SUPREME COURT OF INDIA

Messrs Gammon India Limited

Vs

Spl. Chief Secretary and Others

Appeal (Civil) 1148 of 2006 , Arising Out of Slp(C) Nos. 20487-20488/05 , C.A. No.1149/2006 , Arising Out of Slp(C) Nos.22994-22995 of 2005

((Mrs.) Ruma Pal, Dr. Ar. Lakshmanan, JJ)

16.02.2006

JUDGMENT

DALVEER BHANDARI, J.

Leave granted.

The principal question which falls for adjudication in these appeals is regarding the jurisdiction of the Assistant Commissioner of Commercial Taxes, Warangal Division, Andhra Pradesh in initiating and completing penalty proceedings under the Andhra Pradesh General Sales Tax Act, 1957 (for short A.P.G.S. Tax Act) after its repeal.

We are not adjudicating the merits of the controversy involved in these appeals but are confining our judgment to the limited question of the jurisdiction of the Assistant Commissioner in initiating proceedings under the said A.P.G.S. Tax Act after its repeal. The brief facts which are imperative to dispose of these appeals are as under:

The appellant, M/s Gammon India Ltd. is a construction company. The appellant after obtaining construction contract in the State of Andhra Pradesh applied to a registered dealer for the purposes of Section 5B of the A.P.G.S. Tax Act for concessional tax available to the registered dealers, purchasing from other registered dealers in the State of Andhra Pradesh. According to the respondents, the appellant had falsely issued Form G and claimed reduced rates of tax from the sellers whereas according to the appellant, G-2 Form was issued by the Sales Tax authorities and the form specifically enumerated commodities/items which were entitled to a concessional tax. One of the items specifically enumerated therein was 'cement'. Relying on the said G-2 Form, as was also the case with all other construction companies in the State, the appellant while purchasing 'cement' for manufacture of ready mix concrete, obtained the benefit of a lower tax.

On 26.2.2005, two show cause notices, being PR No.6/2004-05 and PR No. 7/2004-2005, were issued by the Assistant Commissioner, Commercial Taxes. In order to properly comprehend the controversy involved in this case one such notice PR No. 6/2004-2005 is set out as under:

"GOVERNMNT OF ANDHRA PRADESH COMMERCIAL TAXES DEPARTMENT Office of the Deputy Commissioner (CT) Warangal Division, Warangal P.R. No.6/2004-05, Dated: 26.02.2005 NOTICE Please take notice that M/s Gammon India Limited. Paloncha a registered dealer vide RC. No. WGL/09/1/2440/95-96 under APGST Act and assesses on the rolls of Commercial Tax Officer, Kothagudem.

They obtained G2 license vide G2 WGL/09/1/23/2001-02 from Commercial Tax Officer, Kothagudem to purchase raw materials, consumable, sub-assembly parts and packing materials at concessional rates for use in the manufacture or processing the goods in side the state under Section 5B of the APGST Act.

In terms of G. O. Ms. No. 496, Rev.(CT-II) Dept., 17.07.2001, the commodity "CEMENT" was made ineligible to purchase within the state of AP at concessional rate of tax against Form-G under Section 5B of the APGST Act. In spite of the fact that M/s. Gammon India Limited, Paloncha had effected purchases of CEMENT from local registered dealers at concessional rate of tax against Form-G as ascertained from the Deputy Commissioner (CT), Nalgonda for the year 2002-03 as detailed below.

Name of the Seller Sugar Cement Ltd., Matampally Amount Rs.29, 26, 200.00 Thus, it is proved beyond doubt that M/s. Gammon India Limited, Paloncha had falsely issued Form-G and claimed reduced rate of tax from the sellers.

Therefore, it is proposed to levy a penalty of Rs.23, 40, 960 (Rupees Twenty Three Lakhs Forty Thousand Nine Hundred and Sixty only) being five times the tax due on the above respective transactions for the year 2002-03 under Section 7A(2)(ii) of APGST Act. Objections if any against the proposed levy of penalty may be filed in person or through authorized representative touching upon all the material evidence before the undersigned with in (7) days of receipt of this notice. Failing which proposed levy of penalty will be confirmed without further notice. ASSISTANT COMMISSIONER (CT) (INTELLIGENCE AND LTU) WARANGAL DIVISION, WARANGAL. To

M/s. Gammon India Limited, Paloncha."

The appellant, after a few weeks, received two more notices PR No. 1/2005 and PR No. 2/2005 on 12.4.2005 from the Assistant Commissioner, Commercial Taxes. In these notices also it is incorporated that the appellant had falsely issued Form-G and claimed reduced rate of tax from the sellers.

