A EXCISE COMMISSIONER & ORS.

v.

AJITH KUMAR & ANR.

(Civil Appeal No. 2891 of 2008)

APRIL 22, 2008

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[S.B. SINHA AND D.K. JAIN, JJ.]

Kerala Abkari Shops (Disposal in Auction) Rules, 1974 (as amended in 2000) – r.25A – Respondent, licencee under C *the Abkari Act – Licence cancelled – Interest on defaulted amount of revenue due in terms of the Rules – G.O. providing for waiver of interest upto 75% on defaulted amount of revenue due in terms of the Rules – Interpretation of – Application of r.25A – Held: If there was default on the part of Respondent as* D *a licencee, interest would be charged only for the period during which licence amount was not paid.*

Maxims – Lex non cogit ad impossibillia – Meaning of – Stated.

Interpretation of Statutes – Procedural provision – E *Interpretation of – Held: Procedural provisions are normally directory and not imperative – Substantial compliance of procedural provisions ordinarily would subserve the purpose and object for which the same has been made.*

F **First Respondent was a licencee under the Abkari Act for the period 1-4-1993 to 31-3-1994. The licence was cancelled, whereupon, the shop in question came under management of the Department in terms of the Kerala Abkari Shops (Disposal in Auction) Rules, 1974. The** G **Department collected a total sum of Rs.31,49,288/- towards Abkari dues. Dispute arose as to whether the said amount should be adjusted from the total liability of First Respondent. First Respondent filed writ petition which was allowed by judgment dated 11-8-2000 whereby and**

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whereunder it was directed that the amount collected towards Abkari dues be adjusted towards liability due from the Appellant. A

Meanwhile G.O.(P)No.88/2000/TD dated 2-6-2000 was issued which provided for waiver of interest upto 75% on the defaulted amount of revenue due in terms of the said Rules, wherefor Rule 25A was introduced. First Respondent sought benefit of the said Government Order which was denied to him on the premise that he had not complied with the conditions precedent therefor. Respondents filed writ petition before the High Court which was allowed. Hence the present appeal. B C

Dismissing the appeal, the Court

HELD: 1.1. Rule 25A, as inserted by reason of the notification dated 3-6-2000, contains a non-obstante clause providing for a legal entitlement to the licencees. Such exemption is hedged by two conditions precedent as provided for in the provisos appended thereto, being: (1) the taxes, duties shall be paid with reduced interest on or before 31-08-2000; and (2) that the defaulter who opts for payment of arrears thereunder would make an application to the Assistant Excise Commissioner in writing on or before 15-07-2000. [Para 11] [785-D, E, F] D E

1.2. During the period 1-4-1993 and 31-3-1994, Respondents paid a sum of Rs.41,16,841/-. A sum of Rs.31,49,288/- was also realized by the State during the said period. Appellants evidently did not adjust the said amount of Rs.31,49,288/- from the total amount. It was done only after the judgment of the High Court which was passed only on 11-8-2000. The said amount should have, in law, been adjusted as on 1-4-1994. As the matter was pending adjudication before the High Court, Respondents were unable to file any such application on or before 15-7-2000 for waiver of interest or pay any amount on or F G H

A before 31-8-2000. In terms of the said judgment of High Court, Appellants were directed to inform the respondent as regards the outstanding liability. A fresh demand, therefore, was to be raised. The said order was not complied with. The said order was unsuccessfully B challenged before the Division Bench. SLP therefrom to this Court also failed. [Para 14] [788-A-E]

1.3. If the benefit of the said notification could not be availed of by the Respondents because of the pendency of the writ petition, the High Court cannot be said to have C committed any jurisdictional error in passing the impugned judgment. [Para 15] [788-E, F]

1.4. *Lex non cogit ad impossibillia* is a well known maxim which means that nobody can be asked to do a D thing which is impossible to be performed. [Para 16] [788-F]

1.5. Rule 25A confers a right. How the said right is to be exercised is a matter of procedure. The procedural provisions are normally directory and not imperative. A E substantial compliance of the procedural provisions ordinarily would subserve the purpose and object for which the same has been made. [Para 16] [788-G]

1.6. A sum becomes due only when it is definite and only when a demand therefor is made. If no demand could F legally be made from the Respondents for the entire sum as they were entitled to adjustment of a sum of Rs.31,49,288/-, one does not see how even in equity, the appellants were entitled to ask for strict compliance of the said GOMs. [Para 17] [789-A]

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1.7. A party to the lis cannot take advantage of his own wrong. If the State, in law, was liable to adjust the said amount of Rs.31,49,288/-, a valid demand could have been raised only in respect of the balance sum. [Para 17] [789-B]

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1.8. If there was a default on the part of the Respondents as a licencee, interest would be charged only for the period during which licence amount was not paid. Interest cannot be charged although no amount was due. Some amount might be due but not the entire amount on which interest is being claimed. [Para 18] [789-F]

Solomon Antony and Ors. etc. v. State of Kerala and Ors. **(2001) 3 SCC 694 – referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2891 of 2008.

