IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1885 OF 2025

Microsoft Corporation (India) Pvt. Ltd.
Having its corporate office at
Winder Building, 4th Floor,
Near Mumbai University
OFF CST Road, Kalina
Santacruz (E), Mumbai 400098. … Petitioner

Versus

1. The State of Maharashtra,
   Through the Government Pleader
   High Court, Mumbai.

2. The Deputy Commissioner of State
   Tax, (E-611), LTU-4, Mumbai having
   his office at 4th Floor, GST Bhavan,
   Mazgaon, Mumbai-400010

3. The Commissioner of Sales Tax,
   GST Bhavan, Mazgaon,
   Mumbai 400 010

4. The Joint Commissioner of State Tax
   (Appeals) III, 3rd Floor, A Wing,
   Suburban State GST Bhavan,
   Bandra-Kurla Complex, Bandra (East),
   Mumbai-400 051 …. Respondents

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Adv. Prasad Paranjape i/b. Lumiere Law Partners, for the petitioner.

Ms. Jyoti Chavan, Addl.G.P. a/w Mr. Himanshu Takke, AGP, for the respondent-State.

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CORAM : M. S. KARNIK &
SANDESH D. PATIL, JJ.

DATE : 10th SEPTEMBER 2026

JUDGMENT (PER M. S. KARNIK, J.) :

1. The writ petition challenges two Orders in Appeal dated 14th February 2025, one under the Maharashtra Value Added Tax Act, 2002 ("MVAT Act" for short) and the other under the Central Sales Tax Act, 1956 ("CST Act", for short) passed by respondent No.4 for the Financial Year 2013-2014.

2. The grievance of the petitioner is that the respondents have confirmed the following demands which are arbitrary, contrary to the statutory provisions of law and therefore unsustainable :-

Table A

Sr. No.	Particular	VAT Assessment (Rs.)	CST Assessment (Rs.)
1	Interest under Section 30(2) of MVAT Act r.w. Section 9(2) of CST Act	1,26,35,766	14,06,997
2	Tax on Mismatch in figures of Annexure J1 & J2 alongwith Interest u/s. 30(3) of MVAT Act	11,66,598	
	Total demand confirmed by Impugned Orders-in-Appeal	**1,38,02,364**	**14,06,997**

3. The facts of the case in brief are that the petitioner is engaged *inter alia* in the business of sale and distribution of software products, along with allied services such as marketing support and product support services. The petitioner voluntarily obtained registration under the MVAT Act and CST Act with effect from 3rd September 2012.

4. For the FY 2012-2013, being the first year of operations in the State of Maharashtra, the petitioner filed returns in accordance with the statutory requirements and discharged its tax liability. The total CST liability for the said year was Rs.19,200/-, while there was no MVAT liability.

5. Since the tax liability in the preceding year was below the prescribed threshold of Rs.1,00,000/-, in terms of Rule 17(4) read with Rule 41 of the Maharashtra Value Added Tax Rules, 2005 ("MVAT Rules, 2005", for short) the petitioner became eligible to file six monthly returns for Financial Year 2013-2014. The provisions of Section 20 of the MVAT Act with respect to filing of returns and Section 32 of the MVAT Act with respect to payment

of tax and corresponding rules are extracted below for a facility of convenience :-

Table B

Sr. No.	Relevant Section of MVAT Act, 2002	Relevant Rules of MVAT Rules, 2005
1	**Section 20: Returns and self-assessment** (1)(a) Every registered dealer shall file correct, complete and self-consistent return in such form, by such date, for such period and to such authority as may be prescribed. Different types of returns may be prescribed for different classes of dealers.	**Rule 17: Submission of returns** (4) Subject to the other provisions of this rule and of rule 18. - (b) every registered dealer to whom clause (a) does not apply and, - (i) whose tax liability during the previous year was rupees one lakh or less or, as the case may be, who had no entitlement for refund, or (ii) whose entitlement for refund during the previous year was ten lakhs or less, shall file a six-monthly return within thirty days from the end of the period of six months to which the return relates.
2	**Section 32: Payment of tax** (1) Tax shall be paid in the manner herein provided, and at such intervals as may be prescribed. (2) A registered dealer furnishing returns as required by section 20 shall pay into the Government treasury, in such manner and at such intervals as may be prescribed, the amount of tax due from him for the period covered by a return which he is required to file along with the amount of interest and any other sum payable by him	**Rule 41: Time for Payment** (1) Every dealer required to furnish a return including an electronic return under rule 17 or 18 whether monthly, quarterly or six monthly or for any other period, or, as the case may be, a fresh or revised return in respect of any of the said periods shall, on or before the date specified for submission of such return, pay into Government treasury, the tax due from him for the period covered by such return and interest, if any, payable by him under this Act. Where the return is not filed within the prescribed time, the dealer shall pay the late fee in addition to the tax and interest, if any, due from him.

