

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2019

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

WP.Nos. 9996 of 2012, 17314 of 2015
3666 of 2012 & 21237 of 2011
MP.Nos.1 & 2 of 2015

Tvl.Makkal Stores,
Rep.by its partner
A.J.Issath

... Petitioner in W.P.No.9996/2012

M/s.Kamatchi Steels,
Rep.by its Partner
T.Mahadevan

... Petitioner in W.P.No.17314/2015

Anghumari Trading Company
Rep.by its partners
(1) C.M.Subiramani
(2) M.Balanagammal

... Petitioner in W.P.No.3666/2012

Tamil Nadu Scented & Chewing
Tobacco Manufactures Association
Rep.by its President
V.Parthiban

... Petitioner in W.P.No.21237/2012

/Vs/

1.State of Tamil Nadu,
Represented by the Secretary,
Commercial Taxes and Registration Department
Fort St. George, Chennai-9

2.The Commercial Tax Officer,
Arcot,
Vellore District ...Respondents in W.P.No.17314/2012

3.The Commercial Tax Officer,
Vandavasi
Vandavasi 604408
Tiravanamalai D.T. ..Respondent in W.P.No.9996/2012

4.Commissioner of Commercial Taxes
Chepauk, Chennai-600 005 ..Respondents in W.P.No.3666/2012
& 21237 of 2011

5. Assistant Commissioner of
Commercial Taxes

V, Dindigul-624001 ..Respondents in W.P.No.3666/2012

PRAYER in W.P.Nos. 9996 of 2012 & 17314 of 2012: PETITIONs filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorari, calling for the records of the respondent/Commercial Tax Officer in TIN No:33694601877/2010-11 dated 24.02.2011 and TIN No:33434581165/10-11 dated 20.05.2015 and quash the same as illegal in so far as the turnover of Rs. 45,32,300/- is concerned

PRAYER in W.P.Nos. 3666 of 2012 & 21237 of 2011: etition filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 1st respondent made in Letter No.Acts Cell-V/42890/2010 and V/42890/2010 dated 02.06.2011 quash the same and consequently direct the respondents to refund value added tax on chewing tobacco collected from the petitioners from 01.04.2007 to 12.10.2009.

For Petitioner:Mr.S.Rajasekar in
W.P.Nos. 9996 of 2012&17314 of 2012

Mr.K.Thangavel in
W.P.No.3666 of 2012

Mr.S.Elamurugan in
W.P.No.21237 of 2011

For Respondents : Mr.Mohammed.Shaffiq
in all W.Ps Special Government Pleader

C O M M O N O R D E R

A common issue arises in these writ petitions and I hence dispose all matters by way of a single order though I have adverted to the individual facts separately in the course of the order itself.

2. The challenge in these cases is to assessments made in terms of the Tamil Nadu Value Added tax Act 2006 ('Act'). The petitioners are dealers in Iron, Steel and Cement (Kamatchi Steels) Electric and Electronic goods, (Makkal Stores) and Manufacturers and sellers of Chewing Tobacco (Angumari Trading Company and Tamil Nadu Scented & Chewing Tobacco Manufacturers Association).

3. In the case of the Tobacco manufacturers and dealers 'beedi, beedi tobacco, tobacco leaves, snuff and cheroot' had been exempted from tax under Notification G.O.Ms. No.146
Commercial Taxes and Registration (B2) Department on

08.08.2007. A representation had been made by the manufacturers/dealers requesting inclusion of chewing tobacco also in the Exemption Notification. This was accepted and a Notification issued in G.O. Ms.No.149 dated 12.10.2009. Both the first and second Notifications are extracted below for the sake of clarity:

ANNEXURE
NOTIFICATION

In exercise of the powers conferred by sub-section (1) of section 30 of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006), the Governor of Tamil Nadu hereby makes an exemption in respect of tax payable under the said Act on the sale of beedi, beedi tobacco, tobacco leaves, snuff and cheroot.

