

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/2/2018

C O R A M

The Honourable Mr.Justice S.Manikumar
a n d
The Honourable Mrs.Justice V.Bhavani Subbaroyan

Writ Appeal No.329 of 2018

1. The Appellate Assistant Commissioner
Commercial Tax Department
Pondicherry.
2. The Commercial Tax officer
Mahe
Pondicherry State. ... Appellants

Vs

1. M/s. Mahe Auto Fuel Enterprises
Bharath Petroleum Dealer
rep. By its Partner
Mr.K.E.Naushad
Poozhithala
Mahe
Pondicherry.
2. Bharat Petroleum Corporation Ltd
rep. By its Manager (Retail)
Calicut Territory Office
Calicut. ... Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 22/12/2017 and 9/1/2018, in W.P.No.33594 of 2017. WP filed under Article 226 of the Constitution of India for insuance of Writ of Certiorarified Mandamus Calling for records relating to Notice No.640/CTD/ CTO(M)/2017-18 dated 12.12.2017 passed by the 2nd respondent quash the same and consequentially direct the 2nd respondent to unlock the facility to download C-form by the petitioner.

For appellants ... Mr.T.P.Manoharan
Senior Counsel
Assisted by Mr.J.Kumaran
Government Advocate (Pondy)

For respondents ... Mr.D.Geetha

J U D G M E N T

(Order of the Court was made by S.Manikumar,J)

With the consent of the parties, writ appeal itself is taken up for final disposal.

2. Impugned notice, No.640/CTD/CTO(M)/2017-18, dated 12/12/2017, challenged, in W.P.No.33594 of 2017, is extracted hereunder:-

"The dealer M/s. Mahe Auto Fuel Enterprises with TIN No.34030006315 who is a registered dealer in the books and records of the Commercial Tax Officer, Mahe has defaulted to make their monthly payment due for the months of August, September and October 2017, for which they have filed returns showing the tax due as follows:-

August	...	Rs. 85,04,645
September	...	Rs. 78,59,360
October	...	Rs. 54,38,435

Total		Rs.2,18,02,440

According to the second proviso to Section 24 of Puducherry Value Added Tax Act, 2007 read in conjunction with the first proviso of the same Section, if a dealer failed to pay the tax due along with the return within the time prescribed (15th of the subsequent month) the whole amount outstanding on the date of default along with the penalty at 2% of such amount for each month of default or part thereof shall become immediately due and shall be the first charge on the properties of the dealer liable to pay the tax or penalty.

The dealer has paid the part of the total outstanding dues as follows:-

S.N o.	D.D.No.	Chall.No	Challan Dt	Clear date	Tax
1	758097	5/17/448	27/10/2017	31/10/2017	50,000
2	758293	5/17/479	28/11/2017	30/11/2017	25,00,000
3	758299	5/17/480	28/11/2017	30/11/2017	10,00,000

S.N o.	D.D.No.	Chall.No	Challan Dt	Clear date	Tax
4	758305	5/17/481	28/11/2017	30/11/2017	25,00,000
5	758306	5/17/482	29/11/2017	2/12/2017	24,54,645
6	758308	5/17/484	30/11/2017	2/12/2017	15,00,000
					1,00,04,645

An amount of Rs.1,17,97,795/- is pending for payment by the dealer for the months of September 2017 and October 2017 along with interest for the two months of September 2017 and October 2017. Therefore, the dealers are hereby instructed to remit the above mentioned amount on or before 22/12/2017 which is outstanding for the past two months, failing which the recovery action will be initiated as per Section 37 of Puducherry Value Added Tax Act, 2007. Till then the application of C-Form cannot be entertained by this office."

