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Court : Karnataka

Decided On : Dec-22-1969

Reported in : [1975]35STC12(Kar)

Judge : B. Venkataswami and ;G.K. Govinda Bhat, JJ.

Acts : Bombay Sales Tax Act, 1959 - Sections 35; Central Sales Tax Act, 1956 - Sections 2, 3, 6, 6(1A), 6(2), 8, 8(1), 8(2), 8(2A), 8(4), 9, 9(1) and 9(2)

Appeal No. : Writ Petition No. 5361 of 1969

Appellant : international Cotton Corporation (P.) Ltd.

Respondent : Commercial Tax Officer, Circle Iii, Hubli and ors.

Judgement :

Venkataswami, J.

1. This writ petition is directed against a notice dated 23rd July, 1969, issued under rule 38 of the Mysore Sales Tax Rules, 1957 (to be hereinafter referred to as the State Rules), read with section 9 of the Central Sales Tax Act, 1956 (to be hereinafter referred to as the Central Act). The notice in question is one whereunder the petitioners herein were called upon to show cause why the proposed rectification of the assessment should not be effected. The circumstances under which the notice came to be issued are as follows :

The petitioners are dealers in cotton within the State of Mysore. In respect of their turnover for the year ended on 31st July, 1959, in regard to their inter-State sales of cotton, they were assessed to tax under the Central Act. But, subsequently, in view of the decision of the Supreme Court in the case of State of Mysore v. Yaddalam Lakshminarasimhiah Setty & Sons : [1965]2SCR129 , the petitioners moved the Commercial Tax Officer under rule 38 of the State Rules seeking for the rectification of the mistake as regards assessment to tax of the inter-State sales of cotton made by the petitioners. Accordingly, such sales were exempted from liability to tax under the Mysore Sales Tax Act, 1957, and the necessary refund was also made. The Central Act was amended by the Central Sales Tax (Second Amendment) Act, 1958 (Act 31 of 1958), with effect from 1st October, 1958. One of the amendments was in regard to section 8 of the Central Act, whose sub-sections (1) to (4) were completely substituted by virtue of section 5 of that amending Act. We need refer to only one more amendment to the Central Act by the Central Sales Tax (Amendment) Ordinance, 1969 (No. 4 of 1969) hereinafter referred to as the Ordinance. It may, however, be mentioned that this Ordinance was later replaced by the Central Sales Tax (Amendment) Act, 1969, hereinafter referred to as the amending Act. By virtue of the Ordinance section 6 of the Central Act was amended, among others, by the additional of a clause (1A), which provided for levy of sales tax on dealers in respect of sales of goods effected by them in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable whether on the seller or the purchaser under the State law of the appropriate State if that sale had taken place inside that State. This section was given retrospective operation. In view of this amendment the first respondent initiated

proceedings once again under rule 38 of the State Rules, with a view to rectify the earlier order of rectification made at the instance of the petitioners. It is at this stage the petitioners have approached this court in the present petition.

2. No counter has been filed on behalf of the respondents and it is conceded by Sri K. Srinivasan, the learned counsel appearing on behalf of the petitioners, that it would not be necessary, having regard to the contentions that he proposed to raise. Although a question relating to infringement of article 14 of the Constitution of India has been raised in the affidavit filed in support of the petition, that question was neither raised nor argued in the course of hearing. Indeed the only contentions formulated by the learned counsel for the petitioners may be stated thus :

(1) Sections 8 and 9 of the Central Act as amended by the amending Act of 1969 are unconstitutional and void for the reason that they have adopted the sales tax laws of the various States not only as they stood at the time when the Central Act was passed but also the sales tax laws as in force from time to time subsequent thereto, including those that might be made in future, in the matter of fixation of rate of taxation, grant of exemptions, assessment and collection of tax and imposition of penalty, and that such a provision would be indicative of the fact that the Parliament had abdicated its essential legislative function. It is also urged that the Central Act must be deemed to have adopted only the 'sales tax law' in force at the time that Act came into force, which was on 21st December, 1956. In support of this contention, he invited attention to a decision of the Supreme Court in B. Shama Rao v. Union Territory of Pondicherry : [1967]2SCR650 , and of the Madras High Court in Shah & Co. v. State of Madras ([1967] 20 S.T.C. 146), in addition to placing reliance on the definition of 'sales tax law' in section 2(i) of the Central Act.