From the final Judgment and Order dated 17.03.2006 of the High Court of Kerala at Ernakulam in W.A. No. 153 of 2006.

G. Prakash for the Appellants.

L.N. Rao, A Raghunath for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Interpretation of G.O.(P) No.88/2000/TD dated 2.6.2000 providing for waiver of interest upto 75% on the defaulted amount of revenue due in terms of the Kerala Abkari Shops (Disposal in Auction) Rules, 1974 (the Rules) is the question involved herein.

3. First respondent was a licencee under the Abkari Act for the period 1.4.1993 to 31.3.1994. They conducted business for the period 1.4.1993 to 12.8.1993 only, as their licence was cancelled by an order dated 13.8.1993. There was a dispute between the parties in regard to the actual amount payable as excise duty for the said period. According to Revenue, an amount of Rs.86,40,000/- was payable. Respondent, admittedly, had paid an amount of Rs.40,18,934/-.

In terms of the Rules, upon cancellation of the licence, the shop in question came under the management of the department. It, during the period 31.8.1993 to 31.3.1994 The

A Department had collected a total sum of Rs.31,49,288/- towards Abkari dues.

On the premise that the said amount should be adjusted from the total liability of the first respondent, a dispute arose between the parties herein as no credit was given in respect of
B the said amount of Rs.31,49,288/-.

A writ petition was filed by the first respondent which was allowed by a judgment and order dated 11.8.2000 whereby and whereunder it was directed that the amount collected would be
C adjusted towards liability due from the appellant. The question, however, which arose for consideration was as to whether till the entire amount was adjusted, the first respondent was liable to pay any interest thereupon or not.

By reason of the Government Order dated 2.6.2000, the
D State of Kerala granted time to the defaulters to deposit the due amount of duty only with interest of 25%, wherefor Rule 25A was introduced in the Rule.

4. First respondent sought the benefit of the said Government Order which was denied to him on the premise
E that he had not complied with the conditions precedent therefor.

5. By reason of an order dated 14.12.2001, the representation of the respondents was rejected by the Excise Commissioner.

F They were directed to deposit an amount of Rs.83,26,344/- with future interest at the rate of 18% per annum on sum of Rs.41,16,841/- w.e.f. 8.12.2001. A Revenue Recovery Notice was issued for recovery of the said sum from the respondents on or about 4.4.2002.

G Aggrieved by and dissatisfied therewith, the respondents filed a writ petition before the High Court on 23.4.2002 questioning the validity of the said notice dated 4.4.2002.

6. By reason of a judgment and order dated 6.10.2005, a
H learned Single Judge allowed the s d writ petition, directing :

"In view of the above, the Original Petition is disposed of directing the 1st respondent to grant amnesty benefits to the petitioners on the following terms and conditions :

(i) The Commissioner will work out the liability by reducing 75% of the interest payable upto 31.03.1997 being waiver available under the amnesty scheme and demand balance amount with 25% interest without charging further interest from 01.04.1997 to 31.8.2000.

(ii) Since petitioners have not made payment as on 31.08.2000 on account of pendency of the Original petition, petitioners will on this amount pay statutory rate of interest upto the date of payment i.e. from 01.09.2000 to the actual date of payment.

(iii) Petitioners are granted time till 31.12.2005 to clear the arrears with interest in two equal instalments, first of which will be paid on or before 30.11.2005 and the balance on or before 31.12.2005.

(iv) If payments are not made as above the benefit of amnesty scheme granted to the petitioners with modifications as above will stand forfeited and the respondents are free to proceed to recover the entire arrears.

(v) The Commissioner will give a statement as above within two weeks from the date of production of a copy of this judgment for petitioners to make payments and settle liability."

7. An intra court appeal preferred thereagainst by the appellant herein, marked as Writ Appeal No.153 of 2006, has been dismissed by a Division Bench of the said High Court stating that no ground was made out for interference with the directions issued by the learned Single Judge.

