



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 26<sup>th</sup> APRIL, 2024

IN THE MATTER OF:

+ **W.P.(C) 10332/2023 & CM APPL. 40030/2023**

**GEEP INDUSTRIES (INDIA) PVT. LTD. & ORS** ..... Petitioners

Through: Mr. Tarun Gulati, Senior Advocate  
with Mr. Ravisekhar Nair,  
Ms.Parthsarathi Jha, Ms. Ayushi  
Sharma, Ms.Raagini Agarwal, Ms.  
Shruti, Advocates

versus

**COMPETITION COMMISSION OF INDIA** ..... Respondent

Through: Ms. Aakanksha Kaul and Mr. Aman  
Sahani, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

1. The Petitioners have approached this Court by filing the instant writ petition under Article 226 of the Constitution of India challenging the Order dated 18.07.2023 passed by the Respondent/Competition Commission of India (CCI) directing the Petitioners to deposit interest on the penalty amount for the period commencing from 10.12.2018 to 07.07.2023 on the ground that the Respondent/CCI could not have directed payment of interest on the penalty amount without following the procedure laid down under the Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2011 (*hereinafter referred to as "2011 Regulations"*).



2. The facts, in brief, leading to the filing of the instant writ petition are as under:

- i. The proceedings were initiated against Petitioner No.1/Company and Petitioners Nos.2, 3 and 4, who were directors of the Petitioner No.1/Company under the Competition Act, 2002 (*hereinafter referred to as "2002 Act"*). Inquiry was conducted and the Respondent/CCI *vide* Order dated 30.08.2018 directed the Petitioner No.1 and their directors and employees indentified in the proceedings to cease and desist from indulging into any act of cartelisation in the Dry Cell Batteries market in India. The Respondent/CCI also held that penalties will be imposed on the Petitioners, under Section 27(b) of the 2002 Act. Penalty of Rs.9,64,06,682/- was imposed on Petitioner No.1, Rs.1,29,839 was imposed on Petitioner No.2, Rs.1,10,386/- was imposed on Petitioner No.3 and Rs.2,40,452 was imposed on Petitioner No.4. The penalties were to be deposited within a period of 60 days of the receipt of the Order. The said Order dated 30.08.2018 was challenged by the Petitioners by filing Competition appeals being No.88/2018 etc. before the National Company Law Appellate Tribunal (NCLAT). The Ld. NCLAT *vide* its Order dated 31.03.2023 upheld that the Petitioners are guilty of abusing their dominant position in the market, however, the penalty qua Petitioner No.1 was reduced to 1% of the total turnover for each year of continuance of cartelisation. It is pertinent to mention that the Order dated 30.08.2018 passed by the Respondent/CCI had been stayed during the pendency of the appeal, subject to the Petitioner No.1 depositing 10%



of the penalty amount as imposed by the Respondent/CCI.

- ii. Pursuant to the Order dated 31.03.2023 passed by the Ld. NCLAT, the Respondent/CCI issued demand notices directing the Petitioners to deposit the penalty amount with simple interest @ 1.5% for every month or part of a month comprised in the period commencing from 10.12.2018 till the date on which the demand is paid. It is pertinent to mention here that the Petitioner No.1 continuously renewed the FDR of Rs.10 lakhs, that had been deposited as a condition precedent for grant of stay by the Ld. NCLAT. The Petitioners requested the Respondent/CCI to withdraw the demand notices in so far as it related to the demand of payment of simple interest @ 1.5% for every month or part of a month comprised in the period commencing from 10.12.2018 till the date on which the demand is paid. The Petitioners also requested for payment of penalty amount by way of instalments. The said request had been turned down by the Respondent/CCI *vide* the Impugned Order dated 18.07.2023.
  - iii. The Petitioners have, therefore, approached this Court by filing the instant writ petition under Article 226 of the Constitution of India challenging the power of the Respondent/CCI to levy interest on the payment of penalty.
3. The principal contention of the learned Senior Counsel appearing for the Petitioners is that the interest can be levied on any penalty amount only in accordance with the 2011 Regulations. It is stated that unless the procedure laid down under the 2011 Regulations are followed, the Respondent/CCI cannot direct payment of interest on any delayed payment



of penalty.

