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**A.F.R.**

**Reserved**

**Court No. - 6**

**Case :-** SALES/TRADE TAX REVISION No. - 1596 of 2006

**Applicant :-** Union Of India Thru' The General Manager & Another
**Opposite Party :-** The Commissioner, Trade Tax, U.P. Lucknow
**Counsel for Applicant :-** Ajit Kumar Singh
**Counsel for Opposite Party :-** S.C.

And

**Case :-** SALES/TRADE TAX REVISION No. - 1592 of 2006

**Applicant :-** Union Of India Thru' The General Manager & Another
**Opposite Party :-** Commissioner, Trade Tax, U.P. Lucknow
**Counsel for Applicant :-** Ajit Kumar Singh
**Counsel for Opposite Party :-** S.C.

And

**Case :-** SALES/TRADE TAX REVISION No. - 1593 of 2006

**Applicant :-** Union Of India Thru' The General Manager & Another
**Opposite Party :-** Commissioner, Trade Tax, U.P. Lucknow
**Counsel for Applicant :-** Ajit Kumar Singh
**Counsel for Opposite Party :-** S.C.

And

**Case :-** SALES/TRADE TAX REVISION No. - 1594 of 2006

**Applicant :-** Union Of India Thru' The General Manager & Another
**Opposite Party :-** The Commissioner, Trade Tax, U.P. Lucknow
**Counsel for Applicant :-** Ajit Kumar Singh
**Counsel for Opposite Party :-** S.C.

And

**Case :-** SALES/TRADE TAX REVISION No. - 1595 of 2006

**Applicant :-** Union Of India Thru' The General Manager & Another
**Opposite Party :-** The Commissioner, Trade Tax, U.P. Lucknow
**Counsel for Applicant :-** Ajit Kumar Singh
**Counsel for Opposite Party :-** S.C.

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**Hon'ble Ashok Kumar,J.**

Heard Sri Krishna Agrawal, learned counsel for the revisionist and Sri B.K. Pandey, learned standing counsel.

These revisions are filed by the Union of India through General Manager, Government Opium & Alkaloid Works Undertaking, Ghazipur by which the revisionist has challenged the order passed by Trade Tax Tribunal dated 21.6.2006 pertaining to five assessment years vis. 1974-75 to 1978-79 decided by the Tribunal by a common judgment.

Since the issue involved in these revisions are/is same/similar therefore, these revisions are decided by a common judgment.

Brief facts of the case are that the revisionist is a Government of India undertaking and it deals in procurement, distribution as well as export of Opium, its derivatives and life saving medicines and exportation thereof.

For the convenience, the fact of the Assessment Year 1974-75 are being taken while deciding all the revision petitions.

The matter pertains to the imposition/liability of interest under Section 8(1) of the U.P. Sales Tax Act, 1948 (hereinafter referred to as the 'Act').

According to the learned counsel for the revisionist, for the Assessment Year 1975-76, 76-77, 77-78, the assessment was made by the assessing authority in the year 1979. The returns were filed by the revisionist without admitting any tax liability and in fact the revisionist disputed the applicability of the provisions of U.P. Sales Tax Act, 1948 on the following grounds namely;

(i) Revisionist is not a dealer,

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(ii) Revisionist is not liable to tax in view of Article 285 of the Constitution of India, and

(iii) The procurement of Opium and sales and manufactured product are not liable to tax.

The assessing authority of the revisionist however has passed the assessment orders by which he has accepted the books of accounts by treating the revisionist as a manufacturer and by observing that the revisionist is a dealer, hence is liable to tax on purchase of Opium under Section 3-AAAA of the Act and that the Opium is taxable at the point of sale to consumer under Section 3-AAAA of the Act.

Since the revisionist did not admit any liability on the purchase of Opium as such no tax was deposited by the revisionist initially but on insistence by the department the tax was deposited under protest.

