HC-KAR

NC: 2026:KHC:40244
WP No. 29162 of 2025
C/W WP No. 8067 of 2025

CNR: KAHC010629342025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 29162 OF 2025 (T-RES)
C/W
WRIT PETITION NO. 8067 OF 2025 (T-RES)

IN WP No. 29162/2025

BETWEEN:

M/S. IVRCL DRN INFRA JV
2ND FLOOR, NO.36, MUNIRATHANAM ORCHIDS,
RAILWAY PARALLEL ROAD, NEHRU NAGAR,
BENGALURU – 560 020.
(REPRESENTED BY
MR. RAMAKRISHNA S GANGOJI
AUTHORISED REPRESENTATIVE)

…PETITIONER

(BY SRI. V.RAGHURAMAN, SENIOR COUNSEL APPEARING FOR
SRI. C.R. RAGHAVENDRA, SRI. BHANU MURTHY.J.S, AND
SRI. AARYAK .G. KOUSHIK, ADVOCATES)

AND:

COMMISSIONER OF CENTRAL TAX
BENGALURU SOUTH
GST COMMISSIONERATE
C.R. BUILDING, QUEEN'S ROAD,
BENGALURU-560 001.

…RESPONDENT

(BY SRI. ARAVIND KAMATH, ADDITIONAL SOLICITOR GENERAL A/W
SRI. SHISHIRA AMARNATH, CGC)

THIS W.P IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH IMPUGNED ORDER IN ORIGINAL NO. 53/ST/COMMR/23-24 DTD 14.03.24, PASSED BY R1 ENCLOSED AS ANNX-A FOR THE REASONS STATED IN THE GROUNDSGRANT AN INTERIM ORDER TO STAY OF OPERATION OF

ORDER IN ORIGINAL NO. 53/ST/COMMR/23-24 DTD 14.03.24, PASSED BY R1 ENCLOSED AS ANNX-A.

IN WP NO. 8067/2025

BETWEEN:

M/S ASIAN INFRA
(FORMERLY KNOWN AS M/S ASIAN PUMPS)
PLOT NO. 15/A, 2ND PHASE,
PEENYA INDUSTRIAL AREA,
BENGALURU – 560 068.
(REPRESENTED BY
MR. K P PAVAN, PARTNER
M/S ASIAN INFRA,
AGED ABOUT 37 YEARS,
S/O MR. K H PUTTASWAMY GOWDA)

...PETITIONER

BY SRI. V.RAGHURAMAN, SENIOR COUNSEL APPEARING FOR SRI. C.R. RAGHAVENDRA, SRI. BHANU MURTHY.J.S, AND SRI. AARYAK .G. KOUSHIK, ADVOCATES)

AND:

1. ADDITIONAL COMMISSIONER OF CENTRAL TAX
GST COMMISSIONERATE,
BANGALORE NORTH WEST,
2ND FLOOR, SOUTH WING,
BMTC BUS STAND COMPLEX,
SHIVAJI NAGAR, BENGALURU – 560 051.

2. COMMISSIONER OF CENTRAL TAX
GST COMMISSIONERATE,
BANGALORE NORTH WEST,
2ND FLOOR, SOUTH WING,
BMTC BUS STAND COMPLEX,
SHIVAJI NAGAR, BENGALURU – 560 051.

...RESPONDENTS

(BY SRI. AKASH B SHETTY, ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUITON OF INDIA PRAYING TO QUASH IMPUGNED ORDER IN ORIGINAL NO. 48/ADC/BNW/2023-24/BNW DATED 23.12.2024, PASSED BY THE RESPONDENT NO.1 ENCLOSED AS ANNEXURE-A FOR THE REASONS STATED IN THE GROUNDS.

THESE PETITIONS ARE BEING HEARD AND RESERVED ON 25.04.2026 COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

CAV ORDER

In W.P.No.29162/2025, petitioner seeks for the following reliefs:-

> *" (A) Issue a writ of certiorari or any other writ or direction or order to quash impugned Order No. 53/ST/COMMR/2023-24 dated: 14.03.2024, passed by Respondent NO.1 enclosed as Annexure-A for the reasons stated in the grounds.*
>
> *(B) Grant such other beliefs as this Honorable High Court may think fit including the cost of this writ petition. "*

In W.P.No.8067/2025, petitioner seeks for the following reliefs:-

> *" (A) Stay of operation of the impugned Order-in-Original Sl.No.48/ADC/BNW/2023-24 BNW dated: 23.12.2024 passed by the Respondent No.1 enclosed as Annexure-A.*
>
> *(B) Stay of operation of the impugned Show Cause notice No.117/2021 having Digital Identification No. ('DIN')20210457YX0000000FFB dated: 27.04.2021 passed by the Respondent No.1, enclosed as Annexure-B."*

2. Briefly stated the facts giving rise to the present petitions are as under:-

Petitioner in W.P.No.29162/2025 is a joint venture between IVRCL and DRN Infra, formed for the purpose of applying tenders and executing works contracts relating to lift irrigation projects. Karnataka Neeravari Nigama Limited ("KNNL") through a tender awarded the work of construction of lift irrigation project named Tubchi-Bableshwar lift irrigation project to the petitioner. It is contended by the petitioner that the respondent issued summons based on the information available through Form 26AS / Income Tax Returns (ITR) of the petitioner for the year 2015-16 and 2016-17 to produce reasons along with supporting documents as to why no registration under service tax provisions were obtained and necessary returns in Form ST-3 were not filed. It is further contended that the said summons was not delivered to the petitioner. Subsequently, a Show Cause Notice (SCN) dated 27.04.2021 was issued by respondent proposing to demand service tax of Rs.71,52,52,117/- for the Assessment Year 2015- 16 and 2016-17 on the incomes reflected in the Form 26AS. The petitioner replied to the SCN via a reply dated 13.02.2024 to the said show cause notice *interalia* contending that the extended period of limitation could not have been invoked as there was no suppression and that the service tax portions of the contract are exempted from taxation vide Notification No. 25/2012-ST dated 20.6.2012. It was also contended that reliance on the income tax forms without analysis of the type of income was bad in law.

2.1 The petitioner in W.P.No.8067/2025 is a manufacturer and trader of submersible pumps and accessories. It is contended by the Petitioner that it was regularly filing returns under the relevant statutory provisions, from time to time as prescribed under the respective laws and has discharged its tax liabilities. The petitioner was awarded contracts / work orders by Governmental institutions for supply and installation of the pump sets for use in irrigation under Ganga Kalyana scheme. During the Financial Year (FY) 2015-16, the petitioner supplied pumps and accessories towards the above work orders and remitted applicable VAT. The petitioner reported the above transaction as sale of goods in the monthly as well as annual returns filed under the provisions of Karnataka VAT Act and remitted the applicable VAT. Further, on the same basis income tax was also assessed and returns were also filed. The Jurisdictional Officer, Bengaluru North-west Commissionerate, based on the information available in Form 26AS, issued a letter dated 23.04.2021 to sought clarification as to why no service tax was paid for FY 2015-16 on amounts appearing in Form 26AS, and thereafter got issued show cause notice bearing No. 117/2021 dated 27.04.2021 proposing to demand service tax on the income earned by the petitioner in the FY 2015-16. The petitioner filed a reply dated 08.07.2021 to the show cause notice *interalia* contending that they are engaged in the sale of goods and did not provide services during the said Financial Year. Further, it also contended that the sales reflected in Form 26AS were made to the Government organizations and has also been transparent in revealing the gross sales in the financial statements. It also contended that the applicable output VAT was paid on such sales, which is appropriately disclosed Annual Returns in Form-240 and VAT returns.

2.2 Thereafter it is contended that, the SCN was adjudicated and Order-in-Original bearing No. 07/ADC/BNW/2022-23/BNM dated 17.06.2022 and having Digital Identification No.('DIN') 20220657YX00005075C4 was passed. The said order was challenged by the petitioner before this Court in W.P.No.17591/2022 and vide dated 03.07.2024, this Court set aside the order of the respondents and directed the respondent to re-adjudicate keeping in mind the principles as set out therein. Thereafter, the petitioner attended the personal hearing on 30.10.2024 and submitted letter / reply dated 30.10.2024 to the said SCN. Further, vide letter dated 18.11.2024, the petitioner submitted a reconciliation statement showing the revenues as per Form 26AS but without considering the legal submissions, documentary evidence, the respondents demanded service tax vide impugned Order-in-Original dated 23.12.2024. Aggrieved by which, petitioner is before this Court by way of the present petition.

3. Heard learned Senior Counsel for the petitioners and learned ASG for the respondent and perused the material on record.

4. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned Senior counsel for the petitioners submitted that the impugned orders are without jurisdiction, inasmuch as they attempt to tax sale of goods

under service tax law which is wholly impermissible. He would also submit that while the service portions in works contracts are exigible to service tax, in the case of the petitioner in W.P.No.29162/2025 is wholly exempt and in the case of petitioner in W.P.No.8067/2025, the service tax has been completely paid on the service tax portion. He would submit that the extended period of limitation could not have been invoked, as in such cases there cannot be any suppression of facts. In support of his submissions, learned Senior counsel for the petitioners placed reliance upon the following judgments:

(i) NCS Pearson Inc vs UOI (2025) 9 TMI 1205 (Kar);

(ii) Commissioner BDA vs State of Karnataka - 2005 SCC Online Kar 652;

(iii) Bharat Sanchar Nigam Ltd vs UOI 2006 (002) STR 0161 SC & Imagic Creative Private Limited Vs Commissioner of Commercial Taxes - 2008 (9) S.T.R. 337 (SC).

5. Per contra, learned ASG for the respondents would reiterate the various contentions urged in the statement of objections and submits that the petitioner is not entitled to the exemption as they cannot be called a municipality and though, they

are a Governmental company, they are not falling within the scope of the exemption which has to be read strictly. Therefore, the orders are sustainable and present petitions are devoid of merit and the same are liable to be dismissed.

6. I have given my anxious consideration to the rival submissions and perused the material on record.

7. The following points arise for consideration in the present petition are as under:

(i) Whether service tax can be levied on sale of goods component as indicated in the impugned orders?

(ii) Whether the petitioner in W.P.No.29162/2025 is entitled to exemption from service tax?

(iii) Whether the demands are barred by limitation under Section 73 of the Finance Act, 1994?

Re: Point No.1;

8. Before adverting to the rival contentions of the parties, it is profitable to extract the relevant provisions of the Finance Act, 2012 and Service Tax Rules which are as under;

Charge of service tax on and after Finance Act, 2012.

66B. *There shall be levied a tax (hereinafter referred to as the service tax) at the rate of [fourteen per cent.] on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.*

65B

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-
(a) an activity which constitutes merely,--
(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution; or
(iii) a transaction in money or actionable claim;
(b) a provision of service by an employee to the employer in the course of or in relation to his employment;
(c) fees taken in any Court or tribunal established under any law for the time being in force.
Explanation 1.- *For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,--*
(A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or
(B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
(C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State

Governments or local authority and who is not deemed as an employee before the commencement of this section.

[14]***[Explanation 2.****-For the purposes of this clause, the expression "transaction in money or actionable claim" shall not include--*

(i) any activity relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

(ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out--

[17]*[(a) by a lottery distributor or selling agent on behalf of the State Government, in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner, in accordance with the provisions of the Lotteries (Regulation) Act, 1998 (17 of 1998.);]*

*(b) by a foreman of chit fund for conducting or organising a chit in any manner.****]***

Explanation 3.- *For the purposes of this Chapter,-*

(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;

(b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

Explanation 4.- *A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;*

[Declared services.

66E. *The following shall constitute declared services, namely:—*

(a) renting of immovable property;

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after

issuance of completion-certificate by the competent authority.

Explanation*.- For the purposes of this clause,-*

(I) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non requirement of such certificate from such authority, from any of the following, namely:—

(A) architect registered with the Council of Architecture constituted under the Architects Act, 1972; (20 of 1972.) or

(B) chartered engineer registered with the Institution of Engineers (India); or

(C) licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(II) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;

(f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;

(g) activities in relation to delivery of goods on hire purchase or any system of payment by instalments;

(h) service portion in the execution of a works contract;

(i) service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.]

[2]*[(j) assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers thereof.]*

Service Tax (Determination of Value) Rules, 2006

[2A. Determination of value of service portion in the execution of a works contract.:

Subject to the provisions of section 67, the value of service portion in the execution of a works contract , referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:-

(i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods, [3C][or in goods and land or undivided share of land, as the case may be] transferred in the execution of the said works contract.

***Explanation**.- For the purposes of this clause,-*

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include, -

(i) labour charges for execution of the works;

(ii) amount paid to a sub-contractor for labour and services;

(iii) charges for planning, designing and architect's fees;

(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;

(vi) cost of establishment of the contractor relatable to supply of labour and services;

(vii) other similar expenses relatable to supply of labour and services; and

(viii) profit earned by the service provider relatable to supply of labour and services;

(c) Where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works

contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent. of the total amount charged for the works contract;

[3G][Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent. of the total amount charged for the works contract.]

[2][(B) in case of works contract, not covered under sub-clause (A), including works contract entered into for,-

(i) maintenance or repair or reconditioning or restoration or servicing of any goods; or

(ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property,

service tax shall be payable on seventy per cent. of the total amount charged for the works contract]

***Explanation 1.-** For the purposes of this rule,-*

(a) "original works" means-

(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

(b) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in

or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services, if any; and

(ii) the value added tax or sales tax, if any, levied thereon:

***Provided** that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.*

***Explanation 2.--**For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.]*

8.1 It is a matter of record and an undisputed fact that under the Finance Act, 1994, Section 65B (44) defines the phrase 'service', which *inter alia* excludes the activity of 'sale of goods' and 'transactions referred to in Article 366(29A) of the Constitution', from the scope of service; further, in terms of Section 66E(h) of the Finance Act, 2012, service portion in the execution of works contract is considered as declared services. In terms of these provisions, service tax could be levied only on the service portion of the works contract and for this purpose Rule 2A(i) of the Service Tax (Determination of Value) Rules, 2006, specifically provide for exclusion of value of goods transferred. This mechanism is to ensure that the value of goods is not taxed, which is in the exclusive domain of the State and outside the scope of 'service' and 'service tax'.