(2) In view of clause 9 of the Ordinance, all assessments made prior to 9th June, 1969, stood validated and therefore should be deemed to have been made in accordance with law. That being so, the rectification of assessment made on 26th June, 1967, at the instance of the petitioners under rule 38 of the State Rules also stood validated. It is not, therefore, open to the Commercial Tax Officer to institute proceedings for rectification of such a valid assessment.

(3) The present proceeding under rule 38 of the State Rules is barred by limitation, as it is beyond 5 years of the date of the assessment order. Since, every rectification of an order of assessment gets merged in the original assessment order, the period of limitation prescribed under rule 38 ought to be reckoned from the date of assessment order and not from the date of the passing of the order of rectification. In other words, rectification of the assessment order can be made more than once, but every such rectification should be within 5 years from the date of the assessment order.

(4) Under the Central Act, cotton is taxable at the point of purchase and, therefore, such goods are unconditionally exempt within the meaning of section 8(2A) of the Central Act, as amended by the Ordinance and subsequently by the amending Act. This will be so, notwithstanding the amendment of section 6(1A). It, therefore, follows that inter-State sales of cotton are exempt from liability to tax under the Central Act as amended till now.

3. On behalf of the respondents, Sri E. S. Venkataramiah, the learned Government Advocate, contends that the petition is not maintainable as the petitioner has adequate alternative remedies under the statute for questioning any rectification that may eventually be made. In this connection he invited reference to clause 8(2) of the Ordinance. It is further submitted by him that the plea of bar of limitation raised in the petition has not been founded on rule 38 of the State Rules. In fact the plea is clearly based on an assumption that section 35 of the Bombay Sales Tax Act, 1953, was applicable to the facts and circumstances of the case, and that the Commercial Tax Officer can, therefore, institute proceedings for rectification only within 2 years from the date of passing of the order sought to be rectified. He further submits that the contention advanced on behalf of the petitioners that, notwithstanding section 6(1A) and section 8(2A) of the Central Act as amended, the law as settled in Yaddalam Lakshminarasimhiah's case ([1962] 13 S.T.C. 583.), as pronounced by this court, was still

good is unsustainable, in view of the decisions of the Supreme Court in Civil Appeals Nos. 1228 and 1229 of 1969 (State of Kerala v. P. P. Joseph and Co. ([1970] 25 S.T.C. 483 (S.C.)) and 1230 and 1231 of 1969 (Deputy Commissioner of Agricultural Income-tax and Sales Tax v. Aluminium Industries Ltd. ([1970] 25 S.T.C. 476 (S.C.))) decided on 14th August, 1969, and 11th August, 1969, respectively. His further argument is that section 8(2A) clearly refers to categories of goods and not to transactions of sales and purchases. He also draws attention to the explanation to section 8(2A) and submits that the scope and effect of the explanation had not been considered in any of the earlier decisions, including Yaddalam Lakshminarasimhiah Setty's case : [1965]2SCR129 .

4. It may be relevant to set out some of the statutory provisions to which a reference has been made in the course of the arguments.

5. Section 2(i) of the Central Act reads thus :

''Sales tax law' means any law for the time being in force in any State or part thereof which provides for the levy of taxes on the sale or purchase of goods generally or on any specified goods expressly mentioned in that behalf, and 'general sales tax law' means the law for the time being in force in any State or part thereof which provides for the levy of tax on the sale or purchase of goods generally.'

6. Section 8(2A) of the Central Act, as amended by Act 31 of 1958, reads thus :

'Notwithstanding anything contained in sub-section (1) or sub-section (2), if under the sales tax law of the appropriate State the sale or purchase, as the case may be, of any goods by a dealer is exempt from tax generally or is subject to tax generally at a rate which is lower than one per cent (whether called a tax or fee or by any other name), the tax payable under this Act on his turnover in so far as the turnover or any part thereof relates to the sale of such goods shall be nil or, as the case may be, shall be calculated at the lower rate.

Explanation. - For the purposes of this sub-section a sale or purchase of goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law it is exempt only in specified circumstances or under specified conditions or in relation to which the tax is levied at specified stages or otherwise than with reference to the turnover of the goods.'

