Supreme Court of India
M/S. J. K. Jute Mills Co. Ltd vs The State Of Uttar Pradesh And ... on 17 April, 1961
Equivalent citations: 1961 AIR 1534, 1962 SCR (2) 1
Author: T V Aiyyar
Bench: Das, S.K., Kapur, J.L., Hidayatullah, M., Shah, J.C., Aiyyar, T.L. Venkatarama

PETITIONER:
M/S. J. K. JUTE MILLS CO. LTD.

Vs.

RESPONDENT:
THE STATE OF UTTAR PRADESH AND ANOTHER

DATE OF JUDGMENT:
17/04/1961

BENCH:
AIYYAR, T.L. VENKATARAMA
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AIYYAR, T.L. VENKATARAMA
DAS, S.K.
KAPUR, J.L.
HIDAYATULLAH, M.
SHAH, J.C.

CITATION:
1961 AIR 1534 1962 SCR (2) 1
CITATOR INFO :
R 1962 SC1753 (19)
R 1963 SC 966 (19)
C 1963 SC1667 (15)
R 1965 SC 560 (1,23,18)
RF 1972 SC2455 (12,13)
R 1973 SC 376 (10)
F 1973 SC1034 (13,28)

ACT:
Sales Tax-Enactment enabling Government to fix rate of tax by notification-Notification declared invalid by court-Enactment validating notification-Retrospective operation-Validity of enactment-U. P. Sales Tax (Validation) Act, 1958 (U. P. 15 of 1958), s. 3-U.P. Sales Tax Act, 1948 (U.P. 15 of 1948), s. 3A-Constitution of India, Seventh Schedule, List II, Entry 54.

HEADNOTE:
In exercise of the power conferred by s. 3A(2) of the U.P. Sales Tax Act, 1948, which enabled the State Government, by notification, to fix the rate of the tax to be levied on the

sales of goods specified in the section not exceeding nine pies per rupee, the Government issued at notification dated June 8, 1948 imposing a tax of six pies in the rupee on sales of jute. On March 31, 1956, the Governor of Uttar Pradesh issued an Ordinance, inter alia, amending S. 3A(2) of the Act, the effect of which was to enact one ceiling rate of one anna per rupee on the sale proceeds for all goods leaving it to the State to fix within the ceiling such rates of tax for such goods as it might determine. On the same date the Government issued a notification by which sales on jute were liable to pay sales tax at the rate of one anna per rupee on the sale proceeds. The Ordinance was replaced by U.P. Sales Tax (Amendment) Act, 1956, under which the amended section shall "be deemed to have effect on and from April 1, 1956". One of the dealers who had been assessed to sales tax in accordance with the notification filed an application under Art. 226 of the Constitution of India, calling in question its validity, and the High Court of Allahabad held that there was no power in the State to issue the notification under s. 3A(2) on March 31, 1956, as that section was itself to come into force only on April 1, 1956. With a view to remove the defect pointed out in said decision, the State Legislature passed the U.P. Sales Tax (Amendment) Act, 957, but this in turn having been declared by the Allahabad High Court not being effective in saving the notification, the legislature ultimately enacted the U.P. Sales Tax (Validation) Act, 1958. Section 3 of this Act provided that notwithstanding any judgment of any court the notification dated March 31, 1956, shall be deemed to have been issued in exercise of the powers conferred by s. 3A of the U.P. Sales Tax Act, 1948, as if the said section was in force on the date on

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which the notification was issued in the form in which it was in force immediately before the commencement of this Act. The petitioner who was carrying on business in the manufacture and sale of jute goods filed an application under Art. 32 of the Constitution and contended that the Validation Act of 1958, had not brought about any change in the situation on the grounds (1) that the words "in the form in which it was in force immediately before the commencement of this Act" in s. 3 must be read as qualifying the word "notification" and not the word "section" and in that view the notification in question was subject to the same infirmity which attached to it when it was published on March 31, 1956, and (2) that the State Legislature was not competent to enact a law imposing sales tax retrospectively and therefore the Validation Act was ultra vires.

