INDIA TOBACCO CO. LTD. A

v.

THE COMMERCIAL TAX OFFICER, BHAVANIPORE & ORS.

November 5, 1974

[H. R. KHANNA, R. S. SARKARIA AND A. C. GUPTA, JJ.] B

Interpretation of statutes—Repeal, nature of—Bengal Finance (Sales Tax) Act, 1941, if repealed, with regard to cigarettes by West Bengal Sales Tax Act, 1954—West Bengal Sales Tax (Amendment) Act, 1958—Effect of.

Under the Bengal Finance (Sales Tax) Act, 1941, the definitions of 'goods' and 'dealer' are very comprehensive and general, and they cover 'cigarettes' and a dealer in cigarettes. Under s. 5(2)(a)(ii), a dealer would be entitled to purchase free of tax goods required by him for use in the manufacture of cigarettes. C
Section 23 of the West Bengal Sales Tax Act, 1954, excepts everything relating to cigarettes from the operations of the 1941-Act, save to the extent indicated in the proviso to that section, which retains the benefit under s. 5(2)(a)(ii) of the 1941-Act. As a consequence of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (Central Act 58 of 1957), the West Bengal State legislature passed the West Bengal Sales Tax (Amendment) Act, 1958. This Act amended the 1954 Act, by substituting the words 'certain notified commodities' for the words 'cigarettes and other commodities.' The 1958-Act also substituted new ss. 23 and 25 in the 1954-Act. Under the new s. 25, the D
1954-Act can be made applicable by a notification only to a commodity 'which is liable to taxation under the Bengal Finance (Sales Tax) Act, 1941' and further, the 1941-Act 'shall cease to apply to such commodity' and the 1954-Act shall apply to such commodity, only from the date of such notification.

The appellant-company claimed that as a result of the 1958-Act, the 1941-Act was applicable to cigarettes and as such it was entitled to the benefit of s. 5(2)(a)(ii) of the 1941-Act and that the Sales Tax Authorities were not E
competent to amend the registration certificate issued to it under the 1941-Act. The Commercial Tax Officer rejected the contention and asked the appellant for its registration certificate for amendment and deletion of exemption. The appellant filed a writ petition in the High Court, challenging the threatened action, and the writ petition was allowed by a Single Judge.

In L.P. Appeal, the Division Bench of the High Court held that the 1954-Act had the effect of completely repealing the 1941-Act, in relation to cigarettes, that the 1958-Act did not revive the operation of the 1941-Act and F
that since the 1941-Act stood completely obliterated from the statute book in relation to cigarettes, no sales tax would be payable in regard thereto either under 1954-Act or under the 1941-Act, and that therefore, the appellant was not entitled to any certificate of registration under the 1941-Act.

Allowing the appeal to this Court,

HELD : (1) The general rule of construction is that the repeal of a repealing Act does not revive anything repealed thereby. But the operation of the G
rule is not absolute and is subject to the appearance of a 'different intention' in the repealing statute, which may be explicit or implicit. Repeal connotes abrogation or obliteration of one statute by another, from the statute book, as completely as it if had never been passed. When an Act is repealed, it must be considered (except as to transactions past and closed) as if it had never existed. Repeal is not a matter of form but one of substance, depending upon the intention of the Legislature. If the intention was to abrogate or wipe off the former enactment, wholly or in part, then it would be a case of total or *pro tanto* repeal. If the intention was merely to modify the former enactment by engraft- H
ing an exception or granting an exemption, or by super-adding conditions, or by restricting, intercepting or suspending its operation, such modification would not amount to a repeal. [617D-E, F-H]

A *Kay* v. *Goodwin*, [1830] 6 Bing 576 at p. 582; *Surtees* v. *Ellison*, (1829) 9 B & C 750 at p. 752; *State of Orissa* v. *M. A. Tulloch & Co.*, A.I.R. 1964 S.C. 1284 and *Mount* v. *Taylor* referred to.

