
(2014) 09 AP CK 0144

In the Andhra Pradesh High Court

Case No : Tax Revision Case Nos. 254 and 285 of 2001

Raj Kumar Engineering Pvt. Ltd.

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 37(1)

Citation : (2015) 77 VST 340

Hon'ble Judges : Ramesh Ranganathan, J; M. Satyanarayana Murthy, J

Bench : Division Bench

Advocate : S. Dwarakanath, Advocate for the Appellant; M. Govind Reddy, Spl. S.C, Advocate for the Respondent

Judgement

Ramesh Ranganathan, J.—These two Tax revision cases are filed by the assessee aggrieved by the order of the Sales Tax Appellate Tribunal upholding the order of the Appellate Deputy Commissioner who, in turn, had confirmed the order of the assessing authority levying penalty under Section 15(4)(a) of the Andhra Pradesh General Sales Tax Act, 1957 (for brevity, "the Act") as it stood before its amendment by Act 18/1985 with effect from 01.07.1985.

2. Both Sri S. Dwarakanath, learned counsel for the petitioner, and Sri M. Govinda Reddy, learned Special Standing Counsel for Commercial Taxes, would agree that it would suffice, for the disposal of both these Tax revision cases, if the facts in T.R.C. No. 254 of 2001 are noted. The petitioner, in T.R.C. No. 254 of 2001, is a dealer registered on the rolls of the Commercial Tax Officer, Barkatpura Circle, Hyderabad. For the month of February, 1996, in the assessment year 1995-96, the petitioner filed their returns, under Rule 17 of the Andhra Pradesh General Tax Rules, 1957 (for brevity, "the Rules"), admitting a tax liability of Rs. 9,19,262/-. On the ground that tax was paid belatedly, i.e. beyond the month in which it fell due, the assessing authority issued notice dated 29.03.1996 calling upon the petitioner to show cause why penalty should not be imposed under Section 15(4) of the Act.

3. In his order dated 08.04.1996, the assessing authority held that, in reply to the show cause notice, the petitioner had submitted a written explanation stating that, due to financial problems, they could not pay the tax in time; the explanation submitted by the dealer was not reasonable; their conduct in paying statutory taxes to the Government, throughout the financial year 1995-96, was disturbing; even in the earlier months of 1995-96, they had delayed payment of their monthly tax in time, inspite of several oral directions; in the last month of the financial year 1995-96 i.e. in the month of March, the dealer had exhibited total indifference towards statutory payment of sales tax; and, hence, it was just and proper to take action under Section 15(4)(a) of the Act, and levy penalty equal to the tax amount of Rs. 9,10,260.80/-.

4. Aggrieved thereby, the petitioner preferred an appeal to the Appellate Deputy Commissioner. In his order dated 23.10.1996, the Appellate Deputy Commissioner noted the admission of the authorized representative, appearing on behalf of the petitioner, that they had charged sales tax separately in their sales invoices issued to their purchasers. The Appellate Deputy Commissioner held that that they did not argue against the levy of penalty prescribed under Section 15(4)(a) of the Act; they were habitual in filing returns belatedly; and they were not prompt in the submission of their returns. Having regard to the fact that (1) sales tax was charged in the sales invoices issued by the petitioner, and (2) belated filing of the returns earlier were also noticed in respect of the petitioner, the Appellate Deputy Commissioner saw no scope to interfere with the impugned penalty proceedings as no evidence was placed before him to show that the petitioner had sought time for payment of the taxes due for the month of February, 1996. The appeals were, accordingly, dismissed.

5. Aggrieved thereby, the petitioner carried the matter in appeal to the Sales Tax Appellate Tribunal. In the order under revision, the Tribunal noted the contention, urged on behalf of the petitioners, that the reasonable explanation given by them was not accepted by the Appellate Deputy Commissioner; they were regular and prompt tax payers, and had produced books of accounts to show transmission of information from the branch to the Head Office promptly every month well in advance, so that there would be no delay at the level of the Head Office in arranging payment, by way of demand drafts, to the assessing authority; the delay in the month of February, 1996 was because of financial stringency; the Appellate Deputy Commissioner had erred in passing the order without applying his mind; he had failed to consider the judgment of the Supreme Court in Hindustan Steel Ltd. Vs. State of Orissa, ; he should have held that levy of penalty, equal to the tax due, was not warranted.

