A COMMERCIAL MOTORS LTD.

v.

COMMISSIONER OF TRADE TAX U.P., LUCKNOW & OTHERS

B (Civil Appeal Nos. 622-623 of 2015)

SEPTEMBER 11, 2015

[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]

C *U.P. Trade Tax Act, 1948: s.21(2), proviso as amended on 30.4.2001 – Assessment year 1990-91 – Whether the show cause notice issued u/s.21(2) on 13.3.2002 seeking reassessment in respect of assessment year 1990-91 of which the assessment was completed on 25.3.1995 is valid* D *and acceptable in law – Held: For the purpose of limitation u/s.21(1) and the first proviso, the period of limitation is to be counted from the end of the relevant assessment year i.e. 31.3.1991 – The proviso was amended on 30.4.2001 and the previous provision that contained the words "eight years* E *from the end of such year" were substituted by "six years from the end of such year or March 31, 2002 whichever is later" – By virtue of amendment, the assessment or reassessment cannot be made after expiry of six years and it would not mean that the assessment can be made by 31.3.2002* F *irrespective of assessment year, for that would be contrary to the requisite intent of the legislature – Therefore, the initiation of reassessment was not valid being barred by limitation.*

Tax/Taxation: Applicability of the law – Held: The law in G *force in the assessment year is to be applied unless there is an amendment which comes into force having retrospective operation.*

Allowing the appeals, the Court

H **HELD: 1. In the case at hand the proviso that has**

been amended on 30.4.2001 and the previous provision that contained the words "eight years from the end of such year" have been substituted by "six years from the end of such year or March 31, 2002 whichever is later". Original assessment order is dated 25.2.1995 and the notice for reassessment is dated 13.3.2002. For the purpose of limitation under Section 21(1) and the first proviso, the period of limitation is to be counted from the end of the relevant assessment year i.e. 31.3.1991. Thus, the notice dated 13.3.2002 was beyond six years or even eight years of the end of assessment year i.e. 1990-91. The question is whether the notice is saved by the expression "six years from the end of such year or March 31, 2002. There can be no iota of doubt that period of six years would have the full effect in respect of fresh assessment or reassessment, where notice is issued or after the date the proviso came into force. [Para 16] [1053-E-H; 1054-A-B]

2. The law in force in the assessment year is to be applied unless there is an amendment which comes into force having retrospective operation. The State legislature has intentionally reduced the period from eight years to six years. However, the outer limit has been fixed either six years or March 31, 2002. The amendment is not only beneficial to the assessee but also intends to protect the interest of the revenue. Prior to this amendment, the period of limitation was eight years. There could be cases which were pending by virtue of issue of notice as the earlier limitation period was eight years under the pre-amended proviso. The intention of the latter part of the proviso is to save such pending assessments and that is why a specific date, that is, March 31, 2002 has been incorporated. While reducing the period from eight years to six years, time

A has been specified to complete the assessment or reassessment by 31.3.2002. Had the said date, that is, 31.3.2002, is not treated as a saving factor, the pending reassessment cases covered by eight years period would have come under the sunset and reduced
B limitation period would have adversely affected the interest of the revenue. Therefore, the protective provision. If such construction is not placed, it would be rather inequitable, in a way incongruous, as on the one hand the period of limitation is reduced and by fixing
C a determinative date, a peculiar situation is created. The legislative intent was not to enhance and increase the limitation period, regardless and notwithstanding the financial or assessment year. If the stand of the revenue
D is to be accepted, then the effect of 2001 amendment would empower and authorise reopening of cases without reference to the financial year, provided the assessment order was made on or before 31.3.2002. Such an interpretation would be contrary to the
E legislative intendment for the reason, the same amendment has reduced the limitation period from eight years to six years. The logical corollary is that the legislative intent was not to do away and erase the limitation period, but the date "March 31, 2002" was
F incorporated only to protect the cases which could be earlier governed by a limitation period of eight years. Thus, 2001 amendment is not fully retrospective, but it is partly retrospective. It reduces the limitation period from eight years to six years and simultaneously protects
G and safeguards the interest of the revenue in respect of cases within eight years and six years provided the reassessments are completed by 31st March, 2002. [Para 19] [1057-D-H; 1058-A-F]

