

(2004) 06 KAR CK 0049
In the Karnataka High Court
Case No : S.T.R.P. No. 74 of 2003

Bharat Heavy Electricals Limited

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 10-06-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 151
Income Tax Act, 1961 — Section 254
Karnataka Sales Tax Act, 1957 — Section 23, 23 (1), 23 (6), 24

Citation : (2004) ILR (Kar) 3708 : (2004) 4 KCCR 431 SN : (2006) 147 STC 638

Hon'ble Judges : R.V. Raveendran, J;R. Gururajan, J;H. Billappa, J

Bench : Full Bench

Advocate : G. Sarangan for K.S. Ramabhadran, for the Appellant; B. Anand, GA, for the Respondent

Judgement

R.V. Raveendran, J.—A Division Bench of this Court, has by an order dated 16-9-2003, referred the following question of law for the opinion of a Full bench:

Whether the High Court has the power to grant interim order of stay of recovery of the tax, pending, disposal of a Revision Petition filed by the assessee u/s 23(1) of the Karnataka Sales Tax Act, 1957.

Facts & reason for reference:

2. The petitioner filed a Revision Petition u/s 23(1) of the Karnataka Sales Tax Act, 1957 ("Act" for short) challenging the order dated 26-10-2002 passed in STA 361/2000 by the Karnataka Appellate Tribunal. In the said proceedings, the petitioner filed IA. I/ 03 u/s 151 CPC praying for stay of recovery of the balance of the disputed amount of tax pending disposal of the Revision Petition. The State resisted the application by contending that there is no inherent power in this Court to grant interim orders while exercising revisional power u/s 23 or appellate power u/s 24 of the Act. Reliance was placed on the decision in *Mec Wires v. State of Karnataka* (1999) 113 STC 391 KAR in support of the said contention.

3. The Division Bench which heard the application was of the view that the decision in M.E.C. WIRES required reconsideration, for the following reasons.

(a) When the High Court entertains a revision petition, being satisfied prima facie that the order of the Tribunal suffers from errors which give rise to substantial questions of law, denial of interim stay on the ground that there is no express provision would result in serious and irreparable injury. This is more so because if ultimately it is found that the assessee is not liable, he will not even be entitled to interest on the tax paid, having regard to the proviso to Sub-section (6) of Section 23.

(b) The revisional power conferred on the High Court empowers the Court to reverse, affirm, or amend the order against which the Revision Petition is filed (or to remit the matter to the Appellate Tribunal) and pass such other order as the High Court thinks fit. This makes the revisional jurisdiction similar to appellate jurisdiction. Such wide power is to be understood as including all incidental and ancillary powers necessary to make effective the revisional power u/s 23 of the Act. One such incidental/ancillary power is to grant interim stay, so as to maintain status quo and prevent recovery of balance tax in cases where the Court is satisfied that the matter involves an important question of law which has been wrongly decided or not decided at all by the Tribunal.

(b) Section 23(6) of the Act is in the nature of an instruction to the assessee that mere filing of a revision petition u/s 23(1) of the Act, does not absolve the assessee of his liability to pay the tax as per the order under challenge. Section 23 does not contain any provision prohibiting grant of interim stay.

(d) The two decisions relied on in MEC WIRES (the decision of the Supreme Court in VIJAY PRAKASH D. MEHTA v. COLLECTOR OF CUSTOMS and the decision of the Delhi High Court in NARULA TRADING AGENCY v. COMMISSIONER, SALES TAX 1981(47) STC 45 KAR were rendered with reference to statutory provisions differently worded when compared to Section 23 and therefore inapplicable. On the other hand the decision of the Supreme Court in Income Tax Officer Vs. M.K. Mohammed Kunhi, holding that the statutory power of appeal carries with it, the duty in appropriate cases, to make orders staying recovery pending appeal, would apply to exercise of power u/s 23 and 24 of the Act.

