

Gujarat HC: Section 84A of Gujarat VAT Act Held Unconstitutional, Court Rules in Favour of Reliance Industries

- Anjali Baskar*

Abstract

In this case analysis, the author extrapolates the main issues and critical aspects of a recent case. In the case of *Reliance Industries & Anr. vs. State of Gujarat & Ors.*¹, The Deputy Commissioner of Commercial Tax, Ahmedabad passed an assessment order on 23.12.2009 for the Financial Year 2006-07 against the writ applicant company by reversing the Input Tax Credit to the extent of 8% i.e. 4% under each of the provisions of Sections 11(3)(b)(ii) and 11(3)(b)(iii) of the GVAT Act. This case provides development into taxation law and its versatile aspects. It shows how no matter what the field is, constitution is the supreme or “grundnorm” law.

Facts

- The Court, on 18.1.2013 dismissed the appeal of the State Government filed against the aforesaid order of the VAT Tribunal, while holding inter alia, that the reduction of Input Tax Credit under Section 11(3)(b) would, in no case, exceed 4% on the ground that the limitation of availing of the tax credit as provided under Section 11(3)(b) could be applied only once irrespective of the fact as to whether particular commodity purchased falls in more than one sub-clauses of Section 11(3)(b) of the VAT Act.
- On 18.01.2013, the Court rendered in the case of the petitioner Company with respect to the reduction of Input Tax Credit on natural gas used as raw material, the competent authority reduced the ITC of the Petitioner Company at the rate of 4%, instead of 8%, under the provisions of Section 11(3)(b) of the Act.
- On 01.07.2017, the legislations, i.e, the Gujarat Goods and Services Tax Act, 2017 and the Central Goods & Services Tax Act, 2017 came into force to levy tax on all the intra-state suppliers of goods or services or both. With reference to the Constitution (101st Amendment) Act, 2016, the Gujarat Value Added Tax Act, 2003 came to be substantially

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¹ *Reliance Industries & Anr. vs. State of Gujarat & Ors.*, on 16th April, 2020.

amended by way of substitution and deletion of many provisions thereof by virtue of the Gujarat Value Added Tax (Amendment) Act, 2017, which came into force w.e.f. 01.07.2017.

- In the present case, the period commencing from the date of the decision of this Court on 18.01.2013 rendered against the revenue upto the date of the decision of the Supreme Court i.e., 22.09.2017 being in favour of the revenue, is sought to be excluded by virtue of the above referred retrospective amendment to enable the department to issue a notice for revision for revising the assessment made for the year 2008-09 and thereby removing the basis of the later judgment on 16.03.2018 of this court.
- On 01.09.2018, fresh notice for revision came to be issued by the Addl. Commissioner of Commercial Tax to the Petitioner on the basis of the above referred newly added Section 84A, for revising the assessment for the F.Y.2008-09 made vide order on 30.03.2013 for reducing the Input Tax Credit to the extent of 8% under the provisions of Section 11(3)(b)(ii) and 11(3)(b)(iii) of the VAT Act in light of the judgment on 22.09.2017 of the Supreme Court. In the present case, the original period of limitation as provided under Section 75 of the VAT Act for issuing notice is of 3 years from the date of the assessment order i.e. 30.03.2013 which had lapsed on 30.03.2016.
- The period spent from the date of the decision of the High Court is 18.01.2013 upto the date of the decision of the Supreme Court i.e. 22.09.2017 is to be excluded in deciding the aforesaid period of three years, referred to under Section 75 of the Act. In such circumstances, the writ petitioner wanted to challenge the constitutional validity of Section 84A of the GVAT Act as well as the revision notice on 01.09.2018.

Issues

1. Is there constitutional validity attached to Section 84A of the Gujarat Value Added Tax Act, 2003? (No.)
2. Is Section 84A of the GVAT Act is ultra vires and beyond the legislative competence of the State under Entry 54 of List II of the Seventh Schedule to the Constitution of India? (Yes.)
3. Is Section 84A of the GVAT Act is arbitrary, unreasonable and, therefore, violative of Article 14 of the Constitution of India? (Yes.)

