IN THE SUPREME COURT OF INDIA

Civil Appeal Nos. 3257-3268 of 2019

INDIAN OIL CORPORATION LTD

Vs

STATE OF UP AND OTHERS

Ashok Bhushan & K M Joseph, JJ

Dated: April 22, 2019

U.P. Tax on Entry of Goods into Local Areas Act, 2007 - Sections 4, 12(3), 13 - U.P VAT Act, 2008 - Section 33

Keywords - interest on entry tax - compensatory payment - constructive res judicata - mutatis mutandis - receiving goods fom manufacturer

The assessee company had approached this Court challenging the liability to pay interest on the Entry Tax on the assessee under The U.P. Tax on Entry of Goods into Local Areas Act, 2007. The demanded Entry Tax having been paid by the assessee, the issue to be considered was with regard to liability to pay interest on the Entry Tax alone. In the background, Entry Tax Legislations enacted by different States including the State of U.P. came to be challenged in the High Courts questioning the very legislative competence of State Legislature to enact Entry Tax Legislations, which according to the assessee dealers violated freedom of trade, commerce and intercourse guaranteed under Article 301 and other Articles of Part XIII of the Constitution. Some of the High courts including Allahabad High Court had struck down the initial Entry Tax Legislations on the ground that it violated rights guaranteed under Part XIII of the Constitution of India.

Although, the Allahabad High Court declared it unconstitutional, the same was challenged before the Apex Court and Leave was granted. Thereafter, the Constitution Bench of this Court laid down yardstick to determine whether tax was compensatory or not. Pursuent to the Constitution Bench decision, the Allahabad High Court held that Entry Tax levied on crude oil and other goods did not fulfil the requirements of compensatory tax. Later on, in view of the interim order passed by Apex Court, the levy of Entry Tax in the State of U.P. was held to be unsustainable. Ultimately, 50% of the accrued tax arrears under the Act, 2007, came to be deposited. This Court, thus, left the determination of interest, which was to be payable by the assessee to be determined subsequently. Later on, this Court granted liberty to the assessee to question the levy of Entry Tax under Act, 2007 on the issues, which were left open in the order of the Nine Judges Bench before High Court by way of a fresh writ petition.

Having heard the parties, the Supreme Court held that,

Whether when Writ Court has expressly restricted the consideration to limited issues, then plea of constructive *res judicata* cannot be pressed in service to preclude the aggreived party from raising questions which were not expressly permitted to be argued in previous Petition - YES: SC

Whether 'receiving of goods from a manufacturer', is *sine qua non* for invokation of Section 12 of U.P Entry tax Act, 2007 and hence attracting interest on Entry tax - YES: HC

Whether the payment of interest which is contemplated u/s 33 of U.P VAT Act on the amount of tax, has to be applied with regard to the payment of Entry Tax and the interest thereon u/s 13 of U.P Entry Tax Act - YES: SC

Whether the provision by which the authority is empowered to levy & collect interest, even if construed as forming part of the machinery provisions, is substantive law - YES: SC

++ it is seen that the essence of the argument in the long drawn debate was to declare the Entry tax Act, 2007 as invalid, void and unconstitutional in so far as purports to levy entry tax on crude oil imported into India for Mathura Refinery. Further reliefs were claimed for quashing the assessment orders as well as interest also. The issue which has not been expressly permitted to be decided by judgment passed on May 04, 2018 cannot operate as res judicata in subsequent writ petition filed by the assessee where the challenge to the leviability of the interest has been raised. What Explanation 4 to Section 11 of CPC provides is that a plea which might and ought to have been taken in the earlier suit, shall be deemed to have been taken and decided against person raising the plea in the subsequent suit. Present is a case where the plea of questioning the leviability of the interest was specifically raised by the assessee in the writ petition. The Division Bench of the High Court did not entertain such pleas due to the Court having restricted the consideration to three questions only. The subsequent writ petition where plea of leviability of the interest was raised could not have been thrown on the ground of res judicata. The sequence of events and the fact of de-tagging the writ petition with the main Bunch where challenge to interest was made separately clearly indicate that the Division Bench intended not to entertain the question of liability to pay interest in the Bunch which was reserved on Nov 09, 2017. When the High Court has expressly restricted the consideration to three issues, the plea of constructive res judicata cannot be pressed in service against the assessee to preclude him from raising the question which was not expressly permitted to be argued in previous Writ Petition No.25730 of 2017;

++ the liability of the interest u/s 12(3) is confined to one particular situation and does not provide for any universal application for payment of interest. Requirement of payment of interest u/s 12(3), thus, is for a particular situation and has no application with regard to any other instance of liability to pay tax. Present is a case where assessee is not receiving any goods from any manufacturer, hence, in the present case

Section 12 has no applicability. There is no quarrel to the proposition that liability to pay a tax or interest on it has to be provided by a substantive law. The application of provisions of VAT Act, 2008 is provided by Section 13 of Act, 2007 with certain changes in points of details. Section 33 of the VAT Act, 2008 which has been mentioned to apply u/s 13 has to be applied with respect to payment and recovery of tax. Thus, the payment of interest which is contemplated u/s 33 on the amount of tax has to be applied with regard to the payment of Entry Tax and the interest thereon. Even if provision of Section 33 of VAT Act, 2008 to be treated as machinery provision which is to be applied by virtue of Section 13 of Act, 2007, the machinery provision has to be interpreted in a manner so as to make the liability effective and treated to be substantive law. In the present case, Section 33 has been made applicable by virtue of Section 13 mutatis mutandis. It is to be noted that the provision by which the authority is empowered to levy and collect interest, even if construed as forming part of the machinery provisions, is substantive law. However, what shall be the effect of deposit of Entry Tax in separate interest-bearing account in pursuance of the interim order of this Court dated Feb 09, 2004 in Civil Appeal Nos.997-998 of 2004, needs to be considered by this Court.

Assessee's appeal allowed

JUDGEMENT

Per: Ashok Bhushan:

These appeals have been filed against the Division Bench judgment of Allahabad High Court dated 22.11.2018 dismissing the writ petitions filed by the appellant questioning the demand notices issued by the respondent demanding interest on Entry Tax from the appellant.

2. These appeals centres round the issue regarding liability to pay interest on the Entry Tax on the appellant under The U.P. Tax on Entry of Goods into Local Areas Act, 2007 (hereinafter referred to as "Act, 2007") The demanded Entry Tax having been paid by the appellant, the issue to be considered is with regard to liability to pay interest on the Entry Tax alone.

3. The Entry Tax Legislations in the State of U.P. as well as in other States of the country have a long history of litigation. The Entry Tax Legislations enacted by different States including the State of U.P. were challenged in the High Courts questioning the very legislative competence of State Legislature to enact Entry Tax Legislations, which according to writ petitioners violated freedom of trade, commerce and intercourse guaranteed under Article 301 and other Articles of Part XIII of the Constitution of India. Some of the High courts including Allahabad High Court have struck down the initial Entry Tax Legislations on the ground that it violates rights guaranteed under Part XIII of the Constitution of India.

