
(2008) 04 KL CK 0035
In the High Court Of Kerala
Case No : ST. Rev. No. 339 of 2003

Chandramani Traders

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 07-04-2008

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 10, 11B, 16, 16(1), 17
Kerala General Sales Tax Rules, 1963 — Rule 18, 18(1), 18(2), 18(2A), 18(3)

Citation : (2008) 16 VST 294

Hon'ble Judges : H.L. Dattu, C.J.; K.T. Sankaran, J

Bench : Division Bench

Advocate : Arikkat Vijayan Menon, Harishankar V. Menon and Meera v. Menon, for the Appellant; Muhammed Rafiq, Sr. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Dattu, C.J.—In this tax revision case filed by the assessee against the order passed by the Sales Tax Appellate Tribunal in T. A. No. 543 of 2002 dated March 20, 2003, for the assessment year 1997-98, the following two questions of law are raised for our consideration and decision/They are:

- (i) Whether, on the facts and circumstances of the case, has not the Appellate Tribunal gone wrong in finding that the revision petitioner is liable to interest with reference to the due date of filing the returns as held by the assessing authority ?
- (ii) Is not the order of the Tribunal against the decision of the Supreme Court in Maruti Wire Industries Pvt. Ltd. v. Sales Tax Officer [2001] 122 STC 410 : [2001] 2 KLT 100

2. The questions of law framed by the assessee can be reframed as under : (i) Whether, on the facts and circumstances of the case, interest is chargeable u/s 23(3) of the Kerala General Sales Tax Act, 1963 from the date of filing of the return admitting the tax liability, but claiming concessional rate of tax or from the date of assessment and issuance of demand notice in pursuance thereof ?

3. The factual matrix in a nutshell are : The assessee is a partnership firm and a dealer registered under the provisions of the Kerala General Sales Tax Act, 1963 (hereinafter referred to as, "the Act, 1963"). It is engaged in the trading of chemicals and drugs and an assessee for sales tax on the rolls of Sales Tax Officer, Aluva.

4. The petitioner is opting and paying tax by self-assessment in accordance with Section 17(1) of the KGST Act read with the Rules framed thereunder. The assessee had filed monthly and annual returns for the assessment year 1997-98, disclosing the turnover in chemicals and drugs for an amount of Rs. 18,38,419.50 to various industrial units. In the returns filed, the petitioner has shown this turnover as taxable as provided u/s 5(3) of the KGST Act. It is not in dispute nor is it disputed by the Revenue that the petitioner has collected tax at three per cent from the purchasing industrial units and the collected tax is also remitted before the assessing authority. Section 5(3) of the Act provides for the concessional rate of tax of three per cent on the sales of industrial raw materials, etc., to industrial units, provided the selling dealer produces declaration in form No. 18 prescribed under the Kerala General Sales Tax Rules, 1963 issued by the purchasing industrial unit before the assessing authority. During the relevant assessment year, the assessee had effected sales of industrial raw materials, etc., for an amount of Rs. 18,38,419.50 to various industrial units, but was able to procure form No. 18 declarations for Rs. 14,52,891 only from various purchasing industrial units. For the balance turnover, the petitioner could not collect form No. 18 declarations, since many of purchasing industrial units had closed their business units. Since the assessee had failed to produce those declaration forms, the assessing authority while quantifying the tax liability for the assessment year 1997-98 has granted the concessional rate of three per cent tax only on the turnover covered by form No. 18 declarations and has levied tax at the rate specified in the Schedule for the balance turnover and also has imposed interest u/s 23(3) of the Act.

5. The assessee being aggrieved by the levy of interest by the assessing authority had filed first appeal before the first appellate authority in S.T.A. No. 1561 of 2001, who by his order dated May 31, 2002 had allowed the appeal in part and further had directed the assessing authority to calculate the interest payable by the assessee in the light of the law laid down by the apex court in Maruti Wire Industries" case [2001] 122 STC 410 : [2001] 2 KLT 100.

6. The Revenue being aggrieved by the order passed by the first appellate authority had preferred second appeal in No. T. A. No. 543 of 2002 before the Kerala Sales Tax Appellate Tribunal, Additional Bench II, Ernakulam, inter alia, contending that the assessee is liable to pay interest from the due date of filing of the return and the decision of the apex court in Maruti Wire Industries case [2001] 122 STC 410 : [2001] 2 KLT 100 is distinguishable on facts, since the case considered by the apex court was one where no return itself was filed by the assessee.