8.2 The Apex Court in the case of ***BSNL vs UOI – 2006 (3) SCC 1,*** held as under:

> ***81.*** *This does not however allow State to entrench upon the Union List and tax services by including the cost of such service in the value of the goods. Even in those composite contracts which are by legal fiction deemed to be divisible under Art. 366(29A), the value of the goods involved in the execution of the whole transaction cannot be assessed to sales tax. As was said in Larsen & Toubro v. Union of India (supra) :-*
>
> > *"The cost of establishment of the contractor which is relatable to supply of labour and services cannot be included in the value of the goods involved in the execution of a contract and the cost of establishment which is relatable to supply of materials involved in the execution of the works contract only can be included in the value of the goods".*
>
> ***82.*** *For the same reason the Centre cannot include the value of the SIM cards, if they are found ultimately to be goods, in the cost of the service. As was held by us in Gujarat Ambuja Cements Ltd. v. Union of India (2005) 4 SCC 214, 228.*
>
> > *"This mutual exclusivity which has been reflected in Article 246(1) means that taxing entries must be construed so as to maintain exclusivity. Although generally speaking, a liberal interpretation must be given to taxing entries, this would not bring within its purview a tax on subject-matter which a fair reading of the entry does not cover. If in substance, the statute is not referable to a field given to the State, the Court will not by any principle of interpretation allow a statute not covered by it to intrude upon this field."*

8.3 A perusal of the material on record indicates that the petitioner in W.P.No.29162/2025 is involved in executing a works contract of providing lift irrigation works to Karnataka Neeravari Nigam Ltd., the scope of the work involves survey, investigation, design and construction of civil works of intake fore bay, pump house, etc. for a lift irrigation project with attendant electrical works including operation and maintenance for 5 years on a turnkey basis and has paid sales tax in the execution of the project. This indicates that the scope of works involved in the subject works contract falls outside the purview of service tax as they are sale of goods and are wholly exempted from payment of service tax.

8.4 A perusal of the material on record would indicate that the petitioner in W.P.No.8067/2025 has furnished records to prove that they have paid sales tax on the sale value and service tax on the service value through invoices and returns submitted which have been completely ignored by the respondents - authorities even after the same was remanded by this Court for proper verification. Further, the petitioners have also submitted reconciliation between the ST3 returns, VAT returns and the income tax 26AS statement clearly indicates that respective taxes have been paid in respect of the said transactions.

8.5 In the light of the aforementioned facts, circumstances, and law laid down by the Apex Court and this Court, I am of the considered view that the scope of works contract was wholly exempted from payment of service tax and in the case wherein there was involvement of service, the material on record indicates payment of service tax.

Point No.1 is accordingly answered in favour of the petitioners.

Re- Point No.2;

9. Before adverting to the rival contentions of the parties, it would be profitable to extract the relevant portions of the Exemption Notification No.25/2012 dated 20.6.2012, which reads as under;

> *"12. Services provided to the Government, a local authority or a governmental authority by way of construction, **erection, commissioning, installation**, completion, fitting out, repair, maintenance, renovation, or alteration of –*
> *(d) canal, dam or other **irrigation works**;*
> *"(s) "governmental authority" means an authority or a board or any other body;*

(i) set up by an Act of Parliament or a State Legislature; or (ii) established by Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution

Article 243W of the Constitution of India reads as under:

243W- Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow—
(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—

(i) the preparation of plans for economic development and social justice;
(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.'
Extracts of XII Schedule
Matters listed in twelfth schedule are:
1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.

9.1 From the above wordings of the Notification, the essential ingredients to satisfy to come under the purview of the exemption notification are as under:-

a. Service rendered by a service provider who could be the petitioners;
b. Services are rendered to a governmental authority.
c. The services are in the nature of building, construction, etc. of canal, dam or other irrigation works.
d. The Governmental authority is entrusted with functions which are done by municipalities under Article 243W of the Constitution of India.

9.2 Learned Senior Counsel for the petitioners contended that there is no dispute regarding the fact that irrigation works done for a Governmental authority would be exempted from payment of tax. However, the dispute is centered around the definition of what is a Governmental authority and on the aspect of whether the activity of lift irrigation could fall under the scope of Article 243W r/w Schedule XII to the Constitution.

9.3 A perusal of the material on record would indicate that the definition of Governmental authority would be applicable to the petitioners as it is a body under clause (ii) established with 90% or more participation or control by the Government. However, the Learned ASG for respondents contended that Karnataka Neeravari Nigam Ltd., does not carry out any function entrusted to a municipality under Article 243W of the Constitution.

9.4 It is apposite here to mention that careful reading of the exemption notification would indicate that any body / organisation which is set up by the Government with at least 90% equity or participation or control by the Government and carry out activities which are entrusted to a municipality under Article 243W also is considered to be a Governmental authority and is therefore exempted from payment of tax. The Notification however does not mention/indicate that the body/organisation should necessarily be a municipality as strictly defined under Article 243W of the Constitution of India to claim exemption under the said Notification.

9.5 The regime of service tax is leviable on activity or transactions in the nature of services, except for those services rendered by a body/organisation to a Governmental authority. The said Governmental authority, *inter alia*, should carry out functions that municipalities do under Article 243W of the Constitution of

India. What is to be seen is whether the said Governmental body does functions which are entrusted to such municipalities under Article 243W. In the present case, if lift irrigation projects are tasks normally entrusted to municipalities under Article 243W, then the said project would be entitled to exemption under the service tax regime. A look at Article 243W indicates that a municipality can carry out the following functions:

> ***i. the preparation of plans for economic development and social justice;***
> ***ii. the performance of functions and the implementation of schemes as may be entrusted to them***
> ***iii. including those in relation to the matters listed in the Twelfth Schedule***

9.6 The test that has to be looked into is whether lift irrigation projects are within the purview of "plan for economic development and social justice or performance of functions entrusted to them," as enumerated in Article 243W. A perusal of the material on record would indicate that the said project is meant to foster economic and social development of the area to which they pertain, which indicate that they come under the purview of Article 243W of the Indian Constitution and are thereby exempted under the said Notification and therefore, the impugned orders passed by the respondents deserve to be set aside on this score also.

9.7 It is apt here to extract the relevant entries in the Twelfth Schedule, of the Constitution;

> ***"3. Planning for economic and social development.***
>
> ***5. Water supply for domestic, industrial and commercial purposes."***

9.8 In the case of ***The Commissioner BDA vs State of Karnataka - 2005 SCC Online Kar 652***, this Court held as under:

> *14. A look at the objects and reasons to the Seventy Third and Seventy Fourth Amendment, would reveal that though Panchayat Raj Institutions have been in existence for a long time, it was observed that these institutions were not able to acquire the status and dignity of viable and responsive peoples bodies due to a number of reasons. Similarly local bodies had become week and ineffective on account of variety of reasons. The reasons so identified are, absence of or failure to hold regular elections, prolonged supersessions, insufficient representations of weaker sections like Schedule Castes, Schedule Tribes and women, inadequate devolution of powers, and lack of financial resources. It is to remedy this malady Chapter IX and IXA was added to the Constitution.*
>
> *15. The development plan referred to in the said Chapters is not for carrying out building, engineering or other operations in or over or under land or the making of any material change in any building or land. It is a plan for economic development and social justice for the whole area comprised in the Panchayat*

or the Municipality. It is a plan for all round economic and social development of the people of the area, who have been denied a say in the institution of self government, by giving them the power and authority to enable them to perform effectively as vibrant democratic units of self government. The stress was on holding elections regularly, conferring power to levy taxes and duties, implementation of developmental schemes, as maybe required to enable them to function as institutions of self government. In the committee constituted, they want to ensure 2/3rd of the members are elected representatives. In other words those committees in the nature of things are elected bodies and not specialized agencies.

16. Therefore, the legislative intent was to give additional powers to Panchayats and Municipalities. That is achieved by enacting Part IX and IXA and Schedule XI and XII. Then power is conferred Page: 373 on the State Legislature under Article 243-G and 243-W to make laws in respect of matters listed in Schedule XI and XII. The provisions contained in Part IX and IXA may be in conflict with the existing laws in respect of Panchayats and Municipalities or the existing law may not be sufficient to achieve the object of the amendment. Therefore, in Article 243-N and 243-ZF "non obstante clause", namely "notwithstanding anything in this part" is employed to give overriding effect to the provisions contained in Part IX and XA, over any provision of any law relating to Panchayats and Municipalities in force in a State immediately before the commencement of the Seventy Third and Seventy Fourth Amendment respectively. An opportunity was given to the State Legislatures to bring the aforesaid existing law in conformity with the constitutional provisions, within a period of one year from the commencement of the aforesaid parts, failing which the inconsistent provisions in the law relating to Panchayats and Municipalities cease to exist. Therefore, the legislative intent is manifest and expressed in clear words, without leaving any scope for interpretation by the Courts.

9.9 A perusal of the material on record would indicate that the objectives and the scope of the work involved in the lift irrigation project is a task which is meant for social purpose and involves activities which for social development and therefore, the said project falls within the activities which are entrusted to municipalities and therefore, would very well be entitled to the exemption under the notification.

9.10 It is important to mention here that exemption Notifications, while being interpreted strictly, should also be interpreted in a manner that they become workable so that the purpose of the exemption is conserved, catena of judgments by the Apex Court and this Court have held unlike charging provision, construction of an exemption Notification 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, however, once exception or exemption is applicable, no rule or principle requires it to be construed strictly.

9.11 A liberal and strict construction of an exemption provision is to be invoked at different stages of its interpretation. 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 about applicability is lifted and the subject falls in the notification, then it calls for a wider and liberal construction.

9.12 In the case of ***Mangalore & Chemicals Fertilizers Ltd. v Deputy Commissioner - 1991 (55) ELT 437***, the Apex Court held as under;

> ***1.*** *By this petition, Messrs Mangalore Chemicals and Fertilisers Limited, a registered dealer under the Karnataka Sales Tax Act, 1957, ("Act") seeks special leave to appeal to this Court from the judgment and order dated August 14, 1990 of the High Court of Karnataka in W.P. No. 3436 of 1980.*
>
> ***2.*** *We have heard Shri Harish Salve, learned counsel for the petitioner and Shri R.N. Narasimhamurthy, learned Senior Counsel for the respondent-Revenue. Special leave granted.*
>
> ***3.*** *On June 30, 1969, State Government issued a notification in exercise of powers referable to Section 8-A of the Act providing certain incentives to entrepreneurs starting new industries in the State, pursuant to State's*

policy for "rapid industrialisation". The notification contains a package of reliefs and incentives including one concerning relief from payment of sales tax with which this appeal is concerned.

4. *The clause in the said Notification of 1969 relevant for the present purpose reads: (SCC p. 571, para 1)*

(1) Sales Tax.— A cash refund will be allowed on all sales tax paid by a new industry on raw material purchased by it for the first 5 (five) years from the date of the industry goes into production, eligibility to the concessions being determined on the basis of a certificate to be issued by the Department of Industries and Commerce."

5. *This was followed by a further Notification dated August 11, 1975 envisaging certain modified procedures for effectuating the reliefs contemplated by the earlier exemption Notification of June 30, 1969. The relevant portions of the Preamble and the body of the notification say:*

Preamble: "… The Commissioner of Commercial Taxes has suggested that New Industries covered by the above scheme might be permitted to adjust the refunds to which they would be eligible against the sales tax payable by them.

ORDER

In partial modification of the government order cited (2) above, government are pleased to prescribe the following procedure for claiming refund of sales tax by new industries.

2. The new industries intending to take advantage of the system of adjustment shall apply to the Deputy Commissioner of Commercial Taxes (Administration) of the Division concerned through the assessing authority. The application must contain the following particulars:

(i) Name and address of the new industry;

(ii) Date of commencement of the industry;

(iii) Reference number of the certificate issued by the Director of Industries and Commerce, Bangalore;

(iv) Year for which the permission to withhold tax amount is related;

(v) The description of finished products in which the materials are used.

3. The Deputy Commissioner of Commercial Taxes (Administration) of the concerned Division, after scrutinising the application filed by the new industry and after satisfying himself that the industry is covered by the scheme sanctioned in G.O. No. OI 58 FMI 69 dated June 30, 1969 will permit the industry to withhold the amount of tax payable on raw materials purchased and used in the manufacture of goods.

4. (Omitted as unnecessary)

5. The new industry may apply for permission at any time during the year subject to its renewal every subsequent year. Until permission of renewal is granted by the Deputy Commissioner of Commercial Taxes, the new industry should not be allowed to adjust the refunds. At the end of the assessment year, particulars should be *formulated in the annual return of the total amount adjusted during the entire year. Along with the return, details prescribed in Government Order No. FD 428 CSL 70 dated February 1, 1971 should be furnished.*

6. (Omitted as unnecessary).

7. (Omitted as unnecessary).

8. (Omitted as unnecessary)."

***6.** Appellant, it is not in dispute, had the necessary eligibility under the original exemption Notification of 1969. The controversy is confined only to the question of the manner of effectuating the refund of sales tax that appellant, admittedly, was entitled to.*

***7.** Some particulars as to the application made by the appellant for grant of permission might, perhaps, be necessary here. For the assessment year 1976-77, the appellant made such an application to the Deputy Commissioner of Sales Tax (Administration) on November 10, 1976 for adjustment of the refunds against sales tax due. This permission was granted with retrospective effect from May 1, 1976, validating the adjustments which the appellant had made during the interregnum.*

***8.** However, for the three subsequent years viz., 1977-78, 1978-79 and 1979-80, similar applications which were made on March 29, 1977, March 20, 1978 and March 8, 1979, respectively, remained undisposed of. In the meanwhile, in anticipation of the permission appellant adjusted the refund against tax payable for these years* *and filed its monthly returns setting out adjustments so effected.*

9. *There is, as set out earlier, no dispute that the appellant was entitled to the benefit of the Notification dated June 30, 1969. There is also no dispute that the refunds were eligible to be adjusted against sales tax payable for respective years. The only controversy is whether the appellant, not having actually secured the "prior permission" would be entitled to adjustment having regard to the words of the Notification of August 11, 1975, that "until permission of renewal is granted by the Deputy Commissioner of Commercial Taxes, the new industry should not be allowed to adjust the refunds". The contention virtually means this: "No doubt you were eligible and entitled to make the adjustments. There was also no impediment in law to grant you such permission. But see language of clause 5. Since we did not give you the permission you cannot be permitted to adjust." Is this the effect of the law?*

10. *The sales tax already paid by the appellant on the raw materials procured by it is the subject matter of the refunds. The sales tax against which the refund is sought to be adjusted is the sales tax payable by appellant on the sales of goods manufactured by it. If the contention of the Revenue is correct, the position is that while the appellant is entitled to the refund it cannot, however, adjust the same against current dues of the particular year but should pay the tax working out its refunds separately. The* *situation may well have been such but the snag comes here. If the adjustments made by the appellant in its monthly statements are disallowed, the sales tax payable would be deemed to be in default and would attract a penalty ranging from 1 1/2 per cent to 2 1/2 per cent per month from the date it fell due. That penalty, in the facts of this case, would be very much more than the amounts of refund.*

***11.** What emerges from the undisputed facts is that appellant was entitled to the benefit of these adjustments in the respective years. It had done and carried out all that was necessary for it to do and carry out in that behalf. The grant of permission remained pending on account of certain outstanding inter-departmental issues as to which of the departments — the Department of Sales Tax or the Department of Industries — should absorb the financial impact of these concessions. Correspondence indicates that on account of these questions, internal to administration, the request for permission to adjust was not processed. On March 27, 1979, the Deputy Commissioner of Commercial Taxes wrote to the appellant to say that the orders on appellant's application for permission would be passed only on receipt of the clarification from the government on these matters.*

***12.** While the matter stood thus, on January 9, 1980, the Commercial Tax Officer of the concerned jurisdiction issued three demand notices demanding payment of the sales tax. He said prior permission to adjust "had not been* *considered by the Deputy Commissioner of Mangalore Division, Mangalore, and, therefore, the Commercial Tax Officer was obliged to proceed to recover the taxes". Steps for recovery of the penalties were also initiated. Thereafter, in February 1980, the appellant moved the High Court for issue of writ of mandamus to quash the demand notices and the proceedings initiated for recovery of penalty under Section 13 of the Act.*

13. *The contentions in the High Court was somewhat different from those urged before us. Before the High Court the Revenue asserted that the very conditions of eligibility for entitlement to these concessions stood modified under a subsequent Notification of January 12, 1977 and that appellant did not satisfy the altered conditions of eligibility. The question, therefore, was whether entrepreneurs who had commenced their ventures prior to January 12, 1977, could be held to be governed by the terms of the later Notification of January 12, 1977. This question, in principle, had been settled by a decision of this Court in Assistant Commissioner of Commercial Taxes (Asst.), Dharwar v. Dharmendra Trading Co. [(1988) 3 SCC 570 : 1988 SCC (Tax) 432] The question that arose there pertained to another condition stipulated in the same Notification of January 12, 1977. This Court held that industries established prior to that date were not governed by those altered conditions. Though in the present case the altered condition set up against appellant was a different one, on the principle decided in Dharmendra Trading Company case [(1988) 3*

SCC 570 : 1988 SCC (Tax) 432] the altered condition would not be attracted. But the High Court took a different view of the matter. It held, in our opinion quite erroneously, that the principle of the earlier decision of this Court was not applicable because it was rendered in the context of another condition in the 1977 notification. What fell for decision was not whether a particular condition was or was not applicable; but the very basic question was whether a subsequent notification could undo the eligibility for the concession stipulated and conferred under the 1969 notification.