4. Learned Senior Counsel for the Petitioners draws attention of this Court to Regulation 3(1) of the 2011 Regulations to contend that where a penalty has been imposed on an enterprise by the Respondent/CCI, a demand notice as set out in Form-I appended to the regulations has to be served on the enterprise through the Recovery Officer after the expiry of the period specified in the Order of penalty expires. He further contends that Regulation 3(2) of the 2011 Regulations provides that demand notice as set out in Form-I appended to the Regulations shall provide a time of 30 days from the date of service of the demand notice to the enterprise concerned to deposit the penalty in the manner specified in the said notice. He states that Regulation 3(3) of the 2011 Regulations provides that upon receipt of demand notice, the enterprise has to pay the penalty through challan as set out in Form-II appended to the Regulations, in favour of Pay & Accounts Officer (PAO), Ministry of Corporate Affairs. He states that unless the said procedure is followed, interest on penalty amount, as specified in Regulation 5 of the 2011 Regulations, cannot be imposed.

5. Learned Senior Counsel for the Petitioners also draws attention of this Court towards the analogous provisions of the Income Tax Act, 1961 regarding levy of interest on delay in payment of penalty. He more particularly draws attention of this Court to Sections 156 and 220 of the Income Tax Act to substantiate his contention.

6. Regarding the power to levy interest on the instalments, the learned Senior Counsel for the Petitioners places reliance upon Regulation 4 of the 2011 Regulations and contends that the interest can be levied only when



there is a delay in payment of instalment and for the delay in the payment of instalment, he states that even in that case a demand notice under Regulation 3 has to be first issued before interest under Regulation 5 can be imposed. He states that the procedure laid down in the 2011 Regulations are mandatory in nature and it has to be followed before levying interest on delay in payment of penalty.

7. *Per contra*, learned Counsel appearing for the Respondent/CCI contends that the liability to pay the amount of penalty arose from the date of the Final Order which is 30.08.2018. She states that the Ld. NCLAT did not come to the conclusion that penalty was not to be levied on the Petitioners. She states that there was a reduction only as far as Petitioner No.1 is concerned regarding the quantum of penalty. She, therefore, states that the demand notice was only Consequential wherein the Petitioners have been directed to pay interest on the penalty amount from the date of which the penalty was to be paid.

8. Learned Counsel for the Respondent/CCI further states that on the date when the appeals were dismissed by the Ld. NCLAT, the original demand made *vide* Order dated 30.08.2018 got revived and the stay granted by the Ld. NCLAT gets automatically vacated. She, therefore, states that the amount which was due and payable within 60 days from the date of Order dated 30.08.2018 would attract interest on its own. She states that it cannot be said that the liability to pay interest on the delayed payment of penalty can only arise after the demand notice is served on the Petitioners because Regulation 3 of the 2011 Regulations is only procedural in nature. She further states that Regulation 3 being procedural in nature is only directory and therefore, the demand for interest for the delay in payment of penalty in



terms of the Order dated 30.08.2018 cannot be found fault with.

9. Learned Counsel for the Respondent/CCI states that Regulation 5 of 2011 Regulations is clear and provides that if the penalty is not paid within the period specified, the enterprise concerned shall be liable to pay simple interest @ 1.5% for every month or part of a month comprised in the period commencing from the day immediately after the expiry of the period mentioned in demand notice and ending with the day on which the penalty is paid. She states that penalty imposed by the Respondent/CCI was crystallised and brought to the knowledge of the persons against whom the penalty was ordered to be paid. She, therefore, states that there is no necessity of giving a demand notice first directing the persons against whom the penalty has been imposed. She states that issuance of demand notice is only a Ministerial Order and it can have no effect on the obligation of the persons against whom the penalty is imposed to pay the amount of penalty within the time stipulated and the delay in payment of penalty would automatically attract interest.