Rival Contentions:

4. Learned Counsel for the assessee submitted that in the absence of an express provision in the statute, prohibiting grant of stay, Sub-section (6) of Section 23 will not come in the way of High Court granting interim stay, in exercise of the inherent power in the High Court which is incidental and ancillary to the power vested u/s 23 to revise the orders of the Tribunal and to reverse, affirm or vary such order or remit the matter or to pass such other appropriate order as it thinks fit. A comparative reference is made to Section 22 relating to appeals to Appellate Tribunal, which contain a specific provision [Sub-section 3A] prohibiting grant of stay by the Tribunal pending disposal of appeals filed against appellate

orders. It is submitted that if the legislative intent was to bar grant of stay by High Court, a similar provision would have been made in Section 23.

5. On the other hand, learned Government Advocate submitted, on behalf of the Revenue, that the inherent power of the Court cannot enlarge or expand the power or jurisdiction expressly conferred upon the Court nor can the inherent power be exercised so as to violate any express provision of law. He submitted that the assumption of an inherent power to grant stay would militate against the express provisions of Sub-section (6), which requires the assessee to pay the tax in regard to the assessment notwithstanding the fact that he has filed a Revision Petition. He submitted that if the Legislative intent was to confer the power of stay, it would have made a specific provision for grant of interim stay as has been done in the provisos to Section 20(3)(b) and 22(5). The learned Government Advocate submitted that absence of a specific conferment of power to issue interim stay shows a legislative intent that there should be no stay in proceedings u/s 23 or 24 of the Act.

Statutory Provisions:

6. Sub-section (1) of Section 23 of the Act provides for revision by High Court. It provides that the appellant or the respondent [before the Tribunal] may prefer a Revision Petition to the High Court against an order of the Karnataka Appellate Tribunal, passed under Sub-sections (4) or (6) or (6-A) of Section 22, on the ground that the Appellate Tribunal has either failed to decide, or decided erroneously, any question of law. Sub-section (3) of Section 23 provides that if the High Court, on perusing the petition, is of the view that there is no sufficient ground for interfering, may dismiss the Revision Petition summarily, after giving a reasonable opportunity of hearing to the petitioner. Sub-section (4) provides that if the High Court does not dismiss the petition summarily, it shall, after giving both the parties to the Revision Petition a reasonable opportunity of being heard, determine the question or questions of law raised and either reverse, affirm or amend the order against which the petition was preferred or remand the matter to the Appellate Tribunal [with its opinion on the question of law] or pass such other order in relation to the matter as it thinks fit. Sub-section (5) provides that before passing an order under Sub-section (4), the High Court may, if it considers necessary so to do, remit the petition to the Appellate Tribunal with a direction to return the petition with its finding on any specific question or issue.

6.1) Sub-section (6) of Section 23 relates to payment of tax when a revision is filed. It is extracted below:

"(6) Notwithstanding that a petition has been preferred under Sub-section (1), the tax shall be paid in accordance with the assessment made in the case.

Provided that if as a result of the petition, any change becomes necessary in such assessment, the High Court may authorize the assessing authority to amend the assessment and assessing authority shall amend the assessment

accordingly and thereupon the amount overpaid by the assessee shall be refunded to him without interest or the additional amount of tax due from him shall be collected in accordance with the provisions of this Act, as the case may be."

6.2 Section 24 of the Act provides for appeals to the High Court against an order of the Commissioner or the Additional Commissioner u/s 22A, or an order of the Authority u/s 4. Sub-section (4) of Section 24 makes applicable to such appeals, the provisions of Sub-section (6) of Section 23, as they apply in relation to the Revision Petitions u/s 23(1) of the Act.