3. We have gone through the contents of the supporting affidavit to the writ petition and find that the first respondent has admitted that, as on 20/10/2017, tax to be paid was Rs.2,18,02,440/-. But the first respondent has paid a sum of Rs.1,00,04,645/-, on various dates, as detailed hereunder:-

- (i). D.D.No.758097 dated 26/10/2017 for Rs.50,000/-
- (ii). D.D.No.758293 dated 27/11/2017 for Rs.25,00,000/-
- (iii). D.D.No.758299 dated 27/11/2017 for Rs.10,00,000/-
- (iv). D.D.No.758305 dated 28/11/2017 for Rs.25,00,000/-
- (v). D.D.No.758306 dated 29/11/2017 for Rs.24,54,645/-
- (vi). D.D.No.758308 dated 30/11/2017 for Rs.15,00,000/-

4. Submission of the first respondent before the writ Court, in W.P.No.33594 of 2017, was that despite payment of 1,00,04,645/-, the request for issuance of C-form, for the months of June to August 2017, has been rejected.

5. Perusal of the order, dated 22/12/2017, made in W.P.No.33594 of 2017, impugned in the instant writ appeal shows that the first respondent herein, has admitted their liability and submitted that it was not their intention not to pay tax. But due to unexpected situation and stringent financial crisis, they were unable to pay tax. Before the writ Court, submission has also been made that a sum of Rs.1,00,04,645/-, towards arrears of sales tax has been paid to the Commercial Tax

Officer, Mahe, Puducherry State, second appellant, in the instant writ appeal, and that the second appellant has received the said payment. It was further pleaded before the writ Court that if the second appellant had given some time, to remit the arrears, on instalment basis, the entire arrears would be cleared. On the above contention, M/s. Mahe Auto Fuel Enterprises, Pondicherry, first respondent herein before the writ Court has prayed for a direction to the appellants herein, to unlock the on-line facility, for generation of Form-C.

6. Conscience of the fact that there is no provision under the Puducherry Value Added Tax Act, 2007, permitting a dealer, to pay tax, in instalments, but, by observing that the same would not preclude the Commercial Tax Officer, Mahe, Puducherry State, appellant No.2, herein, from considering the bona fide of the first respondent herein, and making necessary accommodation which in the opinion of the writ Court, was to ensure that tax is collected from the defaulting dealer, at the earliest, and taking note of the remittance of Rs.1,00,04,645/- writ Court, at paragraph No.6 of the order, in W.P.No.33594 of 2017, dated 22/12/2017, ordered as hereunder:-

"Considering the fact that the petitioner has already remitted a sum of Rs.1,00,04,645/-, the petitioner is directed to pay a sum of Rupees 35 lakh towards the arrears of sales tax for the months of September 2017 and October 2017, and if the said remittance is made, the second respondent shall consider as to whether the on-line generation of Form-C Declaration can be unlocked. The petitioner should also give an undertaking, as to how, they propose to liquidate the balance. It is made clear that, this direction has been issued only in respect of the arrears for September 2017 and October 2017, and the same will not enure to the benefit of the petitioner for the future months and the petitioner has to pay the sales tax promptly for the future months."

7. Subsequently, on 9/1/2018, the matter has been listed, under the caption "For Being Mentioned". On 9/1/2018, writ Court has issued clarifications as hereunder:-

"The matter has been listed under the caption for being mentioned'.

2. In paragraph 6 of the order dated 22/12/2017, this Court directed the petitioner to pay Rs.35 lakhs and on such

remittance, the second respondent should consider as to whether the online generation of Form C declaration could be unlocked.

3. The learned counsel for the petitioner submits that the petitioner apprehends that even after payment of Rs.35 lakhs, the second respondent may not unlock the online facility.

4. Mr.J.Kumaran, learned Government Advocate, on instructions, submits that the discretion may be left with the authorities.

5. This Court, while issuing such direction, observed that the second respondent shall consider, which would mean that it is a positive direction. Therefore, on remittance of Rs.35 lakhs, the on line generation of Form C declaration facility shall be unlocked."

