

**SUPREME COURT OF INDIA**

Indodan Industries Ltd.

Vs.

State of U.P.

C.A.No.2352 of 2007

(S.H. Kapadia and Aftab Alam JJ.)

20.10.2009

**ORDER**

1. In this batch of Civil Appeals, the following issues arose for determination before the Allahabad High Court:

“(1) Whether sub-Section (2B) of Section 9 of the *Central Sales Tax Act, 1956*, inserted on 12th May, 2000 by the Finance Act of 2000 is retrospective? and (2) Whether Section 120 of the *Finance Act, 2000* which was a validating Act was invalid inasmuch as it purports to validate a provision which had never existed on the statute book? For the sake of convenience, we may refer to a few facts in the lead matter in the case of Shivalik Cellulose No.2354 of 2007).”

2. Prior to 12th May, 2000, there was no provision for levy of interest for delayed payment under Section 9 of the *Central Sales Tax Act, 1956* (hereinafter referred to as 1956 Act). On 12th May, 2000, Finance Act 2000 came into force. Vide Section 119 of the Finance Act, 2000, sub-Section (2B) came to be inserted in Section 9 of the 1956 Act. We quote hereinbelow sub-Section (2B) which stood inserted in Section 9:

“If the tax payable by any dealer under this Act is not paid in time, the dealer shall be liable to pay interest for delayed payment of such tax and all the provisions for delayed payment of such tax and all the provisions relating to due date for payment of tax, rate of interest for delayed payment of tax, of the general sales tax law of each State, shall apply in relation to due date for payment of tax, rate of interest for delayed payment of tax, and assessment and collection of interest for delayed payment of tax under this Act in such States as if the tax and the interest payable under this Act were a tax and an interest under such sales tax law.”

3. This sub-Section (2B) came into force with the assent of the President only on 12th May, 2000. In all these Civil Appeals, we are concerned with assessment years prior to 12th may, 2000.

4. In the lead matter of Shivalik Cellulose Limited, we are concerned with the Assessment Years 1979-80, 1980-81 and 1981-82. On facts, there is no dispute that in each of these years, the taxes with penalty have been paid. However, they have been paid after considerable delay. The question which, therefore, arises for determination in this batch of Civil Appeals is whether sub-Section (2B) inserted in Section 9 operated retrospectively and whether it would cover the aforesaid Assessment Years 1979-80, 1980-81 and 1981-82. At this stage, we may also mention one more fact. Vide Section 2 120 of the Finance Act, 2000, which was the validating provision, the Legislature made it clear that the provisions of Section 9 of 1956 Act shall have effect, and shall be deemed always to have effect as if that section provided for levy of interest for delayed payment for the period when the 1956 Act came into force. We quote hereinbelow Section 120 of the Finance Act, 2000, which reads as under:

“Validation.--(1) The provisions of section 9 of the Central Sales Tax, 1956 (74 of 1956), (hereafter in this section referred to as the Central Sales Tax Act), shall have effect, and shall be deemed always to have had effect, as if that section also provided- (a) that all the provisions relating to interest of the general sales tax law of each State shall, with necessary modifications, apply in relation to- (i) the assessment, reassessment, collection and enforcement of payment of any tax required to be collected under the Central Sales Tax Act, in such State; and (ii) any process connected with such assessment, reassessment, collection or enforcement of payment; and (b) that for the purposes of the application of the provisions of such law, the tax under the Central Sales Tax Act shall be deemed to be tax under such law.

(2) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, general sales tax law of any State imposed or purporting to have been imposed in pursuance of the provisions of section 9 of the Central Sales Tax Act, and all proceedings, acts or things taken or done for the purposes of, or in relation to, the imposition or collection of such interest, before the commencement of this section, shall, for all purposes, be deemed to be and to have always been imposed, taken or done as validly and effectively as if the provisions of sub-section (1) had been in force when such interest was imposed or proceedings or acts or things were taken or done and, accordingly,- (a) no suit or other proceedings shall be maintained or continued in, or before, any court, tribunal or other authority for the refund of any amount received or realised by way of such interest;

(b) no court, tribunal or other authority shall enforce any decree or order directing the refund of any amount received or realised by way of such interest;

(c) where any amount which had been received or realised by way of such interest is refunded before the date on which the Finance Act, 2000 receives the assent of the President and such refund would not have been allowed if the provisions of sub-section (1) had been in force on the date on which the order for such refund was passed, the amount so refunded may be recovered as an arrear of tax under the Central Sales Tax Act;

(d) any proceeding, act or thing which could have been validly taken, continued or done for the imposition or collection of such interest at any time before the commencement of this section if the provisions of sub-section (1) had then been in force but which had not been taken, continued or done, may, after such commencement, be taken, continued or done.

(3) Nothing in sub-section (2) shall be construed as preventing any person- (a) from questioning the imposition or collection of any interest or any proceedings, act or thing in connection therewith; or (b) from claiming any refund, in accordance with the provisions of the Central Sales Tax Act, read with sub-section (1).

Explanation.-For the purposes of this section, "general sales tax law" shall have the same meaning assigned to it in the Central Sales Tax Act."

5. For deciding this batch of Civil Appeals, we need to emphasize clause (d) of sub-Section (2) of Section 120 which, 4 inter alia, states that any proceeding, act or thing which could have been validly taken but not taken may, after commencement, be taken, continued or done. Clause (d), in our view, gives a complete answer to the contention advanced by the assessee on retrospectivity. Section 120 of the Finance Act, 2000 makes sub-Section (2B) effective right from the very first date of commencement of 1956 Act, i.e. 5th January, 1957.

6. One more aspect needs to be highlighted. In the present case, we are concerned with the levy of interest for delayed payment. Under sub-Section (2B) to Section 9, such interest for delayed payment is given the status of "tax due".

7. The said interest is compensatory in nature in the sense that when the assessee pays tax after it becomes due, the presumption is that the Department has lost the revenue during the interregnum period (the date when the tax became due and the date on which the tax is paid). The assessee enjoys that amount during the said period. It is in this sense that the interest is compensatory in nature and in order to recover the lost revenue, the levy of interest is contemplated by Section 120 of the Finance Act, 2000 retrospectively.

8. Keeping in mind the above, we find no infirmity in the judgment of the Allahabad High Court and, for the aforesaid reasons, we dismiss all the Civil Appeals mentioned hereinabove. We, however, make it clear, in conclusion, that in none of these cases, the assessee has challenged the constitutional validity of sub-Section (2B) inserted vide Finance Act, 2000 with retrospective effect. In the circumstances, we are not required to express any opinion on the constitutional validity of the said sub-Section particularly, in the context of retrospectivity.

9. Subject to above, Civil Appeals are dismissed with no order as to costs.