***14.** Shri Narasimhamurthy with his usual fairness said that he found it difficult to support the approach of the High Court to the question. The main point on which the case turned is thus settled in favour of the appellant.*

***15.** But a subsidiary question arose whether the grant of permission for adjustment could at all be made after the period to which such adjustment related had itself expired. On this, the High Court said:*

"… But under Ex. B, the 1975 notification, a clear procedure was provided in order to claim the benefit of refund on the sales tax paid on raw materials purchased by the industrialists. The industrialists claiming the benefit had to secure the prior permission of the assessing authority to withhold the tax subject to the government's permission. In other words, prior permission was a condition precedent. In the instant case, Mr Kumar was not able to satisfy us, permission had indeed been granted. On the other hand, he fairly conceded that though an application was made, no permission was actually granted to withhold the payment. Therefore, in view of the 1975 notification prescribing the procedure for claiming the benefit under 1969 notification as at Ex. A,

there has been no compliance and as such, the petitioner will not be entitled to withhold the tax. With the result, the demand at Annexure R, S and T would be justifiable and legal."

(emphasis supplied)

This is the only ground on which the appellant's right to adjustment is contested by the Revenue.

16. *Shri Harish Salve urged that indisputably the permission for the three years had been sought well before the commencement of the respective years but had been withheld for reasons which were demonstrably extraneous. Learned counsel emphasised that the basic eligibility was conditioned by the Notification of June 30, 1969, which required a certificate from the Department of Industries and Commerce. Both the eligibility and the fact that there was such certification from the Department of Industries were not disputed. Indeed, the requirement of the annual permission for adjustment envisaged by the Notification of August 11, 1975 was, says counsel, merely procedural as clause 3 of the notification stipulated that if the conditions were satisfied — there was no dispute they were — the Deputy Commissioner "will permit" the adjustment. Counsel says that if, in these circumstances, the Deputy Commissioner withheld the permission law treats that as done which ought to have been done.*

17. *Shri Narasimhamurthy, however, sought to contend that the requirement of the prior permission was held — and rightly — by the High Court to be a 'condition precedent' and that non-satisfaction of that condition precedent, whatever be the reason for the non-*

satisfaction, automatically entailed the logical consequences. Learned counsel further submitted that it was not as if the right to the refund was denied or defeated by the inaction of the Deputy Commissioner but only one mode of the refund — by adjustment — became unavailable. Learned counsel urged that the benefit envisaged by the Notification of August 11, 1975 was in the nature of a concession and that the appellant in order to avail itself of its benefit had to show strict compliance with conditions subject to which it was available. Learned counsel placed reliance on Kedarnath Jute Manufacturing Co. v. CTO [(1965) 3 SCR 626, 628-30 : AIR 1966 SC 12 : (1965) 16 STC 607] and Collector of Central Excise v. Parle Exports (P) Ltd. [(1989) 1 SCC 345 : 1989 SCC (Tax) 84] to support his contention that where exemptions were concerned, the conditions thereof ought to be strictly construed and strict compliance with them exacted before a person can lay claim to the benefit of the exemptions.

***18.** Learned counsel submitted that the point was not whether there was any justification for delaying the permission; but, more importantly, whether appellant at the relevant point of time had such prior permission or not and that if, in the meanwhile, the period itself expired, no relief was possible as, quite obviously, the requirements of 'prior permission' became impossible of compliance.*

***19.** Shri Narasimhamurthy relied on the following observations of this Court in Kedarnath Jute*

Manufacturing Co. case [(1965) 3 SCR 626, 628-30 : AIR 1966 SC 12 : (1965) 16 STC 607] to support this contention: (SCR pp. 628-30)

"… But the said exemption is made subject to a proviso. Under that proviso, in the case of such sales a declaration form duly filled up and signed by the registered dealer to whom the goods are sold and containing the prescribed particulars on a prescribed form obtainable from the prescribed authority has to be furnished in the prescribed manner by the dealer who sells the goods ….

… The provision prescribing the exemption shall, therefore, be strictly construed …. To accept the argument of the learned counsel for the appellant is to ignore the proviso altogether, for if his contention be correct it will lead to the position that if the declaration form is furnished, well and good; but, if not furnished, other evidence can be produced. That is to rewrite the clause and to omit the proviso. That will defeat the express intention of the legislature."

20. *We have given our careful consideration to these submissions. We are afraid the stand of the Revenue suffers from certain basic fallacies, besides being wholly technical. In Kedarnath case [(1965) 3 SCR 626, 628-30 : AIR 1966 SC 12 : (1965) 16 STC 607] , the question for consideration was whether the requirement of the declaration under the proviso to Section 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, could be established by evidence aliunde. The Court said that the intention of the legislature was to grant exemption only upon the satisfaction of the substantive condition of the provision and the condition in the proviso was held to be of substance embodying considerations of policy. Shri*

Narasimhamurthy would say the position in the present case was no different. He says that the Notification of August 11, 1975 was statutory in character and the condition as to 'prior permission' for adjustment stipulated therein must also be held to be statutory. Such a condition must, says counsel, be equated with the requirement of production of the declaration form in Kedarnath case [(1965) 3 SCR 626, 628-30 : AIR 1966 SC 12 : (1965) 16 STC 607] and thus understood the same consequences should ensue for the non-compliance. Shri Narasimhamurthy says that there was no way out of this situation and no adjustment was permissible, whatever be the other remedies of the appellant. There is a fallacy in the emphasis of this argument. The consequence which Shri Narasimhamurthy suggests should flow from the non-compliance would, indeed, be the result if the condition was a substantive one and one fundamental to the policy underlying the exemption. Its stringency and mandatory nature must be justified by the purpose intended to be served. The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve.

***21.** In Kedarnath case [(1965) 3 SCR 626, 628-30 : AIR 1966 SC 12 : (1965) 16 STC 607] itself this Court* *pointed out that the stringency of the provisions and the mandatory character imparted to them were matters of important policy. The Court observed: (SCR p. 630)*

> *"… The object of Section 5(2)(a)(ii) of the Act and the rules made thereunder is self-evident. While they are obviously intended to give exemption to a dealer in respect of sales to registered dealers of specified classes of goods, it seeks also to prevent fraud and collusion in an attempt to evade tax. In the nature of things, in view of innumerable transactions that may be entered into between dealers, it will well nigh be impossible for the taxing authorities to ascertain in each case whether a dealer has sold the specified goods to another for the purposes mentioned in the section. Therefore, presumably to achieve the twofold object, namely, prevention of fraud and facilitating administrative efficiency, the exemption given is made subject to a condition that the person claiming the exemption shall furnish a declaration form in the manner prescribed under the section. The liberal construction suggested will facilitate the commission of fraud and introduce administrative inconveniences, both of which the provisions of the said clause seek to avoid."*
>
> *(emphasis supplied)*

22. *Such is not the scope or intendment of the provisions concerned here. The main exemption is under the 1969 notification. The subsequent notification which contains condition of prior permission clearly envisages a procedure to give effect to the exemption. A distinction between the provisions of 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. What we have here is a pure technicality. Clause 3 of the notification leaves no discretion to the Deputy Commissioner to refuse the* *permission if the conditions are satisfied. The words are that he "will grant". There is no dispute that appellant had satisfied these conditions. Yet the permission was withheld — not for any valid and substantial reason but owing to certain extraneous things concerning some inter-departmental issues. Appellant had nothing to do with those issues. Appellant is now told, "We are sorry. We should have given you the permission. But now that the period is over, nothing can be done". The answer to this is in the words of Lord Denning: [See Wells v. Minister of Housing and Local Government, (1967) 1 WLR 1000, 1007 : (1967) 2 All ER 1041] "Now I know that a public authority cannot be estopped from doing its public duty, but I do think it can be estopped from relying on a technicality and this is a technicality".*

23. *Francis Bennion in his Statutory Interpretation, (1984 edn.) says at page 683:*

"Unnecessary technicality: Modern courts seek to cut down technicalities attendant upon a statutory procedure where these cannot be shown to be necessary to the fulfillment of the purposes of the legislation."

24. *Shri Narasimhamurthy again relied on certain observations in CCE v. Parle Exports (P) Ltd. [(1989) 1 SCC 345 : 1989 SCC (Tax) 84] , in support of strict construction of a provision concerning exemptions. 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 tax payers 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. Indeed, in the very case of Parle Exports (P) Ltd. [(1989) 1 SCC 345 : 1989 SCC (Tax) 84] relied upon by Sri Narasimhamurthy, it was observed: (SCC p. 357, para 17)*

"While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided."

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. [(1990) 4 SCC 256 : 1990 SCC (Tax) 422 : JT (1991) 1 SC 151] :

"… 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)

***25.** It appears to us that the view taken of the matter by the High Court does not acknowledge the essential distinction between what was a matter of form and what was one of substance. There was no other disentitling circumstance which would justify the refusal of the permission. Appellant did not have prior permission* *because it was withheld by the Revenue without any justification. The High Court took the view that after the period to which the adjustment related had expired no permission could at all be granted. A permission of this nature was a technical requirement and could be issued making it operative from the time it was applied for.*

26. *We, therefore, allow the appeal set aside the judgment of the High Court under appeal and direct the Deputy Commissioner of Sales Tax (Admn.) to grant the permission for the said three years operative from the dates of the application. The permission shall entitle the appellant to the adjustment of the refunds against the taxes due for the respective years. We issue these directions in view of the admitted position that, apart from the technical objection that periods to which the applications related had since expired, there was no other impediment for the grant of permission. It also follows that the demand notices which proceed on the premise that adjustment of refunds against taxes due was unavailable cannot also stand. They are quashed.*

27. *There will be no order as to costs.*

9.13 So also in ***Commissioner of Customs vs. Dilip Kumar & Company - 2018 (361) ELT 577***, the Apex Court held as under;

This Constitution Bench is set up to examine the correctness of the ratio in Sun Export Corpn. v. Collector of

Customs [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] (hereinafter referred to as "Sun Export case", for brevity), namely, the question is — What is the interpretative rule to be applied while interpreting a tax exemption provision/notification when there is an ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied?

2. *In Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] , a three-Judge Bench ruled that an ambiguity in a tax exemption provision or notification must be interpreted so as to favour the assessee claiming the benefit of such exemption. Such a rule was doubted [Commr. of Customs v. Dilip Kumar, (2018) 9 SCC 40] when this appeal was placed before a Bench of two Judges. The matter then went before a three-Judge Bench consisting one of us (Ranjan Gogoi, J.). The three-Judge Bench having noticed [Commr. of Customs v. Dilip Kumar, (2018) 9 SCC 38] the unsatisfactory state of law as it stands today, opined that the dicta in Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] , requires reconsideration and that is how the matter has been placed before this Constitution Bench.*

3. *Few facts necessary, to appreciate the issue involved are as follows — the respondents imported a consignment of Vitamin E50 powder (feed grade) under Bill of Entry No. 8207, dated 19-8-1999. They claimed the benefit of concessional rate of duty at 5%, instead of standard 30%, as per Customs Notification No. 20 of 1999 and classified the product under Chapter 2309.90 which admittedly pertains to prawn feed.*

They relied on the ratio in Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] and claimed the benefit of exemption. The benefit of Customs Notification No. 20 of 1999 was, however, denied to the respondents on the plea of the department that the goods under import contained chemical ingredients for animal feed and not animal feed/prawn feed, as such, the concessional rate of duty under the extant notification was not available. The Department classified the consignment under Chapter 29 which attracts standard rate of customs duty. The adjudicating authority, namely, the Assistant Commissioner of Customs, distinguished Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] , while accepting the plea of the Department to deny the concessional rate. The Commissioner of Customs (Appeals) reversed the order of the Assistant Commissioner and came to the conclusion that Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] was indeed applicable. The Department then approached the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), which affirmed the order of the Commissioner of Customs (Appeals). Aggrieved thereby, the present appeal is filed.

***4.** When the appeal was placed, as noticed earlier, before a Bench of two Judges, the ruling in Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] was doubted, observing as follows: (Dilip Kumar case [Commr. of Customs v. Dilip Kumar, (2018) 9 SCC 40] , SCC p. 47, paras 11-12)*

"11. We have serious doubts as to whether the Bombay High Court judgment [Glindia Ltd. v. Union of India, 1988 SCC OnLine Bom 614 : (1988) 36 ELT 479] affirmed in Sun Export Corpn. case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] is correct. First and foremost, it is clear that the subsequent exemption notification largely expanded the first notification which referred only to animal feeds and nothing else. That being the case, it would be difficult to say that a large number of other categories which have subsequently been added would be clarificatory and therefore, retrospective.

12. Further, we also feel that in view of the catena of judgments of this Court which have held that an exemption notification has to be strictly construed (that is, if the person claiming exemption does not fall strictly within the letter of the notification, he cannot claim exemption), have also been ignored by this Court in Sun Export Corpn. case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] in para 13 thereof. Apart from this, the view of this Court in para 13 that it is well settled that if two views are possible, one favourable to the assessee in matters of taxation has to be preferred is unexceptionable. However, this Court was not concerned in that case with the charging section of a taxation statute. It was concerned with the interpretation of an exemption notification which, as has been stated above, would require the exactly opposite test to be fulfilled."

