

(2018) 08 KAR CK 0032

In the Karnataka High Court

Case No : Writ Appeal No.72, 387-485 of 2018

The State of Karnataka and Ors @APPELLANT@Hash M/s. WS Retail Services Private Limited and Ors

Date of Decision : 31-08-2018

Acts Referred:

Karnataka High Court Act, 1961 — Section 4
Income Tax Act, 1961 — Section 88, 140(A)(1)
Finance (No.2) Act, 1998 — Section 96
Central Excise Act — Section 35(F), 37

Citation : (2018) 08 KAR CK 0032

Hon'ble Judges : Dinesh Maheshwari, J;S. Sunil Dutt Yadav, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

WRIT APPEAL

NUMBER", "WRIT PETITION

NUMBER", RESPONDENTS, ACT

72/2018, 33176/2017, "W.S. Retail Services Pvt.

Ltd.", KVAT

,,, CST

387/2018, 32658/2017, "M/s. Lakshmi Tools and

Components", CST

388-399/2018, 32659-32670/2017, "M/s. Flowserve India

Controls Pvt. Ltd.", KVAT

400-402/2018, 33470-33472/2017, M/s. Castrol India Ltd., KVAT

403/2018, 35892/2017, "M/s. AVK Valves India

Pvt. Ltd.", CST

404/2018 & 405-415/2018,"25349/2017 & 31438-31448/2017",Nokia India Pvt. Ltd.,KVAT
416/2018 & 417-427/2018,"25350/2017 & 30508-30518/2017","Nokia India Pvt. Ltd.",KVAT
428/2018 & 429-439/2018,"25351/2017 & 30526-30536/2017","Nokia India Pvt. Ltd.",KVAT
440/2018 & 441-451/2018,"25352/2017 & 34098-34108/2017","Nokia India Pvt. Ltd.",KVAT
452/2018,32127/2017,"M/s.Smile Electronics Ltd.",CST
453/2018 & 454-464/2018,"25353/2017 & 30711-30721/2017","Nokia India Pvt. Ltd.",KVAT
465/2018 & 466-476/2018,"25354/2017 & 30318-30328/2017","Nokia India Pvt. Ltd.",KVAT
477/2018,30001/2017,"M/s.GE T & D India Limited",CST
478/2018,28370/2017,"M/s.GE T & D India Limited",CST
479/2018,26333/2017,M/s.Castrol India Ltd.,KTEG
480/2018,38574/2017,"M/s.Saras Precision Tools Pvt. LTd.",CST
481/2018,44681/2017,"M/s.AB Mauri India Pvt. Ltd.",CST
482/2018,45976/2017,"M/s.Sri. Annapurneswari Bar and Restaurant",KVAT
483/2018,45978/2017,"M/s.Sri. Nanjundeswara Bar and Restaurant",KVAT
484/2018,46691/2017,"M/s.Universal Digital Connect Ltd.",KVAT
485/2018,47080/2017,M/s.Fakhri Sons,KVAT

provisions of the KST Act and CST Act which remain unpaid as on 15.03.2017 as also the penalties leviable and interest accrued till the date of filing,,, of the application.,,,

(c) Clause 2.4 of the Scheme provides that all appeals or other applications filed against the order or proceedings relating to arrears of tax and arrears,,,

of penalty and interest before any Appellate Authority or Court, if pending, would have to be withdrawn before availing benefit of waiver of arrears of",,,

penalty and interest under the Scheme. It was further provided that the quantum of arrears of tax/penalty and interest for the purposes of the Scheme,,,

would be considered as per the order against which the appeals or other applications had been filed.,,,

(d) Clause 3.2 provides that the Assessing Authority / Recovery Officer / Prescribed Authority would scrutinize the applications and work out the,,,

actual arrears of tax, penalty and interest payable, as regards the amount due and if there were any discrepancies the Authority referred to above",,,

would inform the assessee about the same.,,,

(e) Clause 3.3 provides that on being called upon to pay the balance of amount as determined under Clause 3.2, the assessee was required to comply",,,

by making payments on or before 31.05.2017.,,,

(f) Clause 3.4 states that if the assessee failed to comply with requisite deposit as referred to above and to rectify the discrepancies pointed out, the",,,

