

The State of Karnataka Vs. M/S. Ws Retail Services Private Limited

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Court : Karnataka

Decided On : Aug-31-2018

Judge : Chief Justice and S Sunil Dutt Yadav

Appeal No. : WA 72/2018

Appellant : The State of Karnataka

Respondent : M/S. Ws Retail Services Private Limited

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE31T DAY OF AUGUST 2018 PRESENT HON'BLE MR.JUSTICE DINESH MAHESHWARI, CHIEF JUSTICE AND HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV WRIT APPEAL No.72/2018 (T-RES) AND WRIT APPEAL Nos. 387 485/2018 (T-RES) Rep. by its Finance Secretary, W.A.No.72/2018 in W.P.No.33176/2017: BETWEEN:

1. The State of Karnataka, Vidhana Soudha, Bengaluru 560 001.
2. Commercial Tax Officer (Audit)-4.3 Dvo-4, Vanijya Therige Karyalaya-2, Koramangala, Bengaluru 560 047.
3. Assistant Commissioner of Commercial Taxes, (Audit)-4.4, Dvo-4, Vtk-42, Room No.204, A Block, Koramangala, Bengaluru 560 047. Appellants (By Sri. Aditya Sondhi, Additional Advocate General and Sri. Vikram Huilgol, High Court

Government Pleader) AND: M/s. WS Retail Services Private Limited, A Company Incorporated under the 2 Companies Act, 1956, Having its office at No.447B, 1st A Cross, 12th Main, 4th Block, Koramangala, Bengaluru 560 034. Rep. herein by its Authorised Signatory, Mr.Anil Gupta (Adult). ... Respondent (By Ms. Anupama G. Hebbar, Advocate) State of Karnataka, Through its Principal Secretary, Finance Department, Vidhana Soudha, Bengaluru 560 001. W.A.No.387/2018 in W.P.No.32658/2017: BETWEEN:

1.

2.

3. The Commissioner of Commercial Taxes in Karnataka, Vanijya Therige Karyalaya, Gandhinagar, Bengaluru 560 009. The Deputy Commissioner of Commercial Taxes, (Audit)-5.2, Dvo-5, Room No.504, 5th Floor, B Block, VTK-2, Rajendranagar, Koramangala, Bengaluru 560 047. ... Appellants (By Sri. Aditya Sondhi, Additional Advocate General and Sri. Vikram Huilgol, High Court Government Pleader) AND: M/s. Lakshmi Tools and Components B-34, ITI Industrial Estate, Mahadevapura Post, Bengaluru 560 048. ... Respondent (By Sri Mohammed Mujassim & Sri Ganesh.S, Advocates) 3 W.A.Nos.388-399/2018 in W.P.Nos.32659-32670/2017: BETWEEN:

1.

2. State of Karnataka, Represented by Additional Chief Secretary, and Principal Secretary to Government, Finance Department, Government of Karnataka, Vidhana Soudha, Bengaluru 560 001. The Commissioner of Commercial Taxes in Karnataka, Vanijya Therige Karyalaya, Gandhinagar, Bengaluru 560 009. The Dy. Commissioner of Commercial Taxes, (Audit) 5-1, VTK-2, B Block, 5th Floor, Rajendra Nagar, Koramangala, Bengaluru 560 047. ... Appellants 3. (By Sri. Aditya Sondhi, Additional Advocate General and Sri. Vikram Huilgol, High Court Government Pleader) AND: M/s. Flowserve India Controls Pvt. Ltd., Plot No.4, 1-A-EPIP, Whitefield, Bengaluru 560 066. Represented by its Asst. Manager, Mr. H.S.Mahadevappa, Aged about 39 years, S/o Sri Shivappa. ... Respondent (By Sri Thirumalesh.M, Advocate) W.A.Nos.400-402/2018 in W.P.Nos.33470-33472/2017:

BETWEEN:

1. State of Karnataka , Represented by Additional Chief Secretary And Principal Secretary to Government, 2.

3. 4 Finance Department, Government of Karnataka, Vidhana Soudha, Bengaluru 560 001. The Commissioner of Commercial Taxes in Karnataka, Vanijya Therige Karyalaya, Gandhinagar, Bengaluru 560 009. The Deputy Commissioner of Commercial Taxes (Audit)6.6, DVO-6, 3rd Floor, KIADB Building, Peenya Industrial Area, 2nd Stage, Peenya, Bengaluru 560 058. ... Appellants (By Sri. Aditya Sondhi, Additional Advocate General and Sri. Vikram Huilgol, High Court Government Pleader) AND: M/s.Castrol India Ltd., C/o Shree Logistics, No.75, Harokyathanahalli (Adakamaranahalli), Dasanapura Hobli, Makali Post, Bengaluru North Taluk, Bengaluru 562 123. A Private Limited Company, Represented by Deputy Manager (Taxation) Sri V.Balasubramanian, Aged about 53 years, S/o Sri T.S.Valleesan. ... Respondent (By Sri.Thirumalesh.M, Advocate) W.A.No.403/2018 in W.P.No.35892/2017: BETWEEN:

1. State of Karnataka , Represented by Additional Chief Secretary and Principal Secretary to Government, Finance Department, Government of Karnataka, Vidhana Soudha, Bengaluru 560 001.

2.

3. 5 The Commissioner of Commercial Taxes in Karnataka, Vanijya Therige Karyalaya, Gandhinagar, Bengaluru 560 009. The Commercial Tax Officer (Audit) Bindu New Layout, 2nd Cross, Doom Light Circle, Kolar 563 101. ... Appellants (By Sri. Aditya Sondhi, Additional Advocate General and Sri. Vikram Huilgol, High Court Government Pleader) AND: M/s.Avk Valves India Pvt. Ltd., Plot No.179, KIADB Industrial Area, Phase-II, Malur 563 130. Represented by its Finance Manager, Mrs. Nafisa Firdaus, Aged about 37 years, S/o Mr. Faiyaz Faruque. ... Respondent (By Sri.Thirumalesh.M, Advocate) W.A.Nos.404/2018 & 405-415/2018 in W.P.Nos.25349/2017 & 31438-31448/2017: BETWEEN1 2. The State of Karnataka, Through the Secretary, Finance Department, Vidhana Soudha, Bengaluru 560 001. The Deputy Commissioner of Commercial Taxes (Audit)-3.6,

Dvo-3, TTMC, B Block, BMTC Building, 2nd Floor, Shanthinagar, Bengaluru 560 027. ... Appellants (By Sri. Aditya Sondhi, Additional Advocate General and Sri. Vikram Huilgol, High Court Government Pleader) 6 AND: Nokia India Private Ltd., 88, Brigade Chambers, Gandhi Bazaar Main Road, Basavanagudi, Bengaluru 560 004. (Having Registered Office at: Flat No.1204, 12th Floor, Kailash Building, Kasturba Gandhi Marg, New Delhi 110 001) Rep. by Authorised Representative Surendra Kumar Raheja. ... Respondent (By Sri Udaya Holla, Senior Advocate for Sri Chethana Deepak, Advocate) W.A.Nos.416/2018 & 417-427/2018 in W.P.Nos.25350/2017 & 30508-30518/2017: BETWEEN:

1. The State of Karnataka, Through the Secretary, Finance Department, Vidhana Soudha, Bengaluru 560 001. The Deputy Commissioner of Commercial Taxes (Audit)-3.6, Dvo-3, TTMC, B Block, BMTC Building, 2nd Floor, Shanthinagar, Bengaluru 560 027. ... Appellants 2. (By Sri. Aditya Sondhi, Additional Advocate General and Sri. Vikram Huilgol, High Court Government Pleader) AND: Nokia India Private Ltd., 88, Brigade Chambers, Gandhi Bazaar Main Road, 7 Basavanagudi, Bengaluru 560 004. (Having Registered Office at: Flat No.1204, 12th Floor, Kailash Building, Kasturba Gandhi Marg, New Delhi 110 001) Represented by Authorised Representative Surendra Kumar Raheja. (By Sri Udaya Holla, Senior Advocate for Sri Chethana Deepak, Advocate) W.A.Nos.428/2018 & 429-439/2018 in W.P.Nos.25351/2017 & 30526-30536/2017: BETWEEN:

1. ... Respondent State of Karnataka , Through the Secretary, Finance Department, Vidhana Soudha, Bengaluru 560 001. The Deputy Commissioner of Commercial Taxes (Audit)-3.6, DVO-3, TTMC, B Block, BMTC Building, 2nd Floor, Shanthinagar, Bengaluru 560 027. ... Appellants 2. (By Sri. Aditya Sondhi, Additional Advocate General and Sri. Vikram Huilgol, High Court Government Pleader) AND: Nokia India Private Ltd., 88, Brigade Chambers, Gandhi Bazaar Main Road, Basavanagudi, Bengaluru 560 004. (Having Registered Office at: Flat No.1204, 12th Floor, Kailash Building, Kasturba Gandhi Marg, New Delhi 110 001 8 Represented by Authorised Representative Surendra Kumar Raheja. (By Sri Udaya Holla, Senior Advocate for Sri Chethana Deepak, Advocate) W.A.Nos.440/2018 & 441-451/2018 in W.P.Nos.25352/2017 & 34098-34108/2017:

BETWEEN:

1. ... Respondent State of Karnataka, Through the Secretary, Finance Department, Vidhana Soudha, Bengaluru 560 001. The Deputy Commissioner of Commercial Taxes (Audit)-3.6, DVO-3, TTMC, B Block, BMTC Building, 2nd Floor, Shanthinagar, Bengaluru 560 027. ... Appellants 2. (By Sri. Aditya Sondhi, Additional Advocate General and Sri. Vikram Huilgol, High Court Government Pleader) AND: Nokia India Private Ltd., 88, Brigade Chambers, Gandhi Bazaar Main Road, Basavanagudi, Bengaluru 560 004. (Having Registered Office at: Flat No.1204, 12th Floor, Kailash Building, Kasturba Gandhi Marg, New Delhi 110 001) Represented by Authorised Representative Surendra Kumar Raheja. ... Respondent (By Sri Udaya Holla, Senior Advocate for Sri Chethana Deepak, Advocate) 9 W.A.No.452/2018 in W.P.No.32127/2017: **BETWEEN:**

1. State of Karnataka , Represented by its Secretary, Department of Finance, Vidhana Soudha, Bengaluru 560 001.

2. The Assistant Commissioner of Commercial Taxes, (Audit)-5.1, DVO-5, VTK-2, B Block, 4th Floor, Koramangala, Bengaluru 560 047. ... Appellants (By Sri. Aditya Sondhi, Additional Advocate General and Sri. Vikram Huilgol, High Court Government Pleader) AND: M/s. Smile Electronics Ltd., Plot No.13, Bhattarahalli, K.R.Puram, Old Madras Road, Bengaluru 560 049, Represented by Sri Abdul Aleem. ... Respondent (By Sri K.M.Shivayogiswamy, Advocate) W.A.Nos.453/2018 & 454-464/2018 in W.P.Nos.25353/2017 & 30711-30721/2017: **BETWEEN:**

1. State of Karnataka , Through the Secretary, Finance Department, Vidhana Soudha, Bengaluru 560 001.

2. 10 The Deputy Commissioner of Commercial Taxes, (Audit)-3.6, DVO-3, TTMC, B Block, BMTC Building, 2nd Floor, Shanthinagar, Bengaluru 560 027. ... Appellants (By Sri. Aditya Sondhi, Additional Advocate General and Sri. Vikram Huilgol, High Court Government Pleader) AND: Nokia India Private Ltd., 88, Brigade Chambers, Gandhi Bazaar Main Road, Basavanagudi, Bengaluru 560 004. Having Registered Office at: Flat No.1204, 12th Floor, Kailash Building,

Kasturba Gandhi Marg, New Delhi 110 001. Represented by Authorised Representative Surendra Kumar Raheja. ... Respondent (By Sri Udaya Holla, Senior Advocate for Sri Chethana Deepak, Advocate) W.A.Nos.465/2018 & 466-476/2018 in W.P.Nos.25354/2017 & 30318-30328/2017: BETWEEN:

1. State of Karnataka , Through the Secretary, Finance Department, Vidhana Soudha, Bengaluru 560 001. The Deputy Commissioner of Commercial Taxes, (Audit)-3.6, DVO-3, TTMC, B Block, BMTC Building, 2nd Floor, Shanthinagar, Bengaluru 560 027. ... Appellants 2. (By Sri. Aditya Sondhi, Additional Advocate General and Sri. Vikram Huilgol, High Court Government Pleader) 11 AND: Nokia India Private Ltd., 88, Brigade Chambers, Gandhi Bazaar Main Road, Basavanagudi, Bengaluru 560 004. (Having Registered Office at: Flat No.1204, 12th Floor, Kailash Building, Kasturba Gandhi Marg, New Delhi 110 001) Represented by Authorised Representative Surendra Kumar Raheja. ... Respondent (By Sri Udaya Holla, Senior Advocate for Sri Chethana Deepak, Advocate) W.A.No.477/2018 in W.P.No.30001/2017: BETWEEN:

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3. (By Sri. Aditya Sondhi, Additional Advocate General and Sri. Vikram Huilgol, High Court Government Pleader) The Deputy Commissioner of Commercial Taxes (Audit)-1.1, DVO-1, 3rd Floor, TTMC, BMTC Bus Stand Building, Yeshwanthapur, Bengaluru 560 022. ... Appellants State of Karnataka , Through its Principal Secretary, Finance Department, Vidhana Soudha, Bengaluru 560 001. The Commissioner of Commercial Taxes in Karnataka, Vanijya Therige Karyalaya Gandhingar, Bengaluru 560 009. 12 AND: M/s. GE T & D India Limited, (Formerly Known as M/s. Alstom T & D Limited) No.302, III Floor, Embassy Classic, No.11, Vittal Malya Road, Bengaluru, Represented by its Assistant Manager-Indirect Tax, Shri.Venkatesulu Yenugula. ... Respondent (By Sri Joseph Prabhakar, Advocate) W.A.No.478/2018 in W.P.No.28370/2017: BETWEEN:

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2. State of Karnataka , Through its Principal Secretary, Finance Department, Vidhana Soudha, Bengaluru 560 001. The Commissioner of Commercial Taxes in Karnataka, Vanijya Therige Karyalaya, Gandhinagar, Bengaluru 560 009. The Assistant Commissioner of Commercial Taxes, (Audit)-1.3, DVP-1, Yeshwanthapura, Bengaluru 560 022. ... Appellants 3. (By Sri. Aditya Sondhi, Additional Advocate General and Sri. Vikram Huilgol, High Court Government Pleader) 13 AND: M/s. GE T & D India Limited, (Formerly Known As M/s. Alstom T & D Limited) No.302, III Floor, Embassy Classic, No.11, Vittal Malya Road, Bengaluru, Represented by its Assistant Manager-Indirect Tax, Shri.Venkatesulu Yenugula. ... Respondent (By Sri Joseph Prabhakar, Advocate) W.A.No.479/2018 in W.P.No.26333/2017: BETWEEN:

1. State of Karnataka, Represented by Additional Chief Secretary, And Principal Secretary to Government, Finance Department, Government of Karnataka, Vidhana Soudha, Bengaluru 560 001.

2.

