Gei Engineering Ltd. and anr. Vs. Additional Commissioner, Commercial Tax and ors.

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Court : Madhya Pradesh

Decided On : Aug-07-2002

Reported in : 2003(2)MPLJ8; [2006]146STC177(MP)

Judge : Arun Mishra, J.

Acts : Madhya Pradesh General Sales Tax Act, 1958; Central Sales Tax Act, 1956; Employers and Workmen Act, 1875 - Sections 11; Income Tax Act, 1952; Wealth-tax Act - Sections 2; Madhya Pradesh Entry Tax Act; Madhya Pradesh Deferment of Payment of Tax Rules, 1994 - Rules 2(1), 4 and 5; Code of Civil Procedure (CPC) - Sections 60

Appeal No. : W.P. Nos. 1400, 1634, 1635, 1643, 1714, 2248 and 2249 of 2002

Appellant : Gei Engineering Ltd. and anr.

Respondent : Additional Commissioner, Commercial Tax and ors.

Advocate for Def. : R.S. Jha, D.A.G

Advocate for Pet/Ap. : H.S. Shrivastava, ;Sanjay K. Agrawal, ;Akshay Dharmadhikari and ;Sumit Nema, Advs.

Disposition : Petition dismissed

Judgement :
ORDER

Arun Mishra, J.

1. In these writ petitions a common question arises about the applicability of the Madhya Pradesh Bakaya Rashi Saral Samadhan Yojna, 2002 for liquidating the arrears of tax under the Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 and the Central Sales Tax Act, 1956. Petitioners have availed the benefit of the Madhya Pradesh Deferment of Payment of Tax Rules, 1994 issued as per Notification No. A-3-24-94-ST-V(108) dated October 6, 1994. Under the deferment scheme tax is payable on a future date. The amount of deferred liability to a date after April 1, 2001 has been treated as not 'due' under the M.P. Bakaya Rashi Saral Samadhan Yojna, 2002 (hereinafter referred to as the 'Scheme') and Rules framed there under. The question which has been agitated precisely whether the amount of liability of tax which has been determined, but has been 'deferred' to a future date, can be said to be a tax 'due' to extend benefit of the 'Scheme'.

2. The relevant factual matrix of each writ petitions indicates that each of the petitioners has been assessed to tax covered under one or other Acts mentioned in Scheme and the petitioners' industries are availing the benefit of deferment scheme as per notification dated October 6, 1994. The State Government has issued the eligibility certificate and the petitioners have been given the benefit of deferment of amount due under the provisions of the State Act/the Central Act of the maximum of 300 per cent of total capital investment for the periods as per their entitlement in deferment Rules commencing from date of commencement of the production. It is also relevant to note that under the deferment scheme on the tax liability so deferred interest is not payable whereas with respect to tax liability which has not been deferred interest is payable at present at the rate of 24 per cent per annum.

3. The State Government issued a Notification No. A-7-15-2001- A ST-V (98) dated January 5, 2002 for the purpose of liquidating the amount of arrears which include tax, penalty and interest under the Madhya Pradesh General Sales Tax

Act, Madhya Pradesh Vanijyik Kar Adhiniyam, Central Sales Tax Act and Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam. It is meant for liquidating the amount of arrears which were 'outstanding' and 'due' for payment on April 1, 2001. The Scheme is known as 'Madhya Pradesh Bakaya Rashi Saral Samadhan Yojna, 2002'. The application under this Scheme could be submitted up to January 31, 2002. Clause 2 of the Scheme provides that the amount of tax, penalty/interest which was outstanding for payment on April 1, 2001, the facility granted under this Scheme shall be available for that amount of arrears, which is related to any year ending up to March 31, 1997. Cases of arrears were also classified and the calculation of amount to be paid for Samadhan shall be made according to the Schedule. A case in which arrear is up to Rs. 50,000, 25 per cent of the amount of arrear has to be paid towards Samadhan and the case in which the amount exceeds sum of Rs. 50,000, 40 per cent of the amount of arrears has to be paid. Explanation is that if any amount exceeding 25/40 per cent, as the case may be, has been deposited between April 1, 2001 and date of coming into force of this Scheme the amount deposited in excess shall not be refunded.