8. Being aggrieved by the directions, instant appeal has been filed, setting out the details of belated payment, made by the assessee, and contention has been made that the second respondent is a habitual defaulter. Details set out by the appellants in the memorandum of grounds, are extracted hereunder:-

S. No.	Tax period/ Month	Due date for payment of tax for the month	Actual Date of payment of tax made by the dealer	No.of days delay in payment	Remarks
1	Sep 17	15/9/2017	30/11/2017	46	Only part amount of Rs.15 lakhs paid. Balance pending Rs.63,59,360/- yet to be paid
2	Aug 17	15/9/2017	27/10/2017	42	Amount paid in instalments
3	Aug 17	15/9/2017	28/11/2017	74	- do -
4	Aug 17	15/9/2017	28/11/2017	74	- do -

S. No.	Tax period/ Month	Due date for payment of tax for the month	Actual Date of payment of tax made by the dealer	No.of days delay in payment	Remarks
5	Aug 17	15/9/2017	28/11/2017	74	- do -
6	Aug 17	15/9/2017	29/11/2017	75	- do -
7	Jul 17	15/8/2017	1/9/2017	17	
8	Jun 17	15/7/2017	28/9/2017	75	- do -
9	Jun 17	15/7/2017	20/10/2017	97	- do -
10	Jun 17	15/7/2017	23/10/2017	100	- do -
11	Jun 17	15/7/2017	27/10/2017	104	- do -
12	May 17	15/6/2017	7/7/2017	22	
13	Apri 17	15/5/2017	5/6/2017	21	
14	Mar 17	15/4/2017	4/5/2017	19	
15	Feb 17	15/3/2017	28/3/2017	13	
16	Jan 17	15/2/2017	27/2/2017	12	
17	Dec 16	15/1/2017	27/1/2017	12	

9. Mr.T.P.Manoharan, learned Senior Counsel for the appellants submitted that as per Section 24 of the Puducherry Value Added Tax Act, 2007, respondent No.1, in the instant appeal, who had collected tax from the public, along with the price of petrol products, has failed to remit tax due with the monthly returns, for each tax period, within fifteen days, after the end of the period, and withheld public money.

10. Learned Senior Counsel further submitted that after collecting tax, the first respondent ought to have remitted, tax within the stipulated period, as provided therefor, under the statute and instead, utilised tax amount collected, for their own pecuniary benefits.

11. Referring to Section 43 of the Puducherry Value Added Tax Act, 2007, Mr.T.P.Manoharan, learned Senior Counsel for the appellants contended that if tax is not paid within time, provided therefor, then Section 43 of the Act, empowers the competent authority to withhold the C-form declaration.

12. Mrs.D.Geetha, learned counsel for the first respondent submitted that Chapter 5 of the Puducherry Value Added Tax Act, 2007, has not been followed and that the Assessing Officer is yet to pass the assessment orders, on the returns submitted, for the period in dispute.

13. Learned counsel has admitted that the first respondent is not questioning the liability. But, according to her, if only assessment orders are passed by the competent authority, and liability fastened the question of payment of tax, due to the Government arises, until such time C-Forms cannot be withheld.

14. Learned counsel for the first respondent further submitted that the very existence of the first respondent in the appeal herein, would be at peril, if C-Forms are not issued. Lastly, she submitted that at least for the payment of tax till the month of September 2017, directions be issued to the authorities to issue C-Forms.

15. Heard the learned counsel for the parties and perused the materials available on record.

16. Before advertng to the rival submissions, let us have a cursory look at few provisions of the Puducherry Value Added Tax Act, 2007.

17. Section 24 (1) & 2 of the Puducherry Value Added Tax Act, 2007, reads thus:-

"(1). Every registered dealer shall file a tax return for each tax period within fifteen days after end of the period in such manner as may be prescribed.