4. For deciding the issues, which have arisen in these appeals, it is necessary to notice the history of litigation in so far as State of U.P. is concerned. Levy of tax on entry of any goods into a local area was introduced by the U.P. Tax on Entry of Goods Ordinance, 2000, w.e.f. 01.11.1999, which Ordinance was replaced by the U.P. Tax on Entry of Goods Act, 2000, which Act was deemed to have come into force on 01.11.1999. The Entry Tax was also imposed on crude oil. The appellant filed a Writ Petition No. 251 of 2003 before the Allahabad High Court challenging the validity of levy of Entry Tax on crude oil. The Allahabad High Court vide its judgment and order dated 27.01.2004 declared Act No. 1 of 2000 as violative of Articles 301 and 304 of the Constitution of India and, thus, was held to be ultra vires. The State of U.P. filed a Special Leave Petition against the judgment dated 27.01.2004, which was later re-numbered as Civil Appeal Nos. 997-998 of 2004. This Court on 09.02.2004 passed following interim order:-

"Issue notice on the application for impleadment.

Leave granted.

The operation of the impugned judgment is stayed subject to the appellant's depositing all taxes that may be realized by the appellant from the respondents after 27.1.2004 in a separate interest bearing account. This amount and the interest accrued thereon shall be held subject to the further orders of this Court.

SLP (C) No.3033/3004 Delink this matter."

5. The Constitution Bench of this Court in *Jindal Stainless Ltd. (2) and Another Vs. State of Haryana and Others, (2006) 7 SCC 241* = *2006-TIOL-34-SC-MISC-CB* laid down the yardsticks to determine whether tax was compensatory or not. Constitution Bench reiterated that the doctrine of "direct and immediate effect" on the trade and commerce under Article 301 as propounded in *Atiabari Tea Co. Ltd. Vs. State of Assam, AIR 1961 SC 232* and the working test enunciated in *Automobile Transport (Rajasthan) Ltd. Vs. State of Rajasthan, AIR 1962 SC 1406* for deciding whether a tax is compensatory or not was to continue to apply. Constitution Bench held that accordingly, the constitutional validity of various local enactments which are the subject matters of pending appeals, special leave petitions and writ petitions will now be listed for being disposed of in the light of this judgment.

6. Pursuant to Constitution Bench judgment, the matters were listed on 14.07.2006, when this Court permitted the parties to place the relevant materials in the concerned writ petitions within two months before the respective High Courts, which were to deal with the basic issue as to whether the impugned levy was compensatory in nature. The High Courts were requested to decide the issues within five months from the date of receipt of the order. After the above orders of this Court, the Allahabad High Court was pleased to decide the questions raised on 08.01.2007

holding that Entry Tax levied on crude oil and other goods does not fulfil the requirements of compensatory tax as laid down by this Court. On 17.04.2007, this Court in *C.A. Nos. 997-998 of 2004 – State of U.P. & Ors. Vs. M/s. Indian Oil Corporation Ltd. & Etc.,* passed an order in the following terms:-

"....The High Court's orders, wherever it has been passed in favour of the tax payers, shall operate so far as the writ petitioners are concerned...."
7. The effect in view of the above interim order was that the levy of Entry Tax in the State of U.P., thus, was held to be unsustainable. The State of U.P. promulgated the U.P. Tax on Entry of Goods into Local Areas Ordinance on 24.09.2007 (U.P. Ordinance No. 35 of 2007) with retrospective effect from 01.11.1999 repealing the earlier Act No.1 of 2000 and re-enacting the same w.e.f. 01.11.1999. The Statement of Objects and Reasons, which necessitated the issuance of the aforesaid Ordinance was as follows:-

"STATEMENT OF OBJECTS AND REASONS

The Uttar Pradesh Tax on Entry of Goods Act, 2000 (U.P. Act No. 12 of 2000) was enacted to provide for the levy and collection of tax on entry of goods into a local area for consumption, use or sale therein. The said act was declared ultra vires by the Hon'ble High Court of Judicature at Allahabad in writ petition No. 251/2003 M/s Indian Oil Corporation Limited Versus State Government in its Judgment dated January 27, 2004. The State Government filed the special leave petition No. 2757-2758/2004 against the said Judgement. The Hon'ble Supreme Court in the said special leave petition stayed the operation of the said Judgement of the High Court on February 9, 2004 with the condition that the amount realised as entry tax shall be deposited in the separate interest bearing account. Thereafter in the case of Jindal Steel Limited Versus State Government and others, the Hon'ble Supreme Court required the High Court to submit its report regarding whether the entry tax under the said act falls in the category of compensatory tax or not. The High Court in its judgment dated January 8, 2007 held that the entry tax under the said act does not fall in the category of compensatory tax. The same Judgement had been delivered by the High Court in the case of the Indian Oil Corporation Limited and other similar cases. A special leave petition was filed in the Supreme Court by the State Government against the Judgement of the High Court dated January 8, 2007. Since M/s Indian Oil Corporation Limited was demanding for the refund of Rs. 3022-58 crore on the basis of the interim order dated April 17, 2007 of the Apex Court, the State Government was considering to enact afresh the said Act retrospectively after the Judgement of the constitution Bench of the Supreme Court. In the meantime the Bihar Entry Tax Act was held to be valid by the Patna High Court. It was therefore decided to make a Law with retrospective effect by removing the short-comings pointed out in the Judgement of the High Court of Judicature at Allahabad and in the light of observations with respect to the compensatory tax made by the Constitutional Bench of the

Supreme Court and on the basis of the provisions of the Bihar Entry Tax Act, which had been held valid by the Patna High Court.

Since the State Legislature was not in session and immediate legislative action was necessary to implement the aforesaid decision, the Uttar Pradesh Tax on Entry of Goods in to Local Areas Ordinance, 2007 (U.P. Ordinance No. 35 of 2007) was promulgated by the Governor on September 24, 2007.

This Bill is introduced to replace the aforesaid Ordinance."

8. The Ordinance No.35 of 2007 was replaced by the U.P. Tax on Entry of goods into Local Areas Act, 2007. The appellant after enforcement of the Ordinance had filed a Writ Petition No. 1483 of 2007 in the Allahabad High Court challenging the Ordinance No. 35 of 2007. After enactment of the Act, writ petition was sought to be amended by replacing the word "Ordinance" with "Act". On 18.12.2008, a Two- Judge Bench of this Court in Jaiprakash Associates Limited Vs. State of Madhya Pradesh & Ors. (2009) 7 SCC 339 referred the issue of levy of Entry Tax in various States enactments including U.P. for determination of a Larger Bench of Nine Judges in terms of Article 145(3) of the Constitution of India. On 23.12.2011, a Division Bench of the Allahabad High Court decided the Writ Petition No. 1483 of 2007 alongwith bunch of writ petitions, leading writ petition being Writ Tax No. *1484 of 2007 – ITC Limited Vs. State of U.P. and Others*. The Division Bench of the Allahabad High Court held that the State of U.P. did not lack legislative competence in enacting the U.P. Tax on Entry of Goods into Local Areas Act, 2007, imposing Entry Tax on the entry of scheduled goods into the local areas for consumption, use or sale thereunder. Concluding part of the judgment in Paragraph Nos. 151, 152 and 153 are as follows:-

"151. For the reasons given as above, we hold that the State of U.P. did not lack legislative competence in enacting U.P. Tax on Entry of Goods into Local Areas Act, 2007, imposing entry tax on the entry of scheduled goods into the local areas for consumption, use or sale thereunder. The provisions of the Act patently and facially indicate and that there are sufficient guidelines and guarantees under the Act for ensuring that the entire amount of entry tax collected and credited to the U.P. State Development Fund is utilised only for the purposes of its reimbursement to facilitate the trade, commerce and industry. The State Government has also established that the entire amount of entry tax is by way of reimbursement / recompense to the trade, commerce and industry, in the local areas of the State of U.P. provides quantifiable/ measurable benefits to its payers. The levy under the Act, 2007 is also not discriminatory, unreasonable or against public interest. The levy of entry tax under the Act, therefore, does not violate the freedom of trade, commerce and intercourse guaranteed under Article 301 of the Constitution of India. Section 17 of the Act validating the amount of entry tax levied, assessed, realized and collected under the U.P. Tax on Entry of Goods Act, 2000, is also valid and authorises the State to keep the entire amount, for the

purposes of its utilisation for facilitating trade, commerce and intercourse in the local areas of the State.