The department therefore, has made demand of interest on delayed payment by issuing the notice for the first time on 28.2.1981 and according to the revisionist's counsel the said demand notice and asking for the demand is after a period of about four years from the end of the relevant assessment year there it is illegal.

An application under Section 22 of the Act for rectification of the orders was created filed by the revisionist claiming that the interest is not chargeable as the liability of tax was not an admitted liability as such the demand of tax was disputed by the revisionist and it was even not accepted or admitted since beginning.

Learned counsel for the revisionist has submitted that since the demand was quite belated and that the relevant provisions of Section 3-AAAA came into force on 17.4.1979 with retrospective effect from 1.4.1974 by U.P. Act 12 of 1979

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therefore, the liability was not there in the relevant assessment years.

However, the application filed by the revisionist under Section 22, was rejected by the assessing authority by an order dated 15.1.2001.

Learned counsel for the revisionist has pointed out that a writ petition being Writ Petition No. 167 of 1989 was filed by the revisionist by which the assessment orders were challenged along with a prayer for mandamus directing the respondent department to refund the amount of purchase tax paid or realised from by the revisionist company. The challenge was made on the ground that the revisionist is not a dealer, its property is exempted from taxation under Article 285 of the Constitution of India and the procurement of Opium is not a purchase inasmuch as the forming of Opium is fully controlled by the revisionist under the Opium Act, 1857 of the Ministry of finance from its growers who cultivated the Opium under the directions and control of the Government and exclusive supply is made to the Government which is used for medicinal purposes and further that section 3-AAAA and Section 3D(1)(a) of the Act are not attracted or can validly applicable.

The writ petition aforesaid was decided by the division bench of this Court vide judgment dated 21.1.2000 holding as under :

> *"(a) the validity of the provisions have already been upheld;*
>
> *(b) the applicant is a dealer under the Act, the procurement of Opium from cultivator is transaction of purchase (page 47 of the supplementary affidavit);*
>
> *(c) the sale or purchase transaction by the applicant is not exempted under Article 285 of*

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> *the Constitution of India (page 55 of the supplementary affidavit);*
>
> *(d) the question of interest would be decided was left open to be decided by the assessing authority in the application under Section 22 of the Act already filed by the applicant; and*
>
> *(e) the assessment has become final. (Copy of the order passed by the division bench is already part of record as Annexure SA-1 to the supplementary affidavit."*

After the decision by this Court, the matter went to the Tribunal against the rejection of the application of the revisionist and the Tribunal has rejected the appeals of the revisionist vide impugned order dated 21.6.2006.

Learned counsel for the revisionist has submitted that though the Writ Petition No. 167 of 1989 was filed before this Court with a prayer to issue a writ in the nature of mandamus directing the respondents to refund the amount of purchase tax paid/ realised by/from the revisionist for the assessment years in question along with interest after quashing the assessment orders however the writ petition was pending for more than 11 years and is ultimately and finally decided by the division bench vide judgment dated 21.1.2000 by which the writ petition of the petitioner was dismissed but this Court has considered the submissions of the petitioner and has held/observed as follows :

> *"These rules clearly indicate that poppy grown by a cultivator remains his property till it is purchased by the Government in accordance with the Opium Act.*
>
> *Thus, in our view, the contention that there is complete embargo so far as the disposal of sale of poppy/opium by a cultivator is concerned and that the transaction between the petitioner and the poppy grower is not a sale, is misconceived. The cultivator is only*

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*required to dispose his produce in terms of the conditions of licence which he agreed to abide while taking licence and he can sell the produce of his cultivation in the form of poppy heads in terms of the licence to any one holding a licence to sell opium besides to the State Government or to nay one authorized by the State Government in that behalf, in lieu of which he gets the price of such produce.*

*In this view of the matter, the phrase "on account of" in the Act cannot be interpreted to mean that the Central Government is the owner of the poppy and the cultivators are merely its agents.*

