

The House reassembled after lunch at thirty-two minutes past two of the clock, Mr. Deputy Chairman in the Chair.

THE DELHI SALES TAX (AMENDMENT AND VALIDATION) BILL 1976

THE MINISTER OF REVENUE AND BANKING (SHRI PRANAB MUKHERJEE): Sir, I beg to move:

"That the Bill to amend retrospectively the law relating to sales tax as in force in the Union Territory of Delhi during a past period and to validate taxes on the sale or purchase of certain goods during such period, as passed by the Lok Sabha, be taken into consideration."

Sir by a notification issued by the Ministry of Home Affairs on 28th April, 1951, under section 2 of part C States (Laws) Act, 1950 (later on named as Union Territories (Laws) Act, 1950, after Delhi became a Union Territory, the Bengal Finance (Sales Tax) Act, 1941, was extended to the Union Territory of Delhi with certain modifications. The aforesaid Act of 1941 has since been repealed by section 73 of the Delhi Sales Tax Act, 1975, with the usual saving provisions. Sub-section (2) of section 6 of the 1941 Act, as extended, required a notice of not less than three months to be given before any notification to add to or omit from or otherwise amend the schedule appended to the Act was issued. The above notification of 28th April, 1951, was subsequently amended on four different occasions by notifications issued by the Ministry of Home Affairs. The last such notification of 7th December, 1957, amended the aforesaid sub-section (2) of section 6 of the Act, as extended, so as to replace the expression "not less than three months' notice" by the expression "such previous notice as it considers

reasonable". The result of this amendment was that it was not necessary for the Government to give three months' notice of its intention to amend the schedule and the amendment of the schedule could be undertaken by giving a reasonable notice which need not be of three months.

Under the amended sub-section (2) of section 6 aforesaid several notifications were issued by the Ministry of Home Affairs which amended the schedule appended to the Act.

The vires of the notification of 7th December, 1957, aforesaid was challenged through writ petitions in the Delhi High Court. While a single judge of the Delhi High Court allowed the petitions, the division bench dismissed the petitions on appeal.

The matter came up in appeal before the Supreme Court in the case of Lachminarayan Vs. Union of India and others. The Supreme Court ruled in this case that the notification dated 7th December, 1957 was beyond the powers conferred on the Central Government by section 2 of the Part C States (Laws) Act, 1950 and, therefore, the notifications in question which were issued under the amended sub-section (2) of section 6 of the Bengal Finance (Sales Tax) Act, 1941, as applicable to Delhi, without complying with the mandatory requirement of not less than three months notice, enjoined by that sub-section were also invalid and ineffective. The view taken by the Supreme Court was that the power conferred by section 2 of the Part C States (Laws) Act, 1950 to make restrictions and modifications in the enactment sought to be extended is not a separate and independent power. It is an integral constituent of the power of extension. It cannot be exercised apart from the power of extension. The power exhausts itself on extension of the enactment. It

cannot be exercised repeatedly or subsequently to such extension. It can be exercised only once simultaneously with the extension. Further, the power cannot be used for a purpose other than that of extension. In the exercise of this power only such restrictions and modifications can be validly engrafted in the enactment sought to be extended, which are necessary to bring it into operation and effect in the Union territory. Modifications which are not necessary for or ancillary and subservient to the purpose of extension are not permissible. Only such modifications can be legitimately necessary for such purpose as are required to adjust, adapt and make the enactment suitable to the peculiar local conditions of the Union territory for carrying it into operation and effect. The words "restrictions and modifications" in section 2 of the Part C States (Laws) Act, 1950 do not cover such alterations as involve a change in any essential features of the enactment or the legislative policy built into it.

In view of the aforesaid judgement of the Supreme Court, notifications that amended the original extension notification of 28th April, 1951 as also the notifications issued under amended sub-section (2) of section 6, which modified the schedule to the Act, are bad and are required to be validated. Further, it may be possible to advance the argument that some of the modifications made in the Act by the extension notification of 28th April, 1951 (particularly the substitution of the schedule to the Act by a new schedule) are not valid as being beyond the limits of permissible modifications. In the case before the Supreme Court, the Court did not allow a similar argument to be raised on a technical ground, namely, that it was not raised in the original pleadings. It appears desirable to avail of the present opportunity to

make a suitable provision for avoiding scope for any such argument being raised in any future case.