4. For implementation of the 'M.P. Bakaya Rashi Saral Samadhan Yojna, 2002' the State Government has framed Rules called 'M.P. Bakaya Rashi Saral Samadhan Niyam, 2002' published in the Gazette on February 5, 2002. 'Scheme' has been defined in Rule 2(1)(a) to mean Madhya Pradesh Bakaya Rashi Saral Samadhan Yojna, 2002'. 'Defaulter' means the person desirous of availing of benefit under the Scheme against whom the amount of arrears are pending. Rule 2(l)(h) defines 'amount of arrear' to mean amount of tax and penalty/interest imposed and due under the Madhya Pradesh General Sales Tax Act, Vanijyik Kar Adhiniyam, Central Sales Tax Act and Entry Tax Act relating to any year up to March 31, 1997 which is 'due for payment' as on April 1, 2001 after the completion of 'assessment' and service of the 'demand notice'.

5. Clauses 1, 2, 3, 4 and 5 of the 'Scheme' are relevant. These clauses read as under:

1. The Scheme is known as 'Madhya Pradesh Bakaya Rashi Saral Samadhan Yojna, 2002' and applications under this Scheme for samadhan of arrears may be

submitted up to 31st January, 2002.

A 2. The Scheme shall be effective with reference to that amount of tax and penalty/interest under Madhya Pradesh General Sales Tax Act, 1958, Madhya Pradesh Vanijyik Kar Adhiniyam, 1994, Central Sales Tax Act, 1956 and Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976, which was outstanding for payment on 1st April, 2001. The facility granted under this Scheme shall be available for that amount of arrears, which is related to any year ending up to 31st March, 1997.

3. For the purpose of calculation of Samadhan of the amount in arrears in respect of a defaulter, the case shall be considered Act-wise for each year separately.

4. The cases of arrears shall be classified and the calculation of amount to be paid for Samadhan shall be made according to the following Schedule:

schedule

Category of case (1)	Amount to be paid for Samadhan (2)
1 Case in which the amount of arrears is up to Rs. 50,000	25 per cent of the amount of arrears.2.
Case in which the amount of arrears exceeds Rs. 50,000.	40 per cent of the amount of arrears.

Explanation.-If any amount exceeding 25/40 per cent, as the case may be, has been deposited between 1st April, 2001 and the date of coming into force of this Scheme, the amount deposited in excess shall not be refunded.

The Samadhan amount in respect of each case under any Act shall be deposited in cash in the Treasury in such manner and within such period as may be prescribed.

5.(1) If the arrears relate to such assessment year, in respect of which appeal, revision or any other proceedings are pending before the State Government, Board of Revenue or the departmental H authorities, then he shall state in the application that he is voluntarily availing the facility, according to the Scheme

sanctioned by the Government, and he will withdraw the appeal/revision/petition. From the date of filing of application for availing benefit of the Scheme, the action on these shall be stayed and the said appeal/revision/petition shall be deemed to have been withdrawn automatically when the Samadhan Certificate is issued. As far as the petition/appeal/reference A before the Supreme Court/High Court is concerned the applicant, according to the Rules, shall make an application to withdraw the same and shall produce appropriate evidence before the Samadhan Certificate is issued. For want of such appropriate evidence the application may be rejected.

(2) The total sum of both, the relief granted in cases disposed in appeal/revision and in other cases during the period from April 1, 2001 to the operation of the Scheme and the facility available under the Scheme, shall not exceed the prescribed limit of 75 per cent or 60 per cent as the case may be. If the relief granted in appeal/revi- c sion or in any other case exceeds the facility available under the Scheme, such cases shall not be considered under this Scheme. Similarly, if any case is remanded for fresh assessment by an order in appeal/revision or in any other case, such case also shall not be considered for Samadhan under this Scheme.

6. It is also relevant to quote the definitions of 'defaulter' and 'amount of arrears' as provided in the Madhya Pradesh Bakaya Rashi Saral Samadhan Niyam, 2002' (hereinafter referred to as 'the Rules'):

2(l)(g). 'Defaulter' means the person desirous of availing of benefit under the Scheme against whom the amount of arrears are pending.

