

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 319 OF 2020

S. K. Trading Co.

..Petitioner

Vs.

The State of Maharashtra & Ors.

..Respondents

Mr. Rahul C. Thakar i/b. Mr. C. B. Thakar for Petitioner.

Mr. V. A. Sonapal, Special Advocate with Mr. Dushant Kumar, AGP for
Respondent Nos. 1 to 3.

**CORAM : G. S. KULKARNI &
RAJESH S. PATIL, JJ.**

DATE : JUNE 06, 2023

Oral Judgment (per G. S. Kulkarni, J.) :-

1. This petition under Articles 226 and 227 of the Constitution of India challenges an order dated 30 September, 2019 passed by the Maharashtra Sales Tax Tribunal at Mumbai (for short, “**the tribunal**”) on a stay application filed by the petitioner praying for stay of the order dated 27 March, 2018 passed by the Deputy Commissioner of Sales Tax (Appeals) IV, Mumbai (the ‘first appellate authority’). By the impugned order, while admitting the petitioner’s second appeal, the petitioner’s stay application has been partly allowed, whereby although stay is granted to the petitioner on the tax as demanded, stay has been refused on the order

qua the interest amount of Rs. 3,60,932/-, as demanded under Section 30(2) of the Maharashtra Value Added Tax Act, 2002 (for short, the “Act”), forming part of the order as appealed.

2. The assessment in question is for the period 2012-13. The Assistant Commissioner, Sales Tax passed an assessment order *inter alia* holding that the petitioner is liable to pay tax of Rs.34,85,603/-and interest under Section 30(2) and 30(3) of the Act, quantified at Rs.3,60,932/- and Rs.20,38,268/- respectively. Further, penalty under Section 29(3) of the Act was levied at Rs.8,71,401/-. In pursuance of such order passed by the Assessing Officer, the petitioner deposited an amount of Rs.56,00,000/-. Thus, the balance amount including interest amount and penalty as payable by the petitioner was an amount of Rs. 61,96,204/-.

3. The order passed by the Assessing Officer was carried by the petitioner in a first appeal (First Appeal No.VAT-495/2017-18) filed under Section 26(6A) of the Act, which came to be adjudicated by an order dated 27 March, 2018 passed by the first appellate authority. By such order the first appellate authority partly allowed the petitioner’s appeal, thereby modifying the assessment order, with a direction to the assessing authority to recover the balance dues along with appropriate amount of

interest and proceed further as per the provisions of law. The petitioner being aggrieved by the order passed by the first appellate authority, approached the tribunal in a second appeal (VAT Second Appeal No. 1109 of 2018), in which the stay application in question was filed by the petitioner, on which the impugned order has been passed.

4. The grievance of the petitioner is in regard to the tribunal holding that the petitioner's appeal *qua* the challenge to the demand of interest as ordered by the first appellate authority, in terms of what Section 30(2) of the Act would provide, itself being not maintainable and the petitioner's stay application *qua* the order on interest, accordingly being rejected. It is the petitioner's contention that the tribunal has not considered and/or has overlooked that the order impugned before it was not merely an order under Section 30(2), however, it was a composite order passed by the appellate authority. It is submitted that the subject matter of the first appeal was the assessment order passed by the assessing authority under Section 23 of the Act, which itself was a composite order, from which an appeal was filed by the petitioner before the first appellate authority as per provisions of sub-section (6A) of Section 26 of the Act.

5. The petitioner has contended that once the nature of order passed

by the first appellate authority itself was a composite order, it was not correct for the tribunal to dissect such composite order by bifurcating/ separating the order as to the interest component and to reject the petitioner's stay application *qua* the interest amount as demanded under Section 30(2) of the Act. This more particularly as the subject matter of assail and consideration before the tribunal was a composite order passed by the first appellate authority in the petitioner's second appeal.

