

(2001) 05 RAJ CK 0090

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2683 of 1998

M/s Herbertsons Limited, Alwar

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 09-05-2001

Acts Referred:

Rajasthan Distillery Rules, 1977 — Rule 21, 91(3)
Rajasthan Excise (Amendment) Act, 1976 — Section 2
Rajasthan Excise (Amendment) Act, 1995 — Section 5
Rajasthan Excise Act, 1950 — Section 9
Rajasthan Excise Rules, 1956 — Rule 69(2)

Citation : (2001) 3 RLW 1637 : (2001) 3 WLC 19 : (2001) 3 WLN 442

Hon'ble Judges : Dr. Ar. Lakshmanan, C.J.; Bhagwati Prasad, J

Bench : Division Bench

Advocate : K.N. Joshi, for the Appellant; Dinesh Maheshwari, for the Respondent

Final Decision : Dismissed

Judgement

Lakshmanan, C.J.

(1) Civil Writ Petition No. 2683/98 was filed by M/s Herbertsons Ltd. to quash the notice as also the impugned orders Anx.1 dated 16.8.97 passed by the Commissioner, Excise Department, Udaipur and Anx. 2 dated 29.7.98 passed by the Rajasthan Taxation Tribunal, Jodhpur Bench and to declare that no interest is leviable on the due enhanced bottling fees since the payability of the dues was arrested during the period in which the stay order passed by this Court was in vogue. Therefore, the respondents be directed to make refund of the Rs. 33,91,500/- which have been deposited by the petitioner against the Interest, with Interest at the rate of 24% per annum.

(2). Writ Petition No. 2684/98 was filed by M/s. Udaipur Distillery Company Ltd. to quash the impugned orders Annex. 1, 2 and 3 and to declare that no interest is leviable on the due enhanced bottling fees on the petitioner company, since the payability of the due enhanced bottling fees was arrested during the period in

which the stay order was in vogue and granted by the High Court and to refund a sum of Rs. 83,00,000/- which have been deposited by the petitioner against interest with Interest at 21% per annum.

(3). The brief facts of the case are as follows, -

Since these two writ petitions involve the consideration of common question of fact and law, they are being disposed of by this common judgment, by consent of parties.

(4). The petitioner-Company, in 2684/98 challenged the Notification dated 16.3.92 issued by the respondents enhancing the bottling fees in the year 1984 by filing the writ petition before this Court. The writ petition was admitted and an interim order was passed which was later on confirmed, after hearing the parties in 1986. Ultimately, the writ petition came to be dismissed by the Division Bench of this Court vide judgment dated 17.8.95 by the Division Bench comprising of Hon'ble Justice Jas Raj Chopra and Hon'ble Justice P.K. Palli). Though the writ petition was dismissed on 17.8.95 this Court allowed interim stay to continue for six weeks, to enable the petitioner to obtain relief from the Supreme Court of India.

(5). The petitioner filed SLP before the Supreme Court. No interim order was passed. As such the petitioner, without receiving any notice deposited Rs. 1, 41, 88, 972/- against the dues of bottling fees, It is the case of the petitioner that after enhancing the bottling fees by Notification dated 16.3.82, till the writ petition was dismissed, no notice or demand was raised by the respondents and that the petitioner voluntarily deposited the above amount of Rs. 1, 41, 88, 972/-.

(6). For the first time a notice was given on 29.12.95 raising the demand of interest for late payment of dues to the extent of Rs. 1,45,38,464/-. This notice was for the payment of interest. After the rejection of the writ petition, the petitioner moved an application before the Excise Commissioner for waiver of interest u/S. 30AA of the Act, which application was rejected against which the petitioner filed another writ petition before this Court, in which the interim stay was given. Ultimately, the writ petition was dismissed vide order dated 20.3.97 in SBCW Petition No. 2983/96 (Hon'ble B.J. Shethna, J.). In the above writ petition, the petitioner has also challenged the jurisdiction of the respondent u/s 30A of the Act which was dealt with in detail by the learned Single Judge. Being aggrieved by the said decision, the petitioner filed a special appeal being DBC Spl. Appeal No. 377/97 which was disposed of by a Division Bench on 30.4.97 remanding the matter back to the Commissioner for reconsideration.

(7). It is relevant to notice the observations made by the Division Bench:-

"1. The controversy involved in these appeals is that the appellants questioned the imposition of excise duty on them. The imposition of excise duty was questioned by the appellants before this Court unsuccessfully and liability to

pay the excise duty was maintained even upto Supreme Court. Since the appellants were litigating and had stay orders operating in their favour at some intervals while they were litigating the imposition of the excise duty they ignored the liability to pay tax over the same. It is admitted fact that appellants have paid the amount as far as the excise duty is concerned.

2. Since the law provided for imposition of interest on delayed payment of the excise duty, the Excise Commissioner issued an order dated 16th December, 1995, whereby interest for about 10 years, that is from 1984 to 1995, was demanded from the appellants. This amount was disputed by the appellants and in the meantime they sat with the respondents and arrived at an amount which, according to them, was the correct calculation of interest. The Department earlier demanded a sum of Rs. 1.85 crores as interest which was later on corrected to Rs. 1.45 crores only. This amount was calculated against the appellants in terms of Section 30-A.

3. With the payment of excise duty the challenge by the appellants against imposition of excise duty came to an end. As regards imposition of Interest, the appellants got the same corrected by sitting with the respondents and no steps were taken by the appellants to file any appeal against the order of imposition of interest to the tune of Rs. 1.45 crores on the amount of excise duty. However, the appellants preferred an application u/S. 30-AA of the Rajasthan Excise Act, 1950 thereafter referred to as the Act") for waiver of the interest because they were ready and willing to co-operate with the Department as regard realisation of interest. The respondent- Commissioner by order dated 31st August, 1996 rejected the application of the appellant-petitioners. Against the order of the Commissioner whereby he refused to waive the amount of interest imposed or to reduce the same, petitioners preferred the writ petitions mentioned above and impugned this impugned order Annex. 1 to the writ petitions."

(8). The Bench has also observed in paragraph 5 as follows:-

"5. We have given our thoughtful consideration. As regard argument of appellant-petitioners about legality of imposition of interest u/s 30-A, we are afraid that this ground could not have been raised by the petitioner-appellants even before the learned Single Judge or this Court in appeal because neither have they impugned the order u/s 30-A before this Court in the writ petition nor could they otherwise challenge the same because that order had to be challenged in a different proceedings. The argument of the counsel for the petitioner regarding Section 30-A cannot be entertained by this Court and has rightly not been entertained by the learned Single Judge because there is a regular remedy of appeal u/s 9A of the Act. The Writ Petitions have been designed basically against the orders passed u/s 30-AA of the Act. Thus, we are of the considered opinion that appellants had remedies before the Excise authorities u/s 9A of the Act and then u/s 5 of Act of 1995, before the Rajasthan Taxation Tribunal."

