COMORIN MATCH INDUSTRIES (PVT.) LTD. A

v.

STATE OF TAMIL NADU

APRIL 16, 1996

[N.P. SINGH AND SUHAS C. SEN, JJ.] B

Central Sales Tax Amendment Act, 1969 : Ss.2(j), 9—Validating Act retrospectively permitting inclusion of excise duty in turnover to overcome Supreme Court's decision in State of Madras v. N.K. Nataraja Mudaliar—Whether legislature can nullify judgment of the court—Held, yes; the validating C *Act removed the very basis of the law and was validly enacted—Constitution of India, Article 246(1)—Legislative power of Parliament.*

Constitution of India, Articles 215, 226—High Court quashing central sales tax assessments including excise duty as part of turnover—Department not filing appeal—After Validating Act passed, High Court in contempt D *proceedings ordering refund - Special Leave Petition against the order dismissed—Whether subsequent demand by department under Validating Act barred by res judicata—Held, no , refund of tax under an order in a contempt petition does not debar recovery of tax under valid subsisting law.*

E

The Appellant challenged the assessments under the Central Sales Tax Act, 1956 for the years 1957-58 to 1965-66, *inter alia*, **on the ground that sales tax was levied on turnover which included excise duty. In** *Larsen Toubro* **v.** *Joint Commercial Tax Officer*, **(1967) 20 STC 150 the Madras High Court allowed the writ petitions and quashed the assessment orders.** F **While, the Respondent State did not file an appeal in the appellant's case, its appeals in the other cases were decided by this Court in** *State of Madras* **v.** *N.K. Nataraja Mudaliar*, **AIR (1969) SC 147. While reversing the High Court and holding the amended Ss.8(2), 8(2A) and 8(5) of the Central Sales Tax Act valid, this court held that tax on excise duty was illegal.**

G

To overcome the decision, the Central Sales Tax Amendment Act 1969 (validating Act') was enacted under which the definition of 'turnover' was retrospectively amended and the words 'and determined in a prescribed manner' were substituted by 'and determined in accordance with the provisions of this Act and rules made thereunder'. Thus the very basis of the law on which the judgment in *N.K. Nataraja Mudaliar* **was** H

A pronounced was removed.

Thereafter the High Court, in a contempt application by the appellant, directed refund of the disputed amount of tax. With the State's Special Leave Petition being dismissed by this Court, the refund was made. Thereafter, the State filed a suit to recover the tax due under the Validating
B Act.

The appellant contended before this Court that the legislature could not, by the Validating Act, nullify the Judgment of the High Court quashing the assessment order in its case. Further, Once refund of tax was made by
C the State pursuant to the orders of the High Court in the contempt petition, and the Special Leave Petition of the State was also dismissed, filling of a fresh suit to recover the tax was barred by *res judicata*.

Dismissing the appeals, this Court

D HELD : 1.1. If a High Court quashed several assessment orders by interpreting a taxing statute in a certain manner and that interpretation was nullified by a subsequent judgment of the Supreme Court and the statute itself was amended as a result of which the law on the basis of which the High Court's judgment was given is drastically altered, in such a situation, it was permissible for the legislature, by a Validation Act, to
E declare the assessments as valid and binding notwithstanding the judgment of the High Court to the contrary. [338-G; 359-A-B]

1.2. The includibility of excise duty element in the turnover was validated by the statutory amendments with retrospective effect. Therefore, the very basis on which the assessments were quashed in the case of *Larsen*
F *and Toubro* disappeared. The contention that the Judgment of the Madras High Court in the appellant's case was in full force in spite of the Amendment Act of 1969 could not be upheld. [360-C; 358-F]

Madan Mohan Pathak v. *Union of India & Ors.*, [1978] 3 SCR 334; *Shri Prithvi Cotton Mills Ltd.* v. *Broach Borough Municipality*, [1970] 1 SCR
G 388 and *Patel Gordhandas Hargovindas* v. *Municipal Commissioner, Ahmedabad*, [1964] 2 SCR 608, followed.

A.V. Nachane v. *Union of India*, [1982] 2 SCR 246; *Janpada Sabha, Chhindwara* v. *The Central Provinces Syndicate Ltd.*, [1970] 3 SCR 745; *P.S.*
H *Mahal* v. *Union of India*, [1984] 3 SCR 847; *A.K. Subraman* v. *Union of*

India, [1975] 2 SCR 979; *Bhubaneswar Singh* v. *Union of India*, [1994] 6 SCC 77 and *S.R. Bhagwat* v. *State of Mysore*, [1995] 6 SCC 16, referred to. A

Larsen Toubro v. *Joint Commercial Tax Officer*, (1967) 20 STC 150 and *State of Madras* v. *N.K. Nataraja Mudaliar*, AIR (1969) SC 147, referred to.