10. Learned Counsel for the Respondent/CCI further contends that the analogy drawn by the learned Senior Counsel for the Petitioners between the procedure laid down in the Income Tax Act and the 2011 Regulations is unsustainable for the reason that under the Income Tax Act, when notice of demand is issued, the demand is raised after assessment. She states that in case of income tax, the assessee is initially not aware about the assessment, against which he has statutory remedies available to him under the Income Tax Act and the assessment done under the income tax involves a reasonable procedure, wherein the assessee has opportunity to rebut, explain and distinguish the evaluation and figures, and bring favourable material on



record to his benefit. She states that distinguishably, in the present case, where Respondent/CCI adjudicates a matter, it goes onto imposing a penalty, based on the criteria laid down under the CCI laws and the only remedy available to the party is to challenge the same in appeal. She further states that the interest imposed under the Competition Act is akin to the interest imposed under Section 234A of Income Tax Act, which is also a statutory levy and automatically becomes leviable as soon as a default occurs on the part of the assessee defaulting to file his income tax return.

11. In nutshell, the contention of the learned Counsel for the Respondent/CCI is, as night follows the day, that the moment a penalty is imposed, it has to be complied with and if the penalty is not paid in terms of the Order imposing penalty, interest automatically becomes payable under Regulation 5 of the 2011 Regulations.

12. Heard learned Counsel appearing for the Parties and perused the material on record.

13. To understand the scheme of Regulations and the power to levy penalty, it is necessary to extract the few provisions of the 2011 Regulations. Regulations 2(c), 2(e), 2(g), 3, 4, 5 and Form-I of 2011 Regulations read as under:

*“2(c) “demand notice” means a notice issued by the Commission to an enterprise from whom any penalty is recoverable under the Act;*

*2(e) “enterprise in default” means an enterprise which has not paid the penalty imposed on it within the stipulated time despite the demand notice duly served upon;*



2(g) “penalty” means a monetary penalty or fine or any other sum imposed by the Commission and realisable under the Act;

**3. Issuance of demand notice.-** (1) Where a penalty has been imposed on an enterprise by the Commission, the Secretary **shall** issue a demand notice as set out in Form I appended to these regulations and shall serve it through the recovery officer, to the enterprise concerned after expiry of the period specified for the purpose in the order of imposition of penalty by the Commission at its last address known to the Commission and in the case of a joint account to all the joint holders of such account at their last addresses known to the Commission.

(2) A demand notice issued under sub-regulation (1) shall provide a time of thirty days from the date of service of the demand notice to the enterprise concerned to deposit the penalty in the manner specified in the said notice:

Provided that where the Commission has any reason to believe that it will be detrimental if the full period of thirty days aforesaid is allowed, it may direct the enterprise concerned that the sum specified in the demand notice shall be paid within such period being a period less than the period of thirty days aforesaid, as may be specified by the Commission in the demand notice.

(3) Upon receipt of demand notice the enterprise shall pay the penalty, through challan as set out in Form II appended to these regulations, in favour of Pay & Accounts Officer (PAO), Ministry of Corporate Affairs, Head No. 1475.00.105.05, Sub-Head-05 – ‘Penalties imposed by Competition Commission of India’.





