PRADIP NANJEE GALA

v.

SALES TAX OFFICER & ORS.

(Civil Appeal No. 4542 of 2007)

APRIL 29, 2015

[H. L. DATTU, CJI., S. A. BOBDE AND ARUN MISHRA, JJ.]

Bombay Sales Tax Act, 1959 – ss.18 and 45 r/w rr. 43A, 44 and 44A of Bombay Sales Tax Rules, 1959 – Assessment of assessee-firm – Claim of the appellant (one of the partners of the assessee-firm) that his offer for settling his individual liability as a partner was accepted by the Minister of the State and accordingly he paid his individual dues – Therefore, he was not liable to pay the dues of the assessee-firm – Writ petition of the appellant dismissed by High Court – On appeal, held: There is no provision under the Act or the Rules empowering the State Government or the Commissioner to enter into a settlement with an individual partner regarding his liability in respect of the dues payable by the assessee-firm – The appellant cannot be discharged from his obligation to pay the sales tax dues payable by the assess-firm — Bombay Sales Tax Rules, 1959 – rr. 43A, 44 and 44A.

Interpretation of Statutes – Interpretation of taxing statutes – Held: Equity cannot be read into while interpreting a taxing statue – Equity.

Words and Phrases – 'Prescribed' – Meaning of, in the context of Bombay Sales Tax Act, 1959.

A Dismissing the appeal, the Court

HELD: 1.1 Section 45 of the Bombay Sales Tax Act, 1959 would indicate that the legislature has vested the power of remission of tax only with the B Commissioner and subjected the exercise of said power in accordance with such circumstances and conditions as prescribed by the State Government under the Bombay Sales Tax Rules, 1959. The Section neither speaks of any power to enter into a settlement for such C purposes by the State Minister of Finance nor prescribes exercise of powers by the Commissioner in the light of any such settlement. [para 14] [149-D-F]

1.2 Section 18 of the Act specifically provides that D the liability of a partner in respect of the dues payable by the firm is joint and several. But for Section 45 of the Act which permits remission of the tax payable by the dealer, that is, the assessee-Firm, there is no provision under the Act empowering the State Government or the E Commissioner to enter into a settlement with an individual partner regarding his liability in respect of the dues payable by the assessee-Firm. Further, the Rules relevant to the exercise of power of remission by the F Commissioner under the Act *viz.*, Rules 43A, 44 and 44A also do not provide any condition with respect to remission of sales tax under the Act by entering into any settlement, more so a settlement for the payment of individual liability of partners under the partnership deed. G Therefore, in the absence of any specific provision contained in the Act or the Rules, there could be no settlement with an individual partner so as to discharge him from his obligation to pay the sales tax dues payable by the assessee-Firm. [para 15] [149-G-H; 150-A-C]

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1.3 The present statute clearly and expressly provides for the limitation on exercise of powers of remission by the Commissioner and mandates them to be exercised only "in such circumstances and subject to such conditions as may be prescribed." Section 2(21) of the Act provides that "prescribed" under the Act would mean as prescribed under the Rules and herein, the Rules being silent on any settlement of the nature allegedly entered into between the appellant and the State Government, the external circumstances including a settlement cannot be considered by the Commissioner while exercising power of remission of tax under the Act. [para 16] [150-E-G]

1.4 The settlement, if any, reached between the appellant and the State Government for part payment of tax liability by the partner of an assessee-Firm would not fall under the four corners of the Act or the Rules as has been claimed by the appellant since the beginning of the proceedings under the Act. Therefore, the High Court has rightly examined the issues before it and the judgment and order passed by it does not suffer from any error. [para 19-20] [151-G-H; 152-A-B]

2. It is trite that the letter of law has to be accorded utmost respect and strictly adhered to especially while interpreting a taxing statute. There ought not exist any scope for impregnating the interpretation by reading equity into taxing statutes. [para 17] [150-G-H]

CIT v. V. MR. P. Firm Muar **(1965) 1 SCR 815**; *CIT v. Shahzada Nand & Sons* **(1966) 3 SCR 379**; *Murarilal Mahabir Prasad v. B.R. Vad* **(1975) 2 SCC 736**; *CIT v. Nawab Mir Barkat Ali Khan Bahadur* **(1975) 4 SCC 360**; *State of M.P. v. Rakesh Kohli* **(2012) 6 SCC 312**;