Arguments of The Petitioner

- Mr. S.N. Soparkar (Petitioner's counsel) submitted that despite such **limited legislative competence**, the State Legislature proceeded to enact Section 84A whereby the assessment related to the tax liability of all goods which were earlier covered under Entry 54 are now sought to be reopened. Liability is sought to be imposed and enforced in respect of all goods though the competence of the Legislature is limited to the six products. To substantiate his point, he referred to the case of *A. Haji Abdul Shukoor & Co. vs. State of Madras*.²
- He also submitted that Section 84A of the VAT Act was arbitrary and violative of Articles 14 and 19(1)(g) of the Indian Constitution. He submitted that when the assessment for a particular year attains finality, the same creates a vested right in favour of the dealer. He alteration of such position without any definite time limit only on the ground that a judgment has been pronounced in favour of the Revenue in another case is manifestly arbitrary and illegal. To support this point, he asked court to refer to the case of *State of Punjab vs. Shreyans Industries Ltd.*³
- He submitted that the provisions of limitation in the taxing statute are enacted with a specific objective of giving certainty and finality to the legal proceedings and to avoid exposure to the risk of litigation for an indefinite period of time. Any changes in such limitation period should be ordinarily prospective, and not retrospective.
- He also submitted that the amendment leads to an absurd situation with unforeseeable consequences. Mr. Soparkar gave an example in this regard. He also contended that the amendment is violative of Article 19(1)(g) of the Constitution of India as it adversely effects the fundamental right of free trade business.
- Finally, the counsel submitted that the Commissioner is empowered to revise an assessment passed by his delegatee under Section 75 of the VAT Act. Once such power of revision in respect of an assessment order is exercised, then the power gets exhausted and the same assessment order cannot be revised again, like in the case of *OCL India Ltd. vs. State of Orissa*.⁴

² *A. Haji Abdul Shukoor & Co. vs. State of Madras*, 1964 15 STC 719 SC.

³ *State of Punjab vs. Shreyans Industries Ltd.*, 2006 91 VST 23 SC.

⁴ *OCL India Ltd. vs. State of Orissa*, 2003 130 STC 35 SC.

Arguments of The Respondent

- Mr. Kamal Trivedi (State's counsel) submitted that the State Legislature is empowered to enact taxation laws relating to the intra-state supply with respect to only six items and not with any other items. In terms of all intra-state sale / purchase of goods other than newspaper, the State legislature was empowered to levy taxes on the said transactions.=
- He submitted that by virtue of the said Constitution Amendment Act of 2016, two major changes have been brought in picture: (a) Tax would be now imposed on 'supply of goods', which was earlier used to be only on 'sale/purchase of goods' (b) The demarcation of powers between the Union and the legislatures of every State has disappeared and that the Union and the legislatures of every State, both are empowered to make laws with reference to the supply of goods:
- He submitted that by enacting Section 84A in the VAT Act, the State Legislature has not proposed to levy any fresh tax, but merely allowed the department to enlarge the period of limitation under the provisions of Section 75 of the VAT Act, if permissible, so as to collect the legitimate tax already levied, but was not collected in view of pendency of litigation before the Apex Court.
- According to him, the VAT Amendment Act of 2018 is a validating Act, as it has sought to overcome the obstacle in terms of limitation of 3 years provided under Section 75 of the VAT Act. This revision notice was issued on the basis of the judgment dated 22.09.2017 of the Supreme Court whereby the judgment on 18.01.2013 of this Court was set aside necessitating the recovery of lost revenue.
- He relied on the decision of the Supreme Court case of *Shri Prithvi Cotton Mills Ltd. vs. Broach Boroush Municipality*⁵ to state that there is no bar under the Constitution that a statute of limitation impacting a substantive right, cannot be made retrospective in nature. Thus, even if Section 84A of the VAT Act is considered to be not a validating act, but simply a statutory provision relating to limitation, then in that case also, it is rightly brought in picture with retrospective effect.
- Countering the precedents given by the petitioners, it was held that once the Assistant Commissioner, as a delegatee of the Commissioner, had revised the order of the Sales Tax Officer, then in that case, the Commissioner, as a delegator, could not have exercised the power of revision once over again. They felt the Revisional Authority was seeking to revise

⁵*Shri Prithvi Cotton Mills Ltd. vs. Broach Boroush Municipality*, 1969 Part II SC.

in respect of the same subject matter, which was already settled either in revision or appeal. He contended facts were not similar to the present case, and thus, the case laws are irrelevant.

