

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.424 OF 2018

United Spirits Ltd. (Erstwhile
McDowell and Co. Ltd.,)
A Company incorporated under
the Companies Act, 1956

with its registered office at
9th Floor, U.B. Tower, U.B. City,
24, Vittal Mallya Rd.,

Bengaluru – 560001 with its
Manufacturing Plant at
Bethora, Ponda Goa.

Represented by its Authorized Officer,
Mr. Suraj Shenvi Pilgaonkar,
major of age, married,
resident of Datta Laxmi Niwas,
ID Hospital Road, Tisk, Ponda Goa.

.. Petitioner

Versus

1. State of Goa,
through the Chief Secretary
with office at Secretariat,
Legislative Assembly Complex,
Porvorim Goa.
2. The Commissioner of Commercial Taxes,
with office at Vikrikar Bhavan,
M.G. Road, Panaji Goa.
3. The Addl. Commissioner of Commercial Taxes,
with office at Vikrikar Bhavan,
M. G. Road, Panaji Goa.

4. The Commercial Tax Officer Ponda Ward,
with office at Tisk, Ponda Goa.

5. The Assistant Commercial Tax Officer,
with office at Abubaker Mansion,
Kurti Road, Ponda Goa.

... Respondents

Mr. Sudesh Usgaonkar with Ms. Rosette Pereira, Advocates for the
Petitioner.

Mr. D. Pangam, Advocate General with Mr. P. Faldessai, Addl.
Government Advocate for the Respondents.

**Coram:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.**

Reserved on : 27th September, 2019.

Pronounced on : 16th October, 2019.

Judgment (Per M. S. Sonak, J)

Heard Mr. Sudesh Usgaonkar with Ms. R. Pereira, learned
counsel for the Petitioner and Mr. D. J. Pangam, learned Advocate
General with Mr. P. Faldessai, learned Addl. Government Advocate for
the Respondents.

2. Rule. With the consent and at the request of the learned
counsel for the parties, Rule is made returnable forthwith.

3. The main issue involved in this petition relates to the date
from which, the simple interest at the rate of 8% per annum, in terms of

Section 33(2) of the Goa Value Added Tax Act, 2005 (the said Act) becomes payable, on the amount refundable under the provisions of the said Act ?

4. The relevant facts in which the aforesaid main issue arises for determination, are as follows :-

(A) The Petitioner, a registered dealer, filed returns under the said Act for the year 2007-2008, within the period prescribed under the said Act.

(B) The Commercial Tax Officer (CTO), made an Assessment Order under Section 29 of the said Act on 29th March, 2011, determining that the amount of Rs.1,92,91,143/- was refundable to the Petitioner.

(C) Since the refund order was not actually implemented for a considerable period of time, the Petitioner addressed communications/representations/reminders dated 18th March, 2013, 3rd March, 2014, 12th March, 2014, 26th March, 2014, 30th April, 2014, 31st January, 2015, 14th April, 2015, amongst others, seeking actual refund.

(D) Ultimately, the Petitioner instituted a Writ Petition No.940 of 2015 in this Court, which was disposed of vide order dated

28th January, 2016, directing the CTO to take a decision in the matter, in accordance with law, within a period of three months.

(E) In pursuance of the aforesaid direction, the CTO, applied for sanction under Rule 30 of the Goa Value Added Tax Rules, 2005 (the said Rules), which sanction was granted on 1st February, 2016, for an amount, however, of only Rs.81,19,244/-. This was followed by a refund voucher dated 20th February, 2016 in terms of which the amount of Rs.81,19,244/- was actually refunded to the Petitioner.

(F) In this petition, the Petitioner, has made no grievance about the refund of only Rs.81,19,244/- when the Assessment Order dated 29th March, 2011 had determined the amount refundable as Rs.1,92,91,143/-. However, the grievance of the Petitioner in this petition relates to non payment of simple interest at the rate of 8% per annum in terms of Section 33(2) of the said Act, on the refunded amount of Rs.81,19,244/-.

(G) Out of the refunded amount of Rs.81,19,244/-, the refund towards the interstate/local sales comes to Rs.52,36,030.69 and the refund towards input tax credit/export sales comes to Rs.28,83,213.31.

(H) It is the case of the Petitioner that upon refund amount of Rs.52,36,030.69 towards the interstate/local sales the Respondents are liable to pay simple interest at the rate of 8% per annum from 29th June, 2011 i.e. after expiry of 90 days period from the date of actual refund i.e. 20th February, 2016.

(I) It is also the case of the Petitioner that on refund amount of Rs.28,83,213.31 towards the input tax credit/export sales, the Petitioner is entitled to simple interest at the rate of 8% per annum, proportionately from 24th April, 2008 and 18th July, 2008 i.e. the dates on which 90 days expired from making of application for refund under Section 10(3) of the said Act. This is in terms of Section 33(2)(a) of the said Act.

(J) In addition to the aforesaid claim for interest, the Petitioner has also claimed an amount of Rs.8,51,594.88 towards VAT Input Tax Credit on export sales against restrictive tax invoice which according to the Petitioner has been incorrectly denied by the Respondents.

5. Mr. Usgaonkar, learned counsel for the Petitioner submits that the provisions of Section 33 of the said Act are quite clear, inasmuch as they provide that any amount refundable to any dealer or person, under an order made under any provision of the said Act,

including refund admissible to an exporter under Section 10(3) of the said Act is not refunded within 90 days of the date of such order or the date of receipt of an application for refund under Section 10(3) of the said Act, the Authority is liable to pay simple interest at the rate of 8% per annum on such amount from the date immediately following the day of expiry of said 90 days period. He submits that the period for refund of Rs.52,36,030.69 expired on 29th June, 2011 and the period for refund in terms of Section 10(3) of the said Act expired on 24th April, 2008 and 18th July, 2008 respectively. Therefore, he submits that the interest at the statutory rate became payable from the said date and not from the date of sanction order, which, according to Mr. Usgaonkar, is only an administrative order, unconnected with the issue of payment of interest under Section 33(2) of the said Act.

