IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31-03-2022

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal Nos. 1260, 1508, 1527, 1528, 1551, 1554, 1565,
1566, 1567, 1588, 1625, 1626, 1629, 1632, 1633, 1643, 1646,
1650, 1651, 1652, 1658, 1677, 1678, 1680, 1682, 1686, 1689, 1692,
1700, 1701, 1702, 1709, 1722, 1723, 1724, 1725, 1731, 1732, 1760,
1770 and 1771 of 2017
6, 18, 77, 205, 216, 422 and 1399 of 2018,
100, 446, 459, 1518, 1543, 1639, 1862, 1864, 1874, 2067, 2807, 2809, 2902
and 2903 of 2019, 54 of 2020,
1446, 1447 and 2963 of 2021 and 128 of 2022
W.P.Nos. 26705, 26706 and 26707 of 2016
6800, 6801 and 24535 of 2018 and 6004 of 2019

CMP.Nos.20166, 20327, 20388, 20498, 20499, 20500, 20501, 20502, 21195,
21200, 21856, 21277, 21350, 21379, 21399, 21408, 21409, 21479, 21629,
21631, 21644, 21672, 21699, 21736, 21767, 21811, 21920, 22085, 22087,
22088, 22091, 22141, 22146, 22333, 22446, 22447 of 2017 and 100, 232, 762,
1562, 1679, 3677, 11098 of 2018 and 901, 4119, 12599, 12592, 12601, 12722,
13913, 17931, 17937, 18699, 18704 of 2019 and 698 of 2020 and 8989, 8991,
20088 of 2021 and 945 of 2022 and
WMP.Nos.22923, 22924, 22925 of 2016 and 28558, 28562, 28563 of 2018
and 6826 of 2019

W.A. No. 1260 of 2017

1. The State of Tamil Nadu
   represented by its Secretary
   Commercial Taxes Department
   Fort St. George
   Chennai - 600 009

2. The Deputy Commissioner (CT) (FAC)
Fast Track Assessment Circle-I
Now Large Tax Payers Unit
Coimbatore .. Appellants

Versus

M/s. Everest Industries Limited
rep. by its Senior Manager-Finance
Podanur Post
Coimbatore 641 023 .. Respondent

W.A. No. 1260 of 2017:- Writ Appeal filed under Clause 15 of The Letters Patent praying to set aside the order dated 06.02.2017 passed in WP No. 7969 of 2014 passed by this Court.

For Appellant : Mr.Haja Nizrudeen, Additional Advocate General assisted by Mr. M.Venkateswaran, Spl.GP and Mr.V.Prasanth Kiran, Govt. Advocate in WA.Nos.1260, 1626, 1633, 1677, 1678, 1625, 1632, 1701, 1588, 1643, 1652, 1702, 1722, 1723, 1731, 1760, 1770, 1682, 1686, 1700, 1732, 1650, 1551, 1554, 1565, 1566, 1567, 1629, 1646, 1658, 1680, 1724, 1508, 1527, 1528, 1692, 1689, 1725, 1771, 1651 and 1709 of 2017 and 216, 422, 6, 1399, 77, 18 and 205 of 2018, 2902, 446, 459, 2807, 2809, 100, 1862, 1864, 2903, 1518, 1543, 1639, 2067, 1874 of 2019, 54 of 2020, 2963 of 2021 and 128 of 2022

Mr. N.Murali
in WA.Nos.1446 & 1447 of 2021

For Petitioner : Mr. Adithya Reddy
in WP.Nos.26705 to 26707 of 2016

Mr. Prasad for N.Inbarajan
in WP.Nos.6800 and 6801 of 2018

Mr. Ramani, Senior Counsel for B.Raveendran
in WP.No.24535 of 2018

Mr. V.Sundareswaran in WP.No.6004 of 2019

For Respondent : Mr. Adithya Reddy
in WA.Nos.1626, 1633, 1677, 1678, 1625, 1632, 1701 of 2017, 216 of 2018 and 2902 of 2019

: Mr.Ramani, Senior Counsel
for Mr.B.Raveendran
in WA.Nos.1551, 1554, 1565, 1566, 1567, 1629, 1646, 1658, 1680, 1724 of 2017

: Mr.B.Raveendran in WA.2963 of 2021

: Mr. Joseph Prabakar
in WA.Nos.446 and 459 of 2019

: Mr. K.Jayachandran
in WA.Nos.2807 and 2809 of 2019

: Mr.N.Murali for R.Raghavan
in WA.Nos.1643 & 1652 of 2017 and 6 & 1399 of 2018 and 100, 1862 & 1864 of 2019

: Mr.Prasad for N.Inbarajan
in WA.Nos.1682, 1686 and 1260 of 2017, 1518, 1543 and 1639 of 2019

: Mr. Sri Prakash for N.Inbarajan
in WA.Nos.1689 & 1725 of 2017

: Mr.N.Inbarajan in WA.No.422 of 2018

: Mr.D.Vijayakumar in WA.No.1588 of 2017

: Mr.P.Rajkumar in WA.No.1770 of 2017

: Mr.R.Kumar in WA.No.2067 of 2019

: Mr.R.Saravanakumar in WA.No.1732 of 2017

: Mr. Ragavan Ramabadran
for M/s.Lakshmi Kumaran & Sridharan
in WA.No.1650 of 2017

: Mr.S.Ramanathan
in WA.Nos.1508, 1527, 1528 and 1692 of 2017
and 54 of 2020

: Mr.V.Sundareswaran
in WA.Nos. 1651 and 1709 of 2017, 18 of 2018

: Mr.V.Sundaeswaran for Mr.V.V.Ramesh
in WA.No.205 of 2018

: Mr.T.Pramodkumar Chopda
in WA.No.1771 of 2017

: Mr.Subbaraya Aiyar
in WA.No.1874 of 2019

: Mr.Haja Nizrudeen, AAG
Assisted by Mr. M.Venkateswaran, Spl.GP
and Mr.V.Prasanth Kiran, GA
in WP.Nos.26705, 26706 and 26707 of 2016,
6800, 6801 and 24535 of 2018, 6004 of 2019,
1446 and 1447 of 2021

: No appearance
in WA.Nos.1702, 1722, 1723, 1731, 1760 of 2017,
77 of 2018 and 2903 of 2019

COMMON JUDGMENT

R. MAHADEVAN, J.

Preface.

1. In these writ appeals, a batch of cases is filed by the Revenue, assailing the common order dated 06.02.2017 passed by a learned Judge in WP No.

7969 of 2014 etc., batch, holding that the proviso to Section 19 (2) (v) of the Tamil Nadu Value Added Tax Act, 2006 (in short, "the TNVAT Act") inserted by section 2(1) of the Tamil Nadu Value Added Tax (Fifth Amendment) Act No.28 of 2013 with effect from 11.11.2013 is not applicable to the manufacturers and allowing the writ petitions. The other writ appeals are also filed by the Revenue, assailing the orders passed in the writ proceedings by the other learned Judges, which are similar to the aforesaid order dated 06.02.2017. Whereas, WA Nos.1446 and 1447 of 2021 are filed by the assessee against the order of dismissal dated 08.12.2020 passed by the learned Judge in WP.Nos.28828 and 28829 of 2018, on the ground of limitation.

2. The writ petition No.26705 of 2016 etc. batch, has been filed by the assessees to quash the orders passed by the respective Assessing Officers insofar as the same relate to reversal of Input Tax Credit (ITC) under the proviso to Section 19 (2) (v) of the TNVAT Act and further direct the respondents therein not to apply Section 2(1) of the Amendment Act, 2013 inasmuch as they are the manufacturers of goods in the State of Tamil Nadu consequent to the omission of proviso to Section 19 (2) (v) of the Tamil Nadu Value Added Tax (Fifth Amendment) Act, 2015 read with substitution of clause (v) to section 19 (2) of the TNVAT Act.

3. In view of commonality of the issue involved, the instant writ appeals and writ petitions were heard together and are decided by this common judgment.

Background of the Litigation.

4. The introduction of the proviso to Section 19 (2) (v) of then TNVAT Act, 2006 by Act 28 of 2013 with effect from 11.11.2013 has triggered the department to initiate the proceedings for reversal of ITC on interstate sale of goods covered under Section 8(1) of the CST Act, which has resulted in mushrooming of cases before this Court.

5. The subject proviso reads as under:

> "*Provided that input tax credit shall be allowed in excess of three percent tax for the purpose specified in clause (v).*"

6. Before proceeding further, it is worthwhile to note that the proviso was omitted by deletion of section 19 (2) (v) and 19 (5) (c) vide Act 5 of 2015 with effect from 01.04.2015 and substituted with new sub-clause (v) which reads as under:

> "*v. sale in the course of Inter-State trade or commerce falling under sub-sections (1) and (2) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956).*"

Thereafter, the TNVAT Act itself was repealed at the advent of the GST enactments. The relevancy and applicability of the TNVAT Act and the Rules

are limited in nature, only with regard to pending proceedings and accrued rights including the matters related to goods that have not been included in GST.

7. Be that as it may, the history of the batch of cases takes us back to Writ Petition No. 7969 of 2014 etc., batch filed by the assessees before the learned Judge, before whom, it was contended *inter alia* that the amendment to Section 19 (2) (v) of the Act has nothing to do with the right or allowance of ITC vested in a dealer, who uses the local tax suffered goods as input in the manufacture or processing of goods in the State or as containers for packing of goods or as capital goods in the manufacture of the same. The proviso inserted vide Act 28/2013 seeks to allow a restricted quantum of ITC, when the goods purchased within the State from a registered dealer, are sold in the course of inter-state trade or commerce against Form "C" declarations. But, the said proviso does not seek to restrict the claim of ITC in the circumstances when the local tax suffered goods are used in the manufacture of goods and such manufactured goods are sold in the course of inter-state trade or commerce against “C” form declarations. Had this been the intention of the legislature, then, such an intention would have been explicitly stated in the proviso itself. On the contrary, the proviso to Section 19 (2) (v) of the Act will not be applicable in cases of stock transfer of manufactured goods or inter-state sale

of manufactured goods not supported by "C" declaration forms as per Section 19(4) and 19 (5) (c) of the Act. However, based on the amendment, the department proposed to reverse ITC towards inter-state sale by invoking Section 19 (2) (v) and Section 19 (5) (c) of the Act. Therefore, the writ petitions were filed challenging the action initiated based on the amendment brought into Section 19 (2) (v) of the TNVAT Act.

8. The writ petitions were opposed by the Revenue by filing a detailed counter affidavit stating that as per the newly amended proviso, the assessment proceedings were initiated and it was found that the dealers have effected inter-state sales to the registered dealers against “C” forms and sales to the unregistered dealers and adjusted the Input Tax Credit for the tax dues payable. However, they have not filed “C” forms for the turnover nor have reversed the input tax credit as per the amended Section 19 (2) (v) and Section 19 (5) (c). As per the newly amended Section 19 (2) (v) of the Act with effect from 11.11.2013, ITC shall be allowed in excess of 3% of tax for the sale in the course of inter-state falling under sub-section (1) of Section 8 of the Central Sales Tax and therefore, it was proposed to reverse the ITC under the proviso to section 19 (2) (v). Before finalising the assessment proceedings, a notice inviting objection on the proposal was issued to the dealers. In response, it was stated that the reversal of ITC is not applicable to them as they

are manufacturers and their purchases are mostly inter-state. It was also admitted that they have deducted the value of purchases used for manufacturing purposes and inter-state purchase turnover while arriving at ITC due. In any event, as the dealers are not eligible for ITC on the turnover not covered by "C" forms and sales to unregistered dealers, it was proposed that the ITC be reversed in respect of the turnover not covered by "C" forms and sales turnover to the unregistered dealers. According to the Revenue, such a course adopted is in consonance with the amended proviso to Section 19 (2) (v) and therefore, they prayed for dismissal of the writ petitions.

9. The learned Judge, by common order dated 06.02.2017 passed in WP No. 7969 of 2014 (*M/s. Everest Industries Limited, rep. by its Senior Manager, Finance vs. State of Tamil Nadu, rep. by its Secretary, Commercial Taxes Department and another)* etc. batch of cases, allowed the writ petitions filed by the assessees. The relevant portion of the same reads as follows:-

> *"19. The facts pertaining to W.P.No.7969 of 2014 have already been delineated hereinabove by me. As indicated at the very outset, the fate of these writ petitions would turn squarely on the interpretation, which one may give to the proviso appended to Section 19(2) of the 2006 Act, since, facts are not disputed before me. Therefore, for the sake of convenience, the relevant part of Section 19 of the 2006 Act, is extracted hereunder, in order to appreciate the nuances of the arguments advanced on behalf of the assessees and the Revenue:*
>
> *"19.Input tax credit.-(1) There shall be input tax credit of the amount of tax paid or payable under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule:*

Provided that the registered dealer, who claims input tax credit, shall establish that the tax due on such purchases has been paid by him in the manner prescribed.

(2) Input tax credit shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of

(i) re-sale by him within the State ; or

(ii) use as input in manufacturing or processing of goods in the State; or

(iii) use as containers, labels and other materials for packing of goods in the State; or

(iv) use as capital goods in the manufacture of taxable goods.

(v) sale in the course of Inter-State trade or commerce falling under sub-section (1) of Section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956).

(vi) agency transactions by the principal within the State in the manner as may be prescribed.

[Provided that input tax credit shall be allowed in excess of three percent tax for the purpose specified in clause (v);]"

20. A careful reading of Section 19 would show that a dealer is entitled to claim ITC in respect of tax suffered inputs, which are specified in the First Schedule, and are purchased within the State from a registered dealer, and thereafter, are used for the purpose set out in clauses (i) to (vi), as delineated in sub-section (2) of Section 19 of the 2006 Act.

20.1 The proviso to sub-section (2) of Section 19 limits the availment of ITC by providing that ITC shall be allowed in excess of 3% of the tax for the purposes specified in clause (v). Clause (v), if read with sub-section (2) of Section 19 would have me conclude that, if, an assessee were to purchase taxable goods specified in the First Schedule, which were sold in the course of Inter-State Trade or Commerce against declarations made in form 'C', an assessee would be allowed ITC only in excess of 3% of the tax paid on such purchases.

20.2 Therefore, there is, to my mind, nothing in the proviso, which will have me come to the conclusion that, it is attracted to any of the other clause referred to in sub-section (2) of Section 19 of the 2006 Act.

20.3 A plain reading of the provisions of sub-section (1) and sub-section (2) of Section 19 of the 2006 Act would show that, as long as specified goods, which suffer tax are used for any of the purposes set out in clauses (i) to (vi) of sub-section (2) of Section 19, the assessee should be able to claim the ITC, with a caveat in so far as clause (v) is concerned. The caveat being, the limitation, which is encapsulated in the proviso to Section 19(2) of the 2006 Act. Therefore, the limitation provided in the proviso would apply only

vis-a-vis the purpose specified in clause (v) and not qua other purposes set out in clause (i) to (iv) and (vi) of Section 19(2) of the 2006 Act.

20.4 If, that be the conclusion, then, surely, none of the impugned orders can sustain. The fact that, the proviso, on account of erroneous interpretation by the Revenue, was causing difficulties for the manufacturers, is exemplified by the Statement of Objects and Reasons which was set forth, at the time of introduction of Act 5 of 2015.

21. A perusal of the relevant extract of the Statement of Objects and Reasons would show that insertion of the proviso to Section 19(2) of 2006 Act had led to the manufacturing industries located in the State of Tamil Nadu, becoming less competitive as compared to their counterparts in the neighbouring States. The relevant part of the Statement of Objects and Reasons, which sheds light on this aspect of the matter is extracted hereunder, for the sake of convenience:

"*In the Budget Speech for the year 2015-2016, among others, the following announcements were made:-*

(i) Input tax credit reversal imposed at the rate of 3 per cent on the Inter-State sale of goods as per proviso to Section 19(2)(v) of Tamil Nadu Value Added Tax Act, 2006, which was introduced with effect from 11-11-2013 will be withdrawn henceforth to make the manufacturing industries in Tamil Nadu more competitive with their counterparts in the neighbouring States."

(emphasis is mine)

22. Furthermore, since, I have come to the conclusion that the proviso to Section 19(2) would apply only qua that purpose which is engrafted in clause (v) of the very same Section, in my view, the alternate argument advanced on behalf of the petitioners need not detain me.

23. Apart from what is adverted to above, I must also indicate that reliance was placed by Mr.Annamalai on the judgement of the Orissa High Court in the matter of : Bajrang Steel and Alloys Ltd. and others V. State of Orissa and Others, (2011) 43 VST 235 (Ori). To my mind, the said judgement would not further the cause of the respondents for the following brief reasons:

23.1. First, the Orissa High Court in that matter was dealing with a challenge made to Rule 11(3) of the Orissa Value Added Tax Rules, 2005 (in short OVAT Rules), framed under the Orissa Value Added Tax Act, 2004 (in short OVAT Act).

23.2. It was contended in that case that not only Rule 11(3) ultra vires Section 20 of the OVAT Act, but that it conferred unguided and unfettered powers on the State Government.

23.3. It was, this challenge, which, the Orissa High Court repelled.

23.4. In matters placed before me for adjudication, there is no

challenge to the provisions of Section 19(2) of the 2006 Act. All that I have been asked to rule upon, is, as to whether the proviso to Section 19(2) of the 2006 Act would apply to the purpose set out in clause (ii) of Sub-section (2) of Section 19 of the 2006 Act.

23.5. Therefore, in my view, the said judgement is distinguishable and would not apply to the facts obtaining in the instant petitions.

24. Which brings me to the last submission advanced by Mr.Annamalai, that is, the petitioners, should be relegated to the available alternate statutory remedies.

25. According to me, in the instant case, this argument is not sustainable, as the petitioners have approached this Court under Article 226 of the Constitution on the ground that the assessing officers had no jurisdiction to reverse ITC in their cases, as the proviso to Section 19(2) did not apply to manufacturers. This Court was, therefore, well within its right to entertain these petitions.

25.1 Furthermore, these are the writ petitions of 2014, which have, now, been pending adjudication for nearly two years and more. Therefore, if one were to now relegate the petitioners to a statutory forum, it would cause much grief to the assessees, both, in terms of time and costs. In any event, the practice, which Courts follow of relegating parties to an alternate remedy, is a norm, which Courts adopt to prevent a logjam. This self limitation, which, Courts apply to themselves does not denude them of the power of exercising jurisdiction under Article 226 of the Constitution, even where statutory remedy is available to a litigant. (See ABL International Ltd. V. Export Credit Guarantee Corporation of India Ltd., (2004) 3 SCC 553).

26. Thus, for the reasons given above, I am of the opinion that the captioned matters were fit cases, in which, jurisdiction was rightly exercised. Therefore, this argument of Mr.Annamalai cannot be accepted. Thus, for the foregoing reasons, I am inclined to set aside the impugned order dated 06.02.2014. Accordingly, W.P.No.7969 of 2014 is allowed.

27. As indicated right at the outset, counsels were agreed that the decision reached in W.P.No.7969 of 2014 could be applied to other writ petitions, as well, since, except for the dates and events and quantum of ITC involved, the issue, discussed above, was common to each one of them.

28. Resultantly, having regard to the conclusion reached in W.P.No.7969 of 2014, I am inclined to allow the other writ petitions as well. The impugned orders in each of the writ petitions are set aside. Accordingly, the writ petitions Nos. 7969 of 2014, 10585 and 10586 of 2014, 38233 of 2015, 43402 of 2016 and 44188 of 2016, 722 of 2017, 1230, 1268, 1388 and 1880 of 2017 are allowed. Consequently, the connected pending applications are also closed. There shall, however, be no order as to costs."

10. Referring to the aforesaid order, similar orders were passed in the other writ petitions. Therefore, the Revenue is before this court with these batches of writ appeals, except WA.Nos.1446 and 1447 of 2021, which are filed by the assessee against the order of dismissal passed by the learned Judge on the ground of limitation.

11. While so, some of the assessees preferred writ petitions challenging the orders passed by the assessing officers *qua* reversal of ITC under section 19(2)(v) of the TNVAT Act. Taking note of the commonality of the issue involved, a Co-ordinate Bench of this court, by order dated 20.10.2017, directed the Registry to tag all the writ appeals along with those writ petitions for joint hearing, in order to avoid repetition and multiplicity of proceedings. Accordingly, these cases were listed and elaborate arguments were heard by us.

Contentions:

On the side of the Revenue.

12. The Learned Additional Advocate General, Mr.Haja Naziruddeen, appearing for the appellants-revenue would contend that these appeals are filed challenging the order passed by the learned Judge holding that the limitation provided in the proviso to Section 19 (2) of the Act, 2006, which came into effect from 11.11.2013, would apply only for the purposes specified

in clause (v) and not for other purposes set out in clauses (i) to (iv) of Section 19 (2). The learned Judge failed to consider that the proviso to Section 19 (2) restricts the usage of ITC only to the extent of excess of 3% for the purpose specified in clause (v) and it ought to have been read harmoniously in line with the purpose specified under Section 19 (2) as a whole. The learned Judge also did not consider that sub-clauses of Section 19 (2), except 19 (2) (v), were enacted to give the benefit of ITC in respect of 'usage' and 're-sale' as such, but did not extend to the cases, where final products were sold in the course of inter-state sale. In such cases, if the goods are purchased within the State and sold inter-state after undergoing various processes as contemplated under Section 19(2)(i) to 19 (2) (iv) and Section 19 (2) (vi), Section 19 (2) (v) can be applied. While so, the proviso ought to be read as applicable to the entire provisions of Section 19 (2) when the condition specified in Section 19 (2) (v) comes into play in addition to other sub-clauses of Section 19 (2) of the Act.

13. The learned Additional Advocate General provided an illustration that if ‘A’, a dealer, registered in the State purchases inputs from the State and uses the same for manufacturing purpose and sells the final product, after all processes within the State, he is eligible for ITC under Section 19 (2) (ii) of the Act to the extent of such purchases of inputs. However, if ‘A’ purchases inputs within the State and uses it in manufacturing process but sells the final

product outside the State under Section 19 (2) (v) read with proviso, ‘A’ can claim ITC only to the extent of three percent tax. Thus, where the process does not end with manufacturing, but also result in inter-state sale, ITC can be claimed to the extent of excess of three percent.

14. The Learned Additional Advocate General further contented that the value addition refers to any processing and profit in case of manufacturers and profit alone in case of traders. Apart from the local sale transactions governed by VAT, the dealer can effect inter-state transactions governed by Central Sales Tax (CST) Act covering the following categories such as (i) Sale to other state registered dealers against "C" forms. If the buyer at the other State obtains "C" forms from the Commercial Tax Department of other State and submits it to the Government of Tamil Nadu, a concessional rate of 2% alone is levied and collected; (ii) Sale to other State registered and unregistered dealers without "C" forms and in such case, tax is levied at the rate of 5%; (iii) Branch or stock transfer of goods to other state with Form "F" and this transaction is exempted; and (iv) Branch or stock transfer of goods to other State without form "F" is levied at the rate of 5%. It is also his contention that the dealer, on local purchase, claims ITC at 5% from the State of Tamil Nadu and pays at concessional rate of 2% thereby 3% ITC was accumulated by the dealer. Similarly, the dealer, on his local purchase, claims ITC at 5% from the

State of Tamil Nadu and transfers the goods to the branches in other State without paying any tax, as tax in such an event is exempted under Central Sales Tax Act and the ITC on his purchase to the extent of 3% was reversed and the balance 2% was accumulated by the dealer. It is further stated that at the time of introduction of VAT, the levy of tax under VAT as well as CST are 4%, later, the Central Government, while implementing Goods & Service Tax (GST) reduced the CST from 4% to 3% and thereafter to 2%. On the other hand, the State Government has increased the tax rate from 4% to 5% from 12.07.2011 and this difference in the tax rates paved way for accumulation of ITC by the dealer. After the amendment, there is no difference between the manufacturers and traders and both are not allowed to enrich ITC unduly at the cost of the exchequer. The words 'sale in the course of inter-state trade or commerce' connotes sale of any goods which may be traded or manufactured. The meaning of the words 'sale in the course of inter-state trade or commerce' occurring in clause (v) of sub-section (5) of Section 19 of the Act has to be derived only from the CST Act, 1956 and not from any other law or interpretation. The words ‘sale in the course of inter-state trade or commerce’ is sufficiently defined in Section 3 of the CST Act, 1956 as a sale or purchase of goods which shall be deemed to have taken place in the course of inter-state trade or commerce, if the sale or purchase (a) occasions the movement of

goods from one State to another (b) effected by transfer of documents of title to the goods during their movement from one State to another. Thus, if movement of goods from one State to another happened because of pre agreed sale or as pre-condition of sale, then such movement of goods shall be deemed to be inter-state sale/purchase. Further, for a sale to be inter-state sale, it must satisfy that (i) there must be a contract of sale, incorporating a stipulation, express or implied regarding movement of goods inter-state (ii) the goods must actually move from one State to another pursuant to such contract of sale, the sale being proximate cause of movement and (iii) such movement of goods must be from one State to another State where the sale concludes. To buttress this submission, the learned Additional Advocate General relied on the decision of the Honourable Supreme Court in ***CST vs. Suresh Chand Jain reported in 1988 70 STC 45 (SC)*** and reiterated the said requirement for sale. It is also contended that a taxing statute ought not to be read in isolation, rather it has to be read along with other associated provisions, as well, more particularly when the subject matter with different sections or parts of the same statute is identical. While so, Section 19 (2) has to be read as a whole to give the intending meaning behind the proviso to Section 19 (2) according to which the Legislature intended to restrict the claim of ITC when final product is sold outside the State. In this context, the learned Additional Advocate

General placed reliance on the decision of the Honourable Supreme court in the case of ***Kailash Chandra vs. Mukund Lal*** *reported in* ***2002 (2) Supreme Court Cases 678*** wherein it was held that "ITC is a concession and it is open to the legislature to impose restrictions while extending the concession".

15. It is further contended that the intention of the legislature was always to include the manufacturers within the ambit of the proviso, which is evident from the Statements of objects and reasons of the Acts 28/2013 and 5/2015 and hence, the court ought not to have gone by the literal rule of interpretation and rather must have gone by the intent of the legislature or adopted the golden rule of interpretation. Relying upon the definition of the term "business" under the CST Act, it is contended that the same covers "manufacture" and therefore the amendment is also applicable to a manufacturer. Further, Section 19 (2) (v) of the Act explicitly does not distinguish between a trader and manufacturer and hence, the proviso introduced to it must be deemed to be covered both the categories. It is further contended that a dealer though is entitled to claim credit of the taxes paid or payable by him at the time of purchase of First Schedule goods, he has to satisfy that the goods have been dealt with for the purposes enumerated under Section 19 (2) and that credit can be adjusted against the tax payable by him by relying upon Sections 3(2) and 3(3) of the Act. Therefore, it is only after

the sale, the Input tax credit can be adjusted and that the State was well within its powers to restrict the availment of Input Tax Credit on inter-state sales. The Learned Additional Advocate General referred to various provisions in sections 19(4) and 19(5) of the TNVAT Act to support his contention that the State from inception had imposed restrictions in the availment of the ITC on inter-state transactions and also pointed out to other restrictions under the Act. It is further contended by the learned Additional Advocate General that once the requirements of Section 3(a) of the CST Act are satisfied, the transaction becomes an inter-state sale irrespective of whether the goods are sold after manufacture or merely traded.

16. The learned Additional Advocate General also advanced the counter argument stating that Section 19 (2) (v) is an extended limb of section 19(2)(ii) and it should not be read in isolation as most of the manufacturers have both local and inter-state sales, including exports. If clause (v) is treated as only meant for traded goods, then all the manufacturers will be forced to pay tax on the inter-state sale of manufactured goods as there is no provision under sub-section (2) of section 19 of the Act to the manufacturers to adjust the ITC available on the purchase of local taxable inputs, consumables, packing materials including capital goods for the inter-state sales of manufactured goods against Form “C”. It is further contended that in inter-state transactions

covered under "C" Forms, concessional tax at 2% is made and the dealer retains the purchase tax as ITC, which necessitated the introduction of the proviso, as there was huge accumulation and undue enrichment of ITC on increasing inter-state sales causing loss to the state exchequer, added further by the reduction of rates under CST Act and the increase in state tax. It is also contended that the withdrawal of the proviso in 2015 to plug the loopholes cannot be given retrospective effect and in any case, the Learned Judge ought not to have given retrospective effect to the order, which has cascaded in huge loss to the state exchequer and that unless it is shown that the refund of tax would reach the ultimate customer, the same cannot be permitted. It is further pointed out that the *vires* of Section 19 (5) (c), which deals with denial of ITC on inter-state sale of goods falling under Section 8(2) of the CST Act was upheld by this court as affirmed by the Apex Court, superimposing the authority of the state to impose conditions on the adjustment of ITC. In support of his contention, he placed reliance on the judgment of the Division Bench of the Orissa High Court in ***Bajrang Steel and Alloys Ltd. and others vs. State of Orissa and others*** reported in **(2011) 43 VST 235.** With these averments, he sought to allow the appeals preferred by the state and dismiss the writ petitions filed by the assessees.

Contention on behalf of the assessees.

17. Mr.R.L.Ramani, Learned Senior Counsel appearing for Mr.B.Raveendran, learned counsel for the assessee in WP.No.24535 of 2018, supporting the findings of the Learned Judge, contended that the proviso cannot be applied to the manufacturers. As per Section 19 of the TNVAT Act, as they existed prior to the amendment brought forth on 11.11.2013, ITC is allowed when tax suffered goods are used for the purpose of re-sale or used as input in manufacturing or processing of the goods in the State. A manufacturer is allowed ITC when they use tax suffered goods either as an input in the manufacture or processing of goods or use the same as containers etc., for packing of goods or use the same as capital goods. A manufacturer, in such an event, is vested with a right to claim ITC and such right is not dependant on the manner in which they sell/dispose the manufactured goods except when the manufactured goods are stock transferred to a place outside the State or sold on inter-state basis without being supported by 'C' declaration forms. However, the Assessing Officers, ignoring the proviso to Section 19 (2) of the Act, erroneously concluded that it will apply only in cases falling under Section 19 (2) (v) of the Act. The Learned Senior Counsel further contented that the omission of the proviso with effect from 01.04.2015 is only curative. The Learned Senior Counsel also referring to the provisions of the Orissa

Value Added Tax Act contended that the provisions therein are different and clear, whereas it is not the case under the TNVAT Act and therefore, the judgment in ***Bajrang Steel and Alloys Limited case*** is not applicable. The Learned Senior Counsel fairly submitted that the validity of Section 19(5)(c) has been upheld by the Apex Court in ***TVS Motor Company v. State of T.N.,*** reported in ***(2019) 13 SCC 403*** and that has nothing to do with the other issues relating to applicability of the proviso to the manufacturers. Further, under Section 19(2)(ii), the word 'use of manufacturer' has been added and under section 19(2)(v) the expression 'use' has not been employed at all and hence, Section 19(2)(v) cannot be said to be applicable only to the traders. Therefore, the learned Judge, on appreciation of the said factual as well as legal position, has rightly allowed the writ petitions filed by the assesses, which do not call for any interference by this court.

18. Mr.Prasad, learned counsel representing Mr.N.Inbarajan, learned counsel appearing for the respondents in WA.Nos.1260, 1682 and 1686 of 2017 as well as WA.No.422 of 2018 would, at the outset, contend that when the provisions of the taxing statute are clear and unambiguous, recourse to internal or external aids is not necessary, besides it is legally impermissible. Further, endorsing the order passed by the Learned Judge, it is contended that the proviso cannot be applied to the manufacturers as they fall within the

ambit of Section 19 (2) (ii) of the Act and once the goods are used for the manufacturing activity, they are entitled to claim ITC.

19. The learned counsel further taking the court to the provisions of the Act, illustrated that intention of the legislature from inception was to treat the manufacturers within the section 19 (2) (ii) alone and not within 19 (2) (v), if not specific words to include the manufacturers as found in section 19 (4) and that 19 (5) (c) would have been used by the legislature. Further, the expression "which are" clearly indicate that the subject matter of the sale in the course of inter-state trade is the very goods which are purchased inside the State. The expression 'which' is in reference to the antecedent expression namely the goods purchased inside the State. Similarly, the expression 'which' is used as a relative in a subordinate clause representing noun or noun press in the principal sentence. It is used as an introductory word and referring to an antecedent noun. Therefore, by virtue of usage of the word 'which' in the main provision, Section 19 (2) (v) cannot be applied to the manufacturers, since there is no identity between the goods purchased for the purpose of Section 19(2)(ii) and sale of the manufactured goods in the course of inter-state trade. The learned counsel also relied on the definition of the word “which” from the extract of Websters and Oxford Dictionaries, to buttress his argument. It is further contended that the purpose of VAT legislation itself is to ensure that

the cascading effect is avoided. For this purpose, it becomes necessary that tax paid at the earlier stage which is at the stage of purchase is offered as credit. In addition to this, the scheme of VAT Act does not contemplate a one-to-one correlation. Once a credit is validly earned, it can be adjusted towards output tax payable on local sale or for payment of tax under the CST Act.

20. It is further contended that when a manufacturer purchases an input, he does not sell the input as such, but makes a substantial value addition. According to the learned counsel, Section 19(2)(ii) deals with goods purchased for the purpose of use as input in manufacture of goods. Soon after manufacture, the purpose of purchase is consummated. In other words, the moment the goods are purchased for being used in manufacturing activity and commercially different goods than the one manufactured, the goods purchased cease to exist and they are not goods for satisfying the ingredients under Section 19 (2) (v). Further, as per the definition provided under Section 2 (27) of the Act, the inputs purchased have lost their commercial identity. Thus, a plain reading of Section 19 (2) (v) and the earlier part of Section 19 (2) would show that it would apply where inputs are purchased, which are used for the purpose of sale in the course of inter-state trade or commerce falling under Section 8 (1) of the CST Act. Therefore, Section 19 (2) (v) will apply to a case of trading of inputs, which are purchased inside the State, which are for the

purpose of sale in the course of inter-state trade under Section 8 (1) of the CST Act. In the case of the respondent –assessee itself, while inputs are purchased inside the state of Tamil Nadu on Payment of TNVAT, the final product is Asbestos sheet and there is a value addition to it. Therefore, the rate of CST at 2% is not on the input sold as such, but on the manufactured commodity. It was further contended that the proviso inserted by Tamil Nadu Act 28 of 2013 effective from 11.11.2013 cannot be applied to the manufacturers as because the restriction of input credit to the manufacturer effecting an inter- state sale from the State of Tamil Nadu to another manufacturer located outside the state, would be an additional cost to the manufacturer effecting sale from the State of Tamil Nadu and would directly impact the price of the manufacturer effecting the sale from the State of Tamil Nadu rendering his product uncompetitive for the receiving manufacturer located outside the State. “Input credit” is not cost but only a receivable in accounting terms. Denial of input credit would result in increase in cost and resultant price, rendering the product supplied from Tamil Nadu uncompetitive in the receiving State. Therefore, the extension of input credit in an unrestricted fashion promotes inter-state trade and a construction that promotes that objective has to be given.

21. It is further contended by the learned counsel that in exercise of power under section 80, the TNVAT Rules have been framed. Rule 7 provides for power to prescribe a monthly return. The monthly return furnished in Form I itself permits use of the credit for discharge of CST. It is also contended that the omission of the proviso by Tamil Nadu Act 05 of 2015 effective from 01.04.2015 becomes relevant. The effect of omission of the proviso is as if the proviso did not have any existence at all. It is a case of omission and not repeal. It is also contended that Section 2(1)(i) of the Tamil Nadu Act 05 of 2015 omitted the proviso inserted to section 19(2) by Tamil Nadu Act 28 of 2013 and Section 2(1)(i) substituted the words ‘sale in the course of inter-state trade or commerce' falling under sub – sections (1) and (2) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), for the words ‘sale in the course of inter- state trade or commerce' falling under sub-section (1) of Section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956). The combined effect of the omission of the proviso and the substitution of sub – clause (v) is as if the restriction of the input credit contemplated by the proviso never existed as because a substitution relates back.

22. It is further contended that the expression 'use' is found under Section 19(2) (ii), sub-clause (iii) and sub-clause (iv), but it is absent in sub-clause (v) of Section 19 (2). Similarly, the expression 'manufacture' is found in sub-

clause (ii) and (iv) of Section 19 (ii) but it is absent in sub-clause (v). Again, the expression 'use in manufacture' is found in sub-clause (ii) of section 19(4) but it is inherently absent in sub-clause (i) of section 19 (4). Therefore, according to the learned counsel, Section 19(2)(v) would not include a case of inputs used in manufacture, as if inputs were intended for sale in the course of inter-state trade or commerce, and it would amount to reading words into the provisions which are non-existent.

23. The learned counsel further contended that under the scheme of the Act, there is a distinction between credit being 'allowed' and the same being 'utilized'. Section 19 (2) contemplates that ITC is being 'allowed', which expression refers to the grant of credit. Once credit is granted or earned by a manufacturer, the use of credit can be made under Rule 5 (3-A) of the Central Sales Tax Act (Tamil Nadu) Rules, 1957 in respect of inter-state sale effected by a manufacturer. Further, under the provisions of CST Act, the State Government has framed Rules in exercise of power under Section 13 (3) of the Central Sales Tax Act where Rule 5 (3-A) permits use of the credit earned under Section 19. Therefore, sub-clause (v) is not necessary to complete the entitlement for credit for a manufacturer, in whose case, the entitlement is complete the moment inputs are used in manufacture.