7. This section stood amended slightly by the Amendment Act of 1969, as a consequence of the amendment of section 6 by the addition of clause (1A). In the result the non obstante clause occurring in sub-section (2A) of section 8 stood modified so as to include sub-section (1A) of section 6. The operation of this sub-section has been made retrospective with effect from 1st October, 1958.

8. Sub-section (1A) of section 6 of the Central Act is inserted by section 3 of the amending Act and made retrospective from the date of the commencement of that Act. The relevant sub-section reads thus :

'A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale bad taken place inside that State.'

9. The next section which is of relevance is section 9 of the Central Act as amended by the amending Act of 1969. This section also is made expressly retrospective in its operation. The relevant sub-sections read thus :

'(1) The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within clause (a) or clause (b) of section 3, shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of sub-section (2), in the State from which the movement of the goods commenced :

Provided that, in the case of a sale of goods during their movement from one State of another, being a sale

subsequent to the first sale in respect of the same goods, the tax shall, where such sale does not fall within sub-section (2) of section 6, be levied and collected in the State from which the registered dealer effecting the subsequent sale obtained or, as the case may be, could have obtained, the form prescribed for the purposes of clause (a) of sub-section (4) of section 8 in connection with the purchase of such goods. (2) Subject to the other provisions of this Act and the Rules made thereunder, the authorities for the time being empowered to assess, reassess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, reassess, collect and enforce payment of tax, including any penalty, payable by a dealer under this Act is a tax or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm of Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, penalties, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly : Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may by Rules made in this behalf make necessary provision for all or any of the matters specified in this sub-section.'

10. Section 9 of the amending Act of 1969 relates to validation of assessments, reassessments, levy, etc., prior to the 9th day of June, 1969. It reads thus :

'(1) Notwithstanding anything contained in any judgment, decree or order of any court or other authority to the contrary, any assessment, reassessment, levy or collecting of any tax made or purporting to have been made, any action or thing taken or done in relation to such assessment, reassessment, levy or collection under the provisions of the principal Act before the 9th day of June, 1969, shall be deemed to be as valid and effective as if such assessment, reassessment, levy or collection or action or thing had been made, taken or done under the principal Act as amended by this Act and accordingly -

(a) all acts, proceedings or things done or taken by the Government or by any officer of the Government or by any other authority in connection with the assessment, reassessment, levy or collection of such tax shall, for all purposes, be deemed to be, and to have always been, done or taken in accordance with law;

(b) no suit or other proceedings shall be maintained or contained in any court or before any authority for the refund of any such tax; and

(c) no court shall enforce any decree or order directing the refund of any such tax.

(2) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall be construed as preventing any person -

(a) from questioning in accordance with the provisions of the principal Act, as amended by this Act, any assessment, reassessment, levy or collection of tax referred to in sub-section (1), or

(b) from claiming refund of any tax paid by him in excess of the amount due from him by way of tax under the principal Act as amended by this Act.'

11. The relevant portion of rule 38 of the State Rules is as follows :

'(1) An assessing, appellate or revising authority or the Appellate Tribunal may, at any time, within five years from the date of any order passed by it, rectify any mistake apparent on the record.....'

12. A brief reference to some of the relevant cases will be necessary in order to clear the ground. In Yaddalam Lakshminarasimhiah Setty's case ([1965] 13 S.T.C. 583) the turnover related to a period prior to the

amendment by Act 31 of 1958. This court held that the liability of the petitioner under section 8(2) of the Central Act on his inter-State sales could not be more than what it would have been had they been intra-State sales and liable to be taxed under the State law. Further while dealing with an argument based on the proviso to section 8(1) of the Central Act prior to its amendment in 1958 that the said proviso was concerned with categories of goods and not transactions of sales and purchases, the court did not decide the question as it was unnecessary for the decision in that case. This decision was subsequently affirmed by the Supreme Court in State of Mysore v. Yaddalam Lakshminarasimhiah Setty & Sons : [1965]2SCR129 . The Supreme Court while referring to section 8(2) of the Central Act has observed that that section could be interpreted in two ways thus giving rise to an ambiguity. The court, in order to dispel that ambiguity, interpreted section 9(1) of the Central Act and affirmed the decision under appeal on that ground.