(2). The returns submitted by the dealer along with tax due thereon shall be accepted as self-assessed:

Provided that the assessing authority may select either at his discretion or as directed by the Commissioner, any dealer for detailed assessment (for a tax period or tax periods) by scrutiny of accounts and may make best judgement assessment if so required, where

a. a person fails to file a return as required under sub-section (1); or

b. the assessing authority is not satisfied with the correctness and completeness of a return filed by a person; or

(c). the Commissioner has reasonable ground to believe that a person will become liable to pay tax under this Act but is unlikely to pay the amount due.

18. Chapter V of the Puducherry Value Added Tax Act, 2007,

deals with Collection and Recovery. Section 37 of the said Act deals with the payment and recovery of tax and the same is extracted hereunder:-

“(1). The tax assessed under this Act shall be paid in such manner and in such instalments, if any, and within such time, as may be specified in the notice of assessment, not being less than twenty-one days from the date of service of the notice. If default is made in paying according to the notice of assessment, the whole of the amount outstanding on date of default shall become immediately due and shall be a first charge on the properties of the dealer liable to pay the tax under this Act.

(2). Where during the pendency of any proceedings under this Act, or after the completion thereof, any dealer or person creates a charge on, or parts with the possessions by way of sale, mortgage, gift, exchange, or any other mode of transfer whatsoever, of any of this assets in favour of any other person, with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax, or any other sum payable by the dealer as a result of completion of such proceedings or otherwise.

Provided that, such charge or transfer shall not be void if it is made -

(a). for adequate consideration and without notice of the pendency of such proceeding or as the case may be without notice of such tax or any other sum payable by such dealer; or

(b). with the previous permission of the assessing authority.

(3). Any tax assessed, any fee or any other amount due under this Act from a dealer or person may, without prejudice to any other mode of collection be recovered -

(a) as if it were an arrear of land revenue under the law for the time being in force in that behalf; or

(b) on application to any Judicial Magistrate, by such Judicial Magistrate as if it were a fine imposed by him.

[Provided that no proceedings for such recovery shall be taken or continued as long

as he has, in regard to the payment of such tax, other amount or fee, as the case may be, complied with an order by any of the authorities to whom the dealer or person has appealed or applied for revision, under Sections 45, 47, 49, 50 or 51].

(4). If the tax assessed under this Act or any instalment thereof is not paid by any dealer or person within the time specified therefor in the notice of assessment or in the order permitting payment in instalment, the dealer or person shall pay by way of penalty, in addition to the amount due, a sum equal to two per cent of such amount for each month or part thereof after the date specified for its payment.

(5). If any person collects any amount by way of tax and his turnover for the year falls short of the taxable limit specified, the sum so collected shall be remitted to the Government and forfeited wholly.

19. Section 38 of the said Act deals with Recovery of Penalty, and the same is extracted hereunder:-

"Any penalty payable under this Act shall be deemed to be tax under this Act for the purposes of collection and recovery and shall be without prejudice to the institution of any proceeding for an offence under this Act, or for the recovery of the entire amount remaining unpaid under this Act."

20. Section 43 of the said Act, deals with withholding issue of statutory forms and seizure of goods:-

(1). Notwithstanding that any recovery proceeding initiated under this Act, the Assessing Officers or any other Officers authorised in this regard, shall have power to withhold issue of statutory or other declaration forms to a dealer from whom any tax or penalty, interest or any other amount payable under this Act is due.

(2). The Assessing Officer or any other authorised officer empowered in this regard shall also have the power to seize and confiscate goods being transported by a dealer from whom tax, penalty, interest or any other amount payable under this Act is

due."

21. Section 24 of the Act, which deals with assessment of tax, falls under Chapter IV of the Puducherry Value Added Tax Act, 2007. Every registered dealer shall file a tax return for each tax period within fifteen days after the end of the period in such manner as may be described. The returns submitted by the dealer along with tax due thereon shall be accepted as assessee;

Provided that the assessing authority may select either at his discretion or as directed by the Commissioner, any dealer for detailed assessment (for a tax period or tax periods) by scrutiny of accounts and may make best judgment assessment if so required, where

a. a person fails to file a return as required under sub-Section 1; or

b. the assessing authority is not specified with the correctness and completeness of a return filed by a person; or

c. the Commissioner has reasonable ground to believe that a person will become liable to pay tax under this Act, but is unlikely to pay the amount due.

