

PETITIONER:
MAHALAXMI SUGAR MILLS CO. LTD.

Vs.

RESPONDENT:
COMMISSIONER OF INCOME-TAX, DELHI, NEW DELHI

DATE OF JUDGMENT 09/04/1980

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
UNTWALIA, N.L.
VENKATARAMIAH, E.S. (J)

CITATION:
1980 AIR 754 1980 SCR (3) 421
1980 SCC (3) 475
CITATOR INFO :
R 1992 SC 847 (62)

ACT:
Indian Income Tax Act 1922-Section 10(2) (xv)-Interest paid on arrears of sugarcane cess-whether penalty-Interest if a permissible deduction.

HEADNOTE:

Section 3(2) of the U.P. Sugarcane Cess Act, 1956 provides that the owner of a sugar factory shall pay cess on sugarcane coming into the premises of a factory for use therein, on such date and at such place as may be prescribed. Sub-section (3) provides that if the cess is not paid by the specified date, interest at six per cent per annum is payable on the arrears from the specified date to the date of payment. Where a person is in default in making the payment of the cess, sub-section (5) provides that in addition to the amount of the arrears and interest a sum not exceeding ten per cent shall be recoverable by way of penalty from the person liable to pay the cess.

In respect of three assessment years the appellant-assessee, a manufacturer of sugar, in its income tax returns claimed deduction of certain sums paid by it by way of interest on arrears of cess due under the U.P. Sugarcane Cess Act, 1956. The Income Tax Officer disallowed the claim. The Appellant Assistant Commissioner, whose view was upheld by the Appellate Tribunal, held that the payment of interest constituted a permissible deduction.

On reference the High Court held that the interest paid on the arrears did not fall within the scope of s. 10(2) (xv) of the Indian Income Tax Act, 1922 for the reason that it was paid by way of penalty for an infringement of the law.

Allowing the appeal,

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HELD : The interest paid under s. 3(3) of the Cess Act cannot be described as a penalty paid for an infringement of the law. The assessee is entitled to claim the sum as a deduction under section 10(2) (xv) of the 1922 Act as expenditure laid out wholly or exclusively for the purpose of the business. [427E]

(a) The interest payable on arrears of cess under s. 3(3) is in reality part and parcel of the liability to pay cess. It is an accretion to the cess. Under s. 3(3) this enlargement of the cess liability is automatic and no specific order is necessary in order that the obligation to pay interest under this sub-section should accrue. The liability to pay interest is as certain as the liability to pay the cess. The interest payable is in the nature of compensation paid to the Government for delay in the payment of cess. It is not by way of penalty. [425G-H]

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(b) Interest on arrears of cess is not a penalty because provision for imposing penalty has been made separately by s. 3(5). It is also not a penalty within the meaning of s. 4 which provides for criminal liability and criminal prosecution. The penalty payable under s. 3(5) lies in the discretion of the collecting officer or authority. For imposing penalty under s. 4 no prosecution can be instituted unless a complaint is made by or under the authority of the Cane Commissioner under s. 5(1) of the Cess Act. [426A-B]

(c) The procedure for collecting interest on arrears is different from the procedure for recovering penalty imposed under s. 3(5). The Collector proceeds to recover the arrear of cess as if it were an arrear of land revenue on receipt from the authority concerned of a certificate under s. 3(6) specifying the amount of arrears including interest due. The words "specifying the amount of arrears including interest" show that the interest is part of the arrears of cess. In the case of penalty imposed under s. 3(5) a separate provision for recovery has been made under s. 3(7). Although the manner of recovery of penalty provided by s. 3(7) is the same as the manner for recovery provided by s. 3(6) the Legislature has dealt with it as something distinct from the recovery of arrears of cess including interest. [426C-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2440-2442 of 1972.

From the Judgment and Order dated 25-10-1971 of the Delhi High Court in Income Tax Reference Nos. 40 & 41 of 1970.

A. K. Sen and Mr. Bishamber Lal for the Appellant.

P. G. Ghokhale and Miss A. Subhashini for the Respondent.

The Judgment of the Court was delivered by

PATHAK, J.-This appeal by certificate granted by the Delhi High Court raises the question whether interest paid on arrears of cess under s. 3 (3) of the U.P. Sugarcane Cess Act, 1956 is a permissible deduction under s. 10 (2) (xv) of the Indian Income Tax Act, 1922.

The assessee is a public limited company engaged in the business of the manufacture and sale of sugar. In its income-tax return for the assessment year 1959-60 (the previous year being the period ending 30th June, 1958) the assessee claimed a deduction of Rs. 1,20,859/- paid as interest on arrears of cess due under the U.P. Sugarcane Cess Act, 1956. The Income-tax Officer disallowed the claim, but the Appellate Assistant Commissioner held that the payment of interest constitute a permissible deduction and this view was affirmed by the Income Tax Appellate Tribunal. For the next assessment year 1960-61, (the previous year ending 30th June, 1959), the assessee claimed a sum of Rs.