6. In compliance with the said statutory provisions, the petitioner filed six monthly returns for FY 2013-2014 under both the MVAT Act and CST Act and discharged tax amounting to approximately Rs.41.35 crores (taxable turnover of Rs.981 crores) within the due dates prescribed for such six monthly returns. There was no delay in payment of tax vis-a-vis the due dates prescribed under Rule 41 of the MVAT Rules. In respect of one additional self-assessed CST liability arising due to non-receipt of certain Form C declarations, the petitioner voluntarily paid tax of Rs.34,55,622/- along with interest of Rs.5,19,724/- which fact is not disputed.

7. Subsequently, assessment proceedings were initiated and culminated in two Assessment Orders dated 31st March 2018, whereby certain demands were confirmed, *inter alia*, in relation to alleged disallowance of credit notes and non-submission of Form C declarations. The petitioner filed statutory appeals before respondent No.4.

8. During the appellate proceedings, the petitioner was

issued show cause notice dated 28th October 2024 by respondent No.4 proposing to levy interest under Section 30(2) of the MVAT Act for delayed payment of tax. It was opined that it is hyper technical to rely on amount of previous year payment as prescribed under Rule 17 of MVAT Rules, 2005 and file six monthly returns and make payment accordingly when the petitioner's case is assigned to Large Taxpayers Unit and the petitioner's tax payment during the year is more than Rs.40 crores.

9. The petitioner filed a reply vide letter dated 10th December 2024 and attended personal hearing on 13th December 2024 before the respondent No.4. By the impugned orders dated 14th February 2025, the respondent No.4 :

(a) Levied interest under Section 30(2) of the MVAT Act for VAT and CST Assessments on the premise that tax ought to have been paid on a monthly basis instead of six-monthly basis; and

(b) Demanded tax and interest on alleged disallowance of credit notes/mismatch in Annexure J1 and J2 under the MVAT assessment.

10. The respondent No.4 accepted that the petitioner was legally entitled to file six monthly returns, yet levied interest under Section 30(2) of the MVAT Act by treating the petitioner as liable to pay tax on a monthly basis, solely on the ground that the aggregate tax paid during the year of assessment was substantial. Respondent No.4 also confirmed the demand with interest with respect to mismatch between certain figures submitted during assessment.

11. In the submission of learned counsel for the petitioner, the impugned orders *inter alia* proceeds on the premise that filing six monthly returns, though authorised by the statute, resulted in "unjust enrichment" and was contrary to the purported legislative intent, and therefore statutory rules could be disregarded. This approach according to learned counssel is erroneous and contrary to law.

12. **The submissions of learned Additional Government Pleader for the respondents :**

(A) Opposing the writ petition a preliminary objection is raised that the petitioner has an alternative efficacious remedy which has not been exhausted. The petitioner has a remedy of preferring a Second Appeal under Section 26(2) before the Maharashtra State Tax Tribunal ("Tribunal", for short). Reliance is placed on the decision in Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others[1] to submit that only in the exceptional circumstances stipulated in the judgment can the High Court entertain a writ petition despite existence of an equally efficacious alternative remedy. The impugned orders do not suffer from want of jurisdiction as levy of interest under Section 30(2) is squarely within the jurisdiction of respondent No.4.

(B) M/s. McDowell and Company Limited vs. Commercial Tax Officer[2] lays down the principle of tax planning vs. colourable device. It is held that tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods.

(C) Even assuming if the petitioner’s challenge to the levy of

1 (1998) 8 SCC 1
2 (1985) 3 SCC 543

interest under Section 30(2) is entertainable, the order in appeal is a composite order dealing with multiple heads of demands and at least two of these heads are admittedly appealable and hence the petitioner must first approach the Tribunal.