H *CTO v. Biswanath Jhunjhunwalla* 1996 (5) Suppl. SCR 286: (1996) 5 SCC 626; *Ahmedabad*

Manufacturing & Calico Printing Co. Ltd. v. S.G. Mehta, ITO **AIR 1963 SC 1436: 1963 Suppl. SCR 92;** *National Agricultural Coop. Marketing Federation of India Ltd. v. Union of India* **2003 (3) SCR 1: (2003) 5 SCC 23;** *Thirumalai Chemicals Ltd. v. Union of India* **2011 (4) SCR 838 : (2011) 6 SCC 739 – relied on.**

Addl. Commissioner (Legal) and Anr. v. Jyoti Traders and Anr. **1998 (3) Suppl. SCR 67: (1999) 2 SCC 77 – distinguished.**

Addl. Commissioner (Legal) and Anr. v. Jyoti Traders and Anr. **1998 (3) Suppl. SCR 67: (1999) 2 SCC 77;** *Binani Industries Ltd. v. Assistant Commissioner of Commercial Taxes* **JT 2007 (5) SC 311;** *Ahmedabad Manufacturing & Calico Printing Co. Ltd. v. S.G. Mehta, ITO* **AIR 1963 SC 1436 : 1963 Suppl. SCR 92;** *State of U.P. v. Anil Kumar Ramesh Chandra Glass Works* **(2005) 11 SCC 451;** *State of Orissa v. Sangram Keshari Misra* **(2010) 13 SCC 311;** *Ministry of Defence v. Prabhash Chandra Mirdha* **2012 (6) SCR182 : (2012) 11 SCC 565 – referred to.**

Case Law Reference

1998 (3) Suppl. SCR 67	**distinguished.**	**Paras 6, 16**
JT 2007 (5) SC 311	**referred to.**	**Para 6**
1963 Suppl. SCR 92	**relied on.**	**Paras 6, 16**
(2005) 11 SCC 451	**referred to.**	**Para 11**
(2010) 13 SCC 311	**referred to.**	**Para 11**
2012 (6) SCR 182	**referred to.**	**Para 11**
1996 (5) Suppl. SCR 286	**relied on.**	**Paras 12, 16**
2003 (3) SCR 1	**relied on.**	**Para 17**
2011 (4) SCR 838	**relied on.**	**Para 18**

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 622-623 of 2015

From the Judgment and Order dated 03.03.2014 of the High Court of Judicature at Allahabad, Lucknow Bench in WP
B No. 1513 of 2002 and 25.04.2014 in RP No. 365 of 2014.

Pawanshree Agrawal and Pradeep Agrawal for the Appellant.

Ravi Prakash Mehrotra and Rajeev Dubey for the
C Respondents.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. The appellant is a registered dealer
D under the U.P. Trade Tax Act, 1948 (for brevity, 'the Act') and authorised to deal with scooters manufactured by M/s. Bajaj Auto Limited, and during the assessment year 1990-91, had sold the two wheelers to the government employees through U.P. Government Employees Welfare Corporation as well as
E canteen of the Stores Department amounting to Rs.5,23,93,337.57. During the course of assessment, the appellant had submitted certificates which were required to be issued for claiming exemption in terms of the exemption notification no. 7037 dated 31.1.1985. The assessee had
F produced 270 sale certificates and on the basis of the same he was granted exemption on the sale of scooters for the aforesaid amount by the Assessing Officer vide assessment order dated 25.3.1995. As claimed by the revenue, at a later stage it discovered that the total sale amount of the scooters
G in question was in fact Rs.4,26,94,276.59 instead of Rs.5,23,93,337.57 and hence the assessee was liable to pay tax on the sale of scooters to the extent of Rs.97,02,050.65 on which it had earlier been granted sales tax waiver in view of the circular dated 16.4.1994.
H

2. Treating the original assessment as defective, a show cause notice dated 13.3.2002 was issued to the appellant fixing the date of 18.3.2002 requiring the assessee to show cause to offer explanation why a proceeding under Section 21(2) of the Act should not be initiated against it and the tax component should not be realised. A B