Held: (1) that on its proper construction, the words "in the form in which it was in force immediately before the commencement of this Act" in s. 3 of the U.P. Sales Tax (Validation) Act, 1958, qualify the word "section" and not the word "notification", and that on that view the impugned

notification was within the saving clause of the Validation Act.
H. L. M. Biri Works v. Sales Tax Officer, A.I.R. 1959 All. 208, approved.
(2) that the power of a legislature to enact a law with reference to a topic entrusted to it is unqualified and that in the exercise of such a power it will be competent for the legislature to enact a law which is either prospective or retrospective. Accordingly, the Validation Act is not ultra vires the powers of the legislature under entry 54 in List II of the Seventh Schedule to the Constitution, for the reason that it operates retrospectively.
The fact that the seller is not in a position to pass the sales tax on to the consumer does not affect the competence of the legislature to enact a law imposing a sales tax retrospectively as that is a matter of policy.
The Province of Madras v. Boddu Paidanna and Sons, [1942] F.C.R. go, explained.
The Tata Iron & Steel Co., Ltd. v. The State of Bihar, [1958] S.C.R. 1355, Buchirajalingam v. State of Bihar, A.I.R. 1958 S.C. 756 and M.P.V. Sundararamier & Co. v. The State of Andhya Pradesh, [1958] S.C.R. 1422, followed.
The Union of India v. Madan Gopal Kabra, [1954] S.C.R. 541, relied on.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 108 of 1961. Writ Petition under Art. 32 of the Constitution of India for the enforcement of Fundamental Rights.

M. C. Setalvad, Attorney-General of India, Rameshwar Nath, S. N. Andley and P. L. Vohra, for the petitioner. C. K. Daphtary, Solicitor-General of India, K. L. Misra, Advocate-General, U.P., K. B. Asthana and C. P. Lal, for the respondents.

1961. April 17. The Judgment of the Court was delivered by VENKATARAMA AIYAR, J. - The petitioner is a company incorporated under the Indian Companies Act, its registered office being at Kanpur in the State of Uttar Pradesh, and it is carrying on business in the manufacture and sale of jute goods. By a notification dated March 31, 1956, the State of Uttar Pradesh imposed a tax of one anna in the rupee on the sale proceeds of jute. Previously thereto, the tax payable on sale of jute was six pies in the rupee. This notification having been struck down by the High Court of Allahabad as unauthorised and inoperative, the State legislature enacted the U. P. Sales Tax (Validation) Act,. 1958 (U. P. Act XV of 1958), hereinafter referred to as the Validation Act, validating the said notification as from March 31, 1956. In this petition filed under Art. 32 of the Constitution, the petitioner contends that notwithstanding the Validation Act, the notification in question continues to be void and inoperative, because it has not in fact been validated, and because the Act itself is ultra vires. The impugned notification was, it may be mentioned, superseded by a fresh notification on August 1, 1956, and the present dispute relates only to the tax on sales effected between April 1,

1956, and July 31, 1956. If the Validation Act is intro vires, the tax payable by the petitioner would, in accordance with the impugned notification, be Rs. 1,26,529-3-0, whereas if the said Act is ultra vires, the tax would be reduced by half Though the point for decision is a simple one lying within a narrow compass, to reach it one has to wade through a perfect morass of statutes, notifications and judicial pronouncements. We begin with what has been termed the "Principal Act" by which sales tax was imposed in the Province. That is the U. P. Sales Tax Act No. XV of 1948, and that came into force on April 1, 1948. There were subsequent amendments to it in 1948, 1950 and 1952, but they are not material for the present discussion. It is sufficient to refer to s. 3-A as it stood on March 31, 1956, when the notification in question was issued. This section ran as follows:

"3-A. Single point taxation-(1) Notwithstanding anything contained in Section 3, the State Government may by notification in the official Gazette declare that the turnover in respect of any goods or class of goods shall not be liable to tax except at such single point in the series of sales by successive dealers as the State Government may specify.