6.3 Section 13 relates to payment and recovery of tax. Sub-section (3) thereof provides that any tax assessed or any other amount due under the Act from a dealer or any other person may without prejudice to any other mode of collection, be recovered as arrears of land revenue or by attachment/sale or as arrears of excise revenue [in the case of dealers in liquor] or as fine imposed by a Magistrate. The proviso to Sub-section (3) of Section 13 clearly contemplates grant of interim orders in exercise of revisional jurisdiction and it is extracted below:

""Provided that where a dealer or any other person who has appealed or applied for revision of any order made under this Act and has complied with an order made by the appellate or the revising authority, in regard to the payment of the tax or other amount, no proceedings for recovery under this sub-section shall be taken or continued until the disposal of such appeal or application for revision.

Analysis:

7. The Statute does not contain any express bar prohibiting the grant of interim orders of stay pending disposal of revisions u/s 23 or appeals u/s 24. Nor does the statute confer any express power on the High Court to grant stay pending disposal of revisions u/s 23 or appeals u/s 24. The question is whether, in such a position, the High Court has the inherent or incidental power to grant stay pending disposal of a revision u/s 23 or Appeal u/s 24.

8. This takes us to the question as to what is "inherent power" Words and Phrases. (Permanent Edition, volume 21 A, pages 16 and 17) defines inherent power as follows:

"Jurisdiction" is conferred on Court by constitutions and statutes, whereas "inherent powers" of Court are those necessary to ordinary and efficient exercise of jurisdiction already conferred.... The "inherent powers" of a Court are such as result of the very nature of its organization and are essential to its existence and protection and to the due administration of justice, and the "inherent power" of a Court is the power to do all things that are reasonably necessary for administration of justice within scope of Court's jurisdiction ..The "inherent powers" of a Court are an unexpressed quantity and un-definable term, and Courts have indulged in more or less loose explanations concerning it. It must

necessarily be that the Court has inherent power to preserve its existence, and to fully protect itself in the orderly administration of its business. Its inherent power will not carry it beyond this.

That Courts possess certain "inherent powers" means that when the constitution declares that the legislative, judicial and executive powers shall remain separate, it thereby invests those officials charged with the duty of administering justice according to law with all necessary authority to efficiently and completely discharge those duties and to maintain the dignity and independence of the Courts.

9. The Supreme Court has referred to the scope of inherent power in several decisions. Reference can be made to *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*, , *Arjun Singh Vs. Mohindra Kumar and Others*, , *Ram Chand and Sons Sugar Mills Pvt. Ltd. Vs. Kanhaya Lal Bhargava and Others*, .

9.1) In *MANOHARLAL CHOPRA*, the Supreme Court held that the inherent powers are not to be exercised when their exercise may be in conflict with what had been expressly provided in the code or against the intention of the Legislature.

9.2) In *ARJUNSINGH*, the Supreme Court held as under:

"....It is common ground that the inherent power of the Court cannot override the express provisions of the law. In other words if there are specific provisions of the Code dealing with a particular topic and they expressly or by necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter the inherent power of the Court cannot be invoked in order to cut across the powers conferred by the Code. The prohibition contained in the Code need not be express but may be implied or be implicit from the very nature of the provisions that it makes for covering the contingencies to which it relates....."

9.3) In *RAM CHAND* the Supreme Court held thus:

"... The inherent power of a Court is in addition to and complementary to the powers expressly conferred under the Code. But, the power will not be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions...."

10. Therefore the Courts have the inherent power in addition to and complementary to the powers expressly conferred under a statute, to make incidental orders necessary to make the exercise of express power effective for the ends of justice. Inherent power does not create "jurisdiction" nor increases the "jurisdiction" of a Court. Inherent power merely enables the orderly and efficient exercise of the jurisdiction conferred on, or possessed by, the Court.

When a statute specifies how a jurisdiction should be exercised or restricts the jurisdiction of a Court, the inherent power of the Court cannot be invoked either to expand the jurisdiction or alter the manner of exercise of jurisdiction. Consequently exercise of inherent power cannot in any way conflict with what has been expressly provided in a statute, nor go against the intention of the Legislature.

