Associated Cement Company Limited

Vs

Commercial Tax Officer Kota and Others

Civil Appeal No. 852 of 1980

(P.N. Bhagwati, A.P. Sen, E.S. Venkataramiah JJ)

02.09.1981

JUDGMENT

BHAGAWATI, J. (dissenting) –

1. I have had the advantage of reading the judgment prepared by my learned brother Venkataramiah, but despite the great respect which I have for his learning and erudition, I find myself unable to agree with the view taken by him. The facts giving rise to this appeal are not very material because the question which arises for consideration is essentially one of law, but the factual setting does help to see the question in its proper perspective and hence it would be useful to set out a few material facts.

2. The assessee is a public limited company carrying on business of manufacture and sale of cement. It has a factory for manufacturing cement at Lakheri in the State of Rajasthan and it effects sales of cement both inside as well as outside the State of Rajasthan. Since some of the sales effected by the assessee were inside the State of Rajasthan and some others were inter-State sales, the assessee filed returns of sales for the quarters comprised in the period August 1, 1973 up to July 31, 1974 both under the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as the State Act) and the Central Sales Tax Act, 1956 (hereinafter referred to the Central Act). The assessee did not include in the taxable turnover shown in the returns the amount of freight paid in respect of the goods sold under the bona fide impression that the amount of freight did not form part of the sale price and was not includible in the taxable turnover of the assessee. This impression was carried by the assessee in view of certain decisions which had been given by some High Courts as well as the Supreme Court and particularly the decision of the Supreme Court in Hyderabad Asbestos Cement Products Limited v. State of Andhra Pradesh [(1969) 24 STC 487 : (1969) 1 SCWR 560]. The assessee paid up for each quarter the full amount of tax calculated on the basis of the return submitted by it and the receipt for such payment was filed along with the return. The amount of tax paid by the assessee obviously did not include tax on the amount of freight, since according to the assessee the amount of freight did not form part of the sale price and was accordingly not shown in the returns as forming part of the taxable turnover. Subsequently however, the question whether the amount of freight formed part of the sale price and was therefore includible in the taxable turnover of the assessee so as to be eligible to tax came up for consideration before this Court in Hindustan Sugar Mills Limited v. State of Rajasthan [(1979) 1 SCR 276 : (1978) 4 SCC 271 : 1978 SCC (Tax) 225 : 43 STC 13] and it was held by this Court that by reason of the provisions of the Cement Control Order, 1967 which governed the transactions of sale of cement entered into by the assessee with the purchasers, the amount of freight formed part of the sale price within the meaning of the first part of the definition of that term contained in Section 2(p) of the State Act and Section 2(h) of the Central Act and was includible in the taxable turnover of the assessee. As soon as this decision was given by the

Court on August 29, 1978, the assessee immediately prepared revised returns in respect of the period August 1, 1973 up to July 31, 1974 showing the amount of freight as forming part of the taxable turnover and filed the same before the Commercial Tax Officer, Special Circle, Kota on October 20, 1978. The assessee also deposited along with the revised returns challans showing payment of the balance of the tax on the basis of the revised returns under the State Act as well as the Central Act. Two orders of assessment were thereafter passed by the Assessing Authority, on under Section 10, sub-section (3) of the State Act and the other under Section 9 of the Central Act. The former order of assessment levied a penalty of Rs. 53,355 under Section 7-AA of the State Act and interest amounting to Rs. 85,910.50 under Section 11-B of the State Act for the delay in payment of the tax in respect of the amount of freight under State Act, which according to the Assessing Authority ought to have been deposited along with the filing of the original returns. Similarly, the latter order of assessment also levied a penalty of Rs. 1,34,204 under Section 7-AA of the State Act read with Section 9, sub-section (2) of the Central Act and interest amounting to Rs. 2,07,174 under Section 11-B of the State Act read with Section 9, sub-section (2) of the Central Act for the delay in depositing the tax payable in respect of the amount of freight under the Central Act. The assessee has in the present appeal preferred with special leave challenged the validity of both these orders of assessment insofar as they levy penalty and interest on the assessee.

3. The first question which arises for consideration before us is whether the Assessing Authority was right in imposing penalty on the assessee under the two assessment orders for not depositing the tax in respect of the amount of freight at the time of filing of the original returns under the State Act and the Central Act. My learned brother Venkataramiah has held, following the decision of this Court in Cement Marketing Company of India Limited v. C.S.T. [(1980) 1 SCR 1098 : (1980) 1 SCC 71 : 1980 SCC (Tax) 64] that "the levy of penalties for not including the freight charges in the taxable turnover in the original returns and for not paying the tax in respect of such freight charges, is unsustainable" and that the two orders of assessment insofar as they levy penalty on the assessee are liable to be quashed and set aside. I entirely agree with the view taken by him and I do not think I can usefully add anything to what he has said.

4. The next question that arises for consideration is whether the assessee was liable under Section 11-B of the State Act to pay interest on the tax in respect of the amount of freight for the period between the date of filing of the original return and the date when such tax was actually paid while filing the revised return. The contention of the revenue was that the assessee was so liable and this contention was sought to be supported by relying on Section 7, sub-sections (1) and (2) read with Section 11-B of the State Act. The same provisions read with Section 9, sub-section (2) of the Central Act were also relied upon for the purpose of sustaining the Revenue's claim for interest under the Central Act. The determination of the question before us therefore really turns on the true interpretation of Section 7, sub-sections (1) and (2) read with Section 11-B of the State Act. Section 7 of the State Act as it stood at the material time was in the following terms :

> 7. Submission of returns. - (1) Every registered dealer, and such other dealer, as may be required to do so by the assessing authority by notice served in the prescribed manner, shall furnish prescribed returns, for the prescribed periods, in the prescribed forms, in the prescribed manner and within the prescribed time to the assessing authority :
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> Provided that the assessing authority may extend the date for the submission of such returns by any dealer or class of dealers by a period not exceeding fifteen days in the aggregate.

(2) Every such return shall be accompanied by a Treasury receipt or receipt of any bank authorised to receive money on behalf of the State Government, showing the deposit of the full amount of tax due on the basis of return in the State Government Treasury or bank concerned.

(2-A) Notwithstanding anything contained in sub-section (2), the State Government may be notification in the official Gazette require any dealer or class of dealers specified therein, to pay tax at intervals shorter than those prescribed under sub-section (1). In such cases, the proportionate tax on the basis of the last return shall be deposited at the intervals specified in the said notification in advance of the return. The difference, if any, of the tax payable according to the return and the advance tax paid shall be deposited with the return and the return shall be accompanied by the treasury receipt, or receipts, of any Bank authorised to receive money on behalf of the State Government, for the full amount of tax due shown in the return.

(3) If any dealer discovers any omission, error, or wrong statement in any returns furnished by him under sub-section (1), he may furnish a revised return in the prescribed manner before the time prescribed for the submission of the next return but not later.

Section 11-B of the State Act during the relevant period provided inter alia as under :

11-B. Interest on failure to pay tax, fee or penalty. - (a) If the amount of any tax payable under sub-sections (2) and (2-A) of Section 7 is not paid within the period allowed, or

(b) If the amount specified in any notice of demand, whether for tax, fee, or penalty, is not paid within the period specified in such notice, or in the absence of such specification, within 30 days from the date of service of such notice, the dealer shall be liable to pay simple interest on such amount at one per cent per month from the day commencing after the end of the said period for a period of three months and at one and a half per cent per month thereafter during the time he continues to make default in the payments :

Provided that, where, as a result of any order under this Act, the amount, on which interest was payable under this section, has been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded :

Provided further that no interest shall be payable under this section on such amount and for such period in respect of which interest is paid under the provisions of Sections 11 and 14.

These are the two sections which fall for construction but in order to arrive at their true meaning and legal effect it is necessary to refer to a few other provisions of the State Act. Section 3 is the charging section and it creates the liability to pay tax. That is the normal function of a charging section in a taxing statute. But, of itself, it does not make the tax payable by an assessee. It is only when the tax which an assessee is liable to pay is ascertained that becomes payable by the assessee. Now the normal mode by which the tax payable by an assessee is ascertained is by the process of assessment which is provided in Section 10. Sub-section (1), clause (a) of Section 10 says that

assessment and determination of tax due for any year shall be made after the returns for all the periods of that year have become due. Section 11 then provides for payment and recovery of tax and its provisions insofar as material read inter alia as follows :

> 11. Payment and recovery of tax. - (1) The tax shall be payable by a dealer on the basis of the assessments.
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> (2) The tax paid by a dealer shall be adjusted against the tax determined as a result of the assessment under Section 10 and the balance of the amount shall be payable by such dealer by such date is specified in the notice of demand and, where no such date is specified, shall be paid within thirty days from the date of service of the notice :
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> Provided that the assessing authority may, subject to such conditions and restrictions as may be prescribed, in respect of any particular dealer, and for reasons to be recorded in writing, extend the date of such payment and allow such dealer to pay the tax due and the penalty, if any, by instalments.
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> (3) In default of the payment of tax payable under sub-section (1) or sub-section (2), the amount of tax shall be recoverable as an arrear of land revenue :
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> #* * *##

Provided further that where recovery of tax or any part thereof is stayed under the preceding proviso, the amount of such tax shall be recoverable with interest at the prescribed rate on the amount ultimately found due; and such interest shall be payable on such amount from the date of tax first become due.