(9). The Bench has remanded the matter to the original Authorities, without

expressing their opinion on the merits of the case, for, on merits, a fresh examination has to be done by the excise authorities under the Act and then by the Rajasthan Taxation Tribunal under the Act of 1955.

(10). On remand, the matter was heard by the Commissioner and he, by order dated 16.8.97 rejected the prayer of the petitioner. The submissions made by the petitioner in regard to the challenge of the jurisdiction of the respondents to recover the interest u/S. 30A, as well as the request for enhancing the same u/S. 30AA, on the ground that no objection for the dues was ever given to the petitioner, were dealt with by the Commissioner and he rejected the objection of the petitioner on the ground that it was the duty of the petitioner to pay the dues.

(11). Placing reliance on the judgments, Mr. Joshi, the learned senior counsel, submitted that it is clear from the above order that no notice was given to the petitioner about the dues not the dues were arrested at any time and the petitioner paid voluntarily all the dues. He also submits that the legal position of the interpretation of law has not been taken up for consideration by the Commissioner and that the Commissioner has also not considered that during the period of pendency of the writ petition right from 1984 to 1995 since there was stay order, the question of payment does not at all arise nor at the time of decision of the writ petition the respondents reported to levy the interest. Thus, it is submitted that the respondents have waived their right to claim interest.

(12). Aggrieved by the judgment of the Commissioner, the petitioner moved the Taxation Tribunal, Jodhpur, challenging the order of the Commissioner. The Taxation Tribunal also while giving the reference of Section 30A observed that it was the duty of the petitioner to pay the amount.

(13). Aggrieved by the decision of the Tribunal, the petitioner approached this Court against the recovery notice of interest dated 29.12.95.

(14). Mr. K.N. Joshi, learned senior counsel, appearing for the petitioner in both the cases raised the following contentions at the time of hearing,-

(a) That in the absence of assessment and prior notice of depositing excise revenue u/S. 30A, the question of levying interest does not at all arise.

(b) That since there was stay order from 1984 to 1995 and, thereafter for six weeks after the dismissal of the writ petition, the question of payment of Interest on enhanced bottling fees does not at all arise.

(c) That alternatively, it is submitted that u/s 30AA of the Act, the Commissioner should have waived the interest as the petitioner has voluntarily deposited the entire dues without any demand and cooperated with the respondents, and since the petitioner was facing genuine hardship, the authorities should have waived the interest thereon.

(d) That no interest can be charged from the petitioner on the principal amount from the date of stay as the principal amount was under dispute and no

assessment could be made till either the stay order is vacated or the petition is finally decided.

(e) That recently, the respondents have introduced a claim by Notification dated 30.1.99, where in it is mentioned that any proceeding is pending prior to 31.3.97 in the Supreme Court, High Court, and Taxation Tribunal and in case the original principal amount is deposited, interest can be waived. But since the petitioner has already paid the entire principal amount, he cannot take the advantage of this claim although the controversy is pending in this Court since 1984.

(15). On the above contentions and points, it is submitted by Mr. K.N. Joshi that from the perusal of Section 30A it is clear that interest is leviable only if the date is prescribed under the Act or Rules, whereas in the instant case, for the payment of enhanced bottling fees, no date or time is prescribed in the Act or Rules. In the absence of which, no interest can be levied and the petitioner is at liberty to pay as per his own convenience which practice was prevalent with the respondents otherwise also and in the eventuality if the respondents wanted to recover the interest, they should have given the notice fixing the time for the payment of the dues, in the absence of which, the question of levying interest does not at all arise.

(16). Mr. Joshi submitted that since there was stay order from 1984 to 1995, the question of paying any interest on the original dues does not at all arise. In this respect, reference was made to 1991 Allahabad Law Journal 237(1) & Food Corporation of India vs. State of Haryana (2) and Vrinda Gujarati vs. Bareilly Development Authority (3).

(17). For waiver of interest, Mr. Joshi cited the judgment of the Supreme Court, State of Kerala vs. Arvind Ramakant & Ors. (4), State of Rajasthan & Ors. Anil Kumar Sunil Kumar & Party (5) and State of Rajasthan & Ors. vs. Ghazi Lal (6). Mr. Joshi also relied on the judgment reported in Adoni Ginning Factory and Others vs. Secretary, Andhra Pradesh Electricity Board, Hyderabad & Ors. (7), wherein Interest was waived by the Supreme Court.

(18). Another Judgment reported in J.K. Synthetics Ltd. vs. Commercial Taxes Officer (8), was also relied on for the above proposition.

(19). Mr. Joshi further submitted that the petitioner was continuing the proceedings bonafidely by challenging the enhancement of bottling fees and the levy of interest etc. etc. and the petitioner also cooperated since this Court did not give any stay order, and without any demand, the petitioner voluntarily deposited the entire dues to the extent of Rs. 1,41,88,972/-. The petitioner was facing great hardship also being a very small Company, thus, there cannot be any better position for invoking the power u/s 30-AA for waiving interest.

(20). Mr. Joshi also further mentioned that while dismissing the appeal of the petitioner, the Hon'ble Supreme Court in Civil Appeal Nos. 9700 and 9701 of 1995 (9), has observed as follows:-

"Faced with the express phraseology of Rule 69(2) of the Rajasthan Excise Rules, 1956, r/w Rules 21 and 91 (3) of the Rajasthan Distillery Rules, 1977, Mr. Sanghi, learned Senior counsel appearing for the appellant seeks to withdraw the appeals.

Learned counsel, however, submitted that a writ petition had been filed by him in the High Court, challenging the imposition of interest @ 2% per month on the arrears of excise duty/licence fee and that u/s 30-A of the Rajasthan Excise Act, 1950, interest cannot be charged at a rate higher than that which was prevailing on the date when the amount fell due. Mr. Sanghi further submits that the Excise Commissioner has also the power to reduce or waive the interest u/s 30-AA of the Rajasthan Excise Act, 1950 and that the withdrawal of the appeals is without prejudice to the rights of the appellant pursuing remedies for reduction/waiver of interest. We record the statement of Mr. Sanghi and while dismissing the civil appeals as withdrawn, we leave it open to the appellant to raise all the available pleas before the High Court in the pending Writ Petition and/or approach the Excise Commissioner for appropriate relief. We clarify that the High Court or the Excise Commissioner, as the case may be, will decide the matters uninfluenced by the dismissal of the appeals in this Court."

