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**Court :** Allahabad

**Decided On :** Nov-30-1961

**Reported in :** [1962]13STC305(All)

**Judge :** S.C. Manchanda, J.

**Appeal No. :** Civil Misc. Writs Nos. 2370 of 1959 and 1001 of 1960

**Appellant :** Ram Kumar Ram Chandra and Co.

**Respondent :** The Sales Tax Officer lii

**Advocate for Def. :** The Standing Counsel

**Advocate for Pet/Ap. :** S.K. Agarwala, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**S.C. Manchanda, J.**

1. These are two writ petitions under Article 226 of the Constitution directed against the orders of the Sales Tax Officer, Kanpur, assessing the dissolved firm.
2. The relevant assessment years are 1953-54 and 1954-55. The firm was dissolved on the 23rd July, 1957. It is contended by Mr. Jagdish Swarup for the petitioner that no assessment can be made on a firm which has been dissolved

before the coming into force of the U.P. Sales Tax (Second Amendment) Act, 1957. It is further contended that the U. P. Sales Tax (Amendment) Act, XV of 1961, is ultra vires to the extent that it makes it possible to assess a firm dissolved prior to the 30th November, 1957. The argument is that prior to 1957 a Division Bench of this Court in Jagat Behari Tandon v. State 1957 A.L.J. 77 had held that there was no provision in the U.P. Sales Tax Act, 1948, for any assessment to be made on a dissolved firm. To plug this hole the Legislature introduced the (Second Amendment) Act, XXXII of 1957. By virtue of Section 3 of the said Act a new Section 3-C was inserted in the principal Act (Act XV of 1948). The relevant portion of Section 3-C is as follows :-

3-C. Liability to tax of a dissolved firm, etc.-Where the dealer is a firm...and such firm...has discontinued business during the course of an assesment year-(a) tax payable under this Act by such firm...for the period upto the date of such discontinuance may be assessed and determined as if no such discontinuance had taken place.

3. The Act XXXII of 1957 was published in the Gazette dated the 30th November, 1957. Section 1 thereof reads as follows :-

1. (2) It shall come into force at once :Provided that the amendments to the U. P. Sales Tax Act, 1948 (hereinafter called the Principal Act) made by Section 3 shall also apply in relation to assessments for any year before the commencement of this Act whether such assessments have or had at any stage been completed or not.

4. Mr. Jagdish Swarup urges that Act XXXII of 1957 only came into force from the 30th November, 1957, i.e., the date of its publication in the Gazette. The provisions of Section 3-C which were inserted by Section 3 of Act XXXII of 1957 cannot under any circumstances be made operative retrospectively for any period prior thereto and the U.P. Sales Tax Amending Act, 1961, having specified for the coming into force of Section 2 of Act XV of 1961 as the 30th day of November, 1957, the position that prevailed under Act XXXII of 1957 therefore remained intact. In other words, a firm dissolved before the 30th day of November, 1957, could not under any circumstances be assessed. The preamble to Act XV of 1961

runs :-

Whereas doubts have arisen as to the extent and purpose of certain provisions of the U.P. Sales Tax Act, 1948...

5. It is hereby enacted as follows :-

1. Short title and commencement.

(2) This section and Sections 3 and 4 shall come into force at once and the provisions of Section 2 shall be deemed to have come into force with effect from the 30th day of November, 1957 :

Provided that the amendments to the U.P. Sales Tax Act, 1948 (hereinafter called the ' Principal Act ') made by Section 2 of this Act shall also apply in relation to an assessment for any period before the commencement of the U. P. Sales Tax (Second Amendment) Act, 1957, whether or not such assessment has or had at any stage been completed.

2. In Sub-section (1) of Section 3-C of the Principal Act-

(i) the words 'during the course of an assessment year' ; and

(ii) the words 'for the period' occurring in Clause (a) thereof shall be deleted.

