

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 12th DAY OF JUNE 2014

PRESENT

THE HON'BLE MR.JUSTICE N.KUMAR

AND

THE HON'BLE MR.JUSTICE B.MANO HAR

STRP 120/2013 & STRPs.229-250/2013 c/w
STRP 457/2012 and STRPs.158-159/2013, STRP 213/2013
and STRPs.44-45/2014

STRP 120/2013 & STRPs.229-250/2013

BETWEEN:

State of Karnataka,
By Secretary to Government,
Finance Department,
Vidhana Soudha,
Bangalore - 560 001.

...PETITIONER

(By Smt.S.Sujatha. AGA)

AND:

M/s.Maintec Technologies Pvt. Ltd.,
No.129, 2nd H Main Road,
Kasturinagar,
Bangalore - 16.
Rep. by the Director.

...RESPONDENT

(By Smt.Vani.H. Adv.,)

These STRPs are filed under Sec.6591) of the Karnataka Value Added Tax Act, 2003 against the judgment dated 14.9.2012 passed in STA No.248/2009 and STA Nos.418 to 439/2009 on the file of the Karnataka Appellate Tribunal, Bangalore, allowing the appeals.

STRP 457/2012 and STRPs.158-159/2013

BETWEEN:

The State of Karnataka,
Rep. by the Secretary,
Finance Department,
Vidhana Soudha,
Bangalore – 560 001.

...PETITIONER

(By Smt.S.Sujatha, AGA)

AND:

M/s.Bharath Heavy Electronics Ltd.,
Electro Porcelains Division,
Prof.CNR Rao Circle,
Opp. To Indian Institute of Science,
Malleshwaram,
Bangalore – 12.
Rep. by the Manager – Finance.

...RESPONDENT

(By Sri.T.Surya Narayana, Adv., for
M/s.King & Partridge)

These STRPs are filed under section 65(1) of the Karnataka Value Added Tax Act, 2003 against the judgment dated 4.8.2011 passed in STA No.2512 to 2514/2010 on the file of the Karnataka Appellate Tribunal, Bangalore, allowing the appeals.

STRP 213/2013 and STRPs.44-45/2014

BETWEEN:

The State of Karnataka,
Rep. by the Secretary to Govt.,
Department of Finance,
Vidhana Soudha,
Bangalore – 560 001.

...PETITIONER

(By Smt.S.Sujatha, AGA)

AND:

M/s.Bharath Heavy Electronics Ltd.,
Industrial Systems Group,
Prof.CNR Rao Circle,
Indian Institute of Science Post,
Malleshwaram,
Bangalore – 12.
Rep. by the Manager – Finance.

...RESPONDENT

(By Sri.T.Rajaram, Adv.,)

These STRPs are filed under section 65(1) of the KVAT Act, against the judgment dated 16.11.2012 passed in STA

No.961 and 962/2011 on the file of the Karnataka Appellate Tribunal at Bangalore, allowing the appeals.

These STRPs coming on for Hearing this day, **N.KUMAR. J.,** made the following:

ORDER

These three sets of revision petitions are filed by State/Revenue challenging the order passed by the Karnataka Appellate Tribunal holding interest can only be charged after issuance of an assessment order and not from the date of furnishing of the monthly returns.

2. For the purpose of convenience and better appreciation of the question of law involved in these cases we have set out the facts of STRP No.457/2012.

3. The assessee is a public sector undertaking, a company registered under the provisions of the Karnataka Value Added Tax Act and Central Sales Tax Act. The Assessing Officer has concluded the assessment order for

the tax period from April 2005 to March 2006 (for short hereinafter referred to as 'CST Act'). The Assessing Authority has levied higher rate of tax for the transaction which is not covered by the 'C' forms. The Assessing Authority also levied interest on the period from April 2005 to March 2006. The assessee paid taxes and interest as per the demand notice issued by the Assessing Authority. However, being not satisfied with the order passed by the Assessing Authority, the assessee filed an appeal before the Joint Commissioner of Commercial Taxes. The appeal was partly allowed. Not being satisfied with the said order, the assessee filed STA Nos.2512 to 2514/2010 before the Karnataka Appellate Tribunal. The Tribunal following the judgment of the Supreme Court allowed the appeal quashing the levy of interest and transactions which are not covered by 'C' forms. Aggrieved by the same, the revenue is in revision before this court.

