

Background



- The validity of amendments carried out by the State legislatures in their respective VAT Acts pursuant to the introduction of Constitution 101st Amendment Act, 2016 ('CAA'), has been subject matter of dispute in many States and several judgments were delivered by the High courts, some in favour of the assessee and some in favour of the revenue. Consequently, the matter was brought to the Supreme Court¹ ('SC') against the decisions rendered by the High Court ('HC') of Telangana, Bombay and Gujarat.
- The appeals were filed before the Telangana HC in pursuance of the amendment in the local VAT Act extending the period of limitation to issue notice of reassessment and reopen assessments as well as for deciding pending revisions proceedings for further two years through an Ordinance brought into force on June 17, 2017. The Telangana HC struck down the amendment holding that the amendment could have been done only to bring it in conformity with the amended Constitution in terms of Section 19 of CAA and the State lacked legislative competence after July 1, 2017. The same was challenged in the present petition.
- Another batch of appeals were filed against the decision of Gujarat HC striking down the amendment in Gujarat VAT Act, which *inter-alia* provided that if for a particular issue in "some other proceedings" a lower forum, gave a decision which is prejudicial to the interest of the revenue and an appeal against such decision is pending before the higher forum, then the period spent in such litigation will be excluded while computing period of limitation for revision, on the ground of lack of legislative competence on the part of the legislature after July 1, 2017.
- Another batch of appeals were filed against the decision of Bombay HC upholding the Maharashtra VAT Amendment Act, passed on April 15, 2017, requiring the assessee to deposit 10% of disputed tax amount, failing which the appeal shall be dismissed.

Issue for consideration



- The principal questions raised before the SC was whether the State legislatures had the power and competence to amend their respective VAT legislations, in light of the provision of Section 19 of CAA, which imposed a time limit of one year to amend existing tax laws in conformity with the new constitutional provisions.



- The SC not being impressed by the arguments put forth by the revenue for upholding the amendment of the local State VAT Act in pursuance to introduction of CAA held that the amendment carried out in the respective State VAT Act pursuant to introduction of CAA are void.
- The SC analysed Section 19 of CAA to hold that the said provision seeks to achieve three aims i.e., i. to preserve the existing state of the State and Central indirect tax regime, for one year from the date of commencement of the amendment or till a new law is enacted whichever is earlier. ii. to authorize the State Legislatures and Parliament to amend existing laws which were in force iii. to repeal such laws. The SC took note that other than Section 19 of CAA there is no saving provision which is part of the Amendment.
- The Bench referred to various decisions to draw distinction between constituent power and legislative power and held that Section 19 of CAA is not merely a legislative device and even though it was kept outside the Constitution, the fact remains that it was introduced as part of the same Amendment Act which entirely reconstructed the Constitution and hence, whether the same was a part of the Constitution or not is not relevant and what matters is the effect of those provisions. Accordingly, Section 19 of CAA is to be construed as a part of the Constitution for a limited duration it was in operation.
- The Bench also referred to Section 20 of the CAA that enabled the President to issue orders for the removal of difficulties experienced in the course of implementing the amendments to the Constitution. It held that if it were not enacted in the exercise of constituent power but mere legislative power, there would be no legitimacy of the power conferred upon the President under said Section 20 of CAA.
- In addition to the above, the SC noted that Article 246A of the Constitution has no relation to the earlier sales tax laws as it specifically deals with GST, which was specifically defined under the Constitution to mean a tax on the “supply of goods and services”. Section 19 of CAA does not confer wide powers to the State legislatures/ Parliament to make any amendment in the laws existing in force at the time of enacting the Amendment Act. The power referred to in Section 19 is a limited power granted to the State Legislature for a limited period to make such amendments as may be necessary to remove inconsistencies, if any, and bring the existing laws in consonance with the GST legislations.
- The power under Article 246A of the Constitution is to be exercised simultaneously by the Parliament and the State legislature and cannot be exercised independently as they do under the provisions of Article 246(3). Therefore, the State Legislature can only exercise its taxing powers with respect to goods and services either under said Article 246A, which is to be exercised along with the Parliament, or under Article 246(3) read with amended Entry 54 of Seventh Schedule of the Constitution.



- Basis the above, the Bench held that amendments made to the State VAT Act after July 1, 2017, shall be void as correctly held by Telangana and Gujarat HC and the decision of Bombay High Court is held to be in error and accordingly, set aside.

Aurtus Comments



- The ruling recognizes that the legislature did not intent to indefinitely allow the erstwhile laws to continue after the introduction of GST. The provisions of the CAA were drafted and enforced with that intent and purpose and not for the State to continuously amend the limitations prescribed under these erstwhile laws to make them limitless. The attempt of the State legislatures to stretch these powers to enable larger collections was superfluous and maybe was made with an endeavor to ensure to keep the old truck running. The Supreme Court, however, taking a very focused view that erstwhile taxes cannot be imposed and collected by the State legislatures in absence of the powers subsequent to the Constitutional amendment.
- Also, considering the above decision, taxpayers should immediately re-evaluate situations where refunds are pending with respect to a time barred assessment or where the assessment has become time barred but the timeline was extended by the State legislatures. Such taxpayers may evaluate an option of approaching the High Courts for an expedited relief.

¹*The State of Telangana & Ors. v. M/s. Tirumala Constructions [Civil Appeal No(s). 1628 of 2023]*