6. In supporting the above contentions, Mr. Thakar, learned counsel for the petitioner has drawn the Court's attention to the relevant provisions of the Act being the provisions of Section 30(3) read with Section 26, sub-section (6A) and (6B) of the Act, providing for the first appeal and the second appeal. Mr. Thakar has also drawn the Court's attention to the provisions of Section 85 of the Act which provide for a '*bar to certain proceedings*' under which sub-section (2)(b-3) provides that no appeal shall lie in regard to the interest payable by the dealer under the provisions of the Act. It is Mr. Thakar's submission that on a cumulative reading of the provisions of Section 23 (Assessment) and Section 26 (6A) and (6B) read with the provisions of Section 85 of the Act, it is clear that law would permit that an appeal can be filed by an assessee against a

composite order passed by the respective authorities which would include an order on interest. It is his submission that Section 26 of the Act does not make any provision or create an independent category of an appeal only against the assessment of the primary taxes, so as to exclude any order on levy of interest under Section 30(2) of the Act. It is hence his submission that once such composite order is passed and which is an appealable order under sub-section (6A) and (6B) of Section 26, an application for stay is maintainable against the order as a whole. According to Mr. Thakar, the tribunal has failed to appreciate the true purport of the provisions of Section 85 sub-section (2) (b-3) and the provisions of Section 26, when Section 85 itself saves as to what is provided for in Section 26. Mr. Thakar in support of his contention, has relied on the decision of the Supreme Court in *Arcot Textile Mills Limited vs. Regional Provident Fund Commissioner and Ors.*¹.

7. On the other hand, Mr. Sonapal, learned counsel for respondent nos.1 to 3 has opposed this petition. It is his contention that Section 85 (2)(b-3) clearly creates a bar to the maintainability of any appeal against an order passed under sub-sections (2) or (4) of Section 30 directing payment of interest. He submits that once such specific provision is incorporated,

¹ (2013) 16 SCC 1

no fault can be found in the view as taken by the tribunal in paragraph 6 of the impugned order, that an order passed under Section 30(2) of the Act is not an appealable order, hence, the petitioner's appeal against an order of interest passed under Section 30(2) of the Act was not maintainable. It is his submission that for such reason, there was no question of any stay to an order directing payment of interest under Section 30(2) of the Act. It is hence submitted that the petition is misconceived and needs to be dismissed.

8. We have heard the learned counsel for the parties. We have also perused the orders passed by the assessing officer, the first appellate authority, as also the impugned order passed by the tribunal on the second appeal and the record.

9. The short issue which falls for our consideration is whether the tribunal in exercising its appellate jurisdiction under Section 26(6B) of the Act, is correct in rejecting the petitioner's stay application *qua* the interest as ordered to be paid by the petitioner under Section 30(2) of the Act, when such order forms part of a composite order passed not only by the assessing officer, but also by the first appellate authority.

10. To appreciate the controversy, we need to note the relevant provisions of the Act to which a reference has been made in the foregoing paragraphs. The provisions being Sections 23 providing for assessment, Section 26 read with 26(6A) and 26(6B) providing for a first appeal and a second appeal respectively. We also need to note the provisions of Section 30 providing for interest payable by a dealer or a person. Section 30 falls under an independent Chapter namely “Chapter VI” providing for “*Penalty and Interest*”. The next provision which is required to be noted, is Section 85 providing for a “*Bar to Certain Proceedings*”.

11. The relevant provisions as referred by us read thus:-

“26. Appeals.- (1)[An appeal, from every order, not being an order mentioned in subsection (2) of this section and sub-section (2) of section 85] passed under this Act or rules or notifications, shall lie if the order is made, -

(a) by a Sales Tax Officer or an Assistant Commissioner, or any other officer sub-ordinate thereto, to the Deputy Commissioner;
(b) by a Deputy Commissioner or Senior Deputy Commissioner, to the Joint Commissioner;

(c) by a Joint Commissioner, [Additional Commissioner, Advance Ruling Authority] or the Commissioner, to the Tribunal.

(2) In the case of an order passed in appeal by a Deputy Commissioner or a Joint Commissioner, a second appeal shall lie to the Tribunal.

(3) Every order passed in appeal by the Tribunal under this section, shall, subject to the provisions of sections 24 and 27, be final and every order passed in appeal by any other appellate authority, shall, subject to the provisions of sections [24, 25 and 27], be final.

(4) Subject to the provisions of sections 80 and 81, no appeal including a second appeal shall be entertained unless it is filed within sixty days from the date of the communication of the order

appealed against.