B

2.1. No question of *res judicata* arose in such a case. In the contempt petition the only issue was whether the court's order in the writ petition was carried out, the contempt court was bound to pass suitable orders to ensure obedience to the order of the court. The question of correctness or validity of the judgment passed on the writ petition could not be raised in a contempt proceeding. [[365-F] C

2.2. Merely because the amount of tax which had been realised earlier was directed to be refunded by court's order on the finding that the assessment order was invalid, would not preclude the State from realising the tax due subsequently when the assessment order was validated by the Amending Act of 1969. [366-C] D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2206 of 1982 Etc.

From the Judgment and Order dated 11.7.89 of the Madras High Court in A.S. No. 614 of 1978. E

C.S. Vaidyanathan, S.R. Setia, Shivram, Mrs. Mohana and Ms. Jayshree for the Appellants.

A. Mariaputham and Mrs. Aruna Mathur for the Respondents. F

The Judgment of the Court was delivered by

SEN, J. The appellant is a manufacturer of safety matches., During the period relevant for the assessment years 1957-58 to 1965-66, the appellant sold matches in the course of inter-State trade and commerce for which sales tax was charged under the Central Sales Tax Act. The assessment orders were challenged by the petitioner by filing writ petition before the High Court. The ground taken was that Central Sales Tax was levied on turnover which included excise duty. No Central Sales Tax could be levied on excise duty. The provisions of sub-sections (2), (2A) and (5) of Section 8 of the Central Sales Tax Act were *ultra vires* the Constitution of G H

A India. Claims for refund of the tax collected by the Sales Tax Authority were also made. Several other similar writ petitions were heard by the High Court along with the appellant's case. The High Court by its judgment dated 30th January, 1968 allowed the writ petitions in the case of *Larsen and Toubro* v. *Joint Commercial Tax Officer,* (1967) 20 STC 150. Following that decision, the High Court allowed the writ petitions filed by the B appellant and the other writ petitioners. The Sales Tax Authority did not prefer any appeal in the case of the appellant, but went up in appeal in another case. *The State of Madras* v. *N.K. Nataraja Mudaliar,* AIR (1969) SC 147 in which this Court held that the provisions of sub-sections (2), (2A) and (5) of Section 8 of the Central Sales Tax Act were valid. It, C however, held that tax on excise duty was illegal and affirmed the decision of the High Court on this point.

The case of the appellant is that even after the less judgment of the Madras High Court the Commercial Tax Officer did not refund the amount of tax illegally collected even though specific direction had been D given by the High Court to that effect.

The position after the decision of this Court in the case of *The State of Madras* v. *N.K. Nataraja Mudaliar* (supra) was that levy of sales tax cold not be said to be invalid because provisions of sub-sections (2), (2A) and (5) of Section 8 of the Central Sales Tax Act were ultra vires the Constitu- E tion of India. In disposing of the appeal Shah, J. (as His Lordship then was) directed :

> "The appeal will be allowed and the order passed by the High Court declaring the provisions of Sections 8(2), 8(A) and 8(5) *ultra* F *vires* must be set aside.
>
> The petition out of which this appeal arises was one of a group of petitions filed before the High Court. Against orders passed in favour of the other assessees the State has not preferred appeals. The amount involved in the claim is small. The State apparently G has approached this Court with a view to obtain a final determination of the important question which was raised in the petitions filed before the High Court. We therefore, direct that there will be no order as to costs in this Court and in the High Court."

H The other reason for which the assessments were set aside was

inclusion of excise duty in the computation of 'turnover'. There was a controversy as to how the turnover under the Central Sales Tax Act should be computed. Under the Madras General Sales Tax Act, 1959 and the rules, as it stood at the material time, provisions had been made for deduction of excise duty in the computation of chargeable turnover. Madras High Court held that the quantum of turnover for the purpose of levy of Central Sales Tax had to be made in the same manner by excluding the excise duty paid on the goods sold. In the case of *State of Madras* v. *N.K. Nataraja Mudaliar*, (supra), this Court held :

> "If under the Madras General Sales Tax Act in computing the turnover the excise duty is not liable to be included and by virtue of section 9(1) of the Central Sales Tax Act has to be levied in the same manner as the Madras General Sales Tax Act, the excise duty will not be liable to be included in the turnover ..... We are of the view that in the matter of determining the taxable turnover the same rules will apply by virtue of Section 9(1) of the Central Sales Tax Act, whether the tax is to be levied under the Central Sales Tax Act or the General Sales Tax Act."