When the assessment is made and the tax payable by an assessee is determined, the tax so determined does not become payable until after a notice of demand is served by the Assessing Authority under Section 11, sub-section (2) read with Rule 31 of the Rajasthan Sales Tax Rules, 1955 made by the Government of Rajasthan in exercise of the powers conferred under Section 26 of the State Act and then the assessee is allowed time to make payment up to the date specified in the notice of demand and if no such date is specified, then within thirty days from the date of service of the notice. So long the assessee pays up the amount of the tax assessed within the time specified in the notice of demand or within thirty days from the date of service of the notice, as the case may be, he would not be in default and hence Section 11-B, clause (b) provides that the assessee would be liable to pay interest on the tax assessed only if the amount of such tax is not paid within the period specified in the notice of demand or in the absence of such specification, within thirty days from the date of service of such notice and then too, the liability to pay interest would commence not from the date of the assessment, but from "the day commencing after the end of the said period" that is, the period specified in the notice of demand or thirty days from the date of service of such notice, as the case may be. Thus even after the assessment is made and the tax payable by an assessee is determined, the assessee is not liable to pay interest on the amount of such tax until after the period specified in the notice of demand or in the absence of such specification, thirty days from the date of service of such notice, have expired.

5. Turning now to sub-section (1) of Section 7 it requires every registered dealer to furnish prescribed returns for the prescribed period, in the prescribed forms, in the prescribed manner and within the prescribed time to the Assessing Authority. It was not disputed on behalf of the Revenue

that in the present case the prescribed returns in the prescribed forms were furnished by the assessee in time for the quarter comprised in the period August 1, 1973 to July 31, 1974, the only grievance in regard to those returns being that the amount of freight was not shown as forming part of the taxable turnover. Sub-section (2) of Section 7 provides that every return furnished by the assessee must be accompanied by a receipt showing the deposit of the full amount of tax due on the basis of the return and the assessee accordingly deposited the full amount of tax calculated on the basis of each quarterly return and filed the receipt showing such deposit along with the return. Since, according to the view taken by the assessee at the time of filing the original returns, the amount of freight did not form part of the sale price, it was not included in the taxable turnover shown in the original returns and hence no tax on the amount of freight was deposited by the assessee while filing the original returns. It was only after the decision of this Court in Hindustan Sugar Mills Limited Company case [(1979) 1 SCR 276 : (1978) 4 SCC 271 : 1978 SCC (Tax) 225 : 43 STC 13] that the assessee filed revised returns including the amount of freight in the taxable turnover and deposited the balance of the tax on the basis of the revised returns. The argument of the Revenue was and that is the argument which has appealed to my learned brother, Venkataramiah, that the words "full amount of tax due on the basis of return" in sub-section (2) of Section 7 meant the full amount of tax due on the basis of a true and proper return which ought to have been filed by the assessee and not the full amount of tax due on the basis of the return actually filed and since the amount of freight was liable to be included in the taxable turnover and hence in a true and proper return, the "full amount of tax due on the basis of return" within the meaning of sub-section (2) of Section 7 included the tax on the amount of freight and the assessee therefore ought to have deposited the same at the time of filing the original returns, and since the assessee failed to do so, Section 11-A, clause (a) was attracted and the assessee was liable under that provision to pay interest on the tax on the amount of freight which remained unpaid until the filing of the revised returns. This argument, plausible though it may seem, is in our opinion unsustainable. It is plainly contrary to the language of sub-section (2) of Section 7 read with Section 11-B and is opposed to the scheme of the State Act. It is also inconsistent with the decision of a Bench of five Judges of this Court in State of Rajasthan v. Ghasilal [(1965) 2 SCC 805 : AIR 1965 SC 1454 : (1965) 16 STC 318]. Indeed I fail to see how in the face of this decision, the Court can possibly accept the argument of the Revenue.

6. The language used in sub-section (2) of Section 7 is "full amount of tax due on the basis of return". The "return' referred to is obviously the return filed by the assessee under sub-section (1) of Section 7. Now it is true that when sub-section (1) of Section 7 requires an assessee to file a return, the return filed must be correct and proper. If the return is not correct and proper, the Assessing Authority may not give credence to the return and may refuse to assess the tax on the basis of the return and if the Assessing Authority finds that the assessee has concealed any particulars from the return furnished by him or has deliberately furnished inadequate particulars in the return, the Assessing Authority may levy penalty on the assessee under Section 16, sub-section (1), clause (e) and the assessee may also be liable to be punished for an offence under Section 16, sub-section (3), clause (d) for making a false statement in the return. But, whether the return filed be correct or not, the tax payable by the assessee under sub-section (2) of Section 7 would be the full amount of tax due on the basis of the return. We must look at the return actually filed by the assessee in order to see what is the full amount of tax due on the basis such return. It is not the assessed tax nor is it the tax due on the basis of a return which ought to have been filed by the assessee but it is the tax due according to the return actually filed that is payable under sub-section (2) of Section 7. This provision is really in the nature of self-assessment and what it requires is that whatever be the amount of tax due on the basis of self-assessment must be paid up along with the filing of the return which constitutes self-assessment. I fail to see how the plain words of sub-section (2) of Section 7

can be tortured to mean full amount of tax due on the basis of return which ought to have been filed but which has not been filed.

7. It may also be noted that the construction contended for on behalf of the Revenue leads to a serious anomaly. If this construction were accepted, the tax payable under sub-section (2) of Section 7 would be the full amount of tax due on the basis of a correct and proper return and that would necessarily be the same as the tax assessed by the Assessing Authority, because what is a correct and proper return would be determinable only with reference to the assessment ultimately made. The assessment when made would show whether the return filed was correct and proper; it would be correct and proper if it accords with the assessment made; if it does not accord with the assessment, then to the extent to which it differs it would obviously have to be regarded as incorrect and improper. The consequence of the construction suggested on behalf of the Revenue would thus be that the tax payable under sub-section (2) of Section 7 would be the full amount of the tax as assessed, because that would represent the tax due on the basis of a correct and proper return and the assessee would have to deposit at the time of filing the return, an amount equivalent to the amount of the tax as assessed. If the assessee fails to do so, then apart from the liability to pay interest under Section 11-B, clause (a), the assessee would expose himself to penalty under Section 16, sub-section (1), clause (n) which provides inter alia that any person who fails to comply with any requirement of the provisions of the State Act, the requirement under sub-section (2) of Section 7 being to deposit the full amount of tax due on the basis of return, shall be liable to penalty in "a sum not exceeding Rs. 1000 and in the case of continuing default, a further penalty not exceeding Rs. 50 for every day of such continuance". This is a consequence which it is difficult to believe could ever have been contemplated by the legislature. The legislature could never have intended that the assessee should be liable, on pain of imposition of penalty, to deposit an amount which is yet to be ascertained through assessment. How would the assessee know in advance what view the Assessing Authority would take in regard to the taxability of any particular category of sales or the rate of tax applicable to them and deposit the amount of tax on that basis ? And this would be all the more problematic in the case of a statute like the sales tax law which is full of complexities and where it may be difficult to assert dogmatically that a particular view is right or wrong. Even in regard to the liability to pay interest, it does not stand to reason that the legislature should have subjected the assessee to such liability for non-payment of an amount of which the liability for payment is still to be ascertained. Moreover on the construction of the Revenue, if the assessee has not deposited at the time of filing the return an amount equivalent to the full amount of the tax assessed, the assessee would be liable to pay interest on the amount remaining unpaid from the date of filing of the return until payment. But, as I have already pointed out above, when the assessment is made and the tax payable by the assessee is determined, the assessee is given time for payment of the amount of the tax assessed up to the period specified in the notice of demand and in the absence of such specification, within thirty days from the date of service of such notice and it is only if the assessee fails to make payment within such period that he becomes liable to pay interest on the amount of the tax assessed to the extent to which it remains unpaid. There is no liability on the assessee to pay interest on the amount of the tax assessed until after the expiration of the period specified in the notice of demand or thirty days from the date of service of such notice, as the case may be. There would thus be a conflict between the two provisions, if the construction contended for on behalf of the Revenue were accepted. Under sub-section (2) of Section 7 read with Section 11-B, clause (a), the assessee would be liable to pay interest on the amount of the tax assessed to the extent to which it has not been deposited at the time of filing the return and such interest would run continuously from the date of filing of the return until payment, while under Section 11-B, clause (b) the assessee would not be liable to pay interest on the amount of the tax assessed during the period specified in

the notice of demand or in the absence of such non-specification during the period of thirty days from the date of service of such notice. Such a conflict could never have been intended by the legislature. It is a well-settled rule of interpretation that a statute must be so construed as not to create any repugnancy between its different provisions, for it is a basic assumption underlying every interpretational exercise that the legislature must be supposed not to have intended to contradict itself. The Court must always prefer that interpretation which avoids repugnancy between two provisions of a statute and gives full meaning and effect to both. Therefore, on this principle of interpretation also the construction canvassed on behalf of the Revenue cannot be accepted, as it would create a direct conflict between the provisions of clause (a) and (b) of Section 11-B. The only way in which clauses (a) and (b) of Section 11-B can be read harmoniously and full meaning and effect can be given to them is by construing them as dealing with distinct matters or situations. The tax payable under sub-section (2) of Section 7 dealt with in clause (a) of Section 11-B cannot, therefore, be equated with the amount of the tax assessed forming the subject-matter of clause (b) of Section 11-B and hence it must be held to be tax due on the basis of the return actually filed by the assessee and not on the basis of a correct and proper return which ought to have been filed by him.