***5.** Further this Court found that the subsequent judgment in Collector of Customs & Central Excise v. Surendra Cotton Oil Mills & Fertilizers Co. [Collector of Customs & Central Excise v. Surendra Cotton Oil Mills & Fertilizers Co., (2001) 1 SCC 578] (hereinafter referred to as "Surendra Cotton Oil Mills case", for brevity), distinguished Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] , which mandated this Court to take a relook at the proposition laid down by the earlier cases in the following manner: (Dilip Kumar case [Commr. of Customs v. Dilip Kumar, (2018) 9 SCC 40] , SCC pp. 47-48, paras 13-14 & 17)*

"13. We also find that in the subsequent judgment of this Court, Surendra Cotton Oil Mills case [Collector of Customs & Central Excise v. Surendra Cotton Oil Mills & Fertilizers Co., (2001) 1 SCC 578] , this Court has distinguished Sun Export Corpn. case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] and held that it dealt with "animal feed" which was large enough to include "animal feed supplements" whereas the facts of Surendra Cotton Oil Mills case [Collector of Customs & Central Excise v. Surendra Cotton Oil Mills & Fertilizers Co., (2001) 1 SCC 578] showed that ingredients of animal feed could not be held to be included in "animal feed".

14. In our opinion, this Court did not adequately deal with why Sun Export Corpn. case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] , which is a binding decision of a three-Judge Bench, should not be followed, apart from a specious distinction between "ingredients" and "supplements" which is logically speaking a distinction without a difference.

***

*17. This being the **unsatisfactory state of law** as it stands today, we feel that this matter should be placed before Hon'ble the Chief Justice of India to constitute an appropriate Bench to resolve the doubts pointed out by us in the body of this order."*

(emphasis supplied)

6. *We feel that the reference to Surendra Cotton Oil Mills case [Collector of Customs & Central Excise v. Surendra Cotton Oil Mills & Fertilizers Co., (2001) 1 SCC 578] , may not be necessary as the distinction was drawn on a factual footing, which this Court may not concern itself with, as we are only concerned with the principle of law. With this, the Division Bench was of the tentative view that the opinion expressed in Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] would require reconsideration, as the proposition laid down therein was unsatisfactory, and therefore placed before the Chief Justice of India for constituting an appropriate Bench.*

__7.__ When the matter was placed before a three-Judge Bench presided over by one of us (Ranjan Gogoi, J.), the Bench reiterated [Commr. of Customs v. Dilip Kumar, (2018) 9 SCC 38] the view for reconsideration of Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] and again placed the matter, before Hon'ble the Chief Justice of India for constitution of an appropriate Bench, considering the fact that Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] was decided by a Bench comprising of three learned Judges of this Court. Hence, this matter came to be placed before this Bench of five Judges with the following observations: (Dilip Kumar case [Commr. of Customs v. Dilip Kumar, (2018) 9 SCC 38] , SCC p. 39, paras 4-6)

"4. In para 13 of the order of this Court in Sun case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] , views have been expressed with regard to the interpretation of an exemption notification to support the conclusion reached. The same may require a reconsideration.

5. That apart, in the referral order it has been noticed that Sun case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] has been distinguished in Collector of Customs & Central Excise v. Surendra Cotton Oil Mills & Fertilizers Co. [Collector of Customs & Central Excise v. Surendra Cotton Oil Mills & Fertilizers Co., (2001) 1 SCC 578] . The basis on which the said distinction has been drawn needs to be further pursued.

6. Having considered the matter at some length, we are of the tentative view, that the opinion expressed inSun case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] may require a reconsideration. Being a coordinate Bench, we believe we ought not to proceed any further in the matter. Hence, we direct the Registry to lay the papers before the Hon'ble the Chief Justice of India for appropriate orders."

(emphasis supplied)

8. *The learned Additional Solicitor General, Ms Pinky Anand, submits that a tax exemption statute or notification needs to be strictly interpreted. According to her, strict interpretation is literal rule of interpretation, which means that the Court has to apply the provision reading the language therein and no interpretation is required if the language is clear. In the event of any ambiguity, according to her, the benefit has to be given to the Revenue and that such ambiguity in tax exemption provision must not be interpreted to benefit the assessee who fails to demonstrate without any doubt that such assessee is covered by the tax exemption notification. She elaborated her arguments by relying on various judgments and contends that the ratio in Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] , which was doubted in Surendra Cotton Oil Mills case [Collector of Customs & Central Excise v. Surendra Cotton Oil Mills & Fertilizers Co., (2001) 1 SCC 578] , is not correct law. On merits of the case, she submitted that the artificial distinction created by Surendra Cotton Oil Mills case [Collector of Customs & Central Excise v. Surendra Cotton Oil Mills & Fertilizers Co., (2001) 1 SCC 578] , in distinguishing the ingredients from supplements is not sound and may not be accepted by the Court.*

9. *Per contra, among others, Mr Somnath Shukla, learned counsel appearing on behalf of the respondents would submit that the ratio and observations in Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] have to be considered holistically without giving any narrow meaning to the conclusion arrived therein. The rule of strict interpretation* *cannot be applied in abstract. It has to be applied keeping in view the interpretation to be used in relation to Customs Tariff Entry. According to the learned counsel, when the Customs Tariff Entry is interpreted broadly, the same should be adopted in interpreting exemption notification. Indeed, the learned Senior Counsel would contend that the rule of strict interpretation should be limited to the eligibility conditions of an exemption notification and while conferring the benefits to such exemption. He distinguished all the judgments relied on by the appellants and submits that "prawn feed supplements" would also be included under the head "prawn feed", and the judgment of the Tribunal impugned in these appeals does not warrant any interference.*

10. *Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] was a case against the judgment [Glindia Ltd. v. Union of India, 1988 SCC OnLine Bom 614 : (1988) 36 ELT 479] of the High Court of Judicature, Bombay. It was concerned with the interpretation of tax exemption notification, being Notification No. 234/1982-CE, dated 1-11-1982, issued by the Central Government under sub-section (1) of Section 25 of the Customs Act. The High Court considered the issue whether Vitamin AD-3 mix (feed grade)/animal feed supplement could be included under the head "animal feed, including compound livestock feed". The Bombay High Court decided, in the affirmative, in favour of the assessee. The case then landed in this Court, which was persuaded to expand the meaning of "animal feed" in the light of subsequent notification issued in 1984, which largely expanded the scope of exemption to the effect that "animal feed, including compound* *livestock feed, animal feed supplements and animal feed concentrates". This Court indeed countenanced the plea, namely, whenever there is ambiguity as to whether the subject-matter was included or not, then the benefit of the same should be conferred on the assessee.*

***11.** The relevant portion in Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] , reads as follows: (SCC pp. 569-70, para 13)*

"13. We are in agreement with the above view expressed by the Bombay High Court. No doubt it was contended on behalf of the Revenue that the contrary view taken by the Tribunal has been challenged in this Court which was rejected in limine at the admission stage. We do not think that dismissal at the admission stage can be relied upon as a binding precedent. Even assuming that there are two views possible, it is well settled that one favourable to the assessee in matters of taxation has to be preferred."

(emphasis supplied)

***12.** There cannot be any doubt that the ratio in Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] that, if two views are possible in interpreting the exemption notification, the one favourable to the assessee in the matter of taxation has to be preferred. This principle created confusion and resulted in unsatisfactory state of law. In spite of a catena of judgments of this Court, which took the contra view, holding that an exemption notification must be strictly construed, and if a person claiming exemption does not fall strictly within the description of the notification otherwise then he cannot claim exemption.*

***13.** About three years after Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] , in the* *year 2000, this Court in Surendra Cotton Oil Mills case [Collector of Customs & Central Excise v. Surendra Cotton Oil Mills & Fertilizers Co., (2001) 1 SCC 578] , expressed reservations as to the soundness of the dicta in Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] , observing that Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] ignored the catena of judgments of this Court expressing contra view. This Court prima facie came to the conclusion with regard to the principle that when two views are possible, one favourable to the assessee in matters of taxation has to be preferred, is unexceptionable when interpreting the charging section of a taxation statute, but the opposite principle would be applicable in interpretation of exemption notification. The three-Judge Bench in the referral order further observed that the views expressed in Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] with regard to interpretation of exemption notification to support the conclusion, required reconsideration.*

14. *We may, here itself notice that the distinction in interpreting a taxing provision (charging provision) and in the matter of interpretation of exemption notification is too obvious to require any elaboration. Nonetheless, in a nutshell, we may mention that, as observed in Surendra Cotton Oil Mills case [Collector of Customs & Central Excise v. Surendra Cotton Oil Mills & Fertilizers Co., (2001) 1 SCC 578] , in the matter of interpretation of charging section of a taxation statute, strict rule of interpretation is mandatory and if there are two views possible in the matter of interpretation of a* *charging section, the one favourable to the assessee need to be applied. There is, however, confusion in the matter of interpretation of exemption notification published under taxation statutes and in this area also, the decisions are galore [See: Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564; CCE v. Abhi Chemicals and Pharmaceuticals (P) Ltd., (2005) 3 SCC 541; CCE v. Parle Exports (P) Ltd., (1989) 1 SCC 345 : 1989 SCC (Tax) 84; Commr. of Customs v. Konkan Synthetic Fibres, (2012) 6 SCC 339; Collector of Customs v. Swastic Woollens (P) Ltd., 1988 Supp SCC 796 : 1989 SCC (Tax) 67; Commr. of Customs v. Reliance Petroleum Ltd., (2008) 7 SCC 220.] .*

15. *We may passingly, albeit, briefly reiterate the general principles of interpretation, which were also adverted to by both the counsel. In his treatise, Principles of Statutory Interpretation, Justice G.P. Singh lucidly pointed out the importance of construction of statutes in a modern State as under:*

"Legislation in 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."

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."

11. *The relevant portion in Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] , reads as follows: (SCC pp. 569-70, para 13)*

"13. We are in agreement with the above view expressed by the Bombay High Court. No doubt it was contended on behalf of the Revenue that the contrary view taken by the Tribunal has been challenged in this Court which was rejected in limine at the admission stage. We do not think that dismissal at the admission stage can be relied upon as a binding precedent. Even assuming that there are two views

possible, it is well settled that one favourable to the assessee in matters of taxation has to be preferred."

(emphasis supplied)

12. *There cannot be any doubt that the ratio in Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] that, if two views are possible in interpreting the exemption notification, the one favourable to the assessee in the matter of taxation has to be preferred. This principle created confusion and resulted in unsatisfactory state of law. In spite of a catena of judgments of this Court, which took the contra view, holding that an exemption notification must be strictly construed, and if a person claiming exemption does not fall strictly within the description of the notification otherwise then he cannot claim exemption.*

13. *About three years after Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] , in the year 2000, this Court in Surendra Cotton Oil Mills case [Collector of Customs & Central Excise v. Surendra Cotton Oil Mills & Fertilizers Co., (2001) 1 SCC 578] , expressed reservations as to the soundness of the dicta in Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] , observing that Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] ignored the catena of judgments of this Court expressing contra view. This Court prima facie came to the conclusion with regard to the principle that when two views are possible, one favourable to the assessee in matters of taxation has to be preferred, is unexceptionable when interpreting the charging section of a taxation statute, but the opposite* *principle would be applicable in interpretation of exemption notification. The three-Judge Bench in the referral order further observed that the views expressed in Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] with regard to interpretation of exemption notification to support the conclusion, required reconsideration.*

14. *We may, here itself notice that the distinction in interpreting a taxing provision (charging provision) and in the matter of interpretation of exemption notification is too obvious to require any elaboration. Nonetheless, in a nutshell, we may mention that, as observed in Surendra Cotton Oil Mills case [Collector of Customs & Central Excise v. Surendra Cotton Oil Mills & Fertilizers Co., (2001) 1 SCC 578] , in the matter of interpretation of charging section of a taxation statute, strict rule of interpretation is mandatory and if there are two views possible in the matter of interpretation of a charging section, the one favourable to the assessee need to be applied. There is, however, confusion in the matter of interpretation of exemption notification published under taxation statutes and in this area also, the decisions are galore [See: Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564; CCE v. Abhi Chemicals and Pharmaceuticals (P) Ltd., (2005) 3 SCC 541; CCE v. Parle Exports (P) Ltd., (1989) 1 SCC 345 : 1989 SCC (Tax) 84; Commr. of Customs v. Konkan Synthetic Fibres, (2012) 6 SCC 339; Collector of Customs v. Swastic Woollens (P) Ltd., 1988 Supp SCC 796 : 1989 SCC (Tax) 67; Commr. of Customs v. Reliance Petroleum Ltd., (2008) 7 SCC 220.] .*

15. *We may passingly, albeit, briefly reiterate the general principles of interpretation, which were also adverted to by both the counsel. In his treatise, Principles of Statutory Interpretation, Justice G.P. Singh lucidly pointed out the importance of construction of statutes in a modern State as under:*

> *"Legislation in 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."*

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."

31. *It was further observed:*

"In all tax matters one has to interpret the taxation statute strictly. Simply because one class of legal entities is given a benefit which is specifically stated in the Act, does not mean that the benefit can be extended to legal entities not referred to in the Act as there is no equity in matters of taxation…."

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)]]'."

33. *Further elaborating on this aspect, the learned author stated as follows:*

"Therefore, if the words used are ambiguous and reasonable open to two interpretations benefit of interpretation is given to the subject [Central India Spg. and Wvg. & Mfg. Co. Ltd. v. Municipal Committee, Wardha [Central India Spg. and Wvg. & Mfg. Co. Ltd. v. Municipal Committee, Wardha, AIR 1958 SC 341]]. If the legislature fails to express itself clearly and the taxpayer escapes by not being brought within the letter of the law, no question of unjustness as such arises [CIT v. Jalgaon Electric Supply Co. Ltd. [CIT v. Jalgaon Electric Supply Co. Ltd., AIR 1960 SC 1182]]. But equitable considerations are not relevant in construing a taxing statute, [CIT v. Central India Industries Ltd. [CIT v. Central India Industries Ltd., (1972) 3 SCC 311 : AIR 1972 SC 397]], and similarly logic or reason cannot be of much avail in interpreting a taxing statute [Azam Jah Bahadur v. Expenditure Tax Officer [Azam Jah Bahadur v. Expenditure Tax Officer, (1971) 3 SCC 621 : AIR 1972 SC 2319]]. It is well settled that in the field of taxation, hardship or equity has no role to play in determining eligibility to tax and it is for the legislature to determine the same [Kapil Mohan v. CIT [Kapil Mohan v. CIT, (1999) 1 SCC 430 : AIR 1999 SC 573]]. Similarly, hardship or equity is not relevant in interpreting provisions imposing stamp duty, which is a tax, and the court should not concern itself with the intention of the legislature when the language expressing such intention is plain and unambiguous [State of M.P. v. Rakesh Kohli [State of M.P. v. Rakesh Kohli, (2012) 6 SCC 312 : (2012) 3 SCC (Civ) 481]]. But just as reliance upon equity does not avail an assessee, so it does not avail the Revenue."