6. In the order under revision, the Tribunal held that, under Section 15(4)(a) of the Act, the penalty provided was for an amount equal to the tax; the penalty to be levied was fixed under the Act to be an amount equal to the tax due where the dealer had charged tax from the purchaser, but had failed to pay the same to the State; penalty, in other cases, was governed by Section 15(4)(b) of the Act

which provided for imposition of penalty for an amount not exceeding half the amount of tax; in other words, under Section 15(4)(b) of the Act, the maximum penalty which could be levied was half the amount of tax; penalty could be levied at less than the maximum having regard to the circumstances of the case; however Section 15(4)(a) of the Act left no discretion to the authority to impose penalty for any lesser amount than the tax due under the Act; if imposition of penalty was justified, in the circumstances, the assessing authority had no discretion to levy a lesser penalty than the tax due; he had to levy the same amount as penalty which was equal to the tax due under the Act; in the present case, even though the assessing authority did not specify whether he was imposing penalty under Section 15(4)(a) or Section 15(4)(b) of the Act, the Appellate Deputy Commissioner had held, on the basis of the admission made on behalf of the petitioner, that the dealer had collected tax from the purchasers, and levy of penalty by the Commercial Tax Officer was only under Section 15(4) (a) of the Act; both the assessing authority and the Appellate Deputy Commissioner had considered the conduct of the dealer, and had come to the conclusion that they were accustomed to filing returns belatedly; and they were not paying taxes in time, without any justifiable reason. In view of this finding, and as imposition of penalty was under Section 15(4)(a) of the Act, the Tribunal saw no ground to interfere with imposition of penalty for a sum equal to the tax due under the Act.

7. After referring to the judgment of, the Supreme Court, in Hindustan Steel Ltd. Vs. State of Orissa, , the Tribunal held that imposing penalty was a quasi-criminal proceeding; and it would not, ordinarily, be imposed unless the dealer acted deliberately, and dishonestly. After noting the contention, urged on behalf of the petitioner, that non-payment of tax for the month of February, 1996 was not a deliberate act but was due to financial stringency, the Tribunal held that the vague plea of financial stringency was no justification for non-payment of tax in time, specifically when the same was charged and collected from the customers; the orders of the assessing authority and the Appellate authority did not show, except for financial problems, any other circumstance being pleaded in justification of the delay in payment of tax; the assessing authority had rightly held that this explanation was not reasonable; the contention that the assesseees were regular and prompt tax payers, and the default was only a stray incident, could not be accepted in the light of the observations made by the Commercial Tax Officer that they were chronic defaulters in payment of taxes in time, even in earlier months of 1995-96, and the observations of the Appellate Deputy Commissioner that they were accustomed to filing returns belatedly; the facts and figures, as reflected in the order of the Appellate Deputy Commissioner, showed that delayed payment of tax was a regular feature; delayed payment, regularly during the assessment year 1995-96 without justifiable reason, showed the deliberate and dishonest intention of the dealers in withholding payment of tax to the State in time, though they had charged and collected the same from the purchasers; imposition of penalty was justified; a lesser penalty could not be

imposed as Section 15(4)(a) of the Act prescribed a fixed penalty; and it was not the maximum penalty, as in the case of the penalty prescribed under Section 15(4)(b) of the Act. The Tribunal found no justification in the petitioners claim for reduction of the penalty imposed under Section 15(4)(a) of the Act which provided for the imposition of a fixed penalty where tax was charged but was not paid to the State in time.