2(l)(h). 'Amount of arrear' means amount of tax and penalty/ interest under the Madhya Pradesh General Sales Tax Act, Vanijyik Kar Adhiniyam, Central Sales Tax Act and Entry Tax Act imposed under these Acts relating to the period up to 31st March, 1997 or for the periods prior to that, which is due for payment as on 1st April, 2001 after the completion of assessment and service of the demand notice.

7. In W.P. No. 2248 of 2002 liability has been determined and has been deferred till March 31, 2002.

In W.P. No. 1635 of 2002 deferment of the tax liability is up to March 31, 2002 as per order P/3.

In W.P. No. 1400 of 2002 deferment of liability is up to financial year 2001-2002, i.e., March 31, 2002 as per order P/4.

In W.P. No. 1634 of 2002 deferment of tax as per order P/3 is up to April 30, 2002 and as per order P/3 passed on April 27, 1996 deferment has been made for 10 years. Deferment is up to April 30, 2002 and for the financial year 1994 deferment is for 10 years.

In W.P. No. 1643 of 2002 as per order P/2A deferment is up to September 30, 2001 and as per order P/2B dated November 28, 1994 A deferment is up to September 30, 2001, as per P/2C order dated November 16, 1995 deferment is up to March 31, 2002. As per order P/2D dated October 30, 1995 deferment is up to March 31, 2003 as per order P/2E deferment is up to March 31, 2004 as per P/2F deferment is up to March 31, 2004, as per order P/2G deferment is up to March 31, 2004.

In W.P. No. 1714 of 2002 the deferment as per P/4 is up to July 9, 2001.

Demand notices were also issued along with the orders with reference to date of deferment on which the amount has to fall due in the year concerned.

8. Petitioners applied to the prescribed authorities for liquidating the arrears as per the Scheme. The applications have been rejected on the ground that the amount of arrears were not due for payment as payment of amount has been 'deferred' to a date after March 31, 2001 though assessment order has been passed and notice of demand for making payment after March 31, 2001 was also issued. Petitioners challenge the order of rejection of their application for liquidating the arrears as per the Scheme. According to the petitioners 'Scheme' has been misinterpreted and they have been illegally denied the benefit of the Scheme. The amount was due/outstanding for payment on April 1, 2002 as per clause 2 of the

Scheme and 'defaulter' as defined in Rule 2(1)(g) of the Rules means the person desirous of availing of benefit under the Scheme against whom the 'amount of arrears' are pending. 'Amount of arrear' means amount of tax deferred in the amount of arrears as defined in rule 2(l)(h) of the Rules framed under the Scheme. Petitioners submit that merely because payment was deferred to a future date, it cannot be held that it was not outstanding/due for payment on April 1, 2001.

9. The respondents have filed the return in W.P. 1400 of 2002 Gwalior Tanks & Vessels Ltd. v. Commissioner, Commercial Tax, MP, and have adopted it in all other writ petitions. It has been contended that the scheme of deferment contained in Deferment of Payment of Tax Rules, 1994, Notification of October 6, 1994 provides that amount of tax payable by a registered dealer shall be deferred and the amount of tax the payment of which is deferred shall be liable to be paid immediately after the date on which it becomes due for payment. The amount outstanding is not payable as on April 1, 2001. It cannot be said to be 'amount of arrears' as defined in rule 2(l)(h) of the Rules. Thus, interpretation put on the Scheme and the Rules to deny benefit of Scheme by respondent is correct.

10. Shri H.S. Shrivastava, Shri Sanjay K. Agrawal, Shri Sumit A Nema and Shri Akshay Dharmadhikari, learned Counsel for the petitioners, submit that as per clause 2 of the Scheme the amount 'outstanding' for payment on April 1, 2001 and 'amount of arrear' related to any year ending on or before March 31, 1997 both these requirements are fulfilled. It is further urged that they have to be treated as 'defaulter' as defined in rule 2(l)(g) of Rules and the liability of tax deferred has to be treated as 'amount of arrear' as defined in rule 2(l)(h) of the Rules. They have been served with a 'demand notice' to pay the dues along with the 'assessment order' with reference to the date on which they have to pay the amount. This notice has been issued before April 1, 2001. The amount is due for payment, by deferment of liability it cannot mean that the amount is not due for payment as on April 1, 2001.

