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**(2004) 03 SC CK 0015**

**In the Supreme Court Of India**

**Case No : Civil Appeals Nos. 4970-71 Of 2001**

Voltas Ltd.

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

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**Date of Decision :** 25-03-2004

**Acts Referred:**

Income Tax Act, 1961 — Section 72

**Citation :** (2004) 11 SCC 569 : (2004) 136 STC 15

**Hon'ble Judges :** S. N. Variava, J;H. K. Sema, J

**Bench :** Division Bench

**Advocate :** Dushyant A. Dave and K. Sudheer, for the Appellant; Amreswari T.V. Ratnam and K. Subba Rao, for the Respondent

**Final Decision :** Dismissed

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## Judgement

1. These appeals are against the judgment of the Andhra Pradesh High Court dated June 8, 2001.

Briefly stated, the facts are as follows :

2. In Andhra Pradesh, there was a company known as "Hyderabad Allwyn Ltd". In this company, the Government of Andhra Pradesh was a major shareholder. The company suffered huge losses and became a sick company. Therefore the matter was taken up before the Board for Industrial and Financial Reconstruction (BIFR).

3. While the matter was before the BIFR, negotiations took place with the appellants for the purpose of reviving at least the refrigeration department of that company. A memorandum of understanding was entered into on March 28, 1993, which, inter alia, provided as under :

"HAL has been incurring losses for the past few years and the Government of Andhra Pradesh has decided to disinvest its holding and inter alia privatize HAL with a view to making it a viable unit and achieving the following objectives :

(a) To secure the public interest by reviving HAL, balancing the drain on the State's exchequer and consequential denial of use of State's finances for other State and public purposes and objectives and obviating allocations of the State budget to HAL, as contrasted with the consequences of continued retention of the shareholding and management of HAL as a Government company.

(b) To avoid bankruptcy of HAL and consequential loss of employment in the State of Andhra Pradesh and loss of capital of the State of Andhra Pradesh by initiating measures of privatisation;

(c) To ensure the commitment on the part of the new owner to maintain and fully utilise the existing production capacities at reasonable level and to ensure the growth and stability of HAL in the long run;"

4. By this MOU, it was agreed that all the business interests and undertaking of refrigeration department would be transferred to and taken over by the appellants by virtue of an amalgamation on the terms and conditions set out in the MOU. The MOU clarified that it would take effect from March 29, 1993 provided the scheme of amalgamation was approved by the BIFR.

5. Thereafter, a draft scheme was prepared and circulated to all the parties. The draft scheme, inter alia, provided for certain waivers and concessions. One of the concessions was a deferment of sales tax for a period of seven years from the date of final order passed by the BIFR approving the scheme.

6. The scheme was placed before BIFR. After giving notice to all interested parties and after hearing objections BIFR sanctioned the scheme on April 4, 1994. The sanctioned scheme contained the following two clauses which are relevant for our purpose :

"13(b)(3) Unpaid statutory dues like sales tax to be funded and the amount so funded to have a moratorium of 2 years (1994-95 and 1995-96) for repayment of such dues and payment of interest thereon. Thereafter, repayment to be made in 20 equal quarterly instalments with interest at 6 per cent per annum.

13(b)(4) Deferment of sales tax liabilities in respect of the products manufactured at Sanatnagar and Nandalur factories for a period of 7 years from the date of the final order from the BIFR approving this scheme."

7. The Government issued a G.O. No. 66 dated January 20, 1994, wherein it was provided as follows :

"The sales tax deferral will be up to a maximum of 50 per cent of the fresh monies which amounts to Rs. 18.50 crores to be brought in by M/s. Voltas for the rehabilitation of the refrigerator division as per the sanctioned scheme of the BIFR. Sales tax up to the above ceiling will be deferred for a period of 7 years."

8. However, by another G.O. bearing No. 119 dated August 18, 1995, the Government substituted the above mentioned clauses of the earlier G.O. by the following :

"The Sales Tax Deferral shall be limited to the maximum of 50 per cent of the fresh monies to be brought in by M/s. Voltas Limited for rehabilitation of the refrigeration division as per the sanctioned scheme of Board for Industries Reconstruction or Rs. 18.50 crores whichever is less. The sales tax up to the above ceiling shall be deferred for a period of 7 years starting from April 1, 1993. The amount of sales tax so deferred shall carry an interest of 18 per cent per annum. It shall be payable after 7 years in one lump sum."