(21). Mr. Dinesh Maheshwari, learned counsel for the respondents submitted that the challenge of the statutory provisions and rules was rejected by this Court and the enhancement was upheld by the Hon'ble Supreme Court. The Supreme Court dismissed the appeal on 27.1.2000 as withdrawn by the petitioner and that the final calculation of the interest due was made on 3.6.96 itself in consultation with the petitioner and since the petitioner has not paid the same he is liable to pay the same.

(22). He also invited our attention to the dismissal of the writ petition No. 2983/96 dated 20.3.97 by Hon'ble Justice Shethna, wherein the learned Judge has held:-

(a) The petitioner did not avail the remedy of appeal u/s 9A.

(b) Challenge to levy of interest on the ground of not prescribing the date for deposit was rejected.

(c) The petitioner has earned benefit and deprived the Department of the amount and, therefore, it was not a case for any genuine hardship.

(23). Mr. Dinesh Maheshwari then invited our attention to the judgment of the Division Bench dated 30.4.97 (the Hon'ble Chief Justice Mr. M.G. Mukherji and Hon'ble Justice Mr. Bhagwati Prasad) holding,-

(a) Argument regarding legality of imposition of interest cannot be entertained for availability of regular remedy of appeal.

(b) Petition was basically against the order u/s 30AA of the Act.

(c) The Excise Commissioner was directed to consider the application of the

petitioner u/S. 30AA also once again.

(24). Our attention was also drawn to the order dated 16.8.97 of the Commissioner, rejecting the application u/S. 30AA made by the petitioner. The Commissioner, considered the contentions regarding validity of levy of interest and found,-

(a) Bottling fees becomes payable immediately after manufacture and no separate notice was required,

(b) Whether the petitioner has included the same in his costing or not is undoubtedly irrelevant.

(c) It was not a case of genuine hardship and the petitioner retained the dues of the Government and earned profit from the same. Hence, the case for waiver was not made out.

(25). Fresh demand notice was issued after the rejection of the petition by the Commissioner of the application u/S. 30AA on 16.8.97. The fresh demand notice was made on 26.1.1.97. On 10.12.97, the Tribunal passed an interim order for depositing 50% of the amount. The High Court, in Writ Petition No. 4558/97 stayed the recovery on 18.12.97 and directed the Tribunal to decide within two months. The Tribunal delivered its judgment on 29.7.98. In the meanwhile, on 27.1.2000, the Supreme Court dismissed the appeal as withdrawn, with certain observations.

(26). Mr. Dinesh Maheshwari submitted that the contention of petitioner in regard to the legality of the imposition and deduction of interest is concerned, the same has already stood concluded against the petitioner for the obvious reason that the petitioner has already worked out the amount payable by silting with the Department and the imposition of interest was never challenged in appeal u/S. 9-A of the Act and that the challenge in Writ Petition No. 2983/96 was precisely rejected by the learned Single Judge and such rejection was approved by the Division Bench, and the very fact that the petitioner was asking for waiver of interest shows clearly that the petitioner was not challenging the validity and legality of the same, but was only asking for leniency. Thus, Mr. Dinesh Maheshwari submitted his arguments in a nut shell that the challenge to the legality and validity of interest was never taken up by the petitioner, nor it was permitted to do so and, therefore, such proceedings and decisions have already become final and conclusive against the petitioner and, therefore, is not liable to be re-opened.

(27). Mr. Maheshwari, in support of his contention, has placed strong reliance on the following judgments:-

(1) Order in DBCW Petition No. 18/84 and 288/84 dated 17th August, 1955(10).

(2) The order in SBCW Petition No. 2983/96 filed by the Udaipur Distillery Company Ltd. (decided by Hon"ble Shethna, J.) on 20th March 1997 (IO(3)

Judgment In DBC Spl. Appeal No. 377, 378/1997 dated 30th April, 1997 decided by the Hon'ble Chief Justice Mukherji and Hon'ble Justice Bhagwati Prasad (12).

(4) The order dated 29.7.98 by the Taxation Tribunal;

(5) The order passed by the Supreme Court in Civil Appeal Nos. 9700 and 9701 of 1995 dated 27th January, 2000 (supra);

(6) The judgment reported in Calcutta Jute Manufacturing Company vs. Commercial Tax Officer (13);

(7) Grindlays Bank vs. I.T. Officer (14);

(8) Anas vs. State of Kerala (15) and

(9) State of M.P. vs. M.V. Vyavasaya & Company (16).

(28). With regard to the interpretation of Section 30A introduced by the Legislature for the recovery of excess revenue, Mr. Joshi has also made the following submissions-

(29). Section 30A was introduced in the Rajasthan Excise Act, 1950 authorising the respondents to impose interest on the delayed payment of Excise Revenue. Section 30A reads as follows:-

"30-A. Interest payable on failure to pay excise revenue, If the amount of any duty, fee or other demand due against any person under this Act or the Rules made thereunder, is not paid within the period specified in any notice for such payment served on him, or where no time for such payment is specified in such notice within 30 days from the date of service of such notice, he shall be liable to pay, on the amount due, simple interest from the day next following the day on which the payment of such duty, fee or demand became due, at the rate of one percent per month where the default continues for not more than three months and at the rate of one and-a-half per cent per month when the default continues for more than three months."

(30). In fact, this was introduced by Section 2 of the Rajasthan Excise (Amendment) Act, 1976 (Rajasthan Act 30 of 1976) vide notification No.F.2(14) vide 76 dated 28.4.76. According to Mr. Joshi, from the perusal of Section 30A which was initially introduced by the Legislature in the Excise Act, it is crystal clear that before levying the interest on delayed payment, notice is necessary and until and unless, notice for the payment of dues are given, the question of levying interest on the delayed payment does not at all arise. Thus, the condition precedent for the levy of interest at the relevant time was "Notice" as referred to above.

(31). The Excise Act was amended on 6.8.85 and the amendment was made in Section 30-A. In this context, it will be useful to peruse the statement of objects and reasons given for the amendment. It is necessary to make such person liable to pay interest if they fail to make payment of dues by the due date as

prescribed in the Act or the rules. Necessary amendment in Section 30-A of the Act is, therefore, being made for the purpose.

(32). The amended Section 30-A reads as under:-

"30-A. Interest payable on failure to pay excise revenue:- If the amount of any duty, fee or other demand due against any person under this Act or the rules made thereunder is not paid till the due date as prescribed, he shall be liable to pay on the amount due simple interest at the (rate of one and half percent) per month where the default continues for not more than three months and at the (rate of two percent) per month where the default continues for more than three months from the day next following the day on which the payment of such duty, fee or demand became due."

(33). This amended section is relevant in the present controversy and is applicable to certain recoveries of interest in the present case i.e. after 1985. It is the case of the learned counsel for the petitioner that on a perusal and comparison of old and present law it is crystal clear that since defaults used to avoid the service of notice, mandatory conditions of notice which was earlier in the Act was deleted. But at the same time, condition precedent for the payment of interest is that dues are required to be paid at due date as prescribed, and if on the due date, the dues are not paid, then only interest can be levied.