7. The Appellate Tribunal by its order dated March 20, 2002 has allowed the Revenue's appeal, holding that, the first appellate authority is not justified in directing the assessing authority to reconsider the levy of interest in the light of the observations made by the apex court in Maruti Wire Industries case [2001] 122 STC 410 : [2001] 2 KLT 100. The correctness or otherwise of the order passed by the Tribunal is the subject-matter of this revision petition.

8. We have heard Sri Harishankar V. Menon, learned Counsel appearing for the assessee and Sri Mohammed Rafiq, learned Government Pleader for Taxes. The contentions canvassed and the decisions relied on in support of their case will be noticed by us at the appropriate stage in our judgment.

9. Section 5 of the Act is the charging provision. It provides for levy of tax on sale or purchase of goods. Sub-section (1) of Section 5 of the Act, envisages that every dealer, other than a casual trader or agent of a non-resident, whose total turnover for a year is not less than two lakhs of rupees and every casual trader or agent of non-resident dealer, whatever be his total turnover for the year, shall pay tax on his taxable turnover for that year. Clause (i) of Sub-section (1) of Section 5 of the Act provides for the levy of tax in the case of goods specified in the First or Second Schedule, at the rates and only at the points specified against such goods in the said Schedules. The only other section which is relevant for the purpose of the case is Sub-section (3) of Section 5 of the Act. The said sub-section is as under:

5(3)(i). Notwithstanding anything contained in Sub-section (1), the tax payable by a dealer in respect of any sale of industrial raw materials, component parts, containers or packing materials which are liable to tax at a rate higher than three per cent when sold to any industrial units for use in the production of finished products inside the State for sale or for packing of such finished products inside the State for sale, as the case may be, shall be at the rate of three per cent on the taxable turnover relating to such industrial raw materials, component parts, containers or packing materials, as the case may be:

Provided that the provisions of this clause shall not apply to any sale unless the dealer selling the goods furnishes to the assessing authority in the prescribed manner a declaration duly filled in and signed by the dealer to whom the goods are sold containing the prescribed particulars in the prescribed form.

(ii) Where any dealer, after purchasing any goods by furnishing a declaration as mentioned in the proviso to Clause (i), fails to make use of the same for the purpose for which the declaration was furnished, he shall be liable to pay the tax that would have been payable by him, had the declaration not been furnished, less the tax, if any, paid by him and the same shall be levied and collected as if it is a tax due from him.

10. Sub-section (3) commences with a non obstante clause. The purpose is to exclude Sub-section (1) of Section 5 of the Act for the purpose of subsection (3) of the Act. Under this sub-section, a dealer engaged in trading of industrial raw

materials, component parts, etc., which are liable to tax at a rate higher than three per cent, when it is sold to industrial units for use in the production of finished products inside the State for sale, shall be at the rate of three per cent on the taxable turnover relating to such industrial raw materials, component parts, etc. In sum and substance, Sub-section (3) of Section 5 of the Act provides concessional rate of tax of three per cent on the sale of industrial raw materials, etc., to an industrial unit in the State for a particular purpose. The proviso appended to the sub-section carves out an exception to the sub-section for getting this reduced rate of tax. For getting the benefit of Sub-section (3) of Section 5, the selling dealer has to produce a declaration form No. 18 as prescribed in the KGST Rules, issued by the purchasing dealer. The other clause in Sub-section (3) of Section 5 of the Act is not relevant for the purpose of the case and therefore, the same is not noticed.

11. Chapter V of the KGST Act provides for assessment, collection and penalty. This chapter contains machinery and procedural provisions for the purpose of charging provisions. Section 16 of the Act, provides for assessment, levy and collection of tax as provided in the KGST Rules. u/s 17 of the Act, every registered dealer and every dealer liable to takeout registration under the Act, shall submit such return or returns in the prescribed manner within the prescribed time as provided in the Rules. Under Sub-section (2), if the assessing authority is satisfied that the return submitted by the dealer is correct and complete, he shall assess the dealer on the basis of the return filed by the dealer under Sub-section (3) of the Act. If the assessee fails to submit its return as required under Sub-section (1) or if the return submitted by the dealer appears to the assessing authority to be either incorrect or incomplete, and after making such enquiry as he may consider necessary pass a best-judgment assessment. Sub-section (4) of Section 17 of the Act provides for summary assessments in the case of prescribed class of dealers. Sub-section (6) provides for limitation within which assessment under this section requires to be completed. The other sub-sections may not be relevant for the purpose of this case.

