D. Cawasji and Co., Mysore

Vs

State of Mysore and Another

Civil Appeals Nos. 1353 and 1355 of 1973

(Amarendra Nath Sen, P. N. Bhagwati, Ranganath Misra JJ)

26.09.1984

JUDGMENT

AMARENDRA NATH SEN, J. –

1. The question of constitutional validity of the Mysore Sales Tax (Amendment) Act, 1969 (Mysore Act of 1969), (hereinafter referred to as the Act) falls for determination in these two appeals preferred by the appellants with certificate granted by the High Court under Article 133(1) of the Constitution.

2. The question arises under the following circumstances :

3. The appellants are excise contractors who had secured excise privilege of retail sale of toddy, arrack or special liquor. The State Government has the monopoly of the first sale of arrack which is country liquor other than toddy. The manufacture of arrack by distillation is done in the State under State control and the entire quantity manufactured by distillation in the State is sold to the State Government which in its turn supplies arrack to bonded depots in Taluks. Under the Mysore Excise Act arrack is liable to excise duty at the rates prescribed by the Government. The State does not collect excise duty from the distillers. From the distillery arrack is transferred to bonded depots and excise duty together with cesses thereon is collected from the contractors who are given the privilege or right to effect retail sales of arrack. The exclusive privilege of retail vending of arrack for each excise year which commences on the first day of July and ends on June 30 of the following year, is sold by the State by auction. The successful bidders whose bids are accepted are granted licensees for the exclusive privilege of retail vending. The retail selling price of arrack by the licensees is fixed by the State Government at or before the time of notifying sales of the exclusive privilege in respect of each year. The excise duty of arrack together with cesses thereon is collected from the licensees before the date of delivery. Under the terms and conditions governing the licenses, granted to the contractors whose bid is accepted and to whom the licenses for exclusive privilege of vending arrack is granted, the licensees were required to deposit in the State Treasury under separate heads of account the sales tax payable to the State Government and the excise duty with cesses. There was no dispute as to the amount of sales tax payable by the licensees up to April 1, 1966. However, with effect from April 1, 1966, the State Government started collecting sales tax computed on the sale price of arrack together with excise duty and cesses payable thereon. So computed sales tax came to about 24 paise a litre which was collected along with the price of arrack sold to the licensees.

4. Challenging the validity of the collection of the sales tax on the aforesaid basis the appellant filed a writ petition in the High Court of Mysore at Bangalore being Writ Petition 644 of 1966. As this

Writ Petition 644 of 1966 related to the excise year 1966-67 only, the appellant filed two other writ petitions being Writ Petitions 1012 and 1013 both of 1966 for subsequent excise years. These three writ petitions of the appellant along with similar writ petitions filed by other contractors were disposed of by a common judgment by a Division Bench of the Mysore High Court on July 12, 1968. The Mysore High Court for reasons recorded in the judgment held :

> We allow the rest of the petitioners only to the extent of holding that the State Government is not entitled to collect from the petitioners any amount by way of sales tax on the following, viz., excise duty, health cess and education cess imposed on arrack or special liquor. In the said petitions, we hereby issue writs directing the State Government to forbear from collecting from the petitioners any amount representing sales tax on the following viz. excise duty, health cess and education cess imposed on arrack or special liquor, and to refund to the petitioners any amount that might have been collected from them, by way of sales tax on items of excise duty, health cess and education cess on arrack or special liquor.

The Division Bench in the course of the Judgment in D. Cawasji & Co., Mysore v. State of Mysore ((1969) 1 Mys LJ 461 : (1968) 16 Law Rep 641), observed at p. 483 :

> It is difficult to see how excise duty paid, not by the seller but by the purchaser, to the State Government, can become a part of the price at which the goods are sold by that seller to that purchaser. If that is the true position, we think the State Government cannot, under Section 19 of the Sales Tax Act, collect sales tax on excise duty which is not a part of its selling price.

5. Against the judgment of the Mysore High Court the State preferred an appeal to the Supreme Court; but the appeal was subsequently withdrawn. It appears that during the pendency of the appeal the privileges of vending liquor in the excise year 1968-69 were sold without any variation in the price of arrack fixed by the Government during the previous year at 55 paise a litre. During the year 1968-69 the State Government collected sales tax computing the same at the rate of 6 1/2% of the actual sale price without including therein excise duty and cess.