*It was next argued that Article 285 of the Constitution exempts the property of the Union from all taxes imposed by the State or by any authority within the State. Reliance has been placed on a judgment of the Apex Court rendered in the case of State of Punjab and Others Vs. Union of India and others, reported in 1991 SCC (Tax), 25; and in a Division Bench judgment of this court in the case of Union of India through the Secretary, Ministry of Telecommunication, Government of India Vs. The State of U.P. & Others, reported in 1999 UPTC 280. In our view, this contention has also no merit for the reason that the sales tax is not a tax directly on the goods and the taxable event it is the act of sale and purchase. It is a settled legal position that sales/purchase tax is imposed on the sale and purchase of goods and it is not levied directly on the goods but on the sale and purchase thereof.*

*Therefore, in our view, the claim of immunity from purchase tax under the provisions contained in Article 285 of the Constitution is not available to the petitioner.*

*On the question of demand of interest under Section 8 (1) of Act No.XV of 1948 in pursuant to the demand letter dated 28.2.1981, admittedly, the petitioner has filed an objection vide letter dated 6.4.1981 which seems to have not been disposed of till date. Sri Upadhyaya, learned counsel for the petitioner, however, urged that the liability of purchase tax was for*

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> *the first time enforced by introducing Section 3-AAA in the year 1978 giving retrospective effect from 1.4.1974 and, thus, the petitioner cannot be saddled with the liability of interest under Section 8(1) of Act XV of 1948, because the tax was not admitted by the petitioner to be payable. He placed reliance, inter alia, on a Division Bench judgment of this Court in the case of M/s. Annapurna Biscuits Company Vs. State of U.P. & Others (supra).*
>
> *In our opinion, since the objection of the petitioner with regard to interest under Section 8 (1) of Act XV of 1948 has not been decided by the Assessing Officer, it would not be appropriate to express any opinion. In the counter affidavit sworn by Sri Chaturvedi, Sales Tax Officer, Ghazipur filed on behalf of the respondent, the statement made in paras 41 and 42 of the Writ Petition regarding filing of objection has been admitted in para 34 of the counter affidavit. Besides that the petitioner has not claimed any specific relief in this regard. In this view of the matter, the petitioner may agitate its claim before the Assessing Officer and no direction on our part is necessary".*

It is admitted fact that the assessment orders were passed in the year 1979 on the return filed by the revisionist and in view of Section 9(4) of the Act (XV of 1948) it has attained the finality as the revisionist did not prefer any appeal against the order of assessment. Learned counsel for the revisionist therefore submitted that the issue is only finalised after the decision of the writ petition filed in the year 1989 decided on 21st January 2000, that there is liability of tax upon the revisionist and since the matter was bonafidely agitated by the revisionist no interest could legally be charged from it.

In support of his submission learned counsel for the revisionist has placed reliance on a judgment of this Court in **M/s Annapurna Biscuit Company vs. State and others** reported in **1980 U.P.T.C. 1320**. He has placed para 4 of the

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said judgment which contain, that the dealer may raise dispute about taxability or about rate, and then the question may arise what is tax payable under the Act, that the tax which is calculated or determined by dealer or that found to be due by assessing authority. In such cases it is the *bona fide* of assessee which shall have to be examined. So long the calculation is honest and fair the dealer shall not incur any liability to pay interest.

Learned counsel for the revisionist has also placed reliance on a recent judgment of this Court in case of **Bharti Airtel Ltd. vs. State of U.P. and others** reported in **2015 (10) ADJ 250 (DB)**.