11. The Supreme Court in MOHAMMED KUNHI (Supra) considered the question whether power to grant stay of recovery, pending an appeal, was incidental and ancillary to the power to hear and dispose of appeals. The question was considered with reference to Section 254 of Income Tax Act, 1961 which at the relevant point of time read thus:

"The Appellate Tribunal may, after giving both the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit."

The Supreme Court quoted with approval the following passage from Maxwell on Interpretation of Statutes [XI Edition, page 350]:

"Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts or employing such means, as are essentially necessary to its execution."

The Supreme Court answered the question raised before it in the affirmative in MOHAMMED KUNHI on the following reasoning:

"The argument advanced on behalf of the appellant before us that, in the absence of any express provisions in Sections 254 and 255 of the Act relating to stay of recovery during the pendency of an appeal, it must be held that no such power can be exercised by the Tribunal, suffers from a fundamental infirmity..... The right of appeal is a substantive right and the questions of fact and law are at large and are open to review by the Appellate Tribunal. Indeed, the Tribunal has been given very wide powers u/s 254(1), for it may pass such orders as it thinks fit after giving full hearing to both the parties to the appeal. If the Income Tax Officer and the Appellate Assistant Commissioner have made assessments or imposed penalties raising very large demands and if the Appellate Tribunal is entirely helpless in the matter of stay of recovery, the entire purpose of the appeal can be defeated if ultimately the orders of the departmental authorities are set aside.... It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective. The powers which have been conferred by Section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective"

(emphasis supplied)

12. In Commissioner of Income Tax Vs. Bansi Dhar and Sons, , the Supreme Court considered whether the incidental or inherent power to grant stay in

appellate jurisdiction will extend to reference jurisdiction also. It referred to the following passage from HUKUM CHAND BOID v. KAMALANAND SINGH ILR (1906) CAL 927 :

"It may be added that the exercise by Courts, of what are called their inherent powers or "incidental powers" is familiar in other systems of law, and such exercise is justified on the ground that it is necessary to make its ordinary exercise of jurisdiction effectual, because, "when jurisdiction has once attached, it continues necessarily and all the powers requisite to give it full and complete effect can be exercised, until the end of the law shall be attained."

The Supreme Court explained the said observations in HUKUMCHAND thus:

"These observations, however, will have to be understood in the context in which the same were made. If there was jurisdiction to do certain matters then all powers to make that jurisdiction effective must be implied to the authority unless expressly prohibited. But in references under the 1922 Act as well as the 1961 Act, the Courts merely exercised an advisory or consultative jurisdiction while the appeals are kept pending before the Tribunal. Therefore, nothing should be implied as detracting from the jurisdiction of the Tribunal. Power to grant stay is incidental and ancillary to the appellate jurisdiction. What was true of the appellate jurisdiction could not be predicated of the referential jurisdiction.

(emphasis supplied)

The Supreme Court thereafter held that the power to grant stay which is incidental and ancillary to Appellate (or revisional) jurisdiction cannot be predicated in respect of advisory or consultative jurisdiction. The reasoning given by the Supreme Court to hold that the power to grant stay is not inherent to advisory jurisdiction underlines the existence of such inherent power in cases of appeals and revisions. The same is extracted below:

"After the High Courts and, in cases of appeals to the Supreme Court, (this Court) answer the question in any manner or give certain opinion, the Appellate Tribunal would dispose of the appeals in accordance with the opinions expressed or answers given by the High Courts or the Supreme Court. Therefore, under the scheme, the appeal is kept pending before the Tribunal and the appellate jurisdiction is retained by the Tribunal but the High Court exercises an advisory or consultative jurisdiction ...The jurisdiction exercised by the High Courts is purely advisory, it is not that of a civil Court exercising original, or any appellate or revisional, jurisdiction. Therefore, the powers and jurisdiction of the High Court, and in certain cases of the Supreme Court, are those which are expressed and conferred upon them and also those which inhere in the exercise of that jurisdiction or are ancillary or those which subserve the exercise of that function and jurisdiction of giving advice.