8. Before us Sri S. Dwarakanath, learned counsel for the petitioner, would submit that Section 15(4)(a) of the Act is not attracted where a dealer charges tax at a lesser rate than what is prescribed under the Act; and where a dealer, who has not charged tax, admits his liability and pays tax later; while these cases would undoubtedly fall within the scope of clause (b) of Section 15(4) of the Act, even cases, where a dealer has charged but has not collected tax from their customers before the due date of payment of tax, would also fall within the ambit of clause (b) of Section 15(4) of the Act; it is only those cases, where a dealer has not only charged but has also collected tax from his customers before the due date, and has not paid the collected tax to the State, which would fall within the ambit of Section 15(4)(a) of the Act; the word "charged" in Section 15(4)(a) of the Act must be read as "charged and collected"; it is only if a dealer has collected the tax charged would clause (a) of Section 15(4) of the Act be attracted; in cases where the assessee has either not charged his customers to tax, or has not collected tax from his customers even though he had charged them to tax, clause (b) alone is attracted and not clause (a); it is only if a dealer has collected tax, and has not paid it to the State, is he liable to pay penalty under Section 15(4)(a); the finding of the Tribunal, that the petitioner had collected tax from their customers, is perverse and is based on no evidence; while there is no discretion conferred on the authority to reduce the penalty in cases where clause (a) of Section 15(4) of the Act is attracted, such a discretion is available to the assessing authority under clause (b) of Section 15(4) of the Act; the past conduct of the petitioner cannot form the basis for levying penalty; for belated payment of tax in any of the earlier months, the assessing authority could have imposed penalty for that month if he considered it appropriate to do so; failure to pay tax on time, in a given month, cannot form the basis for imposing penalty for another month; it is not as if the dealer goes scot-free as interest is levied, for belated payment of tax, under Section 16(3) of the Act; Section 15(4) of the Act is a penal provision and must be strictly construed; and it is only if Section 15(4)(a) is not susceptible to any other meaning, would the petitioner be liable to pay penalty for belated payment of tax.

9. While fairly stating that the petitioner has not specifically urged in the grounds of appeal, before the Sales Tax Appellate Tribunal, that they had not collected tax from their customers, Sri S. Dwarakanath, learned counsel for the petitioner, would draw attention of this Court to the "memo of case law" filed by the counsel for the petitioner before the Tribunal whereby it was contended:-

".....the observations of the appellate authority that the appellants admitted

charged sales tax and therefore did not argue against the levy of penalty under Section 15(4)(a) of the Act is a mistake when the very appeals are filed aggrieved by the levy of penalties. Moreover, the expression "tax charged from the purchasers" logically means the collection from the purchasers. The appellants might have charged sales tax but realization of bills can be delayed....."

10. According to Sri S. Dwarakanath, Learned Counsel, the afore extracted paragraph, filed in the "memo of case law" before the Tribunal, indicates that the petitioners have not collected tax from their customers before the last date on which sales tax was liable to be paid by them; and, as such, they would not fall within the ambit of Section 15(4)(a) of the Act. Learned counsel would rely on R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another, ; and State of Mysore v. Mysore Spinning and Manufacturing Company Limited (1960) 11 STC 734.

11. On the other hand, Sri M. Govinda Reddy, learned Special Standing Counsel for Commercial Taxes, would submit that, at no stage prior to these proceedings, had the petitioners herein ever contended that they had not collected tax from their customers, and this had resulted in belated payment of tax; the Tribunal is the final Court of fact and in the absence of a plea or any documentary evidence being placed by the petitioner before the Tribunal, to show that they had not collected tax before the due date of payment, the finding recorded by the Tribunal to the contrary cannot be said to be perverse or based on no evidence; a finding of fact does not, save perversity or no evidence, give rise to a question of law; even otherwise the words used in Section 15(4)(a) of the Act is "charged"; reading the words "collected" into the said provision would amount to judicial legislation, and is impermissible; the word "charged" cannot be read as "charged and collected"; the mere fact that interest can be charged, under Section 16(3) of the Act, does not disable the revenue from imposing penalty under Section 15(4) of the Act and the order of the Tribunal does not necessitate interference in these revision proceedings.