6. It may be noticed that although the appellants had obtained an order of stay of payment of the disputed sales tax amounts from April 27, 1966 from the High Court, there were various other contractors who had paid the same computed on the sale price of arrack together with excise duty and the cess. When the decision of the High Court pronouncing the illegality of the levy and collection of sales tax on the price of arrack, including in the price the excise duty and cess, became final and conclusive in consequence of the withdrawal of the appeal filed by the State in this Court against the said judgment and decision of the High Court, the State Government became liable to refund the excess amount of sales tax collected to the licensees and contractors. It appears that the liability of the State to refund the amount collected as sales tax in excess amounted to lacs of rupees. Faced with this situation and with the object of avoiding the liability of refund by the State Government of the excess amount so collected, the Governor of the State passed Ordinance 3 of the 1969 on July 17, 1969. The Ordinance was replaced by the impugned Act which came into force on July 19, 1969.

7. It will be convenient at this stage to set out the provisions of the Act, which is a short one consisting of four sections, in its entirety. The Act provides as follows :

Section 1(1). This Act may be called the Mysore Sales Tax (Amendment) Act, 1969.

(2). It shall be deemed to have come into force on the nineteenth day of July, 1969.

Section 2. In the Second Schedule to the Mysore Sales Tax Act, 1957 (Mysore Act 25 of 1957) in Column 3 of Sl. No. 39, for the words "Six and a half per cent.", the words "Forty-five per cent.", shall be and shall be deemed to have been substituted with effect from the first day of April, 1966.

Section 3. Notwithstanding anything contained in any judgment, decree or order of any court or other authority, the sales tax on country liquor other than toddy levied or collected or purported to have been levied or collected shall, for all purposes, be deemed to be and to have always been validly levied or collected in accordance with law, as if this Act had been in force at all material times when such tax was levied or collected and accordingly -

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

(b) no suit or proceeding shall be entertained, maintained or continued in any court for the refund of any tax as paid; and

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

Section 4. The Mysore Sales Tax (Amendment) Ordinance, 1969 (Mysore Ordinance 3 of 1969) is hereby repealed.

8. The Statement of Objects and Reasons for the passing of the amendment may appropriately be set out at this stage. The Statement of Objects and Reasons runs as follows :

Clause (j) of sub-rule (4) of Rule 6 of the Mysore Sales Tax Rules, 1957, provided for the exclusion of excise duty paid by a dealer from the computation of his taxable turnover. By Government Notification GSR 882, dated March 16, 1966, this clause was deleted from the rules with the object of recovering sales tax even on the excise duty portion of the turnover of dealers. In respect of arrack which falls under entry relating to Sl. No. 39 of the Schedule, sales are made by Government to licensed contractors and sales tax was recovered from them at 6 1/2% on the total amount payable by them including the excise duty from April 1, 1966. The Mysore High Court in W.P. No. 644 of 1966 - D Cawasji & Co. v. State of Mysore ((1969) 1 Mys LJ 461 : (1968) 16 Law Rep 641), held that on the sales of arrack, the sales tax cannot be collected on the total amount but has to be collected only on the basic price excluding excise duty on the ground that the duty in such a case does not form part of the sale price but is a separate 'levy' made by the Government at the time of releasing the stocks from the Government Bonded warehouses. Consequently, a considerable amount already recovered may become refundable. In order to get over the effects of the High Court decision and retain the money already recovered by the Government, it is proposed to enhance the rate of tax on arrack to 45% with retrospective effect from April 1, 1966. The enhanced rate of tax on the basic price would be absorbed in the price already recovered, and no additional tax is expected to be realised from this

Bill. Since the Legislature was not in session and in view of the urgency, an Ordinance was promulgated. The Bill is to replace the Ordinance.

