

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 30.01.2014
Pronounced on: 28.03.2014

+ ST. REF.6/2002, C.M. APPL. 20732/2013

M/S. ANAND TRADERS Petitioner
Through: Sh. Rajesh Mahna with Sh. N.S.
Bhatnagar and Sh. Ramanand Roy, Advocates.

Versus

COMMISSIONER OF SALES TAX Respondent
Through: Sh. H.C. Bhatia, Advocate.

+ ST. REF.10/2002, C.M. APPL. 20734/2013

M/S. TILES EMPORIUM Petitioner
Through: Sh. Rajesh Mahna with Sh. N.S.
Bhatnagar and Sh. Ramanand Roy, Advocates.

Versus

COMMISSIONER OF SALES TAX Respondent
Through: Sh. H.C. Bhatia, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.V. EASWAR

MR. JUSTICE S. RAVINDRA BHAT

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1. This is a reference from the Appellate Tribunal, Sales Tax in respect of the following questions of law:

“(1) Whether the Appellate Tribunal was justified in holding that Rule 7(3) of the Delhi Sales Tax Rules, 1975 is a substantive provision?”

(2) Whether the Appellate Tribunal was justified in holding that the exemption from furnishing 'C' forms cannot be granted by application under Rule 7(3) of the Delhi Sales Tax Rules, 1975 read with Section 9(2) of the Central Sales Tax Act, 1956?"

2. These cases arise out of similar facts and circumstances. M/s. Anand Traders and M/s. Tiles Emporium, the dealers in these two appeals (hereafter "the assessee") are firms carrying on business as a wholesale and retail distributor. A fire broke out in their business premises on the night of 9th July, 1991, which, (according to it) devastated all records including statutory forms obtained from the purchasing dealers to whom the assessee had made sales both under the Sales Tax Act, 1956 and the Central Sales Tax Act, 1956, ("the local Act" and "CST") respectively. On 11.7.1991, M/s. Anand Traders intimated, through a letter to the Commissioner of Sales Tax, "regarding the fire in the business premises". The letter stated as follows:

"This is to inform you that due to the Short Circuit of Electricity, fire broke out in our business premises bearing No. 3680, Chawri Bazaar, Delhi on 9th July 1991 around 9:50 p.m. As a result of this fire, the entire building on 1st, 2nd and 3rd floors of the above building was engulfed in fire causing damage to the building, the stocks, books of account and the record. To control the fire, it took about 4 hours to about 23 fire tenders.

Further investigations are being carried out by the concerned department, i.e. Fire Brigade and the police. On receipt of their report, a formal application shall be submitted. The actual loss could not be ascertained so

far. It is for your information and appropriate action, if any warranted, at your end.

A copy of the F.I.R. and the Statement of the partner is enclosed”

3. A similar letter was sent by M/s. Tiles Emporium. Both dealers later filed an application before the Commissioner of Sales Tax under Rule 7(3) of the Delhi Sales Tax Rules, 1975 (“the Local Tax Rules”) seeking an exemption from production of statutory declaration forms stating that its business premises were severely affected by the fire. The claim for exemption was for the concerned AYs. The Commissioner was told that the M/s. Anand Traders was in the business of trading sanity materials, and packing materials for these items was in the form of corrugated cartons, dried grass and plastic sheets, which were inflammable, thus leading to the fire, while M/s. Tiles Emporium also contended that a fire had broken out on the 1st, 2nd and 3rd floors of the building premises at No. 3679, Chawri Bazaar. Accordingly, exemption under Rule 7(3) of the Local Tax Rules was claimed.

4. As regards M/s. Anand Traders, the fire took place at the show room of the assessee, No. 3680, Chawri Bazaar, Delhi. The head office of the assessee – in terms of its Registration Certification – was 2578, Nai Sarak, where no fire had occurred. Two inspection reports of the Revenue – dated 18.11.1991 and 27.11.1991 –indicated that the Nai Sarak premises were only being used as a godown and there was no activity at that location. This, however, is disputed by the assessee,

claiming that there are regular sales of ₹ 10,000/- –12,000/- from that premises every day.

5. Importantly, this Court also notices that both assesseees are undisputedly registered under the Central Sales Tax (Registration and Turnover) Rules, 1975 and under the Bengal Finance (Sales Tax) Act, 1941 (as extended to Delhi). With regard to M/s. Anand Traders, while the certificates recognize the head office of the assessee as the Nai Sarak premises, they record the Chawri Bazaar premises as an additional place of business and a warehouse.