4. Keeping in mind the facts of this case along with the other connected cases two questions of law do arise for considerations in these batch of revisions:

1. *When 'C' form is not at all furnished and the assessee admits the liability to pay tax, from what date the interest on the delay in payment of tax has to be levied?*
2. *If 'C' form furnished is found to be defective for any reason whatsoever and the assessee is called upon to pay tax, from what date the interest is payable thereon?*

5. Question No.1: Inter-State Trade or Commerce is regulated by the provisions of the CST Act, 1956. Section 6 of the CST Act is the charging section. Every dealer registered under the CST Act is liable to pay tax under the Act on all sales of goods other than electrical energy effected by him In the course of inter-State trade or commerce during any year on and from the date so notified. The said tax is payable to the Central

Government. Section 9 provides levy and collection of tax and penalties. By virtue of the said provision the appropriate State shall, on behalf of the Government of India, assess, re-assess, collect and enforce payment of tax, including any interest or penalty payable by a dealer under the CST Act as if the tax or interest or penalty payable by such a dealer under the CST Act is a tax or interest or penalty payable under the general sales tax Act of the State. Karnataka Value Added Tax Act which replaced the Karnataka Sales Tax Act system in line with the national consensus for bringing in reforms in commodity taxation came into force from 1.4.2005. Therefore, by virtue of sub-section(2) of Section 9 for the purpose of levy and collection, assessment, re-assessment, enforcing payment of tax the provisions of Value Added Tax (VAT) is applicable. Section 35 of the VAT Act prescribes that the registered dealer shall furnish a return for such periods in the prescribed form. Section 36 deals with interest in case of

failure to furnish returns or to pay tax declared on returns or other amounts payable. Section 37 deals with rate of interest. Section 38 deals with assessment of tax and section 39 re-assessment of tax. Section 8 of the CST Act deals with rates of tax on sales in the course of inter-State trade or Commerce. It reads as under:

“ 8. Rates of tax on sales in the course of inter-State trade or commerce-

[(1) Every dealer, who in the course of inter - State trade or commerce, sells to a registered dealer goods of the description referred to in sub-section(3), shall be liable to pay under this Act, which shall be [two per cent] of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower;

Provided that the Central Government may, by notification in the Official Gazette, reduce the rate of tax under this sub-section.]

[(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section(1), shall be at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State.]

Explanation- For the purpose of this sub-section, a dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of appropriate State, notwithstanding that he, in fact, may not be so liable under that law.]

(3) [The goods referred to in sub-section (1)]-

*[****]*

*(b) [****] are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for*

sale or [in the tele-communications network or] in mining or in the generation or distribution of electricity or any other form of power;

- (c) are containers or other materials specified in the certificate of registration of the registered dealer purchasing the goods, being containers or materials intended for being used for the packing of goods for sale;*
- (d) are containers or other materials used for the packing of any goods or classes of goods specified in the certificate of registration referred to in [****] clause (b) or for the packing of any containers or other materials specified in the certificate of registration referred to in clause (c).*

[(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter -State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled

and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority:

Provided that the declaration is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit]

6. The aforesaid provision makes it obligatory for every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer goods of the description referred to in sub-section(3), shall be liable to pay tax under the CST Act, which shall be 4% of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower. To get the benefit of rate of tax under sub-section(4) of section 8, it mandates the dealer selling the goods in the course of inter-State trade or commerce to furnish to the prescribed authority in the

prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority. If for any reason, he is unable to furnish the said declaration within the prescribed time, the authority is vested with the power to extend the time for furnishing such declaration to the dealer showing sufficient cause. In other words, if the sales tax payable in the appropriate State is higher when compared to what is prescribed u/s 8 of the CST Act and the sale is in the inter-State trade or Commerce, the dealer could avail the benefit of this lower tax by furnishing such declaration. If the said declaration is not forthcoming even if it is an inter-State trade or commerce, he is liable to pay tax as prescribed by the appropriate State Government.