(2) The High Court was wrong in holding that s. 23 of the 1954-Act repeals the 1941-Act with regard to cigarettes and that cl. (ii) of its proviso does not save the operation of s. 5 of the 1941-Act but only makes it a part of the 1954-Act. The words 'in calculating the taxable turnover under s. 5 of the B said Act' in s. 23 of the 1954-Act show beyond doubt that the calculation of the taxable turnover from which the deduction of the price of goods sold to a dealer for use in manufacturing cigarettes is to be made, has still to be done under s. 5 of the 1941-Act. Assuming that cl. (ii) of the Proviso incorporates by reference, s. 5 of the 1941-Act in a modified form, then also such incorporation would not *per se* amount to a repeal, in the sense of complete obliteration of s. 5 of the 1941-Act. [619F-620A]

(3)(a) A conjoint reading of the 1941, 1954 and 1958-Acts shows that the C 1954-Act did not repeal or obliterate the 1941-Act, but only *modified* it by excepting cigarettes from its operation. During the interregnum between the enactment of the 1954-Act and the 1958-Act, the operation of the 1941-Act with regard to cigarettes was in a state of mere interception, and when as a result of the amendment made by the 1958-Act, that exception or interception was removed, the application of the 1941-Act to cigarettes revived *proprio vigore*. After the 1958-Act, cigarettes could be notified under the amended s. 25 of the 1954 Act. It necessarily implies that the 1941-Act would cease to apply to cigarettes only when the requisite notification in respect thereof under D s. 25 of the 1954-Act is issued. If such a notification were issued and later on rescinded, such rescission would revive the application of the 1941-Act. The position would be the same, as in the present case, if a notification under s. 25 specifying cigarettes as a taxable commodity was not at all issued. [621C-D, F-G]

(b) Further, the 1941-Act was amended by Bengal Act 13 of 1959. In obedience to the mandate of s. 14 of the Central Sales Tax Act of 1957, it reduced the rate of tax from 5 np. in the rupee to 2% of such part of the taxable E turnover of a dealer under the 1941-Act as represents sale of goods (including manufactured tobacco and cigarettes) referred to in s. 14 of the Central Act. This amendment of the 1941-Act, effected in 1959, also indicates that after the 1958-Act, the operation of the 1941-Act revived in relation to cigarettes. [621D-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1183 of 1970.

From the judgment and order dated the May 26, 1969 of the Calcutta High Court in E.M.A. No. 135 of 1961.

F *A. K. Sen, M. C. Bhandari, D. Pal, P. Mridul* and *D. N. Gupta*, for the appellant.

B. Sen, P. K. Chatterjee, Leila Seit and *G. S. Chatterjee* for the respondent.

The Judgment of the Court was delivered by

G SARKARIA, J. Whether the sale of cigarettes after the enactment of West Bengal Sales Tax (Amendment) Act, 1958 (for short, the 1958 Act) is governed by the Bengal Finance (Sales Tax) Act 1941 (for short, the 1941 Act) and, as such, a dealer in the State of West Bengal is entitled to the benefits under s. 5(2)(a)(ii) of the 1941 Act in making purchases free of sales-tax of raw material and other goods required for use in the manufacture of cigarettes on the strength of such examption entered in his registration certificate, is the only question H that falls for determination in this appeal by certificate granted by the High Court of Calcutta under Article 133(1)(a) and (b) of the Constitution ?

The appellant, India Tobacco Co. Ltd. (hereinafter called the Company) was a 'dealer' within the meaning of 1941 Act carrying on the business of manufacture and sale of cigarettes and smoking tobacco. It obtained the registration certificate No. BH/67B under that Act, and on its basis, became entitled to exemption under s. 5(2)(a)(ii) from payment of sales tax on goods purchased by it for use in the manufacture of cigarettes.

