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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 10335 of 2022

M/s. P.K. Ores Pvt. Ltd. @ ... *Petitioner*
M/S. PK Minings Pvt. Ltd.

Ms. Kananbala Roy Choudhury,
Advocate

-versus-

Commissioner of Sales Tax & ... *Opposite Party*
Another

Mr. Sidharth Shankar Padhy,
Advocate for CT & GST Organization

CORAM:
JUSTICE JASWANT SINGH
JUSTICE MURAHARI SRI RAMAN

JUDGMENT

06.05.2022

1. This matter is taken up by virtual/physical mode.
2. Assailing the Order dated 8th February, 2022 passed by the Commissioner of CT & GST, Odisha in Revision Case No. BHU-105/G/2021-22 under Section 80 of the Odisha Goods and Services Tax Act, 2017 (for short, “the OGST”) read with Rule 158 of the Odisha Goods and Services Tax Rules, 2017 (for brevity, “the OGST” Rules), directed against the demand of interest for the periods from April, 2019 to December, 2019 raised by the CT&GST Officer, Bhubaneswar-II Circle, Bhubaneswar for belated deposit of admitted tax, the petitioner has approached this Court

P.T.O.

invoking provisions of Article 226/227 of the Constitution of India with the following prayers:

- “(a) Rule NISI calling upon the Opposite Parties as to why the impugned Order under Annexure-4 in absence of any reason, shall not be held to be illegal, arbitrary and violation of Natural Justice.*
- (b) And if they fail to show cause or show insufficient cause make the Rule absolute.*
- (c) Issue a direction to O.P. to rectify the demand raised vide DRC-07 under Annexure-1.*
- (d) And be further pleased to allow the petitioner to pay the admissible interest amount in 24 installments in accordance with law.*
- (e) Issue any appropriate order/orders deemed fit in the fact and circumstances of the case.”*
3. The case of the petitioner is that in terms of the Section 39 read with Section 59 of the OGST Act, returns for the period 2019-20 in Form GSTR-3B and GSTR-1 have been furnished on self-assessment. While undertaking the scrutiny of said self-assessed returns furnished for each tax periods as per Section 39, the CT & GST Officer noticed that the petitioner has filed the returns belatedly.
4. The petitioner has alleged that non-payment of admitted tax is attributed to non-disbursal of substantial amount standing due from IDCOL, a Government Agency. It is submitted by Ms. Kananbala Roy Choudhury, counsel for the petitioner that as of now, entire tax component stands deposited,

though belatedly. Ms. Roy Choudhury advancing argument submitted that the petitioner is not in a position to discharge demand of interest as raised by the CT&GST Organisation on account of such belated deposit of admitted tax. Therefore, the petitioner prayed before the Commissioner of CT&GST, Odisha to allow it to discharge interest demand to the tune of Rs.68,15,506/- by instalments. The learned counsel for the petitioner has made submission that the Commissioner of CT&GST being vested with power under Section 80 of the OGST Act ought not to have rejected its application in Form GST DRC-20 filed in consonance with Rule 158 of the OGST Rules and facilitated the petitioner by allowing it to discharge the liability towards the huge burden of interest. It is submitted at the bar that the rejection of prayer for deposit of interest demand in instalments by the Commissioner of CT&GST is outcome of not only arbitrary exercise of power but misreading of provision of the statute.

5. *Per contra*, stressing on Annexure-1, i.e., Form GST DRC-07 issued by the CT&GST Officer, Bhubaneswar-II Circle, Bhubaneswar, Sri Sidharth Shankar Padhy, learned Advocate for the CT&GST Organisation submitted that when the statute requires doing certain things in certain way, the thing must be done in that way or not at all and, thereby other methods or modes of performance are impliedly and necessarily forbidden. Drawing attention of this Court to the heading “*issue involved*” appearing in

Form GST DRC-07 (Annexure-1), Sri Padhy further submitted that, it is explicit from the demand raised by the CT&GST Officer that *“Interest has not been paid on delayed payment of tax (paid through cash)”*. Sri Padhy, learned Advocate for the CT&GST Organisation referred to the following as stated at Annexure appended to Form GST DRC-07:

*“You are a registered taxpayer under the CGST/OGST Act, 2017 and you have been self-assessed under Section 59 of the aforesaid Act by filing returns in GSTR-3B and GSTR-1 for the tax period 2019-20 under Section 39 of CGST/OGST Act, 2017. You are also required to pay interest @18% in accordance with the provision under Section 50(1) of OGST/CGST Act or rule made thereunder, if you fail to pay the tax or any part thereof within the due date of return filing. However, on the basis of GSTR-3B returns filed by you, it is noticed that you have filed GSTR-3B returns belatedly as mentioned below but have not paid the interest liability, on your own, on the delayed payment of tax (through cash) which violates the statutory provisions. Hence, as per your GSTR-3B returns, you have to pay interest amount of Rs.68,15,506/- ***”*

5.1. Sri Padhy also submitted, on instruction, that the Commissioner of CT&GST has rightly rejected the prayer of the petitioner inasmuch as the claim is contrary to the express language of Section 80 of the OGST Act. With reference to Annexure-2 to the writ petition, *i.e.*, Application in Form GST DRC-20 filed before the Commissioner of CT&GST, it is contended by him that the rejection of prayer for allowing the petitioner 36 (thirty-six)

instalments is just and proper. The learned Advocate for the CT&GST Organisation pressed for rejection of the writ petition by subscribing to the following reason ascribed by the Commissioner of CT&GST while rejecting the Application in Form GST DRC-20 *vide* impugned Order dated 08.02.2022 (Annexure-4):

*“*** Gone through the prayers of the petitioner and order passed by the forum below. It is noticed that impugned demand has been raised for belated filing of the returns which contravenes the provisions under Section 39 of OGST Act and attract penal action as per provision under Section 50(1) of the said Act. Further Section 80 of the OGST Act also mandates that on an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, **other than the amount due as per the liability self-assessed in any return**, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under Section 50 and subject to such conditions and limitations as may be prescribed.”*

[Emphasis supplied]

- 5.2. It is suggested that the well-reasoned order of the Commissioner of CT&GST needs no indulgence by this Court inasmuch as there was no scope or occasion to allow thirty-six instalments as sought for by the petitioner. Doing so would be contrary to the statutory mandate.
6. The issue raised in the present case is:

WHETHER THE COMMISSIONER OF CT&GST IS JUSTIFIED IN REJECTING THE PRAYER OF THE PETITIONER TO DEPOSIT THE INTEREST LEVIED ON ACCOUNT OF BELATED DEPOSIT OF ADMITTED TAX AS PER SELF-ASSESSED RETURNS FURNISHED IN TERMS OF SECTION 39 READ WITH SECTION 59 OF THE CGST/OGST ACT IN INSTALMENT UNDER SECTION 80 READ WITH RULE 158?

7. As the period under consideration is April, 2019 to December, 2019, the provisions for furnishing return under Section 39, as they existed at the material period, so far as required for the present purpose, stood as follows:

“39. Furnishing of returns.—

- (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of Section 10 or Section 51 or Section 52 shall, for every calendar month or part thereof, furnish, in such form, manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed on or before the twentieth day of the month succeeding such calendar month or part thereof.*

- (7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or subsection (3) or sub-section (5), shall pay to the Government the tax due as per such return not later*

than the last date on which he is required to furnish such return.

(8) *Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.*

(9) *Subject to the provisions of Sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2), sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act:*

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following or the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

***”

7.1. Section 50 speaks of interest on delayed payment of tax which reads as under:

“50. Interest on delayed payment of tax.—

(1) *Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part*

thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of Section 39, except where such return is furnished after commencement of any proceedings under Section 73 or Section 74 in respect of the said period, shall be payable on the portion of the tax which is paid by debiting the electronic cash ledger.