(5) Subject to such rules of procedure as may be prescribed, every appellate authority (both in the first appeal and the second appeal) shall have the following powers, namely :-

(a) in an appeal against an order of assessment, it may confirm, reduce, enhance or annul the assessment:

Provided that, where the appeal is filed before the Tribunal, the Tribunal may set aside the assessment and refer the case back to the assessing authority for making a fresh assessment in accordance with the direction given by it and after making such further inquiry as may be necessary; the assessing authority shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment;

[Provided further that, in respect of any appeal against an order of assessment, wherein dealer was not able to attend or remain present before the assessing authority at the time of hearing when the assessment order had been passed, then the appellate authority in first appeal may set-aside the said assessment order,-

(i) within nine months from the commencement of the Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 2017 (Mah. XXXI of 2017), if the appeal is filed prior to the date of commencement of the said Act,

(ii) within six-months from the date on which the said appeal has been filed, if the appeal is filed on or after the commencement of the Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 2017 (Mah. XXXI of 2017) and refer the case back to the assessing authority for making a fresh assessment under sub-section (7) of section 23.]

(b) in an appeal against an order imposing a penalty, the appellate authority may confirm or cancel such order or modify it in accordance with the provisions of this Act;

(c) [* * *];

(d) in any other case, the appellate authority may pass such order in the appeal as it deems just and proper:

Provided that, the appellate authority shall not enhance an assessment or a penalty or interest or sum forfeited or reduce the amount of set-off or refund of the tax, unless the appellant has been given a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation.- While disposing of an appeal, the appellate authority may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before it by the appellant or that no order was made in the said proceedings regarding such matter.

(6) The appellate authority or the Tribunal, as the case may be, may, while admitting the appeal, pending the disposal of the appeal, stay the order appealed against in full or part, subject to such conditions or restrictions as it may deem necessary including a direction for depositing of a part or whole of the disputed amount by the appellant:

[Provided that, in case of an appeal filed on or after the 1st July 2014 against any order, in which claim against declaration or certificate, has been disallowed on the grounds of non-production of such declarations or, as the case may be, certificates then,-

(a) where such appeal is filed after two years from the end of the year to which such claim relates, then the stay shall not be granted unless the appellant makes 100 per cent payment of tax, in respect of such claim,

(b) where such appeal is filed before the expiry of two years from the end of the year to which such claim relates, the stay, if any, shall stand vacated, if the dealer fails to produce the required declaration before the expiry of the said period of two years.

Explanation – For the purpose of computing payment in the appeal, mentioned in the above clauses, the amount of part payment made earlier, if any, shall be included:]

[Provided further that] if at the request of the appellant, the appellate authority or the Tribunal has granted three adjournments or the appellant fails to attend on the date fixed for hearing by the appellate authority or the Tribunal on three occasions, whether consecutive or not then,-

(a) (i) the stay, if any, shall not be continued unless an amount equal to fifteen per cent of the amount so disputed in appeal or rupees fifteen crore, whichever is less is paid into the Government Treasury within the time mentioned in the order by the appellate authority or the Tribunal for this purpose.

Explanation.- The amount of fifteen per cent or rupees fifteen crore referred to above shall be inclusive of any part payment made earlier towards the disputed amount;

(ii) if the appellant fails to pay the amount so enhanced, within such time as mentioned in the order by the appellate authority or Tribunal, the amount in dispute shall be recoverable and all orders to the contrary shall stand vacated;

(b) the appellate authority or the Tribunal shall accordingly modify the order of stay, if any, pending the disposal of the said appeal;

(c) notwithstanding anything contained in clause (i) of sub-section (2) of section 85, no appeal shall lie against the order passed under clause (a) above.]

[(6A) No appeal against an order, passed on or after the commencement of the Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 2017 (Mah. XXXI of 2017), shall be filed before the appellate authority in first appeal, unless it is accompanied by the proof of payment of an aggregate of the following amounts, as applicable,-

(a) in case of an appeal against an order, in which claim against declaration or certificate, has been disallowed on the ground of non-production of such declaration or, as the case may be, certificate then, amount of tax, as provided in the proviso to sub-section (6),

(b) in case of an appeal against an order, which involves disallowance of claims as stated in clause (a) above and also tax liability on other grounds, then, an amount equal to 10 per cent. of the amount of tax, disputed by the appellant so far as such tax liability pertains to tax, on grounds, other than those mentioned in clause (a),

(c) in case of an appeal against an order, other than an order, described in clauses (a) and (b) above, an amount equal to 10 per cent. of the amount of tax disputed by the appellant,

(d) in case of an appeal against a separate order imposing only penalty, deposit of an amount, as directed by the appellate authority, which shall not in any case, exceed 10 per cent. of the amount of penalty, disputed by appellant :

Provided that, the amount required to be deposited under clause (b) or, as the case may be, clause (c), shall not exceed rupees fifteen crores.