Sir, the aforesaid judgement of the Supreme Court was delivered on the 25th November, 1975. The Commissioner, Sales Tax, Delhi approached the Central Government for undertaking a legislation in the form of an Ordinance to cure the defects pointed out in the judgement. It was considered necessary to collect relevant factual data about the likely refund which would have to be allowed by the Delhi Administration in case the validating legislation, which was required for the purpose, was not enacted. Details of all the notifications which were to be validated had to be collected. The effect of the judgement on any other legislations extended to Union Territories under section 2 of Part C States (Laws) Act, 1950 was also to be examined. It was also felt that legislation by Ordinance was not desirable in respect of taxation matters like this, particularly when it required validation of actions taken in the past. The Delhi Administration was, therefore, advised to collect the required data and to forward a Bill for enactment by Parliament. They were also advised to place the Bill before the Metropolitan Council of Delhi, as required by the Delhi Administration Act, 1966. All these processes, including discussions between administrative Ministries and the Delhi Administration, invariably took time. The Bill in the form in which it could be placed before the Metropolitan Council was finalised in April, 1976. The Administration informed the Central Government on 4th June, 1976 that the Bill has been recommended by the Metropolitan Council and the Executive Council of Delhi has approved it.

The Administrator, Delhi has also seen the Bill. While forwarding the Bill, the Delhi Administration stressed that if the validating legislation

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was not enacted, they would be required to refund the taxes already collected to the tune of Rs. 40 crores. Sir, if the refund of taxes already collected was allowed to be made, the benefit of such refund would have accrued to the dealers and not to the purchasers from whom the tax would have been recovered already by such dealers.

In view of the above position, the Government decided on 29th June, 1976 to enact a legislation in the current session of Parliament, to cure all the defects. The Bill before the House seeks to achieve the following objectives:—

(i) The notification of 28th April, 1951, which extended the Bengal Finance (Sales Tax) Act 1941 to the Union Territory of Delhi with certain modifications, as also the other notifications which amended the aforesaid extension notification of 28th April, 1951, shall be deemed to have been and to be a law enacted by Parliament on the date on which of such notification was published in the Gazette of India;

(ii) Sub-section (2) of section (6) of the Act as extended to Delhi would be modified so as to retrospectively do away with the requirement of previous notice; and

(iii) Validation of action taken in the past on the basis of notifications issued under the said section 6(2).

Sir, I would like to reiterate that the Bill seeks only to cure the legal defects which were pointed out in the judgement of the Supreme Court. It does not create any new charge or liability under the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi which, as stated earlier, has since been repealed by the Delhi Sales Tax Act, 1975, enacted by Parliament and brought into effect from 21st October, 1975. The Bill merely seeks to restore and confirm the position obtaining during the past

period. Sir, there have been precedents when retrospective validating legislations had to be enacted. In the case of Delhi itself the Bengal Finance (Sales Tax) (Delhi Validation of Appointments and Proceedings) Act, 1971 was enacted in June 1971, when the appointment of officers for assisting the Commissioner of Sales Tax, Delhi was challenged before Delhi High Court as not being in accordance with section 3 of the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi. It validated all appointments made from the commencement in 1951 of the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi, as also all assessments etc. made by officers so appointed, from time to time. The Central Sales Tax (Amendment) Act enacted in 1969 also amended the principal Act retrospectively from 1-10-1958 and validated the collections made between 1-10-1958 and 9th June, 1959 (the date of commencement of the Amendment Act) when the Supreme Court interpreted the provisions of the law in a manner different from the original intentions of such law. Sir, I trust the House will unanimously accept the Bill. Sir, I move.

The question was proposed.