- (2) *The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.*
- (3) *A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of Section 42 or undue or excess reduction in output tax liability under sub-section (10) of Section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.”*

7.2. Section 39(7) of OGST Act requires every registered person, who is required to furnish a return, is to pay to the Government the tax due as per such return not later than the last date on which the return is to be furnished. The period

prescribed for payment of tax in respect of every month is on or before the 20th day of the succeeding calendar month. However, in case after furnishing return(s), if there is discovery of any omission or incorrect particulars therein by the taxpayer, scope is given to rectify in view of Section 39(9), which is subject to payment of interest.

7.3. Section 50 deals with interest on delayed payment of tax and by virtue of provisions contained therein, a burden is cast on the taxpayer, who is liable to pay tax, but failed to pay the same, to pay interest not exceeding 18%. The liability to pay interest under Section 50(1) is a statutory obligation which the taxpayer is obligated to comply with “ON HIS OWN” accord. The liability to pay interest under Section 50, being compensatory for non-deposit of tax within the stipulated period envisaged under Section 39, is not penal in nature. Therefore, the petitioner cannot escape the rigours of liability of interest.

7.4. From sub-section (1) of Section 50, it is manifest that the liability to pay interest arises automatically, when a person who is liable to pay tax, fails to pay the tax to the Government within the period prescribed. The liability to pay interest arises in respect of the period for which the tax remains unpaid. In fact, the liability to pay interest under Section 50(1) arises even without any assessment, as the person is required to pay such interest “ON HIS OWN”. While sub-section (1) of Section 50 speaks about the liability to pay interest under one contingency, viz., the failure to pay

tax within the period prescribed, sub-section (3) thereof speaks about the liability to pay interest under a different contingency, *i.e.*, whenever an undue or excess claim of ITC is made or whenever an undue or excess reduction in output tax liability is made. The words “*ON HIS OWN*” employed in sub-section (1) of Section 50 are not used in sub-section (3) of Section 50. Therefore, it is clear that the liability to pay interest under Section 50(1) is self-determined and automatic without intervention from anyone. Apt here to look at the definition of “assessment” contained in Section 2(11) which *inter alia* comprehends “*SELF-ASSESSMENT*”. When the admitted tax is deposited belatedly as per the figures disclosed in the returns, interest component is also to be concomitant with the same and is required to be deposited on its own computation. Hence, the liability to pay interest is compensatory in nature.

- 7.5. When the levy of interest emanates as a statutory consequence and such liability is a direct consequence of non-payment of tax, such a levy is different from the levy of interest which is dependent on the discretion of the assessing officer. The default arising out of non-payment of tax on an admitted liability in the case of self-assessment attracts automatic levy of interest, whereas the default in filing incomplete and incorrect return attracts best judgment assessment in which the levy of interest is based on the adjudication by the assessing officer. Reference be had to

EID Parry (India) Ltd. Vrs. Assistant Commissioner of Commercial Taxes, (2005) 141 STC 12 (SC).

7.6. It has been observed in *Haji Lal Mohammad Biri Works Vrs. State of Uttar Pradesh, (1973) 32 STC 496 (SC)*; and *Sales Tax Officer Vrs. Dwarika Prasad Sheo Karan Dass, (1977) 39 STC 36 (SC)* that liability to pay interest is automatic and arises by operation of law. In *Commissioner of Sales Tax Vrs. Qureshi Crucible Centre, (1993) 89 STC 467 (SC)* and *Commissioner of Trade Tax Vrs. Kanhai Ram Thekedar, (2005) 141 STC 1 (SC)* consistent view has been expressed to the effect that a dealer shall have to deposit the tax admittedly payable within the time prescribed under the statute and if he fails to do so, interest becomes payable. This levy of interest is by operation of law. It does not require a separate order as such by any authority.