Prescribed Authority could reject the applications.,,,

10. The provisions of the KVAT Act that require consideration in the present controversy are as under:-,,,

42. Payment and recovery of tax, penalties, interest and [other amounts, issuance of clearance certificates]",,,

6) Where the amount paid falls short of the aggregate of the tax or any other amount due and interest payable, the amount so paid shall first be",,,

adjusted towards interest payable and the balance, if any, shall be adjusted towards the tax or any other amount due.",,,

62. Appeals,,,

(4) (a) No appeal against an order of assessment shall be entertained by the Appellate Authority unless it is accompanied by satisfactory proof of the,,,

payment of tax and other amount not disputed in the appeal.,,,

(b) The tax or other amount shall be paid in accordance with the order or proceedings against which an appeal has been preferred.,,,

(c) (i) The Appellate Authority may, in its discretion, stay payment of seventy per cent of tax and other amount, if the appellant makes payment of the",,,

balance thirty per cent of the tax and other amount along with prescribed form of appeal.,,,

(ii) Where any application made by an applicant for staying proceedings of recovery of any tax or other amount has not been disposed of by the,,,

Appellate Authority within a period of thirty days from the date of such application, it shall be deemed that the Appellate Authority has made an order",,,

staying proceedings of recovery of such tax or other amount subject to payment of thirty per cent of the tax and other amount disputed and furnishing,,,

of sufficient security to the satisfaction of the Assessing Authority in regard to the balance seventy per cent of such tax or amount within a further,,,

period of fifteen days.,,,

(d) Where an order staying proceedings of recovery of any tax or other amount is passed in any proceedings relating to an appeal under sub-section,,,

(1), the Appellate Authority shall dispose of the appeal within a period of two hundred forty days from the date of such order.",,,

63. Appeal to the Appellate Tribunal,,,

(7) (a) The Appellate Tribunal may, in its discretion, stay payment of seventy per cent of the tax or other amount disputed, if the appellant makes",,,

payment of the thirty per cent of the tax or other amount disputed along with the prescribed form of appeal.,,,

(b) The Appellate Tribunal shall dispose of such appeal within a period of three hundred and sixty-five days from the date of the order staying,,,

proceedings of recovery of seventy per cent of tax or other amount and, if such appeal is not so disposed of within the period specified, the order of",,,

stay shall stand vacated after the said period and the Appellate Tribunal shall not make any further order staying proceedings of recovery of the said,,,

tax or other amount.â??,,,

11. In the present case, the assessee'sâ?? applications have been rejected by the State solely on the ground that the prerequisite condition for",,,

eligibility, i.e., payment of entire tax arrears and 10% of penalty and interest, was not complied with, as the assessee had adjusted remittances made",,,

whilst filing appeals towards tax, at the first instance and consequently had calculated arrears of tax, penalty and interest which was at variance with",,,
the mode of calculation adopted by the State.,,,

12. The learned Single Judge relied on the decision of this Court in the case of Mangilal S. Jain v. Commissioner of Income Tax and Others reported,,,

in ILR 2003 KAR 2066 which held that specific appropriation provisions under the Income Tax Act, 1961 and general law as regards appropriation of",,,

payments would be inapplicable to payments made pending adjudication and covered by the "Kar Vivad Samadhan Scheme, 1998." The",,,

relevant portion of the said decision is extracted below:-,,,

"14. The above clarifications issued by the Central Government, binding on the respondents, are a complete answer to the contentions raised by the",,,

Department. Any payment made towards tax arrears after the date of assessment and before the date of declaration filed under the KVS Scheme",,,

will therefore have to be taken as part payment towards tax in regard to declarations validly falling under the KVS Scheme. The normal rule that,,,

payments will first be adjusted towards interest and then towards principal (income Tax)(sic), based on the Explanations to Section 140A(1) of the IT",,,