12. Rule 18(1) of the Rules provides for filing of annual returns and final assessment. The Sub-rule (1) provides for filing of annual returns by every dealer liable to pay tax under the Act, irrespective of the quantum of his total turnover, on or before the first day of May of every year a return in form No. 9 showing the total and taxable turnover for the preceding year, the amounts by way of tax or taxes due on the taxable turnover during the year. Rule 18(2) provides for filing of returns in the case of a dealer who discontinues business during the course of the year. Rule 18(2A) provides for filing of revised return, if any dealer after filing of the return under Sub-rule (1) finds that a mistake has crept in the return filed. Sub-rule (3) mandates that every dealer liable to submit a return shall along with the return produce proof for having paid the full amount of tax or taxes due for the year on the basis of the return or taxes collected by him, whichever is higher before the assessing authority. Sub-rule (4) provides that if the assessing authority, on receipt of the return, is satisfied that the

return is correct and complete, he may finally assess on the basis of the returns filed, the tax or taxes payable u/s 5 or the taxable payable under the notification issued u/s 10 for the year to which the return relates. Sub-rule (5) provides the procedure for best judgment assessment, if the return filed for the year to which return relate is either incorrect or incomplete. Rule 20 speaks of adjustment after final assessment. The assessing authority under this rule is authorised, after passing an order under Sub-rule (4) or (5) of Rule 18, to examine whether any, and if so, what amount is due from the dealer towards the final assessment after deducting the tax paid if any on the provisional assessment with reference to Rule 21 or at the time of submission of the return in form 8 with reference to Sub-rule (3) of Rule 18. If any amounts are due from the dealer towards the final assessment, he shall serve on the dealer a demand notice specifying the amounts due and the dealer shall pay the sum demanded within the time and in the manner specified in the notice. The sub-rule also provides for refund of the tax already paid, if in the final assessment the dealer has paid more than the tax assessed. Rule 21 has undergone several amendments and several sub-rules are, in fact, deleted from the statute. The rule now available is Sub-rule (7) of Rule 21, which provides for filing of monthly returns by a dealer registered or liable to be registered under the provisions of the Act on or before 10th and in some cases 15th of succeeding month. Under Sub-rule (9), the assessing authority is empowered to pass the best-judgment assessment provisionally, if the return submitted by the dealer appears to be incorrect or incomplete or if no return is submitted by the dealer or where the return is submitted without the statements/certificates/documents required to be filed as per Sub-rule (7AA) or any other rules and shall serve upon the dealer a notice in form 13 and the dealer shall pay the sums demanded within the time and the manner prescribed in the rules. Under Sub-rule (10) if the return submitted by the dealer is without the necessary proof for having paid the admitted tax, or the full amount of tax payable under the Act, the assessing authority is authorised to serve upon the dealer a demand notice for payment of tax due under the Act and the dealer shall pay the amount demanded within the time and manner prescribed under the Rules. The other sub-rules as we understand may not be relevant for the purpose of the case. We have extracted the machinery provisions and the relevant rules only to demonstrate several procedures prescribed under the Act and the Rules framed therein which casts an obligation on the registered dealer and the dealer liable to be registered under the Act, of the necessity, and if we say so, more of obligation and duty to file true and complete monthly returns and annual returns along with the proof of evidence of having paid the admitted tax due under the Act.

13. Rule 28 of the Rules provides for declaration required for the purpose of Section 5(3) of the Act. The rule provides that the declaration provided under the aforesaid sub-section shall be in form No. 18. Sub-rule (5) says that a dealer who claims that a sale is liable to tax under Sub-section (3) of Section 5 shall attach to his return of turnover, a declaration received by him from the

purchasing dealer.