22. As per sub-Section 3 of Section 24 of the Puducherry Value Added Tax Act, 2007, when making any assessment under sub-Section 2, the assessing authority may also direct the dealer to pay in addition to the tax assessed, a penalty not exceeding double the amount of tax due on the turnover was not disclosed by the dealer in his return or, in the case of failure to submit a return, double the amount of tax assessed, as the case may be.

Provided that before taking action under this sub-Section, the dealer shall be given a reasonable opportunity of being heard.

23. A conjoint reading of Sections 34 and 37 of the Act, makes it clear that along with returns, the dealer has to pay tax as self assessed. But for any of the reasons contained in the proviso, to sub-Section 2 of Section 24 of the Puducherry Value Added Tax Act, 2007, the Assessing Officer, can pass an order of assessment and direct the dealer to pay in addition to the tax assessed.

24. Section 37 of the Act only, enables the tax assessed under this Act shall be paid in such manner and in such instalments, if any and within such time, as may be specified in the notice of assessment, not being less than 21 days from the date of service of notice. If default is made in payment according to the notice of assessment, the whole of the amount outstanding on date of default shall become immediately due and shall be a first charge on the properties of the dealer liable to pay the tax under this Act.

25. Payment of tax assessed by the assessing officer, under sub-Section 24 (3) of the Puducherry Value Added Tax Act, 2007, on the basis of self assessment and notice if any issued, for payment of tax, in instalments, if permitted under Section 37 of the Puducherry Value Added Tax Act, 2007, are entirely different and distinct. There is a mandatory requirement of payment of tax, along with returns to be submitted under sub-Section 2 of Section 24 of the Act of Puducherry Value Added Tax Act, 2007. There is no provision in Puducherry Value Added Tax Act, 2007, to withhold the tax due and payable to the Government when self-assessment is made and returns are filed.

26. Provision in Section 37 of the Puducherry Value Added Tax Act, 2007, conferring discretionary power, on the assessing Officer, to issue notice for payment of tax, assessed by the Officer, cannot be imported into Section 24 (2) of the Puducherry Value Added Tax Act, 2007, wherein the assessee/respondent is mandated to pay tax, on the self-assessment made, when returns are submitted. There is no provision in the Puducherry Value Added Tax Act, 2007, enabling the assessee to pay tax in instalments, at the time when self declaration is made. Payment of tax along with returns submitted by the dealer, on self assessment is different than tax payable on assessment by the assessing officer. Sections 24 (2) and 37 of the Puducherry Value Added Tax Act, 2007, operate in different context altogether. The former is on self assessment and the latter is assessment by the assessing officer.

27. As extracted supra, even as per the version of the respondent in the supporting affidavit, the pending tax liability, as on 20/10/2017 was Rs.2,18,02,440/- But then, they have made payment of Rs.1,00,04,645/-, according to the respondent/dealer, as on 20/10/2017, a sum of Rs.1,17,97,795/- was due. Though the writ Court was conscious of the fact that there is no provision, under the Puducherry Value Added Tax Act, 2007, enabling the dealer to pay the admitted tax in instalments, however, ordered that the dealer has to pay a sum of Rs.35,00,000/-, towards arrears of sales tax for the months of September 2017 and October 2017 and also issued a positive direction to the appellants that on remittance of Rs.35 lakhs, on-line generation of C-forms declaration facility shall be unlocked. Statute does not permit payment of tax, as declared in the returns, under Section 24 (2) of the Puducherry Value Added Tax Act, 2007, in instalments, and therefore, we are of the view that the Court cannot substitute or add words to the statute by granting any indulgence in payment of tax by instalments.