8. Mr. G. Prakash, learned counsel appearing on behalf of

A the appellant, in support of the appeal, inter alia, would submit that the High Court committed a serious error in passing the impugned judgment insofar as it failed to take into consideration that exemption from payment of interest could be directed only in the event the entire amount was paid in terms the notification B by 2.6.2000 and in view of the fact that the first respondent failed to deposit the said amount by the said date, the impugned judgment cannot be sustained.

9. Mr. Rao, learned senior counsel appearing on behalf of the respondents, on the other hand, would support the judgment.

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10. The sole question which, thus, arises for our consideration in this appeal is the application of Rule 25A of Kerala Abkari Shops (Disposal in Auction Rules) Amendment Rules, 2000. It reads thus :

D "25A. Reduction of interest in certain cases – (i) Notwithstanding anything contained in this rule or any other rules made under the Abkari Act 1 of 1077 or in any judgment, decree or order of any court, the persons who are in arrears to pay rentals, taxes duties or other amount E under this rules as on 31st day of March, 1997 shall be entitled to a reduction of 75% of the amount of interest accrued on such rentals, taxes, duties or other amounts as the case may be.

Provided that the entire arrears of rental, taxes, duties or F other amounts with the reduced interest shall be paid on or before 31st day of August, 2000.

Provided further that the maximum interest payable after allowing the reduction mentioned above shall be limited G to 100% of the principal amount of rentals, duties or other amounts outstanding as arrears.

(ii) A defaulter who opts for payment of arrears under this rule shall make an application to the Asst. Excise Commissioner concerned in writing on or before 15th day H of July, 2000.

(iii) On receipt of the application the Asst. Excise Commissioner shall contact the revenue recovery authority concerned in whose cases the amount has been recommended for realization under the revenue recovery act and shall calculate the quantum of the rentals, taxes, duties and other amounts and interest payable under Rule as on the date of the application and the amount of interest payable after allowing the reduction of interest under this provision. After getting the amount thus calculated being remitted into the treasury the Asst. Excise Commissioner shall withdraw the revenue recovery requisition from the revenue authority. Asst. Excuse Commissioners are authorized to get the money remitted in the treasure in this behalf. In those cases in which revenue recovery proceedings have not been initiated by the Asst. Excise Commissioner concerned, on receipt of application from the defaulters, the Asst. Commissioner shall quantify the amount as said above and to get it remitted."

11. Rule 25A, as inserted by reason of the aforementioned notification dated 3.6.2000, contains a non obstente clause providing for a legal entitlement to the licencees. There cannot be any doubt whatsoever that such exemption is hedged by two conditions precedent as provided for in the provisos appended thereto, being : (1) the taxes, duties shall be paid with reduced interest on or before 31st day of August, 2000; and (2) that the defaulter who opts for payment of arrears thereunder would make an application to the Assistant Excise Commissioner in writing on or before 15th July, 2000.

12. Respondents herein admittedly filed a representation before the appellants on or about 12.9.2001. The same was, however, done on the premise that their right to get the aforementioned amount of Rs.31,49,288/- adjusted was determined only in O.P. No.7894 of 1994. It appears that during the pendency of the said writ petition, a sum of Rs.1,00,000/- was also deposited. What was, therefore, urged in the aforementioned representation dated 12.9.2001 for grant of

A proportionate deduction in the *kist* as also interest thereupon.

First Appellant, however, was of the opinion that the waiver of interest as per the said scheme having already expired and the respondents having not filed any application before the said authority within the stipulated time, it was impermissible to grant
B the benefit of the said Rule to the respondent, stating :

> "The petitioners had already executed permanent agreement as per Rule 5(15) of the Kerala Abkari Shops (Disposal in Auction) Rules, 1974 and agreed to remit the
> C duty on monthly designated quantum of rectified spirit 6400 litres per month @ 25.73 per litr. Hence they are legally bound to pay the duty on designated quantum of rectified spirit. The above shops were placed under Department Management due to the non payment of Kist in time and
> D D.M. arrangements made at the risk of the Original purchasers. The petitioners prayer that D.M. amounts are to be accounted towards the arrears on the date of remittance made by the D.M. agent itself cannot be considered, since a decision in this regard is to be taken by the Excise Commissioner.
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> As per the D.C.E. prepared after given credit the entire remittance made by the defaulters and the D.M. agent as stated by the petitioners including Rs.13,71,738/- remitted before the Tahsildar, Thodupuzha on 7.12.2001 as directed
> F by the Honourable High Court in O.P. Nos.10683 and 29173/01 dated 8.11.2001 as such an amount of Rs.83,26,344/- with future interest @ 18% on Rs.41,16,841/- with effect from 8.12.2001. The petitioners are legally bound to pay the amount due to Government
> G as stated above."