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]].*

37. *The first case with which we need to concern ourselves is in Union of India v. CTO [Union of India v. CTO, AIR 1956 SC 202] . It may be noted that this case was dealt with by five learned Judges of this Court resulting in two different opinions; one by the then Chief Justice of India, S.R. Das for the majority, and Justice B.P. Sinha (as his Lordship then was) rendering minority view. The question before this Court was whether the sale of goods made by one private mill to the Government of India, Ministry of Industries and Supplies were to be deducted as taxable turnover of the mill for the exemption given under Section 5 of the Bengal Finance (Sales Tax) Act, 1941 (Bengal Act VI of 1941). The exemption under Section 5(2)(a)(iii) of the Bengal Finance (Sales Tax) Act, 1941 provided for exemption*

"to sales to the Indian Stores Department, the Supply Department of the Government of India, and any railway or water transport administration".(AIR p. 203, para 3)

The Court was to interpret the aforesaid provision in order to ascertain whether the sale to the Government of India, Ministry of Industries and Supplies would be covered under the section.

38. *The majority was of the view that the Government of India, Ministry of Industries and Supplies was not similar to* *those mentioned in the exemption notification. The majority extensively relied on the history and origin of the Ministry of Industries and Supplies and concluded that the functions of the aforesaid Ministry were different from the erstwhile departments mentioned under the exemption provision. The majority reasoned that the exemption being the creation of the statute itself, it should have to be construed strictly and the interpretation cannot be extended to sales to other departments. We might find some clue as to the content of a strict construction also. It was canvassed before the Court that the object of Section 5(2)(a)(iii) of the relevant statute, was to give exemption not to the particular departments but to the sale of such goods to those departments and, therefore, sale of those goods made to any Departments of the Government of India, which came to be charged with the duty of purchasing those goods should also come within the purview of the exemption.*

39. *The Court while repelling the aforesaid interpretation, reasoned as under: (CTO case [Union of India v. CTO, AIR 1956 SC 202] , AIR p. 207, para 18)*

"18. … We are unable to accept this line of reasoning. This interpretation will unduly narrow the scope and ambit of the exemption by limiting it to sales of only those goods as, at the date of the Act, used to be sold to those two departments and sales of other goods even to those two departments, however necessary for the prosecution of the war, would not get benefit of the exemption. Such could not possibly be the intention of the legislature as expressed by the language used by it in framing the section."

40. *The aforesaid placitum is suggestive of the fact that the Courts utilised the rule of strict interpretation in order to* *decipher the intention of the legislature and thereafter provide appropriate interpretation for the exemption provided under the provisions of the Act which was neither too narrow nor too broad. It may be noted that the majority did not take a narrow view as to what strict interpretation would literally mean; rather they combined legislative intent to ascertain the meaning of the statute in accordance with the objective intent of the legislature.*

41. *On the contrary, the minority opinion of B.P. Sinha, J. (as his Lordship then was) provided a purposive interpretation for Section 5(2)(a)(iii) of the Act, which is clear from the following passage: (CTO case [Union of India v. CTO, AIR 1956 SC 202] , AIR p. 210, para 24)*

"24. … The judgment under appeal is based chiefly on the consideration that the exemption clause in question does not in terms refer to the newly created department which now goes by the name of the Ministry of Industry and Supply. But this department insofar as it deals with industry, is not concerned with the main purchasing activities of the Government of India. The exemption was granted in respect of the purchasing activity of the Government of India and that function continues to be assigned to the Supply Department which has now become a wing of the newly created department of the Government. The question therefore arises whether in those circumstances the Government of India could claim the benefit of the exemption. The High Court in answering that question in the negative has gone upon mere nomenclature. It has emphasised the change in the name and overlooked the substance of the matter."

42. *The minority construed "strict interpretation" to be an interpretation wherein least number of "determinates in terms of quantity" would fall under the exemption. The minority referred to an old English case of IRC v. James Forrest [IRC v. James Forrest, (1890) LR 15 AC 334 (HL)] . It* *may be relevant to note that the minority could not find the justification to apply strict interpretation as the exemption notification was broad enough to include exemptions for commodities purchased by the Government of India.*

43. *The Court was of the opinion that the strict interpretation provided by the majority was uncalled for as there was no additional burden on others by giving such exemptions. The relevant observations are as follows: (CTO case [Union of India v. CTO, AIR 1956 SC 202] , AIR pp. 211-12, para 27)*

"27. … The High Court referred to the observations of Lord Halsbury in IRC v. James Forrest [IRC v. James Forrest, (1890) LR 15 AC 334 (HL)] , to the effect that exemptions from taxation should be strictly construed because otherwise the burden of taxation will fall on other members of the community. Those observations, in my opinion, have no relevance to the facts and circumstances of the present controversy, because we know that the exemption was granted to the Government of India in the department dealing with purchase of certain commodities and articles without reference to quantity. As already pointed out, the Indian Stores Department was concerned with purchase of stores for public services on behalf of all Central Departments of Government and Local Government, etc., and the Government of Bengal as then constituted was one of the Provinces of India which have been receiving subsidies and subventions to make up the deficit in their budgets. As a matter of fact, as stated on behalf of the Bengal Government the concession was granted in order to enable business communities within the Province of Bengal to compete on favourable terms with others, outside Bengal in the matter of supplying the needs of the Government. Hence, there is no question of liberal construction of the exemption resulting in throwing a greater burden on other citizens. On the other hand, the larger the sales in the Province of Bengal as it used to be, the greater the benefit to the business community doing business within that Province. It was therefore stated at the Bar that though

the present case involved taxes amounting to less than Rs 10,000, the question arising for determination in this case affected much larger amounts because such sales within the Province amounted to several crores. I should have thought that the business community in the Province of Bengal having had the advantage of the transactions of sale, the Government of Bengal in all fairness should have allowed the purchasing agency of the Government of India the benefit of the exemption until that benefit was in terms withdrawn sometimes in the beginning of 1949."

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)

47. *In Mangalore Chemicals and Fertilisers Ltd. v. CCT [Mangalore Chemicals and Fertilisers Ltd. v. CCT, 1992 Supp (1) SCC 21] (hereinafter referred to as "Mangalore Chemicals case", for brevity), the facts of the case were that the State Government issued a Notification in exercise of power under Section 8-A of the Karnataka Sales Tax Act, 1957, providing certain incentives to entrepreneurs starting* *new industries in the State pursuant to the State's policy for "rapid industrialisation". The notification contains a package of reliefs and incentives including one concerning relief from payment of sales tax with which the case was concerned. There was no dispute that the appellant was entitled to the benefit of the Notification dated 30-6-1969. There was also no dispute that the refunds were eligible to be adjusted against sales tax payable for the respective years. The only controversy was whether the appellant, not having actually secured the "prior permission" would be entitled to adjustment having regard to the words of the Notification of 11-8-1975, that "until permission of renewal is granted by the Deputy Commissioner of Commercial Taxes, the new industry should not be allowed to adjust the refunds". The contention of the appellants therein was that the permission for the three years had been sought well before the commencement of the respective years but had been withheld for reasons which were demonstrably extraneous. Therefore, contention was that if, in these circumstances, the Deputy Commissioner could withhold the permission.*

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] "

49. *Three important aspects which come out of the discussion are the recognition of horizontal equity by this Court as a consideration for application of strict interpretation, subjugation of strict interpretation to the plain meaning rule and interpretation in favour of exclusion in light of ambiguity.*

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 34 are 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.*

***57.** In Parle Exports case [CCE v. Parle Exports (P) Ltd., (1989) 1 SCC 345 : 1989 SCC (Tax) 84] , a Bench of two*

Judges of this Court considered the question whether non-alcoholic beverage base like Gold Spot base, Limca base and Thums Up base, were exempted from payment of duty under the Central Government Notification of March 1975. While considering the issue, this Court pointed out the strict interpretation to be followed in interpretation of a notification for exemption. These observations are made in para 17 of the judgment, which read as follows: (SCC p. 357)

"17. How then should the courts proceed? The expressions in the Schedule and in the notification for exemption should be understood by the language employed therein bearing in mind the context in which the expressions occur. The words used in the provision, imposing taxes or granting exemption should be understood in the same way in which these are understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them. It is, however, necessary to bear in mind certain principles. The notification in this case was issued under Rule 8 of the Central Excise Rules and should be read along with the Act. The notification must be read as a whole in the context of the other relevant provisions. When a notification is issued in accordance with power conferred by the statute, it has statutory force and validity and, therefore, the exemption under the notification is as if it were contained in the Act itself. See in this connection the observations of this Court in Orient Wvg. Mills (P) Ltd. v. Union of India [Orient Wvg. Mills (P) Ltd. v. Union of India, 1962 Supp (3) SCR 481 : AIR 1963 SC 98] . See also Kailash Nath v. State of U.P. [Kailash Nath v. State of U.P., AIR 1957 SC 790] The principle is well settled that 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. But in this connection, it is well to remember the observations of the Judicial Committee in Caroline M. Armytage v. Frederick Wilkinson [Caroline M. Armytage v. Frederick Wilkinson, (1878) LR 3 AC 355 (PC)] , that it is only, however, in the event of there being a real difficulty in ascertaining the meaning of a particular enactment that the question of strictness or of liberality of construction arises. The Judicial Committee reiterated in the said decision

at p. 369 of the report that in a taxing Act provisions enacting an exception to the general rule of taxation are to be construed strictly against those who invoke its benefit. While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided."

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] .*

61. *The next authority, which needs to be referred is Mangalore Chemicals [Mangalore Chemicals and Fertilisers Ltd. v. CCT, 1992 Supp (1) SCC 21] . As we have already* *made reference to the same earlier, repetition of the same is not necessary. From the above decisions, the following position of law would, therefore, be clear. Exemptions from taxation have a tendency to increase the burden on the other unexempted class of taxpayers. A person claiming exemption, therefore, has to establish that his case squarely falls within the exemption notification, and while doing so, a notification should be construed against the subject in case of ambiguity.*

***62.** The ratio in Mangalore Chemicals case [Mangalore Chemicals and Fertilisers Ltd. v. CCT, 1992 Supp (1) SCC 21] was approved by a three-Judge Bench in Novopan India Ltd. v. CCE [Novopan India Ltd. v. CCE, 1994 Supp (3) SCC 606] . In this case, probably for the first time, the question was posed as to whether the benefit of an exemption notification should go to the subject/assessee when there is ambiguity. The three-Judge Bench, in the background of English and Indian cases, in para 16, unanimously held as follows: (SCC p. 614)*

"16. We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemicals [Mangalore Chemicals and Fertilisers Ltd. v. CCT, 1992 Supp (1) SCC 21] — and in Union of India v. Wood Papers Ltd. [Union of India v. Wood Papers Ltd., (1990) 4 SCC 256 : 1990 SCC (Tax) 422] , referred to therein — represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee — assuming that the said principle is good and sound — does not apply to the construction of an exception or an exempting provision, they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State."

63. *In TISCO Ltd. v. State of Jharkhand [TISCO Ltd. v. State of Jharkhand, (2005) 4 SCC 272] , which is another two-Judge Bench decision, this Court laid down that eligibility clause in relation to exemption notification must be given strict meaning and in para 44, it was further held: (SCC pp. 289-290)*

"44. The principle that in the event a provision of fiscal statute is obscure such construction which favours the assessee may be adopted, would have no application to construction of an exemption notification, as in such a case it is for the assessee to show that he comes within the purview of exemption (see Novopan India Ltd. v. CCE [Novopan India Ltd. v. CCE, 1994 Supp (3) SCC 606])."

64. *In Hari Chand case [CCE v. Hari Chand Shri Gopal, (2011) 1 SCC 236] , as already discussed, the question was whether a person claiming exemption is required to comply with the procedure strictly to avail the benefit. The question posed and decided was indeed different. The said decision, which we have already discussed supra, however, indicates that while construing an exemption notification, the Court has to distinguish the conditions which require strict compliance, the non-compliance of which would render the assessee ineligible to claim exemption and those which require substantial compliance to be entitled for exemption. We are pointing out this aspect to dispel any doubt about the legal position as explored in this decision.*

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.*

66. *To sum up, we answer the reference holding as under:*

66.1. *Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.*

66.2. *When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.*

66.3. *The ratio in Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] is not correct and all the decisions which took similar view as in Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] stand overruled.*

67. *The instant civil appeal may now be placed before the appropriate Bench for considering the case on merits after obtaining orders from the Hon'ble Chief Justice of India.*

9.14 In the present case, it can be said that once the objective of the exemption is to encourage economic development and foster social development, a liberal interpretation to the wordings of the Notification should be given to include lift irrigation as part of exemption as the project fulfills the objective of economic and social development and therefore, the impugned orders are liable to be side aside on this score also.

Point No.2 is accordingly answered in favour of the petitioners.

Re- Point No.3;

9.15 A perusal of the material on record would indicate that in W.P.No.29162/2025, the relevant tax has been demanded by the respondents for the FY 2015-16 and 2016-17. Similarly, in W.P.No.8067/2025, it can be seen that the SCN was issued on 27.4.2021 invoking the powers to issue SCN in the extended period on the ground that the assessee has suppressed the value of the taxable services.

9.16 In this regard, it would be profitable to extract the relevant provisions of Finance Act and Service Tax rules;

> ***7. Returns***
>
> [1]***(1)*** *Every assessee shall submit a half-yearly return in Form `ST-3' or `ST-3A* [11]*[or ST-3C]', as the case may be, along with a copy of the Form TR-6, in triplicate for the months covered in the half-yearly return.*
>
> ***(2)*** *Every assessee shall submit the half-yearly return by the 25th of the month following the particular half-year.*

[7]***[Provided** that the Form 'ST-3' required to be submitted by the 25th day of October, 2012 shall cover the period between 1st April to 30th June, 2012 only.**]***

[8]***[Provided further tha**t the Form ST- 3 for the period between the 1st day of July 2012 to the 30th day of September 2012, shall be submitted by the 25th day of March, 2013]*

73. [1]Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded

*(1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the **[2]**[Central Excise Officer] may, within [17][thirty months] from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice: PROVIDED that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of-*

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,

by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "[17][thirty months] , the words "five years" had been substituted.

9.17 The provisions of the Finance Act, 1994, make it clear that returns are to be filed within a specified period as contemplated in Section 70 read with Rule 7 of the Service Tax Rules, 1994. Rule 7 makes it mandatory to file returns by the 25th of the month following the end of every six months. In other words, for the period April 2015 to September 2015, returns ought to be filed by October 25th, 2015 and for the period October 2015 to March 2016, by April 25th 2016. Section 73 makes it mandatory to issue show cause notices within a period of 30 months of these dates in normal cases which gets extended to 5 years in cases of collusion, suppression, willful misstatement or fraud with intention to evade taxes. In the case of ***NCS Pearson vs UOI - (2025) 9 TMI 1205***, this Court held as under:

7. A perusal of the material on record will indicate that 2nd respondent has issued the Impugned Show cause Notice dated 12.02.2024 under Section 74 of the CGST Act seeking to demand GST on supply of Type-III Tests upon alleging that the petitioner, being clearly aware of its GST

Liability, has not declared and paid appropriate GST on the services provided in connection with supply of taxable service from July, 2017 to June, 2021. It is alleged that the petitioner has failed to pay the GST Liability to the extent of the actual GST applicable on the value of supply provided qua GMAT Tests. It is also alleged that petitioner failed to mention the value of service correctly in the GSTR-5A returns and failed to apply the correct GST rate on the consideration received for supply of service. It is further alleged that appropriate GST was not properly assessed and paid to the Government Exchequer and the petitioner, with an intention to evade payment of GST, suppressed such facts by not disclosing the same for the period under dispute in relation to Type-III Tests conducted by the petitioner.

