

(2010) 07 AHC CK 0182
In the Allahabad High Court

The Commissioner Trade Tax

APPELLANT

Vs

S/S. Control Switch Gears Company Ltd.

RESPONDENT

Date of Decision : 14-07-2010

Acts Referred:

Central Sales Tax Act, 1956 — Section 8

Citation : (2010) 07 AHC CK 0182

Hon'ble Judges : Rakesh Sharma, J;R.K. Agrawal, J

Bench : Division Bench

Judgement

R.K. Agrawal, J.—A learned single Judge while considering the question relating to charge of interest was of the view that there are different views of learned single Judges of this Court on this issue and, therefore, the matter requires consideration by the Full Bench of this Court in the light of provisions of the U.P. Trade Tax Act, 1948 (hereinafter referred to as the Act), the decision of the Apex Court in the case of J.K. Synthetics Limited v. The Commercial Taxes Officer 1994 UPTC 893, Commissioner of Sales Tax v. Hindustan Aluminium Corporation 1999 UPTC 1, Commissioner of Sales Tax v. Qureshi Crucible Centre 1993 UPTC 901 and a Division Bench decision of this Court in the case of Annapurna Biscuit Co. v. State of U.P. and Ors. 1980 UPTC 1320.

2. The learned single Judge had framed the following questions, which according to his esteemed opinion required consideration by the Full Bench.

(a) In view of fact that the requisite Forms for the claim of exemption/concession is required to be filed during the course of assessment proceeding as per rule and in case of non furnishing of form during the assessment proceeding tax is levied at the normal rate whether, interest u/s 8(1) can be demanded from the due date of the return in which turnover was disclosed and exemption/concession has been claimed and tax at the normal rate has not been paid or from the date of assessment order or u/s 8(1-B) in case of non payment even after the assessment order.

(b) Whether in case of non furnishing of requisite form by the time of assessment proceeding, the tax assessed at a normal rate can be said to be tax admittedly payable u/s 8(1) of the Act.

(c) Whether there is any scope for the consideration of legitimate expectation or hope or bona fide belief u/s 8(1) of the Act and what is the stage of determination of liability of tax whether return or assessment.

3. When the matter was placed before Hon"ble the Chief Justice, His Lordship thought it proper to place the matter before the Division Bench instead of the Full Bench and that is how this matter has come before us.

BRIEF FACTS OF THE CASE

4. The dealer opposite party (hereinafter referred to as the dealer) was carrying on the business of manufacture and sale of electronic goods. In the return, it had shown certain sales against Form 3 B and admitted the tax liability at the concessional rate and claimed full exemption on some of the sales. Some Form 3 B were filed before the Assessing Authority. However, in respect of some of the sales on which concession/full exemption was claimed, the dealer could not file the Form 3 B on account of which the Assessing Authority disallowed the exemption claimed and levied tax at the normal rate applicable to sale of such goods. The Assessing Authority treated the tax assessed as the tax admittedly payable along with the return and levied interest u/s 8(1) of the Act @ 2% per month from the date of filing of the return till the date of its deposit. The levy of tax has been confirmed up to the stage of Tribunal. However, the Tribunal deleted the levy of interest u/s 8(1) of the Act. Feeling aggrieved, the Commissioner of Trade Tax preferred revision u/s 11(1) of the Act before this Court. The learned single Judge while hearing the matter after noticing the various provisions of the Act and the Rules and also the case laws cited at the Bar came to the conclusion that there is a divergence of opinion in cases decided by various learned single Judges of this Court on the issue and, therefore, formulated the aforementioned questions to be decided by a larger Bench in the light of the various decisions of the Apex Court and the Division Bench referred to above.

5. We have heard Sri B.K. Pandey, learned standing counsel and Sri Kunwar Saxena. Learned Counsel appearing for the dealer.