The special jurisdiction of the High Court u/s 256 (of Income Tax Act, 1961) does not deprive it of judicial character or its inherent power, it was submitted. This, in

our opinion, does not solve the question because the High Court in answering a reference indubitably acts in a judicial capacity and must be implied to have powers which are necessary to discharge the obligations in exercising its jurisdiction of giving advice conferred by the special provisions of the statute.

Section 66 of the Income Tax Act of 1922 or Section 256 of the Income Tax Act of 1961 is a special jurisdiction of a limited nature conferred not by the CPC or by the Charters or by the special Acts constituting such High Courts but by the special provisions of the Income-Acts of 1922 or 1961 for the limited purpose of obtaining the High Court's opinion on questions of law. In giving that opinion properly, if any question of incidental or ancillary power arises such as giving an opportunity or restoring a reference dismissed without hearing or giving some additional time to file the paper book, such powers inhere to the jurisdiction conferred upon it. But such incidental powers cannot be so construed as to confer the power of stay of recovery of taxes pending a reference which lie in the domain of an appellate authority. Therefore, the concept of granting stay in a reference *ex debito justitiae* does not arise. That concept might arise in the case of the appellate authority exercising its powers to grant stay where there is no express provision. *Ex debito justitiae* is to do justice between the parties."

(emphasis supplied)

Having analysed the nature of reference jurisdiction (which was advisory/consultative in nature) vis-a-vis appellate/provisional jurisdiction, the Supreme Court held that power to grant stay was not incidental to reference jurisdiction, though it was incidental to appellate (or revisional) jurisdiction. What is important to note is that the Supreme Court did not hold that there is no incidental power while exercising reference jurisdiction, but held that the incidental power referable to reference jurisdiction did not extend to granting of stay. Thus the principle is that nature and extent of incidental/ancillary power will depend upon the jurisdiction that is exercised. Grant of stay has been considered to be an incidental power necessary for effective and proper exercise of appellate or revisional jurisdiction, in MOHAMMED KUNHI as also BANSI DHAR.

13. The revisional jurisdiction can be of different kinds and dimensions. It may be confined only to questions of jurisdiction. It may be broader and relate to the "legality and correctness". It may be with reference to "questions of law" in which event, the power becomes akin to that of a second appeal u/s 100 CPC. While there is no doubt that the power of revision or appeal, only with reference to a "question of law" is narrower than the power of appeal with reference to "questions of fact and law", for the purpose of considering whether there is incidental power of stay, there is no difference between appellate and revisional power. In fact Sub-section (4) of Section 23 enabling the High Court to reverse, affirm or amend the order of the Tribunal or remand the matter to the Tribunal or pass "such other order in relation to the matter as the High Court thinks fit" makes it clear that the revisional power is on par with appellate power, in so far as the incidental/ancillary powers are concerned.

14. We will next consider whether Sub-section (6) of Section 23 acts a bar on the power to grant stay. Sub-section (6) does not relate to the power of the High Court to pass interim orders during the pendency of revision. It does not bar or prohibit, granting of stay, pending disposal of the Revision Petition. It only requires the assessee to pay the tax in regard to the assessment made irrespective of the fact that a Revision Petition has been filed against the order of the Appellate Tribunal, u/s 23(1). The effect of it is that where the Revision Petition is by the State, the assessee cannot postpone payment of tax, merely on the ground that the order of the Tribunal is challenged by the State itself. Similarly, where the assessee has challenged the order of the Tribunal in a Revision Petition, he cannot postpone the payment of tax merely on the ground that a Revision Petition filed by him is pending. In other words, the effect of Sub-section (6) is that mere filing of a revision does not act as an automatic stay of recovery of tax. But that does not mean that Sub-section (6) can be construed as barring the High Court from granting stay. The Legislature has not made any express provision regarding stay. Nor is there any express prohibition regarding grant of stay pending disposal of the Revision Petition. In the absence of an express bar, the principle is that the express grant of statutory power of revision or appeal carries with it by necessary implication, the implied power to make such grant of provisional/appellate power effective, and such implied power include the power to grant stay pending decision.