28. The Hon'ble Apex Court held that substitution or

addition should not be made to a statute by process of interpretation. Reference can be made to few decisions,

(i) In CIT v. Badhraj and Company reported in 1994 Supp (1) SCC 280, the Hon'ble Apex Court held that an object oriented approach, however, cannot be carried to the extent of doing violence to the plain meaning of the Section used by rewriting the Section or substituting the words in the place of actual words used by the legislature.

(ii) In Dadi Jagannadham v. Jammulu Ramulu reported in (2001) 7 SCC 71, the Hon'ble Supreme Court held that,

"13. We have considered the submissions made by the parties. The settled principles of interpretation are that the court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the court would not go to its aid to correct or make up the deficiency. The court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there."

(iii) In Institute of C.A. of India v. Ajit Kumar Iddya reported in AIR 2003 Kant. 187, the Karnataka High Court held that, "So far as the cardinal law of interpretation is concerned, it is settled that if the language is simple and unambiguous, it is to be read with the clear intention of the legislation. Otherwise also, any addition/subtraction of a word is not permissible. In other words, it is not proper to use a sense, which is different from what the word used ordinarily conveys. The duty of the Court is not to fill up the gap by stretching a word used. It is also settled that a provision is to be read as a whole and while interpreting, the intention and object of the legislation have to be looked upon. However, each case depends upon the facts of its own."

(iv) In Sanjay Singh v. U.P. Public Service Commission reported in (2007) 3 SCC 720, the Hon'ble Supreme Court held that,

"It is well settled that courts will not add

words to a statute or read into the statute words not in it. Even if the courts come to the conclusion that there is any omission in the words used, it cannot make up the deficiency, where the wording as it exists is clear and unambiguous. While the courts can adopt a construction which will carry out the obvious intention of the legislative or the rule-making authority, it cannot set at naught the legislative intent clearly expressed in a statute or the rules."

(v) In *Mohan v. State of Maharashtra* reported in (2007) 9 SCC 431, the Hon'ble Supreme Court held that,

" There is no mention in Section 11-A that the period after the publication of the declaration under Section 6 and the publication of any corrigendum to the said declaration has also to be excluded. We will be adding words to the statute if we put such interpretation to Section 11-A, and it is well settled that the court should not add or delete words in a statute.

29. Courts have consistently held in taxing statute, there is no equity. If tax has not paid as declared, within the time provided there for, consequences would follow. When the dealer had collected tax from the buyer, tax should be paid to the Government, within time. Retention of the same would amount to unjust enrichment.

30. It is well settled that Tax Laws have to be given strict construction and interpretation. Reference can be made to few decisions.

(i) It is said that tax and equity are strangers, vide *Partington v. Attorney General* (1869) LR 4 HL 100 Lord Cairns, expressed thus:

"If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind. On the other hand if the Court seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be".

(ii) The principle of strict interpretation of taxing

statutes was best enunciated by Rowlatt, J., in Cape Brady Syndicate v. IRC reported in (1921) 1 KB 64:

In a taxing statute 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.

(iii) In State of Punjab v. Jullunder Vegetable Syndicate reported in AIR 1955 SC 1295, the Hon'ble Apex Court held that in taxing statutes the language cannot be strained.

(iv) In A.V. Fernandez v. State of Kerala reported in AIR 1957 SC 657, the Hon'ble Supreme Court of India held that, "If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the taxing statute no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter."

(v) In Commissioner of Sales Tax, Uttar Pradesh Vs. The Modi Sugar Mills Ltd., reported in AIR 1961 SC 1047, the Hon'ble Supreme Court observed thus:

"In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency."

(vi) In Commissioner of Income Tax v. Mr.P.Firm, Muar reported in AIR 1965 SC 1216, the Hon'ble Apex Court held that equity is out of place in Tax Laws.