13. The total demand as against the respondents was calculated as under:

"DCB STATEMENT IN RESPECT OF A.S. GROUP NO.II/ 93-94 ETTUMANOOR RANGE
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Kist arrears	5075709
Duty on designated quantum	1646720
D.N. Fee	2
Cost of establishment	4000
Interest on kist	403352
Interest as quantum of Rectified spirit	125854
Interest on Kist of establishment and penal interest	492

	Principal	Interest	Total
Total Demand as on 1.4.94	6726429	539700	7266129
Deducted D.M. and duty of Rectified Spirit collected during D.M. period (242910 + 719372 – 3149288)	2609588	539700	3149288
Balance	4116841	Nil	3149288
Interest upto 12/94 (9 months)		555774	4672615
Remitted Rs.100000/- as per TR No.2066/94 dated 31.12.94 at Tahsildr, Thodupuzha		100000	100000
Interest from 1/95 to 1/01 (83 months)		455774	4572615
Total as on 11/01	4116841	5581241	9698082
Remitted Rs.1371739/- as per Receipt No.21 Book No.321 at Taluk Officer, Thodupusha dated 7.12.2001		1371738	8326344

Assistant Excise Commissioner
Kottayam."

A 14. It is not in dispute that during the period 1.4.1993 and 31.3.1994, the respondents paid a sum of Rs.41,16,841/-. A sum of Rs.31,49,288/- was also realized by the State during the said period. Appellants, it would appear from he annexure appended to the order of the Excise Commissioner dated
B 14.12.2001, evidently did not adjust the said amount of Rs.31,49,288/- from the total amount. It was done only after the judgment of the High Court. The said amount should have, in law, been adjusted as on 1.4.1994.

As the matter was pending adjudication before the High
C Court, the respondents were unable to file any such application on or before 15.7.2000 for waiver of interest or pay any amount on or before 31.8.2000.

The judgment of the High Court was passed only on
D 11.8.2000. In terms of the said judgment, the appellant were directed to inform the respondent as regards the outstanding liability. A fresh demand, therefore, was to be raised. The said order was not complied with. The said order was unsuccessfully challenged before the Division Bench. A SLP therefrom to this
E Court also failed.

15. If the benefit of the said notification could not be availed of by the respondents because of the pendency of the writ petition, in our opinion, the High Court cannot be said to have committed any jurisdictional error in passing the impugned
F judgment.

16. *Lex non cogit ad impossibillia* is a well known maxim which means that nobody can be asked to do a thing which is impossible to be performed.

G Rule 25A confers a right. How the said right is to be exercised is a matter of procedure. The procedural provisions are normally directory and not imperative. A substantial compliance of the procedural provisions ordinarily would subserve the purpose and object for which the same has been
H made.

17. A sum becomes due only when it is definite and only when a demand therefor is made. If no demand could legally be made from the respondents for the entire sum as they were entitled to adjustment of a sum of Rs.31,49,288/-, we do not see how even in equity, the appellants were entitled to ask for strict compliance of the said GOMs.

A party to the lis, it is trite, cannot take advantage of his own wrong. If the State, in law, was liable to adjust the said amount of Rs.31,49,288/-, a valid demand could have been raised only in respect of the balance sum. The High Court was not concerned with the amount of interest as the sum was required to be calculated on the amount legally due and recoverable and not on the amount specified in the notice.

18. Strong reliance has been placed on a judgment of this Court in *Solomon Antony and Ors. etc. v. State of Kerala and Ors.* [(2001) 3 SCC 694]. The said decision was rendered on the fact of the case. Therein the question which arose for consideration was as to whether the contractors were liable to pay the duty on import in relation to the unlifted portion of the designated quantum of rectified spirit as provided for in the Rules. Respondents did not disclaim their liability. They, in fact contended that the entire liability for the period between 1.4.1993 and 31.3.1994 should be taken into consideration but then for determining the actual liability the appellants were bound to give credit to each and every pie which was realized during the said period. The contention of the State, to our mind, is wholly unjust and unfair. If there was a default on the part of the respondents as a licencee, interest would be charged only for the period during which licence amount was not paid. Interest cannot be charged although no amount was due. Some amount might be due but not the entire amount on which interest is being claimed.

19. For the reasons aforementioned, there is no merit in the appeal. The appeal is dismissed with costs quantified at Rs.10,000/- (Rupees ten thousand only).

B.B.B. Appeal dismissed.