7.7. In *Garg Associates Pvt. Ltd. Vrs. Commissioner of Trade Tax, (2005) 139 STC 368 (All)* referring to *J.K. Synthetics Ltd. Vrs. Commercial Tax Officer, (1994) 94 STC 422 (SC)*, it has been held that the statutory provision authorising the State or the Revenue to charge interest on delayed payment of tax must be construed as the substantive law and not procedural law. Thus, the State Government is empowered by the Legislature to raise revenue through the mode prescribed in the Act so that the State should not suffer on account of delay, caused by the tax-payers in payment of tax. The interest is payable on the tax admittedly payable which is due. The purpose of charging interest is to

compensate the revenue for the loss caused to it due to the late payment. If no loss has been caused to the department or the revenue as the money was already lying in deposit with the department earlier, no interest can be charged in such circumstances, by the department. The condition precedent for levy of interest under the provisions of the Act is only if there is default in payment of tax admittedly due to the department. In *Prahlad Rai Vrs. Sales Tax Officer*, (1992) 84 STC 375 (SC) it has been laid down that accrual of interest is automatic and no separate notice of demand is necessary.

8. The meaning of “interest” and its purport has been discussed in *State of Karnataka Vrs. Karnataka Pawn Brokers Association*, (2018) 6 SCC 363. The relevant paragraphs are quoted hereunder:

“29. *** *It has been repeatedly held that interest is basically compensation for the use or retention of money. In Halsbury’s Laws of England, 4th Edn., Vol. 32, “interest” has been defined as follows:*

“127. *Interest in general.—*

Interest is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. Interest accrues from day to day even if payable only at intervals, and is, therefore, apportionable in respect of time between persons entitled in succession to the principal.”

30. *According to Law Lexicon, by P. Ramanathan Aiyar, 3rd Edn. (2005) (p. 2402) Vol. 2:*

“ *“Interest” means the time value of the funds or money involved, which, unless otherwise agreed, is calculated at the rate and on the basis customarily accepted by the banking community for the funds of money involved.*”

31. *In Words and Phrases Permanent Edition, Vol. 22 p. 148, “interest” means:*

“(i) *“Interest” is compensation for loss of use of principal. [Jersey City v. Zink, 44 A 2d 825 : 133 NJ Law 437 (1945)], A 2d p. 828”.*

(ii) *“Interest” means compensation for the use or forbearance of money. [Commissioner of Internal Revenue v. Meyer, 139 F 2d 256 (6th Cir 1943)], F 2d at p. 259.”*

32. *Black’s Law Dictionary, 6th Edn. (p. 812) defines “interest” as:*

“*For use of money.— Interest is the compensation allowed by law or fixed by the parties for the use or forbearance of borrowed money. [Jones v. Kansas Gas and Electric Company, 222 Kan 390 : 565 P 2d 597 (1977)] , P 2d p. 604.”*

33. *There is no manner of doubt that normally a person would be entitled to interest for the period he is deprived of the use of money and the same is used by the person with whom the money is lying. ***”*

8.1. This Court in *Naili Kanta Muduli Vrs. Bhubaneswar Development Authority, 2008 (II) OLR 18 (Ori)* has observed that ‘Interest’ means the compensation allowed by

law or fixed on by the parties for the use or forbearance for borrowed money. In common parlance, it is naive to mention that a creditor when allows a debtor to use his money for a period exceeding the date until which, such credit was given, takes an extra amount is known as interest.

- 8.2. “Conventional interest” and “legal interest” have been explained in Black’s Law Dictionary thus:

Conventional interest:

“Interest at the rate agreed upon and fixed by the parties themselves, as distinguished from that which the law would prescribe in the absence of an explicit agreement.”

Legal interest:

“A rate of interest fixed by statute as either the maximum rate of interest permitted to be charged by law, or a rate of interest to be applied when the parties to a contract intend an interest to be paid but do not fix the rate in the contract. Even in the latter case, frequently this rate is the same as the statutory maximum rate permitted. Term may also be used to distinguish interest in property or in claim cognisable at law in contrast to equitable interest.”

