

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.03.2022

CORAM :

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

Writ Petition Nos. 29096, 26788, 29120 and 35593 of 2007  
&  
2580, 5288, 5289, 7692, 10036, 26560 and 29464 of 2008  
&  
313, 314, 315, 880, 9789, 10223, 10639, 16722, 16723, 19654  
and 19655 of 2009  
&  
2291, 10660, 13201, 13716, 15458, 15459, 18097, 28209 and 30084 of 2010  
&  
13113, 13114, 13988, 20469, 28973 and 28974 of 2011  
&  
1213, 1214, 1215, 1216, 3253, 4992, 8028, 8029, 8030, 8031, 8103, 8104,  
8105, 8106, 18189 and 27530 of 2012  
&  
892, 893, 894, 895, 1362, 6564, 7112, 7113, 7114, 7115, 7116, 7117,  
7118, 7119, 8294, 8295, 14183, 14184 and 15049 of 2013  
&  
2556, 2557, 2558, 2559, 2560, 2561, 2562, 9994, 10097, 10098, 10099, 10100  
and 29433 of 2014  
&  
14130, 14131, 33505, 33506, 33507, 33508, 33509, 40071, 40072, 40073 and  
40074 of 2016  
and  
MP.Nos.1 & 2 of 2007, 1,1,1,1,1,1 & 1 of 2008, 1,1,1,1,1,1,1,1,1,1,1 & 2 of  
2009, 1,1,1,1,1, 2 & 3 of 2010, 1,1,1 & 2 of 2011, 1,1,1,1,1,1,1,1,1,1,1,1,1,1  
of 2012, 1,1,1,1,1,1,1,1,1,1,1,1,1,1,1,2,2,2,2 & 2 of 2013, 1,1,1,1 &  
1 of 2014 and  
WMP.Nos.12367, 12368, 34116, 34117, 34118 and 34119 of 2016

WP No. 29096 of 2007

M/s. LG Electronics India Pvt. Ltd.,  
AA11, 2<sup>nd</sup> Avenue, Fathima Towers,  
Anna Nagar, Chennai – 600 040.

.. Petitioner

Versus

1. The State of Tamil Nadu  
rep. By the Chief Secretary to  
Government of Tamil Nadu,  
Secretariat, Chennai.

2. The Commercial Tax Officer  
Anna Salai II Assessment Circle  
Chennai

.. Respondents

WP No. 29096 of 2007:-Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring the amendments made by Act 21 to Section 6 of the Tamil Nadu Value Added Tax Act 2006 (Act 32 of 2006) as unconstitutional ultravires Article 14, Article 19 (1)(g), Article 20, Article 301 and Article 304 (a) of the Constitution of India.

WP No. 26788 of 2007:-Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring Sec.3 of the Tamilnadu Value Added Tax (Amendment) Act 2007 (Act No.21 of 2007) as ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the constitution of India

WP No. 29120 of 2007:-Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declare the amendment to section 6 of the Tamilnadu Value Added Tax Act 2006 inserting the expressions other than the dealer who purchases goods from outside the state or imports goods from outside the country introduced vide Act 21 of 2007 for the period from January 1 2007 to June 7 2007 and after June 8 2007 as ultra vires under Articles 14, 19(1) (g), 265, 300A, 301 to 304 of the Constitution of India

WP No. 35593 of 2007:-Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declare Sec 3 of the Tamilnadu Value Added Tax(Amendment) Act 2007 (Act No.21 of 2007) as ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India

WP No. 2580 of 2008:-Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declare the Tamil Nadu Value Added Tax(Amendment) Act 2007 (Act No.21 of 2007) in so far as amending section 6 of the Tamil Nadu Added Tax Act 2006 as ultra vires, unconstitutional and infringes Articles 14, 19(1)(g), and 301 of the Constitution of India

WP No. 5288 of 2008:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the respondent in TIN 3360441638 dated 28.9.2007 served on the petitioner herein only on 25.1.2008 quash the same as contrary to the provisions of the TNVAT Act

WP No. 5289 of 2008:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declare the amendment to Section 6 of the Tamilnadu Value Added Tax Act 2006 inserting the expressions other than the dealer who purchases goods from outside the State or imports goods from outside the Country as introduced by Act 21 of 2007 with effect from 1.1.2007 as ultra vires Articles 14, 19(1)(g), 265, 300A, 301 to 304 of the Constitution of India

WP No. 7692 of 2008:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring the amendments made by Act 21 of Section 6 of the Tamil Nadu Value Added Tax Act 2006 [Act 32 of 2006] as unconstitutional ultra vires Article 14, Article 19(1)(g), Article 20, Article 301 and Article 304(a) of the Constitution of India.

WP No. 10036 of 2008:-Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring Sec.3 of the Tamilnadu Value Added Tax (Amendment) Act 2007 (Act no.21 of 2007) as ultravires and Constitution of India and Violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India

WP No. 26560 of 2008:Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring Sec.3 of the Tamil Nadu Value Added Tax (Amendment) Act 2007 (Act No. 21 of 2007) ultra vires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India.

WP No. 29464 of 2008:-Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring the amendments made by the Act 21 of Section 6 of the Tamil Nadu Value Added Tax Act 2006 (Act 32 of 2006) as unconstitutional, ultra vires Article 14, Article 19(1)(g), Article 20, Article 301 and Article 304(a) of the Constitution of India.

WP No. 313 of 2009:-Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring the amendments made by Act 21 to section 6 of the Tamilnadu value Added Tax Act 2006 (Act 32 of 2006) as unconstitutional, ultra vires Article 14, Article 19 (1) (g), Article 20, Article 301 and Article 304 (a) of The Constitution of India.

WP No. 314 of 2009:-Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records in TIN/33241522423/2007-2008 on the file of the respondent and quash its notice dated 16-12-2008 and direct the respondent not to take coercive action for the assessment year 2007-2008 under the TNVAT Act 2006

WP No. 315 of 2009:-Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari Mandamus calling for the records in TIN/33241522423/2008-2009 on the file of the respondent and quash its notice dated 16-12-2008 and direct the respondent not to take coercive action for the assessment year 2008-2009 under the TNVAT Act 2006

WP No. 880 of 2009:-Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring Sec. 3 of the Tamil Nadu Value Added Tax (Amendment) Act 2007 (Act No. 21 of 2007) as ultra vires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India.

WP No. 9789 of 2009:-Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring Sec.3 of the Tamilnadu Value Added Tax (Amendment) Act 2007 (Act No.21 of 2007) as ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India.

WP No. 10223 of 2009:-Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records on the file of the Respondent in his Notice in TIN/33571522969/2008-2009 dated 30.4.2009 quash the same.

WP No. 10639 of 2009:-Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring section 3 of the Tamil Nadu Value Added Tax (Amendment)Act, 2007 (Act No.21 of 2007) as ultra vires the constitution of India and violative of Articles 14, 301, 303 and 304 of part XIII of the constitution of India as null and void in so far as the petitioner is concerned

WP No. 16722 of 2009:-Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring the amendments made by Act 21 Section 6 of the Tamil Nadu Value Added Tax Act 2006 (Act 32 of 2006) as unconstitutional ultra vires Article 14, Article 19(1)(g), Article 20, Article 301 and Article 304(a) of The Constitution of India.

WP No. 16723 of 2009:-Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring the amendments made by Act 21 Section 6 of the Tamil Nadu Value Added Tax Act 2006 (Act 32 of 2006) as unconstitutional ultra vires Article 14, Article 19(1)(g), Article 20, Article 301 and Article 304(a) of the Constitution of India.

WP No. 19654 of 2009:-Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records in TIN/33981663054/2007-2008 on the file of the Respondent and quash its notice dated 03.09.2009 and direct the respondent not to take coercive action for the assessment year 2007-08 under the TNVAT Act 2006.

WP No. 19655 of 2009:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring the amendments made by Act 21 to Section 6 of the Tamil Nadu Value Added Tax Act 2006 (Act 32 of 2006) as unconstitutional ultra vires Article 14, Article 19(1)(g), Article 20, Article 301 and Article 304(a). of The Constitution of India.

WP No. 2291 of 2010:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration To declare the amendment to Section 6 of the Tamil Nadu Value Added Tax Act 2006 inserting the expressions other than the dealer who purchases goods from outside the State of imports goods from outside the country introduced vide Act 21 as ultra vires Articles 14, 19 (1) (g), 265, 301 to 304 of the Constitution of India.

WP No. 10660 of 2010:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration Declaring section 3 of the Tamil nadu value added tax (Amendment) Act 2007 (Act No.21) as ultra vires the constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India.

WP No. 13201 of 2010:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declare the amendment to section 6 of the Tamilnadu Value Added Tax Act 2006 inserting the expressions other than the dealer who purchases goods from outside the State or imports goods from outside the country introduced vide Act 21 of 2007 as ultra vires Articles 14, 19 (1) (g), 265, 301 to 304 of the Constitution of India

WP No. 13716 of 2010:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring section 3 of the Tamilnadu Value Added Tax (Amendment) Act 2007 (Act No.21 of 2007) as ultra vires the Constitution of India and violative of Articles 14, 301, 303 and 304 of part XIII of the Constitution of India

WP No. 15458 of 2010:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration Declaring Sec.3 of the Tamilnadu Value Added Tax (Amendment) Act 2007 (Act No.21 of 2007) as ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India

WP No. 15459 of 2010:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the impugned proceedings of the second respondent in TIN/33300641048/2007-2008 dated 4.6.2010 and quash the same

WP No. 18097 of 2010:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration Declaring Sec.3 of the Tamil Nadu Value Added Tax (Amendment) Act 2007 (Act No.21 of 2007) as ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India

WP No. 28209 of 2010:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration To declare the amendment to section 6 of the Tamil Nadu Value Added Tax Act 2006 inserting the expressions other than the dealer who purchases goods from outside the State or imports goods from outside the country introduced vide Act 21 of 2007 as ultra vires Articles 14, 19(1)(g), 265, 301 to 304 of the Constitution of India

WP No. 30084 of 2010:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration Declaring Sec. 3 of the Tamilnadu Value Added Tax (Amendment) Act 2007 (Act No.21 of 2007) as ultra vires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of Constitution of India.

WP No. 13113 of 2011:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declare the Amendment Act 21 of 2007 inserting the words other than the dealers who purchases goods from outside the State of imports goods from outside the Country in Section 6 of the Tamilnadu Value Added Tax Act 2006 as ultravires the provisions of Article 14 read with Article 19 (1)(g), Article 21, Article 301 and 304 of the Constitution of India apart from being unreasonable, unjust, arbitrary and unfair violating level playing field

WP No. 13114 of 2011:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in TIN 33940843911/2007-08 dated 11.04.2011 and quash the same as illegal

WP No. 13988 of 2011:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring the amendments made by Act 21 Section 6 of the Tamil Nadu Value Added Tax Act 2006 (Act 32 of 2006) as unconstitutional ultravires Article 14, Article 19(1) (g), Article 20, Article 301 and Article 304(a) of the Constitution of India.

WP No. 20469 of 2011:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring Sec.3 of the Tamilnadu Value Added Tax (Amendment) Act 2007 (Act No.21 of 2007) as ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of part XIII of the Constitution of India

WP No. 28973 of 2011:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in TIN 33021402070/2006-07 quash the impugned proceedings dated 08.11.2011

WP No. 28974 of 2011:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to Declare the Amendment Act 21 of 2007 inserting the words other than the dealers who purchases goods from outside the State or imports goods from outside the Country in section 6 of the Tamilnadu Value Added Tax Act 2006 as ultravires the provisions of Article 14 read with Article 19(1)(g), Article 21, Article 301 and 304 of the Constitution of India apart from being unreasonable, unjust, arbitrary and unfair violating level playing field

WP No. 1213 of 2012:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring Section 3 of the Tamil Nadu Value Added Tax (Amendment) Act 2007 (Act No.21 of 2007) as ultra vires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India

WP No. 1214 of 2012:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring Section 3 of the Tamil Nadu Value Added Tax (Amendment) Act 2007 (Act No.21 of 2007) as ultra vires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India



WP No. 1215 of 2012:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring Section 3 of the Tamil Nadu Value Added Tax d(Amendment) Act 2007 (Act No.21 of 2007) as ultra vires the Constitution of India and violative of Articles 14, 301, 303, and 304 of Part XIII of the Constitution of India

WP No. 1216 of 2012:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring Section 3 of the Tamil Nadu Value Added Tax (Amendment) Act, 2007 (Act No.21 of 2007) as ultra vires the constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India.

WP No. 3253 of 2012:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declare the amendment to Section 6 of the Tamilnadu Value Added Tax Act 2006 inserting the expressions other than the dealer who purchases goods from outside the State or imports goods from outside the Country introduced vide Act 21 of 2007 as ultra vires Articles 14, 19 (1)(g), 265, 300A, 301 to 304 of the Constitution of India in so far as the petitioner concerned

WP No. 4992 of 2012:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declare the amendment to Section 6 of the Tamil Nadu Value Added Tax Act 2006 inserting the expressions other than the dealer who purchases goods from outside the state or import goods from outside the Country introduced vide Act 21 of 2007 for the period from January 1 2007 to June 7 2007 and after June 8 2007 as ultra vires under Articles 14, 9(1)(g), 265, 300A, 301 to 304 of the Constitution of India in so far as the petitioner is concerned

WP No. 8028 of 2012:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent passed in TIN No.33290862941/2007-08 dated 14.9.2011 and quash the same as the impugned proceedings of the respondent invokes the Tamilnadu Value Added Tax (Amendment) Act 2007 (Act No.21 of 2007) in so far as amending section 6 of the Tamilnadu Value Added Tax Act 2006 which is ultra vires unconstitutional and infringes Articles 14, 19 (1) (g) and 301 of the constitution of India

WP No. 8029 of 2012:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent passed in TIN NO.33290862941/2008-09 dated 14.9.2011 and quash the same as the impugned proceedings of the respondent invokes the Tamilnadu Value Added Tax (Amendment) Act 2007 (Act No.21 of 2007) in so far as amending section 6 of the Tamilnadu Value Added Tax Act 2006 which is ultra vires unconstitutional and infringes Articles 14, 19 (1) (g) and 301 of the constitution of India

WP No. 8030 of 2012:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent passed in TIN NO.33290862941/2009-10 dated 08.03.2011 and quash the same as the impugned proceedings of the respondent invokes the Tamilnadu Value Added Tax (Amendment) Act 2007 (Act No.21 of 2007) in so far as amending section 6 of the Tamilnadu Value Added Tax Act 2006 which is ultra vires unconstitutional and infringes Articles 14, 19 (1) (g) and 301 of the constitution of India

WP No. 8031 of 2012:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declare the Tamilnadu Value Added Tax (Amendment) Act 2007 (Act No.21 of 2007) in so far as amending section 6 of the Tamilnadu Value Added Tax Act 2006 as ultra vires unconstitutional and infringes Articles 14, 19 (1) (g) and 301 of the constitution of India

WP No. 8103 of 2012:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records on the files of the 1st respondent herein in TIN 33350620408/ 2006-2007 dated 27.2.2012 and quash the same

WP No. 8104 of 2012:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records on the files of the 1st respondent herein in TIN 33350620408/ 2007-2008 dated 29.2.2012 and quash the same

WP No. 8105 of 2012:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records on the files of the 1st respondent herein in TIN 33350620408/ 2008-2009 dated 29.2.2012 and quash the same

WP No. 8106 of 2012:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records on the files of the 1st respondent herein in TIN 33350620408/ 2009-2010 dated 29.2.2012 and quash the same

WP No. 18189 of 2012:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declare the amendment to section 6 of the Tamilnadu Value Added Tax Act 2006 inserting the expressions other than the dealer who purchases goods from outside the State or imports goods from outside the country as introduced by Act 21 of 2007 with effect from 1.1.2007 as ultra vires articles 14, 19 (1)(g), 265, 300A, 301 to 304 of the constitution of India

WP No. 27530 of 2012:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration Declaring Sec.3 of the Tamilnadu Value Added Tax (Amendment) Act 2007 (Act No.21 of 2007) as ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India.

WP No. 892 of 2013:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declare the amendment to Section 6 of Tamilnadu Value Added Tax Act 2006 inserting the expressions other than the dealer who purchases goods from outside the State or imports goods from outside the Country introduced vide Act 21 of 2007 as ultra vires Articles 14, 19(1)(g), 265, 300A, 301 to 304 of the Constitution of India

WP No. 893 of 2013:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records on the file of the respondent in his proceedings in TIN No.33191883436/ 2009-2010 dated 18.12.2012, quash the same

WP No. 894 of 2013:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records on the file of the respondent in his proceedings in TIN No.33191883436/ 2010-2011 dated 18.12.2012, quash the same

WP No. 895 of 2013:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records on the file of the respondent in his proceedings in TIN No.33191883436/ 2011-2012 dated 18.12.2012, quash the same

WP No. 1362 of 2013:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declare the Amendment Act 21 of 2007 inserting the words other than the dealers who purchases goods from outside the State or imports goods from outside the Country in section 6 of the Tamilnadu Value Added Tax Act 2006 as ultravires the provisions of Article 14 read with Article 19 (1)(g) and Article 21 Article 301 304 of the Constitution of India apart from being unreasonable unjust, arbitrary, unfair and violating level playing field

WP No. 6564 of 2013:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration Declaring Sec.3 of the Tamilnadu Value Added Tax (Amendment) Act 2007 (Act No.21 of 2007) as ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India

WP No. 7112 of 2013:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declare the Amendment Act 21 of 2007 inserting the words other than the dealers who purchases goods from outside the State or imports goods from outside the Country in section 6 of the Tamilnadu Value Added Tax Act 2006 as ultravires the provisions of Article 14 read with Article 19(1)(g) and Article 21, Article 301 and 304 of the constitution of India apart from being unreasonable unjust arbitrary unfair violating level playing field

WP No. 7113 of 2013:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the 1st respondent in TIN No. 33740962943/2006-07 dated 31.01.2013, quash the same.

WP No. 7114 of 2013:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the 1st respondent in TIN No. 33740962943/2007-08 dated 31.01.2013, quash the same.

WP No. 7115 of 2013:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the 1st respondent in TIN No. 33740962943/2008-09 dated 31.01.2013, quash the same.

WP No. 7116 of 2013:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declare the Amendment Act 21 of 2007 inserting the words other than the dealers who purchases goods from outside the State or imports goods from outside the Country in section 6 of the Tamilnadu Value Added Tax Act 2006 as ultravires the provisions of Article 14 read with Article 19(1)(g) and Article 21, Article 301 304 of the constitution of India apart from being unreasonable, unjust, arbitrary, unfair, violating level playing field

WP No. 7117 of 2013:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the 1st respondent in TIN No. 33100961840/2006-07 dated 31.01.2013, quash the same.

WP No. 7118 of 2013:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the 1st respondent in TIN No. 33100961840/2007-08 dated 31.01.2013, quash the same.

WP No. 7119 of 2013:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the 1st respondent in TIN No. 33100961840/2008-09 dated 31.01.2013, quash the same.

WP No. 8294 of 2013:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring Sec.3 of the Tamilnadu Value Added Tax (Amendment) Act 2007 (Act No. 21 of 2007) as ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the constitution of India

WP No. 8295 of 2013:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the impugned TIN/33420887265/CTO-Group-I/Enft (South) dated 18.02.2013 received on 21.02.2013 on the files of the second respondent herein and quash the same

WP No. 14183 of 2013:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declare the Amendment Act 21 of 2007 inserting the words other than the dealers who purchases goods from outside the State or imports goods from outside the Country in section 6 of the Tamilnadu Value Added Tax Act 2006 as ultravires the provisions of Article 14 read with Article 19(1)(g) and Article 21, Article 301 and 304 of the constitution of India apart from being unreasonable unjust arbitrary unfair violating level playing field

WP No. 14184 of 2013:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the 1st respondent in TIN 33451502956/2007-08, quash the impugned proceedings dated 11.3.2013.

WP No. 15049 of 2013:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring Sec.3 of the Tamilnadu Value Added Tax (Amendment) Act 2007 (Act No.21 of 2007) as ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India

WP No. 2556 of 2014:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring section 3 of the Tamilnadu Value Added Tax (Amendment) Act 2007 (Act No.21 of 2007) as ultravires the constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the constitution of India

WP No. 2557 of 2014:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the 2nd respondent in CST 867778/2007-08 dated 31.7.2013 and quash the same as being without jurisdiction and authority of law

WP No. 2558 of 2014:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the 2nd respondent in CST 867778/2008-09 dated 31.7.2013 and quash the same as being without jurisdiction and authority of law

WP No. 2559 of 2014:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the 2nd respondent in CST 867778/2009-10 dated 31.7.2013 and quash the same as being without jurisdiction and authority of law

WP No. 2560 of 2014:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the 2nd respondent in CST 867778/2010-11 dated 31.7.2013 and quash the same as being without jurisdiction and authority of law

WP No. 2561 of 2014:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the 2nd respondent in CST 867778/2011-12 dated 31.7.2013 and quash the same as being without jurisdiction and authority of law

WP No. 2562 of 2014:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the 2nd respondent in CST 867778/2012-13 dated 31.7.2013 and quash the same as being without jurisdiction and authority of law

WP No. 9994 of 2014:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring Sec.3 of the Tamilnadu Value Added Tax (Amendment) Act 2007 (Act No.21 of 2007) as ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India

WP No. 10097 of 2014:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration call for the records of the impugned order of re-assessment in 33892002458/2007-08 dated 20.2.2014 on the files of the respondent herein passed in pursuance of the impugned Amendment Act 21/2007 quash the same

WP No. 10098 of 2014:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the impugned order of re-assessment in 33892002458/2008-09

dated 20.12.2014 on the file of the respondent herein passed in pursuance of the impugned Amendment Act 21/2007, quash the same.

WP No. 10099 of 2014:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration call for the records of the impugned order of re-assessment in 33892002458/2009-10 dated 20.02.2014 on the files of the respondent herein passed in pursuance of the impugned Amendment Act 21/2007 quash the same

WP No. 10100 of 2014:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the impugned order of re-assessment in 33892002458/2010-11 dated 20.02.2014 on the file of the respondent herein passed in pursuance of the impugned Amendment Act 21/2007, quash the same

WP No. 29433 of 2014:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring Sec.3 of the Tamil Nadu Value Added Tax (Amendment) Act 2007 (Act No.21 of 2007) as ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the constitution of India

WP No. 14130 of 2016:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in TIN 33961348882/ 2013-2014 dated 28.03.2016 quash the same

WP No. 14131 of 2016:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in TIN 33961348882/ 2014-2015 dated 24.03.2016 quash the same

WP No. 33505 of 2016:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declare the amendment to section 6 of the Tamilnadu Value Added Tax Act 2006 inserting the expressions other than the dealer who purchases goods from outside the State or imports goods from outside the country introduced vide Act 21 of 2007 as ultra vires Articles 14, 19, (1) (g), 265, 300A, 301 to 304 of the constitution of India



WP No. 33506 of 2016:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declare the amendment to section 6 of the Tamilnadu Value Added Tax Act 2006 inserting the expressions other than the dealer who purchases goods from outside the State or imports goods from outside the country introduced vide Act 21 of 2007 as ultra vires Articles 14, 19, (1) (g), 265, 300A, 301 to 304 of the constitution of India

WP No. 33507 of 2016:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the 2nd respondent in his impugned proceedings made in TIN : 33194382932/ 2008-2009 dated 18.10.2014 quash the same as illegal and contrary to the scheme of the Act

WP No. 33508 of 2016:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the 2nd respondent in his impugned proceedings made in TIN : 33194382932/2009-2010 dated 18.10.2014 quash the same as illegal and contrary to the scheme of the Act

WP No. 33509 of 2016:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the 2nd respondent in his impugned proceedings made in TIN : 33194382932/2010-2011 dated 18.10.2014 quash the same as illegal and contrary to the scheme of the Act

WP No. 40071 of 2016:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in TIN 33631502663/2008-09 dated 27/09/2016 and quash the same

WP No. 40072 of 2016:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to to call for the records of the first respondent in TIN 33631502663/2009-10 dated 27/09/2016 and quash the same

WP No. 40073 of 2016:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in TIN 33631502663/2010-11 dated 27/09/2016 and quash the same

WP No. 40074 of 2016:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in TIN 33631502663/2007-08 dated 27/09/2016 and quash the same

For Petitioners : Mr. K. Vaitheeswaran  
in WP.Nos. 29096/2007, 7692/2008,  
16722/2009, 16723/2009 and 13988/2011

Mr. K.J. Chandran  
in WP No. 26788 of 2007  
WP.Nos.10036 of 2008 & 880 of 2009  
Mr. Ramani, Senior Advocate  
for Mr. P.V. Sudhakar  
in WP.Nos. 27530/2012&29433/2014

Mr. P.J. Rishikesh for Mr. K.R. Krishnan  
in WP.Nos.10639/2009 & 10223/2009

Mr. N. Inbarajan in WP Nos. 8103,  
8104, 8105 and 8106/2012

Mr. Joseph Prabhakar in  
WP.No.29120 of 2007& 4992 of 2012

Mr. N. Murali in WP No. 2580/2008,  
8028 to 8031 of 2012

Mrs. R. Hemalatha in WP.Nos.5288,  
5289/08, 3253/2012, 18189/2012,  
892/2013, 893/2013, 894/2013,  
895/2013, 33505/2016, 33506/2016,  
33507/2016, 33508/2016 and 33509/2016

Mr. N.R. Rajagopalan in  
WP.Nos.29464/2008, 313/2009,  
314/2009, 315/2009, 19654/2009 and 19655/2009

Mr. R. Kumar in WP.No.2291/2010,  
28209/2010 and 13201 of 2010

Mr. S. Ramanathan in  
WP Nos. 13113/2011 & 13114/2011

Mr. V. Sundarewaran in  
WP.No.28973/2011, 28974/2011, 1362/2013,  
7112/2013, 7113/2013, 7114/2013, 7115/2013,  
7116/2013, 7119/2013, 7117/2013, 7118/2013,  
14183/2013 14184/2013, 14130/2016, 14131/2016

Ms. Aparna Nandakumar in  
WP.Nos.8294 & 8295 of 2013, 9994/2014,  
10097/2014, 10098/2014, 10099/2014, 10100/2014

Mr. P. Rajkumar in WP No. 15458/2010,  
15459/2010, 15049/2013, 40071/2016,  
40072/2016, 40073/ 2016, 40074/2016

Mr. B. Raveendran in  
WP No. 26560/2008, 9789/2009 & 6564/2013

Mr. R. Senniappan in  
WP No. 10660/2010, 13716/2010,  
18097/2010, 1213/2012, 214/2012,  
1215/2012, 1216/2012, 2556/2014,2557/2014  
2558/2014, 2559/2014, 2560/2014,  
2561/2014, 2562/2014.

Mrs. Hema Muralikrishna in  
WP Nos.35593/2007, 30084/2010 and  
20469/2011

For Respondents : Mr. Haja Nizudeen  
Additional Advocate General  
assisted by Mr. V. Prashanth Kiran  
Government Advocate (Tax) in all the cases

**COMMON ORDER****R. MAHADEVAN, J.**

For the sake of clarity, the sub headings given in this order are tabulated

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## **I. INTRODUCTION**

1. In these batches of writ petitions, some of which are filed praying to issue a Writ of Declaration, declaring the amendment introduced by Act 21 of 2007 retrospectively with effect from 01.01.2007 to Section 6 of the Tamil Nadu Value Added Tax Act, 2006 (Act 32 of 2006) as unconstitutional, ultravires Articles 14, 19 (1) (g), 20, 301 and 304 (a) of the Constitution of India.

2. Some writ petitions are filed seeking to issue a Writ of Declaration declaring Section 3 of the Tamil Nadu Value Added Tax (Amendment) Act, 2007 (Act 21 of 2007) as ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India.

3. Some writ petitions are filed challenging the orders passed by the assessing officers under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 (in short, “the TNVAT Act, 2006”) disallowing the returns filed under Section 6 of the TNVAT Act, 2006.

4. Some writ petitions are filed challenging the notices issued by the respective respondents proposing to disallow the returns filed under Section 6 of the TNVAT Act, 2006.

## **II. PROVISION UNDER CHALLENGE**

5. At the first instance, in order to appreciate the issues that arise for

consideration herein, it is pertinent to look into the relevant provisions of the Act, which read as under:

**6. Section 6. Payment of tax at compounded rate by works contractor.-**

*“(1) Notwithstanding anything contained in this Act, every dealer, **other than the dealer who purchases goods from outside the State or imports goods from outside the Country may**, at his option, instead of paying tax in accordance with section 5, pay, on the total value of the works contract executed by him in a year, tax calculated at the following rate, namely:-*

- i) Civil works contract: two per cent of the total contract value of the civil works executed;*
- ii) Civil maintenance works contract: two per cent of the total contract value of the maintenance works executed;*
- iii) All other works contracts: [ Five] per cent of the total contract value of the works executed*

*(2) Any dealer, who executes works contract, may apply to the assessing authority along with the first monthly return for the financial year or in the first monthly return after the commencement of the works contract, his option to pay the tax under sub-section (1) and shall pay the tax during the year in the monthly installments and for this purpose, he shall furnish such return within such period and in such manner as may be prescribed.*

*(3) The option exercised under sub-section (1) shall be final for that financial year.*

*(4) A dealer, exercising option under sub-section (1) shall, so long as the option remains in force, not be required to maintain accounts of his business under this Act or the rules made there under except the records in original of the works contract, extent of their execution and payments received or receivable in relation to such works contract, executed or under execution.*

*(5) The dealer, who pays tax under this section, shall not I[collect any amount by way of tax or purporting to be by way of tax and shall not] be entitled to input tax credit on the goods purchased by him.*

**Explanation.-** *For the purpose of this section "civil works contract" includes civil works of construction of new building, bridge, road, runway, dam or canal including any lining, tiling, painting or decorating which is an inherent part of the new construction and any repair, maintenance, improvement or up gradation of such civil works by means of fixing and laying of all kinds of floor tiles, mosaic tiles, slabs, stones, marbles, glazed tiles, painting, polishing, partition, wall panelling, interior decoration, false ceiling, carpeting and extra fittings, or any manner of improvement*

*on an existing structure.”*

7. Section 3 of the Tamil Nadu Value Added Tax (Amendment Act)

21/2007-

*“In section 6 of the principal Act,--*

*(i) in sub-section (1), after the expression "every dealer", the following expression shall be inserted, namely:--*

*"other than the dealer who purchases goods from outside the State or imports goods from outside the country;"*

*(ii) for sub-section (5), the following sub-section shall be substituted, namely:--*

*"(5) The dealer who pays tax under this section shall not collect any amount by way of tax or purporting to be by way of tax and shall not be entitled to input tax credit on the goods purchased by him."*

**III. LEGISLATIVE / JUDICIAL HISTORY RELATING TO WORKS**

**CONTRACT**

8. As the issues involve the validity of certain conditions to a composition scheme relating to works contract, it may be necessary to very briefly set-out the legislative/judicial history on works contract. Works contract has been the subject matter of controversy ever since 1959, when the Hon'ble Supreme Court in *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd., [1959 SCR 37: 9 STC 353]* (also referred to 1st Gannon Dunkerly) while examining the validity of levy of tax on works contract for a building, after finding that there was transfer of property in goods, held that such contract nevertheless was an indivisible contract for construction involving both labour and

material/goods and it was impermissible for the States to levy tax on such transactions inasmuch as sale under Entry 48 of the Government of India Act, 1935 which corresponds to Entry 54 of List II of the VII Schedule to the Constitution of India, was “nomen-juris” and the expression “*Sale of goods*” was a term of well – recognized legal import and should be interpreted as having the same meaning as in the “Sale of Goods Act, 1930”. In other words, the competence of the State legislature was limited only to tax those transactions which qualified as a sale in terms of “Sales of Goods Act 1930” and works contract was thus held to be beyond the pale of the power of taxation of the State legislature. Soon thereafter in addition to building contracts (works contract), the Hon'ble Supreme Court examined/considered certain other transactions and applying the principles laid down in *Ist Gannon Dunkerly case*, held the same to be not sales and liable to payment of sales tax, even though they involve transfer of property, in the following cases:

(i) *M/s. New India Sugar Mills [(AIR) 1963 SC 1207]*, wherein, the Hon'ble Supreme Court took the view that in the transfer of controlled commodities in pursuance of a direction under a Control Order, the element of volition by the seller, or mutual assent, is absent and, therefore, there is no sale as defined in the Sale of Goods Act, 1930. However, in *Oil and Natural Gas Commission v. State of Bihar [A.I.R. 1976 S.C. 2478]*, the Hon'ble Supreme



Court had an occasion to consider its earlier decisions with regard to the liability of transfer of controlled commodities to be charged to sales tax and held that where there are any statutory compulsions, the statute itself should be treated as supplying the consensus and furnishing the modality of the consensus. In *Vishnu Agencies v. Commercial Tax Officer* [A.I.R. 1978 S.C. 449], six of the seven Judges concurred in over-ruling the decision, in *New India Sugar Mill's case* while the seventh Judge held the case to be distinguishable. It is, therefore, considered desirable to put the matter beyond any doubt.

(ii) *Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi* [A.I.R. 1978 S.C. 1591], in which, it was held that States have been proceeding on the basis that the *Associated Hotels of India case* was applicable only to supply of food or drink by a hotelier to a person lodged in the hotel and that tax was leviable on the sale of foodstuffs by a restaurant. But over-ruling the decision of the Delhi High Court, the Supreme Court has held in the above case that service of meals, whether in a hotel or restaurant, does not constitute a sale of food for the purpose of levy of sales tax, but must be regarded as the rendering of a service in the satisfaction of a human need or ministering to the bodily want of human beings. It would not make any difference, whether the visitor to the restaurant is charged for the meal as a

whole or according to each dish separately.

9. The problem that arose on account of the above decisions, was referred to the Law Commission of India and its advice was sought to plug the loophole as there was large scale leakage of sales tax revenue by adoption of various devices including hire purchase system. The Law Commission suggested three means/modes to plug the loophole, one of which being insertion of an expanded definition to “Sale of Goods” under the Constitution.