14. Section 23 of the Act provides for payment and recovery of tax. This section envisages that the tax assessed or any amount demanded under the Act shall be paid as may be specified in the notice of demand within twenty-one days from the service of demand notice. If there is any default in complying with the demand notice, the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay tax or other amounts due under the Act. Sub-section (2) speaks of the mode of recovery of tax assessed or any other amount due under the Act. Sub-section (3) of Section 23 of the Act is relevant for the purpose of this case and therefore the same is extracted and it reads as under:

23(3) : If the tax or any other amount assessed or due under this Act is not paid by any dealer or other person within the time prescribed therefore in this Act or in any rule made thereunder and in other cases within the time specified therefore in the notice of demand, the dealer or other person shall pay, by way of interest, in the manner prescribed, in addition to the amount due, a sum equal to:

(a) one per cent of such amount for each month or part thereof for the first three months after the date specified for its payment;

(b) two per cent of such amount for each month or part thereof subsequent to the first three months aforesaid.

Explanation.-Where the period of default is less than one month, interest shall be calculated for the actual number of days of default.

15. The analysis of this sub-section is as under:

The dealer or other person shall pay by way of interest, in addition to the amount due, a sum equal to two per cent of such amount for each month or part thereof subsequent to the first three months aforesaid.

(i) if the "tax assessed" is not paid by any dealer or other person within the time prescribed under the Act or the Rules framed.

(ii) if any "other amount assessed" is not paid by any dealer or other person within the time prescribed under the Act or the Rules framed.

(iii) if the "tax due under the Act" is not paid by any dealer within the time prescribed under the Act or the Rules framed.

(iv) "in other cases" within the time specified therefore in the notice of demand.

16. If the period of default is less than one month, interest is calculated for the actual number of days of default.

17. We will come back to Section 23(3) of the Act once again a little later. To complete the narration of facts, we will also notice Section 45A of the Act, which

provides for imposition of penalty by the authorities notified in the section for the offences enumerated under Clauses (a) to (h), an amount not exceeding twice the amount of sales tax or other amount evaded or sought to be evaded when it can be quantified, and in other cases, ten thousand rupees. One of the Clauses in Section 45A of the Act that provides for levy of penalty is, if the dealer or other persons files an untrue or incorrect return.

18. Having seen the relevant provisions of the Act and the Rules framed thereunder, now let us revert back to the factual matrix of this case. Petitioner has filed their monthly and annual returns by way of self-assessments in accordance with Section 17(1) of the Act read with rules framed thereunder for the assessment year 1997-98, disclosing the turnover in chemicals and drugs for an amount of Rs. 18,38,419.50 to various industrial units. In the returns filed, the petitioner has shown this turnover as taxable at three per cent as provided u/s 5(3) of the Act. It is not in dispute that the petitioner has collected tax at three per cent from the purchasing industrial units and the collected tax also is remitted before the assessing authority. To claim concessional rate of tax u/s 5(3) of the Act, the selling dealer has to collect declaration in form No. 18 as provided under the KGST Rules from the purchasing industrial units and file it along with its returns before the assessing authority. Since the assessee failed to produce the declaration forms for part of the turnover declared in the returns filed, the assessing authority while quantifying the tax liability, has levied higher rate of tax as provided in the Schedule to the Act and also has levied interest u/s 23(3) of the Act, on the ground that the assessee has failed to remit tax due under the Act in the manner prescribed under the Act.

19. Learned Counsel, Sri Harishankar V. Menon would contend, that, the interest under Sub-section (3) of Section 23 of the Act could be levied by the assessing authority, only, when the assessee defaults in paying the tax due under the Act after the same is quantified by the assessing authority and after service of demand notice thereof within the time prescribed under the Act. The learned Counsel would further contend that, in the present case, immediately after quantification of tax liability and service of demand notice for payment of assessed tax by the assessing authority, the assessee has remitted the entire tax demanded and therefore, the assessing authority was not justified in levying and demanding payment of interest u/s 23(3) of the Act. The learned Counsel would further contend that the interpretation given by the Tribunal on Maruti Wire Industries Pvt. Ltd. Vs. S.T.O., Ist Circle, Mattancherry and Others, does not reflect the correct position in law. Alternatively, it is contended that the interest levied by the assessing authority is highly illegal, improper and contrary to the statutory provisions. In aid of his submission, learned Counsel mainly relies on the observations made by the apex court in Maruti Wire Industries Pvt. Ltd. v. Sales Tax Officer [2001] 122 STC 410 : [2001] 2 KLT 100, and a decision of this Court in Protech Appliances Pvt. Ltd. v. Assistant Commissioner (Assessment), Sales Tax [2002] 127 STC 322. The learned Counsel, to explain the meaning of the expression "tax assessed" and "tax due" under the Act, has placed heavy