3. The Commissioner of Commercial Taxes in Karnataka, Vanijya Therige Karyalaya, Gandhinagar, Bengaluru 560 009. The Deputy Commissioner of Commercial Taxes (Audit) 6.3, DVO-6, 3rd Floor, KIADB Building, Peenya Industrial Area, 2nd Stage, Peena, Bengaluru 560 058. ... Appellants (By Sri. Aditya Sondhi, Additional Advocate General and Sri. Vikram Huilgol, High Court Government Pleader) 14 AND: M/s.Castrol India Ltd., C/o Shree Logistics, No.75, Harokyathanahalli (Adakamaranahalli) Dasanapura Hobli, Makali Post, Bengaluru North Taluk, Bengaluru 562 123. A Private Limited Company, Represented by Deputy Manager (Taxation) Sri V.Balasubramanian, Aged about 53 years, S/o Sri T.S.Valleesan. ... Respondent (By Sri.Thirumalesh.M, Advocate) W.A.No.480/2018 in W.P.No.38574/2017: BETWEEN:

1.

2.

3. The Commissioner of Commercial Taxes in Karnataka, Vanijya Therige Karyalaya, Gandhinagar, Bengaluru 560 009. State of Karnataka, Through its Principal Secretary, Finance Department, Vidhana Soudha, Bengaluru 560 001. The Assistant Commissioner of Commercial Taxes, (Audit) 4.5, DVO-4 Room No.504, 5th Floor, B Block, Vtk-2, Rajendranagar, Koramangala, Bengaluru 560 047. ... Appellants (By Sri. Aditya Sondhi, Additional Advocate General and Sri. Vikram Huilgol, High Court Government Pleader) 15 AND: M/s.Saras Precision Tools Pvt. Ltd., 64-B Area, Bommasandra Industrial Area, Hosur Road, Bengaluru 560 009. Represented by its Director, Bheemesh Ramnath. (By Sri Mohammed Mujassim & Sri Ganesh.S, Advocates) ... Respondent State of Karnataka, Through its Principal Secretary, Finance Department, Vidhana Soudha, Bengaluru 560 001. W.A.No.481/2018 in W.P.No.44681/2017: BETWEEN:

1.

2.

3. The Commissioner of Commercial Taxes in Karnataka, Vanijya Therige Karyalaya, Gandhinagar, Bengaluru 560 009. The Assistant Commissioner of Commercial Taxes, (Audit) 4.6, Vat Division-4, 4th Floor, A Block, Vtk-2, Koramangala, Bengaluru 560 047. ... Appellants (By Sri. Aditya Sondhi, Additional Advocate General and Sri. Vikram Huilgol, High Court Government Pleader) 16 AND: M/s. AB Mauri India Pvt. Ltd., Plot No.218 & 219 Bommasandra Jigani Link Road, Rajapura Hobli, Jigani, Anekal Taluk, Bengaluru 560 105. Represented by its Manager Finance, Shri.Apoorv Verma. ... Respondent (By Sri Joseph Prabhakar, Advocate) W.A.No.482/2018 in W.P.No.45976/2017: BETWEEN:

1. The Commissioner of Commercial Taxes in Karnataka, Vanijya Therige Karyalaya, 1st Floor, Gandhinagar, Bengaluru 560 009. State of Karnataka, Represented herein by the Principal Secretary, Finance Department, Government of Karnataka, Vidhana Soudha, Bengaluru 560 001.

2.

3. (By Sri. Aditya Sondhi, Additional Advocate General and Sri. Vikram Huilgol, High Court Government Pleader) The Assistant Commissioner of Commercial Taxes, (Audit) 4.6, Vat Division-4, 4th Floor, A Block, Vtk-2, Koramangala, Bengaluru 560 047. ... Appellants 17 AND: M/s. Sri Annapoorneswari Bar and Restaurant, No.118, 9th Cross, JP Nagar, 2nd Phase, JP Nagar, Bengaluru 560 076. Represented by its Proprietor, Sri B.Gopala Krishna, S/o Sri Byanna, Aged about 54 years. ... Respondent (By Ms.Vani.H, Advocate) W.A.No.483/2018 in W.P.No.45978/2017: BETWEEN:

1. State of Karnataka, Represented herein by the Principal Secretary, Finance Department, Government of Karnataka, Vidhana Soudha, Bengaluru 560 001.

2. The Commissioner of Commercial Taxes In Karnataka, Vanijya Therige Karyalaya, 1st Floor, Gandhinagar, Bengaluru 560 009. The Assistant Commissioner of Commercial Taxes Audit 4.6, VAT Division-4, 4th Floor, A Block, VTK-2, Koramangala, Bengaluru 560 047. ... Appellants 3. (By Sri. Aditya Sondhi, Additional Advocate General and Sri. Vikram Huilgol, High Court Government Pleader) 18 AND: M/s. Sri Nanjundeswara Bar and Restaurant, No.288, N.S.Palya, B.G.Road, BTM Layout, Bengaluru 560 076. Represented by its Proprietor, Sri B.Gopala Krishna, S/o Sri Byanna, Aged about 54 years. ... Respondent (By Ms.Vani.H, Advocate) W.A.No.484/2018 in W.P.No.46691/2017: BETWEEN:

1. State of Karnataka, Represented by Additional Chief Secretary and Principal Secretary to Government, Finance Department, Government of Karnataka, Vidhana Soudha, Bengaluru 560 001.

2.

3. The Commissioner of Commercial Taxes in Karnataka, Vanijya Therige Karyalaya, Gandhinagar, Bengaluru 560 009. The Deputy Commissioner of Commercial Taxes, (Audit) 5.1, DVO-5, 5th Floor, B-Block, Vanijya Therige Karyalaya-2, Koramangala, Bengaluru 560 047. ... Appellants (By Sri. Aditya Sondhi, Additional Advocate General and Sri. Vikram Huilgol, High Court Government Pleader) 19 AND: M/s.Universal Digital Connect Ltd., No.32/3, 1st

Main, Behind Domlur Post Office, Domlur Layout, Bengaluru 560 071. Represented by its Authorised Signatory, Mr. Keshav N. Hegde, Aged about 51 years, S/o late Mr. Narayana Hegde. ... Respondent (By Sri G.Rabinathan, Advocate) W.A.No.485/2018 in W.P.No.47080/2017: BETWEEN:

1.

2.

3. State of Karnataka, Represented by its Finance Secretary, Government of Karnataka, Vidhana Soudha, Ambedkar Veedhi, Bengaluru 560 001. The Commissioner of Commercial Taxes, VTK-1, Kalidasa Road, Gandhinagar, Bengaluru 560 009. The Deputy Commissioner of Commercial Taxes (Audit)-3.6, DVO-3, II Floor, TTMC, BMTC Building, Shanthi Nagar, Bengaluru 560 027. Appellants (By Sri. Aditya Sondhi, Additional Advocate General and Sri. Vikram Huilgol, High Court Government Pleader) 20 AND: M/s.Fakhri Sons, No.23/5, S.P.Road, Bengaluru 560 002. (Represented by its Proprietor Mufaddal Fakhri, 48 years). Respondent (By Sri Atul K. Alur, Advocate) These Writ Appeals are filed under Section 4 the dated 14.11.2017 passed c/w W.P.No.25349/2017 of the Karnataka High Court Act, 1961, praying to set order aside in W.P.No.33176/2017 W.P.Nos.32658/2017, W.P.Nos.32659-32670/2017, W.P.Nos.33470-33472/2017, W.P.No.35892/2017, and and W.P.Nos.31438-448/2017, W.P.No.25350/2017 and W.P.Nos.30508-518/2017, W.P.No.25351/2017 W.P.Nos.30526-536/2017, W.P.No.25352/2017 and W.P.Nos.34098-108/2017, W.P.No.32127/2017, W.P.No.and W.P.Nos.30711-721/2017, W.P.No.25353/2017 25354/2017 and W.P.Nos.30318-328/2017, W.P.No.30001/2017, W.P.No.28370/2017, W.P.No.26333/2017, W.P.No.44681/2017, W.P. W.P.No.45976/2017, W.P.No.45978/2017, W.P.No.46691/2017 and W.P.No.47080/2017 (T-RES). No.38574/2017, These Writ Appeals having been heard and reserved for orders, this day S.Sunil Dutt Yadav. J., delivered the following:

21.