SHRI KHURSHED ALAM KHAN (Delhi): Sir, I rise to support the Delhi Sales Tax (Amendment and Validation) Bill, 1976. It was obvious and necessary that this Amendment Bill should be brought in because the hon. Minister has stated in his introductory remarks the necessity and the urgency of the Bill. I have nothing to say about that except that it is a very innocent Bill and it has all our support. In the meanwhile, I would like to say that we have so many Acts of other States which have been extended to Delhi. Really speaking, our problems always arise when we have extended these Acts. We find that they fail to meet our total requirements, our needs and our necessities. Here the Bill has

been brought forward as a result of the Supreme Court Judgement invalidating some of the basic notifications. Sir, how long are we going to live on this borrowing from other States? By now Delhi have its own legislation and its own Bills so that we could incorporate all our requirements and necessities, as we want them today. We find that we are still continuing with extension of Acts of other States and I suppose, it is high time that an end should be put to such sort of extension of Acts to the Union Territory of Delhi.

Sir, as a result of the Supreme Court Judgment, the refund of taxes collected amount to about Rs. 40 crores and this is really a staggering sum. Therefore, it is very necessary that this amendment should be brought forward and it should be passed and approved. But, at the same time, I would like to repeat what I said last time that apparently it seems Delhi does not have anything of its own. Some people go to the extent of saying that even our weather is borrowed from Rajasthan, Himachal Pradesh and Jammu and Kashmir, because our summer is affected by the Rajasthan heat and our winter is affected by the Himachal Pradesh cold. Our problem is that a number of Acts have been extended to Delhi, just as the Act of 1941 of Bengal was extended to Delhi, and those have failed to meet our requirements. How long are we going to remain in this situation? When will the day come when we find that we can enact our own legislation? The present position that our Metropolitan Council can only make recommendations does not seem to be a cheerful one. We want that our Metropolitan Council should have full delegation of powers so that they can deal with such problems effectively and expeditiously. Sir, we shall continue to be faced with this kind of problems unless, of course, our own Metropolitan Council is delegated with more powers on the subject and we are in a position to pass our own

legislation without borrowing it from another State, as we have seen that this borrowing from other States has failed us in many respects and in many ways. This has been a long standing demand. Unfortunately, in Delhi there is multiplicity of authority and unless there is a unified set-up for Delhi, we will fail to satisfy the aspirations of the citizens of this ancient city.

Sir, while the Delhi Sales Tax Bill, 1975 was being deliberated in this House, the honourable Minister had given us an indication that the revenues of the Union Territory of Delhi will increase by about Rs. 12 crores per annum. I would like to know whether our income has increased as estimated or we have failed to touch this figure which was indicated by the honourable Minister at that time. Besides, Sir, I would also like to know whether this high rate of tax introduced in pursuance of that Act has affected the distributory character of trade in Delhi in any adverse manner because Delhi is known for its distributory character since we have a lot of trade in which the people from other States come and make their purchases and take the goods and materials to their States. If there has been any adverse effect of this, what is proposed to be done? I would like to know whether any steps have been taken to find out and ascertain whether this is an assumption only or really there is some adverse effect.

Sir, with these few words, I would like to say that we support the Bill, but we earnestly hope that in future there will be no need for extension of Acts from other States to the Union Territory of Delhi and that our Metropolitan Council will have adequate powers to legislate its own Bills and its own rules and regulations.

I once again support the Bill.

SHRI JAGAN NATH BHARDWAJ
(Himachal Pradesh): Mr. Deputy
Chairman, Sir, I support this Bill