10. Pursuant to the recommendation of the Law Commission, the 46<sup>th</sup> Amendment to the Constitution was introduced in Article 366 of the Constitution, whereby clause 29-A was inserted and the same is extracted below:

*“Clause 29-A of Article 366 is in the following terms:*

*(a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration:*

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

*(c) a tax on the delivery of goods on hire-purchase or any system of payment by installments;*

*(d) a tax on the transfer of the right to use any goods for any purpose(whether or not for a specified period) for cash, deferred payment or other valuable considerations;*

*(e) a tax on the supply, by way of or as part of any service or in an other manner whatsoever, of goods, being food or any other article for human consumption or any drink(whether or not intoxicating), where such supply or service, or cash, deferred payment or other valuable consideration,*

*and such transfer, delivery or supply of goods shall be deemed to be a sale of those goods by the persons making the transfer, delivery or supply ad a*

*purchase of those goods by the person to whom such transfer, deliver or supply is made.”*

**11.** The 46<sup>th</sup> Amendment to the Constitution was challenged by way of a batch of writ petitions and civil appeals in the ***Builders Association's case*** [1989(2) SCC 245 : 73 STC 370] giving rise to the following questions viz.,

a. The first question related to the constitutional validity of the Constitution ( Forty-Sixth Amendment) Act, 1982, by which the legislatures of the States were empowered to levy sales tax on certain transaction described in sub-clauses (a) to (f) of clause (29-A) of Article 366 of the Constitution; and

b. The second question was, whether the power of the State legislature to levy tax on the transfer of property in goods involved in the execution of works contracts referred to sub-clause (b) of clause (29-A) of Article 366 of the Constitution is subject to the restrictions and condition contained in Article 286 of the Constitution.

**12.** The challenge to the validity of the 46<sup>th</sup> Amendment was rejected and it was held that the Amendment to the Constitution was valid. The Hon’ble Supreme Court thereafter proceeded to explain the scope of the 46<sup>th</sup> Amendment in respect of works contract as under:

(i) The 46<sup>th</sup> Amendment to the Constitution does not treat the entire works contract to be a sale.

(ii) The element of labour and service must be deducted from the contract value.

(iii) The goods component from outside the State, in the course of interstate trade and commerce, export or import in the course of execution of works contract continued to remain beyond the legislative competence of the State and thus, ought to be deducted from the total contract value.

**13. *Gannon Dunkerley & Co and others v. State of Rajasthan and others* [(1993) 1 SCC 364]:**

In a batch of matters in *Gannon Dunkerley case*, the Hon'ble Supreme Court considered the appeals arising from the judgment of the Rajasthan High Court and certain connected writ petitions filed under Article 32 of the Constitution raising questions relating to imposition of tax in the transfer of property and goods involved in the execution of works contract pursuant to the 46<sup>th</sup> Amendment to the Constitution, which made available to the State legislature the power to levy tax on six categories of mutant sales which by a fiction was deemed to be a sale. The challenge was primarily on the premise that the power of the States to levy tax which stood expanded pursuant to the

46<sup>th</sup> Amendment to the Constitution, was subject to the same discipline/limitation which a regular/conventional sale would be subject to. The Hon'ble Supreme Court also examined the question, as to what would constitute the measure of tax pursuant to the 46<sup>th</sup> Amendment in relation to works contract. Ultimately, the Hon'ble Supreme Court summarized its conclusion as under:

*“51. The aforesaid discussion leads to the following conclusions:*

*(1) In exercise of its legislative power to impose tax on sale or purchase of goods under Entry 54 of the State List read with Article 366(29-A)(b), the State Legislature, while imposing a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract is not competent to impose a tax on such a transfer (deemed sale) which constitutes a sale in the course of inter-State trade or commerce or a sale outside the State or a sale in the course of import or export.*

*(2) The provisions of Sections 3, 4 and 5 and Sections 14 and 15 of the Central Sales Tax Act, 1956 are applicable to a transfer of property in goods involved in the execution of a works contract covered by Article 366(29-A)(b).*

*(3) While defining the expression 'sale' in the sales tax legislation it is open to the State Legislature to fix the situs of a deemed sale resulting from a transfer falling within the ambit of Article 366(29-A)(b) but it is not permissible for the State Legislature to define the expression 'sale' in a way as to bring within the ambit of the taxing power a sale in the course of inter-State trade or commerce, or a sale outside the State or a sale in the course of import and export.*

*(4) The tax on transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract falling within the ambit of Article 366(29-A)(b) is leviable on the goods involved in the execution of a works contract and the value of the goods which are involved in execution of the works contract would constitute the measure for imposition of the tax.*

*(5) In order to determine the value of the goods which are involved in the execution of a works contract for the purpose of levying the tax referred to in Article 366(29-A)(b), it is permissible to take the value of the works contract as the basis and the value of the goods involved in the execution*

*of the works contract can be arrived at by deducting expenses incurred by the contractor for providing labour and other services from the value of the works contract.*

*(6) The charges for labour and services which are required to be deducted from the value of the works contract would cover (i) labour charges for execution of the works, (ii) amount paid to a sub-contractor for labour and services; (iii) charges for obtaining on hire or otherwise machinery and tools used for execution of the works contract; (iv) charges for planning, designing and architect's fees; and (v) cost of consumables used in execution of the works contract; (vi) cost of establishment of the contractor to the extent it is relatable to supply of labour and services; (vii) other similar expenses relatable to supply of labour and services; and (viii) profit earned by the contractor to the extent it is relatable to supply of labour and services.*

*(7) To deal with cases where the contractor does not maintain proper accounts or the account books produced by him are not found worthy of credence by the assessing authority the legislature may prescribe a formula for deduction of cost of labour and services on the basis of a percentage of the value of the works contract but while doing so it has to be ensured that the amount deductible under such formula does not differ appreciably from the expenses for labour and services that would be incurred in normal circumstances in respect of that particular type of works contract. It would be permissible for the legislature to prescribe varying scales for deduction on account of cost of labour and services for various types of works contract.*

*(8) While fixing the rate of tax it is permissible to fix a uniform rate of tax for the various goods involved in the execution of a works contract which rate may be different from the rates of tax fixed in respect of sales or purchase of those goods as a separate article."*

#### **IV. NATURE OF COMPOSITION SCHEME WITH REGARD TO WORKS CONTRACT**

**14.** The State's power to levy tax on works contract having been held to be limited to tax the transfer of property involved in the execution of works contract in ***Gannon Dunkerley's*** case and the need to provide for a mechanism to deduct elements relating to labour and services involved in works contract and also to exclude the value of the transfer of property involved in the

execution of works contract which are governed by Sections 3, 4 and 5 of the Central Sales Tax Act, 1956 (in short, “the CST Act”) as being in the course of interstate trade or commerce or export or import made it necessary for a works contractor to maintain books of accounts to distinguish the extent of labour and services and component of goods involved in the execution of works contract, which are in the course of interstate trade or commerce or export or import and claim deduction thereof.

**15.** The above process was found to be complex, cumbersome, time consuming and administratively inconvenient. Resultantly, a number of States provided for an alternate method to discharge the tax on works contract which invariably was to levy tax at a “**flat rate**” on the “**total contract value**” which included the element of labour and services and also components of goods covered by sections 3,4 and 5 of the CST Act. However, the flat rate was much lower than the rates prescribed on the sale of individual goods prescribed by the respective State enactments.

**16.** In *State of Kerala and another v. Builders Association of India and others [104 STC 134]*, the Hon'ble Supreme Court examined the challenge to a composition scheme for works contract under Section 7 of KGST Act, on the premise that the composition scheme failed to comply with the Constitutional limitations, since, it levied tax at flat rate on the total contract value which

would include the value of labour/services and the component/element of goods in the course of inter-state trade and commerce, export and import.

**17.** The Hon'ble Supreme Court rejected the challenge to the above scheme on the ground that a contractor, who had not opted to the alternate method, cannot complain against the same for which he can have no grievance nor can a contractor, who has opted to the alternate method of tax, challenge the same, in view of the fact that he had voluntarily and with the full knowledge of the features of the alternate method of tax, opted to be covered by it. Therefore, neither set of contractors can be heard to challenge the validity of scheme. Importantly, the Hon'ble Supreme Court explained the nature of composition scheme and highlighted its features, as under:

A. The composition scheme provides a convenient and simple method of assessment.

B. By opting to alternative method the contractor saves himself the botheration of book-keeping, assessment and appeals.

C. The composition scheme is rough and ready method of assessment of tax and leaves it to the contractor either to opt to it or to be governed by the regular/ normal method.

D. The option of composition scheme can be availed at the discretion of



a contractor if he thinks it advantageous to him.

E. The object of the composition scheme is the same as that of the regular method and it was only that they follow a different route to arrive at the same destination.

**18.** The above view of the Hon'ble Supreme court was reiterated in the case of *Mycon Constructions v. State of Karnataka and others [(2002) 127 STC 105(SC)]*.

#### **V. LEGAL BACKGROUND OF THE SECTION**

**19.** The petitioners in these batches of writ petitions are engaged in works contract. Earlier, the Tamil Nadu General Sales Tax Act, 1959 was in force, which was the taxing statute, as per Section 3-B of which, a dealer engaged in the business of transfer of property in goods involved in execution of works contract, has to pay tax on the taxable turnover of transfer of property in goods involved in the execution of works contract. Such taxable turnover had to be calculated by deducting certain amount that was mentioned thereof from the total turnover. Subsequently, Section 7-C was inserted to the Tamil Nadu General Sales Tax Act, 1959 by Act 25 of 1993 with effect from 01.04.1993, which provided for an option for payment of tax compounded rates on works contract only for civil contractors. Thereafter, the Act was further amended in

the year 1999, extending the scope of Section 7-C to bring within its fold, all work contractors involved in the execution of work contract in the State. Accordingly, all the contractors engaged in the execution of works contract in the State were eligible to opt for payment of tax at compounded rates as prescribed under Section 7-C on the total value of the contract executed, instead of paying tax under Section 3-B of the Tamil Nadu General Sales Tax Act, 1959. According to the petitioners, Section 7-C provided for levy of tax on the total value of the contract, without any deductions whatsoever. However, they have availed the benefit conferred thereof as it provided a single rate of tax for the contract. Above all, Section 7-C does not require an assessee to maintain the books of accounts. Further, Section 7-C of the Tamil Nadu General Sales Tax Act treated all the persons engaged in the works contract as a class by themselves and had provided the option of paying tax at compounded rates. It is thus, open to the contractors to either discharge their liability under Section 3-B or exercise the option of discharging the taxes on the basis of the composition scheme in terms of Section 7-C.

**20.** On 01.01.2007, the Tamil Nadu General Sales Tax Act, 1959 was repealed with the advent of the Tamil Nadu Value Added Tax Act, 2006. Section 3-B of the repealed Act was re-defined and incorporated as Section 5 in the new Act. Similarly, Section 6 replaced Section 7-C of the repealed Act.

Thus, even after the repeal of the Tamil Nadu General Sales Tax Act on 01.01.2007, under the new VAT regime, the dealers engaged in works contract were extended the option either to discharge the taxes under Section 5 of the Act, which is the charging section for works contract or by way of composition under Section 6 of the Act. Thus, the dealers engaged in works contract were treated differently from those who are engaged in manufacturing, re-selling or transfer of right to use goods, who had no such option.

**21.** Now, coming to VAT regime, there are two classes of dealers in 'works contract' viz., works contractor of the general scheme covered under Section 5 and the other covered under Section 6, which is optional. A dealer covered under Section 5 is liable to pay tax for each year on his taxable turnover relating to his business of transfer of properties and goods involved in the works contract, either in the same form or in some other form, which may be arrived at in such a manner as specified under the first schedule of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006). On the other hand, the dealers who opt under Section 6 of the Act, are liable to pay a compounded tax on the actual value of works contract executed by them at the rate of 2% in the case of civil works contract and maintenance works contract and at 4% on all other works contract.

**22.** Subsequently, the impugned Act 21 of 2007 was passed by the Legislative Assembly and published in the Government Gazette, TNGG Extraordinary No.157 dated 08.06.2007 bringing within its fold various Amendments to the Act. As per Section 3 (i) of the Act 21 of 2007, the expression "every dealer" was replaced with the words "*other than the dealer who purchases goods from outside the State or imports goods from outside the Country*". This, according to the petitioners, results in hostile discrimination between the dealers who purchase goods within the State and outside the State/country.

**23.** Further, it is contended that even though the Act was published in the gazette on 08.06.2007, it was notified to have come into force with retrospective effect on 01.01.2007. Therefore, challenging the impugned amendment as arbitrary, beyond legislative competence, resulting in hostile discrimination within the works contractors on the basis of the state of procurement/ purchase of goods and further, the impugned amendment impedes the free movement of the goods in the trade and commerce and imposes higher rate of tax on goods purchased from other states/imports, the writ petitions have been filed.

**24.** Some writ petitions have also been filed challenging the assessment orders and the notices issued for revision of assessment, on the same grounds.

## **VI. CONTENTIONS OF THE PETITIONERS**

**25.** Mr. N. Sriprakash, learned counsel for the petitioners in WP Nos. 8103 to 8107 of 2012 submitted that the petitioners are works contractors. They were granted approval as a Co-developer for providing infrastructural facilities involving residential development for the Developer. They were also granted permission to procure materials required for the development of residential facilities at Mahindra World City, Special Economic Zone (in short SEZ). Accordingly, various materials purchased by the petitioners inter-state as well as locally and subsequently deemed to have been sold, were meant to carry on their authorised operations within the meaning of Section 12 (1) (a) of the Tamil Nadu Special Economic Zones (Special Provisions) Act, 2005 and hence their entire turnover is exempt from taxation and outside the purview of the Act including section 6 of the Act. Further, as per Section 28 of the TNSEZ Act, the Act has overriding powers in respect of other enactments. Referring to Section 8 (6) of the Central Sales Tax Act and section 26(1)(g) of the Central Special Economic Zones Act, 2005, Section 50 of the CSEZ Act, was relied upon to contend that the State governments are empowered to grant exemptions from taxes/levies to the developers. In order to support SEZ developers, exemption at that point of purchase was extended by G.O. Ms. No.193, Commercial Taxes and Registration Department dated 30.12.2006 and

therefore, the subsequent sales inside the State of Tamil Nadu are exempted by Section 12 of the SEZ Act. Thus, the various materials purchased and transferred and deemed to have been sold by the petitioners were meant to carry on the authorised operations, within the meaning of Section 12(1)(a) of the SEZ Act, without which the petitioners could not carry on or execute the work. While so, the classification made by virtue of the impugned amendment is discriminatory.

**26.** It is stated by the learned counsel that the classification contained under Section 3 (i) of the impugned amendment, on the basis of antecedent purchases and taxes paid on the same by a works contractor, bears no nexus to the object sought to be achieved under Section 6 of the Act. It is also submitted that in the absence of any Statement of objects and reasons being appended to the impugned amendment, it may have to be understood in the light of the decision of the Hon'ble Supreme Court in *Builders Association's case (supra)*, wherein it was provided that the intention was to provide a hassle free and alternate method for discharging taxes. That being the object of a composition scheme, the impugned amendment which imposes a condition whereby only those works contractors who do not have any inter-state purchases or receive goods from outside the state or imports/goods from outside the country, would be eligible to opt for the Composition scheme

under Section 6 of the Act, has no nexus to the said object. Therefore, the impugned legislation is arbitrary, discriminatory and violative of Article 14 of the Constitution of India. The object and purpose of the impugned provision are to protect the works contractors, who have paid taxes under the VAT Act on their purchases, which object has no application to a case of works Contractor who is not paying any tax on their local purchases as per G.O. Ms. No.193, Commercial Taxes and Registration Department dated 30.12.2006. The learned counsel further contended that an exemption is applicable only to the persons on whom tax can be levied.

**27.** It is submitted by the learned counsel that any legislation which fails the following twin tests, would fall foul of Article 14 of the Constitution viz.,

a. Those grouped together in one class must possess a common characteristics which distinguishes them from those excluded from the group.

b. This characteristic or intelligible differentia must have a rational nexus with the object sought to be achieved.

**28.** Elaborating the tests which are required to be satisfied for bringing a classification among the same class of dealers, the learned counsel submitted that a fiscal legislation also can be subjected to challenge if there is no rational distinction between the two classes. In the present case, there is no

justification for the classification made by virtue of the impugned amendment.

The learned counsel also contended that the sub-classification of the dealers engaged in works contract clearly amounts to discrimination as because the nature of works contract, irrespective of the place of purchase remains the same.

**29.** The learned counsel further contended that the impugned amendment discriminates between the co-developers, who use goods purchased locally and purchase goods from dealers outside the state, which is in the nature of restriction forcing the dealers to purchase goods from dealers within the state and hence, violates the rights guaranteed under Part XIII of the Constitution.

**30.** It is also submitted by the learned counsel that Section 27 (1) (a) or (b) of the TNVAT Act, 2006 cannot be invoked to revise the assessment while rejecting the option under Section 6, where the total contract value is assessed and not the turnover. In this regard, reliance was placed upon the judgment of this Hon'ble Court in *Sinotech v. CTO [(2008) 15 VST 398 (Mad)]*. The learned counsel, in support of his contentions, also relied upon the following judgments in *Income Tax Officer v. Lawrence Singh Ingty [AIR 1968 SC 658]*, *Ranjit Thakur v. Union of India and others [1987 (4) SCC 611]*, *Ayurveda Pharmacy and another v. State of Tamil Nadu [1989 (2) SCC 285]*, *Shashikant Laxman Kale & another v. Union of India and another [1990 (4) SCC 366]*,



*State of Kerala and another v. Builders Association of India and others [1997 (2) SCC 183], Ahmedabad Pvt. Primary Teachers Association v. Administrative Officers and others [2004 (1) SCC 755], Peekay Re-rolling Mills (P) Ltd v. Assistant Commissioner and another [2007 (4) SCC 30], Indian Dairy Machinery Co. Ltd v. Assistant Commissioner of Commercial Taxes [2008 (3) SCC 698], Star Television News Ltd v. Union of India and others [2009 SCC online BOM 2162], Union of India v. Star Television News Ltd [2015 (12) SCC 665], Jayam & Co. v. Assistant Commissioner [2018 (19) GSTL 3 (SC)], and TVS Motor Company Ltd v. State of Tamil Nadu and others [2019 (13) SCC 403].*

31. Mrs. R. Hemalatha, learned counsel for the petitioners in WP No. 892 of 2013 etc., submitted that the impugned legislation under Section 6 of the Act, inserting the expressions "other than the dealer who purchased goods from outside the State or imports goods from outside the Country" introduced under Act 21 of 2007 clearly discriminates the goods on the basis of its origin. The impugned legislation creates two classes of dealers on the basis of the goods dealt with by them viz., those who are dealing in local goods alone and those who deals with imported goods from outside the State or Country. Such a discrimination among the dealers is wholly arbitrary, illegal and violative of Article 14 of the Constitution of India. To lend support to this submission, the

learned counsel placed reliance on the decision of the Andhra Pradesh High Court in the case of ***Maruthi Constructions vs. Government of Andhra Pradesh and another [(2007) 10 VST 362 (AP)]***. In that case, the Hon'ble Court had an occasion to examine the constitutional validity of Section 5G (4) of Andhra Pradesh General Sales Tax Act, 1957 inserted by Andhra Pradesh General Sales Tax (Third Amendment) Act, (Act 25 of 2002) whereby restraining a dealer from using the goods purchased outside the State as a condition precedent for exercising the option to be taxed at a compounded rate.

32. Adding further, the learned counsel submitted that Section 5G (4) of Andhra Pradesh General Sales Tax (Third Amendment) Act 25 of 2002, which was dealt with by the Honourable Andhra Pradesh High Court in the above decision, is *pari materia* to the impugned legislation under Section 6 of the Act. The classification among the works contractors based on the place of purchase of the goods is not a reasonable classification. Even otherwise, there is no justification for such a classification among the works contractors, who deal with almost same kind of goods. Thus, the learned counsel reiterated that there is a vast and different treatment among the dealers, by virtue of insertion of the impugned provision under Section 6 of the Act and it is in gross violation of Article 14 of the Constitution of India.

33. It is also submitted by the learned counsel that Article 304 (a) mandates the States to levy tax on goods having its origin outside the State at the same rates as local goods and prohibits the States from levying taxes at different rates on the basis of its origin. But in this case, for the goods belonging to the same class, the respondents have adopted discriminatory treatment by bringing in the impugned legislation. In this context, the learned counsel relied on the decision of the Constitutional Bench of the Honourable Supreme Court in the case of *Jindal Stainless Limited and another v. State of Haryana and others* [(2017) 12 Supreme Court Cases 1].

34. Adding further, the learned counsel submitted that the term 'manufacture' used in Section 2 (27) of the Act is given a wider connotation and it includes within the definition 'works contract'. It is contended that the works contract comes under the purview of 'manufacture' and therefore, the nature of activity of the petitioners engaged in execution of works contract falls within the definition of 'manufacture' and it fails to satisfy Article 304 (a) of the Constitution of India. The essence of Article 304 (a) lies in ensuring equality of fiscal burden without any discrimination. Here, the impugned legislation denies a dealer importing goods from outside the State, the benefit of composition under Section 6 of the Act, while the same legislation enables a dealer executing the same work involving materials procured locally, is

extended the benefit of composition under Section 6. This, according to the learned counsel, is a discrimination and it deprives the same class of persons level playing field. Therefore, the learned counsel prayed this Court to observe that the impugned legislation is ultra vires Articles 14, 19(1)(g), 265, 300A, 301 to 304 of the Constitution of India and thereby allowing the writ petitions.

**35.** Mr. R. Senniappan, learned counsel appearing for the petitioners in Writ Petition Nos. 1213, 1214, 1215 and 1216 of 2012 etc. cases submitted that the petitioners are civil works contractors and during the course of their business, they purchased cement, blue metal, iron and steel, wood, hardware, electrical goods, sanitary wares, electrical cables, paints etc., for execution of the work entrusted to them. The learned counsel further submitted that there is no interstate purchase for the assessment years 2006-07 and 2008-09. However, based on the impugned amendment, notices were issued by the Assessing Officers proposing to cancel the earlier orders of assessment, which were already completed at the compounding method of assessment purportedly on the ground that the petitioners purchased goods outside the State during the assessment years 2007-2008 and 2009-2010.

**36.** By pointing out the provisions contained in Section 6 of the TNVAT Act, 2006, the learned counsel submitted that an assessee, who exclusively purchases inter-state or imported goods, cannot be permitted to avail the

benefit under Section 6 of the Act. However, the petitioners, who have purchased goods on inter-state as well as local goods, are also denied the benefit of compounding method of assessment on the strength of the impugned amendment. According to the learned counsel, the petitioners cannot be equated with an assessee, who exclusively purchases goods outside the State or imports goods from outside the Country. It is also stated illustratively that mere inter-state purchase of one item, out of 25 items required by the assessee, for execution of work should not deprive the assessee the benefit under the Act which existed prior to amendment. Even though the impugned amendment has no application to the petitioners, who purchase the goods locally except a few goods, if at all, the petitioners have to be directed to pay enhanced tax for the few items which were purchased outside the State as contemplated under Section 3 (2) of the Act and such purchase should not disturb or affect the other items purchased locally. Even if the impugned amendment is declared to be valid, it cannot be made applicable to the petitioners, who have purchased almost all the goods locally, bearing a very few items purchased outside the State, for execution of work. The learned counsel therefore prayed for allowing all the writ petitions, by quashing the notices issued by the Assessing Officers.

**37.** Mr. K. Vaitheeswaran, learned counsel for the petitioner in WP No.

29096 of 2007 etc., would contend that the petitioners are engaged in undertaking works contract, which involve both material and labour. According to the learned counsel, the Tamil Nadu General Sales Tax Act, which was hitherto the taxing statute, was repealed on introduction of Tamil Nadu Value Added Tax (TNVAT) Act, 2006 with effect from 01.01.2007. The Act encompasses various added features including a list of goods which are exempted from the purview of VAT, those goods which attract VAT at 1 % and those which attracts 4%. The Act also contains the list of goods which are not exempted or those goods, which will attract VAT at 1%, 4% or 12.5% as the case may be. The Act also provides for Input Tax Credit (ITC) and once the VAT is paid on purchases, it can be used to pay the VAT on the sales. Further, the dealers, who purchase goods on payment of VAT can take ITC of the VAT charged by their supplier and set it off against the VAT payable on their sales. Similarly, the manufacturers, who purchase goods for use as input in manufacture or processing, can take ITC of the VAT charged by their suppliers and set it off against the VAT payable on their sales. As per the provisions of the Act, a seller is allowed to avail ITC of taxes paid on inputs for set off against taxes payable on output.

**38.** Adding further, the learned counsel would contend that the petitioners have exercised their option of compounding in terms of Section 6 of the Act,

as soon as it was introduced on 01.01.2007. To that effect, they have also filed their declaration in terms of Section 6 and are paying applicable VAT to the department. While so, the respondent amended Section 6 of the Act by virtue of Act 21 of 2007 retrospectively from 01.01.2007. As per the impugned amendment under Section 6 (1) the dealers have been categorised under two classes and they are (i) dealers who purchase goods from outside the State and (ii) those who import goods from outside the country.

**39.** It is the specific contention of the learned counsel that the amendment brought to Section 6 of the Act discriminated a dealer who availed the compounding scheme, when it was in vogue by virtue of the subsequent amendment, the dealers are deprived of the compounding scheme. The amendment was brought in purportedly on the ground that a dealer executing works contract and purchasing goods outside the State and a dealer who imports goods from outside the country, constitute a distinct and separate class from a dealer, who executes the works contract procuring goods locally. The learned counsel further submitted that the works contractors formed a single class and relying upon the judgment of the Andhra Pradesh High Court in *Maruthi Constructions case (supra)* submitted that similar restriction was held to be discriminatory and restrictive. According to the learned counsel, if a concessional rate of duty was granted to one importer, but it was denied to the

other without any justification, it would amount to discrimination. To buttress this submission, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in *Jain Exports Private Limited v. Union of India* [1991 AIR SC1721] and submitted that merely because a dealer made purchase from outside the State, he cannot be deprived of the benefit of the scheme of compounding.

40. Placing reliance on the observation of the Hon'ble Supreme Court in the case of *Nagaraj M v. Union of India* [(2006) (9) JT 191] that “equality is the essence of democracy and is the basic structure of the Constitution, it is submitted that the amendment to Section 6 of the Act conspicuously restricted inter-state purchase and sale of the goods by a dealer and thereby infringes his right to carry on business under the free trade policy as enshrined under the Constitution of India. By virtue of the impugned amendment, there is a discrimination among the traders by dividing them into two classes, on the ground that one class of dealer purchases goods locally and the others make inter-state purchases. This concept is opposed to the principles of equality as the goods purchased in the course of inter-state trade and brought within the State for being used in the works contract will only result in free flow of trade and commerce and any restriction imposed thereof would offend the constitutional guarantees conferred under Part XIII of the Constitution of



India. The learned counsel further contended that when the State denies compounding mechanism among the works contractors, it discriminates against the goods imported into the State and purchased from the State, which results in imposing higher tax burden. Such discriminatory tax burden brought about by virtue of the impugned amendment based on the origin of goods or on the basis of payment of tax made within the State at the earliest stage infringes Article 304(a) of the Constitution of India. In this context, the learned counsel referred to the decision in ***Firm A.T.B. Mehtab Majid and Company v. State of Madras [AIR 1963 SC 928]*** in which the Honourable Supreme Court struck down the Madras Sales Tax Rules, which had brought about differential tax liability on hides and skins sold within the State in relation to payment of tax. The said decision was also followed by the Constitutional Bench of the Hon'ble Supreme Court in ***Shree Mahavir Oil Mills and another v. State of Jammu and Kashmir and others [1997 104 STC 148]***.

41. Reliance was also placed on the decision in ***Anand Commercial Agencies v. CTO [AIR 1998 SC 113]*** in which the Hon'ble Supreme Court has found that the State of Andhra Pradesh levied tax at 6.5% on groundnut oil. However, it was ordered that the rate of tax would be 2.5% if tax on the groundnut from which the oil was produced had already been paid in that

State. Holding that such a levy is discriminatory, it was held that the taxation policy of the State would result in heavy tax burden to the importers who will have to pay sales tax at a higher rate.

**42.** The learned counsel also relied on the decision of this Court in the case of *Tata Sky Limited v. State of Tamil Nadu and another* [(2013) 62 VST 69] wherein it was held that except for the technology difference, there is no difference between the Cable TV and DTH and the object of introducing Tamil Nadu Entertainments Tax Act appears to levy tax on entertainment, when the content of entertainment does not undergo any change, except for the medium through a technique of receiving signals through satellite. Therefore, it was held that the classification made is arbitrary insofar as the differential tax treatment meted to the DTH as a separate class and it offends Article 14 of The Constitution of India. The appeal preferred by the State was dismissed for non-prosecution in *2018 SCC Online 2412*.

**43.** It is further submitted by the learned counsel that the Value Added Tax (VAT) was implemented across the Country to ensure uniform implementation of tax law on sale of goods. The other States have simply provided for a compounding scheme as an alternative system of taxation for works contracts without restricting any procurement from other States or from outside India. However, two States namely Karnataka and Andhra Pradesh have provided for

a restriction in such a way that the restriction would not deny the benefit of the scheme for the rest of the turnover. The learned counsel also relying upon the doctrine of proportionality, contended that the amendment to section 6 imposes a condition which is disproportionate to the alleged object as because even if 0.1% of inputs are purchased from an another state dealer, the assessee is denied the concession for the entire turnover of the works contract and therefore, such a condition is unreasonable.

**44.** It is further submitted that the retrospective amendment to Section 6 of the Act by introducing Act 21 of 2007 provides that a dealer should not have collected tax with effect from 01.01.2007. Such an amendment makes the dealer for excess collection of tax, so as to make it an offence and requiring the dealer to pay a penalty under the Act. Therefore, if the retrospective amendment is allowed to be operated, the dealer would be exposed to penalty in terms of Section 40 (2) (ii) of the Act. Even assuming that a dealer is able to procure a material which is otherwise not available in the State and pays Central Sales Tax at 3%, the same cannot be a reason to enact a discriminatory provision. There is no statement of objects which formed part of the bill. There was no committee report or data available to suggest that local dealers were affected and that, it warranted the impugned amendment. There is no justification on the part of the respondents in classifying the dealers differently

based on the place of purchase of the goods and therefore it clearly offends Article 14 of The Constitution of India.

**45.** The learned counsel placed reliance on the decision of the Honourable Supreme Court in the case of *Mohinder Singh Gill v. Chief Election Commissioner* [(1978) 1 Supreme Court Cases 405] in which it was held that when a statutory authority makes an order on the basis of certain grounds, its validity must be judged by the reasons so mentioned and in the absence of any reasons given in the order, it cannot be supplemented by way of a counter affidavit or otherwise. By pointing out the said observations of the Honourable Supreme Court, the learned counsel submitted that in Para Nos. 8 and 9 of the counter affidavit filed in WP No. 7692 of 2008, it was merely stated that the contractors procuring goods outside the State were benefited by saving tax payable on the purchase of the goods. It was also stated that there is a trade diversion and the Government found it essential to rectify the anomaly and to negate the inequality among the dealers. Such a reason assigned in the counter affidavit is nothing but an assumption without any basis. In any event, merely because some dealer is able to operate in a tax efficient manner and control costs, that would not be a ground to provide a statutory mechanism to deny such dealer the benefit conferred prior to the amendment and to impose a restriction. The learned counsel, in addition to the judgments referred above,

relied upon the judgments in *Bhagat Ram v. State of HP [AIR 1983 SC 454]*, *Appu Food Products Ltd v. Akram and others [2019 SCC Online Mad 12378]*; and *Deputy Commissioner of Income Tax and another v. Pepsi Foods Limited [2021 (49) GSTL 113]* and prayed for allowing the writ petitions.

46. Mr. N. Murali, learned counsel appearing for the petitioners in WP Nos. 8028, 8029, 8030 and 8031 of 2012 would contend that the impugned amendment is in the nature of restricting the purchase of goods from outside the State or importing goods outside the country thereby depriving the dealers who have opted for composition of tax prior to the impugned amendment and no assent was obtained from the President. According to the learned counsel, the scheme of the Act allowed composition of taxes under Section 3 (4) for dealers whose turnover is less than Rs.50 lakhs and under Section 6-A, similar composition of tax is provided to brick manufacturers. However, there is no similar restriction in the amendment Act. When the composition scheme forms a separate class for the purpose of levy, the respondents are not justified to club or combine the composition of tax in respect of works contract and impose an unworkable condition through the impugned amendment. It is his contention that there is no reason or justification to single out the composition dealers alone by placing restriction on the basis of source or place of purchase

of the goods. Even though Section 7-C of the Act is a *pari materia* provision under the repealed Tamil Nadu General Sales Tax Act, 1959, the said provision did not contain a restriction of this nature as contained in the impugned amendment. Similarly, there is no restriction in the purchase when enabling composition under Section 3 (4) of the Act for dealers having a turnover of less than Rs.50,00,000/-. Thus, it is contended that the identification of source of purchase for the purpose of imposing restriction or classification among the traders is manifestly arbitrary and is liable to be declared as ultra vires the Constitution of India.

47. The learned counsel further submitted that under the impugned amendment, the compounding dealer under Section 6 is liable to pay tax on the entire contract value and not allowed to claim any deduction. There is also a prohibition to collect tax from the customers. Above all, a compounding dealer is not entitled to have Input Tax Credit (ITC) on his purchases. Therefore, it is clear that whatever the leakage of revenue on account of inter-state purchase is getting compensated due to the restriction imposed in the impugned amendment, there is no tax leviable on inter-state purchase/import of goods from outside the Country by the State legislature. When all the above restrictions are imposed by the State, while taking into consideration the possible leakage of revenue on account of inter-state purchase, the respondents

are not justified in introducing the impugned amendment to further restrict the benefit of compounding dealer. It is further stated that enough restrictions were already in existence under Section 6 of the Act. In this context, the learned counsel placed reliance on the decision of the Honourable Supreme Court in ***Shyara Bano and others v. Union of India [2017 (9) Supreme Court Cases 1]*** wherein it was held that the tests of arbitrary action which apply to executive actions, do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary a law which could not be reasonably expected to emanate from an authority delegated with the law making power. By pointing out the said observation of the Honourable Supreme Court, the learned counsel submitted that the impugned amendment seeks to restrict the benefit of compounding only based on the source of purchase of goods and it is manifestly arbitrary. The dealers who effect interstate purchase, are denied the benefit on local purchase as well, which is arbitrary. There is an additional burden on the petitioners, who are now forced to purchase higher rate of tax. The learned counsel also relied upon the judgement in ***Deputy Commissioner of Income Tax and another v. Pepsi Foods Limited (Now Pepsico India Holdings Private Limited) [2021 (7) SCC 413]*** and prayed for allowing the writ petitions.