7. Rule 12(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957 (for short 'the CST Rules') declares that the declaration and the certificate referred to

in sub-section(4) of section 8 of the CST Act shall be in Forms-C and D respectively. Sub-Rule(7) of Rule 12 provides that the declaration in Form-C or Form-F or the certificate in Form-E-I or Form-E-II shall be furnished to the prescribed Authority within three months after the end of the period to which the declaration or the certificate relates. The proviso to the said sub-Rule states, if the prescribed Authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time as that Authority may permit. Therefore, the dealer who wants to claim the benefit of concessional rate of tax has to furnish the declaration form within the aforesaid time prescribed or within the extended time to avail the said benefit. At any rate the said Form-C has to be produced at the time of passing the assessment order to have the benefit. In

dealing with the question whether 'C' form could be produced at the appellate stage, a Division Bench of this court in the case of A.S. Nasiruddin Vs Commissioner of Commercial Taxes in Karnataka, Bangalore, reported in Sales Tax Cases volume 94 page.399 has held as under:

"Section 8(1) of the Central Act provides for levy of tax on sale of goods in the course of inter-State trade or commerce at a concessional rate. To avail of this the dealer shall have to furnish 'C' forms (declaration forms). The declaration thus furnished will be the evidence of the nature of the transaction. This declaration has to be obtained by the assessee from another dealer. The question is whether production of this evidential document cannot be permitted in the proceedings before the appellate authority or before the Appellate Tribunal. The Revenue relies upon the language of the proviso to section 8(1) as well as rule 12(7) referred already. These provisions no doubt refer to the assessing authority as the authority before whom these

declarations will have to be filed. This is so because primarily it is the assessing authority who makes the original order either accepting or rejecting the case of the assessee. It is the said authority which initiates the case of the Revenue with reference to the particular facts of the case. Therefore, necessarily law requires the dealer to produce all the relevant materials before the said authority.

The question whether the appellate authority should entertain the declaration under the circumstances when the dealer could not produce the same before the assessing authority will have to be considered in the light of the powers of the appellate authority. If the appellate power is a limited power then entertainment of the documents filed by the assessee will depend upon the scope of the said limited power. However, if the appellate power is not restricted in any manner, the said power will be as wide as the power that could be exercised by the assessing authority. Generally stated, the appellate power is co-extensive with the power of the original authority. Section 20 provides for

the first appeal. The scope of the appellate power is found in section 20(5). The appellate authority may confirm, reduce, enhance or annul the assessment, or direct the assessing authority to make further enquiry, or pass such order as it may think fit. The power necessarily includes the power of setting aside the assessment and remand the matter. The power is quite wide. There is absolutely no limitation as to exercise of the power by the appellate authority and if so, there is no reason to deny him the power to entertain an application of the assessee to consider the prayer to produce 'C' form (declaration) provided the assessee is able to satisfy the authority that due to reasons beyond his control he could not produce them before the assessing authority. It is true that the assessee cannot, as a matter of course, produce these documents before the appellate authority. He will have to show sufficient cause as to why he could not produce them earlier.

The power of Appellate Tribunal has to be traced to section 22 of the Act. As per section 22(4) the Appellate Tribunal shall after giving

both the parties to the appeal reasonable opportunity of being heard, pass such orders thereon as it thinks fit. We do not find any limitation on the power of the Appellate Tribunal even under section 22. No doubt various aspects of the appellate power are not enumerated as in the case of section 20(5). Obviously because the Appellate Tribunal is the highest statutory Tribunal under the Act, the Legislature has left the issue to the discretion of the Appellate Tribunal to pass such orders thereon as the Tribunal may think fit with regard to the appeal. The order which the Tribunal would think fit to make has, necessarily a judicial order. In the absence of any restriction as to the scope of this power, the scope has to be inferred by reference to the principle governing the appellate power. It will lead to several difficulties if we hold that the Appellate Tribunal cannot entertain any fresh evidence or additional evidence under any circumstances. There may be several instances wherein as assessee may have been prevented from producing material before the assessing authority or the first appellate authority; the

circumstances under which an assessee may be prevented from producing the best evidence which was obtained subsequently, may be due to the reasons beyond his control. Denial of opportunity to the assessee to produce the appropriate relevant material even at the stage of second appeal before the Appellate Tribunal irrespective of the circumstances of the case would result in denial of justice to the assessee. The decision of this Court in C.Govindaswamy vs. State of Mysore [1963] 14 STC 65 explains the scope of the Appellate Tribunal's power. At pages 66-67, it observes thus :

'The expression 'pass such orders thereon as it thinks fit' is an expression of wide import. An order of remand can be properly brought within that expression. We see no reason why these words should be construed narrowly. In fact, if a narrow construction is placed on these words, it may work to the prejudice of the assessees in a large number of cases. There may be occasions when a total remand may be required in the interest of justice.'