The appellant also received a letter dated 19th September, 2005 from the I/C Executive Engineer, I & CADD, Irrigation Division, Bhadrachalam asking the appellant to get clearance of sales tax due for Rs.4, 06, 83, 207/- from the Dy. Commissioner (CT) Warangal Division, Warangal and produce the clearance certificate.

The Andhra Pradesh Value Added Tax Act (for short A.P.V.A. Tax Act) came in force from 1st April, 2005 in the State of Andhra Pradesh and consequently the A.P.G.S. Tax Act was repealed. The notices were issued to the appellant by the Assistant Commissioner of Commercial Taxes, respondent no.3, calling upon the appellant to explain why maximum penalty of five times permitted under the Act be not imposed for falsely issuing the G-2 form and claiming reduced rate of tax from the sellers.

The proceedings were initiated under Section 7A(2) (ii) of the A.P.G.S. Tax Act. The said Section reads as under : 7A(2)(ii). Burden of proof and liability of the dealer to pay (tax and penalty) :

"(1) .....

(2) Where a dealer issues or produces a false bill, voucher, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him or any other dealer, is not liable to be taxed or is liable to be taxed at a reduced rate, the assessing authority shall on detecting such issue or production, direct the dealer issuing or producing such document to pay as penalty:

(i) In the case of first such detection, three times the tax due in respect of such transaction; and

(ii) In the case of a second or subsequent detection, five times the tax due in respect of such transaction: Provided that before issuing any direction for the payment of the penalty under this section, the assessing authority shall give to the dealer an opportunity of making representation against the levy of such penalty."

In reply to the abovementioned notices, a detailed objection petition was submitted by the appellant, according to which none of the essential conditions prescribed under Section 5B(2) of APGS Tax

Act was violated by the Appellant.

The Assistant Commissioner of Commercial Taxes after considering the grievance of the appellant confirmed the additional tax and penalty. The appellant has filed the appeals before the Deputy Commissioner (Appeals) against issuance of the notices which are pending adjudication, but the appellant's prayer for staying the penalty proceedings was declined.

The appellant, aggrieved by the said order, also filed a writ petition which was heard by a Division Bench of the High Court. The Division Bench examined the question whether the Assistant Commissioner of Commercial Taxes was entitled to initiate and complete the penalty proceedings under the A.P.G.S. Tax Act subsequent to its repeal and introduction of the A.P.V.A. Tax Act with effect from 1.4.2005. The High Court while dismissing the writ petition held that the Assistant Commissioner was not prohibited from initiating and completing the said proceedings.

The Appellant, aggrieved by the said judgment, has filed Special Leave Petitions under Article 136 before this Court. For examining the jurisdiction of the Assistant Commissioner of Commercial Taxes in initiating and completing the penalty proceedings under the A.P.G.S. Tax Act, it is necessary to note the relevant provisions of the Act. Section 80 of the A.P.V.A. Tax Act reads as under :

"80(1) The Andhra Pradesh General Sales Tax Act, 1957 is hereby repealed provided that such repeal shall not effect the previous operation of the said Act or section or any right, title, obligation or liability already acquired, accrued or incurred thereunder and subject thereto, anything done or any action taken (including any appointment, notification, notice, order, rule from, regulation, certificate, license or permit) in the exercise of any power conferred by said Act or Section shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act was in force on the date on which such thing was done or action was taken and all arrears of tax and other amounts due at the commencement of this Act may be recovered as if they had accrued under this Act.

(2) Notwithstanding anything contained in sub-section (1), any application, appeal, revision or other proceedings made or preferred to any officer or authority under the said Act or section and pending at the commencement of the Act, shall, after such commencement, be transferred to and disposed of by the officer or authority who would have had jurisdiction to entertain such application, appeal, revision or other proceedings was made or preferred.

(3) Upon such repeal of the Andhra Pradesh General Sales Tax Act, 1957 the provisions of Sections 8, 8-A, 9 and 18 of the Andhra Pradesh General Clauses act, 1891 shall apply."

Section 80(3) of the A.P.V.A. Tax Act provides for the application of Section 8 of the Andhra

Pradesh General Clauses Act, 1891 on the repeal of the APGST Act, 1957. Section 8 of the A.P. General Clauses Act, 1891 deals with the effect of repealing the Act, reads as under :

"Effect of Repealing an Act Where any Act to which this Chapter applies, repeals any other enactment, then the repeal shall not :

(a) Affect anything done or any offence committed, or any fine or penalty incurred or any proceedings begun before the commencement of the repealing act; or

(b) Revive anything not in force or existing at the time at which the repeal takes effect; or

(c) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or

(d) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(e) affect any fine, penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(f) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, fine, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, any such fine, penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed."