13. In Mysore Silk House v. State of Mysore ([1962] 13 S.T.C. 597), this court merely applied the principles enunciated in Yaddalam Lakshminarasimhiah Setty's case ([1962] 13 S.T.C. 583). Further it also interpreted the proviso to section 8(1) as it stood then and came to the conclusion that it had reference to transactions of sales of goods in the course of inter-State trade or commerce and not to categories of goods as contended for on behalf of the State. On an appeal from that decision [see 17 S.T.C. 309 (S.C.) (State of Mysore v. Mysore Silk House)], the Supreme Court followed its decision in Yaddalam Lakshminarasimhiah Setty's case : [1965]2SCR129 , and affirmed the judgment of this court.

14. In Civil Appeals Nos. 1228 and 1229 of 1969, decided on 14th August, 1969 (State of Kerala v. P. P. Joseph & Co. ([1970] 25 S.T.C. 483 (S.C.))), while considering the amendments made to the Central Act by the Ordinance, the Supreme Court observed thus :

'The effect of the Ordinance is to supersede the judgment of this court in Yaddalam Lakshminarasimhiah Setty's case : [1965]2SCR129 . It is now made clear that even if no tax was leviable under the general sales tax law of the State in respect of intra-State transactions of sale, tax will be leviable on sale of goods effected by a dealer in the course of inter-State trade according to the sales tax law of the appropriate State. By section 9(2) of the Central Sales Tax Act as modified it is enacted that the authorities empowered to assess, reassess, collect and enforce payment of any tax under the general sales tax law of the State shall be entitled, on behalf of the Government of India, to assess, reassess, collect and enforce payment of tax by a dealer under the Act as if the tax payable by such a dealer under the Act was tax payable under the general sales tax law of the State, and for this purpose they may exercise all or any of the powers they have under the general tax law of the State. Thereby the procedural law prescribed by the general sales tax law of the State applies in the matter of assessment, reassessment, collection and enforcement of payment of tax under the Central Sales Tax Act, but the liability to pay is determined by the provisions of the Central Sales Tax Act.'

15. Also in one other earlier judgment of that court in Civil Appeals Nos. 1230 and 1231 of 1969 decided on 11th August, 1969 (Deputy Commissioner of Agricultural Income-tax and Sales Tax v. Aluminium Industries Ltd. ([1970] 25 S.T.C. 476 (S.C.))), their Lordships clearly observed that the effect of the amendments to the Central Act effected by the Ordinance was to supersede the majority decision of that court in Yaddalam Lakshminarasimhiah Setty's case : [1965]2SCR129 .

16. The above decisions of the Supreme Court were rendered in connection with the Ordinance of 1969. We have observed earlier that it was subsequently replaced by an Act of Parliament. The Supreme Court in dealing with this Act also in Civil Appeals Nos. 1688 and 1689 of 1969 (State of Kerala v. Anglo Indian Direct Tea Trading Co.), in a judgment rendered on 1st December, 1969, have stated thus :

'The High Court has, following the judgment of this court in the State of Mysore v. Yaddalam Lakshminarasimhiah Setty & Sons : [1965]2SCR129 , decided the tax cases against the State of Kerala. Since that judgment was delivered the Parliament has enacted the Central Sales Tax (Amendment) Act (28 of 1969). Thereby several changes have been made in the scheme of the levy of Central sales tax, and the judgment in Yaddalam Lakshminarasimhiah Setty's case : [1965]2SCR129 is superseded. In view of the judgment of this

court in State of Kerala v. M/s. P. P. Joseph & Co. and M/s. Joseph Elias ([1970] 25 S.T.C. 483 (S.C.)) (Civil Appeals Nos. 1228 and 1229 of 1969 decided on 14th August, 1969), the order passed by the High Court is set aside and the proceedings will stand remanded to the Sales Tax Officer to be dealt with and disposed of according to the provisions of the Central Sales Tax Act, 1956, as amended by Act 28 of 1969. The Sales Tax Officer will proceed to determine the turnover of the respondents in the light of the Act as amended.'

17. In the light of the above views we shall not proceed to consider the propositions canvassed before us by Sri K. Srinivasan.