9. After G.O. No. 119 was issued, the appellants made a reference to the Government. The Government by its letter dated October 25, 1995 directed the appellants to move BIFR for obtaining a specific order to extend concession of sales tax deferral without charging any interest.

10. BIFR by its order dated December 5, 1995, refused to interfere on the ground that the sales tax deferral was granted by the Government based on its policy and if the policy guidelines did not provide for waiver of interest then that benefit could not be granted to the appellants.

11. The appellants filed an appeal before the Appellate Board for Industrial and Financial Reconstruction, which by its order dated July 25, 1996 dismissed the appeal, inter alia, on the ground that the liability to pay interest was a statutory liability. It was held that in the absence of any provision in the scheme the statutory liability could not be waived.

12. The appellants then filed a writ petition in the Andhra Pradesh High Court, which has been dismissed by the impugned judgment. The Andhra Pradesh High Court has held that there was no exemption from sales tax. It held that all that had been granted was a deferral for payment of sales tax. It held that there was no provision in the Sales Tax Act to grant deferral but it would not go into the question whether such deferral could have been granted as it did not arise before it. It held that there was a statutory liability to pay interest and so long as there was no express waiver of the statutory liability in this sanctioned scheme interest had to be paid. It held that normally sales tax become due and payable on filing of the return and if there is deferred payment then interest has to be paid.

13. It is urged, on behalf of the appellants, that the whole purpose of the amalgamation and the scheme was to revive a sick company and to ensure that the company remained in the State of Andhra Pradesh. It was submitted that the whole purpose was to see that workmen did not lose jobs. It was submitted that with this view in mind the concessions and the waivers were granted. It was submitted while considering the scheme before BIFR the cost elements were also taken into consideration. It was submitted that the costs factor was worked out on the basis that there was to be a deferral without their being any interest liability. It was submitted that taking into account the cost factor, above mentioned Clause (4) was incorporated in the scheme. It is submitted that Clause (4) did not contain any provision for payment of interest on the deferred sales tax and therefore no interest was payable under the scheme.

14. Reference was made to various provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 to show that once a scheme is sanctioned, it is final and binding not only on the parties to the scheme but that it also prevails over all other contracts and even other laws. It was submitted that the provisions of the scheme prevail over the Andhra Pradesh General Sales Tax Act. It was submitted that as there was no provision for payment of interest, no interest could be charged from the appellants.

15. Reliance was placed upon the case of J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, , wherein the question was whether an assessee was liable to pay interest. The assessee had not included the amount of freight charged in respect of sales of cement, as part of price and filed returns on that basis. The assessee also paid tax on that basis. However, ultimately on adjudication it was held that freight was part of the price and that tax had to be paid even on this element. The assessee thus paid the tax. The question was whether the assessee was liable to pay interest on this payment. In this context, this Court held as follows :

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

visit him with the liability to pay interest under Clause (a) of Section 11B. It would be a different matter if the return is not approved by the authority but that is not the case here. It is difficult on the plain language of the Section to hold that the law envisages the assessee to predict the final assessment and expect him to pay the tax on that basis to avoid the liability to pay interest. That would be asking him to do the near impossible."

16. It was submitted that this authority shows that a liberal interpretation had to be given and that the assessee should not be made liable for interest amounts. In our view this authority is against the appellants. This authority shows that the tax becomes due on the date that the returns are filed. In *J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another*, the assessee had paid the tax which the assessee thought was payable. In this case the appellants were not exempted from paying tax. All that happened was that payment of tax was deferred. Thus the appellants collected tax from the customers but were not paying the same over to the Government. The concession of deferral did not mean that the payment had not become due.

Payment becomes due with the filing of the returns. The deferral was granted as payment had become due. The appellants know that it was due but due to the concession granted under the scheme, they were not paying the same.

17. It was submitted that the amounts become due and payable only on March 29, 2000. In support of this contention reference was also made to a letter dated March 1, 2000 addressed by the Commercial Tax Officer to the appellants calling upon them to pay the amount by March 29, 2000. We are unable to accept this submission. As set out above the payment had become due on filing of the return.