The Court observed that even in the absence of a provision similar to Section 80(3) of the A.P.V.A. Tax Act, Section 8 of the A.P.G.S. Tax Act, which is analogous to Section 6 of the General Clauses act, is not confined to mere repeal of a statute but extends to a repeal followed by fresh legislation, unless a different intention appears from the new enactment and that is for the Court to enquire whether the fresh legislation had preserved the rights and liabilities created under the old statute or whether their intentment was to obliterate them. This difficulty does not arise in the present case in as much as Section 80(3) of the A.P.V.A. Tax Act specifically makes Section 8 of the A.P. General Clauses Act, 1891 applicable on the repeal of the A.P.G.S.T. Act.

Mr. Jaideep Gupta, learned senior Advocate appearing for the appellant, has drawn our attention to M/s M.S. Shivananda v. Karnataka State Road Transport Corporation and Ors. A careful reading of the said judgment also leads to the same conclusion that after repeal of the Act whether it applies or not depends on the intention of the legislature which is reflected by the language used in the subsequent Act passed by the legislature. The Court also observed in this case that if, however, the

right created by the statute is of an enduring character and has vested in the person, then that right cannot be taken away because the statute by which it was created has been repealed.

Mr. Gupta further submitted that liability arises only after it is quantified in accordance with law. In the instant case, unless the liability has not been properly quantified in accordance with the A.P.G.S. Tax Act, the same cannot be imposed. We have examined the contention of Mr. Gupta in the light of M/s M.S. Shivananda's case (supra), but on proper analysis of the aforementioned judgment, we do not find any merit in the submission of the learned counsel for the appellant.

Mr. Anoop G. Chaudhary, the learned senior Advocate appearing for the respondent submitted that the liability is incurred from the point when the forged documents have been filed by the appellant and not from the time when the show cause notice was issued. Mr. Choudhary further submitted that in the matter of this nature, the tax collecting authority has no option but to impose penalty in accordance with the statute. Mr. Choudhary also submitted that the respondent not only had the jurisdiction to initiate and complete the proceedings in the repealed Act but the penalty imposed by him was also clearly in consonance with the provisions of the Act.

We have noticed relevant facts and rival contentions. Now, in order to ascertain the correct legal position it has become imperative to examine relevant provisions and decided cases, dealing with the ambit and scope of repeal and reenactment of a statute. Since the General Clauses Act, 1897 is largely based on the English Interpretation Act, 1889, it is appropriate to deal with English and other relevant cases throwing light on issues involved in the case. According to the law of England, as it stood before Interpretation Act of 1889, the effect of repealing a statute was to obliterate it as completely from the records of Parliament as if it had never been passed, except for the purpose of those actions, which were commenced, prescribed and concluded while it was an existing law. A repeal therefore, without any saving clause would destroy any proceeding whether or not yet begun or whether pending at the time of enactment of the Repealing Act and not already prosecuted to a final judgment so as to create a vested right.

The legal position which existed in England before Section 38(2) was inserted in the Interpretation Act of 1889 is reflected from the following two English cases. In Kay vs. Goodwin reported in (1830) 6 Bing. 576 = English Reports (Volume 130) at page 1403, Tindal, Chief Justice observed that the effect of repealing a statute is to obliterate it as completely from the records of the Parliament as if it had never been passed; and it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law. Lord Tanterden in Surtees vs. Ellison - (1829) 9 B & C. 750 = English Report (Volume 109) at page 278 observed that when an Act of Parliament is repealed, it must be considered (except as to transactions past and closed) as if it had never existed.

In England, to obviate such result a practice was developed to insert a saving clause in the repealing statute with a view to preserve rights and liabilities already accrued or incurred under the repealed enactment. When it was found cumbersome to insert a saving clause in every statute, then in order

to dispense with the necessity of having to insert a saving clause on each occasion, Section 38(2) was incorporated in the Interpretation Act of 1889. Section 6 of the Indian General Clauses Act is on the same lines as Section 38(2) of the Interpretation Act of 1889. Section 38(2) of the Interpretation Act, 1889 reads as under:

"38. Effect of repeal in future Acts. (I).....

(2) Where this Act or any Act passed after the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not (a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or

(c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed."