In the case of ***Bharti Airtel Ltd. (Supra)*** this Court has considered the decision in *Commissioner of Sales Tax vs. Satna Cement Works, Manu U.P.* in which the learned Single Judge held that since the dealer did not attempt its liability on freight charges, it became a disputed question whether freight charges would form part of the turn over or not and, therefore, the tax liability on the ground of freight charges could not be treated to be an admitted tax and, therefore, the interest could not be levied under Section 8(1) of the Act. The division bench has also considered the decision in *Commissioner of Sales Tax Vs. Hindustan Aluminium Corporation, 2002 (127) STC 258*, the Supreme Court on a plain interpretation of provisions of Section 8(1) of the Act held that the assessee was required to deposit tax that was admittedly payable by it. The Supreme Court held that the words 'tax admittedly payable' means the tax payable under the Act on the assessees turnover as disclosed in its accounts or admitted by it in its return or other proceedings under the Act. While deciding the issue in ***Bharti Airtel Ltd. (Supra)*** the division bench of this Court held as follows :

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> *"we find that even though the vires of the Act of 2007 had been upheld, the petitioner nonetheless disputed the liability of payment of tax under the Act of 2007 on the ground that the petitioner was importing "electrical equipments" and that the petitioner was not liable to pay any tax as it was not a "machinery". This fact, that the petitioner has disputed its liability under the Act is not disputed by the respondents. The fixation of the liability under the Act of 2007 in the assessment orders are being contested by the petitioner in the appeal. We are consequently of the opinion that since the petitioner has disputed its liability from the very inception, the same cannot be treated to be the admitted tax for the purpose of Section 8(1) of the Act read with Section 33(2) of the U.P.VAT Act."*

Learned counsel for the revisionist has also placed reliance on a judgment of learned Single Judge in the case of **M/s. Hashmatullah and Company, Bareilly vs. Commissioner of Sales Tax** reported in **1995 U.P.T.C. 626**. The relevant extract of the judgment is reproduced hereinbelow :

> *"Under the proviso to Section 3-AAAA as it stood at the relevant time no tax was leviable if it was proved to the satisfaction of the assessing authority that the goods so purchased had already been subjected to tax or may be subjected to tax under Section 3-AAA. Therefore, the admission or non-admission by the assessee is to be considered at the point of time when he furnished return and simply because by the time the assessment proceedings are taken the seller has not beer subjected to any tax it cannot be said that the dealer had wrongly denied its liability. It is only recently that Section 3-AAA has been amended by U.P. Ordinance No. 7 of 1994 with retrospective effect. Prior to that even purchases from unregistered dealers could not have been taxed if it could be established that they had been subjected to tax*

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*in the hands of those dealers. Relying on 1994 UPTC 893 (SC), held that the dealer having not admitted the liability to pay tax in respect of the purchases in question and there being nothing to show that his denial was absolutely without any basis the disputed tax could not be treated as the tax admittedly payable by it. Therefore, no interest was leviable".*

Learned counsel for the revisionist has also relied upon the judgment of learned Single Judge in the case of **M/s B.D. Agarwal and Company vs. The Commissioner of Sales Tax, U.P., Lucknow** reported in **2005 NTN (Vol. 28) 265**. The relevant extracts of the aforesaid judgment are quoted hereinbelow :

*"9. The next point raised by the applicant is with regard to levy of interest under Section 8(1) of the Act. The Assessing Authority while framing assessment orders treated the tax assessed on the applicant as admitted turnover and levied interest on the tax assessed. The question of levy of interest has not been discussed in the order of the Tribunal. In the memo of revision it has been stated that the said question was argued before the Tribunal, but the Tribunal has omitted to consider the same. Since the imposition of levy of interest does not require any investigation of fact and is basically question of law, the Counsel was permitted to urge the said point in support of the revision. The assessment order in the Assessment Year 1986-87 is dated 24.04.1992 and for the Assessment Year 1985-86 it is dated 11.3.1992. This court in the case of M/s Pioneer Tannery Glue Works vs. State of U.P. and others , 1991 UPTC 585 had declared Section 3-AAAA of the Act as ultra vires. This decision was subsequently reversed by Supreme Court in the case of Hotel Balaji (supra) on 22.10.1992. Thus the day on which assessment orders were framed Section 3-AAAA was not on the Statute book.*