6. Considering the fact situation in both the cases, the Commissioner – by two independent orders – granted the exemption after recording that the limited determination under Rule 7 (3) was as to whether or not a fire had occurred and if it resulted in the dealer’s inability to produce all or any of the statutory declarations referred to in Rule 7 (1)(b). The Commissioner noted that the local ST authorities did not dispute that the fire had occurred at No. 3680, Chawri Bazaar, Delhi, and at No. 3679, Chawri Bazaar, and that an FIR had been lodged in respect of the fire incident. In the order concerning M/s. Anand Traders, the finding was as follows:

“6.....it is seen that they were registered under the Central Sales Tax Act (Registration & Turnover) Rules, 1975 on 1/12/60 and under the Bengal Finance (Sales Tax) Act, as extended to Delhi in April 1960. In the latter, the head office is mentioned as being situated at 2578 Nai Sarak. This Certificate also recognises that the dealer had additional place of business and warehouse at 3680,Chawri Bazaar, Delhi w.e.f. 1/7/91 apart from a show room opened at Asaf Ali Road.”

7. It was observed that since the Chawri Bazar premises were mentioned in the registration certificate as an additional place of business, there was warrant for concluding that those premises were meant to be construed as such and not merely as a godown. Therefore, in exercise of revisional power, under Section 47 (1) of the local Act, the Commissioner granted the exemption sought. An exemption also granted to M/s. Tiles Emporium.

8. Subsequently, both assessee's application (dated 7.1.1992 in both cases) for review of the orders to extend the exemption to other sales tax apart from that covered by the Local Act. The applications stated that:

“5. Section 4(2)(V) of the Delhi S.T. Act takes care of all admissible deductions and does not restrict only to Sales covered by the S.T.1 only ...

6. That granting exemption from the production of ST 1 forms and not other statutory forms particularly when the law does not discriminate between Local and Central Statutory forms or any other forms, records and documents, it would be denying the benefit what is otherwise granted by the Act.”

9. Thus, it was claimed that in proceedings under Rule 7(3) of the Local Tax Rules, the assessee is entitled to receive a deduction, and exemption from producing statutory forms, in respect of tax-free sales, inter-state sales, sales made to embassies, tax paid sales and tax on exports out of India, or in other words, the grant of exemption under Section 4(2)(v) of the Local Act must extend to sales tax collected under the Central Sales Tax Act as well.

10. This review application was dismissed by the Commissioner in the following terms:

“4. It is clear from the above cited Rule 7(3) that there is no difficulty, subject to CST’s satisfaction, in agreeing with the request of the petitioner for exemption, insofar as his inability to produce statutory declaration forms under the Delhi Sales Tax Act cannot be accommodated in the absence of specified provision under this law to cater to such a contingency ...

5. It is thus clear that whatsoever relief is permissible under the abovesaid rule has been allowed by (sic) any predecessor, and all other matters including the enhancement made in any quarter are outside the scope of Rule 7(3) of the Delhi Sales Tax Rules, 1975. At no stage, in the abovesaid application dated 12/7/91 moved by the petitioner, or during the proceedings under Rule 7(3), the petitioner has stated that he is also entitled for the relief now sought in the review petition.

6. In view of the foregoing, it is amply clear that scope of Rule 7(3) does not extend to the statutory forms under the Central Act.”

11. The assessee carried the matter in appeal to the Sales Tax Appellate Tribunal (“STAT”), which dismissed the appeal, and held that the disallowance of the deductions (due to the failure to produce the statutory declarations) was correct. The question before the STAT was “*whether Rule 7(3) appended to the Delhi Sales Tax Rules, 1975 is applicable to cases under the Central Sales Tax Act.*” The STAT held that Rules 7(3) embodies substantive law, rather than a procedural aspect, and as the liability to pay taxes under the Central Act (along with the question of deductions etc.) must be judged by

reference to the provisions of that Act, and not by invoking provisions of the Local Act. The STAT relied on the decisions of the Supreme Court in *Khemka and Co. (Agencies) Private Ltd. v. State of Maharashtra*, (1975) 35 STC 571, and *Nav Bharat Enterprises Ltd. v. Sales Tax Officer*, 66 STC 254 for the proposition that proceedings under the Central Act and the Local Act are independent, in terms of the liability, assessment and procedure for imposing tax. On this basis, the STAT held as follows:

“18. It is noteworthy that according to section 9(2) of the Central Sales Tax Act, levy and collection of taxes and penalties have to be made subject to the provisions and rules made under Central Sales Tax Act. Rules framed under the Local Acts which are inconsistent and incongruous to the provisions of the Central Sales Tax, have to be ignored. The dealer cannot take refuge in those contradictory and incongruous rules framed under the local laws. As such, the assessment under the Central Act has to be framed u/s 8 of the Central Sales Tax Act. Central law in this regard is intransigent. It admits of no exceptions. No amendment in Central Sales Tax Act has been made despite of the observations made by the Supreme Court in above cited authority of *Kedar Nath Jute Co. Ltd.* The introduction of Rule 7(3) in the Delhi Sales Tax Act does not have ipso facto application to the Central Sales Tax Act. It would be no exaggeration to say that Rule 7(3) runs contrary to the provisions of the Central Sales Tax Act. This is quite apparent when we read Rule 7(3) in juxtaposition with observations made by the Supreme Court in the above mentioned authority of *Kedar Nath Jute Co Ltd.* It is trite saying that deductions under Central Sales Tax Act are not permissible. Furnishing of C-forms is mandatory as was held in *commissioner of Sales Tax Versus Delhi Automobiles Pvt. Ltd.* 48 STC 333.

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20. Furthermore, it is also crystal clear that there is a marked difference between ST-1 forms and C-forms. There are no parallels between two kinds of forms. St-1 form has limit up to Rs. 25000/- C-forms has limit upto 25000/- C-forms deals with Inter State Sale St-1 form deals with sales effected within the State. Under the Central Sales Tax Act the sales to Govt. are not exempted. Section 6(8) of the Central Sales Tax Act admits of no exception. Both the Acts deal with the different kind of materials. The commissioner of Sales Tax has power to grant exemptions under the Local Act and (sic) no under the Central Act. The Commissioner of Sales Tax cannot arrogate to himself the power which he does not have, under any law in the country. He has to exercise powers within the parameters of law. For all those reasons the arguments urged by the Ld. Counsel for the appellants are found to be unpalatable and as such I clap no importance thereon.”

12. It was in these circumstances that this Court, by an order dated 13.7.2001, directed the STAT to submit a statement of the case, and the questions of law mentioned previously were framed. The assessee filed a review petition against that order, which was dismissed by the STAT by an order dated 31.3.2001.

Contentions

13. The assessees contend that the scheme of the CST is such that the mechanism for assessment and recovery of tax is left to that devised by the respective states, through local State enactments and laws. The intention of Parliament was to enact the policy underlying

CST, but rely on state local laws for the machinery to enforce its policy, embodied in express provisions of CST. So viewed, there can be no doubt that Rule 7 (3) was procedural and had to be applied uniformly. It was highlighted, during the hearing that the facts of the present case demonstrate an absurd and incongruous result due to the flawed interpretation given to the CST and Rule 7 (3) by the lower authorities and the Tribunal. It was urged that whereas the local sales tax authorities had no difficulty in accepting the request from the assesseees whose premises were gutted by fire, and relieving them of the rigors of local laws, in respect of production of relevant documents, the same authorities, donning the hat of administrators of CST, chose to adopt a different approach. The assesseees were as much victims of the fire in the case of records pertaining to local sales tax, as in the case of CST. Therefore, the Tribunal should have opted for a consistent and rational approach in the interpretation given to Rule 7 (3), which was merely procedural and could not be treated as substantive. Counsel also underlined the provision of Section 9 (2) which enabled application of provisions like Rule 7 (3). To say that the CST's policy was to enact broad Parliamentary intention to collect Central Sales tax, and leave it to the states to utilize their respective mechanisms, reliance was placed on *Khemka & Co.* (1975) 35 STC 571 (SC) and *India Carbon Ltd. v State of Assam* 1997 (106) STC 460 (SC). Illustrating that only matters such as levy of interest, penal interest and penalties have been left as substantive matters for which the State laws are to yield to CST, learned counsel submitted that Rule

7 (3) confers exclusivity to state authorities who alone can deal with all aspects relating to assessments, re-assessments, etc.

