

(2012) 12 AP CK 0044

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1257 of 2005

Cairn Energy India Private Limited

APPELLANT

Vs

Central Board of Excise and Customs, The Commissioner of Customs and Central Excise, The Deputy Commissioner of Customs and Central Excise and Sales Tax Kakinada II Division and The Superintendent of Customs and Central Excise Ramachandrapuram Range

RESPONDENT

Date of Decision : 31-12-2012

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11, 3
Central Sales Tax Act, 1956 — Section 14, 9(2), 9(2)
Oil Industries (Development) Act, 1974 — Section 15, 15(4), 15(4), 3(4)
Produce Cess Act, 1966 — Section 15, 15(2)
Vegetable Oils Cess Act, 1983 — Section 3, 3(4)

Citation : (2013) 4 ALD 283

Hon'ble Judges : M.S. Ramachandra Rao, J;G. Raghuram, J

Bench : Division Bench

Advocate : S. Ravi, for the Appellant; A. Rajashekara Reddy (SR SC FOR C.G.), for the Respondent

Final Decision : Allowed

Judgement

M.S. Ramachandra Rao, J.—In this writ petition, the question to be decided is "whether in the absence of a provision for levy of interest for delayed payment of cess under the Oil Industry (Development) Act, 1974, the Revenue can apply the provisions of Section 11-AB of the Central Excise and Salt Act, 1944 and demand interest from the petitioner?". The petitioner is one of the four Joint Venture partners who together executed a Production Sharing Contract with the Government of India on 28.10.1994. The Joint Venture referred to as "Ravva JV", was authorized under the said contract to carry out petroleum exploration and production in an off shore oil field off Andhra Pradesh Coast called "the Ravva Field". While, the Oil and Natural Gas Commission ("ONGC") holds 40% interest, Petrocon India Limited holds 25% interest, Ravva Oil (Singapore) Pte Limited

holds 12.5% and the petitioner herein holds 22.5% interest in the Ravva JV. The petitioner acts as an operator on behalf of Ravva JV to run its operations. It obtained a Central Excise Registration in its name, it being the seller's representative.

2. Ravva JV produces crude oil from the Ravva Field and sells it on F.O.B. basis exclusively to the Hindustan Petroleum Corporation Limited ("HPCL") at Visakhapatnam and Bongaigaon Refineries and Petrochemicals Limited ("BRPL") at Bongaigaon, Assam. The said two refineries were nominated by the Government of India as per the above contract. The crude oil, after its extraction, is stored for a while in the adjoining on shore facilities and after separation of water and sediments is taken back to a sea point through pipe line from where it is shipped out periodically, to the two refineries through the marine tankers deployed by them.

3. The crude oil produced from Ravva field is subject to "cess" u/s 15 of the Oil Industry (Development) Act, 1974 (for short "OID" Act). The cess is levied and collected on items specified in the schedule i.e. crude oil and natural gas, which is produced in India (including the continental shelf thereof) and (a) removed to a refinery or factory; or (b) transferred by the person by whom such item is produced to another person. Since the OID Act did not provide for an independent mechanism for collection of cess, clause (4) of Section 15 states that the provisions of the Central Excise and Salt Act, 1944 and the rules made thereunder, including those relating to refunds and exemptions from duties shall, as far as may be, apply in relation to the levy and collection of duties of excise leviable under this section and for this purpose, the provisions of that Act (i.e. the Central Excise and Salt Act, 1944) shall have effect as if that Act provided for the levy of duties of excise on all items specified in the schedule.

4. The Government of India, Ministry of Finance (Department of Revenue), New Delhi had issued a Circular No. 18/88 dated 20.5.1988 prescribing the procedure and payment of cess on crude oil. Under this circular, the oil producing companies shall debit the amount of cess on receipt of information of the actual quantity of net crude oil received by the refineries/factories and within 20 days after the close of each month, the oil producing companies shall file monthly returns in this regard. On receipt of the monthly returns and copy of Personal Ledger Account (PLA) register from the oil producing company, the officer concerned shall finalise the assessment of cess on the crude oil received by the refinery/factory after scrutiny of the relevant records. If the amount due has not already been paid, the officer concerned shall cause a notice to be served upon the oil producing company requiring it to make payment of the amount assessed within ten days of service of the notice. The first respondent, in its trade notice no. 13/2001 dated 14.3.2001 reiterated the said GOI notification, however, without referring to the said GOI circular.