*10. It may also be noted here that in order to*

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*get over the decision and to remove the defects as stated in M/s Pioneer Tannery & Glue Works , the Governor of Uttar Pradesh by issuing Ordinance No. 45 of 1991 substituted Section 3-AAAA in its entirety with effect from 21.04.1974 which was replaced by U.P. Sales Tax (Amendment) Act, 8 of 1992. The fact remains that neither the applicant admitted the turnover in the return nor had admitted any tax liability thereon. In such a situation learned Counsel has rightly relied upon the judgment of this Court in the case of M/s Vijay Dal Mill vs. Commissioner of Sales Tax, 2000 UPTC 938 wherein it has been held following the judgment of Supreme Court in the case of Commissioner of Sales Tax vs. Hindalco Industries Limited , 1999 UPTC page 1 that no interest can be charged on the turnover which has not been admitted by the dealer. It was held by Supreme Court that classification dispute is ordinarily resolved in assessment proceeding and if resolved against the assessee, the assessee has to make payment of differential amount of tax, as required by subsection (1-A) failing which provisions to Section (1-b) will apply. It may be noted here that interest at the lesser rate and for lesser period is payable under sub-section (1-A) and (1-B) of Section 8 of the Act. The interest is payable on the tax assessed under the Act and within 30 days of service of the notice of assessment and demand and not from the date of immediately following last date prescribed of deposit of admitted tax, as prescribed under Section 8(1) of the Act.*

*11. In view of the above discussion levy of interest under Section 8 (1) of the Act is not justified. However, the applicant would be liable to pay interest on the assessed tax in the light of sub-section (1-A) and (1-B) of Section 8 of the Act.”*

In another case of **M/s. Vijai Dall Mills, Kanpur vs. Commissioner of Sales Tax** reported in **2000 U.P.T.C. 983** this Court has considered the provisions of Section 3-AAAA

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read with Section 8(1) of the Act. The relevant extract of the judgment is reproduced hereinbelow :

> *6. It may be mentioned here that, to get over the decision and to remove the defects pointed out by this Court in the case of Pioneer Tanneries and Glue Works, Jajmau, Kanpur (supra), the Governor of Uttar Pradesh issued an Ordinance being U.P. Ordinance No. 45 of 1991 substituting Section 3-AAAA in its entirety with effect from 1st April, 1974. The said Ordinance has since been replaced by U.P. Sales Tax (Amendment) Act 8 of 1992. Thus, despite the decision of this Court in the case of Pioneer Tanneries and Glue Works (supra). Section 3-AAAA shall be deemed to be the Statute in the assessment year in question and the liability to tax was there. But the applicant had neither admitted the turnover in the return nor had admitted any tax liability thereon. Moreover there was a bona fide dispute raised by the applicant regarding liability for tax thereon. Thus, it cannot be said to be its admitted turnover and, therefore, there is no liability for payment of interest under Section 8(1) of the Act. This Court in the case of R.P. Chemical Works vs. Commissioner of Sales Tax, reported in 1986 U.P.T.C. 157 had held that where a dealer does not admit any liability for payment of tax on a particular turnover and tax is imposed under Section 3-AAAA of the Act, the turnover and the tax liability does not admitted liability under Section 8(1) of the Act. The Hon'ble Supreme Court in the case of the Commissioner of Sales Tax vs. Hindalco Industries Ltd., reported in 1999 U.P.C. Had held that no interest can be charged on a turnover which has not been admitted by a dealer. Respectfully following the aforesaid decision it is held that the applicant is not liable for payment of interest under Section 8(1) of the Act.*

Counsel for the revisionist therefore submitted that the revisionist could not be saddled with the liability of tax which is admitted based upon the provisions non-extent during the relevant period but only came into force later on with

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retrospective effect. According to the counsel for the revisionist that the liability of tax could be determined after the enactment of the provisions with retrospective effect but in any manner no action of interest could be demanded. He has further submitted that since beginning the revisionist has disputed its liability under the Act on the ground of not being a dealer, no purchase or sale of Opium is carried on, this property is not liable for taxation under the Constitution of India and there was no provision to leave any tax on purchase of Opium.

