HIGH COURT OF MADHYA PRADESH:
MAIN SEAT AT JABALPUR

(DIVISION BENCH: HON. SHRI S.K. SETH AND HON. SMT. ANJULI PALO, JJ)

Writ Petition No.1744/2015

Indian Oil Corporation Limited
Petitioner

V E R S U S

State of Madhya Pradesh & Others
Respondents

Shri G.N. Purohit, Senior Advocate with Shri Abhishek Oswal, Advocate for the petitioner.

Shri Deepak Awasthi, Deputy Advocate General for the respondents/State.

Whether approved for reporting - **Yes**

Law Laid Down - **Relating to Section 18(4)(a) of MPVAT Act for levy of interest**

Significant Paragraphs - **11, 12, 13**

O R D E R

(Delivered on this 23rd day of November, 2017)

Per Seth, J.

The short question that falls for our consideration is whether the petitioner is liable to

pay interest under Section 18 (4)(a) of the M.P.V.A.T. Act, 2002 for the Assessment Year 2011-12?

2. Brief facts, which are not disputed and necessary for the disposal of the present petition are as under:-

3. Petitioner is a registered dealer and is wholly owned and controlled by the Central Government as an Oil Marketing Company. Petitioner is engaged in the business of refining and distribution of Petroleum products, that is to say H.S.D., Motor Spirit, L.P.G., Kerosene and other petroleum products. In the State of M.P., only distribution work is undertaken in respect of L.P.G. The only source of purchase of L.P.G. within the State of M.P. is from the Gas Authority of India Limited (for short 'GAIL'), another Central Government owned and controlled company and also a registered dealer.

4. The case of the petitioner is that it had purchased L.P.G. after payment of full tax under the MPVAT Act as applicable to the State of

M.P. during the period from 01.04.2011 to 31.03.2012. The tax has been paid as per the books of accounts in time.

5. The Assessing Officer respondent No.4 while passing the assessment order denied the set-off of input rebate on amount of VAT paid to the GAIL on the ground that the GAIL had issued credit notes in favour of the petitioner due to price revision as per the direction of Petroleum Planning and Analysis Cell (PACC) of the Government of India after the invoices were issued. The price revision has only been made in respect of base price and no credit note has been issued for the VAT paid by the petitioner and deposited by the GAIL in the assessment of the GAIL and an order of forfeiture of amount (tax charged and deposited on the amount of credit notes subsequently issued) has been made under Section 35 (2) of the VAT Act.

6. The Assessing Officer raised an additional demand inclusive of interest under Section 18 (4) of the VAT Act and issued a recovery notice

for outstanding demand. This order of assessment was taken up in *suo motu* revision by the Additional Commissioner of Commercial Tax, Bhopal (respondent No.3 herein). The respondent No.3 has made an order under Section 47 (1) and revised the assessment order under the VAT Act. The respondent No.3 has corrected certain calculation mistakes, allowed the adjustment of refund order in input tax rebate but sustained the levy of interest charged under Section 18 (4)(a) of VAT Act.

7. It is the case of the petitioner is that levy of interest is not sustainable because it had paid the full tax amount of VAT along with returns in the prescribed manner.

8. The petition is opposed by the respondents by filing return and they have justified the levy of interest on the ground that additional demand has been created.

9. After having heard the rival submissions at length and going through the material placed on

record, we are of the considered opinion that the levy of interest is unsustainable in view of the Constitutional Bench decision of the Supreme Court in the case of **J.K. Synthetics Ltd. Vs. Commercial Taxes Officer** reported in **(1994) 94 STC 422**.

10. For ready reference, Section 18 (4)(a) of the MPVAT Act is reproduced herein below:-

> *"**18(4)(a)** If a dealer required to furnish return under sub-section (1),-*
>
> ***(i)** fails to pay the amount of tax payable according to a return for any period in the manner prescribed under sub-section (2) of Section 24; or*
>
> ***(ii)** furnishes a revised return under sub-section (2) showing a higher amount of tax to be due than was shown by him in the original return; or*
>
> ***(iii)** fails to furnish return,*
>
> ***(iv)** has furnished return or returns and the tax paid along with the return or returns is less than the tax as per accounts.*
>
> *such dealer shall be liable to pay interest in respect of,-*

(1) *the tax payable by him according to the return; or*

(2) *the difference of the amount of tax payable according to the revised return; or*

(3) *the tax payable for the period for which he has failed to furnish return; or*

(4) *the amount of tax by which tax so paid along with the return or returns falls short of the tax as per accounts.*

[at such rate as may be prescribed which shall not exceed 1.5 percent per month] from the date the tax so payable had become due to the date of its payment or to the date of order of assessment, whichever is earlier.