Statutory Provisions

Section 7. Determination of turnover and assessment of tax. (1) Every dealer who is liable to pay tax under this Act shall submit such return or returns of his turnover at such intervals, within such period, in such form and verified in such manner, as may be prescribed but assessing authority may in its discretion, for reasons to be recorded, extend the date for the submission of the return by any person or class of persons. (1-A) Before submitting the return under Sub-section (1) or along with such return the dealer shall deposit in such manner as may be prescribed the amount of tax due on the turnover shown in such return.

Rule 25-B. Authority from which Declaration Forms may be obtained; use, custody and maintenance of records of such Forms and matters incidental thereto.

(5) A registered dealer who claims to have made sale to a dealer holding a recognition certificate shall, in respect of such claim, furnish to the Sales Tax Officer the portion marked "Original" of the declaration form received by him from the purchasing dealer, upto the date on which he is required to furnish his accounts for final assessment in respect of the year to which the claim pertains. The Sales Tax Officer may in his discretion, require the selling dealer to produce for inspection the portion of the declaration form marked "Duplicate".

Rule 41. Submission of returns and assessment of tax. (1) Every dealer liable to tax, the aggregate of whose turnover, as referred to in Sub-section (2) of Section 3, in any assessment year exceeds rupees two lakhs, shall, before the expiry of the next succeeding month, submit to the Sales Tax Officer, a monthly return of his turnover in Form IV, giving in Annexures I and II thereof, detailed information, according to code numbers notified by the State Government from time to time, in respect of each category of goods in which he carries on business:

Provided that the return for the month of February shall be submitted to the Sales Tax Officer on or before the twentieth day of March:

Provided further that the dealer may, instead of submitting a return as aforesaid, estimate his turnover for the year on the basis of the turnover admitted by him in his return, or disclosed in his account books, whichever is greater, for the immediately preceding year, calculate the amount of tax payable thereon and deposit a sum equal to one twelfth thereof during each of the first two months of every quarter, and deposit the balance of tax due on the turnover admitted by him in his return for the relevant quarter, which shall be prepared and submitted in the manner laid down in this rule. (2) Every dealer liable to pay tax under the Act, other than the dealer referred to in Sub-rule (1), shall submit to the Sales Tax Officer for the quarter ending June 30, September 30, December 31 and March 31, within a month of the expiry of the quarter concerned, a return of his turnover in Form IV giving detailed information in respect of each category of goods in which he carries on business:

Provided that it shall not be necessary for such dealer to furnish in Annexures I and II detailed information according to code numbers in respect of goods in which business is carried on by him:

Provided further that a dealer whose total admitted tax liability during the assessment year immediately preceding did not exceed Rs. 500 and whose estimated admitted tax liability during the assessment year is not likely to exceed Rs. 500 may, instead of submitting a return as aforesaid, estimate his turnover on the basis of the turnover admitted by him in his return for the assessment year, immediately preceding, calculate the amount of tax payable

thereon and deposit a sum equal to one fourth thereof within a month of the expiry of each of the first three quarters and deposit the balance of tax on the turnover admitted by him in his return for the assessment year, which shall be prepared and submitted in the manner laid down in this sub-rule, within a month of the expiry of the relevant assessment year.

Explanation I - "Admitted tax liability" means the tax which is payable under this Act on the turnover or, as the case may be, the turnover of purchases or both, as disclosed in the accounts maintained by the dealer or admitted by him in any return or proceeding under this Act, whichever is greater, or, if no accounts are maintained, then according to the estimate of the dealer.

Explanation II--"Estimated admitted tax liability" means the tax payable under the Act by the dealer on his estimated turnover or estimated turnover of purchases of the assessment year or both, as the case may be.

(3)....

(4) Before submitting the return under Sub-rule (1), Sub-rule (2) or Sub-rule (3), the dealer shall, in the manner laid down in these rules, deposit the total tax due under the Act on the turnover of sales or purchases or both, as the case may be, disclosed in the return and shall submit to the Sales Tax Officer, along with the return, the treasury challan, bank draft or cheque for the amount so deposited:

Provided that where a Government Department wants to deposit the tax by book transfer, such Department shall, before submitting such return, prepare a bill, in triplicate, for the amount of tax due, endorse it to the Sales Tax Officer in accordance with the financial rules on the subject and attach two copies thereof with such return. One of the copies shall be retained by the Sales Tax Officer and the other copy shall be sent to the Accountant General, U.P., for crediting the amount to the account of the Sales Tax Department.