24. As a riposle to the assertion of the learned Additional Advocate General that the need for restriction of ITC is on account of accumulation of excess ITC, Mr.Prasad, learned counsel, submitted that the Central Sales Tax is always payable on the selling price of goods as contemplated under Section 2 (g), 2 (h), 2 (i) read with Section 6 of the Central Sales Tax Act, 1956. Under Section 8 (1) of the CST Act, tax is determined on the sale price at 2% at the relevant time. On the strength of the same, the respondents-assessees purchased industrial inputs incurring 5% on the price of purchase of raw materials or inputs. To this, Central Sales Tax is levied at 2% of price of manufactured product. Therefore, by no stretch of imagination, the purpose of amendment was to address the alleged excess credit. The selling price comprises cost of raw materials, inputs, other manufacturing costs incurred such as power, financial costs of investment, wages, selling expenses etc. Therefore, the amendment to Section 19 (2) (v) has nothing to do with the accumulation of ITC by the dealer, who manufactures the goods. Contending that both by the rule of literal and harmonious construction, the proviso will not be applicable to the manufacturers and by placing reliance upon the judgments in ***Commissioner of Agricultural Income Tax, Kerala vs. Plantation Corporation of Kerala Limited, Kottayam*** *reported in* ***(2001) 1 Supreme Court Cases 207, Hansraj Gordhandas vs. H.H. Dave, Assistant***

Collector of Central Excise, Customs, Surat and others *reported in* ***(1969) 2 SCR 253 = AIR 1970 SC 755, Collector of Central Excise, Pune and others vs. Dalichi Karkaraia Limited and others*** *reported in* ***(1999) 7 Supreme Court Cases 448, Collector of Central Excise and others vs. Himalayan Cooperative Milk Product Union Limited and others*** *reported in* ***(2000) 8 Supreme Court Cases 642, Kerala State Cooperative Marketing Federation Limited and others vs. Commissioner of Income Tax*** *reported in* ***(1998) 5 Supreme Court Cases 48, Govind Saran Ganga Saran vs. Commissioner of Sales Tax and others*** *reported in* ***1985 (Supp) Supreme Court Cases 205, Commissioner of Income Tax vs. Hindustan Bulk Carriers*** *reported in* ***(2003) 3 Supreme Court Cases 57,*** the learned counsel sought for dismissal of the appeals filed by the state and allowing the writ petitions filed by the assessees.

25. Mr. Joseph Prabhakar, learned counsel appearing for the respondents in W.A. Nos. 446 and 459 of 2019 would contend that the Value Added Tax (VAT) Act, was introduced on 01.01.2007 and the erstwhile Tamil Nadu General Sales Tax Act was in vogue until the year 2006 and it provided for a single point of taxation in the State. Upon introduction of VAT, multiple point of taxation came into force with an intention to levy tax at every stage of sale and ITC was allowed at every stage of purchase. Thus, the grant of ITC on

purchase, upon introduction of VAT, is not a benefit, but a necessity for the purpose of sustaining VAT, which is a scheme for multiple point of taxation. Relying upon Section 19 (2), the learned counsel further contended that each of the sub-clauses are independent of each other and lay down different stipulations to claim ITC. The learned counsel emphasized the use of the "; or" at the end of each sub-clause to buttress his case that the sub clauses must be read separately. According to the learned counsel, a *semi colon* is used between two closely related independent clauses and hence, the sub-clauses contained under Section 19 (2) are like water tight compartments and the eligibility to avail ITC for a given transaction would be determined under any one of the six sub-clauses.The learned counsel also contended that there was no error in Section 19 (2) and therefore, the amendment in 2013 cannot be called as corrective, that ITC is available on the purchase of raw material in case of manufacturer as per section 19 (2) (ii) and as it has got nothing to do with sale, section 19 (2) (v) will not affect the claim of ITC, that sections 19 (2) (1) and 19 (2) (v) will have to be read together, that the words used in 19 (5) (c) like "such goods" or "sale of manufactured goods" would imply that the legislature never intended to cover manufacturers under section 19 (2) (v) and that word "sale" in section 19 (2) (v) would have to be read as "resale". The learned counsel further referred to the term "re-sale" in sub-clause (i) and

contended that it has been used to define a pure and simple transaction of purchase of goods within the State and re-sale of the same goods within the State without any condition. Whereas, the term “sale” in the course of inter-state trade within the meaning of Section 8 (1) of the CST Act defines a re-sale outside the State as the one with Form 'C'. In other words, re-sale can be effected by complying with the conditions incorporated under Section 8 (1) of the CST Act. Therefore, the learned counsel submitted that sub-clause (v) refers to purchase of goods within the State and consequent re-sale of the same goods as such to other States and nothing more. For availing ITC the manufacturing or process of goods within the State is the sole criterion under sub-clause (ii) to determine the eligibility to avail ITC, which they have fulfilled. Relying upon the judgments which would be discussed later, the learned counsel sought for the dismissal of the appeals filed by the state.

26. Mr.V.Sundareswaran, learned counsel appearing for the respondents in Writ Appeal Nos.1651 and 1709 of 2017 as well as Writ Appeal Nos. 18 and 205 of 2018 would contend that the Tamil Nadu Value Added Tax Act, 2006 was introduced with effect from 01.01.2007 with an object of having uniform rate of sales tax throughout the Country. On 17.01.2005, the White Paper on VAT submitted was agreed by all the States. As per the White Paper, ITC shall be available to all "intra-state sales" as well as "inter-state sales" and it was

agreed to allow ITC on all sales including the inter-state sales irrespective of whether such sale is made to a registered or unregistered dealers. However, the State of Tamil Nadu restricted the availment of ITC on inter-state sales falling under Section 8 (2) of the Central Sales Tax Act under Section 19 (5) (c) read with Rule 10 (9) (a) of the TNVAT Rules unless form "C" is filed by the seller. In fact, the Central Government, with a view to facilitate the introduction of Goods and Service Tax Act, wanted to phase out the CST levy so as to remove the cascading effect of tax. Accordingly, vide Taxation Laws (Amendment) Act, 2007, the Central Government reduced the rate of CST in a phased manner viz., reduction of tax from 4% to 3% from 01.04.2007 and subsequently from 3% to 2% from 01.04.2008. However, during the assessment year 2011-2012, the Government of Tamil Nadu had increased the rate of sales tax under the TNVAT Act from 4% to 5% with effect from 12.07.2011 and from 12.5% to 14.5% with effect from 12.07.2011. Section 19(5)(c) denies the ITC not covered by form 'C' Declaration and therefore, the *vires* of the Act was challenged before this Court. This Court upheld the *vires* of the Act following the order dated 29.10.2014 passed by the Honourable Supreme Court in ***Sitalakshmi Mills*** case reported in ***(1974) 4 SCC 408.*** Further, the Apex Court in the decision dated 12.10.2018 in the case of ***TVS Motor Company vs. State of Tamil Nadu*** dismissed the Special Leave Petition

filed by the Revenue against the order dated 29.10.2014 passed by the Division Bench of this Court upholding the *vires* of Section 19 (5) of the Act. While holding so, it was held that Section 8 (2) of the CST Act is applicable only to inter-state sales made to the unregistered dealer and not to inter-state sales made to the registered dealers not covered by form "C" declarations. However, during the pendency of the Civil Appeal before the Apex Court, the State of Tamil Nadu made amendment to the TNVAT Act by omitting Section 19 (5) (c), Rule 10 (9) (a) and proviso to Section 19 (2) (v) on the one hand and substituted Section 19 (2) (v) on the other as agreed in VAT White paper. The 'omission' and 'substitution' were done by way of the same Amendment Act 5 of 2015 and the effect was that ITC is available to inter-state sales covered and without ‘C’ Forms. It is further contended by the learned counsel that Act 5 of 2015 is a declaratory statute in the real sense that the said amendment had removed the doubts existing as to the application of the provision in the light of the binding undertaking given by all the States.

27. The learned counsel referring to the budget speech rendered in vernacular language, contended that the intention of the legislature in 2015 while omitting the proviso added in 2013, was to cure the anomaly caused in implementation by giving retrospective effect and therefore it can only be termed as clarificatory. The learned counsel also relying upon the Doctrine of

Fairness, contended that even if purposive construction of Act 05/2015 is made, the amendment can only have retrospective effect. The learned counsel further terming the amendment in 2015 as declaratory, contended that it removed the confusion by omission and substitution and hence, would have retrospective effect. Referring to the judgments in ***CIT vs. Gold Coin Health Foods*** *reported in* ***(11) SCALE 497, Commissioner of Income Tax -I, New Delhi vs. Vatika Township Private Limited*** *reported in* ***2015 1 Supreme Court Cases 1, SEBI vs. Alliance Finstock Limited*** *reported in* ***(2015) 16 Supreme Court Cases 731,*** the learned counsel sought for the dismissal of the state appeals and allowing the writ petitions filed by the assessees.

28. Mr. Ramanathan, learned counsel appearing for the respondents in W.A. Nos. 1508, 1527, 1528 and 1692 of 2017 and W.A. No. 54 of 2020 and Mr. Pramodkumar Chopda, learned counsel for the respondent in W.A. No. 1771 of 2017 have adopted the arguments advanced by the other learned counsel appearing for the assessees.

29. Mr. Rajkumar, learned counsel for the respondent in W.A. No. 1770 of 2017 and Mr. K. Jayachandran, learned counsel for the respondents in W.A. Nos.2807 and 2809 of 2019 have adopted the arguments made by Mr.Prasad, learned counsel appearing for the respondent in W.A. No. 1260 of 2017.

30. Mr. N.Murali, learned counsel appearing for the appellants in W.A Nos.1446 and 1447 of 2021 / assessee contended that when the batch of writ petitions was pending and the earlier batch was allowed, it was appropriate for the learned judge to dismiss the writ petitions on the ground of technicality that they were filed beyond the time given for filing statutory appeal. The learned counsel also pressed into service the Division Bench Judgement of this Court in W.A No.493/2021 in support of his contention. It is further contended by the learned counsel that the order of the Learned Judge is the just interpretation and the same warrants no interference. Thus, the learned counsel prayed for the appeals filed by the assessees to be allowed by extending the benefit of the said order.

31. Similarly, Mr. Aditya Reddy, learned counsel for the respondent in W.A. Nos. 1626, 1633, 1677 and 1678 of 2017 and other cases, adopted the arguments of other counsels and sought the dismissal of the Writ Appeals preferred by the state and allowing the writ petitions of the assessees.

Analysis.

32. Heard all the Counsels and perused the materials available on record. All the counsels have pressed into service many judgments on interpretation of statutes, which will be referred and discussed later along with other judgments relevant on the issues.

33. What was challenged in the writ appeals filed by the Revenue is to the order dated 06.02.2017 passed in WP No. 7969 of 2014 etc., and also similar orders passed in the other writ proceedings. The order of the learned Judge made in WP.Nos.28828 and 28829 of 2018 is questioned in WA.Nos.1446 and 1447 of 2021 filed by the assessee.

34. The prayer made in WP.No.26705 of 2016 etc, is to quash the assessment orders passed by the Assessing Officers and for a consequential direction not to apply Section 2 (1) of the amending Act 29/2013 inasmuch as the writ petitioners are manufacturers.

35. Some of the writ petitions have been filed by the assessees with a prayer to issue a Writ of Mandamus directing the assessing officers to adjudicate on the monthly returns filed by the petitioners under the provisions of the Act and to restore the ITC, on the basis of the common order dated 06.02.2017 passed in WP No. 7969 of 2014 etc., batch by the learned Judge, which is impugned in WA.No.1260 of 2017 etc. cases filed by the Revenue.

36. At the outset, it is to be pointed out that the learned counsel for the writ petitioners, in unison, contended that the relief sought for in these writ petitions has to be decided depending upon the outcome of the writ appeals filed by the Revenue. As per section 23 of the Act, if any identical question of law is pending before this Court or the Supreme Court, the Assessing Officer

has to keep all further proceedings in abeyance till such time the issue is settled by the Constitutional Courts once and for all. When this Court is seized of the issue relating to applicability of the amended proviso to Section 19 (2) (v) of the Act, to a manufacturer, the Assessing Officer cannot proceed further until the conclusion of the writ appeals. Thus, we shall first proceed to examine the writ appeals filed by the Revenue.

Issues at Large

37. The following questions arise in these writ appeals filed by the Revenue, viz.,

i. Whether the proviso to Section 19(2) (v) of the TNVAT Act, 2006 inserted by Tamil Nadu Act 28 of 2013 in vogue till 01.04.2015, which provides that input tax credit shall be allowed only in excess of 3%, would apply to the manufacturers also, in respect of inputs used in manufacturing or processing of goods in the State, when such manufactured/processed goods are sold in the course of intra-State trade or commerce under sub-section (1) of Section 8 of the Central Sales Tax Act, 1956?

ii. Whether the omission of the proviso to Section 19 (2) (v) by Tamil Nadu Act 5 of 2015 is curative in nature and would have retrospective effect from the date of its insertion i.e., 11.11.2013?

Deliberations and findings

38. Before adverting to the contentious issues, it is apropos to address another important point raised by the State *qua* Judicial Review. *Sans* the adjudication on the authority of this Court to review, it may not be judicially viable to proceed further.

Judicial Review

39. One of the contentions of the Revenue is that the courts must restrain themselves in reviewing the policy decision of the State, more particularly in a fiscal statute, in which the States are at liberty to make trial and error. Let us now look at some of the judgments, which provide perspicuous reasons and prepositions on this point.

40. ***R.K. Garg v. Union of India, [1981 4 SCC 675 : 1982 SCC (Tax) 30]:***

> *"19..... It would be outside the province of the Court to consider if any particular immunity or exemption is necessary or not for the purpose of inducing disclosure of black money. That would depend upon diverse fiscal and economic considerations based on practical necessity and administrative expediency and would also involve a certain amount of experimentation on which the Court would be least fitted to pronounce. The Court would not have the necessary competence and expertise to adjudicate upon such an economic issue. The Court cannot possibly assess or evaluate what would be the impact of a particular immunity or exemption and whether it would serve the purpose in view or not. There are so many imponderables that would enter into the determination that it would be wise for the Court not to hazard an opinion where even economists may differ. The Court must while examining the constitutional validity of a legislation of this kind, "be resilient, not rigid, forward looking, not static, liberal, not verbal" and the Court must always bear in mind the constitutional proposition enunciated by the Supreme Court of the United States in Munn v. Illinois [94 US 13], namely, "that courts do*

not substitute their social and economic beliefs for the judgment of legislative bodies". The Court must defer to legislative judgment in matters relating to social and economic policies and must not interfere, unless the exercise of legislative judgment appears to be palpably arbitrary. The Court should constantly remind itself of what the Supreme Court of the United States said in Metropolis Theater Company v. City of Chicago [57 L Ed 730 : 228 US 61 (1912)] : "The problems of government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere error of government are not subject to our judicial review."

41. ***State of Kerala vs. Builders Association of India [(1997) 2 SCC 183]:***

"9. .....It must also be remembered that in the field of taxation, the legislature must be allowed greater "play in the joints", as it is called. Allowance must also be made for "trial and error" by the legislature....."

42. ***DDA v.UEE Electrical Engg.(P) Ltd [(2004) 11 SCC 213]:***

"11. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality" the second "irrationality", and the third "procedural impropriety". These principles were highlighted by Lord Diplock in Council of Civil Unions v. Minister for the Civil Service, [1984] 3 A1I.ER. 935, (commonly known as CCSU Case).

12. Courts are slow to interfere in matters relating to administrative functions unless decision is tainted by any vulnerability such as, lack of fairness in procedure, illegality and irrationality. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.

13. The famous case Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. [(1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] (KB at p. 229: All ER p. 682) commonly known as 'The Wednesbury's case" is treated as the landmark so far as laying down various basic principles relating to judicial review of administrative or statutory direction.

14. The law is settled that in considering challenge to administrative decisions courts will not interfere as if they are sitting in appeal over the decision."

43. ***State of T.N. v. K.Shyam Sunder [(2011) 8 SCC 737]:***

*31. The Government has to rise above the nexus of vested interests and nepotism and eschew window-dressing. "The principles of governance have to be tested on the touchstone of justice, equity and fair play and if a decision is not based on justice, equity and fair play and has taken into consideration other matters, though on the face of it, the decision may look legitimate but as a matter of fact, the reasons are not based on values but to achieve popular accolade, that decision cannot be allowed to operate". (*Vide Onkar Lal Bajaj v. Union of India *[(2003) 2 SCC 673 : AIR 2003 SC 2562])*

32. In State of Karnataka v. All India Manufacturers Organisation*, [(2006) 4 SCC 683 : AIR 2006 SC 1846], this Court examined under what circumstances the government should revoke a decision taken by an earlier Government. The Court held that an instrumentality of the State cannot have a case to plead contrary from that of the State and the policy in respect of a particular project adopted by the State Government should not be changed with the change of the government. The Court further held as under: (SCC p. 706, para 59)*

> *59. ... It is trite law that when one of the contracting parties is 'State' within the meaning of* Article 12 *of the Constitution, it does not cease to enjoy the character of "State" and, therefore, it is subjected to all the obligations that "State" has under the Constitution. When the State's acts of omission or commission are tainted with extreme arbitrariness and with mala fides, it is certainly subject to interference by the Constitutional Courts"*
>
> *(emphasis added)*

35. Thus, it is clear from the above that unless it is found that act done by the authority earlier in existence is either contrary to statutory provisions, is unreasonable, or is against public interest, the State should not change its stand merely because the other political party has come into power. Political agenda of an individual or a political party should not be subversive of rule of law.

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45. The legislature while delegating such powers has to specify that on certain data or facts being found and ascertained by an executive authority, the operation of the Act can be extended to certain areas or may be brought into force on such determination which is described as conditional legislation. While doing so, the legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purpose

and object of the Act. Where the legislative policy is enunciated with sufficient clearness or a standard is laid down, the courts should not interfere. What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on consideration of the provisions of the particular Act with which the Court has to deal including its preamble. (See Delhi Laws Act, *In re [AIR 1951 SC 332],* MCD v. Birla Cotton Spg. and Wvg. Mills *[AIR 1968 SC 1232])".*

44. ***Swiss Ribbons Pvt. Ltd. vs. Union of India [(2019) 4 SCC 17]:***

"120. The Insolvency Code is a legislation which deals with economic matters and, in the larger sense, deals with the economy of the country as a whole. Earlier experiments, as we have seen, in terms of legislations having failed, "trial" having led to repeated "errors", ultimately led to the enactment of the Code. The experiment contained in the Code, judged by the generality of its provisions and not by so-called crudities and inequities that have been pointed out by the petitioners, passes constitutional muster. To stay experimentation in things economic is a grave responsibility, and denial of the right to experiment is fraught with serious consequences to the nation. We have also seen that the working of the Code is being monitored by the Central Government by Expert Committees that have been set up in this behalf. Amendments have been made in the short period in which the Code has operated, both to the Code itself as well as to subordinate legislation made under it. This process is an ongoing process which involves all stakeholders, including the petitioners."

45. The Supreme Court of America, in its first ever judgment on judicial review in 1803, upholding the superiority of the Constitution of United States and the authority of the Judiciary over legislature, emphasized the importance and concept of Judicial Review in ***William Marbury v. James Madison, Secretary of the state of United States, reported in 5 US 137; 2 L.Ed 60*** and held as follows:

"*132. The question, whether an act, repugnant to the constitution, can become the law of the land, is a question deeply interesting to the United States; but, happily, not of an intricacy proportioned to its interest. It seems only necessary to recognise certain principles, supposed to have been long and well established, to decide it.*

133.That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it nor ought it to be frequently repeated. The principles, therefore, so established are deemed fundamental. And as the authority, from which they proceed, is supreme, and can seldom act, they are designed to be permanent.

134.This original and supreme will organizes the government, and assigns to different departments their respective powers. It may either stop here; or establish certain limits not to be transcended by those departments.

135.The government of the United States is of the latter description. The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing; if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.

136.Between these alternatives there is no middle ground. The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it.

137.If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

138.Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature repugnant to the constitution is void.

139.This theory is essentially attached to a written constitution, and is consequently to be considered by this court as one of the fundamental principles of our society. It is not therefore to be lost sight of in the further consideration of this subject.

140.If an act of the legislature, repugnant to the constitution, is void, does it, notwithstanding its invalidity, bind the courts and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law? This would be to overthrow in fact what was established in theory; and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration.

141.It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

142.So if a law be in opposition to the constitution: if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law: the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

143.If then the courts are to regard the constitution; and he constitution is superior to any ordinary act of the legislature; the constitution, and not such ordinary act, must govern the case to which they both apply.

144.Those then who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

145.This doctrine would subvert the very foundation of all written constitutions. It would declare that an act, which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare, that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.

……..

148.Could it be the intention of those who gave this power, to say that, in using it, the constitution should not be looked into? That a case arising under the constitution should be decided without examining the instrument under which it arises?

149.This is too extravagant to be maintained.

150.In some cases then, the constitution must be looked into by the judges. And if they can open it at all, what part of it are they forbidden to read, or to obey?

151.There are many other parts of the constitution which serve to illustrate this subject.

152.It is declared that 'no tax or duty shall be laid on articles exported from any state.' Suppose a duty on the export of cotton, of tobacco, or of flour; and a suit instituted to recover it. Ought judgment to be rendered in such a case? ought the judges to close their eyes on the constitution, and only see the law.

……..

157.From these and many other selections which might be made, it is apparent, that the framers of the constitution contemplated that instrument as a rule for the government of courts, as well as of the legislature.

158.Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies, in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!.

159.The oath of office, too, imposed by the legislature, is completely demonstrative of the legislative opinion on this subject. It is in these words: 'I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States.'

160.Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government? if it is closed upon him and cannot be inspected by him.

161.If such be the real state of things, this is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime.

162.It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the constitution, have that rank.

163.Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void, and that courts, as well as other departments, are bound by that instrument.

164.The rule must be discharged."

46. As a matter of fact, the position in India or throughout the world, is not different. Judiciary as the pillar of democracy is the premise on which the rule of law and democracy rests. The Constitution of the India being law of the land, is the touchstone on which all substantive, procedural or any other law in any form falling under Article 13 of the Constitution, is tested. The High Courts and the Supreme Court created under the Constitution serve as Constitutional bodies to uphold the rule of law. Any law much less the fiscal law is tested on its constitutionality. The question as to whether a law violates any fundamental or constitutional right guaranteed by the Constitution is to be reviewed only by this pillar of democracy. Whenever the executive and the legislature encroach upon the rights guaranteed, judicial review cannot be curtailed. The power of a High Court under Article 226, as agreed and settled by the Apex Court is in fact much wider even than the powers of the Apex Court in its Writ Jurisdiction as the High court is not only entitled to interfere *qua* infringement of fundamental rights, but also Constitutional rights.

47. The policy decisions of the State are formulated into law in any of the forms laid down in Article 13 of the Constitution. It is one thing to state that the State has the authority to bring in law falling under any of the subjects under State List or Concurrent List subject to Article 254. The law, once brought into force, is subject to judicial review by the Constitutional Courts

for the legislature on passing of the Act becomes *functus officio*. Any State is at liberty to bring any law on the subjects in the State list in furtherance of its policy of the State. The cause and effect in such cases are the policies of the State.

48. The Hon'ble Supreme Court, even in the recent judgment rendered in Civil Appeal Nos.7682 to 7684 of 2021 on 10/01/2022 following the earlier judgment reported in ***2021 (8) SCC 784*** held as follows:

> "*10.4 As per the settled proposition of law, the Court should refrain from interfering with the policy decision, which might have a cascading effect and having financial implications. Whether to grant certain benefits to the employees or not should be left to the expert body and undertakings and the Court cannot interfere lightly. Granting of certain benefits may result in a cascading effect having adverse financial consequences.*
>
> *10.5 In the present case, WALMI being an autonomous body, registered under the Societies Registration Act, the employees of WALMI are governed by their own Service Rules and conditions, which specifically do not provide for any pensionary benefits; the Governing Council of WALMI has adopted the Maharashtra Civil Services Rules except the Pension Rules. Therefore, as such a conscious policy decision has been taken not to adopt the Pension Rules applicable to the State Government employees; that the State Government has taken such a policy decision in the year 2005 not to extend the pensionary benefits to the employees of the aided institutes, boards, corporations etc.; and the proposal of the then Director of WALMI to extend the pensionary benefits to the employees of WALMI has been specifically turned down by the State Government. Considering the aforesaid facts and circumstances, the High Court is not justified in directing the State to extend the pensionary benefits to the employees of WALMI, which is an independent autonomous entity."*

49. The above said judgment was rendered in the context of extension of benefits to the employees, who were refused to be treated on par with the state government employees, in view of a specific law. It is the prerogative of every

State to impose any condition in its policy by granting or restricting benefits to a section of society. The court will be hesitant to interfere with such policy decisions even if inconvenience is caused to a section of the society or if a section of the society is deprived of its benefits, however subject to satisfaction of other parameters. Similarly, though the legislature of any state can, by experiment enact any law on trial and error, the result of such enactment *qua* financial success or failure has nothing to do with the test to the legality of the provision as it is the constitutional right of any subject to challenge the *vires* of the enactment or action of the authority in the touchstone of the Constitution or the provisions of the Act. Once it is found lacking, the natural consequences would follow and it is for the state to take appropriate steps. However, once the subject of legislation falls within the realm of the state's authority to legislate and it is found to be in consonance with the other rights guaranteed under the Constitution, seldom can the court interfere under Judicial Review to deprecate any enactment just because the trial ended in error causing infirmity though not of Constitutional or resulted in causing prejudice to a section of the society as laid down in ***RK.Garg Case***, followed by the Apex Court in ***Union of India vs. VKC Footsteps Pvt Ltd (2021 SCC Online SC 706)***.

50. Any law that is enacted is not the handwork of any layman. Normally, it is formulated by an expert committee consisting of experts in the field. Objections or suggestions from the public are also considered when the act is in the stage of a draft bill. It then undergoes the test of the parliament or the legislature and thereafter must receive the assent of the President to become a law. For instance, before the then local state sales tax laws were repealed and VAT laws were introduced, an empowered committee comprising of state finance ministers was constituted, deliberated and then the basic structure was given. Each state then made modifications and the state Value Added Tax Acts were notified on various dates by the respective states. Of course, the legislature cannot foresee every situation while enacting a law and improvisations may have to be made to curtail evasion, but that would not justify the courts to adopt a liberal interpretation in taxing statues which is different from liberal approach, while deciding on Constitutional Validity.

51. The authority to review the constitutionality of such decisions or enactments is not abridged in totality, in addendum, the decision-making process is also subject to judicial review. The court is to weigh such policy decisions against the guarantees and safeguards under the Constitution of India. In fiscal matters, generally, the courts take a restrained approach in interfering with any policy decision taken to bring about a particular law,

where the financial implications in the subject matter are more. The courts cannot direct the state to extend the benefit to another section. Even though taxing statutes can be categorized as a fiscal matter, the general rule cannot be abruptly applied in view of various safeguards and protection under the Constitution in the matters of taxation.

52. The safeguard insofar as taxes are concerned is stronger by virtue of Article 265 of the Constitution of India, which states “No tax shall be levied or collected except by authority of law”. It is affirmative in the sense that it restricts the authority of the State as the State is to satisfy the test of law before any levy or collection. The word “levy” is to be tested on the touchstone of the constitutional and charging provision and the word “collected” is to be tested not only upon the constitutional provisions, but also the provisions of the appropriate Act and Rules under which action is taken. They are not synonyms and operate at different stages. A legal levy may not at times entitle the authority to collect the tax, but every collection would encompass within it a legal levy. For instances, exemptions granted by the state or judicial pronouncements subsequently declaring the levy to be bad, would prohibit the state from collecting any amount by way of tax. Therefore, not only the constitutionality of any enactment can be subjected to Judicial Review, but also the decisions of the authorities in implementing the law.

53. In taxing matters, the quotient is irrelevant, once the provisions of the Act or the action impugned is found wanting. If the subject cannot be brought within the four corners of law, the assessee is free from tax. The rule of interpretation of the exemption provision has been the subject matter of many disputes over several decades and settled by the Constitutional Bench of the Apex Court in the Judgment in ***Commr. of Customs v. Dilip Kumar & Co.*** *reported in* ***2018 (9) SCC 1*** about which we will address in the later part of this order.

54. In the present case, the contention of the State on judicial review is fallacious as the provisions are not under challenge and assessees have not espoused a case for interference with the policy decision, but rather it is the interpretation by the department that is under question. What is espoused here is that when the legislative intent was to allow ITC to the manufacturers, the department cannot, by interpretation impose tax by reversal of ITC. Therefore, the ratio laid down in the judgments deciding the *vires* of the provisions are not applicable, but rather, the judgments, *qua* the interpretation to be adopted is relevant. The primary function of judiciary is to render justice by interpreting law. There is difference between judicial review and interference. Judicial review is the process by which the court reviews any law or action of the state against the standard of test prescribed in the Constitution or any other

law. Whereas, interference is altogether a different concept, wherein the judiciary steps into the shoes of the legislature. The law relating to interference has also substantially changed in the form of judge made law in spheres where either the law of the state is found wanting or a new situation not anticipated by the legislature or parliament is exposed. It lingers on either side of the line to be taken as judicial activism or judicial overreach. The question raised here is purely a question of law and requires interpretation of the statute, which squarely falls within the ambit of review and therefore, the power of judicial review is not taken away. Hence, the contention of the state is turned down.

55. Now, coming to the issues at large, it is necessary to narrate the basic and overall scheme of the Act before proceeding and elaborating further and for that purpose, the relevant portion as it was in vogue, is extracted as under:

> *"Section 2 of the Act deals with definitions. The relevant definitions applicable to the present case as extracted under:*
>
> ***Section 2 (10)** "**business**" includes --*
>
> *(i) any trade or commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern; and*
>
> *(ii) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern;*
>
> ***Section 2 (15)** ''**dealer''** means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes--*
>
> *(i) a local authority, company, Hindu undivided family, firm or other association of persons which carries on such business;*

(ii) a casual trader;

(iii) a factor, a broker, a commission agent or arhati, a del credere agent or an auctioneer, or any other mercantile agent by whatever name called, and whether of the same description as hereinbefore or not, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal, or through whom the goods are bought, sold, supplied or distributed;

(iv) every local branch of a firm or company situated outside the State;

(v) a person engaged in the business of transfer otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;

(vi) a person engaged in the business of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(vii) a person engaged in the business of delivery of goods on hire-purchase or any system of payment by instalments;

(viii) a person engaged in the business of transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(ix) a person engaged in the business of supplying by way of, or as part of, any service or in any other manner whatsoever of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration;

***Explanation I**.- A society including a co-operative society, club or firm or an association which, whether or not in the course of business, buys, sells, supplies or distributes goods from or to its members for cash, or for deferred payment or for commission, remuneration or other valuable consideration, shall be deemed to be a dealer for the purposes of this Act:*

***Explanation II**.- The Central Government or any State Government which, whether or not in the course of business, buy, sell, supply or distribute goods, directly or otherwise, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, shall be deemed to be a dealer for the purposes of this Act;*

***Explanation III.**- Each of the following persons or bodies who dispose of any goods including unclaimed or confiscated or unserviceable or scrap surplus, old or obsolete goods or discarded material or waste products whether by auction or otherwise directly or through an agent for cash or for deferred payment or for any other valuable consideration, notwithstanding anything contained in this Act, shall be deemed to be a dealer for the purposes of this Act to the extent of such disposals, namely:-*

(i) Port Trust;

(ii) Municipal Corporations, Municipal Councils and other local authorities constituted under any law for the time being in force;

(iii) Railways administration as defined under the Railways Act, 1989(Central Act 24 of 1989);

(iv) Shipping, transport and construction companies;.

(v) Air Transport Companies and Airlines;

(vi) Any person holding permit for the transport vehicles granted under the Motor Vehicles Act, 1988 (Central Act 59 of 1988) which are used or adopted to be used for hire;

(vii) The Tamil Nadu State Road Transport Corporations;

(viii) Customs Department of the Government of India administering the Customs Act, 1962 (Central Act 52 of 1962);

(ix) Insurance and Financial Corporations or Companies and Banks included in the Second Schedule to the Reserve Bank of India Act, 1934 (Central Act II of 1934);

(x) Advertising agencies; and

(xi) Any other corporation, company, body or authority owned or set up by, or subject to administrative control of the Central Government or any State Government.

***Section 2 (20)** ''**exempted goods''** means the goods falling under the Fourth Schedule and goods exempted by the Government, by notification, from time to time.*

***Section 2 (21)** ''**goods''** means all kinds of movable property (other than newspapers, actionable claims, stocks and shares and securities) and includes all materials, commodities and articles including the goods (as goods or in some other form) involved in the execution of works contract or those goods to be used in the fitting out, improvement or repair of movable property; and all growing crops, grass or things attached to, or forming part of the land which are agreed to be severed before sale or under the contract of sale;*

***Section 2(23)** ''**input''** means any goods including capital goods purchased by a dealer in the course of his business;*

***Section 2 (24)** ''**input tax''** means the tax paid or payable under this Act by a registered dealer to another registered dealer on the purchase of goods including capital goods in the course of his business;*

***Section (27)** ''**manufacture''** with its grammatical variations and cognate expressions means producing, making, extracting, altering, ornamenting, finishing, assembling or otherwise processing, treating or adapting any goods and includes any process of goods which brings into existence a*

commercially different and distinct commodity but does not include any activity as may be notified by the Government;

***Section 2(28) ''output tax''** means tax paid or payable under this Act by any registered dealer in respect of sale of any goods;*

***Section 2(30) ''registered dealer''** means a dealer registered under this Act;*

*Section 2(33) ''**sale''** with all its grammatical variations and cognate expressions means every transfer of the property in goods (other than by way of a mortgage, hypothecation, charge or pledge) by one person to another in the course of business for cash, deferred payment or other valuable consideration and includes ,-*

(i) a transfer, otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;

(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(iii) a delivery of goods on hire-purchase or any system of payment by instalments;

(iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(v) a supply of goods by any un-incorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;

***Explanation I**.- The transfer of property involved in the supply or distribution of goods by a society (including a co-operative society), club, firm or any association to its members, for cash, or for deferred payment or other valuable consideration, whether or not in the course of business, shall be deemed to be a sale for the purposes of this Act.*

***Explanation II**.- Every transfer of property in goods by the Central Government or any State Government for cash or for deferred payment or other valuable consideration, whether or not in the course of business, shall be deemed to be a sale for the purposes of this Act.*

***Explanation III**.- Every transfer of property in goods including goods as unclaimed or confiscated or unserviceable or scrap surplus, old, obsolete or*

discarded materials or waste products, by the persons or bodies referred to in Explanation III in clause (15) of section 2 for cash or for deferred payment or for any other valuable consideration whether or not in the course of business, shall be deemed to be a sale for the purposes of this Act.

***Explanation IV**.- The transfer of property involved in the purchase, sale, supply or distribution of goods through a factor, broker, commission agent or arhati, del credere agent or an auctioneer or any other mercantile agent, by whatever name called, whether for cash or for deferred payment or other valuable consideration, shall be deemed to be a purchase or sale, as the case may be, by such factor, broker, commission agent, arhati, del credere agent, auctioneer or any other mercantile agent, by whatever name called, for the purposes of this Act.*

***Explanation V.**-(a) The sale or purchase of goods shall be deemed for the purposes of this Act, to have taken place in the State, wherever the contract of sale or purchase might have been made, if the goods are within the State —*

(i) in the case of specific or ascertained goods, at the time the contract of sale or purchase is made; and

(ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase by the seller or by the purchaser, whether the assent of the other party is prior or subsequent to such appropriation.

(b) Where there is a single contract of sale or purchase of goods, situated at more places than one, the provisions of clause (a) shall apply as if there were separate contracts in respect of the goods at each of such places.

***Explanation VI**.- Notwithstanding anything to the contrary contained in this Act, two independent sales or purchases shall, for the purposes of this Act, be deemed to have taken place –*

(a) when the goods are transferred from a principal to his selling agent and from the selling agent to the purchaser, or

(b) when the goods are transferred from the seller to a buying agent and from the buying agent to his principal, if the agent is found in either of the cases aforesaid-

(i) to have sold the goods at one rate and to have passed on the sale proceeds to his principal at another rate, or

(ii) to have purchased the goods at one rate and to have passed them on to his principal at another rate, or

(iii) not to have accounted to his principal for the entire collections or deductions made by him in the sales or purchases effected by him on behalf of his principal.

*Section 2(37) "**taxable goods''** means goods other than exempted goods*

specified in the Fourth Schedule to this Act or goods exempted by notification by the Government;

***Section 2 (38) ''taxable turnover''** means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed;*

***Section 2(43) ''works contract''** includes any agreement for carrying out for cash, deferred payment or other valuable consideration, building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning, of any movable or immovable property;*

Section 3 which is the charging section reads as follows

*3. **Levy of Taxes on sales of goods.-** (1) (a) Every dealer, other than a casual trader or agent of a non-resident dealer, whose total turnover for a year is not less than rupees five lakhs and every casual trader or agent of a non-resident dealer, whatever be his total turnover, for a year shall pay tax under this Act.*

(b) Notwithstanding anything contained in clause (a), every dealer, other than a casual trader or agent of a non-resident dealer, whose total turnover in respect of purchase and sale within the State, for a year, is not less than rupees ten lakhs, shall pay tax under this Act.

(1-A) Notwithstanding anything contained in this Act, for the purpose of assessment of tax under this Act, for the period from the 1st day of January 2007 to the 31st day of March 2007 in respect of dealers referred to in clause (a) or (b) of sub-section (1), the total turnover for the period from the 1st day of April 2006 to the 31st day of December 2006 under the repealed Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) and the total turnover for the period from the 1st day of January 2007 to the 31st day of March 2007 under this Act, shall be the total turnover for the year 2006-2007. in respect of such dealer whose total turnover for that year exceeds the total turnover referred to in the said clause (a) or (b) of sub-section 1 and if,-

(a) such dealer has not collected the tax under this Act, he is liable to pay tax under this Act,

(b) such dealer has collected the tax under this Act, he is liable to pay tax under this Act, and other provisions of this Act, shall apply to such dealer.

(2) Subject to the provisions of sub-section (1), in the case of goods specified in Part - B or Part - C of the First Schedule, the tax under this Act shall be payable by a dealer on every sale made by him within the State at the rate specified therein.

Provided that all spare parts, components and accessories of such goods shall also be taxed at the same rate as that of the goods if such spare parts, components and accessories are not specifically enumerated in the First

Schedule and made liable to tax under that Schedule.

(3) The tax payable under sub-section (2) by a registered dealer shall be reduced, in the manner prescribed, to the extent of tax paid on his purchase of goods specified in Part - B or Part - C of the First Schedule, inside the State, to the registered dealer, who sold the goods to him.

.....

Section 15. Exempted sale.-- *Sale of goods specified in the Fourth Schedule and the goods exempted by notification by the Government by any dealer shall be exempted from tax.*

Section 19 is the provision which deals with entitlement and claim of ITC. It is this provision that requires interpretation before and after the amendment to resolve the issues at large.