(2) If the State Government makes a declaration under sub- section (1) of this section, it may further declare that the turnover of the dealer, who is liable to pay tax on the sale of such goods, shall in respect of such sales, be taxed at such rate as may be specified not exceeding one anna per rupee if the sale relates to goods specified below:-

(i) Motor vehicles including motor cars, motor taxi-cabs, motor cycles and cycle combinations, motor scooters, motorettes, motor omnibuses, motor vans and motor lorries. Chassis of motor vehicles. Articles including rubber and other tires and tubes and batteries adapted for use as motor part and accessories of motor vehicles, not being such arti- cles as are ordinarily also used for other purposes than as parts of accessories of motor vehicles.

(ii) Refrigerators and air conditioning plants.

(iii) (a) Wireless reception instruments, apparatus and component parts thereof, including all electrical valves, accumulators, amplifiers and loudspeakers which are not specially designed for purposes other than wireless reception.

(b) Radiogramophones.

(iv) Cinematographic, photographic and other cameras. projectors and enlargers and films, plates, papers and cloth required for use therewith.

(v) Scents and perfumes, and nine pies per rupee if it relates to any other goods." It was under this provision that the U. P. Government had issued a notification on June 8, 1948, imposing a tax of six pies in the rupee on the sale of jute. In exercise of the power conferred by Art. 213(1) of the Constitution, the Governor of Uttar Pradesh issued on March 31, 1956, Ordinance No. IX of 1956, and that was published in the Official Gazette on the same date. Under this Ordinance the whole of subsection (2) of s. 3-A as it then stood was deleted and the following substituted:- "(2) If the State Government makes a declaration under subsection (1), it may further declare that the turnover in

respect of such goods shall be liable to tax at such rate not exceeding one anna per rupee as may be specified." The effect of this provision was to exact one ceiling rate of one anna per rupee on the sale proceeds for all goods leaving it to the State to fix within the ceiling such rates of tax for such goods as it might determine. On the same date, the Government published the following notification No. ST. 905/X on which the entire controversy has arisen.

> "In exercise of the power conferred by section 3-A of the U. P. Sales Tax Act, 1948, as amended from time to time, and in supersession of all previous notifications on the subject, the Governor of Uttar Pradesh is hereby pleased to declare that the turnover in respect of the goods specified in the List below shall not with effect from April 1, 1956, be liable to tax except-
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> (a) in the case of goods imported from outside, Uttar Pradesh at the point of sale by importer; and
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> (b) in the case of goods manufactured in Uttar Pradesh, at the point of sale by the manufacturer;
>
> and the Governor is further pleased to declare that such turnover shall with effect from the said date be taxed at the rate of one anna per rupee.
>
> List
>
> 18. Jute goods"

In due course, the U. P. Sales Tax Ordinance No. IX of 1956 was replaced by the U. P. Sales Tax (Amendment) Act XIX of 1956, and that came into force on May 28, 1956. It merely reproduces the terms of the Ordinance No. IX of 1956 with this modification which is consequential, that the amended section including s. 3-A shall "be deemed to have effect on and from the first day of April, 1956". If notification No. ST. 905/X dated March 31,1956, is valid there is no question that the petitioner would be liable to pay sales tax for the period in question at the rate of one anna per rupee on the sale proceeds.

One of the dealers who had been assessed to sales tax in accordance with this notification filed an application under Art. 226 in the High Court of Allahabad calling in question its validity and this proved successful, the court holding that there was no power in the State to issue the impugned notification under s. 3-A on March 31, 1956, as that section was itself to come into force only on April 1, 1956, vide Adarsh Bhandar v. Sales Tax Officer (1). The correctness of this decision is not under challenge in these proceedings. We do not therefore desire to express any opinion on it. With a view to remove the defect pointed out in Adarsh Bhandar v. Sales Tax Officer (1), the State legislature passed the U. P. Sales Tax (Amendment) Act XXIV of 1957. That Act received the assent of the President on August 31, 1957, and was published on September 3, 1957. It runs, so far as is material, as follows:-

"For sub-section (2) of Section I of the U. P. Sales Tax (Amendment) Act, 1956, the following shall be and be deemed to have always been substituted:-

'This Section, so much of Section 3, as relates to the substitution of the second proviso to sub-section (1) of Section 3 of the U. P. Sales Tax Act, 1948 (hereinafter called the principal Act) and section 4 shall have effect on and from the 31st day of March, 1956'."

