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Amendment to Telangana VAT Act for extending period of limitation and permission to re-open assessments post enactment of GST is unconstitutional - SC

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Summary

The Supreme Court (SC) has upheld the Telangana High Court's (HC) decision and affirmed that an amendment to the Telangana VAT Act for extending the period of limitation and permission to re-open assessments post the enactment of GST is unconstitutional. The SC found that after the 101st Constitution Amendment Act came into force in 2016, the state legislature did not have the competence to legislate the VAT amendment Act. It was thus concluded that once the VAT Act stood repealed, except in the case of limited categories, the question of amending it would not arise.

Facts of the case

- The Telangana local VAT Act was amended by introducing an ordinance. It was brought into force on 17 June 2017, i.e., 13 days before the time granted by the 101st Amendment Act, i.e., one year.
- The amendment came into force on 16 September 2016. The ordinance sought to extend the limitation period and permitted re-opening assessments. This ordinance continued till the state legislature enacted it.
- The governor then assented to the law, and it came into force on 2 December 2017.
- Feeling aggrieved, many traders and VAT payers approached the Telangana High Court, challenging the amendments to the local VAT Act.
- The Telangana HC accepted the challenge and struck it down on various counts, including that the state had limited scope to amend its VAT Act, which, in terms of Section 19 of the amendment, could have done only to bring it in conformity with the amended Constitution.
- Other reasons included that the ordinance could not have been confirmed, as the state was denuded of legislative competence after 1 July 2017.

Supreme Court's observations and ruling [CIVIL APPEAL NO(S). 1628 OF 2023, Order dated 20 October 2023]

- **Authority to legislate flows from the Constitution:** The authority to legislate has been located primarily in Articles 245 and 246. The courts have consistently recognised that the lists in the Seventh Schedule to the Constitution merely delineate the fields of legislation; they are not considered as sources of power. The reorganisation of those legislative fields, particularly Entry 84 of the first list and Entry 54 of the second list and the conformant of larger powers, upon both the legislative entities, i.e., the parliament and the state legislatures, meant that both authorities to legislate upon all subject matters that are comprehended within the description of 'goods and services' for the purpose of indirect taxation under Article 246 A. Yet the operationalisation of this provision required the formulation of the principles by the GST Council, which occurred later.
- **Authority to legislate is expressed through Section 19, read with Article 246A:** Section 19 is to be construed as part of the Constitution for the limited duration it operated and was effective. The authority to legislate is expressed through Section 19, read with Article

246A. In other words, in the absence of the principles formulated by the GST Council, the authority, so to say, reserved by Section 19 and Article 246A to amend or repeal the law, which is the subject matter as understood initially, stood obliterated from the Constitution.

- **Amendment act could not have been given effect to post the enactment of the GST regime:** The ordinance's validity and effect might not have been suspect on the date of its promulgation. However, on the date when it was approved and given shape as an amendment, the state legislature had ceased to possess the power. By then, the State GST and the Central GST Acts had come into force (on 1 December 2017). Therefore, Section 19 ceased to be effective. The original entry (Entry 54 of the state list) ceased to exist.
- **No limitations on power to amend:** Section 19 of the Constitution (101st Amendment) Act, 2016, and Article 246A enacted in the exercise of constituent power, formed part of the transitional arrangement for the limited duration of its operation, and had the effect of continuing the operation of inconsistent laws for the period(s) specified by it and, by virtue of its operation, allowed state legislatures and the parliament to amend or repeal such existing laws. Since other provisions of the said Amendment Act had the effect of deleting the heads of legislation from List I and List II (of the Seventh Schedule to the Constitution of India), both Section 19 and Article 246A reflected the constituent expression that existing laws would continue and could be amended. The source or fields of legislation, to the extent they were deleted from the two lists, for a brief while, were contained in Section 19. As a result, there were no limitations on the power to amend.

Our comments

This is a welcome ruling by the SC and will provide huge relief to the taxpayers, as the amended act gave an undue advantage to the assessing authorities by empowering them to reassess the returns that had been assessed previously – additionally for a period of two years, i.e., in six years, which was four years earlier. The lengthening of the period by two more years meant that the dealers whose assessments had either escaped notice and who had misdeclared or withheld information could now be exposed to the possibility of reassessment for a further period of two years.

The ruling concurs that the state government cannot make laws contrary to the spirit of the central acts. It is pertinent to note that the Gujarat and Kerala HCs have already struck down similar laws made by the state governments.

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