48. It is also contended by all the counsels that the rate of tax cannot be different for same goods and that, all the works contractors being equals cannot be treated as unequal and therefore, the impugned amendment is liable to be struck down as violative of Article 14. It is further contended that in any case, the Act ought to have been only with prospective effect and such retrospective effect is not only arbitrary, but also restrictive and violates Article 19 (1) (g) of the Constitution of India.

49. The learned counsels appearing for other writ petitioners adopted the arguments placed by the aforesaid learned counsels and sought for the impugned amendment and Section 6 to be ultra vires the constitution.

## **VII. CONTENTIONS MADE ON THE SIDE OF THE STATE**

50. Mr. Haja Nizudeen, learned Additional Advocate General appearing for the respondents, at the outset, would contend that the State is empowered to enact legislation to levy tax on sale of goods by virtue of Entry 54 of List II of the VII Schedule of the Constitution. It is on the strength of this rule making power, the State has enacted TNVAT Act, 2006 and it came into force from 01.01.2007. Further, levy of tax on works contract is already covered under Section 5 of the Act. However, it is a beneficial provision for those who undertake work contracts and who satisfy the conditions prescribed under Section 6 in the form of payment of tax at a compounded rate. Prior to the



amendment, Section 6 provided the benefit of compounded rate of tax to all dealers irrespective of source of their purchase. But, by the impugned amendment under Act 21 of 2007 the State Government felt the need to mitigate the loss of revenue and to promote growth of intra-state purchases and manufacturing. Therefore, such legislation giving effect to economic and fiscal policy dealing with financial aspects requires no judicial interference by this Court. In this context, he placed reliance on the decision of the Hon'ble Supreme Court in the case of *R.K. Garg v. Union of India* [133 ITR 239 (SC)].

51. Referring to the object with which the impugned legislation had been brought in, the learned Additional Advocate General submitted that prior to the amendment, the contractors executing the works in the State by procuring goods from outside the State or by importing them outside the country, were paying tax under Section 6 of the Act at a low compounding rate of 2% on civil works and civil maintenance works and 4% on other works. They were not paying Value Added Tax as prescribed under Section 5 of the said Act as they were procuring goods from outside the State or importing from outside the country. Therefore, the Government found that such contractors, by claiming deduction in terms of the provisions in section 5 of the said Act, were depriving the exchequer of the tax revenue lawfully due under Section 5 of the

Act. Further, certain contractors executing works in the State have resorted to purchase goods for execution of works only from dealers outside the State or by import from outside the country and use the goods in the execution of the works. Such contractors, taking advantage of Section 6 of the Act, prior to amendment, were paying only the compounded rate of tax at 2%. In this fashion, the contractors were benefited, saving the tax legitimately payable by them on the purchase of goods. This has led to large scale trade diversion by which the local traders, who trade in such goods, were badly affected. On the other hand, the contractors, who were also procuring the goods within the State and executing works in the State, were paying tax both under Section 5 and Section 6 of the Act and in some cases only under section 6. This according to the learned Additional Advocate General, is the reason which prompted the Government to bring in the amendment and it is a reasonable classification among the dealers who pay tax and those who do not. Resultantly, the amendment was brought in by including the words "other than the dealer who purchases the goods from outside the State or imports goods from outside the country" and this had a nexus to the object sought to be achieved.

**52.** The instant amendment has been brought out to impose certain restriction on certain categories of dealers who were wrongfully enjoying the

benefits of the legislation, which were not intended to be provided to them. Thus, it is stated that the restrictions imposed by way of amendment categorise the dealers into two classes viz., one who purchase goods within the State and those who purchase their goods outside the State. The economic policy decision of the Government to restrict the benefit to only such dealers who make intra-state purchase cannot be questioned by the petitioners. It is for the legislators to determine the object on which tax shall be levied at a particular rate. In such case, the Constitutional Courts will not strike down such a legislation on the ground that it denies equal protection of law to same class of traders. The legislature is competent to classify persons into different categories and collect tax from them.

**53.** Even if the classification is irrational, the taxation statute cannot be questioned by the tax payers merely because different rates of taxation are prescribed for different categories of persons. If the classification is based on intelligible differentia, which distinguishes persons or things on the basis of a rational nexus with the object sought to be achieved, then the challenge to the constitutionality of any statute based on violation of Article 14 would essentially fail. In this context, the learned Additional Advocate General placed reliance on the decision of the Honourable Supreme Court in the case of *Federation of Hotels and Restaurant Association [178 ITR 97 (SC)]*.

54. The learned Additional Advocate General also placed reliance on the decision of the Honourable Supreme Court in the case of *Indian Dairy Machinery and Co. Ltd. v. Assistant Commissioner of Commercial Taxes, [(2008) 3 Supreme Court Cases 698]* wherein similar amendment made to Karnataka Sales Tax Act, excluding the dealers who received goods from outside the State for using the same in execution of works contract, was upheld by the Honourable Supreme Court.

55. As regards the submissions made on the side of the petitioners / assesseees that there is a violation of Article 14 of the Constitution of India, it is submitted by the learned Additional Advocate General that a taxing statute can be held to be contravening Article 14 of the Constitution of India only in cases where it imposes on the same class of dealers, who are similarly placed, an incidence of taxation that leads to obvious inequality. When the dealers form two different classes of their own, the challenge based on Article 14 of The Constitution of India cannot be sustained. In this context, the learned Additional Advocate General placed reliance on the decision of the Honourable Supreme Court in (i) *Chunilal v. Union of India [221 ITR 459]* and (ii) *Baksh Singh v. State of Uttar Pradesh [46 ITR 169]*.

56. The learned Additional Advocate General appearing for the respondents referred to the decision of the Honourable Supreme Court in *Additional*

***Commissioner (Legal) and another v. Jyoti Traders and another [(1999) 2 Supreme Court Cases 77]*** and contended that it is always open to the Government to bring into operation a fiscal statute with retrospective effect.

57. For the same proposition, the learned Additional Advocate General relied on the decision of the Honourable Supreme Court in the case of ***Mycon Construction Limited v. State of Karnataka and another [(2003) 9 Supreme Court Cases 583]***.

58. The learned Additional Advocate General further submitted that the amendment, which is impugned in these writ petitions, denies the benefit of Section 6 inasmuch as they had effected inter-state purchases unlike a local dealer who purchases goods within the State. The object of the amendment is based on intelligible differentia to prevent trade diversion and to enable the traders within the State to get benefited. In the case of contractors who purchase goods outside the State against 'C' form, the benefit of making payment on the basis of the contract value is denied. In this regard, he placed reliance on the decision in the case of ***State of Kerala and another v. Builders Association of India and others [(1997) 2 Supreme Court Cases 183]***.

59. Above all, it is submitted by the learned Additional Advocate General that while considering the question as to the effect of unconstitutionality of a statute, it has to be seen that unconstitutionality might arise either if the law is

in respect of a matter not within the competence of the legislature or the matter itself being within its competence. In the present case, the amendment brought in is within the competence of the legislature and therefore it is not ultra vires the power of the legislature under Entry 54, List II of the VII Schedule of the Constitution of India, whether it is retrospective or prospective. The power of the legislature includes the power to legislate in different way from any other legislation. The power to tax is within the exclusive competence of the legislature. It is idle to contend that merely because the taxing statute purports to operate retrospectively, the retrospective operation '*per se*' involves contravention of the right of a citizen guaranteed under Articles 14 and 19 (1)(g) of the Constitution of India. In this case, having regard to the legislative background of the provisions of Section 7C of the Act, there is no element of unreasonableness involved in the retrospective operation of clause (1) of Section 6 of the Act. Further, in order to have an equal treatment of dealers in taxation without impairing the free flow of trade and commerce, under Part XIII of the Constitution of India, the provision has been amended retrospectively in view of the specific reasons to get over the infirmity so long as it is based on differential criteria. In any event, by virtue of the amendment, it is open to the dealers to withdraw their option exercised for adopting the compounding system of tax. In the absence of any practical conditions

expressed which are incapable or beyond performance and compliance, the petitioners cannot express any grievance on the ground of hardship and inconvenience.

**60.** With respect to the competency of the legislature, the learned Additional Advocate General relied upon the judgment of the Hon'ble Supreme Court in *Surinder Singh case [(1986) 4 SCC 667]* to contend that the absence of any provision conferring power is immaterial and even in the absence of such rule or provision, it is within the legislative domain to exclude certain classes of persons from availing the option.

**61.** In reply to the exemption for SEZ, the learned Additional Advocate General relied on section 12(1)(a) r/w section 12(2) of the Tamil Nadu Special Economic Zones (Special Provisions) Act, 2005 to contend that exemption from the taxes on sale or purchase of goods under the Tamil Nadu General Sales Tax Act, 1959 (this would refer to Tamil Nadu Value Added Tax Act by virtue of section 87 of the TNVAT Act) is available only if such goods are meant to carry on authorized operations by the developer/entrepreneur subject to the manner, terms and conditions prescribed by the government. One such condition under section 14 of the TNSEZ Act, 2005 r/w Rule 7 of the TNSEZ Rules, 2010 is to inform the Development Commissioner of the SEZ and get

concurrence before effecting the transfer in case of co-developers, who enter into agreements with SEZ. Further, as per Rule 5 of the TNSEZ Rules, 2010, they shall be eligible for exemption subject to conditions laid down by or under the State Acts, referred to in section 12(1) of the parent Act (TNSEZ Act). Therefore, the Special Economic Zones are only entitled to exemption provided for them under the respective Acts mentioned under section 12(1) of the TNSEZ Act. In the present case, the exemption is only for purchase and not for sales. Further, the Co-Developer, in the present case, having rightly filed returns earlier and paid the taxes under Section 6, cannot go back to claim exemption for all transactions.

**62.** The learned Additional Advocate General further submitted that as per section 26(1)(g) of the Central Special Economic Zones Act, 2005, exemption from Central Sales Tax is granted only to authorized operations of the developer/entrepreneur. Relying upon Rule 9 dealing with grant of approval for authorized operations and Rule 22 dealing with the terms and conditions subject to which the exemption under section 26 shall be given, of the Central Special Economic Zone Rules, 2006 and section 12(2) of the TNSEZ Act, it is submitted that the benefits are granted only to authorized operations and not to every operation performed within a Special Economic Zone and that, the TNSEZ Rules are in compliance with the Central Act and Rules. Therefore, a



cumulative reading of these provisions with sections 15 and 30 of the TNVAT Act would result that such conditions are also applicable to Special Economic Zones and in the absence of specific exemption, the provisions are applicable.

**63.** It is further submitted by the learned Additional Advocate General that the Developer leases the land to the Co-Developer who inturn sub-leases the same to the residents. Contending that whether all the operations of the Developer are authorized, whether the activities of construction of residential houses are within the processing area, whether he is entitled to such exemption, whether the activities of the Co-Developer are authorized and whether they are also entitled to such exemption and whether the co-developer is authorised to lease out the property and whether such lessees are to be treated as workers or third party, when the ownership actually passes to the residents and whether there is a difference in stock, are all factual aspects and have to be put forth only before the Appellate Authority. It is also contended that the assessing officer has passed a reasoned order considering the objections of the petitioners in W.P Nos.8103 to 8107/2012.

**64.** The learned Additional Advocate General therefore prayed for dismissal of these writ petitions by upholding the amendment introduced vide Section 3 of the Amendment Act 21/2007 to Section 6 of the Tamil Nadu Value Added Tax Act. The learned Additional Advocate General also relied upon the

following judgements in support of his contentions: *N. Venugopala Ravi Varma Rajah v. Union of India* [(1969) 1 SCC 681], *Shashikant Laxman Kale and another v. Union of India and another* [(1990) 4 SCC 366], *Pine Chemicals Ltd. v. Assessing Authority* [(1992) 2 SCC 683 at page 694], *Gannon Dunkerley & Co and others v. State of Rajasthan and others* [(1993) 1 SCC 364], *India Agencies (Regd.) v. CCT* [(2005) 2 SCC 129 : 2004 SCC OnLine SC 1616] and *Govt. of Andhra Pradesh v. P. Laxmi Devi* [(2008) 4 SCC 720: 2008 SCC OnLine SC 370]; *Meenakshi v. State of Tamil Nadu* [1976 SCC OnLine Mad 443 : (1977) 40 STC 201], *Titanium Equipments and Anodes Manufacturing Co. Ltd. v. Union of India* [1993 SCC OnLine Mad 467 : (1994) 207 ITR 566 at page 573], *Kamatchi Lamination (P) Ltd. v. State of Tamil Nadu* [1994 SCC OnLine Mad 761 : (1994) 95 STC 378], *State of Kerala v. Unitech Machines Ltd.* [2009 SCC OnLine Ker 6740 : (2010) 32 VST 80] and *Dosal Ltd. v. State of Kerala* [2009 SCC OnLine Ker 2789 : (2009) 3 KLT 682 : (2010) 29 VST 158 at page 683].

#### **VIII. CONTENTIONS IN REPLY**

65. The learned counsel appearing for the petitioners in W.P Nos.8103 to 8107/2012 submitted that the Developers and Co-Developers are covered by SEZ Acts and not by Section 15 of the TNVAT Act. Further, as an alternative argument, it is submitted that in case the validity of Section 6 is upheld, it

must be read down to exclude the Co-Developers of SEZ.

66. It is also submitted by all the counsels for the petitioners that the turnover relating to inter-state purchase or import can be excluded for the purpose of Section 6 by reading down the provision similar to other States and such turnover can be taxed under regular scheme by allowing the works contractors to file returns both under Section 5 and Section 6 of the TNVAT Act, 2006.

67. On the other hand, the learned Additional Advocate General by way of reply, submitted that when the provision is constitutionally *vires*, there is no question of reading down the provision, extending benefits contrary to the same.

#### **IX. RELEVANT PROVISIONS UNDER VARIOUS STATUTES**

68. We have heard the learned counsel for the parties at length and also perused the materials available on record. For the proper appreciation, it is necessary to refer to the relevant provisions.

#### **69. Constitution of India.**

*“Article 14. Equality before law -The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.”*

*“Article 19. Protection of certain rights regarding freedom of speech, etc.*

*(1)All citizens shall have the right*

.....

*(g) to practise any profession, or to carry on any occupation, trade or business*

.....

*(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,*

*(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or*

*(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise”*

***“Article 246. Subject matter of laws made by the Parliament and the Legislature of the States.***

*(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the “Union List”).*

*(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the “Concurrent List”).*

*(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the “State List”).*

*(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.”*

***“Article 265. - Taxes not to be imposed save by authority of law No tax shall be levied or collected except by authority of law.”***

***“Article 301. - Freedom of trade, commerce and intercourse Subject***

*to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.”*

*“Article 303.- Restrictions on the legislative powers of the Union and of the States with regard to trade and commerce.*

*(1) Notwithstanding anything in Article 302, neither Parliament nor the Legislature of a State shall have power to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule*

*(2) Nothing in clause ( 1 ) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.”*

*“Article 304- Restrictions on trade, commerce and intercourse among States.*

*Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law*

*(a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and*

*(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest: Provided that no Bill or amendment for the purposes of clause shall be introduced or moved in the Legislature of a State without the previous sanction of the President”*

**70. Central Sales Tax Act, 1956.**

*“Section 8. Rates of tax on sales in the course of inter-State trade or commerce:-(1) Every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer goods of the description referred to in sub-section(3); shall be liable to pay tax under this Act, which shall be three per cent, of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the Sales Tax Law of that State, whichever is lower;*

*Provided that the Central Government may, by notification in the Official Gazette, reduce\* the rate of tax under this sub-section.*

*(2) The tax payable by any dealer on his turnover in so far as the turnover*

*or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1), shall be at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State.*

*Explanation:- For the purposes of this sub-section, a dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law:*

*[\*\*\*]*

*(3) The goods referred to in [\*\*\*] sub-section (1):---*

*(a) (Deleted from 1st April 1963);*

*(b) are goods of the class or classes specified in the Certificate of Registration of the registered dealer purchasing the goods as being intended for re-sale by him or subject to any Rules made by the Central Government in this behalf, for use by him in the manufacture of processing of goods for sale or 3[ in the telecommunications network or] in mining or in the generation or distribution of electricity or any other form of power;*

*(c) are containers or other materials specified in the Certificate of Registration of the registered dealer purchasing the goods, being containers or materials intended for being used for the packing of goods for sale;*

*(d) are containers or other materials used for the packing of any goods or classes of goods specified in the certificate of registration referred to in clause (b) or for the packing of any containers or other materials specified in the Certificate of Registration referred to in clause (c).*

*(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed Form obtained from the prescribed authority.*

*[\*\*\*]*

*Provided that the declaration [\*\*\*] is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.*

*(5) Notwithstanding anything contained in this section, the State Government may, [on the fulfillment of the requirements laid down in sub-section (4) by the dealer] if it is satisfied that it is necessary so to do in the public interest, by Notification in the Official Gazette, and subject to such conditions as may be specified therein, direct—*

*(a) that no tax under this Act shall be payable to any dealer having his place of business in the State in respect of the sale by him, in the course of*

*inter-State trade or commerce, to a registered dealer I[\*\*\*] from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) [\*\*\*] a may be mentioned in the Notification;*

*(b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the Notification, which are made in the course of inter-State trade or commerce, to a registered dealer [\*\*\*] by any dealer having his place of business in the State or by any class of such dealers as may be specified in the Notification to any person or to such class of persons as may be specified in the Notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) as may be mentioned in the Notification.*

*(6) Notwithstanding anything contained in this section, no tax, under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce, to a registered dealer for the purpose of setting up, operation, maintenance, manufacture, trading, production, processing, assembling, repairing, reconditioning, re-engineering, packaging or for use as packing material or packing accessories in an unit located in any special economic zone, or for development, operation and maintenance of special economic zone by the developer of the special economic zone, if such registered dealer has been authorized to establish such unit or to develop, operate and maintain such special economic zone by the authority specified by the Central Government in this behalf.*

*(7) The goods referred to in sub-section (6) shall be the goods of such class or classes of goods as specified in the certificate of registration of the registered dealer referred to in that sub-section.*

*(8) The provisions of sub-sections (6) and (7) shall not apply to any sale of goods made in the course of inter-State trade or commerce unless the dealer selling such goods furnishes to the prescribed authority referred to in sub- section (4) a declaration in the prescribed manner on the prescribed form obtained from the authority specified by the Central Government under sub- section (6), duly filled in and signed by the registered dealer to whom such goods are sold.*

*Explanation:-- For the purposes of sub-section (6), the expression "special economic zone" has the meaning assigned to it in clause (iii) to Explanation 2 to the proviso to Section 3 of the Central Excise Act, 1944 (1 of 1944)."*

## **71. Central Sales Tax (Tamil Nadu) Rules, 1957.**

**"Rule 4.** (1) Every dealer registered under Section 7 of the Act and every dealer liable to pay tax under the Act shall keep and maintain separately a

*true and correct account in any one of the languages mentioned in the Eighth Schedule to the Constitution of India or in English, showing the goods sold and bought by him and the value thereof, in respect of the transactions under the Act. He shall maintain an account showing the day-to-day purchases, sales, deliveries and stocks of each kind of goods.*

*(2) Every such dealer shall in respect of each transaction under the Act prepare in duplicate a voucher showing the date of transaction, the name of the seller and purchaser, the sale price, quantity and description of goods, and issue the original thereof to the buyer. The voucher shall also specify the mode of dispatch, and delivery of goods with appropriate details.*

*(3) The voucher of each kind shall be serially numbered separately.*

*(3-A) Every principal, who claims exemption on the sale of goods on consignment account through agents outside the State, shall maintain the following records, namely: -*

*(a) a register showing the name and full address of the agent to whom goods were consigned together with description of the goods so despatched for sale, on each occasion and their quantity and value;*

*(b) the originals of authorisation sent to the agent for sale of the goods.*

**Note:** *Copies of these authorisations and descriptions of goods despatched for sale on each occasion with particulars of their quantity and value should be simultaneously furnished to the assessing officer concerned.*

*(c) the originals of the written contract, if any entered into between the principal and the agent;*

*(d) copies of bills issued by the agents to the purchasers;*

*(e) pattials, i.e., accounts rendered by the agents to the principals from time to time showing the gross amount of bill and deduction on account of commission and incidental charges;*

*(f) extract of the ledger account of the principal maintained in the books of the agents duly signed by such agents;*

*(g) copies of railway receipts or lorry receipts under which the goods were so despatched; and*

*(h) a register showing the date and mode of remittance of the amount to the principal.*

*(4) Every dealer shall maintain all vouchers relating to stocks, purchases, sales and deliveries relating to all transactions under the Act for a period of five years after the close of the year to which they relate.*

*(5) Every registered dealer shall keep at the place of business specified in the certificate of registration books of account for the current year. If more than one place of business in the State is specified in the Certificate of Registration, the books of account relating to each place of business for*



*the current year shall be kept in the place of business concerned. He shall also keep the books of account for the previous five years at such place or places as he may notify to the registering authority.*

*Provided that if the registered dealer decides to change the place or places so notified, he shall, before effecting such change, notify the same to be registering authority."*

***"Rule 7. (1) Any officer not lower in rank than a Deputy Commercial Tax Officer may for the purpose of the Act, require any dealer carrying on business in any kind of goods to produce before him the accounts and other documents and to furnish any other information relating to such business.***

***(2) All books, accounts or documents required to be kept under the Act shall be open to inspection at all reasonable times by an officer not lower in rank than an [ a Deputy] Commercial Tax Officer.***

***(3) Any officer not lower in rank than an a Deputy Commercial Tax Officer may enter any premises at all reasonable times for the purpose of searching for any books, accounts or documents referred to in sub-rule (2) above and kept or suspected to be kept in such premises and seize such books of accounts or documents, as may be necessary. The officer seizing the books, accounts or documents shall grant a receipt for the same and shall retain the same until and for so long as may be necessary for the purpose of the Act."***

***"Rule 11. Whoever commits a breach of the following rules, namely 4,5,8,9 and 10 and whoever in contravention of Rule 7 prevents or obstructs, inspection or entry, search or seizure of any books or documents by any officers specified in the rule, shall, on conviction, be punishable with fine which may extend to five hundred rupees and where the offence is a continuing one with a daily fine which may extend to fifty rupees for every day during which the offence continues."***

## **72. Tamil Nadu Value Added Tax Act, 2006.**

### ***"Section 2.-Definitions.***

***(27) "manufacture" with its grammatical variations and cognate expressions means producing, making, extracting, altering, ornamenting, finishing, assembling or otherwise processing, treating or adapting any goods and includes any process of goods which brings into existence a commercially different and distinct commodity but does not include any activity as may be notified by the Government;***

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

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

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

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

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

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

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

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

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

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

**Explanation III.-** Every transfer of property in goods including goods as unclaimed or confiscated or unserviceable or scrap surplus, old, obsolete or discarded materials or waste products, by the persons or bodies referred to in Explanation III in clause (15) of section 2 for cash or for deferred payment or for any other valuable consideration whether or not in the course of business, shall be deemed to be a sale for the purposes of this

Act.

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

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

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

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

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

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

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

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

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

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

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

(37) “**taxable goods**” means goods other than exempted goods specified in the Fourth Schedule to this Act or goods exempted by notification by the Government;

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

(40) “**total turnover**” means the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not, the whole or any portion of such turnover is liable to tax;

(40) “**total turnover**” means the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not, the whole or any portion of such turnover is liable to tax;

(41) “**turnover**” means the aggregate amount for which goods are bought or sold, or delivered or supplied or otherwise disposed of in any of the ways referred to in clause (33), by a dealer either directly or through another, on his own account or on account of others whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce, other than tea and rubber (natural rubber latex and all varieties and grades of raw rubber) grown within the State by himself or on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover.

**Explanation I.**- “Agricultural or horticultural produce” shall not include such produce as has been subjected to any physical, chemical or other process for being made fit for consumption, save mere cleaning, grading, sorting or dying;

**Explanation II.**- Subject to such conditions and restrictions, if any, as may be prescribed in this behalf—

(i) the amount for which goods are sold shall include any sums charged for anything done by the dealer in respect of the goods sold at the time of, or before the delivery thereof;

(ii) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover;

**Explanation III.**- Any amount realised by a dealer by way of sale of his business as a whole, shall not be included in the turnover;

**Explanation IV.**-Any amount, charged by a dealer by way of tax separately without including the same in the price of the goods sold, shall not be included in the turnover;

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

***“Section 5. Levy of tax on transfer of goods involved in works contract.-***

*(1) Notwithstanding anything contained in this Act, but subject to the provisions of this Act, every dealer, shall pay, for each year, a tax on his taxable turnover, relating to his business of transfer of property in goods involved in the execution of works contract, either in the same form or some other form, which may be arrived at in such manner as may be prescribed, at such rates as specified in the First Schedule.*

***Explanation.*** - *Where any works contract involves more than one item of work, the rate of tax should be determined separately for each such item of work.*

*(2) The dealer, who pays tax under this section, shall be entitled to input tax credit on goods specified in the First Schedule purchased by him in this State .”*

***“Section 6. Payment of tax at compounded rate by works contractor.-(1)***

*Notwithstanding anything contained in this Act, every dealer, 1[other than the dealer who purchases\*[or receives]goods from outside the State or imports goods from the outside the Country] may, at his option, instead of paying tax in accordance with section 5, pay, on the total value of the works contract executed by him in a year, tax calculated at the following rate, namely:-*

*i) Civil works contract: two per cent of the total contract value of the civil works executed;*

*ii) Civil maintenance works contract: two per cent of the total contract value of the maintenance works executed;*

*iii) All other works contracts: 2[ Five] per cent of the total contract value of the works executed*

*(2) Any dealer, who executes works contract, may apply to the assessing authority along with the first monthly return for the financial year or in the first monthly return after the commencement of the works contract, his option to pay the tax under sub-section (1) and shall pay the tax during the year in the monthly installments and for this purpose, he shall furnish such return within such period and in such manner as may be prescribed.*

*(3) The option exercised under sub-section (1) shall be final for that financial year.*

*(4) A dealer, exercising option under sub-section (1) shall, so long as the option remains in force, not be required to maintain accounts of his business under this Act or the rules made there under except the records in original of the works contract, extent of their execution and payments received or receivable in relation to such works contract, executed or under execution.*

*(5) The dealer, who pays tax under this section, shall not 1[collect any*

amount by way of tax or purporting to be by way of tax and shall not] be entitled to input tax credit on the goods purchased by him.

**Explanation.-** For the purpose of this section "**civil works contract**" includes civil works of construction of new building, bridge, road, runway, dam or canal including any lining, tiling, painting or decorating which is an inherent part of the new construction and any repair, maintenance, improvement or up gradation of such civil works by means of fixing and laying of all kinds of floor tiles, mosaic tiles, slabs, stones, marbles, glazed tiles, painting, polishing, partition, wall panelling, interior decoration, false ceiling, carpeting and extra fittings, or any manner of improvement on an existing structure.

**\*receives inserted by Act 13/2015.**

**"Section 10. Tax on goods purchased by dealers registered under Central Sales Tax Act, 1956 (Central Act 74 of 1956)-.** Notwithstanding anything contained in this Act, every dealer registered under sub- section (3) of section 7 of the Central Sales Tax Act, 1956 shall, whatever be the quantum of his turnover, pay tax, for each year, in respect of the sale of goods with reference to the purchase of which he has furnished a declaration under sub-section (4) of section 8 of the said Central Act, in accordance with the provisions of this Act."

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

**"Section 16. Stage of levy of taxes in respect of imported and exported goods,--(1)** In the case of goods imported into the State either from outside the territory of India or from any other State, the stage of levy of tax shall be deemed to commence at the stage of the sale or purchase effected immediately after the import of such goods;

(2) In the case of goods exported out of the State to any place outside the territory of India or to any other State, the stage of levy of tax shall be deemed to conclude at the stage of sale or purchase effected immediately before the export of such goods:

Provided that in the case of goods exported out of the State to any place outside the territory. of India, where the sale or purchase effected immediately before the export of such goods is undersub- section (3) of section 5 of the Central Sales Tax Act, 1956, a sale or purchase in the course of export, the series of sales or purchases of such goods shall be deemed to conclude at the stage of the sale or purchase immediately preceding such sale or purchase in the course of export."

**"Section 27. Assessment of escaped turnover and wrong availment of input tax credit-**

*(1) (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (3), at any time within a period of 1[six years from the date of assessment], determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary.*

*(b) Where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of 2[six years from the date of assessment], reassess the tax due after making such enquiry as it may consider necessary.*

*(2) Where, for any reason, the input tax credit has been availed wrongly or where any dealer produces false bills, vouchers, declaration certificate or any other documents with a view to support his claim of input tax credit or refund, the assessing authority shall, at any time, within a period of 2[six years from the date of assessment], reverse input tax credit availed and determine the tax due after making such a enquiry, as it may consider necessary:*

*Provided that no order shall be passed under sub-sections (1) and (2) without giving the dealer a reasonable opportunity to show cause against such order.*

*(3) In making an assessment under clause (a) of sub-section (1), the assessing authority may, if it is satisfied that the escape from the assessment is due to wilful non-disclosure of assessable turnover by the dealer, direct the dealer, to pay, in addition to the tax assessed under clause (a) of sub-section (1), by way of penalty a sum which shall be -*

*(a) fifty per cent of the tax due on the turnover that was wilfully not disclosed if the tax due on such turnover is not more than ten per cent of the tax paid as per the return;*

*(b) one hundred per cent of the tax due on the turnover that was wilfully not disclosed if the tax due on such turnover is more than ten per cent but not more than fifty per cent of the tax paid as per the return.*

*(c) one hundred and fifty per cent of the tax due on the assessable turnover that was wilfully not disclosed, if the tax due on such turnover is more than fifty per cent of the tax paid as per the return;*

*(4) in addition to the tax determined under sub-section (2), the assessing authority shall direct the dealer to pay as penalty a sum \*[which shall be three hundred percent of the tax due in respect of such claim;]*

*\*omitted[(i) which shall be in the case of first such detection fifty per cent of the tax due in respect of such claim; and*

*(ii) which shall be in the case of second or subsequent detections, one*

*hundred per cent of the tax due in respect of such claim:]omitted\**

*Provided that no penalty shall be levied without giving the dealer a reasonable opportunity of showing cause against such imposition.*

*(5) The powers under sub-sections (1) and (2) may be exercised by the assessing authorities even though the original order of assessment, if any, passed in the matter has been the subject matter of an appeal or revision.*

*(6) In computing the period of limitation for assessment or re-assessment under this section, the time during which the proceedings for assessment or re-assessment remained stayed under the orders of a Civil Court or other competent authority shall be excluded.*

*(7) In computing the period of limitation for assessment or re-assessment under this section, the time during which any appeal or other proceeding in respect of any other assessment or reassessment is pending before the High Court or the Supreme Court involving a question of law having a direct bearing on the assessment or re-assessment in question, shall be excluded.*

*(8) In computing the period of limitation for assessment or re-assessment under this section, the time during which any appeal or proceeding in respect of any assessment or re-assessment of the same or part of the turnover made under any other enactment was pending before any appellate or revisional authority or the High Court or the Supreme Court shall be excluded.*

*\* These words were substituted in Sub-section (4) of Section 27 as per Gazette No 217 Act No 13 of 2015, dated 14.10.2015.*

*2. These words were substituted by Section 6 of the Amendment Act 2012, effective from 19th June 2012, as per GO.NO.82 for the words 'five years from the date of order of assessment by the assessing authority.'*

**“Section 28.** *Assessment of turnover not disclosed under compounding provisions.-- (1) Where for any reason, any part of the turnover of business of a dealer who has opted to pay tax under sub-section (4) of section 3 or section 6 or section 8 has escaped assessment from the tax, the assessing authority may, at any time within a period of 1[six years from the date of assessment] determine to the best of its judgment the turnover which has escaped assessment and re-assess the tax payable on the total turnover including the turnover already assessed under the said section.*

*(2) Before making the re-assessment under sub-section (1), the assessing authority may make such enquiry as it may consider necessary and give the dealer concerned a reasonable opportunity to show cause against such re-assessment.*

*(3) The amount of tax already paid by the dealer concerned in pursuance of the option to compound under sub-section (4) of section 3 or section 6 or section 8 shall be adjusted towards the amount of tax due as the result of*



*re-assessment under sub-section (1).*

*(4) The provisions of sub-sections (3) to (8) of section 27 shall, as far as may be, apply to reassessment under sub-section (1) as they apply to the reassessment of escaped turnover under sub- section (1) of section 27.*

*1. These words were substituted by Section 7 of the Amendment Act 2012, effective from 19th June 2012, as per GO.NO.82 for the words ‘five years from the date of order of assessment by the assessing authority.’”*

**“Section 30. Power of Government to notify exemption or reduction of tax.--***(1) The Government may, by notification, whether prospectively or retrospectively make an exemption, or reduction in rate, in respect of any tax payable under this Act—*

*(a) on the sale or purchase of any specified goods or class of goods, at all points or at a specified point or points in the series of sales by successive dealers; or*

*(b) by any specified class of persons, in regard to the whole or any part of their turnover; or*

*(c) on the sale or purchase of any specified classes of goods by specified classes of dealers in regard to the whole or part of their turnover.*

*(2) Any exemption from tax, or reduction in the rate of tax, notified under sub-section (1) -*

*(a) may extend to the whole State or to any specified area or areas therein; or*

*(b) may be subject to such restrictions and conditions as may be specified in the notification.*

*(3) The Government may, by notification, cancel or vary any notification issued under sub- section (1).”*

### **73. The Tamil Nadu Value Added Tax Rules, 2007.**

**“Rule 7. Filing of Returns.**

**(1) .....**

**(e).** *Every registered dealer who opts to pay tax under section 6 or section 8 shall file a return for each month in **Form L** on or before 20th of the succeeding month to the assessing authority along with proof of payment of tax.*

*After amendment in 2016, the Rule reads as follows.*

*(1) (a) Every registered dealer liable to pay tax under the Act other than the dealers who opted to pay tax under sub-section (4) of section 3, section 6, section 6-A or section 8 of the Act, including an agent of a non-resident dealer and casual trader, shall file a return for each month in electronic*

*Form I, on or before 20th of the succeeding month, to the assessing authority in whose jurisdiction his principal place of business or head of office is situated. Such return shall be accompanied by proof of electronic payment of tax.*

*(b) The option exercised under sub-section (4) of section 3 of the Act shall be final for the financial year and such option shall be exercised in electronic Form K-1 within thirty days from the date of commencement of the business in case of new business and for others within thirty days from the commencement of each financial year.*

*(c) Every registered dealer who opts to pay tax under sub-section (4) of section 3, section 6, section 6-A or section 8 of the Act shall file a return for each month in electronic Form K on or before 20th of the succeeding month to the assessing authority along with proof of electronic payment of tax.”*

**“8. Procedure for assessment.—** (1) *In pursuance of Explanation II to clause (41) of section 2, the amounts specified in the following clauses shall not, subject to the conditions specified therein, be included in the turnover of a dealer –*

.....