Rules 12-A, 12-B and 12-C of the Rules relate to the submission of Form 3-A, 3-C-1, 3-C-2 and 3-D under the provisions of Section 3-A, 3-AA, 3-D and 3-G of the Act. Under the aforesaid provisions, forms are required to be furnished before the assessing authority upto the time prescribed in Sub-section (7) of Rule 41 of the Rules, i.e. upto the time of the assessment proceedings.

Section 8 (1) of the Act read as follows:

Section 8. Payment and recovery of tax.

(1) The tax admittedly payable shall be deposited without the time prescribed or by the thirty-first day of August, 1975, whichever is later failing which simple interest at the rate of 2 per cent per mensem shall become due and be payable on the unpaid amount with effect from the day immediately following the late date prescribed till the date of payment of such amount and nothing contained in Section 7 shall prevent or have the effect of postponing the liability to pay such

interest.

Explanation. For the purpose of this Sub-section, the tax admittedly payable means the tax which is payable under this Act on the turnover of sales or, as the case may be, the turnover of purchases, or of both, as disclosed in the accounts maintained by the dealer, or admitted by him in any return or proceeding under this Act, whichever is greater, or, if no accounts were maintained then according to the estimate of the dealer, and includes the amount payable u/s 3B.

Rival Submissions

6. Sri Pandey, learned standing counsel submitted that the dealer claimed exemption or the concessional rate of tax based on furnishing of Form 3 B, in the absence of which it was liable to pay tax at the normal rate. For claiming exemption or concessional rate of tax, the burden was on the dealer to furnish the requisite Form 3 B and on failure of furnishing the prescribed form, the liability for payment of tax is at the normal rate. Consequently, interest u/s 8(1) of the Act would be leviable. In support of his aforesaid submission, he has relied upon the following decisions namely, Commissioner of Trade Tax, U.P. Lucknow v. S/S Jobex India (2005)28 NTN 175, Commissioner of Trade Tax v. S/S/ Deepak Hume Pipe Manufacturing Company (2006)29 NTN 104 and Commissioner of Sales Tax v. Qureshi Crucible Centre 1993 UPTC 901.

7. Sri Saxena, learned Counsel for the dealer however submitted that the statute does not require to submit declaration forms along with the return. It can be filed up to the stage of assessment and, therefore, till the stage of assessment, there was always a legitimate expectation to file the form which stands substantiated with the bills issued by the dealer and in case the form 3 B has not been filed, it can not be treated to be admitted tax till the stage of assessment. Consequently, interest u/s 8(1) can not be levied and realised.

8. In addition to the decisions relied upon by him before the learned single Judge, he has relied upon the following decisions, viz. Frick India Limited and Anr. v. State of Haryana and Ors. : (1994) 5 SCC 559, Roozan Pipe Industries v. Commissioner of Sales Tax 2004 UPTC 921, Indian Oil Corporation Ltd. v. Commissioner of Sales Tax 2005 UPTC 160 and E.I.D. Parry (India) Ltd. v. Assistant Commissioner of Commercial Taxes 2006 UPTC 143.

Cases Cited at the Bar

9. In the case of Annapurna Biscuit Co. v. State and Ors. reported in 1980 UPTC 1320, Division Bench of this Court held as follows:

The learned Counsel mentioned that as the sale was made to registered dealers and such sales being exempt u/s 3-D (1) the petitioner did not commit any error in determining the tax payable by nil u/s 8 (1), therefore its failure to file Form C could result in the enhancement of tax in excess but the Assessing Authority could not while assessing tax create any demand for interest. Reliance was placed on Commissioner of Sales Tax v. Vinus Auto Traders 1980 UPTC 273. None

of the submissions for have any merit on it. We have already indicated above that liability to pay interest under Sub-section (1) of Section 8 is not affected by deposit of tax assessed within the time specified. The only question, therefore, is whether calculation of tax payable was in accordance with the Act. It is not disputed that if petitioner effected sale to person other than a registered dealer then it was liable to pay tax under Sub-section (2) of Section 3-D. The liability to pay tax, therefore, depends on this crucial fact which is required to be proved by filing Form III C-1 under sub-rules 9 (6) and (7) of Rule 1 2-B. It is admitted that these forms were not filed. In absence of these forms it cannot be said that calculation of tax payable was in accordance with the Act.