5. The petitioner was paying cess provisionally every month on or before the 20th of the month in respect of the crude oil supplies made to the refineries

during the preceding month. Payments were being made on the basis of bill of lading quantities pending the ascertainment of the final quantities from the refineries. The petitioner contends that despite requests by it, the actual quantities received by the refineries were not given to it and therefore, its payments were higher than the quantities which the refineries would have actually received on account of evaporation and loss in transit of the Crude oil.

6. Differences arose between the petitioner and the Central Excise Department in respect of the quantities of the crude oil on which cess was payable. Against certain orders passed by the officers of the said department unilaterally assessing the quantities of certain shipments in the years 2002 and 2003, the petitioner filed appeals before the Commissioner (Appeals), Central Excise at Visakhapatnam and while they were pending, the 2nd respondent issued a letter dated 12.12.2003 directing the petitioner to follow the procedure prescribed in the trade notice no. 13/2001 dated 14.3.2001 referred to above.

7. In view of this, the petitioner convinced both the refineries on the need to furnish the received quantities in a time bound manner. While HPCL agreed to furnish such figures on the basis of the quantities received at their refinery, BRPL expressed that it is impossible for them to give shipment wise received quantities at their refinery gate. They pleaded that from Haldia Port, they have to transport the crude oil through a pipe line to a distance of 1100 kms. and that since certain quantities always remain in the pipeline, it is not possible for them to identify the exact quantity received against any particular shipment and consequently the month. It offered to furnish the quantity received from the petitioner at Haldia Port and accordingly it started furnishing details of the quantities received from the petitioner at Haldia Port from January 2004. Thus, from January 2004, the petitioner paid cess on the quantities certified by the refineries as received on or before 20th of the following month.

8. The petitioner contends that for the period prior to January 2004, the petitioner had furnished the figures relating to the quantities received from the refineries to the department on 15.7.2004 to finally assess the actual cess on the quantities received by the refineries, but the 4th respondent did not assess the cess till the date of filing of the writ petition and that on such assessment, the petitioner would be entitled to a refund of Rs. 1.25 crores.

9. While so, the 4th respondent issued a letter in OC No. 128/2004 dated 5.3.2004 relying on Rule 8 of the Central Excise Rules and demanded the petitioner to pay interest of Rs. 23,82,392/- for certain months between May 2001 and March 2003 i.e. the delayed period. He also issued another letter in OC No. 130/2004 dated 5.3.2004 stating that the due date for payment of cess is the 5th of the following month and that the petitioner would be liable to pay interest @ 2% per month for delayed payment after 5th and that for the period April 2003 to September 2003, the petitioner has to pay Rs. 95,29,989/-.

10. The petitioner sent replies to both the letters denying its liability to pay

interest contending that the due date for payment cannot be 5th of the following month as applicable to routine excisable goods whose quality and quantity is known ex-factory unlike crude oil and that the final received quantity figures are not immediately known to the petitioner in respect of the crude oil. No response was given by the 4th respondent to the petitioner's reply.

11. A circular C. No. V/30/253/2003-tech/II dated 16.4.2004 was sent by the 2nd respondent to the petitioner reiterating that 5th of the following month is the due date and while making payment in the Personal Ledger Account by the 5th, the petitioner on receipt of the quantity data from the refineries shall carry out reconciliation. On such reconciliation, if any excess amount is payable, the same shall be paid within a month thereof with interest on the delayed payment. If any excess payment is made, the petitioner is entitled to adjust the same in the next month against the cess payable. The petitioner expressed its disappointment by a letter dated 12.7.2004 to the 2nd respondent.

12. Thereafter, the petitioner received another demand for the period October 2003 to February 2004 vide letter OC No. 338 dated 1.6.2004 for a sum of Rs. 96,18,789/- directing the petitioner to show any material evidence and legal provision in its knowledge against the said demand.