152. We may observe by way of clarification that in these writ petitions we have confined our enquiry to the constitutional validity of the U.P. Tax on Entry of Goods into Local Areas Act, 2007, and whether the entry tax is compensatory in nature, which does not violate the freedom of trade, commerce and intercourse under Article 301 of the Constitution of India. We have not examined the other issues namely the validity of the notices, assessments, rebates, exemption and the liability of the traders, and manufacturers of the scheduled goods to pay entry tax. All other questions, will remain open to be considered by the competent authorities under the Act in accordance with law.

153. All the writ petitions are consequently dismissed. The interim orders are discharged."

9. Against the judgment of Allahabad High Court dated 23.12.2011, decision in the writ petition of the appellant, SLP (C) No. 327 of 2012 was filed by the appellant. On 10.01.2012, this Court passed an interim order in several special leave petitions filed against the judgment dated 23.12.2011 staying the operation of the impugned judgment of the High Court dated 23.12.2011 subject to the appellants in each case depositing 50% of the accrued tax liability/arrears under the Act, 2007 and furnish bank guarantee for the balance amount within four weeks. In SLP (C) No. 327 of 2012, following order was passed:-

"Shri R.F. Nariman, learned Solicitor General, appearing for the petitioner in this matter, would contend that the respondents have issued demand notices, inter alia, demanding the payment of Entry Tax under the provisions of U.P. Tax on Entry of Goods into Local Areas Act, 2007 for the assessment periods 2007-2008, 2008- 2009, 2009-2010 and 2010-2011, without there being any quantification by way assessments for all these years. Faced with this situation, learned senior counsel, Shri K.K. Venugopal, appearing for the respondent-State would submit that he will file an appropriate affidavit indicating whether the petitioners herein have filed the monthly or annual returns for the assessment years in question and whether the department has completed assessments or the basis on which the demand notices are issued. To facilitate them to file the said affidavit, we adjourn this matter to Thursday, i.e. 12.01.2012."

10. The orders dated 17.01.2012 and 16.02.2012 were further passed by this Court in the SLP (C) No. 327 of 2012 of the appellant. Appellant in the interim order has been directed to pay 50% of the Entry Tax. On 06.12.2013, prayer for further modification of the interim order made on behalf of the appellant was accepted, which is to the following effect:-

"In I.A. No. 7 in Civil Appeal No. 3413 of 2012, Shri R.F. Nariman, learned senior counsel for the applicant(s) requests us to modify our orders passed on 17.01.2012, by observing that in the event of appellant(s) failing in this appeal, the appellant(s) will be liable to pay the arrears of tax along with

interest, as may be determined by this Court under the provisions of the Uttar Pradesh Entry Tax Act, 2007, at the time of final disposal of the appeal.

The request of the learned senior counsel appears to be reasonable and if it is granted it would not prejudice the case of the respondents in any manner whatsoever.

In view of the above, we accept the prayer so made by Shri Nariman, learned senior counsel."
11. This Court, thus, left the determination of interest, which was to be payable by the appellant to be determined subsequently. On 11.11.2016, the Nine Judges Constitution Bench decided the reference in *Jindal Stainless Limited & Anr. Vs. State of Haryana & Ors., (2017) 12 SCC 1 = 2016-TIOL-187-SC-MISC-CB*.The reference was answered by the Court in following manner:-

"1159. By majority the Court answers the reference in the following terms:

1159.1. Taxes simpliciter are not within the contemplation of Part XIII of the Constitution of India. The word "free" used in Article 301 does not mean "free from taxation".

1159.2. Only such taxes as are discriminatory in nature are prohibited by Article 304(a). It follows that levy of a nondiscriminatory tax would not constitute an infraction of Article 301.

1159.3. Clauses (a) and (b) of Article 304 have to be read disjunctively.

1159.4. A levy that violates Article 304(a) cannot be saved even if the procedure under Article 304(b) or the proviso thereunder is satisfied.

1159.5. The Compensatory Tax Theory evolved in Automobile Transport case, AIR 1962 SC 1406 and subsequently modified in Jindal case, (2006) 7 SCC 241 has no juristic basis and is therefore rejected.

1159.6. The decisions of this Court in Atiabari, AIR 1961 SC 232, Automobile Transport, AIR 1962 SC 1406 and Jindal, (2006) 7 SCC 241 cases and all other judgments that follow these pronouncements are to the extent of such reliance overruled.

1159.7. A tax on entry of goods into a local area for use, sale or consumption therein is permissible although similar goods are not produced within the taxing State.

1159.8. Article 304(a) frowns upon discrimination (of a hostile nature in the protectionist sense) and not on mere differentiation. Therefore, incentives, set-offs, etc. granted to a specified class of dealers for a limited period of time in a nonhostile fashion with a view to developing economically backward areas would not violate Article 304(a). The question whether the levies in the present case indeed satisfy this test is left to be determined by the regular Benches hearing the matters.

1160. States are well within their right to design their fiscal legislations to ensure that the tax burden on goods imported from other States and goods produced within the State fall equally. Such measures if taken would not contravene Article 304(a) of the Constitution. The question whether the levies in the present case indeed satisfy this test is left to be determined by the regular Benches hearing the matters.

1161. The questions whether the entire State can be notified as a local area and whether entry tax can be levied on goods entering the landmass of India from another country are left open to be determined in appropriate proceedings."

12. After the judgment of Nine Judges Bench dated 11.11.2016, the matter was taken by the Regular Bench and by judgment and order dated 21.03.2017, this Court granted liberty to the appellant to question the levy of Entry Tax under Act, 2007 on the issues, which are left open in the order of the Nine Judges Bench before High Court by way of a fresh writ petition. The appellant filed a Writ Petition No.25730 of 2017 before the High Court, where assessment orders were also assailed as the consequential relief in (Prayer iii). There were other writ petitions also. The appellant's Writ Petition No. 25730 of 2017 was heard alongwith the bunch of writ petitions on 09.11.2017 and on 09.11.2017 judgment was reserved. There were few other writ petitions, which were heard alongwith the bunch, one being *Writ Tax No. 474 of 2017 – M/s. Birla Corporation Limited Vs. State of U.P.*, where the validity of the demand of interest was separately challenged. While reserving the judgment on 09.11.2017, High Court de-linked all such writ petitions where validity of demand of interest was separately challenged. On 04.05.2018, the High Court delivered the judgment in Writ Petition No. 25730 of 2017 and other connected matters dismissing the writ petitions upholding the validity of the Act, 2007. Immediately after the decision of the High Court on 04.05.2018, demand notices were issued for the assessment years 2008-2009 to 2011-2012 and demand notices dated 05.05.2018 for the assessment years 2000-2001 to 2007-2008 requiring the appellant to deposit Entry Tax together with interest thereupon. The appellant paid a sum to the tune of Rs. 3,361.55 crores towards Entry Tax for the years 1999-2000 to 2011-2012. The appellant filed a writ petition challenging the demand notices dated 04.05.2018 and 05.05.2018 in so far as demand towards interest was concerned. In one of the writ petitions, Writ Petition No.757 of 2018 filed by the appellant, following prayers were made:-

"(i) Issue a suitable writ, order or direction in the nature of certiorari calling for the records and quashing the impugned notice dated 04.05.2018 (ANNEXURE-1) issued by the Respondent No.3 demanding interest on entry tax from the petitioner.