(6B) No appeal shall be filed, before the Tribunal, against an order, which is passed on or after the commencement of the Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 2017 (Mah. XXXI of 2017), unless it is accompanied by the proof of payment of an aggregate of following amounts, as applicable,-

(a) in case of an appeal against an order, in which claim against declaration or certificate has been disallowed on the grounds of non-production of such declarations or, as the case may be, certificates then, amount of tax, as provided in the proviso to sub-section (6),

(b) in case of an appeal against an order, which involves disallowance of claims as stated in clause (a) above and also tax liability on other grounds, then, an amount equal to 10 per cent. of the balance amount of disputed tax, so far as such tax liability pertains to tax, on grounds, other than those mentioned in clause (a),

(c) in case of an appeal against an order, other than an order, described in clauses (a) and (b) above, an amount equal to 10

per cent. of the balance amount of disputed tax,

(d) in case of an appeal against any other order, an amount, as directed by the Tribunal :

Provided that, the amount required to be deposited under clause (b) or, as the case may be, clause (c), shall not exceed rupees fifteen crores.

Explanation.- For the purposes of clause (b) or clause (c) of sub-section (6B), the expression, “balance amount of disputed tax” shall mean an amount of disputed tax which remains outstanding, after considering the amount paid, as directed by the appellate authority in first appeal under clause (b) or, as the case may be, clause (c), respectively of sub-section (6A).

(6C) The appellate authority or, as the case may be, Tribunal shall stay the recovery of the remaining disputed dues, in the prescribed manner, on filing of an appeal under sub-section (6A) or, as the case may be, sub-section (6B).]

Explanation – For the removal of doubts, it is hereby clarified that, the provisions of sub-sections (6A), (6B) and (6C) shall be applicable for any appeal, against all such orders, referred to in those sub-sections, irrespective of the period to which the order, appealed against, relates or irrespective of the date on which the proceedings in respect of such order have commenced.]

(7) Every appellate authority including the Tribunal, in so far as it may, shall decide the appeals pending before it, [by such priorities as may be prescribed]:

Provided that, if a person has attained the age of seventy-five years or more and such person is the proprietor of the business, a partner in a firm or a director having substantial interest in a company being a body corporate, then on an application in the prescribed form made by him in this regard, any appeal made by the proprietary concern, partnership firm or the company shall be decided on priority to the exclusion of all other appeals.

30. Interest payable by a dealer or person.-

(1) A dealer who is liable to pay tax in respect of any year, and who has failed to apply for registration or has failed to apply for registration within the time as required by or under this Act, shall be liable to pay by way of simple interest, in respect of each of such years, in addition to the amount of tax payable in respect of such year, a sum calculated at the prescribed rate on the amount of such tax for each month or part thereof for the period commencing on the 1st April of the respective year to the date of the payment of tax. The amount of such interest shall be calculated by taking into consideration the amount of, and the date of, such payment, when the payment is made on different dates or in parts, or is not made. When, as a result of any order passed under this Act, the said

amount of tax is reduced, the interest shall be reduced accordingly and where the said amount is enhanced, [the interest on the enhanced amount shall be calculated *mutatis mutandis* up to the date of such order]:

Provided that, in respect of any of such years, [the amount of interest payable] under this sub-section shall not exceed the amount of tax found payable for the respective year.