2. This Notification shall be deemed to have come into force on the 1st April 2007

M.DEVARAJ,
SECRETARY TO GOVERNMENT

ANNEXURE
NOTIFICATION

In exercise of the powers conferred by sub-section (3) of section 30 of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006), the Governor of Tamil Nadu hereby makes the following variation to the Commercial taxes and Registration Department Notification No.II (1)/CTR/52(a)/2007, published at page 1 of Part II-Section 1 of the Tamil Nadu Government Gazette, Extraordinary, dated the 8th August 2007:-

VARIATION

In the said Notification, for the expression "snuff and cheroot", the expression "snuff, cheroot and chewing tobacco" shall be substituted'

RAJEEW RANJAN
PRINCIPAL SECRETARY TO
GOVERNMENT'

4. According to the petitioners, the exemption granted to 'chewing tobacco' should be made available from the date of original Notification as the exclusion thereof had been an obvious omission that stood corrected from date of second Notification by 'substitution' of the amended list of products in respect of which exemption was granted. The assessment for the period 2010-11 is thus assailed on the ground that the turnover from chewing tobacco ought to be exempt from tax.

5. As far as Makkal Stores and Kamatchi Steels are concerned, an amendment had been carried out to Section 3(4) of

the Act under Amendment Act 27 of 2011 receiving the assent of the Governor on 26.09.2011. The impugned proceedings dated 24.02.2012 & 20.05.2015 are in respect of the period 2010-11 and the 2011 Amendment should, according to the petitioners, ought to have been taken note of and applied in the impugned assessments for the earlier period as well.

6. Prior to the Amendment in question, the Act had been amended in 2008. Both the 2008 and 2011 Amendments are extracted below in order that the trajectory of the presumptive tax provisions, to the extent to which they illustrate the point in relevance in these writ petitions, is set out:

ACT No. 49 OF 2008.

An Act further to amend the Tamil Nadu Value Added Tax Act, 2006.

BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Fifty-ninth Year of the Republic of India as follows:-

1 (1) This Act may be called the Tamil Nadu Value Added Tax (Second Amendment) Act, 2008.

(2) It shall be deemed to have come into force on the 18th day of June 2008.

2. In section 3 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the principal Act), for sub-section (4), the following sub-section shall be substituted, namely:-

“(4) (a) Notwithstanding anything contained in sub-section (2), but subject to the provisions of sub-section (1), every dealer, who effects second and subsequent sales of goods purchased within the State, whose turnover relating to taxable goods, for a year, is less than rupees fifty lakhs may, at his option, instead of paying tax under sub-section(2), pay a tax, for each year, on his turnover relating to taxable goods at such rate not exceeding one per cent, as may be notified by the Government. Such option shall be exercised by a dealer,

(i) Who commences business, within thirty days from the date of commencement of the business;

(ii) Whose turnover relating to taxable goods is below rupees fifty lakhs during the previous year, on or before the 30th day of April of the year for which he exercises such option;

(iii) for the year 2008-2009, within thirty days from the date of commencement of the Tamil Nadu Value Added Tax (Second Amendment) Act, 2008:

Provided that such dealer shall not collect any amount by way of tax or purporting to be by way of tax:

Provided further that such dealer shall not be entitled to input tax credit on the goods purchased by him:

Provided also that the dealer who purchased goods from such dealer shall not be entitled to input tax credit on the goods purchased by him.

(b) If the turnover relating to taxable goods of a dealer paying tax under clause (a), in a year, reaches rupees fifty lakhs at any time during that year, he shall inform the assessing authority in writing within seven days from the date on which such turnover has so reached. Such dealer is liable to pay tax under sub-section (2) on all his sales of rupees fifty lakhs and above and he is entitled to the input tax credit on the purchases made from the date, and on the stock available with him, the purchases of which has been made within ninety days before the date, on which such turnover has reached rupees fifty lakhs:

Provided that such dealer whose turnover relating to taxable goods has reached rupees fifty lakhs during the previous year shall not be entitled to exercise such option for subsequent years.

Act.No.27 of 2011

An Act further to amend the Tamil Nadu Value Added Tax Act, 2006.

BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Sixty-second Year of the Republic of India as follows:-

1. (1) This Act may be called the Tamil Nadu Value Added tax (Fourth Amendment) Act, 2011).