19. ***Input tax credit .--*** *(1) There shall be input tax credit of the amount of tax paid or payable under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule :*

Provided that the registered dealer, who claims input tax credit, shall establish that the tax due On such purchases has been paid by him in the manner prescribed

(2) Input tax credit shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of -

(i) re-sale by him within the State; or

(ii) use as input in manufacturing or processing of goods in the State; or

(iii) use as containers, labels and other materials for packing of goods in the State; or

(iv) use as capital goods in the manufacture of taxable goods.

(v) Sale in the course of inter-State trade or commerce falling under sub-section (1) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956).

(vi) Agency transactions by the principal within the State in the manner as may be prescribed

(3) (a) Every registered dealer, in respect of purchases of capital goods, for use in the manufacture of taxable goods, shall be allowed input tax credit in the manner prescribed.

(b) Deduction of such input tax credit shall be allowed only after the commencement of commercial production and over a period of three years in the manner as may be prescribed. After the expiry of three years, the un availed input tax credit shall lapse to Government.

(c) Input tax credit shall be allowed for the tax paid under section 12 of the Act, subject to clauses (a) and (b) of this sub-section.

(4) Input tax credit shall be allowed on tax paid or payable in the State on the purchase of goods, in excess of three percent of tax relating to such purchases subject to such conditions as may be prescribed,-

(i) for transfer to a place outside the State otherwise than by way of sale; or

(ii) for use in manufacture of other goods and transfer to a place outside the State, otherwise than by way of sale:

Provided that if a dealer has already availed input tax credit there shall be reversal of credit against such transfer.

(5) (a) No input tax credit shall be allowed in respect of sale of goods exempted under section 15

(b) No input tax credit shall be allowed on tax paid or payable in other States or Union Territories on goods brought into this State from outside the State.

(c) No input tax credit shall be allowed on the purchase of goods sold as such or used in the manufacture of other goods and sold in the course of inter-State trade or commerce falling under sub-section (2) of section 8 of the Central Sales Tax Act, 1956.(Central Act 74 of 1956).

(6) No input tax credit shall be allowed on purchase of capital goods, which are used exclusively in the manufacture of goods exempted under section 15.

Provided that on the purchase of capital goods which are used in the manufacture of exempted goods and taxable goods, in put tax credit shall be allowed to the extent of its usage in the manufacture of taxable goods in the manner prescribed.

(7) No registered dealer shall be entitled to input tax credit in respect of-

(a) goods purchased and accounted for in business but utilised for the purpose of providing facility to the proprietor or partner or director including employees and in any residential accommodation; or

(b) purchase of all automobiles including commercial vehicles, two wheelers and three wheelers and spare parts for repair and maintenance thereof, unless the registered dealer is in the business of dealing in such automobiles or spare parts; or

(c) purchase of air-conditioning units unless the registered dealer is in the business of dealing in such units.

(8) No input tax credit shall be allowed to any registered dealer in respect of any goods purchased by him for sale but given away by him by way of free sample or gift or goods consumed for personal use.

(9) No input tax credit shall be available to a registered dealer for tax paid or payable at the time of purchase of goods, if such-

(i) goods are not sold because of any theft, loss or destruction, for any reason, including natural calamity. If a dealer has already availed input tax

credit against purchase of such goods, there shall be reversal of tax credit; or

(ii) inputs destroyed in fire accident or lost while in storage even before use in the manufacture of final products; or

(iii) inputs damaged in transit or destroyed at some intermediary stage of manufacture.

(10) (a) The registered dealer shall not claim input tax credit until the dealer receives an original tax invoice duly filled, signed and issued by a registered dealer from whom the goods are purchased, containing such particulars, as may be prescribed, of the sale evidencing the amount of input tax.

(b) If the original tax invoice is lost, input tax credit shall be allowed only on the basis of duplicate or carbon copy of such tax invoice obtained from the selling dealer subject to such conditions as may be prescribed.

(11) In case any registered dealer fails to claim input tax credit in respect of any transaction of taxable purchase in any month, he shall make the claim before the end of the financial year or before ninety days from the date of purchase, whichever is later.

(12) Where a dealer has availed credit on inputs and when the finished goods become exempt, credit availed on inputs used therein, shall be reversed.

…….

(16) The input tax credit availed by any registered dealer shall be only provisional and the assessing authority is empowered to revoke the same if it appears to the assessing authority to be incorrect, incomplete or otherwise not in order.

(17) If the input tax credit determined by the assessing authority for a year exceeds tax liability for that year, the excess may be adjusted against any outstanding tax due from the dealer.

(18) The excess input tax credit, if any, after adjustment under sub-section (17), shall be carried forward to the next year or refunded, in the manner, as may be prescribed.

19) Where any registered dealer has availed input tax credit and has goods remaining unsold at the time of stoppage or closure of business, the amount of tax availed shall be reversed on the date of stoppage or closure of such business and recovered.

20) Not withstanding anything contained in this section, where any registered dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of the input tax credit over and above the output tax of those goods shall be reversed.

***38. Registration of Dealers.--** (1) (a) Every dealer, 1who purchases goods within the State and effects the sale of those goods within the State and*

whose total turnover any year is not less than ten lakhs of rupees and every other dealer whose total turnover in a year is not less than five lakhs of rupees shall, and

(b) any other dealer or person intending to commence business may, get himself registered under this Act.

……

(3) Notwithstanding anything contained in sub-section (1),--

…….

(c) every dealer registered under sub-section (3) of section 7 of the Central Sales Tax Act, 1956 (Central Act 1956);

(d) every dealer residing outside the State, but carrying on business in the State; (e) every agent of a non-resident dealer;

…….

(g) every dealer who in the course of his business obtains or brings goods from outside the State or effects export of goods out of the territory of India shall get himself registered under this Act, irrespective of the quantum of his turnover in such goods.

….

56. The Tamil Nadu Value Added Tax Act came into force on 1st January 2007. There was a shift from the concept of Second Sale Exemption to Input Tax Credit and payment of tax on the Value added to the goods purchased and sold as such or after manufacture. Input Tax Credit has been defined under Section 2(24) to be "the tax paid or payable under this Act by a registered dealer to another registered dealer on the purchase of goods including capital goods in the course of his business". Section 3 of the Act which is the charging section, lays down that "every dealer other than a causal dealer or agent or non-resident reader, shall register himself upon reaching the threshold total turnover of Rupees Five Lakhs". The said provisions under the TNVAT Act would lay down that any person engaged in the sale or purchase of goods,

whose turnover exceeds Rupees Five Lakhs or a registered dealer under CST Act is bound to register himself under the provisions of the Act and such registered dealer who deals with First Schedule goods shall be entitled to credit of tax paid or payable at the time of purchase of First Schedule goods within the state. Sections 19 (2) to 19 (9) deal with the different circumstances under which a registered dealer is entitled to Input Tax Credit and from section 19(10) onwards, the provisions deal with the conditions to be satisfied to claim ITC. No Input Tax Credit is available on exempted goods or goods falling under Schedule IV. It could also be discerned that the point of levy of tax is at every point of sale and that a dealer is entitled to adjust his output tax from and out of the credit to which he is entitled as per the provisions and after satisfying the requirements. It is needless to point out that the Output tax would include the value added on the goods purchased or manufactured from and out of the goods purchased within the state. Every dealer has to file its monthly return in Form I and claim ITC. In case, any dealer fails to claim ITC in its monthly returns, he can make a claim within 90 days from purchase or before the end of the financial year, whichever is later. To be specific, if not claimed in monthly returns, by late he can claim ITC for the period up to December of any assessment year within 31st March and for the months of January, February and March of the Assessment year in the months of April,

May and June, respectively depending upon the date of purchase. Further, the legislature in its wisdom has chosen to include the manufacturers in the sections 19 (2) (ii), 19 (2) (iv), 19 (3) (a), 19 (4) (ii), 19 (5) (c), 19(6) (a) and its proviso and 19 (9) (ii) and (iii) of the Act.

57. Now, let us consider the relevant portion of the white paper on State Level Value Added Tax presented by The Empowered Committee of State Finance Ministers (Constituted By the Ministry of Finance, Government of India on the Basis of Resolution Adopted in the Conference of the Chief Ministers on November 16,1999):

"**Concept of VAT and Set- Off/ Input Tax Credit**

57.1. The essence of VAT is in providing set-off for the tax paid earlier, and this is given effect through the concept of input tax credit / rebate. This input tax credit in relation to any period means setting off the amount of his input tax by a registered dealer against the amount of his output tax. The Value Added Tax (VAT) is based on the value addition to the goods and the related credit from tax collected on sales during the payment period (say a month).

If for example, input worth Rs.1,00,000/- is purchased and sales are worth Rs.2,00,000/- in a month, and input tax rate and output tax rate are 4% and 10% respectively, then input tax credit /set-off and calculation of VAT will be as shown below:

a) Input purchased within month : Rs 1,00,000/-

b) Output sold in the month : Rs. 2,00,000/-

c) Input tax paid : Rs.4000/-

d) Output tax payable : Rs.20,000/-

e) VAT payable during the month : Rs.16,000/-

After set – off/input tax credit [(d) – (c)]

Coverage of Set- Off/ Input Tax Credit

57.2. This input tax credit will be given for both manufacturers and traders for purchase of inputs/supplies meant for both sale within the state as well as to other States, irrespective of when these will be utilized/sold. This also reduces immediate tax liability.

Even for stock transfer/consignment sale of goods out of the state, input tax paid in excess of 4 % will be eligible for tax credit.

Carrying Over of Tax Credit

57.3. If the tax credit exceeds the tax payable on sales in a month, the excess credit will be carried over to the end of next financial year. If there is any excess unadjusted input tax credit at the end of second year, then the same will be eligible for refund.

Input tax credit on capital goods will also be available for traders and manufacturers. Tax credit on capital goods may be adjusted over a maximum of 36 equal monthly instalments. The States may at their option reduce this number of instalments.

There will be a negative list for capital goods (on the basis of principles already decided by the Empowered Committee) not eligible for input tax credit.

58. Of course, when the Act came into force, small changes were made by many States. However, the concept regarding Input Tax Credit as stated above was implemented. There is no one to one corelation in either the goods or the tax, while adjustment or set-off, but the disposal of the goods is an essential condition to adjust ITC.

59. It appears that the State as found in the White Paper, decided to enable the manufacturers effecting inter-state sale to also avail ITC by including them in section 19(2)(ii) with a condition that the manufacturing activity must happen within the State. While introducing the Act, section 19 (2) (v) was incorporated by which ITC was allowed on inter-state sale falling under Section 8(1) of the CST Act and ITC on inter-state sale to an unregistered dealer falling under Section 8(2) of the CST Act was not allowed.

60. The primary condition for a person to claim ITC is that he must be registered under the provisions of the Act. Upon registration, a dealer transforms into an assessee and is bound to satisfy the conditions to be entitled to and claim ITC. An unregistered dealer is not entitled to ITC. Though there are few sections that speak about the entitlement to ITC, Section 19 of the TNVAT Act referred to above exclusively deals with the entitlement and claim of ITC. Section 19 (4) alone was introduced with a condition, about which we will discuss later. Insofar as Section 19 (2), the matter of concern now is, an assessee who purchases First Schedule goods within the State alone, is entitled to ITC. That apart, the sub-clauses (i) to (vi) lay down the various circumstances under which an assessee is entitled to ITC. Upon satisfaction of any of the conditions in section 19(2), an assessee is entitled to ITC.

61. However, the entitlement is subject to the other conditions as found for instance in the Section 19 (10) or 19 (11) or 19 (20) as the case may be. The essential conditions to claim ITC is receipt of Original Tax Invoice by the purchaser and to claim the same within the time limits prescribed under law. If ITC is not claimed in the returns within the stipulated time as contemplated under Section 19 (11), it shall lapse to the government despite the entitlement. At this juncture, it is relevant to refer to the law laid down by the Apex Court, while considering the *vires* of the TNVAT Act.

62. In ***ALD Automotive (P) Ltd. v. CTO, (2019) 13 SCC 225 : 2018 SCC OnLine SC 1945***, the Apex Court, while confirming the *vires* of Section 19 (11), held as follows**:**

> "***34.*** *The input credit is in the nature of benefit/concession extended to the dealer under the statutory scheme. The concession can be received by the beneficiary only as per the scheme of the statute. Reference is made to the judgment of this Court in Godrej & Boyce Mfg. Co. (P) Ltd. v. CST [Godrej & Boyce Mfg. Co. (P) Ltd. v. CST, (1992) 3 SCC 624] . Rules 41 and 42 of the Bombay Sales Tax Rules, 1959 provided for the set-off of the purchase tax. This Court held that the rule-making authority can provide curtailment while extending the concession. In para 9 of the judgment, the following has been laid down: (SCC pp. 631-32)*
>
> "*9. In law (apart from Rules 41 and 41-A) the appellant has no legal right to claim set-off of the purchase tax paid by him on his purchases within the State from out of the sales tax payable by him on the sale of the goods manufactured by him. It is only by virtue of the said Rules—which, as stated above, are conceived mainly in the interest of public—that he is entitled to such set-off. It is really a concession and an indulgence. More particularly, where the manufactured goods are not sold within the State of Maharashtra but are despatched to out-State branches and agents and sold there, no sales tax can be or is levied by the State of Maharashtra. The State of Maharashtra gets nothing in respect of such sales effected outside the State. In respect of such sales, the rule-making authority could well have denied the benefit of set-off. But it chose to be generous and has extended the said benefit to such out-State sales as well, subject, however to deduction of one per cent of the sale price of such goods sent out of the State and sold there. We fail to understand how a valid grievance can be made in respect of such deduction when the very extension of the benefit of set-off is itself a boon or a concession. It was open to the rule-making authority to provide for a small abridgement or curtailment while extending a concession. Viewed from this angle, the argument that providing for such deduction amounts to levy of tax either on purchases of raw material effected outside the State or on sale of manufactured goods effected outside the State of Maharashtra appears to be beside the point and is unacceptable. So is the argument about apportioning the sale-price with reference to the proportion in which raw material was purchased within and outside the State."*

63. In ***TVS Motor Co. Ltd. v. State of T.N., (2019) 13 SCC 403 : 2018 SCC OnLine SC 1944***, the Apex Court, while confirming the *vires* of Section

19 (5) (c), approved the view in ***ALD Automotive case*** by holding as under:

> "***39.*** *In another judgment in ALD Automotive (P) Ltd. v. CTO [ALD Automotive (P) Ltd. v. CTO, (2019) 13 SCC 225] pronounced in today's date, the scheme of this very provision is discussed again in detail to the same effect.*
>
> ***40.*** *It is very clear from the aforesaid discussion that this Court held that ITC is a form of concession which is provided by the Act; it cannot be claimed as a matter of right but only in terms of the provisions of the statute; therefore, the conditions mentioned in the aforesaid section had to be fulfilled by the dealer; and sub-section (20) of Section 19 was constitutionally valid. It was also noted, in the process, that there were valid and cogent reasons for inserting that provision and the main purpose was to protect the Revenue against clandestine transaction resulting in evasion of tax.*
>
> ***41.*** *The reasoning given in that judgment while upholding sub-section (20) of Section 19 shall equally apply while examining the validity of Section 19(5)(c) thereof. The High Court has noted the specific stand taken by the State Government to the fact that in respect of unregistered dealer in other States, the State of Tamil Nadu has no mechanism to prevent evasion of tax and loss of revenue caused by trade with such unregistered dealers in the State of Tamil Nadu. Therefore, the provision was aimed at achieving a specific and justified purpose and could not be treated as discriminatory.*
>
> ***42.*** *It is stated at the cost of repetition that Section 19 of the Tnvat Act deals with ITC. It incorporates provision for grant of ITC under certain circumstances and, at the same time, also lays down the conditions in which such ITC would be admissible. It is in this context sub-section (5) of Section 19 is to be analysed. Sub-section (5) stipulates certain contingencies where such ITC would not be admissible. There is no quarrel about clauses (a) and (b). We are only concerned with clause (c) of this sub-section which provides that ITC would not be allowed on the purchase of goods sold as such or used in the manufacture of other goods and sold in the course of inter-State trade or commerce falling under sub-section (2) of Section 8 of the Central Sales Tax Act. To put it tersely, sale by a dealer who is registered in the State of Tamil Nadu which is effected outside the State of Tamil Nadu will qualify for ITC only when the said sale is made to a registered dealer. If it is to an unregistered dealer, it would not be admissible. This classification is based on intelligible differentia having a proper rationale. Insofar as sales to unregistered dealers are concerned, that too situated outside the State of Tamil Nadu, the State would not have any mechanism to find out the genuineness of these sales. In essence, the State is putting the condition that ITC would be admissible when Form C is given, which can be given only in those cases where sale is to a registered dealer. Prescribing such a condition*

> *in order to ensure that there is no evasion, has a rational purpose and objective. Consideration of this aspect in the context of the very nature of the ITC scheme, which is a concession and not a right, would lead us to the conclusion that it was open to the legislature to make such a provision."*

64. That ITC is not a vested right but only a concession, cannot be disputed in view of the law laid down by the Apex Court in the above cases. In the present cases, it is not the validity of the provision or the proviso or the right of the State to enact, is called for to be adjudicated. Rather, it is the applicability of proviso to the manufacturers that is in dispute.

65. Before venturing further into the intention of the legislature and interpretations, it is now relevant to ponder on Section 19 (2) (v) and its applicability to the manufacturers.

66. As found above, Sections 19 (2) to 19 (9) deal with the entitlement to ITC. Section 19 (2) has six sub-clauses. Section 19 (2) (v) entitles a dealer to claim ITC on inter-state sale to registered dealers viz falling under Section 8(1) of the CST Act. The word "manufacture" is not used in section 19 (2) (v) but is used in Section 19 (2) (ii), wherein to be entitled to ITC, the manufacturing activity must happen within the State.

67. Section 19 (3) speaks about entitlement of ITC on purchase of capital goods and it goes without saying that to avail ITC, such capital goods are to be used for the purpose of manufacturing activity. There is a staking difference

between claim of ITC in case of raw materials as they are to be used as input in the manufacturing process, whereas in case of capital goods, a wider connotation is used as the provision implies, it is to be used for the manufacturing process.

68. Section 19 (4) deals with inter-state transactions otherwise than by way of sale. From inception, the legislature thought it wise to bring the manufacturer also within the ambit of the sub-section and to allow ITC only above four percent until it was reduced to three percent which is fortified in sub-clause (ii) by employment of the words "for use in manufacture of other goods and transfer to a place outside the state, otherwise than by way of sale;". The transactions covered under "Form F" of the CST Act fall under Section 19(4).

69. Similarly, the State thought it wise and took a policy decision to disallow ITC on sales of goods as such or use in the manufacture of other goods in the course of inter-state trade or commerce in Section 19 (5) (c) when the sale is effected to an unregistered dealer as because no concession under the Section 8 (2) of the CST Act is available on sales to unregistered dealers and no ITC can be claimed on a transaction with unregistered dealer even within the state. The first limb deals with goods sold as such, implying resale of the goods and the second limb deals with inputs in the form of raw material.

70. Section 19 (2) (v) as it stood before the amendment or rather for that matter, even after the proviso was introduced, omitted and substituted, the only word used is “sale”.

71. The learned Additional Advocate General in addition to the contention that the legislative intent must be looked into, has also relied upon the definition of the term “business” in the Central Sales Tax Act to contend that the proviso is applicable to the manufacturers also. The definition is as follows:

> *“Section2aa“business”includes-*
> *(i) any trade, commerce or manufacture, or any adventure or concern in the nature of trade, Commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern; and*
>
> *(ii) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern;”*

72. This court does not find any difference in the definition of “business” under the CST Act and the TNVAT Act. There cannot be any quarrel that a manufacturing activity is a business. It is the contention of the department that since the definition of business includes trade and commerce which would include the act of buying and selling, the sale contemplated in section 19(2)(v) would also include manufactured goods.

73. The analogy sought to be adopted is enthymeme, a rhetoric syllogism, a theory propounded by Aristotle. To attract the rule of syllogism, there must be

two sets of preposition that are asserted or assumed to be true. It is applicable when in a given set of true facts, logic stands to offer the reason. The classic example that is often quoted is follows:

> "*All men are mortal; Socrates is a man; therefore Socrates is mortal.*"

74. The conclusion in syllogism must be true to be valid. In this context, reliance has also been placed upon the Judgment of the Odisha High Court in ***Banjrang Steels***. The term "sale" as defined under TNVAT Act in Section 2(33) as extracted in the earlier paragraph is wide enough to include the transactions by a trader as well as the manufacturer as it covers any process by which there is transfer of property in goods either in the same or different form.

75. Another contention, noteworthy to be addressed is the reliance upon the provisions of CST Act, to augment that Section 3 of the CST Act is to be taken into account for understanding, what is sale in the course of inter-state trade or commerce. There can be no quarrel about the conditions to be satisfied for a transaction to qualify as an interstate transaction as upheld by the Apex Court in ***Suresh Chand*** Case. Section 3 does not point out a difference between an interstate sale falling under Sections 8 (1) and 8(2) of the Act. It is only under Section 8, the levy of concessional tax is prescribed. The object of Section 8(1) is to enable a party to avail concessional rate of tax. There is no

compulsion under the statute that every dealer should effect interstate sale only under Section 8(1). If the dealer wants to avail concessional rate, he has to produce the “C” Form within the stipulated time. If the “C” Form is not produced, the rate of tax under the local Act has to be paid. It is pertinent to note here that while dealing with ITC, the State had endeavoured to distinguish traders who effect resale and who effect sale after manufacturing the goods in section 19 (5) (c) disclosing their intention to treat them as distinct. However, no such distinction is prescribed in section 19 (2) (v). The object of Section 8 of the CST Act is different from Section 19 of the TNVAT Act. If the intention of the legislature was to limit the applicability of the general meaning of the term “sale” or as defined in the Act, it would have said so specifically excluding the manufacturers. It also cannot be disputed that the manufacturers are also covered under the definition of the term “dealers” under the Act. Therefore, any registered dealer effecting interstate sale falling under Section 8 (1) of the CST Act would be covered under Section 19 (2) (v). It is also not out of place to mention here that the determining factor is the “sale” in the course of interstate trade or commerce, which occurs after local purchase or manufacture. The ITC covered under Section 19 (2) (ii) is at the manufacturing point and under section 19 (2) (v) is at the point of sale in the course of interstate trade or commerce.

76. At this juncture, it is relevant to refer to the decision of the Supreme Court reported in the case of ***Polestar Electronic (Pvt.) Ltd. v. Additional Commissioner, Sales Tax (1978) 1 SCC 636***, wherein, it was held as under :

> "***7.****Now, if there is one principle of interpretation more well-settled than any other, it is that a statutory enactment must ordinarily be construed according to the plain natural meaning of its language and that no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. This rule of literal construction is firmly established and it has received judicial recognition in numerous cases. Crawford in his book on "Construction of Statutes" (1940 Edn.) at p. 269 explains the rule in the following terms:*
>
> "*Where the statute's meaning is clear and explicit, words cannot be interpolated. In the first place, in such a case they are not needed. If they should be interpolated, the statute would more than likely fail to express the legislative intent, as the thought intended to be conveyed might be altered by the addition of new words. They should not be interpolated even though the remedy of the statute would thereby be advanced, or a more desirable or just result would occur. Even where the meaning of the statute is clear and sensible, either with or without the omitted word, interpolation is improper, since the primary source of the legislative intent is in the language of the statute."*
>
> *Lord Parker applied the rule in R.v. Oakes [(1959) 2 All ER 350] to construe "and", as "or" in Section 7 of the Official Secrets Act, 1920 and stated :*
>
> "*It seems to this Court that where the literal reading of a statute, and a penal statute, produces an intelligible result, clearly there is no ground for reading in words or changing words according to what may be the supposed intention of Parliament. But here we venture to think that the result is unintelligible."*
>
> *Lord Reid also with great clarity and precision which always characterise his judgment enunciated the rule as follows in Federal Steam Navigation Co. Ltd. v. Department of Trade and Industry [(1974) 2 All ER 97] :*
>
> "*Cases where it has properly been held that a word can be struck out of a deed or statute and another substituted can as far as I am aware be grouped under three heads: where without such substitution the provision is unintelligible or absurd or totally unreasonable; where it is unworkable; and where it is totally irreconcilable with the plain intention shown by the rest of the deed or statute."*
>
> *This rule in regard to reading words into a statute was also affirmed by this Court in several decisions of which we may refer only to one, namely, Narayanaswami v. Pannerselvam [(1972) 3 SCC 717 : AIR 1972 SC*

2284 : (1973) 1 SCR 172] where the Court pointed out that:

"'..... addition to, or modification of words used in statutory provision is generally not permissible ...', but 'courts may depart from this rule to avoid a patent absurdity'."

Here, the word used in Section 5(2)(a)(ii) and the second proviso is "re-sale" simpliciter without any geographical limitation and according to its plain natural meaning it would mean re-sale anywhere and not necessarily inside Delhi. Even where the purchasing dealer resells the goods outside Delhi, he would satisfy the requirement of the statutory provision according to its plain grammatical meaning. There are no words such as "inside the Union Territory of Delhi" qualifying "re-sale" so as to limit it to re-sale within the territory of Delhi. The argument urged on behalf of the Revenue requires us to read such limitative words in Section 5(2)(a)(ii) and the second proviso. The question is whether there is any necessity or justification for doing so? If "re-sale" is construed as not confined to the territory of Delhi, but it may take place anywhere, does Section 5(2)(a)(ii) or the second proviso lead to a result manifestly unintelligible, absurd, unreasonable, unworkable or irreconcilable with the rest of the Act? Is there any compulsive necessity to depart from the rule of plain and natural construction and read words of limitation in Section 5(2)(a)(ii) and the second proviso when such words have been omitted by the law-giver? We do not think so.

8. *It may be pointed out in the first place that the Legislature could have easily used some such words as "inside the Union Territory of Delhi" to qualify the word "re-sale", if its intention was to confine re-sale within the territory of Delhi, but it omitted to do what was obvious and used the word "re-sale" without any limitation or qualification, knowing full well that unless restriction were imposed as to situs, "re-sale" would mean re-sale anywhere and not merely inside the territory of Delhi. The Legislature was enacting a piece of legislation intended to levy tax on dealers who are laymen and we have no doubt that if the legislative intent was that "re-sale" should be within the territory of Delhi and not outside, the Legislature would have said so in plain unambiguous language which no layman could possibly misunderstand. It is a well-settled rule of interpretation that where there are two expressions which might have been used to convey a certain intention, but one of those expressions will convey that intention more clearly than the other, it is proper to conclude that, if the legislature used that one of the two expressions which would convey the intention less clearly, it does not intend to convey that intention at all. We may repeat what Pollack C.B. said in Attorney General v. Sillem [(1864) 2 H & C 431, 526] that:*

"*If this had been the object of our legislature, it might have been accomplished by the simplest possible piece of legislation; it might have been expressed in language so clear that no human being could entertain a doubt about it."*

We think that in a taxing statute like the present which is intended to tax the dealings of ordinary traders, if the intention of the legislature were that in order to qualify a sale of goods for deduction, "re-sale" of it must necessarily be inside Delhi, the legislature would have expressed itself clearly and not left its intention to be gathered by doubtful implication from other provisions of the Act. The absence of specific words limiting "re-sale" inside the territory of Delhi is not without significance and it cannot be made good by a process of judicial construction, for to do so would be to attribute to the legislature an intention which it has chosen not to express and to usurp the legislative function.

11. *We fail to see any reason why the word "resale" in Section 5(2) (a)(ii) and the second proviso should not be construed according to its plain natural meaning to comprehend resale taking place anywhere without any limitation as to situs and it should be read as referring only to resale inside Delhi as if the words "inside the Union Territory of Delhi" were added by way of limitation or restriction. Even without such words and reading the statutory provision according to its plain natural sense as referring to resale, irrespective whether it is inside or outside Delhi, Section 5(2)(a)(ii) and the second proviso do not become absurd, unintelligible, unworkable or unreasonable, nor is it possible to say that they come into conflict with any other provision of the Act. We have already explained the scheme of Section 5(2)(a)(ii) and its two provisos and, even on the view that "resale" means resale anywhere and not necessarily inside Delhi, they enact a statutory provision which is quite intelligible, reasonable and workable. The selling dealer is granted deduction in respect of sale to a registered dealer where the goods purchased are of the class or classes specified in the certificate of registration of the purchasing dealer as being intended for resale by him and the purchasing dealer gives a declaration that the goods are purchased by him for resale. So long as the goods are required by the purchasing dealer for resale, whether inside or outside Delhi, the sale to the purchasing dealer is exempted from tax. It is true that if the purchasing dealer resells the goods outside Delhi, the Union Territory of Delhi would not be able to recover any tax since the sale to the purchasing dealer would be exempt from tax under Section 5(2)(a)(ii) and the resale by the purchasing dealer would also be free from tax by reason of Section 27. But that is not such a consequence as would compel us to read the word "resale" as limited to resale inside Delhi. The argument of the Revenue was that the Legislature could never have intended that the Union Territory of Delhi should be altogether deprived of tax in cases of this kind. The legislative intent could only be to exempt the sale to the purchasing dealer in those cases where the Union Territory of Delhi would be able to recover tax on resale of the goods by the purchasing dealer. The goods must be taxed at least at one point and it could not have been intended that they should not be taxable at all at any point by the Union Territory of Delhi. The Revenue urged that it was for the purpose of taxing the goods at least at one point that the second proviso was enacted by the Legislature. We do not think this contention based on the presumed intention of the Legislature is-*

well founded. It is now well-settled that when the court is construing a statutory enactment, the intention of the Legislature should be gathered from the language used by it and it is not permissible to the court to speculate about the legislative intent. Some eighty years ago, as far back as 1897, Lord Watson said in an oft quoted passage in Salomon v. Salomon & Co. Ltd. [1897 AC 22, 38] :

"'*The intention of the legislature' is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of law or equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication.'*"

The same view was echoed by Lord Reid in Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg [(1975) 1 All ER 810, 814] :

"*We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used. We are seeking not what Parliament meant but the true meaning of what they said."*

If the language of a statute is clear and explicit, effect must be given to it, for in such a case the words best declare the intention of the law-giver. It would not be right to refuse to place on the language of the statute the plain and natural meaning which it must bear on the ground that it produces a consequence which could not have been intended by the legislature. It is only from the language of the statute that the intention of the Legislature must be gathered, for the legislature means no more and no less than what it says. It is not permissible to the Court to speculate as to what the Legislature must have intended and then to twist or bend the language of the statute to make it accord with the presumed intention of the legislature. Here, the language employed in Section 5(2)(a)(ii) and the second proviso is capable of bearing one and only one meaning and there is nothing in the Act to show that the legislature exempted the sale to the purchasing dealer from tax on the hypothesis that the Union Territory of Delhi would be entitled to tax the resale by the purchasing dealer. The intention of the legislature was clearly not that the Union Territory of Delhi should be entitled to tax the goods at least at one point so that if the sale to the purchasing dealer is exempt, the resale by the purchasing dealer should be taxable. We do not find evidence of such legislative intent in any provision of the Act. On the contrary, it is very clear that there are certain categories of resales by the purchasing dealer which are admittedly free from tax. If, for example, the purchasing dealer resells the goods within the territory of Delhi, but such resale is in the course of inter-State trade or commerce, or in the course of export out of the territory of India, it would be exempt from tax and yet, even on the construction suggested on behalf of the Revenue, the sale to the purchasing dealer would not be liable to tax. Both the sale as well as the resale would be free of tax even if the word

"resale" were read as limited to resale inside the territory of Delhi. Then again, take a case where the resale by the purchasing dealer, though inside the territory of Delhi, falls within Section 5(2)(a)(ii). The resale in such a case would be exempt from tax and equally so would be the sale. So also the resale would not be taxable if it falls within Rule 29 and in that case too, the sale as well as the resale would both be exempt from tax. It will, therefore, be seen that it is not possible to discover any legislative intent to tax the goods at least at one point and to exempt the sale to the purchasing dealer only if the resale by the purchasing dealer is liable to tax. The second proviso too does not support any such legislative intent, for in the event there contemplated, namely, where the purchasing dealer utilises the goods for any purpose other than "resale", what is taxed in the hands of the purchasing dealer is not the resale by him but the sale to him and that is done not with a view to ensuring that the goods must suffer tax at least at one point, but because the purchasing dealer having committed a breach of the intention expressed by him in the declaration, on the basis of which exemption is granted to the selling dealer, he should not be allowed to profit from his own wrong and to escape the amount of tax on the sale. We do not, in the circumstances, see any cogent or compelling reason for reading the words "inside the Union Territory of Delhi" after "resale" in Section 5(2)(a)(ii) and the second proviso.

12. *It must also be remembered that Section 5(2)(a)(ii) and the second proviso occur in a taxing statute and it is well-settled rule of interpretation that in construing a taxing statute "one must have regard to the strict letter of the law and not merely to spirit of the statute or the substance of the law". The oft quoted words of Rowlett,J., in Cape Brandy Syndicate v. Inland Revenue Commissioner [(1921) 1 KB 64] lay down the correct rule of interpretation in case of a fiscal statute : "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." It is a rule firmly established that "the words of a taxing Act must never be stretched against a tax-payer". If the legislature has failed to clarify its meaning by use of appropriate language, the benefit must go to the tax-payer. Even if there is any doubt as to interpretation, it must be resolved in favour of the subject. We would, therefore, be extremely loathe to add in Section 5(2)(a)(ii) and the second proviso words which are not there and which, if added, would have the effect of imposing tax liability on the purchasing dealer. Moreover, it may be noted that if the purchasing dealer resells the goods outside Delhi, then, on the construction contended for on behalf of the Revenue, he would be liable to include the price of the goods paid by him in his return of taxable turnover and pay tax on the basis of such return and if he fails to do so, he would expose himself to penalty, though he has complied literally with the declaration made by him. We find that in fact a penalty of Rs 2 lakhs has been imposed on the assessees in Civil Appeal No. 1085 of 1977 for not including the price of the goods purchased by them in their return of taxable turnover and paying tax on the basis of such return. It would be flying in the face of*

well-settled rules of construction of a taxing statute to read the words "inside the Union Territory of Delhi" in Section 5(2)(a)(ii) and the second proviso, when the plain and undoubted effect of the addition of such words would be to expose a purchasing dealer to penalty.

16. *The subsequent history of the Act also supports the construction which we are inclined to place on Section 5(2)(a)(ii) and the second proviso. Section 5(2)(a)(ii) was amended with effect from May 28, 1972 by Finance Act, 1972 and the words "in the Union Territory of Delhi" were added after the word "manufacture" so as to provide that manufacture should be inside the territory of Delhi. It was also provided by the amendment that the sale of manufactured goods should be inside Delhi or in the course of inter-State trade or commerce or in the course of export outside India. This amendment clearly excluded manufacture of goods as also sale of manufactured goods outside Delhi. It is clear from the statement of objects and reasons that this amendment was not introduced by Parliament ex abundanti cautela, but in order to restrict the applicability of the exemption clause in Section 5 (2)(a)(ii). The statement of objects and reasons admitted in clear and explicit terms that:*

"*At present sales of raw materials in Delhi are exempted from tax irrespective of the fact whether the goods manufactured therefrom are sold in Delhi or not. It is, therefore, made clear that sales of raw materials will be tax-free only when such sales are made by those who manufacture in Delhi taxable goods for sale."*

It is obvious that under Section 5(2)(a)(ii), as it stood prior to the amendment, the exemption was available to the selling dealer even if the purchasing dealer used the goods purchased as raw materials in manufacture outside Delhi, or having manufactured the goods, sold them outside Delhi. That is why Parliament amended Section 5(2)(a)(ii) with a view to restricting manufacture as well as sale inside the territory of Delhi. It is of course true that a parliamentary assumption may be unfounded and an amendment may proceed on an erroneous construction of the statute and, therefore, it cannot alter the correct interpretation to be placed upon the statute; but if there is any ambiguity in the statute, the subsequent amendment can certainly be relied upon for fixing the proper interpretation which is to be put upon the statute prior to the amendment. The amendment made in Section 5(2)(a)(ii) read with the statement of objects and reasons thus clearly supports the construction that under the unamended section manufacture as well as sale could be anywhere and not necessarily inside the territory of Delhi. It is also significant to note that though Parliament amended Section 5(2)(a)(ii) for restricting manufacture as well as sale to the territory of Delhi, it did not carry out any amendment in the section with a view to limiting resale in the same manner by the addition of some such words as "in the Union Territory of Delhi" or "inside Delhi". This clearly evinces parliamentary intent not to insist upon resale being restricted to the territory of Delhi. It is a circumstance which lends support to the view that "resale" in Section

5(2)(a)(ii) and the second proviso meant resale outside as well as inside Delhi.

21. *…… She, however, urged that in her submission the second proviso was inconsistent with Section 4 and, therefore, no effect should be given to it. This contention is, in our opinion, wholly unsustainable. We fail to see how the second proviso can be said to be inconsistent with Section 4. It may be pointed out that even if there were some conflict, which we do not think there is, it would have to be reconciled by a harmonious reading of the two sections and it would not be right to adopt a construction which renders one of the two sections meaningless and ineffectual unless the conflict between the two is so utterly irreconcileable that the Court is driven to that conclusion. Here we find that Section 4 merely imposes liability on a dealer to pay tax if his gross turnover exceeds the taxable quantum. It is really Section 5 which provides for levy of tax and it says that the tax payable by a dealer shall be levied on his "taxable turnover" Now, "taxable turnover" is a concept entirely different from gross turnover and it is arrived at by making certain additions and deductions to the gross turnover. Section 5(2)(a)(ii) provides for a deduction while the second proviso speaks of an addition. Where the conditions of the second proviso are satisfied, the price of the goods purchased is to be added to the "taxable turnover" of the purchasing dealer and it would then form part of the "taxable turnover" on which the tax is levied. This provision has been made in order to ensure that the purchasing dealer does not commit a breach of the declaration given by him on the basis of which exemption is given to the selling dealer. The sale to the purchasing dealer is exempted from tax in the hands of the selling dealer but it is taxed in the hands of the purchasing dealer on account of breach of faith committed by him. We do not, therefore, see any inconsistency at all between Section 4 and the second proviso and the contention urged on behalf of the appellants in these appeals must be rejected."*

77. In the above case, the authorities wanted to read the provision as "resale within the Union Territory of Delhi", when the provision specifically did not state so. The Apex Court declining such interpretation, made it clear that the subsequent amendment also did not impose such restriction. The ratio laid down in the above judgment is squarely applicable to the facts of the present case in two aspects. If the legislature wanted to exclude the sale by the manufacturers from the ambit of section 19 (2) (v), it would have said so

directly in plain, clear and unambiguous terms. The definition of the term "sale" cannot be limited or restricted to exclude the manufacturers. The absence of specific words is not without significance. Words which were consciously and repeatedly omitted, cannot be read into a provision by a process of judicial construction, for to do so would amount to judicial interference and not review.