(2) A registered dealer who has failed to pay the tax within the time specified by or under this Act, shall be liable to pay by way of simple interest, in addition to the amount of such tax a sum calculated at the prescribed rate on the amount of such tax for each month or part thereof after the last date by which he should have paid such tax:

Provided that, in relation to the tax payable according to [the return, fresh return or as the case may be], revised return, the said dealer shall, notwithstanding anything contained in any other provision of this Act, be deemed not to have paid the amount of such tax within the time he is required by or under the provisions of this Act to pay it if he has not paid the full amount of such tax on or before the last date prescribed for furnishing of such return and accordingly, if he has not paid the full amount of such tax or has paid only the part of the amount of such tax by such date, he shall be liable under this clause for payment of interest after such date on the full or part, as the case may be, of the amount of tax which has not been paid by such date and where a dealer has furnished a [fresh return or revised return] and the amount of tax payable as per the [fresh return or revised return] exceeds the amount of tax payable as per the original return, then for the purposes of this sub-section, the dealer shall be deemed to have been required to pay the excess amount of tax at the time he was required to pay the tax as per the original return and accordingly he shall be liable to pay interest under this sub-section on the said excess amount of tax.

[Provided further that, in case a dealer files an annual revised return, as provided under clause (b) or, as the case may be, clause (c) of sub-section (4) of section 20, then the interest shall be payable on the excess amount of tax, as per such annual revised return, from the dates mentioned in column (2) of the Table, till the date of payment of such excess amount of tax.

[Provided also that, in case a dealer, whose registration is deemed to be cancelled under sub-section (6A) of section 16 , files

an annual revised return, as provided under clause (b) or, as the case may be, clause (c), of sub-section (4) of section 20, for any period starting from the 1st April 2017, then the interest shall be payable on the excess amount of tax, payable as per such annual revised return from the prescribed dates by the prescribed class of dealers.]

(3) In the case of a registered dealer, in whose case, any tax other than the tax on which interest is leviable under sub-section (2) has remained unpaid upto one month after the end of the period of assessment, such dealer shall be liable to pay by way of simple interest, [a sum calculated at the prescribed rate on the amount of such tax] for each month or part thereof from the date next following the last date of the period covered by an order of assessment till the date of the order of assessment and where any payment of such unpaid tax whether in full or part is made on or before the date of the order of assessment, the amount of such interest shall be calculated by taking into consideration the amount and the date of such payment. If, as a result of any order passed under this Act, the said amount of tax is reduced, then the interest shall be reduced accordingly and where the said amount is enhanced, then interest on the enhanced amount shall be calculated *mutatis mutandis* upto the date of such order from the said date next.

[(4) If, -

(a) after the commencement of,-

(i) audit of the business of the dealer in respect of any period, or

(ii) inspection of the accounts, registers and documents pertaining to any period, kept at any place of business of the dealer, or

(iii) entry and search of any place of business or any other place where the dealer has kept his accounts, registers, documents pertaining to any period or stock of goods,

(b) in consequence of any intimation issued under sub-section (7) of section 63,

The dealer files one or more returns or, as the case may be, revised returns in respect of the said period, then he shall be liable to pay by way of interest, in addition to the amount of tax, if any, payable as per the return or, as the case may be, revised return, a sum equal to 25 per cent, of the additional tax payable as per the return or, as the case may be, revised return.]

[Provided that, interest under this sub-section shall not be

payable on account of the additional tax liability arising due to non-production of declarations or, as the case may be, certificates:

Provided further that, if the amount of tax paid as per revised return is less than ten per cent. of the aggregate amount of tax paid as per the original returns, in respect of the corresponding period, then no interest under this sub-section shall be payable.

Explanation – For the purpose of this sub-section the expressions,-

(i) “tax paid as per original returns” shall be deemed to include the amount of tax paid, as per the revised returns, filed before the commencement of proceeding specified in clause (a) or before the receipt of intimation specified in clause (b) of sub-section (4);

(ii) “tax paid” shall mean the amount of tax paid by such person or dealer, after the adjustment of set-off.]

[(5) The State Government may, from time to time, by notification published in the *Official Gazette*, subject to such conditions mentioned therein, remit the whole or any part of the interest, in respect of any period, payable by any prescribed class of registered dealers,-

(i) who were not able to pay the tax during the prescribed period, due to technical problems of the automation system of the Sales Tax Department, or

(ii) who obtained registration late.]