(1) A.I.R. 1957 All. 475.

The result of this amendment was that s. 3-A was given retrospectively operation from March 31, 1956, instead of April 1, 1956, as originally enacted. The intention behind the legislation is obvious. If the impugned notification was, as held in Adarsh Bhandar v. Sales Tax Officer (1), invalid, because it was issued before s. 3-A was in operation, that objection could no longer hold good as that section would now operate from a point of time anterior to the issue of the notification. If the State thought that this legislation would give a quietus to the controversy, they were sadly mistaken. After the Amendment Act of 1957 came into force, another dealer who was sought to be assessed pursuant to the notification dated March 31, 1956, filed a petition under Art. 226 before the Allahabad High Court and raised the contention that as the Amendment Act merely amended s. 3-A and did not in terms validate the impugned notification, no proceedings could validly be taken under that notification and that therefore the proposed levy was illegal. This contention was again upheld by a Full Bench in Firm Bangali Mal v. Sales Tax Officer (2), which held that there was a difference between the existence of a power and its actual exercise, that while by reason of Act XXIV of 1957, a power had been conferred on Government to issue a notification on March 31, 1956, the notification actually issued on that date could not be referred to that power, that it was in exercise of the power supposed to have been conferred by s. 3-A as it stood on March 31, 1956, and that in consequence the impugned notification was not saved by the new Act.

This decision set the legislature again on the move and that brings us to what may be said to be the final round in the game. The State legislature enacted a fresh legislation for the purpose of effectuating the impugned notification. That was U. P. Sales Tax Validation Act XV of 1958. It received the assent of the President on May 3, 1958, and was published in the Official Gazette on May 6, 1958. The preamble to the Act states that "it is expedient to provide for (1) A.I.R. 1957 All. 475.

(2) A.I.R. 1958 All, 478.

the validation of certain notifications issued under the U. P. Sales Tax Act, 1948, (U. P. Act XV of 1948) and any action taken in pursuance thereof". Section 3 of the Act which deals with the present matter runs as follows:- "3. Validation of certain notifications and action taken in pursuance thereof.-

(1) Notwithstanding any judgment, decree or order of any court, the notifications specified in Part A, Part B and Part C of the Schedule shall be deemed to have been

> issued in exercise of the powers conferred respectively by section 3, section 3 -A and section 4 of the U. P. Sales Tax Act, 1948, as if the said sections were in force on the date on which the notifications were issued in the form in which they were in force immediately before the commencement of this Act and all the said notifications shall be valid and shall be deemed always to have been valid and shall continue in force until amended, varied or rescinded by any notification issued under any of the said section.
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> (2) Anything done or any action taken (including any order made, proceeding taken, direction issued, jurisdiction exercised, assessment made or tax levied or collected) purporting to have been done or taken in pursuance of any of the notifications specified in the Schedule shall be deemed to be and to have been validly and lawfully done or taken."

In Part B are set out the notifications issued in exercise of the powers conferred by s. 3A of the U.P. Sales Tax Act, 1948, and one of them is the impugned notification No. ST. 905/X. If this legislation is valid, the impugned notification stands validated and the petitioner would be liable to pay tax in accordance therewith. But the petitioner contends that the Validation Act has not brought about any change in the situation and that the notification dated March 31, 1956, continues to be null and void now as before the Act. Two grounds have been urged in support of this contention that on its true construction the Act does not in fact validate the impugned notification and that it is not a law which the State legislature was competent to enact and it is therefore a nullity. We must now examine these contentions. As regards the first contention, the argument in support of it is that the words, "in the form in which they were in force immediately before the commencement of this Act" in s. 3 must, in their setting, be read as qualifying the word, "notifications" and not the word "sections", and in that view the notification in question is subject to the same infirmity which attached to it when it was published on March 31., 1956. We are wholly unable to appreciate this contention. The object of the legislation as stated in the long title and in the preamble to the Act was to validate the impugned notification in relation to the amended section. Schedule B to the Act expressly mentions that notification. And if we are now to accede to the contention of the petitioner, we must hold that though the legislature set about avowedly to validate the notification dated March 31, 1956, it failed to achieve that object. A construction which will lead to such a result must, if that is possible, be avoided. The words, "in the form in which they were in force immediately before the commencement of this Act", no doubt occur after the word, "notifications". But then the words, "in the form" can have no reference to the impugned notification, because it had never changed form, whereas they were quite appropriate to s. 3A, because it had been amended. It should further be noted that the Validation Act was published both in Hindi and in English, and both of them were authorised versions. The words in the Hindi version make it clear beyond all doubt that the words, "in the form in which they were in force immediately before the commencement of this Act" qualify the word "sections" and not the word "notifications". That is the view expressed by a Bench of the Allahabad High Court in H. L. M. Biri Works v. Sales Tax Officer (1), on a comparison of the two versions, and we are in agreement with it. There would have been no scope for this argument if transposing the 'words, the section read, "as if the said (1) A.I.R. 1959 All. 208.