(ii) Issue a suitable writ, order or direction in the nature of Prohibition restraining the Respondents, their servants, agents or representative from in any manner realizing any interest on the entry tax from petitioner

pursuant to the Act No. 30 of 2007, assessment order and the impugned notice dated 04.05.2018;

(iii)Issue a suitable writ, order or direction in the nature of mandamus commanding the respondents to adjust the interest payable by the Respondents on the amounts paid by the Petitioner upto 23.09.2007 towards the entry tax together with interest;

(iv) Issue any other suitable writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case in the facts and circumstances of the case.

(v) Award the costs of the petition to the petitioners."

13. On 10.05.2018, when the writ petitions were taken up for hearing by the High Court, learned counsel for the appellant made submission before the High Court that appellant proposes to make an application before this Court to adjudicate upon the liability to pay interest under the Act, 2007, since the issue was left to be decided at the time of final disposal of the appeal. High Court by order dated 10.05.2018, adjourned the proceedings considering the facts and prayers made by the learned counsel for the appellant. An application for direction was filed by the appellant being Application No.1716 of 2018, which was permitted to be withdrawn on submission of the learned counsel for the applicant that the issue of levy of interest shall be pressed before the High Court.

14. After the above order dated 20.07.2018, the hearing in writ petition proceeded. Another demand notice dated 18.05.2018 was issued by the respondent asking for depositing arrears of interest amount. The respondents before the High Court raised a preliminary objection on 25.07.2018 on the ground that writ petition is a second writ petition against the same assessment order on the same and consequential cause of action. It was stated in the preliminary objection that for the same relief Writ Petition No.25730 of 2017 has already been dismissed by the High Court on 04.05.2018, wherein assessment orders were also challenged, hence the writ petition being second writ petition be dismissed as not maintainable. Reply to preliminary objection was filed by the appellant. High Court after hearing all the parties by the impugned order dated 22.11.2018 upheld the preliminary objection about the maintainability of the writ petitions and the writ petitions have been dismissed as not maintainable. While dismissing the writ petitions, certain observations have also been made by the High Court. Appellant, aggrieved by the judgment dated 22.11.2018 has come up in this appeal.

15. We have heard Shri Dhruv Agrawal, learned senior counsel for the appellant. Shri Dinesh Dwivedi, learned senior counsel has appeared for the respondents. We have also heard Shri Guru Krishan Kumar, learned senior counsel, who has appeared for appellant in *S.L.P. No. 2691 of 2018 – VST Industries Limited Vs. The State of Uttar Pradesh & Ors.*, which is being separately decided.

16. Learned counsel for the appellant submits that under the Act, 2007 there are no substantive provisions for realisation of interest on Entry Tax. In absence of a substantive provision providing for payment of interest, no interest can be demanded from the appellant. It is submitted that in Act, 2007, wherever it provided for payment of interest, it has been so provided. Reference is made to sub-section (3) of Section 12 of Act, 2007 where liability to tax alongwith interest is created. It is submitted that Section 13 of the Act, 2007, which makes the provisions of U.P. Value Added Tax Act, 2008 mutatis mutandis, applicable adopts only machinery provisions for the purposes of Act, 2007 and Section 33 of Value Added Tax Act, 2008, which deals with demand and recovery of tax is only machinery provision, which does not entitle the respondent to claim any interest from the appellant. Apart from Section 12, there is no other substantive provision for payment of interest under the Act, 2007. No charge is created by interpretation of machinery provisions by virtue of Section 13 of Act, 2007. It is further submitted that bonafide dispute pertaining to liability of a dealer to make payment of Entry Tax was going on in the High Court and this Court, which could be finally decided on 04.05.2018, when writ petition filed by the appellant challenging the vires of the Act, 2007 was finally dismissed. There being bonafide dispute regarding liability to pay the Entry Tax itself, the respondents are not entitled to charge any interest on the Entry Tax. It is submitted that till 23.09.2007, there was no power with the State to recover any Entry Tax, since the Act, 2007 was declared ultra vires by the High Court. Levy of Entry Tax was validated by virtue of Act, 2007, hence there is no liability to pay any interest for the period prior to 24.09.2007, on which date, the Act was passed. The interest is being demanded from the appellant from the year 1999, which is wholly illegal and without jurisdiction. As per the interim order passed by this Court including the order dated 06.12.2013 passed in S.L.P. No. 327 of 2012 filed by the appellant, where this Court had passed an order on 06.12.2013 directing that the appellant will be liable to pay arrears of tax alongwith interest as may be determined by this Court under the provisions of Act, 2007 at the time of final disposal of the appeal. It is submitted that neither the Nine Judges Constitution Bench in its judgment dated 11.11.2016 nor the Regular Bench deciding the appeals on 21.03.2017, entered into or decide the question of liability of interest. The judgment of the High Court dated 04.05.2018 did not consider the question of liability of interest of the appellant and the High Court confined to only three issues, which have been noted in the judgment. The writ petitions where challenge to demand of interest was separately made, were de-tagged, which make the intention of the High Court clear that it neither intended or actually decided the issue of interest in the batch of writ petitions decided on 04.05.2018. In judgment dated 04.05.2018, the liability of interest under Act, 2007 having not been decided nor argued, the High Court in the impugned judgment has erroneously accepted the preliminary objection of the respondent holding that the judgment dated 04.05.2018 will operate as res judicata in

subsequent writ petition filed by the appellant, where demand notices praying for payment of interest has been challenged.

17. Shri Agarwal further submits that Act, 2000 having been declared unconstitutional, there is no liability to pay any interest before 24.09.2007 on which date Act, 2007 was enacted. It is further submitted that Act, 2007 was immediately challenged by the appellant which Act was upheld by Division Bench of the High Court only on 23.12.2011. Before the aforesaid date, this Court has already referred various issues pertaining to Entry Tax legislation to a Larger Bench. A Larger Bench, i.e., Nine-Judges Bench decided the reference only on 11.11.2016. The larger Bench had reversed the law which was in operation for more than last fifty years. In wake of such uncertainty of legal position, the appellant cannot be saddled with any liability to pay interest. It is submitted that ultimately the Division Bench after liberty by this Court declared the Act valid on 04.05.2018. It is submitted that appellant be relieved from paying of any interest during the aforesaid period. It is submitted that appellant had promptly made the payment of entire Entry Tax immediately after dismissal of writ petition on 04.05.2018. It is submitted that appellant is a Public Corporation which may not be saddled with huge liability of interest which shall adversely affect the functioning of the Public Corporation.