3. The assessee filed its reply on 18.3.2002 taking two grounds, namely, (i) that the proceedings under Section 21(2) of the Act could not be initiated against it as the same was barred by limitation being initiated after lapse of six years from the date of end of assessment year i.e. 31.3.1997 in the light of the proviso to sub-section 2 of Section 21 of the Act and (ii) the books of accounts were examined during the original assessment proceeding by the Assessing Officer as is manifest from the assessment order of the year 1990-91 and, therefore, the material having already been considered by the Assessing Officer while making the original assessment, steps could not be issued for reopening of the assessment. C D

4. The competent authority considering the reply submitted by the appellant required the assessee to appear with the documents to clarify the position. At that juncture, the appellant preferred Writ Petition No. 1513 of 2002 and the High Court entertained the writ petition, issued notice and as an interim measure, directed that the assessment proceeding may continue but no final order should be passed. E F

5. The contentions raised in the reply were advanced in the writ petition and they were resisted by the Department by filing counter affidavit contending, inter alia, that the amendment incorporated in Section 21(2) of the Act has retrospective effect and the steps taken for reopening the assessment was within time and there was no justification for invocation of the writ jurisdiction. The High Court, after noting the rival submissions G H

A of the parties formulated the following two questions for determination:-

> "1. Whether in the facts and circumstances mentioned above could a complete assessment
B under the Act could be reopened after prescribed period when that period has been enlarged by amending the law?
>
> 2. Whether any case for reopening the assessment
C relying upon the Section 21(1) is made out and whether it is a case of change of opinion?"

6. As far as the first issue is concerned, the High Court referred to the decision in ***Addl. Commissioner (Legal) and Anr. v. Jyoti Traders and Anr.***[1] in extenso, referred to the
D pronouncement in ***Binani Industries Ltd. v. Assistant Commissioner of Commercial Taxes***[2] and the decision referred therein i.e. ***Ahmedabad Manufacturing & Calico Printing Co. Ltd. v. S.G. Mehta, ITO***[3], and opined thus:-

E
> "Under Sub-section (1) of Section 21 of the Act before its amendment, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or
F reassess the dealer according to law. Sub-section (2) provided that except as otherwise provided in this section no order for any assessment year shall be made after the expiry of 2 years from the end of such year or till 31.3.1988 whichever is later.
G However, after the amendment, a proviso was added to Sub-section (2) under which Commissioner of Sales Tax authorises the assessing authority to make assessment or reassessment after the

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1 (1999) 2 SCC 77

H 2 JT 2007 (5) SC 311

3 AIR 1963 SC 1436

expiration of aforesaid period but not after 8 years from the end of such year notwithstanding that such assessment or reassessment may involve a change of opinion. The proviso came into force w.e.f. February 19, 1991. This proviso was further amended and "six years from the end of such year or March 31, 2002 whichever is later" were substituted in place of words "eight years from such year". In view of IInd proviso the assessment or reassessment for the year 1987-88 may be made till 31.3.1993 and as per IVth proviso the assessment or reassessment for the year 1989-90 may be made till 31.3.1995. We do not think that sub-section (2) and the proviso added to it leave anyone in doubt that as on the date when the amended proviso came into force, the Commissioner of Sales Tax could authorise making of assessment or reassessment after the expiration of six years from such year, i.e. upto 31.3.1999 or March 31, 2002 whichever is later. It is immaterial if a period for assessment or reassessment under sub-section (2) of Section 21 before the addition of the said proviso had expired. Read as it is, these provisions would mean that the assessment for the year 1987-88 could be reopened up to March 31, 1993. Authorisation by the Commissioner of Sales Tax and completion of assessment or reassessment under sub-section (1) of Section 21 have to be completed within 6 years of the particular assessment year or till 31.3.2002 whichever is latter. Notice to the assessee follows the authorisation by the Commissioner of Sales Tax. It is not disputed that a fiscal statute can have retrospective operation. If we accept the interpretation given by the respondents, the proviso added to Sub-section (2)

A of Section 21 of the Act providing limitation up to 31.3.2002 becomes redundant. Proviso now added to Sub-section (2) of Section 21 of the Act does not put any embargo on the Commissioner of Sales Tax not to reopen the assessment if period, as prescribed earlier, had expired before the proviso came into operation.