78. "Formalism" is the theory in which the inherent features of the text is interpreted without considering any external aid. It was first used to interpret literary works and in due course gave way to the literary rule of interpretation. In the literary rule of interpretation, the plain language by taking into consideration the literary and grammatical meaning of the words used in the statute alone is to be considered to derive the object. More often or not, it has been held that taxing statutes are to be interpreted by deploying the literal rule. The interpretation of a taxing statute has always been treated differently in comparison with other laws. It is also settled law that once the language of the provision is clear and unambiguous from a careful reading of the provision, no internal or external aid can be called for. In a taxing statute, the intention of the legislature is to be gauged from the words used and not from what they had in their mind. It is only when the language is unclear and ambiguous and when the literary interpretation would result in absurdity, defeating the very purpose

of the enactment, there would be a necessity for interpretation much less to resort to other aids. Even if there is any ambiguity or conflict between two provisions, the first step would be to look into the other provisions of the Act and derive at a logical conclusion so as to ensure that both the provisions co-exist. This is the spirit of Harmonious Construction. Let us now consider some of the judgments on the subject of interpretation, which are as follows:

79. ***Hansraj Gordhandas v. H.H. Dave, AIR 1970 SC 755:***

> "***5.*** *The main contention on behalf of the appellant is that the case fell within the language of two notifications, dated July 31, 1959 and April 30, 1960 and the appellant was entitled to exemption from payment of excise duty on the cotton fabrics. The argument was stressed that the exemption applied to all cotton fabrics which were produced on power looms owned by the Cooperative Society or on powerlooms allotted to its members and it was not a relevant consideration as to who produced or manufactured such fabrics, whether it was the Society itself or its members or even outsiders. It was conceded by the appellant that it was the owner of the cotton fabrics. But even upon that assumption the claim of the appellant is that it was entitled to exemption from excise duty as it was covered by the language of the two notifications already referred to. In our opinion, the argument of the appellant is well founded and must be accepted as correct. The notification dated July 31, 1959 grants exemption to "cotton fabrics produced by any Cooperative Society formed of owners of cotton powerlooms which is registered or which may be registered on or before March 31, 1961" subject to four conditions set out in the notification. In the next notification dated April 30, 1960 exemption was granted to "cotton fabrics produced on powerlooms owned by any cooperative society or owned by or allotted to the members of the society, which is registered or which may be registered on or before March 31, 1961" subject to, the conditions specified in the notification. It was contended on behalf of the appellant that under the contract between the appellant and the society there was no relationship of master and servant but. the appellant supplied raw material and the contractor i.e. the Society produced the goods. But even on the assumption that the appellant had manufactured the goods by employing hired labour and was therefore a manufacturer, still the appellant was entitled to exemption from excise duty since the case fell within the language of the two notifications dated July 31, 1959 and April 30, 1960, and the cotton fabrics*

were produced on power-looms owned by the cooperative society and there is nothing in the notifications to suggest that the cotton fabrics should be produced by the Cooperative Society "for itself" and not for a third party before it was entitled to claim exemption from excise duty. It was contended on behalf of the respondent that the object of granting exemption was to encourage the formation of cooperative societies which not only produced cotton fabrics but which also consisted of members, not only owning but having actually operated not more than four power-looms during the three years immediately preceding their having joined the society. The policy was that instead of each such member operating his looms on his own, he should combine with others by forming a society which, through the cooperative effort should produce cloth. The intention was that the goods produced for which exemption could be claimed must be goods produced on its own behalf by the society. We are unable to accept the contention put forward on behalf of the respondents as correct. On a true construction of the language of the notifications, dated July 31, 1959 and April 30, 1960 it is clear that all that is required for claiming exemption is that the cotton fabrics must be produced on power-looms owned by the cooperative society. There is no further requirement under the two notifications that the cotton fabrics must be produced by the Co-operative Society on the powerlooms "for itself". It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notificatlon. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different, but that is not the case here. In this connection we may refer to the observations of Lord Watson in Salomon v. Salomon & Co. [(1897) AC 22, 38] :

"*Intention of the legislature is a common but very slippery phrase, which, popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication."*

It is an application of this principle that a statutory notification may not be extended so as to meet a casus omissus. As appears in the judgment of the Privy Council in Crawford v. Spooner [6 Moo PCC 8] .

"*… we cannot aid the legislature's defective phrasing of the Act, we cannot add, and mend, and, by construction, make up deficiencies which are left there".*

Learned Counsel for the respondents is possibly right in his submission that the object behind the two notifications is to encourage the actual manufacturers of handloom cloth to switch over to powerlooms by constituting themselves into Cooperative Societies. But the operation of the notifications has to be judged not by the object which the rule-making authority had in mind but by the words which it has employed to effectuate the legislative intent. Applying this principle we are of opinion that the case of the appellant is covered by the language of the two notifications dated July 31, 1959 and April 30, 1960 and the appellant is entitled to exemption from excise duty for the cotton fabrics produced for the period between October 1, 1959 to April 30, 1960 and from May 1, 1960 to January 3, 1961. It follows therefore that the appellant is entitled to the grant of a writ in the nature of certiorari to quash the order of the Assistant Collector of Central Excise of Baroda dated November 26, 1962 and the appellate order of the Collector of Central Excise dated November 12, 1963."

80. ***CIT v. Vadilal Lallubhai, (1973) 3 SCC 17 : 1973 SCC (Tax) 1:***

"***13.*** *It is established on high authorities that the subject is not to be taxed unless the charging provision clearly imposes the obligation — see CIT v. Ajax Products Ltd.[AIR 1965 SC 1358 : (1965) 1 SCR 700 : (1965) 55 ITR 741 (SC) :] As is often said that in interpreting a taxing provision one has merely to look to the words of the provision. The language employed in Section 44-F cannot be said to be plain enough to bring to tax the receipts of the character with which we are concerned in these appeals.*

14. *To accept the contention of the Revenue, we have to adopt three- fold assumptions. Firstly the fictional dividend contemplated by Section 2(6-A)(c) is an "income" within the meaning of Section 44-F. Secondly we must assume that that dividend is capable of being deemed to accrue day to day and lastly we must assume that the day to day distribution contemplated in Section 44-F commences from the commencement of the relevant accounting year and ends with the distribution of the assets as contended on behalf of the Department. To do so we have to read into the section many more words than it contains at present which is wholly impermissible in construing any provision much less a taxing provision. In the case of deemed dividend under Section 2(6-A)(c), the assets distributed will be considered as income in the account year in which it is distributed but that conception would be inapplicable in cases coming under Section 44-F. A company may go into liquidation long after the accounting year ends. What period the Income Tax Officer should take into consideration for applying the fiction that "the income had deemed to accrue from day to day?" The scheme of Section 2(6-A)(c) is incompatible with the scheme of Section 44-F. The two provisions are intended to meet totally different situations. The former provision cannot be dovetailed into the latter.*

15. *In order to find out the legislative intent, we have to find out what was the mischief that the Legislature wanted to remedy. The Act was extensively amended in the year 1939. Section 44-F was not in the draft bill. That section was recommended by the Select Committee consisting of very eminent lawyers. It will not be inappropriate to find out the reasons which persuaded the Select Committee to recommend the inclusion of Section 44-F, if the section is considered as ambiguous see CIT v. Sodra Devi etc. [AIR 1957 SC 832 : 1958 SCR 1 : (1957) 32 ITR 615 at p. 627 :] In recommending the inclusion of Section 44-F, this is what the Select Committee observed:*

"*The new Sections 44-E and 44-F are designed to prevent avoidance of tax by what are known as "bond-washing" transactions, involving the manipulation of securities so that the securities will pass temporarily in the legal ownership of some second person who is either not liable at all or liable in a lessor degree to tax, under such conditions that the interest on the securities is the income of this second person. A common form of the process is the sale of securities-cum-interest with a simultaneous contract to purchase them ex-interest. Where foreign securities are concerned this second person may be a foreigner resident abroad entitled to claim exemption from the tax on the interest. More often a financial concern in India is utilised whose computation of profits includes the results of realising securities, so that the concern can profitably offer "bond-washing" facilities to the owner of securities bearing fixed interest where the owner himself is not liable to taxation on the realisation of the securities."*

81. ***Govind Saran Ganga Saran v. CST, 1985 SCC (Tax) 447:***

"***11.*** *It may be noted that the State Act as applied to the Union Territory of Delhi was amended by Parliament in 1959, and Section 5-A was inserted. Section 5-A provides:*

"*Notwithstanding anything to the contrary in this Act, the Chief Commissioner may, by notification in the Official Gazette, specify the point in the series of sales by successive dealers at which any goods or class of goods may be taxed."*

That provision clearly empowers the Chief Commissioner to specify the single point in a series of sales at which single-point taxation may be levied. The widest amplitude of power has been conferred on the Chief Commissioner in the matter of selecting the point of taxation in a series of sales and, if that is so, clearly no single point can be spelled out, even by implication, from the provision of sub-clause (ii) of clause (a) of sub-section (2) of Section 5. For to do so would mean either accepting an inconsistency between the two provisions or narrowing down correspondingly the scope of Section 5-A. We have already pointed out that the provision for single point taxation cannot, in the view of this Court expressed in Polestar Electronic

(P) Ltd. [(1978) 1 SCC 636 : 1978 SCC (Tax) 68 : (1978) 41 STC 409] , be discovered in sub-clause (ii) of clause (a) of sub-section (2) of Section 5 of the State Act. To our mind, provision has been made in that behalf in the statute by the insertion of Section 5-A. The High Court has referred to the Statement of Objects and Reasons attached to the Bengal Finance (Sales Tax) (Delhi Amendment) Act, 1959 in support of its conclusion that Section 5-A was inserted only to provide for the levy of tax at any point other than the point of last sale so that sales tax may be levied at the first point on certain items which were manufactured in factories. It is well settled that when the language of the statute is clear and admits of no ambiguity, recourse to the Statement of Objects and Reasons for the purpose of construing a statutory provision is not permissible. We are of opinion that there is ample power under Section 5-A of the State Act enabling the Chief Commissioner to specify the single point at which tax may be levied in a series of sales. This can, however, be done by him only by a notification in the Official Gazette. No such notification has been placed before us which could relate to the assessment year under consideration. We hold therefore that a vital prerequisite of Section 15 of the Central Sales Tax Act, namely, that the tax shall not be levied at more than one stage, has not been satisfied in respect of the turnover or cotton yarn, and accordingly the assessment complained of is liable to be quashed."

82. In ***Union of India v. Wood Papers Ltd., (1990) 4 SCC 256 : 1990 SCC (Tax) 422*** , the Apex Court, while interpreting an exemption provision, held as follows:

"***4.*** *Entitlement of exemption depends on construction of the expression "any factory commencing production" used in the Table extracted above. Literally exemption is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. For instance tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective etc. That is why its construction, unlike charging provision, has to be tested on different touchstone. In fact an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about*

applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. ...”

83. ***Sultana Begum v. Prem Chand Jain, (1997) 1 SCC 373 at page 381***

“***11.*** *The statute has to be read as a whole to find out the real intention of the legislature.*

12. *In Canada Sugar Refining Co. v. R. [1898 AC 735 : 67 LJPC 126] , Lord Davy observed:*

“*Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter.”*

…….

14. *This rule of construction which is also spoken of as “ex visceribus actus” helps in avoiding any inconsistency either within a section or between two different sections or provisions of the same statute.*

15. *On a conspectus of the case-law indicated above, the following principles are clearly discernible:*

(1) It is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.

(2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of “harmonious construction”.

(4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a “dead letter” or “useless lumber” is not harmonious construction.

(5) To harmonise is not to destroy any statutory provision or to render it otiose.”

84. ***Mathuram Agrawal v. State of M.P.*****, (1999) 8 SCC 667**

“***11.*** *Then the further question for determination is whether such a building or land, the annual letting value of which does not exceed Rs 1800, automatically becomes liable for payment of tax and if so what is the rate of tax in such a*

case. The provision in sub-section (1) of Section 127-A, which is a charging section, makes no provision regarding the rate at which the tax is to be paid in case the building or land in question the annual letting value of which is less than Rs.1800 is to be taxed.

10. *On a fair reading of the proviso to Section 127-A(2)(b) it is clear that in respect of any building or land whose letting value is less than Rs 1800 which is owned by a person who owns any other building or land in the same municipality, the annual letting value of such building or land shall be deemed to be the aggregate annual letting value of all buildings or lands owned by him in the municipality. The provision also makes it clear that this exception is meant for the purpose of this clause i.e. clause (b) of sub-section (2). It follows, therefore, that the exemption to the levy under sub-section (1) of Section 127-A will not be available in a situation to which the proviso applies.*

12. *Another question that arises for consideration in this connection is whether sub-section (1) of Section 127-A and the proviso to sub-section (2)(b) should be construed together and the annual letting values of all the buildings owned by a person to be taken together for determining the amount to be paid as tax in respect of each building. In our considered view this position cannot be accepted. The intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature. The statute should clearly and unambiguously convey the three components of the tax law i.e. the subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the legislature to do the needful in the matter.*

13. *In the case of Bank of Chettinad Ltd. v. CIT [(1940) 8 ITR 522 (PC)] the Privy Council quoted with approval the following passage from the opinion of Lord Russell of Killowen in IRC v. Duke of Westminster [1936 AC 1 : 104 LJ KB 383 (HL)] :*

"*I confess that I view with disfavour the doctrine that in taxation cases the subject is to be taxed if in accordance with a court's view of what it considers the substance of the transaction, the court thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstances of his case. As Lord Cairns said many years ago in Partington v. Attorney General[(1869) 4 HL 100] at p. 122: 'As I understand the principle of all fiscal legislation, it is this; if the person sought*

to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however, apparently within the spirit of the law the case might otherwise appear to be.' "

14. *In the case of Russell (Inspector of Taxes) v. Scott [(1948) 2 All ER 1, 5] Lord Simonds in his opinion at p. 5 observed:*

"*My Lords, there is a maxim of income tax law which, though it may sometimes be overstressed, yet ought not to be forgotten. It is that the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax on him. It is necessary that this maxim should on occasion be reasserted and this is such an occasion."*

15. *In Administrator, Municipal Corpn. v. Dattatraya Dahankar [(1992) 1 SCC 361] this Court while accepting the position that each building is a unit for the purpose of taxation and that there is no provision for taxation in respect of a building having annual letting value less than Rs 1800 and that the deeming proviso to clause (b) of sub-section (2) as expressly stated is "for the purpose of this clause", held that since the aggregation of annual letting value of all buildings or lands is permitted, then, all such buildings or lands have to be taken as one unit for the purpose of taxation. The Court was of the view that any other construction would render the proviso nugatory and defeat the object of the Act.*

16. *This construction, in our considered view, amounts to supplementing the charging section by including something which the provision does not state. The construction placed on the said provision does not flow from the plain language of the provision. The proviso requires the exempted property to be subjected to tax and for the purpose of valuing that property alone the value of the other properties is to be taken into consideration. But, if in doing so, the said property becomes taxable, the Act does not provide at what rate it would be taxable. One cannot determine the rateable value of the small property by aggregating and adding the value of other properties, and arrive at a figure which is more than possibly the value of the property itself. Moreover, what rate of tax is to be applied to such a property is also not indicated.*

18. *In view of the discussions in the foregoing paragraphs the proviso to clause (b) of sub-section (2) of Section 127-A of the Act being contrary to the charging section is struck down as ultra vires."*

85. ***CCE v. Himalayan Cooperative Milk Product Union Ltd., (2000) 8 SCC 642 : 2000 SCC OnLine SC 1514:***

*"**7.** In our view the Tribunal rightly preferred the view taken in the case of Devidayal [(1984) 16 ELT 30 (Bom)] . The factual hurdles like a common generator may be in use by different units in the factory complex as indicated in the case of Golden Press [(1987) 27 ELT 273 (AP)] can well be worked out by devising proper method while apportioning the value of different plants proportionately. In no way such hurdle, as posed, would change the meaning of a notification which on the face of it and by the plain language used therein has unambiguous and clear meaning.*

***8.** Such notifications by which exemption or other benefits are provided by the Government in exercise of its statutory power, normally have some purpose and policy decision behind it. Such benefits are meant to be provided to the investors and manufacturers. Therefore, such purpose is not to be defeated nor those who may be entitled to it are to be deprived by interpreting the notification which may give it some meaning other than what is clearly and plainly flowing from it."*

86. ***Gurudevdatta VKSSS Maryadit v. State of Maharashtra, (2001) 4 SCC 534 : 2001 SCC OnLine SC 573:***

"***20.** The proviso for which the clarificatory Ordinance has been promulgated, it appears that the legislature advisedly used the expression "new members". Members have been defined under the State Cooperative Societies Act [Section 2(19) of the Act of 1960] meaning — a person joining in an application for registration of a cooperative society which is subsequently registered or a person duly admitted to membership of his society after registration and includes a nominal associate or sympathizer member. Section 27(3) proviso as noticed above adds an appendage "any new" before the member society. Whereas Mr Bobde contended that the appendage "any new" cannot but mean though existing but not voted since Section 27 on which the proviso as noticed above was added by the Maharashtra Cooperative Societies (Second Amendment) Act, 2000 which came into force on and from 23-8-2000 and deals with the parties' voting rights in terms of Section 27 of the Act of 1960, any other interpretation would be a violent departure from the statutory intent and it is on this score Mr Bobde did put very strong reliance as to the understanding of the Government as is laid down in the Statement of Objects and Reasons. Statement of Objects and Reasons as noticed above can only be looked into in the event of there being any requirement therefor and not otherwise. The meaning of the expressions used in the legislation, if is of doubtful nature, maybe a guide or an aid but not otherwise. The legislature has used the expression "new" obviously with an intent to ascribe something other than existing members and this additional requirement by reason of an additional appendage by way of a statutory amendment, must be stated to be that (sic thus) indicative of the intent and to convey a definite meaning. The word*

"new" in common English parlance cannot but mean something which was not existing and thus a society becoming a member on or after 23-8-2000 and not prior thereto: it cannot possibly apply to existing members but only new members after the amendment.

23. *Another decision of the Australian High Court in the case of Newcastle City Council v. GIO General Ltd. [(1998) 72 Aus LJR 97] may also be noticed at this juncture wherein the observations and elucidation of canons of construction and interpretation by Brennan, C.J. seem to be very apposite and we do record our unhesitant concurrence therewith.*

24. *The observations however run as below:*

"*Moreover, as the extrinsic material reveals, Section 40(3) was intended to be remedial. As far as practicable, Sections 40(1) and (3) should be construed to promote the objects of the Act. Nevertheless, as I pointed out in Kingston v. Keprose Pty Ltd. [(1987) 11 NSWLR 404] (NSWLR at p. 423) in applying a purposive construction 'the function of the court remains one of construction and not legislation'. When the express words of a legislative provision are reasonably capable of only one construction and neither the purpose of the provision nor any other provision in the legislation throws doubt on that construction, a court cannot ignore it and substitute a different construction because it furthers the objects of the legislation.*

***

The circumstances in which recourse can legitimately be had to the extrinsic material.

Mr Sackar relied on Section 15-AB of the Acts Interpretation Act to urge this Court to examine and take into account the extrinsic material. Section 15-AB is entitled "Use of extrinsic material in the interpretation of an Act" and relevantly provides:

'*(1) Subject to sub-section (3), in the interpretation of a provision of an Act, if any material not forming part of the Act is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material:*

(a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; or

(b) to determine the meaning of the provision when:

(i) the provision is ambiguous or obscure; or

(ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act leads to a result that is manifestly absurd or is unreasonable.

(2) Without limiting the generality of sub-section (1), the material that may be considered in accordance with that sub-section in the interpretation of a provision of an Act includes:

***

(b) any relevant report of a Royal Commission, Law Reform Commission, Committee of Inquiry or other similar body that was laid before either House of Parliament before the time when the provision was enacted;

***

(e) any explanatory memorandum relating to the Bill containing the provision….' "

25. *On a perusal of the aforesaid, be it noted that in the event the language is clear, categorical and unequivocal, no outside aid is required or is permissible for interpreting the proviso to the section by the amending Act of 2000. In the contextual facts and in the view we have taken above, we regret our inability to accede to or record our concurrence with the submissions of Mr Bobde.*

26. *Further we wish to clarify that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute. Bearing in mind, the aforesaid principle of construction, if the expression "any new member society" occurring in the proviso to sub-section (3) of Section 27 is construed, it conveys the only meaning that it refers to the societies to be formed hereafter and not of those societies which have already become member societies of the federal society. Therefore, the requirement of the completion of the period of three years from the date of its investing any part of its fund in the shares of such federal society would apply only to those societies which became member society of the federal society after 23-8-2000. In this view of the matter, the impugned judgment of the High Court*

does not suffer from any infirmity. Even if there remained any doubt in the matter of interpreting the proviso, in the Ordinance that has been promulgated on 27-2-2001, called Maharashtra Ordinance 10 of 2001, after the first proviso to sub-section (3), a second proviso had been inserted, which has removed any doubt or controversy inasmuch as it has been indicated therein that the first proviso will not apply to the member society which has invested any part of its fund in the share of the federal society before the commencement of the Maharashtra Cooperative Societies (Amendment) Act, 2000 dated 23-8-2000. The aforesaid Ordinance also has been given a retrospective effect, to be effective from 23-8-2000. The Ordinance having been held to be valid by us as stated above, the so-called prohibition contained in the first proviso to sub-section (3) of Section 27 will not apply to all those societies which have already become members of the federal society prior to 23-8-2000."

87. In ***P. Nirathilingam v. Annaya Nadar, (2001) 9 SCC 673 : 2001 SCC OnLine SC 1310,*** the Apex Court laid emphasis on intent of the legislature in the following words:

"***20.*** *The principle is well settled that an interpretation of the statutory provision which defeats the intent and purpose for which the statute was enacted should be avoided."*

88. ***Bhaiji v. SDO, (2003) 1 SCC 692 : 2002 SCC OnLine SC 1207:***

"***11.*** *Reference to the Statement of Objects and Reasons is permissible for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute, and the evil which the statute sought to remedy. The weight of judicial authority leans in favour of the view that the Statement of Objects and Reasons cannot be utilized for the purpose of restricting and controlling the plain meaning of the language employed by the legislature in drafting a statute and excluding from its operation such transactions which it plainly covers. (See Principles of Statutory Interpretation by Justice G.P. Singh, 8th Edn., 2001, pp. 206-09.)*

12. *The learned Senior Counsel for the appellant placed strong reliance on Girdhari Lal and Sons v. Balbir Nath Mathur [(1986) 2 SCC 237] wherein it has been held that the courts can by ascertaining legislative intent place such construction on a statute as would advance its purpose and object. Where the words of a statute are plain and unambiguous, effect must be given to them. The legislature may be safely presumed to have intended what the*

words plainly say. The plain words can be departed from when reading them as they are leads to patent injustice, anomaly or absurdity or invalidation of a law. The Court permitted the Statement of Objects and Reasons, Parliamentary Debates, Reports of Committees and Commissions preceding the legislation and the legislative history being referred to for the purpose of gathering the legislative intent in such cases. The law so stated does not advance the contention of Shri Gambhir. The wide scope of transactions covered by the plain language of Section 170-B as enacted in 1980 cannot be scuttled or narrowed down by reading the Statement of Objects and Reasons."

89. ***CIT v. Hindustan Bulk Carriers, (2003) 3 SCC 57 :***

"***16.*** *The courts will have to reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. (See Salmon v. Duncombe [(1886) 11 AC 627 : 55 LJPC 69 : 55 LT 446 (PC)] AC at p. 634, Curtis v. Stovin [(1889) 22 QBD 513 : 58 LJQB 174 : 60 LT 772 (CA)] referred to in S. Teja Singh case [AIR 1959 SC 352 : (1959) 35 ITR 408] .)*

18. *The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.*

19. *The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. (See R.S. Raghunath v. State of Karnataka [(1992) 1 SCC 335 : 1992 SCC (L&S) 286 : (1992) 19 ATC 507 : AIR 1992 SC 81] .) Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act. (See Sultana Begum v. Prem Chand Jain [(1997) 1 SCC 373 : AIR 1997 SC 1006] .)*

90. In the case of ***GEM Granites v. CIT (2004) 271 ITR 322 (SC)*** it was observed by the Apex Court as *"an argument founded on what is claimed to be the intention of Parliament may have appeal but a Court of law has to gather the object of the Statute from the language used. What one may believe or think to be the intention of Parliament cannot prevail if the language of the Statute does not*

support that view".

91. ***Parle Biscuits (P) Ltd. v. State of Bihar, (2005) 9 SCC 669:***

> "***19.*** *It is well established that in a taxing statute there is no room for any intendment and regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the taxpayer is within the plain terms of the exemption, it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different, but that is not the case here. In this connection we may refer to the observations of Lord Watson in Salomon v. Salomon & Co. [1897 AC 22 : (1895-99) All ER Rep 33 : 66 LJ Ch 35 (HL)] (AC at p. 38): (All ER p. 41 C-D)*
>
> " '*Intention of the legislature' is a common, but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a court of law or equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication."*
>
> ***20.*** *It is an application of this principle that a statutory notification may not be extended so as to meet a casus omissus. As appears in the judgment of the Privy Council in Crawford v. Spooner [(1846) 6 Moo PC 1 : 4 MIA 179] :*
>
> *"... we cannot aid the legislature's defective phrasing of the Act, we cannot add, and mend, and, by construction, make up deficiencies which are left there."*

92. ***Govt. of India v. Indian Tobacco Assn.*, (2005) 7 SCC 396:**

> "***11.*** *It is also well settled that an expression used in a statute should be given its ordinary meaning unless it leads to an anomalous or absurd situation".*

93. In ***Commr. of Customs v. Dilip Kumar & Co., (2018) 9 SCC 1 : 2018 SCC OnLine SC 747***, the Constitutional Bench, while dealing with a reference regarding the interpretation of an exemption notification, differentiating it with

the interpretation of the provisions contained in the statute, after analysing various judgments on the issue, held that a taxing statute must be literally construed in a strict manner and in case of ambiguity in the statute, the view favourable to the assessee must be taken and in case of an exemption or exemption notification, the balance must be tilted in favour of the revenue. In the process, the Apex Court held as under:

> "***16.*** *An Act of Parliament/Legislature cannot foresee all types of situations and all types of consequences. It is for the Court to see whether a particular case falls within the broad principles of law enacted by the legislature. Here, the principles of interpretation of statutes come in handy. In spite of the fact that experts in the field assist in drafting the Acts and Rules, there are many occasions where the language used and the phrases employed in the statute are not perfect. Therefore, Judges and courts need to interpret the words.*
>
> ***17.*** *In doing so, the principles of interpretation have been evolved in common law. It has also been the practice for the appropriate legislative body to enact the Interpretation Acts or the General Clauses Act. In all the Acts and Regulations, made either by Parliament or Legislature, the words and phrases as defined in the General Clauses Act and the principles of interpretation laid down in the General Clauses Act are to be necessarily kept in view. If while interpreting a statutory law, any doubt arises as to the meaning to be assigned to a word or a phrase or a clause used in an enactment and such word, phrase or clause is not specifically defined, it is legitimate and indeed mandatory to fall back on the General Clauses Act. Notwithstanding this, we should remember that when there is repugnancy or conflict as to the subject or context between the General Clauses Act and a statutory provision which falls for interpretation, the Court must necessarily refer to the provisions of the statute.*
>
> ***18.*** *The purpose of interpretation is essentially to know the intention of the legislature. Whether the legislature intended to apply the law in a given case; whether the legislature intended to exclude operation of law in a given case; whether the legislature intended to give discretion to enforcing authority or to adjudicating agency to apply the law, are essentially questions to which answers can be sought only by knowing the intention of the legislation. Apart from the general principles of interpretation of statutes, there are certain internal aids and external aids which are tools for interpreting the statutes.*
>
> ***19.*** *The long title, the preamble, the heading, the marginal note, punctuation,*

illustrations, definitions or dictionary clause, a proviso to a section, explanation, examples, a schedule to the Act, etc., are internal aids to construction. The external aids to construction are parliamentary debates, history leading to the legislation, other statutes which have a bearing, dictionaries, thesaurus.

20. *It is well accepted that a statute must be construed according to the intention of the legislature and the courts should act upon the true intention of the legislation while applying law and while interpreting law. If a statutory provision is open to more than one meaning, the Court has to choose the interpretation which represents the intention of the legislature. In this connection, the following observations made by this Court in District Mining Officer v. Tisco [District Mining Officer v. Tisco, (2001) 7 SCC 358] , may be noticed : (SCC pp. 382-83, para 18)*

"*18. ... A statute is an edict of the legislature and in construing a statute, it is necessary, to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation the court has to choose that interpretation which represents the true intention of the legislature. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed."*

21. *The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the courts are bound to give effect to the said meaning irrespective of consequences. If the*

words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the legislature.

22. *In Kanai Lal Sur v. Paramnidhi Sadhukhan [Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907] , it was held that if the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.*

23. *In applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the language employed by the legislation. This is especially so in fiscal statutes and penal statutes. Nevertheless, if the plain language results in absurdity, the court is entitled to determine the meaning of the word in the context in which it is used keeping in view the legislative purpose. [Commr. v. Mathapathi Basavannewwa, (1995) 6 SCC 355] Not only that, if the plain construction leads to anomaly and absurdity, the court having regard to the hardship and consequences that flow from such a provision can even explain the true intention of the legislation. Having observed general principles applicable to statutory interpretation, it is now time to consider rules of interpretation with respect to taxation.*

24. *In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocents might become victims of discretionary decision-making. Insofar as taxation statutes are concerned, Article 265 of the Constitution ["**265. Taxes not to be imposed save by authority of law**.—No tax shall be levied or collected except by authority of law."] prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because the State cannot at their whims and fancies burden the citizens without authority of law. In other words, when the competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the legislature.*

25. *At the outset, we must clarify the position of "plain meaning rule or clear and unambiguous rule" with respect to tax law. "The plain meaning rule" suggests that when the language in the statute is plain and unambiguous, the court has to read and understand the plain language as such, and there is no scope for any interpretation. This salutary maxim flows from the phrase "cum inverbis nulla ambiguitas est, non debet admitti voluntatis quaestio". Following such maxim, the courts sometimes have made strict interpretation subordinate to the plain meaning rule [Mangalore Chemicals and Fertilisers Ltd. v. CCT, 1992 Supp (1) SCC 21] , though strict interpretation is used in the precise sense. To say that strict interpretation involves plain reading of the statute and to say that one has to utilise strict interpretation in the event*

of ambiguity is self-contradictory.

26. *Next, we may consider the meaning and scope of "strict interpretation", as evolved in Indian law and how the higher courts have made a distinction while interpreting a taxation statute on one hand and tax exemption notification on the other. In Black's Law Dictionary (10th Edn.) "strict interpretation" is described as under:*

Strict interpretation. (16c) 1. An interpretation according to the narrowest, most literal meaning of the words without regard for context and other permissible meanings. 2. An interpretation according to what the interpreter narrowly believes to have been the specific intentions or understandings of the text's authors or ratifiers, and no more. Also termed (in senses 1 & 2) strict construction, literal interpretation; literal construction; restricted interpretation; interpretatio stricta; interpretatio restricta; interpretatio verbalis. 3. The philosophy underlying strict interpretation of statutes. Also termed as close interpretation; interpretatio restrictive. See strict constructionism under constructionism. Cf. large interpretation; liberal interpretation (2).

"*Strict construction of a statute is that which refuses to expand the law by implications or equitable considerations, but confines its operation to cases which are clearly within the letter of the statute, as well as within its spirit or reason, not so as to defeat the manifest purpose of the legislature, but so as to resolve all reasonable doubts against the applicability of the statute to the particular case." Willam M. Lile et al., Brief Making and the Use of Law Books 343 (Roger W. Cooley & Charles Lesly Ames eds., 3d Edn. 1914).*

"*Strict interpretation is an equivocal expression, for it means either literal or narrow. When a provision is ambiguous, one of its meaning may be wider than the other, and the strict (i.e. narrow) sense is not necessarily the strict (i.e. literal) sense." John Salmond, Jurisprudence 171 n. (t) [Glanville L. Williams (Ed.), 10th Edn. 1947].*

27. *As contended by Ms Pinky Anand, learned Additional Solicitor General, the principle of literal interpretation and the principle of strict interpretation are sometimes used interchangeably. This principle, however, may not be sustainable in all contexts and situations. There is certainly scope to sustain an argument that all cases of literal interpretation would involve strict rule of interpretation, but strict rule may not necessarily involve the former, especially in the area of taxation.*

28. *The decision of this Court in Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court [Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court, (1990) 3 SCC 682 : 1991 SCC (L&S) 71] , made the said distinction, and explained the literal rule : (SCC p. 715, para 67)*

"*67. The literal rules of construction require the wording of the Act to be construed according to its literal and grammatical meaning, whatever the*

result may be. Unless otherwise provided, the same word must normally be construed throughout the Act in the same sense, and in the case of old statutes regard must be had to its contemporary meaning if there has been no change with the passage of time."

That strict interpretation does not encompass strict literalism into its fold. It may be relevant to note that simply juxtaposing "strict interpretation" with "literal rule" would result in ignoring an important aspect that is "apparent legislative intent". We are alive to the fact that there may be overlapping in some cases between the aforesaid two rules. With certainty, we can observe that, "strict interpretation" does not encompass such literalism, which lead to absurdity and go against the legislative intent. As noted above, if literalism is at the far end of the spectrum, wherein it accepts no implications or inferences, then "strict interpretation" can be implied to accept some form of essential inferences which literal rule may not accept.

29. *We are not suggesting that literal rule dehors the strict interpretation nor one should ignore to ascertain the interplay between "strict interpretation" and "literal interpretation". We may reiterate at the cost of repetition that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely, contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. Indeed, it is well settled that in a taxation statute, there is no room for any intendment; that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a tax statute. Strictly one has to look to the language used; there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute.*

…….

32. *Yet again, it was observed:*

"*It may thus be taken as a maxim of tax law, which although not to be overstressed ought not to be forgotten that,*

'*the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax [on] him', (Russell v. Scott [Russell v. Scott, 1948 AC 422 : (1948) 2 All ER 1 (HL)] , AC p. 433).*

The proper course in construing revenue Acts is to give a fair and reasonable construction to their language without leaning to one side or the other but keeping in mind that no tax can be imposed without words clearly showing an intention to lay the burden and that equitable construction of the words is not permissible [Ormond Investment Co.v. Betts [Ormond Investment

Co. v. Betts, 1928 AC 143 (HL)]]. Considerations of hardship, injustice or anomalies do not play any useful role in construing taxing statutes unless there be some real ambiguity [Mapp v. Oram [Mapp v. Oram, 1970 AC 362 : (1969) 3 WLR 557 : (1969) 3 All ER 215 (HL)]]. It has also been said that if taxing provision is 'so wanting in clarity that no meaning is reasonably clear, the courts will be unable to regard it as of any effect [IRC v. Ross and Coulter [IRC v. Ross and Coulter, (1948) 1 All ER 616 (HL)]]'."

…….

34. *The passages extracted above, were quoted with approval by this Court in at least two decisions being CIT v. Kasturi and Sons Ltd. [CIT v. Kasturi and Sons Ltd., (1999) 3 SCC 346] and State of W.B. v. Kesoram Industries Ltd. [State of W.B. v. Kesoram Industries Ltd., (2004) 10 SCC 201] (hereinafter referred to as "Kesoram Industries case", for brevity). In the later decision, a Bench of five Judges, after citing the above passage from Justice G.P. Singh's treatise, summed up the following principles applicable to the interpretation of a taxing statute:*

"*(i) In interpreting a taxing statute, equitable considerations are entirely out of place. A taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency; (ii) Before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section; and (iii) If the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and there is nothing unjust in a taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly."*

35. *Now coming to the other aspect, as we presently discuss, even with regard to exemption clauses or exemption notifications issued under a taxing statute, this Court in some cases has taken the view that the ambiguity in an exemption notification should be construed in favour of the subject. In subsequent cases, this Court diluted the principle saying that mandatory requirements of exemption clause should be interpreted strictly and the directory conditions of such exemption notification can be condoned if there is sufficient compliance with the main requirements. This, however, did not in any manner tinker with the view that an ambiguous exemption clause should be interpreted favouring the Revenue. Here again this Court applied different tests when considering the ambiguity of the exemption notification which requires strict construction and after doing so at the stage of applying the notification, it came to the conclusion that one has to consider liberally.*

36. *With the above understanding the stage is now set to consider the core issue. In the event of ambiguity in an exemption notification, should the*

benefit of such ambiguity go to the subject/assessee or should such ambiguity be construed in favour of the Revenue, denying the benefit of exemption to the subject/assessee? There are a catena of case laws in this area of interpretation of an exemption notification, which we need to consider herein. IRC v. James Forrest [IRC v. James Forrest, (1890) LR 15 AC 334 (HL)] is a case which does not discuss the interpretative test to be applied to exemption clauses in a taxation statute—however, it was observed that : (AC p. 338) '... it would be unreasonable to suppose that an exemption was wide as practicable to make the tax inoperative, that it cannot be assumed to have been in the mind of the legislature' and that exemption 'from taxation to some extent increased the burden on other members of the community'. (AC p. 340) Though this is a dissenting view of Lord Halsbury, LC, in subsequent decisions this has been quoted vividly to support the conclusion that any vagueness in the exemption clauses must go to the benefit of the Revenue. Be that as it is, in our country, at least from 1955, there appears to be a consistent view that if the words in a taxing statute (not exemption clause) are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and it does not matter if the taxpayer escapes the tax net on account of the Legislature's failure to express itself clearly [see the passage extracted hereinabove from Kesoram Industries case [State of W.B.v. Kesoram Industries Ltd., (2004) 10 SCC 201]].

……..