(2) It shall come into force on such date as the state Government may, by notification, appoint

2. In section 3 of the Tamil Nadu Value Added Tax Act, 2006, in sub-section (4), in clause (b), for the expression "Such dealer is liable to pay tax under sub-section (2) on all his sales of rupees fifty lakhs and above", the expression "Such dealer may pay a tax for each year on his turnover relating to taxable goods upto rupees fifty lakhs at such rate not exceeding one per cent, as may be notified by the Government and is liable to pay tax under sub-section (2) on all his sales of taxable goods above rupees fifty lakhs" shall be substituted.'

7. The 2008 amendment was to the effect that the liability of a dealer with turnover upto a sum of Rupees Fifty lakhs (eligible turnover) was 0.5% and that of a dealer with turnover in excess of the eligible turnover shall be in terms of section 5(2) of the Act. According to the dealers, the

liability should be staggered thus: eligible turnover at the rate of 0.5% and in excess of eligible turnover, at regular rate.

8. The revenue had taken the stand then that once an assessee had achieved turnover of even a rupee more than Rupees Fifty lakhs, it exposes itself to the rigours of a regular assessment in respect of the entirety of its turnover for that very year.

9. According to the petitioners, it is in the light of this contested position that the 2011 Amendment should be viewed and interpreted. This Amendment clarifies that the liability to tax shall be two-fold, presumptively in respect of the eligible turnover upto Rupees Fifty lakhs and at regular rate in respect of the turnover in excess of the eligible turnover. Since the Amendment is clarificatory, it was clearly intended to remove doubts that arose from the implementation of the 2008 Amendment and the 2011 Amendment is thus to be implemented retrospectively, for period prior to the date of amendment as well.

10. Detailed submissions have been advanced by Mr.S.Elamurugan, Mr.K.Thangavelu, Mr.S.Rajasekar, learned counsel for the petitioners as well as Mr.Mohammed Shaffiq, learned Special Government Pleader for the Commercial Taxes Department on the law relating to 'substitution' of a provision in a Statute. In both sets of cases before me, the legal issue that arises for determination is what the effective date of an amendment is, that has been incorporated by way of 'substitution'. I will advert to this issue first in general terms before proceeding to advert to the specific facts involved in both sets of matters.

11. The language in which Amendments are couched is varied. Though the language used, in general, and the choice of words employed, in particular, are important parameters to assist in a decision as to whether the amendment is intended to act prospectively or retrospectively, they are not the sole determinants.

12. The primary elements of a 'tax' have been detailed in Govind Saran Ganga Saran Vs. Commissioner of Sales Tax and Others [(1985) SCC 205] as follows:

6. The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to

which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity.

13. A fiscal statute and Rules will thus have to adhere to the scheme of taxation as above, to ensure an effective and robust levy.

14. In the case of Government of India and Others Vs. Indian Tobacco Association ((2005) 7 SCC 396), the Supreme Court specifically interpreted the expression 'substitute'. The petitioner therein was the Association of cultivators of tobacco comprising of several cultivators and exporters of tobacco. A Notification had been issued and an incentive scheme introduced by the Government of India (GOI) in regard to export and import of tobacco. A certain percentage of incentive was granted to those assesseees that had carried out exports from notified container depots.

15. The original notification did not contain 'Guntur' as one of the notified depots. The scheme was amended and in addition to the notified ports contained originally, several other ports were also included and the benefit was extended to the newly included ports as well. The contention of the assessee therein was that the subsequent notification having substituted the words 'Ludhiana, Hyderabad, Nagpur, Agra, Faridabad, Jaipur, Guntur and Varanasi' for the original two ports that is 'Ludhiana and Hyderabad', the benefit under the original Notification would be available to all the subsequently included ports including Guntur, from date of original Notification, that is, from 01.04.1997 itself. Per contra, the contention of the revenue was that exports of tobacco during the period 01.04.1997 to 26.11.1997 would not qualify for the incentive.