(D) The petitioner's reliance on Section 85(2)(b-3) of the MVAT Act to argue that no appeal lies against the interest levy under Section 30(2) is wholly misconceived. The said provision bars an appeal only against an order solely regarding interest under Section 30(2)/(4). Where the interest under Section 30(2) is one of several heads of demand in a composite assessment order or appellate order, the bar under Section 85(2)(b-3) does not apply, and the entire order is amenable to the appellate jurisdiction of the Tribunal.

(E) The petitioner's argument that the executive cannot defeat the statutory bar under Section 85(2)(b-3) by drafting a composite order is unsustainable. The composite order in the present case is not a drafting artifice; it is a direct consequence of the fact that the petitioner's credit notes disallowance and the consequent interest liability under Section 30(3) flow from the same transaction and assessment year. The Tribunal would have full jurisdiction to examine all the heads of demand, including the interest under Section 30(2) in the Second Appeal.

(F) The impugned orders are speaking, reasoned and within jurisdiction after affording the petitioner multiple opportunities of hearing.

13. **So far as the device adopted by the petitioner to avoid its liability, the submission of the respondents is as under** :

(A) The petitioner has admittedly filed six monthly returns under Rule 17(4) of the MVAT Rules for FY 2013-2014, on the strength of having paid only Rs.19,200/- as GST (against a single transaction of Rs.1,72,800/-) and NIL MVAT in the preceding FY 2012-2013.

(B) The petitioner is an admitted Large Taxpayer Unit (LTU) dealer. The petitioner collected and paid tax aggregating Rs. 41,35,59,885/- in FY 2013-2014, comprising Rs.38,07,38,432/- under MVAT Act and Rs.3,28,21,453/- under CST. Gross sales of the year were Rs.9,81,82,06,182/-.

(C) The petitioner filed a six monthly returns for the period 1st April 2013 - 30th September 2013 on 28th October 2013 that is, 160 days after the end of the period for which tax was collected from customers in April 2013 alone. The petitioner collected Rs.1,44,74,873/- as tax from customers in April 2013, which was remitted to the Government only on 28th October 2013.

(D) The petitioner thus used the technical benefit of Rule 17(4) which determines periodicity solely on the basis of the previous year's tax to defer the payment of substantial tax revenue by up to 160 days in some months. The impugned interest under Section 30(2) of Rs.1,26,95,766/- is a mandatory, compensatory and statutory charge for the use of Government revenue during the period of deferment, and is levied under express statutory authority.

(E) This Court has consistently held that Rule 17 periodicity must be applied in its letter and spirit and that the period for payment of tax under Section 30(2) of the MVAT Act is determined by Rule 41, which prescribes the last date for filing the return as the due date for payment. This Court in M/s. Oberoi Constructions Limited vs. State of Maharashtra vide order dated 11th November 2024 in Writ Petition No.3643 of 2018 affirmed this principle and upheld the levy of compensatory interest under Section 30(2) where the assessee had filed consolidated returns in deviation of the prescribed periodicity.

(F) The petitioner has placed reliance on Trade Circular No.30T of 2006 dated 10th October 2006 and Trade Circular No.26T of 2009 dated 1st October 2009 to argue that the periodicity is determined solely by the previous year's tax liability. These Trade Circulars do not override the statutory provisions for they merely operationalised the rule. The petitioner's attempt to derive an entitlement to withhold Rs.41,35,59,885/- of the Government revenue for periods up to 160 days on the basis of these Circulars is wholly unsustainable.

(G) Reliance placed by the petitioner on Commercial Taxes Officers vs. Bombay Machinery Store[3] is misplaced. In *Bombay Machinery Store* (supra), the Hon'ble Supreme Court held that

3 2020 (4) TMI 769 (SC)

where the language of a statutory provision is plain and unambiguous, effect must be given to it, and a tax authority cannot rewrite or supply words to the statute on its own perception of legislative intent. This principle supports the respondents' case that the statute clearly contemplates compensatory interest for delayed payment, and the Rule 17 periodicity cannot be read down to defeat the levy of interest.