*(5) The taxable turnover of the dealer liable to pay tax under section 5 on transfer of property in goods involved in the execution of works contract shall be arrived at after deducting the following amounts from the total turnover of that dealer, namely:-*

*(a) All amounts involved in respect of goods involved in the execution of works contract in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India or in the course of inter-State trade or commerce;*

*(b) All amounts relating to the sale of any goods involved in the execution of works contract which are specifically exempted from tax under the Act;*

*(c) All amounts paid to the sub-contractors as consideration for execution of works contract whether wholly or partly:*

*Provided that no such deduction shall be allowed unless the dealer claiming deduction, produces proof that the sub-contractor is a registered dealer liable to pay tax under this Act and that the turnover of such amount is included in the return filed by such sub-contractor;*

*(d) All amount towards labour charges and other charges not involving any transfer of property in goods, actually incurred in connection with the execution of works contract, or such amounts calculated at the rate specified in column (3) of the Table below, if they are not ascertainable from the books of accounts maintained and produced by a dealer before the assessing authority.*

THE TABLE

Sl.No.	Type of Works Contract	Labour or other charges as a percentage value of the works contract
(1)	(2)	(3)
1.	Electrical Contracts	15
2.	All Structural Contracts	15
3.	Sanitary Contacts	25
4.	Watch and / or clock repair Contracts	50
5.	Dyeing Contracts	50
6.	All other Contracts	30

*(e) all amounts, including the tax collected from the customer, refunded to the customer or adjusted towards any amount payable by the customer, in respect of unexecuted portion of works contract based on the corrections on account of measurements or check measurements, subject to the conditions that—*

*(i) the turnover was included in the return and tax paid; and*

*(ii) the amount including the tax collected from the customer is refunded or adjusted, within a period of six months from the due date for filing of the return in which the said amount was included and tax paid.”*

#### **74. Central Special Economic Zone Act, 2005.**

**“Section 2(g)** *“Developer” means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (10) of section 3 and includes an Authority and a Co-Developer;*

**(j)** *“entrepreneur” means a person who has been granted a letter of approval by the Development Commissioner under sub-section (9) of section 15;”*

**“Section 26.** *Exemptions, drawbacks and concessions to every Developer and entrepreneur.—(1) Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely:—*

.....

*(g) exemption from the levy of taxes on the sale or purchase of goods other than newspapers under the Central Sales Tax Act, 1956 (74 of 1956) if such goods are meant to carry on the authorised operations by the Developer or entrepreneur.”*

*“Section 50. Power of State Government to grant exemption.—The State Government may, for the purposes of giving effect to the provisions of this Act, notify policies for Developers and Units and take suitable steps for enactment of any law—*

*(a) granting exemption from the State taxes, levies and duties to the Developer or the entrepreneur;*

*(b) delegating the powers conferred upon any person or authority under any State Act to the Development Commissioner in relation to the Developer or the entrepreneur.”*

**75. The Tamil Nadu Special Economic Zone (Special Provisions) Act, 2005**

*“Section 12. (1) Subject to the provisions of sub-section (2), every Developer or entrepreneur shall be entitled to the following exemptions, namely:-*

*(a) exemption from the levy of taxes on the sale or purchase of goods under the Tamil Nadu General Sales Tax Act, 1959 if such goods are meant to carry on the authorised operations by the Developer or entrepreneur;*

.....

*(2) The Government may prescribe the manner in which and the terms and conditions subject to which, the exemptions shall be granted to the Developer or entrepreneur under sub-section (1).”*

*“Section 14. The transfer of ownership in any goods brought into, or produced or manufactured in any Unit or Special Economic Zone or removal thereof from such Unit or Zone shall be allowed, subject to such terms and conditions as may be prescribed.”*

*“Section 28. The provisions of this Act shall be in addition to and not in derogation of the Special Economic Zones Act, 2005 and shall have effect notwithstanding anything inconsistent therewith contained in any other State law for the time being in force.”*

**X. AUTHORITY TO LEGISLATE**

**76.** It has been contended on behalf of the petitioners / assesseees that the State has no authority to bring in such a legislation and hence, is violative of

Article 265. It was their further contention that in view of Section 15 and Section 30 of the TNVAT Act, 2006, it is only by executive order, the government can grant exemptions with prospective or retrospective effect and not by the State by enacting the impugned law. We do not agree with the same. The authority of the State to enact any law on any of the entries in State List/List II is derived from Article 246 (3) and the authority to enact any law on the entries in List III/Concurrent List is traceable to Article 246 (2). Prior to the 101<sup>st</sup> Amendment to the Constitution, the authority of the State to legislate on taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I was traceable to Entry 54 of List II.

77. The authority to legislate carries with it the authority to amend, repeal or omit any provision. The theory of Doctrine of Implied authority is applicable. Insofar as the contention regarding Section 15 and Section 30, the same is fallacious. It is not to be forgotten that the TNVAT Act, 2006 is the parent Act by which powers have been delegated to the government to grant exemption. By such delegation under Sections 15 and 30, the powers of the state are not ousted. Such powers are granted for administrative convenience and do not take away the power of the legislature to bring in amendments, for which the authority is derived from the Constitution.

**78.** In the hierarchy of powers, the Constitution is supreme, then the laws enacted by the parliament or the legislature in their respective fields and then the executive or administrative orders by virtue of delegated powers. The provisions of the Act are substantive laws which can be altered or amended only by the legislature. Further, when the legislature is empowered by Article 246, Entry 54 of List II, to promulgate any enactment, it is well within the powers of the legislature to impose such conditions as it may deem fit in such law. Therefore, rejecting the contention that the legislature is incompetent, we hold that the legislature is competent not only to enact, but also to modify such law. In this connection, it is useful to refer to the judgment of the Apex Court in which it was held that the Central Government still had the authority to issue directions under the Act, despite there being a provision by which authority was delegated for framing of rules.

**79. *Surinder Singh v. Central Govt.* [(1986) 4 SCC 667]:**

*“6. The High Court has held that the disposal of property forming part of the compensation pool was “subject” to the rules framed as contemplated by Sections 8 and 40 of the Act and since no rules had been framed by the Central Government with regard to the disposal of the urban agricultural property forming part of the compensation pool, the authority constituted under the Act had no jurisdiction to dispose of urban agricultural property by auction-sale. Unless rules were framed as contemplated by the Act, according to the High Court the Central Government had no authority in law to issue executive directions for the sale and disposal of urban agricultural property. This view was taken, placing reliance on an earlier decision of a Division Bench of that court in Bishan Singh v. Central Government. [(1961) 63 Punj LR 75] The Division Bench in Bishan case [(1961) 63 Punj LR 75] took the view that since the disposal of the*

compensation pool property was subject to the rules that may be made, and as no rules had been framed, the Central Government had no authority in law to issue administrative directions providing for the transfer of the urban agricultural land by auction-sale. In our opinion the view taken by the High Court is incorrect. Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same. In other words framing of the rules is not condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression "subject to the rules" only means, in accordance with the rules, if any. If rules are framed, the powers so conferred on authority could be exercised in accordance with these rules. But if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute. In *T. Cajee v. U. Jormanik Siem* [AIR 1961 SC 276 : (1961) 1 SCR 750] the Supreme Court reversed the order of the High Court whereby the order of District Council removing Siem, was quashed by the High Court on the ground that the District Council had not framed any rules for the exercise of its powers as contemplated by para 3(1)(g) of 6th Schedule to the Constitution. The High Court had taken the view that until a law as contemplated by para 3(1)(g) was made there could be no question of exercise of power of appointment of a Chief or Siem or removal either. Setting aside the order of the High Court, a Constitution Bench of this Court held that the administration of the district including the appointment or removal of Siem could not come to a stop till regulations under para 3(1)(g) were framed. The view taken by the High Court that there could be no appointment or removal by the District Council without framing of the regulation was set aside. Similar view was taken by this Court in *B.N. Nagarajan v. State of Mysore* [AIR 1966 SC 1942 : (1966) 3 SCR 682 : (1967) 1 Lab LJ 698] and *Mysore State Road Transport Corpn. v. Gopinath* [AIR 1968 SC 464 : (1968) 1 SCR 767 : (1968) 2 Lab LJ 144] In *U.P. State Electricity Board v. City Board, Mussoorie* [(1985) 2 SCC 16 : AIR 1985 SC 883 : (1985) 2 SCR 815] validity of fixation of Grid Tariff was under challenge. Section 46 of the Electricity (Supply) Act, 1948 provide that tariff known as the Grid Tariff shall be fixed from time to time in accordance with any regulations made in that behalf. Section 79 of the Act conferred power on the Electricity Board to frame regulations. The contention that Grid Tariff as contemplated by Section 46 of the Electricity (Supply) Act could not be fixed in the absence of any regulations laying down for fixation of tariff, and that the notification fixing tariff in the absence of such Regulations was illegal, was rejected and this Court observed: (SCC pp. 20-21, para 7)

"It is true that Section 79(h) of the Act authorises the Electricity Board to make regulations laying down the principles governing the fixing of Grid Tariffs. But Section 46(1) of the Act does not say that no Grid Tariff can be fixed until such regulations are made. It only provides that the Grid

*Tariff shall be in accordance with any regulations made in this behalf. That means that if there were any regulations, the Grid Tariff should be fixed in accordance with such regulations and nothing more. We are of the view that the framing of regulations under Section 79(h) of the Act cannot be a condition precedent for fixing the Grid Tariff."*

*7. As noted earlier Sections 8 and 20 of the Act provides for payment of compensation to displaced persons in any of the forms as specified including by sale to the displaced persons of any property from the compensation pool and setting off the purchase money against the compensation payable to him. Section 16 confers power on the Central Government to take measures which it may consider necessary for the custody, management and disposal of the compensation pool property. The Central Government had therefore ample powers to take steps for disposal of pool property by auction-sale and for that purpose it had authority to issue administrative directions. Section 40(2)(j) provides for framing of rules prescribing procedure for the transfer of property out of the compensation pool and the adjustment of the value of the property so transferred against the amount of compensation. Neither Sections 8, 16, 20 nor Section 40 lay down that payment of compensation by sale of the pool property to a displaced person shall not be done unless rules are framed. These provisions confer power on the Central Government and the authorities constituted under the Act power to pay compensation to displaced persons by sale, or allotment of pool property to them in accordance with rules, if any. Framing of rules regulating the mode or manner of disposal of urban agricultural property by sale to a displaced person is not a condition precedent for the exercise of power by the authorities concerned under Sections 8, 16 and 20 of the Act. If the legislative intent was that until and unless rules were framed power conferred on the authority under Sections 8, 16 and 20 could not be exercised, that intent could have been made clear by using the expression "except in accordance with the rules framed" a displaced person shall not be paid compensation by sale of pool property. In the absence of any such provision the framing of rules, could not be a condition precedent for the exercise of power."*

## **XI. OBJECT OF THE AMENDMENT**

**80.** Before ascertaining the constitutionality of the impugned amendment, it is necessary to discern the object or the purpose for which section 6 of the TNVAT Act was amended denying the option to file return under the compounding scheme to the persons effecting interstate purchase or imports. It was vehemently contended by the learned counsels for the petitioners that the



Amendment Act did not have any object and reason and therefore, the only object for such composition scheme as laid down by the Apex Court in para 9 of the judgment in ***State of Kerala v. Builders Assn. of India*, [(1997) 2 SCC 183]**, is to provide an alternative, simplified and hassle free method and no other object can be looked into. It was also contended that in the absence of any object and reason, the classifications would be arbitrary and hit by Article 14. A reference by the State to the counter affidavit, wherein the reason or the purpose for introducing an Amendment was spelled out, was sought to be rejected by the assessee contending that a case cannot be improved on counter affidavit. For this purpose, the judgment of the Apex Court in ***Mohinder Singh Gill v. Chief Election Commr* [(1978) 1 SCC 405]** was relied on and the relevant portion of the same is extracted below:

*“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16] :*

*“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older.”*

81. Per contra, the State has relied upon the following judgments to contend that not only the affidavit, but also the court is empowered to look into any materials cull out the object or the purpose for which a provision was introduced and the same are as under.

82. ***K.K. Kochunni v. State of Madras* [1959 Supp (2) SCR 316 : AIR 1959 SC 725]:**

*"12....We are not unmindful of the fact that the view that this Court is bound to entertain a petition under Article 32 and to decide the same on merits may encourage litigants to file many petitions under Article 32 instead of proceeding by way of a suit. But that consideration cannot, by itself, be a cogent reason for denying the fundamental right of a person to approach this Court for the enforcement of his fundamental right which may, prima facie, appear to have been infringed. Further, questions of fact can and very often are dealt with on affidavits. In Chiranjitlal Chowdhuri case [1954 SCR 1122] this Court did not reject the petition in limine on the ground that it required the determination of disputed questions of fact as to there being other companies equally guilty of mismanagement. It went into the facts on the affidavits and held, inter alia, that the petitioner had not discharged the onus that lay on him to establish his charge of denial of equal protection of the laws. That decision was clearly one on merits and is entirely different from a refusal to entertain the petition at all. In Kathi Raning Rawat v. State of Saurashtra [1952 SCR 435] the application was adjourned in order to give the respondent in that case an opportunity to adduce evidence before this Court in the form of an affidavit. An affidavit was filed by the respondent setting out facts and figures relating to an increasing number of incidents of looting, robbery, dacoity, nose cutting and murder by marauding gangs of dacoits in certain areas of the State in support of the claim of the respondent State that "the security of the State and public peace were jeopardised and that it became impossible to deal with the offences that were committed in different places in separate courts of law expeditiously". This Court found no difficulty in dealing with that application on evidence adduced by affidavit and in upholding the validity of the Act then under challenge. That was also a decision on merits although there were disputed questions of fact regarding the circumstances in which the impugned Act came to be passed. There were disputed questions of fact also in the case of Ramkrishna Dalmia v. Justice S.R. Tendolkar [ Supreme Court Civil Appeals Nos. 455-457 and 656-658 of 1957, decided on March 28, 1958]. The respondent State relied on the affidavit of the Principal*

*Secretary to the Finance Ministry setting out in detail the circumstances which lead to the issue of the impugned notification and the matters recited therein and the several reports referred to in the said affidavit. A similar objection was taken by learned counsel for the petitioners in that case as has now been taken. It was urged that reference could not be made to any extraneous evidence and that the basis of classification must appear on the face of the notification itself and that this Court should not go into disputed questions of fact. This Court overruled that objection and held that there could be no objection to the matters brought to the notice of the Court by the affidavit of the Principal Secretary being taken into consideration in order to ascertain whether there was any valid basis for treating the petitioners and their companies as a class by themselves. As we have already said, it is possible very often to decide questions of fact on affidavits. If the petition and the affidavits in support thereof are not convincing and the court is not satisfied that the petitioner has established his fundamental right or any breach thereof, the Court may dismiss the petition on the ground that the petitioner has not discharged the onus that lay on him. The court may, in some appropriate cases, be inclined to give an opportunity to the parties to establish their respective cases by filing further affidavits or by issuing a commission or even by setting the application down for trial on evidence, as has often been done on the original sides of the High Courts of Bombay and Calcutta, or by adopting some other appropriate procedure. Such occasions will be rare indeed and such rare cases should not, in our opinion, be regarded as a cogent reason for refusing to entertain the petition under Article 32 on the ground that it involves disputed questions of fact.”*

**83. *Hamdard Dawakhana v. Union of India [(1960) 2 SCR 671 : AIR***

***1960 SC 554 : 1960 Cri LJ 735]*:**

*“4. In their counter affidavit the respondents submitted that the method and manner of advertisement of drugs by the petitioners and others clearly indicated the necessity of having an Act like the impugned Act and its rigorous enforcement. The allegations in regard to discrimination and impairment of fundamental rights under Article 19(1)(a), (f) and (g) and any infringement of Articles 21 and 31 were denied and it was stated:*

*“The restriction is about the advertisement to the people in general. I say that the main object and purpose of the Act is to prevent people from self-medicating with regard to various serious diseases. Self-medication in respect of diseases of serious nature mentioned in the Act and the Rules has a deleterious effect on the health of the community and is likely to affect the well-being of the people. Having thus found that some medicines have tendency to induce people to resort to self-medication by reason of elated advertisements, it was thought necessary in the interest of public health that the puffing up of the advertisements is put to a complete check and that the manufacturers are compelled to route their products through*

*recognised sources so that the products of these manufacturers could be put to valid and proper test and consideration by expert agencies.”*

*It was also pleaded that the advertisements were of an objectionable character and taking into consideration the mode and method of advertising conducted by the petitioners the implementation of the provisions of the impugned Act was justified. Along with their counter-affidavit the respondents have placed on record Ext. A, which is a copy of the literature which accompanied one of the various medicines put on sale by the petitioners and/or was stated on the cartons in which the medicine was contained. In their affidavit in rejoinder the petitioners reiterated that Unani and Ayurvedic systems had been discriminated against; that self-medication had no deleterious effect on the health of the community; on the contrary it is likely to affect the well-being of the people, in the context of effective household and domestic remedies based on local herbs popularly known to them in rural areas. Self-medication has its permission (?) limits even in America and Canada where unlicensed itinerant vendors serve the people effectively”.*

*For the petitioners in all the petitions Mr Munshi raised four points:*

- (1) Advertisement is a vehicle by means of which freedom of speech guaranteed under Article 19(1)(a) is exercised and the restrictions which are imposed by the Act are such that they are not covered by clause (2) of Article 19;*
- (2) That Act, the Rules made thereunder and the Schedule in the Rules impose arbitrary and excessive restrictions on the rights guaranteed to the petitioners by Article 19(1)(f) and (g);*
- (3) Section 3 of the Act surrenders unguided and uncanalised power to the executive to add to the diseases enumerated in Section 3;*
- (4) Power of confiscation under Section 8 of the Act is violative of the rights under Articles 21 and 31 of the Constitution.*

*8. Therefore, when the constitutionality of an enactment is challenged on the ground of violation of any of the articles in Part III of the Constitution, the ascertainment of its true nature and character becomes necessary i.e. its subject-matter, the area in which it is intended to operate, its purport and intent have to be determined. In order to do so it is legitimate to take into consideration all the factors such as history of the legislation, the purpose thereof, the surrounding circumstances and conditions, the mischief which it intended to suppress, the remedy for the disease which the legislature resolved to cure and the true reason for the remedy; Bengal Immunity Company Ltd. v. State of Bihar [(1955) 2 SCR 603, 632 & 633] ; R.M.D. Chamarbaughwala v. Union of India [(1957) SCR 930, 936] ; Mahant Moti Das v. S.P. Sahi [AIR (1959) SC 942, 948] .*

*9. Another principle which has to borne in mind in examining the constitutionality of a statute is that it must be assumed that the legislature understands and appreciates the need of the people and the laws it enacts are directed to problems which are made manifest by experience and that*

*the elected representatives assembled in a legislature enact laws which they consider to be reasonable for the purpose for which they are enacted. Presumption is, therefore, in favour of the constitutionality of an enactment. Charanjit Lal Chowdhuri v. Union of India[(1950) SCR 869] ; State of Bombay v. F.N. Bulsara [(1951) SCR 682, 708] ; Mahant Moti Das v. S.P. Sahi [AIR (1959) SC 942, 948] .”*

**84. Supdt. & Remembrancer of Legal Affairs v. Girish Kumar Navalakha, [(1975) 4 SCC 754 : 1975 SCC (Cri) 718]:**

*“15. In para 17 of the affidavit of Shri M.L. Sharma, Under Secretary, Ministry of Finance, Department of Economic Affairs, filed with the permission of this Court, the reasons why the legislature selected the contravention of certain provisions of the Act for being dealt with by the criminal courts in the first instance have been fully stated. ....”*

**85. Shashikant Laxman Kale v. Union of India [(1990) 4 SCC 366 : 1990 SCC (Tax) 428]:**

*“18. Not only this, to sustain the presumption of constitutionality, consideration may be had even to matters of common knowledge; the history of the times; and every conceivable state of facts existing at the time of legislation which can be assumed. Even though for the purpose of construing the meaning of the enacted provision, it is not permissible to use these aids, yet it is permissible to look into the historical facts and surrounding circumstances for ascertaining the evil sought to be remedied. The distinction between the purpose or object of the legislation and the legislative intention, indicated earlier, is significant in this exercise to emphasise the availability of larger material to the court for reliance when determining the purpose or object of the legislation as distinguished from the meaning of the enacted provision.*

*25. The counter-affidavit filed on behalf of respondent 1 disclosing the reasons which led to the insertion of clause (10-C) in Section 10 of the Act confining the benefit granted thereby only to employees of the public sector indicates that the purposes of the legislation include reduction in the existing gap between the lower compensation package in public sector and the higher compensation package of the counterpart in private sector in addition to preventing misuse of the benefit in private sector which is not*

*subject to the control of administration by government like that in the public sector. It is evident from the material produced before us that the compensation package in the public sector, particularly at the higher levels, is much lower than that in the private sector.”*

**86.** The judgment in *Mohinder Singh Gill case* will not be of any assistance to the assesseees as because we are now concerned with a provision and not an administrative or quasi- judicial order. The ratio laid down therein will apply only with respect to administrative or quasi-judicial orders as the reasons form the basis of such orders. In cases involving taxing statutes, it is the prerogative of the State to levy taxes and the object and intendment are irrelevant. The primary objective is to raise the revenue of the State. Such power is attributed to the sovereign power of the State. The misconception would be evident if we bear in mind the nature of the power to tax as explained by Nine Judges Constitutional Bench Judgment in *Jindal stainless steel v. State of Haryana [(2017) 12 SCC 1]* wherein the following passage from Cooley in his book on Taxation was quoted with approval and was found apposite:

*“57. Power to tax as an inherent attribute of sovereignty- The power of taxation is an essential and inherent attribute of sovereignty, belonging as a matter of right to every independent Government. It is possessed by the Government without being expressly conferred by the people. The power is inherent in the people because the sustenance of the Government requires contributions from them. In fact the power of taxation may be defined as “the power inherent in the sovereign state to recover a contribution of money or other property, in accordance with reasonable rule or apportionment, from the property or occupations within its jurisdiction for the purpose of defraying the public expenses”.*

( Emphasis supplied).

*18. To the same effect is the decision of this Court in Jagannath Baksh the*

*state; as was observed by Chief Justice Marshall in M'lloch Vs Maryland. ( L Edp.607)*

*“15. ....The power of taxation is, no doubt, the sovereign right of the state, as was observed by Chief Justice Marshall in Malloch Vs Maryland. ( L Edp.607)*

*....the power of taxing the people and their property is essential to the very existence of Government, and may be legitimately exercised on the objects to which it is applicable to the utmost extent to which the Government may choose to carry it.”*

**87.** The above passages would suggest that the primary object of any taxing statute is to raise revenue to defray the expenditure of the Government. The following observations are relevant, which would show, how tax is used as a tool to achieve other objectives:

**88. *Sri Srinivasa theatre v. Government of Tamil Nadu [(1992) 2 SCC]:***

*“11. The instrument of taxation is not merely a means to raise revenue in India; it is, and ought to be, a means to reduce inequalities. You don't tax a poor man. You tax the rich and the richer one gets, proportionately greater burden he has to bear. Indeed, a few years ago, the Income Tax Act taxed 94p out of every rupee earned by an individual over and above Rupees one lakh. The Estate Duty Act, no doubt since repealed, Wealth Tax Act and Gift Tax Act are all measures in the same direction. It is for this reason that while applying the doctrine of classification — developed mainly with reference to and under the concept of “equal protection of laws” — Parliament is allowed more freedom of choice in the matter of taxation vis-a-vis other laws. If this be the situation in the case of direct taxes, it should be more so in the case of indirect taxes, since in the case of such taxes the real incidence is upon some other than upon the person who actually makes it over to the State though, it is true, he cannot avoid the liability on the ground that he has not passed it on. In the matter of taxation it is, thus, not a question of power but one of constraints of policy — the interests of economy, of trade, profession and industry, the justness of the burden, its ‘acceptability’ and other similar considerations. We do not mean to say that taxation laws are immune from attack based upon Article 14. It is only that Parliament and legislatures are accorded a greater freedom and latitude in choosing the persons upon whom and the situations and stages at which it can levy tax. We are not unaware that this greater latitude has been recognised in USA and UK even without resorting to the concepts of*

*‘equality before law’ or “the equal protection of laws” — as something that is inherent in the very power of taxation and it has been accepted in this country as well. (See in this connection the decision of Subba Rao, C.J., (as he then was) in Gorantia Butchayya Chowdary v. State of A.P. [AIR 1958 AP 294 : 1958 Andh LT 36 : (1958) 9 STC 104] where the several US and English decisions have been carefully analysed and explained). In the context of our Constitution, however, there is an added obligation upon the State to employ the power of taxation — nay, all its powers — to achieve the goal adumbrated in Article 38.”*

**89.** Further, the contention of the learned counsel for the petitioners that the reasons given in the case of ***Builders Association of India (supra)*** must be considered as the only reason, cannot be accepted, because, though relevant, what is under challenge here is the Amendment introduced to section 6. We are concerned with the condition denying the composition scheme to a class of dealers and not with the composition scheme itself. In the ***Builder’s Association case***, the Apex Court was dealing with the challenge to the composition scheme. Hence, the contention of the assessee is rejected.

**90.** That apart, the object or reason for introducing a provision can be derived from the history of the legislation, the subject of legislation, circumstances warranting the amendment, mischief that is sought to be remedied, other provisions of the same statute or different, but connected or *pari materia* statutes, common knowledge, affidavits of the parties. The State, relying upon the counter affidavits, has contended that the purpose was to curb the tax diversion by many dealers, who either purchased goods from other State dealers or by import thereby depriving the State of its tax, which is



remitted if the goods are purchased in this State. It is also submitted that the condition creates a level playing field by placing the dealers, who purchase goods locally and are engaged in works contract and the dealers, who purchase goods from other State on par and that, such tax diversion also diminished the local sale resulting in not only a loss of revenue to small dealers, but also to the State.

**91.** This court finds force in the said contention. It is not out of place to mention here that even without the counter affidavit, it is evident from the scheme of Section 8(1) of the CST Act read in conjunction with Section 6 of the TNVAT Act, 2006, that the State tends to lose revenue. Section 8 of the CST Act permits the dealers, who effect interstate purchase, to avail concession in rate of tax. Though it is not mandatory, every dealer registered under the State and Central Acts, is aware that a concession is available when an interstate purchase of goods takes place upon production of 'C' form and opts to such a transaction. When the goods are purchased from such registered dealers from other State, which is the case in most of the matters before us or by import as seen in few cases, the rate of tax paid on purchases is only Central Sales Tax @ 3% or 2 % as applicable from time to time, upon production of "C" Forms. A dealer who brings the goods from another state or by import, does not pay taxes on purchase as per the schedule.

**92.** It is to be noted that when the goods are purchased locally, tax at 4 % or 5 % or 12.5% or 14.5% is paid. When the goods are purchased locally, the dealer pays the taxes as per the schedule and in addition thereto, tax is paid on the value of the works contract. Whereas, in the absence of such a stipulation, when a dealer purchases goods from dealers in other State, he pays tax at concessional rate and also lesser rate of tax under the composition scheme. For instance, if a dealer purchases goods @ 2% on interstate transactions upon production of “C” Form and pays 2% on works contract, it will be less than or equal to tax paid on local purchases by a dealer depending upon the rate of tax on goods. This cannot be a level playing field. In fact, such a situation would amount to arbitrary treatment of local dealers. There is a substantial difference and loss to the State, against which the State is entitled to take remedial action to protect its interest, which obviously is for the welfare of the people of the State. It is known that the levy of tax itself is in public interest as the tax so levied and collected is utilized in various schemes and projects of which the public is the beneficiary. Similarly, the dealers who purchase goods from local dealers, are deprived of fair competition.

**93.** In case of imports, the dealer is exempted from payment of any tax, and it is only on the first sale within the State, tax is payable. Therefore, the State to protect its revenue, can bring in any law. The above phenomenon of

procuring goods by way of interstate trade or commerce having an adverse impact is not a challenge or evil which is being faced for the first time by a State. As a matter of fact, Entry tax on Motor Vehicles was introduced with a similar objective. The statement of objects and reasons of the Tamil Nadu Tax on Entry of Motor Vehicles into local Areas Act, 1990 was fairly similar. The objects and reasons of the Tamil Nadu Act relating to Entry Tax on Motor Vehicles is as follows:—

*“In order to curb the evasion of sales tax on the sale of motor vehicles which are purchased outside the State and brought into this State, the Government have decided to levy tax on entry of motor vehicles into local areas of this State either for use or sale therein which is liable for registration in the State under the Motor Vehicles Act, 1988 (Central Act LIX of 1988). It has also been decided not to levy the tax in respect of vehicles registered in the Union Territory or in other States fifteen months prior to registration in the State and necessary provision has been provided for. In the case of dealers, entry tax shall be leviable on the entry of motor vehicles and the tax paid by them shall be adjusted with the tax payable by them under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act No. 1 of 1959).”*

94. The above object was considered by a Division Bench of the Madras High Court in the matter of ***V. Krishnamurthy v. State of T.N. [2019 SCC OnLine Mad 8523]*** wherein while upholding the legality of levy of Entry Tax on Motor Vehicles on imported vehicles, the Division Bench placed reliance on the decision of the Supreme Court in ***Fr. William Fernandez*** in which the levy of Entry Tax on imported Vehicles by the State of Kerala, was upheld. Importantly, the Division Bench after extracting the objects and reasons, stated that the same are one and the same and thus, upheld the levy of Entry Tax. The

following observations are relevant:

*“45. On a reading of both the statement of objects and reasons, it is evidently clear that both the enactments have been enacted for a common purpose that is to curb evasion of sales tax on motor vehicles purchased from outside the State and brought into the State for use or sale therein, which are liable for registration under the Motor Vehicles Act, 1988.*

*46. Thus, we are satisfied that the object of enacting the statute by respective Legislative Assemblies of both the States are identical. The argument of the petitioners is that the scheme and spirit of the Act needs to be understood first, for every social legislation has a personality and taxing statute a fiscal philosophy without a feel of which a correct perspective to gather the intent and effect of the separate clauses cannot be gained.”*

95. Thus, though the primary object of a fiscal legislation is to raise revenue, it must be noted that the power to tax is also used as a tool to further the directive principles and regulate and promote industry commerce or any other activity. It is therefore clear that the submission that the object under Section 6 which is a composition scheme, cannot travel beyond the primary object of providing a hassle free alternate method of taxation, is untenable, more so, when the State has filed a counter affidavit setting out the object behind the amendment. By introduction of the condition in the compounding scheme, there is no alteration to the rate of tax on the goods. The condition also cannot be treated as a restriction because it is only an option available to the dealers as held by the Apex Court in ***Builders' Association Case***. The objects held in ***Builders' Association case*** cannot be treated as the only object, but rather as only, one of the objects. Therefore, we are of the view that the

object sought to be achieved is not illegal and is within the legislative competence of the State.

## **XII. SIMILAR PROVISIONS IN OTHER ACTS OF OTHER STATES**

96. The learned counsels for the petitioners, invariably relied upon the judgment of the Division Bench of Andhra Pradesh in *Maruthi Constructions case* to contend that similar restriction imposed in the erstwhile Andhra Pradesh General Sales Tax Act was held to be violative of Article 14 and was hence struck down. They also contended that when a *pari materia* provision is struck down, it is incumbent upon this Court to similarly strike down the provision impugned in the present case. It is appropriate to refer to the relevant paragraphs in *Maruthi Constructions case (supra)*:

*“41. But, the question still remains whether such a provision is violative of Article 14 of the Constitution of India on the ground that from out of the same class of dealers who are taxable under Section 5F of the APGST Act, some are allowed an option for a specified mode of assessment provided under Section 5G and others are debarred from availing that option on the ground that they utilised goods procured from out of the State of Andhra Pradesh.*

*42. Learned Counsel for the petitioner argued that though such sub-classification of the dealers who otherwise form single class for the purpose of Section 5F is not totally prohibited, the burden that such sub-classification bears a reasonable nexus to some legitimate purpose is on the State. Though it is a definite case of the petitioners that the impugned provision is violative of Article 14 of the Constitution of India, no specific reason is given in the counter-affidavit filed by the State indicating any legitimate purpose that is sought to be achieved by making such a sub-classification.*

*43. We see substantial force in the submission made by the learned Counsel for the petitioner. The counter filed by the State is totally silent on this aspect nor could the learned Government Pleader appearing for the*

*respondents bring to the notice of this court the existence of any legally tenable purpose that could be achieved by the impugned provision.*

*44. In the circumstances, we are of the opinion that the impugned provision is violative of Article 14 of the Constitution of India and is therefore required to be declared unconstitutional.”*

97. In support of their contention that the *pari materia* provision and any decision on such provision must be followed, reliance was placed upon the judgment of the Apex Court in *Ahmedabad (P) Primary Teachers' Assn. v. Administrative Officer* [(2004) 1 SCC 755 : 2004 SCC (L&S) 306 : 2004 SCC OnLine SC 64], wherein it was held as follows:

*“12. We have critically examined the definition clause in the light of the arguments advanced on either side and have compared it with the definitions given in other labour enactments. On the doctrine of “pari materia”, reference to other statutes dealing with the same subject or forming part of the same system is a permissible aid to the construction of provisions in a statute. See the following observations contained in Principles of Statutory Interpretation by G.P. Singh (8th Edn.), Syn. 4, at pp. 235 to 239:*

*“Statutes in pari materia*

*It has already been seen that a statute must be read as a whole as words are to be understood in their context. Extension of this rule of context permits reference to other statutes in pari materia i.e. statutes dealing with the same subject-matter or forming part of the same system. Viscount Simonds in a passage already noticed conceived it to be a right and duty to construe every word of a statute in its context and he used the word context in its widest sense including ‘other statutes in pari materia’. As stated by Lord Mansfield ‘where there are different statutes in pari materia though made at different times, or even expired, and not referring to each other, they shall be taken and construed together, as one system and as explanatory of each other’.*

*\*\*\**

*The application of this rule of construction has the merit of avoiding any apparent contradiction between a series of statutes dealing with the same subject; it allows the use of an earlier statute to throw light on the meaning of a phrase used in a later statute in the same context; it permits the raising of a presumption, in the absence of any context indicating a contrary*

*intention, that the same meaning attaches to the same words in a later statute as in an earlier statute if the words are used in similar connection in the two statutes; and it enables the use of a later statute as parliamentary exposition of the meaning of ambiguous expressions in an earlier statute.”*

98. Before we proceed further with regard to the findings in ***Maruthi Constructions case***, it is pertinent here to refer to the judgment of the Apex Court in ***State of Kerala v. Builders Assn. of India [(1997) 2 SCC 183]***, ***Mycon Construction Ltd. v. State of Karnataka [(2003) 9 SCC 583 : 2002 SCC OnLine SC 581]*** and ***Indian Dairy Machinery Co. Ltd. v. CCT [(2008) 3 SCC 698 : 2008 SCC OnLine SC 159]*** and the same are extracted below.