16. The Court reiterated the settled position that an exemption notification must be construed having regard to the objects and purposes which the same seeks to achieve. In determining the effect of the second notification, the Bench took into account the observations of an earlier Division Bench of the Supreme Court in the case of Ramkanali Colliery of BCL vs. Workmen by Secretary Reshtriya Colliery Mazdoor Sangh [(2001) 4 SCC 236], wherein the Division Bench observed as follows:

'What we are concerned with in the present case is the effect of the expression 'substituted' used in the context of deletion of sub-sections of Section 14, as was originally enacted. In

Bhagat Ram Sharma Vs. Union of India, this Court stated that it is a matter of legislative practice to provide while enacting an amending law, that an existing provision shall be deleted and a new provision substituted. If there is both repeal and introduction of another provision in place thereof by a single exercise, the expression 'substituted' is used. Such deletion has the effect of the repeal of the existing provision and also provides for introduction of a new provision. In our view there is thus no real distinction between repeal and amendment or substitution in such cases. If that aspect is borne in mind, we have to apply the usual principles of finding out the rights of the parties flowing from an amendment of a provision. If there is a vested right and that right is to be taken away, necessarily the law will have to be retrospective in effect and if such a law retrospectively takes away such a right, it can no longer be contended that the right should be enforced. However, that legal position, in the present case, does not affect the rights of the parties as such.'

17. A distinction was also made between substitution of a provision that resulted in repeal of the earlier position and one that resulted in re-placement by the new provision. In this context, the observations of the three Judges Bench of the Supreme Court in West U.P. Sugar Mills Assn. Vs. State of U.P. [(2002) 2 SCC 645], were referred to, wherein it was held that by substituting the old one for a new one, it was never intended to keep the old rule alive. In that case, the Court had held that the effect of substitution was deletion of the old rule and the making of the new rule operative even from inception. Having said so, the Bench also noted some instances where the Court, having regard to the purport and object sought to be achieved by legislature could well construe the word 'substitution' as an amendment that would have prospective effect. One of the parameters to determine whether the statute in question was to be read as a substitution or as an amendment would be to test whether the new Notification/Amendment Act was brought in for the purpose of supplying an obvious omission in the existing Act/Notification. If it did, then the subsequent Act/Notification would relate back in time to when the prior act had been passed.

18. In Indian Tobacco Association (supra), the Court held that the Notification in question was intended to give a benefit, in general, to all exporters. Such a benefit, originally intended to all cultivators of Tobacco should not be denied to those in Guntur and some other regions that had been omitted to be mentioned in the original Notification,

particularly, when it is not the intention of the authorities to carve out any exception to the original incentive scheme. Thus, having regard to the objects, as discernible from the Scheme, that it was always intended that all tobacco cultivators were to receive a uniform benefit, a construction and interpretation in line with this object was given in that case and the claim of the assessee/dealers allowed.

19. In *Shakti Masala (P) Ltd. V. The Assistant Commissioner (CT)* (2013 (64) VST 385) a learned Single Judge of this Court considered the import of an exemption granted to chilly, coriander and turmeric and whether such exemption would also encompass chilly powder, coriander powder and turmeric powder. The revenue contended that it did not and that those commodities in their whole form were entirely different and distinct from the commodities in powder form. This argument was negated and the Court held that, whether in whole or powdered form, the benefit of the exemption would apply equally and in both circumstances. This was on the specific finding of the Court that the non-mentioning of the commodities in powder form was a clear omission since the intention of legislature from inception was to treat these commodities as exempt, in whatever form they may be. Such intention being apparent, the question of treating the two forms of the same commodity differently, as regards taxability, did not arise.

20. Yet another determinant is to ascertain whether the amendment has the effect of expanding the ambit of the original provision, bringing into effect/force new liabilities, hitherto non-existent or unanticipated. If this were to be so, the amendment would only be active prospectively. In *Government of Andhra Pradesh and Another Vs. Corporation Bank* [(2007) 9 SCC 55], the Supreme Court, in this context, holds thus:-

14....Therefore, the object of the Explanation IV containing such deeming provisions is to expand the meaning of the word "dealer" and, therefore, it cannot be read as a retrospective enactment so as to cover old transactions of the past. It is for that reason that even the Legislature while enacting Act No.27 of 1996 has stated that the provisions thereof shall come into force with effect from 1.8.96 which is one more circumstance to show that the Amending Act was not to operate before 1.8.96.

21. By the same token as above, an amendment is understood to be retrospective if it serves to clarify a point thought to be ambiguous or requiring clarity, as considered by the Supreme Court in *United of India and Others Vs. Martin Lottery Agencies Ltd* [(2009) 12 SCC 209] to following effect:-

34. No doubt, the explanation begins with the words 'for removal of doubts'. Does it mean that it is conclusive in nature? In law, it is not. It is

not a case where by reason of a judgment of a court, the law was found to be vague or ambiguous. There is also nothing to show that it was found to be vague or ambiguous by the executive. In fact, the Board circular shows that invocation of clause (ii) had never been in contemplation of the taxing authorities.