18. Shri Dinesh Dwivedi, learned senior counsel appearing for the respondents supporting the impugned judgment submits that High Court has rightly dismissed the writ petition of the appellant as not maintainable. It is submitted that in the Writ Petition No.25730 of 2017 filed by the appellant, one of the prayers was also to quash the assessment orders passed determining Entry Tax and interest and even though the issue of question of liability of interest having not been determined by the Division Bench of the High Court on 04.05.2018, the principle of constructive res judicata shall be applicable debarring the appellant to challenge the demand of interest by a subsequent writ petition. It is submitted that High Court has rightly accepted the preliminary objection of the respondents and held that writ petition is not maintainable. Shri Dwivedi further addressed submissions on the merits of the claim of the appellant. It is submitted that Act, 2007 contains substantive provisions regarding charging of interest. He submits that by virtue of Section 13 of Act, 2007, the provisions of U.P. Trade Tax Act, 1948 and U.P. Value Added Tax Act, 2008 have been adopted, which contains the substantive provisions for payment of interest. Section 8 of the U.P. Trade Tax Act, 1948 and Section 33 of the U.P. Value Added Tax Act, 2008 provides for charging of interest when dealer fails to pay the tax, which is liable to be paid under the Act. Thus, the submission of the appellant that there are no substantive provisions for charging of the interest under the Act is unfounded. It is further submitted that the appellant has enjoyed the benefit of the interim order passed by this Court in special leave petitions filed by the appellant challenging the judgment of the High Court dated 23.12.2011 and now they are estopped from challenging the pay-ability of the interest. By Section 17 of the Act, 2007, the

levy of the Entry Tax as per Act, 2007 has been validated. The Act, 2007 has been given retrospective effect w.e.f. 01.11.1999, hence the appellant was liable to pay both the Entry Tax as well as the interest. The liability to pay Entry Tax arises as per the provisions of Act, 2007 and the U.P. Entry Tax Rules, 2007 framed thereunder. The concept of interest evolves on default in payment of Entry Tax. Shri Dwivedi also placed reliance on the Principle of Restitution. Liability accrued under Act, 2000 is deemed to be one arising under the Act, 2007. On dismissal of the Writ Petition on 04.05.2018, the issue of interest has also been closed finally. After the interim order of this Court on 10.01.2012 and 17.01.2012 Entry Tax was partly paid and remaining was paid only after the judgment of the High Court on 04.05.2018. Despite the valid levy being there the Tax was withheld by the appellant. The appellant took a chance with litigation and retained and used the amount withheld. The levy whose validity is upheld is deemed valid from date it was due and not from the date of the judgment of the High Court. The appellant is liable for payment of interest not only as per law but also on equitable grounds. Liability to pay interest for a Stay period is valid as interest does not cease running with passing of interim order. Interest is to be awarded on equitable grounds. Liability to pay interest on a tax is an accretion of tax and enlargement of tax liability. In the present case, interest liability on delayed payment is prescribed by law.

19. We have considered the submissions of the learned counsel on behalf of the parties and have perused the records.

20. From the submissions of the learned counsel for the parties and pleadings on the record, following are the questions, which arise for consideration in these appeals:-

(1) Whether the Writ Petition No.757 of 2018 and other Writ Petitions filed by the appellant challenging the demand notices dated 04.05.2018 and 05.05.2018 issued after judgment dated 04.05.2018 of the High Court in Writ Petition No.25730 of 2017 is barred by Principle of Res-judicata, in view of the dismissal of Writ Petition No.25730 of 2017 on 04.05.2018?

(2) Whether Act, 2007 does contain any substantive provision for charging interest?

(3) Whether the appellant had liability to pay interest on the Entry Tax levied between the period from 01.11.1999 to 23.09.2007, i.e., during the operation of Act, 2000, which had been struck down by the High Court?

(4) What can be the liability of payment of interest with which the appellant can be saddled after the period w.e.f. 24.09.2007?

(5) Relief, if any, to which the appellant may be entitled?
Question No.1

21. The preliminary objection raised by the respondents on the ground of res judicata has been allowed relying on the judgment of the High Court dated 04.05.2018 in Writ Petition No.25730 of 2017. We may first notice the

prayers made in Writ Petition No.25730 of 2017. Following are the prayers made in the writ petition:

"(i) that a suitable writ, order or direction be issued declaring the "Uttar Pradesh Tax on Entry of Goods into Local Area Act, 2007' as invalid, void and unconstitutional in so far as purports to levy entry tax on crude oil imported into India for Mathura Refinery.

(ii) that a suitable writ, order or direction in the nature of mandamus be issued restraining the Respondents, their servants, agents or representative from in any manner collecting any entry tax from petitioner pursuant to the Act;

(iii) that a suitable writ, of certiorari, order or direction in the nature of certiorari be issued calling for the records and quashing the assessment orders enclosed as Annexure 3 to 11;

(iv) that a suitable writ, order or direction in the nature of mandamus or prohibition be issued restraining/ prohibiting the Respondents from taking any further steps or action pursuant to the impugned assessment orders;

(v) issue a suitable writ, order or direction for refund of the entry tax hitherto paid by the Petitioner to the Respondent pursuant to the impugned Act;

(vi) that a suitable writ, order or direction be issued as this Hon'ble Court may deem fit and proper in the circumstances of the case in the facts and circumstances of the case.

(vii)award the costs of the petition to the petitioner."

22. As noted above the liberty was granted by this Court to the appellant by its order dated 21.03.2017. The liberty granted to the appellant was on the issues which were left open by the Nine-Judges Constitution Bench judgment dated 21.03.2017 and noticed. Following are certain other aspects which were argued before the Constitution Bench but left open:

"(1) Whether the entire State can be treated as 'local area' for the purposes of entry tax?

(2) Whether entry tax can be levied on the goods which are directly imported from other countries and brought in a particular State?

(3) In some statutes enacted by certain States, there was a provision for giving adjustment of other 20 C. A. Nos. 997-998/2004 etc. taxes like VAT, incentives etc. paid by the indigenous manufacturers and it was contended by the assesses that whether the benefits given to certain categories of manufacturers would amount to discrimination under Section 304."

23. Ultimately, this Court on 21.03.2017 referring to the aforesaid issues gave following liberty:

"According to us, in the aforesaid scenario, appropriate course of action would be to permit the appellants to file fresh petitions by May 31, 2017, raising the aforesaid issues with necessary factual background or any other constitutional/ statutory issue which arises for consideration."

24. Writ Petition No.25730 of 2017 was filed by the appellant in pursuant to the liberty dated 21.03.2017 aforesaid. The main pleadings and the grounds raised in the writ petition relate to challenge to vires of Act, 2007. In the writ petition direction sought was declaring the Act, 2007 as invalid, void and unconstitutional in so far as purports to levy entry tax on crude oil imported into India for Mathura Refinery. Further reliefs were claimed in the writ petition including prayer for quashing the assessment orders enclosed as Annexure 3 to 11 to the writ petition that is assessment orders 1999-2000 to 2011-2012. It is also relevant to notice that in the writ petition there was challenge to interest also. Following was stated in paragraphs 33 and 34 of the writ petition:

"33. That in view of the aforesaid, it is submitted that the judgment of Atiabari case and Automobile case having been overruled on 11.11.2016 by the Nine Judges Bench of the Apex Court, hence the interest and penalty could not be demanded from the petitioner for the period prior to 11.11.2016 as the petitioner has acted upon the law, as has been declared by the Constitutional Benches of Hon'ble Apex Court earlier, which was holding the field, as being the law of the land. Hence, when the law itself has been overruled subsequently and the petitioner being a bonafide dealer was acting as per the provisions of the law, as was existing during the period in dispute, cannot be made to suffer due to subsequent change in the law by the Hon'ble Apex Court.

34. That without prejudice to the above, it is submitted that even otherwise the interest, if any, could not be charged from the petitioner prior to the date of passing the assessment order."