8. Before adverting to the rival contentions, it is necessary to extract Section 74 of the CGST Act, which reads as under:

> ***Section 74. Determination of tax pertaining to the period up to Financial Year 2023-24 not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful-misstatement or suppression of facts.-***
>
> *(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has*

been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under subsection (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by

the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

(12) The provisions of this section shall be applicable for determination of tax pertaining to the period up to Financial Year 2023-24.

***Explanation 1**.- For the purposes of section 73 and this section,-*

(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.

Explanation 2 - For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

9. A plain reading of Explanation 2 to Section 74 will indicate that the sine qua non for an allegation of 'wilful suppression' under Section 74 of the CGST Act, to be made out is the non-declaration of facts or information which an Assessee is required to declare in its return or any other document furnished under the Act etc., or a failure on the part of the Assessee to furnish information sought by a Proper Officer in writing. It is the specific contention of the petitioner that the impugned Show-cause Notice dated 12.02.2024 issued under Section 74 of the CGST Act, by 2nd respondent on the ground of 'wilful suppression' is illegal and arbitrary being manifestly violative of the law for want of satisfaction of the jurisdictional fact of Section 74 of the CGST Act and that the impugned show cause notice is wholly without jurisdiction or authority of law as the foundational jurisdictional facts to trigger / invoke Section 74 of the CGST Act i.e., existence of wilful suppression to evade / avoid payment of GST in relation to Type – III tests has not been satisfied by the respondents and the impugned show cause notice deserves to be quashed.

10. In this context, it is an undisputed fact borne out from the material on record that Revenue Department had participated in the proceedings before the AAR and the proceedings before the AAAR in relation to the very issue of the classification and taxability of supply of Type-III tests as OIDAR under GST Laws. It follows there from that Revenue had in its knowledge the entire gamut of transactions of supply of Type-III Tests by the petitioner, as a result of which, *no question would arise for the petitioner having non-declared facts or information which it is required to declare under law qua the supply of Type-III Tests as the Revenue authorities (jurisdictional authorities) already possessed the requisite knowledge of the granular details of such supplies having participated in the proceedings before the AAR and AAAR.*

11. In fact, at the very inception, i.e., on 10.01.2020, the petitioner had filed an application before the AAR seeking a ruling on the classification and taxability of Type-II and Type-III tests as supplied by it as OIDAR services and the petitioner had sought the aforesaid Authority's ruling on the questions hereunder:

(i) Whether the service provided for Type-II Tests is classifiable as an OIDAR service?

(ii) If the Type-II Tests provided by the petitioner do not qualify as OIDAR services, whether the petitioner is liable to pay GST on the supply of such services to non-taxable online recipients in India?

(iii) Whether the service provided for Type-III Tests is classifiable as an OIDAR service?

(iv) If the Type-III Tests provided by the petitioner do not qualify as OIDAR services, whether the petitioner is liable to pay GST on the supply of such services to non-taxable online recipients in India?

12. Before the AAR, petitioner described the modalities of the tests in detail and further laid down descriptive grounds to buttress its contention that the tests in *question did not qualify as OIDAR services; so also, other supporting evidence, in the form of a video explaining the mode of the tests as also a sample GST Payment Receipt were appended as part of the Application submitted for consideration of the AAR; thus, from the very initial stage of the litigation, the Revenue / Department who participated in the proceedings before the AAR in the capacity of an opposite/contesting party had possessed the requisite knowledge in relation to the supply of services of Type-II and Type-III Tests by the petitioner. It is a matter of record that the proceedings before the AAR culminated in a ruling dated 22.05.2020, which opined that while Type-II Tests were classifiable as OIDAR services, Type-III tests did not qualify as OIDAR services under GST Laws; significantly, the Ruling recorded the participation of the OIDAR Division Bengaluru West Commissionerate, in the proceedings before the AAR.*

13. It is an undisputed fact that in relation to the findings of the AAR that Type-III Tests were not classifiable as OIDAR services, an appeal dated 27.08.2020 against such Ruling of the AAR was carried by the Revenue/Department to the AAAR, wherein they spelled out the modalities and the granular details of the transaction of supply of Type-III Tests by the petitioner which clearly establishes that the entire gamut of supply of Type-III Tests by the petitioner, along with knowledge of the modalities, methodology and manner thereof, was well within the knowledge of the Revenue/Department and its jurisdictional officer/concerned officer. Further, the AAAR allowed the appeal of the

Department/Revenue in relation to Type-III tests and not only expressly recorded that information had been furnished by the petitioner detailing relevant particulars of the supply of Type-III tests by it, but also expressly recorded the participation of the Additional Commissioner of the Jurisdictional Authority, i.e. OIDAR Division Bengaluru West Commissionerate, in the proceedings before it and ultimately held against the petitioner by opining that Type-III Tests qualify as OIDAR services.

14. The aforesaid undisputed facts and circumstances lead to the sole/unmistakable conclusion that from 10.01.2020 onwards, the jurisdictional/concerned authorities (i.e. Revenue) had in its knowledge the entire breadth of relevant details, information and particulars as regards the supply of Type-III Tests by the petitioner and consequently, the allegations made in the impugned show cause notice of non-declaration of facts or information which are required to be declared qua Type-III tests supplied by the petitioner and the allegations of wilful suppression under Section 74 of the CGST Act made against the petitioner are clearly illegal, arbitrary and contrary to facts and law.

15. The aforesaid proceedings before the AAR and AAAR in relation to the classification and taxability of Type-III Tests are as hereunder:

Sl.No.	*Date*	*Event*	*Particulars*
1	*10.01.2020*	*Application filed before Petitioner the before the*	*Ruling sought the on classification and taxability of Type-II and Type-*

		AAR.	*III Tests by the Petitioner.*
2	*22.05.2020*	*Ruling rendered by the AAR*	*Type-II tests classified as OIDAR services, whereas Type-III Tests held not to quality as OIDAR services.*
3	*27.08.2020*	*Appeal filed by jurisdictional authority (Revenue) against ruling of AAR before AAAR*	*Challenge was made to the finding that Type-III Tests do not qualify as OIDAR services,*
4	*13.11.2020*	*Ruling issued by the AAAR*	*Type-III Tests found to be classifiable as OIDAR services.*

16. The material on record also indicates that in the absence of anything to establish that the petitioner had failed to furnish information sought by the Revenue Authorities, the very invocation of Section 74 of the CGST Act on grounds of wilful suppression is erroneous and illegal; on the other hand, petitioner had furnished all relevant information/details as sought by the 2nd respondent in relation to the supply of Type-I, Type-II and Type-III tests to non-taxable recipients In India and the GST paid thereon as and when such information was sought by such Revenue authorities during 2021-22 itself as can be seen from the communications, correspondence etc., detailed in paragraph-82 of the memorandum of writ petition, thereby establishing that the petitioner cannot be said to be guilty of having deliberately, consciously or wilfully *suppressed any information so as to evade that payment of tax as wrongly alleged in the impugned show cause notice.*

17. As stated supra, it is the specific contention of the petitioner that the impugned SCN dated 12.02.2024 issued under Section 74 of the CGST Act, by the 2nd respondent on the ground of 'wilful suppression' is illegal and arbitrary being manifestly violative of the law for want of satisfaction of the jurisdictional fact of Section 74 of the CGST Act and that the impugned show cause notice is wholly without jurisdiction or authority of law as the foundational jurisdictional facts to trigger / invoke Section 74 of the CGST Act i.e., existence of wilful suppression to evade / avoid payment of GST in relation to Type – III tests has not been satisfied by the respondents who seek the invoke the benefit of the extended period of limitation under Section 74 of the CGST Act. In this context, it is relevant to state that the question of limitation involves a question of jurisdiction and that a finding of fact on the question of jurisdiction would be a jurisdictional fact and issues concerning limitation go to the very root of the matter and an authority cannot clothe itself with jurisdiction by deciding the jurisdictional fact incorrectly or by assuming the jurisdictional fact wrongly.

18. In the case of ***Carona Ltd. vs. Parvathy Swaminathan & Sons - (2007) 8 SCC 559,*** *the Apex Court held as under:*

Jurisdictional fact

26. *The learned counsel for the appellant company submitted that the fact as to "paid-up share capital" of rupees one* *crore or more of a company is a "jurisdictional fact" and in absence of such fact, the court has no jurisdiction to proceed on the basis that the Rent Act is not applicable. The learned counsel is right. The fact as to "paid-up share capital" of a company can be said to be a "preliminary" or "jurisdictional fact" and said fact would confer jurisdiction on the court to consider the question whether the provisions of the Rent Act were applicable. The question, however, is whether in the present case, the learned counsel for the appellant tenant is right in submitting that the "jurisdictional fact" did not exist and the Rent Act was, therefore, applicable.*

***27.** Stated simply, the fact or facts upon which the jurisdiction of a court, a tribunal or an authority depends can be said to be a "jurisdictional fact". If the jurisdictional fact exists, a court, tribunal or authority has jurisdiction to decide other issues. If such fact does not exist, a court, tribunal or authority cannot act. It is also well settled that a court or a tribunal cannot wrongly assume existence of jurisdictional fact and proceed to decide a matter. The underlying principle is that by erroneously assuming existence of a jurisdictional fact, a subordinate court or an inferior tribunal cannot confer upon itself jurisdiction which it otherwise does not posses.*

***28.** In Halsbury's Laws of England (4th Edn.), Vol. 1, Para 55, p. 61; Reissue, Vol. 1(1), Para 68, pp. 114-15, it has been stated:*

"Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive."

The existence of a jurisdictional fact is thus a sine qua non or condition precedent to the assumption of jurisdiction by a court or tribunal.

Jurisdictional fact and adjudicatory fact

29. *But there is distinction between "jurisdictional fact" and "adjudicatory fact" which cannot be ignored. An "adjudicatory fact" is a "fact in issue" and can be determined by a court, tribunal or authority on "merits", on the basis of evidence adduced by the parties. It is no doubt true that it is very difficult to distinguish "jurisdictional fact" and "fact in issue" or "adjudicatory fact". Nonetheless the difference between the two cannot be overlooked.*

30. *In Halsbury's Laws of England (4th Edn.), Vol. 1, Para 55, p. 61; Reissue, Vol. 1(1), Para 68, pp. 114-15, it is stated:*

"There is often great difficulty in determining whether a matter is collateral to the merits or goes to the merits. The distinction may still be important; for an erroneous decision on the merits of the case will be unimpeachable unless an error of law is apparent on the face of the record of the determination or unless a right of appeal lies to a court in respect of the matter alleged to have been erroneously determined. An error of law or fact on an issue collateral to the merits may be impugned on an application for an order of certiorari to quash the decision or in any other appropriate form of proceedings, including indirect or collateral proceedings. Affidavit evidence is admissible on a disputed issue of jurisdictional fact, although the superior courts are reluctant to make an independent determination of an issue of fact on which there was a conflict of evidence before the inferior tribunal or which has been found by an inspector after a local inquiry."

31. *In R. v. Fulham, Hammersmith and Kensington Rent Tribunal, ex p Philippe [(1950) 2 All ER 211 (DC)] it was held that the question whether premium for renewal of tenancy was or was not paid was a jurisdictional fact and, therefore, was held to be a condition precedent for the lawful exercise of jurisdiction by a Rent Tribunal. In Brittain v. Kinnaird [(1819) 1 B&B 432 : (1814-23) All ER Rep 593] however, the factum as to possession of a "boat"* *with gunpowder on board was held to be a part of the offence charged and thus a finding of fact or adjudicatory fact. It was stated:*

"The logical basis for discriminating between these cases and other falling on opposite sides of the line, is not easily discernible."

(emphasis supplied)

32. *Likewise, the fact whether the petitioner was an "adult" in adoption proceedings was not held to be a "jurisdictional fact" (Eversole v. Smith [159 SW 2nd 35]).*

33. *In Chaube Jagdish Prasad v. Ganga Prasad Chaturvedi [AIR 1959 SC 492 : 1959 Supp (1) SCR 733] , the question was whether the landlord was entitled to enhancement of rent. Under the Act, he was not entitled to such rent unless a "new construction" had been made after 30-6-1946. It was held by this Court that the question whether construction was new or not was a "jurisdictional fact" and if the court wrongly decided the said fact and thereby conferred jurisdiction not vested in it, the High Court could interfere with the order. The Court stated (at AIR p. 498, para 21) that "once it had the power it could determine whether the question of the date of construction was rightly or wrongly decided". (See also Arun Kumar v. Union of India [(2007) 1 SCC 732] .)*

34. *But, in Roshan Lal Mehra v. Ishwar Dass [AIR 1962 SC 646 : (1962) 2 SCR 947] this Court held that the Rent Controller had jurisdiction to fix standard rent for new construction made after 24-3-1947. The question was as to when the construction was made. The Rent Controller recorded a finding of fact that the construction was put up after 24-3-1947. The finding was confirmed by the District Judge. But the High Court interfered in revision.*

35. *Setting aside the decision of the High Court, this Court stated: (Roshan Lal Mehra case [AIR 1962 SC 646 : (1962) 2 SCR 947] , AIR p. 659, para 17)*

"17. … It is clear from the orders of the Rent Controller and of the District Judge in appeal that the question whether the second floor was newly constructed or not was really a question of fact, though undoubtedly a jurisdictional fact on which depended the power of the Rent Controller to take action under Section 7-A. If the Rent Controller had wrongly decided the fact and assumed jurisdiction where he had none, the matter would be open to reconsideration in revision. The High Court did not, however, go into the evidence, nor did it say that the finding was not justified by the evidence on record. The High Court referred merely to certain submissions made on behalf of the landlord and then expressed the opinion that what was done to the second floor was mere improvement and not a new construction. We think that the High Court was in error in interfering with the finding of fact by the Rent Controller and the District Judge, in support of which finding there was clear and abundant evidence which had been carefully considered and accepted by both the Rent Controller and the District Judge."

