INDIA CARBON LTD. ETC. A

v.

THE STATE OF ASSAM

JULY 16, 1997

[S.P. BHARUCHA AND M. JAGANNADHA RAO, JJ.] B

Sales Tax :

Central sales Tax Act, 1957—Section 9(2)/14—Assam Sales tax Act, 1947—Section 35-A—Imposition of interest on delayed payments of Central Sales Tax—Inter-state sales of Petroleum Coke—Subjected to Central sales tax—Delay in payment of sales tax—High Court held that appellant is liable to pay interest on delayed payment of sales tax—Held, no substantive provision in the Central Act requiring payment of interest—Assessee not liable to pay interest. C

D

The appellants were manufacturers and sellers of petroleum coke which were goods declared by section 14 of the Central Sales Tax Act, 1957. The appellants were liable to pay central sales tax on the petroleum coke that was subjected to inter-state sales. Due to delay in payment of sales tax, the appellants were required to pay interest under section 35-A of the Assam Sales Tax Act, 1947. The appellants challenged the imposition of interest by filing a writ petition in the High Court, on the ground that there being no mention of interest in the first part of section 9(2) of the Central Sales Act, they were not liable to pay interest. The High Court held that interest was payable by the appellants on account of delay in payment of central sales tax even though no specific provision had been made in the Central Act in this regard. Hence the present appeal. E F

Allowing the appeals, this Court

HELD : 1.1. The requirement of the sales tax authorities that the appellants should pay interest on delayed payment of Central Sales Tax under the provisions of Section 35(A) of the Assam Sales Tax Act 1947 is bad in law. [9-E-F] G

1.2. Section 9(2) of Central Sales Tax Act 1957 authorise the sale tax authorities of a State to assess, reassess, collect and enforce payment of the Central Sales Tax payable by a dealer as if it was payable under the H

State Act. The substantive law that the States' sales tax authorities must apply is the Central law. For procedural purposes alone the provisions of the State Act are available. [9-B-D]

1.3. The provisions relating to interest in the latter part of section 9(2) can be employed by the States' sales tax authority only if the Central Act make susbstantive provision for the levy and charge of interest on Central Sales Tax and only to that extent. There is no substantive provision in the Central Act requiring the payment of interest on Central Sales Tax. The State sales tax authorities therefore cannot charge interest on delayed payment of Central Sales Tax. The demands made for payment of interest are quashed. [9-D-E; F]

Khemka & Company **v.** *State of Maharashtra*, **[1975] 3 SCR 753, relied on.**

J.K. Synthetics Ltd. **v.** *Commercial Tax Officer*, **[1994] 4 SCC 276 referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2156-67 of 1993.

From the Judgment and Order dated 15.9.89 of the Assam High Court in C.R. Nos. 305-307/77, 505-509/80 and 391-394 of 1984.

WITH

Civil Appeal Nos. 2168-71/93, 7728/95, 7735/95, 7865/95, 9267/95.

R.F. Nariman, M.L. Lahoty, Ashok Saraf and Mrs. A.K. Verma for M/s. JBD & Co. for the Appellants.

S.A. Syed for the Respondents.

The Judgment of the Court was delivered by

S.P. BHARUCHA, J. These appeals impugn a judgment and order of the High Court at Guwahati. It may be immediately stated that, there having been some difference of opinion between the two learned Judges who first heard the writ petitions filed by the appellants, four questions were referred to a third learned Judge and it is the first of those four questions which will determine these appeals.

Briefly stated for the purposes of this judgment, the facts are these: The appellants manufacture and sell petroleum coke, which are goods declared by Section 14 of the Central Sales Tax Act. The appellants are registered as dealers under the Central Act and liable to pay central sales tax on the petroleum coke that is the subject of inter-State Sales. The payments of Central sales tax on inter-State sales of petroleum coke were delayed. For the assessment years 1974 to 1980 the appellants were required by the respondents to pay interest at the rate of 24% per annum thereon, in purported exercise of the provisions of Section 35A of the Assam Sales Tax Act, 1947. The writ petitions were filed by the appellants challenging the imposition of such interest.

The four question which were referred to the third learned Judge read thus :

> "(1) Section 9(2) of the Central Act did not visualise any payment of interest.
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> (2) If interest were to be charged by the force of Section 35A of the Assam Sales Tax Act, 1947 which visualises imposition of a minimum interest at the rate o 6% per annum, the same would violate Section 15(a) of the Central Act which has put a limit of 4% in so far as the tax payable on the goods dealt with the appellants were concerned.
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> (3) Charging of interest on the amount of tax assessed because of what have been provided in Rule 42A of the Assam Sales Tax Rules, 1947 was not permissible inasmuch as Rule 42A was *ultra vires* Section 35A.
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> (4) Section 35A of the said Act was violative of Article 14 of the Constitution."