(34). Thus, according to Mr. K.N. Joshi, on a reading of Section 30A, amended Section 30-A and the statement of objects and reasons, it is clear that an assessee is required to pay the dues on the date prescribed under the rules or the Act or otherwise. Thus, in the absence of which, if interest is to be levied, due amount has to be assessed and notice is mandatory, where no date is prescribed for the payment of dues. In other words, where time or date is not prescribed under the Act or Rules, for the payment of dues since the interest is an additional liability prior to levying the interest, notice must be given for the payment of dues and in the absence of which question of levying interest does not at all arise, for the reason that since the dues are not prescribed, nor demanded, the question of payment of interest is not attracted.

(35). It is submitted that since no notice was given, and no date or time is prescribed for the payment under the rules and the Act, the interest is not payable. Citing Ahmedabad Urban Development Authority Vs. Sharadkumar Jayantikumar Pasawalla and others, . Mr. Joshi submitted that the delegated authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring the theory of implied intent or the concept of incidental and ancillary power in the matter of exercise of fiscal power.

(36). We have given our thoughtful consideration to the entire matter placed before us. We have carefully gone through the pleadings and the judgments cited by the counsel appearing on either side, and considered the arguments advanced by the counsel for the respective parties.

(37). In the instant case, the petitioner in both the writ petitions, has questioned the authority of the Department of levying bottling fees through a writ petition before this Court and the said writ petition was dismissed on 17.8.95. This fact is not disputed. It is submitted that after the dismissal of the writ petition, the petitioner filed SLP before the Supreme Court and since the Supreme Court has refused to stay recovery of the amount pertaining to bottling fees, the petitioner had no other way except to deposit the amount.

(38). According to the learned counsel appearing for the State, there is no need to give any notice for payment of due amount of bottling fee, since it is the duty of the Distillery to deposit the said amount. It is to be noticed that the petitioner has challenged the order of Excise Commissioner, by which he has dismissed the application of the petitioner u/S. 30A of the Act, and the writ petition was also dismissed by this Court. The special appeal filed against the judgment passed by the learned Single Judge was remanded by the Division Bench for reconsideration of the application of the petitioner u/S. 30AA of the Act, and the applications u/S. 30-A and Section 30-AA were considered by the Excise Commissioner and the same has been dismissed vide order dated 16.8.97. The petitioner, in our view, is not entitled to make any grievance regarding the interest levied u/S. 30A of the Act because the petitioner has not taken this ground before the learned Single Judge in the earlier writ petition and the petitioner has said that the respondents have arrived at an amount which, according to the petitioner, was correct calculation of interest. The Hon'ble Judges of the Division Bench in DBC Spl. Appeal No. 378/97 has specifically observed the same in their judgment. The Tribunal has also rightly observed the same.

(39). In our view, the provisions of law are very clear. It was the duty cast upon the petitioner to calculate the bottling fee and deposit the same in the Department in time. In such circumstances, there is no question of giving any notice to the petitioner and the contention of the petitioner to this effect is baseless and, therefore, the same is liable to be rejected.

(40). Admittedly, the petitioner has not paid the amount of bottling fee in time and, therefore, he is liable to pay interest on the delayed payment as per the provisions of law. Likewise the petitioner cannot question the rate of interest at this stage. It is pertinent to notice that the petitioner has never questioned the rate of interest at any point of time, either before the Excise Authority or before the High Court, in the Single as well as before the Division Bench, and again before the Excise Authority and the Taxation Tribunal. In such circumstances, we are of the view that the petitioner is not entitled to raise this new plea at this stage.

(41). The fact remains that the petitioners themselves sat with the answering respondents and arrived at an amount which, according to the petitioner, was correct calculation of interest. In this contest it is to be noticed that the Department has earlier demanded a sum of Rs. 1.84 crore as interest but the same was reduced upto Rs. 1.45 crore after the Departmental Officials having

deliberations with the petitioner, the amount was calculated in terms of Section 30A of the Act. Hence, the contention raised by the learned counsel for the petitioner, has no force in the eyes of law and the same is liable to be rejected.

(42). The Rajasthan Taxation Tribunal has also rightly observed that as per Section 30A of the Act, it was the duly cast upon the petitioner to calculate the bottling fee and deposit the same in time and, therefore, there is no question of giving any notice to the petitioner for depositing the amount due as bottling fee. The Tribunal, after considering the judgments referred to by both the parties, have observed that no person is liable to get the benefit of stay order when the writ petition filed by him is ultimately dismissed by the Court. The finding given by the Tribunal on this point is just and proper and in accordance with the provisions of law.

(43). It was argued specifically before the Tribunal that once the petitioner has sat with the Department and agreed on an amount, it is not open for him to challenge the same at this stage. It was also argued that the observations made by the Division Bench of this Court in DBC Spl. Appeal No. 378/97 decided on 30.4.97, are very clear and on the basis of which the petitioner cannot challenge the imposition of interest u/s 30A of the Act. In the facts and circumstances, the petitioner is also not entitled for waiver of interest u/S. 30A of the Act and his claim for waiver has been rejected by the Tribunal.

(44). As could be seen from the judgment of the Division Bench in D.B. Civil Special Appeal No. 378/97, the controversy involved in the appeals and the question of imposition of excise duty by the appellant, was questioned by the petitioner before this Court unsuccessfully and the liability to pay the excise duty was maintained even upto the Supreme Court. As pointed out by the Division Bench that since the law provided for imposition of interest on delayed payment of the excise duty, the Excise Commissioner issued an order on 16th December 1995 whereby interest for about 10 years from 1984 to 1995 was demanded from the petitioners and that the payment of excise duty challenged by the petitioner against the imposition of excise duty, came to an end. As regards imposition of interest, the petitioner has got the same corrected by settling with the respondents and no steps were taken by them to file any appeal against the order of Imposition of Interest on the amount of excise duty.

(45). However, the petitioners preferred an application u/S. 30AA for waiver of interest because they were ready and willing to cooperate with the Department as regards realisation of interest. The Commissioner by order dated 31.8.96, rejected the application of the petitioner and in the further proceedings taken against the Commissioner's order by way of writ petitions, the interest was refused to be waived.

(46). We shall now consider the judgment cited by Mr. K.N. Joshi and its relevancy in the present context.