Act and general law, will be inapplicable to matters covered by the KVS Scheme. The learned single judge has lost sight of the above aspects and has",,,

wrongly proceeded as if the Explanation to Section 140A(1) of the IT Act is applicable to the KVS Scheme.",,,

(emphasis supplied),,,

13. Despite the contention by learned counsel for the State that reliance ought to be placed on the decision in the case of Y. Venugopal Reddy v.,,,

Commissioner of Income Tax and Another reported in (1999) 239 ITR 895, the learned Single Judge held that Venugopal Reddy's case was in",,,

conflict with the judgment of the Division Bench in the case of Mangilal S. Jain. It appears that the fact that the order in the case of Venugopal Reddy,,,

affirmed in Writ Appeal No.5435/1999 was not brought to the notice of the Court. The relevant portions of the learned Single Judge's decision in,,,

Venugopal Reddy's case are extracted below:-,,,

"By this writ petition, the order of the Commissioner of Income-tax dated January 19, 1999, passed under the Kar Vivad Samadhan Scheme, has",,,

been challenged. The prayer made for revision of calculation to the

Commissioner of Income-tax was rejected on January 19, 1999. The petitioner",,,
 moved the Central Board of Direct Taxes on January 1, 1999, stating that the
 amount along with the returns should be appropriated towards tax but",,,
 not towards interest. In pursuance of the representation the petitioner was
 informed that the Scheme of 1998 is different from Section 140A of the",,,
 Income-tax Act. The assessment in this case was made by the Deputy
 Commissioner of Income-tax on March 21, 1997, for the assessment year",,,
 1994-95. The assessee has paid the tax between April and January 1997, to the
 extent of Rs. 4,90,000. A sum of Rs. 3,00,000 was paid under Section",,,
 140A of the Act on July 18, 1995, and after adjusting these two amounts, out of
 the total liability of tax and interest of Rs. 38,47,856, a demand was",,,
 created for Rs. 35,47,156. Under the Explanation to Section 140A(1), if the
 amount paid falls short of the aggregate of the tax and interest, the amount",,,
 so paid shall be first adjusted towards the interest payable and the balance is to
 be adjusted towards tax.,,,
 Whenever a non obstante clause is used in any provision by using the word
 ""notwithstanding"" then it can only mean that the provisions of the later",,,
 would supersede the earlier. If the contention of learned counsel for the
 petitioner is considered in this respect, it would be evident that the amount",,,
 payable under the scheme will hold the field than what is payable under the
 Income-tax law. This supersession has been made under Section 88 to the",,,
 amount payable under the Scheme. A definite percentage and calculations have
 been given on the basis of which the amount has to be calculated,,,
 under the Scheme, 1998, irrespective of the provisions of the Income-tax Act.
 Nowhere under the Scheme, 1998, is it stated that the assessment",,,
 which have already been made and where the amount paid under Section 140A
 has been adjusted, then readjustment has to be done. The provisions",,,
 of Section 140A by its Explanation would have no force, had there been any
 specific provision under the Kar Vivad Samadhan Scheme, 1998. Since",,,
 the KVS Scheme does not contemplate adjustment of the amount paid under
 Section 140A towards tax, the arguments raised by learned counsel for",,,
 the petitioner cannot be accepted. Question No. 4 of the clarification dated
 September 3, 1998, also does not help the petitioner's case, because, it",,,
 refers to the payments which are made after the tax arrears are computed and
 thereafter any part payment is made. The clarification given by the,,,

Government dated January 18, 1999, has only used the words "the Scheme is different from Section 140A." This also does not help the petitioner, for,",,

it is nowhere stated in this clarification that the amount paid under Section 140A has to be adjusted towards tax. The amount has been paid admittedly,,,

under Section 140A and the Explanation to Section 140A is clear in requiring adjustment of the payment first towards interest liability. Even in the,,,

Budget Speech, the contention raised by the petitioner has not been elaborated, explained or stated. It is pointed out that, if the payment made under",,,