18. In regard to the first contention that sections 8 and 9 of the Central Act are unconstitutional and void, we have to observe that a similar contention was raised in W.P. No. 2109 of 1968 (Mysore Electrical Industries Ltd. v. Commercial Tax Officer ([1971] 27 S.T.C. 559)). In dealing with that contention this court observed thus :

'The policy of the law has been clearly laid down in the Act. In the circumstances in which the Act was enacted the rate of taxation had to be linked with the rate of taxation under the sales tax laws of the appropriate States if its purpose were to be served. Therefore, section 8(2A) provided for exemption from taxation if under the State law the sales are exempt. The rates provided were the State law of the appropriate State are adopted for taxation in the cases falling under sub-section (2) of section 8. If the power to fix the rate of taxation could be delegated as laid down by the Supreme Court in Pandit Banarsi Das Bhanot v. State of Madhya Pradesh : [1959]1SCR427 , the adoption of the rates of taxation in the sales tax law of the appropriate State from time to time would not amount to abdication of essential legislative function.

Section 9(2) has adopted the procedure prescribed by the general sales tax law of the appropriate State in the matter of assessment, reassessment, collection and enforcement of payment of tax. The Act, if it had intended, could have delegated to the State Governments the power to frame rules providing for assessment, reassessment, collection and enforcement of payment of tax under the Central Sales Tax Act. Instead of doing so, by section 9(2) the Act has adopted the procedure under the general sales tax law of the appropriate State. In adopting the procedural law of the State, the Parliament cannot be said to have abdicated its essential legislative functions.....'

19. Again in dealing with the contention based on the definition of the expression 'sales tax law' in section 2(i) of the Central Act, it is observed thus :

'....The Legislature's intention is quite clear that it is not only the law in force when the Central Act was enacted but the State law in force from time to time. With respect, we are unable to agree with the decision in Shah & Co. v. State of Madras ([1967] 20 S.T.C. 146), that what has been adopted is only the law as it stood when the Act was enacted, since in our opinion, the Parliament was competent to adopt the State law not only as it existed at the time of the enactment of the Act but also as it may exist in future including amendments made from time to time, where the adoption of law is with respect to the rate of taxation and the procedural law for assessment and collection of tax. The Parliament, in our opinion, has not abdicated any of its essential legislative functions.....'

20. In view of the above enunciation, we are of the opinion that this contention of Sri Srinivasan should fail.

21. The next question relates to validation of the assessment by the Ordinance and amending Act of 1969. We have set out the contention earlier. It is relevant to state that this contention has not been made a ground of attack in the main petition. But, since it is a question of law relating to the interpretation of the relevant provision of the statute, we propose to deal with it briefly. Sri K. Srinivasan, the learned counsel, did not seriously dispute the point as it was covered by a decision of this court in S.T.R.P. Nos. 30, 31, 32 and 39 of 1968 pronounced on 15th October, 1969 (A. Misrimal Jain & Co. v. State of Mysore ([1971] 28 S.T.C. 137)). The facts of that case were that the sale of cloth during the period 14th December, 1957, and 31st March, 1958, was exempted from sales tax by virtue of a certain agreement between the State and the Central Governments. The agreement was that articles, on which additional excise duty was levied by the Central

Government, should not be further subject to tax under the State law. Since the articles in question had not suffered additional excise duty which came into force on 14th December, 1957, they were, therefore, made subject to tax. But, on a writ petition being presented to this court in W.P. No. 368 of 1961, this court held that the tax was not exigible on the terms of section 5(5-A) as it stood then. Pursuant to the said decision, the Deputy Commissioner of Commercial Taxes exempted the said turnover. Subsequently, the State Government passed Act No. 9 of 1964, and thereby appropriately amended with retrospective effect section 5(5-A) so as to enable the levy of sales tax on sales of stock of cloth held on 14th December, 1957. Further, by that Act the earlier assessments made in respect of the turnover relating to that article during the relevant period were validated. Proceedings were, therefore, instituted under section 21 of the State Act for revising the assessment orders and for rectification of the earlier order under rule 38 of the State Rules, with a view to secure recovery of tax already refunded to the petitioner, pursuant to the decision of the High Court. One of the contentions was that the refund made earlier stood validated by the validating provision of the amending Act of the State. This court in disposing of that ground of attack observed thus :