[Shri Jagan Nath Bhardwaj]

because it is a simple and formal Bill. It seeks to meet certain anomalies which have been caused by the judgements given by different courts and other legal lacunae. Sub-clause 3(c) of clause 3 says something about recoveries. Recoveries are to be made in cases which have been assessed under the existing Sales Tax Act. Naturally, there will be recoveries in those cases. I have no objection to this. But I would urge upon the honourable Minister to take steps which are as lenient as possible to make recoveries from those who will be affected by this amendment. Mr. Khurshed Alam Khan said that Delhi borrows climate from the other States. In our case, although we lend them climate, we borrow from them dearth. For example, for us in Himachal Pradesh, the nearest market is Delhi. We have to make purchases from Delhi at a very high cost because the sales tax rate here is very high and it directly affects the purchasers, not the sellers. So, naturally our market is also affected. I would therefore urge upon the hon. Minister to see if some reasonable reduction could be possible in the high rate of sales tax prevailing in Delhi. Alternatively, something should be done either to assess sales tax or to include sales tax at the production stage so that the consumer is not affected by sales tax because shopkeepers are experts in their business. They collect sales tax but only from the consumers, they do not add sales tax out of their pockets. For example, when they say that there is a reduction in prices under the 20-point programme, actually they increase the prices beforehand and then they make a cut in them and put up the sign-board. Similarly it happens in the case of sales tax also, not in Delhi, but also at other places in the country. So it is very desirable that the feasibility of including or adding the sales tax at the production stage should be considered.

As far as the collection machinery is concerned, most of the sales tax

collected is not actually remitted to the Government. It is a very serious point—there are such financial irregularities. He should look into this matter and something positive should be done so that every paisa of sales tax collected is paid to the Government.

Lastly, there is one point, though it does not concern the subject under discussion. But it has some bearing on the feelings of some retired Members of Parliament. I had the chance of meeting many retired Members. They feel themselves in a very pitiable condition, some of them, not all. Yesterday, my friend, Dr. Chandramanilal Chowdhri, raised the question of meeting many retired Members and said that a Bill should come as early as possible. He spoke just to express the feelings of those hon. Members who have led a very honourable life in Parliament.

AN HON. MEMBER: Is it coming from sales tax?

SHRI JAGAN NATH BHARDWAJ: Since you are sitting in those Benches you can dare ask like that. I hope you will not mind this, Government is already conscious of this. I need not take more time of the House but still I am duty bound to express the sentiments of my friends. I also join Dr. Chandramanilal Chowdhri in requesting the hon. Minister to bring forward a Pension Bill for Members of Parliament as early as possible. There is also the question of medical and travel facilities. If in addition to pension these two things are also given to the retired MPs, they will be leading an honourable life. They will have some source of income, they will feel grateful and will also participate in the social programmes of the Government. So much new thinking is developing in this country and such retired people could be very useful in carrying out constructive work for the welfare of the poor masses in our country. With these words, sir, I again support the Bill.

SHRI KHURSHED ALAM KHAN:

But no amount from the Delhi sales tax should be diverted for this purpose.

SHRI JAGAN NATH BHARDWAJ:

I agree.

SHRI PRANAB MUKHERJEE:

Mr. Deputy Chairman, Sir, I am glad that the two hon. Members who have made their observations have lent their unqualified support to the provisions of the Bill. I explained in slight detail the background for bringing this piece of legislation, why it was necessary and what was the situation created by the judgment of the Supreme Court and its legal and financial implications.

Sir, in this connection, I would like to answer two or three points which Mr. Khurshed Alam Khan and Mr. Bhardwaj mentioned. It is true that the Bengal Sales Tax Act of 1941 was extended to Delhi and was in operation for quite some time. But, with the approval of this House and after a good deal of deliberations in the Select Committee, it has been possible for us to replace that Act by the Delhi Sales Tax Act, 1975. So, so far as Delhi sales tax is concerned, it is not guided by the extension of any other Act from any other State, but is governed by the Delhi Sales Tax Act itself. Sir, in this connection it is known to the hon. Members—if I remember correctly, Mr. Bhardwaj was also a member of this Select Committee...

SHRI JAGAN NATH BHARDWAJ:

I stand correct. No, I was not a member.