6. The relevant portion of Section 4 of Act XV of 1961 is as follows:-

4. Validation of certain proceedings.-Notwithstanding anything contained in Section 3-C of the Principal Act all assessments or orders made...under the provisions of the Principal Act before or after its amendment by the U. P. Sales Tax (Second Amendment) Act, 1957, relating to any period prior to the discontinuance of business by a firm ...shall be deemed to be good and valid in law as if such assessments...have been duly made...under or in accordance with the provisions of Section 3-C of the Principal Act as amended by this Act, and as if the amendment so made had been in force on all material dates.

7. The proviso to Section 1 and Section 4 of Act XV of 1961 make the position abundantly clear that this piece of legislation was intended to be with retrospective effect. Mr. Jagdish Swamp relying on Sub-section (2) of Section 1 urges that the proviso to Section 1 is ultra vires for the reason that by the insertion of the words 'for any period before the commencement of the U. P. Sales Tax (Second Amendment) Act XXXII of 1957' vested rights have been taken away. The foundation for the argument is the use of the words in Sub-section (2) of Section 1 'that the provisions of Section 2 shall be deemed to have come into force with effect from the thirtieth day of November, 1957'. Now the mention of the 30th November, 1957, is the date on which Act XXXII of 1957 was promulgated and therefore it is submitted that Section 2 of Act XV of 1961 by deleting the words 'during the course of an assessment year' specifically restricted the right of the Sales Tax Officer to assess a dissolved firm only from that date and not if the firm had dissolved on any date prior thereto. The interpretation sought to be placed on Section 2 by the learned counsel for the petitioner would require much to be written into that section and for which there can be no warrant. The words used in Sub-section (2) of section I may not be very happily worded but they are capable of only one interpretation, and that is that on the 30th day of November, 1957, the offending words for the first time in the Principal Act, which is the U. P. Sales Tax Act, 1948, came to be inserted. The effect of the deletion of the offending words 'during the course of an assessment year' from the 30th day of November, 1957, was that Act XXXII of 1957 was to be read omitting the aforesaid words. That was the only purpose of mentioning the date from which Section 2 of Act XV of 1961 was to be deemed to have come into force. Once it is appreciated that Act XXXII of 1957 is to be read omitting the words 'during the course of an assessment year' then there is no difficulty whatsoever in giving the said statute its proper meaning. Section 1 of the Act (Act XXXII of 1957) in unequivocal terms provides :

(1) This Act may be called the U. P. Sales Tax (Second Amendment) Act, 1957.

(2) It shall come into force at once :

Provided that the amendments to the U. P. Sales Tax Act, 1948 (hereinafter called the Principal Act) made by Section 3 shall also apply in relation to assessments for

any year before the commencement of this Act whether such assessments have or had at any stage been completed or not.

8. Therefore, the offending words having been deleted from Section 3-C of this Act by the Amending Act XV of 1961, and the proviso to Act XXXII of 1957 having remained intact, the powers of the Sales Tax Officer to assess a dissolved firm even for periods prior to the 30th November, 1957, were undoubtedly existing.

9. It is well settled that where there is a change of language effected by the omissions in a later statute of words which occurred in an earlier one then except for the words omitted all other earlier provisions must continue to be given their full import. It is true that ordinarily a statute applies from the date from which it is specified in the Act to come into operation and it is ordinarily prospective, but when the phraseology is clear and unambiguous the Legislature can make the legislation retrospective. In the instant case the proviso to Section 1(2) and Section 4 of Act XV of 1961 when read with the proviso to Section i of Act XXXII of 1957 leaves no manner of doubt, and the intention can be unhesitatingly gathered, that the Legislature intended and in fact made this piece of legislation retrospective.

10. For the reasons aforesaid the petition is without merits and it is accordingly dismissed. In view of the writ having been filed before the U. P. Sales Tax (Amendment) Act XV of 1961 came into force which purported to clear certain doubts which had arisen, there will be no order as to costs.

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