The legal position dramatically changed after incorporation of Section 38 (2) in the English Interpretation Act, 1889. The following case is illustrative of the change which took place after incorporation of the said provision. Lord Morris of Borth-y-Gest, while interpreting Section 10 of the Interpretation Ordinance of Hong Kong, which corresponds with Section 38 of the Interpretation Act of 1889 in an appeal from the Judgment of the Supreme Court of Hong Kong, in the matter of Director of Public Works vs. Ho Po Sang reported in 1961 All England Law Reports Vol. 2 pg. 731, observed as under:

"It may be, therefore, that, under some repealed enactment, a right has been given but that, in respect of it, some investigation or legal proceeding is necessary. The right is then unaffected and preserved. It will be preserved even if a process of quantification is necessary. But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether some right should or should not be given. On a repeal, the former is preserved by the Interpretation Act. The latter is not."

When we look to the American law, we find basic similarity in the scope and ambit of the provisions relating to repeal and reenactment of the statute. We deem it appropriate to refer some

relevant American judgments.

In Bear Lake & River Waterworks & Irrigation Co. v. Garland, 164 US 1, 41 L Ed 327, the U.S. Supreme Court has held that the reenactment of a statute which has been repealed by specific provision, or by implication from later legislation, invalidates the previous repeal and restores the statute to effective operation. In that very case, the Court held that a so-called "simultaneous repeal and reenactment" is a misnomer, for there is no repeal by implication effectuated of the original act, and even though the "repeal" is declared by specific provision in the later enactment the courts will construe the unchanged provisions as being continuously in force.

In Commonwealth vs. Gross - 21 A.2d 238, 240, 145 Pa. Super. 92 it was observed that insofar as Workmen's Compensation Act of 1939 is a reenactment of Workmen's Compensation Act of 1937, it is "continuance" of such act, but insofar as act of 1939 is in conflict with act of 1937, it is a "repeal" of the act of 1937.

In State vs. Bemis 45 Neb. 724, 64 N.W. 348, the Court held that the rule seems to be settled in this state that the simultaneous repeal and reenactment of a statute in terms or in substance is a mere affirmance of the original act, and not a "repeal" in the strict or constitutional sense of the term. The Court further held in this case that as a rule of construction the simultaneous repeal and reenactment of the same statute in terms or in substance is a mere affirmance of the original act, and not a repeal in the strict and constitutional sense of the term. Where the reenactment is in the words of the old statute, and was evidently intended to continue the uninterrupted operation of such statute, the new act or amendment is a mere continuation of the former act, and not in a proper sense a repeal.

In State v. Gray, 40 Or App 799, 596 P2d 611(1979) the Court held that when the legislature incorporates in one statute matter that is included in another, a subsequent repeal of the statute containing the incorporated matter does not necessarily affect the statute in which it has been incorporated, as the question is one of the legislative intent. In absence of evidence of a contrary intent, the legislature will be presumed to have intended the repeal not to affect the statute into which the matter is incorporated.

In George v. City of Asheville, 80 F2d 50 (CCA4 1936) the Court observed that the reenactment of a statute is a continuation of the law as it existed prior to the reenactment as far as the original provisions are repeated without change in the reenactment. Consequently, an intermediate statute which has been superimposed upon the original enactment as a modification of its provisions is likewise not repealed by the reenactment of the original statute, but is construed to be in force to modify the reenacted statute as it modified the original enactment.

In State v. Board of Appeals, 21, Wis 2d 516, 124 NW2d 809 (1963) the Court held that the continuous operation of a statute was not interrupted by repeal and reenactment at same time in substantially the same language. In the case of Pentheny, Ltd. vs. Government of Virgin Islands Federal Reporter 2d Series Vol. 360 pg. 786, the U.S. Court of Appeals has observed as under:

"Simultaneous repeal and re-enactment of substantially the same statute, or part thereof, is a substitution and not a repeal, and the statute, or part thereof, thus substituted is construed as a continuation of the original provisions to the extent re-enacted and jurisdiction of administrative agency under such statute is not disturbed as to those provisions which were continued under the new statute."

The legal position in Australia is also almost similar. The Interpretation Act of 1984 of Australia also has similar provisions. The relevant portion of Section 37(1) of the Act reads as under:

"37(1) of the Interpretation Act provides: "Where a written law repeals an enactment, the repeal does not, unless the contrary intention appears

(b) affect the previous operation of the enactment repealed or anything duly done or suffered under that enactment;

(c) affect any right, interest, title, power or privilege created, acquired, accrued, established or exercisable or any status or capacity existing prior to the repeal;

(f) affect any investigation, legal proceeding or remedy in respect of any such right, interest, title, power, privilege, status, capacity, duty, obligation, liability, burden of proof, penalty or forfeiture, and any such investigation, legal proceeding or remedy may be instituted, continued, or enforced, and any such penalty or forfeiture may be imposed and enforced as if the repealing written law had not been passed or made." 37(2) The inclusion in the repealing provisions of any enactment of any express saving with respect to the repeals effected thereby shall not be taken to prejudice the operation of this section with respect to the effect of those repeals."