12. The question whether the assessee has collected tax or not is a question of fact. Even before the Appellate Deputy Commissioner, the petitioner did not contend that they had not collected tax from their customers before the due date of payment. Even in the grounds of appeal, before the Sales Tax Appellate Tribunal, no such contention was raised. As the question, whether the petitioner had collected tax or not, is purely a question of fact and the question, whether penalty could have been imposed on the petitioner for his failure to pay the tax collected by him, is a mixed question of fact and law and not a pure question of law, it would be wholly inappropriate for us to entertain any such contention for the first time in revision proceedings, more so as no factual foundation, in support of such a contention, has been laid by the petitioner before the Tribunal or the authorities below. Even the contention, in the "memo of case law" filed by the Counsel for the petitioner before the Tribunal, is ambiguous. All that is stated

therein is that the expression "tax charged from the purchaser" means collection from the purchasers; and, while the petitioners may have charged sales tax, but realization of bills can be delayed. It is not even specifically stated therein that there was, in fact, a delay in collection of sales tax dues by the petitioner.

13. We could have refrained from examining the contention that the expression "charged tax" in Section 15(4)(a) of the APGST Act must be read as "charge and collected tax", as it is not even clear whether or not the petitioner had collected tax from their customers before the due date. We shall, however, deal with this contention also, as we are satisfied that, even if the petitioner had not collected tax from their customers, penalty can, nonetheless, be imposed on them under Section 15(4)(a) of the Act, as they have charged their customers to tax.

14. Section 15(4)(a) of the Act, as it then stood, stipulated that if any dealer, who is liable to pay tax, fails to submit a return as required by the provisions of the Act or the rules made thereunder or any dealer who fails to pay the tax due on the basis of the return submitted by him under Section 13 or fails to pay the tax provisionally assessed shall be liable to pay, by way of penalty, (a) an amount equal to the tax where the dealer has charged tax from the purchaser; and (b) in any other case, an amount not exceeding half of the amount of tax.

15. Before analysing the scope of Section 15(4) of the A.P.G.S.T. Act it is necessary to refer to the judgments cited by Sri S. Dwarakanath, Learned Counsel for the petitioner. The scope of Section 37(1) of the Bombay Sales Tax Act, 1959, arose for consideration in R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another, . Section 37(1), which related to imposition of penalty for contravention of Section 46, read as under:-

(a) If any person, not being a dealer liable to pay tax under this Act, collects any sum by way of tax in excess of the tax payable by in, or otherwise collects tax in contravention of the provisions of section 46, he shall be liable to pay, in addition to any tax for which he may be liable, a penalty as follows:

(i) where there has been a contravention referred to in clause (a), a penalty of an amount not exceeding two thousand rupees; and, in addition, any sum collected by the person by way of tax in contravention of section 46 shall be forfeited to the State Government."

(emphasis supplied).

16. While elucidating the meaning of the words "any sum collected" the Supreme Court held:-

".....Section 37(1) does say that "any sum collected by the person by way of tax shall be forfeited. Literally read, the, whole sum goes to the State. Let us suppose the dealer has returned the whole or part of the collections to the customers. Should the whole amount, regardless of such repayment, be forfeited? We think not.

Section 37(1) uses the expressions, in relation to forfeiture, any sum collected by the person shall be forfeited." What does "collected" mean here? Words cannot be construed effectively without reference to their context. The setting colours the sense of the word. The spirit of the provision lends force to the construction that "collected" means "collected and kept as his" by the trader. If the dealer merely gathered the sum by way of tax and kept it in suspense account because of dispute about taxability or was ready to return it if eventually it was not taxable, it was not collected. "Collected", in an Australian Customs Tariff Act, was held by Griffith C.J., not to include money deposited under an agreement that if it was not legally payable it will be returned", (Words & Phrases, p. 274). We therefore semanticise "Collected" not to cover amounts gathered tentatively to be given back if found non-exigible from the dealer.....

(emphasis supplied)

17. Section 37(1) of the Bombay Sales Tax Act stipulated a penalty in cases where a dealer had collected any sum by way of tax either in excess of the tax payable or in contravention of Section 46 of the said Act. In construing the expression "collection of tax", the Supreme Court held that the word "collected" used therein did not cover amounts gathered tentatively to be given back if found non-exigible from the dealer. The word "collected" was so construed as Section 37(1) prohibited a dealer from collecting any sum by way of tax; and any amount gathered tentatively, to be given back if found non-exigible, could not be said to be collection of "tax" by the dealer.