Section 140A is adjusted towards interest, then such adjustment would be disadvantageous in comparison to the assessee who has not paid the tax at",,,

all. There may be anomalies or the Scheme may be more beneficial to the greater defaulter than to the honest taxpayer or the taxpayer who has,,,

complied with the provisions but the Scheme has to be read as it is. In these circumstances, I do not consider that any case for interference is made",,,

out. The contention that the payment under Section 140A should be treated towards the tax liability has no force.â??,,,

(emphasis supplied),,,

14. However, it were to be noticed that the judgment in the case of Venugopal Reddy is clearly distinguishable on facts and would be inapplicable in",,,

light of the following:-,,,

(a) In Venugopal Reddy's case, the tax that was paid on admitted income under self-assessment was sought to be set-off as against the interest",,,

as determined under the regular assessment. The Court rightly distinguished Mangilal S. Jain's case observing that the Amnesty Scheme would,,,

apply only in case of payment made as regards disputed income and disputed tax and in the facts of the above-mentioned case, tax was paid as",,,

regards admitted income as per self-assessment.,,,

(b) In Venugopal Reddy's case, the tax that was paid pursuant to self-assessment was already adjusted when the Scheme was sought to be",,,

availed and it was held that already adjusted payments could not be re-opened nor was it the intention of that Scheme.,,,

15. However, in the case of Mangilal S. Jain, the payment was made pending a revision petition wherein the tax as regards "disputed income",,,

was still in issue as seen in the following extract:-,,,

13. If any amount paid towards arrears during the pendency of the litigation

(by way of appeal, revision, etc.,) is to be irreversibly adjusted against" ,,,
the interest under Section 140A, that would render infructuous the pending litigation [in this case pending revision petition]. Surely that cannot be and" ,,,
in fact is not the intention. As noticed above, if the appellant had succeeded in the revision petition, his liability towards interest would have been" ,,,
deleted/reduced and obviously the sum of Rs. 60,000.00 that has been paid by him towards tax arrears would have been adjusted either against the tax" ,,,
or would have been refunded.,,,
Therefore, the explanation to sub-section (1) of Section 140A of the IT Act applies only where the liability has attained finality. This is clarified by the" ,,,
Department itself. The Government of India, Ministry of Finance (Department of Revenue), Central Board of Direct Taxes, issued certain" ,,,
clarifications by circular No.F 149/145/98/DPL, dated 3.9.1998, under Section 96 of the Finance (No.2) Act, 1998. The said Section 96 enables the" ,,,
Central Government to issue from time to time, such orders, instructions and directions to the authorities as it may deem fit, for the proper" ,,,
administration of the KVS Scheme and the authorities concerned with execution of the scheme are required to observe and follow such orders and" ,,,
instructionsâ?|..â? ,,,
(emphasis supplied),,,

16. The Court in the case of Mangilal S. Jain has clarified and rightly held that the appropriation under Explanation to Section 140A of the Income Tax ,,,
Act would apply only where liability had attained finality. Though as regards the â??Kar Vivad Samadhan Scheme 1998,â?? the Central Board of" ,,,
Direct Taxes had issued a circular No.FC/149-145/98 DPL dated 03.09.1998 wherein it was specifically pointed out that the part payments would be ,,,
appropriated first towards tax and then towards interest, it would still not alter the appropriation as contemplated under Explanation to Section 140A." ,,,
In fact, the Court merely relied on the circular as being clarificatory. Hence, inapplicability of appropriation provisions under taxation enactments" ,,,
would remain even as regards the â??Karasamadhana Scheme 2017â?? notwithstanding lack of clarificatory circular as was available for the â??Kar ,,,
Vivad Samadhan Scheme 1998â??. ,,,

17. An allied aspect as regards appropriation is as to the nature of payments/ deposits made by the assesseees. The learned Single Judge while ,,,

disposing the Writ Petitions had observed that payments made pending adjudication of the appeals would be in the nature of colourless deposits till the,,, finality of adjudication.,,,

18. The said finding of the learned Single Judge is sought to be assailed by the State contending that the payments made as statutorily mandated either,,, at the time of filing of the appeal before the Appellate Authority [Section 63(4)] or for the purpose of seeking consideration of their prayer for interim,,, relief [Section 63(7)(9)] were not preconditions for appeal and hence appropriable.,,,