A *Vodafone International Holdings BV v. Union of India* **(2012) 6 SCC 613;** *CIT v. Calcutta Knitwears* **(2014) 6 SCC 444;** *CTO v. Binani Cements Ltd.***(2014) 8 SCC 319 – relied on.**

B *Cape Brandy Syndicate* v. *IRC* **(1921) 1 K.B. 64, 71 – referred to.**

Case Law Reference

C	**(1921) 1 K.B. 64,71**	**referred to.**	**Para 17**
	(1965) 1 SCR 815	**relied on.**	**Para 18**
	(1966) 3 SCR 379	**relied on.**	**Para 18**
D	**(1975) 2 SCC 736**	**relied on.**	**Para 18**
	(1975) 4 SCC 360	**relied on.**	**Para 18**
	(2012) 6 SCC 312	**relied on.**	**Para 18**
E	**(2012) 6 SCC 613**	**relied on.**	**Para 18**
	(2014) 6 SCC 444	**relied on.**	**Para 18**
	(2014) 8 SCC 319	**relied on.**	**Para 18**

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4542 of 2007

From the Judgment and Order dated 03.02.2006 of the High Court of Judicature at Bombay in Writ Petition No. 2226 G of 1989

S. Ganesh, S. Ravi Shankar, S. Yamunah Nachiar for the Appellant.

H Rahul Chitnis, Aniruddha P. Mayee for the

Respondents. A

The Judgment of the Court was delivered by

H. L. DATTU, CJI 1. This appeal is directed against the judgment and order passed by the High Court of Judicature at Bombay in Writ Petition No. 2226 of 1989, dated 03.02.2006, whereby and whereunder, the High Court has held that the appellant is liable for payment of tax under Bombay Sales Tax Act, 1959 (for short, "the Act") and dismissed the writ petition. B

2. The question raised before us is whether the respondent-Revenue could resile from a settlement entered into with the assessee on the basis of which the appellant has already paid and settled his dues under the Act. C

3. Since the protracted proceedings in the instant case have spawned over three decades, we would only notice the most relevant facts necessary for disposal of the appeal. D

4. Facts in brief are as follows: The appellant had joined as a partner in the assessee-Firm. His status as the partner of the said Firm, not being of any consequence to the question that arises for our consideration, does not require to be noticed by us. The relevant assessment years are Samvat 2034 (12.11.1977 to 31.10.1978) and Samvat 2035 (01.11.1978 to 24.06.1979). The Assessing Authority had carried out the assessments and confirmed the demand for Rs.13,33,091/- under the Act and Rs.85,878/- under the Central Sales Tax Act, 1956 (for short, "the CST Act") for Samvat 2034; and Rs.28,18,202/- under the Act and Rs.44,577/- under the CST Act for Samvat 2035. The appellant had preferred appeals against the aforesaid assessments before the first appellate authority, which were dismissed by order dated 30.09.1981. E F G

5. Being aggrieved by the aforesaid orders, the appellant H

A had approached the Maharashtra Sales Tax Tribunal (for short, "the Tribunal"). During the pendency of the said appeals, the appellant had addressed a letter to the State Minister for Finance dated 23.11.1983, seeking settlement of sales tax dues payable by him as a partner of the assessee-Firm. It is
B the case of the appellant that the then State Minister for Finance accepted the offer of settlement and accordingly, in the light of the said settlement, the Commissioner of Sales Tax had issued a letter on 16.01.1984 quantifying the amount due and payable
C by the assessee-Firm for the relevant assessment years on the basis of the partnership deed. Before the Tribunal, the respondents have denied the existence of such settlement and further submitted that there has been no decision quantifying the individual liability of the appellant and absolving him from
D the liability to pay for the dues of the assessee-Firm for said assessment years. Since, the question before the Tribunal was restricted to determination and payment of liability by the appellant *qua* the assessee-Firm, the Tribunal had refused to adjudicate upon both: (a) whether there exists any settlement
E between the parties regarding the tax liability and (b) whether the appellant was relieved of his obligation under the Act.