Explanation: *For the purpose of this clause,-*

(1) *Where the period of default covers a period less than a month the interest payable in respect of such period shall be computed proportionately.*

(2) *'month' shall mean thirty days.*

(b) *If a registered dealer having furnished a return under sub-section (1) or a revised return under sub-section (2) for any period and paid the tax payable according to such return or revised return after the time prescribed therefore fails to pay interest along with such return or revised return in accordance with the provisions of clause (a), the Commissioner shall levy the interest liable to be paid by the dealer and*

after giving the dealer a reasonable opportunity of being heard, may direct him to pay in addition to the tax payable or paid and the interest payable by him, by way of penalty a sum equal to such rate as may be prescribed which shall not exceed 1.5 per cent per month of the amount of interest from the date such interest had become due to the date of its payment or to the date of order of assessment, whichever is earlier.

(c) *If a dealer fails without sufficient cause to comply with the requirement of notice issued under sub-section (1), the Commissioner may after giving the dealer a reasonable opportunity of being heard, direct him to pay, in addition to any tax payable or paid by him by way of penalty a sum of one hundred rupees per day of default subject to a maximum of rupees five thousand.*

(d) *Where,-*

> ***(i)*** *no tax is payable by a registered dealer committing a default under sub-clause (iii) of clause (a), or*
>
> ***(ii)*** *a registered dealer having paid the tax payable according to a return in time fails to furnish the return in time;*

the Commissioner may after giving such dealer a reasonable opportunity of being heard direct him to pay by way of penalty a sum of rupees fifty per day for

> *first thirty days of default and thereafter a sum of rupees one thousand per day subject to a maximum of rupees fifty thousand"*

11. The provision for levy of interest clearly shows that so long as the assessee pays the tax which according to return is due on the basis of information furnished in the return filed by him, there would be no default on his part to meet the statutory obligation and therefore, it cannot be held that the tax payable by him is not paid to make him liable to pay interest.

12. Their Lordships' of the Supreme Court while dealing with the Provisions of the Rajasthan Sales Tax Act in J.K. Synthetics Ltd. (**supra**) has observed as under:-

> "**7.** *Now Section 7(2) says that every 'such' return, meaning thereby the return referred to in Section 7(1), shall be accompanied by a receipt showing the deposit of the full amount of tax due "on the basis of the return". In other words the dealer is required to pay the full amount of tax that becomes due on the basis of the particulars in regard to the turnover and taxable*

turnover disclosed in the return.

Sub-section (2-A) begins with a non obstante clause, namely, notwithstanding anything contained in sub-section (2), and provides that any dealer or class of dealers specified in the notification may pay the tax at intervals shorter than those prescribed under sub-section (1), in which case the tax shall be deposited at the intervals specified in the notification in advance of the return and the return shall be accompanied by the receipt for the full amount of tax due "shown in the return". Although the phraseology used in sub-sections (2) and (2-A) of Section 7 is not the same, the content and purport of the two sub-sections is more or less identical, namely, both the sub-sections require that the return shall be accompanied by a receipt evidencing the deposit of the "full amount of tax due" on the basis of the return or on the basis of the information shown in the return. The full amount of tax due and payable prior to the submission of the return is clearly relatable to the information furnished in the return. Undoubtedly, the information to be furnished in the return must be "correct and complete", that is, true and complete to the best of knowledge and

belief; without the dealer being guilty of wilful omission. This is the essence of the verification clause found at the foot of Form ST 5. Rule 25 expects the verification of the return to be in the manner indicated in Form ST 5. Therefore, on a conjoint reading of Section 7(1), (2) and (2-A), Rule 25, the information to be furnished under Form ST 5 and the form of verification, it becomes clear that the dealer must deposit the full amount of tax due on the basis of information furnished, which information must be correct and complete to the best of the dealer's knowledge and belief without he being guilty of wilful omission. If the dealer has furnished full particulars in respect of his business, without wilfully omitting or withholding any particular information which has a bearing on the assessment of tax, which he honestly believes to be "correct and complete", it would be difficult to hold that the dealer had not acted "bona fide" in depositing the tax due on that information before the submission of the return. Of course the tax so deposited is to be deemed to be provisional and subject to necessary adjustments in pursuance of the final assessment..... Counsel for the Revenue, however, points out that considerations for the levy

of penalty under Section 7-AA are different from those which guide the recovery of interest under Section 11-B and while in a given case levy of penalty may not be permissible, recovery of interest on unpaid tax amount may still be justified.