In an appropriate case, if the Appellate Tribunal finds that the assessee was prevented, due to sufficient cause, from producing material evidence, it is always open to the Appellate Tribunal to entertain the same and if necessary may remand the matter to the assessing authority. In fact, regulation 36 of the Karnataka Appellate Tribunal Regulations provides for such a procedure and recognises the power in the Appellate Tribunal to entertain additional evidence. This apart, second appeal before the Appellate Tribunal is nothing but continuation of the assessment proceedings, because, normally the appeal is nothing but the continuation of the original proceedings. There is no restriction against the application of this fundamental principle as not applicable to the case of an appeal before the Appellate Tribunal.”

8. From the aforesaid judgment, it is clear that if 'C' form declarations are not filed before the Assessing Authority and if the dealer-assessee is able to satisfy the Assessing Authority that due to reasons beyond his control,

he could not produce them before the Assessing Authority, the Appellate Authority can entertain the said 'C' form and either grant the relief or remand the matter to the Assessing Authority to take note of the said 'C' forms and grant the relief to which the assessee-dealer is entitled to.

9. In the background of the statutory provisions the question that arises for our consideration in these revision petitions is, if the assessee having claimed the benefit of concessional rate of tax under the CST Act fails to produce the 'C' form declarations and he accepts the assessment order levying tax from what date the interest is payable on such tax. Liability to pay tax arises u/s 9(2B). This provision was inserted by Act 10 of 2000. It is retrospective in operation. It reads as under:

"9(2B) If the tax payable by any dealer under this Act is not paid in time, the dealer shall be liable to pay interest for delayed payment of such tax and all the provisions for delayed payment of such tax and all the

provisions relating to due date for payment of tax, rate of interest for delayed payment of tax, of the general sales tax law of each State, shall apply in relation to due date for payment of tax, rate of interest for delayed payment of tax, and assessment and collection of interest for delayed payment of tax under this Act in such States as if the tax and the interest payable under this Act were a tax and an interest under such sales tax law."

10. A reading of the aforesaid provision makes it clear if the tax payable by any dealer under this Act is not paid in time, the dealer shall be liable to pay interest for delayed payment of such tax and all the provisions for delayed payment of such tax and all the provisions relating to due date for payment of tax, rate of interest for delayed payment of tax and assessment and collection of interest for delayed payment of tax of the general Sales Tax Act of each State is made applicable.

11. In the instant case the dealer submitted monthly returns as contemplated u/s 35(1) of the VAT Act. In the said return he has disclosed the total turnover representing inter-State sales. He has paid 4% on such turnover the tax payable u/s 8(1) of the Act. He has also stated that he would furnish the declaration in Form-C. Admittedly, he could not produce the declaration in Form-C. Therefore, the Assessing Authority has passed the assessment order levying tax payable on the said turnover in terms of VAT Act. The assessee has not disputed the said levy. The Assessing Authority has also directed the assessee to pay interest from the date it is liable to be paid in terms of the return filed. It is this levy of interest from the date it is liable to be paid in terms of the return which is disputed in this case.

12. The argument of the learned counsel appearing for the revenue is, once 'C' form is not furnished as promised in the return and when once the liability to pay

tax under VAT Act is accepted, the payment of interest being compensative in nature, the interest is liable to be paid from the date the tax under the VAT Act is liable to be paid. The Tribunal, was not justified in holding that it is liable to be paid only from the date of assessment order or from the date prescribed in the demand for tax made in pursuance of the assessment order.

13. Per contra, the learned counsel appearing for the assessee contended, unless the assessment order was passed, there was no liability on the part of the assessee to make the said payment. Therefore, only after the determination of the tax payable and after the issue of a demand notice calling upon the assessee to make payment, if the payment is not made, then the liability to pay interest commences and rightly the Tribunal has held so and therefore, he submits that no case for interference is made out. He further submits there is no provision in CST Act or VAT Act prescribing the time from which the interest is payable

and also the rate at which interest is payable in case of non furnishing of 'C' forms.