1,83,731/- paid by way of interest on the arrears of cess. The claim met with the same fortune, disallowed by the Income Tax Officer but upheld by the Appellate Assistant Commissioner and the Appellate Tribunal. At the instance of

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the Revenue, the Appellate Tribunal referred the following question of law to the Delhi High Court in respect of the assessment years 1959-60 and 1960-61:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in allowing the interest of Rs. 1,20,859/- and Rs. 1,83,731/-, paid by the assessee on the arrears of cess in the assessment years 1959-60 and 1960-61 respectively, as revenue expenditure?"

For the assessment year 1961-62 also the previous year of which ended 30th June, 1960 the assessee claimed a deduction of Rs. 2,00,439/- on account of interest paid by it on arrears of cess. This claim also was rejected by the Income Tax Officer but allowed by the Appellate Assistant Commissioner and the Appellate Tribunal. The Revenue obtained a reference to the High Court on the question:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in allowing the interest of Rs. 2,00,439/-, paid by the assessee on the arrears of cess, as revenue expenditure?"

The references were disposed of by the High Court by its judgment dated 25th October 1971. The questions were answered in the negative. The High Court took the view that the claim of the assessee did not satisfy the provisions of s. 10 (2) (iii) of the Indian Income Tax Act, 1922 because it was not interest paid on borrowed capital, and it did not fall within the scope of s.10 (2) (xv) of the Act because it was paid by way of penalty for an infringement of the Act. The High Court then certified under s. 66 (A) (2) of the Act that the cases were fit for appeal to this Court.

Learned counsel for the assessee has made no attempt to justify the claim under s. 10 (2) (iii) and we are, therefore, relieved of the necessity of examining the validity of the claim by reference to that provision. The case has been argued before us on the basis that it falls under s. 10 (2) (xv).

The validity of the U. P. Sugarcane Cess Act, 1956 (the "Cess Act") was challenged by the assessee and several other sugar manufacturing companies by petitions under Article 226 of the Constitution in the Allahabad High Court. The High Court admitted the writ petitions and granted an order suspending the operation of the Act. The High Court, on final hearing, dismissed the writ petitions. But subsequently on appeal this Court declared the Cess Act ultra vires on

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the ground that the Act fell beyond the competence of the State Legislature.

Thereafter, on 31st January, 1961, the President promulgated the U.P. Sugarcane Cess (Validation) Ordinance, 1961 validating the cess imposed, assessed or collected by the Government of Uttar Pradesh during the period 26th January, 1950 to the date of the commencement of the Ordinance (3rd February, 1961). The ordinance was replaced by the U.P. Sugarcane Cess (Validation) Act, 1961 (the "Validation Act").

The question whether the interest paid by the assessee under s. 3(3) of the Sugarcane Cess Act, 1956 can be allowed under s. 10(2) (xv) of the Income Tax Act requires us to examine the relevant provisions of the Cess Act. The Act, as

its long title states, is "an Act to amend and consolidate the law relating to the imposition of cess on sugarcane intended for use, consumption in or sale to a factory". The relevant provisions of s.3 declare:

"3. Imposition of cess-(1) The State Government may by notification in the official Gazette impose a cess not exceeding four annas per maund on the entry of the cane into the premises of a factory for use, consumption or sale therein.

(2) The cess imposed under sub-section (1) shall be payable by the owner of the factory and shall be paid on such date and at such place as may be prescribed.

(3) Any arrear of cess not paid on the date prescribed under sub-section (2) shall carry interest at 6 per cent per annum from such date to date of payment.

(4) The State Government may, for the purpose of assessment and collection of the cess, appoint officers and authorities and may also prescribe the manner in which the cess shall be assessed and collected.

(5) Where any person is in default in making the payment of the cess, the officer or authority empowered to collect the cess may direct that in addition to the amount of the arrears and interest a sum not exceeding 10 per cent thereof shall by way of penalty be recovered from the person liable to pay the cess.

(6) The officer or authority empowered to collect the cess may forward to the Collector a certificate under his signature specifying the amount of arrears including inte-

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rest due from any person, and on receipt of such certificate the Collector shall proceed to recover the amount specified from such person as if it were an arrear of land revenue.

(7) Any sum imposed by way of penalty under sub-section (5) shall be recoverable in the manner provided in sub-section (6) for the recovery of the arrear of cess".

Then follows s.4 and it provides:

"4. Penalties-If any person defaults in the payment of cess imposed under sub-section (1) of Sec.3, or, contravenes any provision of any rule made under this Act, he shall without prejudice to his liability therefor under sub-section (5) of Sec.3 be liable to imprisonment up to six months or to a fine not exceeding rupees five thousand or both and in the case of continuing contravention to a further fine not exceeding rupees one thousand for each day during which the contravention continues".