8. There is also another angle from which the problem can be considered. Clause (a) of Section 11-B postulates tax which, though payable under sub-section (2) of Section 7, is not paid by the assessee within the time allowed and hence it subjects the assessee to liability to interest for non-payment of such tax. Now if, as contended by the Revenue, the tax payable under sub-section (2) of Section 7 means the full amount of tax due on the basis of a correct and proper return which ought to have been filed by the assessee, and is, therefore, equivalent to the amount of the tax as assessed, it would be the amount of the tax as assessed which would be payable under sub-section (2) of Section 7 and this amount would be payable by the assessee at the time of filing the return, even though ex hypothesi no assessment has taken place. Now it is difficult to appreciate how under the scheme of taxation embodied in the State Act, the amount of tax which is yet to be ascertained through the process of assessment can be said to be payable by the assessee at the time of filing the return. If, as contended by the Revenue, it is so payable, it is difficult to understand why it should have been liable to bear interest from the date of filing the return up to the date of assessment and thereafter it should have been freed from the liability of bearing interest up to the period specified in the notice of demand or thirty days from the date of service of the notice, as the case may be and the rate of interest also should have been made to vary from period to period. Moreover, it is, to my mind, impossible to accept the proposition that the amount of the tax ultimately assessed, which would represent the tax due on the basis of a correct and proper return should be payable by the assessee at the time of filing the return under sub-section (2) of Section 7. The scheme of taxation envisaged in the State Act clearly shows that it is only when the assessment is made and the period specified in the notice of demand or in the absence of such specification, thirty days from the date of service of such notice expires, that the amount of tax as assessed becomes payable by the assessee and its payment can be enforced by the Revenue. What becomes payable by the assessee under sub-section (2) of Section 7 is merely the tax due on the basis of the return actually filed by the assessee that is, on the basis of self-assessment.

9. This position seems to be clear beyond doubt on an examination of the scheme of taxation contained in the State Act and no authority is needed in support of it, but if any authority were needed, it is to be found in the decision of a Bench of five Judges of this Court in State of Rajasthan v. Ghasilal [(1965) 2 SCC 805 : AIR 1965 SC 1454 : (1965) 16 STC 318]. There the question was whether the assessee could be said to have failed, without reasonable cause, to pay the tax due within the time allowed, when he paid the tax due on the basis of the quarterly returns at the time of filing those returns, but the returns were filed long after the due dates for filing the same had

expired. The argument of the Revenue was that tax became due from the assessee under Section 3 which is the charging section and the assessee could not withhold payment of the same by delaying the filing of the quarterly returns within the time prescribed under the State Act and he was therefore liable to pay interest on the amount of the tax as assessed from the date the quarterly returns ought to have been filed and the amount of the tax paid. This argument of the Revenue was rejected by the Court and Sikri, J. speaking on behalf of the Bench of five Judges, said :

> Till the tax payable is ascertained by the Assessing Authority under Section 10 or by the assessee under Section 7(2), no tax can be said to be due within Section 16(1)(b) of the Act for till then there is only a liability to be assessed to tax.

These observations show beyond doubt that on a true construction of the provisions of the State Act, tax becomes due from the assessee and is payable by him only when it is "ascertained by the Assessing Authority under Section 10 or by the assessee under Section 7(2)". Until then, there is only the liability of the assessee to be assessed to tax and no tax can be said to be payable by the assessee. The tax payable is ascertained when the assessment is made by the Assessing Authority under Section 10 or when the assessee himself quantifies it through the process of self-assessment under sub-section (2) of Section 7. These two amounts of tax may, and in quite a number of cases would, be different because one is ascertained by the assessee himself by filing his return and the other is ascertained by the Assessing Authority through the process of assessment and that is why sub-section (4) of Section 7 provides that every deposit of tax made under sub-section (2) shall be deemed to be provisional subject to necessary adjustments in pursuance of final assessment of tax made under Section 10. This provision clearly contemplates that the tax payable under sub-section (2) of Section 7 may be different from the tax assessed under Section 10 and it cannot, therefore, obviously be the tax due on the basis of a correct and proper return (because that would necessarily be the same as the tax ultimately assessed under Section 10) but must be the tax due on the basis of the return actually filed.

10. Mr. Justice Venkataramiah has in his judgment classified registered dealers into the following five different categories :

> 1. A registered dealer who files his return showing a higher taxable turnover than the actual turnover which is ultimately found to be taxable at the time of regular assessment and who pays tax under Section 7(2) of the Act on the basis of the return.
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> 2. A registered dealer who files a true and proper return and pays tax on the basis of such return within the time allowed.
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> 3. A registered dealer who does not file any return at all as required by Section 7(1) and pays no tax under Section 7(2) of the Act.
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> 4. A registered dealer who files a true return but does not pay the full amount of tax as required by Section 7(2) and
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> 5. A registered dealer who files a return but wrongly claims either the whole or any part of the turnover as not taxable and pays under Section 7(2) of the Act that amount of tax, which accordingly to him is payable, on the basis of the return.

The learned Judge has observed that if the construction contended for on behalf of the assessee were accepted, registered dealers falling within Categories 3, 4, and 5 would be outside the provision

enacted in sub-section (2) of Section 7 read with Section 11-B, clause (a) and no interest would be payable by them under that provision and that would make clause (a) of Section 11-B "either unworkable or meaningless". I must, with the greatest respect, confess my inability to appreciate the line of reasoning which has prevailed with the learned Judge in making this observation. The learned Judge has proceeded on the basis that the registered dealers falling within all the three Categories, namely, 3, 4 and 5 are required by sub-section (2) of Section 7 to pay the tax chargeable under Section 3 of the State Act and if they do not pay the same within the time allowed, that is, at the time when the returns are filed or in case the returns are not filed within the prescribed time, then before the expiration of the date when they would be liable to pay interest under Section 11-B, clause (a). There is, in my opinion, a basic fallacy underlying this assumption, because it is clear from the language of sub-section (2) of Section 7 that it is only on the filing of the return that the liability to pay the tax due on the basis of the return arises. If no return is filed within the prescribed time, it would undoubtedly constitute a default attracting penalty under Section 16, sub-section (1), clause (n), but there would be no liability on the assessee to pay interest on the amount of the tax, because the liability to pay the "tax due on the basis of the return" under sub-section (2) of Section 7 can arise only when the return is filed. There is no liability on the assessee to pay any amount by way of tax until the return is filed or the assessment is made. This is clear from the decision of this Court in the State of Rajasthan v. Ghasilal [(1965) 2 SCC 805 : AIR 1965 SC 1454 : (1965) 16 STC 318] where this Court held in so many terms at page 322 of the Report that since the assessee in that case did not file returns till December 19, 1959 and January and March 1960, "Section 7(2) could not be attracted till then" I fail to understand how in the face of these observations made by a Bench of five Judges of this Court, it can ever be held that Section 7, sub-section (2) is attracted even when no return has been filed. It is clear from the observations in this case - observations which we have set out here as also in an earlier paragraph - that until the assessee files a return or the assessment is made, no tax is payable by the assessee, because "till then there is only a liability to be assessed to tax". I must therefore regretfully express my inability to accept the conclusion reached by my learned brother Venkataramiah that a registered dealer falling within Category 3 who does not file any return at all as required by sub-section (1) of Section 7 would still be liable to pay the amount of tax and if he does not pay the same before the due date for filing the return has expired, he would be liable to pay interest under Section 11-B, clause (a). That would be plainly contrary to the decision in State of Rajasthan v. Ghasilal [(1965) 2 SCC 805 : AIR 1965 SC 1454 : (1965) 16 STC 318] which, being a decision of five Judges of this Court, is binding upon us.