In 1954, the Legislature of West Bengal enacted the West Bengal Sales Tax Act, 1954 (for short, the 1954 Act) "to impose a tax on the sale of cigarettes and other commodities in West Bengal". The 1954 Act took out cigarettes and a dealer in cigarettes from the purview of the 1941 Act.

The Company got itself registered under the 1954 Act and its registration certificate which it had obtained under the 1941 Act was amended and cigarettes were excluded therefrom. By virtue of the provisions of s. 23 of 1954 Act, however, the Company continued to avail of the benefit under s. 5(2)(a)(ii) of the 1941 Act with regard to purchases of goods required for use in the manufacture of cigarettes.

In 1957, the Government of India in consultation with the State Governments, decided that an additional duty of excise should be levied on mill-made textiles, sugar and tobacco including manufactured tobacco in replacement of the sales-tax then levied by the State Governments, the net proceeds being distributed among the States subject to the then income derived by each of the States being assured to it. Before undertaking the necessary legislation for the levy, the President of India made a reference to the Second Finance Commission requesting it to make recommendations as to the principles which should govern the distribution of the net proceeds of this additional duty among the States. Broadly, the recommendation of the Finance Commission was that the States levying a tax under their State Laws on the sale or purchase of sugar, tobacco and mill-made textile after April 1, 1958 would not be entitled to participate in the distribution of the net proceeds of this additional duty. In accordance with the recommendations of the Finance Commission, Parliament enacted the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (Central Act 58 of 1957). This Act came into force on December 24, 1957. It declared the aforesaid three classes of goods "to be of special importance in inter-state trade or commerce". Further, the proviso to para 1(b)(iii) of the Second Schedule appended to the said Act, gave effect to the recommendation of the Finance Commission with regard to the distribution of additional duties among the States. Manufactured Tobacco is mentioned under Item 9(II) of the First Schedule of the 1957 Act. It further indicates that cigarettes, cigars, cheroots and bidies all fall under the description of 'manufactured tobacco'. They have been subjected to this additional duty of excise at different rates. Part I of the Second Schedule relates to distribution of these additional duties.

A

In view of the Central Act 58 of 1957, the State Legislature passed the 1958 Act. It received the assent of the President and was thereafter published in the Calcutta Government Gazette on March 30, 1958. It amended the 1954 Act. The 1958 Act, substituted for the words "cigarettes and other commodities" occurring in the preamble of the 1954 Act, the words "certain notified commodities". It further
B replaced the word "cigarettes", wherever it occurred in the 1954 Act, by the words "notified commodities". The 1958 Act substituted a new Section 23 for the original Section 23 of the 1954 Act. The new Section provided that nothing in the 1941 Act shall apply to notified commodity from the date on which the said commodity is or was notified under s. 25 of the 1954 Act as amended by the 1958 Act. Clause (ii) of the Proviso in this new Section 23 provided that :

C

> "the price of goods sold to a dealer for use by such dealer for manufacturing, making, processing or packing notified commodities shall be deducted in calculating the taxable turnover under section 5 of the Bengal Finance (Sales Tax) Act, 1941."

The notifications issued by the State Government from time to time
D under s. 25 in respect of "notified commodities" do not include cigarettes.

Having regard to the enactment of 1958 Act, the Company wrote to the Commissioner of Commercial Taxes, West Bengal, Respondent No. 3, on April 11, 1958, stating that the registration certificate granted to it under the 1954 Act, bearing No. BH/1/54B, was liable to be
E cancelled because the Company ceased to be a dealer as defined in that Act. It was further contended that the Company as a manufacturer of cigarettes and smoking tobacco was entitled to have its registration certificate under the 1941 Act suitably amended in order to enable it to purchase free of tax goods required for use in the manufacture of cigarettes and smoking mixtures in accordance with the proviso to s. 5(2)(a)(ii) of the 1941 Act. Then, the Sales-tax authorities
F of the State on July 1, 1958, amended the registration certificate of the Company under the 1941 Act specifying cigarettes and smoking mixtures as the goods for the manufacture of which it was entitled to purchase free of tax raw material, plant and machinery. This certificate was further amended by the authorities on July 25, 1958 to include certain materials under the heading 'consumable stores' which it could purchase tax-free.