According to the revisionist it is only when the writ petition filed in the year 1989 decided on 21.1.2000 was finally decided and thereafter the liability of revisionist has been crystallized. According to the learned counsel it was not at all admitted liability under the Act.

Learned counsel for the revisionist has placed the provisions of Section 8(1) of Act which is reproduced hereinbelow :

> *"**8. Payment and recovery of tax**.- (1) The tax admitted payable shall be deposited within the time prescribed or by 31st day of August, 1975, whichever is later, failing which simple interest at the rate of two percent per mensem shall become due and be payable on the unpaid amount with effect from the day immediately following the last date prescribed till the date of payment of such amount whichever is later, and nothing contained in Section 7 shall prevent or have the effect of postponing the liability to pay such interest.*
>
> ***Explanation**.- For the purpose of this sub-section, the tax admittedly payable means the tax which is payable under this Act on the turnover of sales or, as the case may be, the turnover of purchases, or of both, as disclosed in the accounts maintained by the dealer, or admitted by him in any return or proceeding*

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> *under this Act, whichever is greater, or, if no accounts are maintained, then according to the estimate of the dealer, and includes the amount payable under Section 3-B or sub-section (6) of Section 4-B."*

At the end learned counsel for the revisionist submitted that even in the assessment orders the assessing authority has not indicated any liability of payment of interest.

*Per contra*, Sri B.K. Pandey, learned standing counsel has submitted that though the State of U.P. enacted Section 3-AAAA on 17.4.1979 by amendment by U.P. Act 12 of 1979 but it was w.e.f. 1.4.1974 whereby for the first time purchase tax was imposed on purchase of goods, therefore, the provisions of Section 3-AAAA had been considered by the Division Bench of this Court in writ petition filed by the petitioner company (Revisionist) being Writ Petition No. 167 of 1989 decided/dismissed on 21.1.2000. He has submitted that the division bench in the aforesaid writ petition has observed that in view of the provisions of Section 3-AAAA the petitioner filed its return for the assessment year 1974-75 to 1978-79 on the basis of which the assessments were made and the assessed amount of purchase tax was deposited. He has therefore, submitted that the department was correct in raising the demand of interest under Section 8(1) of the Act on the assessed amount at the rate of 24% per annum treating the said liability as an admitted tax liability for the aforesaid assessment years though admitted but was not deposited within time.

Learned standing counsel has fairly accepted that the liability of payment of interest was subsequently raised by the department. He has submitted that in fact the liability of payment of interest is by virtue of the law hence it is not necessary to pass separate orders for that.

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The counsel for the department has heavily relied upon the decision of division bench of the writ petition filed by the revisionist and the observations made in the judgment. Learned standing counsel has also relied upon a decision of Hon'ble Supreme Court in the case of **Commissioner of Sales Tax vs. Qureshi Crucible Centre** reported in **1993 U.P.T.C. 901** in which the Hon'ble Supreme Court held that the tax “admittedly payable” means the tax which is payable inter alia according to the returned filed by the dealer. In the present case the return has been submitted by the dealer and on the basis of said returns the tax has been assessed by the assessing authority in accordance with law. He has submitted that therefore, the tax assessed by the assessing authority in accordance with law is tax admittedly payable by the revisionist. Learned counsel for the department has emphasized the observation of the Hob'ble Supreme Court particularly on the words “admittedly payable”.