25. A perusal of the judgment of the High Court dated 04.05.2018 indicates that the Division Bench in paragraph No.40 took the view that the Division Bench is to deal with the challenge on the grounds as reflected in the judgment of the Regular Bench dated 21.03.2017. It is useful to extract paragraph No.40 of the judgment, which is to the following effect:

"40. Thus, while overruling the objection to the maintainability of these petitions, we would like to confine ourselves within the forecorners of the judgment of the regular Bench dated 21 March, 2017. We further observe, once again at the cost of repetition, that the challenge to the validity of the Act, 2007 was considered by the Division Bench in ITC Limited on all grounds including the ground that the levy of tax under the Act is compensatory in nature. In view of the opinion expressed by the Nine Judges' Bench, whereby compensatory theory has been completely wiped out, we would have to, therefore, consider the challenge limited to the grounds reflected in the questions framed by the regular Bench of the Supreme Court. In short and in substance, we observe that we would be

dealing with the challenge only on the grounds as reflected in the judgment of the regular Bench dated 21.03.2017, in the light of the judgment of Nine Judges' Bench in Jindal Stainless-II."

26. The Division Bench, thus, confined the consideration limited to the grounds reflected in the questions framed by the regular Bench of the Supreme Court. The Division Bench, thus, consciously confined the consideration to only three questions as we have extracted above from the judgment of this Court dated 21.03.2017. The Division Bench clearly did not permit the consideration of any other questions including the question of interest which is clear from the judgment dated 04.05.2018. It has been specifically submitted that when the judgment was reserved on 09.11.2017 in Bunch of writ petitions including W.P.No.25730 of 2017, in the writ petitions where challenge to levy of interest was separately made were de-tagged. The order dated 09.11.2017 passed in *Writ Tax No.474 of 2017 (M/s. Birla Corporation Limited Vs. State of U.P. and others*) had been brought on record as Annexure P-24 where the Division Bench ordered: "This petition be de-linked from the Bunch. Place it before the appropriate Bench."

27. Specific ground No.L has also been taken which reads as follows:

"L. Because even at the time of reserving its judgment in Writ-C No.25730 of 2017 and connected matters on 09.11.2017, the High Court had de-linked all such writ petitions in which the demand of interest on entry tax was assailed."

28. It is admitted before us by the counsel for the parties that Writ Tax No.474 of 2017, which de-tagged with the Bunch of Writ Petition No.25730 of 2017 is still pending for consideration before the High Court. Present is a case where the Division Bench while deciding Writ Petition No.25730 of 2017 consciously restricted the consideration to three questions as noted in the judgment of this Court dated 21.03.2017 and did not permit to raise any submission other than three questions as noted above or proceed to consider any other questions. The issue which has not been expressly permitted to be decided by judgment dated 04.05.2018 cannot operate as res judicata in subsequent writ petition filed by the appellant where the challenge to the leviability of the interest has been raised. Section 11 Explanation 4 C.P.C. on which much reliance has been placed by the counsel for the appellant provides:

"Section 11. Res judicata.- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

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Explanation IV.- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

29. What Explanation IV provides is that a plea which might and ought to have been taken in the earlier suit, shall be deemed to have been taken and decided against person raising the plea in the subsequent suit. Present is a case where the plea of questioning the leviability of the interest was specifically raised by the appellant in the writ petition in paragraphs 33-34 as noticed above. The Division Bench of the High Court did not entertain such pleas due to the Court having restricted the consideration to the three questions as noted above. In the above fact situation, we are of the view that subsequent writ petition where plea of leviability of the interest was raised could not have been thrown on the ground of res judicata. The sequence of the events and the fact of de-tagging the writ petition with the main Bunch where challenge to interest was made separately clearly indicate that the Division Bench which reserved the judgment on 09.11.2017 clearly intended not to entertain the question of liability to pay interest in the Bunch which was reserved on 09.11.2017. When the High Court has expressly restricted the consideration to three issues noted above, the plea of constructive res judicata cannot be pressed in service against the appellant to preclude him from raising the question which was not expressly permitted to be argued in Writ Petition No.25730 of 2017.

30. There is one more reason due to which we are not to shut the consideration of question of liability of the appellant to pay interest on the Entry Tax. From the facts of the case, as noticed above, it is apparent that in the order of this Court passed on 06.12.2013 while modifying the interim order passed in C.A. No. 3413 of 2012 (arising out of SLP(C)No.2757-2758 of 2004), this Court observed "in the event of appellant failing in this appeal, the appellant will be liable to pay the arrears of tax along with interest, as may be determined by this Court under the provisions of the Uttar Pradesh Entry Tax Act, 2007, at the time of final disposal of the appeal." When Appeal No.3413 of 2012 was ultimately decided on 21.03.2017 by this Court, this Court granted liberty to the appellant to file fresh writ petition raising the issues mentioned therein for consideration of the High Court. In the order dated 21.03.2017 there was no determination by this Court regarding interest to be paid by the appellant under the provisions of the Entry Tax Act, 2007. However, when the liberty was granted by this Court to the appellant to raise above noted three issues on the necessary factual background or any other constitutional/statutory issues, which arise for consideration, the High Court was free to consider the question of liability of interest to be satisfied by the appellant under Act, 2007.

31. Further, what is the scheme of payment of interest under Act, 2007 is a question which depends on the interpretation of the Act, 2007 and the Rules framed thereunder. The issue needs determination for proper working of the Act and the Rules. In this context, we may refer to judgment of this Court in Shree Bhagwati Steel Rolling Mills Vs. Commissioner of

Central Excise and another, (2016) 3 SCC 643, where question of levying interest under the provisions of Central Excise Act, 1944 under Rule 96- ZO, 96-ZP and 96-ZQ of Central Excise Rules, 1944 was held question of jurisdiction to levy interest and the said question was allowed to be raised. This Court laid down following in paragraph 29:

"29...We also feel that since this is a question of the very jurisdiction to levy interest and is otherwise covered by a Constitution Bench decision of this Court, it would be a travesty of justice if we would not allow Shri Aggarwal to make this submission."

32. We are, thus, of the view that the question relating to nature and extent of liability to pay interest on Entry Tax under the scheme of Act, 2007 need to be examined by this Court in these appeals. In view of the above discussion, we are of the view that the High Court in the impugned judgment committed error in upholding the preliminary objection of the respondent. We are of the view that the question relating to nature and extent of liability of interest on Entry Tax under the scheme of Act, 2007 need to be examined and answered in these appeals. The question is answered accordingly.

Question No.2

33. The submission of the appellant is that interest on the Entry Tax is not payable by the appellant under the Act, 2007, inasmuch as there is no substantive provision under the Act, 2007 providing for levy of interest on the outstanding Entry Tax. Referring to provision under Act, 2007 it is submitted that interest on Entry Tax is contemplated only under Section 12 (3) where tax along with interest and penalty is contemplated where any manufacturer fails to deposit the tax under Section 12. He submitted that there is no other substantive provision of levy of interest. Referring to Section 13, contention is that Section 13 applies only machinery provisions of U.P. Value Added Tax Act, 2008 which provision can at best be stated to be applicability of machinery provisions and applicability of those provisions cannot be said to be applicability of any substantive provision regarding interest. For considering the above submission, we need to first notice the provisions of Act, 2007 which are relevant for the present controversy. Section 4 of the Act provides for levy of tax. Section 4(1) provides that for the purpose of development of trade, commerce and industry in the State, there shall be levied and collected a tax on entry of goods specified in the Schedule into a local area for consumption, use or sale therein, from any place outside that local area, at such rate not exceeding five per cent of the value of the goods as may be specified by the State Government by notification.