6. Mr. Usgaonkar submits that the amount of Rs.8,51,594.88 has been incorrectly withheld by the Respondents though in terms of law, the Petitioner, was very much entitled to this amount, being an exporter for the purpose of the said Act. Mr. Usgaonkar submits that in fact, clause 9 of the Goa Value Added Tax Deferment-cum-Net Present Value Compulsory Payment Scheme 2005 (the said Scheme) was quite clear on this aspect. In any case, the Scheme was amended in the year 2016, but with retrospective effect from 1st April, 2005, to clarify that the Scheme also covers to the extent indicated the sales beyond the State but within the territory of India. Mr. Usgaonkar submits that the relief

in terms of prayer clause (c) of the petition is also due to the Petitioner.

7. Mr. D. Pangam, learned Advocate General, while resisting the claim of the Petitioner submits that Section 33 of the said Act begins with the expression “*subject to other provisions of this Act and the Rules made thereunder*”. On this basis, he submits that the provisions of Section 33 have been subordinated by the Legislature itself to “*other provisions of this Act and Rules made thereunder*”. He submits that Rule 30 of the said Rules makes special provision with regard to refund. He submits that the conjoint reading of Section 33 of the said Act and Rule 30 of the said Rules make it clear that the liability for payment of interest arises upon expiry of 90 days period from the date of sanction order or direct order under Rule 30 of the said Rules. He submits that in the present case, the sanction order was made on 1st February, 2016 and actual refund was also granted on 20th February, 2016. He therefore submits that there is no question of any liability of payment of interest under Section 33 of the said Act, in the facts and circumstances of the present case.

8. Mr. Pangam submits that the Assessment Order under Section 29 of the said Act, in so far as it orders the refund, is only provisional and such order becomes enforceable only once the same is sanctioned under Rule 30 of the said Rules. He submits that the liability to pay interest arises once there is final determination of the refund

amount, which according to him arises only when the sanction order is made under Rule 30 of the said Rules. He submits that the Assessment Order had determined the refund amount at Rs.1,92,91,143/-. However, the Sanctioning Authority upon due examination and verification has determined the refund amount at only Rs.81,19,244/-, which determination has quite correctly, not even been challenged by the Petitioner. He therefore submits that the liability to pay the interest might have arisen if within 90 days from the sanction order dated 1st February, 2016, the State had not actually refunded the amount of Rs.81,19,244/-. He however points out that this amount was admittedly refunded on 20th February, 2016, well within 90 days period and therefore, no liability arises for payment of any interest.

9. Mr. Pangam submits that the issues relating to payment of tax, refund or even interest on refund are to be determined in accordance with statutory provisions as they are. He submits that there is no scope for any intendment or implications. He submits that such issue, in particular, can never be decided on the basis of any equitable considerations because there is no equity about tax.

10. In so far as the prayer clause (c) of the petition is concerned, Mr. Pangam submits that the issue is in fact pending adjudication before the Authorities under the said Act. He therefore submits that such issue may not be decided by this Court directly for the first time, in the

present petition.

11. For all the aforesaid reasons, Mr. Pangam submits that this petition is liable to be dismissed.

12. The rival contentions now fall for our determination.

13. As noted earlier, the main issue which arises for determination in this petition is the date from which the simple interest at the rate of 8% per annum, in terms of Section 33(2) of the said Act becomes payable on the amount refundable under the provisions of the said Act ?

14. The Petitioner, in the present petition, contends that the interest, in terms of Section 33(2)(a) of the said Act becomes payable upon refund amount of Rs.52,36,030.69 from 29th June, 2011 i.e. upon expiry of 90 days from the date of refund order dated 29th March, 2011 till the date of actual refund i.e. 20th February, 2016; and interest in terms of Section 32(2)(c) of the said Act become payable upon refund amount of Rs.28,83,213.31, proportionately from 24th April, 2008 and 18th July, 2008 i.e. upon expiry of 90 days period from the date of application for refund under Section 10(3) of the said Act.

15. The revenue on the other hand contends that the liability to

pay interest under Section 33(2) of the said Act arises only after appropriate Authority sanctions the actual refund in terms of Rule 30 of the said Rules. In the present case, revenue contends that the sanction was accorded only on 1st February, 2016 and since the refunds were actually made on 20th February, 2016 i.e. well within 90 days period prescribed under Section 33(2) of the said Act, there was no liability for payment of any interest on the refund amount.

16. Brief reference to the scheme of the said Act and some of the relevant provisions therein, become necessary to appreciate the rival contentions as above.

17. The said Act was enacted to provide for and consolidate law relating to levy and collection of Value Added Tax on sale of goods in the State of Goa. Section 3 deals with Incidence of tax and Section 4 deals with taxes payable by a dealer or a person. Section 9 deals with Input Tax Credit and Section 10 deals with Input Tax Credit exceeding tax liability. Chapter 5 of the said Act deals with aspects like filing returns, payment of tax, tax deduction at source, assessment, provisional assessment, assessment of escaped turnover. Protective assessment, refund and payment of interest on amount refundable, provisional refund of tax in special circumstances.