- 8.3. In *Pratibha Processors Vrs. Union of India*, AIR 1997 SC 138 = (1996) 11 SCC 101, distinction between “tax”, “interest” and “penalty” has been culled out in the following manner:

“13. In fiscal statutes, the import of the words— ‘tax’, ‘interest’, ‘penalty’, etc. are well known. They are different concepts. Tax is the amount payable as a

result of the charging provision. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. Penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provisions of the particular statute. Interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable. The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date. Essentially, it is compensatory and different from penalty — which is penal in character.”

8.4. In *Bhai Jaspal Singh Vrs. Assistant Commissioner of Commercial Taxes, (2010) 35 VST 456 (SC)* it is laid down that interest on failure to pay sales tax before expiry of last date for filing the return means that the assessee would be liable to pay interest on the amount of such tax from the date it was payable, *i.e.*, from the expiry of the last date for filing returns under the Act. Where the tax due on the basis of quarterly return is not paid before the expiry of the last date of filing such return, it is not necessary to issue any notice of demand, but on the default being committed by the dealer, he becomes liable to pay interest on the amount of such tax from the last date of filing quarterly returns prescribed under the Act.

8.5. In *Alok Shanker Pandey Vrs. Union of India, AIR 2007 SC 1198 = (2007) 3 SCC 545* it has been observed as follows:

“9. *It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence, equity demands that A should not only pay back the principal amount but also the interest thereon to B.*”

8.6. In equity, interest may be recovered in certain cases where a particular relationship exists between the creditor and the debtor. Interest is also payable where there has been misconduct or improper delay in payment, or in the case of money obtained or retained by fraud. It may also be allowed where the defendant ought to have done something which would have entitled the plaintiff to interest at common law, or has wrongfully prevented the plaintiff from doing something which would have so entitled him. However, payment of tax is not under a contract between the taxpayer and the State. There is plain repugnance between contract and taxation. Taxation is the very antithesis of contract.

8.7. In the present case the admitted tax on self-assessment being not deposited within the period stipulated, the petitioner is liable to compensate the State Government by way of interest which is provided for under the statute.

9. In *Khazan Chand Vrs. State of Jammu & Kashmir, (1984) 56 STC 214 (SC)* it has been laid down that payment of interest in case of default in payment of tax is a means of compelling the assessee to pay the tax due by the prescribed date and that it is a mode of recovery of tax and well within the legislative power of the State. Provisions in that behalf form part of the recovery machinery provided in a taxing statute. It is for the State to provide by what means payment of tax is to be enforced and a person who does not pay the amount of tax lawfully and admittedly due by him can hardly complain of the measures adopted by the State to compel him to pay such amount. It neither lies in the defaulter's mouth to protest against the rate of interest charged to him nor is it open to him to dictate to the State the methods which it should adopt for recovering the amount of tax due by him.

9.1. The mode and manner of payment of tax and interest have been envisaged in section 49. For better appreciation provisions of said section are extracted hereunder:

“49. Payment of tax, interest, penalty and other amounts.—

(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such

person to be maintained in such manner as may be prescribed.

(2) *The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with Section 41, to be maintained in such manner as may be prescribed.*

(3) *The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.*

(4) *The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act, 2017 (Act No.13 of 2017) in such manner and subject to such conditions and within such time as may be prescribed.*

(5) *The amount of input tax credit available in the electronic credit ledger of the registered person on account of,—*

(a) *integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union Territory tax, in that order;*

(b) *the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;*

- (c) *the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;*
- (d) *the Union territory tax shall first be utilized towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;*
- (e) *the central tax shall not be utilised towards payment of State tax or Union territory tax; and*
- (f) *the State tax or Union territory tax shall not be utilised towards payment of central tax.*
- (6) *The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of Section 54.*
- (7) *All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.*
- (8) *Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:*
- (a) *self-assessed tax, and other dues related to returns of previous tax periods;*
- (b) *self-assessed tax, and other dues related to the return of the current tax period;*

- (c) *any other amount payable under this Act or the rules made thereunder including the demand determined under Section 73 or Section 74.*
- (9) *Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.*