(47). 1992 AILLJ 237 (supra) a Division Bench of the Allahabad High Court, while

construing the word "Payable" has observed as follows:-

"The word payable should be interpreted to mean "legally enforceable" and is not capable of any other interpretation due to the interim order passed by the High Court staying the recovery of the excise fee. Thus, the amount of licence fee was not legally enforceable against the petitioner on the date the Act came into force as the petitioner was saved from paying it, due to the interim order passed by the High Court. The licence fee became payable only after the dismissal of the writ petition and the petitioner became liable for interest only from the date of the dismissal of the writ petition and not from the date the Amendment Act came into force. Moreover, word "payable" in second proviso is to be read in the context of the words "before" commencement of Act. Hence, second proviso to Section 38 will not be attracted."

(48). In *Vrinda Gujarati vs. Bareilly Development Authority* (supra), our attention was drawn to para 26 to para 32. It was contended before the said Court that from the date of stay till the stay is vacated or final decision, no interest can be charged pendente lite and that if the payability of the principal amount itself is arrested under the order of Court, no interest can be charged thereon for the period during which the order of the Court remains operative. The Division Bench of the Allahabad High Court was of the opinion that only when the principal amount becomes payable after the decision of the Court and then the petitioner becomes liable to pay interest from the date of the decision of the writ petition and not from the earlier date as the principal amount itself was under dispute and was not finally determined by the Court and thus its payability was arrested by the Court passing the stay order. Hence, interest only can be charged on the principal amount after the determination by the Court but certainly not during the pendency of the petition, i.e. from the date of stay order till either the stay order is vacated or petition is finally decided.

(49). Similarly, in *State of Rajasthan & Ors. vs. Ghasilal* (supra), it is ruled that till the tax payable is ascertained by the assessing authorities concerned, no tax can be said to be due only till then a liability to be assessed to tax may be there. Thus, the question of paying any interest does not arise.

(50). In *J.K. Synthetics Ltd. vs. Commercial Taxes Officer* (supra), the Supreme Court ruled that it is difficult to hold that the law envisages the assessee to predicate 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.

(51). The above judgment of the Allahabad High Court and the Supreme Court will be of no assistance to Mr. Joshi since in those cases the principal amount itself was under dispute and was not finally determined by the Court and thus, its payability was arrested by the Court in passing the stay order. Therefore, the Courts have held in all the above cases that interest only can be charged for principal amount after the determination by the Court.

(52). In *Zunjarrao Bhikaji Nagarkar vs. Union of India* (18), the Supreme Court held that during the pendency of the proceedings before the learned Single Judge, the respondent-petitioners had obtained a stay of collection of tax in respect of the contract carriage vehicles involved in the writ petitions before the High Court. The learned Single Judge, while dismissing their writ petitions, directed that the petitioners should pay the balance tax due upto 30.9.95 in equal installments. From the records, the Supreme Court was not able to find whether there was any interim order of stay during the pendency of the appeal before the Division Bench. But, however, the stay sought for by the State in the appeals was rejected. Therefore, taking into consideration the fact that atleast after the judgment of the Division Bench there has been no stay or any other interim order in favour of the State, the Supreme Court was of the opinion that it would be just and fair that inspite of the fact that they have allowed the appeal of the State, the State should not demand the enhanced tax from the respondents which may have become due by virtue of the judgment for the period between the date of Judgment of the Division bench i.e. 11.12.1995 and the date of delivery of the Supreme Court judgment. The Supreme Court, while upholding the validity of the Notification and while setting aside the judgment of the Division Bench of the High Court, allowed the appeal with the above directions.

(53). In the case on hand, there is absolutely no dispute with regard to the determination of the amount or payment of bottling fees at the rate fixed by the State. In this case, the Department served upon the petitioner the notice for payment of interest on the aforesaid amount of bottling fees on 16.12.95. The petitioner deposited an amount of Rs. 53 lakhs against the payment of Rs. 1.85 crores as interest on 31.3.96. The petitioner also moved an application for waiver of the interest u/s 30AA of the Act. The petitioner, after moving the application for waiver, sat with the Department and arrived at the conclusion that the interest payable was reduced from Rs. 1.85 crores to Rs. 1.45 crores. The stay order granted by this Court was also modified from time to time on condition of the petitioner making certain payments. In this case, there is no dispute or ambiguity in regard to the bottling fees. The petitioner company who has a licence for distillation and manufacture of IMF" (Indian Made Foreign) Liquor granted under the provisions of Rajasthan Excise Act, 1950, is liable to pay bottling fees to the Excise Department which was enhanced to 10 paise per bottle by Notification dated 13.3.82. So far as the legality of the imposition, the same has already stood concluded against the petitioner as discussed earlier in paragraphs supra.

(54). The remand by the Division Bench on 30.4.97 to the Excise Commissioner was only for reconsideration of the prayer for waiver of interest and all the other aspects of the matter has already stood concluded against the petitioner.

(55). In our opinion, the contention of the petitioner-company that they were not served with the notice for making payment of bottling fees is baseless because

under the Rules, for bottles manufactured by the petitioner, it was its duty to calculate bottling fee and to deposit the same, and no separate notice was required.

(56). Food Corporation of India vs. State of Haryana & Another (supra) : This judgment was cited by Mr. Joshi for the proposition that the State could demand interest only on legally payable tax which is paid belatedly as held in the above judgment. The Supreme Court in the above case held that during the period between 17th May, 1975 to 6th January, 1997 the law declared by the High Court was that the State of Haryana did not have the constitutional authority to impose sale-tax on levy transactions. This declaration of law was not challenged by the State per contra the State of Haryana accepted the declaration of law made by the High Court, therefore, the State of Haryana could not have made a demand for the payment of sales-tax on levy transactions. Therefore, the Supreme Court held that the notice of demand was without the authority of law.

(57). The Supreme Court, in this case, has declared the law which empowers the State to raise a demand even for the assessment-year 1975-76 and the Food Corporation of India is bound to satisfy the said demand, but the duty of the assessee to satisfy that demand would arise only when a fresh and valid demand after the judgment of this Court is made by the State and, if, after the demand is made the assessee fails to pay then, as contemplated u/S. 59 of the Haryana Act, the assessee becomes liable to pay the interest also. In that case, the Supreme Court held that a fresh demand was made pursuant to the judgment of the Supreme Court which is the right step to be taken consequent to the declaration of law made by the Court.

(58). In the instant case, a valid demand was made on 16.12.1995 for interest on bottling fee delayed payment and on 31.3.1996 the petitioner had deposited Rs. 53,00,000/- towards interest and final calculation of interest due was made on 3.6.1996 in consultation with the petitioner. The above judgment cited, in our view, has no application to the facts and circumstances of the case on hand.