The Central Sales Tax Amendment Act, 1969 brought about a number of changes in the Central Sales Tax Act, 1956. The definition of 'turnover' in Section 2(j) was modified and the wording of Section 9 was radically altered. The new provisions were deemed always to have been substituted. This amendment was effected with a view to put an end to the controversy whether 'turnover' should be computed in accordance with the provisions of the State Sales Tax law or not. This amendment was necessary to get over the view expressed by this Court in *N.K. Nataraja Mudalar's* case that the Central Sales Tax had to be levied in the same manner as provided in the Madras General Sales Tax Act. When the Central Sales Tax Act was examined by the Madras High Court in the case of *Larsen and Toubro* and this Court in the case of *N.K. Nataraja Mudaliar*, 'turnover' had been defined by the Central Sales Tax Act in Section 2(j) to mean "the aggregate of sale prices received and receivable by him in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period and determined in the prescribed manner". By Section 2 of the Central Sales Tax Amendment Act, 1979 (28 of 1969), the words 'and determined in a prescribed manner' were substituted by the words 'and determined in accordance with the provisions of this Act and

A the rules made thereunder'. This amendment was given effect with retrospective effect from the date on which the Central Sales Tax Act came into force. In other words, the very basis of the law on which the judgment in *N.K. Nataraja Mudaliar's* case was pronounced was removed from the statute book.

B The scope of the validating provision of the Amending Act of 1969 must be viewed in the background of these facts. The amending Act, after amending the aforesaid provisions of the Central Sales Tax Act and various other provisions, went on to validate all assessments, reassessments, levy or collection of any tax made 'notwithstanding anything contained in the C judgment, decision, decree or order of any court or other authority to the contrary'. The result of the various provisions of the Amending Act and in particular the validating provision was to change the law with retrospective effect and to impart validity to all assessments made under the Central Sales Tax Act which had been struck down by the Judgment in the case of *Larsen and Toubro* and all other orders passed pursuant to their judgment. D

Mr. Vaidyanathan has strenuously contended that the legislature cannot nullify any judgment of the court. In the instant case, the assessment made under the Central Sales Tax Act and been quashed by the Madras High Court. This was one of a large number of writ petitions which were E heard by the Madras High Court. Although in the case of *N.K. Nataraja Mudaliar*, an appeal was preferred to the Supreme Court and the judgment was reversed, in the case of the appellant the judgment was not questioned and was allowed to stand. Therefore, it is in full force and has to be respected as valid and binding. This judgment could be reversed by the F Supreme Court, but could not be nullified by legislature by an Act. In support of this contention he has relied on a judgment of this Court in the case of *Madan Mohan Pathak* v. *Union of India & Ors.*, [1978] 3 SCR 334.

In that case, a dispute between workers' union and the Life Insurance Corporation was settled by an agreement for payment of cash bonus at the G rate of 15% of gross wages. The settlement was valid for four years from 1st April, 1973 to 31st March, 1977. There was some dispute about the implication of this settlement and on 21st May, 1976 on a writ petition, the Calcutta High Court passed an order recognising the right of the employees to payment of bonus for the year 1975-76 which had become H payable along with the salary in April, 1976. The Calcutta High Court

ordered that it must be paid to the employees. On 29th May, 1976 the Life Insurance Corporation (Modification of Settlement) Act, 1976 was passed by the Parliament denying the employees the right which had been conferred by the settlement, approved by the Central Government, acted upon by actual payment of bonus to the employees and finally recognised as a right protected by Articles 19(1)(f) and 31(1) of the Constitution by a decision of the Calcutta High Court on 21st May, 1976.

It was noted in the judgment of Beg, C.J., that the Statement of Objects and Reasons of the Act disclosed that the purpose of the Act was to undo the settlement which had been arrived at between the Corporation and Class-III and Class-IV employees on January 24 and January 26, 1974. Beg, C.J., was of the view that "it would, in any event, be unfair to adopt legislative procedure to undo such a settlement which had become the basis of a decision of a High Court. Even if legislation can remove the basis of a decision it has to do it by an alteration of general rights of a class but not by simply excluding two specific settlements between the Corporation and its employees from the purview of the section 18 of the Industrial Disputes Act, 1947, which had been held to be valid and enforceable by a High Court. Such selective exclusion could also offend Article 14."