10. In the case of *Ram Sahai Dal Mills, Varanasi v. Sales Tax Officer, Varanasi and Anr.* reported in 1982 UPTC 600, Division Bench of this Court held that if the dealer did not file any declaration in Form 3-C (1) for the claim of exemption, the dealer was liable to pay tax u/s 3-D (2) of the Act and the same becomes the liability of tax in respect of these transactions u/s 8(2) of the Act. It has been further held that it was not a case of any bonafide dispute raised by the assessee. The tax in respect of these transactions should have been paid along with the filing of the return and since this was not done, the interest became chargeable u/s 8(1) of the Act.

11. In the case of *Commissioner of Sales Tax, U.P. v. Indian Herbs Research and Supply Company* reported in 1982 UPTC 804, which is directly on the controversy involved in the present case, this Court has considered Section 8 of the Central Sales Tax Act along with Section 8 of the U.P. Sales Tax Act, as amended by U.P. Act No. 38 of 1975 and has held that where a dealer is seeking exemption from levy of tax upon some part of the turnover unless he fulfils the statutory requirement for such a claim he shall have to pay interest upon the unpaid amount of tax calculated on the turnover worked out without regard to claim of exemption. In this case, the High Court disapproved the view of the Tribunal that interest for not filing of Form "C" on the unpaid amount would be payable from the date of assessment. The reason is that in Sub-section (1) of Section 8 of the Act, the starting point for the liability for payment of interest on the unpaid part of the admitted tax has been provided for and it is 1st June, 1975 or the last date prescribed for payment of admitted tax, whichever is later. The Tribunal in the case in hand has not given any reason for deletion of levy of interest except saying that it is not proper in their opinion. The order of Tribunal is thus laconic and cannot be sustained.

12. The Apex Court examined Section 8(1) of the Act in the case of *Commissioner of Sales Tax v. Qureshi Crucible Centre (Supra)* and held that Section 8(1) of the Act does not say that non-payment should be malafide. It has been further held that where the dealer calculated the tax at an inapplicable rate, dealer is liable to pay interest u/s 8(1) of the Act. The expression "tax admittedly payable" means the tax which is payable, inter-alia according to the return filed by the dealer.

13. In the case of Commissioner of Trade Tax, U.P., Lucknow v. S/S Deepak Hume Pipe Manufacturing Company (Supra) learned Single Judge of this Court held that the burden lay upon the dealer to file requisite form for the claim of exemption or concessional rate of tax, failing which normal rate of tax is payable. It is held that in case, if requisite form is not filed, the normal rate of tax is due and payable and for the non-payment of such tax, the interest u/s 8(1) of the Act is chargeable.

14. Similar view has been taken by learned Single Judge of this Court in the case of Commissioner of Trade Tax, U.P., Lucknow v. S/S Jobex India (Supra).

15. Section 8 (1) of the Act has been examined by the Apex court along with interest u/s 8 (1-B) of the Act in the case of Commissioner of Sales Tax v. Hindustan Aluminium Corporation (Supra), Apex Court held as follows:

What is required is a plain interpretation of the provisions of Section 8. Sub-section (1) thereof requires the assessee to deposit within the time prescribed or by 1st August, 1975, whichever is later, the tax that is admittedly payable by him. What tax admittedly payable means, for the purpose is set out in the explanation to Sub-section (1). It means the tax payable under the Act on the assessee's turnover as disclosed in his accounts or as admitted by him in his return or other proceeding under the Act, whichever is greater, or , if no accounts are maintained according to his estimate. Sub-section (1-A) deals with the post-assessment scenario. It says that the tax assessed under the Act shall be deposited within thirty days of service of notice of assessment and demand. Sub-section (1-B) applies if the tax assessed is not deposited as required by Sub-section (1-A).

