

PEPSICO INDIA HOLDINGS LTD.

v.

COMMISSIONER OF TRADE TAX, LUCKNOW, U.P.
(Civil Appeal No. 2926 of 2011)

APRIL 5, 2011

[DR. MUKUNDAKAM SHARMA AND
ANIL R. DAVE, JJ.]

U.P. Trade Tax Act, 1948:

s.8(1) and its Explanation, s.8(1B) – Interest on delayed payment of tax – Whether payable as per s.8(1) or as per s.8(1B) – Held: If tax is admittedly payable and is not paid, the same becomes payable along with interest as mentioned in s.8(1) – Once it is confirmed by the Court that the tax is payable under the Act, it would be covered within the definition of the term “the tax admittedly payable” as defined in the explanation to s.8(1) and, in case, the tax had not been paid then the same becomes payable along with interest as mentioned in s.8(1) – Provisions of sub-section (1B) of s.8 would come into operation only if the case is not covered under sub-section (1) of s.8 – In the instant case, assessee disputed its liability to pay tax on the glass bottles and crates used for beverages sold by it – However, it had itself mentioned in its accounts the turnover in respect of rent charged by distributors of glass bottles and crates – The said issue was decided in the case of Asiatic Gases Ltd. wherein it was held that tax was payable on rentals charged in respect of containers for goods that cannot be sold without containers – Thus, interest is payable in terms of sub-section (1) of s.8 and not in terms of sub-section (1B) of s.8.

s.8(1) – Interest on delayed payment of tax – Whether payable from the date when the tax became due and payable or from the date of the assessment order – Held: Where a

- A dealer fails to pay tax at the correct rate because he claimed not to know the revision in the rate, the dealer remains liable to pay interest at a penal rate u/s.8 (1) from the date when the tax became due and payable – In such a case, the dealer cannot claim that he is liable only from the date of the assessment order fixing the correct rate of tax.

- s.3-F – Rent charged in respect of glass bottles and crates used for beverages sold by assessee – Liability to pay sales tax on – Held: Glass bottles and crates constitute an integral part of the beverages and they together with the contents therein are a “composite personality” and constitute “goods” liable to sales tax – Sales tax.

- Words and phrases: Expression “the tax admittedly payable” – Meaning of, in the context of s.8(1) of the U.P. Trade Tax Act.

- The appellant was engaged in the manufacturing and selling of the beverages and owned bottling plants in the State of Uttar Pradesh. The dispute pertained to the trade tax payable on its turnover of ₹ 8.54 crores in respect of rentals by distributors of glass bottles and crates for the assessment year 1999-2000. The appellant disputed the tax liability on such turnover as well as the interest, as according to them no tax was payable on the rental of glass bottles and crates as the same did not amount to a transfer of right to use the goods for value or consideration under section 3-F of the U.P. Trade Tax Act. However, the said submission was negated by the first and second appellate authority as well as, on revision, by the High Court.

- The issue as to whether there was transfer of rights of users by the assessee when he realized rental charges for glass bottles and crates was dropped by the assessee as, in the intervening period, the issue was finally settled

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by judgment of Supreme Court in *Asiatic Gases Ltd. A
wherein it was held that the containers constituted an
integral part of the commodities in question and the
container together with the contents therein was a
"composite personality" and constituted "goods" eligible B
to sales tax. The only issue which was under
consideration in the instant appeal was whether the
appellant was liable to pay interest on the delayed
payment of tax under Section 8(1) of the U.P. Trade Tax
Act i.e. @ 2% per mensem from the date the tax was due
or under Section 8(1B) i.e. 1.5% per mensem from the C
date of the assessment order and demand notice.

Dismissing the appeal, the Court

HELD: 1. The explanation to the sub-section (1) to D
section 8 of the U.P. Trade Tax Act clearly defined the
term "the tax admittedly payable" and illustrates the
situations in which the tax would be deemed to be
admittedly payable, which are: (i) The tax which is
payable under this Act on the turnover of sales, as the E
case may be, the turnover of purchase, or both, as
disclosed in the accounts maintained by the dealer; (ii)
The tax admitted by the dealers in any return or
proceeding under this act, whichever is greater; (iii) If no
accounts were maintained, then according to the estimate F
of the dealer and includes the amount payable under
section 3-B or sub-section (6) of section 4-B.
Undisputedly in the instant case, the appellant had
themselves mentioned in their accounts the turnover in
respect of rentals by distributors of glass bottles and
crates. However, the appellant had disputed that the said G
turnover was liable to tax under the Act. The issue was
finally settled by judgment of Supreme Court in *Asiatic
Gases Ltd. Once it is confirmed that the tax is payable
under the Act, the same becomes payable from the date

