

Calcutta Jute Manufacturing Co & Anr vs Commercial Tax Officer & Ors on 8 July, 1997

Equivalent citations: AIR 1997 SUPREME COURT 2920, 1997 (6) SCC 262, 1997 AIR SCW 2933, 1997 (2) UPTC 1241, 1997 (4) SCALE 411, 1997 STI 213, (1997) 5 JT 690 (SC), 1997 UPTC 2 1241, 1997 (5) JT 690, 1998 BRLJ 38, (1997) 106 STC 433, (1997) 73 ECR 1, (1997) 43 KANTLJ(TRIB) 211, (1997) 4 SCALE 411, (1997) 6 SUPREME 256, (1997) 93 ELT 657

Bench: S. C. Sen, K. T. Thomas

PETITIONER:

CALCUTTA JUTE MANUFACTURING CO & ANR.

Vs.

RESPONDENT:

COMMERCIAL TAX OFFICER & ORS.

DATE OF JUDGMENT: 08/07/1997

BENCH:

S. C. SEN, K. T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

WITH [Civil Appeal Nos. 15367/96, 4196/95, 4707/94, 15513/96, 15514/96, 2905/92, 15584-15591/96, 15583/96, 12638/96, 879/92, 11188/95, 1904/90, 1905/90, 1906//90, 1907/90, 1908/90, 4989/91, 15593/96, 15594/96, 15595/96] J U D G M E N T THOMAS, J The question raised in all these appeals is whether an assessee is liable to pay interest under section 10A of the Bengal finance (Sales Tax) Act 1941, on the turnover tax for the period during which recovery of the tax amount was stopped by orders of the High Court. West Bengal Taxation Tribunal answered the said question against the appellants and hence these appeals by special leave.

For dealing with the aforesaid question, only necessary facts need be mentioned. A new provision

(section 6B) was included in the Bengal Finance (Sales Tax) Act 1941, (hereinafter referred to as the 'Act' for short) and an identical provision was included in the West Bengal Sales Tax Act 1954 as Section 4AAA. The effect of the new provision was that they imposed a tax on the turnover of a dealer whose annual aggregate gross turnover exceeded Rs. Fifty lakhs. The provisions came into force on 1.4.1979. These appellants were concerned with section 6B of the Act and hence, they filed writ petitions before the Calcutta High Court challenging the validity of the aforesaid provision. The High Court, on admission of the writ petitions, granted interim relief by injuncting West Bengal Government from collecting such tax on the turnover, but ultimately the writ petitions were dismissed. Thus, liability of the appellants to pay tax on the turnover became conclusive and appellants remitted the tax amount accordingly. But in the meanwhile, Government of West Bengal yet another provision as Section 10A in the Act by which interest at the rate of 2% per month was charged on the tax amount payable by the dealer during the period of default. So demands were made on the appellants to pay interest on the tax amount.

Appellants disputed their liability to pay such interest mainly on two grounds. First is that since appellants have furnished the returns and paid full tax as per such returns they are not liable to pay interest under section 10A of the Act. Second is, even otherwise they are not liable to pay interest on the tax amount as its non-recovery was the effect of the injunction order granted by the High Court.

West Bengal Taxation Tribunal, before which the appellants challenged the demand for payment of interest, dismissed the petitions filed by the appellants. For considering the contention of the appellants a perusal of Section 10A is necessary. Section 10A of the Act reads thus:

"10A. Interest payable by dealer.-(1) Where a registered or certified dealer furnishes a return referred to in section 10 in respect of any period by the prescribed date or thereafter but fails to make full payment of tax payable in respect of such period by such prescribed date or thereafter, but fails to make full payment of tax payable in respect of such period by such prescribed date, he shall pay a simple interest at the rate of two per centum for each English calendar month of default from the first day of such month next following the prescribed date up to the month preceding the month of full payment of such tax or up to the month prior to the month of assessment under section 11 in respect of such period, whichever is earlier, upon so much of the amount of tax payable by him according to such return remains unpaid at the end of each such month of default. Provided that where such dealer admits in writing that the amount of tax payable in respect of such period is an amount which is either more or less than, what has been originally shown as payable in the return and where the Commissioner is satisfied on the point of such admission, the interest shall be payable upon so much admission, the interest shall be payable upon so much of the amount of tax payable according to such admission as remains unpaid at the end of each such month of default.

(2) Where a registered or certified dealer fails to furnish a return referred to in section 10 in respect of any period by the prescribed date or thereafter before the assessment under section 11 in respect of such period, and on such assessment full

amount of tax payable for such period is found not to have been paid by him by such prescribed date, he shall pay a simple interest at the rate of two per centum for each English calendar month of default from the first day of the month next following the prescribed date up to the month preceding the month of full payment of tax for such period or up to the month prior to the month of assessment under section 11 in respect of such period, whichever is earlier, upon so much of the amount of tax payable by him according to such assessment as remains unpaid at the end of each such month of default.

Provided that where an assessment under section 11 is made for more than one period and such assessment does not show separately the tax payable for the period in respect of which interest is payable under this subsection, the Commissioner shall estimate the tax payable for such period on the basis of such assessment after giving the dealer an opportunity of being heard.