sections were, in the form in which they were in force immediately before the commencement of this Act, in force on the date on which the notifications were issued." But even in its present setting that is the meaning of the section, and the impugned notification must be-held to be within the saving of the Validation Act.

We now proceed to examine the second contention of the petitioner that the validation Act is itself invalid as being ultra vires the powers of the State legislature under the Constitution. The argument of the learned Attorney- General in support of this contention may thus be stated. The State legislature derives its authority to enact a law with respect to tax on the sale of goods under entry 54 in List II of the Seventh Schedule to the Constitution. It has been held that a sale for the purpose of the entry must be what in law is recognised as sale. Likewise, a law imposing tax on sales of goods must, to be intra vires, possess certain well-defined characteristics associated with such laws. In The Province of Madras v. Boddu Paidanna and Sons (1) it has been held that sales tax is a tax on the occasion of sale. In the present case, the sales sought to be taxed took place between April 1, 1956 and July 31, 1956, whereas the Validation Act, by force of which the tax becomes payable, came into force in 1958. It is therefore not a tax on the occasion of sale. Moreover a sales tax is an indirect tax which can be passed on by the seller to the purchaser. The Sales Tax Acts passed by the legislatures of several States provide for the seller collecting the tax from the purchaser as does the U. P. Sales Tax Act XV of 1948, vide s. 8A. That could be done only if the tax was levied before the sale took place. Therefore by the very nature of it there could be no retrospective legislation in respect of sales tax. And finally it is argued that the imposition of a tax retrospectively would be inconsistent with the provisions of the U.P. Sales Tax Act, 1948, and could not have been contemplated by that Act. Such for example are the provisions of S. 8A which provide for the registration of dealers for (1) [1942] F.C.R. 90.

the assessment years, the deposit into Treasury of sales tax collected from the purchasers in certain contingencies, S. 14 of the Act which imposes penalty for non-registration under s. 8A, and rule 63 which provides for the deposit of the sales tax collected under s. 8A(4) within thirty days of the expiry of the month in which the amount is charged. It is accordingly contended that whether we have regard to the true features of the sales tax legislation or the provisions of the U.P. Sales Tax Act, the Validation Act could not be held to be one with respect to sales tax, that it is therefore not within entry 54, and as there is no other entry in List II or List III of the Seventh Schedule to the Constitution, under which the legislation could be justified, it must be held to be ultra vires. So ran the argument.

The point for decision., stating it succinctly, is whether the Validation Act is within the ambit of entry 54 in List II of the Seventh Schedule to the Constitution. That entry confers on the States authority to enact a law with respect to tax on sales of goods. Now what is the extent of that authority? There must be in fact a sale as recognised by law. It is only then that a tax could be imposed. But if the transaction sought to be taxed is not a sale, a law which seeks to tax it, treating it as a, sale, would be ultra vires. Thus in The Sales Tax Officer v. Messrs. Budh Prakash Jai Prakash (1) a tax on agreement to sell was held to be not authorised by the entry, and in The State of Madras v. Gannon Dunkerley & Co., (Madras) Ltd. (2), a tax on the supply of materials in a contract for the construction of works simpliciter, on the footing of a sale was held to be outside the entry, and the

legislation which imposed such a tax was struck down as ultra vires. But where the transaction is one of sale of goods as known to law, the power of the State to impose a tax thereon is plenary and unrestricted subject only to any limitation which the Constitution might impose, and in the exercise of that power, it will be competent to the legislature to impose a tax (1) [1955] 1 S.C.R. 243. (2) [1959] S.C.R. 379.

on sales,which had taken, place prior to the enactment of the legislation.