9. The validity of this Amending Act has been challenged on the ground that the Amending Act is unreasonable and arbitrary. The principal contention raised on behalf of the appellant is that the Amending Act does not seek to rectify or remove the defect or lacuna on the basis of which the collection of the excess sales tax had been set aside by the High Court. It is argued by the learned counsel for the appellant that the High Court had held that the sales tax could not be levied and collected on excise duty, health cess and education cess imposed on arrack or special liquor and had directed the refund of the amount collected on excise duty and cess which were included in the selling price of arrack. The learned counsel had submitted that by the amendment the said lacuna or defect of including the excise duty and cess in the price of arrack on which the sales tax has been charged has not been sought to be removed, as this defect or difficulty could not possibly have been removed, because sales tax could not be levied on excise duty by virtue of the judgment of the High Court. The learned counsel points out that the appeal which was filed by the State Government against the judgment of the High Court had been withdrawn by the State and as such the judgment of the High Court has become final and conclusive and on the basis of the judgment, a large amount has become refundable by the State to the appellants. It is the submission of the learned counsel that the amendment has been brought about only for the purpose of circumventing the judgment of the High Court with the object of avoiding the liability to refund the amount wrongfully and illegally collected as sales tax from the appellant by raising the amount of tax from 6 1/2% to 45%. The learned counsel contends that the increase in the rate of sales tax from 6 1/2% to 45% with retrospective effect is clearly arbitrary and unreasonable. It is the contention of the learned counsel that if any particular provision of the statute is for some lacuna or defect in the statute declared unconstitutional or invalid, it is open to the legislature to pass a Validating Act with retrospective effect so that State may not be saddled with liability of refund or other consequences which may arise as a result of the particular provision being declared invalid. The learned counsel argues that such a Validating Act with retrospective operation can be passed if the lacuna or the defect, because of which the provision is declared to be unconstitutional and invalid, be properly rectified by the Amending Act which seeks to validate the statutory provision which has been struck down as unconstitutional and invalid. It is his argument that without seeking to remove or rectify the defect or lacuna, no Validation can be made to defeat the judgment of the Court striking down any particular statutory provision. The learned counsel contends that enhancing the rate of tax from 6 1/2% to 45% with retrospective effect must necessarily be held to be arbitrary. It is his contention that mere enhancement of the rate without seeking to validate the provision by removing or rectify in the defect or lacuna clearly results in retrospective imposition of tax and any such imposition of tax with retrospective effect must be held to be unreasonable and arbitrary. In support of the submissions made, particular reliance has been placed on the two decisions of this Court in the case of Janapada Sabha, Chhindwara v. Central Provinces Syndicate Ltd ((1970) 3 SCR 745 : (1970) 1 SCC 509 : AIR 1971 SC 57). and Municipal Corporation of the City of Ahmedabad v. New Shorock Spg. & Wvg. Co. Ltd. ((1971) 1 SCR 288 : (1970) 2 SCC 280 : AIR 1970 SC 1292)

10. The material facts in the case of Janapada Sabha Chhindwara ((1970) 3 SCR 745 : (1970) 1 SCC 509 : AIR 1971 SC 57) may briefly be indicated.

11. In 1935, the Independent Mining Local Board Chhindwara, constituted under C.P. Local Self Government Act, 1920, resolved to levy a cess on coal extracted within the area at 3 pies per ton. The sanction of the Local Government, as required by Section 51(2) of the Act, was obtained for the levy. In 1943, the levy was enhanced to 4 pies, in 1946 to 7 pies and in 1947 to 9 pies. The validity

of the enhanced levy was challenged and this Court, in appeal, held that the increased levy would also require the previous sanction of the Local Government and such sanction not having been obtained, the levy at a rate higher than 3 pies was illegal. The State Legislature thereafter enacted the Madhya Pradesh Koyala Upker (Manyatakaran) Adhiniyam, 1964. Section 3(1) provides that "notwithstanding a judgment of any court, cesses imposed, assessed or collected by the Board in pursuance of the notifications and notices specified in the Schedule shall, for all purposes, be deemed to be, and to have always been validly imposed, assessed or collected as if the enactment under which they were issued stood amended at material times so as to empower the Board to issue the said notifications". In the Schedule were specified the three notifications enhancing the rate of cess. On the question whether the enhanced levy was validated by the 1964 Act, a five-Judge Bench of this Court held that it did not give legal effect to the imposition of cess at the enhanced rate. This Court observed at p. 751 : (SCC pp. 514-15, para 10)

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 validly under Section 51(2) without the sanction of the Local Government. On the words used in the Act, it is plain that the Legislature attempted to overrule or set aside the decision of this Court. That, in our judgment, is not open to the Legislature to do under our constitutional scheme. It is open to the legislature within certain limits to amend the provisions of an Act retrospectively and to declare what the law shall be deemed to have been, but it is not open to the Legislature to say that a judgment of a Court properly constituted and rendered in exercise of its powers in a matter brought before it shall be deemed to be ineffective and the interpretation of the law shall be otherwise than as declared by the Court.