14. **The respondents submission that the Voluntary Registration Scheme is a colourable device manufactured by the petitioner :**

(A) The entire foundation of the petitioner's claim is built upon a carefully engineered arrangement designed to secure the periodicity of six-monthly filing under the cover of the Voluntary Registration Scheme ("VRS", for short) under the MVAT Act. Once this foundational design is appreciated, the Writ Petition unravels and this Court should have no hesitation in recording its finding that the petition is frivolous and an abuse of the process of this Court.

(B) The scheme of registration is summarised as under :

Table C

Category	Total turnover of sales to exceed	Total Turnover of sales or purchases of taxable goods not less than	Other Conditions
Importer	Rs.1,00,000/-	Rs.10,000/-	No minimum amount of import prescribed
All other dealers	Rs.5,00,000/-	Rs.10,000/-	NIL
Voluntary Registration	NIL	NIL	Payment of Rs.5,000/- as non-refundable fees, w.e.f. 16.08.2007; and Rs.25,000/- (payable by DD or PO w.e.f. 01.01.2009)

(C) A dealer applying for voluntary registration becomes liable to pay tax from the date of registration. The VRS is designed to enable dealers below the mandatory threshold to opt for registration in advance, primarily with a view to claim input tax credit or to enable inter-state sales. It is not intended to be a route by which a dealer, who subsequently carries on large-scale business operations in the succeeding year, artificially manufactures a “sub-threshold” prior-year liability to claim a deferral periodicity for the next year.

(D) The settled distinction between Regular (Mandatory) Registration and Voluntary Registration Scheme (VRS) is as under :

Table D

Parameter	Regular (Mandatory) Registration	Voluntary Registration Scheme (VRS)
Trigger Condition	When dealer's annual turnover crosses the statutory threshold; application to be filed within 30 days of crossing the threshold.	Turnover below mandatory threshold; can apply at any time before crossing the threshold.
Registration Fees	Lower administrative fee (around Rs 500/-).	Higher non-refundable fee of Rs.5,000/ (subsequently Rs.25,000/- w.e.f. 01.01.2009).
Security Deposit	Not demanded in standard cases.	Interest-free refundable security deposit of Rs.25,000/-.
Tax Liability Date	Liability arises only from the date turnover exceeds the threshold.	Liability arises immediately from the date of registration, regardless of low or zero turnover.
Commencement Condition	No specific period prescribed.	Business must generally commence within 6 months of obtaining voluntary registration, failing which the certificate is liable to be cancelled.

(E) The petitioner obtained registration w.e.f. 3rd September 2012 under the Voluntary Scheme, without crossing any of the mandatory thresholds. The petitioner then deliberately structured its transactional activity during FY 2012-13 by effecting only one single, minuscule inter-State transaction during the quarter 1st

October 2012 to 31st December 2012, of a gross value of Rs.1,73,800/- and net taxable value of Rs.1,53,600/-, on which it collected and remitted a paltry CST of Rs.19,200/-. The petitioner then filed quarterly returns for the first year of registration in compliance with Rule 18. Apart from this single transaction, there was no other transaction for the rest of the period up to 31st March 2013. The petitioner having registered no MVAT transactions and having remitted a near-negligible CST liability, was, by design, planning to keep its prior-year tax below the threshold prescribed under Rule 17 for qualifying for six-monthly filing in FY 2013-14.

(F) The petitioner's submission that it was "entitled" to file six-monthly returns for FY 2013-14 under Rule 17(4) of the MVAT Rules, on the strength of the prior-year tax of Rs.19,200/- is wholly misconceived. Rule 17(4) prescribes the periodicity based on the output tax liability of the immediately preceding year. The petitioner, knowingly and with intent, structured its registration under VRS and conducted a token, nominal transaction in FY 2012-13 to manufacture a prior-year tax figure below Rs.1 lakh, in order to claim six-monthly periodicity for FY 2013-14. The whole object of the scheme was to defer the payment of collected tax in FY 2013-14, a year in which the petitioner admittedly made a turnover of approximately Rs.981 crores and collected tax of approximately Rs.42 crores under MVAT and CST combined. This is borne out by the fact that the petitioner filed its first six-monthly return for the period 1st April 2013 to 30th September 2013 only on 28th October 2013, thereby deferring remittance of April 2013 tax for 160 days, despite having collected the same from customers in April 2013 itself.