reliance on the observations made by the apex court in the case of J.K. Synthetics Ltd. v. Commercial Taxes Officer [1994] 94 STC 422, wherein the court has affirmed the minority view expressed by Justice Bhagwati, as he then was, in Associated Cement Company Limited Vs. Commercial Tax Officer, Kota and Others, The other decisions on which reliance is placed by the learned Counsel are P.K. Damodaran Vs. State of Kerala, , Evershine Plastics Vs. Assistant Commissioner (Assessment) and Another, , P.K. Ali Haji v. Board of Revenue (Taxes) [2008] 15 VST 165 : [2007] 15 KTR 101, State of Rajasthan and Others Vs. Ghasilal, and M.A. and Company Vs. Assistant Commissioner (Judicial) Sales Tax and Another, .

20. Sri Mohammed Rafiq, learned Government Pleader for Taxes would contend, that though the petitioner had disclosed the turnover by filing monthly and annual returns, the petitioner had not paid the tax payable under the Act, but had paid only concessional rate of tax on the disclosed/ conceded turnover, solely on the ground that he is unable to collect declaration form No. 18 from the purchasing dealer. According to the learned Counsel, the petitioner had to pay admitted tax as provided under the Act and the Rules framed thereunder, in default of which the assessee has to pay interest as provided under the Act. It is further stated that the liability to pay interest u/s 23(3) of the Act is automatic and the condition precedent for levy of interest under Sub-section (3) is default in payment of tax admittedly due to the department.

21. The State is empowered by the Legislature to raise revenue through the mode prescribed under the Act, so that the State should not be the sufferer on account of the delay caused by the taxpayer in payment of tax due. The provision for charging interest is possibly introduced by the State Legislature in order to compensate the Revenue for the loss occasioned to it due to delay in paying the tax. When interpreting such a provision in a taxing statute a construction which would preserve the purpose of the provision must be adopted. In the often-quoted decision, Cape Brandy Syndicate v. Commissioners of Inland Revenue [1921] 1 KB 64, which has been noticed and approved in Commissioner of Income Tax, Madras Vs. Ajax Products Ltd. through its Liquidator, , it has been observed that, in interpreting a taxing statute, normally, there is no scope for consideration of principles of equity. In a taxing statute one has to look merely at what is clearly said. There is no room for any intendment. There is no presumption to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used. The apex court in the case of State of Tamil Nadu v. M.K. Kandaswami [1975] 36 STC 191, has observed that in interpreting such a provision, a construction which would defeat its purpose and, in effect, obliterate it from the statute book, should be eschewed. If more than one construction is possible, that which preserves its workability and efficacy is to be preferred to the one which would render it otiose or sterile.

22. Section 23(3) of the Act is the provision which provides for payment of penal interest. This provision requires to be strictly construed and the interpretation

that requires to be given should be strictly in accordance with the language employed by the Legislature in the aforesaid sub-section. As we have already noticed, Sub-section (3) of Section 23 of the Act provides different situations for levying interest under certain circumstances envisaged in the sub-section itself. The contingencies envisaged under the subsection relate to tax due under the Act or the Rules framed thereunder or relates to tax admitted to be payable by a dealer according to the return submitted by the dealer, including all his claims to deductions, exemption or concessional rate of tax.

23. A dealer shall have to deposit tax admittedly payable within the time prescribed under the Act. If he fails to do so, simple interest at the rate prescribed under the Act becomes payable. This levy of interest is by operation of law. It does not require separate order as such by the authority. Tax admittedly payable, means, the tax which is payable according to the return filed by the dealer.