12. In the Municipal Corporation of the City of Ahmedabad v. New Shorock Spg. & Wvg. Co. Ltd ((1971) 1 SCR 288 : (1970) 2 SCC 280 : AIR 1970 SC 1292). the appellant corporation assessed the immovable properties of the respondents to property-tax for the years 1964-65 and 1965-66 on the basis of the'flat rate' method under the Bombay Provincial Municipal Act, 1949. The assessments were challenged in the High Court but the petitions were dismissed. While appeals were pending in this Court, the Municipal Corporation, initiated proceedings for the recovery of the taxes and attached the properties of the assessees. The assesses challenged the attachment proceedings but their petitions were again dismissed. In appeal against these orders in this Court the assessees prayed for interim stay, but this Court did not grant stay because the Municipal Corporation had undertaken to return the amounts if the respondents succeeded. This Court thereafter allowed the appeals by the assesses. Meanwhile an Amending Act called the Bombay Provincial Municipal Corporation (Gujarat Amendment) Act, 1968 had been passed introducing Section 152-A into the 1949 Act, but that provision was not brought to the notice of this Court. However, when the assessees demanded refund of the amounts illegally collected from them the Municipal Corporation did not comply and hence the assessees moved the High Court again. These petitions were allowed and the Municipal Corporation appealed to this Court. While the appeals were pending the Bombay Provincial Municipal Corporation (Gujarat Amendment and Validity Provision) Ordinance, 1969, was passed and sub-section (3) which introduced in Section 152-A.

13. Sub-section (3) which was introduced by the Ordinance was in the following terms :

> Notwithstanding anything contained in any judgment, decree or order of any court, it shall be lawful, and be deemed always to have been lawful, for the Municipal Corporation of the City of Ahmedabad to withhold refund of the amount already collated or recovered in respect of any of the property taxes to which sub-section (1)

applies till assessment or reassessment of such property taxes is made and the amount of tax to be levied and collected is determined under sub-section (1) :

Provided that the Corporation shall pay simple interest at the rate of six per cent. per annum on the amount of excess liable to be refunded under sub-section(2), from the date of decree or order of the court referred to in sub-section (1) to the date on which excess is refunded.

This Court held that under Section 152-A of the Act before the Corporation could detain any amount collected as property tax there must be an assessment according to law; but in the present case there were no assessment orders in accordance with the provisions of 1949 Act and the rules as amended by the Amending Act, 1968 and, therefore, the appellant Corporation was not entitled to retain the amount collected as the section did not authorise the Corporation to retain the amounts illegally collected. This Court has further held that sub-section (3) of Section 152-A which commands the Corporation to refuse to refund the amount illegally collected despite the orders of this Court and the High Court, makes a direct inroad into the judicial powers of the State; and the Legislatures which under the Constitution have, within prescribed limits powers to make laws prospectively and retrospectively are competent in exercise of these powers to remove the basis of a decision passed by a competent court thereby rendering the decision ineffective, but no Legislature in this country has power to ask the instrumentalities of the State to disobey or disregard the decision given by court and Section 152-A(3) was repugnant to the Constitution. This Court at p. 295 (SCC pp. 285-86) has referred to the following observations made in Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality ((1970) 1 SCR 388 : (1969) 2 SCC 283 : AIR 1970 SC 192 : (1971) 79 ITR 136) : (SCC pp., 286-87, para 4).

Before we examine Section 3 to find out whether it is effective in its purpose or not we may say a few words about validating statutes in general. When a Legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, 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. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law.