***44.** In Hansraj Gordhandas v. CCE [Hansraj Gordhandas v. CCE and Customs, AIR 1970 SC 755 : (1969) 2 SCR 253] [hereinafter referred to as "Hansraj Gordhandas case", for brevity], wherein this Court was called upon to interpret an exemption notification issued under the Central Excise Act. It would be relevant to understand the factual context which gave rise to the aforesaid case before the Court. The appellant was the sole proprietor who used to procure cotton from a cooperative society during the relevant period. The society had agreed to carry out the weaving work for the appellant on payment of fixed weaving charges at Re. 0.19 np. per yard which included expenses the society would have to incur in transporting the aforesaid cotton fabric. In the years 1959 and 1960, the Government issued an exemption notification which exempted cotton fabrics produced by any cooperative society formed of owners of cotton power looms, registered on or before 31-3-1961. The question before the Court was whether the appellant who got the cotton fabric produced from one of the registered cooperative societies was also covered under the aforesaid notification. It may be of some significance that the Revenue tried to interpret the aforesaid exemption by relying on the purposive interpretation by contending that the object of granting the above exemption was to encourage the formation of cooperative societies which not only produced cotton fabrics but also consisted of members, not only owning but having actually operated not more than four*

power looms during the three years immediately preceding their having joined the society. The policy was that instead of each such member operating his looms on his own, he should combine with others by forming a society to produce clothes. It was argued that the goods produced for which exemption could be claimed must be goods produced on his own and on behalf of the society. The Court did not countenance such purposive interpretation. It was held that a taxing legislation should be interpreted wholly by the language of the notification.

45. *The relevant observations are : (Hansraj case [Hansraj Gordhandas v. CCE and Customs, AIR 1970 SC 755 : (1969) 2 SCR 253] , AIR p. 759, para 5)*

"*5. ... It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the taxpayer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different, but that is not the case here. In this connection we may refer to the observations of Lord Watson in Salomon v. A. Salomon & Co. Ltd. [Salomon v. A. Salomon & Co. Ltd., 1897 AC 22 (HL)] : (AC p. 38)*

‘ "Intention of the legislature" is a common but very slippery phrase, which, popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication.'

It is an application of this principle that a statutory notification may not be extended so as to meet a casus omissus. As appears in the judgment of the Privy Council in Crawford v. Spooner [Crawford v. Spooner, 1846 SCC OnLine PC 7 : (1846-50) 4 Moo IA 179] .

'… we cannot aid the Legislature's defective phrasing of the Act, we cannot add, and mend, and, by construction, make up deficiencies which are left there.'

The learned counsel for the respondents is possibly right in his submission that the object behind the two notifications is to encourage the actual manufacturers of handloom cloth to switch over to power looms by constituting themselves in cooperative societies. But the operation of the notifications has to be judged not by the object which the rule-making authority had in mind but by the words which it has employed to effectuate the legislative intent."

46. *In the judgment of the two learned Judges in Union of India v. Wood Papers Ltd. [Union of India v. Wood Papers Ltd., (1990) 4 SCC 256 : 1990 SCC (Tax) 422] (hereinafter referred to as "Wood Papers Ltd. case", for brevity), a distinction between stage of finding out the eligibility to seek exemption and stage of applying the nature of exemption was made. Relying on the decision in CCE v. Parle Exports (P) Ltd. [CCE v. Parle Exports (P) Ltd., (1989) 1 SCC 345 : 1989 SCC (Tax) 84] , it was held : (Wood Papers Ltd. case [Union of India v. Wood Papers Ltd., (1990) 4 SCC 256 : 1990 SCC (Tax) 422] , SCC p. 262, para 6)*

"*6. ... Do not extend or widen the ambit at the stage of applicability. But once that hurdle is crossed, construe it liberally."*

The reasoning for arriving at such conclusion is found in para 4 of Wood Papers Ltd. case [Union of India v. Wood Papers Ltd., (1990) 4 SCC 256 : 1990 SCC (Tax) 422] , which reads : (SCC p. 260)

"*4. ... Literally exemption is freedom from liability, tax or duty. Fiscally, it may assume varying shapes, specially, in a growing economy. For instance tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective, etc. That is why its construction, unlike charging provision, has to be tested on different touchstone. In fact, an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject, but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction."*

(emphasis supplied)

…….

48. *This Court while accepting the interpretation provided by the appellant, observed on the aspect of strict construction of a provision concerning exemptions as follows : (Mangalore Chemicals case [Mangalore Chemicals and Fertilisers Ltd. v. CCT, 1992 Supp (1) SCC 21] , SCC p. 31, para 24)*

"*24. ... There is support of judicial opinion to the view that exemptions from taxation have a tendency to increase the burden on the other unexempted class of taxpayers and should be construed against the subject in case of*

ambiguity. It is an equally well-known principle that a person who claims an exemption has to establish his case. ... The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation. It appears to us the true rule of construction of a provision as to exemption is the one stated by this Court in Union of India v. Wood Papers Ltd. [Union of India v. Wood Papers Ltd., (1990) 4 SCC 256 : 1990 SCC (Tax) 422] "

……

50. *We will now consider another Constitution Bench decision in CCE v. Hari Chand Shri Gopal [CCE v. Hari Chand Shri Gopal, (2011) 1 SCC 236] (hereinafter referred as "Hari Chand case", for brevity). We need not refer to the facts of the case which gave rise to the questions for consideration before the Constitutional Bench. K.S. Radhakrishnan, J., who wrote the unanimous opinion for the Constitution Bench, framed the question viz. whether manufacturer of a specified final product falling under the Schedule to the Central Excise Tariff Act, 1985 is eligible to get the benefit of exemption of remission of excise duty on specified intermediate goods as per the Central Government Notification dated 11-8-1994, if captively consumed for the manufacture of final product on the ground that the records kept by it at the recipient end would indicate its "intended use" and "substantial compliance" with procedure set out in Chapter 10 of the Central Excise Rules, 1994, for consideration? The Constitution Bench answering the said question concluded that a manufacturer qualified to seek exemption was required to comply with the preconditions for claiming exemption and therefore is not exempt or absolved from following the statutory requirements as contained in the Rules. The Constitution Bench then considered and reiterated the settled principles qua the test of construction of exemption clause, the mandatory requirements to be complied with and the distinction between the eligibility criteria with reference to the conditions which need to be strictly complied with and the conditions which need to be substantially complied with. The Constitution Bench followed the ratio in Hansraj Gordhandas case [Hansraj Gordhandas v. CCE and Customs, AIR 1970 SC 755 : (1969) 2 SCR 253] , to reiterate the law on the aspect of interpretation of exemption clause in para 29 as follows : (Hari Chand case [CCE v. Hari Chand Shri Gopal, (2011) 1 SCC 236] , SCC p. 247)*

"*29. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied*

with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption."

51. *The Constitution Bench then considered the doctrine of substantial compliance and "intended use". The relevant portions of the observations in paras 31 to 34are in the following terms : (Hari Chand case [CCE v. Hari Chand Shri Gopal, (2011) 1 SCC 236] , SCC pp. 247-48)*

"*31. Of course, some of the provisions of an exemption notification may be directory in nature and some are mandatory in nature. A distinction between the provisions of a statute which are of substantive character and were built in with certain specific objectives of policy, on the one hand, and those which are merely procedural and technical in their nature, on the other, must be kept clearly distinguished. ...*

Doctrine of substantial compliance and "intended use"

32. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means 'actual compliance in respect to the substance essential to every reasonable objective of the statute' and the Court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.

33. A fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance with an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been

found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.

34. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance with those factors which are considered as essential."

52. *After considering the various authorities, some of which are adverted to above, we are compelled to observe how true it is to say that there exists unsatisfactory state of law in relation to interpretation of exemption clauses. Various Benches which decided the question of interpretation of taxing statute on one hand and exemption notification on the other, have broadly assumed (we are justified to say this) that the position is well settled in the interpretation of a taxing statute : It is the law that any ambiguity in a taxing statute should enure to the benefit of the subject/assessee, but any ambiguity in the exemption clause of exemption notification must be conferred in favour of the Revenue—and such exemption should be allowed to be availed only to those subjects/assesses who demonstrate that a case for exemption squarely falls within the parameters enumerated in the notification and that the claimants satisfy all the conditions precedent for availing exemption. Presumably for this reason the Bench which decided Surendra Cotton Oil Mills case [Collector of Customs & Central Excise v. Surendra Cotton Oil Mills & Fertilizers Co., (2001) 1 SCC 578] observed that there exists unsatisfactory state of law and the Bench which referred the matter initially, seriously doubted the conclusion in Sun Export case[Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] that the ambiguity in an exemption notification should be interpreted in favour of the assessee.*

53. *After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification*

wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.

54. *In Govind Saran Ganga Saran v. CST [Govind Saran Ganga Saran v. CST1985 Supp SCC 205 : 1985 SCC (Tax) 447] , this Court pointed out three components of a taxing statute, namely, subject of the tax; person liable to pay tax; and the rate at which the tax is to be levied. If there is any ambiguity in understanding any of the components, no tax can be levied till the ambiguity or defect is removed by the legislature. [See Mathuram Agrawal v. State of M.P. [Mathuram Agrawal v. State of M.P., (1999) 8 SCC 667] ; Indian Banks' Assn. v. Devkala Consultancy Service [Indian Banks' Assn. v. Devkala Consultancy Service, (2004) 11 SCC 1 : AIR 2004 SC 2615] and Consumer Online Foundation v. Union of India [Consumer Online Foundation v. Union of India, (2011) 5 SCC 360] .]*

55. *There is abundant jurisprudential justification for this. In the governance of rule of law by a written Constitution, there is no implied power of taxation. The tax power must be specifically conferred and it should be strictly in accordance with the power so endowed by the Constitution itself. It is for this reason that the courts insist upon strict compliance before a State demands and extracts money from its citizens towards various taxes. Any ambiguity in a taxation provision, therefore, is interpreted in favour of the subject/assessee. The statement of law that ambiguity in a taxation statute should be interpreted strictly and in the event of ambiguity the benefit should go to the subject/assessee may warrant visualising different situations. For instance, if there is ambiguity in the subject of tax, that is to say, who are the persons or things liable to pay tax, and whether the Revenue has established conditions before raising and justifying a demand. Similar is the case in roping all persons within the tax net, in which event the State is to prove the liability of the persons, as may arise within the strict language of the law. There cannot be any implied concept either in identifying the subject of the tax or person liable to pay tax. That is why it is often said that subject is not to be taxed, unless the words of the statute unambiguously impose a tax on him, that one has to look merely at the words clearly stated and that there is no room for any intendment nor presumption as to tax. It is only the letter of the law and not the spirit of the law to guide the interpreter to decide the liability to tax ignoring any amount of hardship and eschewing equity in taxation. Thus, we may emphatically reiterate that if in the event of ambiguity in a taxation liability statute, the benefit should go to the subject/assessee. But, in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the Revenue, the aforesaid conclusions are expounded only as a prelude to better understand jurisprudential basis for our conclusion. We may now consider the decisions which support our view.*

56. *In Hansraj Gordhandas case [Hansraj Gordhandas v. CCE and Customs, AIR 1970 SC 755 : (1969) 2 SCR 253] , the Constitutional Bench unanimously pointed out that an exemption from taxation is to be allowed based wholly by the language of the notification and exemption cannot be*

gathered by necessary implication or by construction of words; in other words, one has to look to the language alone and the object and purpose for granting exemption is irrelevant and immaterial.

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***58.** In the above passage, no doubt this Court observed that : (Parle Exports case [CCE v. Parle Exports (P) Ltd., (1989) 1 SCC 345 : 1989 SCC (Tax) 84] , SCC p. 357, para 17)*

"*17. when two views of a notification are possible, it should be construed in favour of the subject as notification is part of a fiscal enactment."*

This observation may appear to support the view that ambiguity in a notification for exemption must be interpreted to benefit the subject/assessee. A careful reading of the entire para, as extracted hereinabove would, however, suggest that an exception to the general rule of tax has to be construed strictly against those who invoke for their benefit. This was explained in a subsequent decision in Wood Papers Ltd. case [Union of India v. Wood Papers Ltd., (1990) 4 SCC 256 : 1990 SCC (Tax) 422] . In para 6, it was observed as follows : (SCC p. 262)

"*6. ... In CCE v. Parle Exports (P) Ltd. [CCE v. Parle Exports (P) Ltd., (1989) 1 SCC 345 : 1989 SCC (Tax) 84] , this Court while accepting that exemption clause should be construed liberally applied rigorous test for determining if expensive items like Gold Spot base or Limca base or Thums Up base were covered in the expression food products and food preparations used in Item No. 68 of First Schedule of Central Excises and Salt Act and held 'that it should not be in consonance with spirit and the reason of law to give exemption for non-alcoholic beverage basis under the notification in question'. Rationale or ratio is same. Do not extend or widen the ambit at stage of applicability. But once that hurdle is crossed construe it liberally. Since the respondent did not fall in the first clause of the notification there was no question of giving the clause a liberal construction and hold that production of goods by respondent mentioned in the notification were entitled to benefit."*

***59.** The above decision, which is also a decision of a two-Judge Bench of this Court, for the first time took a view that liberal and strict construction of exemption provisions are to be invoked at different stages of interpreting it. The question whether a subject falls in the notification or in the exemption clause, has to be strictly construed. When once the ambiguity or doubt is resolved by interpreting the applicability of exemption clause strictly, the Court may construe the notification by giving full play bestowing wider and liberal construction. The ratio of Parle Exports case [CCE v. Parle Exports (P) Ltd., (1989) 1 SCC 345 : 1989 SCC (Tax) 84] deduced as follows : (Wood Papers Ltd. case [Union of India v. Wood Papers Ltd., (1990) 4 SCC*

256 : 1990 SCC (Tax) 422] , SCC p. 262, para 6)

"*6. ... Do not extend or widen the ambit at stage of applicability. But once that hurdle is crossed, construe it liberally."*

60. *We do not find any strong and compelling reasons to differ, taking a contra view, from this. We respectfully record our concurrence to this view which has been subsequently, elaborated by the Constitution Bench in Hari Chand case [CCE v. Hari Chand Shri Gopal, (2011) 1 SCC 236] .*

65. As already concluded in paras 53 to 55 and 63, above, we may reiterate that we are only concerned in this case with a situation where there is ambiguity in an exemption notification or exemption clause, in which event the benefit of such ambiguity cannot be extended to the subject/assessee by applying the principle that an obscure and/or ambiguity or doubtful fiscal statute must receive a construction favouring the assessee. Both the situations are different and while considering an exemption notification, the distinction cannot be ignored."

94. ***State of A.P. v. Linde (India) Ltd., (2020) 16 SCC 335 : 2020 SCC OnLine SC 362:***

"***17.*** *The term "medicine" is not defined in the 1940 Act. It is a trite principle of interpretation that the words of a statute must be construed according to the plain, literal and grammatical meaning of the words. Justice G.P. Singh in his seminal work Principles of Statutory Interpretation states:*

"*The words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context or in the object of the statute to suggest the contrary ... in the statement of the rule, the epithets 'natural', 'ordinary', 'literal', 'grammatical' and 'popular' are employed almost interchangeably.*

***

It is often said that a word, apart from having a natural, ordinary or popular meaning (including other synonyms i.e. literal, grammatical and primary), may have a secondary meaning which is less common e.g. technical or scientific meaning. But once it is accepted that natural, ordinary or popular meaning of the word is derived from its context, the distinction drawn between different meanings loses much of its relevance."

18. *Similarly, Craies on Statute Law states:*

"*One of the basic principles of interpretation of statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary to, or inconsistent with, any express intention or declared purpose*

of the statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it. He must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity."

19. *The words of a statute should be first understood in their natural, ordinary or popular sense and phrases and sentences should be construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary. Where a word has a secondary meaning, the assessment is whether the natural, ordinary or popular meaning flows from the context in which the word has been employed. In such cases, the distinction disappears and courts must adopt the meaning which flows as a matter of plain interpretation and the context in which the word appears.*

20. *In State of H.P. v. Pawan Kumar [State of H.P. v. Pawan Kumar, (2005) 4 SCC 350 : 2005 SCC (Cri) 943] it was contended that the safeguards provided in Section 50 of the Narcotics Drugs and Psychotropic Substances Act, 1985 regarding search of any person would also apply to any bag, briefcase or any such article or container, which is being carried by the person. The word "person" was not defined in the Act. A three-Judge Bench of this Court, having regard to the scheme of the Act and the context in which the word — "person" has been used, rejected the contention and held thus : (SCC p. 358, para 8)*

"*8. One of the basic principles of interpretation of statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary to, or inconsistent with, any express intention or declared purpose of the statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it. He must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity."*

The above canon of statutory interpretation has been consistently followed by this Court in State of H.P. v. Pawan Kumar [State of H.P. v. Pawan Kumar, (2005) 4 SCC 350 : 2005 SCC (Cri) 943] , State of Haryana v. Suresh [State of Haryana v. Suresh, (2007) 15 SCC 186 : (2010) 3 SCC (Cri) 528] , State of Rajasthan v. Babu Ram[State of Rajasthan v. Babu Ram, (2007) 6 SCC 55 : (2007) 3 SCC (Cri) 52] and Commr. of Customs v. Dilip Kumar & Co. [Commr. of Customs v. Dilip Kumar & Co., (2018) 9 SCC 1]"

95. ***Franklin Templeton Trustee Services (P) Ltd. v. Amruta Garg, (2021)***

6 SCC 736 : 2021 SCC OnLine SC 88 at page 752:

> "***17.*** *The concept of "absurdity" in the context of interpretation of statutes is construed to include any result which is unworkable, impracticable, illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief [See Bennion on Statutory Interpretation, 5th Edn., p. 969.] . Logic referred to herein is not formal or syllogistic logic, but acceptance that enacted law would not set a standard which is palpably unjust, unfair, unreasonable or does not make any sense. [Bennion on Statutory Interpretation, 5th Edn., p. 986.] When an interpretation is beset with practical difficulties, the courts have not shied from turning sides to accept an interpretation that offers a pragmatic solution that will serve the needs of society [Id, p. 971, quoting Griffiths, L.J.] . Therefore, when there is choice between two interpretations, we would avoid a "construction" which would reduce the legislation to futility, and should rather accept the "construction" based on the view that draftsmen would legislate only for the purpose of bringing about an effective result. We must strive as far as possible to give meaningful life to enactment or rule and avoid cadaveric consequences [See Principles of Statutory Interpretation by Justice G.P. Singh, 14th Edn., p. 50.]".*

96. The ratio that could be derived from the above judgments can be summarized as follows:

When the language of the statute is clear and unambiguous, internal or external aid cannot be looked into and the court has to go by the plain language to interpret the law and to find out the intention of the legislature,

a. In interpreting a taxing provision, one should merely look at the plain, natural meaning of the words in the provision and resort to literal but strict interpretation,

b. The intention of the legislature is to be gauged from the plain and unambiguous words used and intentions cannot be derived contrary to the

language or the plain words used,

c. If the legislature has not used a particular word(s), it means that it never intended to use or mean it,

d. No words can be added or read into the statute to supplement the cause or to achieve the just or the desired result,

e. There is neither equity nor waiver or acquiescence in tax. If the subject cannot be brought within the four corners of the taxing statute, no tax can be levied or collected necessarily, even by implication,

f. Where there are two conflicting provisions, the provisions must be harmoniously interpreted to give effect to both the provisions to annul any absurdity and one section cannot be used to nullify another section,

g. It is only when the intention of the legislature cannot be derived from the plain language or by harmonious construction, statement of objects and reasons can be looked into for a limited purpose to find out the intention but that *ipso facto* would not enable the court to add, alter or change the words, upon assessment of the provision, the matter must be left to the legislature to decide the further course of action,

h. If the provision concerned of the taxing statute is ambiguous and vague and is susceptible to two interpretations, the interpretation which favours the subjects, as against the Revenue, has to be preferred,

i. When there is any ambiguity in interpreting an exemption notification or clause, it must be strictly interpreted and the view favourable to the revenue must be taken,

j. On strict interpretation, if the subject can satisfy strictly the conditions for eligibility to claim such exemption, a liberal approach can be permitted thereafter,

k. In interpreting a taxing statute, it is not necessary to follow one rule of interpretation, when the situation warrants interpretation of different provisions, of which one is clear and one is ambiguous, literal, harmonious or purposive constructions can be used at appropriate stages so as to ensure that all provisions are workable to implement the true will of the Act,

l. In a taxing statute, the quantum or inconvenience is of no relevance.

97. Juxtaposing the facts to the ratio from the above derivation and the findings on Section 19 (2) (ii) and 19 (2) (v), we find that the manufacturers are covered by section 19 (2) (ii) and also by section 19 (2) (v) which operate at different levels of a transaction. Section 19 (2) (ii) uses the words “manufacture or process of goods within the State”. The contention of the learned Additional Advocate General that after the goods go through various

process in the sub-clauses and sold to a dealer in other state, sub-clause (v) would be attracted, is well founded as the natural meaning of the word 'sale' would not only include goods that or sold as such, but also manufactured goods. The language used is simple and clear. The event which brings into operation/ triggers Section 19 (2) (v) is the ultimate "sale" and not "manufacture". Until the introduction of the proviso, there was no embargo for the dealers to claim full ITC. The sub-clauses are distinct and cannot be read together as pre-conditions as they are intended to apply to different categories of dealers. In fact, a close reading of the sub-clauses would reveal that the ITC on goods purchased within the state is available upon satisfaction of any of the categories as they are distinct and capable of independently conveying the intention of the legislature to allow ITC. Further, the usage of "full stop" after sub-clause (iv) denotes the intention of the legislature to end the sentence there or in other words, any relationship with the preceding sub-clauses ends there. While interpreting the sub-clauses, the main clause should be the basis upon which the sub-clauses are interpreted. When a provision contains various sub-clauses which are capable of standing alone and meaningful and separated by the use of punctuations and disjunctive like "or" when exposed to the main clause, they have to be treated as independent clauses and would have no connection. The test would be to read the sub-clauses with the main clause and

see whether it conveys the meaning as intended.

98. Let us now consider reading the provision like this:

a. Input tax credit shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of re-sale by him within the State ; or

b. Input tax credit shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of use as input in manufacturing or processing of goods in the State; or

c. Input tax credit shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of use as containers, labels and other materials for packing of goods in the State; or

d. Input tax credit shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of use as capital goods in the manufacture of taxable goods.

e. Input tax credit shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of sale in the course of Inter-State trade or commerce falling under sub-section (1) of Section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956).

f. Input tax credit shall be allowed for the purchase of goods made

within the State from a registered dealer and which are for the purpose of agency transactions by the principal within the State in the manner as may be prescribed.

Thus, it is very clear from the above reading that the legislature intended to treat each categories as separate and independent conditions to claim ITC, that they are to operate independently, that one clause is not dependent on the other. A dealer once he utilizes the inputs in the manufacturing activity in the State, he is entitled to ITC at that point. But when he decides to sell such goods manufactured within the state to a dealer outside the State, section 19 (2) (v) or 19 (5) (c) would come into operation. The above reading would also reflect that section 19 (2) (v) on its plain meaning would also cover all persons sell the goods to the dealers outside the State covered by “C” Forms.

99. Further, section 19 (2) is a positive provision which allows the dealers to claim ITC. Semi-colon followed by the disjunctive “or” used at the end of sub-clauses (i), (ii), (iii) and (iv). Semi-colons are generally used to distinguish or divide sentences more particularly when used in a series. It is also used in the sentences to denote a relation between two independent sentences. Semi-colon in Webster's New World Dictionary (Third Edition) has been defined to mean, a mark of punctuation indicating a degree of separation greater than that marked by the comma and less than that marked by the

period: used chiefly to separate units that contain elements separated by commas, and to separate closely related coordinate clauses. As per the definition, "Semi-colon is the punctuation mark (;) used to indicate a major division in a sentence where a more distinct separation is felt between clauses or items on a list than is indicated by a comma, as between the two clauses of a compound sentence".

100. The use of semi-colon in the sub-clauses as referred above clearly indicates that the legislature intended to treat the sub-clauses as distinct and capable of being treated independently. The deliberate omission of the legislature to make way for separate clause for manufacturers who sell their goods to a dealer outside the State postulates the fact that the legislature intended to go-by the simple and plain meaning of the word "Sale" without any distinction.

101. It is not out of sight to point out here that the word "or" is used to denote the alternatives. It is a conjunction that can be used as a conjunctive or disjunctive. When it is used in a positive condition, it acts as a disjunctive implying its true purpose of indicating an alternate and implies satisfaction of any one of the conditions. But when it is used in a negative condition, it is read as a conjunctive and treated as "and" or "nor". The above conclusion can be drawn from the Constitutional Bench Judgment of the Apex Court rendered in

the context of interpreting the word "or" after considering various judgments on the aspect and the relevant portions are extracted as under:

> ***Indore Development Authority (LAPSE-5 J.) v. Manoharlal, (2020) 8 SCC 129 : (2020) 4 SCC (Civ) 496 : 2020 SCC OnLine SC 316***
>
> "***98.*** *It would be useful to notice rules of statutory interpretation in this regard. Principles of Statutory Interpretation (14th Edn.) by Justice G.P. Singh, speaks of the following general rule of statutory interpretation of positive and negative conditions whenever prescribed by a statute:*
>
> "*… Speaking generally, a distinction may be made between positive and negative conditions prescribed by a statute for acquiring a right or benefit. Positive conditions separated by "or" are read in the alternative [Star Co. Ltd. v. CIT, (1970) 3 SCC 864 : AIR 1970 SC 1559] but negative conditions connected by "or" are construed as cumulative and "or" is read as "nor" or "and" [Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar, (1965) 2 SCR 328 : AIR 1965 SC 1457; Punjab Produce & Trading Co. Ltd. v. CIT, (1971) 2 SCC 540; Brown & Co. Ltd. v. Harrison, 1927 All ER Rep 195, 203, 204 (CA)] ."*
>
> *The above rule of statutory interpretation is based upon the decision of this Court in Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar [Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar, AIR 1965 SC 1457] , in which this Court held : (AIR pp. 1464-65, para 19)*
>
> "*19. It may be recalled that amendments to Section 32 were made from time to time, and Bombay Act 38 of 1957 added to sub-section (1)(b), clause (iii) and the preceding "or". It is to be noticed that the conditions mentioned in sub-sections (1)(a) and (1)(b) are mutually exclusive. In spite of the absence of the word "or" between sub-sections (1)(a) and (1)(b), the two sub-sections lay down alternative conditions. The tenant must be deemed to have purchased the land if he satisfies either of the two conditions. The appellant is not a permanent tenant, and does not satisfy the condition mentioned in sub-section (1)(a). Though not a permanent tenant, he cultivated the lands leased personally, and, therefore, satisfies the first part of the condition specified in sub-section (1)(b). The appellant's contention is that sub-sections (1)(b)(i), (1)(b)(ii) and (1)(b)(iii) lay down alternative conditions, and as he satisfies the condition mentioned in sub-section (1)(b)(iii), he must be deemed to have purchased the land on 1-4-1957. Colour is lent to this argument by the word "or" appearing between sub-section (1)(b)(ii) and sub-section (1)(b)(iii). But, we think that the word "or" between sub-sections (1)(b)(ii) and (1)(b)(iii) in conjunction with the succeeding negatives is equivalent to and should be read as "nor". In other words, a tenant (other than a permanent tenant) cultivating the lands personally would become the purchaser of the lands on 1-4-1957, if on that date neither an application under Section 29 read with Section 31 nor an*

application under Section 29 read with Section 14 was pending. If an application either under Section 29 read with Section 31 or under Section 29 read with Section 14 was pending 1-4-1957, the tenant would become the purchaser on "the postponed date", that is to say, when the application would be finally rejected. But if the application be finally allowed, the tenant would not become the purchaser. The expression "an application" in the proviso means not only an application under Section 31 but also an application under Section 29 read with Section 14. If an application of either type was pending on 1-4-1957, the tenant could not become the purchaser on that date. Now, on 1-4-1957, the application filed by Respondent 1 under Section 29 read with Section 31 was pending. Consequently, the appellant could not be deemed to have purchased the lands on 1-4-1957."

(emphasis supplied)

The decision of this Court in Punjab Produce & Trading Co. Ltd. v. CIT [Punjab Produce & Trading Co. Ltd. v. CIT, (1971) 2 SCC 540], was relied upon in the discussion mentioned above, where provisions of Section 23-A of the Income Tax Act, 1922 and Explanations (b)(ii) and (iii) came up for consideration. This Court ruled with respect to "or" and held that it had to be read as "and" construing negative conditions thus : (SCC pp. 543-44, paras 7-8)

"*7. On behalf of the assessee a good deal of reliance has been placed on decision of this Court in Star Co. Ltd. v. CIT [Star Co. Ltd. v. CIT, (1970) 3 SCC 864 : AIR 1970 SC 1559] . In that case, sub-clause (b)(ii) came up for consideration, and it was held that the two parts of the Explanation contained in that sub-clause were alternative. In other words, if one part was satisfied it was unnecessary to consider whether the second part was also satisfied. Thus, the word "or" was treated as having been used disjunctively and not conjunctively. The same reasoning is sought to be invoked with reference to sub-clause (b)(iii).*

8. It is significant that the language of sub-clauses (ii) and (iii) of clause (b) is different. The former relates to a positive state of affairs whereas the latter lays down negative conditions. The word "or" is often used to express an alternative of terms defined or explanation of the same thing in different words. Therefore, if either of the two negative conditions which are to be found in sub-clause (b)(iii) remains unfulfilled, the conditions laid down in the entire clause cannot be said to have been satisfied. The clear import of the opening part of clause (b) with the word "and" appearing there read with the negative or disqualifying conditions in sub-clause (b)(iii) is that the assessee was bound to satisfy apart from the conditions contained in the other sub-clauses that its affairs were at no time during the previous year controlled by less than six persons and shares carrying more than 50% of the total voting power were during the same period not held by less than six persons. We are unable to find any infirmity in the reasoning or the

conclusion of the Tribunal and the High Court so far as Question 1 is concerned."

It was observed that if either of the two negative conditions, which are to be found in sub-clause (b)(iii), remains unfulfilled, the conditions laid down in the entire clause cannot be said to have been satisfied.

……**."**

102. In ***Ranchhoddas Atmaram v. Union of India, AIR 1961 SC 935 : (1961) 2 Cri LJ 31]***, a Constitution Bench of this Court observed that if there are two negative conditions, the expression "or" has to be read as conjunctive and conditions of both the clauses must be fulfilled. It was observed thus: (AIR p. 938, paras 13-15)

"*13. It is clear that if the words form an affirmative sentence, then the condition of one of the clauses only need be fulfilled. In such a case, "or" really means "either" "or". In Shorter Oxford Dictionary, one of the meanings of the word "or" is given as 'A particle co-ordinating two (or more) words, phrases or clauses between which there is an alternative'. It is also there stated, 'The alternative expressed by "or" is emphasised by prefixing the first member or adding after the last, the associated adv. either'. So, even without "either", "or" alone creates an alternative. If, therefore, the sentence before us is an affirmative one, then we get two alternatives, any one of which may be chosen without the other being considered at all. In such a case it must be held that a penalty exceeding Rs 1000 can be imposed.*

14. If, however, the sentence is a negative one, then the position becomes different. The word "or" between the two clauses would then spread the negative influence over the clause following it. This rule of grammar is not in dispute. In such a case, the conditions of both the clauses must be fulfilled and the result would be that the penalty that can be imposed can never exceed Rs 1000.

15. The question then really comes to this : Is the sentence before us a negative or an affirmative one? It seems to us that the sentence is an affirmative sentence. The substance of the sentence is that a certain person shall be liable to a penalty. That is a positive concept. The sentence is

therefore not negative in its import."

(emphasis supplied)

Thus, for lapse of acquisition proceedings initiated under the old law, under Section 24(2) if both steps have not been taken i.e. neither physical possession is taken, nor compensation is paid, the land acquisition proceedings lapse. Several decisions were cited at the Bar to say that "or" has been treated as "and" and vice versa. Much depends upon the context. In Yashpal v. State of Chhattisgarh [Yashpalv. State of Chhattisgarh, (2005) 5 SCC 420 : 2 SCEC 694] , the expression "established or incorporated" was read as "established and incorporated". In RMDC [State of Bombay v. R.M.D. Chamarbaugwala, AIR 1957 SC 699] , to give effect to the clear intention of the legislature, the word "or" was read as "and".

……

103. Reference has also been made to ***Pooran Singh v. State of M.P., (1965) 2 SCR 853 : AIR 1965 SC 1583: (1965) 2 Cri LJ 547]***, in which the Court considered the scheme of the Motor Vehicles Act. The Magistrate was bound to issue summons of the nature prescribed by sub-section (1) of Section 130. The Court held that there was nothing in the sub-section which indicated that he must endorse the summons in terms of both clauses (a) and (b), that he is so commanded would be to convert the conjunction "or" into "and". There is nothing in the language of the legislature which justifies such a conversion and there are adequate reasons which make such an interpretation wholly inconsistent with the scheme of the Act.

104. Reliance has been placed on ***Nasiruddin v. STAT, (1975) 2 SCC 671]***.

The word "or" was given grammatical meaning. The order states that the High Court shall sit as the new High Court and the Judges and Division Bench thereof shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may appoint. It was held that the word "or" cannot be read as "and". They should be considered in an ordinary sense. If two different interpretations are possible, the court will adopt that which is just, reasonable and sensible. The Court observed thus : (SCC p. 680, para 27)

> "*27. The conclusion as well as the reasoning of the High Court that the permanent seat of the High Court is at Allahabad is not quite sound. The order states that the High Court shall sit as the new High Court and the Judges and Division Bench thereof shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may, with the approval of the Governor of the United Provinces, appoint. The word "or" cannot be read as "and". If the precise words used are plain and unambiguous, they are bound to be construed in their ordinary sense. The mere fact that the results of a statute may be unjust does not entitle a court to refuse to give it effect. If there are two different interpretations of the words in an Act, the court will adopt that which is just, reasonable and sensible rather than that which is none of those things. If the inconvenience is an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if it is read in a manner in which it is capable, though not in an ordinary sense, there would not be any inconvenience at all; there would be reason why one should not read it according to its ordinary grammatical meaning. Where the words are plain, the court would not make any alteration."*

105. In ***MCD v. Tek Chand Bhatia, (1980) 1 SCC 158 : 1980 SCC (Cri) 87]***, for interpretation of "and" and "or" in the context of the term "adulterated" as defined in Section 2(i-a)(f) of the Prevention of Food Adulteration Act, 1954, the Court observed : (SCC pp. 162-63, paras 7 & 11)

> "*7. We are of the opinion that the High Court [MCD v. Tek Chand Bhatia, 1972 SCC OnLine Del 338 : 1972 FAC 640] was clearly wrong in its*

interpretation of Section 2(i-a)(f) of the Prevention of Food Adulteration Act, 1954. On the plain language of the definition section, it is quite apparent that the words 'or is otherwise unfit for human consumption' are disjunctive of the rest of the words preceding them. It relates to a distinct and separate class altogether. It seems to us that the last clause 'or is otherwise unfit for human consumption' is residuary provision, which would apply to a case not covered by or falling squarely within the clauses preceding it. If the phrase is to be read disjunctively the mere proof of the article of food being "filthy, putrid, rotten, decomposed ... or insect-infested" would be per se sufficient to bring the case within the purview of the word "adulterated" as defined in sub-clause (f), and it would not be necessary in such a case to prove further that the article of food was unfit for human consumption.

***

11. In the definition clause, the collection of words "filthy, putrid, rotten, decomposed and insect-infested" which are adjectives qualifying the term "an article of food", show that it is not of the nature, substance, and quality fit for human consumption. It will be noticed that there is a comma after each of the first three words. It should also be noted that these qualifying adjectives cannot be read into the last portion of the definition i.e. the words "or is otherwise unfit for human consumption", which is quite separate and distinct from others. The word "otherwise" signifies unfitness for human consumption due to other causes. If the last portion is meant to mean something different, it becomes difficult to understand how the word "or" as used in the definition of "adulterated" in Section 2(i-a)(f) between "filthy, putrid, rotten, etc." and "otherwise unfit for human consumption" could have been intended to be used conjunctively. It would be more appropriate in the context to read it disjunctively. In Stroud's Judicial Dictionary, 3rd Edn., Vol. 1, it is stated at p. 135:

"*And" has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of "or". Sometimes, however, even in such a connection, it is, by force of a context, read as "or".*

While dealing with the topic "or is read as and, and vice versa", Stroud says in Vol. 3, at p. 2009:

You will find it said in some cases that "or" means "and"; but "or" never does mean "and".

Similarly, in Maxwell on Interpretation of Statutes, 11th Edn., pp. 229-30, it has been accepted that "to carry out the intention of the legislature, it is occasionally found necessary to read the conjunctions "or" and "and" one for the other". The word "or" is normally disjunctive and "and" is normally conjunctive, but at times they are read as vice versa. As Scrutton, L.J. said in Green v. Premier Glynrhonwy State Co. [Green v. Premier Glynrhonwy State Co., (1928) 1 KB 561 (CA)] , KB at p. 568:'You do sometimes read "or" as "and" in a statute. ... But you do not do it unless

> *you are obliged, because "or" does not generally mean "and" and "and" does not generally mean "or".' As Lord Halsbury, L.C. observed in Mersey Docks & Harbour Board v. Henderson Bros. [Mersey Docks & Harbour Board v. Henderson Bros., (1888) LR 13 AC 595 (HL)] , AC p. 603, the reading of "or" as "and" is not to be resorted to 'unless some other part of the same statute or the clear intention of it requires that to be done'. The substitution of conjunctions, however, has been sometimes made without sufficient reasons, and it has been doubted whether some of the cases of turning "or" into "and" and vice versa have not gone to the extreme limit of interpretation."*

106. In the present case, usage of "semi-colon" and "or", though scholars have denounced such usage as improper, it signifies that the sub-clauses are distinct and operate separately until sub-clause (iv). Sub-clause (v) is an independent clause without any link or relationship with any other clause. It is also pertinent to point out that from a harmonious reading of the provisions, to claim ITC, though one to one correlation is not required, for adjustment, there must be disposal. Entitlement to ITC is different from claim for adjustment or availment. The ITC is to be claimed in the monthly returns and adjusted against the output tax payable. It is not necessary for the dealer to sell the very same goods within the same month to claim ITC in the next month returns as because the dealer is not only entitled to carry forward the ITC even to next year, but also to hold stock of the goods. Therefore, the State has prescribed the different points for entitlement and availing ITC. It is relevant to refer to the definition of "output tax", which means tax paid or payable in respect of "sale of any" goods. The disposal, contemplated necessarily does not mean the

very same goods, it also includes manufactured goods. Take for instance, a newly registered dealer purchases goods for Rs. 100/- and pays a tax of Rs.5/- @ 5% in the first transaction. He sells goods worth Rs. 50/- for Rs. 55/-, the tax on it would be Rs 2.75/-. Adjusting the credit available with him, he would not pay any tax for the month out of his pocket and he would be left with a credit of Rs 2.25/-. In the next transaction, he again purchases goods for Rs.100/- and pays tax of Rs. 5/- towards purchase tax and later, sells entire goods lying with him valued at Rs.150/- for Rs.175/-, the output tax on the same would be Rs, 8.75/-. After adjusting the credit of Rs. 7.25/-, he would have to pay Rs.1.50/-. The same analogy is also equally applicable for the goods that are used in the manufacturing process and sold as other products. The only difference would be further value addition in view of the cost involved in the manufacturing product. Therefore, the credit from the purchase is utilized for payment of output tax for the sales effected in subsequent month or in subsequent transactions would include the credit from the purchases already effected.