7. After so stating the High Court proceeded to understand the intention of the legislature in enacting the provision and in that context noted that the date of commencement of the proviso to Section 21(2) of the Act does not control its retrospective operation; that after the amendment after substitution of the proviso to Section 21(2) of the Act, it is six years of the particular assessment year or till 31.3.2002 whichever is later; and that bare reading of the proviso makes it clear that the notice issued by the department to the assessee was within time. The Division Bench declared another Division Bench decision rendered in ***M/s. Prag Ice and Oil Mills and others v. Additional Commissioner of Trade Tax and Anr.***[4] as per incuriam on the ground that it had not taken note of amended provision and the decision of this Court in ***Jyoti Traders*** (supra).

8. After answering the issue of limitation, the High Court proceeded to deal with the other question and in that context came to hold that initial opinion while passing the original assessment order was to grant exemption on sale of scooters had not been changed while issuing the notice but the revenue had found that exemption had been wrongly allowed to the extent of Rs. 97,02,050.65 which ought to have been taxed and accordingly did not find any substance on the second ground. Being of this view, the High Court dismissed the writ petition. Hence, the present appeal by special leave.

[4] VSIT 2008 B92

9. We have heard Mr. Pawanshree Agrawal, learned counsel for the appellant and Mr. Ravi Prakash Mehrotra, learned counsel for the respondents

10. To appreciate the controversy it is appropriate to reproduce Section 21(2), as amended, in entirety.

Section 21 - Assessment of tax on the turnover not assessed during the year

(2) Except as otherwise provided in this section, no order of assessment or re-assessment under any provision of this Act for any assessment year shall be made after the expiration of two years from the end of such year or March 31, 1998, whichever is later:

Provided that if the Commissioner, on his own or on the basis of reasons recorded by the assessing authority, is satisfied that it is just and expedient so to do, authorises the Assessing Authority in that behalf, such assessment or re-assessment may be made after the expiration of the period aforesaid, but not after the expiration of [six years from the end of such year or March 31, 2002, whichever is later] notwithstanding that such assessment or re-assessment may involve a change of opinion:

Provided further that the assessment or re-assessment for the assessment year 1987-88 may be made by March 31, 1993:

Provided also that if the eligibility certificate granted under Section 4-A has been amended or cancelled by the Commissioner under subsection (3) of Section 4-A, the order of assessment or re-assessment may be made within one year from the

A date of receipt by the assessing authority of the copy of the order amending or cancelling the aforesaid certificate or by March 31, 1995, whichever is later:

B Provided also that the assessment or re-assessment for the assessment year 1989-90 may be made by March 31, 1995.

[underlining is ours]

C 11. Regard being had to the anatomy of the aforesaid amended provision, the singular question that arises for consideration is whether the show cause notice issued under Section 21(2) of the Act seeking to reassess the assessee in D respect of the assessment year 1990-91 of which the assessment was completed on 25.3.95 is valid and acceptable in law. The stand of the assessee-appellant is that the reopening of assessment under could only be till 31.3.1997, that is, a period of six years from the end of assessment year E 1991 and hence, the notice having been issued on 13.3.2002 is wholly unsustainable in law. The stand of the revenue is that as per the language employed under Section 21(2), assessment or reassessment could be done either within six years from the end of the assessment year in question or till F 31.3.2002 whichever is later, therefore, the notice is valid and within the prescribed period of limitation. The learned counsel for the appellant would submit that by virtue of the amendment, the assessment or reassessment cannot be made after expiry of six years and it would not mean that the assessment can be G made by March 31, 2002 irrespective of the assessment year, for that would be contrary to the requisite intent of the legislature. Learned counsel for the revenue, per contra, would contend that the limitation has been extended up to period of six years from the assessment year 1991 or 31.3.2002 whichever is H later, and hence, the pronouncement in ***Jyoti Traders*** (supra)

would squarely apply inasmuch as the notice for reassessment has been sent within the stipulated period i.e. 31.3.2002 as certain errors have been discovered in the original assessment which was found to be defective. That apart, a contention has been put forth that a notice to show cause has rightly not been interfered with by the High Court in exercise of the writ jurisdiction in view of the judgments rendered in ***State of U.P. v. Anil Kumar Ramesh Chandra Glass Works***[5], ***State of Orissa v. Sangram Keshari Misra***[6], and ***Ministry of Defence v. Prabhash Chandra Mirdha***[7].