18. Section 29 which is a part of Chapter 5 of the said Act *inter*

alia provides that return submitted by the dealer shall be accepted as self- assessed. However, the Commissioner as per the procedure prescribed, shall select upto 20% of the total member of such dealers or search percentage as may be notified by the Government from time to time for detailed assessment. Section 29 (2) *inter alia* provides where a person fails to file a return as required under Section 24 or the Commissioner has reason to believe that the returns filed by a person are not correct and complete; or the Commissioner has reasonable grounds to believe that a person will become liable to pay tax under this Act but is unlikely to pay the amount due; or the Commissioner may make an assessment of the amount of tax payable by the person to the best of his judgment after giving him an opportunity of being heard. Section 29(3) of the said Act provides for the period of limitation within which the assessment is to be undertaken and completed. There are at least four provisos to Section 29(3) of the said Act, out of which first three proviso, are really not relevant for appreciating the issues which arise in the present petition. However, the fourth proviso to Section 29(3) of the said Act provides that where a registered dealer who has filed all the returns for a particular financial year within prescribed time limit, claiming for that financial year, in the said returns, a refund of any amount of tax paid in excess of the amount due from him under the said Act or unduly paid by him and/or for excess of input tax credit over output tax payable under the said Act but remained unassessed beyond the limitation period specified in the said Act, the Commissioner shall

upon an application made by the dealer claiming refund of tax or excess of input tax credit, proceed to assess by himself or order in writing to any other officer appointed under Section 13 of the said Act to carry out assessment of such dealer, after giving him an opportunity of being heard. The dealer who makes such application under this proviso shall be precluded from filing an appeal against such order.

19. Section 29(4) provides that the Commissioner shall make an assessment of the amount that in his opinion is the amount of tax payable under the said Act, after making necessary enquiries as may be deemed fit by him. Section 29(6) requires the Commissioner to serve a notice on completion of assessment and the dealer shall pay the balance of tax in accordance with the terms of such notice. Section 29(7) provides that amended assessment shall be treated in all respects as an assessment under Section 29 of the said Act. Section 29(8) of the said Act provides that no assessment or other proceedings purporting to be made, issued or executed under the said Act shall be quashed or deemed to be void or voidable for want of form or where the mistake, defect or omission therein is merely of form and not of substance. Section 29(9) refers to best judgment assessment.

20. Section 30 of the said Act deals with provisional assessment. Section 31 deals with assessment of escaped turnover. Section 32 of the said Act deals with protective assessment.

21. Section 33 of the said Act is one of the most important sections for the purpose of issues raised in the present petition and the same is therefore transcribed herein below for convenience of reference.

*“33. Refund and Payment of Interest on Amount Refundable.- (1) **Subject to other provisions of this Act and the Rules made thereunder**, the Commissioner shall in the manner and within the time as may be prescribed, refund to a dealer any amount of tax, penalty or interest paid by such dealer in excess of the amount [due from him under this Act or unduly paid by him and also excess of input tax credit] over output tax payable under this Act. The amount of such refund shall be credited to the declared Bank account of the dealer.*

*(2) **When any amount refundable to any dealer or person under an order made under any provisions of this Act, including refund admissible to an exporter under sub-section (3) of section 10, is not refunded within ninety days***

–
*(a) **of the date of such order is made by any authority; or***

*(b) **the date of receipt of the order by the authority, if such order is made by any other authority; or***
*(c) **of the date of receipt of application for refund under sub-section (3) of section 10, the authority shall pay such person simple interest at the rate of eight percent per annum on the said amount from the day immediately following the day of expiry of the said ninety days to the day of refund:***

Provided that the interest calculable shall be on the balance of the amount remaining after adjusting out of the refundable amount any tax, penalty or other amount due under this Act, for any year by the person on the date from which such interest is calculable.

(Emphasis supplied)

22. Section 34 of the said Act deals with provisional refund of tax in special circumstances. This provision enables a registered dealer, in special circumstances to apply for provisional refund pending audit and investigation to establish the correctness of the claim and consequent assessment, if any. This provision provides that subject to the provisions of sub-section(3), the Commissioner may require the dealer to furnish irrevocable bank guarantee for the amount equal to the amount of refund. On receipt of such guarantee, the Commissioner shall subject to the procedure as prescribed, grant the dealer a provisional refund of such amount that may be determined as refundable. When the dealer is assessed provisionally under sub-section (a) of Section 30, the Commissioner shall adjust the amount of provisional refund against the tax due, if any, as a result of assessment. If the process of assessment cannot be or is not completed within a period of three months from the date of filing the application or within one month of the assessment notice, whichever is later, the provisional refund shall be granted forthwith. Provided that if the delay in completing the assessment under sub-section (3) of Section 34 of the said Act is due to non co-operation of the dealer or non production of evidence as may be required to be furnished in support of the claim of refund or any other lapse on the part of the dealer, the period of delay shall be excluded while computing the period of limitation under this sub-section and such period shall not be reckoned for grant of interest, if any, admissible by or under sub-section (2) of Section 33 of the said Act. Provided

further, that if the lapse on the part of the dealer persists, the Commissioner shall make the provisional assessment absolute and forfeit the bank guarantee furnished to the extent of tax assessed, penalty imposed and interest levied. Section 34(4) provides that if, on assessment, the provisional refund granted under sub-section (2) is found to be in excess, then the excess shall be recovered as if it is tax due from the dealer under the said Act. On such excess amount, the interest will be charged at the rate of 2% per month from the date of grant of provisional refund till the date of assessment.

23. The said Act then provides for various authorities to implement and enforce the provisions of the said Act. The said Act also provides for remedies of appeals and revision. The said Act also makes several other miscellaneous provisions, which will not be relevant to decide the main issue which arises in this petition.

24. In exercise of powers conferred by Section 83 of the said Act, and all other powers enabling it in this behalf, the Government of Goa has framed the said Rules, which *inter alia*, deal with the aspect of “*refunds*”.