14. To highlight the argument, the assessee's counsel relied on *Orissa Cement Ltd. v. State of Orissa and Another* 25 STC 118 (SC) where it was held that the grant of rebate (of rate of tax, for timely payment) too fell within the domain of States' policies, validly under Section 9 (2) – of CST and that the introduction of Section 9 (2A) only enabled use of State law provisions for recovery of interest, to the extent interest was provided in CST. In that case, the kind of interest sought to be recovered was not provided under CST; therefore, it was held not leviable. The assessee also relied on other decisions, such as *The State of Tamil Nadu v. K.A. Ramudu Chettiar & Co* 1973 (31) STC 470 (SC), *Orissa Cement Ltd. v. State of Orissa and Anr*, 25 STC 118 (SC) and *Mahim Patram Private Ltd. v. Union of India & Others* 2007 (6) VST 248 (SC).

15. The revenue argues, on the other hand, that the Tribunal's conclusions are correct and do not call for a different view. It was submitted that Section 5 (2) outlines the fulfilment of conditions upon which a dealer can get exemption, which is upon his furnishing a declaration in the prescribed form. This provision is substantive and incapable of dilution. Whilst there is no quarrel to the proposition that State enactment provide the machinery to be used to assess and recover CST levies, the grant of relief from the obligations cast in Section 5 (2) are substantive matters that, in the absence of express provisions in the CST cannot be given a go by, in seeking recourse to State laws. Counsel relied on *Kedarnath Jute Manufacturing Co. Ltd.*

v. *Commercial Tax Officer and Others* AIR 1966 SC 12 in support of the revenue's submission on this aspect.

The applicable provisions

16. Rule 7 (3) of the Delhi Sales Tax Rules, which is central to this case, is extracted below:

“Notwithstanding anything contained in Sub-rule (1), the Commissioner on an application made by the dealer and after making such enquiries as he may consider necessary, is satisfied that the dealer is not in a position to furnish all or any of the declarations referred to in Sub-rule (1) above on loss of such declaration or declarations due to the fire or flood or riots beyond the control of the dealer and the application of sub rule (1) will cause hardship to the dealer, he may by an order in writing exempt such dealer from furnishing such declaration or declarations subject to the conditions as are hereinbelow mentioned and to such further conditions as may be specified by the Commissioner in that order...”

17. Section 5 of the CST, which requires the dealer, liable to interstate sales tax, to bear tax liability, is cast in the following terms:

“5 When is a sale or purchase of goods said to take place in the course of import or export

(1)A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either

occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.

(4) The provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority.

(5) Notwithstanding anything contained in sub-section (1), if any designated Indian carrier purchases Aviation Turbine Fuel for the purposes of its international flight, such purchase shall be deemed to take place in the course of the export of goods out of the territory of India.

Explanation. – For the purposes of this sub-section, “designated Indian carrier” means any carrier which the Central Government may, by notification in the Official Gazette, specify in this behalf.”

18. A plain reading of the above provisions makes it clear that the last sale/ purchase of goods preceding the sale or purchase, occasioning their export, outside the territory of India is deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export. (4) The provisions of sub-

section Section 5 (3) do not apply to any sale or purchase of goods unless the dealer selling them furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority. Section 9 (1) and Section 9 (2), vital for a discussion of the controversy in the present case, reads as follows:

“9. Levy and collection of tax and penalties

The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within clause (a) or clause (b) of section 3, shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of sub-section (2), in the State from which the movement of the goods commenced:

PROVIDED that, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods and being also a sale which does not fall within sub-section (2) of section 6, the tax shall be levied and collected-

(a) where such subsequent sale has been effected by a registered dealer, in the State from which the registered dealer obtained or, as the case may be, could have obtained, the form prescribed for the purposes of clause (a) of sub-section (4) of section 8 in connection with the purchase of such goods; and

(b) where such subsequent sale has been effected by an unregistered dealer, in the State from which such subsequent sale has been effected.

(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-asses, collect and enforce payment of tax, including any interest or penalty, payable by a dealer under this Act as if the tax or interest or penalty payable by such a dealer under this Act is a tax or interest 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, 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 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:

PROVIDED that if in any State or part thereof there is no general sales tax law in force, the Central Government may, by rules made in this behalf make necessary provision for all or any of the matters specified in this sub-section.”