11. Petitioners submit that the word 'outstanding' means though payable but not paid. When the amount of tax is payable, but, is not paid, it would be outstanding. There is an existing debt that payment whereof is deferred. Hence, it is a case of

'attachable debt'. Payment of debt does not depend on any contingency. 'Debt' used in the 'Scheme' has to be interpreted so as to extend the benefit of the Scheme to the petitioners. Liability to pay the tax is a 'debt', it arises on the valuation date during accounting year. Clause 5.2 of the Scheme does not exclude the deferment Scheme, thus, it is not for a court to supply casus omissus until unless it is the case of clear necessity. Tax laws have to be construed strictly. In case of ambiguity interpretation has to be made in favour of the assessee. The petitioners have relied on various decisions to be referred later.

12. Shri R.S. Jha, learned Deputy Advocate-General appearing for the State urged that the amount of tax has been 'deferred', thus, it cannot be said to be 'due' for payment as per definition of 'amount of arrear' in rule 2(l)(h) of the Rules. He further submits that the benefit of the deferment Scheme has been availed by the petitioners. In the Deferment Rules, 1994 there is already a provision for not to levy the interest which has to be levied at the rate of 24 per cent on the tax liability/penalty on today. The beneficiaries under the Scheme are those whose tax/penalty or interest liability has not been deferred and they are required to pay the amount of tax/penalty outstanding/due along with interest at the rate specified. It cannot be said to be a case of default. In the case of the petitioners the liability has been deferred without interest and petitioners cannot claim two benefits; one that non-payment of interest and at thesame time liquidating arrear which have been deferred without payment of interest as per the Rules specified in the Scheme which requires 25 per cent/40 per cent amount on outstanding amount of tax, penalty and interest. Scheme is not meant to apply to the cases of deferment where no interest is levied on arrear. In any case as the amount of deferred tax liability cannot be said to be 'due' which has to be interpreted in the context as per the submission of the respondents 'when' amount is 'recoverable', 'enforceable' as on April 1, 2001 by virtue of 'deferment' the liability was not enforceable as on April 1, 2001 the relevant date. Thus, the rejection of the applications of the petitioner is proper.

13. The central question for consideration is what meaning has to be given to the expression 'due' in the context of Scheme and the Rules.

14. Under the Karvivad Samadhan Rules authority has been specified as officer not below the rank of Commercial Tax Officer, to sanction samadhan amount in respect of the defaulter, having jurisdiction over the defaulter. Assistant Commissioner, Commercial Tax, up to Rs. 3 lakhs and Deputy Commissioner, Commercial Tax, up to Rs. 10 lakhs and Additional Commissioner, Commercial Tax, exceeding Rs. 10 lakhs.

15. Deferment Rules, 1994 gives the various period for deferment as per categories of industries fixed in Schedule IV. It is available to the new industrial unit. The period of eligibility to avail the facility of deferment of payment of tax Under Sub-clause (3) of clause (b) of p rule 4 commences from the date of commercial production. Rule 5 of the Rules prescribes period for which the payment of tax shall be deferred. Sub-rule (1) of rule 5 contains a provision to the following effect:

5. Period during which the payment of tax shall remain deferred.-(1) The amount of tax payable by a registered dealer for every year of the period during which he avails of the facility of deferment of payment of tax Under Clause (a) of Sub-rule (1) of rule 4 or the period for which he has availed of the said facility under clause (b) of the said Sub-rule shall be deferred for a period of five years. In the sixth year the amount of tax the payment of which is deferred shall be liable to be paid immediately after the date on which it becomes due for payment. No interest shall be charged of the amount of tax due for payment.

Under Sub-rule (3) of rule 5 the amount of tax remaining unpaid after the date specified in Sub-rule (1) shall be recoverable in accordance with the provisions of the Act. The defaulting registered A dealer shall also be liable to pay interest at the rate of two per cent per month for the period from the date on which the payment of such amount became due to the date of its payment.