18. Section 11 of the Mysore Sales Tax Act, on the construction of which the decision of the appeals before the Supreme Court in Mysore Spinning and Manufacturing Company Ltd. (1960) 11 STC 734, turned, was in the following terms:

"11. (1) No person who is not a registered dealer shall collect any amount by way of tax under this Act; nor shall a registered dealer make any such collection except in accordance with such conditions and restrictions, if any, as may be prescribed.

(2) Every person who collects any amount by way of tax under this Act, shall pay over to the government within such time and in such manner as may be prescribed, such collections as are in excess of the tax paid by him for the period during which the collections were made or, in case he has not paid any amount for the period in question, he shall pay over to government all the amounts so collected by him; and in default of such payment, the amounts may be recovered as if they were arrears of land revenue."

19. The Supreme Court held:-

".....After arguments as regards the proper interpretation of the words "by way of tax under this Act" occurring in Ss. (1) and (2) of section 11 had been advanced by the learned counsel on either side on the lines above indicated, it

was realised that on the facts of all these cases, there was no "collection" at all, whether "by way of tax" or otherwise, so as to bring the amounts received and held by the respondents within the scope of section II. We have already set out the questions referred, which would clearly indicate that the amounts were received by the Cement Marketing Co. and by the Mysore Spinning and Manufacturing Co. and the Minerva Mills Ltd. only as "a deposit to cover a possible contingency of these companies being held liable to pay the tax. That this was the real nature of the transaction was never in dispute. Indeed even the Commissioner of Sales Tax in making the reference in the three cases made it clear that the amounts were received by the companies on the definite understanding and condition that they were to be held only "as deposits" to be refunded when the company in question was held not liable to include the relevant sales in its taxable turnover. The construction on which the Sales Tax Authorities proceeded was that the Act made no difference between one type of receipt and another, and that any receipt of money by a dealer from the purchaser was a "collection by way of tax" within section 11(2) of the Act, provided it had some relation to sales tax, and that it mattered not that the receipt was merely a deposit by the payer carried to suspense account, the amount being received on the express undertaking and definite condition that the same would be refunded in the event of the dealer being held not liable to sales tax on the transaction in regard to which the "deposit" was made. We are unable to agree in this Construction of the expression "collection" occurring in section 11(2) of the Act. Where an amount is received merely by way of deposit, on the express understanding or undertaking as in these cases, the company held the money as a mere custodian, and on the fulfillment of the condition became a trustee for the depositor. It is sufficient to state that when once the tax authorities determined that the proceeds of the sales in question were not within the taxable turnover of the company, the beneficial ownership became vested in the depositors and the company ceased to have any right to continue to hold the moneys. The fact that the physical control of the moneys passed from the "depositor" to the "dealer" did not render the receipt a "collection" within section 11(2) of the Act. We should not be understood as saying that collections by a dealer from a purchaser of amounts not lawfully demandable by him are not "collections" within section 11, merely because the purchaser could in law make a claim for refund and enforce that right in appropriate proceedings. But such a case is far removed from the ones before us, where the payment by the purchaser was conditional and made on an express contract that the sum would be refunded in the contingency of the dealer being held not to be assessable in respect of the relevant turnover. On the facts of these appeals we are unable to hold that there has been any "collection" by way of tax of any amount under section 11(2) of the Mysore Sales Tax Act, 1948...."

(emphasis supplied).

20. In Mysore Spinning and Manufacturing Company Limited (1960) 11 STC 734, the Supreme Court, while considering the scope of Section 11(2) of the Mysore

Sales Tax Act held that the words "collection by way of tax" used in Section 11(2) did not include amounts received merely by way of deposit; and, where the money was held by the dealer as a mere custodian, it did not render the receipt a "collection" merely on account of the fact that physical control of money had passed from the depositor to the dealer. While so holding, the Supreme Court made it clear that they should not be understood to have held that collection by a dealer from a purchaser, of amounts not lawfully demanded by him, were not "collection" within section 11, merely because the purchaser could in law make a claim for refund and enforce that right in appropriate proceedings.

21. Unlike the words "collection of tax", used both in Section 37(1) of the Bombay Sales Tax Act and Section 11(2) of Mysore Sales Tax Act, (the scope of which fell for consideration in R.S. Joshi (1977) 40 STC 497 and Mysore Spinning and Manufacturing Company Limited (1960) 11 STC 734 respectively), Section 15(4)(a) of the APGST Act, as it then stood, did not impose a penalty for "collection of tax". Penalty was imposed, thereunder, on a dealer who had "charged tax" from the purchaser, and not where the dealer had "collected tax" from him.