6. Aggrieved by the aforesaid, the appellant approached the Writ Court. The assessee had contended that he had
F approached the State Minister for Finance seeking settlement of his individual dues, which was accepted as well as implemented by the order of the Commissioner dated 16.01.1984 and, therefore, the appellant is absolved of all the liabilities confirmed against the assessee-Firm for the relevant
G assessment years. The Revenue has adopted a stand that under the Act, apart from the power of remission of tax payable by the dealer under Section 45 of Act, there exists no other provision which would empower the authorities to settle th liability of an individual partner. Further, that Section 18 of tl
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Act specifically provides that in respect of the dues of the firm, the liability of a partner is joint and several and, therefore, neither the State Minister for Finance nor the Commissioner could have legally entered into any settlement regarding the liability of individual partner in respect of the dues of the assessee-Firm.

7. The High Court, after due consideration of the submissions made by both the parties and meticulous examination of the case records as well as the relevant provisions of law, has observed that the case of the appellant does not require them to examine the validity of the liability confirmed against the assessee-Firm and thus, examined the question as to whether the settlement entered into between the Commissioner and the appellant herein is permissible under the Act. The High Court has concluded that under Section 18 of the Act the partners of the Firm are jointly and severally liable to pay the tax dues of the assessee-Firm and no provision under the Act contemplates a settlement between a partner of the assessee-Firm and the Commissioner to determine individual liability. The High Court has further noticed that Section 45 of the Act which speaks of power of remission of the Commissioner also does not contemplate any settlement of the nature claimed herein and therefore, could not be invoked to shelter the appellant from discharging his liability under the Act. Hence, the Writ Court has thought it fit to fix the entire liability of payment of sales tax on the assessee and upheld the order passed by the Revenue by the judgment and order dated 03.02.2006.

8. It is the aforesaid judgment and order passed by the Writ Court, which is questioned by the assessee before us in this appeal.

9. Shri S. Ganesh, learned counsel for the appellant-

A assessee would submit that the appellant could not be held liable to settle tax liability of the assessee-Firm under the Act, because he has already paid his dues as a partner of the assessee-Firm under the settlement entered into between him and the State Minister for Finance. He would further refer to
B the order of the Commissioner dated 16.01.1984 in support of the determination of his individual dues by the respondent-Revenue and therefore submit that since the appellant has discharged his share of the liability, he ought to be absolved
C of all the liabilities confirmed against the assessee-Firm for the relevant assessment years under the Act.

10. *Per contra*, the Revenue would support the impugned judgment and order passed by the High Court.

D 11. Before we proceed to examine the merits of submissions advanced by learned counsel appearing for the parties to the *lis,* relevant provisions of the Act and Rules require to be noticed by us.

E 12. Section 18 of the Act provides for the liability of a firm to pay tax and contemplates joint and several liability of the partners of the firm towards the payment of such tax liability under the Act. Section 45 of the Act provides for remission of tax payable by a dealer under the Act. It reads:

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"The Commissioner may, *in such circumstances and subject to such conditions as may be prescribed*, remit the whole or any part of the tax payable, in respect of any period, by any dealer:

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PROVIDED that if the amount to be remitted exceeds two thousand rupees, the remission of the excess shall not be made without the previous sanction of the State Government."

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(emphasis supplied)

13. It would further be relevant to notice the appropriate circumstances and conditions which are prescribed by the appropriate authority adherence to which is required under Section 45 of the Act for the Commissioner to exercise his power of remission. Rules 43A, 44 and 44A speak of remission as provided for under the Act. Rule 43A provides for the remission of purchase tax payable in respect of purchases of goods specified in Schedule E of the Rules. Rule 44 speaks of certain cases where an authorised dealer or commission agent who has become liable to pay purchase tax under section 14 of the Act could claim remission. Section 44A speaks of remission of purchase tax payable by authorised dealer in certain cases.