Strong reliance was placed by Mr. Vaidyanathan on the following observation of Beg, C.J.:

> "I find myself in complete agreement with my learned brother Bhagwati that to give effect to the judgment of the Calcutta High Court is not the same thing as enforcing a right under Article 19 of the Constitution. It may be that a right under Article 12 of the Constitution becomes linked up with the enforceability of the judgment. Nevertheless, the two could be viewed as separable sets of rights. If the right conferred by the judgment independently is sought to be set aside section 3 of the Act, would, in my opinion, be invalid for trenching upon the judicial power."

Mr. Vidyanathan has argued that whatever may be the effect of the validation provision of Central Sales Tax Amendment Act of 1969, it could not nullify the judgment pronounced by the Madras High Court whereby the assessment order had been quashed.

Before examining this argument of Mr. Vaidyanathan, the majority

A judgment in *Madan Mohan Pathak's* case (supra) will have to be read and properly understood. The Life Insurance Corporation (Modification of Settlement) Act, 1976 was an Act to alter the settlement which had been arrived at between the Corporation and its Class-III and Class-IV employees on 24th January, 1974 under the Industrial Disputes Act, 1947 and which was in force upto 31st March, 1976. The Act did not purport to B change the law which formed the basis of the judgment of the Calcutta High Court in any manner. The Act did not contain any clause that it would be enforced notwithstanding anything contained in any judgment to the contrary. The majority judgment, which was delivered by Justice Bhagwati, J. (as His Lordship then was), highlighted this aspect, Bhagwati, J.) ob- C served :

> "It is significant to note that there was no reference to the judgment of the Calcutta High Court in the Statement of Objects and Reasons, nor any non-obstante clause referring to a judgment of D a court in section 3 of the impugned Act. The attention of Parliament does not appear to have been drawn to the fact that the Calcutta High Court had already issued a writ of mandamus commanding the Life Insurance Corporation to pay the amount of bonus for the year 1st April, 1975 to 31st March, 1976. It appears that unfortunately the judgment of the Calcutta High Court E remained almost unnoticed and the impugned Act was passed in ignorance of that judgment. Section 3 of the impugned Act provided that the provisions of the Settlement in so far as they relate to payment of annual cash bonus to Class III and Class IV employees shall not have any force or effect and shall not be F deemed to have had any force or effect from 1st April, 1975. But the writ of mandamus issued by the Calcutta High Court directing the Life Insurance Corporation to pay the amount of bonus for the year 1st April, 1975 to 31st March, 1976 remained untouched by the impugned Act. So far as the right of Class III and Class IV employees to annual cash bonus for the year 1st April, 1975 to 31st G March, 1976 was concerned, it became crystallised in the judgment and thereafter they became entitled to enforce the writ of mandamus granted by the judgment and not any right to annual cash bonus under the settlement. This right under the judgment was not sought to be taken away by the impugned Act. The judgment H continued to subsist and the Life Insurance Corporation was bound

to pay annual cash bonus to Class III and Class IV employees for the year 1st April, 1975 to 31st March, 1976 in obedience to the writ of mandamus." A

After referring to the decision of this Court in *Shri Prithvi Cotton Mills Ltd.* v. *Broach Borough Municipality*, [1970] 1 SCR 388, Bhagwati, J. pointed out that in that case validity of Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963, altered the very basis of the law on which this Court's judgment in *Patel Gordhandas Hargovindas* v. *Municipal Commissioner, Ahmedabad*, [1964] 2 SCR 608, was pronounced. Not only substantive provisions of the Act were altered but Section 3 of the Validation Act provided that notwithstanding anything contained in any judgment, decree or order of a court or tribunal or any other authority, no tax assessed or purported to have been assessed by the municipality on the basis of capital value of a building or land and imposed, collected or recovered by the municipality at any time before the commencement of the Validation Act shall be deemed to have invalidly assessed or imposed or collected or recovered and the imposition or collection of the tax so assessed shall be valid and shall be deemed to have always been valid and shall not be called in question merely on the ground that the assessment of the tax on the basis of capital value of the building or land was not authorised by law and accordingly any tax so assessed before the commencement of the Validation Act and leviable for a period prior to such commencement but not collected or recovered before such commencement may be collected or recovered in accordance with the relevant municipal law. B C D E

After referring to the provisions of the Act, Bhagwati, J. observed : F

"It is difficult to see how this decision given in the context of a validating statute can be of any help to the Life Insurance Corporation. Here, the judgment given by the Calcutta High Court, which is relied upon by the petitioners, is not a mere declaratory judgment holding an impost or tax to be invalid, so that a validation statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax." G

Krishna Iyer and Desai, JJ. agreed with the judgment of Justice Bhagwati. Chandrachud, Fazal Ali and Shinghal, JJ. observed : H

A "We agree with the conclusion of brother Bhagwati but prefer to rest our decision on the ground that the impugned Act violates the provisions of Article 31(2) and is, therefore, void. We consider it unnecessary to express any opinion on the effect of the judgment of the Calcutta High Court in W.P. 371 of 1976."