Analysis of the provisions and some decided cases of England and America reveal the existence of similar provisions and interpretation in the respective countries. Section 6 of the General Clauses Act, 1897

"6. Effect of repeal.- Where this Act, or any Central Act or Regulation made after the commencement o this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not

(a) Revive anything not in force or existing at the time at which the repeal takes effect; or

(b) Affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) Affect any investigation, legal proceeding or remedy in respect of such right, privilege, obligation, penalty, forfeiture or punishment as aforesaid. and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

Following decided Indian cases would reveal, that Indian courts have interpreted Section 6 of the said Act in the same manner as the similar provisions have been interpreted by the English and American courts.

In Basant Singh vs. Rampal Singh, 1919 AIR(Oudh) 217, it has been held that where an Act repeals a previous Act and provides that all orders issued under the repealed Act shall, so far as may be, be deemed to have been issued under the new Act, or is repealed with proviso 'except as to things done under it' the provision is designed to safeguard the validity of orders, appointments, etc., issued under the repealed Act and not to give retrospective effect to the new Act. A Seven Judge Bench of this Court by majority laid down in Keshavan Madhava Menon vs. The State of Bombay, 1951 SCR 228, that the Court was concerned with the legality of the prosecution of the appellant for contravention of the Indian Press (Emergency Powers) Act, 1931. The offence had been committed before the Constitution came into force and a prosecution launched earlier was pending after January 26, 1950. The enactment which created the offence was held to be void under Article 19(1)(a) read with Article 13 as being inconsistent with one of the Fundamental rights guaranteed by Part III of the Constitution. In the circumstances, the point that was debated before this Court was whether the prosecution could be continued after the enactment became void. In this case, the Court by a majority judgment held that the Constitution was prospective in its operation and that Art. 13(1) would not affect the validity of these proceedings commenced under pre-Constitution laws which were valid up to the date of the Constitution coming into force, for to hold that the validity of these proceedings were affected would in effect be treating the Constitution as retrospective.

Therefore, it was considered that there was no legal objection to the continuance of the prosecution. The controversy in issue was dealt with comprehensively with meticulous precision by a Constitution Bench of this Court in State of Punjab vs. Mohar Singh Respondent Mohar Singh filed a claim as an evacuee under the East Punjab Refugees (Registration of Land Claims) Act, 1948. The claim was investigated into and it was found to be false; it was held to be an offence under the Act. At the trial, on his confession, the respondent was convicted and sentenced to imprisonment. On suo motu revision, the District Magistrate found the sentence to be inadequate and referred the case to the High Court. The High Court found that since the ordinance was

repealed, he could not be convicted under Section 7 of the Act. This Court, on appeal, reversed the decision and upheld the conviction applying Section 6 of the General Clauses Act.

The principle which has been laid down in this case is that whenever there is a repeal of an enactment, the consequences laid down in section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purposes of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore, subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section.

In the case of Brihan Maharashtra Sugar Syndicate vs. Janardan , it was observed as under:

"Section 6 of the General Clauses Act provides that where an Act is repealed, then, unless a different intention appears, the repeal shall not affect any right or liability acquired or incurred under the repealed enactment or any legal proceeding in respect of such right or liability and the legal proceeding may be continued as if the repealing Act had not been passed. There is no dispute that Section 153- C of the Act of 1913 gave certain rights to the share-holders of a company and put the company as also its directors and managing agents under certain liabilities. The application under that section was for enforcement of these rights and liabilities. Section 6 of the General Clauses Act would therefore preserve the rights and liabilities created by Section 153-C of the Act of 1913 and a continuance of the proceeding in respect thereof would be competent in spite of the repeal of the Act of 1913, unless of course a different intention could be gathered."

A Constitution Bench of this Court in State of Orissa vs. M.A. Tulloch and Co., 1963 (4) SCR 461, also had an occasion to examine the controversy regarding repeal of the Act. The submission in this case was that the supersession of the Orissa Act by the Central Act was neither more nor less than a repeal. The reference was made to Section 6 of the General Clauses Act, 1897 which has been reproduced (supra). In the said case, the submission was that the interpretation of the Section was two-fold: (1) the word 'repeal' used in the opening paragraph was not confined to express repeal but that the word was comprehensive enough to include cases of implied repeals; (2) it was submitted that if the expression 'repeal' in Section 6(b) be deduced as being confined to express repeals, still the principle underlying Section 6 was of general application and capable of being attracted to cases of implied repeals also.