22. The observations of the Supreme Court in Cooperative Company Ltd. Vs. Commissioner of Trade Tax, U.P [(2007) 4 SCC 480], in the context of whether amendments effected to Section 3AB inserted in the U.P. Trade Tax Act, 1948 (for short, 'the Act') on 01.08.1990 were to be construed as clarificatory/declaratory and having retrospective effect are also pertinent:

The Act having been brought into force from a particular date, no retrospective operation thereof can be contemplated prior thereto. The said provision furthermore contains a substantive provision which is itself a pointer to the fact that for the earlier period packing materials would not be exempted merely because main commodity is exempted from tax, but albeit subject to the condition that there was an agreement to sell in respect thereof. The amendment sought to deal with a matter which created some problem in implementation of the Act.

23. In Bhagat Ram Sharma Vs. Union of India and Others [1988 (Supp) SCC 30], the Bench states,

15. That takes us to the next and last contention of the appellant that Regulation 8(3) of the Regulations having been 'substituted' by cl. (3) of the Punjab State Public Service Commission (Conditions of Service) (First Amendment) Regulations, 1972 must be read along with Regulation 1(2) and therefore deemed to have come into force on November 1, 1956, the appointed day, and consequently, the appellant was entitled to pension as a retired Member of the Public Service Commission from January 2, 1959, the date of his superannuation, and not August 10, 1972, the date when the amendment came into effect. We are afraid we are unable to accept this contention.

16. In order to appreciate the point involved, we may reproduce the operative part of the order dated August 10, 1972 issued by the Governor of Punjab under Art. 318 of the Constitution bringing about a change in the law, which reads as follows:

'In exercise of the powers conferred by Article 318 of the Constitution of India and all other powers enabling him in that

behalf, the Governor of Punjab is pleased to make the following Regulations further to amend the Punjab State Public Service Commission (Conditions of Service) Regulations, 1958, namely:....'

a close look at the aforesaid order manifests an intention to enact a regulation to further amend the Regulations. It would be noticed that the new Regulation 8(1) has been 'substituted' for the old Regulation 8(1) and both deal with pensionary benefits to a Member who at the date of his appointment as such Member was in the service of the Central or a State Government. In contrast, Regulation 8(3) is a 'newly-added' provision conferring pensionary benefits on a person who at the date of his appointment was not in Government service. It may be recalled that while pensionary benefits under Regulation 8(1) were conferred upon a person who at the date of his appointment as a Member was in the service of the Central or a State Government, and his service as such Member was to count for pension under the rules applicable to the service to which he belonged, there was no corresponding provision for conferral of pensionary benefits on a person who at the date of his appointment as such Member was not in the service of the Central or a State Government. The newly-added provision contained in Regulation 8(3) is therefore a remedial measure to remove the anomaly then existing. Regulation 8(3) being a remedial measure, must receive a beneficial construction and if it is capable of two interpretations, the Courts must prefer that construction which permits the beneficent purpose behind it. When language of a statute is free from ambiguity, no duty is cast upon the Court to do anything more than to give effect to the word or words used. We do not mean to say that there might not be something in the context of an Act of Parliament, or to be collected from its language, which might give to words prima facie prospective a larger operation, but that ought not to receive a larger operation unless you find some reason for giving it. Now, it would be seen that cl. (5) similarly 'substituted' new Regulation 6(1) dealing with the salary and allowances payable to the Chairman and other Members of the Public Service Commission, and underneath appears the following:

"Notwithstanding anything contained in the Regulations, clause (i) of the proviso to sub-regulation (I) shall be deemed to have come into effect from 1.11.1956."

24. In *Shyam Sunder and Others Vs. Ram Kumar and Another* [(2001) 8 SCC 24], a Three Judge Bench of the Supreme Court states thus:-

During the course of argument, a half-hearted argument was raised that a substituted section in an Act introduced by an amending Act is to be treated having retroactive operation. According to the learned counsel for the appellant, the function of a substituted section in an Act is to obliterate the rights of the parties as if they never existed. This argument is noted only to be rejected. A substituted section in an Act is the product of an amending Act and all the effects and consequences that follow in the case of an amending Act, the same would also follow in the case of a substituted section in an Act.