19. The learned Additional Advocate General appearing for the State has vehemently argued that any amount remitted was an unconditional payment,",,, as is apparent from a plain reading of relevant provisions of the KVAT Act. Hence, such a payment was not in the nature of provisional deposit but",,,, was reconcilable as per law, subject to final order of the adjudicating authority.",,,

20. On the other hand, the beneficiaries under the Scheme contend that the payments made either for filing of appeal or consideration of interim relief",,, as statutorily mandated cannot be the subject matter of appropriation. The respondents would also contend that permitting appropriation of payments,,, made pending appeals first towards interest would place them worse-off than those assesseees who chose to avail benefit under the Scheme without,,, having made the necessary payments as required by law. Flowing from the said submission, it was pointed out that the latter class of beneficiaries",,, would avail full benefit of 90% waiver of penalty and interest under Clause 2.1 of the Scheme, while the former, would although no doubt avail benefit",,, but to a lesser extent or none at all owing to their earlier payments being adjusted towards interest first as per the State's method of appropriation,,, as put forward.,,,

21. It was contended by the respondents that their remittances were under specific heads and not towards interest and hence question of appropriation,,, was never contemplated, and further impressed upon the arbitrary classification and resultant discrimination as compared to assesseees who had not",,,, even filed appeals or actively pursued the disputes to its logical end.,,,

22. The learned Single Judge has placed reliance on the following judgments in coming to the conclusion that the payments made were colourless,,, deposits:-,,,

the deposits made under Section 35F of the Central Excise Act. It was contended that the use of the phrase "deposit" in light of statutory,

mandate for filing of an appeal could not be appropriated, whereas the use of the phrase "payment" under Sections 62 and 63 of the KVAT Act,

makes these appropriable, and that both the terms could not be referred interchangeably. It was further argued that Section 42, which provides for,

appropriation uses the term "payments" and hence, payments made under Sections 62 and 63 could be appropriated immediately on remittance,

without further recourse.

24. It is necessary to note that the mere fact that Sections 62 and 63 of the KVAT Act do not use the term "deposit" cannot be reason enough,

to hold payments made pending appeal under these sections as not being pre-deposits. In the case of Vatech Wabag Limited v. Deputy Commissioner,

of Sales Tax, Midnapur Charge and Others reported in [2017] 100 VST 1 (Cal), the Calcutta High Court when faced with challenge to the,

constitutionality of Section 84(1) of the West Bengal Value Added Tax Act, 2003 which is analogous to Section 63 of the KVAT Act in mandating,

payment of entire undisputed amount and fifteen per cent of amount under dispute prior to filing of appeal, the Court noted that the word "payment" is,

capable of different meanings in the context that it is used. The Court noticed that the word "payment" can mean payment of a pre-deposit in one,

context and the payment of a tax in another context within the same section of a taxing enactment. The relevant portions of the Calcutta High,

Court's decision are reproduced below:-

"It is submitted on behalf of the petitioners that, the second proviso to Section 84(1) of the Act of 2003 requires payment of tax in dispute for the,

purpose of maintaining an appeal against an order in original. The requirement of payment is an exaction rather than a pre-deposit. The Act does not,

postulate a pre-deposit. Since the word used is payment in the second proviso and the effect is an exaction of a tax, the same is beyond the legislative,

competence of the state legislature. Tax in dispute is not defined under the Act of 2003. What is defined is "tax due". The words payment and pre-

deposit are different. The word payment used in the second proviso of Section 84(1) of the Act of 2003 cannot be read to be a deposit as the same,