36. *It is thus clear that for assumption of jurisdiction by a court or a tribunal, existence of jurisdictional fact is a condition precedent. But once such jurisdictional fact is found to exist, the court or tribunal has power to decide adjudicatory facts or facts in issue.*

19. In the case of ***Raza Textiles vs. Income Tax Officer - AIR 1973 SC 1362,*** *the Apex Court held as under:*

3. *Aggrieved by that order the appellant went up in appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner rejected the appeal on the ground that the same was not maintainable. He took the view that an appeal lay only under Section 30(1-A). But, before such an appeal can be entertained the appellant must satisfy two conditions, namely, (1) he had deducted the tax due from the non-resident in accordance* *with the provisions of sub-section (3-B); and (2) that he had paid the sum deducted to the Government. The appellant having not complied with those two conditions, the Appellate Assistant Commissioner held that the appeal was incompetent. The order of the Appellate Assistant Commissioner was confirmed by the Tribunal. Thereafter, the appellant moved the High Court under Article 226 of the Constitution. That application came up before a Single Judge. The Single Judge after going into the matter in dated came to the conclusion that Messrs Nathirmal and Sons is not a non-resident firm and that being so the appellant was not required to act under Section 18(3-B). He accordingly set aside the order impugned. The revenue went up in appeal against the order of the learned Single Judge to the Appellate Bench. That Bench allowed the appeal with the observations, "in the present case the question before the Income Tax Officer, Rampur, was whether the firm Nathirmal and Sons was non-resident or not. There was material before him on this question. He had jurisdiction to decide the question either way. It cannot be said that the officer assumed jurisdiction by a wrong decision on this question of residence". The Appellate Bench appears to have been under the impression that the Income Tax Officer was the sole Judge of the fact whether the firm in question was resident or non-resident. This conclusion in, our opinion, is wholly wrong. No authority, much less a quasi-judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly. The question whether the Jurisdictional fact has been rightly decided or not is a question that is open for examination by the High Court in an application for a writ of certiorari. If the High Court comes to the conclusion, as the learned Single Judge has done in this case, that the Income Tax Officer had clutched at the Jurisdiction by deciding a jurisdictional fact erroneously, then the assessee was entitled for the writ of certiorari* *prayed for by him. It is incomprehensible to think that a quasi-judicial authority like the Income Tax Officer can erroneously decide a jurisdictional fact and thereafter proceed to impose a levy on a citizen. In our opinion, the Appellate Bench is wholly wrong in opining that the Income Tax Officer can "decide either way".*

*20. In the case of **ITW Signode India Ltd. vs. Collector of Central Excise (2004) 3 SCC 48**, the Apex Court held as under:*

> ***Limitation***
>
> ***63.** Having answered the reference, we are of the opinion that this Court in the peculiar facts and circumstances of this case, at this stage need not go into the question as to whether the processes undertaken by the appellant would amount to manufacture or whether the classification of goods under Sub-Heading 7308.90 is correct, in view of the fact that the question as regards limitation and availability of MODVAT had not been considered.*
>
> ***64.** It is not in dispute that in terms of Section 11-A, a show-cause notice for short-levy could have been issued only within six months from the relevant date. Only in the event such short-levy was imposed on account of fraud, collusion, wilful misstatement or suppression of facts with an intent to evade payment of duty on the part of the manufacturer, the extended period of limitation of five years could be invoked.*

65. *The appellant herein in para 15 of reply dated 2-6-1987 categorically stated that such classification has been made to the knowledge of the Department. It was contended:*

> *"On the contrary, all the processes were carried out openly and they themselves had come up for detailed consideration and eventually the decision was taken under the Assistant Collector's order dated 14-7-1983 after due application of mind and it would, therefore, be incredible to allege as is sought to be done that the Department was not in a position to get first-hand knowledge of the various processes adopted."*

The appellant had further contended:

> *"We deny each and every allegation contained in the show-cause notice. We submit that from the legal point of view the classification cannot be changed as proposed in the show-cause notice, nor does the factual position warrant modification of the classification. When Heading/Sub-Heading 7211.31 is specific (cold-rolled strips), the goods cannot be consigned to Sub-Heading 7308.90 which is not specific and is a residuary item. As long as the subject goods were not classifiable under TI 68 when it existed, they cannot attract the corresponding Sub-Heading 7308.90. We also submit that Rule 9(2) cited in the show-cause notice is not applicable since there was no clandestine clearance."*

66. *It is, therefore, evident that the contention of the appellant was that Rule 9(2) cited in the show-cause notice was not applicable. But, unfortunately, despite the same it had not been adverted to by the Tribunal. We must notice that the appellant herein succeeded before the Appellate Collector. The Revenue went up in appeal. The Tribunal was, therefore, bound to take the aforementioned question* *into consideration inasmuch as a finding of fact was required to be arrived at that the period of limitation for issuing such notices under Section 11-A of the Act would depend upon the question as to whether such short-levy was due to any act of fraud, collusion, wilful misstatement or suppression of facts, (sic) the extended period of limitation of five years could not have been invoked.*

67. *Such an extended period of limitation can be invoked only if a positive act of fraud etc. on the part of the assessee is found. Such a positive act must be in contradistinction to mere inaction like non-taking of licence etc. It has to be pleaded and established. (See Padmini Products [(1989) 4 SCC 275 : 1989 SCC (Tax) 616 : (1989) 43 ELT 195] , P&B Pharmaceuticals Ltd. [(2003) 3 SCC 599 : (2003) 153 ELT 14] and Pushpam Pharmaceuticals Co. [1995 Supp (3) SCC 462 : (1995) 78 ELT 401])*

68. *Even in Easland Combines [(2003) 3 SCC 410 : (2003) 152 ELT 39] this Court held : (SCC pp. 424-25, para 31)*

"31. It is settled law that for invoking the extended period of limitation duty should not have been paid, short-levied or short-paid or erroneously refunded because of either fraud, collusion, wilful misstatement, suppression of facts or contravention of any provision or rules. This Court has held that these ingredients postulate a positive act and, therefore, mere failure to pay duty and/or take out a licence which is not due to any fraud, collusion or wilful misstatement or suppression of fact or

contravention of any provision is not sufficient to attract the extended period of limitation."

__69.__ The question of limitation involves a question of jurisdiction. The finding of fact on the question of jurisdiction would be a jurisdictional fact. Such a jurisdictional question is to be determined having regard to both fact and law involved therein. The Tribunal, in our opinion, committed a manifest error in not determining the said question, particularly, when in the absence of any finding of fact that such short-levy of excise duty related to any positive act on the part of the appellant by way of fraud, collusion, wilful misstatement or suppression of facts, the extended period of limitation could not have been invoked and in that view of the matter no show-cause notice in terms of Rule 10 could have been issued.

21. In the instant case, a perusal of the material on record will indicate that the 2nd respondent has decided the jurisdictional facts in relation to the alleged wilful suppression by the petitioner erroneously/incorrectly by attempting to vest itself with the jurisdiction under Section 74 of the CGST Act and saddle a GST liability upon the petitioner for the period under dispute, which is impermissible in law and consequently, the very issuance of the impugned SCN dated 12.02.2024 under Section 74 of the CGST Act is illegal and violative of Article 265 of the Constitution inasmuch as the impugned SCN seeks to realize monies from the petitioner *under the guise of tax without the authority of the law and the impugned SCN deserves to be quashed.*

22. The impugned SCN also fails to consider and appreciate that the issue of classification of Type-III Tests had not attained finality on account of W.P.No.3555/2021 preferred by the petitioner against the order of the AAAR pending adjudication before the Division Bench of this Court, in which there is an interim order in favour of the petitioner as stated supra; despite the sub-judice nature of the issue of classification and taxability of Type-III Tests pending before this Court, and interim orders having been granted in favour of the petitioner, the 2nd respondent has issued the impugned SCN relating to Type-III Tests, even though this very issue/question relating to classification and taxability of such supply of service was pending consideration of this Court and the impugned SCN deserves to be quashed on this score also.

23. A perusal of the impugned SCN will indicate that Section 74 of the CGST Act cannot be invoked in cases involving the mere omission to pay tax or the mere omission to give correct information, without there being any intention to evade tax; the allegations of wilful suppression of appropriate GST not being paid and the failure of the petitioner to mention the value of services correctly in the GSTR-5A returns and failing to apply the correct GST rate, ignores the fact that the very mens rea element of consciously or deliberately suppressing information/details for the purpose of evading the payment of tax which forms the *sine qua non of Section 74 of the CGST Act, is not satisfied in the instant case; the jurisdictional fact for invoking the stringent provisions of Section 74 of the CGST Act, that is of wilful suppression with a view to evade payment of tax are neither satisfied nor fulfilled in the impugned SCN, which deserves to be quashed on this ground also.*

24. In the case of ***Cosmic Dye Chemical vs. Collector of Central Excise, Bombay - (1995) 6 SCC 117,*** *the Apex Court held that the word 'wilful', which precedes suppression, requires the existence of an intent to evade duty as hereunder:*

> ***6.*** *Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word 'wilful' preceding the words "misstatement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is, therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and yet constitutes a permissible ground for the purpose of the proviso to Section 11-A. Misstatement or suppression of fact must be wilful.*

*25. In the case of **Eastland Combines vs. CCE - (2003) 3 SCC 410**, the Apex Court held that wilful suppression postulates a positive act and that a mere failure to pay duty which is not due to any suppression of facts is not sufficient to attract the extended period of limitation and that the mere default or failure of the assessee to pay duty, without the existence of any intent to wilfully suppress information/details in itself would attract the extended period of limitation as hereunder:*

> ***31.** It is settled law that for invoking the extended period of limitation duty should not have been paid, short-levied or short-paid or erroneously refunded because of either fraud, collusion, wilful misstatement, suppression of facts or contravention of any provision or rules. This Court has held that these ingredients postulate a positive act and, therefore, mere failure to pay duty and/or take out a licence which is not due to any fraud, collusion or wilful misstatement or suppression of fact or contravention of any provision is not sufficient to attract the extended period of limitation.*

*26. Similarly, in the case of **Anand Nishikawa Co. Ltd. vs. Commissioner of Central Excise Meerut - (2005) 7 SCC 749,** the Apex Court held that a mere failure to declare does not amount to wilful suppression as hereunder:*

> ***26.** In Tata Iron & Steel Co. Ltd. v. Union of India [(1988) 3 SCC 403 : 1988 SCC (L&S) 381 : (1988) 35 ELT 605] this Court held that when the classification list continued to have been approved regularly by the Department, it could not be said that the manufacturer was guilty of "suppression of facts". As noted herein earlier, we have also concluded that the classification lists supplied by the appellant were duly approved from time to time regularly by the Excise Authorities and only in the year 1995, the*

Department found that there was "suppression of facts" in the matter of post-forming manufacturing process of the products in question. Furthermore, in view of our discussion made herein earlier, that the Department has had the opportunities to inspect the products of the appellant from time to time and, in fact, had inspected the products of the appellant. Classification lists supplied by the appellant were duly approved and in view of the admitted fact that the flow-chart of manufacturing process submitted to the Superintendent of Central Excise on 17-5-1990 clearly mentioned the fact of post-forming process on the rubber, the finding on "suppression of facts" of CEGAT cannot be approved by us. This Court in the case of Pushpam Pharmaceuticals Co. v. CCE [1995 Supp (3) SCC 462] while dealing with the meaning of the expression "suppression of facts" in the proviso to Section 11-A of the Act held that the term must be construed strictly, it does not mean any omission and the act must be deliberate and wilful to evade payment of duty. The Court further held: (SCC pp. 463-64, para 4)

"In taxation, it ['suppression of facts'] can have only one meaning that the correct information was not disclosed deliberately to escape payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

(emphasis supplied)

27. *Relying on the aforesaid observations of this Court in the case of Pushpam Pharmaceuticals Co. v. CCE [1995 Supp (3) SCC 462] we find that "suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty. When facts were known to both the parties, the omission by one to do what he might have done and not that he must have done, would not render it suppression. It is settled law that mere failure to declare does not amount to wilful suppression. There must be some positive act from the side of the assessee to find*

> *wilful suppression. Therefore, in view of our findings made hereinabove that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in the proviso to Section 11-A of the Act. We are, therefore, of the firm opinion that where facts were known to both the parties, as in the instant case, it was not open to CEGAT to come to a conclusion that the appellant was guilty of "suppression of facts". In Densons Pultretaknik v. CCE [(2003) 11 SCC 390] this Court held that mere classification under a different sub-heading by the manufacturer cannot be said to be wilful misstatement or "suppression of facts". This view was also reiterated by this Court in CCE v. L.M.P. Precision Engg. Co. Ltd. [(2004) 9 SCC 703]*

*27. So also, in **Continental Foundation Joint Venture vs. Commissioner of Central Excise, Chandigarh -(2007) 216 ELT 177 (SC),** it was held by the Apex Court that mere omission to give correct information is not suppression of facts, unless it was deliberate to stop the payment of duty and that when the facts are known to both the parties, omission by one party to do what he might have done would not render it to be suppression as hereunder:*

> ***12.** The expression "suppression" has been used in the proviso to Section 11-A of the Act accompanied by very strong words as "fraud" or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop (sic evade) the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it*

> *suppression. When the Revenue invokes the extended period of limitation under Section 11-A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a wilful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct.*

28. As stated earlier, though the respondents allege in the impugned SCN that the petitioner failed to mention the value of services correctly in the GSTR - 5A returns and apply the correct GST rate on the consideration received, the mere omission to mention the value of services correctly in the returns and/or apply the correct GST rate would not be tantamount to wilful suppression, in light of the principles laid down in the aforesaid judgments, particularly when the respondents-Revenue had in their knowledge the complete gamut of transactions of supply of Type-III tests by the petitioner, thereby leading to the sole conclusion that an intention to evade payment of tax could in no manner be imputed or attributable to the petitioner and the impugned SCN deserves to be quashed.

29. In the case of ***Commissioner, Central Excise and Customs vs. Reliance Industries Ltd., - 2023 SCC OnLine SC 767,*** *the Apex Court held as under:-*

> ***14.*** *In Pushpam Pharmaceuticals Co. v. CCE [Pushpam Pharmaceuticals Co. v. CCE, 1995 Supp (3) SCC 462] , this Court, while dealing with a similar fact circumstance wherein the extended period of limitation under the abovementioned proviso had been invoked, held that since the expression "suppression of facts" is used in the company of terms such as fraud, collusion and wilful misstatement, it cannot therefore*

refer to an act of mere omission, and must be interpreted as referring to a deliberate act of non-disclosure aimed at evading duty, that is to say, an element of intentional action must be present.

15. *Similarly, in CCE v. Chemphar Drugs & Liniments [CCE v. Chemphar Drugs & Liniments, (1989) 2 SCC 127 : 1989 SCC (Tax) 245] , this Court, while dealing with a similar situation of invocation of extended period of limitation under Section 11-A of the Act, this Court held as under : (SCC p. 131, para 9)*

"9. … In order to make the demand for duty sustainable beyond a period of six months and up to a period of 5 years in view of the proviso to sub-section (1) of Section 11-A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before (sic beyond) the period of six months. Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case. The Tribunal came to the conclusion that the facts referred to hereinbefore do not warrant any inference of fraud. The assessee declared the goods on the basis of their belief of the interpretation of the provisions of the law that the exempted goods were not required to be included and these did not include the value of the exempted goods which they manufactured at the relevant time. The Tribunal found that the explanation was plausible, and also noted that the Department had full knowledge of the facts about manufacture of all the goods manufactured by the respondent when the declaration was filed by the

respondent. The respondent did not include the value of the products other than those falling under Tariff Item 14E manufactured by the respondent and this was in the knowledge, according to the Tribunal, of the authorities. These findings of the Tribunal have not been challenged before us or before the Tribunal itself as being based on no evidence."