G

On July 30, 1958, the Company wrote to the Additional Commissioner of Commercial Tax (Res. No. 2) requesting him to confirm that it was not liable to pay tax or to file returns either under the 1954 Act or under the 1941 Act. As a consequence, the Additional Commissioner and Commercial Tax Officer, Bhavanipore wrote letters dated September 8, 1958 and September 22, 1958, respectively. The substance of these letters was that from December 24, 1957, a dealer or a
H manufacturer in cigarettes was not liable to pay any sales-tax under the 1941 Act or under the 1954 Act and was not entitled to benefits of registration certificate under either of the said Acts and that, in the

circumstances, it was proposed to delete the amendment which was made in the registration certificate of the Company under the 1941 Act on July 1, 1958 by inclusion of cigarettes and smoking mixtures in the manufacturers' column of such certificate. The Company wrote back on October 31, 1958 contending that the 1941 Act was applicable to cigarettes, and as such, it was entitled to the benefit of s. 5(2)(a)(ii) of the 1941 Act and the Sales-tax Authorities were not competent to amend the registration certificate issued under the 1941 Act. These contentions were rejected by the Commercial Tax Officer who by his letter of February 2, 1959 asked the Company again to send its registration certificate for amendment and deletion of exemption entry therefrom.

To challenge this action threatened by the Sales-tax Authorities in their letters of September 8, 1958, September 22, 1958 and February 2, 1959, the Company filed a writ petition in March 1959 in the High Court of Calcutta under Article 226 of the Constitution.

On behalf of the Sales-tax Authorities, it was contended before the learned Single Judge, who tried the writ petition, that after the enactment of Central Act of 1957 and 1958 Act, cigarettes no longer formed the subject matter of tax either under the 1941 Act or the 1954 Act, with the result that the registration certificate in respect of cigarettes under those Acts became a nullity and the exemption granted in respect of the purchase of goods required for the manufacture of cigarettes under the registration certificate issued under the 1941 Act was incompetent. The learned Single Judge negatived this contention thus :

> "In my opinion, this is based on an incorrect reading of the law. As will appear from the delineation of the law above mentioned, the provisions contained in section 5(2)(a)(ii) of the Act, affected a dealer who sold goods to a registered dealer, as being intended for use by him in the manufacture of goods for sale, and there was a corresponding benefit conferred upon the purchaser, who being a registered dealer acquired the benefit of not having to pay sales tax, when he purchased goods from another dealer for such purposes. The second thing to be borne in mind is that this exemption is not in respect of cigarettes or smoking tobacco, but in respect of goods intended for use in the manufacture of cigarettes and smoking tobaccos, which is a different thing altogether."

The learned Judge further held that cigarettes which became the subject of the Central Act 58 of 1957, did not find any place in the 1958 Act which took away cigarettes from the scope of 1954 Act and there was nothing in the 1958 Act to take away the right of the Company conferred by the 1941 Act to claim exemption from sale-tax in respect of goods purchased for use in the manufacture of cigarettes. In the result, the learned Judge made the Rule absolute and quashed the impugned notices. He also issued a *mandamus*

A directing the Sales-tax Authorities to forbear from the cancellation of the endorsement to the registration certificate of the Company in relation to cigarettes and smoking mixtures, as made on the 1st July, 1958.

Against the judgment of the learned single Judge, the Revenue
B carried an appeal to a Division Bench of the High Court which accepted the appeal and dismissed the writ petition.