JUDGMENT

1 The State has filed the present appeals aggrieved by the order dated 14.11.2017 passed in W.P.No.33176/2017 along with connected matters, whereby the learned Single Judge has set aside the impugned orders of the State Authorities rejecting the applications filed by the assesseees under the Karasamadhana Scheme-2017 and had remanded the matter to the Authority prescribed under the Scheme to recompute the arrears of tax, interest and penalty and to pass appropriate orders in accordance with the observations therein.

2. The facts leading to the present appeals are that the State had made a provision in the Budget for the year 2017- 2018, for a Scheme called as Karasamadhana Scheme-2017 (for short the Scheme). Pursuant to the declaration in the Budget Speech by the Finance Minister, a Notification No.FD24CSL2017 Bengaluru, dated 31.03.2017 came to be issued in order to enable trade and industry to clear their pending tax liabilities and start with a clean slate in GST. 22 (para-488 of the Budget Speech on the floor of the Legislative Assembly). The Scheme provided for waiver of 90% arrears of penalty and interest payable under the respective taxing statutes subject to compliance of certain conditions as stipulated in the Scheme. The relief was sought to be provided:- (a) Relating to the assessment or reassessment for all years up to 31.03.2016 as regards the following Acts: (i)Karnataka Tax on Entry of Goods Act, 1979 (ii)Karnataka Tax on Profession, Trades, Callings and Employments Act, 1976 (iii)Karnataka Tax on Luxuries Act, 1979 (iv)Karnataka Agricultural Income Tax Act, 1957 and (v)Karnataka Entertainments Tax, 1958. (b) Relating to assessment/reassessment orders under the provisions of Karnataka Value Added Tax Act, 2003 for the tax period relating to all years commencing from 01.04.2005 upto 31.03.2016 and (c) With respect to assessment/reassessment orders passed under the Central Sales Tax Act, 1956 for the 23 tax period relating to all years commencing from 01.04.2005 upto 31.03.2016.

3. The Scheme provided for a procedure whereby applications in the requisite format were to be submitted as per Clause-3.1 of the Scheme; and as per Clause-3.2 thereof, the Assessing Authority/Recovery Officer/Prescribed Authority would scrutinize the application and after working out as regards to the actual arrears of tax, penalty and interest payable, call upon the assessee to comply with

preconditions/stipulations and rectify the discrepancies, if any, in order to avail benefit under the Scheme. Power was conferred to reject applications by a speaking order in the event eligibility was not made out in terms of the Government Order.

4. In all cases, which are the subject matter of the present litigation, the State had rejected, as per the orders impugned before the learned Single Judge, applications of the assesseees submitted as per Clause-3.1 of the Scheme on the 24 ground that computation of arrears of tax, interest and penalty by the assesseees, by first adjusting the deposits made during the pendency of appeals against the tax due and then towards the balance of tax and 10% of interest and penalty and, thereupon seeking waiver of 90% interest and penalty had been incorrect as regards determination of arrears of tax or arrears of interest and penalty as contemplated under the Scheme. The State had contended that the amount in deposit during the pendency of appeals was to be adjusted first against the head of interest and not under the head of tax as had been resorted to by the assessee.

5. The assesseees did not accept the mode of determination of arrears of tax, interest and penalty as resorted to by the Prescribed Authority under Clause-3.2 of the Scheme and refused to comply with the demand for the payment of arrears of tax, penalty and interest. In view of non-compliance with the said demand by the prescribed Authority under the Scheme, the applications of the assesseees came to be rejected. 25 6. The assesseees challenged by way of Writ Petitions the orders of rejection of their applications on the ground of non-compliance with the eligibility conditions as regards deposit of arrears of tax, interest and penalty as envisaged under the Scheme. The learned Single Judge, by his order dated 14.11.2017, set aside the endorsement of, rejection of the applications filed by the assesseees under the Scheme, while accepting the contention of the assesseees that computation of arrears of tax, interest and penalty was to be resorted to by adjustment of amount deposited by the assesseees first under the head of tax and thereafter computing the arrears of tax (if deposit did not cover the entire tax liability), interest and penalty.

7. The State is in appeal challenging the said order of the learned Single Judge.

8. The details of the Writ Petitions of various assesseees under different taxing statutes who had sought to avail the 26 benefit under the Scheme for the purpose of factual narration is as follows: WRIT APPEAL WRIT PETITION RESPONDENTS ACT NUMBER NUMBER722018 387/2018 33176/2017 32658/2017 W.S.Retail Services Pvt. Ltd., M/s.Lakshmi Tools and Components 388-399/2018 32659-32670/2017 M/s.Flowserve India Controls 400-402/2018 403/2018 404/2018 & 405-415/2018 416/2018 & 417-427/2018 428/2018 & 429-439/2018 440/2018 & 441-451/2018 452/2018 453/2018 & 454-464/2018 465/2018 & 466-476/2018 477/2018 33470-33472/2017 35892/2017 25349/2017 & 31438-31448/2017 25350/2017 & 30508-30518/2017 25351/2017 & 30526-30536/2017 25352/2017 & 34098-34108/2017 32127/2017 25353/2017 & 30711-30721/2017 25354/2017 & 30318-30328/2017 30001/2017 KVAT CST CST KVAT KVAT CST KVAT KVAT KVAT Pvt. Ltd., M/s.Castrol India Ltd. M/s.AVK Valves India Pvt. Ltd. Nokia India Pvt. Ltd. Nokia India Pvt. Ltd., Nokia India Pvt. Ltd., Nokia India Pvt. Ltd., KVAT M/s.Smile Electronics Ltd. Nokia India Pvt. Ltd., CST KVAT Nokia India Pvt. Ltd., KVAT M/s.GE T & D India Limited CST2728370/2017 26333/2017 38574/2017 44681/2017 45976/2017 45978/2017 46691/2017 47080/2017 M/s.GE T & D India Limited M/s.Castrol India Ltd. M/s.Saras Precision Tools Pvt. LTd., M/s.AB Mauri India Pvt. Ltd., M/s.Sri. Annapurneswari Bar and Restaurant M/s.Sri. Nanjundeswara Bar and Restaurant M/s.Universal Digital Connect Ltd. M/s.Fakhri Sons CST KTEG CST CST KVAT KVAT KVAT KVAT4782018 479/2018 480/2018 481/2018 482/2018 483/2018 484/2018 485/2018

9. The Clauses of the Scheme that are required to be considered as being relevant to the present controversy are as under:- 1.1 Arrears of tax means tax assessed / reassessed as per the provisions of the KST and CST Acts relating to all the assessment years upto 31/03/2005 and tax assessed / reassessed as per the provisions of the KVAT Act and CST Acts relating to the tax periods for all the years commencing from 01/04/2005 upto 31/03/2016 and 28 also tax assessed / reassessed under the provisions of KTEG Act, KTPTC & E Act, KTL Act, KAIT Act and KET Act relating to all the years upto 31/03/2016 and remaining unpaid upto 15/03/2017. 1.2 Arrears of penalty and interest means all kinds of penalties levied and all kinds of interest accrued under the provisions of the KST