13. The petitioner replied vide letter dated 18.6.2004 questioning the jurisdiction of the department to levy interest on the alleged delayed payment and also disputing taking 5th of the following month as the due date.

14. The petitioner also sought intervention of the first respondent which is the Apex Body for Central Excise matters by its representation dated 4.10.2004.

15. While so, the 3rd respondent issued another notice dated 22-11-2004 to pay a sum of Rs. 96,18,789/- as demanded in O.C. No. 338 dt. 01-06-2004 within ten days from the date of receipt of the said notice.

16. The petitioner by reply dt. 02-12-2004 disputed its liability to pay any amount as interest and raised the same contentions as it had raised before the 4th respondent and enclosed a copy of its response sent to the 4th respondent to the 3rd respondent.

17. The 3rd respondent by letter C. No. V/30/8/2004-STAT dt. 28-12-2004 rejected the petitioner's contentions and reiterated the earlier demands made towards interest for Rs. 1,91,48,778/-. Later another notice C. No. V/30/8/2004-STAT dt. 29-12-2004 was issued by the 3rd respondent calling upon the petitioner to pay Rs. 23,82,392/-.

18. Petitioner sent replies dt. 31-12-2004 and 04-01-2005 to the 3rd respondent reiterating its objections to the demand of interest raised by the respondents.

19. As no specific reply was received by the petitioner and the petitioner suspected that coercive steps for recovery of the amounts demanded under the above three demands would be initiated against it, it filed the present writ

petition.

20. The following are the contentions raised by the petitioner:

(a) The provisions of the OID Act do not postulate any due date for payment of cess; that cess is payable on the quantities received at the refineries unlike in the case of routine excisable goods for payment of Central Excise duty under the provisions of the Central Excise Act, 1944; that clause (4) of Section 15 of the OID Act applies the provisions of the Central Excise Act and the Rules made thereunder in relation to the levy and collection of duties under the OID Act "as far as may be"; that the Government of India was conscious of the fact that cess is payable on the quantity of crude oil received and therefore it issued the Circular No. 18/88 dt. 20-05-1988 prescribing a specific method of levying and collecting cess which is at variance with the methods prescribed under the Central Excise Rules for levy and recovery of Central Excise Duties on goods covered by the Central Excise Act; that Rule 8 of the Central Excise Rules (substituted with effect from 01-04-2003) states that the duty of goods removed from the factory or the ware house during a month shall be paid by the 5th of the following month; that the cess paid under the OID Act on refinery receipt quantities of crude oil is not paid under the Central Excise Act on removal of goods from the factory or ware house; that the cess under the OID Act is not within the ambit of the term "duty" defined u/s 3 of the Central Excise Act and therefore the due date for duty payable under the Central Excise Act is not applicable for payment of cess on crude oil under the OID Act;

(b) The trade notice No. 13/2001 dt. 14-03-2001 issued by the 2nd respondent reproduces the Government of India notification No. 18/88 dt. 20-05-1988 *ipsisssima verba* and prescribes a date (20th of the following month) for filing returns by the oil producing company and payment of cess on crude oil shall be made immediately on receipt of the information relating to the actual quantity of net crude oil received by the refinery or factory determined after test results; that the oil company shall debit the amount of cess in the PLA and therefore the 2nd respondent has no jurisdiction or power vested in him to amend the Government of India notification dt. 20-05-1988 by issuing Circular No. C. No. V/30/253/2003-Tech-II dt. 16-04-2004.

(c) The Government of India has not fixed any specific deadline as a due date for payment of cess and instead, it had allowed time till 20th of the following month to file the return along with the payment particulars and therefore the oil producing companies are allowed time to pay cess after they have received details of receipt quantities from refineries before 20th of the following month and that in view of the practical difficulties being faced by the petitioner in receiving details of the receipt quantities from the refineries, the respondents are bound to fix a reasonable date as due date after due deliberations with the oil refineries.