The *ratio* of the two separate but concurrent judgments of the appellate Bench of the High Court is, that 1954 Act had the effect of completely repealing the 1941 Act in relation to cigarettes, and the repeal of 1954 Act in relation to cigarettes by the 1958 Act, did not
C revive the operation of 1941 Act in regard to cigarettes on the principle "that the repeal of a repealing Act does not revive the repealed Act". Since 1941 Act stood completely obliterated from the statute book in relation to cigarettes, no sales tax would be payable in regard thereto either under the 1954 Act or under the 1941 Act. Upon these premises it was held that the Company as a dealer in cigarettes and smoking mixtures is not entitled to any certificate of registration
D under the Act of 1941 as it is neither a dealer within the meaning of that Act, nor liable to pay sales tax under that Act.

The general rule of construction is that the repeal of a repealing Act does not revive anything repealed thereby. But the operation of this Court is not absolute. It is subject to the appearance of a "different intention" in the repealing statute. Again, such intention may be explicit or implicit. The questions, therefore, that arise for
E determination are : Whether in relation to cigarettes, the 1941 Act was *repealed* by the 1954 Act and the latter by the 1958 Act? Whether the 1954 Act and 1958 Act were repealing enactments? Whether there is anything in the 1954 Act and the 1958 Act indicating a revival of the 1941 Act in relation to cigarettes?

It is now well settled that "repeal" connotes abrogation or oblite-
F ration of one statute by another, from the statute book as completely "as if it had never been passed"; when an Act is repealed, "it must be considered (except as to transactions past and closed) as if it had never existed". (Per Tindal C.J. in *Kay* v. *Goodwin*(1) and Lord Tenterdon in *Surtees* v. *Ellison*(2) cited with approval in *State of Orissa* v. *M. A. Tulloch & Co*)(3).

G Repeal is not a matter of mere from but one of substance, depending upon the intention of the Legislature. If the intention, indicated expressly or by necessary implication in the subsequent statute, was to abrogate or wipe off the former enactment, wholly or in part, then it would be a case of total or *pro tanto* repeal. If the intention was merely to modify the former enactment by engrafting an exception or granting an exemption, or by super-adding conditions, or by res-
H tricting, intercepting or suspending its operation, such modification

(1) (1830) 6 Bing 576 at p. 582. (2) (1829) 9 B & C 750 at p. 752;.
(3) A.I.R. 1964 S.C. 1284.

would not amount to a repeal (*see* Craies on statute Law, 7th Edn. pp. 349, 353, 373, 374 and 375; Maxwell's Interpretation of Statutes, 11th Edn. p. 164, 390 based on *Mount* v. *Taylor*(1); Southerland's Statutory Construction 3rd Edn. Vol. I, Paragraphs 2014 and 2022 pp. 468 and 490). Broadly speaking, the principal object of a Repealing and Amending Act is to 'excise dead matter, prune off superfluities and reject clearly inconsistent enactments—see *Mohinder Singh* v. *Mst. Harbhajan Kaur*(2).

The ground having been cleared, we now proceed to examine the effect of the 1954 Act and the 1958 Act on the 1941 Act in the light of the above principles.

We will start with the 1941 Act. The preamble indicates that its purpose is to impose a general tax on the sale of goods in Bengal. 'Goods' are defined in Clause (d) of s. 2 as "as all kinds of movable property other than actionable claims, stocks, shares or securities, and includes all materials and commodities". "Dealer" means "any person who carries on the business of selling goods in West Bengal and includes the Government". [s. 2(c)].

The charging provision is in s.4, according to which, every dealer whose gross turnover during the preceding year exceeds the taxable quantum shall be liable to pay tax under this Act on all sales effected by him after the notified date. Sub-section (5) of s. 4 defines "taxable quantum" to mean "in relation to any dealer who imports for sale any goods into West Bengal or manufactures or produces any goods for sale, 10,000 rupees "and" in relation to any other dealer, 50,000 rupees." Section 5 of the 1941 Act prescribes the rate of tax. Its original sub-section (2)(a)(ii) reads as under:

> "(ii) sales to a registered dealer—
>
> of goods of the class or classes specified in the certificate of registration of such dealer, as being intended for re-sale by him or for use by him in the manufacture of goods for sale or for use by him in the execution of any contract; and of containers or other materials for the packing of goods of the class or classes so specified:
>
> Provided that in the case of such sales a declaration duly filled up and signed by the registered dealer to whom the goods are sold and containing prescribed particulars on a prescribed form obtainable from the prescribed authority is furnished in the prescribed manner by the dealer who sells the goods."