(3) Where a dealer fails to make payment of any tax payable after assessment by the date specified in the notice issued under sub-section (3) of section 11 for payment thereof, he shall pay a simple interest at the rate of two per centum for each English calendar month of default from the first day of the month next following the date specified in such notice up to the month preceding the month of full payment of such tax or up to the month preceding the month of commencement of proceedings under sub-section (4) of section 11, whichever is earlier, upon so much of the amount of tax payable by him according to such notice as remains unpaid at the end of each such month of default."

It must be pointed out at the outset itself that nobody has a case that appellants are liable to pay interest by virtue of sub-section (3) thereto. Learned counsel for the appellants however, contended that neither are they liable to pay interest under the other two sub-sections because the situation envisaged in either of them was non-existent. According to the counsel, since appellants have furnished returns and paid the tax, as per such returns, there is no ability to pay interest on the turnover tax because sub section (1) contemplates a situation where there was failure to pay tax in accordance with the returns furnished and sub section (2) contemplates a situation where no return has been furnished at all.

The requirement in Sub-section (1) is " to make full payment of the tax payable" after furnishing a return referred to in section 10 of the Act within the prescribed date. Two obligations are thus implied therein as for a dealer. First is that he should have furnished a return within the prescribed date in accordance with the terms referred to in Section 10. Second is that he should make full payment of the tax payable under law. Sub-section (1) operates in the case of a dealer who had performed the first obligation but failed to perform the second obligation. On the other hand sub-section (2) would operate in a case where the dealer failed to discharge the first obligation mentioned above.

So the initial aspect to be considered is whether the first obligation has been discharged by the appellants. If a dealer has furnished only a truncated return that cannot be regarded as furnishing the return referred to in Section 10. It must be the full and accurate return. If a dealer makes just a statement by calling it a return it cannot be regarded as the return referred to in section 10 of the Act. It is a different matter if the dealer would have committed some marginal errors in the return or there were some mistakes of a minor nature.

Here it is admitted that the appellants have not mentioned the amount of turnover or the tax payable thereon in the return filed by them. If that be so the consequence is that they have failed to furnish a return which is "referred to in section 10". The corollary is that there was failure to furnish the return as envisaged in sub-section (2). Thus, the liability to pay interest commenced under that sub-section at the very moment the assessing authority made the assessment under section 11. Interest thereon would start accruing from the date prescribed for furnishing the correct return in accordance with section 10.

Learned counsel for the appellant, however, contended that since the appellant had filed the return according to his own estimation of the tax liability he cannot be considered a defaulter in furnishing the return. In support therefore, learned counsel pleaded for an interpretation which is less onerous to the assessee.

The state is empowered by the legislature to raise revenue through the mode prescribed in the Act so the State should not be the sufferer on account of the delay caused by the taxpayer in payment of the tax due. The provision for charging interest would have been introduced in order to compensate the State (or the Revenue) for the loss occasioned due to delay in paying the tax (vide Commissioner of Income Tax, AP vs. M. Chandra Sekhar [1985 (1) SCC 283] and Central provinces manganese Ore Co Ltd. Vs. Commissioner of Income tax [1986 (3) SCC 461]). When interpreting such a provision in a taxing statute a construction which would preserve the purpose of the provision must be adopted. It is well settled that in interpreting a taxing statute normally, there is no scope for consideration of principles of equity. It was so said by Rowlatt J. in Cape Brandy Syndicate vs. Inland Revenue Commissioners [1921 (1) KB 64 at pages 71].

"In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

The above observation has been quoted with approval by a Bench of three judges of this Court in Commissioner of Income Tax, Madras vs. Ajax products Ltd. [55 STC 741]. In another decision rendered by a Bench of three Judges of this Court in The State of Tamil Nadu vs. MK Kandaswami and others [-36 STC 191] it has been observed thus:

"In interpreting such a provision, a construction which would defeat its purpose and, in effect, obliterate it from the statute book should be eschewed. If more than one construction is possible, that which preserves its workability and efficacy is to be

preferred to the one which would render it otiose or sterile."

We are therefore, not adopting a construction which would upset or even impair the purpose in introducing section 10A in the Act. The return to be filed by the dealer is the full and correct return as referred to in section 10 and on failure to furnish such a return the liability to pay interest from the prescribed date would arise when assessment is completed.

Learned counsel next contended alternatively that in view of the decision of the Constitution Bench in JK Synthetics Ltd. Vs Commercial Tax Officer [1994 (4) SCC 276], the appellants cannot be mulcted with interest on the tax amount since they were bonafide contending and contesting the validity of section 6B of the Act. This contention warrants serious consideration.