(d) Assuming that the due date for payment of cess is the 5th of the following

month, no interest is payable if payment of cess is made during that month u/s 11-AB of the Central Excise Act; that it is only if duty is not paid during that month that liability to pay interest arises from the first date of the month succeeding the month in which the duty ought to have been paid; that Rule 8 (3) of the Rules framed under the Central Excise Act is in direct conflict with Section 11 AB of the Central Excise Act and is ultra vires.

(e) The provisions of the OID Act do not provide for payment of interest. Though u/s 15 (4) of the OID Act, the provisions of the Central Excise Act and the Rules made thereunder as far as may be are made applicable, they cannot be applied mechanically without reference to the particular situation existing with respect to the crude oil qua payment of cess; that if the 5th of the following month is not taken as the due date, there is no delay in making payment and therefore the petitioner is not liable to pay interest.

(f) Even otherwise, the petitioner contended that the 3 rd and 4th respondents have no authority to levy interest since OID Act, which is the charging and substantive statute does not prescribe payment of interest;

(g) The 3rd and 4th respondents have been levying interest on the basis of the amendment effective from 01-04-2003 to Rule 8 (3) of the Central Excise Rules; that when the OID Act was enacted, the provisions of Section 11 AB of the Central Excise Act and Rule 8 (3) of the Central Excise Rules providing for payment of interest did not exist and after the said amended provisions in the Central Excise Act and Rules providing for interest, the provisions of the OID Act are not amended correspondingly; that in the absence of amendment of the provisions of the OID Act, which had never contemplated payment of interest and which alone is the charging Act, the amended provisions of the Central Excise Act and the Central Excise Rules cannot be applied against the petitioner. The petitioner relied upon the judgments in Khemka and Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra, India Carbon Ltd. etc. Vs. State of Assam, and Devi Dass Gopal Krishan Ltd. Vs. Union of India and Others,

21. The respondents filed a counter affidavit contending as follows:

(a) As per sub section (2) of the OID Act, cess on petroleum crude is payable by the persons by whom it is produced on the quantity received in a refinery; under the said Act, the person liable to pay the cess on crude is the producer company on the self assessment basis and it is their responsibility to ascertain the receipt quantities against the dispatches made; nowhere does the law cast any responsibility on the refinery and as such the department cannot approach the refineries in this matter.

(b) As the provision of section 15 (4) of the OID Act is inclusive, the issue of collection of interest on delayed payment of duty becomes automatically "substantive" in terms of the said section.

(c) Duty includes interest as well. Therefore the provisions of the Central Excise

Act 1944 and the Rules made thereunder including those relating to refund and exemptions from duties shall, as far as may be, apply in relation to the levy and collection of duties of excise leviable u/s 15 (4) and for this purpose, the provisions of the Central Excise Act shall have effect as if that Act provided for the levy of duties of excise on all items specified in the schedule. Therefore the duties of excise to be collected as cess under the OID Act, have to be collected as per the provisions of the Central Excise Act and the Rules made thereunder. Therefore payments made subsequent to the due dates under Rule 8 (3) have to be considered as delayed payments of cess and this has been substantiated by the Board in its letter F No. 262/22/82-CEX. 8 and the Letter No. 213/35/88-CEX. 6 dt. 11-04-1989. (These proceedings have not been filed by the respondents)

(d) The Board Circular No. 18/88 dt. 20-05-1988 did not discuss about the due date for payment of cess and only the trade notice No. 13/2001 dt. 14-03-2001 issued by the 2nd respondent discussed about the due date for filing the monthly return to the proper officer. Therefore the due date for payment of cess on crude is to be generally followed.

(e) The provisional payment of cess on bill of lading quantities in the absence of dependable receipt quantity is being accepted by the department pending receipt of the dependable receipt quantities issued by the refineries on consignment basis.

(f) The contention of the petitioner that even assuming that the due date for payment of cess is the 5th of the following month, no interest is payable if payment of cess is made during that month u/s 11-AB of the Central Excise Act is not valid.

(g) The further contention of the petitioner that if the interest is not paid during that month, a liability to pay interest arises from the first date of the month succeeding the month in which the duty ought to have been paid and that Rule 8 (3) of the Central Excise Rules is ultra vires the provisions of Section 11 AB of the Central Excise Act is also not valid.