The dispute here, as aforesaid, was in regard to the classification of the assessee's products. Such classification dispute is ordinarily resolved in assessment proceedings and if resolved against the assessee. The assessee has to make payment of the differential amount of tax as required by Sub-section (1-A) failing which the provisions of Sub-section (1-B) apply.

The requirement of Sub-section (1) is that the assessee must pay tax on the amount of his turnover as particularised in the explanation thereto. Interest under the provisions of Sub-section (1) cannot be levied in respect of a dispute such as a classification dispute which is resolved only by the assessment. Sub-section (1) has no application to such a situation.

Having regard to the conclusion that we reach upon the plain words of Section 8. It is unnecessary to go into the assessee's contention that a substantial part of the amount claimed by the Revenue as and by way of interest is under the provisions of the Central Sales Tax Act and under that Act no interest is leviable.

16. In the case of Hashmatullah And Company, Bareilly v. Commissioner of Sales Tax reported in 1995 UPTC 626. In this case on the non furnishing of requisite Form III-A exemption has been denied and the tax has been assessed and the

interest u/s 8(1) of the Act has been demanded. This Court confirmed the levy of tax but deleted the interest. This Court held as follows:

The next point raised in this case is about the leviability of interest on the tax levied on the aforesaid turnover. The assessing officer has levied interest u/s 8(1) of the Act and levy has been upheld by the Tribunal. The dealer had been denying the taxability of the purchases on the ground that it were the sales that were taxable in the hands of the selling dealer because the revisionist did not furnish any Form III-A to them. The authorities below have treated the tax levied as the tax admittedly payable and the learned Tribunal has observed that the dealer had not wrongly admitted the liability for tax. Under the proviso to Section 3AAAA as it stood at the relevant time no tax was leviable if it was proved to the satisfaction of the assessing authority that the goods so purchased had already been subjected to tax or may be subjected to tax u/s 3AAA. Therefore, the admission or non-admission by the assessee is to be considered at the point of time when he furnished return and simply because by the time the assessment proceedings are taken the seller has not been subjected to any tax it cannot be said that the dealer had wrongly denied its liability. It is only recently that Section 3-AAAA has been amended by U.P. Ordinance No. 7 of 1994 with retrospective effect and the legal position as explained in the case of Shivam Tannery (supra) as emerged. Prior to that even purchases from unregistered dealers could not have been taxed if it could be established that they had been subjected to tax in the hands of those dealers. In the case of J.K.Synthetics Limited v. The Commercial Tax Officer 1994 UPTC 893, the Hon"ble Supreme Court while dealing with an identical provision under the Rajasthan Sales Tax Act observed that the law does not envisage the assessee to predicate the final assessment and expect him to pay the tax on that basis to avoid liability to pay interest. It was observed that so long as the assessee pays that tax which according to him is due on the basis of information supplied in the return filed by him, there would be no default on his part to meet his statutory obligation and it would be difficult to hold that the tax "tax payable" by him is not paid to visit him with the liability to pay interest. In my view, therefore, the dealer having not admitted the liability to pay tax in respect of the purchases in question and there being nothing to show that his denial was absolutely without any basis the disputed tax could not be treated as the tax admittedly payable by it. Therefore, no interest was leviable.

17. In the case of Commissioner of Sales Tax, U.P., Lucknow v. S/S Angana Udyog, Jhansi (Supra) dealer was claiming exemption u/s 4A of the Act being new unit. On account of the requirement of application u/s 4A of the Act tax has been assessed and the interest u/s 8(1) of the Act has been demanded. The claim of the dealer was that since application u/s 4A of the Act was filed under the bonafide belief, the tax was not realised from the customers and neither the liability of tax has been admitted nor deposited and, therefore, interest u/s 8(1) of the Act was not chargeable. Tribunal accepted the plea of the dealer and deleted the tax. On the revision filed by the revisionist this Court held as follows:

In case, the eligibility certificate was granted u/s 4A, the dealer's sales would have been exempt from tax. The dealer had moved an application for the grant of an eligibility certificate which was not disposed of in time and in the returns the dealer did not admit that any tax was payable on the turnover. The assessing officer levied interest u/s 8 (1) of the Act, which was deleted by the Assistant Commissioner (Judicial). This order has been upheld by the Tribunal. Both the authorities have held that in the aforesaid circumstances the tax payable on the turnover could not be treated as admitted tax. This finding in my view is correct. There is no finding by the authorities below that the application u/s 4A of the Act, was not bona fide and was a mere device to delay payment of admitted tax. The dealer's bona fides are demonstrated by the fact that it did not charge any sales tax from its customers. In the circumstances, the Tribunal's finding that the tax ultimately levied on the turnover was not admitted tax within the meaning of Section 8 (1) of the Act, is legally correct.

18. In the case of Commissioner of Trade Tax v. Ram Ratan Ambrish Kumar (Supra) for non-furnishing of requisite Form 3-C-1 exemption was denied and on the assessed turnover, interest u/s 8(1) of the Act was charged. The claim of the dealer was that no tax was charged from the customers and exemption was claimed in the return. Form could not be obtained because the business of the purchaser was closed. Tribunal accepted the plea and held that the dealer was under the bonafide belief and was in hope to get the requisite form III-C-1, which could not be obtained due to the closure of the business of the purchaser and accordingly deleted the demand of interest u/s 8(1) of the Act. The order of the Tribunal has been upheld by this Court.

19. In the case of Frick India Limited and Anr. v. State of Haryana and Ors. (supra), the Apex Court following its earlier judgment in the case of J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, directed to refund the amount of interest levied and collected along with interest @ 12% per annum on the ground that the provisions of Haryana General Sales Tax Act are analogous to those of the Rajasthan Sales Tax Act.

20. In the case of Roozan Pipe Industries (supra), a learned single Judge of this Court has held that if the dealer has not admitted some of the purchases from Steel Authority of India Limited and had issued blank 3 B forms, if by some manipulation some purchases are mentioned in that form 3 B it would not be treated as admitted purchases and, therefore, the liability for payment of interest would not be there.

21. In the case of Indian Oil Corporation Ltd.(supra), a learned single Judge has held that where the claim of export has been contested bona fide merely because the claim has been rejected, interest would not be leviable u/s 8(1) of the Act.

22. In the case of E.I.D. Parry (India) Ltd.(supra), the Apex Court while

considering the provisions of Tamil Nadu General Sales Tax Act, 1959, has held that any interest can not be levied u/s 13 and 24 of the aforesaid Act unless and until an assessment has taken place and a notice of demand has been issued and tax had not been paid within the time specified in the notice of payment. In the absence of any such demand, interest would not become payable u/s 24(3) of the aforesaid Act as there is no provision of charging of interest prior to the date of payment.

Discussions

23. From a perusal of the statutory provisions reproduced above, we find that u/s 7 of the Act, a dealer is obliged to deposit the tax on the turnover disclosed in the return. Section 8(1) of the Act provides for payment of admitted tax within the time prescribed which u/s 7(1A) is along with the return or before submitting the return. If the amount of admitted tax is not paid along with the return or before submitting the return, interest @ 2% per annum is payable u/s 8(1) of the Act from the date immediately following the last date of filing the return till the date of payment of such amount. The explanation to Section 8(1) of the Act also defines as to what is the tax admittedly payable. It means the tax which is payable under the act on the turnover of sales or purchases or of both as disclosed in the account maintained by a dealer or admitted by him in any return or proceedings under the act, whichever is greater. However, Rule 25 B of the U.P. Trade Tax Rules (hereinafter referred to as the Rules), permits the dealer to furnish the declaration forms up to the date till which he is required to furnish the account for final assessment, in respect of the years to which the claim pertains.

24. Explanation I to Rule 41(2) deals with the admitted tax liability to mean the tax which is payable under the Act on the turnover as disclosed in the accounts maintained by the dealer or admitted by him in any return or proceedings under the Act, whichever is greater.