99. ***State of Kerala v. Builders Assn. of India [(1997) 2 SCC 183]:***

*“2. Section 5 of the Kerala General Sales Tax Act, 1963 (15 of 1963) levies tax on sale or purchase of goods. Clause (iv) of sub-section (1) of Section 5 provides for levy of tax on transfer of goods involved in the execution of the works contract. Sub-clause (a) of clause (iv) deals with a situation where “transfer is in the form of goods”. In such a case, the rates and the point of levy are specified in the First, Second or Fifth Schedule to the Act. Sub-clause (b) deals with a situation where the “transfer of goods involved in the execution of works contract is not in the form of goods but in some other form”. In such a case, the rate is specified in the Fourth Schedule to the Act. There are two provisos to clause (iv) which we need not refer to for the purpose of this case. Section 7 provides for payment of tax at compounded rates. We are concerned herein with sub-sections (7), (7-A), (7-B), (11) and (12) which were inserted along with certain other provisions by Act 23 of 1991 and Act 8 of 1992. Sub-section (7) provides:*

*“Notwithstanding anything contained in sub-section (1) of Section 5, every contractor (engaged?) in civil works of construction of buildings, bridges, roads, dams and canals including any repair or maintenance of such civil works may at his option, instead of paying tax in accordance with clause (iv) of that sub-section, pay tax at the rate of two per cent on the whole amount of contract and which shall be deducted from the payments made by the awardee at every time including advance payment and shall remit to Government in such manner as may be prescribed.”*

*3. Sub-section (7-A) provides for a similar option to pay at a uniform specified rate in case of contractors not covered by sub-section (7). Sub-*

section (7-A) reads:

*“(7-A) Notwithstanding anything contained in sub-section (1) of Section 5 every contractor not covered by sub-section (7) may at his option, instead of paying tax in accordance with the said section, pay tax on the whole amount of contract at the rate of seventy per cent of the rates shown in the Fourth Schedule against such contract, less any tax paid by him under this Act on the purchase of any goods used in such contract, the transfer of which to the works contract was effected without any processing or manufacture;”*

*(Proviso omitted as not relevant for the purpose of this case.)*

*4. Sub-section (7-B) provides that the tax under clause (iv) of sub-section (1) of Section 5 and under sub-sections (7) and (7-A) of this section shall be deducted from the payment made by the awarder at every time including advance payment and remit it to the Government within seven days in the prescribed manner. Sub-section (11) requires every contractor who opts for payment of tax in accordance with sub-section (7) or sub-section (7-A) of Section 7 to “file the returns showing all the contracts he has undertaken along with certificates from the awarders, showing the whole amount of contract and the details of tax deducted and remitted to Government”. The sub-section further says that if the particulars so furnished are found to be correct and complete, the assessing authority may summarily make an assessment on that basis. Sub-section (12) provides that “after the close of the year or at the completion of the works contract and on receipt of final statement of accounts and return, if the tax on purchases is found to be in excess of the tax payable under the compounded rates, no refund of such excess tax paid shall be made”.*

*9. The main ground upon which the High Court has held sub-sections (7) and (7-A) of Section 7 to be void is that they levy tax at two per cent on the whole amount of the contract [sub-section (7)] or at a particular rate applied to the entire value of contract [sub-section (7-A)] and not merely upon the value of the goods transferred in the course of execution of the works contract as contemplated by sub-clause (b) of clause (29-A) in Article 366. The Court also noticed that the goods which are transferred in the course of execution of a works contract may be “declared goods”; they may be goods which are liable to be taxed under the Central Sales Tax Act, 1956; the goods so transferred may also be taxable under different Schedules to the Kerala Act which prescribe different rates. In such a situation, it is held, levying tax on the entire value of the contract means levy of tax contrary to the provisions of the Central Sales Tax Act and the Kerala General Sales Tax Act. It also means, the Court held, taking the non-taxable components of works contract, e.g., labour and services etc. For all these reasons, it is held, the said sub-sections are clearly beyond the legislative competence of the State Legislature. With great respect, we are unable to agree. The first feature to be noticed is that the alternate method of taxation provided by sub-section (7) or (7-A) of Section 7 is optional. The*



*sub-sections expressly provide that the method of taxation provided thereunder is applicable only to a contractor who elects to be governed by the said alternate method of taxation. There is no compulsion upon any contractor to opt for the method of taxation provided by sub-section (7) or sub-section (7-A). It is wholly within the choice and pleasure of the contractor. If he thinks it is beneficial for him to so opt, he will opt; otherwise, he will be governed by the normal method of taxation provided by Section 5(1)(iv). Sub-section (8) provides that the option to come under sub-section (7) or (7-A) has to be exercised by the contractor "either by an express provision in the agreement for the contract or by an application to the assessing authority to permit him to pay the tax in accordance with any of the said sub-sections". In these circumstances, it is evident that a contractor who had not opted to this alternate method of taxation cannot complain against the said sub-sections, for he is in no way affected by them. Nor can the contractor who has opted to the said alternate method of taxation, complain. Having voluntarily, and with the full knowledge of the features of the alternate method of taxation, opted to be governed by it, a contractor cannot be heard to question the validity of the relevant sub-sections or the rules. Sub-sections (8), (11) and (12) of Section 7 are incidental and ancillary to sub-sections (7) and (7-A) and cannot equally be faulted. Secondly, it is true that the goods transferred in the course of execution of the works contract may be chargeable at different rates under different Schedules appended to the Kerala Act; it may also be that some of them may be "declared goods", the levy of tax upon which is subject to certain restrictions specified in Sections 14 and 15 of the Central Sales Tax Act; it may also be that sale of some of the goods may also be subject to Central sales tax. It must yet be remembered that the method of taxation introduced by sub-sections (7) and (7-A) is in the nature of composition of tax payable under Section 5(1)(iv). The impugned sub-sections have evolved a convenient, hassle-free and simple method of assessment just as the system of levy of entertainment tax on the gross collection capacity of the cinema theatres. By opting to this alternate method, the contractor saves himself the botheration of book-keeping, assessment, appeals and all that it means. It is not necessary to enquire and determine the extent or value of goods which have been transferred in the course of execution of a works contract, the rate applicable to them and so on. For example, under sub-section (7), the contractor pays two per cent of the total value of the contract by way of tax and he is done with all the above-mentioned botheration. The rate of two per cent prescribed by sub-section (7) is far lower than the rates in Schedules 1, 2 and 5 referred to in Section 5(1)(iv)(a). In short, sub-sections (7) and (7-A) evolve a rough and ready method of assessment of tax and leave it to the contractor either to opt for it or be governed by the normal method. It is only an alternate method of ascertaining the tax payable, which may be availed of by a contractor if he thinks it advantageous to him. It must be remembered that the analogous system of alternate method of taxation evolved by certain State Legislatures in the matter of levy of entertainment tax has been upheld by this Court*

*in Venkateshwara Theatre v. State of A.P. [(1993) 3 SCC 677] The rough and ready method evolved by the impugned sub-sections for ascertaining the tax payable under Section 5(1)(iv) of the Act cannot be said to be beyond the legislative competence of the State or violative of clause (29-A) of Article 366 either. The Constitution does not preclude the legislature from evolving such alternate, simplified and hassle-free method of assessment of tax payable, making it optional for the assessee. The object of sub-sections (7) and (7-A) is the same as that of Section 5(1)(iv); it is only that they follow a different route to arrive at the same destination. Several taxing enactments contain provisions for composition of tax liability which may sometimes be in the interest of both the Revenue and the assesseees. It must also be remembered that in the field of taxation, the legislature must be allowed greater “play in the joints”, as it is called. Allowance must also be made for “trial and error” by the legislature, as has been held in R.K. Garg v. Union of India [(1981) 4 SCC 675 : 1982 SCC (Tax) 30] : (SCC pp. 690-91, para 8)*

*“... laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J. that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved.*

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*The court must always remember that ‘legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry’; ‘that exact wisdom and nice adaptation of remedy are not always possible’ and that ‘judgment is largely a prophecy based on meagre and uninterpreted experience’. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the United States Supreme Court in Secretary of Agriculture v. Central Roig Refining Co. [94 L Ed 381 : 338 US 604 (1950)] , be converted into tribunals for relief from such crudities and inequities. ... If any crudities, inequities or possibilities of abuse come to*

*light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.”*

*10. In our opinion, the above passages from the judgment of the Constitution Bench furnish a complete answer to the objections against the validity of the said provisions.*

.....

*12. In these appeals, Shri Vijayan concentrated his attack upon the validity of Rules 22-A and 30-A alone. His submission is that Rule 22-A provides for deduction of tax at source even in respect of amounts payable to contractors who have not chosen to opt to the composite method of taxation provided by sub-section (7) or (7-A) of Section 7. He submits that such a provision providing for collection of tax even before the making of an assessment is contrary to the Act besides being unreasonable and arbitrary. We are of the opinion that this contention is based upon a misapprehension of the scope and purpose of Rule 22-A. Sub-rule (1) of Rule 22-A says that whether a contractor opts to be governed by sub-sections (7) and (7-A) or whether he is governed by Section 5(1)(iv) of the Kerala Act, tax shall be paid either by the contractor in accordance with the Rules or by the person who awards the contract. No one can have any objection to sub-rule (1) since it only says that where tax is payable, it shall be paid either by the contractor or by the awarder according to law. Now, coming to sub-rule (2), it is equally applicable to all the contractors whether they are governed by Section 5(1)(iv) or by sub-section (7) or (7-A) of Section 7. What the sub-rule says is that wherever payment is made by the awarder to the contractor, “the awarder shall withhold an amount equal to the tax due” and remit the same to the assessing authority. It is evident that sub-rule (2) does not provide for deduction of tax at source like the one provided by Section 194-C of the Income Tax Act, 1961. Sub-rule (2) merely says that where tax is due from a contractor, the awarder shall withhold an amount equal to the tax due while making payment to the contractor. In the case of a contractor who has not opted for the alternate method of taxation and is governed by Section 5(1)(iv), this sub-rule means that where tax is due from him according to law and the awarder is apprised of the said fact, the awarder comes under an obligation to deduct the amount equal to the tax due and remit it to the assessing authority. It needs to be emphasised that the sub-rule speaks of “tax due”. Of course, so far as the contractor who has opted for the alternate method of taxation under sub-section (7) or (7-A) of Section 7 is concerned, the deduction at the prescribed rate would be at the time of any and every payment by the awarder to him, for in his case tax is due at the flat rate prescribed in the relevant sub-section even at the inception of the contract and at all times, until the tax due is satisfied. We fail to see how can any objection be taken to the sub-rule. Sub-rule (3) is really explanatory in nature. It says that notwithstanding anything contained in sub-rule (2), any contractor who pays tax regularly in accordance with the Rules, shall be entitled to payment of the full contract*

*amount without any deduction by the awardee, if he produces a certificate issued by the assessing authority to the effect that no tax is due from him. All these provisions are designed to ensure due realisation of the tax due. No exception can be taken thereto. The attack upon Rule 30-A is equally untenable. It merely provides the procedure according to which the option to come under the alternate method of taxation provided by sub-section (7) or (7-A) of Section 7 is to be exercised. The Division Bench was, therefore, in error in declaring the said rules as invalid."*

**100. *Mycon Construction Ltd. v. State of Karnataka [(2003) 9 SCC 583 :***

***2002 SCC OnLine SC 581]*:**

*"7. Again by Act 5 of 1996 sub-section (6) of Section 17 was amended to read as follows:*

*"17. (6)(i) Notwithstanding anything contained in Section 5-B, but subject to such conditions and in such circumstances as may be prescribed, the assessing authority of the area may, if a dealer liable to tax under Section 5-B so elects, accept in lieu of the amount of tax payable by him during the year under this Act, by way of composition an amount on the total consideration for the works contracts executed by him in that year in the State in respect of works contract specified in column (2) of the Sixth Schedule at the rates specified in the corresponding entries in column (4) of the said Schedule."*

*8. Sub-section (6) was further amended by Act 7 of 1997 with effect from 1-4-1997. Clause (i) of sub-section (6) of Section 17 of the Act as amended reads as follows:*

*"(a) for the words and brackets 'on his total turnover relating to transfer of property in goods (whether as goods or in some other form) involved in the execution of such works contract', the words 'on the total consideration received or receivable by him in respect of such works contract executed by him in that year in the State', shall be deemed to have been substituted with effect from the first day of April, 1988;*

*(b) for the words, brackets and figure, 'at the rates specified in the corresponding entries in column (4) of the said Schedule', the words, 'at the rate of four per cent', shall be substituted;" [Ed.: Considering this amendment by S. 8(13)(iii) of Karnataka Act 7 of 1997 [see 106 STC at p. 50] amended clause (i) of sub-section (6) may possibly read to the effect: "(6)(i) Notwithstanding anything contained in Section 5-B, but subject to such conditions and in such circumstances as may be prescribed, the Assessing Authority of the area may, if a dealer liable to tax under Section 5-B so elects, accept in lieu of the amount of tax payable by him during the year under this Act, by way of composition an amount on the total consideration for the works contracts received or receivable by him in respect of such works contract executed by him in that year in the State in*

*respect of works contract specified in column (2) of the Sixth Schedule at the rate of four per cent.”]*

**9.** *The constitutional validity of sub-section (6) of Section 17 of the Act was challenged in several writ petitions filed before the High Court of Karnataka at Bangalore. The challenge was on the ground that in view of Entry 54 of List III of the Seventh Schedule read with sub-clause (b) of clause (29-A) of Article 366 of the Constitution of India, the tax under the Act is leviable only on transfer of property in goods (whether as goods or in some other form). Therefore, even under a scheme of composition of tax, the tax could not be levied on any goods other than goods in which there was transfer of property in execution of the works contract. The State had no legislative competence to levy sales tax on the total consideration of the works contract so as to include items or goods in which there was in fact no transfer of property. Reliance was placed on the decisions of this Court in Builders' Assn. of India v. Union of India [(1989) 2 SCC 645 : 1989 SCC (Tax) 317] and Gannon Dunkerley and Co. v. State of Rajasthan [(1993) 1 SCC 364] . It was submitted that the judgment of this Court in State of Kerala v. Builders Assn. of India [(1997) 2 SCC 183] ran counter to the ratio in Builders' Assn. of India [(1989) 2 SCC 645 : 1989 SCC (Tax) 317] , a judgment rendered by a Constitution Bench of this Court, and therefore the same had no binding effect. In any event, that decision was distinguishable having regard to the facts and circumstances of that case and the provisions contained in the Kerala Act.*

**10.** *Secondly, it was contended that in any event sub-section (6) of Section 17, to the extent it had been given retrospective operation by Act 7 of 1997, was unconstitutional as it violated the rights guaranteed to the petitioners under Articles 14, 19(1)(g) and Article 265 of the Constitution of India. The petitioners and others like them, who had opted for the composition scheme, as it stood prior to 1-4-1996, could not be saddled with additional burden of tax by the amended provision which was given effect retrospectively from 1-4-1988. In the facts and circumstances of the case the retrospective operation of the amended provision was arbitrary, violating the right guaranteed to the petitioners under Article 14 of the Constitution of India.*

**11.** *The State of Karnataka on the other hand relied upon the decision of this Court in the State of Kerala Vs. Builders Association of India ((1997) 2 SCC 183 and contended that the question was no longer res integra and the validity of sub-section 6 of Section 17 as amended must be upheld. As to the retrospective operation of the amended provision, it was submitted that the legislature had competence not only to enact a law prospectively, but also retrospectively, subject to its being consistent with the constitutional provisions. It was submitted that the rights of the petitioners guaranteed under Article 14 and 19 were not breached at all. In fact the legislature always intended to levy tax on total consideration of works contract so far as assessment under the scheme of composition was concerned, and for this he relied upon the Budget speech of the Finance Minister wherein a reference was made to the levy at an average rate of 2% on the total*

*turnover in lieu of all taxes payable under the Act. The legislative intent was not truly reflected in the amendment effected in the Act which gave rise to some controversy on the subject. To clarify and to give effect to the legislative intent, a circular was issued by the Commissioner but the same was quashed by the High Court. In these circumstances the State was left with no option, but to exercise its legislative power to legislate retrospectively with a view to remove the lacuna in the existing provision.*

.....

*15. Mr Raju Ramachandran, Senior Advocate appearing on behalf of some of the appellants placed before us the judgment of this Court in State of Kerala v. Builders Assn. of India [(1997) 2 SCC 183] . We have carefully read the aforesaid judgment. Fairly Mr Raju Ramachandran submitted that he was unable to point out any distinction between the provisions of the Kerala Act and the Karnataka Act which may have a bearing on the question of interpretation. We have also considered the matter and we are also of the view that so far as the scheme of composition of tax is concerned, the relevant provisions of both the Acts even if not identical, are vastly similar. On the question of the constitutional validity of sub-section (6) of Section 17 the same argument was advanced before this Court in State of Kerala v. Builders Assn. of India [(1997) 2 SCC 183] . In that case, the High Court had declared as unconstitutional sub-sections (7) and (7-A) of Section 7 upholding the contention that they sought to levy tax at the rate of 2% on the whole amount of the contract, or at a particular rate applied to the entire value of contract, and not merely upon the value of the goods transferred in the course of execution of the works contract as contemplated under sub-clause (b) of clause (29-A) of Article 366. The Court noticed that the goods which were transferred in the course of execution of works contract may be “declared goods”, liable to be taxed under the Central Sales Tax Act, 1956. The goods so transferred may also be taxable under different Schedules to the Kerala Act which prescribe different rates. In such a situation, levy of tax on the entire value of the contract meant levy of tax contrary to the provisions of the Central Sales Tax Act and the Kerala General Sales Tax Act. It also meant including the non-taxable components of works contract e.g. labour and services etc. For all these reasons, the High Court held that the said sub-sections were clearly beyond the legislative competence of the State Legislature. This Court repelled the submission urged before it in the following words: (SCC p. 188, para 9)*

*“The first feature to be noticed is that the alternate method of taxation provided by sub-section (7) or (7-A) of Section 7 is optional. The sub-sections expressly provide that the method of taxation provided thereunder is applicable only to a contractor who elects to be governed by the said alternate method of taxation. There is no compulsion upon any contractor to opt for the method of taxation provided by sub-section (7) or sub-section (7-A). It is wholly within the choice and pleasure of the contractor. If he thinks it is beneficial for him to so opt, he will opt; otherwise, he will be governed by the normal method of taxation provided by Section 5(1)(iv). Sub-section*

(8) provides that the option to come under sub-section (7) or (7-A) has to be exercised by the contractor 'either by an express provision in the agreement for the contract or by an application to the assessing authority to permit him to pay the tax in accordance with any of the said sub-sections'. In these circumstances, it is evident that a contractor who had not opted to this alternate method of taxation cannot complain against the said sub-sections, for he is in no way affected by them. Nor can the contractor who has opted to the said alternate method of taxation, complain. Having voluntarily, and with the full knowledge of the features of the alternate method of taxation, opted to be governed by it, a contractor cannot be heard to question the validity of the relevant sub-sections or the rules. Sub-sections (8), (11) and (12) of Section 7 are incidental and ancillary to sub-sections (7) and (7-A) and cannot equally be faulted. Secondly, it is true that the goods transferred in the course of execution of the works contract may be chargeable at different rates under different Schedules appended to the Kerala Act; it may also be that some of them may be 'declared goods', the levy of tax upon which is subject to certain restrictions specified in Sections 14 and 15 of the Central Sales Tax Act; it may also be that sale of some of the goods may also be subject to Central sales tax. It must yet be remembered that the method of taxation introduced by sub-sections (7) and (7-A) is in the nature of composition of tax payable under Section 5(1)(iv). The impugned sub-sections have evolved a convenient, hassle-free and simple method of assessment just as the system of levy of entertainment tax on the gross collection capacity of the cinema theatres. By opting to this alternate method, the contractor saves himself the botheration of book-keeping, assessment, appeals and all that it means. It is not necessary to enquire and determine the extent or value of goods which have been transferred in the course of execution of a works contract, the rate applicable to them and so on. For example, under sub-section (7), the contractor pays two per cent of the total value of the contract by way of tax and he is done with all the abovementioned botheration. The rate of two per cent prescribed by sub-section (7) is far lower than the rates in Schedules 1, 2 and 5 referred to in Section 5(1)(iv)(a). In short, sub-sections (7) and (7-A) evolve a rough and ready method of assessment of tax and leave it to the contractor either to opt for it or be governed by the normal method. It is only an alternate method of ascertaining the tax payable, which may be availed of by a contractor if he thinks it advantageous to him. It must be remembered that the analogous system of alternate method of taxation evolved by certain State Legislatures in the matter of levy of entertainment tax has been upheld by this Court in *Venkateshwara Theatre v. State of A.P.* [(1993) 3 SCC 677]. The rough and ready method evolved by the impugned sub-sections for ascertaining the tax payable under Section 5(1)(iv) of the Act cannot be said to be beyond the legislative competence of the State or violative of clause (29-A) of Article 366 either. The Constitution does not preclude the legislature from evolving such alternate, simplified and hassle-free method of assessment of tax payable, making it optional for the assessee. The object of sub-sections (7) and (7-A) is the same as that of Section 5(1)(iv); it is only

*that they follow a different route to arrive at the same destination.”*

*16. We are of the considered view that principles laid down by this Court in the aforesaid decision squarely apply to the facts of this case having regard to the similarity of the provisions in the two Acts. We therefore find ourselves in complete agreement with the High Court and hold that sub-section (6) of Section 17 of the Karnataka Sales Tax Act is constitutionally valid and the challenge on the ground of lack of legislative competence of the State Legislature must be repelled.*

*17. Learned counsel then submitted that even while evolving a simplified method for assessment of tax, such as the scheme of composition in the instant case, the law cannot give an option to the assessee which is in the teeth of constitutional provisions. This argument does not survive in view of the principles laid down by the Supreme Court in State of Kerala v. Builders Assn. of India [(1997) 2 SCC 183]. He made a faint attempt to draw a distinction between the Kerala Act and the Karnataka Act by reference to the background in which the provisions were enacted. He submitted that under the Kerala Act the composition scheme was introduced by the amendments in the years 1991 and 1992. So far as the State of Karnataka is concerned sub-section (6) of Section 17 which gave option to the assessee to pay tax at a fixed rate on the value of the goods, the property in which was transferred in the course of execution of works contract came into effect in the year 1988 and continued till the year 1996. The appellants had taken benefit of the said scheme of composition by exercising their option for assessment under the composition scheme. They had therefore opted for something different from what is sought to be given to them under the amended provision which levies tax not merely on the value of goods transferred, but on the whole amount of the contract. He, therefore, submitted that having regard to the legislative background, amendment of sub-section (6) of Section 17 with retrospective effect by Act 7 of 1997 is clearly unconstitutional. The submission has no force. If the legislature has legislative competence to enact a statute and the statute so enacted does not breach any constitutional provision, the same cannot be said to be unconstitutional merely because it is retrospective in operation. Moreover, in the instant case as explained in State of Kerala v. Builders Assn. of India [(1997) 2 SCC 183] the appellants had opted for assessment under the composition scheme. They were not compelled to exercise their option and otherwise they would have been assessed in accordance with the provisions of the Act particularly Section 5-B thereof. To remove any hardship to the assessee by retrospective operation of the amended scheme of composition, the State Government itself submitted that the appellants and others like them may be given option to opt for assessment under Section 5-B of the Act even if they had earlier opted for assessment under sub-section (6) of Section 17. The High Court has in fact made such a direction. The appellants are therefore not prejudiced in any manner whatsoever.*

*18. Lastly, counsel submitted that while considering the question of retrospectivity, the High Court has passed its judgment on an erroneous*



*assumption of facts, namely that the assessments so far made were on the basis of total consideration. The learned counsel submitted that this was not factually correct. We have perused the judgment and we find that though the submission of the counsel for the State to this effect was noticed, the judgment of the High Court is not based on this assumption. The judgment of the High Court would not have been different even if the fact was otherwise.*

*19. Mr S.S. Javali, learned Senior Advocate appearing for the appellants in Civil Appeals Nos. 7575-77 of 1999 submitted that the appellants had opted under the composition scheme and enjoyed the benefit for almost 9 years. It would be unreasonable to relegate them to the same position that they occupied before they exercised the option for assessment under the composition scheme. He submits that considerations of equity must persuade this Court to pass an appropriate direction so that the assessments made on the basis of the options already given are not affected in any manner. Having held that the retrospective operation of the amended provision is constitutional, and having noticed that the assesseees are at liberty to opt for regular assessment under Section 5-B of the Karnataka Sales Tax Act, it would not be appropriate to make such a direction on considerations of equity particularly while dealing with a taxing statute.”*

**101. *Indian Dairy Machinery Co. Ltd. v. CCT [(2008) 3 SCC 698 : 2008***

***SCC OnLine SC 159]:***

*“8. The legislature by introducing the above amendment to sub-section (7) of Section 17 of the Act has restricted the benefit of composition amount for a dealer liable to tax under Section 5-B of the Act. By this amended provision, the legislature mandates that a dealer who purchases or receives goods from outside the State for the purpose of using such goods in the execution of works contract is not eligible for benefit of composition amount for the works contract executed by him in that year in the State in respect of works specified in the Sixth Schedule to the Act.*

*14. It is to be noted that if the dealer wanted the benefit of sub-section (6) of Section 17, it was required to submit an application within one hundred and twenty days from the date of commencement of the assessment year. The amended provision of sub-section (7) of Section 17 came into effect from 1-4-2002. The amended provision clearly excludes the dealer from the benefit of sub-section (6) of Section 17 of the Act if he purchases or receives goods from outside the State for the purposes of using such goods in the execution of the works contract. If for any reason, the assessee had intended to opt for composition of tax under Section 17(6) of the Act, necessarily he had to submit the application within one hundred and twenty days from the date of commencement of such year before the assessing authority to accept in lieu*

*of tax payable under Section 5-B of the Act on the total value of the works contract being executed by him. The key words under Section 17(6) of the Act are the tax payable during the year by way of composition an amount on the total consideration for the works executed by the contractor in that year in the State. Option to be exercised for composition benefit is not dependent on the dates of the agreements entered into by the parties for execution of the works contract.*

*16. As already noticed, the relevant assessment year in question is 2002-2003 (ending on 31-3-2003) and the assessee if it elected to compound the tax for this year, it was required to submit the application as provided under Rule 8-B(1) of the Rules. The amended provisions of sub-section (7) of Section 17 were given effect to from 1-4-2002. In view of the restriction imposed under the amended provision, the assessing authority could not have permitted the appellant Company to elect to pay the tax under Section 17(6) of the Act, since admittedly the appellant received the goods by way of stock transfers from outside the State for the purpose of using such goods in the execution of works contract. Therefore, the first question of law raised by the appellant has been rightly answered against the assessee.*

*17. The language used in sub-section (7) of Section 17 is very clear. It is to the effect that if a dealer purchases or receives goods from outside the State for execution of works contract within the State it is not entitled to the benefit of composition in terms of sub-section (6) of Section 17 and undisputedly, the appellant has received the goods by way of stock transfer. In view of the language employed in the amended provision, the appellant was clearly disentitled from composition for availing the benefit under sub-section (6) of Section 17. The expression "receives" would encompass receipt in any manner. Receipt by branch transfer is covered by the said expression. The High Court was, therefore, justified in dismissing the revision petition. We find no scope for taking a different view in view of the clear language of sub-section (7) of Section 17 as amended w.e.f. 1-4-2002."*

**102.** In the ***Builders' Association Case***, the provisions relating to compounding scheme were challenged as it sought to impose a tax on the whole turnover. The challenge succeeded before the Kerala High Court. Allowing the appeal filed by the State of Kerala, the Apex Court upheld the *vires* of the provisions holding that the composition scheme is an alternative method of taxation; it is optional to be exercised voluntarily; a dealer who has

not opted to the such scheme cannot challenge it; and similarly a person who has opted to be assessed under the scheme also, cannot challenge the provisions. It further held that the legislature was competent to device such mechanism and that such scheme of composition adopted by the States in matters relating to entertainment tax, was upheld in *Venkateshwara Theatre v. State of A.P. (1993) 3 SCC 677*].

**103.** Thereafter, in *Mycon Construction Ltd (Supra)*, the challenge to similar compounding scheme introduced by the State of Karnataka by bringing in an amendment to Section 17 (6) of the Karnataka General Sales Tax Act with retrospective effect as being violative of Articles 14, 19 (1) (g) and 265 of the Constitution of India was rejected by the Apex Court by relying upon its earlier judgment in *Builders' Association case*.

**104.** In *Indian Dairy Machinery Co. Ltd (Supra)*, the Apex Court was concerned with the challenge to rejection of the benefit of the composition scheme under the Karnataka Act for having received the goods from other state dealers. The Apex Court dismissed the appeal holding that as per the provision, the composition scheme cannot be availed by persons who bring in goods from other states.

**105.** In *Maruthi Constructions (Supra)*, the judgment relied upon by the assesseees, the *vires* of the composition scheme with the condition to deny the

benefit was upheld with respect to Part XIII. However, the challenge was allowed with respect to Article 14 of the Constitution. We are unable to accede our concurrence to the decision in *Maruthi Construction's case* as the orders were passed without considering the ratio laid down by the Apex Court in *Builders Association's case* rendered in respect of Kerala General Sales Tax Act and followed in *Mycon Construction's case*, wherein the challenge to the compounding provision under the Karnataka Act was challenged and negated holding that the compounding scheme introduced is only an option and that therefore cannot be put to challenge. In *Mycon Construction's case*, the challenge to retrospectivity was also turned down. Though the ratio laid down in *Builders Association's case* was with reference to the composition scheme, yet, the fact that there is no compulsion for any dealer to come under the scheme, was not considered. Further, the judgments relating to derivation of the object of the provisions have not been considered. Therefore, the judgment in *Maruti Construction's case* is *per incuriam*.

**106.** That apart, in the said judgment, the Andhra Pradesh High Court did not consider the object of such provision, but struck down the provision, finding that no counter was filed and proper reasons were not adduced regarding the purpose of introducing such condition. It is not so in the case on hand. The State has filed a detailed affidavit explaining the circumstances under which

the amendment was made and the purpose of the amendment. The court has already held that the reasons adduced therein are acceptable and reasonable. The ratio laid down by the Apex Court in ***Builders' Association*** case and followed in ***Mycon Construction's case*** is binding. The composition scheme contemplated under the Act for the works contractors is only optional and it is open to them to either choose a regular assessment under Section 5 or the composition scheme under Section 6. In view of the same, the contentions of the assesseees, are rejected.