16. A reading of clause 2 of the 'Scheme' makes it clear that the Scheme shall be effective pre-requisites;

(i) amount of tax and penalty/interest under Madhya Pradesh General Sales Tax Act, 1958, Madhya Pradesh Vanijyik Kar Adhiniyam, 1994, Central Sales Tax Act,

1956 and Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976;

(ii)which was outstanding for payment on 1st April, 2001;

(iii) that should be 'amount of arrears' related to any year ending up to 31st March, 1997.

17. The rule 2(l)(h) of the Rules defines 'amount of arrear'. As per that definition to make an amount arrear the following are the requisites:

(1) amount of tax, penalty/interest under Madhya Pradesh General Sales Tax Act, Madhya Pradesh Vanijyik Kar Adhiniyam, Central Sales Tax Act and Madhya Pradesh Entry Tax Act;

(2) imposed relating to year up to March 31, 1997;

(3) which is 'due' for payment on April 1, 2001;

(4) assessment must have been completed before April 1, 2001;

(5) demand notice must have been served as on April 1, 2001.

18. In the instant writ petitions, amount of tax has been imposed under the said Acts as mentioned in clause 2 of the Scheme and rule 2(l)(h) of the Rules. It is also not in dispute that the tax has been imposed relating to the period up to March 31, 1997. It is also not in dispute that the assessments were completed as on April 1, 2001. It is also not in dispute that the service of demand notice was made with reference to a future date to which liability has been deferred. If the deferment is up to March 31, 2002 notice was sent along with assessment order to make the payment immediately after the date of deferment.

19. The only embroglio in the argument is about the interpretation of expression 'due' for payment as on April 1, 2001. In other words whether the liability which has been deferred to a date subsequent to April 1, 2001 can be said to be due for payment as on April 1, 2001.

20. The word 'due' has been derived from latin word 'debeo' indirectly through the French 'du'. The word 'due' has many definitions or variety of meaning, influenced largely by the connection in which it is used, and, while it has been the subject of many decisions by the courts, no general rule of interpretation can be safely stated therefrom. It may, on the one hand, express the mere fact, or the state, of indebtment, as an equivalent simply of 'owing' or, on the other hand, it may refer to the time of payment, indicating that the obligation is immediately enforceable, and is then an equivalent of 'payable' as observed in Amey v. Augusta Lumber Co. 148 A. 687. It has been used in two senses; thus, in the latter sense, a bill or note is often said to be due, when the time for payment has arrived. In the former sense, a debt is often said to be due from a person, when he is the party owing it, or primarily bound to pay, whether the time for payment has or has not arrived. In the singular 'due' in its broader sense, as meaning that which any one has a right to demand, or which may be justly claimed, that which belongs or may be claimed as a right, that which is owed, that which custom, statute, or law requires to be paid, that which ought to be paid or done to or for another, what may be demanded, or whatever customs, law, or morality requires to be done; that which law or justice requires to be paid, or done; hence a debt, a debt ascertained and fixed, although payable in the future, an indebtedness, a simple indebtedness without reference to the time of payment; a liability matured or unmatured; an existing obligation or indebtedness.

21. In other sense 'due' means a debt immediately payable as held in U.S. v. Bank of North Carolina N.C. 6 Pet, 29. In Yocum v. Allen 50 N.E. (North Eastern) reporter 909 it was held that the debt is due when money become payable, so that suit will lie on it presently. In re Hubbard 69 N.E. 349, it was held that debt is due which is enforceable. When an amount of tax can be said to be due, word has double meaning; (1) that the debt or obligation to which it applied has by contract or operation of law become immediately payable; (2) a simple indebtedness, without reference to the time of payment, in which it is synonymous with 'owing', and includes all debts, whether payable in praesenti or in futuro.