But it is urged on the strength of certain observations in The Province of Madras v. Boddu Paidanna and Sons (1) that a sales tax is a tax on the occasion of sale, and that therefore it could not be imposed with retrospective operation. This contention is, in our judgment, wholly without substance. Now, the point for decision in that case was whether a tax imposed by a Provincial legislature on the sale of oil by a person who manufactured it was bad on the ground that it was in essence an excise duty. While a sales tax could be imposed by a Provincial legislature, an excise duty could be imposed only by the Federal legislature. In holding that the tax in question was a sales tax and not an excise duty, the court observed as follows:-

> "The duties of excise which the Constitution Act assigns exclusively to the Central Legislature are, according to the Central Provinces Case, duties levied upon the manufacturer or producer in respect of the manufacture or production of the commodity taxed. The tax on the sale of goods, which the Act assigns exclusively to the Provincial Legislatures, is a tax levied on the occasion of the sale of the goods. Plainly a tax levied on the first sale must in the nature of things be a tax on the sale by the manu- facturer or producer; but it is levied upon him qua seller and not qua manufacturer or producer." (P. 101).

In the context, the words, "on the occasion of the sale" have reference to the character of the transaction and not to the point of time at which the duty becomes leviable, and they have no bearing on the question as to when such a tax could be imposed.

And then it is argued that a sales tax being an indirect tax, the seller who pays that tax has the right to pass it on to the consumer, that a law which imposes a sales tax long after the sales had taken place deprives him of that right, that retrospective operation is, in consequence, an incident inconsistent with the true character of a sales tax law, and that the Validation Act is therefore not a law in respect of tax on the (1) [1942] F.C.R. 90.

sale of goods, as recognised, and it is ultra vires entry

54. We see no force in this contention. It is no doubt true that a sales tax is, according to accepted notions, intended to be passed on to the buyer, and provisions authorising and regulating the collection of sales tax by the seller from the purchaser are a usual feature of sales tax legislation. But it is not an essential characteristic of a sales tax that the seller must have the right to pass it on to the consumer, nor is the power of the legislature to impose a tax on sales conditional on its making a provision for sellers to collect the tax from the purchasers. Whether a law should be enacted,

imposing a sales tax, or validating the imposition of sales tax, when the seller is not in a position to pass it on to the consumer, is a matter of policy and does not affect the competence of the legislature. This question is concluded by the decision of this Court in The Tata Iron & Steel Co., Ltd. v. The State of Bihar (1). The following observations of Das, C. J., bearing on this question might be quoted:-

> " Under the 1947 Act the primary liability to pay the sales tax, so far as the State is concerned, is on the seller. Indeed before the amendment of the 1947 Act by the amending Act the sellers had no authority to collect the sales tax as such from the purchaser. The seller could undoubtedly have put up the price so as to include the sales tax, which he would have to pay but he could not realise any sales tax as such from the purchaser. That circum- stance could not prevent the sales tax imposed on the seller to be any the less sales tax on the sale of goods. The circumstance that the 1947 Act, after the amendment, permitted the seller who was a registered dealer to collect the sales tax as a tax from the purchaser does not do away with the primary liability of the seller to pay the sales tax. This is further made clear by the fact that the registered dealer need not, if he so pleases or chooses, collect the tax from the purchaser and some- times by reason of competition with other registered dealers he may find it profitable to sell his goods (1) [1958] S.C.R: 1355.
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> and to retain his old customers even at the sacrifice of the sales tax. This also makes it clear that the sales tax need not be passed on to the purchasers and this fact does not alter the real nature of the tax which, by the express provisions of the law, is cast upon the seller. The buyer is under no liability to pay sales tax in addition to the agreed sale price unless the contract specifically provides otherwise. See Love v. Norman Wright (Builders) Ltd. If that be the true view of sales tax then the Bihar Legislature acting within its own legislative field had the powers of a sovereign legislature and could make its law prospectively as well as retrospectively." (pp. 1378-1379).