23. *We also find no merits in the other argument urged by the learned counsel for the Revenue that the Tribunal's order in IFGL Refractories [IFGL Refractories Ltd. v. CCE, 2000 SCC OnLine CEGAT 1771 : (2001) 134 ELT 230] could not have constituted a valid basis for the belief entertained by the assessee in view of the fact that the relevant valuation provisions had undergone amendments in the year 2000. The argument of the Revenue's counsel was that in view of the amendments to Section 4 and Rule 6 of the Valuation Rules the ratio of the Tribunal's decision in IFGL case [IFGL Refractories Ltd. v. CCE, 2000 SCC OnLine CEGAT 1771 : (2001) 134 ELT 230] was no longer relevant for the period under consideration in these appeals. We have no hesitation in rejecting this contention for two independent reasons. Firstly, this contention too has not been urged in the civil appeal filed by the Revenue and has been urged only during the course of the hearing before this Court. On this count alone the contention deserves to be ignored. Secondly, we also find this contention to be diametrically opposite to what the Revenue itself has been contending on merits right from the show-cause notice till the appeal filed before this Court.*

24. *On merits, the Revenue's case throughout had been that the issue of valuation is covered against the assessee by the judgment of this Court in IFGL Refractories [CCE v. IFGL Refractories Ltd., (2005) 6 SCC 713] . Even in the order of CESTAT under challenge the Tribunal has proceeded on the basis that the principle of valuation laid down by this Court in IFGL Refractories [CCE v. IFGL Refractories Ltd., (2005) 6 SCC 713] holds good and remains valid even under the amended valuation provisions for the period post July 2000. We therefore find it strange that for the*

> *purposes of justifying its case on limitation, the Revenue wishes to take a position exactly contrary to what it has taken in the show-cause notice on merits. We cannot allow the Revenue to blow hot and cold in the same breath by relying upon IFGL case [CCE v. IFGL Refractories Ltd., (2005) 6 SCC 713] on merits while at the same time arguing that the same had no relevance for the purposes of examining the plea for a bona fide belief.*
>
> ***25.** We are in full agreement with the finding of the Tribunal that during the period in dispute it was holding a bona fide belief that it was correctly discharging its duty liability. The mere fact that the belief was ultimately found to be wrong by the judgment of this Court does not render such belief of the assessee a mala fide belief particularly when such a belief was emanating from the view taken by a Division Bench of the Tribunal. We note that the issue of valuation involved in this particular matter is indeed one where two plausible views could co-exist. In such cases of disputes of interpretation of legal provisions, it would be totally unjustified to invoke the extended period of limitation by considering the assessee's view to be lacking bona fides. In any scheme of self-assessment it becomes the responsibility of the assessee to determine his liability of duty correctly. This determination is required to be made on the basis of his own judgment and in a bona fide manner.*

30. In the instant case, as stated supra, in the light of pendency of W.P.No.3555/2021 preferred by the petitioner before this Court assailing the order of the AAAR, the very issue/question relating to classification of Type-III tests supplied by the petitioner as OIDAR services, remains in a significant state of flux inasmuch as at the very initial stage of the litigation, the AAR vide its order dated 22.05.2020 held that Type-III tests were outside the purview of OIDAR services which was reversed by the AAAR, thereby indicating that the *very classification of Type-3 tests as OIDAR services was uncertain and in a constantly fluid state and thus an interpretative issue which has not attained finality and the classification and taxability of Type-III Tests continues to be in a state of flux, even as of the present day; it follows there from that when there is a scope for doubt concerning the interpretation of legal provisions and the entire facts have been placed before the Revenue Authorities, the assessee cannot be attributed with any suppression or misstatement of facts with intent to evade duty and hence, cannot be saddled with demand by invoking the extended period of limitation and impugned SCN deserves to be quashed.*

31. The respondents placed reliance upon the decision of the Gujarat High Court in ***Commissioner of Central Excise vs. Neminath Fabrics Pvt. Ltd., -2010 (256) ELT 369 (Guj.)*** *to justify the invocation of the extended period of limitation under Section 74 of the CGST Act by submitting that the concept of knowledge cannot be an appropriate defence; in this context, it is relevant to state that the said judgment is circumscribed and applicable only to cases wherein 'suppression' is established or admitted as can be seen from the relevant portion of the judgment as hereunder:*

> ***"18.*** *The Proviso comes into play only when suppression etc. is established or stands admitted. It would differ from a case where fraud, etc. are merely alleged and are disputed by an assessee. Hence, by no stretch of imagination the concept of knowledge can be read into the provisions because that would tantamount to rendering the defined term "relevant date" nugatory and such an interpretation is not permissible."*

*32. The aforesaid judgment in **Neminath's case supra** was considered by the CESTAT in **Amway India Enterprises Pvt. Ltd. vs. Commissioner of Central Excise, New Delhi - 2017 (3) GSTL 69 (Tri.-Del),** wherein it was held as under:*

> *"7. The show cause notice in this case has been issued by the Department alleging 'wilful and intentional suppression' of facts by the appellant. It is trite in law that the suppression (intentional and deliberate) can never be said to exist when material and relevant fact forming the basis of the demand were already within the knowledge of the department. Accordingly, the pre conditions for applicability of the proviso to Section 73(1) ibid cannot be said to be made and in such eventuality, the extended period of limitation cannot be invoked and the demand to be confined to the normal period of one year.*
>
> *10. On a collective reading of the decisions cited by both the counsels, it is clear that the consistent position of law with regard to applicability of the proviso to Section 73(1)/Section 11A ibid has been that suppression cannot be established where material facts were within the knowledge of the Revenue. Accordingly, where there is no suppression, the pre-condition for applicability of proviso to Section 73(1) cannot be said to be met and hence, extended period of limitation contemplated therein cannot be invoked. On the contrary, where the ingredients for invoking proviso to Section 73(1) are established or admitted and thus the pre-conditions for applicability of such proviso stands satisfied, and only in such cases, the period of 5 years is required to be computed from the date when the evasion came to the knowledge of the Department."*

33. In the instant case, the material on record clearly indicates the allegation of suppression made by the respondents are neither admitted nor established and on the other hand, the same are seriously/specifically disputed and *denied by the petitioner and the said allegation remains merely an allegation and nothing more; it is therefore clear that the judgment of Gujarat High Court in **Neminath's case supra** is not applicable to the facts of the instant case and as such, the said contention of the respondents cannot be accepted. In fact, it must also be stated here that initially the Type III tests were held to be outside the purview of OIDAR by the AAR, which was reversed in appeal by the AAR and therefore, the issue itself is not without doubt and when conflicting views are available with the revenue itself entertaining two views, it is impermissible to allege that the petitioner had suppressed any information with an intention to evade payment of taxes; the petitioner having approached the revenue for an advance ruling with all data available cannot be foisted with a demand alleging suppression of facts.*

34. The aforesaid discussion clearly establishes that the impugned Show Cause Notice dated 12.02.2024 issued under Section 74 of the CGST Act, by the 2nd respondent is illegal and arbitrary being manifestly violative of the law for want of satisfaction of the jurisdictional facts contemplated in Section 74 of the CGST Act and that the impugned show cause notice is wholly without jurisdiction or authority of law as the foundational jurisdictional facts to trigger / invoke Section 74 of the CGST Act i.e., existence of wilful suppression to evade / avoid payment of GST in relation to Type – III tests has not been satisfied by the respondents and the impugned show cause notice deserves to be quashed.

35. Insofar as the various other contentions, claims and reliefs urged and sought for by the petitioner are concerned, having regard to the findings recorded hereinbefore that the impugned SCN is illegal, arbitrary and without jurisdiction or authority of law and is contrary to law and the provisions contained in Section 74 of the CGST Act and that the same deserves to be quashed, I deem it just and appropriate not to deal with all other claims, contentions, reliefs, issues, questions etc., which are hereby kept/left open to be decided in an appropriate case and no opinion is expressed on the same in the present order.

36. In the result, I pass the following:

ORDER

(i) Petition is hereby partly allowed.

(ii) The impugned Show Cause Notice at Annexure-A dated 12.02.2024 issued by the 2nd respondent under Section 74 of the CGST Act, 2017 is hereby quashed;

(iii) All other claims, contentions, reliefs, issues, questions etc., urged by both sides are hereby kept / left open to be decided in an appropriate case and no opinion is expressed on the same in the present order.

9.18 So also, in the case of ***Cosmic Dye Chemical vs. Collector of Central Excise, Bombay - (1995) 6 SCC 117***, the Apex Court held as under-

> *6. Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as misstatement or*

> *suppression of facts are concerned, they are clearly qualified by the word 'wilful' preceding the words "misstatement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is, therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and yet constitutes a permissible ground for the purpose of the proviso to Section 11-A. Misstatement or suppression of fact must be wilful.*

9.19 In the case of ***Eastland Combines vs. CCE - (2003) 3 SCC 410***, the Apex Court held that wilful suppression postulates a positive act and that a mere failure to pay duty which is not due to any suppression of facts is not sufficient to attract the extended period of limitation and that the mere default or failure of the assessee to pay duty, without the existence of any intent to wilfully suppress information/details in itself would attract the extended period of limitation as hereunder:

> *31. It is settled law that for invoking the extended period of limitation duty should not have been paid, short-levied or short-paid or erroneously refunded because of either fraud, collusion, wilful misstatement, suppression of facts or contravention of any provision or rules. This Court has held that these ingredients postulate a positive act and, therefore, mere failure to pay duty and/or take out a licence which is not due to any fraud, collusion or wilful*

misstatement or suppression of fact or contravention of any provision is not sufficient to attract the extended period of limitation.

9.20 So also, in the case of ***Anand Nishikawa Co. Ltd. vs. Commissioner of Central Excise Meerut - (2005) 7 SCC 749***, the Apex Court held as hereunder:

> *26. In* ***Tata Iron & Steel Co. Ltd. v. Union of India [(1988) 3 SCC 403 : 1988 SCC (L&S) 381 : (1988) 35 ELT 605]*** *this Court held that when the classification list continued to have been approved regularly by the Department, it could not be said that the manufacturer was guilty of "suppression of facts". As noted herein earlier, we have also concluded that the classification lists supplied by the appellant were duly approved from time to time regularly by the Excise Authorities and only in the year 1995, the Department found that there was "suppression of facts" in the matter of post-forming manufacturing process of the products in question. Furthermore, in view of our discussion made herein earlier, that the Department has had the opportunities to inspect the products of the appellant from time to time and, in fact, had inspected the products of the appellant. Classification lists supplied by the appellant were duly approved and in view of the admitted fact that the flow-chart of manufacturing process submitted to the Superintendent of Central Excise on 17-5-1990 clearly mentioned the fact of post-forming process on the rubber,*

the finding on "suppression of facts" of CEGAT cannot be approved by us. This Court in the case of ***Pushpam Pharmaceuticals Co. v. CCE [1995 Supp (3) SCC 462]*** *while dealing with the meaning of the expression "suppression of facts" in the proviso to Section 11-A of the Act held that the term must be construed strictly, it does not mean any omission and the act must be deliberate and wilful to evade payment of duty. The Court further held: (SCC pp. 463-64, para 4)*

"In taxation, it ['suppression of facts'] can have only one meaning that the correct information was not disclosed deliberately to escape payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

(emphasis supplied)

27. Relying on the aforesaid observations of this Court in the case of ***Pushpam Pharmaceuticals Co. v. CCE [1995 Supp (3) SCC 462]*** *we find that "suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty. When facts were known to both the parties, the omission by one to do what he might have done and not that he must have done, would not render it suppression. It is settled law that mere failure to declare does not amount to wilful suppression. There must be some positive act from the side of the assessee to find wilful suppression. Therefore, in view of our findings* *made hereinabove that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in the proviso to Section 11-A of the Act. We are, therefore, of the firm opinion that where facts were known to both the parties, as in the instant case, it was not open to CEGAT to come to a conclusion that the appellant was guilty of "suppression of facts". In **Densons Pultretaknik v. CCE [(2003) 11 SCC 390]** this Court held that mere classification under a different sub-heading by the manufacturer cannot be said to be wilful misstatement or "suppression of facts". This view was also reiterated by this Court in **CCE v. L.M.P. Precision Engg. Co. Ltd. [(2004) 9 SCC 703].***

9.21 In ***Continental Foundation Joint Venture vs. Commissioner of Central Excise, Chandigarh -(2007) 216 ELT 177 (SC),*** the Apex Court held as hereunder:

12. The expression "suppression" has been used in the proviso to Section 11-A of the Act accompanied by very strong words as "fraud" or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was *deliberate to stop (sic evade) the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11-A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a wilful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct.*

9.22 It is pertinent to note that laying claim to an exemption is purely interpretational in nature and cannot be a matter of suppression of facts or fraud or collusion or wilful misstatement with intention to evade payment of taxes. Therefore, in light of the abovementioned law, facts and circumstances I am of the view that proviso to Section 73 of the Finance Act 1994 could not have been invoked as there has been no wilful misstatement or suppression of facts, the period for issuing show cause notices being 30 months from the date of the relevant returns only, the impugned notice has been issued on 27.4.2021, way beyond the prescribed period of 30 months and therefore, is clearly barred by time.

9.23 Insofar as the petitioner in W.P.No.8067/2025 is concerned, it is to be noted that only based on income tax statement in Form 26AS, the show cause notice was issued alleging suppression, which proceedings were set aside in the earlier order of this Court in W.P.No.17591/2022 dated 03.07.2024 and remanded the matter back for fresh consideration. Therefore, subsequent to remand, the only question that remained is, whether the value of pumps on which sales tax/VAT has been paid can be included in the value of taxable services, which has already been answered by me earlier. Therefore, the question of invoking extended period clearly did not arise as the ingredients of fraud, collusion, misstatement or misrepresentation or suppression of facts with intention to evade really does not arise. Therefore, the extended period could not have been invoked.

Point No.3 is accordingly answered in favour of the petitioners.

10. In view of the aforesaid discussions, I am of the considered opinion that the impugned orders are illegal, arbitrary and without jurisdiction or authority of law and the same are contrary to the aforesaid Notifications as well as the provisions

contained in the Finance Act and consequently, the impugned orders and all further proceedings pursuant thereto, deserves to be set aside.

11. In the result, I pass the following;

ORDER

(i) W.P.No.29162/2025 is hereby allowed.

(ii) The impugned Order-in-Original No. 53/ST/COMMR/2023-24 at Annexure-A dated 14.03.2024 passed by the respondent is hereby set aside.

(iii) W.P.No.8067/2025 is hereby allowed.

(iv) The impugned Order-in-Original No.48/ADC/BNW/2023-24/BNW at Annexure-A dated 23.12.2024 passed by the 1st respondent is hereby set aside.

(v) The impugned Show cause notice No. 117/2021 having Digital Identification No. ('DIN') 20210457YX0000000FEB at Annexure-B dated 27.04.2021, issued by the 1st respondent is hereby quashed.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

Srl.