22. Heard Sri S. Ravi, learned Senior Counsel for the petitioner and Sri A. Rajasekhar Redy, learned Senior Standing Counsel for the Central Government for the respondents.

23. Before we deal with the respective contentions, it is pertinent to note that the OID Act was enacted by Parliament to provide for the establishment of an Oil Industry Development Board for the development of the oil industry and for that purpose to levy a duty of excise on crude oil and natural gas and for other matters connected therewith. Section 15 of the said Act deals with the levy and collection of a cess in the nature of a duty of excise and states as follows:

s. 15. (1) There shall be levied and collected, as a cess for the purposes of this Act, on every item specified in column 2 of the schedule, which is produced in

India (including the continental shelf thereof) and-

(a) removed to a refinery or factory; or

(b) transferred by the person by whom such item is produced to another person, a duty of excise at such rate not exceeding the rate set forth in the corresponding entry in column 3 of the Schedule, as the Central Government may, by notification in the Official Gazettee, specify:

Provided that until the Central Government specifies by such notification the rate of the duty of excise in respect of crude oil (being an item specified in the schedule) the duty of excise on crude oil under this subsection shall be levied and collected at the rate rupees sixty per tonne,

(2) Every duty of excise leviable under sub-section (1) on any item shall be payable by the person by whom such item is produced, and in the case of crude oil, the duty of excise shall be collected on the quantity received in a refinery.

(3) The duties of excise under sub-section 91) on the items specified in the Schedule shall be in addition to any cess or duty leviable on those items under any other law for the time being in force.

(4) The provisions of the Central Excises and Salt, Act, 1944 and the rules made thereunder, including those relating to refunds and exemptions from duties shall, as far as may be, apply in relation to the levy and collection of duties of excise leviable under this section and for this purpose the provisions of that Act shall have effect as if that Act provided for the levy of duties of excise on all items specified in the Schedule.

24. A circular No. 18/88 dt. 20-05-1988 was admittedly issued by the Government of India, Ministry of Finance (Department of Revenue), New Delhi laying down the procedure for assessment and payment of cess on crude oil in the following manner:

PROCEDURE FOR ASSESSMENT AND PAYMENT OF CESS OF CRUDE OIL

(i) The dispatch of crude shall be covered by delivery tickets in form A1 and A2 (enclosed). Two copies of the delivery tickets shall be sent with the consignment out which one copy shall be returned by the refinery to the oil company duly certified by the authorized agent of the refinery in token of having received the crude oil. These delivery tickets should bear printed S.Nos. running for the whole year beginning on 1st January.

(ii) Immediately on receipt of the information relating to the actual quantity of net crude oil received by the refinery or factory; determined after test results; the oil producing company shall debit the amount of cess in the PLA kept for the purpose separately for each refinery. Details of laboratory tests on crude oil samples in form B (enclosed) shall also be furnished to the assessing officer for his verification and record.

(iii) Within 20 days after the close of each month the producer (oil producing company) shall file with the proper officer in quadruplicate a monthly return in form D (specimen form enclosed) showing separately for each refinery or factory the quantity of crude oil produced, the quantity dispatched and received at the refinery or factory, the particulars of delivery tickets under which such quantity was removed and amount of cess paid during the month together with original and duplicate copies of PLA receipted treasury challans on which deposit in the account current were made by payment into the Government Treasury and delivery tickets.

(iv) On receipt of monthly return and copy of PLA register from the oil producing company, the proper officer shall finalize the assessment of cess of the crude oil received by the refinery or factory after scrutiny of the relevant records. If the amount due has not already been paid, the proper officer shall cause a notice to be served upon the oil producing company requiring them to make payment of the amount assessed within ten days of the service of the notice.

(v) In case of oil company extracting oil in places situated in different Collectorates and sending crude oil to different Collectorates, the obligation for payment of cess should be on the Regional Office of such company and officer in whose jurisdiction such Regional office is situated.