B Therefore, the majority view appears to be that if a judgment is pronounced by a court and the effect of that judgment is sought to be taken away by legislature by passing an Act without altering the statute on the basis of which the judgment was pronounced, then such legislation will not nullify the effect or force of the judgment pronounced by a court in any C manner. The statute being what it was, the judicial interpretation of the statute could not be held to be erroneous by legislative imprimatur, but if the statute itself was amended retrospectively so that the very basis of the judgment disappeared, then it could not be said the judgment was still in force and will have to be given effect to even though the legislature had D specifically laid down that the amended law will operate notwithstanding any judgment or decision or decree by the court to the contrary. In fact, that is how the judgment of *Shri Prithvi Cotton Mills Ltd.* was understood and explained.

In the instant case, after this Court's decision of *N.K. Nataraja* E *Mudaliar's* case the legislature has defined 'turnover' in a new manner and has also amended certain other provisions of the Act which formed the very basis of the Madras Judgment in the case of *Larsen and Toubro* and this Court's judgment in the case of *N.K. Nataraja Mudaliar.* Therefore, we are unable to uphold the contention of Mr. Vaidyanathan that the judg- F ment of the Madras High Court in the assessee's own case must be held to be in full force in spite of the Amendment Act of 1969.

The legislature ordinarily cannot reverse a decision of a court of law given in exercise of judicial power. A settlement between the management and the employees under the Industrial Disputes Act cannot be declared G by the legislature invalid and not enforceable even after a High Court had declared the settlement as valid and binding between the parties. This is what was sought to be done in *Madan Mohan Pathak's* case (supra) and this Court held that it was not permissible. But if a High Court quashes several assessment orders by interpreting taxing statute in a certain manner H and that interpretation is nullified by a subsequent judgment of the

Supreme Court and the statute itself is amended as a result of which the law on the basis of which the High Court's judgment was given is drastically altered, in such a situation, it is permissible for the legislature, by a Validation Act, to declare the assessments as valid and binding notwithstanding the judgment of the High Court to the contrary. The principle to be applied in cases like this was stated by Hidayatullah, C.J., in the case of *Shri Prithvi Cotton Mills Ltd.* v *Broach Borough Municipality,* [1970] 1 SCR 388 :

> "When a legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition is that the legislature must possess the power to impose the tax, for if it does not, the action must ever remain ineffective and illegal. Granted legislative competence it is not sufficient to declare merely that the decision of the court shall not bind, for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A Court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances."

It *Shri Prithvi Cotton Mills'* case (supra), the assessment years involved were 1961-62, 1962-63 and 1963-64. Broach Borough Municipality imposed a purported rate on lands and buildings at a certain percentage of the capital value. The assessment lists were published and tax was imposed on the basis of capital value of the property. A number of writ petitions were filed for quashing the assessments. During the pendency of the writ petitions, a Validation Act was passed which was also challenged by amending the writ petition.

The Validation Act was passed before of the decision of this Court in the case of *Patel Gordhandas Hargovindas* v. *Municipal Commissioner, Ahmedabad,* AIR (1963) SC 1742 = [1964] 2 SCR 608. In that case this Court struck down the municipal tax levied as a percentage of the capital value of the property. The assessments were declared *ultra vires*. The Validation Act of 1963 redefined 'rate' and converted the municipal tax as a 'rate' on lands and buildings. In the case of *Shri Prithvi Cotton Mills*

A (supra), Hidayatullah, C.J., pointed out that the legislature by legislative enactment retrospectively imposed the tax by giving to the expression 'rate' a new meaning and "while doing so it put out of action the effect of the decisions of the courts to the contrary." This principal laid down in *Shri Prithvi Cotton Mills'* case has not been overruled or doubted by the majority view in the case of *Madan Mohan Pathak* (supra).
B

In the instant case also, the High Court's judgment in *Larsen and Toubro's* case (supra), in so far as it declared certain provisions of the Sales Tax Act *ultra vires*, was reversed in the case of *N.K. Nataraja Mudaliar* (supra). The includibility of the excise duty element in the turnover was
C validated by the statutory amendments with retrospective effect. Therefore, the very basis on which the assessments were quashed in the case of *Larsen and Toubro* disappeared. The legal basis of the decisions following the *Larsen and Toubro's* case including this case also has disappeared by judicial pronouncements and legislative enactment. The validating
D provision of the 1969 Act, to borrow the language of Hidayatullah, C.J., has put out of action the effect of the decision of the High Court in this case. The field is now occupied by the judgment of this Court in *N.K. Nataraja Mudaliar's* case (supra) and the provisions of the Central Sales Tax Act as amended by the Act of 1969.