22. In taxing statutes the expression levy, charge and collection have different connotations. The connotation of the term "levy" does not extend to "collection". Article 265 of the Constitution makes a distinction between "levy" and "collection". Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd., . The words "charging" and "levying" may be used in the same sense, but are not used to include "collecting". Upper Doab Sugar Mills Ltd. Vs. Shahdara (Delhi) Saharanpur Light Railway Company Ltd., ; P. Ramanatha Aiyer's the Law Lexicon, (reprint edition, 2002). The expression levy" does not mean actual collection of the amount. Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd., ; N.B. Sanjana, Assistant Collector of Central Excise, Bombay and Others Vs. The Elphinstone Spinning and Weaving Mills Company Ltd., . In taxing statutes the words "levy" and "collect" are not synonymous terms. While "levy" would mean the assessment or charging or imposing tax, "collect" would mean the physical realisation of the tax which is levied or imposed or charged. Collection of tax is normally a stage subsequent to the levy of tax. The enforcement of levy can only mean realisation of the tax imposed or demanded. M/s. Somaiya Organics (India) Ltd. Vs. State of Uttar Pradesh and Another, ; Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd., .

23. Sales Tax, being an indirect tax, is passed on by a dealer to his customer. A dealer is said to have charged tax when he raises tax in the sales invoice. In cash sales, the charge to tax and its collection is, more or less, simultaneous. In credit sales, however, the dealer first charges the customer to tax and collects the consideration, including the Sales Tax component passed on by him, from the customer later. The legislature has consciously used the word "charged" and not "collected" in Section 15(4)(a) of the Act. The legislative intent is to impose

penalty on a dealer who, having charged his customer to tax, does not pay the tax so charged to the State within the time stipulated. The penal provision under Section 15(4)(a) of the Act has not been made contingent on the dealer collecting tax from his customers. As penalty, equal to the tax, is liable to be imposed where a dealer has charged his customer to tax, but has not paid it to the revenue within the stipulated time, it matters little whether or not the petitioner had collected tax from his customer before the due date of payment of tax to the Government.

24. Unlike clause (b) of Section 15(4), which confers a discretion on the competent authority to levy a penalty not exceeding half the amount of tax in any case other than those falling under clause (a) meaning thereby that the penalty which can be levied is upto a maximum of 50% of the amount of tax and a discretion is conferred on the assessing authority to levy penalty lesser than maximum, clause (a) does not confer any discretion on the competent authority to impose penalty for a sum lesser than the amount equal to the tax in cases where the dealer has charged tax on the purchaser but has failed to remit the tax, so charged, to the Government. As it is not in dispute that the petitioner has charged his customers to tax, the action of the assessing authority, in imposing penalty under Section 15(4)(a) of the Act, cannot be faulted.

25. Accepting the contention of Sri S. Dwarakanath, Learned Counsel for the petitioner, that the expression "charged to tax" should be read as "charged and collected tax" would require this Court to read the words "and collected" into Section 15(4)(a) of the Act. It is a cardinal principle of interpretation of statutes that the words of a statute must be understood in their natural and ordinary sense and construed according to their grammatical meaning. *Gurudev datta VKSSS Maryadit and Others Vs. State of Maharashtra and Others*, . The legislature may be safely presumed to have intended what the words plainly say. *Bhaiji Vs. Sub Divisional Officer, Thandla and Others*, . A construction which requires, for its support, addition of words has to be avoided. *Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. Vs. Custodian of Vested Forests, Palghat and another*, ; *Smt. Shyam Kishori Devi Vs. Patna Municipal Corporation and Another*, ; *A.R. Antulay Vs. Ramdas Srinivas Nayak and Another*, ; *Dental Council of India and Another Vs. Hari Parkash and Others*, ; *J.P. Bansal Vs. State of Rajasthan and Another*, ; and *State of Jharkhand and Another Vs. Govind Singh*, . The primary rule of construction is that the intention of the Legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said 965212--> . Courts should not, ordinarily, add words to a statute or read words into it which are not there, especially when a literal reading thereof produces an intelligible result. *Delhi Fin. Corp'n. and Another Vs. Rajiv Anand and Others*, . There is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. Courts expound the law, they do not legislate. *State of Kerala Vs. Mathai Verghese and Others*, ; *Union of India and another Vs. Deoki Nandan Aggarwal*, . A Judge is not entitled to add something more than what is there in the Statute