(G) The petitioner's case is therefore plainly covered by the judgment of the Hon'ble Supreme Court in *M/s. McDowell and Company Limited* (supra).

(H) The above principle is directly applicable to the present case. The petitioner cannot be permitted to contend that its structured registration under the VRS designed solely to enable six-monthly filing periodicity, was anything but a colourable device to defer the payment of substantial tax revenue of approximately Rs.41 crores for periods of up to 160 days per month. The petitioner's structure and conduct demonstrate a clear, orchestrated scheme, which falls squarely within the observations of the Hon'ble Supreme Court in *M/s. McDowell and Company Limited* (supra) that colourable devices are impermissible, even if they are (technically) within the letter of the law.

15. **The petitioner's conduct demonstrates the following unmistakable features of a colourable device** :

Step 1 : Voluntary registration under VRS on 3rd September 2012 without any business activity;

Step 2 : Effecting one single, token, nominal CST transaction of Rs.1,73,800/- in FY 2012-13 to generate an output liability figure of Rs.19,200/-;

Step 3 : Filing quarterly returns for FY 2012-13 (mandatory under Rule 18 for first year of registration);

Step 4 : Claiming six-monthly periodicity for FY 2013-14 under Rule 17(4), based on the manufactured "low" prior-year tax;

Step 5 : Grossing sales of Rs.981 crores in FY 2013-14 and collecting tax of approximately Rs.42 Crores, while pocketing the same in the business without remittance to Government Treasury for periods of up to 160 days;

Step 6 : Filing six-monthly returns only on 28th October 2013 and 26th April 2014, thereby remitting the collected tax in a deferred and delayed manner.

16. The entire foundation of the petitioner's claim is built upon a colourable device, as that term is understood in the binding precedent of the Hon'ble Supreme Court in *M/s. McDowell and Company Limited* (supra). The Writ Petition is frivolous and an abuse of the process of this Court.

17. Section 30(2) of the MVAT Act provides for mandatory, compensatory interest at the rate of 1.25% per month (simple interest) on the amount of tax the petitioner has not paid within the time specified by or under the Act.

18. The petitioner's own computation shows that the tax collected in April 2013 (Rs.1,44,74,873/-) was remitted only on 28th October 2013 after a delay of 160 days. This delay constitutes a clear default under Section 30(2) and the levy of interest is squarely attracted.

19. The petitioner's reliance on Rule 17(4) read with Rule 41 to argue that the tax was paid "within the time specified by or

under the Act" is unsustainable. Rule 41 merely prescribes the last date for filing the return, for it does not absolve the dealer from paying tax collected from customers within the time prescribed under Section 32 of the MVAT Act. Section 32 obliges every dealer to pay the tax due at the time of filing the return, but does not contemplate deferment of payment of tax already collected from customers for arbitrary periods.

20. **So far as the compensatory interest is concerned, the submissions of the respondent are as under** :

(A) The interest under Section 30(2) is compensatory in nature. It compensates the Government for the loss of use of revenue during the period of deferment.

(B) The quantum of interest Rs.1,26,95,766/- represents approximately 3% of the total tax liability of Rs.41,35,59,885/- for FY 2013-14. This is far below the rate of 1.25% per month (15% per annum) prescribed under Section 30(2). The levy is therefore not excessive.

(C) The petitioner's characterisation of the interest levy as "approximately 92% of the total aggregate demand" is a misleading presentation. The total demand under the Impugned Orders is Rs.1,47,49,637/-, of which the interest under Section 30(2) constitutes approximately 86%. The tax and interest under Section 30(3) on the credit notes demand constitute the remainder. The petitioner's arithmetic selectively excludes the CST order and ignores the dropped Form C demand of Rs.1,42,19,224/- (which resulted in a refund of Rs.55,65,609/- to the petitioner).

21. **<u>So far as the credit notes disallowance is concerned, the submissions of the respondents are as under</u>** :

(A) The petitioner has failed to discharge its burden of proving that the credit notes were correctly issued and accounted for. The petitioner produced a reconciliation statement and a ledger confirmation from M/s. HCL Infosystems Ltd. (accounting for approximately 85% of the differential).