Explanation.—

For the purposes of this section,—

- (a) *the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;*
- (b) *the expression,—*
- (i) *“tax dues” means the tax payable under this Act and does not include interest, fee and penalty; and*
- (ii) *“other dues” means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.”*

9.2. Every taxable person, thus, is required to make a self-assessment of the tax and to file the return within the time prescribed. The word ‘prescribed’ has been defined in Section 2(87) to mean “prescribed by rules made under this Act on the recommendations of the Council”. The dealer is bound to file self-assessed return in prescribed form along with the payment of tax in the manner and within the period stipulated therein. The date of filing the return and for

making payment varies depending on various factors, the mode of payment, the nature of the transaction, and the turnover. Payment of tax due is also to be made within the period stipulated in the rules from the date of expiry of each quarter. Therefore, the due date for payment for interest under the Act to run is not the date of the assessment.

- 10.** The Commissioner of CT&GST having taken into consideration the analysis made by the Hon'ble Telangana High Court at Hyderabad, *vide* Judgment dated 18.04.2019 rendered in the case of *Megha Engineering & Infrastructures Ltd. Vrs. Commissioner of Central Tax, Writ Petition No.44517 of 2018*, has come to the just conclusion. The Judgment of Single Bench of the Hon'ble Kerala High Court rendered in the case of *Pazhayidom Food Ventures (P) Ltd. Vrs. Superintendent Commercial Taxes, W.P. (C) No. 14275 of 2020 (H)*, Decided on July 24, 2020 reported at 2020 SCC OnLine Ker 12929, as referred to by the petitioner is distinguishable on facts. Material fact on which the said Court proceeded to allow the petitioner therein to discharge liability to pay interest on instalment is that:

“4. It is also relevant to note that, as of today, there is no demand against the petitioner for the unpaid tax amount.”

Said Court having not discussed the provisions of the GSTT Act, said Judgment may not have binding precedent to persuade this court to grant similar relief to the petitioner.

However, in the present case, the petitioner has taken step by approaching the Commissioner of CT&GST by making an application in Form GSTR DRC-20 prescribed under Rule 158 invoking Section 80 after it has received the notice of demand in Form GST DRC-07. Therefore, this Court is not inclined to accede to the prayer of the petitioner.

10.1. It is noticed that had the CT&GST Officer, Bhubaneswar-II Circle, Bhubaneswar not issued demand notice in Form GST DRC-07 directing the petitioner to deposit interest on delayed payment, interest to the tune of Rs.68,15,505/- would have escaped. It is best known to the petitioner as to why after deposit of admitted tax belatedly, did not deposit the interest component thereon “ON HIS OWN”. Matter would have stood on different footing had the petitioner sought to deposit interest on its own in view of requirement under Section 50(1).

10.2. Furthermore, provision of Section 80 apparently restricts consideration of payment of tax/interest in instalments where the same emanates from self-assessment. For proper appreciation it is fruitful to have a glance at the provisions contained in Section 80 of the OGST Act, which stands as follows:

*“On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, **other than the amount due as per the liability self-assessed in any return**, by such person*

in monthly installments not exceeding twenty four, subject to payment of interest under Section 50 and subject to such conditions and limitations as may be prescribed.

Provided that where there is default in payment of any one installment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall without any further notice being served on the person, be liable for recovery.”

[Emphasis supplied]

Corresponding rule is found at Rule 158, which reads thus:

- “(1) On an application filed electronically by a taxable person, in Form GST DRC-20, seeking extension of time for the payment of taxes or any amount due under the Act for allowing payment of such taxes or amount in installments in accordance with the provisions of Section 80, the Commissioner shall call for a report from the jurisdictional officer about the financial ability of the taxable person to pay the said amount.*
- (2) Upon consideration of the request of the taxable person and the report of the jurisdictional officer, the Commissioner may issue an order in Form GST DRC-21 allowing the taxable person further time to make payment and/or to pay the amount in such monthly installments, not exceeding twenty-four, as he may deem fit.*
- (3) The facility referred to in sub-rule (2) shall not be allowed where—*
- (a) The taxable person has already defaulted on the payment of any amount under the Act or the Integrated Goods and Service Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the Central Goods and Services Tax Act, 2017 for which the recovery process is on;*