25. Rule 30 of the said Rules, which specifically deals with the aspect of “*refunds*” is quite relevant to the issue raised in the present petition, and therefore, the same is transcribed herein below for

convenience of reference.

“30. Refunds.- (1) *When any order of assessment under section 29 or re-assessment under section 31 or order of appeal under section 35 or under section 36 or under section 37 a review by Tribunal or under section 38 a revision by High Court or revision by Commissioner or rectification under section 41 results in input tax credit exceeding the tax liability whereby dealer is entitled for refund of tax, penalty or interest paid in excess of the amount due from him and the amount to be refunded does not exceed Rs. 50,000/-, the Appropriate Assessing Authority shall forthwith proceed to refund such amount to the person concerned by issue of refund voucher in Form VAT-XII for being credited to the declared bank account of the dealer. However, before proceeding to refund such amount, the Appropriate Assessing Authority shall firstly verify that any amount being due by the dealer is left unpaid by him, in such case, shall adjust the amount to be refunded by issue of an order in Form VAT-XVI, towards the amount due from the dealer on the date of adjustment and thereafter shall refund the balance, if any.*

(2) *When the amount of refund arising from any of the contingencies referred to in sub-rule (1) exceeds fifty thousand rupees but does not exceed Rs. 2 lakhs, the Appropriate Assessing Authority shall obtain the sanction of the Assistant Commissioner in charge of or having the jurisdiction over the wards, before proceeding to refund such amount. In cases where the Assistant Commissioner is himself Appropriate Assessing Authority, the sanction for refund shall be obtained from the Additional Commissioner of Commercial Taxes. For the said purpose, he shall submit the case record of the dealer to the Assistant Commissioner of Commercial Taxes stating full facts which has originated the refund. The Assistant Commissioner of Commercial Taxes upon examining the case shall order the*

sanction of refund and the Appropriate Assessing Authority shall refund forthwith to the dealer the amount as sanctioned by the order of Assistant Commissioner of Commercial Taxes and the refund shall be made in the manner as provided in sub-rule (1) above.

(3) When the amount of refund arising from any of the contingencies referred to in sub-rule (1) and (2) above exceeds Rs. two lakhs or when any amount is unduly paid by the dealer, the Appropriate Assessing Authority shall obtain the sanction of the Additional Commissioner of Commercial Taxes before proceeding the refund of such amount. For the said purpose, he shall submit the case record of the dealer to the Additional Commissioner of Commercial Taxes stating therein full facts which originated the refund and upon receipts of the sanction order from the Additional Commissioner of Commercial Taxes, the Appropriate Assessing Authority shall refund forthwith to the dealer the amount as sanctioned by the order of Additional Commissioner of Commercial Taxes, in the manner as provided in sub-rule (1) above.

[Provided that no refund exceeding rupees one crore shall be made without prior approval of the Commissioner]”

26. Since the said Act is a taxing statute, interpretation thereof, will have to conform to the principles of interpretation of taxing statutes. The *first* principle in such matters is that the words of statutes are to be understood in their natural, ordinary and popular sense unless there is something in the context to suggest to the contrary; *secondly*, in a taxing statute, regard must be held to the strict letter of law; *thirdly* a fiscal statute will have to be interpreted on the basis of language therein and not *de hors* the same; *fourthly*, no words can be added or ignored,

and only the language of statute is to be considered for ascertaining the proper meaning and intent of the Legislation. This means that the intent of the Legislation must be gathered from language used in the statute. There is no scope of any implication in such matters; *fifthly*, so called equitable construction of words of fiscal statute, is impermissible. There is no equity about tax; *sixthly*, if two views are reasonably possible in a taxing statute, the view which favours the assessee must be preferred.

27. In the precise context of the provisions of the Central Excise Act, 1944 dealing with the claim of interest on refund, the Apex Court in the case of ***Ranbaxy Laboratories Ltd. Vs Union of India***¹, has held that fiscal legislation has to be construed strictly and one has to look merely at what is said in the relevant provision; there is nothing to be read in; nothing to be implied and there is no scope for any intendment. See : *Cape Brandy Syndicate Vs. Inland Revenue Commissioners* 1921 (1) K.B. 64 and *Ajmera Housing Corporation & Anr. Vs. CIT*. 2010 (8) SCC 739.

28. Applying the aforesaid principles, at the outset we note that Section 33 of the said Act deals with two different but not entirely unconnected aspects of “refund” and “*payment of interest on amount refundable*”. The former aspect of “refund” is dealt with by Section

¹ 2011(10) SCC 292

33(1) of the said Act; and later aspect of “*payment of interest on amount refundable*” is dealt with by Section 33(2) of the said Act.

29. Section 33(1) of the said Act which deals with the aspect of “*refund*” no doubt, begins with the expression “*subject to other provisions of this Act and the Rules made thereunder.....*”. However such expression, is conspicuously absent in Section 33(2) of the said Act which deals with the aspect of “*payment of interest on amount refundable*”.

30. On the aspect of “*payment of interest on amount refundable*”, Section 33(2) of the said Act provides that when any amount refundable to any dealer or person “*under an order made under any provisions of this Act, including refund admissible to an exporter under sub-section (3) of Section 10*” is not refunded within 90 days –

(a) *of the date of such order is made by any authority, or*

(b) *the date of receipt of the order by the authority, if such order is made by any other authority; or*

(c) *of the date of receipt of application for refund under sub-section (3) of Section 10,*

the authority shall pay such person simple interest at the rate of 8% per annum on the said amount from the day immediately following the day of expiry of the said ninety days to the day of refund.