Analysis & Findings

19. The above provision, especially Section 9 (1) levies on inter-State sales a tax to “*be collected by that Government in accordance with the provisions of sub-section (2), in the State from which the movement of the goods commenced.*” The mechanism to be used is the State Sales Tax laws, for the purposes of assessment, re-assessment,

appeals, recovery of penalty, etc. The Constitution Bench judgment in *Khemka & Co.* (supra), analyzed the provisions of Section 9(2) of the Central Sales Tax Act. Ray, C.J., taking the majority view, observed:

“13. Section 9(2) of the Central Act first provides that the authorities 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 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. 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 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.”

It was also stated, by the Chief Justice, that:

“15. 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 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 under the State Act cannot be assessed, collected and enforced.”

20. 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 were held to be important. The words “*and for this purpose*” relate to “*assess, re-assess, collect and enforce payment of tax including any penalty payable by dealer under this Act.*” In that context, said the court, the last limb of section 9(2) of the Central Act viz. “*and the provisions of such law.....shall apply accordingly*” meant 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, according to the judgment of the Chief Justice is

“16. for this purpose”. In other words, the genus is 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.”

21. Chief Justice Ray 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. It was also said that:

“28. The Central Act is a self contained code which by charging section 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.”

22. Beg, J., concurring with the majority view, found that provisions relating to penalties were special and specific provisions in the Central and State Acts. He said that they are

“69.....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 State Acts, are really special provisions which can be invoked in the special circumstances given in each 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”.

According to Beg, J, the legislative intent was to confine penalties mentioned in the concluding part of Section 9(2) to only those penalties as were mentioned specifically in the Central Act.

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

“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 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 were a tax under such sales tax law.”

24. 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 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 delayed payments of Central Sales Tax.

25. The authority cited on behalf of the dealer, i.e. *K. Ramudu Chettiar* (supra), *Orissa Cement Limited* (supra), *Mahim Patram* (supra) and *India Carbon* (supra) generally suggest that the mechanism provided by the local State laws for assessment/reassessment, collection and enforcement of payment of tax would be applicable to assess liabilities of a dealer under the Central Sales Tax. *K. Ramudu Chettiar* (supra) states that Section 9(2):

“embraces all the powers that the assessing authority under the Sales Tax Act law of the State in force during the relevant assessment year.”

26. *India Carbon* (supra), on the other hand, was a case concerning claim for interest which was sought to be imposed upon the dealer under the Central Sales Tax by drawing inspiration from the State law. The Court, in that decision stated that having regard to the law declared by the Supreme Court in *Khemka and Company* (supra), only procedural provisions are made applicable and that provision relating to Sales Tax can be employed by utilizing Section 9(2) only if the Central Act made substantial provisions for levy of tax and interest and not otherwise. *Orissa Cement* (supra) was an interesting case where the question requiring decision was whether in view of Section 9 (of the Central Sales Tax Act), the rebate provided in another provision of the local State law could be used. The Court upheld the contention, stating that, *“the rebate is offered to facilitate and expedite collection. It is intended to stimulate the collection*

therefore, it is a part of process and collection. In that view, it is proper to hold that in view of Section 9(3) of the Central Act the rebate provided in Section 13(8) of the Orissa Act is payable to the assessee under the Central Act if they pay the tax within the prescribed time.” Like in the case of *India Carbon* (supra) and *Mahim Patram* (supra) dealt with the issue whether Section 9(2) could be used to enforce payment of tax and penalty. The Court held that the expression “*for this purpose*” cannot enlarge the content of tax and the content of penalty payable under the Central Act. Liability to pay tax as well as liability to pay penalty is created by the Central Act.

27. In *International Cotton Corporation (Pvt.) Ltd. v. Commercial Tax Officer, Hubli and Ors.* (1974) 3 CTR (SC) 265, the Supreme Court observed that:

“4.....The adoption of the machinery of and the rate of tax prevalent in the State is for the convenience of assessment as well as for the convenience of the parties so that they will not have to deal with two sets of officers and two sets of laws in addition to avoiding discrimination between intra-State and inter-State sales. The very purpose of the Act and its scheme would be defeated or at least considerably impeded if the rates of tax applicable in any State in respect of intra-States were not applicable to inter-State sales where that State is the appropriate authority ...

5.....A concession is not a matter of right. Where the legislature taking into consideration the hardships caused to a certain set of tax payers gives them a certain concession, it does not mean that action is bad as another set of tax payer similarly situated may not

have been given a similar concession. It would not be proper to strike down the provision of law giving concession to the former on the ground that the latter are not given such concession. Nor is it possible, for this Court to direct that the latter set should be given a similar concession. That would mean legislation by this Court and this Court does not have any legislative powers.”