### **XIII. GENERAL PRINCIPLES IN FISCAL / ECONOMIC MATTERS**

**107. *N. Venugopala Ravi Varma Rajah v. Union of India [(1969) 1 SCC 681 at page 686]:***

*“14. Equal protection clause of the Constitution does not enjoin equal protection of the laws as abstract propositions. Laws being the expression of legislative will intended to solve specific problems or to achieve definite objectives by specific remedies, absolute equality or uniformity of treatment is impossible of achievement. Again tax laws are aimed at dealing with complex problems of infinite variety necessitating adjustment of several disparate elements. The Courts accordingly admit, subject to adherence to the fundamental principles of the doctrine of equality, a larger play to legislative discretion in the matter of classification. The power to classify may be exercised so as to adjust the system of taxation in all proper and reasonable ways the legislature may select persons, properties, transactions and objects; and apply different methods and even rates for tax, if the legislature does so reasonably. Protection of the equality clause does not predicate a mathematically precise or logically complete or symmetrical classification: it is not a condition of the guarantee of equal protection that all transactions, properties, objects or persons of the same genus must be affected by it or none at all. If the classification is rational, the legislature is free to choose objects of taxation, impose different rates, exempt classes of property from taxation, subject different classes of property to tax in different ways and adopt different modes of assessment. A taxing statute*

*may contravene Article 14 of the Constitution if it seeks to impose on the same class of property, persons, transactions or occupations similarly situate; incidence of taxation, which leads to obvious inequality. A taxing statute is not, therefore, exposed to attack on the ground of discrimination merely because different rates of taxation are prescribed for different categories of persons, transactions, occupations or objects.*

*15. It is for the legislature to determine the objects on which tax shall be levied, and the rates thereof. The Courts will not strike down an Act as denying the equal protection of laws merely because other objects could have been, but are not, taxed by the legislature: Raja Jagannath Baksh Singh v. State of Uttar Pradesh [(1963) 1 SCR 220] . The same rule has been accepted by the Courts in America.”*

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

*“7. Now while considering the constitutional validity of a statute said to be violative of Article 14, it is necessary to bear in mind certain well established principles which have been evolved by the courts as rules of guidance in discharge of its constitutional function of judicial review. The first rule is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. This rule is based on the assumption, judicially recognised and accepted, that the legislature understands and correctly appreciates the needs of its own people, its laws are directed to problems made manifest by experience and its discrimination are based on adequate grounds. The presumption of constitutionality is indeed so strong that in order to sustain it, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation.*

*8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in *Morey v. Doud* [351 US 457 : 1 L Ed 2d 1485 (1957)] where Frankfurter, J., said in his inimitable style:*

*“In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events — self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.”*

*The Court must always remember that “legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry”; “that exact wisdom and nice adaption of remedy are not always possible” and that “judgment is largely a prophecy based on meagre and uninterpreted experience”. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the United States Supreme Court in *Secretary of Agriculture v. Central Roig Refining Company* [94 L Ed 381 : 338 US 604 (1950)] be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.*

*16. ....It must be remembered that every legislation is an experiment in achieving certain desired ends and trial and error method is inherent in every such experiment. Therefore, when experience shows that the legislation as framed has proved inadequate to achieve its purpose of mitigating an evil or there are cracks and loopholes in it which are being taken advantage of by the resourcefulness and ingenuity of those minded to benefit themselves at the cost of the State or the others, the legislature can and most certainly would intervene and change the law. But the law cannot*

*be condemned as invalid on the ground that after a period of ten years it may lend itself to some possible abuse.”*

**109. *Pine Chemicals Ltd. v. Assessing Authority* [(1992) 2 SCC 683**

**@ 694]:**

*“9. ... It is well settled that if power to do an act or pass an order can be traced to an enabling statutory provision, then even if that provision is not specifically referred to, the act or order shall be deemed to have been done or made under the enabling provision. Thus the government orders satisfy all the requirements of the provisions of Section 5 of the local Act. ....*

*.....*

*17. The High Court was of the view that the government orders are, as such, not exemption orders but only a policy decision. The learned Judges observed that Section 5 of the General Sales Tax Act “does not speak of general order of exemption as the power to grant exemption is related to a class of dealers or goods and that too subject to restrictions and conditions as may be prescribed. So there could be no general order of exemption and hence the need for specific order in favour of the petitioner is quite obvious”. On this interpretation the High Court held that the appellant has to first establish that he had set up an industry in the State which conforms to the intent of 1971 order and thereafter ask for an exemption and that on being satisfied the government will have to make an order of exemption under Section 5 of the General Sales Tax Act. We are unable to agree with this reasoning of the learned Judges on the interpretation of Section 5 of the General Sales Tax Act. We are of the view that the High Court was in error in thinking that the exemption order should be specific in favour of the appellant. The exemption as can be seen from the provisions of Section 5 of the General Sales Tax Act could be in respect of any class of dealers or any goods or class or description of goods. There could be an exemption to an individual also but the power of exemption is not restricted to such cases alone. It may refer to transactions of sale of a particular type of goods or class or description of goods or in respect of any class of dealers or a combination of both. Of course even as an order of exemption the appellant will have to show that he had set up the industry in conformity with the intent of 1971 order and entitled in terms thereof to the exemption in respect of the goods manufactured by him. But that is not to say that after he establishes those facts the government will have to make a separate order of exemption in relation to him.”*



**110. *Sri Srinivasa Theatre v. Govt. of T.N. [(1992) 2 SCC 643]:***

*“9. Article 14 of the Constitution enjoins upon the State not to deny to any person ‘Equality before law’ or ‘the equal protection of laws’ within the territory of India. The two expressions do not mean the same thing even if there may be much in common. Section 1 of the XIV Amendment to the U.S. Constitution uses only the latter expression whereas the Irish Constitution (1937) and the West German Constitution (1949) use the expression “equal before law” alone. Both these expressions are used together in the Universal Declaration of Human Rights, 1948, Article 7 whereof says “All are equal before the law and are entitled without any discrimination to equal protection of the law.” While ascertaining the meaning and content of these expression, however, we need not be constrained by the interpretation placed upon them in those countries though their relevance is undoubtedly great. It has to be found and determined having regard to the context and scheme of our Constitution. It appears to us that the word “law” in the former expression is used in a generic sense — a philosophical sense — whereas the word “laws” in the latter expression denotes specific laws in force.*

*10. Equality before law is a dynamic concept having many facets. One facet — the most commonly acknowledged — is that there shall be no privileged person or class and that none shall be above law. A facet which is of immediate relevance herein is the obligation upon the State to bring about, through the machinery of law, a more equal society envisaged by the Preamble and Part IV of our Constitution. For equality before law can be predicated meaningfully only in an equal society i.e., in a society contemplated by Article 38 of the Constitution, which reads:*

*“38. State to secure a social order for the promotion of welfare of the people.— (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.*

*(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities, in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations”.*”

**111. *Gannon Dunkerley and Co. v. State of Rajasthan [(1993) 1 SCC***

***364 at page 397]:***

*“50. A question has been raised whether it is permissible for the State Legislature to levy tax on deemed sales falling within the ambit of Article*

366(29-A)(b) by prescribing a uniform rate of tax for all goods involved in the execution of a works contract even though different rates of tax are prescribed for sale of such goods. The learned counsel for the contractors have urged that it would not be permissible to impose two different rates of tax in respect of sale of the same article, one rate when the article is sold separately and a different rate when there is deemed sale in connection with the execution of a works contract. On behalf of the States it has been submitted that it is permissible for the State to impose a particular rate of tax on all goods involved in the execution of a works contract which may be different from the rates of tax applicable to those goods when sold separately. In the field of taxation the decisions of this Court have permitted the legislature to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes. [See: *East India Tobacco Co. v. State of A.P.* [(1963) 1 SCR 404, 411 : AIR 1962 SC 1733 : (1962) 13 STC 29] ; *P.M. Ashwathanarayana Setty v. State of Karnataka* [1989 Supp (1) SCC 696 : 1988 Supp (3) SCR 155, 188] ; *Federation of Hotel & Restaurant Association of India v. Union of India* [(1989) 3 SCC 634 : (1989) 2 SCR 918, 949] and *Kerala Hotel & Restaurant Association v. State of Kerala* [(1990) 2 SCC 502 : 1990 SCC (Tax) 309 : (1990) 1 SCR 516, 530] .] Imposition of sales tax at different rates depending on the value of the annual turnover was upheld in *S. Kodar v. State of Kerala* [(1974) 4 SCC 422 : 1974 SCC (Tax) 272 : (1975) 1 SCR 121] . Similarly, imposition of purchase tax at different rates for sugar mills and khandsari units was upheld in *Ganga Sugar Co. Ltd. v. State of U.P.* [(1965) 2 SCR 908 : AIR 1965 SC 1636 : (1965) 56 ITR 365] In our opinion, therefore, it would be permissible for the State Legislature to tax all the goods involved in the execution of a works contract at a uniform rate which may be different from the rates applicable to individual goods because the goods which are involved in the execution of the works contract when incorporated in the works can be classified into a separate category for the purpose of imposing the tax and a uniform rate may be prescribed for sale of such goods.

**51.** *The aforesaid discussion leads to the following conclusions:*

- (1) *In exercise of its legislative power to impose tax on sale or purchase of goods under Entry 54 of the State List read with Article 366(29-A)(b), the State Legislature, while imposing a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract is not competent to impose a tax on such a transfer (deemed sale) which constitutes a sale in the course of inter-State trade or commerce or a sale outside the State or a sale in the course of import or export.*
- (2) *The provisions of Sections 3, 4 and 5 and Sections 14 and 15 of the Central Sales Tax Act, 1956 are applicable to a transfer of property in goods involved in the execution of a works contract covered by Article 366(29-A)(b).*
- (3) *While defining the expression 'sale' in the sales tax legislation it is open*

*to the State Legislature to fix the situs of a deemed sale resulting from a transfer falling within the ambit of Article 366(29-A)(b) but it is not permissible for the State Legislature to define the expression 'sale' in a way as to bring within the ambit of the taxing power a sale in the course of inter-State trade or commerce, or a sale outside the State or a sale in the course of import and export.*

*(4) The tax on transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract falling within the ambit of Article 366(29-A)(b) is leviable on the goods involved in the execution of a works contract and the value of the goods which are involved in execution of the works contract would constitute the measure for imposition of the tax.*

*(5) In order to determine the value of the goods which are involved in the execution of a works contract for the purpose of levying the tax referred to in Article 366(29-A)(b), it is permissible to take the value of the works contract as the basis and the value of the goods involved in the execution of the works contract can be arrived at by deducting expenses incurred by the contractor for providing labour and other services from the value of the works contract.*

*(6) The charges for labour and services which are required to be deducted from the value of the works contract would cover (i) labour charges for execution of the works, (ii) amount paid to a sub-contractor for labour and services; (iii) charges for obtaining on hire or otherwise machinery and tools used for execution of the works contract; (iv) charges for planning, designing and architect's fees; and (v) cost of consumables used in execution of the works contract; (vi) cost of establishment of the contractor to the extent it is relatable to supply of labour and services; (vii) other similar expenses relatable to supply of labour and services; and (viii) profit earned by the contractor to the extent it is relatable to supply of labour and services.*

*(7) To deal with cases where the contractor does not maintain proper accounts or the account books produced by him are not found worthy of credence by the assessing authority the legislature may prescribe a formula for deduction of cost of labour and services on the basis of a percentage of the value of the works contract but while doing so it has to be ensured that the amount deductible under such formula does not differ appreciably from the expenses for labour and services that would be incurred in normal circumstances in respect of that particular type of works contract. It would be permissible for the legislature to prescribe varying scales for deduction on account of cost of labour and services for various types of works contract.*

*(8) While fixing the rate of tax it is permissible to fix a uniform rate of tax for the various goods involved in the execution of a works contract which rate may be different from the rates of tax fixed in respect of sales or purchase of those goods as a separate article."*

**112. *Titanium Equipments and Anodes Manufacturing Co. Ltd. v. Union of India* [1993 SCC OnLine Mad 467 : (1994) 207 ITR 566 at page 573]:**

*“8. We may now make a brief reference to the decisions relied on by learned counsel for the respondents. In N. Takin Roy Rymbai's case, [1976] 103 ITR 82 (SC), the constitutional validity as well as classification for purpose of exemption from tax between the income of a member of a Scheduled Tribe accruing or arising from any source in a specified area and income of such a person from a source outside such area, came to be considered. In that connection, the Supreme Court pointed out that there is a wide discretion in the matter of classification for taxation purposes and there is freedom to select and classify goods, properties, which should be subjected to tax and which should not be and so long as that classification is made within that wide and flexible range and does not transgress the principles of the doctrine of equality, such classification is not vulnerable on the ground of discrimination merely because it taxes or exempts from tax some incomes or objects and not others. The Supreme Court further laid down that a mere fact that a tax falls more heavily on some in the same category, by itself, is no ground to render the law invalid. What is found in this case is that Parliament has the freedom to select and classify goods for purposes of different rates of depreciation based on certain criteria. In other words, when the classification is made within the range of articles eligible for depreciation, the availability of a lower percentage of depreciation in respect of T.S.I. anodes manufactured by the petitioner cannot be taken exception to, on the ground that a higher percentage of depreciation is allowed in cases of other energy saving devices. In Federation of Hotel and Restaurant Associations of India's case, [1989] 178 ITR 97 (SC) at page 121, it had been laid down that having regard to the wide variety of diverse economic criteria that go into the formulation of a fiscal policy, the Legislature enjoys a wide latitude in the matter of selection of persons, subject-matter, etc., and within that latitude a classification could be made, not transgressing the fundamental principles underlying the doctrine of equality and if so made within the range of the selection, it is not vulnerable. It may also be pointed out that in the complex and ever-expanding exigencies of the Government, when the power to tax and grant exemptions and benefits of depreciation exists, the extent of the benefit is a matter for the discretion of the law-makers and it is not the function of the court to enter upon the realm of legislative policy.”*

**113. *Bharat Hari Singhania v. CWT* [1994 Supp (3) SCC 46]:**

*“34. The above statement of law of the Constitution Bench makes it clear that the mere fact that some crudities and inequities result as a result of*

*complicated experimental economic legislation, the legislation cannot be struck down on that ground alone and that the courts cannot be converted into tribunals for relief from such crudities and inequities. The court must adjudge the constitutionality of a legislation by the generality of its provisions and not by its crudities and inequities.....”*

# **114. Govt. of Andhra Pradesh v. P. Laxmi Devi [(2008) 4 SCC 720 : 2008**

**SCC OnLine SC 370]:**

*“18. In our opinion, there is no violation of Articles 14, 19 or any other provision of the Constitution by the enactment of Section 47-A as amended by A.P. Amendment Act 8 of 1998. This amendment was only for plugging the loopholes and for quick realisation of the stamp duty. Hence it is well within the power of the State Legislature vide Entry 63 of List II read with Entry 44 of List III of the Seventh Schedule to the Constitution.*

*19. It is well settled that stamp duty is a tax, and hardship is not relevant in construing taxing statutes which are to be construed strictly. As often said, there is no equity in a tax vide CIT v. V.M.R.P. Firm Muar [AIR 1965 SC 1216] . If the words used in a taxing statute are clear, one cannot try to find out the intention and the object of the statute. Hence the High Court fell in error in trying to go by the supposed object and intendment of the Stamp Act, and by seeking to find out the hardship which will be caused to a party by the impugned amendment of 1998.*

*21. It has been held by a Constitution Bench of this Court in ITO v. T.S. Devinatha Nadar [AIR 1968 SC 623] (vide AIR paras 23 to 28) that where the language of a taxing provision is plain, the court cannot concern itself with the intention of the legislature. Hence, in our opinion the High Court erred in its approach of trying to find out the intention of the legislature in enacting the impugned amendment to the Stamp Act.*

*40. The court must always remember that invalidating a statute is a grave step, and must therefore be taken in very rare and exceptional circumstances.*

*.....*

*46. In our opinion, there is one and only one ground for declaring an Act of the legislature (or a provision in the Act) to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. This violation can, of course, be in different ways e.g. if a State Legislature makes a law which only Parliament can make under List I to the Seventh Schedule, in which case it will violate Article 246(1) of the Constitution, or the law violates some specific provision of the Constitution (other than the directive principles). But*

*before declaring the statute to be unconstitutional, the court must be absolutely sure that there can be no manner of doubt that it violates a provision of the Constitution. If two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. Also, the court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope vide Rt. Rev. Msgr. Mark Netto v. State of Kerala [(1979) 1 SCC 23 : AIR 1979 SC 83] SCC para 6 : AIR para 6. Also, it is none of the concern of the court whether the legislation in its opinion is wise or unwise.*

*48. The court certainly has the power to decide about the constitutional validity of a statute. However, as observed by Frankfurter, J. in West Virginia v. Barnette [87 L Ed 1628 : 319 US 624 (1943)] , since this power prevents the full play of the democratic process it is vital that it should be exercised with rigorous self-restraint.*

*51. In our opinion the legislature must be given freedom to do experimentations in exercising its powers, provided of course it does not clearly and flagrantly violate its constitutional limits.*

*55. In Kesavananda Bharati v. State of Kerala [(1973) 4 SCC 225 : AIR 1973 SC 1461] (vide AIR para 1547) Khanna, J. observed: (SCC p. 821, para 1535)*

*“1535. In exercising the power of judicial review, the courts cannot be oblivious of the practical needs of the Government. The door has to be left open for trial and error.”*

*57. In our opinion, the court should, therefore, ordinarily defer to the wisdom of the legislature unless it enacts a law about which there can be no manner of doubt about its unconstitutionality.*

*59. In the light of the above observations, the impugned amendment is clearly constitutional. The amendment was obviously made to plug a loophole in the Stamp Act so as to prevent evasion of stamp duty, and for quick collection of the duty. There are other statutes e.g. the Income Tax Act in which there are provisions for deduction at source, advance tax, etc. which aim at quick collection of tax, and the constitutional validity of these provisions have always been upheld.*

*67. Hence if two views are possible, one making the provision in the statute constitutional, and the other making it unconstitutional, the former should be preferred vide Kedar Nath Singh v. State of Bihar [AIR 1962 SC 955] . Also, if it is necessary to uphold the constitutionality of a statute to construe its general words narrowly or widely, the court should do so vide G.P. Singh's Principles of Statutory Interpretation, 9th Edn., 2004, p. 497. Thus the word “property” in the Hindu Women's Right to Property Act, 1937 was construed by the Federal Court in Hindu Women's Rights to Property Act, 1937, In re [AIR 1941 FC 72] to mean “property other than agricultural*

land”, otherwise the Act would have become unconstitutional.

*68. The court must, therefore, make every effort to uphold the constitutional validity of a statute, even if that requires giving the statutory provision a strained meaning, or narrower or wider meaning, than what appears on the face of it. It is only when all efforts to do so fail should the court declare a statute to be unconstitutional.*

*72. As regards fiscal or tax measures greater latitude is given to such statutes than to other statutes. Thus in the Constitution Bench decision of this Court in R.K. Garg v. Union of India [(1981) 4 SCC 675 : 1982 SCC (Tax) 30] this Court observed: (SCC pp. 690-91, para 8)*

*“8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J. that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in Morey v. Doud [1 L Ed 2d 1485 : 354 US 457 (1957)] where Frankfurter, J. said in his inimitable style:*

*‘In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.’*

*The court must always remember that ‘legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry’; ‘that exact wisdom and nice adaptation of remedy are not always possible’ and that ‘judgment is largely a prophecy based on meagre and uninterpreted experience’. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the United States Supreme Court in Secy. of*

*Agriculture v. Central Roig Refining Co.[94 L Ed 381 : 338 US 604 (1949)] , be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.”*

*(emphasis supplied)*

*79. Some scholars regarded it a paradox in the judgments of Holmes, J. (who, as we have already stated above, was a disciple of Thayer) that while he urged tolerance and deference to legislative judgment in broad areas of law-making challenged as unconstitutional, he seemed willing to reverse the presumption of constitutionality when laws inhibiting civil liberties were before the court.*

*80. However, we find no paradox at all. As regards economic and other regulatory legislation judicial restraint must be observed by the court and greater latitude must be given to the legislature while adjudging the constitutionality of the statute because the court does not consist of economic or administrative experts. It has no expertise in these matters, and in this age of specialisation when policies have to be laid down with great care after consulting the specialists in the field, it will be wholly unwise for the court to encroach into the domain of the executive or legislative (sic legislature) and try to enforce its own views and perceptions.*

*99. In view of the fact that the impugned amendment is an economic measure, whose aim is to plug the loopholes and secure speedy realisation of stamp duty, we are of the opinion that the said amendment, being an economic measure, cannot be said to be unconstitutional.”*

# **115. *Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat* [(2008)**

**5 SCC 33 : 2008 SCC OnLine SC 518]:**

*“39. We have recently held in Govt. of A.P. v. P. Laxmi Devi [(2008) 4 SCC 720 : JT (2008) 2 SC 639] , that the court should exercise judicial restraint*



*while judging the constitutional validity of statutes. In our opinion, the same principle also applies when judging the constitutional validity of delegated legislation and here also there should be judicial restraint. There is a presumption in favour of the constitutionality of statutes as well as delegated legislation, and it is only when there is a clear violation of a constitutional provision (or of the parent statute, in the case of delegated legislation) beyond reasonable doubt that the court should declare it to be unconstitutional.”*

**116.** From the above judgments, the following principles can be discerned:

1. States can evolve different mechanisms to calculate the turnover involved in the works contract for the purpose of taxation. The States are empowered to fix a uniform rate for various goods involved in the execution of the works contract.

2. The legislature in fiscal matters, enjoys a greater latitude and must be permitted to experiment. The presumption is always in favour of the constitutionality of a provision and the courts must seldom interfere. Hardship that may be caused to any individual or a set of persons is irrelevant for considering the validity of a taxing statute. The State with experts is more competent to deal with fiscal matters and hence the courts must exercise judicial restraint while deciding the constitutional validity of an enactment. There may even be possibilities of abuse, but that too cannot be itself a ground for invalidating the legislation. A law can be declared as invalid only if it contravenes or impedes the constitutional rights, guarantees and safeguards.

3. The constitutionality must be tested considering the notion of the

provisions and not by its harshness or limitations.

4. The purpose of taxation is not just to raise revenue, but also to reduce inequalities. The obligation is upon the State to bring about, through the machinery of law, a more equal society envisaged by the Preamble and Part IV of our Constitution.

5. An exemption could be granted in respect of any class of dealers or any goods or class or description of goods. There could be an exemption to an individual also, but the power of exemption is not restricted to such cases alone. The exemption may refer to transactions of sale of a particular type of goods or class or description of goods or in respect of any class of dealers or a combination of both.

6. Protection under the equality clause, does not predicate a mathematically precise or logically complete or symmetrical classification. If the classification is rational, the legislature is at free to choose objects of taxation, impose different rates, exempt classes of property from taxation, subject different classes of property to tax in different ways and adopt different modes of assessment. A taxing statute is not, therefore, exposed to attack on the ground of discrimination merely because different rates of taxation are prescribed for different categories of persons, transactions, occupations or objects. The Courts will not strike down an Act as denying the equal

protection of laws merely because other objects could have been, but are not, taxed by the legislature.

7. The economic wisdom of a tax is within the exclusive province of the Legislature and it also extends to the allowing of depreciation on specific items on a higher percentage. It is not the function of the court to consider the propriety or justness of the tax or enter upon the realm of legislative policy.

8. There is a wide discretion in the matter of classification for taxation purposes and there is freedom to select and classify goods / properties, which should be subjected to tax and which should not be. As long as that classification does not transgress the principles of the doctrine of equality, such classification is not vulnerable on the ground of discrimination merely because it taxes or exempts from tax some incomes or objects and not others. A mere fact that a tax falls more heavily on some in the same category, by itself, is no ground to render the law invalid.

9. Every legislation is an experiment in achieving certain desired ends and trial and error method is inherent in every such experiment, laws relating to economic activities should be viewed with greater latitude than laws touching civil rights, that the constitutionality of a judgment must be presumed and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. The courts must

always remember that economic mechanisms are complex, sensitive and directed towards practical problems. Economic Legislations cannot provide for all possible situations or anticipate all possible abuses. Therefore, just because there are inequities, the law cannot be struck down.

**XIV. ARTICLES 14 & 19 (1) (g)**

**117.** The impugned amendment is challenged as being violative of Article 14 on the premise that the condition whereby only those works contractors who do not have any inter-state purchases or imports/goods from outside the country, would be eligible to the Composition Scheme under Section 6 of the VAT Act introduced vide impugned amendment, does not bear nexus to the object of composition Scheme under Section 6 of the VAT Act which is to provide for simple and hassle free accounting and returns. It is the contention of the learned counsel for the petitioners that all works contractors belong to a class and that there is no rational behind the artificial sub-classification and therefore the amendment is discriminatory and offends Article 14 of the Constitution. It is the further case of the petitioners that the equals namely the works contractors have been treated differently; and that, any legislation which fails the following twin tests, would fall foul of Article 14 of the Constitution viz.,

a. Those grouped together in one class must possess a common characteristics which distinguishes them from those excluded from the group.

b. This characteristic or intelligible differentia must have a rational nexus with the object sought to be achieved.

**118.** It was also contended that the impugned amendment suffers from the vice of manifest arbitrariness and therefore would fall foul of Article 14 of the Constitution of India. That apart, the impugned amendment fails to see that the execution of works contract would require a variety of inputs and it is permissible when some items necessary for the execution of works contract are not available and thus, the works contractors are under compulsion to procure the same from outside the state/country. In other words, the works contractor may not have the choice of sourcing the materials from within the state or otherwise and the procurement from outside the state may be a result of compulsion. However, in such circumstances, the works contractors are denied the benefit of composition under section 6. It was further submitted by the learned counsel for the petitioners that out of a works contract even if 0.1% is procured from outside the state, the works contractor would stand disqualified, and thus, it is “excessive and disproportionate and suffers from manifest arbitrariness”. Adding further, it was submitted that the impugned amendment is irrational inasmuch as it denies the benefit, even if the entire works contract

was executed by using goods procured within the state. However, if for the purpose of trading a works contractor procures material from outside the state even then the works contractor would stand disqualified. It was contended that the classification is unreasonable, disproportionate, manifestly arbitrary not only because of the discrimination but also for the reason that it seeks to give a retrospective effect, thereby the provision affects their right to carry on any occupation, trade or business and hence, falls foul of Article 19 (1) (g).

**119.** The following judgments are relied upon by the counsels for the petitioners to buttress their contention that the impugned provision is arbitrary, discriminative and unreasonable.

**120. *Harbilas Raj Bansal vs. State of Punjab and another* [(1996) 1**

***Supreme Court Cases 1]*:**

*"13. The provisions of the Act, prior to the amendment, were uniformly applicable to the residential and non-residential buildings. The amendment, in the year 1956, created the impugned classification. The objects and reasons of the Act indicate that it was enacted with a view to restrict the increase of rents and to safeguard against the mala fide eviction of tenants. The Act, therefore, initially provided - conforming to its objects and reasons - bona fide requirement of the premises by the landlord, whether residential or non-residential, as a ground of eviction of the tenant. The classification created by the amendment has no nexus with the object sought to be achieved by the Act. To vacate a premises for the bona fide requirement of the landlord would not cause any hardships to the tenant. Statutory protection to a tenant cannot be extended to such an extent that the landlord is precluded from evicting the tenant for the rest of his life even when he bona fide requires the premises for his personal use and occupation. It is not the tenants but the landlords who are suffering great hardships because of the amendment. A landlord may genuinely like to let out a shop till the time he bona fide needs the same. Visualise a shopkeeper (owner) dying*

*young. There may not be a member in the family to continue the business and the widow may not need the shop for quite some time. She may like to let out the shop till the time her children grow up and need the premises for their personal use. It would be wholly arbitrary - in a situation like this - to deny her the right to evict the tenant. The amendment has created a situation where a tenant can continue in possession of non-residential premises for life and even after the tenant's death his heirs may continue the tenancy. We have no doubt in our mind that the objects, reasons and the scheme of the Act could not have envisaged the type of situation created by the amendment, which is patently harsh and grossly unjust for the landlord of a non-residential premises."*

**121. Deputy Commissioner of Income Tax and another v. Pepsi Foods Limited (Now Pepsico India Holdings Private Limited) [(2021) 7 Supreme Court Cases 413]:**

*"16.It is settled law that challenges to tax statutes made under Article 14 of the Constitution of India can be on grounds relatable to discrimination as well as grounds relatable to manifest arbitrariness. These grounds may be procedural or substantive in nature. Thus, in Sural Mall Mohta & Co. vs. A.V. Visvanatha Sastri (AIR 1954 SC 545) this Court struck down Section 5 (4) of the Taxation on Income (Investigation Commission) Act, 1947 on the ground that the procedure prescribed was substantially more prejudicial and more drastic to the assessee than the procedure contained in the Income Tax Act, 1922. Section 5 (4) of the aforesaid Act was thus struck down as a piece of discriminatory legislation offending against the provisions of Article 14 of the Constitution of India.*

*21. The object sought to be achieved by the third proviso to Section 254 (2-A) of the Income Tax Act is without doubt the speedy disposal of appeals before the Appellate Tribunal in cases in which a stay has been granted in favour of the assessee. But such object cannot itself be discriminatory or arbitrary, as has been felicitously held in Nagpur Development Trust vs. Vithal Rao (1973) 1 SCC 500, as follows: (SCC p.506, para 26: SCR p.47)*

*'26. It is now well settled that the State can make a reasonable classification for the purpose of legislation. It is equally well settled that the classification in order to be reasonable must satisfy two tests; (i) the classification must be founded on intelligible differentia, and (ii) the differentia must have a rational relation with the object sought to be achieved by the legislation in question. In this connection, it must be borne in mind that the object itself should be lawful. The object itself cannot be discriminatory, for otherwise, for instance, if the object is to discriminate against one section of the minority the discrimination cannot be justified on*

*the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved."*

**122.** The above two judgments have been relied upon to contend that Article 14 is attracted not only when there is discrimination, but also when there is arbitrariness in the enactment and to reinforce the point that there must be a nexus between the classification and the object, which cannot be unlawful.

**123. *Maruthi Constructions v. Government of Andhra Pradesh and another [(2007) 10 VST 362 (AP)]***, in which, similar provision under the Andhra Pradesh General Sales Tax was challenged and it was observed as under:

*"41. But, the question still remains whether such a provision is violative of Article 14 of the Constitution of India on the ground that from out of the same class of dealers who are taxable under Section 5F of the APGST Act, some are allowed an option for a specified mode of assessment provided under Section 5G and others are debarred from availing that option on the ground that they utilised goods procured from out of the State of Andhra Pradesh.*

*42. Learned Counsel for the petitioner argued that though such sub-classification of the dealers who otherwise form single class for the purpose of Section 5F is not totally prohibited, the burden that such sub-classification bears a reasonable nexus to some legitimate purpose is on the State. Though it is a definite case of the petitioners that the impugned provision is violative of Article 14 of the Constitution of India, no specific reason is given in the counter-affidavit filed by the State indicating any legitimate purpose that is sought to be achieved by making such a sub-classification.*

*43. We see substantial force in the submission made by the learned Counsel for the petitioner. The counter filed by the State is totally silent on this aspect nor could the learned Government Pleader appearing for the respondents bring to the notice of this court the existence of any legally tenable purpose that could be achieved by the impugned provision.*



*44. In the circumstances, we are of the opinion that the impugned provision is violative of Article 14 of the Constitution of India and is therefore required to be declared unconstitutional.”*

**124.** We have already held that the above judgment is not applicable as it is in *per incuriam*. The earlier judgments of the Apex Court on the object of the composition scheme were not considered. Further, there is no discussion on the provisions of the Act and no attempt was made by the court to discern the object and the only reason given was that no counter affidavit was filed by the State specifying the legitimate purpose of such enactment. In the present case, counter has been filed giving reasons, which have been accepted by us.

**125. *Jain Exports Private Limited v. Union of India [1991 AIR 1721 SC]***

**(Article 14):**

*“2. The State Chemicals and Pharmaceuticals Corporation imported caustic soda under the import licence, duty on caustic soda was payable at the rate of 92%. The Central Government granted exemption to the importer under Section 25(2) of the Act permitting it to import the caustic soda on payment of 10% duty instead of 92%, on the ground that there was shortage of caustic soda in the market and if the full duty was paid at the rate of 92% the cost of the goods would be very high in the market which would not be in public interest. The appellant who is an importer also imported caustic soda and applied for the grant of similar concession in the payment of duty as granted to the State Chemicals and Pharmaceuticals Corporation, but he was not granted any exemption, thereupon he filed a writ petition before the High Court challenging the order of the Central Government granting exemption to the State Chemicals and Pharmaceuticals Corporation on the ground that the appellant was being discriminated. The High Court dismissed the writ petition. Hence this appeal.*

*3. There is no dispute that liquid caustic soda at the relevant period was not a canalised item and the appellant claimed that he was also entitled to the exemption in the matter of duty on the import of caustic soda as granted to the State Chemicals and Pharmaceuticals Corporation. The appellant*

*asserted that it was being discriminated without there being any justification for the same. Apparently there appears no justification for the differential treatment. The Union of India has not put in appearance nor any affidavit has been filed on its behalf explaining the circumstances under which a differential treatment was meted out to the appellant.”*

In this case, the State was exempted from payment of duty on import and the exemption was denied to the individuals without any basis and the department also failed to offer any reasons in their counter affidavit. Therefore, holding that such denial amounted to discrimination, the claim of the assessee was allowed.

**126. *Nagaraj M v. Union of India [(2006) (9) JT 191; 2006 (8) SCC 212]:***

***“Role of enabling provisions in the context of Article 14***

*106. The gravamen of Article 14 is equality of treatment. Article 14 confers a personal right by enacting a prohibition which is absolute. By judicial decisions, the doctrine of classification is read into Article 14. Equality of treatment under Article 14 is an objective test. It is not the test of intention. Therefore, the basic principle underlying Article 14 is that the law must operate equally on all persons under like circumstances. (emphasis added) Every discretionary power is not necessarily discriminatory. According to the Constitutional Law of India, by H.M. Seervai, 4th Edn., p. 546, equality is not violated by mere conferment of discretionary power. It is violated by arbitrary exercise by those on whom it is conferred. This is the theory of “guided power”. This theory is based on the assumption that in the event of arbitrary exercise by those on whom the power is conferred, would be corrected by the courts. This is the basic principle behind the enabling provisions which are incorporated in Articles 16(4-A) and 16(4-B). Enabling provisions are permissive in nature. They are enacted to balance equality with positive discrimination. The constitutional law is the law of evolving concepts. Some of them are generic, others have to be identified and valued. The enabling provisions deal with the concept, which has to be identified and valued as in the case of access vis-à-vis efficiency which depends on the fact situation only and not abstract principle of equality in Article 14 as spelt out in detail in Articles 15 and 16. Equality before the law, guaranteed by the first part of Article 14, is a negative concept while the second part is a positive concept which is enough to validate equalising*

*measures depending upon the fact situation.”*

**127. *Tata Sky Limited v. State of Tamil Nadu and another* [(2013) 62**

**VST 69]:**

*“225. We hold, in principle, that there could be a levy of entertainment tax on entertainment received through DTH services and the pith and substance of the levy contemplated under Entry 62 List II of VII Schedule to the Constitution of India is a levy on “entertainment” and is different from the service tax levy on providing of service. As had been done in other High Court, following those decisions and the decisions of the Apex Court, we reject the case of the petitioners based on aspect theory as to the levy of entertainments tax on DTH, which already suffers service tax. We have also upheld the levy of tax on DTH and thereby rejected the petitioners’ interpretation placed on Entry 62 List II of VII Schedule to the Constitution of India, as referable to public entertainment only and not to an entertainment through DTH, which the petitioners called as private entertainment.*

*226. We, however, accept the case of the petitioners on the validity of Section 4-I of the Act, as a colourable legislation, resting our decision on the wording of Section 4-I of the Act. So too, we have accepted the case of the petitioners named above, as to the inadequacy of the charging provision - Section 4-I, not explicitly mentioning the chargeable event and the incidence of tax. We also accept the challenge made to the levy under Section 4-I of the Act, based on Article 14 of the Constitution of India that the classification is discriminatory and the differential tax as arbitrary.*

*227. A reading of Section 4-I of the Act, in terms of the definition ‘entertainment’ under Section 3(4) including DTH, points out that what is sought to be taxed is DTH, meaning thereby, distribution of multi-channel television programmes by using a satellite system by providing television signals direct to the subscriber’s premises without passing through an intermediary such as cable operator, which makes the levy more akin to a service tax levy, which is beyond the competence of the State legislature to levy tax. The providing of machinery for recovery, or providing of the rate of tax and measure of tax cannot fill the vacuum seen in the charging Section by the absence of the taxable event and where the incidence of tax falls. Hence, we are constrained to hold that the charging provision under Section 4-I, insofar as it fails to prescribe the taxable event and where the incidence fall, fails in its purport and in the absence of an explicit charge laid in clear terms, the Section cannot be enforced. Even otherwise, the discrimination in the classification and the arbitrary character of the rate of tax levy therein are violative of Article 14 of the Constitution of India. Entry 62 List II of VII*

*Schedule to the Constitution of India provides for levy of tax on entertainment as a concept, which is a general term and not a legal term. Hence, being a subject of pleasurable occupation of the senses, which occupies the attention of the viewer agreeably, with common content of entertainment in cable TV and DTH service, we do not find any rationality in differentiating the self-same taxable event to a differential tax treatment; consequently, we uphold the contention of the petitioners that the classification and differential treatment in the tax structure is offensive of Article 14 of the Constitution. Hence, even though we have held that by reason of the imperfections pointed out as to the absence of chargeable event not being specified in explicit, unambiguous and clear terms in Section 4-I, the charge cannot be effectuated, yet, on the grounds of violation of Article 14 and the imperfection in the Section creating the impression as though the charge is in the nature of service tax and hence, colourable in character, we have no hesitation in declaring the provision as unconstitutional.”*

In this case, different rate of entertainment tax was levied on Cable TV operators and DTH operators treating them as different service providers. Though all other States dismissed such petitions, the Madras High Court allowed the plea as there was no specific charging provision and treated them as providers of “entertainment” and not service. The facts are completely different in the case before us. The issue here is not relating to rate of tax on goods but relating to a condition for availing an option under composition scheme.