12. First, we shall refer to the decision in ***Jyoti Laboratories*** (supra). In the said case, the assessment in respect of the assessment year 1985-86 under the Act was completed on 27.11.1989 and in respect of Jyoti Traders, the assessment for the said year was completed on 28.2.1990. The period for assessment or reassessment which was four years under Section 21 of the Act for the assessment year 1985-86 expired on 31.3.1990 in respect of the assessee-Jyoti Traders. The court took note of the fact that the amending Act had received assent of the Governor of the Uttar Pradesh on 19.8.1991 and different dates were prescribed for coming into force of various provisions of the amending Act. Section 21 of the Act that underwent an amendment and the court was concerned with the relevant provision which came into force w.e.f. 19.2.1991. On the basis of the amendment, the Sales Tax Officer, after taking sanction from the Commissioner of Sales Tax, issued notices to the assessee for reassessment. The orders granting sanction and the issuance of notices for reassessment were challenged before the High Court and the writ court quashed the same. This court took note of the proviso to sub-section 2 of Section 21 as inserted by the amending Act 1981 which came into force w.e.f. 19.2.1991. The High

[5] (2005) 11 SCC 451
[6] (2010) 13 SCC 311
[7] (2012) 11 SCC 565

A Court had expressed the view that when the period for assessment or reassessment for the year 1985-86 under Section 21 of the Act before insertion of the proviso to sub-section 2 thereof had expired on 31.3.1990, the amendment had no effect. The stand of the revenue before this court was
B that the interpretation placed on sub-section 2 of Section 21 by the High Court, if accepted, would make the provision prospective in nature which will make the proviso redundant. It was also contended that proviso in fact operated after expiry of the four years period prescribed under the sub-section and
C the notice had to follow after the order was obtained from the Commissioner and not prior to that. Reliance was placed on the authority in ***CTO v. Biswanath Jhunjhunwalla***[8].

13. The decision in ***Biswanath Jhunjhunwalla*** (supra) dealt
D with Bengal Finance (Sales Tax) (Third Amendment) Act, 1974 which substituted Section 26(1) of the principal Act which empowered the State Government to make rules with prospective or retrospective effect for carrying out the purposes of the Act. In exercise of the said power, Rule 80(5) of the
E Bengal Sales Tax Rules, 1941 was amended. The amended Rule provided that the Commissioner or any other authority to whom power has been delegated shall not, of his own motion, revise any assessment made or order passed under the Act
F or the rule thereunder if the assessment had been made or the order had been passed more than six years previously. The show cause notices being issued, the High Court was moved for quashment of the same and it ruled that by the amendment of the rule, assessment which had been completed
G could be revised within six years of the date of such completion, but when the right to revise the assessment under the unamended provision of the rule stood barred on the date of the amendment, such assessment could not be reopened or revised. It was also opined by the High Court that the amended

H [8] (1996) 5 SCC 626

notification neither expressly nor by necessary implication confer any power of revision of assessment which stood barred on the date on which it was issued. This Court after referring to the decisions in ***ITO v. S.K. Habibullah***[9], ***S.S. Gadgil, ITO v. Lal and Co.***[10] and ***ITO v. Induprasad Devshanker Bhatt***[11], opined thus:-

> "*12.* What, therefore, we have to seek is the clear meaning of the said Notification. If there be no doubt about meaning, the amendment brought about by the said Notification must be given full effect. If the language expressly so states or clearly implies, retrospectivity must be given with effect from 1-11-1971, so as to encompass all assessments made within the period of six years theretofore, whether they have become final by reason of the expiry of the period of four years or not.
>
> *13.* By reason of the said Notification, with effect from 1-11-1971, Rule 80(5)(*ii*) has to be read as barring the Commissioner (or other authority to whom power in this behalf has been delegated by the Commissioner) from revising of his own motion any assessment made or order passed under the Act or the rules if the assessment has been made or the order has been passed more than six years previous to 1-11-1971. Put conversely, with effect from 1-11-1971, Rule 80(5)(*ii*) permits the Commissioner (or other authority) to revise of his own motion any assessment made or order passed under the Act or the rules provided the assessment has not been made or the order passed more than six years previously. This being the plain meaning,