11. So also with regard to registered dealers falling within Category 4, I cannot agree with the view taken by my learned brother Venkataramiah. He has reasoned that if a registered dealer files a return but does not pay the full amount of the tax due on the basis of the return filed by him, the Assessing Authority would be entitled to ignore the return under sub-rule (4) of Rule 25 and when the return is not taken cognizance of, there would be no return on the basis of which interest can be computed. This reasoning is, in my opinion, fallacious and if I may say so without meaning the slightest disrespect, it is based on misappreciation of the effect of sub-rule (4) of Rule 25 vis-a-vis sub-section (2) of Section 7, Rule 25 sub-rule (4) provides that if a return is not accompanied by a receipt for the deposit of tax as required by sub-section (2) of Section 7, the Assessing Authority shall not be bound to take any cognizance of the return. If the assessee does not deposit the amount of tax due on the basis of the return and files the return without making such deposit, the Assessing Authority is given the discretion to ignore the return and to proceed to assess the assessee as if no return were filed. But, the Assessing Authority may, in a given case, if it so thinks fit, take cognizance of the return for the purpose of assessment, despite the fact that the tax due on the basis of the return has not been deposited by the assessee as required by sub-section (2) of Section 7.

Where the Assessing Authority chooses to take cognizance of the return, there can be no doubt, even on the reasoning of Mr. Justice Venkataramiah, that the assessee would be liable to pay the amount of tax due on the basis of the return and if he fails to do so, he would have to pay interest under Section 11-B, clause (a). Then merely because the Assessing Authority may, in a given case, in the exercise of its discretion, decline to take cognizance of the return, it does not mean that in such a case the assessee would be retrospectively relieved of his liability to pay the amount of tax due on the basis of the return, on the ground that the return filed by him has become "no-return". The liability of the assessee to deposit the amount of tax due on the basis of the return cannot depend upon a future discretionary event, namely, whether the Assessing Authority chooses to take cognizance of the return or declines to take cognizance of it. The only correct way of reading sub-section (2) of Section 7 and sub-rule (4) of Rule 25 is that whenever a return is filed by the assessee, it must under sub-section (2) of Section 7 be accompanied by receipt showing deposit of the full amount of tax due on the basis of the return and if the assessee fails to deposit the amount of the tax due on the basis of the return actually filed, the Assessing Authority would have the option under sub-rule (4) of Rule 25 either to take or not to take cognizance of the return. If the Assessing Authority chooses not to take cognizance of the return, it would proceed to assess the assessee as if no return had been filed by him, but that would not relieve the assessee of the obligation attaching to him under sub-section (2) of Section 7 of depositing, at the time of filing the return, the amount of the tax due on the basis of the return actually filed nor would it condone the breach of such obligation. If the assessee does not pay the full amount of the tax due on the basis of the return as required by sub-section (2) of Section 7, he would be liable to pay interest under Section 11-B, clause (a), irrespective whether the Assessing Authority chooses to act upon the return or declines to take cognizance of it. The argument which has appealed to my learned brother Venkataramiah that if the construction put forward on behalf of the assessee were accepted, sub-section (2) of Section 7 would fail in its application to a registered dealer falling within Category 4 is therefore in my opinion not a valid argument and with the greatest respect, I must confess my inability to accept it. On the construction contended for on behalf of the assessee, the case of registered dealer falling within Category 4 is clearly covered by sub-section (2) of Section 7 and in fact, it is precisely to cover inter alia a case of this kind that the legislature enacted sub-section (2) of Section 7 read with Section 11-B, clause (a). Similarly the case of a registered dealer falling within Category 5 is also covered by sub-section (2) of Section 7 and if he does not pay the amount of tax which according to him is payable, on the basis of the return filed by him, he would be liable to pay interest under Section 11-B, clause (a). So long as the assessee pays the amount of tax which according to him is due on the basis of the return filed by him, there would be no default on his part in complying with the obligation under sub-section (2) of Section 7 and there would be no liability on him to pay interest under Section 11-B, clause (a), because he would have paid the amount of tax quantified by him through the process of self-assessment. The actual amount of tax payable by the assessee would be determined only when it is assessed by the Assessing Authority under Section 10 and that would not be payable until the expiration of the period specified in the notice of demand or thirty days from the date of service of such notice, as the case may be.

12. I must therefore regret my inability to accept the view taken by my learned brother Venkataramiah that if the construction contended for on behalf of the assessee were accepted, Section 11-B, clause (a) would become meaningless or unworkable. That provision would have full meaning and effect on the construction canvassed on behalf of the assessee and in fact as pointed out above if the construction which has appealed to my learned brother Venkataramiah were accepted, the consequence would be directly contradictory to the decision of this Court in State of Rajasthan v. Ghasilal [(1965) 2 SCC 805 : AIR 1965 SC 1454 : (1965) 16 STC 318]. My learned

brother Venkataramiah has relied strongly on the decision of this Court in Gursahai Saigal v. C.I.T. [(1963) 3 SCR 893 : AIR 1963 SC 1062 : (1963) 48 ITR 1] but I fail to see how this decision can be of any help in the present case where Section 11-B, clause (a) is not at all rendered meaningless or unworkable on the construction suggested on behalf of the assessee. The assessee in that case was sought to be charged with interest under sub-section (8) of Section 18-A of the Indian Income Tax Act, 1922 which provided that "where, on making the regular assessment, the Income Tax Officer finds that no payment of tax has been made in accordance with the foregoing provisions of this section, interest calculated in the manner laid down in sub-section (6) shall be added to the tax as determined on the basis of the regular assessment". The argument of the assessee was that since sub-section (6) of Section 18-A provided that where in any year an assessee has paid tax under sub-section (2) or sub-section (3) on the basis of his own estimate and the tax so paid is less than 80 per cent of the tax determined on the basis of the regular assessment, simple interest at the rate of 6 per cent per annum from the first day of January in the financial year in which the tax was paid up to the date of such regular assessment shall be payable by the assessee and in that case no payment of tax had been made by the assessee at all, it was not possible to calculate interest in the manner laid down in sub-section (6) and no interest could therefore be charged to the assessee under sub-section (8) of Section 18-A. This argument was rejected by the Court on the ground that if the words "from the first day of January in the financial year in which the tax was paid" occurring in sub-section (6) of Section 18-A were to be literally applied in a case falling within sub-section (8) would be tendered totally meaningless and futile. The Court therefore with a view not to rendering sub-section (8) of Section 18-A a dead letter construed the words in sub-section (6) to mean "from the first day of January in the financial year in which the tax ought to have been paid". This liberty was taken by the Court with the language of sub-section (6) of Section 18-A, because the Court proceeded on the hypothesis that the legislature could not have intended that sub-section (8) of Section 18-A should be meaningless and unworkable. But here in the present case there is no compelling necessity to modify the words used in sub-section (2) of Section 7, because sub-section (2) of Section 7, read with Section 11-B, clause (a) is not rendered meaningless or futile on a plain natural construction of the language used in that provision.

13. It is interesting to compare Section 140-A, sub-section (1) of the Income Tax Act, 1961 with Section 7, sub-section (2) of the State Act. Sub-section (1) of Section 140-A provides that where any tax is payable on the basis of any return required to be furnished under Section 139 or under Section 148, after taking into account the amount of tax, if any, already paid under any provision of the Act, the assessee shall be liable to pay such tax before furnishing the return and the return shall be accompanied by proof of payment of such tax. Sub-section (3) of Section 140-A the proceeds to state that if any assessee fails to pay the tax or any part thereof in accordance with the provision of sub-section (1), the Income Tax Officer may direct that the sum equal to two per cent of such tax or part thereof, as the case may be, shall be recovered from him by way of penalty for every month during which the default continues. Can it possibly be contended that these two sub-sections of Section 140-A refer to tax payable on the basis of a proper and correct return or in other words the tax as assessed ? It is obvious that these two sub-sections refer only to tax payable on the basis of self-assessment and require such tax to be paid before the filing of the return and if that is not done, the assessee becomes liable to pay penalty for every month during which the default continues. So also Section 215 of the Income Tax Act, 1961 which provides for payment of interest on under-payment of advance tax does not impose liability for payment of interest in case of every deficiency but provides for payment of interest only if the advance tax paid is less than 75 per cent of the assessed tax. In the world of human affairs, it is hardly possible that the advance tax paid by the assessee or the tax payable on the basis of self-assessment would always be equivalent to the tax

ultimately assessed by the authorities. There is no reason to interpret Section 7, sub-section (2) differently provisions in the Income Tax Act, 1961.

14. I am therefore of the view that since the assessee deposited the amounts of tax which according to him were due on the basis of the returns actually filed by him and the returns were accompanied by receipts showing deposit of such amounts of tax, there was no default on the part of the assessee in paying the amounts of tax payable under sub-section (2) of Section 7 within the actual period allowed and in the circumstances no interest was payable by the assessee under Section 11-B, clause (a). I would accordingly allow the appeal and set aside the orders passed by the Assessing Authority imposing penalty and levying interest on the assessee under the State Act as well as the Central Act. The Revenue will pay the costs of the appeal to the assessee.