(59). State of Rajasthan & Others vs. Anil Kumar Sunil Kumar & Party (supra) : In this case, the Excise Commissioner, Rajasthan, Udaipur invited tenders on 06.2.1991 for grant of exclusive privilege licences under the Rajasthan Excise Rules, 1956 for the sale of country liquor for the whole of Rajasthan excluding tribal area. The petitioner's tenders being the highest were accepted and they were granted licence for the retail sale of country liquor for Sirohi group of shops among other licences. According to the petitioners they were grantees of the exclusive privilege licence of shops for the local area comprising of Sirohi revenue district excluding the tribal area. The DEO Sirohi did not allow the petitioners to open their sub-shops in the Municipal areas of Abu Road and Mt. Abu on the ground that those two areas were included in the tribal area which led to short- fall in the sale of country liquor. The petitioners sought declaration that the renewal of the licence granted by the DEO Sirohi in favour of the Sugar Mills for the retail sale of country liquor in the Municipal areas of Mt. Abu and

Abu Road was illegal and also the margin money paid by the Sugar Mills be adjusted towards the exclusive privilege amount payable by the petitioners. The respondents raised a preliminary objection in regard to maintainability of the writ petition. The learned Single Judge directed the writ petition to be dismissed. The Division Bench held that Mt. Abu and Abu Road were included in the area to which the licences granted to the petitioners related and the conduct of the Excise Department treating Mt. Abu and Abu . Road to the scheduled areas was a mistake of law under which both the parties were belabouring. The appeal was allowed and the demand raised against the petitioners was quashed.

(60). The State of Rajasthan preferred appeal by special leave before the Supreme Court. The Supreme Court was of the opinion that the appeal deserves to be allowed and the judgment of the Division Bench deserves to be set aside. The Supreme Court held that the petitioners, in that case, are trying to wriggle out of a contractual obligation by raising the plea that was highly belated and clearly an after-thought. The learned counsel for the writ-petitioners submitted that the principal amount due and payable by them on account of issue price and margin money has been paid by them but the demand of Rs. 8,00,000/- is stated to be outstanding against them which amount consists of interest only which if insisted on being paid, would be ruinous to the petitioners. The Supreme Court has observed as follows:

"In our opinion, looking to the nature of the controversy raised and the stages through which the litigation has travelled up to this Court, i.e., the petitioners having succeeded before the Single Judge earlier, which judgment was set aside on the ground of want of territorial jurisdiction only and again from the Division Bench of the High Court which judgment was stayed by this Court and further keeping in view the payments made by the petitioners to the Excise Department during the pendency of the litigation, we deem it proper to direct that no further amount should now be realised from the petitioners. It may be placed on record that on behalf of the State of Rajasthan the factual position as to the amount of dues and the heads under which it has been demanded and substantially paid, as stated in this para, specially the fact that the outstanding amount is only Rs. 8 lakhs and is attributable to demand on account of interest has not been disputed."

(61). A reading of the above conclusion would go show that the Supreme Court, looking to the nature of the controversy raised and the stages through which the litigation had travelled up to the Supreme Court and the petitioners having succeeded before the Single Judge earlier and the stay granted by the Supreme Court on the judgment of the Division Bench; and, keeping in view the payments made by the petitioners to the Excise Department during the pendency of the litigation, the Supreme Court directed that no further amount should now be realised from the petitioners. Hence, in our view, this judgment is also distinguishable on facts.

(62). Adoni Ginning Factory & Others vs. Secretary, A.P.E.B. (supra): This

judgment is also of no assistance to the petitioners' case. In this case, the very rate of levy of surcharge stipulated in the agreement, viz, one per cent per mensem was under challenge. The relevant para of clause 9 says that every consumer shall pay the amount of the bill within thirty days of the date of receipt of the bill. In default of such payment, he shall pay an additional charge of one per cent on the amount of the bill for every month of delay or part thereof. The Supreme Court held that the very rate of levy of surcharge is a clear indication that the levy is not meant to be a penalty but is a provision for interest by way of compensation for the late payment and, therefore, there is no question of relieving the appellants against any penalty.

(63). It was explained by the learned counsel for the Board that no surcharge was claimed for that period as the operation of G.O. No. 187 dated January 30, 1955 had itself been stayed at that time and the surcharge was claimed for the period during which the appeals were pending in the Supreme Court since the Supreme Court did not stay operation of the G.O. but only restrained the Board from collecting the arrears; and, that no stay of G.O. was ever intended to be granted by the Supreme Court is also clear from the circumstance that there was no injunction restraining the Electricity Board from collecting future charges at the enhanced rates. The Electricity Board was, therefore, right in claiming surcharge for the period during which the appeals were pending in the Supreme Court and not claiming surcharge for the period during which the writ petitions and writ appeals were pending in the High Court. The Supreme Court rejected the submission that the bills issued by the Board did not call upon the appellants to pay the arrears as being entirely without substance.

(64). *Shyam Lal & Party vs. State of Rajasthan* (19). The Division Bench of this Court, in this case, has observed that the principles of natural justice do not apply to a matter of contract and the contract in the shape of licence had been entered into which does not provide for an opportunity of being heard being given to a defaulter. The petitioner was in the capacity of a defaulter and in that capacity the proceedings for recovery of the amount for the two years 1982-83 and 1983-84 were started. Since the money was not paid in accordance with the agreement, the Bench held that it could be recovered by the Excise Department and it does not lay down any requirement of any opportunity being given to the petitioner of being heard. Since the amount as and when fell due was known to the petitioner there was no question of its determination as well as the recovery and, therefore, it is not illegal on the grounds mentioned.

(65). In the above case, the petitioner under the licence was required to make monthly deposits in the manner laid down in the contract. It, however, defaulted in making payment for the year 1982-82. Hence recovery was started against it for the interest through the notice dated 24.10.83. The petitioner defaulted in making the payment of amount due with respect to the year 1983-84 also. The Departmental issued the notice dated 4.1.84 for recovering Rs. 7436.15 as interest. The petitioner challenged the recovery on two grounds that as no

determination of the amount actually due from the petitioner had taken place and no opportunity of hearing had been given to him before either determining the amount or issuing a notice for recovering the interest, the recovery was illegal and bad in law. The Supreme Court has decided the case as extracted in paragraph supra.

(66). In the case on hand, all the terms and conditions, clauses/provisions in the Act and the Rules were known to the petitioner and, under these terms, he was required to pay the amount as and when it becomes due and in the manner as prescribed in the contract. Since the petitioner became a defaulter he is bound to pay interest at the rates provided in the Act and the Rules.