and CST Acts relating to all the assessment years ending on 31/03/2005 and all kinds of penalties levied and all kinds of interest accrued under the provisions of the KVAT Act and CST Act relating to the tax periods for all the years commencing from 01/04/2005 upto 31/03/2016 and all kinds of penalties levied and all kinds of interest accrued under the provisions of the KTEG Act / KTPTC & E Act / KTL Act / KAIT Act / KET Act relating to the assessment / reassessment for all the years upto 31/03/2016 and remaining unpaid upto 15/03/2017. This shall also include all kinds of penalties leviable and interest accrued till the date of filing of application by the dealer or person or proprietor as the case may be, under the Scheme. 2.4 If the dealer or person or proprietor, as the case may be, has filed Appeal or other Application 29 against the order or proceedings relating to arrears of tax and arrears of penalty and interest before any Appellate Authority or Court and if disposal of such Applications is still pending, then the dealer or person or proprietor, as the case may be, shall withdraw the Appeal or other Application before availing the benefit of waiver of arrears of penalty and interest under this Scheme. If Appeal or other Application is withdrawn, the quantum of arrears of tax / penalty and interest for purposes of this Scheme shall be considered as per the order against which Appeal or other Applications had been filed which are since withdrawn to avail of the benefits of the Karasamadhana Scheme, 2017. 3.2 The concerned Assessing Authority / Recovery Officer / Prescribed Authority shall scrutinize the Application and workout the actual arrears of tax, penalty and interest payable by the dealer or person or proprietor, as the case may be, upto the date of filing of Application and if any discrepancies are found in the amount of arrears of tax and arrears of penalty and interest payable upto the date of Application as declared by the dealer or person or proprietor in his Application, then the concerned Assessing Authority / Recovery Officer / 30 Prescribed Authority shall inform the dealer or person or proprietor within 15 days from the date of filing of Application about the discrepancies. 3.3. After receipt of information from the Assessing Authority / Recovery Officer / Prescribed Authority, the dealer or person or proprietor, as the case may be, at his option, may pay the balance amount of tax as in Clause 2.1 and arrears of penalty and interest as in Clause 2.2 / 2.3 so as to avail of the benefits of this Scheme. All payments should be made on or before 31/05/2017. The dealer or person or proprietor, as the case

may be shall file a declaration in support of withdrawal of Appeal or other Application as per Annexure-II along with Application for waiver of arrears of penalty and interest. Such declaration shall be filed separately under relevant Act for each year relating to arrears of penalty and interest. 3.4 If the dealer or person or proprietor, as the case may be, fails to do so, the Authority / Officer shall pass a speaking order rejecting the Application. 3.5 On satisfaction that the applicant-dealer or person or proprietor, as the case may be is eligible for the benefits of the Scheme, the Assessing 31 Authority / Recovery Officer / Prescribed Authority shall pass the order waiving the balance amount of arrears of penalty and interest payable by the dealer or person or proprietor, as the case may be, as per Annexure-III separately under relevant Act for each assessment year / each assessment or reassessment order relating to the relevant tax periods / week / month of the year. (a) Clauses 1.1 and 1.2 define arrears of tax for the purpose of the Scheme with regard to; Karnataka Value Added Tax Act, 2003 (for short KVAT Act) and Central Sales Tax Act, 1956 (for short CST Act) on the one hand and also for the purpose of Karnataka Tax on Entry of Goods Act, 1979, Karnataka Tax on Profession, Trades, Callings & Employment Act, 1976, Karnataka Tax on Luxuries Act, 1979, Karnataka Agricultural Income Tax Act, 1957 and Karnataka Entertainment Act, 1958. (b) Clause 1.2 provides for determination of arrears of penalty and interest which refers to all kinds of 32 penalties levied and interest accrued under the provisions of the KST Act and CST Act which remain unpaid as on 15.03.2017 as also the penalties leviable and interest accrued till the date of filing of the application. (c) Clause 2.4 of the Scheme provides that all appeals or other applications filed against the order or proceedings relating to arrears of tax and arrears of penalty and interest before any Appellate Authority or Court, if pending, would have to be withdrawn before availing benefit of waiver of arrears of penalty and interest under the Scheme. It was further provided that the quantum of arrears of tax/penalty and interest for the purposes of the Scheme would be considered as per the order against which the appeals or other applications had been filed. (d) Clause 3.2 provides that the Assessing Authority / Recovery Officer / Prescribed Authority would 33 scrutinize the applications and work out the actual arrears of tax, penalty and interest payable, as regards the amount due and if there were any discrepancies the Authority referred to above would inform the

assessee about the same. (e) Clause 3.3 provides that on being called upon to pay the balance of amount as determined under Clause 3.2, the assessee was required to comply by making payments on or before 31.05.2017. (f) Clause 3.4 states that if the assessee failed to comply with requisite deposit as referred to above and to rectify the discrepancies pointed out, the Prescribed Authority could reject the applications.

10. The provisions of the KVAT Act that require consideration in the present controversy are as under:- 42. Payment and recovery of tax, penalties, interest and [other amounts, issuance of clearance certificates]. 34

6) Where the amount paid falls short of the aggregate of the tax or any other amount due and interest payable, the amount so paid shall first be adjusted towards interest payable and the balance, if any, shall be adjusted towards the tax or any other amount due.

62. Appeals (4) (a) No appeal against an order of assessment shall be entertained by the Appellate Authority unless it is accompanied by satisfactory proof of the payment of tax and other amount not disputed in the appeal. (b) The tax or other amount shall be paid in accordance with the order or proceedings against which an appeal has been preferred. (c) (i) The Appellate Authority may, in its discretion, stay payment of seventy per cent of tax and other amount, if the appellant makes payment of the balance thirty per cent of the tax and other amount along with prescribed form of appeal. 35 (ii) Where any application made by an applicant for staying proceedings of recovery of any tax or other amount has not been disposed of by the Appellate Authority within a period of thirty days from the date of such application, it shall be deemed that the Appellate Authority has made an order staying proceedings of recovery of such tax or other amount subject to payment of thirty per cent of the tax and other amount disputed and furnishing of sufficient security to the satisfaction of the Assessing Authority in regard to the balance seventy per cent of such tax or amount within a further period of fifteen days. (d) Where an order staying proceedings of recovery of any tax or other amount is passed in any proceedings relating to an appeal under sub-section (1), the Appellate Authority shall dispose of the appeal within a period of two hundred forty

days from the date of such order.

63. Appeal to the Appellate Tribunal (7) (a) The Appellate Tribunal may, in its discretion, stay payment of seventy per cent of 36 the tax or other amount disputed, if the appellant makes payment of the thirty per cent of the tax or other amount disputed along with the prescribed form of appeal. (b) The Appellate Tribunal shall dispose of such appeal within a period of three hundred and sixty-five days from the date of the order staying proceedings of recovery of seventy per cent of tax or other amount and, if such appeal is not so disposed of within the period specified, the order of stay shall stand vacated after the said period and the Appellate Tribunal shall not make any further order staying proceedings of recovery of the said tax or other amount. In the present case, the assessee's applications have 11. been rejected by the State solely on the ground that the prerequisite condition for eligibility, i.e., payment of entire tax arrears and 10% of penalty and interest, was not complied with, as the assessee had adjusted remittances made whilst filing appeals towards tax, at the first instance and consequently had calculated arrears of tax, penalty and 37 interest which was at variance with the mode of calculation adopted by the State.

12. The learned Single Judge relied on the decision of this Court in the case of *Mangilal S. Jain v. Commissioner of Income Tax and Others* reported in ILR 2003 KAR2066 which held that specific appropriation provisions under the Income Tax Act, 1961 and general law as regards appropriation of payments would be inapplicable to payments made pending adjudication and covered by the Kar Vivad Samadhan Scheme, 1998. The relevant portion of the said decision is extracted below:- 14. The above clarifications issued by the Central Government, binding on the respondents, are a complete answer to the contentions raised by the Department. Any payment made towards tax arrears after the date of assessment and before the date of declaration filed under the KVS Scheme, will therefore have to be taken as part payment towards tax in regard to declarations validly falling under the KVS Scheme. The normal rule that payments will first be adjusted towards 38 interest and then towards principal (income Tax)(sic), based on the Explanations to Section 140A(1) of the IT Act and general law, will be inapplicable to matters covered by the KVS Scheme. The learned single judge has