8. *.....However, according to Section 11-B substituted by Act 4 of 1979 w.e.f. 7-4-1979, the liability to pay interest accrues (a) where the dealer has furnished returns but has failed to pay the tax as per the said returns or within the time allowed; (b) where a dealer has furnished a revised return under Section 7(3) where under the amount of tax payable is larger than that already paid; (c) where a dealer has filed his return after expiry of the prescribed period but has not paid the tax as per return within the time allowed; (d) where a dealer is required to pay tax without furnishing a return for any period and such tax is not paid in full by the due date; (e) where a dealer required to furnish returns pays tax for any period without furnishing returns; and (f) where the liability to pay tax is quantified in respect of a dealer who had submitted returns for the period for which the tax is quantified. It will thus be seen that under Section 11-B before the 1979 Amendment*

the liability to pay interest on unpaid tax amount accrued on the dealer in two situations only, viz., (i) failure to pay the tax due under sub-sections (2) and (2-A) of Section 7 and (ii) failure to pay the tax within the time allowed by the notice of demand or 30 days from the receipt of the notice by the dealer. Section 11-B before its amendment nowhere provided for payment of interest on the unpaid tax amount as found on final assessment from the date of the filing of the return under Section 7 of the Act. If the amount of tax payable under sub-section (2) is paid on the basis of return, not on the basis of final assessment, there can be no question of payment of interest under clause (a) of Section 11-B. Similarly, if the tax is paid according to the return as required by sub-section (2-A), in other words, if the full amount of tax due 'shown' in the return is paid, there can be no question of charging interest under clause (a) of Section 11-B. So far as clause (b) is concerned it is a post-assessment situation. Where tax is found due on final assessment and the dealer is required to make good the difference, a notice of demand will issue. If the dealer fails to pay the tax within the time specified in the notice, and if no time

is specified within 30 days from the receipt of notice, he is required to pay interest at the rates prescribed by the sub-section. But if he pays the difference of tax within the prescribed time, there is no question of charging interest. If such an interpretation is not placed and if the Revenue's plea is accepted serious anomalies would surface. Firstly, if the liability to pay interest on the balance tax amount accrues from the date of submission of returns under Section 7, clause (b) of Section 11-B read with Section 11(2) would be rendered nugatory. Otherwise one would be required to hold that interest would be payable from the date of submission of the return till the date of issuance of notice of demand and thereafter no interest would have to be paid till the expiry of the specified period or 30 days, as the case may be, and thereafter interest would have to be paid at a given rate for the first three months and thereafter at a higher rate. Such could not be the legislative intent. Secondly, take the case of a dealer who has failed to submit a return and is subjected to assessment of tax on the basis of best judgment. Pursuant to the said assessment he deposits the tax. Such a dealer would not be liable to pay

interest on the balance tax if the tax assessed under Section 10 is higher than what was provisionally assessed. He can always claim that he cannot be made liable to pay interest for the error of the authority in making the provisional assessment under Section 7-A. The defaulter would be in a better position than a dealer who complies with the requirement of Section 7(1). And if he can show reasonable cause, he would also escape the penalty clause in Sections 7-AA and 16(1). More or less a similar situation may arise in the matter of payment of interest where provisional assessment is made under Section 7-B. Of course such a dealer may become liable to penalty but that is a different matter altogether. Take also the case of a dealer who submits a return without depositing the tax on the basis thereof. Under Rule 25(4) the authority may or may not take cognizance of the return. If cognizance is not taken the dealer would be treated on a par with one who has not submitted a return but if cognizance is taken he must be treated as one who is liable to pay interest under clause (a) of Section 11-B of the Act. Therefore, the view canvassed by the Revenue leads to incongruous situations which can never be the legislative intent. This is how the situation

emerges on a plain reading of the provisions of the Act as they stood before Act 4 of 1979 came into force. After the substitution of Section 11-B by Act 4 of 1979 the situation has changed altogether. What we have said earlier has nothing to do with Section 11-B as introduced by Act 4 of 1979. We may now examine the case law on which reliance was placed.