*(4) One copy of the challan shall be submitted by the enterprise to the recovery officer immediately but not later than seven days of the payment and the recovery officer shall make an entry in the penalty recovery register to the same effect.*

*(5) The Commission may, at any time, rectify any clerical or arithmetical mistake made in the demand notice.*

**4. Extension of time and grant of instalments.-** *(1) On an application made by the enterprise concerned, before the expiry of the due date of the payment specified in the demand notice, the Commission may extend the time for payment or allow payment by instalments, subject to such conditions as the Commission may think fit to impose in the circumstances of the case.*

*(2) In a case where an extension has been granted and the enterprise concerned fails to make the payment within the time so extended, the enterprise concerned shall be deemed to be an enterprise in default.*

*(3) In a case where payment by instalments has been allowed and the enterprise concerned commits default in paying any one of the instalments within the time fixed, the enterprise concerned shall be deemed to be enterprise in default as to the whole of the penalty then outstanding, and the other instalment or instalments shall also be deemed to have been due on the same date as the instalment actually in default.*

**5. Interest on penalty.-** *If the amount specified in any demand notice is not paid within the period specified by the Commission, the enterprise concerned shall be liable to pay simple interest at one and one half per cent, for every month or part of a month comprised in the period*



*commencing from the day immediately after the expiry of the period mentioned in demand notice and ending with the day on which the penalty is paid:*

*Provided that the Commission may reduce or waive the amount of interest payable by the enterprise concerned if it is satisfied that default in the payment of such amount was due to circumstances beyond the control of the enterprise concerned:*

*Provided further that where as a result of an order of the Competition Appellate Tribunal or the High Court or the Supreme Court of India, as the case may be the amount of penalty payable has been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded in accordance with regulation 14.”*

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**“THE COMPETITION COMMISSION OF INDIA  
FORM I  
(See regulation 3)  
DEMAND NOTICE  
[Under The Competition Act, 2002 (12 of 2003)]**

To  
.....  
.....  
.....

**Subject: Notice of demand for the recovery of penalty imposed u/s.....of the Competition Act, 2002 (12 of 2003) – regarding.**

*WHEREAS vide order dated ..... in the matter of ..... (case No. ....) the Competition Commission of India*



*(the Commission) has imposed a penalty of Rs. ....(Rupees.....) on ..... (Name of the concerned enterprise) having its office at ..... (address) and having ..... PAN number under section(s) ..... of the Competition Act, 2002 (12 of 2003) (the Act); and*

*WHEREAS a copy of the said order was duly served upon you on ..... (date); and in terms of the above mentioned order, the penalty of Rs. .... (Rupees. ....) was payable on ..... (date); and*

*WHEREAS you have not paid the said penalty within the time so specified;*

*NOW, therefore, you are required to deposit a sum of Rs..... (Rupees..... ) within thirty days from the date of receipt of this notice through Challan. The payment of penalty shall be made in favour of 'Pay and Accounts Officer- Ministry of Corporate Affairs, New Delhi' in the account head 1475.00.105.05, sub-head-05 'Penalties imposed by Competition Commission of India';*

*[In case you fail to deposit the penalty amount, i.e..... (Rupees .....Only) within the aforesaid period, you shall be liable to pay simple interest @ 1.5% for every month or part of a month comprised in the period commencing from the date immediately after the expiry of the period mentioned in this demand notice and ending with the date on which the demand is paid.*

*Further, the Commission shall also take necessary steps for recovery of the sum so due besides initiating actions for non-compliance of the order(s) of the Commission]*



*Place:*.....

*Date:*.....

*Signature:*.....

*Name:* .....

*Designation: Secretary Competition  
Commission of India*

*Seal”*

14. A perusal of Regulation 3(1) indicates that where a penalty has been imposed on an enterprise by the Commission, then the Commission shall issue a demand notice as set out in Form-I appended to the regulations. A perusal of Regulation 3 read with Form-I postulates that a person against whom penalty has been imposed has to be first informed regarding levy of penalty. This Form-I is to be issued regardless the person against whom a penalty has been imposed was present during the hearing or at the time of final order was passed. Form-I specifies the correct amount of penalty that is due and payable by the person against whom the penalty has been imposed and the amount which has become due and payable. Form-I also specifies that in case a person fails to deposit the amount of penalty within the time stipulated, he shall be liable to pay simple interest @ 1.5% for every month or part of a month comprised in the period commencing from the date immediately after the expiry of the period mentioned in the demand notice and ending with the date on which the amount is paid. The said stipulation was introduced in Form-I on 25.06.2014. The specific insertion of the said clause intimating that the interest is due and payable on failure to pay the amount of penalty read with the mandatory provision of Regulation 3(1) of



the 2011 Regulations makes it clear that unless and until a person, against whom a penalty has been imposed, is informed by giving a notice in Form-I appended to the Regulations, interest is not leviable.