18. Reliance was also placed upon the case of *Indian Shaving Products Limited Vs. Board of Industrial and Financial Reconstruction and another*, wherein this Court has held that an amalgamated company is entitled to the benefit of Section 72(a) of the income tax Act. In our view, this authority has no relevance at all, to the question before us.

19. Undoubtedly, the clause also does not contain any provision for payment of interest. It also does not contain waiver from payment of interest. Under the provisions of the Andhra Pradesh General Sales Tax Act, the assessee has to obtain a licence, file returns and pay the tax at the time the returns are filed. However Section 16(2)(b) of the Sales Tax Act permits extension of time for payment of tax. Section 16 reads as follows :

"16. Payment of tax and other dues payable under the Act--(1) The tax assessed, whether provisionally or finally and the penalty levied under the provisions of this Act shall be paid by the dealer in such manner, and within such time, not being less than fifteen days from the date of service of the notice of assessment or of the levy of penalty, as may be specified in such notice:

Provided that the time-limit of fifteen days for a notice under this sub-section shall not apply to casual traders :

Provided further that the assessing authority may, for good and sufficient reasons to be recorded in writing, require the dealer to pay the tax assessed or the penalty levied within such time, not being less than seven days from the date of service of the notice of assessment, as may be specified in the notice:

Provided also that the assessing authority shall require the dealer to pay the tax due as per the return filed by him in case such return is not accompanied by the proof of payments of tax and it shall not be necessary to give minimum time of fifteen days for payment of tax as mentioned in this section.

2(a) Notwithstanding anything contained in Sub-section (1), on an application made by the assessee, the Deputy Commissioner may, by an order, allow extension of time for payment of any tax, penalty or other amount due under this Act, or permit the payment thereof in such instalments, within such intervals and subject to such conditions as he may specify in the said order, having regard to the circumstances of each case ;

(b) in every case where extension of time for such payment is allowed or where such payment in instalments is permitted, the dealer shall pay, in addition to such tax, penalty, instalment or other amount, interest at the rate of one rupee and fifty paise for every one hundred rupees or part thereof for each month or part thereof, from the date specified for its payment for the period so extended or on the instalments so permitted."

20. Thus time for payment can be extended. But if such an extension is granted a statutory liability to pay interest at the rate of 18 per cent arises. This is a statutory liability. If a statutory liability has to be waived then there must be an express waiver of the same. The fact that the scheme is silent about such waiver shows that there is no waiver. This becomes further clear from Clause 13(b)(3) of the scheme. That clause specifies that interests shall only be at the rate of 6 per cent. Such a provision had to be made because otherwise the statutory liability would have been to pay interest at the rate of 18 per cent. In Clause 13(b)(4) there is no express waiver of or reduction in the rate of interest and the payment thereof.

21. On behalf of the respondents, reliance has been placed upon the case of Amrit Banaspati Co. Ltd. and another Vs. State of Punjab and another, . In this case the Chief Minister and the Government had promised refund of sales tax if the industry was set up in the State. After the industry was set up, the Government did not grant the refund of sales tax. This Court held that a promise of refund of sales tax is completely different from waiver of tax. This Court held that if there is a waiver of tax, that benefit ultimately goes to the consumer inasmuch as no tax is collected. This Court held that in case the tax is collected from the consumer it has to be paid to the Government. This Court held that to promise refund of tax, which is due and payable, would be a fraud on the

Constitution. It was held that such a promise could not be enforced. It was held that promissory estoppel does not arise in such a case. The High Court has, in the impugned judgment, relied upon this authority to conclude that there can be no implied waiver of a statutory liability. We see no infirmity in the reasoning of the High Court.

22. Reliance was also placed by the respondents on the case of South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 Scale 600, wherein it has been held that if under the provisions of the contract or statute interest is payable then such interest must be paid. However, in that case, the question whether the provision of a scheme sanctioned by BIFR would prevail over a statutory provision did not arise.

23. Thus in our view there being no express waiver of interest, the statutory provision must prevail. We thus do not find any infirmity in the order of the High Court.

24. The appeals stand dismissed accordingly. There will be no order as to costs.