(67). In our opinion, the case put forward by the learned senior counsel for the petitioner has no merit and, therefore, the writ petitions are liable to be rejected. At the same time, we are bound to give relief to the State in regard to payment of interest since the imposition of interest was never challenged in appeal u/S. 9A of the Act and the petitioner has already worked out the amount payable by sitting with the Department and the feeble contention made by the petitioner to challenge the same was rejected by the learned Single Judge and by the Division Bench; and, the waiver of interest asked for by the petitioner itself would show that the petitioner was not challenging the validity and legality of the same but was asking only for clemency. The remand by the Division Bench on 30.4.97 to the Excise Commissioner was only for reconsideration of the prayer for waiver of interest; and, that, all other aspects of the matter stood concluded against the petitioner. The question of waiver has also been dealt with and decided against the petitioner. The petitioner has now through his counsel attempted to put forward two claims in this petition, viz; (i) that the interest was not leviable, and (ii) the petitioner was entitled for its waiver,

(68). Although the challenge to the levy of interest in the present case is fundamentally baseless and, rather, the question of validity of the claim of interest already stands concluded against the petitioner, the petitioner is not entitled to re-open the question of validity of the claim of interest. Even on merits, the petitioner, in our opinion, has no case for the following reasons:

(69). A. The contention of the petitioner-company that the petitioner-company was not served with a notice for making payment of the bottling fee is baseless because under the rules it was its duty to calculate the bottling fee at the rates fixed from time to time and deposit the same. Therefore, no separate notice was required.

(70). Regarding the stay order granted in the earlier writ petition and its effect, it may be mentioned that the petitioner applied for and obtained the stay at its own peril. The bottling fee was standing under the statute and the petitioner was liable to pay the same. The petitioner, in our opinion, had the advantage to keep the amount without paying it to the State Exchequer only because of the restraint order passed by the Court. The challenge failed on merits before this

Court and the appeal before the Hon"ble Supreme Court was withdrawn in view of the statutory provisions. Therefore, the petitioner would not be entitled for any advantage of the stay granted by this Court; and, on the contrary, the State would be entitled to recover the interest not only on the basis of statutory provisions but even in common law the State would be entitled to be compensated for the loss suffered by it. The contention raised by Shri Joshi stands negatived by the decision of the Supreme Court in Calcutta Jute Manufacturing Company's case (supra). The Supreme Court decision in that case was followed by the Kerala High Court in *Anas vs. State of Kerala* (supra). In Calcutta Jute Manufacturing Company's case (supra), the Supreme Court was considering the case of interest on sales tax due. In that case, the liability of the dealer to pay interest for the period recovery of tax remained stayed under interim order of the High Court came to be examined. The assessee unsuccessfully challenged the validity of the provision for turnover tax in Section 6B of West Bengal Finance (Sales Tax) Act without entertaining any doubt as to their liability to turnover tax thereunder in case the provision was found to be valid. The High Court had, by an interim order, stated the recovery of the tax due u/s 6B during the pendency of the litigation. The appellants were held liable to pay interest on the tax amount for the said period, the Court further held that the grant of interim order could not lead to the inference that the High Court was satisfied of a strong prima facie case for the appellants. It is relevant to extract few passages from the above judgment. They run as under:

"The tax amount which they should have paid as per Section 6- B remained with the appellants during the entire period and they would have earned goods profit with that amount. The State, to which the tax amount should necessarily have gone, was not able to utilize it for public purposes. When appellants had the advantage of keeping the amount of tax without paying it to the State exchequer only because the High Court granted orders restraining the State from recovering that amount from the assessee, no act of the Court shall cause prejudice to any party. The maxim "*actus curiae neminem gravabit*" has ever remained a salutary and guiding principle.

Interim orders are passed by the High Court on a variety of considerations, one among them being the strained financial position of the person approaching the court. Merely because the court granted interim orders it cannot be inferred that court was then satisfied of a strong prima facie case for the appellants. On the contrary, it is well nigh settled that there is always a presumption in favour of constitutionality of a legislative act. The presumption cannot be the other way round.

In the instant case, it is admitted that the appellants have not mentioned the amount of turnover or the tax payable thereon in the return filed by them. Therefore, the consequence is that they have failed to furnish a return which is "referred to in Section 10" as envisaged in Section 10-A (2). Thus, the liability to pay interest commenced under that provision at the very moment the assessing

authority made the assessment u/S. 11. Interest thereon would start accruing from the date prescribed for furnishing the correct return in accordance with Sec.10."

(71). The above judgment was followed by the Division Bench of the Kerala High Court in the judgment reported in *Anas vs. State of Kerala* (supra) (Dr. AR. Lakshmanan, Actg. C.J. & S. Sankarasubban, J.). In that case, the matter relates to payment of one-time Motor Vehicles Tax. As per Section 39 of the Kerala Motor Vehicles Act all the vehicles have to be registered with the concerned registration authority and, after registration of the vehicles, the Taxation Officer has to endorse the rate of tax to be remitted in the registration certificate. The vehicles can be used only after the payment of the aforesaid rate of tax. According to the newly introduced provision, the petitioners are liable to pay one-time tax at the rates specified in the annexure to the Amendment of the Kerala Motor Vehicles Taxation Act, 1976. A proviso is added to Section 3 and as per the said proviso the petitioners are liable to remit one-time tax at the rates specified in the annexure at the time of first registration of the vehicle, The petitioners who are owners of the newly purchased vehicles come under the amended provision of the Motor Vehicles Taxation Act. The petitioners contended that the law applicable at the time of booking of the vehicles should be applied at the time of purchase of the vehicle which, the Court held, cannot be accepted.

(72). In the above case, the learned Single Judge while staying the operation of the amendment made by Section 3(1) of the Kerala Finance Bill, 1998 imposed the following conditions:

- "1. The petitioner shall pay two years tax with addl. tax, if any, on the vehicle.
2. He/she shall not sell, transfer or alienate the vehicle during the pendency of the case.
3. The petitioner shall also file an undertaking before the registering authority that he/she shall pay the tax with 18% interest within two weeks from the date of judgment if the O.P. is decided against the petitioner."

(73). Before the Division Bench, it was argued on behalf of the petitioners that the order passed is only an interim order pending final adjudication of the question involved and that in the absence of any provision in the taxing statute for charging interest, the State shall not be permitted to collect interest as ordered in the interim order.