In M.A. Tulloch's case (supra), the Court aptly observed that we have to inquire the principle on which the saving clause in Section 6 is based. It is manifest that every later enactment which supersedes an earlier one or pouts an end to an earlier state of the law is presumed to intend the continuance of rights accrued and liabilities incurred under the superseded enactment unless there were sufficient indications - express or implied - in the later enactment designed to completely

obliterate the earlier state of the law.

The next question is whether the application of that principle could or ought to be limited to cases where a particular form of words is used to indicate that the earlier law has been repealed. The entire theory underlying implied repeals is that there is no need for the later enactment to state in express terms that an earlier enactment has been repealed by using any particular set of words or form of drawing but that if the legislative intent to supersede the earlier law is manifested by the enactment of provisions as to effect such supersession, then there is in law a repeal notwithstanding the absence of the word 'repeal' in the later statute. Now, if the legislative intent to supersede the earlier law is the basis upon which the doctrine of implied repeal is founded, could there be any incongruity in attributing to the later legislation the same intent which Section 6 presumes where the word 'repeal' is expressly used. So far as statutory construction is concerned, it is one of the cardinal principles of the law that there is no distinction or difference between an express provision and a provision which is necessarily implied, for it is only the form that differs in the two cases and there is no difference in intention or in substance. A repeal may be brought about by repugnant legislation, without even any reference to the Act intended to be repealed, for once legislative competence to effect a repeal is posited, it matters little whether this is done expressly or inferentially or by the enactment of repugnant legislation.

If such is the basis upon which repeals and implied repeals are brought about it appears to us to be both logical as well as in accordance with the principles upon which the rule as to implied repeal rests to attribute to that legislature which effects a repeal by necessary implication the same intention as that which would attend the case of an express repeal. Where an intention to effect a repeal is attributed to legislature then the same would, in our opinion, attract the incident of the saving found in Section 6 for the rules of construction embodied in the General Clauses Act are, so to speak, the basic assumptions on which statutes are drafted.

The Court examined the ambit and scope of Section 6 of the General Clauses Act, 1897

In view of the interpretation what follows is absolutely clear that unless a different intention appears in the repealing Act, any legal proceeding can be instituted and continued in respect of any matter pending under the repealed Act as if that Act was in force at the time of repeal. In other words, whenever there is a repeal of an enactment the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears in the repealing statute.

In case the repeal is followed by fresh legislation on the same subject the court has to look to the provisions of the new Act for the purpose of determining whether they indicate a different intention. The question is not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. The application of this principle is not limited to cases where a particular form of words is used to indicate that the earlier law has been repealed. As this Court has said, it is both logical as well as in accordance with the principle, upon which the rule as to implied repeal rests, to attribute to that legislature which affects repeal by necessary implication the same intention as that which would attend the case of an express repeal. Where an intention to effect a repeal is attributed to a legislature then the same would attract the incident of saving found

in Section 6.

In the case of Munshilal Beniram Jain Glass Works vs. S. P. Singh (1971) II S.C.J. July- December p. 307, this Court held that under Section 6 would apply to a case of repeal even if there is a simultaneous enactment unless a contrary intention appears from the new enactment.

In Qudrat Ullah vs. Municipal Board, Bareilly, , the Court held that the general principle is that an enactment which is repealed is to be treated, except as to transactions passed and closed, as if it had never existed. However, the operation of this principle is subject to any savings which may be made, expressly or by implication, by the repealing enactment. If a contrary intention appears from the repealing Statute, that prevails.

A three-Judge Bench of this Court in India Tobacco Co. Ltd. vs. CTO, , held that repeal is not a matter of mere form but is of substance, depending on the intention of the legislature. If the intention indicated either 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 restricting, intercepting or suspending its operation, such modification would not amount to a repeal. Broadly speaking, the principal object of a repealing and amending Act is to 'excise dead matter, prune off superfluities and reject clearly inconsistent enactments'.

When there is a repeal and simultaneous reenactment, Section 6 of the General Clauses Act would apply to such a case unless contrary intention has been gathered from the repealing Act. Section 6 would be applicable in such cases unless the new legislation manifests intention inconsistent with or contrary to the application of the section. When the repeal is followed by a fresh legislation on the same subject, the Court would undoubtedly have to look to the provisions of the new Act only for the purpose of determining whether the new Act indicates different intention. The object of repeal and reenactment is to obliterate the Repealed Act and to get rid of certain obsolete matters.