E We shall now examine some of the other case which were cited on the question of the scope of various Validation Acts passed by the legislature from time to time. The case of *A.V. Nachane* v. *Union of India*, (1982) 2 SCR 246, was a sequel to the decision in the case of *Madan Mohan Pathak*, where this Court had directed the Union of India and Life In-
F surance Corporation to forbear from implementing the provisions of the Validation Act of 1976 and to pay annual cash bonus for the years in question to Class III and Class IV employees in accordance with the settlements. On March 31, 1978 the Corporation issued a notice under Section 19(2) of the Industrial Disputes Act declaring its intention to terminate the settlement on the expiry of two months from the date of the
G notice. Another notice was issued to effect a change in the conditions of service applicable to the workmen. The validity of the aforesaid two notices and the consequential notification issued to nullify any further claim to annual cash bonus was challenged by a writ petition in the Allahabad High Court. The writ petition was allowed. On appeal this Court pointed out
H that the settlements of 1974 could only be superseded by a fresh settlement.

It was held in view of the decision in *Madan Mohan Pathak's* case (supra), the amended rules, in so far as they sought to abrogate the terms of 1974 settlement relating to bonus, could only operate prospectively. This judgment does not advance the case of the appellant. It merely reiterates the principles laid down in the case of *Madan Mohan Pathak* (supra).

In the case of *Janapada Sabha, Chhindwara* v. *The Central Provisions Syndicate Ltd.* [1970] 3 SCR 745, the question was raised as to the validity of enhancement of cess on extraction of coal. The rate of cess originally was at 3 pies per ton. This was later enhanced to 4 pies per ton, in 1946 to 7 pies and in 1947 to 9 pies. The enhanced levies were challenged in this Court. It was held that the increased levies were not valid because previous sanction of the local Government had not been obtained. The State Legislature thereafter passed Act in 1964 by which a Board (Janapada Sabha) was constituted and cess was defined to mean a cess imposed by the Board or its successor body. Section 3(1) of the Act contained a validating provision that notwithstanding any judgment of any court, cess imposed, assessed or collected by the Board shall be deemed to be, and to have always been, validly imposed, assessed or collected. When the case came to this Court, the inadequacy of the Amending Act was pointed out in the following words:

> "But the Act in terms is limited in its application to the Independent Mining Local Board, Chhindawara, and its successor body the Janapada Shaba, Chhindawara constituted under Act 38 of 1948, and only in respect of the three notifications specified in the Schedule. Obviously the Act limited to one local Board in its application and to certain specific notifications cannot operate to repeal the clause insofar as it applied to other Boards.
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> The nature of the amendment made in Act 4 of 1920 has not been indicated. Nor is there anything which enacts that the notifications issued without the sanction of the State Government must be deemed to have been issued validity under s. 51(2) without the sanction of the Local Government."

This case does not lay down that after a judgment has been pronounced on the basis of an Act, the provisions of that Act cannot be amended so as to cure the defect pointed out in the judgment retrospectively. The effect of the Amending Act of 1969 is not to overrule a judgment

A passed by a court of law, which the legislature cannot do. What the legislature can do is to change the law on the basis of which the judgment was pronounced retrospectively and thereby nullify the effect of the judgment. When the legislature enacts that notwithstanding any judgment or order the new law will operate retrospectively and the assessments shall be deemed to be validly made on the basis of the amended law, the legislature is not declaring the judgment to be void but rendering things or acts deemed to have been done under amended statute valid notwithstanding any judgment or order on the basis of the unamended law to the contrary. The validity to the assessment orders which had been struck down by the Court, is imparted by the Amending Act by changing the law retrospectively.

In the case of *P.S. Mahal* v. *Union of India,* [1984] 3 SCR 847, certain seniority rules of Government of India came up for consideration. In the case of *A.K. Subraman* v. *Union of India,* [1975] 2 SCR 979, a direction had been given by this Court to the Government of India to amend and revise the seniority list in a certain manner. The Government instead of complying with this direction framed Rules 2(ii) and 2(iv) by which a totally different rule of seniority was framed. This was contrary to the direction given in *A.K. Subraman's* case. This Court pointed out that *A.K. Subraman's* case was *"not a mere declaratory judgment holding an impost or tax to be invalid, so that a validation statute can remove the defect pointed out by that judgment and validate such impost or tax.* But it is a decision giving effect to the right of the Executive Engineers promoted from the grade of Assistant Engineers to have their inter se seniority with Executive Engineers promoted from the grade of Assistant Executive Engineers determined on the basis of rule of length of continuous officiation by issue of a writ directing the Government of India to amend and revise the seniority list in accordance with such rule of seniority."