34. Section 9 deals with submission of returns and assessment of tax. Section 10 deals with provisional assessment of tax. Section 12 deals with realisation of tax through manufacturer. Section 12(1), (2) and (3) are as follows:

"12. Realization of tax through manufacturer (1) Notwithstanding anything contained in any other provision of this act, any person who intends to bring into a local area from any manufacturer within the State, such goods specified in the Schedule as may be notified by the State Government, shall, at the time of taking delivery of the goods from the manufacturer, pay to the manufacturer the tax payable on entry of such goods into the local area and the manufacturer shall receive the tax so paid. The manufacturer 1[shall not deliver such goods] to the purchaser unless the amount of such tax has been paid by the purchaser.

(2) The manufacture receiving the tax under sub-section (1) shall submit to the Assessing Authority a return in respect of the goods supplied, and the tax received, by him under subsection (1) and deposit the tax so received in such manner and within such time as may be prescribed.

(3) Where any manufacturer fails to deposit, the tax under this section he shall be liable to pay the tax along with the interest and penalty, if any, payable thereon which shall be recoverable as arrears of land revenue.

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35. The next provision we notice is Section 13 which provides for applicability of certain provisions of U.P. Value Added Tax Act, 2008. Section 13 as far as relevant is as follows:

"13. Applicability of certain provisions of the Uttar Pradesh Trade Tax Act, 1948 - The following provisions of the Uttar Pradesh Value Added Tax Act, 2008, shall mutatis mutandis apply to all dealers and proceedings under this Act:-

(i) Section 9 - Liability of firm, association of persons and Hindu Undivided Family;

(ii) Section 10 - Tax due from deceased person payable by his representatives;

(iii) Section 11 - Tax liability in case of minor or incapacitated person;

(iv) Section 12 - Liability in case of Court of wards;

(v) Section 16 - Burden of proof; (vi) Section 19 - Security in the interest of revenue;

(vii) Section 21 - Account and documents to be maintained by dealers;

(viii) Section 29 - Assessment of tax of turnover escaped from assessment;

(ix) Section 30 - Rounding off of turnover and tax;

(x) Section 31 - Rectification of mistakes;

(xi) Section 32 - Power to set aside ex parte order of assessment or penalty;

(xii) Section 33 - Payment and recovery of tax;

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36. Now coming back to the submission of the learned counsel for the appellant that only substantive provision in Act, 2007 pertaining to payment of interest is Section 12. Section 12 deals with only one incident of realisation of Entry Tax, i.e., through manufacturer. Section 12(1) makes it clear that any person who intends to bring into a local area from any manufacturer within the State, such goods specified in the Schedule as may be notified by the State Government, shall, at the time of taking delivery of the goods from the manufacturer, pay to the manufacturer the tax payable on entry of such goods into the local area and the manufacturer shall receive the tax so paid. Section 12(2) creates liability on person who intends to bring into a local area from any manufacturer any goods specified in the Schedule and the time of payment is statutorily laid down that is at the time of taking goods. Section 12(3) contemplates a situation where although manufacturer received the tax under Section 12(1) but failed to pay tax as required by Section 12(2) then he shall be liable to pay tax along with the interest. Thus, liability of the interest under Section 12(3) is confined to one particular situation and does not provide for any universal application for payment of interest. Requirement of payment of interest under Section 12 (3), thus, is for a particular situation and has no application with regard to any other instance of liability to pay tax. Present is a case where appellant is not receiving any goods from any manufacturer, hence, in the present case Section 12 has no applicability.

37. Learned counsel for the appellant has placed reliance on the Constitution Bench judgment of this in *J.K. Synthetics Limited Vs. Commercial Taxes Officers, (1994) 4 SCC 276* = *2002-TIOL-736-SC-CT-CB*. In paragraph 16 of the judgment the Constitution Bench laid down following:

"16. It is well-known that when a statute levies a tax it does so by inserting a charging section by which a liability is created or fixed and then proceeds to provide the machinery to make the liability effective. It, therefore, provides the machinery for the assessment of the liability already fixed by the charging section, and then provides the mode for the recovery and collection of tax, including penal provisions meant to deal with defaulters. Provision is also made for charging interest on delayed payments, etc. Ordinarily the charging section which fixes the liability is strictly construed but that rule of strict construction is not extended to the machinery provisions which are construed like any other statute. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not defeat the same. (See Whitney v. IRC, CIT v. Mahaliram Ramjidas, India United Mills Ltd. v. Commissioner of Excess Profits Tax, Bombay and Gursahai Saigal v. CIT, Punjab). But it must also be realised that provision by which the authority is empowered to levy and collect interest, even if construed as forming

part of the machinery provisions, is substantive law for the simple reason that in the absence of contract or usage interest can be levied under law and it cannot be recovered by way of damages for wrongful detention of the amount…"

38. What is relevant to be noticed in the aforesaid pronouncement is that what the Court has held that provision by which the authority is empowered to levy and collect interest, even if construed as forming part of the machinery provisions, is substantive law. There is no quarrel to the proposition that liability to pay a tax or interest on it has to be provided by a substantive law.

39. Section 13 mutatis mutandis applies Section 33 of U.P. Value Added Tax Act, 2008. Section 33 of the VAT Act, 2008 is as follows:

"33. Payment and recovery of tax- (1) Any amount of tax or fee or penalty or any other amount, which a dealer or other person is liable to pay under this Act, shall be deposited by the dealer or such other person in the prescribed manner.

(2) Subject to provisions of section 42, the tax admittedly payable, shall be deposited within the time prescribed, failing which simple interest at the rate of one and quarter percent per mensum shall become due and be payable on unpaid amount with effect from the day immediately following the last date prescribed till the date of payment of such amount and nothing contained in section 24 shall prevent or have the effect of postponing liability to pay such interest.

Explanation-For the purposes of this sub-section, the tax admittedly payable for a tax period or an assessment year, as the case may be, shall be computed in accordance with provisions of section 15.

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(4) If the tax {other than the tax admittedly payable to which sub-section (2) applies} assessed, re-assessed or enhanced by any authority or court remains unpaid after expiration of the period specified in the notice of assessment and demand, simple interest at the rate of one percent per mensum on the unpaid amount calculated from the date of such expiration shall become due and be payable.

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40. Further the Constitution Bench of this Court in *V.V.S Sugars Vs. Govt. of A.P. and others, (1999) 4 SCC 192*, again reiterated the same principle in paragraph No.6, which is to the following effect:

"6. This Court in India Carbon Ltd. v. State of Assam has held, after analysing the Constitution Bench judgment in J.K. Synthetics Ltd. v. CTO that interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf. There being no substantive provision in the Act for the levy of interest on arrears of tax that applied to purchases of sugarcane made

subsequent to the date of commencement of the amending Act, no interest thereon could be so levied, based on the application of the said Rule 45 or otherwise."