SHRI PRANAB MUKHERJEE:

No, he was not there because it was a Lok Sabha Select Committee. But those members who were there also highlighted one particular aspect of Delhi's trade pattern, that is, its distributive character. It is true Delhi has its distributive character. That is why it

was our emphasis to see to what extent we could maintain the distributive character of Delhi in the various provisions of the Bill. But here, Sir, I would like to draw your attention and through you, the attention of other Members of the House, to the fact that this is a point on which certain neighbouring States are also equally concerned. They feel that if Delhi is provided with a differential treatment and if there is no sales tax or if the difference in their sales taxes is of a high order, then there will be the possibility of diversion of trade at the cost of the other neighbouring States. So we had to keep that point also in view and we tried to make a compromise between the demands of Delhi and the demands of the neighbouring States, and we wanted to give effect to the recommendations of the Select Committee as far as possible, keeping that ultimate objective in view. Even today so far as the various provisions of the Delhi Sales Tax Act are concerned, to some extent we try to maintain the distributive character of Delhi.

Sir, Mr. Khurshed Alam Khan wanted to know the improvement in the situation after the new Act came into force from the 21st October, 1975. At that time I had mentioned that there was an expectation of enhanced revenue, and I am glad to tell him that in 1974-75, the total sales tax revenue in Delhi was Rs. 52.46 crores while in 1975-76, it went up to Rs. 73 crores. And it has to be kept in mind that this new Act came into force with effect from October 1975. That is why the benefit for the full year was not received in 1975-76. But the budget estimate for the current financial year, that is, 1976-77, is nearly Rs. 80 crores. So it is yielding more revenue.

Regarding certain other points

Regarding certain other points of more power to the Metropolitan Council or to other authorities, this is obviously not within the purview of my administrative control.

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But one point I would like to tell him and it is this that merely having legislative competence or more powers may not avoid a situation like this. I have mentioned in my introductory remarks myself that we have legislative competence to enact laws according to our own designs and desires, but sometimes we may have to revalidate them because of the situation created by either court judgments or by the different interpretations and classification of certain things. As mentioned by me in my introductory remarks, in the case of the Central Sales Tax Act, we had to do that. That is why the problem of revalidation perhaps cannot be sorted out merely by enhancing the powers or by delegating more powers to the authorities. But that is a separate issue and, obviously, it has its merits and demerits and I hope that the Home Minister who is in charge of it has taken note of it.

Sir, I do agree with you and with the other honourable Members of this House on this point that the last point which was mentioned by Mr. Bhardwaj may be very important and all of us may be interested in it. But I do feel that we should not provide pension to the Members of Parliament out of the proceeds of the Delhi Sales Tax. But, Sir, I can pass on the suggestion of Mr. Bhardwaj to the Minister of Parliamentary Affairs. Thank you, Sir.

MR. DEPUTY-CHAIRMAN: The question is:

"That the Bill to amend retrospectively the law relating to sales tax as in force in the Union territory of Delhi during a past period and to validate taxes on the sale or purchase of certain goods during such period, as passed by the Lok Sabha, be taken into consideration.

The motion was adopted.

MR. DEPUTY-CHAIRMAN: We shall now take up the clause-by-clause consideration of the Bill.

Clauses 2 and 3 were added to the Bill. Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI PRANAB MUKHERJEE: Sir, I beg to move:

"That the Bill be returned."

The question was put and the motion was adopted.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT), BILL, 1976.

THE DEPUTY MINISTER IN THE MINISTRY OF HOME AFFAIRS (SHRI F. H. MOHSIN): Sir, I beg to move:

"That the Bill to amend the Code of Criminal Procedure, 1973, be taken into consideration."

Sir, the provisions of the Bill are intended to remove the doubts and difficulties felt in the actual working of the new Code. As the honourable Members are aware, the new code which replaced the 75-year-old basic law of Criminal Procedure in our country was enacted with all care and attention and after considering the views of all the persons concerned. Honourable Members of both Houses evinced considerable interest and devoted their best attention to the various provisions of the Bill and I will only be reflecting the views of everyone if I say that we can be legitimately proud of the new Code which is one of the solid achievements of our Parliament. However, it cannot be denied that a new law of this complexity could not be made foolproof straightaway. The intention was, therefore, to watch its working for some time and to come up with amendments found necessary to remove the