(vii) In Income Tax Office, Tuticorin v. T.S.Devinatha Nadar reported in AIR 1968 SC 623, the Hon'ble Apex Court held that, if the words of a taxing statute fail, so must the tax and the Courts cannot, except rarely and in clear cases, help the draftsman by a favorable construction. After considering the statement of Rowlatt, J., it held thus,

"These principles have been accepted as correct both by the English Courts and the superior courts in this country. It is now well settled that if the interpretation of a fiscal enactment is in doubt, the construction most beneficial to the subject should be adopted even if it results in obtaining an advantage to the subject; the subject cannot be taxed unless he comes within the letter of the law and the argument that he falls within the spirit of the law cannot avail the department."

(viii) In CIT v. Madho Prasad Jatia reported in 1976 (4) SCC 92, the Hon'ble Apex Court held that there could be no consideration of equity if the language of the provision was plain and clear, but where it was not, and two interpretations were possible, the one in consonance with equity and fairness should be preferred.

(ix) In Mathuram Agrawal Vs. State of Madhya Pradesh, reported in (1999) 8 SCC 667, the Hon'ble Supreme Court held as follows:

"The intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature. The statute should clearly and unambiguously convey the three components of the tax law i.e. the subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the legislature to do the needful in the matter."

(x) In Raghunath Rai Bareja Vs. Punjab National Bank reported in (2007) 2 SCC 230 the Hon'ble Supreme Court, at para 40 held thus:

"40. It may be mentioned in this connection that the first and the foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide Swedish Match AB Vs. Securities and Exchange Board of India (AIR 2004 SC 4219).....

(xi) Thus from the foregoing judgments, it is clear that the well settled principles in tax law are,

(i) There is no equity in tax, and the principle of strict or literal construction applies in interpreting tax statutes. Hence, on the plain language of the statute, if the assessee is entitled to two benefits, he has to be granted both these benefits.

(ii) If there are two reasonable interpretation of taxing statutes, the one in favour of the assessee has to be accepted.

31. On an earlier occasion, in W.A.No.1295 of 2017 dated 6/11/2017, a Hon'ble Division Bench of this Court, to which one of us is a party (Mr.Justice S.Manikumar), held that tax cannot be permitted to be paid in instalments.

32. Contention of the first respondent that assessment orders under Section 24 (3) of the Act are yet to be passed and till such time, the liability is not fastened is wholly untenable, in the light of Section 24 (2) of the Act, which mandates payment of tax on self assessment, along with submission of returns.

33. In the light of the above discussion and decisions stated supra, the respondent/assessee, cannot be permitted to avail the facility of on-line generation of Form C declaration. Directions issued by the writ Court that on remittance of Rs.35 lakhs, on-line generation of Form - C Declaration, be unlocked is set aside.

34. Request of the learned counsel for the assessee that

for the payment made upto September 2017, authorities be directed to issue C-forms, cannot be countenanced, for the reason that when Section 24 (2) of the Puducherry Value Added Tax Act, 2007, does not permit payment of tax in instalments, any payment made belatedly and permitted to be made under the orders of this Court, cannot be recognised as the very order of the writ Court, is assailed on the basis of the statutory provisions, considered in the judgment. If directions prayed for are issued then it would amount to giving premium to the belated payments

and giving stamp of approval or recognition by this Court, which we refrain from doing so.

35. In the light of the above discussion and decision, order made in W.P.No.33594 of 2017, dated 22/12/2017 is set aside and the Writ Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mvs

To

1. The Manager (Retail)
Bharat Petroleum Corporation Ltd
Calicut Territory Office
Calicut.
- 2.The Appellate Assistant Commissioner
Commercial Tax Department
Pondicherry.
- 3.The Commercial Tax Officer Mahe, Pondicherry.

+1cc to Ms.D.Geetha, Advocate, S.R.No.12303

+1cc to the Government Pleader pondy, S.R.No.12396

Writ Appeal No.329 of 2018

KAN(CO)
RRK(23/02/2018)