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A when it was due and not from the date when the judicial
verdict was pronounced (unless and until, in a case, the
court specifies a particular date from which it shall be
payable). Thus, once it has been confirmed by the Court
that the tax is payable under the Act, it would be covered
B within the definition of the term “the tax admittedly
payable” as defined in the explanation to section 8(1) and,
in case, the tax had not been paid then the same
becomes payable along with interest as mentioned in
section 8 (1) of the Act. Provisions of sub-section (1B) of
C section 8 of the act will come into operation only if the
case is not covered under sub-section (1) of section 8 of
the Act. The opening words of the said sub-section (1B)
states “if the tax, other than the tax referred to in sub-
D section 1, assessed by the assessing authority is not
paid”. As in the present case the tax becomes admittedly
payable once it has been held that the tax is payable
under the Act, the interest would be payable in terms of
sub-section (1) of section 8 of the Act and not in terms
of sub-section (1B) of Section 8 of the Act. [Paras 11, 12,
E 14,15,16] [730-G-H; 731-A-D; F-H; 732-A-B, D]

2. Where a dealer fails to pay tax at the correct rate
because he claimed not to know the revision in the rate,
the dealer remains liable to pay interest at a higher rate,
penal rate under section 8 (1) from the date when the tax
F became due and payable. In such a case, the dealer
cannot claim that he is liable only from the date of the
assessment order fixing the correct rate of tax. Similarly,
in case where the dealer has taken a chance and it has
been held that the tax is payable under Act, the same
G becomes payable from the date when it was due. [Para
17] [732-E-G]

**State of Orissa and another v. Asiatic Gases Ltd. (2007)*
5 SCC 766; *Aggarwal Bros. v. State of Haryana (1999)* 9 SCC

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182; *Commissioner of Sales Tax v. Qureshi Crucible Centre* 1993 Supp (3) SCC 495 – relied on. A

Case Law Reference:

(2007) 5 SCC 766 relied on Para 4

(1999) 9 SCC 182 relied on Para 4 B

1993 Supp (3) SCC 495 relied on Para 17

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From the Judgment & Order dated dated 10.12.2007 of the High Court of Allahabad, Lucknow Bench, Lucknow in Trade Tax Revision No. 181 of 2007.

Shyam Divan, Ananya Kumar, Ankur Saigal, Gaurav Singh, Bina Gupta for the Appellant. D

Krishna Venugopal, Gunnam Venkateswara Rao, Manoj Dwivedi for the Respondents.

The Judgment of the Court was delivered by E

DR. MUKUNDAKAM SHARMA, J. 1. Leave granted.

2. The present appeal arises out of the judgment dated 10.12.2007 passed by the learned Single Judge of the High Court of Allahabad (Lucknow Bench) whereby the learned Single Judge has dismissed the tax revision filed by the Appellant under section 11 of the U. P. Trade Tax Act (hereinafter referred to as "the Act") impugning the judgment dated 14.8.2007 passed by the Trade Tax Tribunal, Lucknow rejecting the second appeal of the appellant/assessee. F G

3. Various issues were raised before the Tribunal as well as the High Court with respect to the liability of the appellant/ assessee to pay tax which, in nutshell, are as follows: - H

- A (i) That there is no transfer of rights of users by the assessee when he realized rental charges for glass bottles and crates.
- (ii) The forums did not consider the terms of the agreement/contract between the assessee and his selling agents/consumers.
- B (iii) The interest charge on the tax could not have been charged under Section 8(1) as the case falls under Section 8(1B).

C 4. However, in the present appeal the issues Nos. (i) and (ii) were dropped by the appellant as, in the intervening period, the above said two issues were finally settled by the judgment of this court in the case of *State of Orissa and another v. Asiatic Gases Ltd.* (2007) 5 SCC 766. In the said case this court held that the previous decision of this Court in *Aggarwal Bros. v. State of Haryana* (1999) 9 SCC 182, is fully applicable to rentals charged in respect of the containers for goods that cannot be sold without containers. This court held that the containers constitute an integral part of the commodities in question and the container together with the contents therein is a "composite personality" and constitutes "goods" eligible to sales tax.

F 5. Accordingly, the only issue which requires consideration in the present appeal is whether the appellant is liable to pay interest on the tax due under Section 8 (1) of the Act i.e. @ 2 % per mensem from the date the tax was due or under Section 8 (1B) i.e. @ 1.5 % per mensum from the date of the assessment order and demand notice.

G 6. The High Court and the other forums below, for the reasons mentioned therein, have held that the appellant is liable to pay interest on the delayed payment of tax under section 8 (1) of the Act (i.e. @ 2 % per mensem from the date of filing of returns). Whereas, it is the appellants case that the interest is payable as per section 8 (1B) of the Act (i.e. @ 1.5 % per mensum from the expiration of the date mentioned in the

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assessment order which in the present case is March 15, 2002). A

7. As a short question is involved we need not mention the facts of the case in great detail. In brief the facts leading to the filing of the present appeal are that the appellant is engaged in the manufacturing and selling of the beverages and is having bottling plants in the state of Uttar Pradesh. The dispute pertains to the trade tax payable on its turnover of Rupees 8.54 crores in respect of rentals by distributors of glass bottles and crates for assessment year 1999-2000. The appellant disputed the liability to pay tax on such turnover as well as the interest, as according to them no tax is payable on the rental of glass bottles and crates as the same did not amount to a transfer of right to use the goods for value or consideration under section 3-F of the Act. However, the said submission was negated by the first and second appellate authority as well as, on revision, by the High Court. As mentioned hereinabove, the challenge to the liability to pay tax was dropped by the appellant in the light of the judgment passed by this Hon'ble court in *Asiatic Gases Ltd.* case (supra). B C D