Learned standing counsel has also relied upon another judgment in the case of **Commissioner of Sales Tax vs. M/s Vinus Auto Traders** reported in **1980 U.P.T.C. 273**. He has also referred a decision of this court in the case of **Commissioner Trade Tax vs. M/s Control Switch Gears Company Ltd. Sector-2 , Noida and** in para 29 this Court has observed as follows :

> *“Applying the principles laid down by the Apex Court in the aforesaid cases and by the Division Bench of this Court in the case of M/S. Annapurna Biscuit Co. (Supra), we are of the considered opinion that in a case where concession/exemption is claimed which is dependent upon furnishing of prescribed declaration form and a dealer fails to furnish the declaration from up to the time of assessment or thereafter in appeal, than the tax payable on such purchases/sales would be*

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*leviable at the normal rate which would be the admitted tax and the liability to pay interest @ 2% per month starts from the last date of filing the return in respect of such sales till its actual payment. As held by the Apex Court in the case of Qureshi Crucible Centre (Supra), the question of mala fide does not arise and likewise in our considered opinion, there is no scope for applying the principles of legitimate expectation or hope or bona fide for avoiding the liability of payment of interest under Section 8(1) of the Act. The controversy stands covered by a decision of the Division Bench of this Court in the case of M/S. Annapurna Biscuit Co. (Supra) with which we are in respectful agreement with the view taken by it in so far as the levy of interest on account of non-furnishing of a declaration form is concerned."*

Having heard learned counsel for the parties and after going through the judgments, which are relied by the respective parties, I find substance in the submissions of the learned counsel for the revisionist. Admittedly the revisionist is a Union of India undertaking and it deals in procurement, distribution as well as export of Opium its derivatives and life savings medicines and exportation thereof.

The issue involved in this case is confined to the imposition of the interest under Section 8(1) of the Act. The admitted fact that the assessing authority has passed the assessment orders for all the assessment year in question in the year 1979 and thereafter. No tax was admitted by the revisionist Union of India as it disputed the applicability of the provisions of the Act on the ground that the revisionist is not a dealer, is not liable to tax in view of Article 285 of the Constitution of India and that the procurement of Opium and sales and manufactured product is not liable to tax.

The assessing authority however has proceeded to pass

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the assessment orders though it had accepted books of accounts of the revisionist but it has treated the revisionist as a manufacturer as such is a dealer therefore, is liable to tax on purchase of Opium under Section 3-AAAA of the Act and that the Opium at the point of sale to consumer under Section 3-AAA of the Act.

The revisionist disputed any admission of liability of tax on the purchase of Opium and has not deposited the tax initially but on heavy insistence by the respondent department the tax was deposited by the revisionist under protest. In this background the department has proceeded to ask interest by treating the liability of tax at the hands of the revisionist that the tax was “admittedly payable”. The department therefore, has proceeded to charge the interest on delayed payment and in this background a show cause notice was issued. According to the counsel for the revisionist the show cause notice was issued after a gap of four years from the end of the relevant assessment year therefore, it was illegal act on the part of the assessing authority. The revisionist had filed the rectification applications under Section 22 claiming that the interest is not chargeable as the liability of tax was never admitted nor it was admittedly payable.

Learned counsel for the revisionist has submitted that in fact the demand of tax was disputed by the revisionist since beginning till the revisionist was compelled to deposit under protest.

Learned counsel for the revisionist has further submitted that even the relevant provisions of Section 3-AAAA came into force on 17.4.1979 though with retrospective effect from 1.4.1974, therefore there was no liability at the hands of the revisionist in the relevant assessment years namely in the

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year 1974-75 to 1978-79. Learned counsel for the revisionist has submitted that even the application under Section 22 was rejected by the assessing authority after a long gap on 15.1.2001. He has also submitted that since the revisionist disputed the liability of tax, therefore, a writ petition was filed long back in the year 1989 which was pending for more than 11 years and was ultimately decided only on 21.1.2000 and the division bench though has dismissed the writ petition but on the other hand the regular proceedings were completed which were pending before the Tribunal and the same are decided only vide order of the tribunal dated 21.6.2006.