24. The Act enjoins upon the assessee the duty to file monthly and annual returns, declaring total and taxable turnover of that year. On the basis of turnover and taxable turnover declared, the assessee is required to make self-assessment and compute the tax payable and to pay in the manner prescribed under the Act. Thus, filing of the return and payment of tax thereon computed at the prescribed rates amounts to an admission of tax liability under the Act. In the instant case, the dealer has filed returns for the assessment year 1997-98. The dealer is entitled to claim concessional rate of tax at three per cent, provided he furnishes declaration form No. 18 obtained from the purchasing dealer, otherwise he is liable to pay regular rate of tax. Rule 28 of the Rules provides for declaration form required for the purpose of Section 5(3) of the Act. Sub-rule (5) says that a dealer who claims that his sale is liable to tax under Sub-section (3) of Section 5 only shall attach to his return of turnover a declaration received from the purchasing dealer. Proviso appended to Sub-section (3) says that Clause (i) shall not apply to any sale unless the dealer selling the goods furnishes to the assessing authority declaration form No. 18 received from the purchasing dealer. The dealer has to strictly follow the procedure and produce the relevant documents for claiming concessional rate of tax on the admitted turnover. Without production of declaration form No. 18, the dealer is not entitled to concessional rate of tax under Clause (i) of Section 5(3) of the Act. In the return filed, the assessee had paid tax at concessional rate of tax at three per cent. The assessing authority has held that the assessee has not paid tax admittedly payable u/s 17(1) of the Act read with the Rules thereunder, and further the assessee has not calculated and paid tax at the rate prescribed under the Schedule to the Act and, therefore, it must be held that the assessee has failed to comply with the requirement u/s 23(3) of the Act. In our view, this is not a case, where the rate of tax applicable is in dispute or disputed by the dealer. This is a case where a dealer has calculated the tax at the inapplicable rate. This is a case of self-assessment made by the assessee u/s 17(1) of the Act read with Rule 18 of the Rules. In the returns filed, the assessee had declared his total

turnover and if not u/s 5(3) of the Act he should have paid regular rate of tax as specified in the Schedule to the Act. Admittedly, in the return of turnover, the assessee had claimed the concessional rate of tax on the declared/conceded turnover, but had failed to produce the declaration in form No. 18 for the part of turnover as required under the Act and the Rules. As observed by the apex court in *State of Rajasthan and Others Vs. Ghasilal*, tax can be said to be due under two circumstances. Firstly, the tax payable by the dealer liable to pay tax is ascertained by the assessing authority (in that case, Section 10 of the Rajasthan Sales Tax Act, 1954). Secondly, by the assessee in the returns filed under the Act and the Rules [in that case, Section 7(2) of the Act] which envisaged that the return filed u/s 7(1) of the Act 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 the return in the Government Treasury or bank concerned. In the words of the apex court: (page 322)

... 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 u/s 10, or by the assessee u/s 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.

25. The aforesaid observations were made by the apex court while interpreting Section 16(1)(b) of the Rajasthan Sales Tax Act, 1954 which read as "has without reasonable cause failed to pay the tax due within the time allowed."

26. The meaning of the expression "tax payable" and "tax due" is explained by Justice R.S. Pathak, as he then was, in *M.A. and Company Vs. Assistant Commissioner (Judicial) Sales Tax and Another*. In the said decision, the court has observed that (page 491):

The liability to pay tax is created by Section 3. The incidence of tax may be confined to a single point and the rate may be enhanced by a notification u/s 3A. Sales tax is payable on the turnover, i.e., the aggregate amount for which goods are sold or supplied or distributed by way of sale by the dealer. Tax becomes payable when liability to pay tax arises, and liability to pay tax arises by the happening of the taxable event. The taxable event under the U.P. Sales Tax Act is the sale of goods or their supply or distribution by way of sale. It is not necessary to wait until the assessment has been completed in order to be able to say that a tax has become payable. There is a distinction between the expressions "tax payable" and "tax due". Tax is due when it becomes a debt owed to the taxing State : it becomes a debt when it has been determined by assessment and quantified, and a notice of demand has been issued intimating the amount of tax and demanding payment.

(underlining by us)

27. In *J.K. Synthetics Ltd. v. Commercial Taxes Officer* [1994] 94 STC 422, the Supreme Court has also explained the meaning of the expression "tax payable" and "tax due" under the Act at para 17 of the judgment. The same is noticed : (page 437)