The proviso to this Section provides that the interest calculable shall be on the balance of the amount remaining after adjusting out of the refundable amount any tax, penalty or other amount due under this Act, for any year by the person on the date from which such interest is calculable.

31. Upon plain reading of the provisions in Section 33(2) of the said Act and upon adoption of principles of interpretation of taxing statutes referred to above, it is quite clear that the interest becomes payable on “*amount refundable to any dealer or person under an order made under the provisions of this Act including refund admissible to an exporter under Section 10(3) of the said Act*”, if such amount is not refunded within a period of 90 days from the date of order of refund, or in case of an exporter, within 90 days from the date of receipt of application for refund under Section 10(3) of the said Act.

32. Section 33(2) of the said Act does not refer to interest becoming payable upon 90 days from the date of “*sanction*” under Rule 30 of the said Rules. Section 33(2) does not say that the interest will be payable if refundable amounts are not refunded within 90 days from the date of making any order under the said Rules. Rather, Section 33(2)(a), clearly refers to order made under the provisions of “*this Act*”. Similarly, Section 33(2)(c) refers to the date of receipt of application under Section 10(3) of the said Act and provides that the interest will become payable, within 90 days from the date of such order under this Act or from the

date of receipt of such application under Section 10(3) of the said Act, the amount is not actually refunded.

33. Having regard to the principles of interpretation of taxing statutes, it will not be proper to read into the provisions of Section 33(2) of the said Act, some different date for commencement of period of limitation of 90 days, by reference to Rule 30 of the said Rules, moreso, when the provisions in Sections 33(2)(a) and 33(2)(c) of the said Act in clear and unambiguous terms speak of “*order made under any provisions of this Act*” or “*the date of receipt of application for refund under sub-section (3) of Section 10*”. In particular, it will be improper to add any words to the provisions of Section 33(2) or to ignore the clear words therein and by way of implication, read into the provisions of Section 33(2) of the said Act, any reference to the date of grant of sanction under Rule 30 of the said Rules. As noted earlier, in such matters, it is the rule of strict construction, which is to be preferred and there is no room for any intendment or implication. Even equitable construction is ruled out in such matters.

34 The expression “*subject to other provisions of this Act and Rules made thereunder*” in Section 33(1) of the said Act, which deals with the aspect of “*refunds*” and not with the aspect of “*interest on amount refundable*” cannot lead to the inference that even the period of limitation prescribed in Section 33(2) of the said Act will commence

from the grant of sanction under Rule 30 of the said Rules. The expression, with which Section 33(1) begins, only suggests that the Commissioner, in the matter of making refunds in “*the manner and within the time as may be prescribed*” shall act subject to other provisions of the said Act or Rules made thereunder. This means that the Commissioner, in such matters, must have regard to the other provisions of the said Act and the rules made thereunder. From this, we can say, that even after the assessment order indicates any amount refundable to a dealer or even after an application for refund is made by an exporter under Section 10(3) of the said Act, the commissioner before making actual refund in an amount of over Rs.50,000/-, must obtain sanction from the appropriate authority under Rule 30 of the said Rules. This also means that the commissioner must have due regard to other provisions of the said Act or the said Rules when it comes to making adjustment in terms of proviso to Section 33 of the said Act.

35. ~~Even the provisions in Section 33(2) of the said Act, are covered by the expression “subject to the other provisions of this Act.....” with which Section 33(1) of the said Act begins. Therefore, the expression cannot be stretched to suggest that the same will operate to extend the period of limitation prescribed in Section 33(2) of the said Act, particularly when the provisions in Section 33(2) of the said Act are quite clear and unambiguous.~~
 Even if the provisions in Section 33(2) of the said Act are quite clear and unambiguous.

36. The revenue contends that unless and until there is sanction or approval under Rule 30 of the said Rules, the liability to make refunds, does not crystallize. The revenue further contends that unless and until the liability to refund crystallizes, there is no question of any 90 days period under Section 33(2) of the said Act, commencing or beginning to run. Therefore, the revenue contends that it would be inequitable to require payment of any interest on refunds, when the amount of refund is yet to be crystallized. In the alternate, the revenue contends merely because there may be some delay between the making of refund order under the said Act or the date of receipt of application for refund under Section 10(3) of the said Act and the date upon which sanction is obtained under Rule 30 of the said Rules, no interest can be made payable, without examining whether the dealers or the exporters were themselves responsible for the delay. The revenue contends that interest on refund in such cases would be grossly inequitable.

37. According to us, the interpretation suggested by the Petitioner, arises from a plain reading and strict construction of the provisions in Section 33(2) of the said Act, as they stand. The interpretation proposed by the revenue wishes us to add words to the text of Section 33(2) and to even ignore some of the significant words and expression used in Section 33(2) of the said Act. The interpretation, wishes us to read some words into the provisions of Section 33(2) of the said act, as and by way of implication. This, we are afraid, we are unable

to do, having regard to well settled principles of interpretation of taxing statutes.

38. In any case, merely because the interpretation suggested by the Petitioner, is incidentally, also in accord with equity, the revenue cannot invoke the principle that there is no equity about tax or the tax laws. The said principle merely means that where the provisions of the taxing statute are clear and unambiguous, there is no scope for importing any equitable considerations therein. The principle also means that even if the strict construction of taxing statute which is plain and unambiguous, result in harsh consequences, the same cannot be avoided by importing any equitable considerations under the guise of interpretation. However, this principle does not mean that a provision in a taxing statute, which is otherwise in accord with the principles of equity, must be interpreted any differently, perhaps by straining its language or by adding or ignoring the significant words and expression therein.