15. Regulation 3(2) of the 2011 Regulations provides that a demand notice under sub-regulation (1) shall provide a time of 30 days from the date of service of the demand notice to the enterprise concerned to deposit the penalty in the manner specified in the said notice. The same is reflected in Form-I which stipulates the date within which the amount has to be paid and it further stipulates that in case of failure to deposit the amount of penalty within the time stipulated, interest is chargeable.

16. It is pertinent to mention that the amount of interest which is stipulated in the notice is the amount that is stipulated in Regulation 5 of the 2011 Regulations. Regulation 5 also specifically states that if the amount specified in the demand notice is not paid within the period specified then interest is leviable. It is further fortified that the demand notice also stipulates that the amount has to be paid within 30 days of the receipt of the demand notice under Form-I. These provisions are, therefore, completely mandatory.

17. The Apex Court in Mohan Wahi v. Commissioner, Income Tax, Varanasi and Ors, (2001) 4 SCC 362, while considering on the power to impose interest on the delayed payment of penalty amount, has observed as under:

*“13. Section 156 of the Act provides as under:*

*“156. Notice of demand.—When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Assessing Officer shall serve upon the assessee a*



*notice of demand in the prescribed form specifying the sum so payable.”*

*14. If the amount specified in the notice of demand under Section 156 is not paid within the time limited by sub-section (1) or extended under sub-section (3) of Section 220, then the assessee shall be deemed to be in default under sub-section (4) of Section 220. Tax recovery certificate can be issued under Section 222 when an assessee is in default or is deemed to be in default. Proceedings for recovery of tax under the Second Schedule can be initiated against a defaulter. Thus Section 156 provides for a vital step to be taken by the Assessing Officer without which the assessee cannot be termed a defaulter. The use of the term “shall” in Section 156 implies that service of demand notice is mandatory before initiating recovery proceedings and constitutes foundation of subsequent recovery proceedings.*

*15. We have already stated that the finding of fact recorded by CIT (Appeals) and the Tribunal was that notice of demand was not served on the assessee. The very foundation for initiating the recovery proceedings, therefore, was non-existent and the assessee could neither have been deemed to be in default nor any proceedings for recovery of tax could have been initiated against him.*

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*17. In Homely Industries v. STO [(1976) 3 SCC 705 : 1976 SCC (Tax) 383 : (1976) 37 STC 483] also the significance of service of demand notice came up for the consideration of this Court and it was held that there can be no recovery without service of a demand notice; if such notice was not served, the recovery*



*proceedings are not maintainable in law and are invalid and the same along with the recovery certificates are liable to be quashed.*

**18.** *In Ram Swarup Gupta v. Behari Lal Baldeo Prasad [(1974) 95 ITR 339 (All) (DB)] a Division Bench of the Allahabad High Court referred to the effect of the Taxation Laws (CVRP) Act, 1964 on the law laid down by this Court in Seghu Buchiah Setty case [(1964) 52 ITR 538 : AIR 1964 SC 1473] and held: (ITR p. 342)*

*“The effect of these provisions is to dispense with the need of issuing a fresh notice of demand and the recovery certificate and to allow the original recovery proceedings to continue, but only for the amount found due after reduction in the appeal, and it is for this purpose that the taxing authority is required to send intimation of the fact of the reduction to the assessee and to the Tax Recovery Officer. As the proceedings for recovery can be continued only for the amount that finally remains due, and not for any amount in excess thereof, the requirement of sending intimation to the Tax Recovery Officer becomes an essential duty of the taxing authority and must be held to be a mandatory condition. Non-compliance of that condition will be an illegality in the procedure and will invalidate the proceedings. A sale held in proceedings initiated and continued for the recovery of an amount in excess of the amount payable by the assessee, after its reduction in appeal, will be invalid. Such a sale is not validated by clause (c) of Section 3 of the Act.”*