14. The plain reading of Section 45 of the Act would indicate that the legislature has vested the power of remission of tax only with the Commissioner and subjected the exercise of said power in accordance with such circumstances and conditions as prescribed by the State Government under the Bombay Sales Tax Rules, 1959 (for short, "the Rules"). The proviso to the provision specifies that the remission of tax amount if exceeds Rs.2000/- ought to be made by the Commissioner after obtaining sanction of the State Government. The Section neither speaks of any power to enter into a settlement for such purposes by the State Minister of Finance nor prescribes exercise of powers by the Commissioner in light of any such settlement.

15. Section 18 of the Act specifically provides that the liability of a partner in respect of the dues payable by the firm is joint and several. But for Section 45 of the Act which permits remission of the tax payable by the dealer, that is, the assessee-Firm, there is no provision under the Act empowering the State Government or the Commissioner to enter into a settlement

A with an individual partner regarding his liability in respect of the dues payable by the assessee-Firm. Further, the Rules relevant to the exercise of power of remission by the Commissioner under the Act *viz.*, Rules 43A, 44 and 44A also do not provide any condition with respect to remission of sales B tax under the Act by entering into any settlement, more so a settlement for the payment of individual liability of partners under the partnership deed. Therefore, in our considered opinion, in the absence of any specific provision contained in the Act or C the Rules, there could be no settlement with an individual partner so as to discharge him from his obligation to pay the sales tax dues payable by the assessee-Firm.

16. Further, in our view, the submission advanced by Shri Ganesh that the conditions prescribed under the statute at hand D ought to be read considering the facts and circumstances of the instant case to provide beneficial meaning to the statute, also does not hold any waters. The statute herein clearly and expressly provides for the limitation on exercise of powers of E remission by the Commissioner and mandates them to be exercised only "in such circumstances and subject to such conditions as may be prescribed." Section 2(21) of the Act provides that "prescribed" under the Act would mean as prescribed under the Rules and herein, the Rules being silent F on any settlement of the nature allegedly entered into between the appellant and the State Government, the external circumstances including a settlement cannot be considered by the Commissioner while exercising power of remission of tax under the Act.

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17. It is trite that the letter of law has to be accorded utmost respect and strictly adhered to especially while interpreting a taxing statute. There ought not exist any scope for impregnating the interpretation by reading equity into taxing statutes. The

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classic statement of Rowlatt, J., in *Cape Brandy Syndicate* v.*IRC, [(1921) 1 K.B. 64, 71]* still holds the field. It reads as under:

> "In a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

18. Further, the three Judge Bench of this Court in *CIT v. V. MR. P. Firm Muar, (1965) 1 SCR 815* has authoritatively observed that:

> "13. ...Equity is out of place in tax law; a particular income is either exigible to tax under the taxing statute or it is not..."

> [See: *CIT v. Shahzada Nand & Sons, (1966) 3 SCR 379; Murarilal Mahabir Prasad v. B.R. Vad, (1975) 2 SCC 736; CIT v. Nawab Mir Barkat Ali Khan Bahadur, (1975) 4 SCC 360; State of M.P. v. Rakesh Kohli, (2012) 6 SCC 312; Vodafone International Holdings BV v. Union of India, (2012) 6 SCC 613; CIT v. Calcutta Knitwears, (2014) 6 SCC 444; CTO v. Binani Cements Ltd.,(2014) 8 SCC 319.]*

19. The convoluted mesh of facts and the extremely protracted proceedings which span over three decades, at the instance of appellant, indicate that the basis of case made out by the appellant does not exist in either the statute law or, in fact, any law applicable to the present proceedings. The settlement, if any, reached between the appellant and the State Government for part payment of tax liability by the partner of an assessee-Firm would not fall under the four corners of the

A Act or the Rules as has been claimed by the appellant since the beginning of the proceedings under the Act.

20. Therefore, in light of the aforesaid, we are of the considered opinion that the High Court has rightly examined
B the issues before it and the judgment and order passed by it does not suffer from any error, whatsoever, and thus, the civil appeal being devoid of any merit requires to be dismissed. The judgment and order passed by the High Court is confirmed.
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21. In the result, the appeal is dismissed with costs of Rs.5,00,000/-.

Kalpana K. Tripathy Appeal dismissed.

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