Venkataramiah, J. (on behalf of himself and A.P. Sen, J.) -

The assessee Messrs. Associated Cement Companies Limited has filed this appeal by special leave under Article 136 of the Constitution against the orders dated January 30, 1980 passed by the Commercial Tax Officer, Special Circle, Kota in the State of Rajasthan imposing on it a penalty of Rs. 53,335 under Section 7-AA of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as the Act) and levying interest under Section 11-B of the Act amounting to Rs. 85,910.50 and a further penalty of Rs. 1,34,205 under Section 7-AA of the Act read with Section 9(2) of the Central Sales Tax Act and levying interest of Rs. 2,07,174 under Section 11-B of the Act read with Section 9(2) of the Central Sales Tax Act in respect of the assessment year 1974-75.

16. The circumstances under which the above orders came to be passed are these : The assessee has a cement manufacturing factory in the State of Rajasthan at Lakheri. The cement manufactured at that factory is sold partly in the State of Rajasthan and partly outside that State. The invoices of sales are however, made and issued at Ahmedabad and other places. The sales tax returns relating to the sales were filed under the Act and under the Central Sales Tax Act at Kota before the Assessing Authority for the period between August 1, 1973 and July 31, 1974 i.e. the assessment year 1974-75. In those returns, the assessee had not included in the taxable turnovers the freight charges paid in respect of the goods in question in the bona fide belief that the freight charges were not liable to be so included in the taxable turnover in view of certain decisions which had been rendered by some of the High Courts and of the Supreme Court and in particular the decision of this Court in Hyderabad Asbestos Cement Products Ltd. v. State of Andhra Pradesh. But in Hindustan Sugar Mills v. State of Rajasthan [(1999) 24 STC 487 : (1969) 1 SCWR 560]] this Court held that on a true construction of the scheme of the Cement Control Order, 1967 and the relevant provisions of the Act and of the Central Sales Tax Act, the freight charges formed part of the sale price and that sales tax was payable thereon. The above decision was rendered on August 22, 1978. On coming to know of the said decision, the assessee prepared and filed the revised returns in respect of the assessment year in question i.e. 1974-75 before the Commercial Tax Officer, Special Circle, Kota on October 20, 1978 including the freight charges in the taxable turnover. The assessee also deposited along with the revised returns the balance of the sales tax payable under the Act and under the Central Sales Tax Act. Thereafter the Assessing Authority passed the two impugned orders of assessment - one under Section 10(3) of the Act and another under Section 9 of the Central Sales Tax Act. In the order of assessment passed under the Act, the Assessing Authority levied a penalty of Rs. 53,335 under Section 7-AA of the Act on account of the delay in depositing a sum of Rs. 1,06,671 towards sales tax payable in respect of the freight charges and also levied interest of Rs. 85,910.50 under Section 11-B of the Act. Similarly in the assessment order passed under the Central Sales Tax Act, a penalty of Rs. 1,34,205 was levied under Section 7-AA of the Act read with Section 9(2) of the Central

Sales Tax Act for the delay in depositing the tax payable in respect of the freight charges and levied interest of Rs. 2,07,174 under Section 11-B of the Act read with Section 9(2) of the Central Sales Tax Act. In this appeal, we are only concerned with the correctness of the impugned orders insofar as they levy penalty and interest.

17. The first question canvassed before us relates to the levy of penalties on the assessee under the two assessment orders for not paying the sales tax payable under the Act and under the Central Sales Tax Act in respect of the freight charges which were declared as components of sale price by this Court in Hindustan Sugar Mills case [(1979) 1 SCR 276 : (1978) 4 SCC 271 : 1978 SCC (Tax) 225 : 43 STC 13] on August 22, 1978. The explanation of the assessee for not including the freight charges in the taxable turnover was, as mentioned earlier, that there was a doubt about its liability to pay sales tax thereon as the very same question was pending adjudication before this Court and that on the facts and in the circumstances of the case, the assessee could not be held guilty of filing false returns before the Assessing Authority. It was pleaded that since the non-inclusion of the freight charges in the taxable turnover was a result of bona fide belief of the assessee that they were not liable to be included in the taxable turnover, the Assessing Authority should have in its discretion not imposed the penalties particularly having regard to the fact that within two months after the judgment of this Court in Hindustan Sugar Mills case [(1979) 1 SCR 276 : (1978) 4 SCC 271 : 1978 SCC (Tax) 225 : 43 STC 13], the assessee had filed the revised returns including the freight charges in the taxable turnover and paid the sales tax payable in respect of them even before the Assessing Authority had passed the orders of assessment. We are of the view that this part of the case of the assessee has got to be accepted in view of the decision of this Court in Cement Marketing Co. of India Ltd. v. Asstt. Commissioner of Sales Tax, Indore [(1980) 1 SCR 1098 : (1980) 1 SCC 71 : 1980 SCC (Tax) 64] where under similar circumstance, this Court held that the assessee therein who was also a manufacturer and dealer in cement was not liable to pay a penalty under Section 43 of the Madhya Pradesh General Sales Tax Act, 1958 read with Section 9(2) of the Central Sales Tax Act. For the reasons mentioned therein, we hold that the levy of penalties for not including the freight charges in the taxable turnover in the original returns and for not paying the tax in respect of such freight charges is unsustainable and that the impugned penalties are liable to quashed.

18. The next question which arises for consideration relates to the liability of the assessee to pay interest under Section 11-B of the Act on the tax paid in respect of the freight charges for the period between the date on which it was payable under Section 7(2) of the Act and the date of payment and the liability to pay interest on the tax payable in respect of the freight charges under the Central Sales Tax Act in accordance with Section 9(2) thereof read with Section 11-B of the Act. The claim of the department is based on sub-sections (1) and (2) of Section 7 read with Section 11-B of the Act in the case of interest claimed under the Act and on the aforesaid provisions of the Act read with Section 9(2) of the Central Sales Tax Act in respect of the interest payable under the Central Sales Tax Act. Section 7 of the Act at the relevant point of time read as follows :

> 7. Submission of returns. - (1) Every registered dealer, and such other dealer, as may be required to do so by the assessing authority by notice served in the prescribed manner, shall furnish prescribed returns, for the prescribed periods, in the prescribed forms, in the prescribed manner and within the prescribed time to the assessing authority :
>
> Provided that the assessing authority may extend the date for the submission of such returns by any dealer or class of dealers by a period not exceeding fifteen days in the aggregate.

(2) Every such return shall be accompanied by a Treasury receipt or receipt of any bank authorised to receive money on behalf of the State Government, showing the deposit of the full amount of tax due on the basis of return in the State Government Treasury or bank concerned.

(2-A) Notwithstanding anything contained in sub-section (2), the State Government may by notification in the Official Gazette require any dealer or class of dealers specified therein, to pay tax at intervals shorter than those prescribed under sub-section (1). In such cases, the proportionate tax on the basis of the last return shall be deposited at the intervals specified in the said notification in advance of the return. The difference, if any, of the tax payable according to the return and the return shall be accompanied by the treasury receipt, or receipts of any Bank authorised to receive money on behalf of the State Government, for the full amount of tax due shown in the return.

(3) If any dealer discovers any omission, error, or wrong statement in any returns furnished by him under sub-section (1), he may furnish a revised return in the prescribed manner before the time prescribed for the submission of the next return but not later.

(4) Every deposit of tax made under sub-section (2) shall be deemed to be provisional subject to necessary adjustments in pursuance of the final assessment of tax made for any year under Section 10.

19. Section 11-B of the Act during the relevant period reads as under :

11-B. Interest on failure to pay tax, fee or penalty. - (a) If the amount of any tax payable under sub-sections (2) and (2-A) of Section 7 is not paid within the period allowed, or

(b) If the amount specified in any notice of demand, whether for tax, fee, or penalty, is not paid within the period specified in such notice, or in the absence of such specification, within 30 days from the date of service of such notice, the dealer shall be liable to pay simple interest on such amount at one per cent per month from the day commencing after the end of the said period for a period of three months and at one and a half per cent per month thereafter during the time he continues to make default in the payments :

Provided that, where, as a result of any order under this Act, the amount, on which interest was payable under this section, has been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded :

Provided further that no interest shall be payable under this section on such amount and for such period in respect of which interest is paid under the provisions of Sections 11 and 14.