25. Explanation II deals with admitted tax liability to mean the tax payable under the Act by the dealer on his estimated turnover or both as the case may be.

26. Thus, the scheme of the Act is that if a dealer does not deposit the tax payable on the turnover as admitted by him in his return or shown in the books of account, whichever is greater, either before or along with the filing of return than the dealer exposes himself towards the liability of payment of interest u/s 8(1) of the Act.

27. In the case of J.K. Synthetics (supra), the Apex Court had observed that the law does not envisage the assessee to predicate the final assessment and expect him to pay the tax on that basis to avoid liability to pay interest and so long as the assessee pays the tax which according to him is due on the basis of information supplied in the return filed by him, there would be no default on his part to meet his statutory obligation and it would be difficult to hold that the tax payable by him is not paid to visit him with the liability to pay interest. Similarly,

the Apex Court in the case of Hindustan Aluminium Corporation (Supra), has held that the requirement of Sub-section (1) is that the assessee must pay tax on the amount of his turnover as particularised in the explanation II. Interest in the provisions of Sub-section (2) can not be levied in respect of a dispute such as calculation dispute which resolved only by the assessment. In the case of E.I.D. Parry (Supra), the Apex Court has held that there should be statutory provision for payment of interest on the unpaid amount even before assessment. In the case of Qureshi Crucible Centre (Supra), the Apex Court has held that Section 8(1) of the Act does not say that non-payment should be mala fide and tax admittedly payable means the tax which is payable inter alia according to the return filed by the dealer. In the case of Annapurna Biscuit Co. (Supra), a Division Bench of this Court has held that liability to pay interest under Sub-section (1) of Section 8 is not affected by deposit of tax within the time specified. The only question, therefore, is whether calculation of tax payable was in accordance with the Act or not and, if liability to pay tax depends upon the fact which is to be proved by filing a declaration form and if it is not filed then it can not be said that the calculation of tax payable was in accordance with the Act.

28. Applying the principles laid down by the Apex Court in the aforesaid cases and by the Division Bench of this Court in the case of Annapurna Biscuit Co. (Supra), we are of the considered opinion that in a case where concession/exemption is claimed which is dependant upon furnishing of prescribed declaration form and a dealer fails to furnish the declaration from up to the time of assessment or thereafter in appeal, then the tax payable on such purchases/sales would be leviable at the normal rate which would be the admitted tax and the liability to pay interest @ 2% per month starts from the last date of filing the return in respect of such sales till its actual payment. As held by the Apex Court in the case of Qureshi Crucible Centre (Supra), the question of mala fide does not arise and likewise in our considered opinion, there is no scope for applying the principles of legitimate expectation or hope or bona fide for avoiding the liability of payment of interest u/s 8(1) of the Act. The controversy stands covered by a decision of the Division Bench of this Court in the case of Annapurna Biscuit Co. (Supra) with which we are in respectful agreement with the view taken by it in so far as the levy of interest on account of non-furnishing of a declaration form is concerned.

Conclusion

29. In view of the foregoing discussions, we are of the considered opinion that-

1. Even though declaration form for claiming exemption/concession may be required to be filed during the course of assessment proceedings but, in cases of non-furnishing of declaration forms during the assessment proceedings or subsequent thereto in appeal, tax has to be levied at the normal rate which would become the admitted tax and interest u/s 8(1) of the Act would be leviable from the due date of the return in which turnover was disclosed and exemption/concession has been claimed and tax at the normal rate has not been paid. The

provisions of Section 8(1-B) of the Act would not be applicable.

2. Non-furnishing of requisite form by the time of assessment proceedings or in appellate proceedings, the tax assessed at the normal rate would be treated as the tax admittedly payable u/s 8(1) of the Act.

3. There is no scope for consideration of legitimate expectation or hope or bona fide plea u/s 8(1) of the Act and the stage of determination of liability of tax for the purposes of Section 8(1) would be the date for filing the return.

30. Let the matter be placed before the appropriate Bench.