(vi) After the return has been checked by the proper officer the original copy of the return along with the original copy of the PLA shall be sent to the Chief Accounts Officer, the duplicate return shall be sent to the Assistant Collector in charge of Division, the triplicate shall be returned to the oil producing company and the quadruplicate returned along with copies of delivery tickets and duplicate copy of the PLA shall be retained by the proper officer for records.

(vii) The producing unit should also furnish a list of records maintained and reports/returns submitted by them to the different authorities to the Assistant Collectors of Central Excise.

Subsequently the 1st respondent issued a trade notice No. 13/2001 dt. 14-03-2001 reiterating the said Government of India Circular No. 18/88 dt. 20-05-1988 repeating ipsissima verba the contents of the said circular but without referring to the said circular.

25. As per the trade notice No. 13/2001 dt. 14-03-2001, the petitioner was paying cess provisionally every month on or before the 20th of the month in respect of the crude oil supplies made to the refineries during the preceding month. The payments were being made on the basis of the bill of lading quantities pending the ascertainment of the final quantities from the refineries. The petitioner initially had difficulty in getting the details of the actual quantities received by the refineries despite several requests made by it to both the HPCL and BRPL refineries and there was also evaporation and loss in transit from the point of extraction till delivery at the refineries. This was sorted out by January 2004 and thereafter the petitioner was paying cess on the quantities certified by

the refineries as received on or before 20th of the following month.

26. But disputes arose between the petitioner and the respondents as to whether for the period prior to January 2004 and thereafter, the due date for payment of cess was the 5th of the following month as per Rule 8 (3) of the Central Excise Rules which governed the due date of excisable goods (substituted w.e.f. 01-04-2003); whether there was a delay in payment of cess; and whether interest was payable thereon by the petitioner for the period between May 2001 and March 2003?

27. The petitioner contends that the provisions of the OID Act do not provide for payment of interest; though u/s 15 (4) of the OID Act, the provisions of the Central Excise Act and the Rules made thereunder as far as may be are made applicable, they cannot be applied mechanically without reference to the particular situation existing with respect to the crude oil qua payment of cess; that if the 5th of the following month is not taken as the due date, there is no delay in making payment and therefore the petitioner is not liable to pay interest; Even otherwise, the 3rd and 4th respondents have no authority to levy interest since OID Act, which is the charging and substantive statute does not prescribe payment of interest; that the 3rd and 4th respondents have been levying interest on the basis of the amendment effective from 01-04-2003 to Rule 8 (3) of the Central Excise Rules; that when the OID Act was enacted, the provisions of Section 11 AB of the Central Excise Act and Rule 8 (3) of the Central Excise Rules providing for payment of interest did not exist and after the said amended provisions in the Central Excise Act and Rules providing for interest, the provisions of the OID Act are not amended correspondingly; that in the absence of amendment of the provisions of the OID Act, which had never contemplated payment of interest and which alone is the charging Act, the amended provisions of the Central Excise Act and the Central Excise Rules cannot be applied against the petitioner.

28. On the other hand, the respondents contend that the provision of section 15 (4) of the OID Act is inclusive; that the issue of collection of interest on delayed payment of duty becomes automatically "substantive" in terms of the said section; that duty includes interest as well; that therefore the provisions of the Central Excise Act 1944 and the Rules made thereunder including those relating to refund and exemptions from duties shall, as far as may be, apply in relation to the levy and collection of duties of excise leviable u/s 15 (4) and for this purpose, the provisions of the Central Excise Act shall have effect as if that Act provided for the levy of duties of excise on all items specified in the schedule. Therefore the duties of excise to be collected as cess under the OID Act, have to be collected as per the provisions of the Central Excise Act and the Rules made thereunder. Therefore payments made subsequent to the due dates under Rule 8 (3) have to be considered as delayed payments of cess and interest is leviable on the delayed payments under Rule 8 (3).