- (b) *The taxable person has not been allowed to make payment in installments in the preceding financial year under the Act or the Integrated Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the Central Goods and Services Tax Act, 2017;*
- (c) *The amount for which installment facility is sought is less than twenty-five thousand rupees.”*

10.3. As has been held in *Baidyanath Ayurved Bhawan v. Excise Commissioner, U.P., AIR 1971 SC 378*, in interpreting a taxing statute, the Court should not ordinarily concern themselves with the policy behind the provisions or even with its impact. In that case, the Hon'ble Supreme Court of India referred with approval to the observations made by *Rowlatt, J., in Cape Brandy Syndicate v. Inland Revenue Commissioners, [1921] 1 KB 64 (at p. 71)* which were as follows:

“*** in a taxing Act one has to look 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.”

10.4. Be it noted that individual cases of hardship and injustice do not and cannot have any bearing for rejecting the natural construction by attributing normal meanings to the words used since hard cases do not make bad laws. A fiscal statute shall have to be interpreted on the basis of the language used therein and not *de hors* the same. No words ought to be added and only the language used ought to be considered

so as to ascertain the proper meaning and intent of the legislation. The Court is to ascribe the natural and ordinary meaning to the words used by the Legislature and the Court ought not, under any circumstances, to substitute its own impression and ideas in place of the legislative intent as is available from a plain reading of the statutory provisions. Reference may be had to *Cooke Vrs. Charles A Vogeler Co.*, (1901) AC 102 (HL); *Cape Brandi Syndicate Vrs. Inland Revenue Commissioners*, (1921) 1 KB 64; *Canadian Eagle Oil Co. Vrs. King*, (1945) 2 ALLER 499 (HL); *Inland Commissioners Vrs. Ross & Coulter, Re Bladnoch Distillery Co.*, (1948) 1 ALLER 616 (HL); *Keshavji Ravji & Co. Vrs. Commissioner of Income Tax*, (1990) 183 ITR 1 (SC); *Orissa State Warehousing Corporation Vrs. Commissioner of Income Tax*, (1999) 4 SCC 197; *State of Andhra Pradesh Vrs. Gouri Shankar Modern Rice Mill*, (2006) 147 STC 370 (AP).

10.5. In the case of *Union of India Vrs. Deoki Nandan Aggarwal*, AIR 1992 SC 96, the Supreme Court has observed as follows (para 14, pp. 101-02):

“It is not the duty of the court either to enlarge the scope of the legislation or the intention of the Legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the Legislature the court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The court of

course adopts a construction which will carry out the obvious intention of the Legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities.”

10.6. It is fairly well-settled that statute being an edict of the Legislature, it is necessary that it is expressed in clear and unambiguous language. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the Legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the judges should not proclaim that they are playing the role of a lawmaker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by “an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so”. (See *Frankfurter: “Some Reflections on the Reading of Statutes”* in *Essays on Jurisprudence, Columbia Law Review*, p. 51 as referred to in *A. Ram Mohan Vrs. State by the Inspector of Police and Others*, 2015 SCC OnLine Mad 14282).

10.7. In *Nathi Devi Vrs. Radha Devi Gupta*, (2005) 2 SCC 271 = AIR 2005 SC 648, the Apex Court held that,

“13. *The interpretative function of the court is to discover the true legislative intent. It is trite that in interpreting a statute the court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When the language is plain and unambiguous and admits of only one meaning, no question*

of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional.