Learned counsel for the revisionist has submitted that in fact the writ petition was filed for the refund of the amount of purchase tax which was paid by the revisionist under protest however, since the writ petition was pending for about 11 years and the High Court while dismissing the writ petition has considered the submissions of the revisionist. In fact the revisionist has filed an objection vide letter dated 6.4.1981 which seems to have not been disposed of till date.

From the bare perusal of the observations by the division bench of this Court, it is crystal clear that even the division bench has found substance in the claim of the revisionist as such has clearly observed that it is open to the petitioner (revisionist) that he may agitate its claim before the assessing officer and no direction on our part is necessary. According to the learned counsel for the revisionist in fact the issue has been finally decided by the Hon'ble division bench vide its decision dated 21.1.2000 by holding that there is a liability of tax upon the revisionist and since the matter was bona fidely agitated by the revisionist and was pending altogether for about 11 years, there is no justification to realize the interest or interest can legally be from the revisioist.

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I have perused the material placed before me and the judgment which are relied by the respective parties. In view of the above facts, which are based on material evidence, I am of the opinion that the facts in the present case *prima facie* establishes that in fact the revisionist has never admitted any liability of purchase tax. It was not the tax which was admittedly payable by the revisionist. The High Court in **Commissioner of Tax vs. H.A. Corporation 2002 (127) STC 258**, on a plain interpretation of provisions of Section 8(1) of the Act held that the assessee was required to deposit the tax that was admittedly payable by it. The Supreme Court held that the words tax “admittedly payable” means the tax payable under the Act on the assessed turnover as disclosed in its accounts or admitted by it in its return or other proceedings under the Act.

In the present case it is an admitted fact that the revisionist disputed the liability of payment of tax and that the revisionist never admitted liability to pay any tax on the transaction in question and this fact that the revisionist is disputed its liability under the Act is not disputed by the respondent opposite party. This is also relevant to notice that the tax has been deposited by the revisionist under protest on insistence of the respondent department. The revisionist in fact has contested the matter by means of filing the writ petition for refund of tax, which was ultimately dismissed after gap of about 11 years from the date of its institution. It is clear that even the division bench has clearly indicated in its judgment that it would be open to the revisionist to agitate its claim with respect of imposition of interest under Section 8(1) before the assessing authority.

In view of aforesaid facts, in my opinion, the revisionist in fact has agitated its claim before the assessing authority by

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filing an application under Section 22 as such has disputed its liability from very inspection/binning. In this view of the matter, the same cannot be treated to be "admitted tax" or tax "admittedly payable" for the purpose of Section 8(1) of the Act.

I find that moreover there was a bona fide dispute raised by the revisionist regarding liability for tax thereon, thus, it cannot be said to be its admitted taxable turnover and, therefore, there is no liability for payment of interest under Section 8(1) of the Act.

This Court in the case of R.P. Chemical Works v. Commissioner of Sales Tax, reported in 1986 U.P.R.T.C. 157 held that where a dealer does not admit any liability for payment of tax on a particular turnover and tax is imposed under Section 3-AAAA of the Act, the turnover and the tax liability does not admitted liability under Section 8 (1) of the Act.

The Hon'ble Supreme Court in the case of the **Commissioner of Sales Tax v. Hindalco Industries Ltd.**, reported in **1999 U.P.T.C.** held that no interest can be charged on a turnover which has not been admitted by a dealer.

Respectfully following the aforesaid decisions it is held that the revisionist is not liable for payment of interest under Section 8 (1) of the Act.

In view of the above reasons the impugned order of the Tribunal dated 21.6.2006 is quashed. The revision petitions are allowed and the assessing authority is directed to redetermine the interest in view of the provisions of Section 8(1-A) read with section 8(1-B) of the Act.

Revision petitions are allowed.

**Order Date :-** 08.08.2018
S.S.