**128. *Shayara Bano v. Union of India [(2017) 9 SCC 1 : (2017) 4 SCC (Civ)***

***277 : 2017 SCC OnLine SC 963]:***

*“87. The thread of reasonableness runs through the entire fundamental rights chapter. What is manifestly arbitrary is obviously unreasonable and being contrary to the rule of law, would violate Article 14. Further, there is an apparent contradiction in the three-Judge Bench decision in McDowell [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] when*

*it is said that a constitutional challenge can succeed on the ground that a law is "disproportionate, excessive or unreasonable", yet such challenge would fail on the very ground of the law being "unreasonable, unnecessary or unwarranted". The arbitrariness doctrine when applied to legislation obviously would not involve the latter challenge but would only involve a law being disproportionate, excessive or otherwise being manifestly unreasonable. All the aforesaid grounds, therefore, do not seek to differentiate between State action in its various forms, all of which are interdicted if they fall foul of the fundamental rights guaranteed to persons and citizens in Part III of the Constitution."*

**129. *S.K. Dutta v. Lawrence Singh Ingty [(1968) 2 SCR 165 : AIR 1968 SC 658 : (1968) 68 ITR 272]:***

*"13. We know of no legislative practice or history treating the government servants as a separate class for the purpose of income tax. The government servants' income has all along been treated in the same manner as the income of other salaried officers. We not know under what circumstances the notifications dated 5-6-1890 and 21-3-1922, referred to earlier, came to be issued. But they are insufficient to prove a well established legislative practice. At the time those notifications were issued the power of the legislature to grant or withhold any exemption from tax was not subject to any constitutional limitation. Hence the validity of the impugned provisions cannot be tested from what our legislatures or governments did or omitted to do before the Constitution came into force. If that should be considered as a true test then Article 13(1) would become otiose and most, if not all, of our constitutional guarantees would lose their content. Shri Setalvad, learned counsel for the respondent is justified in his comment that classification based on past legislative practice and history does not mean that because in the past the legislature was enacting arbitrary laws it could do so now.*

*14. It was the contention of the learned Solicitor-General that exemption from income tax was given to members of certain scheduled tribes due to their economic and social backwardness; it is not possible to consider a government servant as socially and economically backward and hence the exemption was justly denied to him. According to the Solicitor-General, once a tribal becomes a government servant he is lifted out of his social environment and assimilated into the forward sections of the society and therefore he needs no more any crutch to lean on. This argument appears to us to be wholly irrelevant. The exemption in question was not given to individuals either on the basis of their social status or economic resources. It was given to a class. Hence individuals as individuals do not come into the picture. We fail to see in what manner the social status and economic*

*resources of a government servant can be different from that of another holding a similar position in a corporation or that of a successful medical practitioner lawyer, architect, etc. To over-paint the picture of a government servant as the embodiment of all power and prestige would sound ironical. Today his position in the society to put it at the highest is no higher than, that of others who in other walks of life have the same income. For the purpose of valid classification what is required is not some imaginary difference but a reasonable and substantial distinction, having regard to the purpose of the law.*

*15. It was lastly contended by the learned Solicitor-General a contention which was not taken either in the return or before the High Court or in the appeal memo that it is not possible to strike down only a portion of Section 4(3)(xxi) of the Indian Income Tax Act, 1922 and Section 10(26) of the Income Tax Act, 1961, namely, the words "provided that such member is not in the service of government" found in Section 4(3)(xxi) of the Indian Income Tax Act, 1922 and the words "who is not in, the service of government" found in Section 10(26) of the Income Tax Act, 1961, as those words are not severable from the rest of the provisions in which they appear. Further according to him it cannot be definitely predicated that the legislature would have granted the exemption incorporated in those provisions without the exception made in the case of government servants. Therefore if we hold that those provisions as they stand are violative of Article 14 then we must strike down the aforementioned Sections 4(3)(xxi) and 10(26) in their entirety. We are unable to accept the contention that the words mentioned above are not severable, from the rest of the provision in which they appear. They are easily severable. Taking into consideration the reasons which persuaded the legislature to grant the exemption in question we have no doubt that it would have granted that exemption even if it was aware of the fact that it was beyond its competence to exclude the government servants from the exemption in question."*

In this case, exemption was given to members of schedule tribes who were not government servants. The Apex Court did not find any difference between a government servant and a private employee and hence, holding that there was no rational difference, struck down the provision imposing such limitation.

**130. *Ayurveda Pharmacy v. State of T.N.* [(1989) 2 SCC 285 : 1989 SCC (Tax) 273 at page 288]:**

*“6. We think that the appeals are entitled to succeed. Item 95 mentions the rate of 7 per cent (now 8 per cent) as the tax to be levied at the point of first sale in the State. Item 135 provides a rate of 30 per cent in respect of Arishtams and Asavas at the point of first sale. We see no reason why Arishtams and Asavas should be treated differently from the general class of Ayurvedic medicines covered by Item 95. It is open to the legislature, or the State Government if it is authorised in that behalf by the legislature, to select different rates of tax for different commodities. But where the commodities belong to the same class or category, there must be a rational basis for discriminating between one commodity and another for the purpose of imposing tax. It is commonly known that considerations of economic policy constitute a basis for levying different rates of sales tax. For instance, the object may be to encourage a certain trade or industry in the context of the State policy for economic growth, and a lower rate would be considered justified in the case of such a commodity. There may be several such considerations bearing directly on the choice of the rate of sales tax, and so long as there is good reason for making the distinction from other commodities no complaint can be made. What the actual rate should be is not a matter for the courts to determine generally, but where a distinction is made between commodities falling in the same category a question arises at once before a court whether there is justification for the discrimination. In the present case, we are not satisfied that the reason behind the rate of 30 per cent on the turnover of Arishtams and Asavas constitutes good ground for taking those two preparations out from the general class of medicinal preparations to which a lower rate has been applied. In Adhyaksha Mathur Babu's Sakti Oushadhalaya Dacca (P) Ltd. v. Union of India [AIR 1963 SC 622 : (1963) 3 SCR 957] , this Court considered whether the Ayurvedic medicinal preparations known as Mritasanjibani, Mritasanjibani Sudha and Mritasanjibani Sura, prepared in accordance with an acknowledged Ayurvedic formula, could be brought to tax under the relevant State Excise Act when medicinal preparations were liable to excise duty under the Medicinal and Toilet Preparations (Excise Duty) Act, which was & Central Act. The Court held that the three preparations were medicinal preparations, and observed that the mere circumstance that they contained a high percentage of alcohol and could be used as ordinary alcoholic beverages could not justify their being treated differently from other medicinal preparations. The Court said: (SCR pp. 975-76)*

*“So if these preparations are medicinal preparations but are also capable of being used as ordinary alcoholic beverages, they will fall under the (Central) Act and will be liable to duty under Item 1 of the Schedule at the rate of Rs 17.50 per gallon of the strength of London proof spirit. On a consideration of the material that has been placed before us, therefore, the only conclusion to which we can come is that these preparations are medicinal preparations according to the standard Ayurvedic text books referred to already, though they are also capable of being used as ordinary*

*alcoholic beverages.... They cannot however be taxed under the various Excise Acts in force in the States concerned in view of their being medicinal preparations which are governed by the Act.”*

*We are of opinion that similar considerations should apply to the appeals before us. The two preparations, Arishtams and Asavas, are medicinal preparations, and even though they contain a high alcohol content, so long as they continue to be identified as medicinal preparations they must be treated, for the purposes of the sales tax law, in like manner as medicinal preparations generally, including those containing a lower percentage of alcohol. On this ground alone the appellants are entitled to succeed.”*

In this case, the nexus between classification and higher rate of tax was discussed. The medicinal products charged at different and higher rate as because of its contents and used for other purpose was deprecated and the Apex Court held that the nature and medicinal quality of the goods do not fade on different usage and once they belong to same category or class, higher rate of tax cannot be imposed. In the case before us, the rate of tax on goods is the same. Hence, the said judgment cannot come into the aid of the petitioners.

**131.** In *Gurucharan Singh v. Government of India [2021 (49) GSTL 113]*, the Delhi High Court, while dealing with an exemption relating to import of oxygen cylinders during the Covid Pandemic, held as under:

*“27. The conditions prescribed in the notification dated 03.05.2021, prevent the petitioner from claiming exemption from imposition of IGST, although, the oxygen concentrator imported by him is gifted [i.e., has been received free of cost] and is for personal use. Condition no. 1, which exempts from the imposition of IGST only those oxygen concentrators that are imported, for COVID relief through a canalizing agency creates, to our minds, a manifestly arbitrary and unreasonable distinction between two identically circumstanced users depending on how the oxygen concentrator has been imported. Imposition of IGST is, thus, as per notification dated 03.05.2021, completely waived, i.e., exempted, if the oxygen concentrator is imported through a canalizing agency.*



*28. The exclusion of individuals, such as the petitioner, from the benefits of the 03.05.2021 notification only because they chose to receive the oxygen concentrators as a gift, albeit directly, without going through a canalizing agency is, in our opinion, violative of Article 14 of the Constitution. While it is permissible for the State to identify a class of persons, to whom tax exemption would be extended, it is not permissible for the State to exclude a set of persons who would ordinarily fall within the exempted class by creating an artificial, unreasonable, and substantially unsustainable distinction.*

*29. There is, in our opinion, no justification whatsoever in excluding individuals from the purview of notification dated 03.05.2021 only on the ground that they received oxygen concentrators directly as gifts from their friends and/or relatives located outside the country. It is the petitioner's case that the oxygen concentrator was shipped to him by his nephew who is located in New York, United States of America.*

.....

*47. One cannot quibble with the submissions made hereinabove on behalf of the State, as these are substance, in the nature of principles enunciated, time and again by the Courts. The exceptions to these principles have already been alluded to. To reiterate very briefly, a taxing statute can be tested on the anvil of Article 14, inter alia, on the ground that the justification for classification proffered by the State is artificial and unreasonable. [See N. Venugopala Ravi Varma Rajah v. Union of India, (1969) 1 SCC 681]*

*48. Having found so, in our view, a declaratory relief can be accorded, to the effect, that imposition of IGST on oxygen concentrators, imported as gifts, i.e., free of cost, for personal use, is violative of Article 14 of the Constitution on the ground that an artificial, unfair and unreasonable distinction has been drawn between persons, who are similarly circumstanced as the petitioner and those who import oxygen concentrators through a canalizing agency.*

*49. The logical sequitur of this would be that persons who are similarly circumstanced as the petitioner, i.e., those who obtain imported oxygen concentrators as gifts, for personal use, cannot also be equated with those who import oxygen concentrators for commercial use. Therefore, notification bearing no. 30/2021-Customs, dated 01.05.2021, will also have to be quashed.”*

**132. Appu Foods v. Akram [2019 SCC Online Mad 12378]:**

*“44. This Court considered the rival submissions. Now, it is required to be*

*noted here that Article 19(1)(g) provides a citizen a right to practise any profession or to carry on any occupation, trade or business. At the same time, Article 304(b) empowers the State Government to impose such reasonable restrictions on the freedom of trade, commerce or intercourse, with or within that State, as may be required in the public interest, but, a bill for this purpose has to be introduced or moved in the Legislature only with the previous sanction of the President. Such being the legal position, the classification made by the respondent authorities between the producers and suppliers of eggs is certainly unreasonable. Similarly, the embargo on the egg producers from outside Tamil Nadu is absolutely unfair, arbitrary and also discriminatory. Further, there was no rational nexus between the differentia made and the object to be achieved. That apart, the decisions relied on by the respondents, cannot be applicable to the facts of the present case, as the same stand in a different footing. In such view of the matter, applying the ratio laid down by the Supreme Court that the Executive should only adopt rational means while entering into contracts and if rationality is not present, the Courts can intervene, this Court comes to the conclusion that the classification made in the impugned G.O is violative of Articles 19(1)(g), 301, 304 and 305 of the Constitution and it also infringes Article 14 of the Constitution.*

.....

**68.** *The policy decision of the Government can always be subjected to judicial review on the grounds of unreasonableness, discrimination, arbitrariness, perversity and mala fides. The impugned G.O.Ms. No. 57 modifying the State-wise tender to that of a zone-wise tender does not contain any valid and acceptable reason necessitating/warranting modification of the earlier policy decision of G.O.Ms. No. 264, by which, directions were given to float State-wise tenders. The impugned G.O.Ms. No. 57 does not also contain any reason to come to the conclusion that zone-wise tenders will be more beneficial to the Government than State-wise tenders, as compared to G.O.Ms. No. 264 especially when G.O.Ms. No. 264 was confirmed by the Division Bench of this Court, vide judgment dated 25.04.2014 in W.A. Nos. 574 and 776 of 2013 accepting the stand and reasoning put forth by the Government and the same was also affirmed by the Supreme Court vide order dated 13.04.2015 in SLP No. 6375 of 2015. Further, the impugned G.O.Ms. No. 57 has been issued within a short span of time i.e., within six working days and there is no nexus corresponding to the object sought to be achieved and the decision to introduce Zonal level tender and the exclusion of egg suppliers from participation cannot be termed to be fair, just and legally valid. That apart, the qualifying conditions for deciding the eligible tenderers and other stipulations mentioned in the consequential tender notification dated 20.08.2018 issued pursuant to G.O.Ms. No. 57, are neither supportive of the alleged reasoning i.e., benefiting poultry farmers, nor have any nexus to the object of the Nutritious Meal Scheme i.e., ensuring uninterrupted supply of quality eggs at a competitive same price for the whole year to the children. The terms*

*and conditions framed in the tender notification dated 20.08.2018 are violative and contrary to the relevant Act and Rules. That apart, there is no basis to state that producers of eggs would be better suited persons than the egg suppliers to ensure adequate and proper uninterrupted supply of eggs to several thousand noon meal centres all over the State. Thus, this Court is of the opinion that the impugned G.O.Ms. No. 57 and the tender notification have nothing to offer to the beneficiaries, who are covered under the Noon Meal programme, but it is only a lame excuse that even small producers would get benefit by the issuance of the said G.O. When the decision taken by the Government was challenged and was subsequently, approved by the Supreme Court, they are estopped from adopting different method, which was negated in the earlier proceedings. G.O.Ms. No. 57 and the subsequent tender notification are arbitrary, mala fide, bad in law and not in public interest, as the same are contrary to the judgment of the Supreme Court and it creates monopoly in favour of one party, without affording an opportunity to others to compete. Since the same are not based on any rational or relevant principle, it is violative of Article 14 of the Constitution and also the rule of administrative law, which inhibits the arbitrary action by the State. Hence, issuance of G.O.Ms. No. 57, ie., zone-wise tender and the terms of the subsequent Notification excluding the egg traders and suppliers like that of the petitioners, are colourable exercise of power and are unreasonable, arbitrary, irrational and discriminatory and also violative of Article 19(1)(g) of the Constitution. It is nonetheless important to mention here that the public interest is paramount; there should not be any arbitrariness in the tender matters; all the participants in the tender process should be treated alike and there should not be any discrimination and unreasonableness.”*

In this case, the tender was quashed as it was against the earlier decision of the Supreme Court, the conditions imposing embargo on dealers from other state and egg suppliers from participating in the tender was held to be irrational, arbitrary, discriminating and violating Articles 14, 19(1) (g), 301, 304 and 305 of the Constitution. The case cannot come to the aid of the petitioners as it is not a fiscal matter and that the difference sought to be made between egg manufacturer and supplier was rejected.

**133. *Star Television News Ltd. v. Union of India* [2009 SCC OnLine Bom****2162 : (2009) 317 ITR 66 : (2009) 225 CTR 140]:**

*“26. In our opinion, the choice of March 31, 2008, as the cut-off date is not supported by any rational reasons. From the statistics of the Income-tax Department itself it is indisputable that the cut-off date of March 31, 2008, for disposal of all applications filed prior to June 1, 2007, were known to be illusory, whimsical, capricious and so wide off the reasonable mark as to make it palpably arbitrary. The arbitrariness of the choice of March 31, 2008, as the cut-off date is even more apparent when it is noticed that the Settlement Commission is not being wound up, but on the contrary even after the amendments made by the 2007 Act came into effect on June 1, 2007, the Act permits the filing of fresh applications before the Settlement Commission—a clear recognition by Parliament that the assumptions made by the Wanchoo Committee and the rationale given by it for establishing the Settlement Commission are still valid and applicable. In the present circumstances, the choice of March 31, 2008, as the cut-off date cannot but be described as a date of imaginative exercise having no basis or rationale whatsoever.*

*27. By fixing such an unrealistic and arbitrary cut-off date, into which of the two abovementioned classes an applicant would fall, depended entirely on the fortuitous circumstance of the Settlement Commission, entirely at its whim and fancy, deciding whether or not to dispose of its application by March 31, 2008. Thus, even two applicants who had filed their applications on the same date could be classified differently on the basis of the aforesaid fortuitous circumstance.*

*30. On this touchstone, the choice of a date is clearly capricious or whimsical as on failure by the Settlement Commission, even for no fault of the petitioner delaying the proceedings, the application stood abated by operation of law. In these circumstances will not reading the cut-off date March 31, 2008, as mandatory be unjust, arbitrary and also discriminatory? We have referred to the various material placed by the Union of India itself before the Supreme Court in the petitioner's own case as also the stand of the Union of India before the Delhi High Court in Vatika Farms' case, [2008] 302 ITR 98. We have also set out the various figures of pendency of matters and the disposal by the Commission. In the affidavit filed before this court it is the stand of the respondents that the object of the amendment was for early settlement of the cases. The cut-off date did not take into consideration whether the failure to dispose of the application is on account of any act on the part of the applicant or not. The pendency of matters itself will show that the matters could not be disposed of as the adjudicating machinery created by the Act (Legislature) was not in a position to dispose of the applications on or before March 31, 2008,*

*for no fault of the applicant. The application before the Commission was dependent on various circumstances like the matter pending before a particular Bench, a particular matter being taken up by the Commission earlier to others which were pending before it and/or sheer inability to dispose of the petitions. In our opinion, considering the material on record the fixation of date was capricious and/or whimsical. The Legislature having statistics before it of the inability of the machinery created by it to dispose of the applications, nevertheless chose to fix the date which was unrealistic and incapable of being adhered to by the machinery created by it. In our opinion, this would be an arbitrary exercise of power and consequently would attract the mandate of article 14 of the Constitution of India if it is read as mandatory.*

*44. Considering the discussion and findings, the fixing of cut-off date under section 245D(4A)(1), the abatement under section 245HA(1)(iv), making available the confidential information under section 245HA(3) of the Act, as inserted by the 2007 Act, would be clearly ultra vires the Constitution and are liable to be struck down as null and void ab initio. It is, however, open to this court instead of striking down the impugned provision in its entirety to read down such provision in such a manner so as to set at naught the unconstitutional portion.*

*47. In Arun Kumar v. Union of India, [2006] 286 ITR 89 (SC) the hon'ble Supreme Court had to consider the validity of rule 3 of the Income-tax Rules as amended in 2001. The court "read down" the provisions of the rule, holding the same only to apply in cases where there was "a concession" in respect of accommodation. Where there is no concession the court held the rule cannot apply. The court also laid down (headnote):*

*"In considering the validity of a statute the presumption is always in favour of constitutionality and the burden is upon the person who attacks it to show that there has been transgression of constitutional principles. For sustaining the constitutionality of an Act, a court may take into consideration matters of common knowledge, reports, preamble, history of the times, object of the legislation and all other facts which are relevant. It must always be presumed that the Legislature understands and correctly appreciates the need of its own people and that discrimination, if any, is based on adequate grounds and considerations. It is also well-settled that courts will be justified in giving a liberal interpretation in order to avoid constitutional invalidity. A provision conferring very wide and expansive powers on an authority can be construed in conformity with the legislative intent of exercise of power within constitutional limitations. Where a statute is silent or is inarticulate, the court would attempt to transmute the inarticulate and adopt a construction which would lean towards constitutionality albeit without departing from the material of which the law is woven. These principles have given rise to the rule of 'reading down' the provisions if it becomes necessary to uphold the validity of the law."*

*54. A harmonious interpretation of section 245D(4A) and section 245HA(1)(iv) would remove the vice of arbitrariness and save the provisions from being struck down as unconstitutional. Following the settled principles of statutory interpretation, this court should read the amended provisions of Chapter XIX-A of the Act harmoniously and in a manner so as to avoid any provision being rendered nugatory or redundant or unconstitutional to the extent possible.*

*57. By reading the words “any other application made under section 245C” in section 245HA(1)(iv) as “any other application made under section 245C, where due to reasons attributable to the assessee” this court would avoid rendering any part of either section 245D(4A)(i) or section 245HA(1) (iv) otiose, meaningless or redundant. The two provisions, read in such a harmonious manner, would mean that the Settlement Commission must fulfil its mandatory statutory duty in disposing of such applications as are referred to in section 245D(4A)(i) by the date specified therein except where prevented from doing so due to any reason attributable on the part of the applicant, and that an application in respect of which the Settlement Commission has been prevented from fulfilling the aforesaid mandatory statutory duty due to any reasons attributable on the part of the applicant shall abate on the specified date under section 245HA(1)(iv). In this manner both section 245D(4A)(i) and section 245HA(1)(iv) will have applicability, meaning and effect. We may also clarify that the expression “reasons attributable” should be reasonably construed. While so dealing, the Settlement Commission shall also to consider whether in the petition before this court the petitioner had averred that the proceedings were delayed not on account of any reason attributable to him, and whether the State had denied the same. If there be no denial then to consider that circumstances in favour of the petitioner. From the above discussion having arrived at a conclusion that fixing the cut off date as March 31, 2008, was arbitrary the provisions of section 245HA(1)(iv) to that extent will be also arbitrary. We have also held that it is possible to read down the provisions of section 245HA(1)(iv) in the manner set out earlier. This recourse has been taken in order to avoid holding the provisions as unconstitutional. Having so read, we would have to read section 245HA(1)(iv) to mean that in the event the application could not be disposed of for any reasons attributable on the part of the applicant who has made an application under section 245C. Consequently, only such proceedings would abate under section 245HA(1)(iv). Considering the above, the Settlement Commission to consider whether the proceedings had been delayed on account of any reasons attributable on the part of the applicant. If it comes to the conclusion that it was not so, then to proceed with the application as if not abated. Respondent No. 1 if desirous of early disposal of the pending applications, to consider the appointment of more Benches of the Settlement Commission, more so at the Benches where there is heavy pendency like Delhi and Mumbai.”*

In this case, the fixation of the cut-off date was held to be irrational on facts as the settlement scheme was extended even beyond the cut-off date and hence held to be violative of Article 14. However, instead of striking down, the provision was read down.

**134. *Union of India v. Star Television News Ltd.* [(2015) 12 SCC 665 : 2015 SCC OnLine SC 546 at page 667]:**

*“2. The High Court, by a detailed judgment, found the aforesaid provisions to be violative of Article 14, etc. but at the same time, it did not invalidate these provisions as the High Court was of the opinion that it was possible to read down the provisions of Section 245-HA(1)(iv) in particular to avoid holding the provisions as unconstitutional.*

*3. The conclusion so arrived at is summed up in para 57 of the impugned judgment [Star Television News Ltd. v. Union of India, 2009 SCC OnLine Bom 2162 : (2009) 317 ITR 66] , which reads as under:*

*“57. ... From the above discussion having arrived at a conclusion that fixing the cut-off date as 31-3-2008 was arbitrary the provisions of Section 245-HA(1)(iv) to that extent will be also arbitrary. We have also held that it is possible to read down the provisions of Section 245-HA(1)(iv) in the manner set out earlier. This recourse has been taken in order to avoid holding the provisions as unconstitutional. Having so read, we would have to read Section 245-HA(1)(iv) to mean that in the event the application could not be disposed of for any reasons attributable on the part of the applicant who has made an application under Section 245-C. Consequently only such proceedings would abate under Section 245-HA(1)(iv). Considering the above, the Settlement Commission has to consider whether the proceedings had been delayed on account of any reasons attributable on the part of the applicant. If it comes to the conclusion that it was not so, then to proceed with the application as if not abated. Respondent 1 if desirous of early disposal of the pending applications, to consider the appointment of more Benches of the Settlement Commission, more so at the Benches where there is heavy pendency like Delhi and Mumbai.”*

**135. *Union of India v. N.S. Rathnam* [(2015) 10 SCC 681 : 2015 SCC OnLine SC 666]:**

*“13. It is, thus, beyond any pale of doubt that the justiciability of particular notification can be tested on the touchstone of Article 14 of the Constitution. Article 14, which is treated as basic feature of the Constitution, ensures equality before the law or equal protection of laws. Equal protection means the right to equal treatment in similar circumstances, both in the privileges conferred and in the liabilities imposed. Therefore, if the two persons or two sets of persons are similarly situated/placed, they have to be treated equally. At the same time, the principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position. It would mean that the State has the power to classify persons for legitimate purposes. The legislature is competent to exercise its discretion and make classification. Thus, every classification is in some degree likely to produce some inequality but mere production of inequality is not enough. Article 14 would be treated as violated only when equal protection is denied even when the two persons belong to same class/category. Therefore, the person challenging the act of the State as violative of Article 14 has to show that there is no reasonable basis for the differentiation between the two classes created by the State. Article 14 prohibits class legislation and not reasonable classification.*

*14. What follows from the above is that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that, that differential must have a rational relation to the object sought to be achieved by the statute in question. If the Government fails to support its action of classification on the touchstone of the principle whether the classification is reasonable having an intelligible differentia and a rational basis germane to the purpose, the classification has to be held as arbitrary and discriminatory. In Sube Singh v. State of Haryana [(2001) 7 SCC 545] , this aspect is highlighted by the Court in the following manner: (SCC p. 548, para 10)*

*“10. In the counter and the note of submission filed on behalf of the appellants it is averred, inter alia, that the Land Acquisition Collector on considering the objections filed by the appellants had recommended to the State Government for exclusion of the properties of Appellants 1 and 3 to 6 and the State Government had not accepted such recommendations only on the ground that the constructions made by the appellants were of ‘B’ or ‘C’ class and could not be easily amalgamated into the developed colony which was proposed to be built. There is no averment in the pleadings of the respondents stating the basis of classification of structures as ‘A’, ‘B’ and ‘C’ class, nor is it stated how the amalgamation of all ‘A’ class structures was feasible and possible while those of ‘B’ and ‘C’ class structures was not possible. It is not the case of the State Government and also not argued before us that there is no policy decision of the Government for excluding*



*the lands having structures thereon from acquisition under the Act. Indeed, as noted earlier, in these cases the State Government has accepted the request of some landowners for exclusion of their properties on this very ground. It remains to be seen whether the purported classification of existing structures into 'A', 'B' and 'C' class is a reasonable classification having an intelligible differentia and a rational basis germane to the purpose. If the State Government fails to support its action on the touchstone of the above principle, then this decision has to be held as arbitrary and discriminatory. It is relevant to note here that the acquisition of the lands is for the purpose of planned development of the area which includes both residential and commercial purposes. That being the purpose of acquisition, it is difficult to accept the case of the State Government that certain types of structures which according to its own classification are of 'A' class can be allowed to remain while other structures situated in close vicinity and being used for same purposes (residential or commercial) should be demolished. At the cost of repetition, it may be stated here that no material was placed before us to show the basis of classification of the existing structures on the lands proposed to be acquired. This assumes importance in view of the specific contention raised on behalf of the appellants that they have pucca structures with RC roofing, mosaic flooring, etc. No attempt was also made from the side of the State Government to place any architectural plan of different types of structures proposed to be constructed on the land notified for acquisition in support of its contention that the structures which exist on the lands of the appellants could not be amalgamated into the plan."*

*15. The question, therefore, that arises is as to whether the two categories, one mentioned in Notification No. 386/86-CE dated 20-8-1986, which is given the benefit and removal of the second category, which was initially granted same benefit vide Notification No. 102/87-CE dated 27-3-1987, is discriminatory? To put it otherwise, we have to see as to whether the two categories are identical or there is a reasonable classification based on intelligible differentia which has nexus with some objective that is sought to be achieved. The test in this behalf that is to be applied can again be culled out from the judgment in Aashirwad case [(2007) 6 SCC 624] . It is summarised in para 14, after taking note of various earlier judgments. This para reads as under: (SCC pp. 629-30)*

*"14. It has been accepted without dispute that taxation laws must also pass the test of Article 14 of the Constitution of India. It has been laid down in a large number of decisions of this Court that a taxation statute for the reasons of functional expediency and even otherwise, can pick and choose to tax some. Importantly, there is a rider operating on this wide power to tax and even discriminate in taxation that the classification thus chosen must be reasonable. The extent of reasonability of any taxation statute lies in its efficiency to achieve the object sought to be achieved by the statute. Thus, the classification must bear a nexus with the object sought to be achieved. (See Moopil Nair v. State of Kerala [AIR 1961 SC 552] , East*

*India Tobacco Co. v. State of A.P. [AIR 1962 SC 1733] , N. Venugopala Ravi Varma Rajah v. Union of India [(1969) 1 SCC 681] , Director of Inspection Investigation v. A.B. Shanthi [(2002) 6 SCC 259] and Associated Cement Companies Ltd. v. State of A.P. [(2006) 1 SCC 597] )”*

*(emphasis in original)*

.....

*18. We are conscious of the principle that the difference which will warrant a reasonable classification need not be great. However, it has to be shown that the difference is real and substantial and there must be some just and reasonable relation to the object of legislation or notification. Classification having regard to microscopic differences is not good. To borrow the phrase from the judgment in Roop Chand Adlakha v. DDA [1989 Supp (1) SCC 116 : 1989 SCC (L&S) 235 : (1989) 9 ATC 639] : “To overdo classification is to undo equality.”*

*19. We are also conscious of the principle that in the field of taxation, the legislature has an extremely wide discretion to classify items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes (see State of Madras v. P.R. Sriramulu [(1996) 1 SCC 345] ). However, at the same time, when a substantive unreasonableness is to be found in a taxing statute/notification, it may have to be declared unconstitutional. Although the Court may not go into the question of a hardship which may be occasioned to the taxpayers but where a fair procedure has not been laid down, the validity thereof cannot be upheld. A statute which provides for civil or evil consequences must conform to the test of reasonableness, fairness and non-arbitrariness.”*

In this case, the assesseees, who were dealing with the same type of goods, were entitled to opt for a method of assessment out of two methods. Exemption was continued to persons opting to one method in which higher duty was payable and taken away from persons who opted the other method. The court holding that there was no intelligible differentia, held that the notification to be arbitrary. However, the Apex court directed the assesseees in the left out method to pay the differential amount to ensure the exemption is also available to them.

**136. Bhagat Ram v. State of H.P. [(1983) 2 SCC 442 : 1983 SCC (L&S)****342]:**

*“15. The question is once we quash the order, is it open to us to give any direction which would not permit a fresh enquiry to be held? After all what is the purpose of holding a fresh enquiry? Obviously, it must be to impose some penalty. It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution. Having been influenced by all these relevant considerations, we are of the opinion that no useful purpose would be served by a fresh enquiry. What option is open to us in exercise of our jurisdiction under Article 136 to make an appropriate order. We believe that justice and fairplay demand that we make an order of minor penalty here and now without being unduly technical apart jurisdiction, we are fortified in this view by the decision of this Court in Hindustan Steels Ltd., Rourkela v. A.K. Roy [(1969) 3 SCC 513 : AIR 1970 SC 1401 : (1970) 3 SCR 343 : (1970) 1 LLJ 228] where this Court after quashing the order of reinstatement proceeded to examine whether the party should be left to pursue further remedy. Other alternative was to remand the matter that being a case of an industrial dispute to the Tribunal. It is possible that on such a remand, this Court further observed, that the Tribunal may pass an appropriate order but that would mean prolonging the dispute which would hardly be fair to or conducive to the interest of the parties. This Court in such circumstances proceeded to make an appropriate order by awarding compensation. We may adopt the same approach. Keeping in view the nature of misconduct, gravity of charge and no consequential loss, a penalty of withholding his increments with future effect will meet the ends of justice. Accordingly, two increments with future effect of the appellant be withheld and he must be paid 50 percent of the arrears from the date of termination till the date of reinstatement.”*

**137. Ranjit Thakur v. Union of India [(1987) 4 SCC 611 :****1988 SCC (L&S) 1]:***“Re contention (d):*

*25. Judicial review generally speaking, is not directed against a decision, but is directed against the “decision-making process”. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so*

*disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 WLR 1174 (HL) : (1984) 3 All ER 935, 950] Lord Diplock said:*

*“Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of ‘proportionality’ which is recognised in the administrative law of several of our fellow members of the European Economic Community; . . .”*

**26.** *In Bhagat Ram v. State of Himachal Pradesh [(1983) 2 SCC 442 : 1983 SCC (L&S) 342 : AIR 1983 SC 454] this Court held: [SCC p. 453, SCC (L&S) p. 353, para 15]*

*“It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.”*

*The point to note, and emphasise is that all powers have legal limits.*

**27.** *In the present case the punishment is so strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review.”*

**138.** On the contrary, it has been submitted by the learned Additional Advocate General that there is a reasonable nexus between the object and the classification of the works contracts, which evident from the scheme of the CST Act and the counter filed by the State illustrates the object to be achieved by the State by imposing such condition. It was also submitted that since the classification is reasonable, satisfies the twin test and hence it cannot be

termed as discriminative or arbitrary. The State has relied upon the following judgments to defend the legislation on being non-violative of Article 14 and to emphasize the principles to be considered.

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

*“6. That takes us to the principal question arising in the writ petitions namely, whether the provisions of the Act are violative of Article 14 of the Constitution. The true scope and ambit of Article 14 has been the subject-matter of discussion in numerous decisions of this Court and the propositions applicable to cases arising under that Article have been repeated so many times during the last thirty years that they now sound platitudinous. The latest and most complete exposition of the propositions relating to the applicability of Article 14 as emerging from “the avalanche of cases which have flooded this Court” since the commencement of the Constitution is to be found in the judgment of one of us (Chandrachud, J., as he then was) in *In re The Special Courts Bill, 1978 [(1979) 1 SCC 380 : AIR 1979 SC 478 : (1979) 2 SCR 476 : (1979) 2 SCJ 35]*. It not only contains a lucid statement of the propositions arising under Article 14, but being a decision given by a Bench of seven Judges of this Court, it is binding upon us. That decision sets out several propositions delineating the true scope and ambit of Article 14 but not all of them are relevant for our purpose and hence we shall refer only to those which have a direct bearing on the issue before us. They clearly recognise that classification can be made for the purpose of legislation but lay down that:*

*“1. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act.*

*2. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed*

*to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense above mentioned."*

*It is clear that Article 14 does not forbid reasonable classification of persons, objects and transactions by the legislature for the purpose of attaining specific ends. What is necessary in order to pass the test of permissible classification under Article 14 is that the classification must not be "arbitrary, artificial or evasive" but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature. The question to which we must therefore address ourselves is whether the classification made by the Act in the present case satisfies the aforesaid test or it is arbitrary and irrational and hence violative of the equal protection clause in Article 14.*

.....