lost sight of the above aspects and has wrongly proceeded as if the Explanation to Section 140A(1) of the IT Act is applicable to the KVS Scheme. (emphasis supplied) 13. Despite the contention by learned counsel for the State that reliance ought to be placed on the decision in the case of Y. Venugopal Reddy v. Commissioner of Income Tax and Another reported in (1999) 239 ITR895 the learned Single Judge held that Venugopal Reddys case was in conflict with the judgment of the Division Bench in the case of Mangilal S. Jain. It appears that the fact that the order in the case of Venugopal Reddy affirmed in Writ Appeal No.5435/1999 was not brought to the notice of the Court. The relevant portions of the learned Single Judges decision in Venugopal Reddys case are extracted below:- By this writ petition, the order of the Commissioner of Income-tax dated January 19, 39 1999, passed under the Kar Vivad Samadhan Scheme, has been challenged. The prayer made for revision of calculation to the Commissioner of Income-tax was rejected on January 19, 1999. The petitioner moved the Central Board of Direct Taxes on January 1, 1999, stating that the amount along with the returns should be appropriated towards tax but not towards interest. In pursuance of the representation the petitioner was informed that the Scheme of 1998 is different from Section 140A of the Income-tax Act. The assessment in this case was made by the Deputy Commissioner of Income-tax on March 21, 1997, for the assessment year 1994-95. The assessee has paid the tax between April and January 1997, to the extent of Rs. 4,90,000. A sum of Rs. 3,00,000 was paid under Section 140A of the Act on July 18, 1995, and after adjusting these two amounts, out of the total liability of tax and interest of Rs. 38,47,856, a demand was created for Rs. 35,47,156. Under the Explanation to Section 140A(1), if the amount paid falls short of the aggregate of the tax and interest, the amount so paid shall be first adjusted towards the interest payable and the balance is to be adjusted towards tax. 40 Whenever a non obstante clause is used in any provision by using the word "notwithstanding" then it can only mean that the provisions of the later would supersede the earlier. If the contention of learned counsel for the petitioner is considered in this respect, it would be evident that the amount payable under the scheme will hold the field than what is payable under the Income-tax law. This supersession has been made under Section 88 to the amount payable under the Scheme. A definite percentage and calculations have been given on the

basis of which the amount has to be calculated under the Scheme, 1998, irrespective of the provisions of the Income-tax Act. Nowhere under the Scheme, 1998, is it stated that the assessment which have already been made and where the amount paid under Section 140A has been adjusted, then readjustment has to be done. The provisions of Section 140A by its Explanation would have no force, had there been any specific provision under the Kar Vivad Samadhan Scheme, 1998. Since the KVS Scheme does not contemplate adjustment of the amount paid under Section 140A towards tax, the arguments raised by learned counsel for the 41 petitioner cannot be accepted. Question No.4 of the clarification dated September 3, 1998, also does not help the petitioner's case, because, it refers to the payments which are made after the tax arrears are computed and thereafter any part payment is made. The clarification given by the Government dated January 18, 1999, has only used the words "the Scheme is different from Section 140A."

This also does not help the petitioner, for, it is nowhere stated in this clarification that the amount paid under Section 140A has to be adjusted towards tax. The amount has been paid admittedly under Section 140A and the Explanation to Section 140A is clear in requiring adjustment of the payment first towards interest liability. Even in the Budget Speech, the contention raised by the petitioner has not been elaborated, explained or stated. It is pointed out that, if the payment made under Section 140A is adjusted towards interest, then such adjustment would be disadvantageous in comparison to the assessee who has not paid the tax at all. There may be anomalies or the Scheme may be more beneficial to the greater defaulter than to the honest taxpayer or the taxpayer who has complied with the provisions but the Scheme has to be read as it is. In these circumstances, I do not consider that any case for 42 interference is made out. The contention that the payment under Section 140A should be treated towards the tax liability has no force. 14. However, it were to be noticed that the judgment in the (emphasis supplied) case of Venugopal Reddy is clearly distinguishable on facts and would be inapplicable in light of the following:- (a) In Venugopal Reddys case, the tax that was paid on admitted income under self-assessment was sought to be set-off as against the interest as determined under the regular assessment. The Court rightly distinguished Mangilal S. Jains case observing that the Amnesty Scheme

would apply only in case of payment made as regards disputed income and disputed tax and in the facts of the above-mentioned case, tax was paid as regards admitted income as per self-assessment. (b) In Venugopal Reddys case, the tax that was paid pursuant to self-assessment was already 43 adjusted when the Scheme was sought to be availed and it was held that already adjusted payments could not be re-opened nor was it the intention of that Scheme.

15. However, in the case of Mangilal S. Jain, the payment was made pending a revision petition wherein the tax as regards disputed income was still in issue as seen in the following extract:- 13. If any amount paid towards arrears during the pendency of the litigation (by way of appeal, revision, etc.,) is to be irreversibly adjusted against the interest under Section 140A, that would render infructuous the pending litigation [in this case pending revision petition].. Surely that cannot be and in fact is not the intention. As noticed above, if the appellant had succeeded in the revision petition, his liability towards interest would have been deleted/reduced and obviously the sum of Rs. 60,000.00 that has been paid by him towards tax arrears would have been adjusted either against the tax or would have been refunded. Therefore, the explanation to sub-section (1) of 44 Section 140A of the IT Act applies only where the liability has attained finality. This is clarified by the Department itself. The Government of India, Ministry of Finance (Department of Revenue), Central Board of Direct Taxes, issued certain clarifications by circular No.F149145/98/DPL, dated 3.9.1998, under Section 96 of the Finance (No.2) Act, 1998. The said Section 96 enables the Central Government to issue from time to time, such orders, instructions and directions to the authorities as it may deem fit, for the proper administration of the KVS Scheme and the authorities concerned with execution of the scheme are required to observe and follow such orders and instructions.. 16. The Court in the case of Mangilal S. Jain has clarified (emphasis supplied) and rightly held that the appropriation under Explanation to Section 140A of the Income Tax Act would apply only where liability had attained finality. Though as regards the Kar Vivad Samadhan Scheme 1998, the Central Board of Direct Taxes had issued a circular No.FC/149-145/98 DPL dated 03.09.1998 wherein it was specifically pointed out that the part payments would be appropriated first towards tax and then 45 towards interest, it would still not alter the appropriation as contemplated under Explanation to Section 140A. In fact, the Court merely

relied on the circular as being clarificatory. Hence, inapplicability of appropriation provisions under taxation enactments would remain even as regards the Karasamadhana Scheme 2017 notwithstanding lack of clarificatory circular as was available for the Kar Vivad Samadhan Scheme 1998.

17. An allied aspect as regards appropriation is as to the nature of payments/deposits made by the assesseees. The learned Single Judge while disposing the Writ Petitions had observed that payments made pending adjudication of the appeals would be in the nature of colourless deposits till the finality of adjudication.

18. The said finding of the learned Single Judge is sought to be assailed by the State contending that the payments made as statutorily mandated either at the time of filing of the appeal before the Appellate Authority [Section 63(4)]. or for the purpose of seeking consideration of their prayer for interim relief [Section 63(7)(9)]. were not preconditions for appeal and hence appropriable.

19. The learned Additional Advocate General appearing for the State has vehemently argued that any amount remitted was an unconditional payment, as is apparent from a plain reading of relevant provisions of the KVAT Act. Hence, such a payment was not in the nature of provisional deposit but was reconcilable as per law, subject to final order of the adjudicating authority.

20. On the other hand, the beneficiaries under the Scheme contend that the payments made either for filing of appeal or consideration of interim relief as statutorily mandated cannot be the subject matter of appropriation. The respondents would also contend that permitting appropriation of payments made pending appeals first towards interest would place them worse-off than those assesseees who chose to avail benefit under the Scheme without having made the necessary payments as required by law. Flowing from the said submission, it was pointed out that the latter class of beneficiaries would avail full benefit of 90% waiver of penalty and interest under Clause 2.1 of the Scheme, while the former, would although no doubt avail benefit but to a lesser extent or none at all owing to their earlier payments being adjusted towards interest first as per the States method of appropriation as put forward. It was contended by 21. the respondents

that their remittances were under specific heads and not towards interest and hence question of appropriation was never contemplated, and further impressed upon the arbitrary classification and resultant discrimination as compared to assessees who had not even filed appeals or actively pursued the disputes to its logical end.