would do violence to the plain meanings of the words used in the later part of

such proviso following the word payment. Reliance is placed on the,,,
dictionary meaning of the words payment and deposit. Reliance is placed on AIR
2010 Cal page 161 (Secretary, West Bengal Council of Higher,,,
Secondary Education v. Soumyadeep Banerjee & Ors.) and [1988] 172 ITR 321
(SC); AIR 1988 SC 1263 (Commissioner of Income-tax, U.P.II,",,,
Lucknow v. Bazpur Co-operative Sugar Factory Ltd.). Various rules of the West
Bengal Value Added Tax Rules, 2005 are also placed by the",,,,
petitioners to contend that, the appeal is required to be made with a payment of
tax and not a deposit or a pre-deposit.",,,
When one is making a deposit or a pre-deposit of money, as is required to prefer
an appeal under Section 84 of the Act of 2003, one is called upon to",,,,
pay a sum of money. Such payment would obviously await the disposal of the
appeal. On the assessee succeeding in the appeal, such money is",,,,
required to be either refunded with accrued interest or allowed to adjust against
any liability of the assessee, as the case may be. Viewed from such",,,,
perspective, the word ""payment"" is a genus in which deposit or the pre-deposit
is a specie. The word ""payment"" used in the second proviso guides both",,,,
clauses (a) and (b). Clause (a) requires a payment and there is no dispute with
regard thereto. So far as the clause (b) is concerned, it is contended",,,,
that, the word ""payment"" does violence to such clause, as in effect, if the word
""payment"" is allowed to govern clause (b) then, the State is requiring an",,,,
exaction from an assessee rather than asking the assessee to make a deposit or
a pre-deposit. With respect, I am not in a position to accept such",,,,
contention on behalf of the petitioners. No doubt the word ""payment"" governs
both clauses (a) and (b) of the second proviso. However, the word",,,,
payment"" is capable of different meanings in the context that it is used. The
word ""payment"" can mean payment of a deposit or a pre-deposit in the",,,,
context of clause (b) and the payment of a tax in the context of clause (a).
Viewed from such perspective, there is no violence to the user of the",,,,
words in the second proviso to Section 84(1) of the Act of 2003. It can be
contended that, the words in the second proviso are clear and that, clause",,,,
(b) does not speak of a deposit or a pre-deposit for a person or the Court to read
the word ""payment"" while regulating clause (b) as a payment of a",,,,
deposit. This contention assumes that, the Section 84 requires a payment of tax
of 15 per cent of the tax in dispute to prefer an appeal. That",,,,

assumption, with the greatest of respect, is not available in the context. The State has not imposed a tax to prefer an appeal. Learned Additional",,,

Advocate General says that, the State does not read Section 84 to be so. According to him, it is a deposit which would abide by the result of the",,,

appeal, that is to say that, on the appellant succeeding in the appeal, the amount deposited in terms of the second proviso to Section 84(1) would be",,,

refunded to the appellant along with interest. Deposit of 15 per cent.(sic) tax in dispute in terms of the second proviso to Section 84(1) is not a tax and",,,

cannot be turned (sic)as an exaction.â??",,,

(emphasis supplied),,,

Adverting to Voltas Limited v. Union of India reported in 1999 (112) E.L.T. 34 (Del.), wherein the Court has held that a pre-deposit made pending",,,

appeal under Section 37 of the Central Excise Act was required to be refunded when the matter stood remanded for fresh consideration and had",,,

further directed that such a pre-deposit could not be withheld and did not have statutory mandate for such withholding. The relevant portions of the",,,

judgment are reproduced hereunder:-",,,

â??7. It cannot be denied that the demand against the petitioner was raised consequent to the order of adjudication. Section 35F of the Act under",,,

which the petitioner was required to deposit the amount of Rs.50 lakhs speaks of â??deposit pending appealâ??. It is clear that the amount so",,,

deposited remains a deposit pending appeal and is thereafter available for appropriation or disbursal consistently with the final order maintaining or",,,

setting aside the order of adjudicationâ??.",,,

(emphasis supplied),,,

25. The State, has however, sought to rely on the decision in the case of Assistant Commissioner v. ACC Limited reported in (2015) 78 VST 169",,,

wherein the Court had refused to interfere with the appropriation of deposit towards interest, despite the assessee having opted for the Amnesty",,,

Scheme. However, the said decision is clearly distinguishable on facts because therein, the Court held that the revision petition was dismissed on",,,