Section 9(2) of the Central Act, as it stood at the relevant time, read thus :

> "9(2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess, collect and enforce pay-

A ment of tax, including any penalty, payable by a dealer under this Act as if the tax or penalty payable by such a dealer under this Act is a tax or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, B provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition C of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly."

D It was contended before the learned third Judge that, there being no mention of interest in the first part of Section 9(2) of the Central Act, the appellants were not liable to pay interest as aforestated. Reliance was placed upon the judgment of this Court in *Khemka & Company* v. *State of Maharashtra*, [1975] 3 SCR 753. The learned third Judge noted the view taken by his two brother Judges on the first question and found that there E was unanimity on the result, though for different reasons. He, therefore, took the same view and held that interest was payable by the appellants on account of delay in payment of Central sales tax even though no specific provision had been made in the Central Act in this regard.

F Our attention was invited to he Constitution Bench judgment in *J.K. Synthetics Ltd.* v. *Commercial Taxes Officer*, [1994] 4 SCC 276, where it has been held that provisions relating to the charging and levying of interest in a statute are provision of substantive law. The relevant paragraph of the judgment may be extracted.

G "16. 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 H 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 of purpose of the statute and not defeat the same. (See *Whitney* v. *IRC, CIT* v. *Mahaliram Ramjidas, India United Mills Ltd.* v. Commissioner of Excess Profits Tax, *Bombay and Gursahai Saigal* v. *CIT, Punjab*). 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. (See *Bangal Nagpur Railway Co. Ltd.* v. *Ruttanji Ramji* and *Union of India* v. *A.L. Rallia Ram*). Our attention was, however, drawn by Mr. Sen to two cases. Even in those cases, *CIT* v. *M. Chandra Sekhar and Central Provinces Manganese Ore Co. Ltd.* v. *CIT*, all that the Court pointed out was that 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, 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."

This proposition may be derived from the above : interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf.

A our attention was also invited to the Constitution Bench judgment in *Khemka & Co.*, where the provisions of Section 9(2) of the Central Sales Tax Act were analysed. Ray, C.J., taking the majority view, observed :

> "Section 9(2) of the Central Act first provides that the authorities
> B empowered to assess, re-assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess and enforce payment of tax including any penalty payable by a dealer under the Central Act. The State Sales Tax authorities are thus created agents of the Government of India. The second important
> C part in section 9(2) of the Central Act is that the State authorities shall assess, re- assess, collect and enforce payment of tax including any penalty payable by the dealer under the Central Act as if the tax or penalty payable by such a dealer under the Central act is a tax or penalty payable under the general sales tax law of the State.
> D This part of the section sets out the scope of work of the State agencies. The words "assess, re-assess, collect and enforce payment of tax including any penalty payable by dealer under this Act" mean that the tax as well as penalty is payable only under the Central act."

E The learned Judge Said :

> "It is only tax as well as penalty payable by a dealer under the Central Act which can be assessed, re-assessed, collected and enforced in regard to payment. The words "as if the tax or penalty
> F payable by such a dealer under the Central Act is a tax or penalty payable under the general sales tax law of the State" have origin and root in the words "payment of tax including any penalty payable by dealer under the Central Act." Just as tax under the State Act cannot be payable and collected and enforced, similarly penalty
> G under the State Act cannot be assessed, collected and enforced."
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> The words "and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State" in section 9(2) of the Central Act are important. The words "and for this purpose" relate to "assess, re-assess, collect and enforce
> H payment of tax including any penalty payable by dealer under this

Act." In that context, the last limb of section 9(2) of the Central Act viz. "and the provisions of such law ..... shall apply accordingly" mean that the provisions of the State Act are applicable for the purpose of assessment, re-assessment, collection and enforcement of payment of tax including penalty payable under the Central Act. The words of the last part of section 9(2) viz., "shall apply accordingly" relate clearly to the words "and for this purpose" with the result that the provisions of the State Act shall apply only for the purpose of assessment, re-assessment, collection and enforcement. The doctrine of *ejusdem generis* shows that the genus in section 9(2) of the Central Act is "for this purpose". In other words, the genus is assessment, re-assessment, collection and enforcement of payment. The genus is applicable in regard to the procedure for assessment, re-assessment, collection and enforcement of payment. The genus is from whom to collect and against whom to enforce. It is apparent that the extent of liability for tax as well as penalty is not attracted by the doctrine of *ejusdem generis* in the application of the provisions of the State Act in regard to assessment, re-assessment, collection and enforcement of payment of tax including any penalty payable under the Central Act."