'As observed by the Supreme Court in State of Bombay v. P. V. Chapalkar ([1953] S.C.R. 773 at 778), 'when a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion. The purpose of the amending Act 9 of 1964 was to ensure that tax payable on the sale of cloth held in stock on 14th December, 1957, was realised and for that purpose sub-section (5-A) of section 5 was amended with retrospective effect. Section 34 further validated the invalid assessment orders made on the assumption that sub-section (5-A) of section 5 of the Act as it stood before the amendment empowered the levy of tax. When this court held in W.P. No. 368 of 1961 that sub-section (5-A) of section 5 did not levy a charge on the sale of cloth held in stock on 14th December, 1957, there were many assessment orders made levying tax on the sale of such cloth. As a result of the validation of such assessments which section 34 does, all those orders are deemed to have been validly done. Where the assessments had been made but taxes were not paid, it was not open to the assessees to contend that the assessment orders were invalid. Where the tax had been paid, it was not open to the assessees to claim back the taxes paid on the ground that the taxes had been illegally levied. By virtue of the validation, the assessment orders and also the refund orders made are deemed to have been validly done under the Act as amended by Act 9 of 1964. But that does not mean that if the assessment orders were open to revision or rectification under the provisions of the Act, such revision or rectification could not be done. If the argument of the learned counsel for the petitioners is accepted as valid, it would follow that an assessee cannot prefer any appeal or revision in the manner provided under the Act against the assessment orders validated by section 34 of the Act. Let us suppose a case where there is dispute as to the turnover of cloth sold by the dealer or there is dispute as to the rate of tax. In both cases, the dealers cannot appeal if the argument that the assessment orders validated cannot be revised or corrected is accepted as correct. All that section 34 means is that assessments and refunds made in proceedings for levy and collection of tax shall be deemed to have been validly made under the provisions of the Act as amended by Act 9 of 1964. Without revising the orders, the authorities under the Act could not have demanded the tax refunded on the ground that the refund was made under any mistake. As stated earlier, the object of the amendment was not to exempt from tax sales of cloth held in stock on 14th December, 1957, but to realise the tax on such sales. It could not be the intention of the legislature to collect the tax from some dealers and exempt others. That object is clear from the fact that sub-section (5-A) of section 5 has been amended with retrospective effect and assessments made prior to the amendment on the basis that sale of cloth held in stock on 14th December, 1957, was chargeable to tax, have been validated.....'

22. In addition to the above enunciation, our attention was invited to the relevant provision relating to the validation of assessments in the amending Act of 1969. It is clear from sub-section (2) of section 9 of the amending Act that a clarification has been made, preserving the rights of a person to question in accordance with the provisions of the Central Act any assessment, reassessment, levy or collection of tax referred to in sub-section (1) of that section. It also preserves the right of a person to claim a refund of any tax paid by him

in excess of the amount due from him by way of tax. In the instant case, it is clear that refund was ordered by virtue of a rectification sought by the assessee on the basis of Yaddalam Lakshminarasimhiah Setty's case : [1965]2SCR129 . It is also now settled that the effect of the amendments made in the Central Act is to supersede the majority decision of the Supreme Court in Yaddalam Lakshminarasimhiah Setty's case : [1965]2SCR129 . These provisions were made expressly retrospective by the amending Act. Such being the position, the transaction with which the petitioners were concerned, became exigible to tax under the Central Act. To say that the refund made earlier stood validated cannot be accepted in view of the enumeration of this court reproduced above.

23. The next question relates to the plea of limitation. The arguments before us is clearly based on the provisions of rule 38 of the State Rules. But in the petition, the basis for the plea has been section 35 of the Bombay Sales Tax Act, 1953. However, since the matter was argued, we propose to deal with it. The argument of Sri Srinivasan is that every order of rectification made under rule 38 gets merged or relates back to the earlier order of assessment. In that view, any subsequent rectification under rule 38 would also be a rectification of the assessment order which stood rectified once earlier. He, therefore, contends that the period of limitation stipulated under that rule will have to be satisfied even with regard to subsequent rectification. He also invites attention to section 38(2)(f) of the State Act, and submits that rule 38 of the State Rules in one sense would not be in accordance with the rule-making power conferred under this section. In this section, only rectification of mistakes apparent from the record of any assessment can be made and not for rectification of 'any order'. We are unable to agree with this submission. The argument that the rule is inconsistent with the relevant rule-making power will not be open to the petitioners for, in the absence of such a rule, they will not have any basis for such a question to be raised. Rule 38 clearly refers to rectification of mistake apparent on the record in any order passed by an assessing, appellate or revising authority or the Appellate Tribunal. The words 'any order' occurring in the rule are wide enough to take within their ambit any order made in the course of the assessment proceedings, and their effect need not be confined to an assessment order as contended for by Sri Srinivasan. Further, the rule enjoins a rectification of a mistake apparent on the record. In our view, this provision enables rectification of an earlier mistake which is apparent from the record. Since the earlier rectification made at the instance of the assessee was a mistake, it can be rectified by a fresh proceeding under rule 38 of the State Rules. It, therefore, follows that the period of limitation under this rule should be computed commencing from the time when the mistake sought to be rectified crept into the record. In this view, the rectification in question is within time as the earlier rectification was effected on 21st June, 1967.

