



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.06.2019**

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P (MD) No.10531 of 2013

and

M.P (MD) No.1 of 2013

M/s.AR.A.S.Motors Private Limited,
Rep. by its Director - K.Suresh,
No.35/1, Samayanallur Road,
Vilangudi,
Madurai - 625 018.

... Petitioner

Vs.

The Assistant Commissioner (CT),
West Veli Street Circle,
Madurai.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, to call for the records on the file of the respondent in its proceeding in TIN: 33914981608 dated 03.06.2013 and quash the same.

For Petitioner : Ms.R.Hemalatha
For Respondent : Mr.R.Murugan,
Additional Government Pleader.

ORDER

The petitioner challenges an order dated 03.06.2013 levying interest on the belated payment of Entry Tax and penalty.

2. Heard Ms.R.Hemalatha, learned counsel appearing for the petitioner and Mr.R.Murugan, learned Additional Government Pleader appearing for the respondent.

3. The main argument raised is that there is no substantive provision in the Entry Tax Act providing for the levy of interest on belated payment of tax and penalty, in the absence of which the levy is liable to be quashed.

4. A feeble challenge is raised to the maintainability of the writ petition on the ground of availability of alternate remedy. I reject the same in *limine* since the question raised is a substantive, legal issue not involving any questions of fact, let alone disputed questions of fact, that can certainly be raised in a writ petition.



5. In my view, it is too well settled a proposition that interest may be levied only in the event of there being a specific, enabling and substantive provision in the Enactment in question, authorising such levy. In the present case, there is, admittedly, no such provision in the Entry Tax Act, 1990.

6. I may make useful reference made in this case to the Judgment of the Supreme Court in *India Carbon Limited Vs. State of Assam* (106 STC 460) rendered in the context of the Central Sales Tax Act 1956. One of the points considered was whether the Central Act visualized the levy of interest at all. In that context, the Division Bench, after extracting from the Judgment of the Constitution Bench of the Supreme Court in the case of *J.K.Synthetics Limited Vs. Commercial Taxes Officer* [(1994) 94 STC 422] reiterated the position that the provisions relating to charging and levying of interest in a statute are provisions of substantive law.

7. The relevant portion of the Judgment in *J.K.Synthetics Limited* (supra) as extracted by the Supreme Court is as follows:-

'16.It is well-known that when a statute levies a tax it does so by inserting a charging section by which a liability is created or fixed and then proceeds to provide the machinery to make the liability effective. It, therefore, provides the machinery for the assessment of the liability already fixed by the charging section and then provides the mode for the recovery and collection of tax, including penal provisions meant to deal with defaulters. Provision is also made for charging interest on delayed payments, etc. Originally the charging section which fixes the liability is strictly construed but that rule of strict construction is not extended to the machinery provisions which are construed like any other statute. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not defeat the same. (See *Whitney V. Commissioners of Inland Revenue* [1926] AC 37, *Commissioner of Income-tax Vs. Mahaliram Ramjidas* [1940] 8 ITR 442 (PC), *India United Mills Limited Vs. Commissioner of Excess Profits Tax* [1955] 27 ITR 20 (SC) : [1955] 1 SCR 810 and *Gursahai Saigal Vs. Commissioner of Income-tax* [1963] 48 ITR 1 (SC) ; [1963] 3 SCR 893). But it must also be realised that provision by which the authority is empowered to levy and collect interest, even if construed as forming part of the machinery provisions, is substantive law for the simple reason that in the absence of contract or usage interest can be levied under law and it cannot be recovered by way of damages for wrongful detention of the amount. (See

<https://hcservices.courts.gov.in/hcservices/> *Barpeta Railway Co. Limited Vs. Ruttanji Ramji* AIR 1938 PC 67 and *Union of India Vs. A.L.Rallia Ram* [1964] 3 SCR 164 at 185 to 190). Our attention was, however, drawn



by Mr. Sen to two cases. Even in those cases, Commissioner of Income-tax Vs. M. Chandra Sekhar [1985] 151 ITR 433 (SC) and Central Provinces Manganese Ore Co. Ltd. Vs. Commissioner of Income-tax [1986] 160 ITR 961 (SC), all that the Court pointed out was that provision for charging interest was, it seems, introduced in order to compensate for the loss occasioned to the Revenue due to delay. But then interest was charged on the strength of a statutory provision, may be its objective was to compensate the Revenue for delay in payment of tax. But regardless of the reason which impelled the Legislature to provide for charging interest, the Court must give that meaning to it as is conveyed by the language used and the purpose to be achieved. Therefore, any provision made in a statute for charging or levying interest on delayed payment of tax must be construed as a substantive law and not adjectival law. So construed and applying the normal rule of interpretation of statutes, we find, as pointed out by us earlier and by Bhagwati, J., in the Associated Cement Company's case [1981] 48 STC 466 (SC) that if the Revenue's contention is accepted it leads to conflicts and creates certain anomalies which could never have been intended by the Legislature.'

8. At paragraph No.7, the Division Bench settles the proposition stating that 'interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf'.