(74). Per contra, the learned Government Pleader Mr. V.V. Asokan placed before the Court the decision of the Supreme Court reported in *Calcutta Jute Manufacturing Co. vs. C.T.O.* (20), and submitted that even though there is no provision for charging interest, the taxation statute has to be construed so as not to upset or impair the purpose of the provisions. Referring to the Supreme Court decision, the Bench observed as follows;

"In that case, the appellant before the Supreme Court filed a Writ Petition before

the High Court challenging the validity of Section 6B of the Bengal Finance (Sales Tax) Act, 1941, imposing a tax on the annual aggregate gross turnover of a dealer whose gross turnover exceeded Rs. 50 lakhs. On admission of the petition, the High Court granted interim injunction against the Government from collecting such tax; but, ultimately the Writ Petitions were dismissed and the appellants paid tax thereafter. Demands were made on the appellants u/s 10A for interest on the amount of tax for the period of default. The appellants challenged the demand for interest before the Taxation Tribunal, but the Tribunal upheld the demand. The Supreme Court, after affirming the decision of the Tribunal, held that the tax which the appellants should have paid u/s 6B remained with them during the entire period, and the State, to which the amount should have necessarily gone, was not able to utilize it for public purposes, and that the appellants had the advantage of retaining the amount of tax without paying it to the State exchequer only because the High Court had granted stay orders restraining the State from recovering the amount from the appellants. It was further held that no act of Court should cause prejudice to any party and that merely because the High Court had granted interim orders, it could not be inferred that the Court was satisfied of a strong prima facie case for the appellants, but on the contrary, it is well-settled that there is always a presumption in favour of the constitutionality of a legislative act and not the other way round. K.T. Thomas, J. speaking for the Bench, held in paragraph 16 of the judgment as follows:

"The tax amount which they should have paid as per Section 6B remained with the appellant during the entire period and they would have earned good profit with that amount. The State, to which the amount should necessarily have gone, was not able to utilise it for public purposes. When appellants had the advantage of keeping the amount of tax without paying it to the State Exchequer only because of the High Court granted orders restraining the State from recovering that amount from the assessee, no act of the Court shall cause prejudice to any party. The pristine doctrine couched in the maxim "*actus curiae neminem gravabit*" has ever remained a salutary and guiding principle."

In view of the above decision of the Supreme Court, persons like the petitioner, who have obtained the conditional interim order, are liable to pay the tax due with interest at 18% per annum. We, therefore, direct the petitioner to pay the tax due, together with interest at 18% per annum from the date on which the tax fell due till the date of payment, within one month from today. The amounts already paid by the petitioners shall be given credit to and interest as above shall be chargeable only on the tax remaining to be paid.

The original petitions are without merits and are accordingly dismissed subject to the above directions."

(75). The facts narrated and decision arrived at in the above Kerala case can directly be made applicable to the instant case. In this case, the learned Single Judge while admitting the writ petition passed the following order:

"Issue notice of the stay application and be given dasti. In the meanwhile and until further orders, the respondents shall not take coercive action for recovery of the amount. This stay order shall remain operative for fifteen days from today. The matter be listed on 4.10.96 for hearing on stay. It will be the responsibility of the petitioner to serve the notice of the writ petition and the stay petition on the respondents."

(76). In this case the petitioners have given an undertaking in writing that they will abide by the terms and conditions that may be imposed and directions that may be made at the time of passing of the final orders. Similar undertakings were filed in the above Kerala case. The High Court granted interim injunction against the Government from collecting such tax but ultimately the writ petitions were dismissed and the appellants paid the tax thereafter. Demands were made on the petitioners for interest on the amount of tax for the period of default. The petitioners challenged the demand for interest before the Tribunal and before the Single Judge and also before Division Bench. All the authorities held that the bottling fee which the appellants should pay remained with them during the entire period and the State to which the amounts should have necessarily gone was not able to realise and utilise the same for public purposes in view of the stay order passed by the High Court; and, the petitioners had the advantage of retaining the amount of bottling fee without paying it to the State exchequer because the High Court had granted the stay orders. The Supreme Court has pointed out that no act of court should cause prejudice to any party and merely because the High Court had granted interim orders it could not be inferred that the Court was satisfied of a strong prima facie case for the appellants, but, on the contrary, there is always a presumption in favour of the constitutionality of a legislative act and not the other way round. In view of the above judgment of the Supreme Court, we are of the opinion that persons like the petitioners who obtained the interim order from the court are liable to pay tax due with interest as notified in the Act and the Rules.

(77). In *Grindlays Bank Ltd. vs. I.T.O.*, (supra), the appellant before the Supreme Court Grindlays Bank carried on business in India and filed return of its income for the year 1972-73. During the assessment proceedings, the I.T.O. issued notice u/s 141 of the Income Tax Act and required the appellant to produce certain account-books and documents. A writ petition was filed by the Bank against the notice. The Single Judge directed the appellant company to comply with the notice and an appeal was preferred. The appeal was allowed by the High Court and the impugned notice was quashed. While doing so the Division Bench also directed the I.T.O. to make a fresh assessment. The appellant contended that the High Court was in error in making the direction for fresh assessment because the assessment had already become barred by limitation and thereby a valuable right not to be assessed had accrued to the appellant and the High Court was not competent to deprive the appellant of that accrued right. An order was necessary in order to do complete justice between the parties. It was a sound exercise of judicial discretion in making it. The Supreme Court held that

ordinarily where the High Court exercise certiorari jurisdiction it merely quashes the offending order and does not substitute its own order for the order quashed by it. But it has power nonetheless to pass such further orders as the justice of the case requires. The interests of justice require that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court, by the mere circumstance that it has initiated a proceeding in the Court, must be neutralised. The simple fact of the institution of litigation by itself should not be permitted to confer an advantage on the party responsible for it.

(78). In *State of M.P. & Ors. vs. M.V. Vyavsaya & Co.* (supra), the Hon''ble Supreme Court has held that the interim orders are subject to final orders and, therefore, the High Court can, at the final stage, correct or repair the damage caused by its interim orders. ,

(79). Thus we hold that the petitioners are liable to pay interest as claimed.

(80). Regarding the rate of interest it has been submitted that interest has been charged as per the rate applicable at the relevant period and the earlier calculation of Rs. 1.85 crore has been corrected to Rs. 1.45 crore in consultation with the petitioners. Regarding the claim for waiver of interest u/s 30AA of the Act it has been submitted that the same could be ordered by the Excise Commissioner on the satisfaction that to do otherwise would cause genuine hardship to the licensee and the licensee has co-operated in any proceedings for recovery of any amount due from him. It is submitted that the case in hand is not and could not be a case of any hardship and least any genuine hardship. The petitioners are engaged in large business of manufacturing I.M.F.L. and have retained the amount of bottling fee payable to the State for over a decade and have paid the same only after failing at the last stage i.e., rejection of the stay application by the Supreme Court. In writ petition No. 2983 of 1996 also, the learned Single Judge observed that the bottling fee of about Rs. 1.40 crore was deposited after over a decade and the manner in which the matter is dragged on from one court to another shows that no hardship would be caused to the petitioner and there arises no question of any co-operation of the petitioner. It made the payment of the over-dues only after failing at the last step. The petitioner has even attempted to raise baseless ground repeatedly in the matter of payment of interest,

(81). In view of the above, the petitioner has, in our opinion, failed to make out any special case for waiver or reduction of interest already over-due against it.

(82). In the result, both the writ petitions deserve to be dismissed. Accordingly, we do so. However, there shall be no order as to costs.