17. Let us look at the question from a slightly different angle. Section 7(1) enjoins on every dealer that he shall furnish prescribed returns for the prescribed period within the prescribed time to the assessing authority. By the proviso the time can be extended by not more than fifteen days. The requirement of Section 7(1) is undoubtedly a statutory requirement. The prescribed return must be accompanied by a receipt evidencing the deposit of full amount of "tax due" in the State Government on the basis of the return. That is the requirement of Section 7(2). Section 7(2A), no doubt, permits payment of tax at shorter intervals but the ultimate requirement is deposit of the full amount of "tax due" shown in the return. When Section 11B(a) uses the expression "tax payable" under Sub-sections (2) and (2A) of Section 7, that must be understood in the context of the aforesaid expressions employed in the two sub-sections. Therefore, the expression "tax payable" under the said two sub-sections is the full amount of tax due and "tax due" is that amount which becomes due ex hypothesi on the turnover and taxable turnover "shown in or based on the return". The word "payable" is a descriptive word, which ordinarily means "that which must be paid or is due, or may be paid" but its correct meaning can only be determined if the context in which it is used is kept in view. The word has been frequently understood to mean that which may, can or should be paid and is held equivalent to "due". Therefore, the conjoint reading of Sections 7(1), (2) and (2A) and 11B of the Act leaves no room for doubt that the expression "tax payable" in Section 11B can only mean the full amount of tax which becomes due under Sub-sections (2) and (2A) of the Act when assessed on the basis of the information regarding turnover and taxable turnover furnished or shown in the return. Therefore, so long as the assessee pays the tax which according to him is due on the basis of information supplied in the return filed by him, there would be no default on his part to meet his statutory obligation u/s 7 of the Act and, therefore, it would be difficult to hold that the "tax payable" by him "is not paid" to visit him with the liability to pay interest under Clause (a) of Section 11B. It would be a different matter if the return is not approved by the authority but that is not the case here. It is difficult on the plain language of the section to hold that the law envisages the assessee to predict the final assessment and expect him to pay the tax on that basis to avoid the liability to pay interest. That would be asking him to do the near impossible.

28. Sub-section (3) of Section 23 of the Act provides for levy of interest under different circumstances. Firstly, if the tax or any other amount assessed is not paid by the dealer or other person within the time prescribed for, i.e., the tax assessed is not paid within the time prescribed under the Act. The expression "tax assessed" is explained by Lord Dunedin in *Whitney v. Commissioners of Inland Revenue* [1926] AC 37 (HL), wherein it is stated,

Now, there are three stages for imposition of a tax : There is a declaration of liability, that is, part of the statute which determines what persons in respect of what properties are liable. Next, there is the assessment. Liability does not depend on assessment, that, ex hypothesi has already been fixed. But, the assessment particularises the exact sum which a person is liable to pay. Lastly, comes the methods of recovery, if the person taxed does not voluntarily pay.

29. Therefore, tax assessed means the exact sum which a dealer or other person is liable to pay under the Act. The tax assessed, if it is not paid after service of demand notice within the time prescribed, the provision for payment of interest is attracted.

30. The "tax due under the Act" as explained by the apex court in J.K. Synthetics case [1994] 94 STC 422 is that amount which becomes due ex hypothesi on the turnover shown in or based on the return. Therefore, so long as the assessee pays the tax which according to him is due on the basis of the information supplied in the return filed by him, there would be no default on his part to meet the statutory obligation u/s 7 of the Act and therefore, it would be difficult to hold that the tax payable by him is not paid to visit him with the liability to pay interest. Even going by the decision on which heavy reliance was placed by the learned Counsel for the petitioner, it may not support his contention. In the instant case, as we already noticed, the assessee has filed his returns as required under the Act and while doing so, was fully aware of the fact that he would be entitled to concessional rate of tax only if he produces declaration form No. 18 obtained from the purchasing dealer, but still had paid only concessional rate of tax and the payment so made is not tax due under the Act, and therefore, in view of the language employed in Sub-section (3) of Section 23 of the Act, and in view of what has been said by the apex court in J.K. Synthetics case [1994] 94 STC 422, the assessee is liable for payment of interest under the Act.

31. The third instance that is envisaged in the sub-section is on the default committed by not paying tax or taxes or other amounts due under the Act after service of demand notice within the time prescribed. In the present case, this situation has not arisen and, therefore, debate or discussion on this aspect may not be necessary. Therefore, we do not intend to deliberate on this issue.