*The Division Bench decision of the Allahabad High Court in Ram Swarup Gupta case [(1974) 95 ITR 339 (All) (DB)] was cited with approval before this Court in Union of India v. Jardine Henderson Ltd. [(1979) 2 SCC 258 : 1979 SCC (Tax) 117 : (1979) 118 ITR 112] though it was distinguished for its applicability to the facts of the case before this Court. The Division Bench of the Orissa High Court has held in Sunil Kumar Singh Deo v. Tax Recovery Officer [(1987) 166 ITR 882 (Ori) (DB)] that non-service of demand notice goes to the root of the jurisdiction of the officer initiating recovery proceedings. We find ourselves in agreement with the view so taken. Incidentally, we may refer to three Division Bench decisions of the High Court of Madhya Pradesh viz. Ghanshyamlal v. State of M.P. [1961 MPLJ 218 (DB) (SN)] , Manmohan Lal Shukla v. Board of Revenue, M.P. [1964 MPLJ 32 (DB)] and Premchand Ramchand v. Board of Revenue, M.P. [1964 MPLJ 337 (DB)] Section 146 of the M.P. Land Revenue Code, 1959 provides that before issuing any process for recovery of arrears of land revenue the Tahsildar or Naib Tahsildar may cause a notice of demand to be served on any defaulter. Chief Justice P.V. Dixit speaking for the Division Benches, in all the three cases, has held that the word “may” has the imperative meaning of “shall” and no proceedings for recovery can be initiated without service of notice of demand failing which the proceedings would suffer from jurisdictional defect. For a long period of time the High Court of Madhya Pradesh has been taking this view consistently.*

18. Similarly, the Apex Court in State of Kerala v. Joy Varghese, Kerala Rubber Products, (1999) 9 SCC 124 has observed as under:

*“2. Having regard to the phraseology of Section 23(3) of the Kerala General Sales Tax Act, the liability of the*





*dealer to pay penal interest on the tax assessed or any other amount due under that Act arises only if such tax or amount is not paid “within the time specified therefor in the notice of demand”. There being no notice of demand, it was held that the liability to pay penal interest did not arise. It is necessary to emphasise that this is not a case of payment of interest at the ordinary statutory rate but a case of penal interest and it is, therefore, that the Act provides that the liability to pay the same arises only after there has been a failure to comply with the provisions of a notice in that behalf.”*

19. The Apex Court in Mumbai Agricultural Produce Market Committee v. Hindustan Lever Ltd., (2008) 5 SCC 575 has observed as under:

*“20. So far as the question of payment of interest is concerned, it must be referable to the statute. When the statute controls the levy, the interest payable thereupon, as envisaged thereunder must also govern the field. The general principle of restitution may not apply in this case.”*

20. The Apex Court in Steel Authority of India Limited v. Commissioner of Central Excise, Raipur (2019) 6 SCC 693 has observed as under:

*“26. In short, therefore, the principle may be taken to be established that while levy of interest is a part of the adjective law, yet to levy interest there must be substantive provision. Demand for interest can be made only if the legislature has specifically intended collection of interest. We must look at the statutory provisions.”*