8. We heard the learned counsel appearing for both the parties and perused the record. It was submitted by the learned senior counsel appearing for the Appellant that as it was the bonafide belief of the appellant/assessee that they were not liable to pay tax on the turnover realized as rental from the bottles and crates, therefore, the tax should be charged only from the date of the assessment order and not from the date of filing of the returns. It was further submitted that section 8 (1) of the Act only becomes applicable when the assessee had admitted its tax liability in its accounts or its return and as the appellant/assessee had disputed the liability to pay tax and raised a bonafide dispute they would not be liable to pay interest under Section 8 (1) of the Act. Resultantly, interest, if any, can only be charged under Section 8 (1B) which covers the cases which does not fall within the ambit of Section 8 (1) of the Act. E F G H

A 9. All the abovesaid contentions were negated by the
counsel appearing for the respondent and it was submitted that
after disclosing the turnover in its accounts a dealer cannot run
away from his liability to pay tax by raising false and frivolous
dispute. In case, if he does so then he will be liable to pay penal
B rate of interest under section 8 (1) of the Act.

10. Section 8 (1) of the act, prior to its amendment in 2002,
is reproduced below:

C "8. Payment and recovery of tax:

(1) The tax admittedly payable shall be deposited within
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
D payable on the unpaid amount with effect from the day
immediately following the last date prescribed or till the
date of payment of such amount, whichever is later and
nothing contained in section 7 shall prevent or have the
effect of postponing the liability to pay such interest.

E Explanation: - For the purposes 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 or purchases, or of both, as disclosed in the
accounts maintained by the dealer, or admitted by him in
F any return or proceeding under this Act, whichever is
granted, or, if no accounts were maintained then according
to the estimate of the dealer and includes the amount
payable under Section 3B or sub-section (6) of section
4B."

G 11. The explanation to the said subsection clearly defines
the term "the tax admittedly payable" and illustrates the situation
in which the tax would be deemed to be admittedly payable,
the same are as follows: -

H (i) The tax which is payable under this Act on the

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turnover of sales, as the case may be, the turnover of purchase, or both, as disclosed in the accounts maintained by the dealer.

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(ii) The tax admitted by the dealers in any return or proceeding under this act, whichever is greater.

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(iii) If no accounts were maintained, then according to the estimate of the dealer and includes the amount payable under section 3-B or subsection (6) of section 4-B.

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12. It is not in dispute in the present case that the appellant has themselves mentioned in their accounts the turnover in respect of rentals by distributors of glass bottles and crates. However, the appellant has disputed that the said turnover is liable to tax under the Act.

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13. The question that emerged for adjudication before forum and Court below was that whether the tax is payable under the Act on the turnover from rentals of glass bottles and crates. The Court has answered the question in affirmative and confirmed that on such turnovers the tax will be payable under the Act.

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14. The appellant had taken the chance to get a judicial verdict on the said issue. Once it has been confirmed that the tax is payable under the Act, the same becomes payable from the date when it was due and not from the date when the judicial verdict was pronounced (unless and until, in a case, the court specifies a particular date from which it shall be payable). Thus, once it has been confirmed by the Court that the tax is payable under the Act it would be covered within the definition of the term "the tax admittedly payable" as defined in the explanation to section 8 (1) and, in case, the tax had not been paid then the same becomes payable along with interest as mentioned in section 8 (1) of the Act.

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15. Provisions of subsection (1B) of section 8 of the act

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A will come into operation only if the case is not covered under subsection (1) of section 8 of the Act. The opening words of the said subsection (1B) states "if the tax, other than the tax referred to in subsection 1, assessed by the assessing authority is not paid". The said subsection is reproduced herein below for reference: -

B "Section 8(1B) – If the tax, other than the tax referred to in sub-section (1), assessed by any Assessing Authority is not paid within the period specified in the notice of assessment and demand referred to in sub-section (1-A), simple interest at the rate of one and half per cent per mensem on the unpaid amount calculated from the date of expiration of the period specified in such notice shall become due and be payable."

C 16. As in the present case the tax becomes admittedly payable once it has been held that the tax is payable under the Act, the interest would be payable in terms of subsection (1) of section 8 of the Act and not in terms of subsection (1B) of Section 8 of the Act.

D 17. This court in the case of *Commissioner of Sales Tax v. Qureshi Crucible Centre*, 1993 Supp (3) SCC 495 has held that where a dealer fails to pay tax at the correct rate because he claimed not to know the revision in the rate, the dealer remains liable to pay interest at a higher rate, penal rate under section 8 (1) from the date when the tax became due and payable. In such a case, the dealer cannot claim that he is liable only from the date of the assessment order fixing the correct rate of tax. Similarly, in case where the dealer has taken a chance and it has been held that the tax is payable under Act, the same becomes payable from the date when it was due.

18. Accordingly, the present appeal dismissed but without any orders as to costs.

H D.G. Appeal dismissed.