Far from supporting the contention of the appellant, this decision completely goes against the argument advanced by the appellant. This Court clearly laid down that if an impost or tax is declared to be invalid, a validation statute can remove the defect pointed out by the judgment and validate such impost or tax. This is precisely what has happened in the instant case. The provisions of the Act which were declared *ultra vires* in the case of *Larsen and Toubro* have been held to be valid by this Court in the case of *N.K. Nataraja Mudaliar* (supra). Includibility of excise duty in

'turnover' was also specifically provided retrospectively by the amendments to the various provisions of the Central Sales Tax Act by the Amendment Act of 1969. A

In the case of *Bhubaneshwar Singh* v. *Union of India*, [1994] 6 SCC 77, Bench of Three Judges to which one of us (N.P. Singh, J) was a party, held : B

> "The Validating Acts are enacted to validate the action taken under the particular enactments by removing the defect in the statute retrospectively because of which the statute or the part of it had been declared ultra vires. The exercise of rendering ineffective the judgments or orders of competent courts by changing the very basis by legislation is a well-known devise of validating legislation. Such validating legislation which removes the cause of the invalidity cannot be considered to be an encroachment on judicial power. At the same time, any action in exercise of the power under any enactment which has been declared to be invalid by a court cannot be made valid by a Validating Act by merely saying so unless the defect which has been pointed out by the court is removed with retrospective effect. The validating legislation must remove the cause of invalidity. Till such defect or the lack of authority pointed out by the court under a statute is removed by the subsequent enactment with retrospective effect, the binding nature of the judgment of the court cannot be ignored." C D E

In that case Bhubaneshwar Singh, the petitioner, was the owner of a coking coal mine which had been taken over by the Central Government. He filed an application under Article 226 of the Constitution alleging that the Custodian had debited the expenses for raising coal to his account but had not given him credit for the price of the coal raised which was lying in stock on the date when the coal mine vested in the Central Government. The High Court allowed the writ petition holding that the petitioner was the owner of the coal mine and was entitled to credit for a stock of coal lying unsold as on 30.4.1972. A direction was given to recast the account and make certain payments to the petitioner. The Special Leave Petition against that judgment was dismissed by this Court by a reasoned order. Thereafter, by the Amendment Act of 1976, Coking Coal Mines (Nationalisation) Act, 1972 was amended with retrospective effect. The F G H

A question before this Court was whether by introduction of sub-section (2) to Section 10 of the Amending Act with retrospective effect, the respondents were absolved of their liability and were exonerated from the responsibility of complying with the direction given by the High Court in the earlier writ petition filed on behalf of the writ petitioner. It was held that the amendments which had been introduced retrospectively had taken away the substratum of the claim made on behalf of the petitioner. This Court held since the Validation Act had cured the lacunae or defect pointed out by the High Court in its earlier decision by introduction of sub-section (2) of Section 10 with retrospective effect, it shall be deemed that compensation had been paid even for the stock of unsold coke lying on the date prior to the appointed day.

In the case of *S.R. Bhagwat* v. *State of Mysore*, [1995] 6 SCC 16, a Bench of three Judges held that a judgment which had attained finality and was binding upon that State could not be overruled by any legislative measure. In the case by an interpretation of the relevant service law the High Court had given certain benefits to the writ petitioners by issuing a writ in the nature mandamus. That order of the High Court was sought to be nullified by enactment of a new statute. The Court held that this was impermissible because the High Court had not struck down any legislation which could be re-enacted after removing the defect retrospectively. In other words, it was recognised by this Court that in a case where provisions of a statute were declared inadequate or *ultra vires*, it was open to legislature to remove the defect retrospectively so as to cure the defect and make the statute valid.

