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State Legislature has no power to deal with Entry Tax related matters after Constitution (101st amendment) Act 2016- West Bengal Taxation Tribunal

30 March 2022

Summary

The West Bengal Taxation Tribunal held that the State Legislature is denuded of its plenary power to deal with Entry Tax related matters since[1] the Constitution (101st Amendment) Act 2016 came into effect. The Tribunal ruled that Section 5 and Section 6 of the West Bengal Finance Act, 2017 are ultra vires and unconstitutional. The Tribunal clarified that Section 19 has conferred limited legislative power within a prescribed period to amend certain entries of the state list to make it in tune with the cherished goal of GST. It has not conferred any power to amend the Principal Act. The Tribunal further held that the State Legislature cannot be said to have legislative competence to bring in the impugned amendment and validation of the Act.

Facts of the case

- The petitioners have challenged the vires of West Bengal Finance Act 2017 (Amending Act 2017) on various grounds including lack of legislative competency, discriminatory, impossibility of its successful implementation, etc.
- The petitioner[2] contended that the Entry Tax Act was enacted under Entry 52[3] which has been deleted[4]. Hence, the State Legislature has lost its legislative competence which cannot be revived or revalidated.
- The petitioner further contended that a transitional provision[5] cannot be used as a source of power to enact the Amending Act. Further, after 101st amendment, the legislature lost its plenary power to legislate Entry 52 with reference to Article 246.
- The petitioner submitted that section 6 is prospective, whereas section 5 is retrospective in nature. Thus, both the sections are not compatible with each other, and section 6 fails to achieve its ostensible purpose.
- The petitioner further submitted that the section has limited legislative power to amend only those provisions on which the legislature has competency to enact.
- The petitioner described the act as manifestly arbitrary, creating hostile discrimination offending equality clause and violative of Article 14 of the Constitution.

West Bengal Taxation Tribunal observations and ruling[6]:

- **Quashing of an order and stay operation of an order is clearly different:** Quashing results in the restoration of the position as on the date of the passing of the order. However, the stay of operation of an order only means that the order which has been stayed would not be operative from the date of the passing of the stay order. The stay of order does not mean that the said order has been wiped out from existence.

[1] on and from 16 September 2016
[2] M/s. Tata Steel Ltd. & Ors.
[3] of list II of the 7th Schedule of the Constitution
[4] in 101st Constitution Amendment Act 2016 w.e.f 16.09.16
[5] section 19 of the 101st Constitution Amendment Act,2016
[6] Case No. RN-08 of 2018, Order dated 25 March 2022

- **Amendment is premature and smacks of misadventure:** A stay order does not erase the effect of original order. Entry Tax Act cannot be revived by way of amendment during the period of appeal until the verdict is reversed. Once a provision has been declared ultra vires, the state cannot invoke the said ultra vires proceedings against the citizen of the country, just because interim order has been passed in an appeal. Hence, despite the fact that interim order was granted with some conditions, the amendment is premature.
- **'Inconsistent' used for entries needed amendment:** The word 'inconsistent' denotes only those provisions which were not entirely deleted like Entry 52 but were deleted partially or kept in altered/ truncated version. For existence of an inconsistency, there ought to be an apparent conflict or contrary position. In present case, Entry 52 has been deleted entirely and nothing is left comparable with term 'inconsistent'. Though Entry 52 was not consistent with purpose of Act[7] but the word 'inconsistent' has lost significance when the Entry 52 was dropped entirely.
- **'Amended' or 'repealed' are to be read disjunctively but distributively:** The word "amended" is meant for those entries which are partially deleted and/or substituted. However, the word 'repealed' is meant for entirely deleted entries. In the given case, the State Legislature has no option but to repeal the entry tax. Thus, the Act[8] has accordingly repealed the Entry Tax Act. But since the section has not conferred any right to amend the entry tax laws, provisions[9] dealing in Entry Tax matter are unconstitutional.
- **Section 19 does not confer any new or additional power:** The section has conferred limited legislative power within a prescribed period to amend certain entries of the state list to make it in tune with the cherished goal of GST. And it has not conferred any power to amend the Principal Act. After deletion of Entry 52, the term 'amended' used in section 19 is no longer including any matter relating to Entry Tax.
- **State Legislature has no power to legislate or amend the Entry Tax laws:** State Legislature has exclusive power to make laws with respect to any matters enumerated in list II of 7th schedule. Since Entry 52 has been permanently deleted hence, now State Legislature has no power to legislate or amend the law in Entry tax. Thus, section 5 and 6 are declared ultra vires and unconstitutional.
- **Applicability of judgement:** The judgement is applicable to all other applications, which are not mentioned in this judgement but are pending before the Tribunal challenging the provisions. However, it will not cover those pending applications where the entry tax act has been challenged.

[7] Constitution Amendment Act 2016
[8] Section 173 of W.B GST Act, 2017
[9] section 5 and 6 of the West Bengal Finance Act 2017, enacted on 06.03.17

Our comments

In the present ruling, the West Bengal Taxation Tribunal has emphasised that the State of West Bengal had no legislative competency to introduce section 5 and 6 of West Bengal Finance Act, 2017. Hence, the said provisions are ultra vires and unconstitutional.

This ruling is applicable to all the applications which are pending before the Tribunal challenging the above provisions. Thus, it is an important and welcoming decision for the taxpayers which shall bring required relief and set precedents in similar pending matters.

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