14. In support of the respective contentions reliance is placed on the two judgments. The revenue relies on a judgment of the Full Bench of the Kerala High court in the case of State of Kerala Vs. Western India Cosmetic and Health Products Limited reported in (2010) 32 VST 325 (Ker) wherein it has been held as under:

"On going through the provisions both before and after the amendment, it is clear that interest is compensatory in nature inasmuch as it is payable from such date on which tax would have been fallen due, had the dealer included actual turnover in the return relating to such period. The Liability arises on account of failure of the dealer to include any turnover of his business in any return filed. In this context, counsel for the respondents submitted that the turnover by itself does not determine any tax liability and that is why the provision is amended later to include the taxable turnover in the

Section and consequently there cannot be any liability for interest for the period prior to the amendment if the turnover was fully returned. We are unable to accept this contention because the question whether there is failure on the part of the assessee to include turnover in the return filed has to be considered with reference to the return itself, which is form No.9 prescribed under the Rules. It is to be noted that the dealer is required to give the description and turnover of each goods, the classification made with reference to entries in the Schedule to the Act, the point of sale and the rate of tax of taxable goods. There is a specific column provided in the return to declare the turnover on exempted goods. Therefore the dealer is expected to file the return disclosing the entire turnover of all the goods and by bifurcating turnover between taxable and non-taxable and again classifying taxable goods at the applicable rate on turnover of each such goods. Non-payment or short payment will arise on account of the dealer mis-classifying taxable goods as non-taxable and can also happen on account of mis-classification

of taxable goods at rates lower than the rates provided in the schedules to the Act. Therefore failure of inclusion of turnover in the return leading to non-payment or short-payment of tax under the pre-amended provision means non-inclusion of taxable turnover or any part thereof at the appropriate rate of tax. We hold that the amendment is only clarificatory because the turnover omitted in the return that attracts liability for interest is taxable turnover or otherwise the section before its amendment becomes meaningless. Interest payable under Section 23(3A) is from the date on which tax would have been payable, had the dealer included the turnover at the correct rate of tax in the return filed. Interest under the Section is attracted if there is omission on the part of the dealer to include any taxable turnover in the return filed or wrong claim of exemption made on taxable turnover and further on account of misclassification of goods at lower rate of tax than the actual rate of tax that is payable on the turnover of goods. Further, even if the assessment is made based on the return filed,

and such assessment happens to be incorrect later and the demand of tax is increased through revision of assessment under Section 19(1) pursuant to orders under Section 35(1), still the assessee will be liable to pay interest under Section 23(3A) on the differential tax that is between assessed tax and tax paid based on the return."

15. The learned counsel for the assessee placed reliance on the judgment of the Constitution Bench of the Supreme Court in the case of J.K.Synthetics Limited Vs. Commercial Taxes Officer reported in STC Vol.94 page.422:

"Before we proceed further we must emphasise that penalty provisions in a statute have to be strictly construed and that is why we have pointed out earlier that the considerations which may weigh with the authority as well as the Court in construing penal provisions would be different from those which would weigh in construing a provision providing for payment of interest on unpaid amount of tax which ought to have been paid. Section 3, read with Section 5

of the Act, is the charging provision whereas the rest of the provisions provide the machinery for the levy and collection of the tax. In order to ensure prompt collection of the tax due certain penal provisions are made to deal with erring dealers and defaulters and these provisions being penal in nature would have to be construed strictly. But the machinery provisions need not be strictly construed. The machinery provisions must be so construed as would enable smooth and effective collection of the tax from the dealers liable to pay tax under the statute. Section 11B provides for levy of interest on failure of the dealer to pay tax due under the Act and within the time allowed. Should this provision be strictly construed or should it receive a broad and liberal construction, is a question which we will have to consider in determining the sweep of the said provision.

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. Ordinarily 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.

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.

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.