22. In Ind. Confer v. State ex rel. Berezner 8 N.E. 2d 75, it was held that in its narrower, but perhaps more frequently used, sense, 'due' has been defined as

meaning mature or matured; overdue; owing and demandable. In U.S. Twine v. Locke C.C.A.N.Y. 68 F. 2d 712 it means owing and demandable. It has also been held to be owing and immediately payable or payable or presently payable or when legally enforceable or depending on the circumstances, in A which it has been used. In re Stockton Malleable Iron Co. 2 Ch.D. 101 it has been held that the due means when time arrives in which payment is enforceable. Word 'owing' is not synonymous as held in Walker v. Mann Civ. App. 143 S.W. 2d 152.

23. In Re European Life Assurance L.Rule 9 Eq. 122 it was held that a debt is 'due' when it is payable. In Warburton v. Hay worth 6 Q.B.D. 1 (Queens Bench Division) it was held that on a weekly hiring, wages were not 'due' to a child, young person, or woman within Section 11 of the Employers and Workmen Act, 1875 until the end of the week; secus, of piecework to be paid for weekly; 'due' in this section meant 'earned'.

24. In Potel v. Inland Revenue Commissioners [1970] T.Rule 325, it was held that dividends are 'due' under the Income-tax Acts when they become payable and not at the time they are declared. In Potel v. Inland Revenue Commissioners [1971] 2 ALL E.R. 504, it was held that a dividend became due, within the meaning of Income-tax Act, 1952 on the day it was declared payable and not at the time it was first announced.

25. The Supreme Court in Union of India v. Raman Iron Foundry : [1974]3SCR556 , considered the question of breach of contract and when damages become a sum 'due' and 'payable'. Their Lordships held that it is to be applied in the context of whole situation, agreement, intention of the parties and clause 18 was interpreted to mean it applies only where the purchaser has a right presently to realise by the contract. A claim for damages for breach of contract is not a claim for a sum presently due and payable and the purchaser is not entitled, in exercise of the right conferred upon it Under Clause 18, to recover the amount of such claim by appropriating other sums due to the contractor. Their Lordships laid down that the claim for damages cannot be said to be amount due and was not enforceable Under Clause 18, which requires amount to be payable.

26. In J. Jermons v. Allammal : AIR 1999 SC3041 , the apex Court considered the question when a debt can be said to be due and it was held that:

14. The word 'debt' is used in the order/notice issued under the Income-tax Act in the same meaning in which it is used in Section 60, C.P.C. Ordinarily, 'debt' means money that is owed; an existing obligation to pay a certain amount; a sum of money due from one person to another. Debts can be classified, having regard to the criteria for payment, into three categories:

(i) debt which has become due and is payable at present (debitum in praesenti), e.g., in monthly tenancy, rent becomes due after the expiry of each month like rent for the month of January becoming due and payable on February 1;

(ii) debt which has become due but is payable at a future date (debitum in praesenti solvendum in futuro); in the above example if under an agreement of tenancy rent is payable on the 15th of the following month, the rent for January becomes due on February 1,but is payable on February 15; and

(iii) contingent debt which becomes payable on the happening of a certain event which may or may not occur; in the above instance the rent for the month of January will not be a debt in the preceding month of December for the tenant may or may not reside in the next month.

Thus, rent that has not become due is not debt. It follows that rent for the unexpired period of lease is not debt. In Lachman v. Jarbandhan : AIR1928 All193 a division Bench of the Allahabad High Court, the purpose of Section 60, C.P.C, correctly held:Rent in respect of a period still in existence is thus not a debtat all as the obligation is not complete.

27. In State Bank of Bikaner & Jaipur v, Ballabh Das & Co. : AIR 1999 SC3408 the apex Court held that term 'debt' means alleged due must be subsisting and legally recoverable on the date on which proceedings are initiated.