21. The Apex Court in J.K. Synthetics Ltd. v. Commercial Taxes Officer, (1994) 4 SCC 276 has observed as under:



*“16. It is well-known that when a statute levies a tax it does so by inserting a charging section by which a liability is created or fixed and then proceeds to provide the machinery to make the liability effective. It, therefore, provides the machinery for the assessment of the liability already fixed by the charging section, and then provides the mode for the recovery and collection of tax, including penal provisions meant to deal with defaulters. Provision is also made for charging interest on delayed payments, etc. Ordinarily the charging section which fixes the liability is strictly construed but that rule of strict construction is not extended to the machinery provisions which are construed like any other statute. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not defeat the same. (See *Whitney v. IRC* [1926 AC 37 : 42 TLR 58] , *CIT v. Mahaliram Ramjidas* [(1940) 8 ITR 442 : AIR 1940 PC 124 : 67 IA 239] , *India United Mills Ltd. v. Commissioner of Excess Profits Tax, Bombay* [(1955) 1 SCR 810 : AIR 1955 SC 79 : (1955) 27 ITR 20] and *Gursahai Saigal v. CIT, Punjab* [(1963) 3 SCR 893 : AIR 1963 SC 1062 : (1963) 48 ITR 1] ). But it must also be realised that provision by which the authority is empowered to levy and collect interest, even if construed as forming part of the machinery provisions, is substantive law for the simple reason that in the absence of contract or usage interest can be levied under law and it cannot be recovered by way of damages for wrongful detention of the amount. (See *Bengal Nagpur Railway Co. Ltd. v. Ruttanji Ramji* [AIR 1938 PC 67 : 65 IA 66 : 67 CLJ 153] and *Union of India v. A.L. Rallia Ram* [(1964) 3 SCR 164, 185-90 : AIR 1963 SC 1685] ). Our attention was, however, drawn by Mr Sen to two cases. Even in those cases, *CIT v. M. Chandra Sekhar* [(1985) 1 SCC 283 : 1985 SCC (Tax) 85 : (1985) 151 ITR 433] and *Central**



*Provinces Manganese Ore Co. Ltd. v. CIT [(1986) 3 SCC 461 : 1986 SCC (Tax) 601 : (1986) 160 ITR 961], all that the Court pointed out was that provision for charging interest was, it seems, introduced in order to compensate for the loss occasioned to the Revenue due to delay. But then interest was charged on the strength of a statutory provision, may be its objective was to compensate the Revenue for delay in payment of tax. But regardless of the reason which impelled the Legislature to provide for charging interest, the Court must give that meaning to it as is conveyed by the language used and the purpose to be achieved. Therefore, any provision made in a statute for charging or levying interest on delayed payment of tax must be construed as a substantive law and not adjectival law. So construed and applying the normal rule of interpretation of statutes, we find, as pointed out by us earlier and by Bhagwati, J. in the Associated Cement Co. case [(1981) 4 SCC 578 : 1982 SCC (Tax) 3 : (1981) 48 STC 466], that if the Revenue's contention is accepted it leads to conflicts and creates certain anomalies which could never have been intended by the Legislature.”*

22. A perusal of the above shows that the interest can be levied only in a manner provided by the statute. Further, the Hon'ble Apex Court in a number of Judgments has held that when there is a power, coupled with duties, to do a thing in a particular way it should be done in that way only and other modes are forbidden. This principle was first laid down in Taylor v. Taylor, (1876) 1 Ch.D 426. Subsequently, it was upheld by the Privy Council in Nazir Ahmad v. Emperor, 1936 SCC OnLine PC 41. The Hon'ble Apex Court has subsequently relied on this principle in various judgments such as Shiv Kumar Chadha v. Municipal Corporation of Delhi,



(1993) 3 SCC 161 and Ramchandra Keshav Adke v. Govind Joti Chavare, (1975) 1 SCC 559 making it mainstream in the India Legal Jurisprudence.

23. In view of the above, the Impugned Order dated 18.07.2023 is set aside inasmuch as it levies interest on the delayed payment of penalty amount from 10.12.2018 till the date of payment.

24. The writ petition is allowed. Pending application(s), if any, stand disposed of.

**SUBRAMONIUM PRASAD, J**

**APRIL 26, 2024**

*S. Zakir*