20. We are principally concerned in this case with sub-sections (1) and (2) of Section 7 of the Act. Sub-section (1) of Section 7 of the Act requires every registered dealer and such other dealer, as may be required to do so by the Assessing Authority in the prescribed manner to furnish returns in a prescribed form in respect of the prescribed periods within the prescribed time furnishing necessary

particulars regarding his turnover. The proviso to sub-section (1) of Section 7 of the Act authorises the Assessing Authority to extend the date for the submission of such returns by a period not exceeding 15 days in the aggregate. Sub-section (2) of Section 7 of the Act insists that every such return shall be accompanied by a treasury receipt or receipt of any Bank authorised to receive money on behalf of the State Government showing the deposit of the full amount of tax due on the basis of return in the State Government Treasury or Bank concerned. Sub-section (4) of Section 7 of the Act, it may be noticed, provides that every deposit of tax made under sub-section (2) shall be deemed to be provisional subject to necessary adjustments in pursuance of the final assessment of tax made for any year under Section 10. Clause (a) of Section 11-B of the Act authorises the levy of interest on the amount of tax not paid in accordance with sub-sections (2) and (2-A) of Section 7 of the Act. The expression "prescribed" is defined in Section 2(1) of the Act. It states that in the Act unless the context otherwise requires, "prescribed" means prescribed by rules made under the Act. Section 26 of the Act empowers the State Government to make rules to carry out the purposes of the Act and in particular and without prejudice to the generality of the foregoing power, such rules may provide for all matters expressly required or allowed by the Act to be prescribed. We have seen earlier that Section 7(1) of the Act requires the returns to be filed in the prescribed manner, in respect of the prescribed periods and within the prescribed time. Sub-section (5) of Section 26 of the Act lays down that all rules made under that section shall be published in the Official Gazette and upon such publication shall have effect as if enacted in the Act. Chapter VII of the Rajasthan Sales Tax Rules, 1955 (hereinafter referred to as the Rules) framed by the State Government in exercise of its power under the Act deals with the topic "Return of turnover and other returns and statements". The relevant part of Rule 25 of the Rules which appears in Chapter VII reads as follows :

> 25. Return of turnover. - (1) The return referred to in sub-section (1) of Section 7 shall be in form S.T. 5 and shall be signed by the dealer himself or his agent, and shall be verified in the manner indicated therein and shall be submitted to the assessing authority concerned.
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> (2) The return may be presented personally or may be sent by post.
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> (3) The said return shall be filed for such of the quarters ending with the last day of the month of June, September, December and March of every Assessment year if the 'previous year' of the dealer ends on the 31st day of March of any year, and in other cases for each of the quarters of the year of accounts of the dealer, and shall be filed not later than 30 days after the end of the quarter to which it relates :
>
> #* * *##
>
> Explanation. - The quarters of the year of accounts of a dealer shall be as follows :
>
> First quarter. - The period of three months commencing on the first day of the year of accounts.
>
> Second quarter. - The period of three months commencing on the day next after the end of the first quarter.
>
> Third quarter. - The period of three months commencing on the day next after the end of the second quarter.
>
> Fourth quarter. - Rest of the year of account.

> The months shall be calculated according to the usage of the dealer whose year of account is in question.
>
> (4) If a return is not accompanied by a receipt for the deposit of tax as required by sub-section (2) of Section 7, the assessing authority shall not be bound to take any cognizance of the return.

21. Sub-rule (1) of Rule 25 of the Rules provides that the return referred to in sub-section (1) of Section 7 of the Act shall be in form S.T. 5 and sub-rule (3) of Rule 25 prescribes the time within which quarterly returns should be filed by a dealer. Sub-rule (4) of Rule 25 of the Rules provides that if a return is not accompanied by a receipt for the deposit of tax as required by sub-section (2) of Section 7 of the Act, the Assessing Authority shall not be bound to take any cognizance of the return. Rule 25 of the Rules which is framed under the Act should be read as a part of the Act itself in view of the express provision contained in sub-section (5) of Section 26 of the Act, which declares that all rules made under Section 26 shall on publication in the Official Gazette have effect, as if enacted in the Act. That that should be the effect of a rule framed under statute containing a provision similar to the provision in Section 26(5) of the Act can be gathered from a decision of the House of Lords in Institute of Patent Agents v. Joseph Lockwood in which Lord Herschell, L.C. observed at page 360 thus :

> I own I feel very great difficulty in giving to this provision, that they "shall be of the same effect as if they were contained in this Act," any other meaning than this, that you shall for all purposes of construction or obligation or otherwise treat them exactly as if they were in the provision of the Act. Well, there is a conflict sometimes between two sections to be found in the same Act. You have to try and reconcile them as best you may. If you cannot, you have to determine which is the leading provision and which the subordinate provision, and which must give way to the other. That would be so with regard to the enactment and with regard to rules which are to be treated as if within the enactment.

22. The contention of the assessee in the present case is that as it had deposited the full amount of tax due on the basis of the returns filed under sub-section (1) of Section 7 of the Act at the time when they were filed, if had complied with sub-section (2) of Section 7 of the Act and that the question of levying interest on the amount of tax which it deposited on the basis of the revised returns for the period prior to the date of the revised returns did not arise. On behalf of the department it is urged before us that the words "on the basis of return" occurring in sub-section (2) of Section 7 of the Act must be read as on the basis of a true and proper return in the context in which those words appear in the statute and if they are so read, the assessee is liable to pay interest on the deficit amount of tax which was made good on October 20, 1978 for the period between the date on which such deposit or deposits had to be made under Section 7(1) of the Act read with Rule 25 of the Rules and the date on which they were actually made.

23. We are concerned in this case with the liability of the assessee to pay interest on the amount of tax which had remained unpaid. Tax, interest and penalty are three different concepts. Tax becomes payable by an assessee by virtue of the charging provision in a taxing statute. Penalty ordinarily becomes payable when it is found that an assessee has wilfully violated any of the provisions of the taxing statute. Interest is ordinarily claimed from an assessee who has withheld payment of any tax payable by him and it is always calculated at the prescribed rate on the basis of the actual amount of tax withheld and the extent of delay in paying it. It may not be wrong to say that such interest is

compensatory in character and not penal.

24. In order to understand the case of the assessee, we may classify the registered dealers into the following different classes :

> 1. A registered dealer who files his return showing a higher taxable turnover than the actual turnover which is ultimately found to be taxable at the time of regular assessment and who pays tax under Section 7(2) of the Act on the basis of the return.
>
> 2. A registered dealer who files a true and proper return and pays tax on the basis of such return within the time allowed.
>
> 3. A registered dealer who does not file any return at all as required by Section 7(1) and pays no tax under Section 7(2) of the Act.
>
> 4. A registered dealer who files a true return but does not pay the full amount of tax as required by Section 7(2) and
>
> 5. A registered dealer who files a return but wrongly claims either the whole or any part of the turnover as not taxable and pays under Section 7(2) of the Act that amount of tax, which according to him is payable on the basis of the return.

25. In the case of a registered dealer falling under Class 1 no question of payment of interest would arise as the amount of tax paid by him at the time of filing the return is much more than what is actually due and payable by him under the Act. The extra tax paid by him becomes refundable after the regular assessment is completed in view of Section 7(4) of the Act. In the case of a registered dealer falling under Class 2 also no question of payment of interest arises as there is no shortfall in payment of the tax.

26. If the contention of the assessee urged in this case is accepted, no interest becomes payable even by registered dealers falling under Classes 3, 4 and 5 because (a) in the case of a registered dealer falling under Class 3 who has not filed any return at all, no occasion would arise to claim interest on any tax "due on the basis of return" as there is no return at all, (b) in the case of a registered dealer falling under Class 4 who files a true return but does not pay full amount of tax under Section 7(2) the Assessing Authority is entitled to ignore it under sub-rule (4) of Rule 25 of the Rules and when the return is not taken cognizance of, there will be no return on the basis of which interest can be computed and (c) in the case of a registered dealer coming within the purview of Class 5 who has filed a return but has wrongly claimed either the whole or any part of the turnover as not taxable and paid under Section 7(2) of the Act only that amount of tax which according to him is payable as tax as he would have paid whatever is payable on the basis of the return. The resulting position would be that clause (a) of Section 11-B of the Act which clearly imposes the liability on the assessee who has not paid the tax due by him within the period allowed by law becomes either unworkable or meaningless. A fair reading of Section 11-B of the Act suggests that the Act expects that all assessees who are liable to pay sales tax should file a true return within the period prescribed under sub-section (1) of Section 7 and should produce a treasury receipt or a receipt of any bank authorised to receive money on behalf of the State Government showing that full amount of tax due from them has been paid.

27. The argument pressed before us on behalf of the assessee is that since Section 7 of the Act does not expressly say that a registered dealer who has not filed any return or a person who has claimed

that his turnover or any part thereof is not taxable and has not paid tax due in respect of such disputed turnover should also pay interest on the tax which is legitimately due to the Government but withheld by him, no interest can be claimed under Section 11-B of the Act in such cases. Section 7 of the Act which deals with the submission of returns is not a charging section but a machinery section. It is settled law that a distinction has to be made by court while interpreting the provisions of a taxing statute between charging provisions which impose the charge to tax and machinery provisions which provide the machinery for the quantification of the tax and the levying and collection of the tax so imposed. While charging provisions are construed strictly, machinery sections are not generally subject to a rigorous construction. The courts are expected to construe the machinery sections in such a manner that a charge to tax is not defeated. The above rule of construction of taxing statute has been adopted by this Court in India United Mills Ltd. v. Commissioner of Excess Profits Tax [(1955) 1 SCR 810 : AIR 1955 SC 79 : (1955) 27 ITR 20] in which Section 15 of the Excess Profits Tax Act came up for consideration. The Court observed in that case thus :

> That section is, it should be emphasised, not a charging section, but a machinery section. And a machinery section should be so construed as to effectuate the charging section.