14. *It is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the legislature. The courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors. [See State of U.P. Vrs. Dr. Vijay Anand Maharaj, AIR 1963 SC 946 = (1963) 1 SCR 1; Rananjaya Singh Vrs. Baijnath Singh, AIR 1954 SC 749 = (1955) 1 SCR 671; Kanai Lal Sur Vrs. Paramnidhi Sadhukhan, AIR 1957 SC 907 = 1958 SCR 360; Nyadar Singh Vrs. Union of India, (1988) 4 SCC 170 = 1988 SCC (L&S) 934 = (1988) 8 ATC 226 = AIR 1988 SC 1979; J.K. Cotton Spg. and Wvg. Mills Co. Ltd. Vrs. State of U.P., AIR 1961 SC 1170; and Ghanshyamdas Vrs. CST, AIR 1964 SC 766 = (1964) 4 SCR 436].”*

10.8. Plain reading of the provisions of Section 80 admits of no ambiguity that the Commissioner of CT&GST is empowered to allow the payment of “any amount due” under the Act in monthly instalments not exceeding twenty-four subject to payment of interest under Section 50 and also subject to such condition and limitation under Rule

158. One of the conditions is reflected in the said provision itself, *i.e.*, the instalment cannot be allowed in the circumstance when the liability to be discharged is on account of self-assessed returns. Therefore, necessary corollary would be that the Commissioner of CT&GST is empowered to invoke Section 80 for allowing taxpayer to discharge liability in instalment when demand is raised under the statute. However, the Commissioner of CT&GST is required to assign reasons in writing for the said purpose. In other words, it may be stated that this section permits a taxable person to make payment of an amount due on instalment basis, other than the amount due as per self-assessed return. The term 'instalments' in general parlance would mean equated periodical payments (money due) spread over an agreed period of time. This provision happens to be a beneficial piece of law to the tax payers to pay the demand in instalments along with interest. Nonetheless, as stated earlier, the amount should not be the amount due as per the liability as self-assessed in any return. Therefore, the amount which is payable pertains to a demand notice can be deferred or paid in instalments.

10.9. Section 39 of the OGST/CGST Act specifies time frame within which returns are to be furnished. Such returns are considered to be self-assessed returns under Section 59 *ibid*.

10.10. Section 59 is reproduced herein below:

“Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under Section 39.”

11. It is admitted fact on record that the petitioner has deposited an amount of tax admitted in self-assessed returns beyond the time stipulated under Section 39 and hence the CT & GST Officer, Bhubaneswar-II Circle, Bhubaneswar had raised demand of interest to the tune of Rs.68,15,506/- vide GST DRC-07 for the period April 2019 to December 2019.

11.1. Since interest is a part of tax and such tax being belated payment in respect of self-assessment, Section 80 of the OGST Act clearly excludes grant of instalment under the present fact-situation. However, the Commissioner is not conferred with power to allow such instalment in respect of amount due as per self-assessment return(s) furnished. Section 80 empowers the Commissioner to grant permission only to the taxable person to make payment of any amount due on instalment basis, on an application filed electronically in Form GST DRC-20 as prescribed under Rule 158. The Commissioner after considering the request by the taxable person in Form GST DRC-20 and report of the jurisdictional officer, may issue an order in Form GST DRC-21, allowing the taxable person either extend the time or allow payment of any amount due under the Act on instalment basis. This provision, therefore, applies to amounts due other than the self-assessed liability shown in any return. The instalment period shall not exceed 24

months. The taxable person shall also be liable to pay prescribed interest on the amount due from the first day such tax was due to be payable till the date tax is paid. In view of proviso to Section 80, if default occurs in payment of any one instalment, the taxable person would be required to pay the whole outstanding balance payable on such date of default itself without further notice. There was, therefore, no scope for the Commissioner of CT&GST to entertain application for grant of instalment.

12. In view of the above discussion, the Commissioner of CT&GST is justified in rejecting the prayer of the petitioner to deposit the interest levied on account of belated deposit of admitted tax as per self-assessed returns furnished in terms of Section 39 read with Section 59 of the CGST/OGST Act in instalment under Section 80 read with Rule 158. The writ petition, thus, being devoid of any merit, is dismissed.

(JASWANT SINGH)
JUDGE

(MURAHARI SRI RAMAN)
JUDGE

Laxmikant May 6, 2022
Cuttack