It is apparent that section 3(2) requires the payment of cess on the date prescribed under the rules. Rule 4 of the U.P. Sugarcane Cess Rules, 1956 provides that the cess due on the sugarcane entering into the premises during the first fortnight of each calendar year must be deposited in the Government treasury by the twenty second day of that month and the cess due for the remainder of the month must be deposited before the seventh day of the next following month. If the cess is not paid by the specified date, then by virtue of s.3(3) the arrear of cess will carry interest at the rate of six per cent per annum from the specified date to the date of payment. Section 3(5) is a very different provision. It does not deal with the interest paid on the arrears of cess but provides for an additional sum

recoverable by way of penalty from a person who defaults in making payment of cess. It is a thing apart from an arrear of cess and the interest due thereon.

Now the interest payable on an arrear of cess under s. 3(3) is in reality part and parcel of the liability to pay cess. It is an accretion to the cess. The arrear of cess "carries" interest; if the cess is not paid within the prescribed period a larger sum will become payable as cess. The enlargement of the cess liability is automatic under s. 3(3). No specific order is necessary in order that the obligation to pay interest should accrue. The liability to pay interest is as certain as the liability to pay cess. As soon as the prescribed date is crossed without payment of the cess, interest begins to accrue.

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It is not a penalty, for which provisions has been separately made by s.3(5). Nor is it a penalty within the meaning of s.4, which provides for a criminal liability and a criminal prosecution. The penalty payable under s.3(5) lies in the discretion of the collecting officer or authority. In the case of the penalty under s.4, no prosecution can be instituted unless, under s.5(1), a complaint is made by or under the authority of the Cane Commissioner or the District Magistrate. There is another consideration distinguishing the interest payable under s.3(3) from the penalty imposed under s.3(5). Section 3(6) provides that the officer or authority empowered to collect the cess may forward to the Collector a certificate under his signature specifying the amount of arrears including interest due from any person, and on receipt of such certificate the Collector is required to proceed to recover the amount specified from such person as if it were an arrear of land revenue. The words used in s.3(6) are "specifying the amount of arrears including interest", that is to say that the interest is part of the arrear of cess. In the case of a penalty imposed under s.3(5), a separate provision for recovery has been made under s.3(7). Although the manner of recovery of a penalty provided by s.3(7) is the same as the manner for recovery provided by s.3(6) of the arrears of cess, the Legislature dealt with it as something distinct from the recovery of the arrears of cess including interest. In truth, the interest provided for under s.3(3) is in the nature of compensation paid to the Government for delay in the payment of cess. It is not by way of penalty. The provision for penalty as a civil liability has been made under s.3(5) and for penalty as a criminal offence under s.4. The Delhi High Court proceeded entirely on the basis that the interest bore the character of a penalty. It was, according to the learned Judges "penal interest". The learned Judges failed to notice s.3(5) and s.4 and the other provisions of the Cess Act.

We have been referred by the Revenue to Mahabir Sugar Mills (P) Ltd. v. Commissioner of Income Tax, U.P.(1) and Commissioner of Income-Tax West Bengal v. A. K. Das,(2) but in those two cases the Delhi High Court and the Calcutta High Court respectively were concerned with a claim to deduction on account of penalty paid under s.3(5) of the Cess Act. Reliance was also placed on Commissioner of Income-Tax v. Oriental Carpet Manufacturers (India) P. Ltd.(3) In that case, the High Court of Punjab and Haryana laid down that

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interest paid by an assessee on account of delay in payment of the provisional demand of tax is not a permissible deduction under s.36 (1) (iii) and s.37 of the Income Tax

Act. The learned Judges observed that the liability to tax, although arising out of a business activity, could not be said to be a liability related to the assessee's, business. It is not necessary for us to express any opinion on the decision. The case is distinguishable because we are concerned with a particular statutory scheme enacted in ss.3 and 4 of the Cess Act before us. Our attention has also been invited to *Suraya Sugar Mills (P) Ltd. v. Commissioner of Income-Tax*, (1) where a Full Bench of the Allahabad High Court has held that the payment of interest under s.3(3) of the U.P. Sugarcane Purchase Tax Act, 1961 is a penal liability which accrues on an infraction of the law. Section 3(3) of the U.P. Sugarcane Purchase Tax Act, 1961 does seem to be in pari materia with s. 3(3) of the Cess Act. But we think we should resist the blandishment to sit in judgment over that decision when it is not in appeal before us. We are concerned solely with the nature of the liability to pay interest under s.3(3) of the Cess Act. A court should be slow to succumb to the temptation of deciding questions on the construction of a statute not directly before it.

In our opinion, the interest paid under s.3(3) of the Cess Act cannot be described as a penalty paid for an infringement of the law. As that is the only ground on which the Revenue resists the claim of the assessee to a deduction of the interest under s.10(2)(xv) of the Income-Tax Act, the assessee is entitled to succeed. There is no dispute that the payment of interest represents expenditure laid out wholly or exclusively for the purpose of the business. There is also no dispute that it is in the nature of revenue expenditure.

In the result, the appeal is allowed, the judgment dated 25th October, 1971 of the Delhi High Court is set aside and the question referred by the Income Tax Appellate Tribunal are answered in the affirmative, in favour of the assessee and against the Revenue. The assessee will be entitled to its costs of these appeals.

P.B.R.

Appeal allowed.

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