22. The learned Single Judge has placed reliance on the following judgments in coming to the conclusion that the payments made were colourless deposits:- 48 Nestle India Limited v. Asstt. Commissioner of C.Ex., Mysore-II reported in 2003 (154) E.L.T. 567 (Kar.). Relevant portions of para-6 are extracted hereinbelow:- 6..In the case of Suvidhe Limited v. Union of India reported in 1996 (82) E.L.T. 177 (Bom), the Division Bench considered an identical question and ruled that the deposit under Section 35F is not a payment of duty, but is only a pre-deposit for availing a right of appeal. Such amount is bound to be refunded when an appeal is allowed with consequential relief. The Court also has allowed interest from the date of the order of the Tribunal till payment. The said judgment was challenged by the Union of India in a Special Leave Petition (Civil) No...../96 in CC No.3522/96. The Supreme Court dismissed the said Special Leave Petition filed by the Union of India [1997 (94) E.L.T. A159 (S.C.)]. thereby confirming the judgment of the Bombay High Court. The Madras High Court in somewhat identical circumstances has ordered refund along with 15 percent interest. It is also to be noticed at this stage that the respondents themselves in the 49 light of dismissal of SLP by the Supreme Court has chosen to issue circular instructions dated 2-1-2002. They have stated that such refund application under Section 11B(1) need not be insisted upon in the light of the judgment of the Supreme Court. In these circumstances, the endorsement at Annexure-H has no legs to stand and the same has to fail in the light of the judgment of the Supreme Court confirming the Bombay High Court judgment. Pre-deposit amount cannot be equated to excise duty as held by the Bombay High Court and confirmed by the Supreme Court. (emphasis supplied) Nestle India refers to Suvidhe Limited v. Union of India reported in 1996 (82) E.L.T. 177 (Bom) and S.L.P. filed against the said judgment came to be dismissed in 1997 (94) E.L.T. A159 (S.C.). The Court has held in the case referred to above that a deposit made under Section 35F of the Central Excise Act for the purpose of availing the right of appeal ought to be

refunded consequent to allowing the appeal and there was no question of the assessee being 50 required to seek for a refund under Section 11B of the said Act, to claim the amount that had been deposited.

23. An attempt was also made by the learned Additional Advocate General to distinguish payments made under the KVAT Act in contradistinction to the deposits made under Section 35F of the Central Excise Act. It was contended that the use of the phrase deposit in light of statutory mandate for filing of an appeal could not be appropriated, whereas the use of the phrase payment under Sections 62 and 63 of the KVAT Act makes these appropriable, and that both the terms could not be referred interchangeably. It was further argued that Section 42, which provides for appropriation uses the term payments and hence, payments made under Sections 62 and 63 could be appropriated immediately on remittance without further recourse.

24. It is necessary to note that the mere fact that Sections 62 and 63 of the KVAT Act do not use the term deposit cannot be reason enough to hold payments made pending 51 appeal under these sections as not being pre-deposits. In the case of Vatech Wabag Limited v. Deputy Commissioner of Sales Tax, Midnapur Charge and Others reported in [2017]. 100 VST1(Cal), the Calcutta High Court when faced with challenge to the constitutionality of Section 84(1) of the West Bengal Value Added Tax Act, 2003 which is analogous to Section 63 of the KVAT Act in mandating payment of entire undisputed amount and fifteen per cent of amount under dispute prior to filing of appeal, the Court noted that the word "payment" is capable of different meanings in the context that it is used. The Court noticed that the word "payment" can mean payment of a pre-deposit in one context and the payment of a tax in another context within the same section of a taxing enactment. The relevant portions of the Calcutta High Courts decision are reproduced below:- It is submitted on behalf of the petitioners that, the second proviso to Section 84(1) of the Act of 2003 requires payment of tax in dispute for the purpose of maintaining an appeal against an order in original. The requirement of payment is an exaction rather than a 52 pre-deposit. The Act does not postulate a pre-deposit. Since the word used is payment in the second proviso and the effect is an exaction of a tax, the same is beyond the legislative competence of the state

legislature. Tax in dispute is not defined under the Act of 2003. What is defined is "tax due". The words payment and pre-deposit are different. The word payment used in the second proviso of Section 84(1) of the Act of 2003 cannot be read to be a deposit as the same would do violence to the plain meanings of the words used in the later part of such proviso following the word payment. Reliance is placed on the dictionary meaning of the words payment and deposit. Reliance is placed on AIR2010 Cal page 161 (Secretary, West Bengal Council of Higher Secondary Education v. Soumyadeep Banerjee & Ors.) and [1988]. 172 ITR321(SC); AIR 1988 SC1263(Commissioner of Income-tax, U.P.II, Lucknow v. Bazpur Co-operative Sugar Factory Ltd.). Various rules of the West Bengal Value Added Tax Rules, 2005 are also placed by the petitioners to contend that, the appeal is required to be made with a payment of tax and not a deposit or a pre-deposit. 53 When one is making a deposit or a pre-deposit of money, as is required to prefer an appeal under Section 84 of the Act of 2003, one is called upon to pay a sum of money. Such payment would obviously await the disposal of the appeal. On the assessee succeeding in the appeal, such money is required to be either refunded with accrued interest or allowed to adjust against any liability of the assessee, as the case may be. Viewed from such perspective, the word "payment" is a genus in which deposit or the pre-deposit is a specie. The word "payment" used in the second proviso guides both clauses (a) and (b). Clause (a) requires a payment and there is no dispute with regard thereto. So far as the clause (b) is concerned, it is contended that, the word "payment" does violence to such clause, as in effect, if the word "payment" is allowed to govern clause (b) then, the State is requiring an exaction from an assessee rather than asking the assessee to make a deposit or a pre-deposit. With respect, I am not in a position to accept such contention on behalf of the petitioners. No doubt the word "payment" governs both clauses (a) and (b) of the second proviso. However, the word "payment" is capable of different meanings in the context that it is used. The word "payment" can mean payment of a deposit or a pre-deposit in the 54 context of clause (b) and the payment of a tax in the context of clause (a). Viewed from such perspective, there is no violence to the user of the words in the second proviso to Section 84(1) of the Act of 2003. It can be contended that, the words in the second proviso are clear and that, clause (b) does not speak of a deposit or a

pre-deposit for a person or the Court to read the word "payment" while regulating clause (b) as a payment of a deposit. This contention assumes that, the Section 84 requires a payment of tax of 15 per cent of the tax in dispute to prefer an appeal. That assumption, with the greatest of respect, is not available in the context. The State has not imposed a tax to prefer an appeal. Learned Additional Advocate General says that, the State does not read Section 84 to be so. According to him, it is a deposit which would abide by the result of the appeal, that is to say that, on the appellant succeeding in the appeal, the amount deposited in terms of the second proviso to Section 84(1) would be refunded to the appellant along with interest. Deposit of 15 per cent.(sic) tax in dispute in terms of the second proviso to Section 84(1) is not a tax and cannot be turned (sic)as an exaction. (emphasis supplied) 55 Adverting to Voltas Limited v. Union of India reported in 1999 (112) E.L.T. 34 (Del.), wherein the Court has held that a pre-deposit made pending appeal under Section 37 of the Central Excise Act was required to be refunded when the matter stood remanded for fresh consideration and had further directed that such a pre-deposit could not be withheld and did not have statutory mandate for such withholding. The relevant portions of the judgment are reproduced hereunder:- 7. It cannot be denied that the demand against the petitioner was raised consequent to the order of adjudication. Section 35F of the Act under which the petitioner was required to deposit the amount of Rs.50 lakhs speaks of deposit pending appeal. It is clear that the amount so deposited remains a deposit pending appeal and is thereafter available for appropriation or disbursal consistently with the final order maintaining or setting aside the order of adjudication. (emphasis supplied) 25. The State, has however, sought to rely on the decision in the case of Assistant Commissioner v. ACC Limited 56 reported in (2015) 78 VST169 wherein the Court had refused to interfere with the appropriation of deposit towards interest, despite the assessee having opted for the Amnesty Scheme. However, the said decision is clearly distinguishable on facts because therein, the Court held that the revision petition was dismissed on 31.03.2009 and the judgment of High Court had attained finality. It was only subsequently on 25.06.2009 that the application to avail benefits under the Amnesty Scheme came to be filed. Hence, the Court held that the appropriation as provided for under Section 55-C of KGST Act, whereby, the

deposit amount adjusted first towards interest would not be disturbed. The Court also observed that the filing of the Special Leave Petition against the order of dismissal of the revisional proceedings was immaterial in so far as the Special Leave Petition would not be construed as a continuation of the revisional proceedings. The relevant paragraphs of the said decision are extracted hereinbelow:-