It will be seen that the definitions of "goods" and "dealer" in 1941 Act are very comprehensive and general. It is not disputed that the wide definitions would cover 'cigarettes' and a dealer in cigarettes. Considered alone, the 1941 Act would take in its sweep cigarettes,

(1) (1868) L.R. 3 C.P. 645; (2) (1955) Cr. L.J. 990.

A also; and under its s. 5(a)(ii) a dealer would be entitled to purchase free of tax goods required by him for use in the manufacture of cigarettes.

The (original) 1954 Act, as stated in its preamble, was an Act "to impose a tax on the sale of cigarettes and other commodities" in West Bengal. As defined in its s.2(a), "cigarettes" include smoking B mixtures ready for use in rolling cigarettes or for use in tobacco pipes, but do not include bidis.

Under Clause (b) of the same section, "dealer" means "any person who sells cigarettes manufactured, made or processed by him in West Bengal, or brought by him into West Bengal from any place outside West Bengal for the purpose of sale in West Bengal."

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Clause 2(e) defines "turnover." Section 4 provides that every dealer shall pay a tax at the date of three per centum of his turnover. Section 5 requires dealers under the Act to obtain registration certificate.

Section 23 of the 1954 Act runs thus :

D "Nothing in the Bengal Finance (Sales Tax) Act, shall apply to cigarettes :

Provided that—

(i) the said Act shall continue to apply in respect of cigarettes sold before the commencement of this Act and in respect of sales of such cigarettes subsequent E to the commencement of this Act;

(ii) the price of goods sold to a dealer as defined in this Act for use by such dealer in manufacturing, making or processing cigarettes shall be deducted in calculating the taxable turnover under s. 5 of the said Act."

F The Division Bench of the High Court has held that this section repeals the 1941 Act with regard to cigarettes, and that clause (ii) of the above Proviso does not save the operation of s. 5 of the 1941 Act but only makes that provision a part of the 1941 Act.

In our opinion, the issues that arise in this case, cannot be correctly and completely answered by construing s. 23 of the 1954 Act in this G manner. We would therefore, defer the final answers to the questions posed till the conjoint survey of 1954 Act, 1958 Act and other relevant enactments, is complete. Suffice it to say, now, on an analysis of s. 23 of the 1954 Act, that it excepts everything relating to cigarettes from the operation of 1941 Act, save to the extent indicated in the Proviso. We are not persuaded that clause (ii) of the Proviso does not save anything in section 5 of the 1941 Act. The words "in calculating the taxable turnover under s. 5 of the said Act" in this clause H are a clincher. They show beyond all manner of doubt that the calculation of the taxable turnover from which the deduction of the price of goods sold to a dealer for use in manufacturing cigarettes is to be

made, has still to be done under s. 5 of the 1941 Act. Assuming that clause (ii) of the Proviso incorporates, by reference, section 5 of the 1941 Act in a modified form, then also such incorporation would not *per se* amount to a repeal, in the sense of complete obliteration of section 5 of the 1941 Act.

We will now take up 1958. This Act amended the 1954 Act. In the preamble of the 1954 Act, for the words "cigarettes and other commodities", it substituted the words "certain notified commodities". Further, for the word "cigarettes", wherever occurring in the 1954 Act, it substituted the words "notified commodities". For the original section 23, it substituted this new Section 23.