[9] (1962) 44 ITR 809 = AIR 1962 SC 918
[10] (1964) 53 ITR 231 = AIR 1965 SC 171
[11] (1969) 72 ITR 595 = AIR 1969 SC 778

A the said Notification must be given full effect. Full effect can be given only if the said Notification is read as being applicable not only to assessments which were incomplete but also to assessments which had reached finality by reason of the earlier B prescribed period of four years having elapsed. Where language as unambiguous as this is employed, it must be assumed that the legislature intended the amended provision to apply even to assessments that had so become final; if the C intention was otherwise, the legislature would have so stated."

14. Thereafter this Court referred to number of other decisions and eventually interpreting the amendment in Section D 21 opined that:-

"The two decisions in the cases of *Ahmedabad Manufacturing & Calico Printing Co. Ltd* and *Biswanath Jhunjhunwalla* are more closer to the E issue involved in the present case before us. They laid down that it is the language of the provision that matters and when the meaning is clear, it has to be given full effect. In both these cases, this Court held that the proviso which amended the existing F provision gave it retrospectivity. When the provision of law is explicit, it has to operate fully and there could not be any limits to its operation. This Court in *Biswanath Jhunjhunwalla case* said that if the language expressly so states or clearly implies, G retrospectivity must be given to the provision. Under Section 34 of the Income Tax Act, 1922, it is the service of the notice which is the sine qua non, an indispensable requisite, for the initiation of assessment or reassessment proceedings where H

income had escaped assessment. That is not so in the present case. Under sub-section (1) of Section 21 of the Act before its amendment, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or reassess the dealer according to law. Sub-section (2) provided that except as otherwise provided in this section, no order for any assessment year shall be made after the expiry of 4 years from the end of such year. However, after the amendment, a proviso was added to sub-section (2) under which the Commissioner of Sales Tax authorises the assessing authority to make assessment or reassessment before the expiration of 8 years from the end of such year notwithstanding that such assessment or reassessment may involve a change of opinion. The proviso came into force w.e.f. 19-2-1991. We do not think that sub-section (2) and the proviso added to it leave anyone in doubt that as on the date when the proviso came into force, the Commissioner of Sales Tax could authorise making of assessment or reassessment before the expiration of 8 years from the end of that particular assessment year. It is immaterial if a period for assessment or reassessment under sub-section (2) of Section 21 before the addition of the said proviso had expired. Here, it is the completion of assessment or reassessment under Section 21 which is to be done before the expiration of 8 years of that particular assessment year. Read as it is, these provisions would mean that the assessment for the year 1985-86 could be reopened up to 31-3-1994. Authorisation by the Commissioner of Sales Tax and completion of assessment or

A reassessment under sub-section (1) of Section 21 have to be completed within 8 years of the particular assessment year."

And again:-

B "If we accept the interpretation given by the respondents, the proviso added to sub-section (2) of Section 21 of the Act becomes redundant. Commencement of the Act can be different than C the operation of the Act though sometimes, both may be the same. The proviso now added to sub-section (2) of Section 21 of the Act does not put any embargo on the Commissioner of Sales Tax not to reopen the assessment if the period, as D prescribed earlier, had expired before the proviso came into operation. One has to see the language of the provision. If it is clear, it has to be given its full effect. To reassure oneself, one may go into the intention of the legislature in enacting such E provision. The date of commencement of the proviso to Section 21(2) of the Act does not control its retrospective operation. Earlier the assessment/ reassessment could have been completed within four years of that particular assessment year and F now by the amendment adding the proviso to Section 21(2) of the Act it is eight years. The only safeguard being that it is after the satisfaction of the Commissioner of Sales Tax. The proviso is operative from 19-2-1991 and a bare reading of G the proviso shows that the operation of this proviso relates and encompasses back to the previous eight assessment years."