Let us look at the question from a slightly different angle. Section 7(1) enjoins on every dealer that he shall furnish prescribed returns for the prescribed period within the prescribed time to the assessing authority. By the proviso the time can be extended by not more than 15 days. The requirement of Section 7(1) is undoubtedly a statutory requirement. The prescribed return must be accompanied by a receipt evidencing the deposit of full amount of 'tax due' in the

State Government on the basis of the return. That is the requirement of Section 7(2). Section 7(2-A), no doubt, permits payment of tax at shorter intervals but the ultimate requirement is deposit of the full amount of 'tax due' shown in the return. When Section 11-B(a) uses the expression "tax payable under sub-sections (2) and (2-A) of Section 7", that must be understood in the context of the aforesaid expressions employed in the two sub-sections. Therefore, the expression 'tax payable' under the said two sub-sections is the full amount of tax due and 'tax due' is that amount which becomes due ex hypothesi on the turnover and taxable turnover "shown in or based on the return". The word 'payable' is a descriptive word, which ordinarily means "that which must be paid or is due or may be paid" but its correct meaning can only be determined if the context in which it is used is kept in view. The word has been frequently understood to mean that which may, can or should be paid and is held equivalent to 'due'. Therefore, the conjoint reading of Sections 7(1), (2) and (2-A) and 11-B of the Act leaves no

room for doubt that the expression 'tax payable' in Section 11-B can only mean the full amount of tax which becomes due under sub-sections (2) and (2-A) of the Act when assessed on the basis of the information regarding turnover and taxable turnover furnished or shown in the return. Therefore, so long as the assessee pays the tax which according to him is due on the basis of information supplied in the return filed by him, there would be no default on his part to meet his statutory obligation under Section 7 of the Act and, therefore, it would be difficult to hold that the 'tax payable' by him 'is not paid' to visit him with the liability to pay interest under clause (a) of Section 11-B. It would be a different matter if the return is not approved by the authority but that is not the case here. It is difficult on the plain language of the section to hold that the law envisages the assessee to predicate the final assessment and expect him to pay the tax on that basis to avoid the liability to pay interest. That would be asking him to do the near impossible.

16. From the aforesaid judgment of the Apex Court it is clear, provision for charging interest is introduced in order to compensate for the loss occasioned to the revenue due to delay in payment of tax. The provision for charging of interest can only be on the basis of a statutory provision. It is a substantive law. The object is to compensate the revenue for delay in payment of tax. Therefore, effect has to be given to the said provision strictly in accordance with law. So long as the assessee pays the tax which according to him is due on the basis of information supplied in the return filed by him, there would be no default on his part to meet his statutory obligation under the Act. Therefore, it cannot be said that the assessee has not paid the tax which is payable. It is only after the determination of the questions of fact the assessing officer passes the order holding that the assessee is liable to pay tax which he has not paid. Then an opportunity has to be given to the assessee to pay such tax determined

after adjudication within the time by raising a demand. If the assessee commits a default in payment of tax within that time, then he would become a defaulter. It is thereafter his liability to pay interest would arise. The reason being the assessee cannot project the final assessment and he cannot be expected to pay the tax on that basis to avoid the liability to pay interest. It would be asking him to do it near impossible. Therefore, the Apex Court held in those circumstances the liability to pay tax arises only after such adjudication and not earlier to it. There cannot be any quarrel with the said proposition.

17. But in the instant case on the date the assessee filed the return he knew what is the tax payable under the State Act as well as under the Central Act. In order to get concessional rate of tax payable under the Central Act he knew he has to furnish a declaration in Form-C. He also knew that if he fails to furnish a declaration in Form-C, he is liable to pay tax under the said Act. Therefore, it is not a case

where the assessee was not aware of his liability to pay tax. He was conscious of the tax liability. He sought for concessional payment of tax on the assumption that he would be able to produce the declaration in Form-C and avail the said benefit. He also knew that if he fails to produce the said declaration in Form-C, he has to pay the tax. That is why after the assessment order, on his default in producing the declaration in Form-C, when he was called upon to pay the tax under the VAT Act, he has paid the tax. He has accepted the said order. The payment of interest being compensative in nature, the tax which he paid in pursuance of the assessment order in respect of which there was no dispute, should have been paid along with the return as prescribed under law. He failed to pay the tax along with the return. He had the benefit of that amount and it deprived the State of the benefit of that amount and therefore, when the liability to pay tax is not disputed, not only he is liable to pay tax, he is liable to pay interest from

the date he was liable to pay tax to compensate the delay in payment of tax. Therefore, the finding recorded by the Tribunal by misreading the judgment of the Apex Court referred to supra requires to be set aside and accordingly we hereby set aside the said finding.