29. In our view, if the provision for levy of interest on delayed payments of cess

is a substantive provision and such provision is necessary to be provided in the OID Act, then interest cannot be levied even if there are delayed payments of the cess. But if the provision for levy of interest on delayed payments of cess is a mere procedural provision, then by virtue of the language in sub section (4) of Section 15 of the Act, such interest may be leviable on delayed payments of cess. If this question is answered, in our opinion, the other question as to which is the due date for payment of cess i.e. 20th of the following month (as per GOI Circular No. 18/88 dt. 20-05-1988 as reiterated in the trade notice No. 13/2001 dt. 14-03-2001) or 5th of the following month (as per Rule 8 (3) of the Central Excise Rules) need not be decided for the reason that even if it is the latter date (5th of the following month), no interest can be charged for the delayed payment of cess.

30. In *Khemka & Co.*'s case (1 supra), the Supreme Court was considering the question whether an assessee under the Central Sales Tax Act, 1956 (Central Act) could be made liable for penalty under the provisions of a State Sales Tax Act (State Act) for default in payment of taxes within the prescribed time. The assessee contended that there is no provision in the Central Act for imposition of penalty for delay or default in payment of tax, and therefore, imposition of penalty under the provisions of the State Act for delay or default in payment of tax is illegal. The rival contention on behalf of the Revenue was that the provision for penalty for default in payment of tax as enacted in the State Act is applicable to the payment and collection of the tax under the Central Act and is incidental to and part of the process of such payment and collection. It relied upon Section 9 (2) of the Central Act which stated as follows:

S.9 (2): Subject to the other provisions of this Act and the Rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess, collect and enforce payment of tax, including any penalty, payable by a dealer under this Act as if the tax or penalty payable by such a dealer under this Act is a tax or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, compounding of offences and treatment of documents furnished by a dealer as confidential shall apply accordingly.

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government, may, by rules made in this behalf make

necessary provision for all or any of the matters specified in this sub-section.

The Supreme Court held:

17. The deeming provision in the Central Act that the tax as well as penalty levied under the Central Act will be deemed as if payable under the general sales tax law of the State cannot possibly mean that tax or penalty imposed under any State Act will be deemed to be tax or penalty payable under the Central Act. The entire authority of the State machinery is that "for this purpose" meaning thereby the purpose of assessing, re-assessing, collecting and enforcing payment of tax including any penalty payable under the Central Act, they, meaning the State agencies, may exercise powers under the general sales tax law of the State. The words "for this purpose" cannot have the effect of enlarging the content of tax and the content of penalty payable under the Central Act. Liability to pay tax as well as liability to pay penalty is created by the Central Act...

21.... Penalty like imposition of tax cannot be included within the procedural part.

25. Penalty is not merely sanction. It is not merely adjunct to assessment. It is not merely consequential to assessment. It is not merely machinery. Penalty is in addition to tax and is a liability under the Act....

26.... The mere fact that there is machinery for assessment, collection and enforcement of tax and penalty in the State Act does not mean that the provision for penalty in the State Act is treated as penalty under the Central Act. The meaning of penalty under the Central Act cannot be enlarged by the provisions of machinery of the State Act incorporated for working out the Central Act.

28. For the foregoing reasons we are of opinion that the provision in the State Act imposing penalty for nonpayment of income tax within the prescribed time is not attracted to impose penalty on dealers under the Central Act in respect of tax and penalty payable under the Central Act. There is no lack of sanction for payment of tax. Any dealer who would not comply with the provisions for payment of tax, would be subjected to recovery proceedings under the Public Demands Recovery Act. A penalty is a statutory liability. The Central Act contains specific provisions for penalty. Those are the only provisions for penalty available against the dealers under the Central Act. Each State Sales Tax Act contains provisions for penalties. These provisions in some cases are also for failure to submit return or failure to register. It is rightly said that those provisions cannot apply to dealers under the Central Act because the Central Act makes similar provisions. The Central Act is a self contained code which by charging section creates liability for tax and which by other sections creates a liability for penalty and impose penalty. Section 9(2) of the Central Act creates the State authorities as agencies to carry out the assessment, reassessment, collection and enforcement of tax and penalty by a dealer under the Act.