39 In fact, the latter part of the revenue's contention, deserves rejection by applying the principle that there is no equity about tax, particularly when the provisions of the taxing statute are clear and unambiguous. The proviso to Section 34(3) of the said Act, very clearly provides that if delay in completing assessment under the said subsection is due to non co-operation of the dealer or non -production of

evidence as may be required to be furnished in support of the claim of refund or any other lapse on the part of the dealer the period of delay shall be excluded while computing the period of limitation under the said sub -section and further, such period, shall not be reckoned for the grant of interest, if any, admissible by or under Section 33(2) of the said Act. Thus, where the Legislature intended exclusion of the period attributable to any delay on the part of the dealer, the legislature has made specific provisions to that effect. No such provision is made either in Section 33 of the said Act or in Rule 30 of the said Rules. Therefore, by invoking so called equitable considerations, the Respondents cannot deprive the Petitioner, interest in terms of Section 33(2) of the said Act, where refund is not actually made within the period of limitation prescribed under Section 33(2) of the said Act.

40 The provisions of Section 33(2) of the said Act, in fact enable the Respondents to retain excess amounts paid by a dealer or an exporter from the date of actual deposit of such excess amount in the treasury till the expiry of period of 90 days from the date of the refund order made under any of the provisions of the said Act or from the date of the receipt of the application for refund under Section 10(3) of the said Act, without liability of payment of interest thereof. Therefore, even though the revenue may have utilized the excess amount from the date of its deposit in treasury and its actual refund, by virtue of provisions in Section 33(2) of the said Act, there is no liability to pay any interest on

the refund of the excess amount during such period. If the dealers or exporters were to make such a claim by invoking equitable considerations, such a claim, would not stand, looking to clear and unambiguous provisions in Section 33(2) of the said Act. Such claim would perhaps have to be rejected by applying the principle that there is no equity in tax matters. However, once it is found that the provisions of Section 33(2) of the said Act contemplate payment of interest, where any amount refundable to a dealer or person under an order made under any provisions of the said Act including refund admissible to an exporter under Section 10(3) of the said Act is not refunded within 90 days from the date of such order or from the date of receipt of application for refund under Section 10(3) of the said Act, the authority will have to pay such person simple interest at the rate of 8% per annum on the said amount on the day immediately following the day of expiry of the said 90 days to the date of refund. Again, even the revenue cannot avoid payment of such interest, by invoking any equitable considerations.

41. Further, we note that the precise scope of grant of “*sanction*” or “*approval*” under Rule 30 of the said Rules is not quite clear. One of the several meanings for the word “*sanction*” in the Oxford Dictionary is “*official permission or approval for an action*”. The Cambridge dictionary speaks of “*approval or permission, is specially formal or legal.*” or “*to formally give permission for something*” or “*to formally permit something*”. Sub rule 2 and 3 of Rule 30 of the said

Rules speak of “*sanction*” of the prescribed authorities and the proviso to Rule 30, inserted vide 6th Amendment Rules, 2008 published in the official gazette on 31.12.2008 says that no refund exceeding rupees one crore shall be made without “*prior approval*” of the Commissioner. In the present case, we are concerned with refund for the Assessment Year 2007-08.

42. Rule 30(1) of the said Rules relates to refunds which do not exceed Rs.50,000/-. Here, there is no requirement of any sanction or approval. However, the appropriate assessing authority, before proceeding to refund such amount, must verify that any amount is due to the dealer, if left unpaid by him, must be adjusted against the amount to be refunded and only the balance is to be thereafter refunded.

43. Rule 30(2) of the said Rules relates to refund which exceed Rs.50,000/- but not Rs.2 lakh. Here, the appropriate assessing authority must obtain the sanction of the Assistant Commissioner in charge of or having the jurisdiction over the wards, before proceeding to refund such amount. In cases where the Asst. Commissioner is himself appropriate assessing authority the sanction for refund must be obtained from Addl. Commissioner of the commercial taxes. For the said purpose, he shall submit the case record of the dealer to the Asst. commissioner of commercial taxes stating full facts which has originated the refund. The Asst. Commissioner of commercial taxes upon examining the case shall

order the sanction of refund and appropriate assessing authority shall refund “*forthwith*” to the dealer the amount sanctioned by the order of the Asst. commissioner of commercial taxes and the refund shall be made in the manner provided under in sub rule (1) of Rule 30 of the said Rules.

44. Rule 30(3) of the said Rules relates to refunds in excess of Rs.2 lakhs or when any amount is unduly paid by the dealer, the appropriate assessing authority in such case must obtain sanction of the Addl. Commissioner of commercial taxes before proceeding to refund such amount. For the said purpose, he shall submit the case record of the dealer to the Addl. Commissioner of commercial taxes stating full facts which originated the refund and upon receipt of the sanction order from the Addl. Commissioner of commercial taxes, the appropriate assessing authority shall refund “*forthwith*” to the dealer the amount as sanctioned by the order of Addl. Commissioner of commercial taxes in the manner as provided in sub rule (1) of Rule 30 of the said Rules.

45. Therefore, going by the provisions in Rule 30 of the said Rules, as also the dictionary meaning of the expression “*sanction*” it appears that the object of this provision is to retain supervisory control in Asst. Commissioners and Addl. Commissioners of commercial taxes in the matters of refund by the appropriate assessing authority and only thereafter permit formal refunds. From the circumstance that the

appropriate assessing authority is required to submit the case record of the dealer along with a statement of full facts which has originated the refund and the circumstance that the sanctioning authority is required to examine the case before it grants the sanction, all that we can say is that the grant of sanction or approval in terms of Rule 30 of the said Rules, is not some mere formality, but perhaps a condition precedent for grant of actual refund under the provisions of Section 33(1) of the said Act. However, that by itself, is not sufficient to conclude that the liability for the payment of interest on the amount refundable stands postponed to the day, immediately following the day of expiry of 90 days from the date of sanction order or the approval order under Rule 30 of the said Rules. As noted earlier, neither Section 33(2) of the said Act, nor Rule 30 of the said Rules says so in clear terms. Further, there is nothing in the said two provisions from which, such a construction can be inferred, by way of implication, assuming that there is any scope for implications in such matters.