31.03.2009 and the judgment of High Court had attained finality. It was only subsequently on 25.06.2009 that the application to avail benefits under the",,,

Amnesty Scheme came to be filed. Hence, the Court held that the appropriation as provided for under Section 55-C of KGST Act, whereby, the",,,

deposit amount adjusted first towards interest would not be disturbed. The Court also observed that the filing of the Special Leave Petition against the,,,

order of dismissal of the revisional proceedings was immaterial in so far as the Special Leave Petition would not be construed as a continuation of the,,,

revisional proceedings. The relevant paragraphs of the said decision are extracted hereinbelow:-,,,

19. Then coming to factual situation, Amnesty Scheme came to be announced with effect from 01.04.2008 by introducing Section 23B in the",,,

KGST Act. By 12.04.2007 on two occasions the appellant-assessee had made two payments, one in pursuance of the appellate order dated",,,

29.09.2006 and another on 14.03.2007 in terms of order of Sales Tax Appellate Tribunal. On 31.08.2007 final order of Sales Tax Appellate Tribunal in",,,

respect of provisional assessment was passed favouring assessee appellant granting full relief and setting aside entire demand. The Revenue had filed",,,

an application for condonation of delay along with revision. On 31.03.2009 such revision was allowed. By virtue of this order, benefit given by the",,,

Tribunal was set aside and the appellant-assessee was under an obligation to pay tax and other amounts demanded by the Department. Much later, on",,,

25.06.2009 assessee filed an application seeking benefit under Amnesty Scheme. According to senior counsel arguing for the appellant-assessee,",,

since the order of the Tribunal was in their favour, there was no obligation on them to seek benefit under Amnesty Scheme. During pendency of",,,

Revision Petition No. 76/2008 before High Court, Amnesty Scheme was introduced. Sub-clause (7) of Section 23B does not indicate that assessee",,,

cannot take benefit if the litigation pending is at the instance of Revenue. Therefore, as on the date of introduction of Amnesty Scheme, litigation was",,,

pending before this court in revision and the same came to be allowed on 31.03.2009. Much later, as Amnesty Scheme was still in force on",,,

25.06.2009, when no litigation was pending Exhibit P12 application came to be filed seeking benefit of Amnesty Scheme. On 03.07.2009, the amount",,,

to be paid as per Amnesty Scheme was intimated to appellant assessee. Thereafter, on 04.07.2009, appellant assessee filed SLP before the",,,

Honourable Supreme Court against order in revision pending before this court pertaining to provisional assessment. SLP came to be admitted only on",,,

08.03.2010. Prior to that, on 16.07.2009 a letter came to be filed before Assistant Commissioner (KVAT) submitting that the amount pre-deposited by",,,

appellant was not considered for computation of liability under Amnesty Scheme. On 18.07.2009 department intimated assessee that the pre-deposit,,,

has been appropriated towards interest due under Section 55C of KGST Act.,,,

23. The only question that has to be seen is, whether the amounts deposited during the pendency of provisional assessment deserve to be refunded,",,

since appellant assessee has deposited amounts under Amnesty Scheme. If appellant assessee is successful before Apex Court, he would be entitled",,,

for refund of entire amount, i.e., two deposits already made and also the amount paid under Amnesty Scheme. If Apex Court holds against the",,,

appellant assessee, so far as liability to pay tax he had already taken the benefit of Amnesty Scheme. In the present case, by virtue of Section 55C,",,

pre-deposit amounts could be appropriated in terms of sub-section (3). With the dismissal of STR before this court as early as 31.03.2009, provisions",,,

of Section 55C would be applicable. Therefore, if any interest was payable, that would be first adjusted and then balance amount to be paid has to be",,,

calculated. The date of submission of application for settlement of arrears was on 25.06.2009 and the amount to be paid as per Amnesty Scheme was,,,

intimated on 03.07.2009. Only on 04.07.2009 SLP was filed challenging the order dated 31.03.2009. Mere filing of SLP would not vest appellant,,,

assessee with any right and it cannot be considered as continuation of revisional proceedings, which is a settled position.",,,