31. In *India Carbon's* case (2 supra), a question arose whether the assessee was liable to pay interest at the rate specified under the provisions of Section 14 of

the Central Sales Tax Act, 1956 on the ground that Section 9 (2) of the said Act (extracted above) creates the State authorities (in this case the authorities under Assam Sales Tax Act, 1947) as agencies to carry out the assessment, reassessment, collection and enforcement of tax and penalty by a dealer under the Act. The assessee contended that there was no mention of interest in the first part of Section 9 (2) of the Central Sales Tax Act and therefore it is not liable to pay interest at the rate specified in Section 35A of the Assam Sales Tax Act, 1947 for delay in payment of Central Sales Tax Act on interstate sales of petroleum coke. The Supreme Court relied on Khemka & Co.'s case (1 supra) and held at para 7 as follows:

7.... Interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf.

32. In *Devi Dass Gopal Krishan's* case (3 supra), the question was whether the petitioner company was liable to pay interest on the delayed payment of cess on vegetable oil levied under the Produce Cess Act, 1966 (for short "the 1966 Act") r/w Vegetable Oils Cess Act, 1983 (for short "the 1983 Act") merely because Section 15 of the 1966 Act and Section 3 of the 1983 Act made applicable the provisions of the Central Excise and Salt Act, 1944 and the Rules made thereunder, including those relating to refunds and exemptions from duty in relation to the levy and collection of duties of excise on any produce specified in the schedule to the said Act (the 1966 Act) as they apply in relation to levy and collection of duty payable to the Central Government under that Act (the Central Excise Act). A Division Bench of the Punjab & Haryana High Court following *India Carbon's* case (2 supra) held at para 14 as follows:

When the 1966 Act was enacted by the Parliament, the Central Excise and Salt Act (now known as Central Excise Act, 1944) was in force. Therefore, instead of separately incorporating the provisions relating to levy and recovery of duty under the 1944 Act and the rules made thereunder, including those relating to the refund and exemption from duty, the provisions of the 1944 Act were made applicable for levy and collection of duties of excise on any produce specified in the second schedule to the 1966 Act. A similar provision was embodied in the 1983 Act in the form of Section 3(4). However, there is nothing in the language of Section 15(2) of the 1966 Act or Section 3(4) of the 1983 Act from which it can be inferred that it authorises the Central Government to charge interest on the delayed payment of cess. Section 11 AA was inserted in the 1944 Act with effect from 26.5.1995 by amending Act No. 22 of 1995. However, no corresponding amendment was made in Section 15(2) of the 1966 Act or Section 3(4) of the 1983 Act so as to empower the Central Government to charge interest in the case of default in the payment of cess. Therefore, we are inclined to agree with Shri Batta that Section 11 AA of the 1944 Act cannot be invoked by the respondents for charging interest on the delayed payment of cess by the petitioner.

33. We respectfully follow the decisions of the Supreme Court in Khemka & Co.'s case (1 supra) and India Carbon's case (2 supra) and hold that interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf. Since the provisions of the OID Act do not contain any provision for levy of interest on delayed payments of cess, the respondents are not entitled to demand that the petitioner pays interest on the alleged delayed payments of cess.

34. We are also in complete agreement with the decision in Devi Dass Gopal Krishan's case (3 supra) that when the OID Act was enacted by the Parliament, the Central Excise and Salt Act (now known as the Central Excise Act, 1944) was in force, that instead of separately incorporating the provisions relating to levy and recovery of duty under the 1944 Act and the rules made thereunder, including those relating to the refund and exemption from duty, the provisions of the 1944 Act were made applicable for levy and collection of duties of excise on any produce specified in the schedule to the OID Act. However, there is nothing in the language of Section 15(4) of the OID Act from which it can be inferred that it authorises the Central Government to charge interest on the delayed payment of cess. Section 11 AA & AB was inserted in the 1944 Act with effect from 26.5.1995 by amending Act No. 22 of 1995. However, no corresponding amendment was made in Section 15(4) of the OID Act so as to empower the Central Government to charge interest in the case of default in the payment of cess. Therefore, we hold that Section 11 AA/11 AB of the 1944 Act cannot be invoked by the respondents for charging interest on the delayed payment of cess by the petitioner. Accordingly, the writ petition is allowed. No costs.