46. Besides, even the provisions in Rule 30 of the said Rules, clearly and unambiguously provide, that refunds have to be made by the appropriate assessing authority, upon receipt of sanction “*forthwith*”. This militates against the contention raised by the revenue that 90 days period prescribed in Section 33(2) of the said Act, begins to run from the date of sanction order under Rule 30 of the said Rules. If the intention of the Legislature was that the period of 90 days prescribed in

Section 33(2) of the said Act were to run from the date of sanction order under Rule 30 of the said Rules, the Legislature, would have said so in clear terms, both in Section 33(2) of the said Act and in Rule 30 of the said Rules. In the absence of any such indication, both in section 33(2) of the said Act and Rule 30 of the said Rules, we are afraid, we cannot accept the interpretation proposed by the revenue in regard to the provisions in section 33(2) of the said Act or Rule 30 of the said Rules.

47. In any case, the sanction order in terms of Rule 30 of the said rules relates back to the date of refund order made by the assessing authority under the provisions of the said Act at least to the extent of the amount referred to in the sanction order made under Rule 30 of the said Rules. The sanctioning authority, does not for the first time determine whether any refund is due or not or even the quantum of refund. The sanctioning authority merely sanctions the determination already made by the appropriate assessing authority, either fully or partly. In a given case, it is possible that the sanctioning authority, may refuse to sanction refund as may have been determined by the appropriate assessing authority in the assessment order. However, in all such contingencies, it is not as if the sanctioning authority is for the first time determining whether any refund is at all due or the quantum of such refund. Therefore, looking to the plain and unambiguous language of the provisions in section 33(2) of the said Act, there is really no reason to deny a dealer or exporter, interest at the rate of 8% per annum on the

sanctioned refund amount, where such amount is not refunded within the period prescribed under Section 33(2) of the said Act.

48. The interpretation suggested by the Petitioner is to be preferred over the interpretation suggested by the revenue because the same, in fact, harmonizes the provisions in section 33(2) of the said Act and Rule 30 of the said Rules. The interpretation suggested by the revenue might very well bring in conflict the two provisions, which conflict, can be avoided by adopting the harmonious construction proposed by the Petitioner. In any case, it is well settled in law that in case of any direct conflict between a rule and the provision in the parent Act, the former has to yield to the later.

49. In *Ispat Industries Vs Commissioner of Customs, Mumbai*² the Apex Court has held that if there are two possible interpretations of a rule, one which subserves the object of a provision in the parent statute and the other which does not, the former will have to be adopted, because adopting the latter will make the room *ultra vires* the Act. In this case, the Apex court was considering the potential conflict between rules framed under the Customs Act and a provision of the Customs Act itself. The Apex court proceeded to observe that if there is any conflict between the provisions of the Act and provisions of the Rule the former will prevail. However, every effort should be made to give an interpretation to the Rules to uphold its validity. This can

2 (2006) 12 SCC 583

only be possible if the Rules can be interpreted in a manner so as to be in conformity with the provisions in the Act, which can be done by giving it an interpretation which may be different from the interpretation which the rule could have if it was construed independently of the provisions in the Act. In other words, to uphold the validity of the rule sometimes a strained meaning can be given to it, which may depart from the ordinary meaning, if that is necessary to make the rule in conformity with the provisions of the Act. This is because it is a well settled principle of interpretation that if there are two interpretations possible of a rule, one of which would uphold its validity while the other which would invalidate it, the former should be preferred.

50. In the present case, fortunately there is no need to give any strained meaning to the provisions in Rule 30 so as to make it conform to the provisions in section 33(2) of the said Act. The provisions in Rule 30 of the said Rules as they stand do not detract anything from section 33(2) of the said Act. In fact, both Rule 30 of the said Rules and section 33(2) of the said Act, operate in their respective fields. Section 33(2) is a special provision which deals with “*payment of interest on the amount refundable*”. Rule 30 of the said Rules, deals with the aspect of “*refunds*” and the necessity of obtaining sanction where the amount of refund exceeds Rs.50,000/-. Even if, as the revenue contends, that there is some marginal overlap, the clear and unambiguous provision in

section 33(2) of the said Act cannot be made to yield to the provisions in Rule 30 of the said Rules, when it comes to payment of interest upon the refund amount, as sanctioned in terms of Rule 30 of the said Rules.

51. There is yet another aspect which renders the interpretation proposed by the Petitioner more acceptable than the interpretation proposed by the revenue. As noted earlier, unlike in the case of assessment or reassessment, there is no time limit prescribed within which the revenue is required to obtain sanction under Rule 30 of the said Rules. If the interpretation of the revenue is to be accepted, then, the revenue will virtually be permitted to take undue advantage of its own delays in obtaining sanctions under Rule 30 of the said Rules and on this basis, would delay unreasonably the refund of the amounts already found to be refundable in terms of the assessment orders made under the said Act.

52. In such circumstances, it is reasonable to proceed on the basis that 90 days time limit provided in section 33(2) of the said Act is the time limit within which the appropriate assessing authorities must obtain sanction in terms of Rule 30 of the said Rules. However, if for any reason such sanction is not obtained within the period of 90 days from the date of order of refund made under Section 29 of the said Act or within a period of 90 days from the date of receipt of application for refund under section 10(3) of the said Act, the appropriate assessing

authority cannot avoid liability or payment of simple interest at the rate of 8% per annum on specious plea that such liability commences only from the date of expiry of 90 days from the date of sanction order under Rule 30 of the said Rules.