24. The last question as propounded by Sri Srinivasan is this : According to him, the conclusion of the Supreme Court that Yaddalam Lakshminarasimhiah Setty's case : [1965]2SCR129 stood superseded by the amending Act of 1969 would not have the effect of unsettling the ratio of the decisions of this court in the interpretation placed on section 8(2A) of the Central Act. The decisions referred to by him were Yaddalam Lakshminarasimhiah Setty & Sons v. State of Mysore ([1962] 13 S.T.C. 583), Mysore Silk House v. State of Mysore ([1962] 13 S.T.C. 597) and Peirce Leslie & Co. v. State of Mysore (S.T.R.P. Nos. 63 and 64 of 1963). He proceeded to argue that the decision of the Supreme Court in Yaddalam Lakshminarasimhiah Setty's case : [1965]2SCR129 , did not interpret the provision of section 8 of the Central Act and the decision thereunder turned on the interpretation of section 9. We are unable to accept this argument of Sri Srinivasan, in view of the decision of the Supreme Court in Civil Appeals Nos. 1228 and 1229 of 1969 decided on 14th August, 1969 (State of Kerala v. P. P. Joseph & Co. ([1970] 25 S.T.C. 483 (S.C.))). Furthermore, such an argument cannot be accepted in view of section 6(1A) of the amending Act of 1969, which clearly makes inter-State sales chargeable to tax under the Act with retrospective operation. But it is submitted by Sri Srinivasan that the non obstante clause occurring in section 8(2A) as amended clearly nullifies the effect of section 6(1A). He, therefore, submits that the amending Act has not in any manner affected the operation of the exemption of concession dealt with under section 8(2A). In other words, the law as laid down in the earlier decisions of this court with regard to section 8(2A) and also the proviso to section 8(1) stood unaffected. The whole basis for this argument, as we see it, is the non obstante clause, and that such a clause should be given an overriding

effect over the provisions referred to therein. In our view, there is no substance in this argument. Section 6(1A) clearly refers to the liability of sale transaction to tax. Section 8(2A) on the other hand refers to the exemption and concessional rates in certain specified circumstances. It is, therefore, clear that they are complementary to each other in one sense. To give an overriding effect to a non obstante clause, the subject-matter dealt with must be common to both the provisions and in giving effect to them, inconsistency or conflict should have arisen. It is only in such a situation a non obstante clause of the kind in question should be given an overriding effect. We are, therefore, of the opinion that in so far as the operation of section 6(1A) is concerned, the non obstante clause is merely a provisions made as a measure of abundant caution. We are, therefore, unable to agree with any of the above contentions of Sri Srinivasan.

25. But, Sri Srinivasan would have us notice one other argument of his. According to him, a 'mistake apparent on the record' within the meaning of rule 38 of the State Rules, is one which does not involve elaborate argument or investigation to discover. He draws attention to the fact that in the present case the authority would want to correct a mistake because of a change in law introduced by the Ordinance and the amending Act of 1969. He submits that since the very question whether such amendment of the law would make the transactions in question exigible to tax is one which is capable of giving rise to considerable argument, the mistake sought to be rectified ceases to be a 'mistake apparent on the record', thus making it unable to correction under rule 38 of the State Rules. We are unable to accept this argument. It is true that the impugned notice clearly indicates that it is issued pursuant to the amendments made in the law aforementioned. But the fact that elaborate arguments could be constructed as to the interpretation to be placed on a statutory provision, which in one sense renders an earlier rectification of a mistake, would not, in our judgment, make such a mistake one that is not apparent on the record. Hence we reject this contention also.

26. For the foregoing reasons, the petition fails and is dismissed. In the circumstances of the case, we make no order as to costs.