Ray, C.J. concluded by holding that the provision in the State sales tax Act imposing penalty for non-payment of sales tax within the prescribed time period was not attracted to impose penalty on dealers under the Central sales tax Act in respect of tax and penalty payable under the Central Act. A penalty was a statutory liability. The Central Act contained specific provisions in respect of penalty. Those were the only provisions available against dealers under the Central Act. Each State sales tax Act contained provisions for penalties. These provisions in some cases were also for failure to submit a return or failure to register. These provisions could not apply to dealers under the Central Act because the Central Act made no similar provisions. The learned Judge added, "The Central Act is a self contained code which by charging section creates liability for tax and which by other sections creates liability for penalty and impose penalty. Section 9(2) of the Central Act creates the State authorities as agencies to carry out the assessment, re-assessment, collection and enforcement of tax and penalty payable by a dealer under the Act."

A Beg, J., concurring with the majority view, found that provisions relating to penalties were special and specific provisions in the Central and State Acts. "They are", he said, "not part of the general sales tax law of either the State or of Union. If the provisions relating to penalties, such as those found in the Central Act and the States Acts, are really special provisions which can be invoked in the special circumstances given in each B statute, we must interpret the reference to penalties in the concluding portion of Section 9(2) to relate only to the special provisions relating to penalties provided for specifically in the Central Act". The learned Judge added that the legislative intent was to confine penalties mentioned in the concluding part of Section 9(2) to only those penalties as were mentioned C specifically in the Central Act.

The words, "charging or payment of interest" in sub-section (2) and sub-section (2A) of Section 9, were introduced with retrospective effect in 1976. Section 9(2A) reads thus :

D

> "All the provisions relating to offences and penalties (including provisions relating to penalties in lieu of prosecution for an offence or in addition to the penalties or punishment for an offence but excluding the provisions relating to matters provided for in Section 10 and 10A) of the general sales tax law of each State shall, with E necessary modifications, apply in relation to the assessment, re-assessment, collection and the enforcement of payment of any tax required to be collected under this Act in such State or in relation to any process connected with such assessment, re-assessment, collection or enforcement of payment as if the tax under this Act F were a tax under such sales tax law."

Section 9(2A) makes applicable to the assessment, re-assessment, collection and enforcement of Central sales tax the provisions relating to offences and penalties contained in the State Acts as if the Central sales tax was a State sales tax. But Section 9(2A) makes no G reference to interest.

There is no substantive provision in the Central Act requiring the payment of interest on Central sales tax. There is, therefore, no substantive provision in the Central Act which obliges the assessee to pay interest on H delayed payments of Central sales tax.

Now, the words "charging or payment of interest" in Section 9(2) occur in what may be called the latter part thereof. Section 9(2) authorises the sales tax authorities of a State to assess, reassess, collect and enforce payment of the Central sales tax payable by a dealer as if it was payable under the State Act; this is the first part of Section 9(2). By the second part thereof, these authorities are empowered to exercise the powers they have under the State Act and the provisions of the State Act, including provisions relating to charging and payment of interest, apply accordingly. Having regard to what has been said in the case of *Khemka & Co.*, it must be held that the substantive law that the States' sales tax authorities must apply is the Central Act. In such application, for procedural purposes alone, the provisions of the State Act are available. The provision relating to interest in the latter part of Section 9(2) can be employed by the States' Sales tax authorities only if the Central Act makes a substantive provision for the levy and charge of interest on Central sales tax and only to that extent. There being no substantive provision in the Central Act requiring the payment of interest on Central sales tax the States' sales tax authorities cannot, for the purpose of collecting and enforcing payment of Central sales tax, charge interest thereon.

The requirement of the 1st respondent's sales tax authorities that the appellants should pay interest at the rate of 24% p.a. on delayed payments of Central sales tax under the provisions of Section 35(A) of the State Act must, therefore, be held to be bad in law.

The appeals are allowed. The judgment and order under appeal is set aside. The demands for payment of interest as aforestated are quashed.

No order as to costs.

Civil Appeal Nos. 2168-71/93 :

Following the above judgment , these appeals are allowed and the judgment and order under appeal is set aside. The demands made upon the appellants for payment of interest on delayed payments of Central sales tax are quashed.

No order as to costs.

S.V.K.I. Appeals allowed.