In the light of the above observations, we are of the opinion, the normal rule that payment has to be first adjusted towards interest and then towards",,,

principal as provided under section 55C is applicable. Hence, W.A. No. 1828/2013 filed by appellant assessee is dismissed and W.A. No. 1807/2013",,,

filed by revenue is allowed.â??,,,

(emphasis supplied),,,

26. It is clear that in view of the discussion supra, the payments made which are referred to by any nomen-clature being made while preferring an",,,

appeal or as a prerequisite to consider the application for stay being statutorily mandated cannot be the subject matter of appropriation till the,,,

adjudication process has reached a finality and such deposits could only be regarded as â??colourless deposits.â?? The finding of the learned Single,,,

Judge as regards the payments made pending adjudication being in the nature of â??colourless depositsâ?? requires no interference.,,,

27. The very Scheme as envisaged in its preamble provided for waiver of 90% of penalty and interest remaining unpaid as on 15.03.2017; and further,",,,

it provided for payment of tax including arrears and 10% of penalty resulting in waiver of remaining penalty and interest. The purpose and intent of the,,,

Scheme was clear that all tax would be cleared and only a portion of penalty and interest need be paid.,,,,

28. As per Clause 2 of the Scheme, "any dealer who makes full payment of arrears of tax on or before 31.05.2017 shall be granted waiver of 90%",",,,

of arrears of penalty and interest payable". If Section 42(6) is to be made applicable to the provisions of the Scheme, as contended by the State, and,",,,

payments made pending appeal were to be appropriated first towards interest in accordance with the parent Acts notwithstanding the Scheme, it",",,,

would then lead to an absurdity where even assessee's making payments for compliance with condition of paying full tax and 10% of interest and,",,,

penalty arrears in terms of Clause 3.3, would have their payments appropriated towards interest first by operation of Section 42(6) of the KVAT Act",",,,

or other provisions which are in pari-materia. By the time final application and declaration is moved before the Assessing Authority/Recovery,",,,

Officer/Prescribed Authority to waive the balance amount, no or very little interest would be left unpaid and the contemplated benefit would never be",",,,

accorded. Hence, the only way of reconciling the provisions of the Scheme to give effect to the object of granting 90% waiver of penalty and interest",",,,

is to adjust the payments made pending adjudication first towards tax and then, towards interest and penalty arrears.",,,

29. The contention of the State as regards appropriation in spite of the Scheme being enacted in exercise of executive power has been rightly rebutted,",,,

by the respondents by contending that the Scheme framed by the Government ought to be treated as self-contained code and if not, the result would",",,,

be an absurd consequence as dealt with above.,,,,

30. In this particular case, it is clear that the payments made by the respondents for admitting their appeals under various statutory provisions were",",,,

under dispute and were not referable to any particular component of tax or penalty or interest and were only "colourless deposits". Accordingly,",,,

these remittances cannot be deemed to be paid and offset from unpaid amount for calculation of arrears to be waived. Unlike in the case of Assistant,",,,

Commissioner v. ACC Ltd. (supra) where the deposits were no longer under dispute by reason of dismissal of appeal having attained finality, in the",,,
present case, the deposit amounts were still under dispute as of the cut-off date for calculation of arrears, i.e. 15.03.2017 as specified in Clauses 1.1",,,
and 1.2 of the Scheme. These deposit amounts being under dispute, cannot be deemed to be paid, and hence, cannot be offset from arrears, to give",,,
effect to the object of the Scheme and to avoid absurdity. Any payments made under the Scheme and the adjustment of deposit after withdrawal of",,,
appeal and after the promulgation of the Scheme, must be by appropriation first towards tax arrears. The explanation through an allegory of three",,,
boxes in a puzzle game made in paras-25 and 26 of the impugned order very aptly indicates the sequence of appropriation which is to be resorted to in",,,
the manner as discussed above.,,,
Â 31. In the light of the above discussion, the order of the learned Single Judge is upheld. Appeals are dismissed and the direction as contemplated in",,,
terms of para-52 of the impugned order is to be carried out.,,,