(B) The respondent No.4 examined the reconciliation and rejected it for the reasons recorded in the Impugned Order. The petitioner's submission that the reconciliation was rejected "merely because it was at variance with the findings recorded in the original VAT Assessment Order" is incorrect. The reconciliation was rejected on its own merits, the ledger confirmation from HCL Infosystems could not be independently verified, and the customer's reporting in Annexure J2 could not be reconciled with the petitioner's books.

(C) The petitioner has not disputed the disallowance of credit notes in the writ petition on merits, the challenge is confined to the maintainability of the writ petition and the alleged violation of natural justice that the disallowance is well-founded on facts and law.

22. For convenience learned Additional Government Pleader placed on record the chart indicating the consolidated demand summary which reads thus :

Table E

Sr.	Head of Demand	Act/Section	Amount (Rs.)	Status
1	Tax - disallowance of credit notes (MVAT)	MVAT Act	6,50,822	Confirmed
2	Interest on credit notes demand	Section 30/3), MVAT Act	5,15,776	Enhanced & confirmed
3	Interest for delayed payment (VAT) - six-monthly filing	Section 30(2), MVAT Act	1,26,95,766	Confirmed

4	Tax - non-submission of Form C (CST)	CST Act r/w MVAT Act	1,42,19,224	**Dropped – refund of Rs.55,65,609/- granted**
5	Interest for delayed payment (CST)-gross	Section 9(2) CST r/w Section 30(2) MVAT Act	14,06,997	Confirmed (gross)
6	Less : Self-assessed interest paid by Petitioner on 31.03.2015	----	(5.19.724)	Adjusted
7	Net CST interest after adjustment	----	8.87.273	Net confirmed
8	Penalty	----	Nil	No penalty imposed
Total Net Confirmed Demand under challenge in WP No.1885 of 2025			**Rs. 1,47,49,637/-**	**Under challenge**

CONSIDERATIONS

23. We have heard learned counsel at length. So far as the preliminary objection to the maintainability of the writ petition when alternative efficacious remedy is available, the Hon'ble Supreme Court in *Whirlpool Corporation* (supra) held that the High Court would not entertain a writ petition where an equally efficacious alternative remedy is available, unless the case falls within one of the recognised exceptions, namely : (i) breach of fundamental rights; (ii) violation of the principles of natural justice; (iii) orders passed without jurisdiction; (iv) orders which

are patently erroneous on the face of the record; (v) where the appeal remedy is unavailable or futile; or (vi) where questions of public interest are involved.

24. The proposition that the compensatory nature of interest under sales tax legislation is to compensate the government for use of revenue, and is not a penalty is not seriously disputed. Interest under Section 30 of the MVAT Act is compensatory and mandatory; and cannot be waived by the assessing authority. The mandatory nature of interest under tax statutes is automatic upon default; there is no discretion with the assessing authority.

25. So far as composite orders are concerned, it is well settled that where an order deals with multiple heads of demand, the entire order is appealable even if one head relates to a non-appealable item.

26. So far as the binding nature of Trade Circulars, the principle is that Trade Circulars are binding on the revenue and cannot be disregarded but Trade Circulars do not override statutory provisions.

27. Thus, apart from the maintainability of the writ petition in view of the existence of availability of alternate efficacious remedy to challenge the impugned orders, the main thrust of the respondents case is the colourable device manufactured by the petitioner to avoid payment of tax resorting to dubious methods. It is the respondents case that the petitioner with a view to make the tax planning look legitimate within the framework of law, has used a colourable device as a part of its tax planning to avoid the payment of tax thus causing deferment of substantial tax revenue of approximately Rs.41 crores for the periods of up to 160 days per month. It is the respondents case that the petitioner's conduct demonstrates a clear, orchestrated scheme, which falls squarely within the observations made by the Hon'ble Supreme Court in *M/s. McDowell and Company Limited* (supra) that colourable devices are impermissible, even if they are within the letter of the law.

28. We have no hesitation in saying that having gone through the impugned orders and heard the submissions of learned Additional Government Pleader, at the first blush the submissions

of the learned Additional Government Pleader sounded attractive.