by way of a supposed intention of the Legislature. Union of India Vs. Elphinstone Spinning and Weaving Co. Ltd. and Others etc., . The legislative casus omissus cannot be supplied by a judicial interpretative process. Maruti Wire Industries Pvt. Ltd. Vs. S.T.O., Ist Circle, Mattancherry and Others, . It would be wholly inappropriate for us, therefore, to read the words "charged tax" in Section 15(4) (a) as "charged and collected tax".

26. We have no quarrel with the submission of Sri S. Dwarakanath, Learned Counsel for the petitioner, that Section 15(4) of the Act, being a penal provision, must be strictly construed. Strict construction of a penal provision in a taxing statute would require this Court, if more than one construction is possible, to adopt the construction favourable to the assessee. Strict construction would not, however, justify reading non-existing words into a statutory provision or to resort to a construction which would cause violence to the language used therein. If, on a plain and grammatical reading of a provision, only one construction is possible, the Court cannot, under the guise of strict construction, give it a meaning contrary to its natural and grammatical sense.

27. In Hindustan Steel Ltd. (1970) 25 STC 211 the Supreme Court held that an order imposing penalty, for failure to carry out a statutory obligation, is in the nature of a quasi-criminal proceeding; penalty would not, ordinarily, be imposed unless the party obliged has either acted deliberately in defiance of the law or is guilty of conduct contumacious or dishonest or has acted in conscious disregard of its obligation; penalty will not also be imposed merely because it is lawful to do so; whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances; and, even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.

28. It is not necessary for us, in the present proceedings, to examine whether or not imposition of penalty under Section 15(4)(a) of the Act is mandatory or whether the competent authority has the discretion not to impose penalty even in cases of violation of the said provision. We shall proceed on the premise that exercise of power under Section 15(4)(a) of the Act, which requires an amount equal to tax to be levied as penalty where a dealer has charged tax from the purchaser, is discretionary. The assessing authority and the appellate authority/Tribunal have noted that the petitioner was irregular in payment of Sales Tax dues even in the earlier months of the year. While no penalty was levied on the earlier months, the fact that the petitioner was regularly delaying payment of tax was taken into consideration in imposing penalty on him for the subject month. While the submission of Sri S. Dwarakanath, Learned Counsel for the petitioner, that, if the assessing authority was of the view that there was a delay in payment of tax he could have imposed penalty for that month is not without

merit, the assessing authority cannot be said to have acted illegally, in considering the failure on the part of the petitioner to pay tax for the earlier months, while exercising discretion to impose penalty for belated payment of tax in a subsequent month. The previous conduct of the dealer is not an irrelevant factor in deciding whether or not penalty should be imposed on a dealer. We may not be understood to have held that in all cases where penalty is imposed, the previous conduct of the dealer should be taken into consideration. All that we have held is that the authority cannot be said to have acted illegally if, while exercising his discretion to impose penalty, he has taken the previous defaults of the dealer, in making belated payment of tax to the State, into consideration.

29. Section 16(3) of the A.P.G.S.T. Act requires the dealer to pay interest, at the stipulated rate, for belated payment of tax, penalty or any other amount due under the Act. Interest is levied for the period of the delay. The very fact that interest is also levied for belated payment of the penalty amount, goes to show that levy of "interest" is not in substitution of the penalty which can be imposed under Section 15(4) of the Act. The petitioner's contention that, as interest is leviable under Section 16(3) of the Act, penalty should not be imposed under Section 15(4)(a) of the Act is, therefore, not tenable.

30. Viewed from any angle, the order of the Sales Tax Tribunal does not necessitate interference in the present Tax Revision Cases. The T.R.Cs. fail and are, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.