This Court at pp. 296 and 297 (SCC pp. 286-87) relied on the earlier decision of this Court in the case of Janapada Sabha, Chhindwara v. Central Provinces Syndicate Ltd. ((1970) 3 SCR 745 : (1970) 1 SCC 509 : AIR 1971 SC 57) This Court finally observed at page 297 : (SCC p. 287, para 8)

We are clearly of the opinion that sub-section (3) of Section 152-A introduced by the Ordinance is

repugnant to our Constitution. That apart, the said provision authorises the Corporation to retain the amounts illegally collected and treat them as loans - an authority to collect forced loans. Such conferment of power is impermissible under our Constitution. (See State of M.P. v. Ranojirao Shinde, (1968) 3 SCR 489 : AIR 1968 SC 1053 : (1968) 2 SCJ 760)

14. The learned counsel appearing on behalf of the State has submitted that this very contention that the State has sought to enhance the rate of tax without seeking to remove or rectify the lacuna which was there in the earlier Act and for which the earlier provision has been struck down by the High Court, was raised in the writ petition filed in the High Court by the appellant. It is the submission of the learned counsel that this contention has been rejected by the High Court for reasons indicated in the judgment. The learned counsel has referred to the following observations made by the High Court :

> This Court has not held that the State is not at all entitled to collect any amount by way of tax on the sale of arrack. The sale price of arrack during the years 1966 to 1969 was fixed at 55 paise a litre. The amount which the State was authorised to collect was six and a half per cent. of 55 paise on the sale of a litre of arrack which comes to about three and a half paise; instead, the State collected 24 paise and the excess collection was 20.5 paise a litre. The decision of this Court is that the State without authority of law was collecting excess amounts by way of tax on the sale of arrack. It is relevant to state that under the Act where the State is deemed to be a dealer entitled to collect tax under Section 19, there is no provision for making an assessment of tax by the assessing authorities as in the case of ordinary dealers. Without making an assessment, the State Government is entitled to collect amounts by way of tax in the same manner as any other registered dealer authorised to do so under Section 18. By enhancing the rate of tax from six and half to 45 per cent. with retrospective effect by enacting Section 2 in the impugned Act, it has to be deemed that the rate of tax under the Act has always been 45 per cent. of the taxable turnover ever since April 1, 1966. If the rate of tax was 45 per cent. on the sale price of arrack which was 55 paise a litre, then the amount the State was authorised to collect comes to about 25 paise. Thus it will be seen that by the enactment of Section 2 of the impugned Act the very basis of the complaint made by the petitioners before this Court in the earlier writ petitions as also the basis of the decision of this Court in Cawasji case ((1969) 1 Mys LJ 461 : (1968) 16 Law Rep 641) that the State is collecting amounts by way of tax in excess of what was authorised under the Act has been removed. Thus the decision of this Court has been rendered ineffective.

15. The learned counsel seeks to adopt the aforesaid observations of the High Court as his submissions and contends that in view of the aforesaid reasoning which are cogent and sound it cannot be said that the impugned amendment is unconstitutional. He submits that there are no valid grounds for interfering with the judgment of the High Court.

16. In the earlier case between the parties to which reference has already been made, the High Court issued writs directing the State Government to forebear from collecting from the appellant any amount representing the sales tax on the following, namely, excise duty, health cess and education cess imposed on arrack or special liquor and to refund to the appellant what might have been collect from them by way of sales tax on items of excise, health cess and education cess on arrack or special liquor. The High Court had passed the aforesaid order issuing appropriate writ in view of the High Court's finding that sales tax is not payable on excise duty, health cess and education cess.