18. Insofar as the contention that there is no provision to levy of interest is concerned, section 9(2B) which was inserted by the Act 10 of 2000 expressly states if the tax payable by any dealer under the CST Act is not paid in time, the dealer shall be liable to pay interest for delayed payment of such tax. Therefore, the CST Act provides for payment of interest on delayed payment of such tax under the VAT Act. Section 36 reads as under:

"36. Interest in case of failure to furnish returns or to pay tax declared on returns or other amounts payable-

(1) Every dealer shall be liable to pay simple interest on any amount of tax which

should have been declared on a return, but which has been omitted from it, unless that omission is corrected within three months of the omission subject to sub-section(2) of Section 72, and such interest is payable from the date the tax should have been declared, and the dealer shall declare his liability to pay that interest in such form and manner as may be prescribed.

(2) If a dealer required to furnish a return under this Act-

a. fails to pay any amount of tax or additional tax declared on the return; or

b. furnishes a revised return more than three months after tax became payable, declaring additional tax, but fails to pay any interest declared to be payable under sub-section(1); or

c. fails to declare any tax or interest which should have been declared; or

d. fails to make a return;

such dealer shall be liable to pay interest in respect of the tax payable and additional tax payable as declared by him or the tax payable and interest payable under sub-section (1) for the period for which he has failed to furnish a return.

(3) Where any other amount is payable under this Act is not paid within the period specified in Section 42, interest shall be payable on such amount from such period.

(4) The interest shall also be payable under this section during any period during which recovery of any tax or other amount payable under the Act is stayed by an order of any authority or Court in any appeal or other proceedings disputing such tax or amount.

19. Sub-section(1) of section 36 provides for the liability to pay simple interest on any amount of tax which should have been declared on a return, but which has been omitted from it. Sub-section(2) further speaks about payment of interest on the aforesaid sub-section as

stipulated therein. Sub-section(3) provides where any other amount is payable under this Act is not paid within the period specified in Section 42, interest shall be payable on such amount from such period. Section 37 of the Act deals with rate of interest. A reading of section 9(2B) r/w sections 36 and 37 makes it very clear that the power conferred to levy interest flows from the statutory provision and therefore we do not see any substance in the said contention.

20. In the facts of this case, we have noticed the assessees in some other cases have furnished declarations in Form-C which are defective. After examining those declarations, after hearing the assessees, the Assessing Authority has determined that the assessee cannot have the benefit of such declarations. After rejecting the claim made on the basis of declarations, orders are passed levying tax under the VAT Act. Now the question is interest on such tax is payable from what date. In our view, the

aforesaid circumstances are covered by the judgment of the Apex Court in the aforesaid Constitution Bench decision. In cases where declaration in Form-C is furnished, the Assessing Authority at the time of assessment determines after hearing the assessee that they cannot be acted upon, they are defective and the assessee is not entitled to the benefit of such declaration and then holds the assessee as liable to pay tax. Then the liability to pay interest on that tax would flow after determination of the said disputed fact and not from the date on which the return was filed either enclosing those defective forms or the date those defective forms are furnished in support of the claim made in the said returns.

21. It is also submitted, in some cases though declarations in Form-C was not furnished before the Assessing Authority they have been produced at the appellate stage. As set out above, the assessee cannot produce these forms as a matter of right but if sufficient cause is shown for not producing them within the stipulated

time, the Appellate Authority has the jurisdiction if it is satisfied by the cause shown to entertain the said declaration in Form-C and either grant the relief in the appeal itself or remand the matter back to the Assessing Authority to consider those declarations and pass appropriate orders. Therefore, in those cases where Form-C is produced the assessee would be entitled to the benefit as aforesaid and there would be no liability to interest.

22. For the aforesaid reasons, we pass the following order:

1. The first question of law is answered in favour of the revenue and against the assessee.
2. The second question of law is answered in favour of the assessee and against the revenue.

Ordered accordingly.

**Sd/-
JUDGE.**

**Sd/-
JUDGE.**

Dvr.