85. Bar to certain proceedings.- (1) Save as is provided by section 27, no order passed or proceedings taken under this Act, the rules or notification by any authority appointed or constituted under this Act, shall be called in question in any Court, and save as is provided by section 26, [* * *], no appeal shall lie against any such order.-

(2) No appeal shall lie against, -

(a) any notice issued under this Act, rules or notifications, or

(b) any summons issued under sub-section (1) of section 14, or [a defect notice issued under section 20] or

[(b-1) an assessment order passed under sub-section (1) of section 23, or]

[(b-2) an order levying penalty under sub-section (8) of section 29, or]

[(b-3) an order passed under sub-sections (2) or (4) of section 30 regarding the interest payable by the dealer under any

provision of this Act, or

(b-4) an intimation issued under sub-section (7) of section 63, or]

(c) any order issued on an application for installment, or

[(d) any order or notice issued under sub-section (1) or (2) of section 34, or]

[(d-1) the order passed under sub-sections (1) and (2) of section 35, or]

(e) an order pertaining to the seizure or retention of books of accounts, registers and other documents, or

[* * *]

(g) any order or assignment under section 59, or

[* * *]

(i) an interim order issued in the course of any proceeding not being an order issued under sub-section (6) of [section 26, or].

[(j) any order, published by the Commissioner, by virtue of the powers conferred on him by notification issued under section 26B.]

(emphasis supplied)

12. The scheme of the Act, in so far as assessment is concerned, is quite clear. Section 23 makes a provision for assessment *inter alia* in regard to a registered dealer who fails to file a return in respect of any period, by the prescribed date, and the procedure required to be followed by the revenue in the circumstances as specified, so as to bring about the assessment of such dealer. Section 23 is followed by Section 24 which provides for rectification of mistakes, Section 25 provides for review of the orders passed by any officer under the Act. Section 26 provides for a remedy of appeal(s). In the present context, the relevant provisions being sub-section (6A), (6B) and (6C) of Section 26. On a plain reading of the provisions of sub-section (6A) and (6B) of Section 26, it is seen that when it provides

for a remedy of an appeal against the orders passed either by the assessing authority or by the first appellate authority, it does not make any distinction, so as to carve out any non-appealability of an order in regard to the interest component, much less as provided for under sub-section (2) or (4) of Section 30 of the Act, which may form part of any composite order passed either by the assessing authority or by the first appellate authority. It needs no deliberation that once in the course of assessment before the assessing authority, followed by the orders passed by the first appellate authority, if the liability on the assessee to pay tax for a particular period has been fixed/ascertained, necessarily the interest provision in a given case, becomes applicable. This would require either the assessing authority or the first appellate authority to make a composite order directing the assessee to pay not only the tax, but also apply the interest provision by ordering payment of interest. In such circumstances, orders, which include an order on payment of interest by the assessee, necessarily are composite orders. Thus, the basis for any demand for interest is primarily the liability to pay tax. Hence both the orders namely the direction to pay tax and the direction to pay the interest, are interconnected and become part of a common order, which is an appealable order.

13. Thus, in our opinion, it is rightly contended by the petitioner that an appeal against such composite order would necessarily include within its ambit appealability of the orders pertaining to the interest. Such composite orders are appealable orders under the provisions of sub-section (6A) and (6B) of Section 26. As a corollary the provisions of sub-section (6C) would become applicable in so far as such appeals as provided under sub-sections (6A) and (6B) are concerned, namely an entitlement of the assessee to seek stay of the recovery of the disputed dues including on interest.

14. The legislature itself has avoided to provide anything in regard to an order on interest to be kept away from the purview of such appeals which the assessee would file under either sub-section (6A) or (6B) of Section 26. Thus to read any bar to appealability in regard to an order on interest, forming part of a composite order passed by the assessing authority or by the first appellate authority, to be read in sub-section (6B) sub-section (6C) would be reading something into such provisions, which has not been expressly provided by the legislature. If such interpretation as canvassed on behalf of the respondents is accepted, necessarily on every occasion, the assessing officer would be required to pass independent

orders on the assessment and a separate order in regard to interest and the same would also be the position before the first appellate authority, that no composite order can be passed. Such eventuality is quite unknown, except in a situation, where the adjudication in a given case is simplicitor only on interest, when the basic liability of tax, would stand crystalised either under judicial orders or otherwise. We are of the clear opinion that it is not the intention of the legislature that a composite order cannot be passed either by the assessing authority or by the first appellate authority. In any event, it is quite possible that in a given situation, the order passed under Section 30(2) of the Act levying interest on the assessee, itself would fall to the ground, in view of setting aside of the principal order on assessment. Hence, there may be diverse situations and a discretion is available to the assessing officer or to the first appellate authority to take into consideration the facts and circumstances of each case, to pass composite order. Such discretion cannot be taken away, considering the plain purport and interpretation of the provisions of Sections 23 and 26 (6A) and 26(6B) of the Act.