107. Ergo, from the language employed, it is very clear that there is no ambiguity qua the legislature never intended to give a separate meaning to “sale” deviating from its plain and natural meaning to exclude the manufactured goods from the ambit of Section 19 (2) (v) similar to section

19(4) and 19 (5) (c). We are also, in the present appeals, interpreting a substantial provision in the statute and not an exemption notification. The surreal ambiguity, by harmonizing the provisions of the statute, would stand removed for the same reasons as indicated above. The issue is therefore, decided in favour of the revenue.

108. Let us now proceed to the applicability of the proviso to the manufacturers. For better appreciation, the proviso added in 2013 is again extracted as under:

> "*Provided that input tax credit shall be allowed in excess of three per cent of tax for the purpose specified in clause (v).";*

109. A plain reading of the proviso would indicate that it is applicable only to section 19 (2) (v) and not to any other part of Section 19. The main provision of section 19 (2) on a plain reading covers different categories of dealers or transactions mentioned in sub-clauses. Each head requires within it a compliance of different acts to be entitled to ITC. The dealer is entitled to ITC under any of the several heads depending upon their nature of transaction, albeit upon satisfaction of other requirements. Each operate at different points. As held above, each sub-clause is distinct and alternate and cannot be read as a pre or post condition of another for the entitlement of ITC and the sale of goods to the registered dealer in other States in the course of trade or

commerce falling under Section 8(1) would be covered by section 19 (2) (v) irrespective whether such sale is a resale or of manufactured goods. Therefore, the claim of ITC by the manufacturers will fall under section 19 (2) (ii) only as long as they effect local sales, the moment they sell the goods to a dealer in other State, section 19 (2) (v) or section 19(5) (c) would come into operation. Therefore, the proviso introduced to cover section 19 (2) (v) is applicable to the manufacturers also, at the point of inter-state sale falling under Section 8(1) as the word "sale" includes sale of goods in the same or different form. In this regard, it is relevant to refer to the following judgments:

110. ***Kerala State Coop. Marketing Federation Ltd. v. CIT*, (1998) 5 SCC 48:**

> "***6.*** *The classes of societies covered by Section 80-P of the Act are as follows:*
>
> *(a) engaged in business of banking and providing credit facilities to its members;*
> *(b) cottage industry;*
> *(c) society engaged in marketing agricultural produce of its members;*
> *(d) engaged in produce of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members;*
> *(e) a society engaged in the processing without the aid of power of the agricultural produce of its members; or*
> *(f) a primary society engaged in supplying milk raised by its members to a federal milk cooperative society.*
>
> ***7.*** *We may notice that the provision is introduced with a view to encouraging and promoting growth of cooperative sector in the economic life of the country and in pursuance of the declared policy of the Government. The correct way of reading the different heads of exemption enumerated in the section would be to treat each as a separate and distinct head of exemption. Whenever a question arises as to whether any particular category of an*

income of a cooperative society is exempt from tax what has to be seen is whether income fell within any of the several heads of exemption. If it fell within any one head of exemption, it would be free from tax notwithstanding that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption. The expression "marketing" is an expression of wide import. It involves exchange functions such as buying and selling, physical functions such as storage, transportation, processing and other commercial activities such as standardisation, financing, marketing intelligence etc. Such activities can be carried on by an apex society rather than a primary society.

9. *A reading of the provisions of Section 80-P of the Act would indicate the manner in which the exemptions under the said provisions are sought to be extended. Whenever the legislature wanted to restrict the exemption to a primary cooperative society it was so made clear as is evident from clause (f) referred to above with reference to a milk cooperative society that a primary society engaged in supplying milk is entitled to such exemption while denying the same to a federal milk cooperative society, but no such distinction is made with reference to a banking business which provides trade facilities to its members. It is clear, therefore, that the legislature did not intend to limit the scope of exemption only to those which are primary societies. If a small agricultural cooperative society does not have any marketing facilities it can certainly become a member of an apex society which may market the produce of its members. It was submitted on behalf of the Department that the member societies themselves do not raise the agricultural produce. The societies only market the produce raised by their members and do not themselves raise agricultural produce. The language adopted in Section 80-P(2)(a)(iii) with which we are concerned will admit the interpretation that the society engaged in marketing of agricultural produce of its members as agricultural produce "belonging to" its members which is not necessarily raised by such member. Thus, when the provisions of Section 80-P of the Act admit of a wider exemption there is no reason to cut down the scope of the provision as indicated in Assam Coop. Apex Marketing Society case[1994 Supp (2) SCC 96 : (1993) 201 ITR 338] ."*

111. ***CIT v. Plantation Corpn. of Kerala Ltd., (2001) 1 SCC 207 : 2000 SCC OnLine SC 1662:***

"***3.*** *Heard the learned Senior Counsel for the appellant State and the learned counsel for the respondent-assessee. Section 5 in providing for computation of agricultural income for the purposes of the Act stipulates that the agricultural income of a person shall be computed after making the various deductions enumerated in clauses (a) to (n) to the extent mentioned and also in the manner specified therein. It is an admitted position and the High Court also proceeded on such basis only having regard to some of the*

decisions of this Court as well as of the Kerala High Court that clause (j) of Section 5 of the Act is in the nature of a residuary provision, in which event in our view, it necessarily means that the other clauses are in relation to a few of the enumerated items of expenditure envisaged for deduction and the mere fact that some alone are illustrated specifically do not render those provisions to be read in a truncated or disjointed manner from the residuary clause ignoring the avowed object of Section 5 as a whole, viz., computation of agricultural income, as defined in Section 2(a) of the Act after making the deductions to which an assessee is found eligible. Thus viewed when Explanation 2 specifically uses the words, "nothing contained in this section shall be ...." expressing a specific intention to encompass the entire Section 5 of the Act reading it otherwise and to confine its relevance and application to only clause (j) of Section 5 would amount to not only rewriting the statutory provision by the Court, but also doing violence to the plain and simple language used. When an explanation or proviso was to apply to any one clause or limb alone of Section 5, the legislature has chosen to incorporate it even in the very Section 5 below the specific or particular clause which it was meant to explain or except as in clauses (c) or (l) and (n). The fact that instead of doing so the Explanation 2 has been incorporated at the end of Section 5 alongside Explanation 1, which also use the words "for the purpose of this section ....", the intention of the legislature must be considered to have been made certain, positive and unambiguous, leaving no room or scope whatsoever for having recourse to either internal or external aids for interpretation or construction of the said provision.

***4.** The High Court appears to have been carried away by the fact of some assumed similarity of the purpose of expenditure envisaged in Section 5(j) and those covered by Explanation 2 and from the further fact of retrospective effect having been given to the said explanation with effect from 1-4-1951, to presume that in doing so the legislative intention indicated was to avoid refunds being made on account of the Supreme Court judgment reported in Travancore Rubber & Tea Co. Ltd. case[Travancore Rubber & Tea Co. Ltd. v. CIT (Ag), (1961) 41 ITR 751 : AIR 1961 SC 604] which, in turn, concerned Section 5(j) of the Act. This in our view is fallacious and cannot be so presumed. The decision of the Supreme Court declaring the position of law on the scope of Section 5(j) might have been the occasion for the legislature to enact Explanation 2, and that too with retrospective effect but the said occasion would have equally enlightened and served as an eye-opener about the need for enacting the explanation in such a manner as to avoid similar claims being projected in respect of expenditure or deductions envisaged in the various other limbs of Section 5 as well, apart from clause (j) alone. This Court has always been reiterating that if the intendment is not in the words used it is nowhere else and so long as there is no ambiguity in the statutory language resort to any interpretative process to unfold the legislative intent becomes impermissible and the need for interpretation arises only when the words in the statute are on their own terms ambivalent*

and do not manifest the intention of the legislature (vide Doypack Systems (P) Ltd. v. Union of India [(1988) 2 SCC 299] and Keshavji Ravji & Co. v. CIT [(1990) 2 SCC 231 : 1990 SCC (Tax) 268]). That apart, an explanation is intended to either explain the meaning of certain phrases and expressions contained in a statutory provision or depending upon its language it might supply or take away something from the contents of a provision and at times even to, by way of abundant caution, clear any mental cobwebs surrounding the meaning of a statutory provision spun by interpretative process to make the position beyond controversy or doubt.

***5.** Consequently, we are unable to approve the reasoning of the High Court as to the need for having recourse to internal or external aids to interpret the Explanation 2 to Section 5 as well as its ultimate conclusion to whittle down the otherwise wide range and area of operation and application of Explanation 2 to the entirety of Section 5 of the Act. In our view, Explanation 2 to Section 5 of the Act, therefore explains generally as to what are not deductible as expenditure for the purpose of computing the agricultural income in the light of the various clauses of Section 5 of the Act, as a whole."*

112. ***Catholic Syrian Bank Ltd. v. CIT, (2012) 3 SCC 784 : 2012 SCC OnLine SC 170:***

"***Interpretation and construction of relevant sections***

***33.** The language of Section 36(1)(vii) of the Act is unambiguous and does not admit of two interpretations. It applies to all banks, commercial or rural, scheduled or unscheduled. It gives a benefit to the assessee to claim a deduction on any bad debt or part thereof, which is written off as irrecoverable in the accounts of the assessee for the previous year. This benefit is subject only to Section 36(2) of the Act. It is obligatory upon the assessee to prove to the assessing officer that the case satisfies the ingredients of Section 36(1)(vii) on the one hand and that it satisfies the requirements stated in Section 36(2) of the Act on the other. The proviso to Section 36(1)(vii) does not, in absolute terms, control the application of this provision as it comes into operation only when the case of the assessee is one which falls squarely under Section 36(1)(vii-a) of the Act.*

***34.** We may also notice that the Explanation to Section 36(1)(vii), introduced by the Finance Act, 2001, has to be examined in conjunction with the principal section. The Explanation specifically excluded any provision for bad and doubtful debts made in the account of the assessee from the ambit and scope of "any bad debt, or part thereof, written off as irrecoverable in the accounts of the assessee". Thus, the concept of making a provision for*

bad and doubtful debts will fall outside the scope of Section 36(1)(vii) simpliciter. The proviso, as already noticed, will have to be read with the provisions of Section 36(1)(vii-a) of the Act. Once the bad debt is actually written off as irrecoverable and the requirements of Section 36(2) satisfied, then, it will not be permissible to deny such deduction on the apprehension of double deduction under the provisions of Section 36(1)(vii-a) and the proviso to Section 36(1)(vii).”

113. In ***Union of India Vs VKC Footsteps India Pvt Ltd, 2021 SCC OnLine SC 706*****,** the Apex Court, while deciding on the *vires* of Rule 89 (5) of CGST Rules and interpreting Section 54 (3) and its proviso, held as under:

“***F.3 Interpretation of Section 54(3) of the CGST Act***

61. *The controversy in the present case turns upon the interpretation of Section 54, which is found in Chapter XI titled as ‘Refunds’. The marginal note of Section 54 is titled “Refund of Tax”. Section 54(1) provides thus:*

“*54. (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:*

62. *Under sub-Section (1) of Section 54, an application has to be made within two years of the relevant date by a person claiming refund of tax and interest (if any, paid on the tax or any other amount paid), in such form and manner as prescribed. Explanation 1 to Section 54 is in the following terms:*

“*Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.”*

63. *Sub-Section (3) of Section 54 is in the following terms:*

“*Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:*

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies."

64. *The submission which was urged by the assessees before the Gujarat and Madras High Courts, as well as this Court, is that under the substantive part of Section 54(3), Parliament has contemplated that the claim of refund may extend to any unutilized ITC. ITC means credit of input tax and since 'input tax' is defined with reference to the tax charged on the supply of goods or services or both, a refund may be claimed not only of the tax charged on input goods but also input services as a whole. According to the Revenue, the first proviso to Section 54(3) is a restriction. On the other hand, assessees have urged that the first proviso sets out only a condition or provision for eligibility and once it is fulfilled, the refund is available on the entirety of the unutilized ITC including the credit which is relatable to tax paid on input goods and input services.*

65. *The crux of the dispute in the present case pertains to how sub-Section (3) to Section 54 and Explanation 1 to sub-Section (1) of Section 54 are to be understood and interpreted. For convenience of analysis, the interpretation of sub-Section (3) of Section 54 can be distributed in its main tier and the three provisos. The main part of sub-Section (3) provides that a registered person may claim refund of any unutilized ITC at the end of any tax period. Tax period is defined in Section 2(106) as the period for which the return is required to be furnished. While enacting Section 54(3), Parliament has envisaged a claim for the refund of unutilized ITC by a registered person at the end of the tax period. The first tier is the main provision of Section 54(3) which lays down four conditions:*

(i) A claim of refund;

(ii) By a registered tax person;

(iii) Of any unutilized ITC; and

(iv) At the end of any tax period, subject to the provisions of sub-Section

(10).

66. *The second tier is the first proviso. The first proviso begins with the expression "no refund of unutilized ITC shall be allowed in cases other than" which is followed by clauses (i) and (ii). The opening line of the first proviso contains two expressions of significance, namely, "no refund shall be allowed" and "in cases other than". The expression 'allowed' in the proviso must be contrasted with the expression 'claim' in the substantive part of sub-Section (3). A refund can be allowed only in the eventualities envisaged in clauses (i) and (ii). The expression 'other than' operates as a limitation or restriction.*

67. *The third tier of sub-Section 54(3) consist of the two clauses of the first proviso which deal with two distinct cases : Clause (i) deals with zero-rated supplies made without payment of tax, while Clause (ii) deals with credit which has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies. Proviso (ii) embodies the concept of an inverted duty structure. Proviso (ii) states that the refund of unutilized ITC shall be allowed only when the credit has accumulated because the rate of tax of inputs is higher than the rate of tax on output supplies. Input, as we have already noted, is defined in Section 2(59) to mean* ***goods other than the capital goods****. 'Output supplies' is not defined in the statute. As seen above, Section 16 stipulates the eligibility and conditions for availing ITC. ITC accumulates when the credit cannot be utilized either partly or in whole and this may occur for a variety of reasons. The credit of ITC may accumulate for several reasons. Without spelling out an exhaustive list of circumstances, the accumulation may be due to : (a) an inverted duty structure when the GST on output supplies is less than the GST on inputs; (b) stock accumulation; (c) capital goods; and (d) partial reverse mechanism for certain services. There could be other reasons as well, such as excessive discounts or predatory pricing.*

F.4 Construing the proviso

79. *Provisos in a statute have multi-faceted personalities. As interpretational principles governing statutes have evolved, certain basic ideas have been recognized, while heeding to the text and context. Justice GP Singh, in his seminal text, Principles of Statutory Interpretation formulates the governing principles of interpretation which have been adopted by courts while construing a statutory proviso. The first rule of interpretation is that:*

"***The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment.*** *As stated by LUSH, J.:"When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso. In the words of LORD*

MACMILLAN:"The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case." The proviso may, as LORD MACNAGHTEN laid down, be "a qualification of the preceeding enactment which is expressed in terms too general to be quite accurate". The general rule has been stated by HIDAYATULLAH, J., in the following words:"As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule". And in the words of KAPUR, J.:"The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment."

(emphasis supplied)

80.*But then these principles are subject to other principles of statutory interpretation which may supplement or even substitute the above formula. These other rules which have been categorized by Justice GP Singh are summarized as follows:*

(i) A proviso is not construed as excluding or adding something by implication:

"*Except as to cases dealt with by it, a proviso has no repercussion on the interpretation of the enacting portion of the section so as to exclude something by implication which is embraced by clear words in the enactment."*

(ii) A proviso is construed in relation to the subject matter of the statutory provision to which it is appended:

"*The language of a proviso even if general is normally to be construed in relation to the subject-matter covered by the section to which the proviso is appended. In other words normally a proviso does not travel beyond the provision to which it is a proviso. "It is a cardinal rule of interpretation", observed BHAGWATI, J., "that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other."*

(iii) Where the substantive provision of a statute lacks clarity, a proviso may shed light on its true meaning:

"*If the enacting portion of a section is not clear, a proviso appended to it may give an indication as its true meaning. As stated by LORD HERSCHELL:"Of course a proviso may be used to guide you in the selection of one or other of two possible constructions of the words to be*

found in the enactment, and show when there is doubt about its scope, when it may reasonably admit of doubt as to having this scope or that, which is the proper view to take of it."

(iv) An effort should be made while construing a statute to give meaning both to the main enactment and its proviso bearing in mind that sometimes a proviso is inserted as a matter of abundant caution:

"*The general rule in construing an enactment containing a proviso is to construe them together without making either of them redundant or otiose. Even if the enacting part is clear effort is to be made to give some meaning to the proviso and to justify its necessity. But a clause or a section worded as a proviso, may not be a true proviso and may have been placed by way of abundant caution."*

(v) While ordinarily, it would be unusual to interpret the proviso as an independent enacting clause, as distinct from its main enactment, this is true only of a real proviso and the draftsperson of the statute may have intended for the proviso to be, in substance, a fresh enactment:

"*To read a proviso as providing something by way of an addendum or as dealing with a subject not covered by the main enactment or as stating a general rule as distinguished from an exception or qualification is ordinarily foreign to the proper function of a proviso. However, this is only true of a real proviso. The insertion of a proviso by the draftsman has not always strictly adhered to its legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before."*

81. *Perhaps the most comprehensive and oft-cited precedent governing the interpretation of a proviso is the decision of this Court in S. Sundaram Pillai v. V.R. Pattabiraman. Justice S Murtaza Fazal Ali speaking for a three judge Bench of this Court held:*

"*43. …To sum up, a proviso may serve four different purposes:*

(1) qualifying or excepting certain provisions from the main enactment:

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory

provision."

82. *While enunciating the above principles, S Sundaram Pillai (supra) took note of the decision in Hiralal Rattanlal v. State of UP where Justice KS Hegde, speaking for a four judge Bench of this Court observed that while ordinarily, a proviso is in the nature of an exception, the precedents indicate that sometimes a proviso is in the nature of a separate provision, with a life of its own. The Court held:*

"*22… Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called a proviso, it is really a separate provision and the so-called proviso has substantially altered the main section. In CIT v. Bipinchandra Maganlal & Co. Ltd., Bombay [AIR 1961 SC 1040 : (1961) 2 SCR 493 : (1961) 41 ITR 290] this Court held that by the fiction in Section 10(2)(vii) second proviso read with Section 2(6-C) of the Indian Income Tax Act, 1922 what is really not income is, for the purpose of computation of assessable income, made taxable income."*

83. *Besides the decision in CIT v. Bipinchandra Maganlal, the Court in Hiralal Rattanlal(supra) adverted to the earlier decisions in State of Rajasthan v. Leela Jain and Bihar Cooperative Development Cane Marketing Union Ltd. v. Bank of Bihar.*

84. *In their effort to persuade this Court to accept the submission that the first proviso to Section 54(3) is in the nature of an eligibility condition as distinct from a restriction on the substantive part (contained in the opening words) of the provision, Counsel appearing on behalf of the assessees have sought to buttress their submissions with the following facets:*

(i) Clause (ii) of the first proviso refers to "rate of tax" as distinct from the quantum of tax;

(ii) The expression "in cases other than where…" adverts to situations or circumstances;

(iii) The expression "on account of" would mean "due to";

(iv) The use of the expression 'inputs' (the singular being defined in Section 2(59) but not the plural) and the corresponding use of the expression "output supplies" (which is not defined, though "outward supply" is defined in Section 2(83));

(v) Section 54(8) and Section 49(6) provide that the balance in the electronic credit ledger is to be refunded and makes no distinction between a credit relatable to goods or to services;

(vi) The expression "on account of" has been used in Section 22(3) and

Section 18(3) and is distinct from the use of the expression "to the extent of" in Section 23(1)(b) and the proviso to Section 12(2). "To the extent of" is a limiting expression and has a distinct connotation from "on account of";

(vii) The Ministry of Finance has issued a circular dated 31 December 2018 clarifying the following position:

"*4. Representations have been received stating that while processing the refund of unutilized ITC on account of inverted tax structure, the departmental officers are denying the refund of ITC of GST paid on those inputs which are procured at equal or lower rate of GST than the rate of GST on outward supply, by not including the amount of such ITC while calculating the maximum refund amount as specified in rule 89(5) of the CGST Rules. The matter has been examined and the following issues are clarified:*

a) Refund of unutilized ITC in case of inverted tax structure, as provided in section 54(3) of the CGST Act, is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability. Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5) of the CGST Rules, the term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.

b) The calculation of refund of accumulated ITC on account of inverted tax structure, in cases where several inputs are used in supplying the final product/output, can be clearly understood with help of the following example:

i. Suppose a manufacturing process involves the use of an input A (attracting 5 per cent GST) and input B (attracting 18 per cent GST) to manufacture output Y (attracting 12 per cent GST).

ii. The refund of accumulated ITC in the situation at (i) above, will be available under section 54(3) of the CGST Act read with rule 89(5) of the CGST Rules, which prescribes the formula for the maximum refund amount permissible in such situations.

iii. Further assume that the claimant supplies the output Y having value of Rs. 3,000/- during the relevant period for which the refund is being claimed. Therefore, the turnover of inverted rated supply of goods and services will be Rs. 3,000/-. Since the claimant has no other outward supplies, his adjusted total turnover will also be Rs. 3,000/-.

iv. If we assume that Input A, having value of Rs. 500/- and Input B, having value of Rs. 2,000/-, have been purchased in the relevant period for the manufacture of Y, then Net ITC shall be equal to Rs. 385/- (Rs. 25/- and Rs.

360/- on Input A and Input B respectively).

v. Therefore, multiplying Net ITC by the ratio of turnover of inverted rated supply of goods and services to the adjusted total turnover will give the figure of Rs. 385/-.

vi. From this, if we deduct the tax payable on such inverted rated supply ofgoods or services, which is Rs. 360/-, we get the maximum refund amount, as per rule 89(5) of the CGST Rules which is Rs. 25/-."

85. *Para 4(b) of the Circular thereafter proceeds to give certain illustrations. The above circular, it is urged, would demonstrate that the phrase "on account of" in the proviso is interpreted by the State qua goods as a threshold condition. Hence even if one input in the basket of inputs of a manufacturer results in an inverted duty structure, the whole of the accumulated ITC can be availed of. On the other hand, for services the same phrase is interpreted so as to mean 'to the extent of'. The expression "on account of" as understood for goods by the above circular must apply for services as well, meaning thereby that it is a threshold condition alone.*

86. *The above submissions demonstrate the scholarship which has been brought to bear upon the controversy by Counsel appearing on behalf of the assessees. The above aspects of the statutory provision - Section 54(3) - must be juxtaposed together with all the features of the statutory provision including Explanation-I which have been adverted to earlier. The analysis earlier indicates why on a reading of the provision as a whole, clauses (i) and (ii) of the first proviso are restrictions and not mere conditions of eligibility. It is not possible for the Court to restrict the ambit of clause (ii) of the proviso, based on a circular which has been issued by the Ministry of Finance on 31 December 2018. In substance, the argument boils down to an effort to lead this Court to hold that in spite of the language which has been used in clause (ii) of the first proviso, (where the credit is accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies), input services must be read into the term "inputs". The assessees argue that the Departmental understanding, as reflected in the circular, should be the basis of interpreting a statutory provision. Such an exercise would be impermissible, when its effect is to expand the area of refund contemplated by the first proviso to cover input services in addition to input goods despite statutory language to the contrary. Sub-Section (3) of Section 54 begins, in its main part, with the stipulation that a registered person may* ***claim refund*** *of any 'unutilised ITC at the end of any tax period'. Whether we construe the first proviso as an exception or in the nature of a fresh enactment, the clear intent of Parliament was to confine the grant of refund to the two categories spelt out in clauses (i) and (ii) of the first proviso. That clauses (i) and (ii) are the only two situations in which a*

*refund can be granted is evident from the opening words of the first proviso which stipulates that "**no refund of unutilised input tax credit shall be allowed in cases other than**". What follows is clauses (i) and (ii). The intent of Parliament is evident by the use of a double - negative format by employing the expression "no refund" as well as the expression "in cases other than". In other words, a refund is contemplated in the situations provided in clauses (i) and (ii) and no other. To put it differently, the first proviso can be recast, without altering its meaning to read that a refund of unutilised ITC shall be allowed only in the cases governed by clauses (i) and (ii). Clause (i) deals with zero rated supplies without payment of tax. Explanation-1 to Section 54 clarifies that the expression 'refund' includes refund of tax paid on zero rated supplies on goods or services or both, or on inputs or input services used in making such zero-rated supplies. On the other hand, in the case of deemed exports, Explanation-1 refers to a refund of tax on the supply of goods. Likewise in regard to domestic supplies, governed by clause (ii) of the first proviso, the expression 'refund' means refund of unutilised ITC as provided under sub-Section (3). With the clear language which has been adopted by Parliament while enacting the provisions of Section 54(3), the acceptance of the submission which has been urged on behalf of the assessee would involve a judicial re-writing of the provision which is impermissible in law. Clause (ii) of the proviso, when it refers to "on account of" clearly intends the meaning which can ordinarily be said to imply 'because of or due to'. When proviso (ii) refers to "rate of tax", it indicates a clear intent that a refund would be allowed where and only if the inverted duty structure has arisen due to the rate of tax on input being higher than the rate of tax on output supplies. Reading the expression 'input' to cover input goods and input services would lead to recognising an entitlement to refund, beyond what was contemplated by Parliament.*

***87.** We must be cognizant of the fact that no constitutional right is being asserted to claim a refund, as there cannot be. Refund is a matter of a statutory prescription. Parliament was within its legislative authority in determining whether refunds should be allowed of unutilised ITC tracing its origin both to input goods and input services or, as it has legislated, input goods alone. By its clear stipulation that a refund would be admissible only where the unutilised ITC has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies, Parliament has confined the refund in the manner which we have described above. While recognising an entitlement to refund, it is open to the legislature to define the circumstances in which a refund can be claimed. The proviso to Section 54(3) is not a condition of eligibility (as the assessees' Counsel submitted) but a restriction which must govern the grant of refund under Section 54(3). We therefore, accept the submission which has been urged by Mr. N Venkataraman, learned ASG."*

114. The ratio laid down in the above judgments clearly lay down that when the proviso refers to a particular provision, it cannot be interpreted to include other provisions. It is also clear that the object of a proviso is to bring in clarity or to impose any restriction or condition to the provision in relation to which it is enacted. In other words, they carve out a portion which is otherwise covered by the previous provision with regard to which proviso is enacted. In the case of ***Kerala State Cooperative Marketing Federation Limited and others vs. Commissioner of Income Tax*** *reported in* ***(1998) 5 Supreme Court Cases 48***, (cited supra), the appellant was an Apex Society registered under the Kerala Cooperative Societies Act, who purchased cashew from its member societies and earned profits on such purchases. Upon rejection of such profits to be deducted under Section 80-P(2) (a) (iii) of the Income Tax Act, the appellant approached the Apex Court which held that each of the exemption clauses are distinct and would be available if any one of them is satisfied. In ***VKC Footsteps*** referred above, after analysing as to how the proviso is to be read, the Apex Court clearly held that when the proviso refers to two clauses or circumstances under which refund of ITC would be allowed, reading it otherwise or extending the meaning of inputs to mean input of goods and input of services would amount to re-writing the law. As evident in the present case, the proviso inserted in 2013 only refers to section 19 (2) (v) and hence it

cannot be extended to other categories. When a proviso is introduced with respect to a particular distinct and independent clause dealing with a particular category of dealers or transaction, it cannot be extended to other clauses or provisions of the statute as it would amount to reading into or interpolating the provisions which is impermissible in taxing laws. In Section 2 of the Amendment Act 28/2013, the amendment to sub-section (4) by Section 2 (2) did not make a distinction between sub-clause (i) of sub-section (4) of section 19 and sub-clause (ii) of sub-section (4) of Section 19. Sub-clause (i) of Section 19 (4) deals with purchase of inputs which are transferred outside the State, while sub-clause (ii) thereof deals with a case of purchase of inputs for use in manufacture and transfer of manufactured goods outside the State otherwise than by way of sale. By Section 2 (2), through which Section 19 (4) was amended, affected both those who purchase inputs and transferred the stock and those who purchase inputs and used it in the manufacturing process. The intention of the legislature is to treat them alike. Section 2 (1), through which proviso to Section 19 (2) was inserted, specified only sub-clause (v) which deals with sale of goods to a dealer in other state falling under section 8(1) of the CST Act. Further, this court has already held that the traders or manufacturers who effect interstate sale are covered by section 19 (2) (v) after they use the inputs for manufacturing or processing within the state and decide

to sell the same to a registered dealer in an another state and hence the contention of the assessees that the manufacturers can claim ITC even if their transaction falls under Section 19 (2) (v) is rejected. Such an interpretation would result in dichotomy in law and render Section 19 (2) (v) otiose. It is also not out of place to point out here that the State was consciously aware that in inter-state sales, not only the goods purchased locally were sold, but also the goods manufactured in the state. As rightly contended by the learned Additional Advocate General by placing reliance upon the settled proposition of law that ITC is only a concession, it is open to the State to impose restrictions or conditions for availing the ITC. In the present case, prior to the introduction of the proviso, every dealer who effected interstate sale availed ITC under section 19 (2) (v) and the State imposed a restriction on such availment by the proviso, which naturally is binding on the assessees.

115. Now, insofar as the nature, effect and applicability of the amendments brought in by way of Act 05/2015, it is to be noted that as we have already held that Section 19 (2) (v) is applicable to the manufacturers and so, the proviso, we would go into the effect of such amendments whereby section 19(2)(v), the proviso and 19 (5) (c) were omitted and substituted with a new provision.

116. It is necessary to briefly look into the history of the changes from 2013

onwards. Though we need not venture into the statement of objects and reasons as we have already held that there is no ambiguity in the provision, to decide this issue, we advent into the same to remove all doubts as much emphasis has been laid on the same.

117. The State, six years after the Act came into force, felt that the interstate sales was affecting the revenue of the State. According to the Revenue, to curb the accumulation of ITC *qua* inter-state transaction, the legislature added a proviso to section 19 (2) (v) by allowing ITC in excess of three percent by Act 28/2013.

118. The statement of objects and reasons given in the Bill which was introduced on 30/10/2013, reads thus.

> "**STATEMEN*T OF OBJECTS AND REASONS.***
>
> *In a manufacturing State like Tamil Nadu, the size and the scale of inter-State transactions are consistently on the rise. Over the years, the increase in input tax credit accumulation on inter-State transactions under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006) has resulted in reduced tax collection to the State. The increase in the volume of inter-State transactions adversely and continuously affect revenue collections under the Value Added Tax consequent on the gradual reduction of rate of Central Sales Tax from 4% to 2% and also due to increase in the tax rates under the said Tamil Nadu Act 32 of 2006 from 4% to 5% and from 12.5% to 14.5%. In order to have certain degree of control over the accumulation of input tax credit, the Government have decided to increase the rate of input tax credit reversal from 3% to 5% on inter-State transfer otherwise than by way of sale and also to make a new provision for reversal of input tax credit at 3% on inter-State sale to a registered dealer.*
>
> *2. Further, even after a lapse of six years from the date of implementation of the said Tamil Nadu Act 32 of 2006, revenue collections are below the expected level. The gradual reduction in rate of Central Sales Tax from*

4% to 2% by the Government of India without adequate compensation has drained the revenue collections. The economic slowdown has further adversely affected the manufacturing State like Tamil Nadu on the revenue front. To manage the adverse fiscal trend, sources have to be identified where revenue flow will be more without any negative impact on the public. The Government have, therefore, decided to increase the rate of tax with retrospective effect from 1.4.2013 on certain alcoholic liquors for human consumption, at the second point of sale in the State on value addition.

3. It is also noticed that vegetable oils intended for inter-State sales are being unloaded and sold in this State itself resulting in evasion of tax and consequential loss of revenue to the Government. The commodity Iron and Steel, which is declared in section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) as goods of special importance in inter-State trade or commerce, is also susceptible to evasion of tax leading to loss of revenue. In order to prevent evasion of tax and to protect the revenue, the Government have decided to include "vegetable oils including refined vegetable oils" and "Iron and Steel as specified in clause (iv) of section 14 of the Central Sales Tax Act, 1956" in the Sixth Schedule to the said Tamil Nadu Act 32 of 2006.

4. The Government have, therefore, decided to amend the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006) for the aforesaid purposes.

5. The Bill seeks to achieve the above object.

Sd/-

119. The said bill was passed and Act 28 of 2013 received the assent of the Governor on 08th November 2013 and the following amendments were made to the Act:

"***2.*** *In section 19 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the principal Act),-*

(1) to sub-section (2), the following proviso shall be added, namely:-

"*Provided that input tax credit shall be allowed in excess of three per cent of tax for the purpose specified in clause (v).";*

(2) in sub-section (4), for the expression "three per cent of tax", the expression "five per cent of tax" shall be substituted."

120. The amendment came into force with effect from 11.11.2013. it is

evident that the State considered the accumulation of ITC by virtue of inter-state sale as illegal and to cure the mischief, the amendment was introduced. Let us consider the following illustration:

Different Scenarios in interstate sale and local sale.

Goods purchased	Rs 100.00
Tax paid @ 5% (ITC)	Rs 5.00

Illustration A- Resale of Goods

Local Sale

Goods sold	Rs.110.00
Tax Payable @ 5 %	Rs. 5.50
VAT Payable after adjusting ITC	Rs. 0.50
VALUE OF CREDIT TAKEN	Rs. 5.00

Inter-state Sale.

Goods Sold	Rs.110.00
Tax Payable @ 2 % with C FO	Rs. 2.20
ITC claimed	Rs. 5.00
After adjustment (5-2.20)	
ITC available	Rs. 2.80

Illustration B

Value of Purchased goods(inputs)	
Plus manufacturing cost 30% as per Rule 8 (5))	
Plus profit at 10%	
(100 plus 5 (Purchase tax) plus 31.5 plus 13.65	Rs.150.15
Rounded off value	Rs.150.00
Local Sale	
Tax at 5%	Rs. 7.50

Vat payable (7.50-5)	Rs.	2.50
Inter -state sale		
With C forms		
Tax at 2% on Rs 150	Rs.	3.00
ITC claim	Rs.	5.00
After Adjustment of ITC available	Rs.	2.00
Without C forms		
Total tax payable reversing		
or without ITC	Rs.	7.50

What is evident from the above illustration is that when a dealer effects interstate sale to a registered dealer falling under Section 8(1) of the CST Act, the output tax is less when compared to a local sale. In that sense, the State is losing revenue. When a dealer effects local sale of goods purchased as such or manufactured, he will have to remit tax out of his pocket. On the other hand, when he sells goods to a dealer in other State at concessional rate of tax, he adjusts the entire tax payable on sale from ITC and excess ITC is still available with him, thereby the State tends to lose revenue. It is to curb this loss of revenue, the proviso was introduced. Thereafter, notices were issued to all the dealers including the manufacturers for reversal of ITC of 3%. Few dealers challenged the same before this court. While so, the Government decided to again amend section 19 and the budget speech of the then Chief Minister rendered in Tamil reads as follows:

"தமிழ்நாட்டில் உள்ள உற்பத்தித் தொழிற்சாலைகள் அண்டை மாநிலங்களில் உள்ள உற்பத்தி அலகுகளோடு சிறப்பாகப் போட்டியிட ஊக்குவிக்கும் வகையில், மாநிலங்களுக்கு இடையேயான விற்பனையில் தமிழ்நாடு மதிப்புக் கூட்டு வரி சட்டம் 2006 பிரிவு 19(2)(v)ன் கீழ் கொண்டுவரப்பட்ட காப்புரையின் படி 11.11.2013 முதல் விதிக்கப்பட்ட 3 சதவீத உள்ளீட்டு வரி திருப்பம் (Input Tax Credit Reversal) திரும்பப் பெறப்படும்.

'சி' படிவமின்றி நடைபெறும், மாநிலங்களுக்கு இடையேயான பொருள் விற்பனைகளிலும் உள்ளீட்டு வரி வரவை (Input Tax Credit Reversal) வணிகர்கள் பெற்றுக்கொள்ள ஏதுவாக 2006-ஆம் ஆண்டு தமிழ்நாடு மதிப்புக்கூட்டு வரிச் சட்டத்தின் பிரிவு 19(5)-ன் கீழ்வரும் கூறான (c) -ஆனது இனிமேல் விலக்கிக் 73 கொள்ளப்படும். இந்த நடவடிக்கையினால் 'சி' படிவமின்றி பொருட்களின் மீதான மாநிலங்களுக்கு இடையேயான விற்பனையினை மேற்கொள்ளும் வணிகர்களது கூடுதல் சுமை தவிர்க்கப்படும்."

121. The budget speech covers two provisions viz., section 19 (2) (v) and section 19 (5) (c). It is pertinent to mention here that in the then chief minister's budget speech, while referring to Section 19(2) (v), it was stated that the proviso introduced with effect from 11.11.2013 would be withdrawn. In a significant change, while an announcement was made to omit Section 19(5)(c), the word "henceforth" was used. However, the English translation of the budget speech which was appended to the Bill reads as under:

"***STATEMENT OF OBJECTS AND REASONS.***

In the Budget Speech for the year 2015-2016, among others, the following announcements were made:—

(i) Input tax credit reversal imposed at the rate of 3 per cent on the inter-State sale of goods as per proviso to section 19(2)(v) of Tamil Nadu Value Added Tax Act, 2006, which was introduced with effect from 11-11-2013 will be withdrawn henceforth to make the manufacturing industries in Tamil Nadu more competitive with their counterparts in the neighbouring States.