9. After an extensive discussion, the Division Bench refers to the judgement of the Constitution Bench in *Khemka and Co. (Agencies) Private Limited Vs. State of Maharashtra* [(1975) 35 STC 571] wherein, the provisions of Section 9(2) of the Central Sales Tax Act, 1956 had been analysed, concluding that there was no substantive provision in the Central Act enabling the payment of interest. In the absence of such substantive provision which obligates the assessee to pay interest on belated payment, there can be no demand/imposition of interest. Equally so, in the present case, there is no provision in the Entry Tax Act empowering the authority to impose penal interest.

10. This Court, in the case of *S. Gurunathan Vs. Deputy Commercial Tax Officer, Thirupathur and another* [(2015) 77 VST 45], dealt with the levy of interest in an assessment made under the provisions of the Tamil Nadu Additional Sales Tax Act, 1970. The Bench concluded that interest could not be levied on belated payment of Additional Tax, when there was no enabling provision in terms of which Section 12(3) of the Tamil Nadu General Sales Tax Act, 1959 empowered the authority for the levy of penalty under the provisions of the Tamil Nadu Additional Sales Tax Act. The provisions of the latter Act drew from the Tamil Nadu General Sales Tax Act, 1959 only in



relation to the levy of tax and interest and thus, could not be extended to support the levy of penalty.

11. This view is also supported by a decision of a learned Single Judge of this Court in the case of *Tvl. Hotel Peacock Vs. Commercial Tax Officer, Chennai* [2018 (17) G.S.T.L. 385 (Mad)] rendered in the context of the Tamil Nadu Tax on Luxuries Act, 1981.

12. In the instant case, the Entry Tax Act, 1990 is a stand-alone enactment. The provisions of Section 8 of the Act dealing with Assessment read thus:

'8.Assessment.- (1) The amount of tax due from a person liable to pay tax under this Act shall be assessed separately for such period as may be prescribed.

(2) If the assessing authority is satisfied that the return furnished by a person liable to pay tax, is correct and complete, he shall assess the amount of tax due from the person on the basis of such return.

(3) If the assessing authority is not satisfied that the return furnished by a person liable to pay tax, is correct and complete, and he thinks it necessary to require the presence of the person or production of further evidence, he shall serve on such person in the prescribed manner a notice requiring him on a date and at a place specified therein, either to attend and produce or cause to be produced all evidences on which the said person relies in support of his return, or to produce such evidence as is specified in the notice. On the date specified in the notice, or as soon as may be, thereafter, the assessing authority shall, after considering all the evidences which may be produced, assess the amount of tax due from the person.

(4) If a person fails to comply with the requirements of any notice issued under sub-Section (3), the assessing authority shall determine the purchase value of the motor vehicle under the proviso to clause (k) of Section 2 to the best of his judgment and assess the amount of tax due from him.

(5) No order of assessment under sub-Sections (3) or (4) shall be made after the expiry of three years from the last date prescribed for filing of returns of the particular period. If for any reason such order is not made within the period aforesaid then the



return so filed shall be deemed to have been accepted as correct and complete for assessing the tax due from such person.'

13. The modality for payment of tax is set out in terms of Section 10 as under:

'10. Payment of tax.- (1) The tax shall be paid in the manner hereinafter provided.

(2) A person liable to pay the tax, shall, before furnishing returns as required by sub-Section (1) of Section 7, first pay into the Government treasury in the prescribed manner, or to the assessing authority in cash or by cheque or Demand Draft the whole of the amount of tax due from him according to such return.

(3) If a person liable to pay the tax, furnishes a revised return in accordance with sub-Section (2) of Section 7, and if such revised return shows that a larger amount of tax than already paid is payable, he shall first pay into the Government treasury in the prescribed manner or to the assessing authority in cash or by cheque or Demand Draft the additional amount of tax according to such revised return.

(4) The amount of-

(i) tax due where return has been furnished without full payment thereof,

(ii) difference in the tax assessed under Section 8 or reassessed under Section 9 for any period and the sum already paid by the person in respect of such period, and

(iii) penalty (if any) levied under Section 15, shall be paid by the person, into the Government Treasury, or to the assessing authority in cash or by cheque or Demand Draft by such date as may be specified in the notice issued by the assessing authority for this purpose, being a date not earlier than thirty days from the date of service of the notice.

(5) Any tax or penalty which remains unpaid after the date specified in the notice for payment, shall be recoverable as if it were an arrear of land revenue.'

14. Thus, though the aforesaid provisions enable the authorities to levy tax and penalty, there is no entitlement therein to levy interest on the belated payment of tax and penalty, which is essentially in the nature of penal interest. Reference to the provision of the Tamil Nadu General Sales Tax Act, 1956, is misconceived as the Entry Tax Act, as stated earlier, is a compact



and self-contained statute that does not draw upon any other law, including the General Sales Tax Law, in the matter of assessments thereunder.

15. In summary, the impugned order is quashed and the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

To

The Assistant Commissioner (CT),
West Veli Street Circle,
Madurai.

+1 CC to M/s.R.HEMALATHA, Advocate (SR-71238[F] dated 25/06/2019)
+1 CC to SPL GP (SR-71552[F] dated 26/06/2019)

W.P (MD) No.10531 of 2013
25.06.2019

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