The ration laid down in the aforesaid decision is that the provision in a taxing statute providing for levy of interest on failure of the dealer to pay tax due under the particular Act should not be strictly construed but should be so construed as to effectuate and not defeat the object and purpose of the Act. The constitution bench was called upon to decide the case on a reference necessitated in view of an apparent conflict between two earlier decision of this Court. Under Section 11B of the Rajasthan Sales Tax Act, 1954, a dealer was made to pay interest on the amount of tax "payable under sub-section (2) and sub-section (2a) of section 7 if it is not paid within the period allowed" JK Synthetics Ltd. filed returns on the premise that the amount of freight (charged in respect of the sale of cement as per a Cement Control Order) did not form part of the sale price for the purpose of payment of sales tax. That contention was rejected by the court in Hindustan Sugar Mills Limited vs State of Rajasthan & Ors. [1978(4) SCC 271. On the strength of the said decision M/S JK Synthetics Ltd. was required to pay sales tax on the sale price inclusive of the freight. The dispute then arose whether the company should pay is interest from the date of filing of the returns or only from the date of determination of tax payable in the final assessment. Revenue then contended that interest became payable from the date on which the original return was filed under section 7(2) or 7(2A) of the Rajasthan Sales Tax Act. The said contention was based on another earlier decision of a Bench of three Judges of this Court in Associated Cement Company Ltd. Vs. Commercial Tax Officer [1981 (48) STC 466]. A majority of judges held in that case that interest would run from the date of filing of returns. Ahmadi J. (as His Lordship then was) speaking for the Constitution Bench in JK Synthetics Ltd. held thus:

"When Section 11-B(a) uses the expression "tax payable under sub-

sections (2) & (2-A) of Section 7', that must be understood in the context of the aforesaid expressions employed in the two sub-sections. Therefore, the expression 'tax payable' under the said two sub-section is the full amount of tax due and 'tax due' is that amount which becomes due ex hypothesis on the turnover and taxable turnover' shown in or based on the return'. The word "payable"

is a descriptive word, which ordinarily means' that which must be paid or is due, or any be paid' but its correct meaning can only be determined if the context in which it is used is kept in view. The word has been frequently understood to mean that which may, can or should be paid and is held

equivalent to 'due'. Therefore, the conjoint reading of Sections 7(1) (2) & (2-A) and 11-b of the Act leaves no room for doubt that the expression "tax payable" in Section 11-B of the Act leaves no room for doubt that the expression 'tax payable' in Section 11-B can only mean the full amount of tax which becomes due under sub-section (2) and (2-A) of the Act when assessed on the basis of the information regarding turnover furnished or shown in the return. Therefore, so long as the assessee pays the tax which according to him is due on the basis of information supplied on the return filed by him, there would be no default on his part to meet his statutory obligation under Section 7 of the Act and, therefore, it would be difficult to hold that the 'tax payable' by him 'is not paid' to visit him with the liability to pay interest under clause(a) of Section 11-B, it would be a different matter if the return is not approved by the authority but that is not the case here. It is difficult on the plain language of the section to hold that the law envisages the assessee to predicate the final assessment and expect him to pay the tax on that basis to avoid the liability to pay interest. That would be asking him to do the mere impassable."

Thus, the majority view expressed in Associated Cement Co. case was over-ruled and the minority view therein was upheld by the constitution Bench.

But the position here is explicitly distinguishable from the factual situation in M/s JK Synthetics Ltd. Here, nobody had doubt that if section 6B of the Act was called the tax was payable on the turnover. It was the Constitutional Validity of Section 6B which was challenged by the appellants in the earlier writ petitions before the Calcutta High Court and which finally ended up in upholding of its validity. Hence, there was no question of the assess waiting for the determination and the turnover as there was no dispute on that aspect. The fact that appellants questioned the constitutional validity of the charging provision cannot be equated with a dispute whether the freight paid would also form part of the sale amount. It was a highly debated dispute whether price amount would envelope the freight charges paid by the dealer and until the controversy was resolved by the Court in Hindustan Sugar Mills Ltd. vs. The state of Rajasthan [1978 (4) SCC 271] the dealers were justified in excluding the freight charges from sale price. it was for that reason the constitution bench refrained from mulcting the tax payer with liability to pay interest additionally. Appellants in these cases have never disputed that they are liable to pay tax on the turnover under section 6B of the Act even while they focussed on the vires of that provision.

The tax amount which they should have paid as per section 6-B remained with the appellant during the entire period and they would have earned good profit with that amount. The State, to which the tax amount should necessarily have gone, was not bale to utilize it for public purposes. When appellants had the advantage of keeping the amount of tax without paying it to the State exchequer only because the High court granted orders restraining the State from recovering that amount from the assessee, no act of the Court shall cause prejudice to any party. The prestine doctrine couched in the maxim "actus curiae neminem gravabit" has ever remained a salutary and guiding principle.

The contention that as the Courts granted injunction restraining the state from recovering the tax amount as per section 6B would raise a presumption that the court was then satisfied of the bona fides of the contention is too fragile for depriving the state of the statutory right of interest incorporated in section 10-A of the Act. Interim orders are passed by the High Court on a variety of

considerations, one among being the strained financial position of the person approaching the court. merely because the court granted interim orders it cannot be inferred that Court was then satisfied of a strong prima facie case for the appellants. On the contrary, it is well neigh settled that there is always a presumption in favour of constitutionality of a legislative act. The presumption cannot be the other way around.

We, therefore, concur with the view taken by the West Bengal Taxation Tribunal and dismiss all these appeals.