(ii) Clause (c) under section 19(5) of Tamil Nadu Value Added Tax Act, 2006 will henceforth be withdrawn to enable the dealers to claim input tax credit on the Inter-State sale of goods without 'C' Form. This measure will eliminate additional burden on the dealers effecting Inter-State sale of goods without 'C' Form.

(iii) Fishing accessories like fishing ropes, fishing floats, fishnet twine, fishing lamps and fishing swivels will be exempted from the present levy of VAT.

(iv) Mosquito nets of all kinds will be exempted from the present levy of VAT at 5%.

(v) VAT on LED lamps of all kinds will be reduced from the present levy of 14.5% to 5% to encourage the use of energy saving devices.

(vi) VAT on air compressors, pump sets upto 10 hp and their parts thereof will be reduced from the present levy of 14.5% to 5% to encourage Micro, Small and Medium Enterprises sector and to benefit the agriculturists in the State.

***2.** To give effect to the said announcements, the Government have decided to amend the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006).*

***3.** The Bill seeks to give effect to the above decisions.*

sd/-"

122. Thereafter, the bill was passed and after notification, the following changes were brought in by Act 05/2015.

In section 19 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the principal Act),—

(1) in sub-section (2),—
(i) for clause (v), the following clause shall be substituted, namely:-

"*(v) sale in the course of Inter-State trade or commerce falling under sub-sections (1) and (2) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956).";*

(ii) the proviso shall be omitted.

(2) in sub-section (5), clause (c) shall be omitted.

123. It is not in dispute that the budgetary speech is delivered in the vernacular language in the assembly. It is also not in dispute that the budgetary speech is summed up as the object and reason for any enactment, which is also obviously evident from the opening lines of the statement to object and reasons in Legislative Assembly Bill No.2/2015. The actual budgetary speech did not contain the word "henceforth translated as "inimael" which is the tamil synonym for "henceforth" when 19 (2) (v) was addressed, but it is found only with regard to section 19 (5) (c). The Tamil word "vagaiyil" would be taken to mean as "hence" or "to enable" or "therefore". In fact, on an overall reading of the speech, it would imply that the implementation of the proviso had diminished the competitiveness of the manufacturing industry. While so, an improper translation cannot confer any right to the department. It is apropos to quote the words of John Conington:

> "*A translator ought to endeavor not only to say what his author has said, but to say it as he has said it."*

124. It is often said that much is lost in translation and nothing is better than the original version. It is for this reason that the father of our nation Mahatma Gandhi wanted to learn Tamil to read and understand Thirukkural, in its native language. It is necessary that a person who translates the speech, is well versed

with both the languages. Nothing should be changed or deleted or added. The purpose of translation is to convey the message of the author/speaker. In the instant case, the English version of the speech culminating into the statement of objects and reasons does not convey the true intent of the legislature, which in the mind of this court is that the subsequent amendment brought in by Act 05/2015 was only to cure the defect.

125. Our decision is also fortified by the cause and effect of the first amendment brought in by Act 28/2013. The cause was to curb the accumulation of ITC, but the effect was that the manufacturers were put to loss, thereby increasing the burden on the manufacturers ultimately on the public. When a remedial measure undertaken by the State to curb or cure a mischief or defect in a provision creates unexpected or unsolicited mischief defeating the very object of the action, it is called as counter mischief. It is to nullify this effect, the legislature in its wisdom, thought it necessary to withdraw the proviso and hence, it was “omitted” by Act 05/2015.

126. The Legislature did not stop there. Parallelly, it also substituted a new clause (v) and omitted section 19 (5) (c) thereby clearly expressing its intention of allowing ITC for inter-state sales to registered as well as unregistered dealers. It is settled law that whenever a provision is omitted and substituted with a new provision, it has the effect of repeal and is to be given

retrospective effect. It is not out of place to mention here that generally, all the provisions have prospective effect, unless the retrospectivity is expressly or impliedly contemplated. To decipher whether a law is implied or not, warrants interpretation. Further, it has been held that generally, conferment of a benefit can be with retrospective effect and when a liability is imposed, it is scarcely given retrospective effect. In this connection, it is relevant to refer to the following judgments:

127. ***Allied Motors (P) Ltd. v. CIT*, (1997) 3 SCC 472:**

> "***6.*** *To understand the circumstances in which Section 43-B came to be inserted in the Income Tax Act and the mischief which it sought to prevent, it is necessary to look at the memorandum explaining the provisions in the Finance Bill of 1983 [(1983) 140 ITR (St.) 160]:*
>
> "*59. Under the Income Tax Act, profits and gains of business and profession are computed in accordance with the method of accounting regularly employed by the assessee. Broadly stated, under the mercantile system of accounting, income and outgo are accounted for on the basis of accrual and not on the basis of actual disbursements or receipts. For the purposes of computation of profits and gains of business and profession, the Income Tax Act defines the word 'paid' to mean 'actually paid or incurred' according to the method of accounting on the basis of which the profits or gains are computed.*
>
> *60. Several cases have come to notice where taxpayers do not discharge their statutory liability such as in respect of excise duty, employer's contribution to provident fund, Employees' State Insurance Scheme, etc., for long period of time, extending sometimes to several years. For the purpose of their income tax assessments, they claim the liability as deduction on the ground that they maintain accounts on mercantile or accrual basis. On the other hand they dispute the liability and do not discharge the same. For some reason or the other undisputed liabilities also are not paid. To curb this practice, it is proposed to provide that deduction for any sum payable by the assessee by way of tax or duty under any law for the time being in force (irrespective of whether such tax or duty is disputed or not) or any sum payable by the assessee as an employer by way of contribution to any provident fund, or superannuation fund or gratuity fund or any other fund*

for the welfare of employees shall be allowed only in computing the income of that previous year in which such sum is actually paid by him."

7. *The Budget Speech of the Finance Minister for the year 1983-84, reproduced in (1983) 140 ITR (St.) 31, is to the same effect.*

8. *Section 43-B was, therefore, clearly aimed at curbing the activities of those taxpayers who did not discharge their statutory liability of payment of excise duty, employer's contribution to provident fund etc. for long periods of time but claimed deductions in that regard from their income on the ground that the liability to pay these amounts had been incurred by them in the relevant previous year. It was to stop this mischief that Section 43-B was inserted. It was clearly not realised that the language in which Section 43-B was worded would cause hardship to those taxpayers who had paid sales tax within the statutory period prescribed for this payment, although the payment so made by them did not fall in the relevant previous year. This was because the sales tax collected pertained to the last quarter of the relevant accounting year. It could be paid only in the next quarter which fell in the next accounting year. Therefore, even when the sales tax had in fact been paid by the assessee within the statutory period prescribed for its payment and prior to the filing of the income tax return, these assessees were unwittingly prevented from claiming a legitimate deduction in respect of the tax paid by them. This was not intended by Section 43-B. Hence the first proviso was inserted in Section 43-B. The amendment which was made by the Finance Act of 1987 in Section 43-B by inserting, inter alia, the first proviso, was remedial in nature, designed to eliminate unintended consequences which may cause undue hardship to the assessee and which made the provision unworkable or unjust in a specific situation.*

13. *Therefore, in the well-known words of Judge Learned Hand, one cannot make a fortress out of the dictionary; and should remember that statutes have some purpose and object to accomplish whose sympathetic and imaginative discovery is the surest guide to their meaning. In the case of R.B. Jodha Mal Kuthiala v. CIT[(1971) 3 SCC 369 : (1971) 82 ITR 570] , this Court said that one should apply the rule of reasonable interpretation. A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole.*

14. *This view has been accepted by a number of High Courts. In the case of CIT v. Chandulal Venichand [(1994) 209 ITR 7 (Guj)] , the Gujarat High Court has held that the first proviso to Section 43-B is retrospective and sales tax for the last quarter paid before the filing of the return for the assessment year is deductible. This decision deals with Assessment Year 1984-85. The Calcutta High Court in the case of CIT v. Sri Jagannath Steel*

Corpn. [(1991) 191 ITR 676 (Cal)] has taken a similar view holding that the statutory liability for sales tax actually discharged after the expiry of the accounting year in compliance with the relevant statute is entitled to deduction under Section 43-B. The High Court has held the amendment to be clarificatory and, therefore, retrospective. The Gujarat High Court in the above case held the amendment to be curative and explanatory and hence retrospective. The Patna High Court has also held the amendment inserting the first proviso to be explanatory in the case of Jamshedpur Motor Accessories Stores v. Union of India [(1991) 189 ITR 70 : (1991) 91 CTR 19 (Pat)] . It has held the amendment inserting first proviso to be retrospective. The special leave petition from this decision of the Patna High Court was dismissed. The view of the Delhi High Court, therefore, that the first proviso to Section 43-B will be available only prospectively does not appear to be correct. As observed by G.P. Singh in his Principles of Statutory Interpretation, 4th Edn. at p. 291: "It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended." In fact the amendment would not serve its object in such a situation unless it is construed as retrospective. The view, therefore, taken by the Delhi High Court cannot be sustained."

128. ***Tata Motors Ltd. v. State of Maharashtra*, (2004) 5 SCC 783:**

"***12.*** *The constitutional validity of the amendment was challenged before the High Court on the basis that the withdrawal with retrospective effect of any relief granted by a valid statutory provision to an assessee stands on a footing entirely different from that which may necessitate the passing of a validating Act seeking to validate any statutory provision declared unconstitutional or to make the law clear. While the legislature makes an amendment validating any provision, which might have been found to be defective, the legislature seeks to enforce its intention which was already there by removing the defect or lacuna. However, withdrawal or modification with retrospective effect of the relief properly granted by the statute to an assessee which the assessee has lawfully enjoyed or is entitled to enjoy as his vested statutory right, depriving the assessee of the vested statutory right has the effect of imposing a levy with retrospective effect for the years for which there was no such levy and cannot, unless there be strong and exceptional circumstances justifying such withdrawal or modification cannot be held to be reasonable or rational."*

129. ***Govt. of India v. Indian Tobacco Assn.*, (2005) 7 SCC 396**

"***14.*** *However, the question which arises for consideration in this case is as to what would be the effect of the subsequent notification.*

15. *The word "substitute" ordinarily would mean "to put (one) in place of another"; or "to replace". In Black's Law Dictionary, 5th Edn., at p. 1281, the word "substitute" has been defined to mean "to put in the place of another person or thing", or "to exchange". In Collins English Dictionary, the word "substitute" has been defined to mean "to serve or cause to serve in place of another person or thing"; "to replace (an atom or group in a molecule) with (another atom or group)"; or "a person or thing that serves in place of another, such as a player in a game who takes the place of an injured colleague".*

27. *There is another aspect of the matter which may not be lost sight of. Where a statute is passed for the purpose of supplying an obvious omission in a former statute, the subsequent statute relates back to the time when the prior Act was passed. (See Attorney General v. Pougett [(1816) 2 Price 381 : 146 ER 130] .)*

28. *The doctrine of fairness also is now considered to be a relevant factor for construing a statute. In a case of this nature where the effect of a beneficent statute was sought to be extended keeping in view the fact that the benefit was already availed of by the agriculturalists of tobacco in Guntur, it would be highly unfair if the benefit granted to them is taken away, although the same was meant to be extended to them also. For such purposes the statute need not be given retrospective effect by express words but the intent and object of the legislature in relation thereto can be culled out from the background facts."*

130. ***CIT v. Gold Coin Health Food (P) Ltd.*****, (2008) 9 SCC 622**

"***8.*** *It would be of some relevance to take note of what this Court said in Virtual case [(2007) 9 SCC 665] . Pointing out one of the important tests at para 51 it was observed that even if the statute does contain a statement to the effect that the amendment is clarificatory or declaratory, that is not the end of the matter. The court has to analyse the nature of the amendment to come to a conclusion whether it is in reality a clarificatory or declaratory provision. Therefore, the date from which the amendment is made operative does not conclusively decide the question. The court has to examine the scheme of the statute prior to the amendment and subsequent to the amendment to determine whether amendment is clarificatory or substantive.*

18. *As noted by this Court in CIT v. Podar Cement (P) Ltd. [(1997) 5 SCC 482] the circumstances under which the amendment was brought in existence and the consequences of the amendment will have to be taken care of while deciding the issue as to whether the amendment was clarificatory or substantive in nature and, whether it will have retrospective effect or it was not so.*

20. *In Zile Singh v. State of Haryana [(2004) 8 SCC 1] it was observed as follows : (SCC pp. 8-9, paras 13-15)*

"*13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only—'nova constitutio futuris formam imponere debet non praeteritis'—a new law ought to regulate what is to follow, not the past. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid., p. 440).*

14. The presumption against retrospective operation is not applicable to declaratory statutes ... In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended ... An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (ibid., pp. 468-69).

15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant : (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right. (p. 392)"

***21.** Above being the position, the inevitable conclusion is that Explanation 4 to Section 271(1)(c) is clarificatory and not substantive. The view expressed to the contrary in Virtual case [(2007) 9 SCC 665] is not correct."*

131. ***CIT v. Alom Extrusions Ltd.*, (2010) 1 SCC 489 : 2009 SCC OnLine SC 1842:**

> "***14.*** *However, the second proviso once again created further difficulties. In many of the companies, financial year ended on 31st March, which did not coincide with the accounting period of RPFC. For example, in many cases, the time to make contribution to RPFC ended after due date for filing of return. Therefore, the industry once again made representation to the Ministry of Finance and, taking cognizance of this difficulty, Parliament inserted one more amendment vide the Finance Act, 2003, which, as stated above, came into force with effect from 1-4-2004. In other words, after 1-4-2004, two changes were made, namely, deletion of the second proviso and further amendment in the first proviso, quoted above.*
>
> ***17.*** *We find no merit in these civil appeals filed by the Department for the following reasons: firstly, as stated above, Section 43-B (main section), which stood inserted by the Finance Act, 1983, with effect from 1-4-1984, expressly commences with a non obstante clause, the underlying object being to disallow deductions claimed merely by making a book entry based on mercantile system of accounting. At the same time, Section 43-B (main section) made it mandatory for the Department to grant deduction in computing the income under Section 28 in the year in which tax, duty, cess, etc. is actually paid. However, Parliament took cognizance of the fact that accounting year of a company did not always tally with the due dates under the Provident Fund Act, the Municipal Corporation Act (octroi) and other tax laws. Therefore, by way of first proviso, an incentive/relaxation was sought to be given in respect of tax, duty, cess or fee by explicitly stating that if such tax, duty, cess or fee is paid before the date of filing of the return under the Income Tax Act (due date), the assessee(s) then would be entitled to deduction. However, this relaxation/incentive was restricted only to tax, duty, cess and fee. It did not apply to contributions to labour welfare funds. The reason appears to be that the employer(s) should not sit on the collected contributions and deprive the workmen of the rightful benefits under social welfare legislations by delaying payment of contributions to the welfare funds.*
>
> ***18.*** *However, as stated above, the second proviso resulted in implementation problems, which have been mentioned hereinabove, and which resulted in the enactment of the Finance Act, 2003, deleting the second proviso and bringing about uniformity in the first proviso by equating tax, duty, cess and fee with contributions to welfare funds. Once this uniformity is brought about in the first proviso, then, in our view, the Finance Act, 2003, which is made applicable by Parliament only with effect from 1-4-2004, would become curative in nature, hence, it would apply retrospectively with effect from 1-4-1988.*

22. *It is important to note once again that, by the Finance Act, 2003, not only is the second proviso deleted but even the first proviso is sought to be amended by bringing about a uniformity in tax, duty, cess and fee on the one hand vis-à-vis contributions to welfare funds of employee(s) on the other. This is one more reason why we hold that the Finance Act, 2003 is retrospective in operation. Moreover, the judgment in Allied Motors (P) Ltd. [(1997) 3 SCC 472 : (1997) 224 ITR 677] was delivered by a Bench of three learned Judges, which is binding on us. Accordingly, we hold that the Finance Act, 2003 will operate retrospectively with effect from 1-4-1988 (when the first proviso stood inserted).*

24. *In our view, therefore, the Finance Act, 2003, to the extent indicated above, should be read as retrospective. It would, therefore, operate from 1-4-1988, when the first proviso was introduced. It is true that Parliament has explicitly stated that the Finance Act, 2003, will operate with effect from 1-4-2004. However, the matter before us involves the principle of construction to be placed on the provisions of the Finance Act, 2003.*

25. *Before concluding, we extract hereinbelow the relevant observations of this Court in CIT v. J.H. Gotla [(1985) 4 SCC 343 : (1985) 156 ITR 323] which reads as under: (SCC p. 360, para 47)*

"*47. ... we should find out the intention from the language used by the legislature and if strict literal construction leads to an absurd result i.e. result not intended to be subserved by the object of the legislation found in the manner indicated before, and if another construction is possible apart from strict literal construction then that construction should be preferred to the strict literal construction. Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction."*

132. ***CIT v. Vatika Township (P) Ltd.*****, (2015) 1 SCC 1:**

"***30.*** *We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators' object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In Govt. of India v. Indian Tobacco Assn.[(2005) 7 SCC 396] , the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute*

was retrospective in nature, was applied in Vijay v. State of Maharashtra [(2006) 6 SCC 289] . It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are (sic not) confronted with any such situation here.

32. *Let us sharpen the discussion a little more. We may note that under certain circumstances, a particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labelled as "declaratory statutes". The circumstances under which provisions can be termed as "declaratory statutes" are explained by Justice G.P. Singh [Principles of Statutory Interpretation, (13th Edn., LexisNexis Butterworths Wadhwa, Nagpur, 2012)] in the following manner:*

"*Declaratory statutes*

*The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies [W.F. Craies, Craies on Statute Law (7th Edn., Sweet and Maxwell Ltd., 1971)] and approved by the Supreme Court [**Ed.**: The reference is to Central Bank of India v. Workmen, AIR 1960 SC 12, para 29] : 'For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a Preamble, and also the word "declared" as well as the word "enacted".' But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law."*

The above summing up is factually based on the judgments of this Court as

well as English decisions.

41.2. *At the same time, it is also mandated that there cannot be imposition of any tax without the authority of law. Such a law has to be unambiguous and should prescribe the liability to pay taxes in clear terms. If the provision concerned of the taxing statute is ambiguous and vague and is susceptible to two interpretations, the interpretation which favours the subjects, as against the Revenue, has to be preferred. This is a well-established principle of statutory interpretation, to help finding out as to whether particular category of assessee is to pay a particular tax or not. No doubt, with the application of this principle, the courts make endeavour to find out the intention of the legislature. At the same time, this very principle is based on "fairness" doctrine as it lays down that if it is not very clear from the provisions of the Act as to whether the particular tax is to be levied to a particular class of persons or not, the subject should not be fastened with any liability to pay tax. This principle also acts as a balancing factor between the two jurisprudential theories of justice — Libertarian theory on the one hand and Kantian theory along with Egalitarian theory propounded by John Rawls on the other hand.*

41.3. *Tax laws are clearly in derogation of personal rights and property interests and are, therefore, subject to strict construction, and any ambiguity must be resolved against imposition of the tax. In Billings v. United States [58 L Ed 596 : 232 US 261 at p. 265 : 34 S Ct 421 (1914)] , the Supreme Court clearly acknowledged this basic and long-standing rule of statutory construction: (L Ed p. 598)*

"*Tax statutes ... should be strictly construed; and if any ambiguity be found to exist, it must be resolved in favour of the citizen.*

Eidman v. Martinez [46 L Ed 697 : 184 US 578 (1902)] , L Ed p. 701 : US p. 583; United States v. Wigglesworth [2 Story 369 (1842)] , Story p. 374 and Mutual Benefit Life Insurance Co. v. Herold [198 Fed 199 (1912)] , Fed p. 201, affirmed in Herold v. Mutual Benefit Life Insurance Co. [201 Fed 918 (CCA 3d 1913)] ; Parkview Building & Loan Assn. v. Herold [203 Fed 876 (1913)] , Fed p. 880 and Mutual Trust Co. v. Miller [177 NY 51 : 69 NE 124 (1903)] , NY p. 57."

133. ***Indian Performing Rights Society Ltd. v. Sanjay Dalia, (2015) 10 SCC 161 : (2016) 1 SCC (Civ) 55 : 2015 SCC OnLine SC 616***.

"***24.*** *If the interpretation suggested by the appellant is accepted, several mischiefs may result, intention is that the plaintiff should not go to far-flung places than that of residence or where he carries on business or works for gain in order to deprive the defendant a remedy and harass him by*

dragging to distant place. It is settled proposition of law that the interpretation of the provisions has to be such which prevents mischief. The said principle was explained in Heydon's case [Heydon's case, (1584) 3 Co Rep 7a : 76 ER 637]. According to the mischief rule, four points are required to be taken into consideration. While interpreting a statute, the problem or mischief that the statute was designed to remedy should first be identified and then a construction that suppresses the problem and advances the remedy should be adopted. Heydon's [Heydon's case, (1584) 3 Co Rep 7a : 76 ER 637] mischief rule has been referred to in Interpretation of Statutes by Justice G.P. Singh, 12th Edn., at pp. 124-25 thus:

"*(b) Rule in Heydon's case [Heydon's case, (1584) 3 Co Rep 7a : 76 ER 637] ; purposive construction : mischief rule*

When the material words are capable of bearing two or more constructions the most firmly established rule for construction of such words 'of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law)' is the rule laid down in Heydon's case [Heydon's case, (1584) 3 Co Rep 7a : 76 ER 637] which has now attained the status of a classic (Kanai Lal Sur v. Paramnidhi Sadhukhan [AIR 1957 SC 907]). The rule which is also known as "purposive construction" or "mischief rule" (Anderton v. Ryan [1985 AC 560 : (1985) 2 WLR 968 : (1985) 2 All ER 355 (HL)]), enables consideration of four matters in construing an Act : (i) What was the law before the making of the Act; (ii) What was the mischief or defect for which the law did not provide; (iii) What is the remedy that the Act has provided; and (iv) What is the reason of the remedy. The rule then directs that the courts must adopt that construction which "shall suppress the mischief and advance the remedy". The rule was explained in Bengal Immunity Co. Ltd. v. State of Bihar [AIR 1955 SC 661] by S.R. Das, C.J. as follows : (AIR p. 674, para 22)

'22. It is a sound rule of construction of a statute firmly established in England as far back as in 1584 when Heydon's case [Heydon's case, (1584) 3 Co Rep 7a : 76 ER 637] was decided that : (ER p. 638)

"*… for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:*

1st : What was the common law before the making of the Act.

2nd : What was the mischief and defect for which the common law did not provide.

3rd : What remedy Parliament hath resolved and appointed to cure the disease of the commonwealth, and

4th : The true reason of the remedy;

and then the office of all the Judges is always to make such construction as

shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro private commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico.' (Bengal Immunity Co. Ltd. v. State of Bihar [AIR 1955 SC 661])."

134. ***SEBI v. Alliance Finstock Ltd.*, (2015) 16 SCC 731**

"***18.*** *On a careful consideration of the rival submissions and keeping in view the relevant case laws relied upon by the parties we have examined analytically and carefully Para 4 as well as the explanations thereto in Schedule III of the Regulations. We find that Para 4 was no doubt inserted through an amendment with effect from 21-1-1998 but it does not disclose, either explicitly or even by necessary implication, that although possessing the required qualifications, a corporate entity formed earlier to 21-1-1998 would not be exempted from payment of fee for the period for which the erstwhile individual or partnership members has already paid the fees. In respect of a legislation of fiscal character such as the present provision which relates to fees, it will not be proper or permissible to read into or delete words which do not exist in the provision. Further even if there is any scope of doubt, the benefit of such doubt will go to the subject i.e. the stockbrokers and not to authority, in this case SEBI. We further find that the explanation to Para 4 introduced with effect from 20-2-2002 takes complete care of any doubt, if at all it could exist, by providing a deeming fiction that in the case of conversion of entities having individual or partnership membership card into a corporate entity, the corporate entity shall be deemed to be a continuation of the entity in respect of collection of fees from the converted corporate entity. Further, an embargo has been created against collection of fees again from the converted corporate entity. This explanation is statutory in nature and like Para 4 it also does not restrict the benefits of conversion to entities converted on or after any particular date. The explanation does not talk of making any refund nor does it render the initial levy or assessment of fee as bad but forbids the collection of such fees if the converted corporate entity is entitled to fee continuation benefit in terms of Para 4 of Schedule III to the Regulations.*

19. *Following the judgment in Somaiya Organics [Somaiya Organics (India) Ltd. v. State of U.P., (2001) 5 SCC 519] , we agree that "levy" and "collection" are not synonyms and generally they occur at different stages. In the present case the legislative intention is to put an embargo on collection in future, in case the converted corporate entity is found entitled to the benefits of fee continuity. Such embargo is clearly to operate prospectively even if there existed some kind of liability in the past on account of fees leviable prior to insertion of Para 4 of Schedule III to the Regulations. In any case the rationale in not permitting retrospective*

operation of laws is only to ensure that subjects are not adversely affected by creation of legal liabilities and obligations for a period already bygone. In the present case the provisions do not create any obligation or liability. They only confer benefits by way of fee continuity on account of fees already paid by the earlier entity before its conversion into a new corporate entity.

***20.** Even if we were to apply the test of fairness, no exception can be taken to extension of the benefit of fee exemption as provided by the relevant provision in the Regulations. Since the policy behind grant of benefits is to encourage corporatisation of individual or partnership members of a stock exchange, the action of extending such benefits without any curb on the basis of date of conversions cannot be held as unfair."*

135. ***SBI v. V. Ramakrishnan, (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458 : 2018 SCC OnLine SC 963 at page 419:***

"***33.** The Report of the said Committee makes it clear that the object of the amendment was to clarify and set at rest what the Committee thought was an overbroad interpretation of Section 14. That such clarificatory amendment is retrospective in nature, would be clear from the following judgments:*

***33.1.**CIT v. Shelly Products [CIT v. Shelly Products, (2003) 5 SCC 461] : (SCC p. 478, para 38)*

"*38. It was submitted that after 1-4-1989, in case the assessment is annulled the assessee is entitled to refund only of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee. But before the amendment came into effect the position in law was quite different and that is why the legislature thought it proper to amend the section and insert the proviso. On the other hand the learned counsel for the Revenue submitted that the proviso is merely declaratory and does not change the legal position as it existed before the amendment. It was submitted that this Court in CIT v. Chittor Electric Supply Corpn. [CIT v. Chittor Electric Supply Corpn., (1995) 2 SCC 430] has held that proviso (a) to Section 240 is declaratory and, therefore, proviso (b) should also be held to be declaratory. In our view that is not the correct position in law. Where the proviso consists of two parts, one part may be declaratory but the other part may not be so. Therefore, merely because one part of the proviso has been held to be declaratory it does not follow that the second part of the proviso is also declaratory. However, the view that we have taken supports the stand of the Revenue that proviso (b) to Section 240 is also declaratory. We have held that even under the unamended Section 240 of the Act, the assessee was only entitled to the*

refund of tax paid in excess of the tax chargeable on the total income returned by the assessee. We have held so without taking the aid of the amended provision. It, therefore, follows that proviso (b) to Section 240 is also declaratory. It seeks to clarify the law so as to remove doubts leading to the courts giving conflicting decisions, and in several cases directing the Revenue to refund the entire amount of income tax paid by the assessee where the Revenue was not in a position to frame a fresh assessment. Being clarificatory in nature it must be held to be retrospective, in the facts and circumstances of the case. It is well settled that the legislature may pass a declaratory Act to set aside what the legislature deems to have been a judicial error in the interpretation of statute. It only seeks to clear the meaning of a provision of the principal Act and make explicit that which was already implicit."

33.2.*CIT v. Vatika Township (P) Ltd. [CIT v. Vatika Township (P) Ltd., (2015) 1 SCC 1] : (SCC p. 23, para 32)*

"*32. Let us sharpen the discussion a little more. We may note that under certain circumstances, a particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labelled as "declaratory statutes". The circumstances under which provisions can be termed as "declaratory statutes" are explained by Justice G.P. Singh [Principles of Statutory Interpretation, (13th Edn., LexisNexis Butterworths Wadhwa, Nagpur, 2012)] in the following manner:*

'*Declaratory statutes*

The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies [W.F. Craies, Craies on Statute Law (7th Edn., Sweet and Maxwell Ltd., 1971)] and approved by the Supreme Court (in Central Bank of India v. Workmen [Central Bank of India v. Workmen, AIR 1960 SC 12, p. 27, para 29]):"For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a Preamble, and also the word "declared" as well as the word "enacted"." But the use of the words "it is declared" is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous

Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language "shall be deemed always to have meant" is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law.'

The above summing up is factually based on the judgments of this Court as well as English decisions."

136. ***Gottumukkala Venkata Krishamraju v. Union of India, (2019) 17 SCC 590 : (2020) 3 SCC (Civ) 519 : 2018 SCC OnLine SC 1386***.

"***15.*** *We have given our due consideration to the arguments advanced by the counsel for the parties on both sides and have also perused the relevant material. We find force in the arguments of the petitioners that the amended provisions of Section 6 shall apply in their cases as well and, therefore, if they have not completed five years of tenure as Presiding Officers of the Debts Recovery Tribunal they are entitled to continue to work as Presiding Officers till they attain the age of 65 years or complete five years' term before attaining the age of 65 years.*

16. *In the first instance, we have to bear in mind the language/terminology which the legislature used while inserting new Section 6 with effect from 1-9-2016. This section stands "substituted" with the old section. The word "substituted" has its own significance. In Union of India v. Indian Tobacco Assn. [Union of India v. Indian Tobacco Assn., (2005) 7 SCC 396], this Court noted dictionary meaning of the word "substitute" as can be seen from para 15 of the said judgment : (SCC p. 400)*

"*15. The word "substitute" ordinarily would mean 'to put (one) in place of another'; or 'to replace'. In Black's Law Dictionary, 5th Edn., at p. 1281, the word "substitute" has been defined to mean 'to put in the place of another person or thing', or 'to exchange'. In Collins English Dictionary, the word "substitute" has been defined to mean 'to serve or cause to serve in place of another person or thing'; 'to replace (an atom or group in a molecule) with (another atom or group)'; or 'a person or thing that serves in place of another, such as a player in a game who takes the place of an injured colleague'."*

18. *Ordinarily wherever the word "substitute" or "substitution" is used by the legislature, it has the effect of deleting the old provision and make the new provision operative. The process of substitution consists of two steps : first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. No doubt, in certain situations, the Court having regard to the purport and object sought to be achieved by the legislature may construe the word "substitution" as an "amendment" having a prospective effect. Therefore, we do not think that it is a universal rule that the word "substitution" necessarily or always connotes two severable steps, that is to say, one of repeal and another of a fresh enactment even if it implies two steps. However, the aforesaid general meaning is to be given effect to, unless it is found that the legislature intended otherwise. Insofar as present case is concerned, as discussed hereinafter, the legislative intent was also to give effect to the amended provision even in respect of those incumbents who were in service as on 1-9-2016.*

19. *The effect, thus, would be to replace Section 6 as amended with the intention as if this is the only provision which exist from the date of introduction and the earlier provision was not there at all. The effect of this would be that all those incumbents who are holding the post of Presiding Officer on 1-9-2016 would be governed by this provision."*

137. ***Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657 : (2021) 4 SCC (Civ) 638***

"***94.*** *We have no hesitation to say that the words "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature noticing that on account of obvious omission certain tax authorities were not abiding by the mandate of the I&B Code and continuing with the proceedings, has brought out the 2019 Amendment so as to cure the said mischief. We therefore hold that the 2019 Amendment is declaratory and clarificatory in nature and therefore retrospective in operation.*

88. *This Court while observing, that the amendment was clarificatory in nature, held thus : (Zile Singh case [Zile Singh v. State of Haryana, (2004) 8 SCC 1] , SCC pp. 9-12, paras 14-22)*

"*14. The presumption against retrospective operation is not applicable to declaratory statutes…. In determining, therefore, the nature of the Act,*

regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended…. An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (ibid., pp. 468-69).

15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant : (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right. (p. 392)

16. Where a statute is passed for the purpose of supplying an obvious omission in a former statute or to "explain" a former statute, the subsequent statute has relation back to the time when the prior Act was passed. The rule against retrospectivity is inapplicable to such legislations as are explanatory and declaratory in nature. A classic illustration is the case of Attorney General v. Pougett [Attorney General v. Pougett, (1816) 2 Price 381 : 146 ER 130] (Price at p. 392). By a Customs Act of 1873 (53 Geo. 3, c. 33) a duty was imposed upon hides of 9s 4d, but the Act omitted to state that it was to be 9s 4d per cwt., and to remedy this omission another Customs Act (53 Geo. 3, c. 105) was passed later in the same year. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s 4d per cwt., but Thomson, C.B., in giving judgment for the Attorney General, said : (ER p. 134)

'The duty in this instance was, in fact, imposed by the first Act; but the gross mistake of the omission of the weight, for which the sum expressed was to have been payable, occasioned the amendment made by the subsequent Act : but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act;' (Price at p. 392)

17. Maxwell states in his work on Interpretation of Statutes (12th Edn.) that the rule against retrospective operation is a presumption only, and as such it 'may be overcome, not only by express words in the Act but also by circumstances sufficiently strong to displace it' (p. 225). If the dominant intention of the legislature can be clearly and doubtlessly spelt out, the inhibition contained in the rule against perpetuity becomes of doubtful applicability as the "inhibition of the rule" is a matter of degree which would "vary secundum materiam" (p. 226). Sometimes, where the sense of the statute demands it or where there has been an obvious mistake in drafting, a court will be prepared to substitute another word or phrase for that which actually appears in the text of the Act (p. 231).

18. In a recent decision of this Court in National Agricultural Coop. Mktg. Federation of India Ltd. v. Union of India [National Agricultural Coop. Mktg. Federation of India Ltd. v. Union of India, (2003) 5 SCC 23] it has been held that there is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. Every legislation whether prospective or retrospective has to be subjected to the question of legislative competence. The retrospectivity is liable to be decided on a few touchstones such as : (i) the words used must expressly provide or clearly imply retrospective operation; (ii) the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional; (iii) where the legislation is introduced to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory basis of the decision. There is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. A validating clause coupled with a substantive statutory change is only one of the methods to leave actions unsustainable under the unamended statute, undisturbed. Consequently, the absence of a validating clause would not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent.

19. The Constitution Bench in Shyam Sunder v. Ram Kumar [Shyam Sunder v. Ram Kumar, (2001) 8 SCC 24] has held : (SCC p. 49, para 39)

'39. ... Ordinarily when an enactment declares the previous law, it requires to be given retroactive effect. The function of a declaratory statute is to supply an omission or to explain a previous statute and when such an Act is passed, it comes into effect when the previous enactment was passed. The legislative power to enact law includes the power to declare what was the previous law and when such a declaratory Act is passed, invariably it has been held to be retrospective. Mere absence of use of the word "declaration" in an Act explaining what was the law before may not appear to be a declaratory Act but if the court finds an Act as declaratory or explanatory, it has to be construed as retrospective.' (p. 2487).

20. In Bengal Immunity Co. Ltd. v. State of Bihar [Bengal Immunity Co. Ltd. v. State of Bihar, (1955) 2 SCR 603 : AIR 1955 SC 661] , Heydon

case [Heydon case, (1584) 3 Co Rep 7a : 76 ER 637] was cited with approval. Their Lordships have said : (Bengal Immunity case [Bengal Immunity Co. Ltd. v. State of Bihar, (1955) 2 SCR 603 : AIR 1955 SC 661] , AIR p. 674, para 22)

'22. It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon case [Heydon case, (1584) 3 Co Rep 7a : 76 ER 637] was decided that—

"… for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered—

1st. What was the common law before the making of the Act.

2nd. What was the mischief and defect for which the common law did not provide.

3rd. What remedy Parliament hath resolved and appointed to cure the disease of the Commonwealth, and

4th. The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico." '

21. In Allied Motors (P) Ltd. v. CIT [Allied Motors (P) Ltd. v. CIT, (1997) 3 SCC 472] certain unintended consequences flowed from a provision enacted by Parliament. There was an obvious omission. In order to cure the defect, a proviso was sought to be introduced through an amendment. The Court held that literal construction was liable to be avoided if it defeated the manifest object and purpose of the Act. The rule of reasonable interpretation should apply.

'A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole.' [Allied Motors (P) Ltd. case [Allied Motors (P) Ltd. v. CIT, (1997) 3 SCC 472] , SCC pp. 479-80, para 13]

22. The State Legislature of Haryana intended to impose a disqualification with effect from 5-4-1995 and that was done. Any person having more than two living children was disqualified on and from that day for being a member of a municipality. However, while enacting a proviso by way of an exception carving out a fact situation from the operation of the newly introduced disqualification the draftsman's folly caused the creation of

trouble. A simplistic reading of the text of the proviso spelled out a consequence which the legislature had never intended and could not have intended. It is true that the Second Amendment does not expressly give the amendment a retrospective operation. The absence of a provision expressly giving a retrospective operation to the legislation is not determinative of its prospectivity or retrospectivity. Intrinsic evidence may be available to show that the amendment was necessarily intended to have retrospective effect and if the Court can unhesitatingly conclude in favour of retrospectivity, the Court would not hesitate in giving the Act that operation unless prevented from doing so by any mandate contained in law or an established principle of interpretation of statutes."

(emphasis supplied)

89. *It could thus be seen that what is material is to ascertain the legislative intent. If legislature by an amendment supplies an obvious omission in a former statute or explains a former statute, the subsequent statute has a relation back to the time when the prior Act was passed.*

90. *The law laid down in Zile Singh [Zile Singh v. State of Haryana, (2004) 8 SCC 1] has been subsequently followed in various judgments of this Court, including in CITv. Gold Coin Health Food (P) Ltd. [CIT v. Gold Coin Health Food (P) Ltd., (2008) 9 SCC 622] (three-Judge Bench).*

91. *This Court recently in SBI v. V. Ramakrishnan [SBI v. V. Ramakrishnan, (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458] had an occasion to consider the question as to whether the amendment to sub-section (3) of Section 14 of the I&B Code by Amendment Act 26 of 2018 was clarificatory in nature or not. By the said amendment, sub-section (3) of Section 14 of the I&B Code was substituted to provide that the provisions of sub-section (1) of Section 14 shall not apply to a surety in a contract of guarantee for corporate debtor. Considering the said issue, this Court observed thus : (SCC pp. 417-19, paras 30-33)*

"*30. We now come to the argument that the amendment of 2018, which makes it clear that Section 14(3), is now substituted to read that the provisions of sub-section (1) of Section 14 shall not apply to a surety in a contract of guarantee for corporate debtor. The amended section reads as follows:*

'***14. Moratorium****.—(1)-(2) * * **

(3) The provisions of sub-section (1) shall not apply to—

(a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

(b) a surety in a contract of guarantee to a corporate debtor.'