17. In view of the aforesaid judgment and order passed by the High Court amounts collected by the State by way of sales tax on items of excise, health cess and education cess on arrack or special liquor from the appellant became refundable to the appellant. The impugned amendment has been passed, as the Statement of Objects which we have earlier set our clearly indicates to override the judgment of the High Court and to enable the State to hold on to the amount collected as sales tax on excise duty, health cess and education cess, if any, on arrack or special liquor. It has to be noted that the said judgment of the High Court in the earlier case had become final and conclusive inasmuch as the special leave petition filed against the judgment by the State was withdrawn. The State instead of seeking to test the correctness and effect of the judgment and order of the High Court thought it fit to have the judgment and order nullified by introducing the impugned amendment. The amendment does not proceed to cure the defect or the lacuna by bringing in an amendment providing for exigibility of sales tax on excise duty, health cess and education cess. The impugned Amending Act may not, therefore, be considered to be a Validating Act. A Validating Act seeks to validate the earlier acts declared illegal and unconstitutional by courts by removing the defect or lacuna which led to invalidation of the law. With the removal of the defect or lacuna resulting in the validation of any Act held invalid by a competent court, the Act may become valid, if the Validating Act is lawfully enacted. But the question may still arise as to what will be the fate of acts done before the Validating Act curing the defect has been passed. To meet such a situation and to provide that no liability may be imposed on the State in respect of such acts done before the passing of the Validating Act making such act valid, a Validating Act is usually passed with retrospective effect. The retrospective operation relieves the State of the consequences of acts done prior to the passing of the Validating Act. The retrospective operation of a Validating Act properly passed curing the defects and lacuna which might have led to the invalidity of any act done may be upheld, if considered reasonable and legitimate.

18. In the instant case, the State instead of remedying the defect or removing the lacuna has by the impugned amendment sought to raise the rate of tax from 6 1/2 per cent. to 45 per cent. with retrospective effect from April 1, 1966 to avoid the liability of refunding the excess amount collected and has further purported to nullify the judgment and order passed by the High Court directing the refund of the excess amount illegally collected by providing that the levy at the higher rate of 45 per cent. will have retrospective effect from April 1, 1966. The judgment of the High Court declaring the levy of sales tax on excise duty, education cess and health cess to be bad become conclusive and is binding on the parties. It may or may not have been competent for the State Legislature to validly remove the lacuna and remedy the defect in the earlier levy by seeking to impose sales tax through any amendment on excise duty, education cess and health cess; but, in any event, the State Government has not purported to do so through the Amending Act. As a result of the judgment of the High Court declaring such levy illegal, the State became obliged to refund the excess amount wrongfully and illegally collected by virtue of the specific direction to that effect in the earlier judgment. It appears that the only object of enacting the amended provision is to nullify the effect of the judgment which became conclusive and binding on the parties to enable the State Government to retain the amount wrongfully and illegally collected as sales tax and this object has been sought to be achieved by the impugned amendment which does not even purport or seek to remedy or remove the defect and lacuna but merely raises the rate of duty from 6 1/2 per cent. to 45 per cent. and further proceeds to nullify the judgment and order of the High Court. In our opinion, the enhancement of the rate of duty from 6 1/2 per cent. to 45 per cent. with retrospective effect is in the facts and circumstances of the case clearly arbitrary and unreasonable. The defect or lacuna is not even sought to be remedied and the only justification for the steep rise in the rate of duty by the amended provision is to nullify the effect of the binding judgment. The vice of illegal collection in

the absence of the removal of the illegality which led to the invalidation of the earlier assessments on the basis of illegal levy, continues to taint the earlier levy. In our opinion, this is not a proper ground for imposing the levy at the higher rate with retrospective effect. It may be open to the Legislature to impose the levy at the higher rate with prospective operation but levy of taxation at higher rate which really amounts to imposition of tax with retrospective operation has to be justified on proper and cogent grounds. This aspect of the matter does not appear to have been properly considered by the High Court and the High Court in our view was not right in holding that "by the enactment of Section 2 of the impugned Act the very basis of the complaint made by the petitioner before this Court in the earlier writ petition as also the basis of the decision of this Court in Cawasji case ((1969) 1 Mys LJ 461 : (1968) 16 Law Rep 641) that the State is collecting amounts by way of tax in excess of what was authorised under the Act has been removed". We, accordingly, set aside the judgment and order of the High Court to the extent it upholds the validity of the impugned amendment with retrospective effect from April 1, 1966 and to the extent it seeks to nullify the earlier judgment of the High Court. We declare that Section 2 of the impugned amendment to the extent that it imposes the higher levy of 45 per cent. with retrospective effect from April 1, 1966 and Section 3 of the impugned Act seeking to nullify the judgment and order of the High Court are invalid and unconstitutional.

19. We accordingly allow the appeals to this extent. The appellants shall be entitled to costs of these appeals with one set of hearing fee.

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