11. *Before we proceed further we must emphasise that penalty provisions in a statute have to be strictly construed and that is why we have pointed out earlier that the considerations which may weigh with the authority as well as the court in construing penal provisions would be different from those which would weigh in construing a provision providing for payment of interest on unpaid amount of tax which ought to have been paid. Section 3, read with Section 5 of the Act, is the charging provision whereas the rest of the provisions provide the machinery for the levy and collection of the tax. In order to ensure prompt collection of the tax due certain penal provisions are made to deal with erring dealers and defaulters and these provisions being penal in nature would have to be construed strictly. But the machinery provisions need not be strictly construed.*

The machinery provisions must be so construed as would enable smooth and effective collection of the tax from the dealers liable to pay tax under the statute. Section 11-B provides for levy of interest on failure of the dealer to pay tax due under the Act and within the time allowed. Should this provision be strictly construed or should it receive a broad and liberal construction, is a question which we will have to consider in determining the sweep of the said provision. We will do so at the appropriate stage but for the present we may notice the thrust of this Court's decision in the case of Associated Cement Co. Ltd. [(1981) 4 SCC 578:1982 SCC (Tax) 3:(1981) 48 STC 466]

19. *It is well-known that when a statute levies a tax it does so by inserting a charging section by which a liability is created or fixed and then proceeds to provide the machinery to make the liability effective. It, therefore, provides the machinery for the assessment of the liability already fixed by the charging section, and then provides the mode for the recovery and collection of tax, including penal provisions meant to deal with defaulters. Provision is also made for charging interest on delayed*

payments, etc. Ordinarily the charging section which fixes the liability is strictly construed but that rule of strict construction is not extended to the machinery provisions which are construed like any other statute. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not defeat the same. (See Whitney v. IRC [1926 AC 37:42 TLR 58], CIT v. Mahaliram Ramjidas [(1940) 8 ITR 442:AIR 1940 PC 124:67 IA 239], India United Mills Ltd. v. Commissioner of Excess Profits Tax, Bombay [(1955) 1 SCR 810:AIR 1955 SC 79:(1955) 27 ITR 20] and Gursahai Saigal v. CIT, Punjab[(1963) 3 SCR 893:AIR 1963 SC 1062:(1963) 48 ITR 1]). But it must also be realised that provision by which the authority is empowered to levy and collect interest, even if construed as forming part of the machinery provisions, is substantive law for the simple reason that in the absence of contract or usage interest can be levied under law and it cannot be recovered by way of damages for wrongful detention of the amount. (emphasis is added by us) ..... provision for charging interest was, it seems, introduced in order to compensate for the loss occasioned to the Revenue due to delay. But then

> *interest was charged on the strength of a statutory provision, may be its objective was to compensate the Revenue for delay in payment of tax. But regardless of the reason which impelled the Legislature to provide for charging interest, the Court must give that meaning to it as is conveyed by the language used and the purpose to be achieved. Therefore, any provision made in a statute for charging or levying interest on delayed payment of tax must be construed as a substantive law and not adjectival law. So construed and applying the normal rule of interpretation of statutes, we find, as pointed out by us earlier and by Bhagwati, J. in the Associated Cement Co. case [(1981) 4 SCC 578:1982 SCC (Tax) 3:(1981) 48 STC 466], that if the Revenue's contention is accepted it leads to conflicts and creates certain anomalies which could never have been intended by the Legislature.*

13. In view of the foregoing discussions, it is clear that the law does not envisage assessee to predict final assessment and expecting to pay tax on that basis to avoid the liability to pay interest. As has been pointed out hereinabove, petitioner had paid tax as per the

return filed in time and it is not a case which falls under four clauses of Section 18 (4) (a) of MPVAT Act. Thus, demand of interest and recovery thereof is unsustainable in law, the same is accordingly quashed and the Writ Petition is ***allowed*** to the extent indicated hereinabove.

14. Before parting with the case, we may observe that in the Writ Petition, petitioner has also questioned the assessment of entry tax and interest. However, that has been given up during the course of arguments by the learned senior counsel and, therefore, we have not touched that aspect of the matter.

15. Ordered accordingly.

(S.K. SETH)
JUDGE

(SMT. ANJULI PALO)
JUDGE

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