15. It is noticeable the interpretation was placed by this H Court on the amendment appended to sub-section (2) of

Section 21 by the amending provision that came into force w.e.f. 19.2.1991, the Court relied on the authority in ***Biswanath Jhunjhunwalla*** (supra), as thought by the Court, was a proximate ruling. In the earlier case Rule 80(5) (ii) was interpreted to have conferred express power and clearly by implication that retrospectivity must be given to the notification so that it can have full effect. The Court opined that plain meaning was to be placed on the amendment, especially on the words "the assessment has been made or the order has been passed more than six years previously", and full effect could only be given if the said notification was read as if applicable not only to assessments which were incomplete but also to assessments which had reached finality by reason of the earlier prescribed period of four years having elapsed. The Court further opined where language was unambiguous as Rule 80(5)(ii), it must be assumed that the legislature intended the amended provision to apply even to assessments that had become final, for if the intention was otherwise, the legislature would have so stated.

16. In the case at hand the proviso that has been amended on 30.4.2001 and the previous provision that contained the words "eight years from the end of such year" have been substituted by "six years from the end of such year or March 31, 2002 whichever is later". It is apt to note here that the assessment year in question is 1990-91 or year ending 31.3.1991. Original assessment order is dated 25.2.1995 and the notice for reassessment is dated 13.3.2002. For the purpose of limitation under Section 21(1) and the first proviso, the period of limitation is to be counted from the end of the relevant assessment year i.e. 31.3.1991. Thus, the notice dated 13.3.2002 was beyond six years or even eight years of the end of assessment year i.e. 1990-91. The question is whether the notice is saved by the expression "six years from the end of such year or March 31, 2002. In the backdrop of the

A ratio laid down in ***Jyoti Traders*** (supra), there can be no iota of doubt that period of six years would have the full effect in respect of fresh assessment or reassessment, where notice is issued or after the date the proviso came into force. It has to be borne in mind that law of limitation when affects B substantial rights of a party, such subsequent amendment should not be read as retrospectively unless the amendment so stipulates or requires so by necessary implication. It has been held in ***Biswanath Jhunjhunwalla*** (supra) when the intendment of the legislature is clear and the language is C unambiguous or it impliedly follows, then full effect should be given and the provision be treated as retrospective. In this regard, reference to a Constitution Bench decision in ***Ahmedabad Manufacturing & Calico Printing Co. Ltd.*** D (supra) would be apt. The majority view, as is discernible, is to the following effect:-

> "The legislature may affect substantial rights by enacting laws which are expressly retrospective or by using language which has that necessary result. E And this language may give an enactment more retrospectivity than what the commencement clause gives to any of its provisions. When this happens the provisions thus made retrospective, expressly or by necessary intendment, operate from a date F earlier than the date of commencement and affect rights which, but for such operation, would have continued undisturbed."

17. In this context, a passage from ***National Agricultural Coop. Marketing Federation of India Ltd. v. Union of India***[12] G is worth reproducing:-

> "that there is no fixed formula for the expression of legislative intent to give retrospectivity to an

H [12] (2003) 5 SCC 23

enactment. Every legislation whether prospective or retrospective has to be subjected to the question of legislative competence. The retrospectivity is liable to be decided on a few touchstones such as: (*i*) the words used must expressly provide or clearly imply retrospective operation; (*ii*) the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional; (*iii*) where the legislation is introduced to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory basis of the decision. There is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. A validating clause coupled with a substantive statutory change is only one of the methods to leave actions unsustainable under the unamended statute, undisturbed. Consequently, the absence of a validating clause would not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent."

18. In ***Thirumalai Chemicals Ltd. v. Union of India***[13], it has been held thus:-

"Limitation provisions therefore can be procedural in the context of one set of facts but substantive in the context of different set of facts because rights can accrue to both the parties. In such a situation, test is to see whether the statute, if applied retrospectively to a particular type of case, would impair existing rights and obligations. An accrued right to plead a time bar, which is acquired after

[13] (2011) 6 SCC 739

A the lapse of the statutory period, is nevertheless a right, even though it arises under an Act which is procedural and a right which is not to be taken away pleading retrospective operation unless a contrary intention is discernible from the statute. Therefore, B unless the language clearly manifests in express terms or by necessary implication, a contrary intention a statute divesting vested rights is to be construed as prospective."