28. A debate on this aspect would not be complete without noticing the ruling in *Kedarnath Jute Manufacturing Company* (supra). In that judgment, the Supreme Court held that Section 5(2)(a) prescribes an exemption and, therefore, requires to be strictly construed. Following observations, in the opinion of this Court, are extremely pertinent for the purpose of decision in this case:

*“8. Section 5 (2) (a) (ii) of the Act in effect exempts a specified turnover of a dealer from sales tax. The provision prescribing the exemption shall, therefore, be strictly construed. The substantive clause gives the exemption and the proviso qualifies the substantive clause. In effect the proviso says that that part of the turnover of the selling dealer covered by the terms of sub-clause (ii) will be exempted provided a declaration in the form prescribed is furnished. To put it in other words, a dealer cannot get the exemption unless he furnishes the declaration in the prescribed form. It is well-settled that “the effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it”: see “*Craies on Statute Law*”, 6th Edn., p.217. If the intention of the Legislature was to give exemption if the terms of the substantive part of sub-clause (ii) alone are complied with, the proviso becomes redundant and otiose. To accept the argument of the learned counsel for the appellant is to*

ignore the proviso altogether, for if his contention be correct it will lead to the position that if the declaration form is furnished, well and good; but, if not furnished, other evidence can be produced. That is to rewrite the clause and to omit the proviso. That will defeat the express intention of the Legislature.

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9. *We realize that the section and the rules as they stand may conceivably cause unmerited hardship to an honest dealer. He may have lost the declaration forms by a pure accident, such as fire, theft etc., and yet he will be penalized for something for which he is not responsible. But it is for the Legislature or for the rule-making authority to intervene to soften the rigour of the provisions and it is not for this Court to do so where the provisions are clear and unambiguous.”*

29. To the same effect is the ruling in a later judgment that exemption conditions are to be given strict interpretation, i.e. *UOI and Ors. v. M/s. Wood Papers Ltd. and Anr.*, AIR 1991 SC 2049, to the effect that exemption conditions are to be construed strictly:

“4.....When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction”

30. The position of law, therefore, is that whilst substantive right and liabilities are to be located within the main enactment, i.e. the Central Sales Tax, the procedure to be followed for assessment, collection of duty etc. is dictated by the local, prevailing State law. In

line with this interpretation, *Khemka* (supra) held that if penalty is not specifically provided in regard to certain matters, the local enactment cannot be relied upon for that purpose. Likewise, *India Carbon* (supra) and *Orissa Cement* (supra) are authorities for the proposition that if in the absence of interest under the Central Sales Tax, a local law could not be enforced through Section 9(2). If one were to keep this aspect in mind, then *Orissa Cement* (supra), on the other, suggests that rebate for timely payment – provided for in the State law – can be extended by virtue of Section 9(2) *as it is intrinsically linked to the concept of tax collection which falls properly within Section 9(2)*. In the present case, the condition for grant of benefit, i.e., the benefit under Section 5(3) and 5(4), subject to production of prescribed declarations, is engrafted within the main statute, i.e. Central Sales Tax. The substantive nature of these provisions has been noticed and emphasized in *Kedarnath Jute Manufacturing Company* (supra) where the Supreme Court even went to the extent of saying that occurrence of events such as fires cannot be covered expressly by Section 5 and that in the absence of any Rules under the Central Sales Tax Act, local State laws cannot be used to give relief. To take the logic further, permitting such relief in the absence of statutory authorisation would not only transgress the extent of jurisdiction allowed to State authorities by Section 9(2) to lead to diverse and probably contradictory results. In the administration of a concededly Central law, such as the Central Sales Tax Act, despite the statutory injunction contained in Section 5(3) and 5(4), each State of the Union would be

free to carve-out myriad exceptions that would only undermine the object of the rule embodied in the substantive provisions.

31. In view of the above discussion, this Court is of the opinion that the question of law framed has to be answered in favour of the Revenue and against the assessee. The order of the Tribunal does not, therefore, call for any interference. The references are accordingly answered.

MARCH 28, 2014



**S. RAVINDRA BHAT
(JUDGE)**

**R.V. EASWAR
(JUDGE)**