15. Now coming to the provisions of Section 85 of the Act which provide for a 'bar to certain proceedings'. Sub-section (2)(b-3) of Section

85 provides that an order passed under sub-section (2) or (4) of section 30 in regard to the interest payable by the dealer under the provision of the Act, no appeal shall lie. In our opinion, the bar under sub-section 2(b-3), such provisions would be applicable in regard to the proceedings where the issue is only in regard to an independent order on interest passed under Section 30(2) or (4) of the Act. Hence, it would not be appropriate to read the bar under sub-section (2)(b-3) of Section 85 of the Act, to the appealability of composite orders, being assailed in appeals under Section 26 (6A) and (6B) of the Act, when the order passed by the assessing officer or first appellate authority is a composite order. We are thus in agreement with the submissions as urged on behalf of the petitioner on the interpretation of the provisions of Section 26 (6A) and (6B) of the Act to be kept distinct from the provisions of Section 85(2)(b-3) of the Act.

16. The petitioner's reliance on the decision of the Supreme Court in *Arcot Textile Mills Limited vs. Regional Provident Fund Commissioner and Ors.* (supra) is also well founded on the principles of interpretation of the provisions in question although the Supreme Court was considering the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, (for short, "**the Employees P.F. Act**"). The Supreme

Court, interpreting the provisions of Section 7A and 7Q of the Employees P.F. Act, observed that the competent authority under the Employees P.F. Act while determining the moneys due from the employee shall be required to conduct an inquiry and pass an order which, according to the petitioner, is akin to the order passed by the assessing officer. The Supreme Court observed that an order under Section 7A of the Employees P.F. Act is an order that determines the liability of the employer under the provisions of the Act and while determining the liability, the competent authority offers an opportunity of hearing to the concerned establishment. It was observed that at that stage, the delay in payment of the dues and component of interest are determined and such an order becomes a composite order being an order passed under Section 7A and 7Q together. The Supreme Court observed that such an order shall be amenable to appeal under Section 7I of the Employees P.F. Act, and the same is true of any composite order a facet of which is amenable to appeal under Section 7I of the Employees P.F. Act. It was observed that if for some reason when the authority chooses to pass an independent order under Section 7Q, the same would not be appealable. In our opinion, the observations of the Supreme Court squarely applies in the present context, considering the provisions of the act in question. It would be appropriate to note the

observations of the Supreme Court which reads thus:-

“18. At this stage, it is necessary to clarify the position of law which do arise in certain situations. The competent authority under the Act while determining the moneys due from the employee shall be required to conduct an inquiry and pass an order. An order under Section 7A is an order that determines the liability of the employer under the provisions of the Act and while determining the liability the competent authority offers an opportunity of hearing to the concerned establishment. At that stage, the delay in payment of the dues and component of interest are determined. It is a composite order. To elaborate, it is an order passed under Section 7A and 7Q together. Such an order shall be amenable to appeal under Section 7I. The same is true of any composite order a facet of which is amenable to appeal and Section 7I of the Act. But, if for some reason when the authority chooses to pass an independent order under Section 7Q the same is not appealable.”

(emphasis supplied)

17. For the above reasons, we are not inclined to accept Mr. Sonapal's contention that the provisions of Section 85(2)(b-3) be read with the provisions of Section 26(6A) and (6B) of the Act. If such an interpretation is accepted, it would certainly lead to an absurdity.

18. In view of the above discussion, we allow the writ petition in terms of prayer clause (a) which reads thus:-

“(a) that this Hon'ble Court be pleased to issue a writ of Certiorari or a writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ or order or direction under Article 226 of the Constitution of India ordering and directing Hon. Tribunal to modify the order on stay application dated 30.09.2019 (Ex.C) so as to include amount of interest u/s. 30(2) in stay granted by Hon. Tribunal.”

19. We accordingly direct the tribunal to consider the petitioner's stay application *qua* the challenge to the interest component.

20. No costs.

[RAJESH S. PATIL, J.]

[G. S. KULKARNI, J.]