> "Nothing in the Bengal Finance (Sales Tax) Act, 1941 shall apply to a notified commodity from the date on which the said commodity is or was notified under section 25 :
>
> Provided that—
>
> (i) the said Act shall apply in respect of a notified commodity sold before the issue of such notification and in respect of re-sales of such notified commodity subsequent to the issue of such notification;
>
> (ii) the price of goods sold to a dealer for use by such dealer for manufacturing, making, processing or packing notified commodities shall be deducted in calculating the taxable turnover under section 5 of the Bengal Finance (Sales Tax) Act 1941."

It also inserted new s. 24A, to the effect :

> "24A. Notwithstanding anything contained in the West Bengal Sales Tax (Amendment) Act, 1958, this Act shall continue to apply to—
>
> (i) cigarettes sold before the commencement of that Act, and
>
> (ii) cigarettes in respect of which no additional duties of excise have been levied under the Additional Duties of Excise (Goods of Special Importance), Act, 1957 as if that Act had not been passed."

Section 24-A is not very material for this discussion because the petitioners are a dealer in cigarettes on which additional duties are being levied under the Central Act of 1957.

The 1958 Act further substituted this new Section 25 for the original Section 25 in the 1954 Act :

> "If the State Government is at any time of opinion that it would be in the public interest that any commodity which is liable to taxation under the Bengal Finance (Sales Tax) Act, 1941, should be taxed under this Act, it may, by notification in the Official Gazette, specify such commodity;

A and on and from the date of such notification the Bengal Finance (Sales Tax) 1941 shall cease to apply to such commodity and this Act shall apply to such commodity."

An analysis of this Section 25 would show that the 1954 Act (as amended by the 1958 Act) can be made applicable by a notification under this section, only to a commodity "which is liable to taxa-
B tion under the Bengal Finance (Sales Tax) Act, 1941," and further, that the 1941 Act "shall cease to apply to such commodity", and 1954 Act shall apply to such commodity, only from the date of such notification.

It is not disputed that cigarettes can be notified as a taxable commodity under the amended section 25 of the 1954 Act. It necessa-
C rily implies that the 1941 Act would cease to apply to cigarettes, only when the requisite notification in respect thereof under s. 25 of the 1954 Act is issued. There can be little doubt that if such a notification were to be issued and later on rescinded, such recission would revive the application of the 1941 Act. The position would be the same, if, as in the present case, no notification under s. 25 specifying cigarettes as a taxable commodity was at all issued.

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It may further be noted that the 1941 Act was amended by Bengal Act 13 of 1953 which was published in the Government Gazette on October 1959. It *inter alia* amended s. 5 of the 1941 Act and prescribed different rates of tax. In obedience to the mandate of s.14 of the Central Sales Tax Act of 1957, it reduced the rate of tax from 5 N.P. in the rupee to 2 per centum of such part of the taxable turn-
E over of a dealer under the 1941 Act as represents sales of goods (including manufactured tobacco, cigarettes) referred to in s. 14 of the aforesaid Central Act. This amendment of the 1941 Act, effected in 1959, also indicates that after the 1958 Act, the operation of the 1941 Act revived in relation to cigarettes.

After a conspectus and conjoint reading of the aforesaid enact-
F ments, it seems to us clear that the 1954 Act did not repeal or obliterate the 1941 Act, but only *modified* it by excepting cigarettes from its operation. During the interregnum between the enactment of the 1954 Act and the 1958 Act, the operation of the 1941 Act with regard to cigarettes was in a state of mere interception, and when, as a result of the amendment made by the 1958 Act, that exception or interception was removed, the application of the 1941 Act to cigarettes
G revived *proprio vigore*. In any case, definite indications of such revival are available in the language and scheme of the 1958 Act and the Bengal Act 13 of 1959.

For reasons aforesaid, we would allow this appeal, set aside the judgment of the Division Bench of the High Court, accept the writ petition and restore the decision of the single Judge of the High Court. There will be no order as to costs.

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V.P.S. *Appeal allowed.*