25. Useful reference may also be made to the case of *Commissioner of Income Tax (Central)-1 New Delhi Vs. Vatika Township Pvt. Ltd* [(2015) 1 SCC 1] wherein the Bench has set out guidelines on the manner in which legislation is to be interpreted:-

28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit*: law looks forward not backward. As was observed in *Phillips vs. Eyre*[3], a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

....

35. We would also like to reproduce hereunder the following observations made by this Court in the case of *Govind Das v. ITO*, while holding Section 171 (6) of the Income- Tax Act to be prospective and inapplicable for any assessment year prior to 1st

April, 1962, the date on which the Income Tax Act came into force:

"11. Now it is a well settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."

26. In *Zile Singh Vs. State of Haryana and Others* [(2004) 8 SCC 1], a three Judge Bench of the Supreme Court states authoritatively as follows:-

13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only 'nova constitutio futuris formam imponere debet non praeteritis' — a new law ought to regulate what is to follow, not the past. (See : *Principles of Statutory Interpretation* by Justice G.P. Singh, Ninth Edition, 2004 at p.438). It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law

is made to cure an acknowledged evil for the benefit of the community as a whole. (ibid, p.440).

14. The presumption against retrospective operation is not applicable to declaratory statutes. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect. (ibid, pp.468-469).

15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, Seventh Edition), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the Courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the Courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the Statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated (p.388). The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right (p.392).

18. In a recent decision of this Court in National Agricultural Cooperative Marketing Federation of India Ltd. And Another Vs. Union of India and Others, (2003) 5 SCC 23, it has been held that there is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. Every legislation whether prospective or retrospective has to be subjected to the question of legislative competence. The retrospectivity is

liable to be decided on a few touchstones such as :
(i) the words used must expressly provide or clearly imply retrospective operation; (ii) the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional; (iii) where the legislation is introduced to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory basis of the decision. There is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. A validating clause coupled with a substantive statutory change is only one of the methods to leave actions unsustainable under the unamended statute, undisturbed. Consequently, the absence of a validating clause would not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent.

27. In addition to the above, the following cases have also been cited at the Bar that I merely cite for the sake of completion as the propositions set out therein have already been discussed in the cases extracted earlier:

(i) Commissioner of Income Tax 1, Ahmedabad Vs. Gold Coin Health Food Pvt. Ltd [(2008) 9 SCC 622]

(ii) Sodexo Food Solutions India Pvt. Ltd. Vs. State of Tamil Nadu dated 30.04.2019 in TCA.Nos.14 & 15 of 2013.

(iii) State of Kerala and Another Vs. Builders Association of India and Others [104 STC 134]

(iv) Koothattukulam Liquors Vs. Deputy Commissioner of Sales Tax [(2015) 12 SCC 794]

(v) Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others [(1999) 8 SCC 16]

(vi) Mehler Engineered Products India Pvt.Ltd. Vs. Union of India [(2018) 364 ELT 26]

17. Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar and Company [(2018) 9 SCC 1]

19. Sri Vijayalakshmi Rice Mills, New Vs. State of Andhra Pradesh [(1976) 3 SCC 37]

20. The State of Madras Vs. Bell Mark Tobacco Co. [(1967) 19 STC 129].

28. The above discussion makes it abundantly clear that, in addition to the other parameters in play such as the language employed and the date of amendment among others, it is the intention behind the amendment that is perhaps the main determinant as to how the amendment is itself to be construed and applied, whether prospectively or retrospectively.

29. As far as the tobacco dealers are concerned, a comparison of the first and second Notifications does not reveal anywhere the intention that the word 'chewing tobacco'

had been inadvertently omitted, originally. The use of the word 'substituted' only means that, going forward, the second Notification will take the place of the first Notification. By virtue of the second Notification having come to be, the first stands effaced. This much is clear.