15. Inherent power cannot be exercised in conflict with what has been specifically provided in the Statute. Thus, if there is a specific bar or prohibition in the statute, in regard to grant of stay, obviously, stay cannot be granted in exercise of inherent power. But, where a statute empowers the High Court to exercise power of revision with authority to reverse, affirm or amend the order against which the Revision Petition is filed or remand the matter to the Tribunal or pass such order in relation to the matter as the High Court thinks fit, the wide power given to the High Court with reference to its revisional jurisdiction, coupled with the absence of any fetters on the High Court to grant stay, gives a clear indication that the inherent power of the High Court includes the power to grant stay. The issue is, however, clinched by proviso to Sub-section (3) of Section 13, extracted above. It specifically provides that where a dealer or other person has applied for revision of an order made under the Act and has complied with the conditions of any order made by the revising authority in regard to payment of tax, no proceedings for recovery u/s 13(3) shall be taken or continued until the disposal of such Revision Petition. Three provisions of the Act viz., Sections 21, 22A and 23 relate to exercise of power of revision. Sections 21 and 22A relate to exercise of suo motu revisional power, where the authority empowered is of the view that any order by an inferior authority, is prejudicial to the interests of the revenue. The question of stay, obviously, does not arise in such circumstance. Therefore, when the proviso to Section 13(3) refers to an interim order made in a revision regarding payment of tax or other amounts and further provides that no proceedings for recovery shall be taken or continued

until disposal of the revision, it refers only to the exercise of power of revision u/s 23. It follows that Section 13(3) impliedly recognizes the power of the High Court to grant stay or pass other interim orders in regard to the amount due, in proceeding u/s 23. Thus, we are of the considered view that the inherent or incidental power of this Court with reference to revisional jurisdiction u/s 23 or appellate jurisdiction u/s 24, will include the power to grant stay pending disposal of the revision or the appeal as the case may be.

16. The Learned Government Advocate contended that other High Courts have taken the view that there is no power to grant stay and one of those decisions (in NARULA TRADING AGENCY) has been followed by the Division Bench of this Court in M.E.C. WIRES. We will now refer to the decision of three other High Courts which have considered the questions whether stay could be granted in appeals/ revisions under the respective Sales Tax Laws.

16.1) In Narula Trading Agency Vs. Commissioner of Sales Tax Delhi, the question that was considered was whether the High Court had power to grant stay pending disposal of a reference u/s 45 of the Delhi Sales Tax Act 1975. The Delhi High Court held that the High Court had no power to grant stay either u/s 151 of CPC or ex debito justitiae. But this is in view of the specific bar contained in Section 45(7) of the Delhi Act which provided that payment of the amount of tax and penalty due in accordance with the order of the Appellate Tribunal in respect of which an application has been made under Sub-section (1) shall not be stayed pending disposal of such application or reference made in consequence thereof. Interpreting the said section, Delhi High Court held that Sub-section (7) is addressed both to the Appellate Tribunal and to the High Court and was comprehensive in scope and sweep and it created an express prohibition. The reasoning of the Delhi high Court which is extracted below shows that but for such express bar, the position would be otherwise:

"I find the words in Sub-section (7) too strong to enable me to say that the legislature did not intend to take away the inherent-power of the High Court "as a Court". In fact this is precisely what the legislature was trying to do. Had this not been the intention of the legislature nothing would or could have been easier than for the legislature to say so. To say that notwithstanding Sub-section (7) of the High Court retains its inherent powers is to misread the whole purpose of Sub-section (7)...It is said that the inherent power always resides in a Court to do justice between the parties before it and that such power is not conferred on it but is inherent in the Court. This argument ignores the express provisions of Section 45(7) by appealing to Section 151 of the Code of Civil Procedure. It is impossible to hold that in a matter which is governed by the Act, an Act which enacts a statutory prohibition, there can be implied in the Court outside the limits of the Act a general discretion to dispense with its provisions: see: AIR 1935 85 (Privy Council) . It is well settled that inherent jurisdiction or power is inherent in a Court and Section 151 of CPC does not confer such jurisdiction or power on the Court but merely saves it because it already exists there. But

inherent jurisdiction of a Court can be invoked only when there are no specific provisions to meet the necessities of, a case. Where there are specific provisions such as in this case the inherent jurisdiction cannot be invoked. To exercise the power of stay when there is a clear provision to the contrary in the Act is to fly in the face of the statute."

16.2) In *CHAMPAKLAL NANABHAI v. COMMISSIONER OF SALES TAX, MAHARASHTRA STATE* (1993) 89 STC 37, the Bombay High Court considered the provisions of Section 61(6) of the Bombay Sales Tax Act, 1959 which provided that payment of the amount of tax, if any, due in accordance with the order of the Tribunal in respect of which an application has been made u/s 61(1) shall not be stayed pending disposal of such application or any reference made in consequence thereof. The Bombay High Court after referring to the decision of the Supreme Court in *BANSI DHAR* (Supra) held thus:

"Though a general statement about the continuation of the liability to pay is there in Section 265 of the Income Tax Act, but there is no specific prohibition to grant stay. Whereas, u/s 61(6) of the Bombay Sales Tax Act which we have quoted above, there is a prohibition to grant stay. The exercise of inherent powers may be possible only in cases where the statute has not dealt with the specific situation, but when the situation has been specifically dealt with in a statute, it would not be open for a Court to exercise inherent powers or similar powers to annul the provisions of the statute."

16.3) In *PENGUIN TEXTILES LTD v. STATE OF ANDHRA PRADESH* (2000) 117 STC 378 AP, a Full Bench of the Andhra Pradesh High Court considered Sub-section (6A) of Section 22 of the Andhra Pradesh General Sales Tax Act, 1957 which provided that payment of tax and penalty if any due in accordance with the order of the appellate Tribunal in respect of which a petition has been preferred under Sub-section (1) shall not be stayed pending disposal of the petition. In view of the express bar, the Full Bench held that High Court does not have the power to stay recovery of tax pending revision. But the following observations of the Full Bench after referring to the decision of the Supreme Court in *Mohammed Kunhi* reinforce our view:

"As a prelude to the discussion of the core question, we may recapitulate certain well-settled principles relevant to the remedy of appeal/revision and the passing of interim orders pending such appeal/revision. As long back as in the year 1968, the Supreme Court ruled in *Income Tax Officer Vs. M.K. Mohammed Kunhi*, , that even though no express provision exists, the Appellate Tribunal must be held to have power to grant stay as an incident of its appellate jurisdiction, it was observed:

"It could well be said that when Section 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory powers carries with it the duty in proper cases to make such orders for staying proceeding as

will prevent the appeal if successful from being rendered nugatory."

Be it noted that the above proposition enunciated by the Supreme Court will hold good only where there is no express provision one way or the other. There is no room to apply the doctrine of incidental or implied powers when the Legislature makes a specific provision debarring the grant of stay or otherwise placing fetters on the appellate or revisional authority to grant stay. The power to decide the appeal or revision need not always be coupled with the power to pass interim orders to maintain status quo and the like."

(emphasis supplied)

16.4) These decisions by the Delhi, Bombay and Andhra Pradesh High Courts make it clear that the power to grant stay has been recognised as incidental or ancillary to the power of revision or appeal. But, in view of the express bar contained in the relevant statute against grant of stay, it was held that High Court could not grant stay. These decisions will not therefore be of any assistance to the Revenue, as the Karnataka Act is significantly different, as it does not contain any such bar. On the other hand, as pointed above, Section 23(4)(a) authorises the High Court to pass such other order in relation to the matter as it deems fit and provisions of Section 13(3) specifically contemplates the High Court granting interim stay pending disposal of the Revision Petitions.