28. The above principle was followed by this Court in Gursahai Saigal v. C.I.T. [(1963) 3 SCR 893 : AIR 1963 SC 1062 : (1963) 48 ITR 1] in which it was observed thus :

> Now it is well recognised that the rule of construction on which the assessee relies applies only to a taxing provision and has no application to all provisions in a taxing statute. It does not, for example, apply to a provision not creating charge for the tax but laying down the machinery for its calculation or procedure for its collection. The provisions in a taxing statute dealing with machinery for assessment have to be construed by the ordinary rules of construction, that is to say, in accordance with the clear intention of the legislature which is to make a charge levied effective.

29. In deciding Gursahai Saigal case [(1963) 3 SCR 893 : AIR 1963 SC 1062 : (1963) 48 ITR 1] the Court followed the observations made by the Privy Council in C.I.T. v. Mahaliram Ramjidas [AIR 1940 PC 124 : 67 IA 239 : 1940 ALJ 656 : 44 CWN 929] and by the House of Lords in Whitney v. Commissioners of Inland Revenue [1926 AC 37]. In the case of Mahaliram Ramjidas [AIR 1940 PC 124 : 67 IA 239 : 1940 ALJ 656 : 44 CWN 929] the Privy Council observed :

> The section, although it is a part of a taxing Act, imposes no charge on the subject, and deals merely with the machinery of assessment. In interpreting provisions of this kind the rule is that construction should be preferred which makes the machinery workable, ut res valeat potius quam pereat.

30. In Whitney case [1926 AC 37], Lord Dunedin made the following observations :

> My Lords, I shall now permit myself a general observation. Once that it is fixed that there is liability, it is antecedently highly improbable that the statute should not go on to make that liability effective. A statute is designed to be workable, and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable. Now, there are three stages in the imposition of a tax : there is the declaration of liability, that is the part of the

> statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, ex hypothesis, has already been fixed. But assessment particularizes the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay.

31. The circumstances under which the above principle was applied by this Court in Gursahai Saigal case [(1963) 3 SCR 893 : AIR 1963 SC 1062 : (1963) 48 ITR 1] are interesting. That was a case in which an assessee who was charged with interest under sub-section (8) of Section 18-A of the Indian Income Tax Act, 1922 had questioned his liability to pay interest. His contention was that interest payable under sub-section (8) of Section 18-A of that Act had to be calculated in the manner laid down in sub-section (6) thereof. Since sub-section (6) of Section 18-A of the Act provided that where in any year an assessee had paid tax under sub-section (2) or sub-section (3) thereof on the basis of his own estimate and the tax so paid was less than eighty per cent of the tax determined on the basis of regular assessment simple interest at the rate of six per cent per annum from the 1st day of January in the financial year in which the tax was paid up to the date of the said regular assessment should be payable by the assessee and as he had not paid any tax at all, it was urged that it was not possible to calculate interest in the manner laid down in sub-section (6). The Court rejected the contention of the assessee following the decisions of the Privy Council and the House of Lords referred to above that the words "from the 1st day of January in the financial year in which the tax was paid" obviously could not literally be applied to a case where no tax had been paid but since on a true construction those words meant "from the 1st day of January in the financial year in which the tax ought to have been paid", the assessee was liable to pay interest. This Court observed :

> It would not be doing too much violence to the words used to read them in this way. The tax ought to have been paid on one or other of the dates earlier mentioned. The intention was that interest should be charged from January 1 of the financial year in which the tax ought to have been paid. Those who paid the tax but a smaller amount and those who did not pay tax at all would then be put in the same position substantially which is obviously fair and was clearly intended. Which is the precise financial year in any case would depend on its facts and this would make no difference in the construction of the provision.

32. We are in respectful agreement with the method of approach adopted by this Court in Gursahai Saigal case [(1963) 3 SCR 893 : AIR 1963 SC 1062 : (1963) 48 ITR 1]. It is the duty of the Court while interpreting the machinery provisions of a taxing statute to give effect to its manifest purpose having a full view of it. Wherever the intention to impose liability is clear courts ought to have no hesitation in giving what we may call a common sense interpretation to the machinery sections so that the charge does not fail.

33. In the present case if we construe the words "on the basis of return" occurring in sub-section (2) of Section 7 of the Act as on the basis of a true and proper return which ought to have been filed under sub-section (1) of Section 7 then all the three classes of persons viz. (i) those who have not filed any return at all and who are later on found to be liable to be assessed, (ii) those who have filed a true return but have not deposited the full amount of tax which they are liable to pay and (iii) those who have filed a return making a wrong claim that either the whole or any part of the turnover is not taxable and who are subsequently found to have made a wrong claim, would be placed in the same position and they would all be liable to pay interest on the amount of tax which they are liable to pay but have not paid as required by sub-section (2) of Section 7 of the Act. We are of opinion

that this view is in conformity with the legislative intention in enacting Section 11-B of the Act.

34. We have carefully gone through the decision of five learned Judges of this Court in State of Rajasthan v. Ghasilal [(1965) 2 SCC 805 : AIR 1965 SC 1454 : (1965) 16 STC 318] and we are humbly of opinion that it is distinguishable from the present case. In Ghasilal case [(1965) 2 SCC 805 : AIR 1965 SC 1454 : (1965) 16 STC 318], this Court was concerned with the question of sustainability of penalties imposed under the Act and not interest leviable under Section 11-B. The relevant facts in that case were these : The respondent therein who was a dealer within the meaning of the Act filed a writ petition in the High Court of Rajasthan challenging the making of assessment on his turnover for the year 1955-56 on the ground that the Rules which had been published on March 28, 1955 were invalid. On January 9, 1958 the High Court passed an interim order stating that "the petitioner will keep proper accounts and file the prescribed returns but shall not be assessed till further orders". While the petition was pending in the High Court, Ordinance No. 5 of 1959 was promulgated on November 6, 1959 validating the Rules. Thereupon the respondent therein withdrew the writ petition. On December 17, 1959, the Rajasthan Sales Tax Validation Act (Rajasthan Act 43 of 1959) replaced the Ordinance. The effect of the Ordinance and the Validation Act was to validate the Rules even if any defect existed in the making of the Rules. On December 4, 1959, the Sales Tax Officer called upon the respondent therein to pay the tax due by him within a week as the writ petition had been withdrawn and dismissed. The respondent had filed his returns earlier and also had deposited certain amounts towards tax. On April 25, 1960, the Sales Tax Officer made an assessment in respect of the accounting period November 3, 1956 to October 22, 1957 and also proceeded to impose a penalty of Rs. 400 under Section 16(1)(b) of the Act. Justifying the imposition of penalty, he observed thus :

> The assessee has not deposited tax of the quarters on the due date, the tax deposited for 4th quarter is very late, i.e., after two years the assessee was given a notice and in reply to which he referred the stay order of the Hon'ble High Court granted to him in a writ petition filed challenging the validity of sales tax rules made under the Act. The stay order of the Hon'ble High Court does not say that the assessee is allowed to withhold the tax. On the contrary, it directs that the petitioner (assessee) will keep proper accounts and file prescribed returns but shall not be assessed. This clearly shows that the assessee should have filed returns in time and according to Section 7(2) the treasury challan of the deposit should have accompanied them. This amounts to contravention of the mandatory provisions. The writ was dismissed on 23-4-58 (sic 23-11-59), even the amount was not deposited till 17-12-59. This shows that the assessee withheld the tax intentionally.

35. The Deputy Commissioner of Sales Tax (Appeal), Kota dismissed the appeal upholding the above penalty. Similarly on December 6, 1960, the Sales Tax Officer assessed the respondent in respect of accounting period October 23, 1957 to November 10, 1958 and imposed a penalty of Rs. 1000 for not depositing the tax in time on the same grounds. The respondent questioned the penalties in respect of the aforesaid two years before the High court. The High Court quashed them. Against the orders of the High Court, the State of Rajasthan filed two appeals which were disposed of by this Court by the judgment rendered in the above case. The judgment of this Court depended upon the true construction of clause (b) of Section 16(1) of the Act which reads :

> 16. (1) If any person -
>
> #(a).....; or##

(b) has without reasonable cause failed to pay the tax due within the time allowed; or

(c) has without reasonable cause failed to furnish the return of his turnover, or failed to furnish it within the time allowed; or

the assessing authority may direct that such person shall pay by way of penalty, in the case referred to in clause (a) in addition to the fee payable by him, a sum not exceeding Rs. 50 and in the case referred to in clause (b), in addition to the amount payable by him, a sum not exceeding half of that amount, and that in cases referred to in clauses (c) and (d), in addition to the tax payable by him, a sum not exceeding half the amount of tax determined; in the case referred to in clause (e), in addition to the tax payable by him, a sum not exceeding double the amount of tax, if any which would have been avoided if taxable turnover as returned by such person had been accepted as correct turnover, and in the cases referred to in clause (f), (ff) and (g), a sum not exceeding Rs. 100.