32. The learned Counsel, Maruti Wire Industries Pvt. Ltd. Vs. S.T.O., Ist Circle, Mattancherry and Others, would submit that a person who does not even file his returns nor does pay tax on self-assessment basis, cannot be on a higher pedestal than a dealer who had filed his return and had paid tax, may be lesser tax than what is specified in the Schedule to the Act and, therefore, the observations made by the apex court should have been taken note of by the Tribunal before allowing the Revenue's appeal. The submission appears to be interesting, but on a deeper consideration has no merit, is our view.

33. In Maruti Wire Industries case [2001] 122 STC 410 : [2001] 2 KLT 100 (SC), the apex court was dealing with the question as to whether the assessee was

liable to pay interest u/s 23(3) of the Act from the date the return was due though neither return as envisaged under the Act had been filed nor tax had been paid on self-assessment basis. The apex court has taken the view that the liability of the assessee to pay sales tax could have arisen on return of turnover being filed by self-assessment or else on an order of assessment being made. To come to the aforesaid conclusion, reliance was placed on the decision of the apex court in Associated Cement Co. Ltd.'s case [1981] 48 STC 466 and J.K. Synthetics case [1994] 94 STC 422. In our view, the decision on which reliance was placed by the learned Counsel for the assessee may not be of much assistance to the assessee, since the fact-situation in that case was entirely different from the fact-situation in the present case. In the present case, the assessee has filed his return conceding a particular turnover by way of self-assessment and in that had claimed concessional rate of tax. The assessee was fully aware, unless he produces declaration form No. 18 from the purchasing dealer, that he would be disentitled to claim concessional rate of tax, in view of the language employed in the section itself and in spite of it, he had paid lesser rate of tax than what is specified in the Schedule to the Act. Since the assessee had not paid tax on the admitted turnover at the specified rate of tax, this is a case where tax due under the Act is not paid and therefore, the petitioner cannot escape the rigour of the penal provision under the Act.

34. The learned Counsel for the assessee has also placed reliance on the observations made by this Court in the case of P.K. Damodaran v. State of Kerala [2004] 138 STC 442. In that case, the court, primarily relying on the observations made by the apex court in Maruti Wire Industries Pvt. Ltd.'s case [2001] 122 STC 410 ; [2001] 2 KLT 100 (SC), has granted the relief to the assessee. As we have already stated how the decision of the apex court cannot be applied to the facts and circumstances of the present case, it may not be necessary for us to consider in depth the observations made by this Court in Damodaran's case [2004] 138 STC 442.

35. The learned Counsel for the assessee has also invited our attention to certain observations made by this Court in the case of Evershine Plastics v. Assistant Commissioner [2000] 120 STC 396, Protech Appliances Pvt. Ltd. v. Assistant Commissioner [2002] 127 STC 322 and P.K. Ali Haji v. Board of Revenue [2008] 15 VST 165 : [2007] 15 KTR 101. All these decisions are rendered in the light of what has been said by the apex court in Maruti Wire Industries case [2001] 122 STC 410 ; [2001] 2 KLT 100. Therefore, in our view, the observations made in those decisions may not assist the learned Counsel, Sri Harishankar V. Menon, for the assessee.

36. The learned Counsel for the Revenue has brought to our notice the observations made by this Court in the case of Miracle Elastomer (India) Ltd. v. Commissioner of Commercial Taxes, Thiruvananthapuram [2007] 10 VST 493 : [2006] 2 KLJ 105 wherein it is stated (page 498 of VST):

... assessee cannot escape from the payment of interest since it had not

disclosed the turnover in the return filed. The assessee was well aware of the fact that the SSI exemption limit expired on October 8, 1999, a fact which is in the exclusive knowledge of the assessee and not the assessing authority. Section 23(3) states that if tax or any other amount assessed or due under the Act is not paid by any dealer or other person within the time prescribed therefor, the dealer shall pay interest in the manner prescribed, in addition to the amount due. The assessee should have paid tax on the expiry of the exemption period. The assessee had failed to pay the tax also with the return. The tax was due to the State once the period of SSI exemption expired. Since the assessee's turnover had exceeded the exemption limit, necessarily he should have disclosed the correct turnover in the return and should have paid the tax due under the Act which he has not done and therefore, in our view, Sub-section (3) of Section 23 would squarely apply.

We are in respectful agreement with the reasoning and conclusions reached by the learned judges in the aforesaid decision.

37. In view of the aforesaid discussion, the tax revision petition requires to be rejected and accordingly rejected. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.