The decision of this Court in Buchirajalingam v. State of Hyderabad (1) is also to the same effect.

The power of a legislature to enact a law with reference to a topic entrusted to it, is, as already stated, unqualified subject only to any limitation imposed by the Constitution. In the exercise of such a power, it will be competent for the legislature to enact a law, which is either prospective or retrospective. In The Union of India v. Madan Gopal(2) it was held by this Court that the power to impose tax on income under entry 82 of List I in Schedule VII to the Constitution, comprehended the power to impose income-tax with retrospective operation even for a period prior to the Constitution. The position will be the same as regards laws imposing tax on sale of goods. In M. P. V. Sundararamier & Co. v. The State of Andhra Pradesh (3), this Court had occasion to consider the validity of a law enacted by Parliament giving retrospective operation to laws passed by the State legislatures imposing a tax on certain sales in the course of inter-State trade. One of the contentions raised against the validity of this legislation was that, having regard to the terms of Art. 286(2), the retrospective legislation was not within the competence of Parliament. In rejecting this contention,

the Court observed: (1) A.I. R. 1958 S.C. 756, 759-60. (2) [1954] S.C.R. 541.

(3) [1958] S.C.R. 1422.

"Article 286(2) merely provides that no law of a State shall impose tax on inter-State sales 'except in so far as Parliament may by law otherwise provide'. It places no restrictions on the nature of the law to be passed by Parliament. On the other hand, the words 'in so far as' clearly leave it to Parliament to decide on the form and nature of the law to be enacted by it. What is material to observe is that the power conferred on Parliament under Art. 286(2) is a legislative power, and such a power conferred on a Sovereign Legislature carries with it authority to enact a law either prospectively or retrospectively, unless there can be found in the Constitution itself a limitation on that power." (p. 1460). And it was held that the law was within the competence of the legislature. We must therefore hold that the Validation Act is not ultra vires the powers of the legislature under entry 54, for the reason that it operates retrospectively. It was finally urged on the basis of ss. 8-A, 14 and rule 23 of the U. P. Sales Tax Act that they contemplated only a prospective legislation and that those sections would be impossible of compliance under the present legislation. This is a consideration which is wholly foreign to the present question. The point which we have got to decide is whether the Validation Act is ultra vires. That has to be determined solely on the construction of entry 54 in List II in the Seventh Schedule, and any other provisions of the Constitution bearing on the question. Even assuming that the provisions of the U. P. Sales Tax Act XV of 1948 contemplate a levy of tax in future, that does not affect the power of the legislature under entry 54 to enact a law with retrospective operation. It can only result in those provisions being unenforceable as regards the levy under the impugned notification. Dealing with a similar contention in M. P. V. Sundararamier & Co. v. The State of Andhra Pradesh (1), this Court observed:

> "It is also contended that under the Sales Tax (1) [1958] S.C.R. 1422.
>
> Acts, the levy of tax is annual and the rules contemplate submission of quarterly returns and payment of taxes every quarter on the admitted turnover, and that a conditional legislation under which payment of tax will become enforceable in fururo would be inconsistent with the scheme of the Act and the rules. But this argument, when examined, comes to no more than this that the existing rules do not provide a machinery for the levy and the collection of taxes which might become payable in future, when Parliament lifts the ban. Assuming that is the true position, that does not affect the factum of the imposition, which is the only point with which we are now concerned. That the States will have to frame rules for realising the tax which becomes now payable is not a ground for holding that there is, in fact, no imposition of tax." (p. 1454).

None of the grounds urged by the petitioner in support of the contention that the Validation Act is ultra vires can be sustained. In the result we must hold that the Validation Act is intra vires, and the impugned notification dated March 31, 1956, stands validated by it. This petition must therefore be dismissed with costs.

Petition dismissed.