29. Learned counsel for the petitioner submitted on instructions that the petitioner is not pressing in this writ petition, relief towards demand of Rs.11,66,598/- (tax of Rs.6,50,822/- and interest of Rs.5,15,776) towards mismatch of numbers in the assessment documents i.e. at Sr. No.2 of the table A at paragraph 2.

30. So far as levy of interest under Section 30(2) of the MVAT Act is concerned, let us consider if the same is without jurisdiction. A plain language of Section 30(2) of the MVAT Act indicates that a registered dealer who has failed to pay the tax within the time specified by or under the Act, shall be liable to pay interest. Therefore, *sine qua non* for levy of interest, is failure to pay the tax within the time specified in the Act.

31. The provisions with respect to payment of tax are provided in Section 32 of the MVAT Act read with Rule 41 of the MVAT Rules which prescribe that the tax be paid on or before the date specified for submission of return. Submission of return is

governed by the provisions of Section 20 of the MVAT Act read with Rule 17 of the MVAT Rules which prescribe that every registered dealer whose tax liability during the previous year was rupees one lakh or less shall file a six-monthly return within thirty days from the end of the period of six months to which the return relates.

32. The petitioner's tax liability for the previous year i.e. 2012-13 was undisputedly less than rupees one lakh and accordingly was entitled to file six monthly return in the Financial Year 2013-14 and thus was required to pay tax on a six monthly basis. It is significant to note that the impugned order records that the petitioner could file six monthly return in view of the relevant provisions of Rule 17 of MVAT Rules, 2005. However, the impugned order then proceeds to justify the levy of interest on the reasoning that the petitioner has unjustly enriched itself by resorting to dubious method of tax planning. Though the petitioner has paid the tax in terms of what is provided in the provision, nonetheless the reason why the respondents find fault with the device used by the petitioner is that it was never the

intention of legislature while framing the said rules to grant any such unwarranted benefit in undeserving cases. The respondent No.4 observes that the provisions are correctly followed by the petitioner but then proceeds to perceive the tax planning as a dubious device adopted by the petitioner to avoid the payment of tax within the period mandated by law had this device not been resorted to. We are therefore of the opinion that though the theory of the respondent No.4 as regards unjust enrichment sounds attractive, but there is hardly any material on record, or sanction of law in support to draw such an inference. We are of the considered view that the order is passed on the surmises of the respondent No.4.

33. The petitioner has placed reliance on the decision of the Hon'ble Supreme Court in *Bombay Machinery Store* (supra) which holds that "the tax administration cannot give its own interpretation to legislative provisions on the basis of their own perception of trade practise. This administrative exercise, in effect, would result in supplying words to legislative provisions, as if to cure omissions of the legislature."

34. The Hon'ble Supreme Court in Krishi Upaj Mandi Samiti, New Mandi Yard, Alwar vs. Commissioner of Central Excise and Service Tax, Alwar[4] has held that "it is the plain language of the provision that has to be preferred, where the language is plain and is capable of determining a defined meaning. Strict interpretation to the provision is to be accorded to each case on hand."

35. The impugned orders expressly acknowledge compliance with Rule 17 and Rule 41 of the MVAT Rules. However, legislative intent and perceived delay is the reason why the finding is recorded of unjust enrichment. In our considered view the legislative intent supplied does not have the sanction of law and in any case there are absolutely no materials to support the inferential finding that a dubious method has been adopted for deferring the payment of tax. The present is a case where the tax has been paid in terms of the timeline prescribed by the Act and the rules as indicated earlier. The finding that the petitioner has used the provisions as a device to arrange the affairs of the company in such a manner so as to cause unjust enrichment to

4 2022 (58) GSTL 129 (SC)

itself at the cost of the revenue is neither having the sanction of law nor is supported by any cogent materials. The respondent No.4 has virtually read down the delegated legislation having the force of law. Once the Rules prescribe the periodicity of filing return and due date for payment of tax, the same are binding both on the assessee and the respondents.

36. The impugned order holds that by deferring the tax liability, the petitioner has unjustly enriched itself. Let us consider this argument in the context of indirect taxation. All indirect taxes are collected first from the consumer and then remitted to the government by the assessee. Thus, the revenue which is to be remitted with the government is with the assessee. To control any delay in remittance, the legislature prescribes the periodicity of paying such taxes. The respondent No.4 has no jurisdiction to decide or alter such periodicity based on his own surmises or perceptions unless supported by very cogent materials or the sanction of law to arrive at such a finding. To assume that the petitioner has arranged its affairs in such a manner only with a view to derive advantage of the statutory provisions, the basis

being the manifold increase in the gross collection for the next year, can at the highest be a perception formed by the respondents. Without there being anything more, the provision will have to be construed in favour of the petitioner.