31. The Insolvency Law Committee, appointed by the Ministry of Corporate Affairs, by its Report dated 26-3-2018, made certain key recommendations,

one of which was:

'*(iv) to clear the confusion regarding treatment of assets of guarantors of the corporate debtor vis-à-vis the moratorium on the assets of the corporate debtor, it has been recommended to clarify by way of an explanation that all assets of such guarantors to the corporate debtor shall be outside scope of moratorium imposed under the Code;'*

32. The Committee insofar as the moratorium under Section 14 is concerned, went on to find:

'*5.5. Section 14 provides for a moratorium or a stay on institution or continuation of proceeding, suits, etc. against the corporate debtor and its assets. There have been contradicting views on the scope of moratorium regarding its application to third parties affected by the debt of the corporate debtor, like guarantors or sureties. While some courts have taken the view that Section 14 may be interpreted literally to mean that it only restricts actions against the assets of the corporate debtor, a few others have taken an interpretation that the stay applies on enforcement of guarantee as well, if a CIRP is going on against the corporate debtor.*

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5.7. The Allahabad High Court subsequently took a differing view in Sanjeev Shriya v. SBI [Sanjeev Shriya v. SBI, 2017 SCC OnLine All 2717 : (2018) 2 All LJ 769 : (2017) 9 ADJ 723] , by applying moratorium to enforcement of guarantee against personal guarantor to the debt. The rationale being that if a CIRP is going on against the corporate debtor, then the debt owed by the corporate debtor is not final till the resolution plan is approved, and thus the liability of the surety would also be unclear. The Court took the view that until debt of the corporate debtor is crystallised, the guarantor's liability may not be triggered. The Committee deliberated and noted that this would mean that surety's liabilities are put on hold if a CIRP is going on against the corporate debtor, and such an interpretation may lead to the contracts of guarantee being infructuous, and not serving the purpose for which they have been entered into.

5.8. In SBI v. V. Ramakrishnan [SBI v. V. Ramakrishnan, 2018 SCC OnLine NCLAT 384] , Nclat took a broad interpretation of Section 14 and held that it would bar proceedings or actions against sureties. While doing so, it did not refer to any of the above judgments but instead held that proceedings against guarantors would affect the CIRP and may thus be barred by moratorium. The Committee felt that such a broad interpretation of the moratorium may curtail significant rights of the creditor which are intrinsic to a contract of guarantee.

5.9. A contract of guarantee is between the creditor, the principal debtor and the surety, whereunder the creditor has a remedy in relation to his debt against both the principal debtor and the surety (National Project Construction Corpn. Ltd. v. Sadhu and Co. [National Project Construction Corpn. Ltd. v. Sadhu and Co., 1989 SCC OnLine P&H 1069 : AIR 1990

P&H 300]). The surety here may be a corporate or a natural person and the liability of such person goes as far as the liability of the principal debtor. As per Section 128 of the Contract Act, 1872, the liability of the surety is co-extensive with that of the principal debtor and the creditor may go against either the principal debtor, or the surety, or both, in no particular sequence (Chokalinga Chettiar v. Dandayuthapani Chettiar [Chokalinga Chettiar v. Dandayuthapani Chettiar, 1928 SCC OnLine Mad 236 : AIR 1928 Mad 1262]). Though this may be limited by the terms of the contract of guarantee, the general principle of such contracts is that the liability of the principal debtor and the surety is co-extensive and is joint and several (Bank of Bihar Ltd. v. Damodar Prasad [Bank of Bihar Ltd. v. Damodar Prasad, AIR 1969 SC 297]). The Committee noted that this characteristic of such contracts i.e. of having remedy against both the surety and the corporate debtor, without the obligation to exhaust the remedy against one of the parties before proceeding against the other, is of utmost importance for the creditor and is the hallmark of a guarantee contract, and the availability of such remedy is in most cases the basis on which the loan may have been extended.

5.10. The Committee further noted that a literal interpretation of Section 14 is prudent, and a broader interpretation may not be necessary in the above context. The assets of the surety are separate from those of the corporate debtor, and proceedings against the corporate debtor may not be seriously impacted by the actions against assets of third parties like sureties. Additionally, enforcement of guarantee may not have a significant impact on the debt of the corporate debtor as the right of the creditor against the principal debtor is merely shifted to the surety, to the extent of payment by the surety. Thus, contractual principles of guarantee require being respected even during a moratorium and an alternate interpretation may not have been the intention of the Code, as is clear from a plain reading of Section 14.

5.11. Further, since many guarantees for loans of corporates are given by its promoters in the form of personal guarantees, if there is a stay on actions against their assets during a CIRP, such promoters (who are also corporate applicants) may file frivolous applications to merely take advantage of the stay and guard their assets. In the judgments analysed in this relation, many have been filed by the corporate applicant under Section 10 of the Code and this may corroborate the above apprehension of abuse of the moratorium provision. The Committee concluded that Section 14 does not intend to bar actions against assets of guarantors to the debts of the corporate debtor and recommended that an explanation to clarify this may be inserted in Section 14 of the Code. The scope of the moratorium may be restricted to the assets of the corporate debtor only.'

33. The Report of the said Committee makes it clear that the object of the amendment was to clarify and set at rest what the Committee thought was an overbroad interpretation of Section 14. That such clarificatory amendment

is retrospective in nature, would be clear from the following judgments:"
(emphasis in original)

92. *In B.K. Educational Services (P) Ltd. v. Parag Gupta and Associates [B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates, (2019) 11 SCC 633 : (2018) 5 SCC (Civ) 528] this Court considered the question as to whether the 2018 Amendment which inserted Section 238-A to the I&B Code was clarificatory in nature or not. After considering various earlier judgments of this Court, this Court observed thus : (SCC p. 654, paras 26-27)*

"*26. In the present case also, it is clear that the amendment of Section 238-A would not serve its object unless it is construed as being retrospective, as otherwise, applications seeking to resurrect time-barred claims would have to be allowed, not being governed by the law of limitation.*

27. We may also refer to a recent decision of this Court in SBI v. V. Ramakrishnan [SBI v. V. Ramakrishnan, (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458] , where this Court, after referring to the selfsame Insolvency Law Committee Report, held that the amendment made to Section 14 of the Code, in which the moratorium prescribed by Section 14 was held not to apply to guarantors, was held to be clarificatory, and therefore, retrospective in nature, the object being that an overbroad interpretation of Section 14 ought to be set at rest by clarifying that this was never the intention of Section 14 from the very inception."

93. *As discussed hereinabove, one of the principal objects of the I&B Code is providing for revival of the corporate debtor and to make it a going concern. The I&B Code is a complete Code in itself. Upon admission of petition under Section 7 there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the corporate debtor is revived and is made an on-going concern. After CoC approves the plan, the adjudicating authority is required to arrive at a subjective satisfaction that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the adjudicating authority can grant its approval to the plan. It is at this stage that the plan becomes binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The legislative intent behind this is to freeze all the claims*

so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans would go haywire and the plan would be unworkable."

138. In a recent judgment in ***Chandra Sekhar Jha Vs Union of India and others reported in 2022 SCC Online SC 269,*** the Apex Court held as follows:

"***4.*** *Section 129E of the Customs Act, 1962, as it stood before substitution by Act 25 of 2014, reads as follows:—*

"*129E. Deposit, pending appeal, of duty and interest, demanded or penalty levied.- Where in any appeal under this Chapter, the decision or order appealed against relates to any duty any interest demanded in respect of goods which are not under the control of the customs authorities or any penalty levied of goods which are not under the control of the customs authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the proper officer duty and interest demanded or the penalty levied:*

Provided that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of the opinion that the deposit of duty and interest demanded or penalty levied would cause under hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue:

Provided further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty and interest demanded or penalty levied under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing."

5. *It is thereafter that the present version was inserted with effect from dated 06.08.2014, which reads as follow:—*

"*129-E. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal.—The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,—*

(i) under sub-section (1) of Section 128, unless the appellant has deposited seven and a half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a

decision or an order passed by an officer of customs lower in rank than the Principal Commissioner of Customs or Commissioner of Customs;

(ii) against the decision or order referred to in clause (a) of sub-section (1) of Section 129-A, unless the appellant has deposited seven and a half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;

(iii) against the decision or order referred to in clause (b) of sub-section (1) of Section 129-A, unless the appellant has deposited ten per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against:

Provided that the amount required to be deposited under this section shall not exceed Rupees Ten crores:

Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014.]"

6. *The specific argument of the learned counsel for the appellant is that in the case of the appellant in view of the fact that the act relates to the year 2013 (namely on 28.2.2013), the appellant must be governed by Section 129E prior to the substitution. This is for the reason that the substitution of Section 129A was effected on 06.08.2014 which is after the date of the incident (28.02.2013). On the basis of the same, it is contended that under Section 129E, as it stood, prior to the substitution there was a power available with the Appellate Authority in the matter of demand of pre-deposit. He would point out that the amount for pre-deposit in his case is harsh and onerous.*

7. *On a conspectus of the provisions of Section 129E before and after the substitution, it becomes clear that the law giver has intended to bring about a sweeping change from the previous regime and usher in a new era, under which the amount to be deposited was scaled down and pegged at a certain percentage of the amount in dispute. In other words, while under Section 129A, as it stood prior to the substitution, the appellant was to deposit the duty and the interest demanded or the penalty levied, in the present regime, the appeal is maintainable upon the appellant depositing seven and the half percent of the amount. Under the earlier regime, in other words the entire amount which was in dispute had to be deposited. Under the earlier avatar of Section 129E, the law giver also clothed the appellate body with power as contained in the first proviso. The first proviso provided the Commissioner (Appeals) or as the case may be, Appellate Tribunal the power to dispense with such deposit, subject to conditions as he deemed fit to impose to safeguard the interest of the revenue.*

8. *The question whether it is undue hardship has been the subject matter of*

the judgment of this Court in Benara Valves Ltd. v. Commissioner of Central Excise, reported in (2006) 13 SCC 347, wherein it, inter alia, held as follow: —

"*13. For a hardship to be "undue" it must be shown that the particular burden to observe or perform the requirement is out of proportion to the nature of the requirement itself, and the benefit which the applicant would derive from compliance with it."*

9. *It is in sharp departure from the previous regime that the new provision has been enacted. Under the new regime, on the one hand, the amount to be deposited to maintain the appeal has been reduced from 100% to 7.5% but the discretion which was made available to the appellate body to scale down the pre-deposit has been taken away.*

10. *The first proviso of Section 129E of the present Section enacts a limitation on the total amount which can be demanded by way of pre-deposit. The first proviso provides that the amount required to be deposited should not exceed Rs. 10 Crores. In this regard, the law giver has purported to grant relief to an appellant. The second proviso contemplates that Section 129(e) as substituted would not apply to stay applications and appeals which are pending before the Appellate Authority prior to the commencement of the Finance Act (2) of 2014. The amended provision, as we have already noticed has come into force from 06.08.2014. Therefore, in regard to stay applications and appeals which were pending before any Appellate Authority prior to commencement of The Finance (No. 2) Act 2014, Section 129E as substituted would not apply. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision.*

11. *As far as the argument of the appellant that for the reason that the incident which triggered the appeal filed by the appellant took place in the year 2013, the appellant must be given the benefit of the power available under the substituted provision, it does not appeal to us. The substitution has effected a repeal and it has re-enacted the provision as it is contained in Section 129E. In fact, the acceptance of the argument would involve a dichotomy in law. On the one hand, what the appellant is called upon to pay is not the full amount as is contemplated in Section 129(E) before the substitution. The order passed by the Commissioner is dated 23.11.2015 which is after the substitution of Section 129E. The appellant filed the appeal in 2017. What the appellant is called upon to pay is the amount in terms of Section 129E after the substitution, namely, the far lesser amount in terms of the fixed percentage as provided in section 129E. The appellant, however, would wish to have the benefit of the proviso which, in fact, appropriately would apply only to a case where the appellant is maintaining the appeal and he is called upon to pay the full amount under Section 129E under the earlier avtar.*

> ***12.*** *We would think that the legislative intention would clearly be to not to allow the appellant to avail the benefit of the discretionary power available under the proviso to the substituted provision under Section 129E.... "*

139. In the present case, the mischief is two in numbers. Firstly, the one identified by the State and the other, the counter mischief occasioned by their curative action and implementation of the proviso by the department. The end result is that the legislature decided to restore the original position with respect to section 19 (2) (v) by omitting and substituting with a new provision to remove the mischief caused by wrongful implementation. The actual intention of the legislature is to be derived only by interpretation of the provision to find out its actual applicability and decide whether it is curative or substantive. As already seen, the original provision along with the proviso was omitted and a new provision was substituted. The word "retrospective" would mean "to look back" or "to go back in time". A curative provision is held to be effective from a date prior to which it was enacted and so, will have a retrospective effect. As evident from the correct statement of objects and reasons and also from the contention of the department that the amendment was brought in only to cure the defect and when it caused adverse effects, the same was withdrawn and substituted with a new provision, the time in that case is reversed. The amendments restore the benefit to all the dealers effecting interstate sale. As rightly pointed out by the counsel for the respondents, the subsequent

amendment is in the form of "Declaration" reiterating that the provision is to be read as it stood before the 2013 amendment. Upon consideration of the materials placed before us and for the reasons stated above, the amendment to Section 19 (2) brought about in the year 2015 is held to be curative in nature. Though we disagree with the reasoning of the learned Judge as to the interpretation placed on the scope of Amendment to Section 19(2) vide Act 28 of 2013, in the light of the finding that Amendment Act 5 of 2015 is curative / declaratory in nature and would thus relate back to 11.11.2013, resultantly, the position insofar as the right of the manufacturers to avail ITC is, it becomes an absolute right, once the inputs are used in the manufacture or processing of the goods within the State, the subsequent event of the manufactured goods being sold by way of inter-state/ intra-state sale would have no bearing nor does it result in imposing any limitation/restriction or whittle down the right to ITC earned in terms of Section 19(2)(ii) or 19(2)(v) of the TNVAT Act in the interregnum period.

140. In the light of the view expressed by us on the scope of the curative/ declaratory nature of Amendment to Section 19 (2) vide Act 5 of 2015, there is a possibility that the State may have to deal with the claims of refund on account of excess ITC to the credit of the assessees, consequent to the above view. It is thus, necessary to clarify the impact of the view expressed by us, on

the claim of refund.

141. The first question which arises for consideration is as to whether the doctrine of "unjust enrichment" would apply in the absence of an express provision incorporating the same. Stated simply, "unjust enrichment" means retention of a benefit by a person that is unjust or inequitable. It occurs when a person retains money or benefits, which in justice, equity and good conscience, belong to someone else. The doctrine of "unjust enrichment", therefore, is that no person can be allowed to enrich inequitably at the expense of another. A right of recovery under the said doctrine arises, where retention of a benefit is considered contrary to justice or against equity. The juristic basis of the obligation is not founded upon any contract or tort, but upon a third category of law, namely, quasi-contract or the doctrine of restitution. The doctrine of "unjust enrichment" is based on equity and has been accepted and applied in several cases. The said doctrine would apply even in the absence of statutory provision incorporating the same. The relevant portions of the judgment of the Hon'ble Supreme Court in ***Sahakari Khand Udyog Mandal Ltd. vs. CCE & Customs*** reported in ***(2005) 3 SCC 738*** are usefully extracted below:

> "*45. From the above discussion, it is clear that the doctrine of 'unjust enrichment' is based on equity and has been accepted and applied in several cases. In our opinion, therefore, irrespective of applicability of Section 11-B of the Act, the doctrine can be invoked to deny the benefit to which a person*

is not otherwise entitled. Section 11-B of the Act or similar provision merely gives legislative recognition to this doctrine. That, however, does not mean that in the absence of statutory provision, a person can claim or retain undue benefit. Before claiming a relief of refund, it is necessary for the appellant-petitioner to show that he has paid the amount for which relief is sought, he has not passed on the burden on consumers and if such relief is not granted, he would suffer loss."

(emphasis supplied)

142. The above position was reiterated in the case of ***State of Maharastra and others vs. Swanstone Multiplex Cinema Private Limited*** reported in ***(2009) 8 SCC 235*** wherein it was held as under:

"33. We are passing this order keeping in view the peculiar situation as in either event it was cinema-goers who had lost a huge amount. It would be travesty of justice if the owners of the cinema theatre become eligible to appropriate such a huge amount for their own benefit. To the aforementioned extent, doctrine of unjust enrichment may be held to be applicable. A person who unjustly enriches himself cannot be permitted to retain the same for its benefit except enrichment. Where it becomes entitled thereto the doctrine of unjust enrichment can be invoked irrespective of any statutory provisions.

34. In Mafatlal Industries Ltd. [(1997) 5 SCC 536] Section 72 of the Contract Act providing for restitution may be taken recourse to. Doctrine of "unjust enrichment" was resorted to, observing: (SCC p. 633, para 108)

"108. (iii) A claim for refund, whether made under the provisions of the Act as contemplated in Proposition (i) above or in a suit or writ petition in the situations contemplated by Proposition (ii) above, can succeed only if the plaintiff-petitioner alleges and establishes that he has not passed on the burden of duty to another person/other persons. His refund claim shall be allowed/decreed only when he establishes that he has not passed on the burden of the duty or to the extent he has not so passed on, as the case may be. Whether the claim for restitution is treated as a constitutional imperative or as a statutory requirement, it is neither an absolute right nor an unconditional obligation but is subject to the above requirement, as explained in the body of the judgment. Where the burden of the duty has been passed on, the claimant cannot say that he has suffered any real loss or prejudice. The real loss or prejudice is suffered in such a case by the person who has ultimately borne the burden and it is only that person who can legitimately claim its refund. But where such person does not come forward or where it is not possible to refund the amount to him for one or the other reason, it is just and appropriate that that amount is retained by the State i.e. by the people. There is no immorality or impropriety involved in such a

proposition.

The doctrine of unjust enrichment is a just and salutary doctrine. No person can seek to collect the duty from both ends. In other words, he cannot collect the duty from his purchaser at one end and also collect the same duty from the State on the ground that it has been collected from him contrary to law. The power of the court is not meant to be exercised for unjustly enriching a person. The doctrine of unjust enrichment is, however, inapplicable to the State. State represents the people of the country. No one can speak of the people being unjustly enriched."

.....

36. It may be true that hereat we are not concerned with refund of tax but then for enforcement of legal principles, this Court may direct a party to divest itself of the money or benefits, which in justice, equity and good conscience belongs to someone else. It must be directed to restitute that part of the benefit to which it was not entitled to."

(emphasis supplied)

143. The second question which may possibly arise is, whether "unjust enrichment" would apply to taxes paid on raw material and captively consumed in the manufacture of finished goods within the State. The said question stands resolved by the decision of the Hon'ble Supreme Court in the case of ***Union of India and others vs. Solar Pesticides Private Limited and another*** reported in ***(2000) 2 SCC 705*** in which, while holding that the doctrine of "unjust enrichment" would apply to duty paid on raw materials and captively consumed, it was held that "passing of incidence of duty to any other person may be direct such as when the goods imported are themselves sold and the burden of tax thereon is passed on to the buyer or it may be indirect when the goods imported are captively consumed by importer himself and the duty paid thereon is added to the price of the finished goods which are sold to others". The following passage of the said judgment would make the said

position clear:

> *"20. We are of the opinion that the aforesaid observations would be applicable in the case of captive consumption as well. To claim refund of duty it is immaterial whether the goods imported are used by the importer himself and the duty thereon passed on to the purchaser of the finished product or that the imported goods are sold as such with the incidence of tax being passed on to the buyer. In either case the principle of unjust enrichment will apply and the person responsible for paying the import duty would not be entitled to get the refund because of the plain language of Section 27 of the Act. Having passed on the burden of tax to another person, directly or indirectly, it would clearly be a case of unjust enrichment if the importer/seller is then able to get refund of the duty paid from the Government notwithstanding the incidence of tax having already been passed on to the purchaser.* **"**
>
> *(emphasis supplied)*

144. Following the above judgment of the Hon'ble Supreme Court in ***Solar Pesticides Private Limited,*** the doctrine of "unjust enrichment" was applied to capital goods used captively in the case of ***Commissioner of Central Excise, Chennai vs. Grasim Industries*** reported in ***(2015) 14 SCC 1,*** the relevant paragraph of which is profitably reproduced below:

> ***"10.*** *However, what follows from the reading of the said judgment is that if a particular material is used for the manufacture of a final product, that has to be treated as the cost of the product. Insofar as the cost of production is concerned, it may include capital goods which are a part of fixed cost as well as raw material which are a part of variable cost. Both are the components which come into costing of a particular product. Therefore it cannot be said that the principle laid down by the Court in Solar Pesticides [Union of India v. Solar Pesticides (P) Ltd., (2000) 2 SCC 705] would not extend to capital goods which are used in the manufacture of a product and have gone into the costing of the goods. In order to come out of the applicability of the doctrine of unjust enrichment, it therefore becomes necessary for the assessee to demonstrate that in the costing of the particular product, the cost of capital goods was not taken into consideration. We, thus, are of the opinion that the view taken by the Tribunal is not correct in law.* ***"***
>
> *(emphasis supplied)*

145. It is also useful to refer to the Judgment of the Apex Court in ***A. Venkata Subbarao v. State of A.P., (1965) 2 SCR 577 : AIR 1965 SC 1773*** while dealing with the claims relating to tax that was illegally retained.

> "***49.*** *Besides, if there is no legal basis for these demands by the Government we consider that it is not possible to characterise them as anything else than as taxes. They were imposed compulsorily by the executive and are sought to be collected by the State by the exercise inter alia of coercive statutory powers, though these latter are vested in Government for very different purposes. We are clearly of opinion that the fact that agreements were taken from some of these merchants affords no defence to their claim for refund.*
>
> ***53.*** *It was submitted by the learned Counsel for the appellants that it was not Article 62 that applied to a suit making a claim of this nature but the residuary Article 120 which runs:*
>
> ---
>
> *"Description of suits* | *period of limitation* | *time from which period begins to run*
>
> ---
>
> *120. Suit for which no period of limitation is provided elsewhere in this schedule.* | *Six yaers* | *When the right to sue accrues"*
>
> ---
>
> *As Article 120 can apply only if no other specific article were applicable, we have to examine the question whether there is any other specific article applicable and in particular whether the language of the first column of Article 62 covers a suit making a claim of the nature made in the plaints before us. The contention urged on behalf of the appellant in Civil Appeals 306 and 644 of 1962 was that the Article refers to "money payable by the defendant to the plaintiff" only in those cases where "the money was received by the defendant for the plaintiff's use". The latter condition that the money which is sought to be recovered must have been received by the defendant for the plaintiff's use should, it was urged, be literally satisfied before that Article could be applied. In other words, the contention was that that Article could not apply unless at the moment when a defendant received the money, he received it specifically for the use of the plaintiff. On*

the other hand, the rival construction suggested by the respondent was that the language of the Article had reference to the action "for money had and received" as known to the English Law, and that the reference to the receipt being for the plaintiff's use was a technical term of English pleading and law which imposed upon a defendant who received money in circumstances which in justice and equity belonged to the plaintiff rendered its receipt a "receipt by the defendant to the use of the plaintiff". Here, it was pointed out, the money was received by the defendant from the plaintiff which the plaintiff was not bound in law to pay but which he was compelled or forced to pay because of the threats or apprehension of legal process. The circumstances, therefore, in which the money was received were, it was said, such that notwithstanding that the receipt by the defendant purported to be for his own benefit still it was money which at the very moment of the receipt in justice and equity belonged to the plaintiff, and that was the whole basis of the plaintiff's claim on the merits.

54. *The questions for consideration, therefore, are: (1) Does Article 62 embody the essential elements of the action known in English Law and pleading as the "action for money had and received to the plaintiffs use?" (2) Does the fact that at the moment of receipt the defendant intended to receive the money for his own benefit and not for the use of the plaintiff render the Article inapplicable? Stated in other terms is a literal compliance with the words that the money must have been received by the defendant for the plaintiff's use necessarily before the Article applies, or is it sufficient that the circumstances of the case are such that the plaintiff being entitled in equity to the money, the law would impute to the defendant the intention to hold it for the plaintiffs use and compel a refund of it to the plaintiff.*

56. *The doctrine on which the action for "money had and received" was based was propounded by Lord Mansfield in Moses v. Macferlan [(1760) 2 Burr 1005] where it was explained that it lay "for money which ex aquo et bono the defendant ought to refund" and in a later case [Sadler n Evans, (1760) 4 Burr 1984] as "a liberal action, founded on large principles of equity, where the defendant cannot conscientiously hold the money". In later decisions it was said to be based not merely on an equitable doctrine but was a Common Law right [See for instance Royal Bank of Canada v. Reh, 1913 AC 283] . The jural basis on which the action was originally supported, was a promise to pay by the defendant implied or imputed by law. Lord Mansfield explained:*

"*If the defendant be under an obligation from the ties of natural justice to refund, the law implies a debt and gives this action, founded on the equity of the plaintiffs case, as it were upon a contract."*

Moses v. Macferlan [(1760) 2 Burr 1005] itself was an action of assumpsit and the imputed promise was an extension of the principle on which it was in its origin based as stated in Cheshire & Fitfoot. In the third Edition of Bullen and Leake published in 1868 they said: [ILR 32 Cal 527]

"*The action for money had and received is the most comprehensive of all the common counts. It is applicable wherever the defendant has received money, which, in justice and equity, belongs to the plaintiff under circumstances which render the receipt of it a receipt by the defendant to the use of the plaintiff."*

"*But, despite this formidable measure of unanimity, the abolition of the forms of action in the middle of the nineteenth century and the temptations of a new analytical jurisprudence gradually undermined Lord Mansfield's position. So long as the common lawyers thought in terms of procedure and associated quasi-contract with the writ of Indebitatus Assumpsit, they were content to accept the implications of unjust benefit. But when they abandoned their traditional forms and substituted a dichotomy of tort and contract, the old explanation seemed no longer to suffice. The various actions grouped under the insidious title of quasi-contract were clearly not tortious: if the new antithesis of the common law was inevitable, they must perforce be contractual. And, as they were equally clearly not based upon any genuine consent, they must rest upon an implied or hypothetical agreement."*

59. *Having considered the matter carefully we are inclined to prefer the interpretation of the Article by Mookerjee, J. in Mahomed Wahib case [ILR 32 Cal 527] . What we are solely concerned with is the meaning of the words employed in the first column of the Article which specifies the nature of the suit dealt with. That they were derived and adopted from the terminology employed in the English action for money had and received is not disputed. The Courts in India being courts administering both law and equity, no doubt we are not concerned with the technicalities of the English forms of action which originated at a time before the Judicature Acts when law and equity were administered by different Courts. But that is only as regards the merits of a claim and its maintainability in a Court. With great respect to the learned Judges who decided Anatram [ILR 50 Cal 475 at p 480] and Lingangouda cases [ILR 1953 Bom 214] , we are unable to agree that the changes which the doctrine has undergone in England have any bearing on what the Article meant in 1871 when the legislature lifted the words descriptive of a form of an English action and incorporated it in the Indian statute. Nor are we impressed with the argument that if the terms of a specific Article do apply to a specific case, one could ignore it and seek a general Article merely on the ground that the latter affords a longer period of limitation for the filing of a suit.*

60. *So far as the present claim for recovery of a tax illegally collected is concerned the authorities are fairly uniform that the period of limitation for a suit making such a claim is governed by Article 62. Rajputana Malwa Railway Cooperative Stores Ltd. v. Ajmere Municipal Board [ILR 32 All 491] arose out of a suit against a Municipal Board for refund of certain octroi duty which they were not legally entitled to levy. The suit for that claim was held to be governed by Article 62, the learned Judges stating:*

> "*The language of Article 62 is borrowed from the form of count in vogue in England under the Common Law Procedure Act of 1852. Prior to the passing of the Supreme Court of Judicature Acts of 1873 and 1875, there was a number of forms of pleading known as the common indebitatus counts, such as counts for money lent, money paid by the plaintiff for the use of the defendant at his request, money received by the defendant for the use of the plaintiff, & co… The most comprehensive of the old common law counts was that for money received by the defendant for the use of the plaintiff. This count was applicable where a defendant received money which in justice and equity belonged to the plaintiff under circumstances which rendered the receipt by the defendant to the use of the plaitiff... It was a form of claim which was applicable when the plaintiffs money had been wrongfully obtained by the defendant."*
>
> *A similar view was taken of claims of a like nature in Municipal Council Dindigul v. Bombay Co. Ltd., Madras [ILR 52 Mad 207], India Sugar and Refinery Ltd. v. Municipal Council Hosper [ILR 43 Mad 521], State of Madras v. A.M.N.A. Abdul Kader [AIR 1953 Mad 995], and Municipal Committee, Amritsar v. Amar Dass [AIR 1953 Punjab 99] . Learned Counsel submitted that these cases proceeded, in great part, on the inapplicability of the shorter periods of limitation provided in the particular statutes for amounts improperly collected thereunder. We do not, however, consider that this militates, in any manner, from the reasoning upon which the decisions are based, for they all refer to the terms of Article 62, to its scope and their applicability in terms to cases of suit for refund of tax illegally collected. In addition, we might point out that in India Sugar and Refinery Ltd. v. Municipal Council, Hospet [ILR 43 Mad 521] the claim for some of the years for which the suit was filed was dismissed as barred by limitation by applying the three year rule. In fact, learned Counsel conceded that save a solitary decision in Govind Singh v. State of Madhya Pradesh [12 STC 825] to which we shall presently refer, the decisions were uniform in applying Article 62 to cases of suits for refund of taxes illegal collected. We consider that these decisions are correct and they have applied the proper article of limitation."*

146. In the above case, the Apex Court was dealing with claims against the State for refund of tax collected illegally or without authority. Any tax collected without authority would certainly amount to unjust enrichment as we have seen in the cases referred to earlier. The Apex Court has held that Article 62 of the Limitation Act, 1908 would appear implying that the period of

limitation would be three years from the date of receipt of tax that has been retained by the Revenue. Article 62 is pari materia to Article 24 of the present Limitation Act, 1963. The plea to invoke the residuary Article 120 under the old Act was turned down. Therefore, for the assessees to claim refund of the tax collected or retained by the State, steps must have been taken by them within three years from the date of their payments to the department. Thus, any claim for refund may have to be examined keeping in view the doctrine of "unjust enrichment" as explained by the decisions cited supra and the findings rendered hereinabove and in the preceding paragraph.

Conclusion.

147. Therefore, the position as regards section19(2)(ii) and the proviso inserted vide Act 28 of 2013 and its subsequent omission vide Amendment Act 5 of 2015 and the claim of refund, shall be examined in the light of the principles as set out above. To that extent, the appeals filed by the State are partly allowed.

148. Insofar as W.A Nos.1446 and 1447/2021 are concerned, the same have been preferred against the orders of the learned Judge dismissing the writ petitions as barred by limitation, based on the decision of the Apex Court in ***Glaxo Smith Kline Consumer Health Care Pvt lTd.***

149. It is brought to the knowledge of this court, a subsequent judgment of a

Co-ordinate Bench of this court in W.A No.493/2021, wherein after considering the observations of the Hon'ble Apex Court, it was held that "no bar has been imposed by the Apex Court in entertaining a writ petition under Article 226 of the Constitution of India" and the same is quoted below for ready reference:

> "*5. In our respectful view, the decision of the Hon'ble Supreme Court in the said decision has not held that a writ petition under Article 226 of the Constitution of India is an absolute bar. We are of the said view after noting the observations/findings rendered by the Hon'ble Supreme Court in the following paragraphs :*
>
> > "*11. In the backdrop of these facts, the central question is: whether the High Court ought to have entertained the writ petition filed by the respondent? As regards the power of the High Court to issue directions, orders or writs in exercise of its jurisdiction under Article 226 of the Constitution of India, the same is no more res integra. Even though the High Court can entertain a writ petition against any order or direction passed/action taken by the State under Article 226 of the Constitution, it ought not to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law (see Baburam Prakash Chandra Maheshwari vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar [AIR 1969 SC 556] and also Nivedita Sharma vs. Cellular Operators Association of India & Ors. [2011 (14) SCC 337]. In Thansingh Nathmal & Ors. vs. Superintendent of Taxes, Dhubri & Ors. [AIR 1964 SC 1419], the Constitution Bench of this Court made it amply clear that although the power of the High Court under Article 226 of the Constitution is very wide, the Court must exercise self imposed restraint and not entertain the writ petition, if an alternative effective remedy is available to the aggrieved person.....*
> >
> > *15. ..... The High Court may accede to such a challenge and can also non suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a*

matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three Judge Bench of this Court in Oil and Natural Gas Corporation Limited (supra). In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose. .....

19..... Pertinently, no finding has been recorded by the High Court that it was a case of violation of principles of natural justice or non compliance of statutory requirements in any manner. Be that as it may, since the statutory period specified for filing of appeal had expired long back in August, 2017 itself and the appeal came to be filed by the respondent only on 24.9.2018, without substantiating the plea about inability to file appeal within the prescribed time, no indulgence could be shown to the respondent at all."

6. On a reading of the above extracted paragraphs, it is seen that the Hon'ble Supreme Court, after referring to the decision of the Constitution Bench in the case of ***Thansingh Nathmal,*** *held that although the power of the High Court under Article 226 of the Constitution is very wide, the Court must exercise self imposed restraint and not entertain the writ petition. Further, in paragraph 15, the Hon'ble Supreme Court observed that the High Court may accede to such a challenge and can also non suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. In addition, in paragraph 19, the Hon'ble Supreme Court took note of the fact that when the High Court refuses to exercise the jurisdiction under Article 226 of The Constitution of India, it would be necessary for the Court to record that there was no case of violation of the principles of natural justice or non-compliance of statutory requirements in any manner.*

7. Therefore, there are certain broad parameters, within which, the Court has to exercise its jurisdiction under Article 226 of The Constitution of India, which read as hereunder :

(i) if there is unfairness in the action of the Statutory Authority;

(ii) if there is unreasonableness in the action of the Statutory Authority;
(iii) if perversity writs large in the action taken by the Authority;

(iv) if the Authority lacks jurisdiction to decide the issue and
(v) if there has been violation of the principles of natural justice,

the Court will step in and exercise its jurisdiction under Article 226 of The Constitution of India.

8. Further, it would be highly beneficial to refer to the celebrated decision of

the Constitution Bench of the Hon'ble Supreme Court in the case of ***Mafatlal Industries Ltd. Vs. Union of India [reported in 1997 (5) SCC 536]*** *wherein it was held that the jurisdiction of the High Courts under Article 226 and that of the Hon'ble Supreme Court under Article 32 of The Constitution of India could not be circumscribed by the provisions of the Enactment (Central Excise Act) and they would certainly have due regard to the legislative intent evidenced by the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the Act. Further, the Court directed that the writ petition would be considered and disposed of in the light of and in accordance with the provisions of Section 11B of the Central Excise Tax Act and for such a reason, the power under Article 226 of The Constitution of India has to be exercised to effectuate rule of law and not for abrogating it.*

9. In the light of the above, we have no hesitation to hold that the observation of the learned Single Judge to the effect that there is absolute bar for entertaining a writ petition does not reflect the correct legal position. Hence, we are inclined to interfere with the observation made in the impugned order."

150. With utmost respect, the Hon'ble Supreme Court has held that such writs should not be entertained as a matter of course, even though, the court has wide powers under Article 226 of the Constitution. The writ court ought to have seen that the High Court under Article 226 of Constitution is rather circumscribed by the theory of laches and not by limitation, because the Constitution is above a statute as held by the Apex Court in the Judgment in the matter of ***Samjuben Gordhanbhai Koli Vs State of Gujarat, reported in MANU/SC/0826/2010***. The effect of "laches" depends upon the facts of each case and is left to the discretion of the court to either reject or entertain a writ petition. In taxing matters, whenever a levy or demand is made without authority of law, the court would be within its power to set aside the same, because any illegality cannot be perpetuated on technicalities. Further, as per

the provisions of the TNVAT Act, Section 84 empowers rectification of orders within five years from the date of any order passed by the assessing officer. It is settled law that the error contemplated therein is not just factual, but also legal error. When the power to the statutory authority is granted upto five years to modify the order, it cannot be said that the constitutional authorities would not have power to review the action. Therefore, concurring with the Division Bench, we do not concur with the decision of the Learned Judge to dismiss the writ petitions on the technicality of limitation, that too, when the batch was pending. We set aside the said order of the learned Judge and dispose of the writ appeals in WA.Nos.1446 and 1447/2021 accordingly.

151. In view of the fact that the batch of cases has been partially decided in favour of the assessees and partially in favour of the revenue, the writ petitioners are disposed of, in terms of the ratio laid down by this court.

152. With respect to W.P No 24535 of 2018, the same is disposed of, granting liberty to the petitioner to file an appeal before the appellate authority within a period of 30 days from the date of receipt of a copy of this order as the only ground raised therein is that the challenge to the *vires* of the Act was pending before the Apex Court, which subsequently was held in favour of the Revenue.

153. In the upshot, the appeals filed by the Revenue and the appeals and writ petitions filed by the assessees are partially allowed. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(R.M.D.,J.) **(M.S.Q., J.)**

31.03.2022

rsh/rk

Index: Yes/ No
Speaking / Non-speaking order

To

1. The Secretary
   State of Tamil Nadu
   Commercial Taxes Department
   Fort St. George
   Chennai - 600 009

2. The Deputy Commissioner (CT) (FAC)
   Fast Track Assessment Circle-I
   Now Large Tax Payers Unit
   Coimbatore

R. MAHADEVAN, J.
and
MOHAMMED SHAFFIQ, J.

rsh/rk

W.A.No.1260 of 2017, etc. batch

31.03.2022