates investigation of facts which have not been investigated, the High Court may refuse to answer the question. Application of the relevant law to a problem raised by the reference before the High Court is not normally excluded merely because at the date when the Tribunal decided the question the relevant law was not or could not be brought to its notice. There is nothing so peculiar in the nature of a reference under the Indian Income-tax Act or the Sales Tax Acts that in deciding it the High Court is restricted to the application of the law which has been superseded by legislation since the date when the reference was made by the Tax Tribunal and is obliged to refuse to apply the law which by legislative direction has to be applied to a particular transaction which is the subject-matter of the reference.

On the view taken by us this appeal must be allowed and the question raised by the Judge (Revisions) Sales Tax must be answered in the affirmative. Having regard to the circum- stances of the case, the parties will bear their own costs both in this Court and the High Court.

Appeal allowed.