37. No doubt in *M/s. McDowell and Company Limited* (supra) the Hon'ble Supreme Court holds in paragraphs 43, 44 and 45 as under :-

> "43. The Gujarat High Court in the case of CIT v. Sakarlal Balabhai, said :
>
> > Tax avoidance postulates that the assessee is in receipt of amount which is really and in truth his income liable to tax but on which he avoids payment of tax by some artifice or device. Such artifice or device may apparently show the income as accruing to another person, at the same time making it available for use and enjoyment to the assessee as in a case falling within Section 44-D or mask the true character of the income by disguising it as a capital receipt as in a case falling within Section 44-E or assume diverse other forms. . . . But there must be some artifice or device enabling the assessee to avoid payment of tax on what is really and in truth his income. If the assessee parts with his income producing asset, so that the right to receive income arising from the asset which theretofore belonged to the assessee is transferred to and vested in some other person, there is no avoidance of tax liability : no part of the income from the asset goes into the hands of the assessee in the shape of income or under any guise. . . .
>
> This decision has been affirmed by this Court in CIT v. Vadilal Lallubhai.
>
> 44. We may also recall the observations of Viscount Simon in Latilla v. I.R. :

> Of recent years much ingenuity has been expended in certain quarters in attempting to devise methods of disposition of income by which those who were prepared to adopt them might enjoy the benefits of residence in this country while receiving the equivalent of such income, without sharing in the appropriate burden of British taxation. Judicial dicta may be cited which point out that, however elaborate and artificial such methods may be, those who adopt them are "entitled" to do so. There is, of course, no doubt that they are within their legal rights, but that is no reason why their efforts, or those of the professional gentlemen who assist them in the matter, should be regarded as a commendable exercise of ingenuity or as a discharge of the duties of good citizenship. On the contrary one result of such methods, if they succeed, is of course to increase pro tanto the load of tax on the shoulders of the great body of good citizens who do not desire, or do not know how, to adopt these manoeuvres. Another consequence is that the Legislature has made amendments to our Income Tax Code which aim at nullifying the effectiveness of such schemes.

> 45. Tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges."

38. In the present case the tax planning resorted to by the petitioner is within the framework of law. Undoubtedly colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. Present is not a case where the petitioner has avoided payment of tax by resorting

to dubious methods. Present is a case where the tax has been paid. At the highest it could be said that the petitioner has made the tax planning in such a manner that it is legitimately within the framework of law.

39. The reasoning in the impugned orders that the petitioner derived an "unwarranted benefit" or stood "unjustly enriched" by paying tax on a six monthly basis, in our opinion, is not correct. The MVAT Act does not create any concept of unjust enrichment in relation to return periodicity or timing of tax payment where the dealer has acted strictly in accordance with the prescribed Rules. In the facts of the present case, payment of tax within the legally prescribed due date cannot be characterised as deferment or enrichment merely because the turnover during the relevant year was substantial.

40. In our opinion, this is a fit case where levy of interest is dehors the statutory provisions and therefore is constitutionally impermissible and in violation of Article 265 of the Constitution of India. The interest is a fiscal levy and can be imposed only with the

authority of law.

41. The present writ petition is maintainable as no efficacious alternate statutory remedy lies against an order passed under Section 30(2) in view of Section 85(2)(b-3) of the MVAT Act which states that no appeal shall lie against an order demanding interest payable under any provisions of the MVAT Act. As indicated earlier the petitioner has already given up the challenge in relation to alleged disallowance of credit notes/mismatch in Annexure J1 and J2 and hence the challenge being restricted to levy of interest under Section 30(2) of the MVAT Act. We entertained the present writ petition as there is no alternate remedy available to the petitioner to challenge such levy.

42. The present writ petition is therefore allowed in terms of prayer clause (a). No order as to costs.

(SANDESH D. PATIL, J.) **(M. S. KARNIK, J.)**