36. Sikri, J. (as he then was) who delivered the judgment of this Court observed thus :

> In our opinion, there has been no breach of Section 16(1)(b) of the Act, and consequently, the orders imposing the penalties cannot be sustained. According to the terms of Section 16(1)(b), there must be a tax due and there must be a failure to pay the tax due within the time allowed. There was some discussion before us as to the meaning of the words 'time allowed' connote time allowed by an assessing authority or time allowed by a provision in the Rules or an assessing authority or time allowed by a provision in the Rules or the Act, or all these things, as we are of the view that no tax was due within the terms of Section 16(1)(b) of the Act. Section 3, the charging section, read with Section 5 makes tax payable, i.e. creates a liability to pay the tax. That is the normal function of a charging section in a taxing statute. But till the tax payable is ascertained by the assessing authority under Section 10, or by the assessee under Section 7(2), no tax can be said to be due within Section 16(1)(b) of the Act, for till then there is only a liability to be assessed to tax.

37. A careful reading of the above passage shows that this Court held that Section 16(1)(b), which provided for the imposition of penalty when an assessee had without reasonable cause failed to pay the tax due within the time allowed, was not attracted as no tax was due, within the terms of Section 16(1)(b) even though it was payable by virtue of Section 3 read with Section 5 of the Act. Now Section 11-B(a) which provides for levying interest on failure to pay tax, states that if the amount of any tax payable under sub-sections (2) and (2-A) of Section 7 is not paid within the period allowed the dealer shall be liable to pay interest at the prescribed rate during the time he continues to make default in the payments. Section 11-B(a) of the Act does not refer to any tax due.

38. At this stage it is necessary to refer to certain legislative changes that have taken place since the decision in Ghasilal case [(1965) 2 SCC 805 : AIR 1965 SC 1454 : (1965) 16 STC 318] was delivered. Section 16(1)(c) as it stood then has been amended and Section 7-AA providing for levy of penalty for failure to furnish returns has been inserted in the Act by Rajasthan Act 11 of 1969. Section 7-AA reads thus :

> 7-AA. Penalty for failure to furnish returns. - If the assessing authority in the course of any proceedings under this Act is satisfied that any dealer has without reasonable

> cause failed to furnish the return under sub-section (1) of Section 7 within the time allowed, he may direct that such dealer shall pay be way of penalty, in addition to the amount of the tax, if any, payable by him, a sum equal to two per cent of the tax, for every month during which the default continued but not exceeding in the aggregate fifty per cent of the tax.

39. Section 16(1) as it now stands does not deal with levy of penalty for not filing the prescribed return as it is provided by Section 7-AA set out above. It is also to be pointed out that sub-section (2-A) was inserted in Section 7 by Rajasthan Act 13 of 1963 providing that notwithstanding anything contained in sub-section (2) of Section 7 the State Government may by notification in the Official Gazette require any dealer or class of dealers specified therein to pay tax at intervals shorter than those prescribed under Section 7(1). In such cases the proportionate tax on the basis of the last return has to be deposited at the intervals specified in the said notification in advance. These features clearly show that the tax that is payable under Section 3 read with Section 5 of the Act has to be paid along with the return within the time allowed for that purpose and if Section 7(2-A) applies it has to be paid in advance at stated intervals. Section 11-B with which we are concerned was added by Rajasthan Act 11 of 1969. Clause (a) of Section 11-B states that if the amount of any tax payable under sub-sections (2) and (2-A) of Section 7 is not paid within the period allowed interest at the prescribed rate has to be paid on that amount from the day commencing after the end of the said period. "Period allowed" means period allowed by the Act and the Rules or such extended period under the proviso to Section 7(1). It is thus clear that in cases to which Section 7(2) of the Act applies interest has to be paid on the tax payable but which has not been paid from the last date on which the return has to be filed for the assessment year in question and in cases to which sub-section (2-A) is applicable, from the last date on which the advance tax has to be paid. The amount of interest has no doubt to be calculated after the actual amount of tax payable is assessed and necessary adjustments are made. We do not think that in taking the above view we have in any way disregarded the decision in Ghasilal case [(1965) 2 SCC 805 : AIR 1965 SC 1454 : (1965) 16 STC 318] in which the question of payment of interest under Section 11-B did not at all arise for consideration.

40. Our learned brother Bhagwati, J. in his opinion while dealing with the applicability of Section 11-B(a) has observed that the scheme of taxation envisaged in the Act clearly shows that it is only when the assessment is made and specified in the notice of demand or in the absence of such specification thirty days from the date of service of such notice expires that the amount of tax as assessed becomes payable by an assessee. With great respect, we have to state that we depend upon Ghasilal case [(1965) 2 SCC 805 : AIR 1965 SC 1454 : (1965) 16 STC 318] itself to hold that for purposes of Section 11-B(a) the tax becomes payable before assessment is made by virtue of Section 3 read with Section 5 and sub-sections (2) and (2-A) of Section 7 of the Act and the Rules framed thereunder, even though, it becomes due when return is filed under Section 7(2) or ascertained under Section 10. That a tax can become payable even before assessment is also clear from the observations of Sikri, J. (as he then was) in Ghasilal case [(1965) 2 SCC 805 : AIR 1965 SC 1454 : (1965) 16 STC 318] to the effect that,

> Section 3, the charging section read with Section 5, makes tax payable i.e. creates a liability to pay tax. . . . But, till the tax payable is ascertained by the Assessing Authority under Section 10 or by the assessee under Section 7(2), no tax can be said to be due within Section 16(1)(b) of the Act for till then there is only a liability to be assessed to tax.

41. We are of opinion that either by delaying the filing of the return or not filing it at all or by filing a return wrongly claiming that a certain part of the turnover is not taxable or by not disclosing a part of the taxable turnover in the return an assessee cannot escape the liability to pay interest under Section 11-B(a) on the amount of tax withheld, as a consequence of his own action or inaction, from the last date on which it had to be paid as per sub-section (2) or sub-section (2A), or Section 7, as the case may be, read with the Rules. An assessee cannot contend that interest does not accrue under Section 11-B(a) on the tax payable by him where the time to file the return has elapsed until he actually files a return admitting the liability to pay such tax or until assessment is made.

42. We are of the view that the statutory liability under Section 11-B(a) arises wherever there is default in payment of the tax within the period allowed by law irrespective of any about which an assessee may be entertaining about the liability to pay the tax.

43. It is not disputed in this case that freight charges had to be included in the taxable turnover of the assessee mentioned in the returns that were filed within the prescribed time under Section 7(1) of the Act and that the tax payable in respect of freight charges should have been paid as required by sub-section (2) of Section 7 before the returns were filed. The fact that the question relating to the liability of the assessee to pay sales tax in respect of the freight charges was decided by the Supreme Court subsequently does not in any way affect the question which arises for consideration in this case. The decision of this Court did not create any new liability. It only declared that such a liability was existing at the relevant point of time. Since it is clear that the amount of tax due in respect of the freight charges which was payable under sub-section (2) of Section 7 was not paid within the period allowed, Section 11-B is clearly attracted and the liability to pay interest as required by it arises.

44. On behalf of the State Government, an alternative contention was urged in support of the levy of interest on the tax payable in respect of the freight charges relying upon the new Section 11-B which was substituted by the Rajasthan Sales Tax (Amendment) Act, 1979 in the place of Section 11-B which was in force during the relevant period. The relevant part of the new Section 11-B reads thus :

> 11-B. Interest on failure to pay tax, fee or penalty. - (1)(a) Where any registered dealer or any other dealer has furnished returns but has not paid the tax as per return or within the time allowed by or under the provisions of this Act, he shall be liable to pay interest on the whole or that part of the amount of tax which was not paid as per returns within the time as aforesaid, at the rate of one and a quarter per cent per month from the date by which he was required to pay the tax by or under the provisions of this Act for a period of three months and at one and a half per cent month thereafter until the date of payment;
>
> (b) Where any registered dealer or any other dealer has furnished a revised return as provided under sub-section (3) of Section 7, which revised return shows that amount of tax larger than that already paid is payable, such dealer shall be liable to pay interest on the excess amount of tax at such rate and for such period as provided in clause (a) of this sub-section as if such amount of tax payable as per the revised return was the amount of tax payable according to the original return;

45. It was contended that as clauses (a) and (b) of sub-section (1) of Section 11-B extracted above were declaratory in character and merely explained what the legislature meant by enacting Section

11-B as it stood before the substitution, the assessee was liable to pay interest on the amount of tax payable in respect of freight charges under clause (b) of sub-section (1) of the new Section 11-B. Since we are of the view that the assessee was liable to pay interest on the tax in question under Section 11-B of the Act as it stood prior to the amendment, we do not find it necessary to express any opinion on this alternative contention urged on behalf of the State Government.

46. In the result, we allow the appeal in part and set aside the impugned orders to the extent they direct the assessee to pay the penalties. The appeal insofar as the levy of interest under the impugned orders is concerned is dismissed. In view of the circumstances of the case, the parties shall pay and bear their own costs.

ORDER OF THE COURT

47. In accordance with the opinion of the majority, the appeal is allowed in part. The penalties imposed on the assessee under the impugned orders of assessment are set aside. The appeal insofar as the levy of interest is concerned is dismissed. The parties shall bear their own costs.

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