41. What is the nature of the provision of Section 33 of the VAT Act, 2008 which has been made applicable by virtue of Section 13 of Act, 2007 is the question to be answered? Section 13 "mutatis mutandis" applies certain provisions of VAT Act, 2008 as mentioned in Section 13. Words "mutatis mutandis" came to be considered in *M/s. Ashok Service Centre and others Vs. State of Orissa, (1983) 2 SCC 82*. In the aforesaid case this Court had occasion to consider the provisions of Orissa Additional Sales Tax Act, 1975. Section 2(2) of which provision mutatis mutandis applies the provisions of Orissa Sales Tax Act, 1947. In the above reference, this Court explained the expression "mutatis mutandis" in paragraph No.17, which is to the following effect:

"17. Section 3(2) of the Act which makes the provisions of the principal Act mutatis mutandis applicable to the levy of additional tax is a part of the charging provision of the Act and it does not say that only those provisions of the principal Act which relate to assessment and collection of tax will be applicable to the proceedings under the Act. Before considering what provisions of the principal Act should be read as part of the Act, we have to understand the meaning of the expression 'mutatis mutandis'. Earl Jowitt's The Dictionary of English Law (1959) defines 'mutatis mutandis' as 'with the necessary changes in points of detail'. Black's Law Dictionary (Revised 4th Edn., 1968) defines 'mutatis mutandis' as "with the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like. Housman v. Waterhouse. In Bouvier's Law Dictionary (3rd Revision, Vol. II), the expression 'mutatis mutandis' is defined as "[T]he necessary changes. This is a phrase of frequent practical occurrence, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like". Extension of an earlier Act 'mutatis mutandis' to a later Act brings in the idea of adaptation, but so far only as it is necessary for the purpose, making a change without altering the essential nature of the thing changed, subject of course to express provisions made in the later Act. Section 3(2) of the Act shows that the State legislature intended not to depart substantially from the principal Act except with regard to matters in respect of which express provision had been made in the Act. The assumption made by the High Court that the Act was an independent Act having nothing to do with the principal Act is not correct. The Act only levied some extra sales tax in addition to what had been levied by the principal Act. The nature of the taxes levied under the Act and under the principal Act was the same and the legislature expressly made the provisions of the principal Act mutatis mutandis applicable to the levy under the Act. The additional sales tax was in the nature of a surcharge over and above what was due and payable by an assessee under the principal Act. The Act, though it had a long title, a

short title and other usual features of every statute, could not be considered as an independent statute. It had to be read together with the principal Act to be effective. In the circumstances the conclusion reached by the High Court that the two Acts were independent of each other was wrong. We are of the view that it is necessary to read and to construe the two Acts together as if the two Acts are one, and while doing so to give effect to the provisions of the Act which is a later one in preference to the provisions of the principal Act wherever the Act has manifested an intention to modify the principal Act. The following observations of Lord Simonds in Fendoch Investment Trust Co. v. Inland Revenue Commissioners made in connection with the construction of certain fiscal statutes are relevant here. He said at p. 144:

"My Lords, I do not doubt that in construing the latest of a series of Acts dealing with a specific subjectmatter, particularly where all such Acts are to be read as one, great weight should be attached to any scheme which can be seen in clear outline and amendments in later Acts should if possible be construed consistently with that scheme."

42. Further, again the same proposition was reiterated in *Rajasthan State Industrial Development and Investment Corporation and another Vs. Diamond & Gem Development Corporation Limited and another, 2013 (5) SCC 470*. In paragraph No.18 following has been laid down:

"18. Thus, the phrase "mutatis mutandis" implies that a provision contained in other part of the statute or other statutes would have application as it is with certain changes in points of detail."

43. Thus, application of provisions of VAT Act, 2008 is provided by Section 13 of Act, 2007 with certain changes in points of details. Section 33 of the VAT Act, 2008 which has been mentioned to apply under Section 13 has to be applied with respect to payment and recovery of tax. Thus, the payment of interest which is contemplated under Section 33 on the amount of tax has to be applied with regard to the payment of Entry Tax and the interest thereon. Even if provision of Section 33 of VAT Act, 2008 to be treated as machinery provision which is to be applied by virtue of Section 13 of Act, 2007, the machinery provision has to be interpreted in a manner so as to make the liability effective and treated to be substantive law.

44. In this context, we may also notice the judgment of this Court in *India Carbon Ltd. and others Vs. State of Assam, (1997) 6 SCC 479 = 2002-TIOL-2656-SC-CT*. In the above case the payment of Central Sales Tax on inter-State sales of petroleum coke were delayed and the appellants were required by the respondents to pay interest in purported exercise of their powers under Section 35A of the Assam Sales Tax Act. The writ petition was filed challenging the exemption of tax. One of the questions noted for consideration is as to whether Section 9(2) of the Central Sales Tax Act did not visualise any payment of interest. Section 9(2) has been extracted in the judgment in paragraph 4 which is to the following effect:

"4. Section 9(2) of the Central Act, as it stood at the relevant time, read thus:

"9. (2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, reassess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, reassess, collect and enforce payment of tax, including any penalty, payable by a dealer under this Act as if the tax or penalty payable by such a dealer under this Act is a tax or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly."

45. The Constitution Bench judgment of this Court in J.K. Synthetics (supra) was noticed and referring to the ratio of the Constitution Bench following was observed in paragraph 7:

"7. This proposition may be derived from the above: interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf."

46. This Court in India Carbon Ltd. (supra) held that the provision relating to interest in the latter part of Section 9(2) can be employed by the States' sales tax authorities only if the Central Act makes a substantive provision for the levy and charge of interest on Central sales tax and only to that extent. In paragraph 13 following has been laid down:

"13. Now, the words "charging or payment of interest" in Section 9(2) occur in what may be called the latter part thereof. Section 9(2) authorises the sales tax authorities of a State to assess, reassess, collect and enforce payment of the Central sales tax payable by a dealer as if it was payable under the State Act; this is the first part of Section 9(2). By the second part thereof, these authorities are empowered to exercise the powers they have under the State Act and the provisions of the State Act, including provisions relating to charging and payment of interest, apply accordingly. Having regard to what has been said in the case of Khemka & Co. it must be held that the substantive law that the States' sales tax authorities must apply is the Central Act. In such application, for procedural purposes alone, the provisions of the State Act are available. The provision relating to interest in the latter part of Section 9(2) can be

employed by the States' sales tax authorities only if the Central Act makes a substantive provision for the levy and charge of interest on Central sales tax and only to that extent. There being no substantive provision in the Central Act requiring the payment of interest on Central sales tax the States' sales tax authorities cannot, for the purpose of collecting and enforcing payment of Central sales tax, charge interest thereon."

47. Section 9(2) was considered in two parts. This Court treated the first as substantive provision whereas second part only for procedural purpose alone, due to the above reason, this Court held that any claim of interest was unfounded. In the case before us, Section 33 has been made applicable by virtue of Section 13 mutatis mutandis. There is no such dichotomy in Section 13 as was noticed in India Carbon Ltd. in Section 9(2) of the Central Sales Tax Act.

48. As noticed above the Constitution Bench of this Court in J.K. Synthetics Ltd. has laid down "…But it must also be realised that provision by which the authority is empowered to levy and collect interest, even if construed as forming part of the machinery provisions, is substantive law…" We have, thus, no hesitation in rejecting the submission of the learned counsel for the appellant that Act, 2007 does not contain any substantive law for levy of the interest. Question No.2 is answered accordingly.

49. We having answered jurisdictional question no.1 and question no.2, other questions and issues need to be remitted to the High Court for consideration. The questions for determining the liability of interest and various aspects including factual aspects need to be examined and considered by the High Court. For instance, what shall be the effect of deposit of Entry Tax in separate interest-bearing account in pursuance of the interim order of this Court dated 09.02.2004 in Civil Appeal Nos.997-998 of 2004 as noted above needs to be considered. There may be few other issues, questions of facts which need to be decided by the High Court for determining the liability of interest of the appellant. It shall also be open for the High Court to frame any other question or issue which may be required to be considered and answered.

50. In result, the appeals are allowed. The impugned judgment of the High Court dated 22.11.2018 is set aside. The Writs are revived before the High Court to be considered and decided on merits.

51. The parties shall bear their own costs.