28. In Life Insurance Corporation of India v. Raj Kumar Rajg- arhia : AIR 1999 SC2346 the apex Court laid down that while interpreting the term of agreement dictionary meaning is not always possible, intention of the parties to the document

should be considered, wider and liberal meaning need not be given merely because one of the parties is a public authority. The question arose in the backdrop of whether on the relevant date the principal amount of loan debt become 'due and payable' in the backdrop of fact that surrender value of the policy as calculated under the terms of the policy on the relevant date was Rs. 15,875.50 and the amount due from the assured on the said date without adding the principal amount of loan was Rs. 12,676.29. Clause 4 of the loan bond specifies that the same shall be paid when called upon to make repayment at the said office of the said advance with all interest which may be due thereon on being given three months' notice to that effect. The defendant had not invoked the right Under Clause 4. Thus, it was held that the loan amount had not become due and payable. The A words 'all money due' found in the automatic non forfeiture clause will have to be construed to mean such amounts which have become 'not only due' but also 'payable' under the terms of the agreement and construed in that manner. It was held that the principal of loan amount is concerned, the same had not become due and payable on the relevant date and the defendant is not entitled to deduct the same from the surrender value.

29. The respondents have relied on apex Court decision in Kesoram Industries and Cotton Mills Ltd. v. Commissioner of Wealth- tax (Central), Calcutta : [1966]59ITR767(SC) . It was c laid down by the apex Court that the distinction must be borne in mind between the case where there is an existing debt, payment whereof is deferred and a case where both the debt and its payment rest in the future. In the former case there is an attachable debt, in the latter case there is not. The apex Court held that: 'debt' may take colour from the provisions of the concerned Act: it may have different shades of meaning. But the following definition is unanimously accepted: A debt is a sum of money which is now payable or will become payable in future by reason of a present obligation;

debitum in praesenti, 'solvendum in future'.

30. In the instant case it is not in dispute that the amount is a 'debt', but, question is whether it is due as on April 1, 2001. The decision was rendered by their Lordship's in a different context. Paras 16 and 22 of Kesoram Industries :

[1966]59ITR767(SC) have been relied upon which are quoted below (pages 778 and 780 of ITR):

(16) In Dunlop & Ranken Ltd. v. Hendall Steel Structures Ltd. (Pitchers Ltd., Garnishees) [1957] 1 WLR 1102 it was held that the issuing of the architect's certificate was just as much a necessity for investing a cause of action in sub-contractors as it was in the main contracts, and the judgment-debtors had no right to be paid, and therefore, there was no debt, until the architect had certified the amount to be paid for the work ordered by the garnishees. On that reasoning it was held that no garnishee order should have been made. Strong reliance was placed on this decision in support of the contention of the Revenue that there could not be a debt if the ascertainment of the debt depended upon a certificate to be issued by a third party. But a perusal of the judgment shows that in such contracts a certificate by the architect was a condition for imposing a liability and that, therefore, till such a condition was complied with, there could not be any debt. This decision does not throw any light on the question that now arises before us. The principle of the matter is well put in the Annual Practice, 1950, at page 808, thus:

But the distinction must be borne in mind between the case where there is an existing debt, payment whereof is deferred, and a case where both the debt and its payment rest in the future. In the former case there is an attachable debt, in the latter case there is not. If, for instance, a sum of money is payable on the happening of a contingency, there is no debt owing or accruing. But the mere fact that the amount is not ascertained does not show that there is no debt.

In our view this is a full and accurate statement of law on the subject and the said statement is supported by English decisions we have discussed earlier..

(22) We have briefly noticed the judgments cited at the Bar. There is no conflict on the definition of the word 'debt'. All the decisions agree that the meaning of the expression 'debt' may take colour from the provisions of the concerned Act: it may have different shades of meaning. But the following definition is unanimously accepted:

A debt is a sum of money which is now payable or will become payable in future by reason of a present obligation; debitum in praesenti, solvendum in futuro.The said decisions also accept the legal position that a liability depending upon a contingency is not a debt in praesenti or in futuro till the contingency happened. But if there is a debt the fact that the amount is to be ascertained does not make it any the less a debt if the liability is certain and what remains is only the quantification of the amount. In short, a debt owed within the meaning of Section 2(m) of the Wealth-tax Act can be defined as a liability to pay in Praesenti or in futuro an ascertainable sum of money.