In Commissioner of Income Tax vs. Shah Sadiq and Sons 2, this Court observed that a right which had accrued and had become vested, continued to be capable of being enforced notwithstanding the repeal of the statute under which that right accrued unless the repealing statute took away such right expressly or by necessary implication. This is the effect of Section 6 of the General Clauses Act, 1897.

In M/s Gurcharan Singh Baldev Singh v. Yashwant Singh and Ors. , the Court observed that the objective of Section 6(c) of the General Clauses Act, 1897 is to ensure protection of any right or privilege acquired under the repealed Act. The only exception to it is legislative intention to the contrary. That is, the repealing Act may expressly provide or it may impliedly provide against continuance of such right, obligation or liability.

In Gajraj Singh and Others vs. State Transport Appellate Tribunal and Others 8, a permit under Section 47(3) of the Motor Vehicles Act, 1939 was granted to the appellant for a period of 3 years. The Motor Vehicles Act, 1988 came into force with effect from 1.7.1989. The question arose whether the renewal of the permit of the appellant granted under the repealed Act is a permit under the Act and its operation was saved by Section 217(2)(a) read with sub-section (4) thereof. Therefore, the second renewal granted under Section 81 was valid in law. There was no need for the appellant to obtain a fresh permit under the Act as the renewal is a continuation of the original permit which is a vested right. The effect of saving provisions in Section 217(2) (a) is to allow all the permits granted under the Repealed Act to continue after renewal under the Act. Section 217(2) (a) and sub-section (4), thus, obviate the need to obtain fresh permit under the Act and, therefore, it would be unnecessary. According to the appellant, the Act is not intended to lay down that after the Act came into force, all the holders of stage carriage permits granted under the Repealed Act would be required to obtain fresh permits under the Act. Section 6 of the General Clauses Act, 1897 read with Sections 217(2) (a) and (4) saves operation of all those permits which were alive when the Act came into force. Consequently, renewals granted under Section 81 were valid.

In Gajraj Singh's case (supra), the Court observed that the proceedings under the Repealed Act would be continued and concluded under the Act as if the Act was not enacted. The Court observed that four things would emerge from its operation. One, there must exist a corresponding provision under the Act pari materia with the Repealed Act; two, the order of permit granted must exist and be in operation on the day on which the Act had come into force; three, it must not be inconsistent with the provisions of the Act and, fourth, the positive act should have been done before 1.7.1989. Positive Act should have been done before the repeal of the Act to further secure any right. All the four conditions should be satisfied as conditions precedent for application of Section 6 of the General Clauses Act.

Number of authors have commented on the 'Doctrine of Repeal'. Craies in his book on Statute Law stated that in English acts passed after 1889 certain savings are implied by statute in all cases of express repeal, unless a contrary intention appears in the repealing Act. The author has stated in his book that it had been usual before 1889 to insert provisions to the effect above stated in all statutes by which express repeals were effected. The result of this enactment is to make into a general rule what had been common statutory form, and to substitute a general statutory presumption as to the effect of an express repeal for the canons of construction hitherto adopted.

In Halsbury's Laws of England, Fourth Edition the word 'repeal' has been defined as under :-

"To repeal an Act is to cause it to cease to be a part of the corpus juris or body of law. To repeal an enactment contained in an Act is to cause it to cease to be in law a part of the Act containing it. The general principle is that, except as to transactions past and closed, an Act or enactment which is repealed is to be treated thereafter as if it had never existed. However, the operation of the principle is subject to any savings made, expressly or by implication, by the repealing enactment, and in most cases it is subject also to the general statutory provisions as to the effects of repeal."

When an Act is repealed then it is treated as revoked or abrogated, and removed from what is popularly known as the Statute Book.

The provisions of English Interpretation Act and Indian General Clauses Act are pari materia as far as Section 38 of English Act and Section 6 of the Indian Act are concerned. According to Halsbury's Laws of England (supra), where any Act after 1889 repeals and reenacts, with or without modification, a previous enactment, then, unless the contrary intention appears, any reference in any other enactment to the enactment so repealed must be construed as a reference to the provision reenacted. Crawford in his book on Interpretation of Law stated that an express repeal will operate to abrogate an existing law, unless there is some indication to the contrary, such as a saving clause. Even existing rights and pending litigations, both civil and criminal, may be affected although it is not an uncommon practice to use the saving clause in order to preserve existing rights and to exempt pending litigation.