19. Then coming to factual situation, Amnesty Scheme came to be announced with effect from 57 01.04.2008 by introducing Section 23B in the KGST Act. By 12.04.2007 on two occasions the appellant- assessee had made two payments, one in pursuance of the appellate order dated 29.09.2006 and another on 14.03.2007 in terms of order of Sales Tax Appellate Tribunal. On 31.08.2007 final order of Sales Tax Appellate Tribunal in respect of provisional assessment was passed favouring assessee appellant granting full relief and setting aside entire demand. The Revenue had filed an application for condonation of delay along with revision. On 31.03.2009 such revision was allowed. By virtue of this order, benefit given by the Tribunal was set aside and the appellant-assessee was under an obligation to pay tax and other amounts demanded by the Department. Much later, on 25.06.2009 assessee filed an application seeking benefit under Amnesty Scheme. According to senior counsel arguing for the appellant-assessee, since the order of the Tribunal was in their favour, there was no obligation on them to seek benefit under Amnesty Scheme. During pendency of Revision Petition No.76/2008 before High Court, Amnesty Scheme was introduced. Sub-clause (7) of Section 23B does not indicate that assessee cannot take benefit if the litigation pending is at the instance of 58 Revenue. Therefore, as on the date of introduction of Amnesty Scheme, litigation was pending before this court in revision and the same came to be allowed on 31.03.2009. Much later, as Amnesty Scheme was still in force on 25.06.2009, when no litigation was pending Exhibit P12 application came to be filed seeking benefit of Amnesty Scheme. On 03.07.2009, the amount to be paid as per Amnesty Scheme was intimated to appellant assessee. Thereafter, on 04.07.2009, appellant assessee filed SLP before the Honourable Supreme Court against order in revision pending before this court pertaining to provisional assessment. SLP came to be admitted only on 08.03.2010. Prior to that, on 16.07.2009 a letter came to be filed before Assistant Commissioner (KVAT) submitting that the amount pre-deposited by appellant was not considered

for computation of liability under Amnesty Scheme. On 18.07.2009 department intimated assessee that the pre-deposit has been appropriated towards interest due under Section 55C of KGST Act.

23. The only question that has to be seen is, whether the amounts deposited during the pendency of provisional assessment deserve to be refunded, 59 since appellant assessee has deposited amounts under Amnesty Scheme. If appellant assessee is successful before Apex Court, he would be entitled for refund of entire amount, i.e., two deposits already made and also the amount paid under Amnesty Scheme. If Apex Court holds against the appellant assessee, so far as liability to pay tax he had already taken the benefit of Amnesty Scheme. In the present case, by virtue of Section 55C, pre-deposit amounts could be appropriated in terms of sub-section (3). With the dismissal of STR before this court as early as 31.03.2009, provisions of Section 55C would be applicable. Therefore, if any interest was payable, that would be first adjusted and then balance amount to be paid has to be calculated. The date of submission of application for settlement of arrears was on 25.06.2009 and the amount to be paid as per Amnesty Scheme was intimated on 03.07.2009. Only on 04.07.2009 SLP was filed challenging the order dated 31.03.2009. Mere filing of SLP would not vest appellant assessee with any right and it cannot be considered as continuation of revisional proceedings, which is a settled position. In the light of the above observations, we are of the opinion, the normal rule that payment has to be first 60 adjusted towards interest and then towards principal as provided under section 55C is applicable. Hence, W.A. No.1828/2013 filed by appellant assessee is dismissed and W.A. No.1807/2013 filed by revenue is allowed. 26. It is clear that in view of the discussion supra, the (emphasis supplied) payments made which are referred to by any nomen-clature being made while preferring an appeal or as a prerequisite to consider the application for stay being statutorily mandated cannot be the subject matter of appropriation till the adjudication process has reached a finality and such deposits could only be regarded as colourless deposits. The finding of the learned Single Judge as regards the payments made pending adjudication being in the nature of colourless deposits requires no interference.

27. The very Scheme as envisaged in its preamble provided for waiver of 90% of penalty and interest remaining unpaid as on 15.03.2017; and further, it provided for payment of tax including arrears and 10% of penalty resulting in waiver of 61 remaining penalty and interest. The purpose and intent of the Scheme was clear that all tax would be cleared and only a portion of penalty and interest need be paid.

28. As per Clause 2 of the Scheme, any dealer who makes full payment of arrears of tax on or before 31.05.2017 shall be granted waiver of 90% of arrears of penalty and interest payable. If Section 42(6) is to be made applicable to the provisions of the Scheme, as contended by the State, and payments made pending appeal were to be appropriated first towards interest in accordance with the parent Acts notwithstanding the Scheme, it would then lead to an absurdity where even assesseees making payments for compliance with condition of paying full tax and 10% of interest and penalty arrears in terms of Clause 3.3, would have their payments appropriated towards interest first by operation of Section 42(6) of the KVAT Act or other provisions which are in pari-materia. By the time final application and declaration is moved before the Assessing Authority/Recovery Officer/Prescribed Authority to waive the balance amount, no 62 or very little interest would be left unpaid and the contemplated benefit would never be accorded. Hence, the only way of reconciling the provisions of the Scheme to give effect to the object of granting 90% waiver of penalty and interest is to adjust the payments made pending adjudication first towards tax and then, towards interest and penalty arrears.

29. The contention of the State as regards appropriation in spite of the Scheme being enacted in exercise of executive power has been rightly rebutted by the respondents by contending that the Scheme framed by the Government ought to be treated as self-contained code and if not, the result would be an absurd consequence as dealt with above.

30. In this particular case, it is clear that the payments made by the respondents for admitting their appeals under various statutory provisions were under dispute and were not referable to any particular component of tax or penalty or interest

and were only colourless deposits. Accordingly, 63 these remittances cannot be deemed to be paid and offset from unpaid amount for calculation of arrears to be waived. Unlike in the case of Assistant Commissioner v. ACC Ltd. (supra) where the deposits were no longer under dispute by reason of dismissal of appeal having attained finality, in the present case, the deposit amounts were still under dispute as of the cut-off date for calculation of arrears, i.e. 15.03.2017 as specified in Clauses 1.1 and 1.2 of the Scheme. These deposit amounts being under dispute, cannot be deemed to be paid, and hence, cannot be offset from arrears, to give effect to the object of the Scheme and to avoid absurdity. Any payments made under the Scheme and the adjustment of deposit after withdrawal of appeal and after the promulgation of the Scheme, must be by appropriation first towards tax arrears. The explanation through an allegory of three boxes in a puzzle game made in paras-25 and 26 of the impugned order very aptly indicates the sequence of appropriation which is to be resorted to in the manner as discussed above. 64 31. In the light of the above discussion, the order of the learned Single Judge is upheld. Appeals are dismissed and the direction as contemplated in terms of para-52 of the impugned order is to be carried out. SD/- CHIEF JUSTICE JUDGE SD/- VGR/RS

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