C 19. Keeping in view the aforesaid enunciation of law, it is to be seen whether the amendment and introduction of the words "six years from the end of such year or March 31, 2002 whichever is later" either expressly or by necessary implication can be regarded as retrospective. The cardinal principle which D is accepted is that law in force in the assessment year is to be applied unless there is an amendment which comes into force having retrospective operation. In the instant case, the Legislature has brought the amendment by reducing the period from eight years to six years. The language employed in the E proviso has to be carefully scrutinised and appreciated. In ***Jyoti Traders*** (supra), the Court was dealing with the amendment where the words that were brought in "eight years from the end of such year" and the Court interpreted the F legislative intent and opined that to give full effect to the intention, it has to date back to the previous assessment of eight years. In the present amendment, the words that have been substituted are "six years from the end of such year or March 31, 2002 whichever is later". We have already stated G the period of six years has to be given full effect. There can be no trace of doubt in the same. The words "or March 31, 2002 whichever is later" are of immense significance. It is extremely important to understand the intent of the legislature, for specifying this date when the limitation period was reduced H from eight years to six years. It is the submission of the learned

counsel for the revenue that the amended proviso does not place any embargo on the Commissioner of Sales Tax to reopen an assessment even if the limitation has expired before the proviso came into operation under the pre or post amendment period of eight or six years and the High Court is justified in holding that the assessment or reassessment could be done either within six years from the end of the assessment year in question or till 31.3.2002 whichever is later. On a first blush, the interpretation placed by the High Court, which has been assiduously supported by the learned counsel for the State may look attractive, but on a closer scrutiny, the fallacy in the interpretation becomes clear. As far as six years is concerned, as stated earlier, there can be no difficulty. The State legislature has intentionally reduced the period from eight years to six years. Such reduction of period is definitely beneficial for the assessee. It is worth noting the period was reduced to six years, however, in the language used, the outer limit has been fixed either six years or March 31, 2002 and, therefore, the latter part of the proviso also specifying the date 31st March, 2002 has to be appositely interpreted. The amendment, as we perceive, is not only beneficial to the assessee but also intends to protect the interest of the revenue. Prior to this amendment, the period of limitation was eight years. There could be cases which were pending by virtue of issue of notice as the earlier limitation period was eight years under the pre-amended proviso. The intention of the latter part of the proviso is to save such pending assessments and that is why a specific date, that is, March 31, 2002 has been incorporated. While reducing the period from eight years to six years, time has been specified to complete the assessment or reassessment by 31.3.2002. The making of assessment is an extremely material facet. Had the said date, that is, 31.3.2002, is not treated as a saving factor, the pending reassessment cases covered by eight years period would have come under the sunset and reduced limitation period would

A have adversely affected the interest of the revenue. Therefore, the protective provision. If such construction is not placed, it would be rather inequitable, in a way incongruous, as on the one hand the period of limitation is reduced and by fixing a determinative date, a peculiar situation is created. The B legislative intent was not to enhance and increase the limitation period, regardless and notwithstanding the financial or assessment year. If the stand of the revenue is to be accepted, then the effect of 2001 amendment would empower and authorise reopening of cases without reference to the financial C year, provided the assessment order was made on or before 31.3.2002. Such an interpretation would be contrary to the legislative intendment for the reason, the same amendment has reduced the limitation period from eight years to six years. The logical corollary is that the legislative intent was not to do D away and erase the limitation period, but the date "March 31, 2002" was incorporated only to protect the cases which could be earlier governed by a limitation period of eight years. Thus, 2001 amendment is not fully retrospective, but it is partly E retrospective. If reduces the limitation period from eight years to six years and simultaneously protects and safeguards the interest of the revenue in respect of cases within eight years and six years provided the reassessments are completed by 31st March, 2002. Hence, we are of the considered opinion F that the decision in ***Jyoti Traders*** (supra) is distinguishable, regard being had to the nature of the amendment that has been brought in and consequently, the interpretation placed by the High Court on the amended provision is incorrect.

G 20. In view of the foregoing analysis, the appeals are allowed and the judgment and order passed by the High Court are set aside. Resultantly, the initiation of the re-assessment proceeding is set aside being barred by limitation. There shall be no order as to costs.

H Devika Gujral Appeals allowed.