17. Lastly we may refer to the decision of the Supreme Court in VIJAY PRAKASH D MEHTA v. COLLECTOR OF CUSTOMS (PREVENTIVE), BOMBAY (1989) STC 324 on which strong reliance was placed in M.E.C. WIRES to hold that there is no inherent power to stay in proceedings u/s 23 and 24 of the Karnataka Sales Tax Act, 1957. In VIJAY PRAKASH MEHTA, the Supreme Court was considering the provisions of Section 129A and 129E of the Customs Act, 1962. Section 129A provides for appeals. Section 129E required the person desirous of filing an appeal, pending appeal, to deposit with the proper officer the duty demanded or the penalty levied. The proviso thereto provided for dispensation with such deposit by the appellate authority. Considering the said provisions, the Supreme Court held

"The right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant.. If the statute gives a right to appeal upon certain conditions, it is upon fulfillment of those conditions that the right becomes vested in and exercisable by the appellant.

The said decision did not deal with the incidental ancillary power to grant stay in appeals/revisions where there was no bar regarding grant of stay. The said decision is therefore of no assistance. It is merely authority for the proposition that power of appeal or revision need not always be coupled with the power to grant stay and the legislature may, by express provision, deny such power.

18. MEC WIRES was decided by following decisions which dealt with provisions which we find were not in pari materia with Section 23 or 24 of the Karnataka Act. The general principles laid down by the Supreme Court in MOHAMMED KUNHI was not properly considered by the Division Bench. With great respect to the learned Judges, we are unable to agree with the reasoning therein. In our view, the decision in MEC WIRES is not good law in the light of the principles laid down in MOHAMMED KUNHI reiterated in BANSI DHAR.

19. The State expressed an apprehension that granting of stay will impede collection of tax. The answer is found in the case of MOHAMMED KUNHI where the Supreme Court observed;

"A Certain apprehension may legitimately arise in the minds of the authorities administering the Act that, if the Appellate Tribunal proceeded to stay recovery of taxes or penalties payable by or imposed on the assessee as a matter of course, the revenue will be put to great loss because of the inordinate delay in the disposal of appeals by the Appellate Tribunal. It is needless to point out that the power of stay by the Tribunal is not likely to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue laws. It will only be when a strong prima facie case is out that the Tribunal will consider whether to stay the recovery proceedings and on what conditions, and the stay will be granted in most deserving and appropriate cases where the Tribunal is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the pendency of the appeal."

One another aspect may be noticed at this juncture. When the appeal is filed u/s 20, the assessee is required to pay the admitted tax in full. He may obtain a stay of the disputed tax subject to furnishing security to the satisfaction of the Appellate Authority in respect of the disputed tax. When he files a second appeal to the Tribunal, Section 22 provides for stay of 50% of the disputed tax on payment of 50% of the disputed tax. Thus, by the time the matter comes up before the High Court u/s 23, admitted tax would have been paid, 50% of the disputed tax would have been paid and remaining 50% of the disputed tax would be covered by inadequate security. Further, the High Court will not grant stay in a routine way. It will grant stay only when a strong prima facie is made out. The High Court may also make the grant of stay subject to conditions in appropriate cases.

20. In view of the above, we answer the question as follows:

"High Court has the power to grant stay during the pendency of a Revision Petition u/s 23 or appeal u/s 24 of the Karnataka Sales Tax Act, 1957.

It is needless to say that the High Court shall exercise such power of stay only in appropriate cases, if need be, by imposing appropriate terms and conditions depending on the facts of the case."

The Registry may place the matter for orders before the appropriate Division Bench.