Analysis

- The Supreme Court in the case of *Union of India & Anr. vs. Mobit Mineral Private Limited*⁶, had the occasion to consider the challenge to the validity of the Goods and Services Tax (Compensation to States) Act, 2017 enacted by the Parliament as well as the Goods and Services Tax Compensation Rules, 2017.
- It appeared that the power conferred by Article 246A of the Constitution of India is to be exercised by both, Union and the States concurrently to ensure uniform “Goods and Services Tax” law all over the country. It has been held by the Supreme Court in the case of *U.P. Bhoodan Yagna Samiti vs. Braj Kishore and Ors.*⁷ that one has to look to the intention of the Legislature, one has to look to the circumstances under which the law was enacted, the Preamble of the law, the mischief which was intended to be remedied by the enactment of the statute.
- The court reached the conclusion that Article 246A of the Constitution of India does not save Section 84A of the VAT Act from being declared invalid or ultra vires, referring to the recent Kerala High Court case *M/s. Opac Engineering Pvt. Ltd. vs. The State Tax Officer (Works Contract) & Ors.*⁸
- It is well known that motive or intention for making an Act or issuing an ordinance is not justifiable before a court of law. we may refer to a decision of the Supreme Court in the case of *Assistant Commissioner, Commercial Taxes and Ors. vs. LIS (Registered)*⁹, wherein the Supreme Court has observed that in interpreting a taxing statute, the equitable considerations are entirely out of place.
- It has been observed in so many words that reasons of morality and fairness can have no application to bring a citizen who is not within the four corners of the taxing statute within its fold so as to make him liable to payment of tax. The Supreme Court, in the case of

⁶ *Union of India & Anr. vs. Mobit Mineral Private Limited*, (2019) 2 SCC 599.

⁷ *U.P. Bhoodan Yagna Samiti vs. Braj Kishore and Ors.*, AIR 1988 SC 2239.

⁸ *M/s. Opac Engineering Pvt. Ltd. vs. The State Tax Officer (Works Contract) & Ors.*, on 06.12.2019.

⁹ *Assistant Commissioner, Commercial Taxes and Ors. vs. LIS (Registered)*, 2018 15 SCC 283.

*Amrendra Kumar Mohapatra vs. State of Orissa*¹⁰ has very succinctly explained the concept of validating Act.

- Thus, it is permissible for the Legislature, subject to its legislative competence otherwise, to enact a law which will withdraw or fundamentally alter the very basis on which a judicial pronouncement has proceeded and create a situation which if it had existed earlier, the Court would not have made the pronouncement. Thus, the court found it difficult to take the view that the VAT Amendment Act, 2018 is a validating Act.
- The above observations show that a law enacted by a legislature without having legislative competence would be void ab initio and the same cannot be revived or revitalised even if the legislative competence is conferred on that legislature subsequently.
- It is also stated that wherever the parliament has the power to frame a statute it also includes the power to make the law retrospective. In other words, the parliament also has wide powers to frame the laws including taxing statutes with retrospective effect. However, the Courts have recognized certain inherent limitations in framing retrospective tax legislations.
- In the case of *Tata Motors Ltd vs. State of Maharashtra and Ors.*¹¹, it was observed that it is undoubtedly true that the legislature has the powers to make laws retrospectively including the tax laws. Levies can be imposed or withdrawn but if a particular levy is sought to be imposed only for a particular period and not prior or subsequently, it is open to debate whether the statute passes the test of reasonableness at all.
- The court is therefore of the view that if unlimited time period is available to the Revenue for assessment/reassessment/revision in any case based on a decision rendered in the case of any other dealer the same would lead to an irreparable situation and, in such circumstances, it renders Section 84A manifestly arbitrary and unreasonable.

Order

The order was given by Justices J.B. Pardiwala And A.C. Rao.

1. **Section 84A** of the VAT Act is to be struck down even on the ground of being manifestly arbitrary, excessive, oppressive and unreasonable. The court's final conclusions were that
 - (i) Section 84A of the Gujarat VAT Act is ultra vires and beyond the legislative competence of the State Legislature.

¹⁰ *Amrendra Kumar Mohapatra vs. State of Orissa*, (2014) 4 SCC 583.

¹¹ *Tata Motors Ltd vs. State of Maharashtra and Ors.*, 2004 5 SCC 783.

- (ii) Section 84A of the Gujarat VAT Act is manifestly arbitrary, unreasonable and therefore, violative of the Articles 14 and 19(1)(g) of the Constitution of India.
 - (iii) Section 84A of the Gujarat VAT Act is not a validating Act.
2. **Section 75** of the Gujarat VAT Act is also quashed.