30. However, there is nothing else in the second Notification or any other explanatory instruction/circular/note that has been brought to my attention to lead me to a conclusion that the substitution was to take effect from the date of the first Notification itself. By virtue of the second Notification, an entirely new commodity has been brought within the beneficial sweep of the exemption, marking a departure in the original intention of the legislature as to the range of products that would be so entitled. I am of the view that if at all the intention that the second Notification were to act retrospectively were to be attributed to Legislature, such intention should be manifest or at least discernible from the Notification itself, from the objects thereof, or at the least, draw support from some tangible material. Retrospectivity of application of an Act/Notification/Provision cannot be an incident that is assumed in vacum or a request that can be accepted for the mere asking.

31. The petitioner makes much of the fact that chewing tobacco, according to it, is nothing but a product of tobacco and the original Notification intended, according to it, to cover tobacco and all its products. According to them, the fact that tobacco and cheroot have been mentioned originally would itself be sufficient to bring all products of tobacco within the realm of the first exemption and the second then, becomes just clarificatory and hence retrospective in operation.

32. To this the revenue responds effectively bringing to the attention of this Court several instances where, advertent to specific commodities, legislature has consciously used the phrase 'of all kinds' to connote that all of the by-products of the product mentioned in the schedule or its ancillaries/variations would also be covered within the ambit of that entry. Some such instances are:

TAMIL NADU VALUE ADDED TAX ACT, 2006

PART B

(See sub-section (2) of Section 3)

Entry No.	Description of Goods	Commodity Code Number	Rate of Tax
1.	Acids and chemicals of all kinds othr than those specified elsewhere in the Schedule	2001	5 percent

22.	a) (a) Bricks of all kinds including fly ash bricks, refractory bricks asphaltic roofing, earthen tiles and refractory monolithic (b) Brick-bats, brick ballast, hollow block bricks, cement hollow blocks, (c) Country bricks and country tiles made of baked clay and other machine made or hand made (other than those specified in the Fourth Schedule) and stoneware (d) Crog of (a) to (c)	2022	5 per cent
71.	Jari of all kinds including metallic yarn, metallic jari yarn, metallic plastic yarn, polyester film yarn and radiant yarn. Notes:- By Notification No. II(1)/CTR/4(b-8)/2010-G.O.No.33-VIII dated 29th March 2010, effective from 12th April 2010, exemption from tax has been granted to any dealer on the sale or purchase of jari excluding polyester film yarn and radiant yarn.	2071	5 per cent
96.	Paper of all sorts, paperboard, newsprint and waste paper	2096	5 per cent
120.	Sago and starch of all kinds	2120	5 per cent
132A.	Sugar of all kinds, that is to say, cane sugar, beet sugar, chemically pure sucrose in solid form and imported sugar of all kinds	2155	5 per cent

PART C

(See sub-section (2) of Section 3)

Entry No.	Description of Goods	Commodity Code Number	Rate of Tax
1.	Mirrors of all kinds	349	14.5 per cent

33. Thus, where legislature intended that upon mere mention of a commodity, all forms and descriptions of the commodity would stand encompassed, it is seen to employ the phrase 'of all kinds' or 'of all sorts'. There is thus no force in the argument of the petitioner that mere mention of tobacco and cheroot should be taken as including chewing tobacco as well. If this had been the intention of the legislature it would have been so mentioned. I am thus of the categoric view that reading the phrase 'chewing tobacco' in the first Notification, would result in rewriting the Notification itself and in the light of the settled position that an exemption Notification has to be strictly construed, rewriting of the same by insertion of new words is wholly impressible.

34. In the light of the discussion as above, writ petitions filed by the tobacco dealers, W.P.Nos.3666 of 2012 and 21237 of 2011, are dismissed.

35. In the second set of writ petitions, the petitioners urge that the Amendment to Section 3(4) inserted vide Amendment Act 2011 be treated as retrospective. The Amendments in 2008 and 2011 have been extracted earlier and reference may be made to paragraph 6 in this regard.

36. A reading of both makes it abundantly clear that there were doubts on the actual interpretation and application of the 2008 amendment which is why clarity was brought in by way of the 2011 amendment to provide that liability to tax would attach itself to a dealer only in respect of such turnover in excess of Rs.50 lakhs. The application of the amended provision in 2011 would apply for all assessments from 2006 onwards since it was brought in clearly to correct the lacune contained in the 2006 amendment, being unclear.