31. In Padmasundara Rao (Deed.) v. State of Tamil Nadu : [2002]255ITR147(SC) the apex Court held that the court only interprets the law and cannot legislate. If a provision of law is misused and subjected to the abuse of the process of law, it is for the Legislature to amend, modify or repeal it, if deemed necessary. Legislative casus omissus cannot be supplied by judicial interpretative process. A casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself. A casus omissus should not be readily inferred and for the purpose all the parts of the statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the A construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if a literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available. Where to apply words literally would defeat the obvious intention of the legislation and produce a wholly unreasonable result the court must do some violence to the words so as to achieve that obvious intention and produce a rational construction and courts have been cautioned not to rely on decision without discussion of the factual situation.

32. In V.V.S. Sugars v. Government of Andhra Pradesh : [1999]2SCR925 it was held that taxing statutes must be literally and strictly construed. Same is the law laid down in J.K. Synthetics Ltd. v. Commercial Taxes Officer : 1994ECR329(SC)

and in Vikrant Tyres Ltd. v. First Income-tax Officer : [2001]247ITR821(SC) . In the latter case it has been laid down that while construing revenue Acts courts have to give a fair and reasonable construction to the language of the statute without leaning to one side or the other, meaning thereby that no tax or levy can be imposed on a subject by an Act of Parliament without the words of the statute clearly showing an intention to lay the burden on the subject. In this process courts must adhere to the words of the statute and the so-called equitable construction of those words of the statute is not permissible. The task of the court is to construe the provisions of taxing enactments according to the ordinary and natural meaning of the language used and then to apply that meaning to the facts of the case and in that process if the taxpayer is brought within the net he is caught, otherwise he has to go free. It has also been laid down that full effect should be given to the beneficial provision in a taxing statute. Same is the law laid down by the apex Court in Mysore Minerals Ltd. v. Commissioner of Income-tax : [1999]239ITR775(SC) .

33. In the instant case the definition of 'amount of arrear' in Rule 2(1)(h) of the Rules makes it clear that the amount of arrear must relate to the period for any year up to March 31, 1997 which is due for payment as on April 1, 2001. The use of date April 1, 2001 has significance as tax liability has been deferred to a date after April 1, 2001 and if full effect is to be given to the definition of A 'amount of arrear', it cannot be said in the context of Scheme that the amount of deferred tax is 'due' for payment as on April 1, 2001. The demand notice indicates that it is due for payment as per demand notice on a subsequent date after April 1, 2001. Defaulter has been defined Under rule 2(l)(g) to mean a person against whom P the amount of arrears are pending. As the demand itself, in the case of deferment is for a date after April 1, 2001 it cannot be said that the 'amount of arrear' is due for payment on April 1, 2001. When the amount of tax liability has been deferred to a date subsequent to a date April 1, 2001 in my opinion it is payable on the date on which it was declared payable not at the time when it was declared payable, i.e., the date of assessment order.

34. I find no ambiguity in the 'Rules' and in the 'Scheme': amount of arrear referred to in clause 2 of the 'Scheme' has been defined clearly and unambiguously in 'rule'

2(l)(h) and when inter-preted in the context in which it has been used and the purpose for which it has been used, in my opinion, the Scheme is not applicable if the amount is not due for payment as on April 1, 2001. Though liability may have been determined earlier the amount must be recoverable by issue of process before April 1, 2001, i.e., an action to recover it could be initiated before April 1, 2001. Simple issue of demand notice for a date after April 1, 2001 cannot make it recoverable before April 1, 2001. The service of demand notice as contemplated Under rule 2(l)(h) must be for a period before April 1, 2001 in praesenti. The demand notices in the case of deferment after April 1 2001 are for the date subsequent thereto. In my opinion the word service of demand notice, the demand made by the notice in praesentinot in futuro to a deferred date after April 1, 2001; in such a case there is no demand notice for a debt prior to April 1, 2001. Thus, in my opinion the interpretation put by the respondents is appropriate; none of the rules is unambiguous and when strict interpretation is made it is clear that the interpretation put by the petitioner cannot be adopted as there is no ambiguity; there is no need to supply casus omissus. Interpretation is clear and goes against petitioner on considering the Deferment Rules, 1994, Saral Kar Samadhan Yojna, 2002 and Rules framed under Scheme.

35. Resultantly, I find no merit in the writ petitions. They are dismissed. Costs on parties.