53. In *Ranbaxy Laboratories Limited vs. Union of India and others*³, the issue which arose before the Hon'ble Apex Court was, whether the liability of the Revenue to pay interest under Section 11-BB of the Central Excise Act, 1944 commences from the date of expiry of three months from the date of receipt of application for refund or on the expiry of three months from the date on which the refund order is made. The Hon'ble Apex Court noted that the provisions of Section 11-BB of the said Act which deal with interest on delayed refund, come into play only after an order for refund has been made under Section 11-B of the said Act. Hon'ble Apex Court, then held that interest under Section 11-BB of the said Act becomes payable if, on expiry of the period of 3 months from the date of receipt of application for refund, the amount claimed is not refunded. Thus, the only interpretation of Section 11-BB that can be arrived at is that the interest under Section 11-BB of the Act becomes payable on the expiry of three months from the date of receipt of application for refund under sub-Section (1) of Section 11-B of the Central Excise Act, 1944. For sustaining such interpretation, the Hon'ble Apex Court relied upon well-settled proposition of law that fiscal legislation has to be construed

3 (2011) 10 SCC 292

strictly and one has to look merely at what is said in the relevant provision and there is nothing to be read in; nothing to be implied and there is no room for any intendment.

54. In *Union of India and others vs. Hamdard (WAQF) Laboratories*⁴ the issue which again arose in the context of provisions of Section 11-B and 11 BB of the Central Excise Act, 1944, was whether a refund application which was found to be incomplete, could nevertheless be taken into consideration for determination of period of three months, after which interest became payable in terms of Section 11-BB of the Central Excise Act, 1944 ? In this context, the Hon'ble Apex Court held that *Ranbaxy Laboratories Ltd.* (supra) principle will nevertheless apply on all fours. The Apex Court, in fact, held that it is obligatory on the part of the Revenue to intimate the assessee to remove the deficiencies in the application within two days and in the event, if there are still deficiencies, it can proceed with adjudication and reject the application for refund. However, the adjudicatory process by no stretch of imagination, can be carried on beyond three months. It is required to be concluded within three months. This means that the interest becomes payable after expiry of three months from the date of application for refund and payment of such interest cannot be resisted on the basis of any procrastination by the Authorities.

55. The aforesaid rulings assist the case of the Petitioner, who

merely contends that it ought not to be deprived of simple interest of 8% per annum, when, ultimately the orders of refund made in their favour have been partly sanctioned by the prescribed authorities under Rule 30 of the said Rules. In the present case, the Petitioner seeks interest only on the amount which has already been sanctioned by the Authorities under Rule 30 of the said Rules. Therefore, upon obtaining necessary sanction under Rule 30 of the said Rules beyond the period of 90 days from the date of the order of refund, or from the date of application for refund under Section 10(3) of the said Act, the Authorities cannot avoid payment of interest upon expiry of this period, on the specious plea that actual refund cannot be made without sanction under Rule 30 of the said Rules.

56. For all the aforesaid reasons, we hold that the Respondents will have to pay simple interest at the rate of 8% per annum, upon the amount of Rs.52,36,030.69 towards Interstate/Local Sales for the period between 29.6.2011, i.e. expiry of 90 days from the date of assessment order dated 29.3.2011, till 20.2.2016 i.e. the date of actual refund. Similarly, Respondents will have to pay simple interest at the rate of 8% per annum on the amount of Rs.28,83,213.31, towards refund of Input Tax Credit/Export Sales with effect from 24.4.2009 and 18.7.2008, on proportionate basis since this is the date which corresponds to the expiry of 90 days from the date of receipt of applications dated 24.1.2008 and 18.4.2008 in terms of Section 10(3)

of the said Act. The Respondents are, accordingly, directed to work out the aforesaid interest amount and pay the same to the Petitioner as expeditiously as possible and, in any case, within 8 weeks from today.

57. In so far as the relief in terms of prayer clause (c) of Writ Petition No.424/2018 is concerned, we find that adjudication on the said issue is still pending before the Appropriate Authorities. Accordingly, we direct the Appropriate Authorities to conclude such adjudication within a period of four months from today. If the Petitioner is still aggrieved, the Petitioner is at liberty to take out appropriate proceedings to question the decision of the Adjudicating Authorities in the context of the relief in terms of prayer clause (c), which we are not adjudicating in the first instance, in this Petition.

58. This petition is therefore disposed of by making the following order :

A) The Respondents are directed to pay to the Petitioner simple interest at the rate of 8% per annum upon sanctioned refund amount of Rs.52,36,030.69 towards interstate/local sales for the period between 29th June, 2011 and 20th February, 2016 within a period of eight weeks from today.

B) The Respondents are directed to pay simple interest at the rate of 8% per annum on the sanctioned refund amount of Rs.28,83,213.31 towards refund of input tax credit/export sales for the period between 24th April,

2009/18th July, 2008, and 20th February, 2016 on proportionate basis, again within eight weeks from today.

C) The reliefs in terms of prayer clause (c) of the petition, is presently denied. However, the appropriate authorities, before whom this issue is pending are directed to conclude adjudication on this issue within a period of four months from today. If the Petitioner is still aggrieved, liberty is granted to take out appropriate proceedings to question the decision of the adjudicating authorities.

D) Rule is made absolute in the aforesaid terms.

E) There shall be no order as to costs.

59. All concerned to act on the basis of the authenticated copy of this order.

NUTAN D. SARDESSAI, J

M. S. SONAK, J

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