37. The Statement of Objects and Reasons in respect of the 2011 amendment makes this position furthermore clear, stating as follows:

STATEMENT OF OBJECTS & REASONS

'As per clause (b) of sub-section (4) of Section 3 of the Tamil Nadu value added Tax Act, 2006 (Tamil Nadu Act 32 of 2006) if the turnover relating to taxable goods of a dealer who has exercised his option to pay tax under clause (a) of the said sub-section (4) in a year, reaches rupees fifty lakhs at any time during that year such dealer is liable to pay tax under sub-section (2) of said section 3 on all his sales of rupees fifty lakhs and above. Due to this provision, while the dealer does not collect tax on turnover relating to taxable goods below rupees fifty lakhs, he is required to pay the tax.

2. While moving the demand for grant in respect of the Commercial Taxes Department for the year 2011-12, the Hon'ble Minister for Commercial Taxes and Registration has announced that amendment to sub-section (4) of section 3 of the said act will be made to rectify the above situation, so that if the turnover relating to taxable goods of a dealer paying tax under clause (a), in a year, reaches rupees fifty lakhs at any time during that year, such dealer is liable to pay tax under sub-section (2) of that section on all his sales of taxable goods above rupees fifty lakhs.

3. The Government have decided to amend the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006) suitable for the purpose.

4. The Bill seeks to give effect to the above decision.

(highlighting supplied for emphasis)

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38. The use of the word 'rectify' and the analysis of the reasons for insertion of this amendment in the first paragraph wherein it is captured that a higher rate of tax would be payable by a dealer even in respect of turnover where he has not collected taxes leaves me in no doubt that the amendment was inserted only to correct an unintended anomaly that arose in the operation of the law, by virtue of the amendment inserted in 2006.

39. A learned Single Judge of this Court sitting in the Madurai Bench has considered the amendment to Section 3(4) of the Act concluding that the Act would have to be retrospectively applied in Tvl.Shanmugamari Timbers V. The Commercial Tax Officer (order dated 20.12.2018 in W.P.(MD) No.3744 of 2015).

40. The petitioner in that case, a dealer in timber, had challenged an assessment for the period 2010-11. The turnover of the petitioner had crossed the limit of Rs.50.00 lakhs in March, 2011 and the sales turnover for the entire year was a sum of Rs.63,50,354/-. The Department thus took the view that since the turnover for the year was in excess of Rs.50.00 lakhs, the petitioner would not be entitled to claim the benefit of the presumptive tax scheme and would have to be regularly assessed, whereas, the petitioner took the view that as per the amendment in 2011, only the excess over and above Rs.50.00 lakhs could be regularly assessed. The learned Judge took note of the judgments of the Supreme Court in Vatika Township Private Limited (supra), Keshavlal Jethalal Shah V. Mohanlal Bhagwandas & Another (1968 AIR 1336) and Sebi V. Alliance Finstoc Ltd.((2015) 16 SCC 731) as well as the doctrine of fairness in coming to the conclusion that Act 27 of 2011 would have retrospective application. In conclusion, he set aside the impugned order and remanded the matter to the file of the respondent to pass orders afresh after hearing the petitioner.

41. This decision has not be challenged by the revenue and hence, even applying the principle of consistency, the argument of the petitioner is liable to be accepted.

42. In the light of the above discussion, W.P.Nos.9996 of 2012 and 17314 of 2015 are allowed. Connected Miscellaneous Petitions are closed with no order as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ska/sl

To

1. The Secretary, State of Tamil Nadu,
Commercial Taxes and Registration Department
Fort St. George, Chennai-9
2. The Commercial Tax Officer,
Arcot, Vellore District
3. The Commercial Tax Officer,
Vandavasi, Vandavasi 604408
Tiravanamalai D.T.
4. Commissioner of Commercial Taxes
Chepauk, Chennai-600005
5. Assistant Commissioner of Commercial Taxes
V, Dindigul-624 001

WP.Nos. 9996 of 2012, 17314 of 2015
3666 of 2012 & 21237 of 2011
MP.Nos.1 & 2 of 2015

+1cc to M/s.R. Hemalatha, Advocate, S.R.No.84729
+2ccs to Mr.K. Thangavelu, Advocate, S.R.No.84353
+1cc to Mr. Elumurugan, Advocate S.R.No. 84855

NR(CO)

Eu 25.6.2020

सत्यमेव जयते

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