What has happened in this case is that a large number of writ petitions were dismissed by the High Court on the basis of the decision in the case of *Larsen and Toubro*. As a result of these decisions, a large number of assessment orders under the Central Sales Tax Act were set aside. It was held in the case of *Larsen and Toubro* certain provisions of the Act were *ultra vires* and in any event excise duty could not be included in the assessee's turnover for the purpose of levy of Central Sales Tax. The main basis of the High Court's judgments disappeared when the Supreme Court held that the impugned provisions of the Central Sales Tax Act which had been declared *ultra vires* by the Madras High Court were validly enacted. The other defect which relates to the includibility of excise duty in the 'turnover' of an assessee was cured retrospectively by amending the

provisions of the Central Sales Tax Act. The new provisions introduced by the Amending Act were deemed to have come into effect retrospectively. Section 9 of the Amendment Act declared all assessments made upto 9th January, 1969 valid and binding. There is nothing in the long line of decisions cited by Mr. Vaidyanathan to suggest that the legislature could not take such a step until and unless the judgments were specifically reversed by this Court. This argument is not tenable having regard to the principles of law laid down in the case of *Shri Prithvi Cotton Mills* (supra), which have been reiterated in the subsequent judgments of this Court. This is not a case of passing a legislation trying to nullify the interpretation of law given in the judgment of a court of law. This is a case of changing the law itself on the basis of which the judgment was pronounced holding that the assessment orders were erroneous in law.

The next contention of Mr. Vaidyanathan is that, even after the Act of 1969 was passed, the High Court passed an order in the contempt application, directing the State to pay the disputed amount to the appellant and that order was carried out. The respondents could have but did not take shelter behind the Amendment Act of 1969. The special leave petition filed against that order was dismissed by this Court. Therefore, this is a case of res judicata and the respondent could not now raise this point at this stage by a fresh proceeding.

The appellant has not been able to city any decision to show that a direction given in a contempt petition can operate as res judicata in a suit. In the contempt petition the only issue was whether the court's order in the writ petition was carried out or not. If the order of the writ court was not carried out, the contempt court was bound to pass suitable orders to ensure obedience to the order of the court. The question of correctness or validity of the judgment passed on the writ petition could not be raised in a contempt proceeding. No question of res judicata arises in such a case.

Be that as it may, the petitioner was successful in getting an order of payment on the contempt petition. We are unable to uphold the contention that merely because an order was passed in the contempt proceeding to make payment, the respondent is estopped from claiming the amount of tax raised by an assessment order validated by the Act of 1969. If this argument is accepted, strange result will follow. The assessment order will remain valid. That notice of demand raised pursuant to the assessment

A order will remain intact and in force, but it will not be open to the Department to realise the amount of tax merely because of the order passed in the contempt proceeding. The writ court's order had to be carried out, which is why the refund order was passed in the contempt proceeding. This direction to refund the amount of tax already collected was given only because the assessment orders had been set aside by the writ court. But, when the assessment orders were validated by passing the Amendment Act of 1969 with retrospective effect, the tax demand became valid and enforceable. The tax demand is a debt owed by an an assessee which can be realised by the State in accordance with law. Merely because the amount of tax which had been realised earlier was directed to be refunded by court's order on the finding that the assessment order was invalid, will not preclude the State from releasing the tax due subsequently when the assessment order was validated by the Amending Act of 1969. The order passed in the contempt proceeding will not have the effect of writing off the debt which is statutorily owned by the assessee to the State. The State has filed a suit for recovery of this debt. Unless it can be shown that the debt does not exist or is not illegally due, the court cannot intervene and prevent the State from realising its dues by a suit. All that the Department has done in this case is to bring a suit to recover the amount of tax due and payable to it as a result of what must now be treated as a valid assessment order.

It is needless to speculate as to what would have been the position, had the Amending Act been produced before the court in the contempt case. But, in our view, in the contempt proceeding the Court was only endeavouring to ensure that the order of refund passed by the writ court was carried out. In the contempt jurisdiction the court was not really concerned with the merit of the case.

It is also to be noted that the vires of the Amendment Act of 1969 has not been questioned by the appellant by filing any substantive application. The effect of the Amending Act is to impart validity to those assessment orders which had been struck down by the High Court. If the assessment orders are now held to be valid, the tax demands raised in the assessment orders are still enforceable. What the State of Tamil Nadu is seeking to do is to enforce these demands. Merely because taxes which had been realised earlier had been refunded under an order passed on a contempt petition, the respondent is not debarred from releasing the

demands which are now deemed to be valid and subsisting. A

Therefore, in our view, the appeal has no merit. The Department is entitled to recover the amount refunded to the appellant pursuant to the direction given in the contempt proceeding. The appeal is dismissed. Each party will bear its own costs.

B

CIVIL APPEAL NO. 2207 OF 1982

In view of our judgment in Civil Appeal No. 2206 of 1982, the above appeal is also dismissed. There will be no order as to costs.

S.M. Appeals dismissed. C