In the said book it is further stated that often the legislature instead of simply amending a pre-existing statute, will repeal the old statute in its entirety and by the same enactment reenact all or certain portions of the pre-existing law. Of course, the problem created by this sort of legislative action involves mainly the effect of the repeal upon rights and liabilities which accrued under the original statue. Are those rights and liabilities destroyed or preserved? The authorities are divided as to the effect of simultaneous repeals and reenactments. Some adhere to the view that the rights and liabilities accruing under the repealed act are destroyed, since the statute from which they sprung has actually terminated, even though for only a very short period of time. Others, and they seem to be in the majority, refuse to accept this view of the situation, and consequently maintain that all rights and liabilities which have accrued under the original statute are preserved and may be enforced, since the reenactment neutralizes the repeal, thereby continuing the law in force without interruption. Logically, the former attitude is correct, for the old statute does cease to exist as an independent enactment, but all practical considerations favour the majority view.

This is so even where the statute involved is a penal legislation. Francis Bennion in his book on Statutory Interpretation (2nd Edn.) says that where an English Act passed after 1878, repeals and reenacts the enactment (with or without modification) then, unless the contrary intention appears, anything done, or having effect as if done, under the enactment repealed, insofar as it could have been done under the provision reenacted, has effect as if done under that provision. G. P. Singh in his book on 'Principles of Statutory Interpretation', 2006 Edition enumerated the effect of clauses (c) to (e) of Section 6 of the General Clauses Act is to prevent the obliteration of a statute in spite of its repeal to keep intact rights acquired or accrued and liabilities incurred during its operation and permit continuance or institution of any legal proceedings or recourse to any remedy which may have been available before the repeal for enforcement of such rights and liabilities. Sutherland in his book on Statutory Construction (3rd Edn.) Vol. I by Horack stated under common law principles of construction and interpretation all rights, liabilities, penalties, forfeitures and offences which are of purely statutory derivation and unknown to the common law are effaced by the repeal of the statute which granted them, irrespective of their accrual. Likewise, where a common law principle is abrogated, its effective existence is destroyed both as to past actions and to pending proceedings. However, a right of a common law nature which is further embodied in statutory terms exists as an

enforceable right exclusive of the statute declaratory of it, and therefore the right is not expunged by the repeal of the statute. Since the effect of a repeal is to obliterate the statute and to destroy its effective operation in future, or to suspend the operation of the common law, when it is a common law principle which is abrogated, any proceedings which have not culminated in a final judgment prior to the repeal are abated at the consummation of the repeal. When, however, the repeal does not contemplate either a substantive common law or statutory right, but merely the procedure prescribed to secure the enforcement of the right, the right itself is not annulled but remains in existence enforced by applying the new procedure.

In the instant cases, there is a simultaneous repeal and the reenactment and the A.P.V.A. Tax Act clearly saves the earlier provisions into to. Consequently, rights and liabilities accrued or incurred under the A.P.G.S. Tax Act shall continue even after it is repealed. On critical analysis and scrutiny of all relevant cases and opinions of learned authors, the conclusion becomes inescapable that whenever there is a repeal of an enactment and simultaneous reenactment, the reenactment is to be considered as reaffirmation of the old law and provisions of the repealed Act which are thus reenacted continue in force uninterruptedly unless, the reenacted enactment manifests an intention incompatible with or contrary to the provisions of the repealed Act. Such incompatibility will have to be ascertained from a consideration of the relevant provisions of the reenacted enactment and the mere absence of saving clause is, by itself, not material for consideration of all the relevant provisions of the new enactment.

In other words, a clear legislative intention of the reenacted enactment has to be inferred and gathered whether it intended to preserve all the rights and liabilities of a repealed statute intact or modify or to obliterate them altogether. On the touchstone of the principles of law culled out from the judgments of various courts applied to the facts of these cases lead to a definite conclusion that the Assistant Commissioner (Commercial Taxes), Warangal Division was fully justified in initiating and completing the proceedings under the A.P.G.S. Tax Act even after it is repealed.

We have been informed that the appeals are pending adjudication before the concerned Authority. The High Court has directed the appellant to pay 40% of the total amount which has been imposed in the four notices issued to the appellant. We have heard the learned counsel for the parties. In the facts and circumstances of the case, we deem it appropriate to modify the directions given by the High Court and direct the appellant to pay a lump sum of Rs.1.5 crores within four weeks pending adjudication of appeals emanating from all the four notices before the Appellate Tribunal. In case the amount as directed is paid by the appellant within a period of four weeks, the order of attachment issued by the respondents shall not be given effect to during the pendency of the proceedings before the Appellate Tribunal. On appellant's depositing the said amount within the stipulated time the tribunal shall hear the appeals and decide them in accordance with law. Consequently, these Appeals are being disposed of in terms of the directions given in the preceding paragraph. In the facts and circumstances of the case, we direct the parties to bear their own costs.