*17. We may now proceed to consider the constitutional validity of the Act in the light of the above discussion as regards the scope and effect of its various provisions. It is obvious that the Act makes a classification between holders of black money and the rest and provides for issue of Special Bearer Bonds with a view to inducing persons belonging to the former class to invest their unaccounted money in purchase of Special Bearer Bonds, so that such money which is today lying idle outside the regular economy of the country is canalised into productive purposes. The object of the Act being to unearth black money for being utilised for productive purposes with a view to effective social and economic planning, there has necessarily to be a classification between persons possessing black money and others and such classification cannot be regarded as arbitrary or irrational. It is of course true — and this must be pointed out here since it was faintly touched upon in the course of the arguments — that there is no legal bar enacted in the Act against investment of white money in subscription to or acquisition of Special Bearer Bonds. But the provisions of the Act properly construed are such that no one would even think of investing white money in Special Bearer Bonds and from a practical point of view, they do operate as a bar against acquisition, whether by original subscription or by purchase, of Special Bearer Bonds with white money. We do not see why anyone should want to invest his white money in subscribing to or acquiring Special Bearer Bonds which yield only 2 per cent simple interest per annum and which are not encashable for a period of not less than ten years. It is true that Special Bearer Bonds can be sold before the date of maturity but who would pay white money for them and even if in some rare and exceptional case, a purchaser could be found who would pay the consideration in white money, no one will dare to sell Special Bearer Bonds for white money, because of the disincentive provided in Section 4, clause (c). The investment of white money in Special Bearer Bonds is accordingly, as a practical measure, completely ruled out and the provisions of the Act are intended to operate only qua persons in possession of black money.*

*There is a practical and real classification made between persons having black money and persons not having such money and this de facto classification is clearly based on intelligible differentia having rational relation with the object of the Act. The petitioners disputed the validity of this proposition and contended that the classification made by the Act is discriminatory in that it excludes persons with white money from taking advantage of the provisions of the Act by subscribing to or acquiring Special Bearer Bonds. But this contention is totally unfounded and we cannot accept the same. The validity of a classification has to be judged with reference to the object of the legislation and if that is done, there can be no doubt that the classification made by the Act is rational and intelligible and the operation of the provisions of the Act is rightly confined to persons in possession of black money.*

*18. It was then contended that the Act is unconstitutional as it offends against morality by according to dishonest assesseees who have evaded payment of tax, immunities and exemptions which are denied to honest tax payers. Those who have broken the law and deprived the State of its legitimate dues are given benefits and concessions placing them at an advantage over those who have observed the law and paid the taxes due from them and this, according to the petitioners, is clearly immoral and unwarranted by the Constitution. We do not think this contention can be sustained. It is necessary to remember that we are concerned here only with the constitutional validity of the Act and not with its morality. Of course, when we say this we do not wish to suggest that morality can in no case have relevance to the constitutional validity of a legislation. There may be cases where the provisions of a statute may be so reeking with immorality that the legislation can be readily condemned as arbitrary or irrational and hence violative of Article 14. But the test in every such case would be not whether the provisions of the statute offend against morality but whether they are arbitrary and irrational having regard to all the facts and circumstances of the case. Immorality by itself is not a ground of constitutional challenge and it obviously cannot be, because morality is essentially a subjective value, except insofar as it may be reflected in any provision of the Constitution or may have crystallised into some well-accepted norm of social behaviour. Now there can be no doubt that under the provisions of the Act certain immunities and exemptions are granted with a view to inducing tax evaders to invest their undisclosed money in Special Bearer Bonds and to that extent they are given benefits and concessions which are denied to those who honestly pay their taxes. Those who are honest and who observe the law are mulcted in paying the taxes legitimately due from them while those who have broken the law and evaded payment of taxes are allowed by the provisions of the Act to convert their black money into "white" without payment of any tax or penalty. The provisions of the Act may thus seem to be putting premium on dishonesty and they may, not, without some justification, be accused of being tinged with some immorality, but howsoever regrettable or unfortunate it may be,*

*they had to be enacted by the legislature in order to bring out black money in the open and canalise it for productive purposes. Notwithstanding stringent laws imposing severe penalties and vigorous steps taken by the tax administration to detect black money and despite various voluntary disclosure schemes introduced by the Government from time to time, it had not been possible to unearth black money and the menace of black money had over the years assumed alarming proportions causing havoc to the economy of the country and the legislature was therefore constrained to enact the Act with a view to mopping up black money so that instead of remaining idle, such money could be utilised for productive purposes. The problem of black money was an obstinate economic problem which had been defying the Government for quite some time and it was in order to resolve this problem that, other efforts having failed, the legislature decided to enact the Act, even though the effect of its provisions might be to confer certain undeserved advantages on tax evaders in possession of black money. The legislature had obviously only two alternatives: either to allow the black money to remain idle and unproductive or to induce those in possession of it to bring it out in the open for being utilised for productive purposes. The first alternative would have left no choice to the Government but to resort to deficit financing or to impose a heavy dose of taxation. The former would have resulted in inflationary pressures affecting the vulnerable sections of the society while the latter would have increased the burden on the honest taxpayer and perhaps led to greater tax evasion. The legislature therefore decided to adopt the second alternative of coaxing persons in possession of black money to disclose it and make it available to the Government for augmenting its resources for productive purposes and with that end in view, enacted the Act providing for issue of Special Bearer Bonds. It may be pointed out that the idea of issuing Special Bearer Bonds for the purpose of unearthing black money was not a brainwave which originated for the first time in the mind of the legislature in the year 1981. The suggestion for issue of Special Bearer Bonds was made as far back as 1950 by some of the members of the provisional Parliament, notably those belonging to the opposition and the Government was repeatedly asked why it was not issuing Special Bearer Bonds in order to absorb the liquidity and thereby control the inflationary pressures in the country. Though the majority of the members of the Wanchoo Committee expressed themselves against the issue of Special Bearer Bonds, Shri Chitale, a member of that Committee wrote a dissenting note in which he suggested that Special Bearer Bonds should be issued. We may point out that the majority members of the Wanchoo Committee were against issue of Special Bearer Bonds for the purpose of mopping up black money, because they apprehended certain abuses to which Special Bearer Bonds might be subjected, but as we have already pointed out while discussing the true meaning and legal effect of the provisions of the Act, we do not think that there is any scope for such abuses, for the legislature has, while enacting the provisions of the Act, taken care to see that such abuses are reduced to the minimum, if not eliminated altogether.*



*19. It is true that certain immunities and exemptions are granted to persons investing their unaccounted money in purchase of Special Bearer Bonds but that is an inducement which has to be offered for unearthing black money. Those who have successfully evaded taxation and concealed their income or wealth despite the stringent tax laws and the efforts of the tax department are not likely to disclose their unaccounted money without some inducement by way of immunities and exemptions and it must necessarily be left to the legislature to decide what immunities and exemptions would be sufficient for the purpose. It would be outside the province of the Court to consider if any particular immunity or exemption is necessary or not for the purpose of inducing disclosure of black money. That would depend upon diverse fiscal and economic considerations based on practical necessity and administrative expediency and would also involve a certain amount of experimentation on which the Court would be least fitted to pronounce. The Court would not have the necessary competence and expertise to adjudicate upon such an economic issue. The Court cannot possibly assess or evaluate what would be the impact of a particular immunity or exemption and whether it would serve the purpose in view or not. There are so many imponderables that would enter into the determination that it would be wise for the Court not to hazard an opinion where even economists may differ. The Court must while examining the constitutional validity of a legislation of this kind, "be resilient, not rigid, forward looking, not static, liberal, not verbal" and the Court must always bear in mind the constitutional proposition enunciated by the Supreme Court of the United States in *Munn v. Illinois* [94 US 13] , namely, "that courts do not substitute their social and economic beliefs for the judgment of legislative bodies". The Court must defer to legislative judgment in matters relating to social and economic policies and must not interfere, unless the exercise of legislative judgment appears to be palpably arbitrary. The Court should constantly remind itself of what the Supreme Court of the United States said in *Metropolis Theater Company v. City of Chicago* [57 L Ed 730 : 228 US 61 (1912)] :*

*"The problems of government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere error of government are not subject to our judicial review."*

*It is true that one or the other of the immunities or exemptions granted under the provisions of the Act may be taken advantage of by resourceful persons by adopting ingenious methods and devices with a view to avoiding or saving tax. But that cannot be helped because human ingenuity is so great when it comes to tax avoidance that it would be almost impossible to frame tax legislation which cannot be abused. Moreover, as already pointed out above, the trial and error method is inherent in every legislative effort*

*to deal with an obstinate social or economic issue and if it is found that any immunity or exemption granted under the Act is being utilised for tax evasion or avoidance not intended by the legislature, the Act can always be amended and the abuse terminated. We are accordingly of the view that none of the provisions of the Act is violative of Article 14 and its constitutional validity must be upheld.*

*20. These were the reasons for which we passed our Order dated September 2, 1981 [ See p. 715 (infra)] rejecting the challenge against the constitutional validity of the Ordinance and the Act and dismissing the writ petitions. Since these writ petitions are in the nature of public interest litigation, we directed that there should be no order as to costs.”*

**140. *Shashikant Laxman Kale v. Union of India [(1990) 4 SCC 366 : 1990***

***SCC (Tax) 428]*:**

*“8. The main question for decision is the discrimination alleged by the petitioners. The principles of valid classification are long settled by a catena of decisions of this Court but their application to a given case is quite often a vexed question. The problem is more vexed in cases falling within the grey zone. The principles are that those grouped together in one class must possess a common characteristic which distinguishes them from those excluded from the group; and this characteristic or intelligible differentia must have a rational nexus with the object sought to be achieved by the enactment. It is sufficient to cite the decision in *In Re the Special Courts Bill, 1978 [(1979) 1 SCC 380 : (1979) 2 SCR 476]* — and to refer to the propositions quoted at pp. 534-537 therein. Some of the propositions are stated thus: (SCC pp. 424-25, para 72)*

*“(2). The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.*

*(3). The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.*

*(4). The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them*

*irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.*

\* \* \*

*(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.*

*(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.*

*(8) The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon person arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense abovementioned.*

\* \* \*

*(11) Classification necessarily implies the making of a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality."*

*(emphasis supplied)*

*9. It is well settled that the latitude for classification in a taxing statute is much greater; and in order to tax something it is not necessary to tax everything. These basic postulates have to be borne in mind while determining the constitutional validity of a taxing provision challenged on the ground of discrimination.*

*10. The scope for permissible classification in a taxing statute was once*

again considered in a recent decision of this Court in *P.H. Ashwathanarayana Setty v. State of Karnataka* [(1989 Supp 1 SCC 696)] . After a review of earlier decisions, it was stated therein as under: (SCC p. 723, para 79)

*“It is for the State to decide what economic and social policy it should pursue and what discriminations advance those social and economic policies. In view of the inherent complexity of these fiscal adjustments, courts give a larger discretion to the legislature in the matter of its preferences of economic and social policies and effectuate the chosen system in all possible and reasonable ways.”*

*(emphasis supplied)*

**11.** In *Federation of Hotel and Restaurant Association of India v. Union of India* [(1989) 3 SCC 634 : (1989) 178 ITR 97] it was said as under: (SCC p. 659, paras 47 and 48)

*“...The test could only be one of palpable arbitrariness applied in the context of the felt needs of the times and societal exigencies informed by experience.”*

*“...A reasonable classification is one which includes all who are similarly situated and none who are not. In order to ascertain whether persons are similarly placed, one must look beyond the classification and to the purposes of the law.”*

*(emphasis supplied)*

**12.** This Court has held in *Kerala Hotel and Restaurant Association v. State of Kerala* [(1990) 2 SCC 502 : 1990 SCC (Tax) 309 : AIR 1990 SC 913] as under: (SCC pp. 512, 515, paras 24, 29)

*“The scope for classification permitted in taxation is greater and unless the classification made can be termed to be palpably arbitrary, it must be left to the legislative wisdom to choose the yardstick for classification, in the background of the fiscal policy of the State to promote economic equality as well....*

*Thus, it is clear that the test applicable for striking down a taxing provision on this ground is one of ‘palpable arbitrariness applied in the context of the felt needs of the times and societal exigencies informed by experience’; and the courts should not interfere with the legislative wisdom of making the classification unless the classification is found to be invalid by this test.”*

*(emphasis supplied)*

**13.** It is useful to refer also to the decision of this Court in *ITO v. N. Takin Roy Rymbai* [(1976) 1 SCC 916 : 1976 SCC (Tax) 143 : (1976) 103 ITR 82] wherein a similar question relating to validity of classification in another clause of Section 10 of the Income Tax Act, 1961 arose for consideration. This Court while upholding the validity of the classification summarised the principles applied, as under: (SCC pp. 922-23, para 27)

*“...it must be remembered that the State has, in view of the intrinsic complexity of fiscal adjustments of diverse elements, a considerably wide discretion in the matter of classification for taxation purposes. Given legislative competence, the legislature has ample freedom to select and classify persons, districts, goods, properties, incomes and objects which it would tax, and which it would not tax. So long as the classification made within this wide and flexible range by a taxing statute does not transgress the fundamental principles underlying the doctrine of equality, it is not vulnerable on the ground of discrimination merely because it taxes or exempts from tax some incomes or objects and not others. Nor the mere fact that a tax falls more heavily on some in the same category, is by itself a ground to render the law invalid. It is only when within the range of its selection, the law operates unequally and cannot be justified on the basis of a valid classification, that there would be a violation of Article 14. (see East India Tobacco Co. v. State of Andhra Pradesh [(1963) 1 SCR 404 : AIR 1962 SC 1733 : (1962) 13 STC 529] ; Vivian Joseph Ferriera v. Municipal Corporation of Greater Bombay [(1972) 1 SCC 70] ; Jaipur Hosiery Mills v. State of Rajasthan [(1970) 2 SCC 26] .”*

*(emphasis supplied)*

.....

**34.** *In Hindustan Paper Corporation Ltd. v. Government of Kerala [(1986) 3 SCC 398] a provision granting exemption to government companies and cooperative societies alone for selling forest produce at less than selling price fixed under the Kerala Forest Produce (Fixation of Selling Price) Act, 1978 was held to be constitutionally valid and not violative of Articles 14 and 19(1)(g) of the Constitution of India. It was held that the government or public sector undertakings formed a distinct class. In this context, it was held as under: (SCC p. 406, para 9)*

*“As far as government undertakings and companies are concerned, it has to be held that they form a class by themselves since any profit that they may make would in the end result in the benefit to the members of the general public. The profit, if any, enriches the public coffer and not the private coffer. The role of industries in the public sector is very sensitive and critical from the point of view of national economy. Their survival very often depends upon the budgetary provision and not upon private resources which are available to the industries in the private sector...”*

*(emphasis supplied)*

*Similarly, in M. Jhangir Bhatusha v. Union of India [1989 Supp 2 SCC 201 : JT (1989) 2 SC 465] a concession in import duty granted to the State Trading Corporation was upheld on the ground that public policy can support the differentiation.*

**36.** *As already indicated, clause (10-C) of Section 10 of the Act itself mentions economic viability of a public sector company as the most relevant circumstance to attract the provision. The economic status of*

*employees of a public sector company who get the benefit of the provision is also lower as compared to their counterpart in the private sector. If this be the correct perspective as we think it is in the present case, the very foundation of the challenge to the impugned provision on the basis of economic equality of employees in both sectors is non-existent. Once the stage is reached where the differentiation is rightly made between a public sector company and a private sector company and that too essentially on the ground of economic viability of the public sector company and other relevant circumstances, the argument based on equality does not survive. This is independent of the disparity in the compensation package of employees in the private sector and the public sector. The argument of discrimination is based on initial equality between the two classes alleging bifurcation thereafter between those who stood integrated earlier as one class. This basic assumption being fallacious, the question of any hostile discrimination by granting the benefit only to a few in the same class denying the same to those left out does not arise.”*

**141. *Raja Jagannath Baksh Singh v. State of U.P.* [(1963) 1 SCR 220 : AIR**

**1962 SC 1563 : (1962) 46 ITR 169]:**

*“16. A taxing statute can be held to contravene Article 14 if it purports to impose on the same class of property similarly situated an incidence of taxation which leads to obvious inequality. There is no doubt that it is for the legislature to decide on what objects to levy what rate of tax and it is not for the courts to consider whether some other objects should have been taxed or whether a different rate should have been prescribed for the tax. It is also true that the legislature is competent to classify persons or properties into different categories and tax them differently, and if the classification thus made is rational, the taxing statute cannot be challenged merely because different rates of taxation are prescribed for different categories of persons or objects. But, if in its operation, any taxing statute is found to contravene Article 14, it would be open to courts to strike it down as denying to the citizens the equality before the law guaranteed by Article 14.*

*19. Let us now turn to the merits of the argument that Section 5(1) contravenes Articles 14 and 19(1)(f). It is urged that since discretion has been left to the State Government to prescribe the multiple without any guidance, the prescription of the necessary multiple by the State Government at its own sweet will amount to an unreasonable restriction under Article 19(5) and so, Article 19(1)(f) must be held to have been contravened. On the same ground, it is said that Article 14 has also been contravened. We are not impressed by this argument. It is clear that the policy of the Act is to augment the revenues of the State and for that purpose, the tax has been levied on land holdings, subject to the important*

*proviso that holdings the area whereof does not exceed thirty acres would not be taxed. In other words, it is only big holders whose land holdings are subjected to tax by this Act. Even so, the basis adopted for levying the tax is ultimately the rent payable for the land or lands in question and taking the basis of the said rent, the annual value of the land is required to be determined by adopting a suitable multiple. Section 5(1) prescribes the maximum limit of this multiple and leaves it to the discretion of the State Government to adjust the multiple as local conditions and conditions of land may require. It would obviously not have been practicable for the legislature to provide for different multiples in respect of different districts or in regard to different classes of lands. Having laid down the general policy in that behalf, the legislature naturally left the adjustment of the multiple to the discretion of the State Government because the said adjustment had to be made in the light of local conditions and by reference to the class of the land. Therefore, we do not think that the discretion left to the State Government can be said to be unfettered or uncanalised so as to amount to an unreasonable restriction as contended by Mr Goyal; as we have already pointed out the notification issued by the State Government prescribing the multiple has clearly complied with the requirement of Section 5(1). We must accordingly hold that the challenge to the validity of Section 5(1) on the ground that it contravenes Articles 14 and 19(1)(f) must fail.”*

**142. Chunnilal Onkarmal (P) Ltd. v. Union of India [1994 SCC OnLine**

**MP 326 : (1996) 221 ITR 459]:**

*“11. The equal protection of the laws provision in our constitution prohibits a discrimination by the State against its own citizens as well as to one in their favour in imposing the wealth-tax. The wealth-tax is uniform as it is equal upon all companies belonging to the described class upon which it is imposed, namely, the companies who are closely-held companies. It cannot be said to be discriminatory. Equal protection cannot be said to be denied by the statute which operates alike on all persons and property similarly situated or by proceedings for the assessment and collection of taxes which follows the course usually pursued in the State.*

*15. A taxation Act will only be struck down as violative of article 14 of the Constitution of India if there is no reasonable basis behind the classification made by it, or if the same class of property, similarly situated, is subjected to unequal taxation. Taxation will not be discriminatory if, within the sphere of its operation, it affects alike all persons similarly situated. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed. (Reliance is placed*

*on Spences Hotel Pvt Ltd. v. State of West Bengal, (1991) 2 SCC 154). The Legislature has jurisdiction and authority to classify property, trade, profession and events for imposition of tax equally and uniformly and as such the discretion exercised by the Legislature cannot be challenged on the ground that it discriminates and infringes article 14 of the Constitution of India. Wealth-tax of two per cent, has been uniformly charged on all closely-held companies. Therefore, there can be no distinction drawn between the closely-held companies where property has been transferred or where property has not been transferred by other companies or by its directors, because that is not the only reason for levying wealth-tax on every closely-held company. A closely-held company has been treated as a class apart and tax has been levied on them. There is a reasonable basis for charging wealth-tax only from the closely-held companies and the action of the Legislature is well within its competence. We do not find any discrimination or arbitrariness, as complained of by the petitioners and section 40 of the Finance Act, 1983 cannot be attacked on that count."*

**143. *Federation of Hotel & Restaurant Assn. of India v. Union of India,* [(1989) 3 SCC 634]:**

*"46. It is now well settled that though taxing laws are not outside Article 14, however, having regard to the wide variety of diverse economic criteria that go into the formulation of a fiscal policy legislature enjoys a wide latitude in the matter of selection of persons, subject-matter, events, etc., for taxation. The tests of the vice of discrimination in a taxing law are, accordingly, less rigorous. In examining the allegations of a hostile, discriminatory treatment what is looked into is not its phraseology, but the real effect of its provisions. A legislature does not, as an old saying goes, have to tax everything in order to be able to tax something. If there is equality and uniformity within each group, the law would not be discriminatory. Decisions of this Court on the matter have permitted the legislatures to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes.*

*47. But, with all this latitude certain irreducible desiderata of equality shall govern classifications for differential treatment in taxation laws as well. The classification must be rational and based on some qualities and characteristics which are to be found in all the persons grouped together and absent in the others left out of the class. But this alone is not sufficient. Differentia must have a rational nexus with the object sought to be achieved by the law. The State, in the exercise of its governmental power, has, of necessity, to make laws operating differently in relation to different groups or classes of persons to attain certain ends and must, therefore, possess the*



*power to distinguish and classify persons or things. It is also recognised that no precise or set formulae or doctrinaire tests or precise scientific principles of exclusion or inclusion are to be applied. The test could only be one of palpable arbitrariness applied in the context of the felt needs of the times and societal exigencies informed by experience.*

*48. Classifications based on differences in the value of articles or the economic superiority of the persons of incidence are well-recognised. A reasonable classification is one which includes all who are similarly situated and none who are not. In order to ascertain whether persons are similarly placed, one must look beyond the classification and to the purposes of the law.”*

**144. *Kamatchi Lamination (P) Ltd. v. State of Tamil Nadu [1994 SCC***

***OnLine Mad 761 : (1994) 95 STC 378]:***

*“74. Point No. 7: This question hinges upon the validity of the newly added section 7-C, as being violative of article 14 of the Constitution. This section applies exclusively to civil works contractors, who are exempt from maintaining accounts required under section 40 of the Principal Act and rule 26 of the Rules, but are required to maintain only accounts relating to payments received by them to the civil works contracts executed by them. According to this section, a civil works contractor may, at his option, instead of paying tax in accordance with section 3-B, pay on the total value of the civil works contract executed by him in a year, tax calculated at 2 per cent of such total contract value of the civil works executed by him in that year. This sort of a special treatment given to civil works contract involved in the execution of works contract excluding other types of contracts is claimed to be violative of article 14 of the Constitution, as being discriminatory in nature, pure and simple. To this sort of a submission, I am unable to affix my seal of approval on the face of the principles evolved by the apex Court in many a decision, including the recent one in *Shashikant Laxman Kale v. Union of India*, [1990] 185 ITR 104; (1990) 4 SCC 366 : AIR 1990 SC 2114.*

*(a) It is expressed therein that the latitude for classification in a taxing statute is much greater; and in order to tax something, it is not necessary to tax everything. These basic postulates have to be borne in mind, while determining the constitutional validity of a taxing provision challenged on the ground of discrimination. One has to look beyond the ostensible classification and to the purpose of the law and apply the test of “palpable arbitrariness” in the context of the felt needs of the times and societal exigencies informed by experience to determine reasonableness, of the classification. For this test, it is first necessary to discern the true purpose or object of the impugned enactment because it is only with reference to the*

*true object of the enactment that the existence of a rational nexus of the differentia on which the classification is based, with the object sought to be achieved by the enactment, can be examined to test the validity of the classification.*

*75. The classification of “civil works contracts” in the impugned section 7-C, if tested, in the backdrop of the principles, as evolved by the Supreme Court as stated above, cannot at all be stated to be suffering the vice of arbitrariness, as contemplated under article 14 of the Constitution. Before parting with these cases, I will be failing in my duty if I do not place on record, a word of appreciation as to the valuable assistance rendered by all learned counsel appearing for the petitioners-assesseees and learned Additional Government Pleader (Taxes). Mr. C. Natarajan spear-headed the attack in an admirable way, in his own, inimitable style, with clarity and precision, ably assisted, in such an arduous task, by learned counsel M/s. K.M. Vijayan, P. Abboy and R.L. Ramani, among others in particular. Mr. V. Ramachandran, learned Senior Counsel also did his part well in making revelling and intrinsic submissions, on the tangle posed. Mrs. Chitra Venkataraman, learned Additional Government Pleader (Taxes) in her own style made incisive and crisp submissions, in the process of repelling those submissions emerging from the host of learned counsel appearing for the respective petitioners-assesseees, befitting the occasion, without causing, in the least, any sort of difficulty for the court in the determination of the issues involved. The enthusiasm exhibited by Mr. S. Sivanandam, learned counsel by participating in the discussion, in response to the invitation extended by the court, as amicus curiae is quite laudable.”*

**145.** It is also appropriate to consider a few other judgments on the scope of Articles 14 and 19 (1) (g), reasonable classification and its nexus to the object sought to be achieved by the law.

**146. *Kathi Raning Rawat v. State of Saurashtra* [1952 SCR 435 : AIR 1952 SC 123 : 1952 Cri LJ 805]:**

*“7. All legislative differentiation is not necessarily discriminatory. In fact, the word “discrimination” does not occur in Article 14. The expression “discriminate against” is used in Article 15(1) and Article 16(2), and it means, according to the Oxford Dictionary, “to make an adverse distinction with regard to; to distinguish unfavourably from others”. Discrimination thus involves an element of unfavourable bias and it is in that sense that the expression has to be understood in this context. If such bias is disclosed and*

*is based on any of the grounds mentioned in Articles 15 and 16, it may well be that the statute will, without more, incur condemnation as violating a specific constitutional prohibition unless it is saved by one or other of the provisos to those articles. But the position under Article 14 is different. Equal protection claims under that article are examined with the presumption that the State action is reasonable and justified. This presumption of constitutionality stems from the wide power of classification which the legislature must, of necessity, possess in making laws operating differently as regards different groups of persons in order to give effect to its policies. The power of the State to regulate criminal trials by constituting different courts with different procedures according to the needs of different parts of its territory is an essential part of its police power (of Missouri v. Lewis [101 US 22] ). Though the differing procedures might involve disparity in the treatment of the persons tried under them, such disparity is not by itself sufficient, in my opinion, to outweigh the presumption and establish discrimination unless the degree of disparity goes beyond what the reason for its existence demands as, for instance, when it amounts to a denial of a fair and impartial trial. It is, therefore, not correct to say that Article 14 provides no further constitutional protection to personal liberty than what is afforded by Article 21. Notwithstanding that its wide general language is greatly qualified in its practical application by a due recognition of the State's necessarily wide powers of legislative classification, Article 14 remains an important bulwark against discriminatory procedural laws.*

*8. In the present case, the affidavit filed on behalf of the respondent State by one of its responsible officers states facts and figures relating to an increasing number of incidents of looting, robbery, dacoity, nose-cutting and murder by marauding gangs of dacoits in certain areas of the State, and these details support the claim that "the security of the State and public peace were jeopardised and that it became impossible to deal with the offences that were committed in different places in separate courts of law expeditiously". The statement concludes by pointing out that the areas specified in the notification were the "main zones of the activities of the dacoits as mentioned above". The impugned Ordinance having thus been passed to combat the increasing tempo of certain types of regional crime, the two-fold classification on the lines of type and territory adopted in the impugned Ordinance, read with the notification issued thereunder, is, in my view, reasonable and valid, and the degree of disparity of treatment involved is in no way in excess of what the situation demanded.*

*17. In the course of the hearing, an affidavit was filed by the Assistant Secretary in the Home Department of the Saurashtra Government, stating that since the integration of different States in Kathiawar in the beginning of 1948 there had been a series of crimes against public peace and that had led to the promulgation of Ordinance 9 of 1948, which provided among other things for detention of persons acting in a manner prejudicial to*

*public safety and maintenance of public order in the State. Notwithstanding this Ordinance, the crimes went on increasing and there occurred numerous cases of dacoity, murder, nose-cutting, ear-cutting, etc. for some of which certain notorious gangs were responsible, and hence Ordinance LXVI of 1949 was promulgated to amend the earlier Ordinance and to constitute Special Courts for the speedy trial of cases arising out of the activities of the dacoits and other criminals guilty of violent crimes.*

*46. An argument was raised, as in the West Bengal case, that even this part of the section gave an uncontrolled and unguided power of classification which might well be exercised by the State Government capriciously or "with an evil eye and an unequal hand" so as to deliberately bring about invidious discrimination between man and man although both of them were situated in exactly the same or similar circumstances. I do not accept this argument as sound, for the reasons I adopted in my judgment in the West Bengal case in repelling this argument apply with equal, if not with greater, force to the argument directed against the validity of the Saurashtra Ordinance. It is obvious that this part of Section 11 of the Ordinance which, like the corresponding part of Section 5(1) of the West Bengal Special Courts Act, confers a power on the State Government to make a classification of "offences", "classes of offences" or "classes of cases", makes it the duty of the State government to make a proper classification, that is to say, a classification which must fulfil both conditions, namely, that it must be based on some intelligible differentia distinguishing the offences grouped together from other offences and that that differentia must have a reasonable relation to the object of the Act as recited in the preamble. A classification on a basis which does not distinguish one offence from another offence or which has no relation to the object of the Act will be wholly arbitrary and may well be hit by the principles laid down by the Supreme Court of the United States in Jack Skinner v. Oklahoma [216 US 535 : L. Ed. 1655] . On the other hand, as I observed in the West Bengal case, it is easy to visualise a situation when certain offences, by reason of the frequency of their perpetration or other attending circumstances, may legitimately call for a special treatment in order to check the commission of such offences. Are we not familiar with gruesome crimes of murder, arson, loot and rape committed on a large scale during communal riots in particular localities and are they not really different from a case of a stray murder, arson, loot or rape in another district which may not be affected by any communal upheaval? Does not the existence of the gangs of dacoits and the concomitant crimes committed on a large scale as mentioned in the affidavit filed on behalf of the State call for prompt and speedier trial for the maintenance of public order and the preservation of peace and tranquillity in the State and indeed of the very safety of the community? Do not those special circumstances add a peculiar quality to the offences or classes of offences specified in the notification so as to distinguish them from stray cases of similar crimes and is it not reasonable and even necessary to the State with power to classify them into a separate group and*

*deal with them promptly? I have no doubt in my mind that the surrounding circumstances and the special features mentioned in the affidavit referred to above furnish a very cogent and reasonable basis of classification, for they do clearly distinguish these offences from similar or even same species of offences committed elsewhere and under ordinary circumstances. This differentia quite clearly has a reasonable relation to the object sought to be achieved by the Act, namely, the maintenance of public order, the preservation of public safety, the peace and tranquillity of State. Such a classification will not be repugnant to the equal protection clause of our Constitution, for there will be no discrimination, for whoever may commit the specified offence in the specified area in the specified circumstances will be treated alike and sent up before a Special Court for trial under the special procedure. Persons thus sent up for trial by a Special Court according to the special procedure cannot point their fingers to the other persons who may be charged before an ordinary Court with similar offences alleged to have been committed by them in a different place and in different circumstances and complain of unequal treatment, for those other persons are of a different category and are not their equals. In my judgment, this part of the section, properly construed and understood, does not confer an uncontrolled and unguided power on the State Government. On the contrary, this power is controlled by the necessity for making a proper classification which is to be guided by the preamble in the sense that the classification must have a rational relation to the object of the Act as recited in the preamble. It is, therefore, not an arbitrary power. The legislature has left it to the State Government to classify offences or classes of offences or classes of cases for the purpose of the Ordinance, for the State Government is in a better position to judge the needs and exigencies of the State and the court will not lightly interfere with the decision of the State Government. If at any time, however, the State Government classifies offences arbitrarily and not on any reasonable basis having a relation to the object of the Act, its action will be either an abuse of its power if it is purposeful, or in excess of its powers even if it is done in good faith and in either case the resulting discrimination will encounter the challenge of the Constitution and the Court will strike down, not the law which is good, but the abuse or misuse or the unconstitutional administration of the law creating or resulting in unconstitutional discrimination. In this case, however, the facts stated in the affidavit filed on behalf of the State make it abundantly clear that the situation in certain parts of the State was sufficient to add a particularly sinister quality to certain specified offences committed within those parts and the State Government legitimately grouped them together in the notification. The criticism that the State Government included certain offences but excluded certain cognate offences has been dealt with by my learned Brother Mukherjea and I have nothing more to add thereto."*

In the above referred case, not only the classification was upheld as having nexus, reliance was also placed on the affidavit filed by the State to understand the object of the provision and the basis for the classification.

**147. *Supdt. & Remembrancer of Legal Affairs v. Girish Kumar Navalakha,***

***[(1975) 4 SCC 754 : 1975 SCC (Cri) 718]:***

*“6. The preamble provides the key to the general purpose of the Act. That purpose is the regulation of certain payments, dealings in foreign exchange and securities and the import and export of currency and bullion in the economic and financial interest of India. The general purpose or object of the Act given in the preamble may not show the specific purpose of the classification made in Section 23(1)(a) and Section 23(1-A). The court has therefore to ascribe a purpose to the statutory classification and coordinate the purpose with the more general purpose of the Act and with other relevant Acts and public policies. For achieving this the court may not only consider the language of Section 23 but also other public knowledge about the evil sought to be remedied, the prior law, the statement of the purpose of the change in the prior law and the internal legislative history. When the purpose of a challenged classification is in doubt, the courts attribute to the classification the purpose thought to be most probable. Instead of asking what purpose or purposes the statute and other materials reflect, the Court may ask what constitutionally permissible objective this statute and other relevant materials could plausibly be construed to reflect. The latter approach is the proper one in economic regulation cases. The decisions dealing with economic regulation indicate that courts have used the concept of ‘purpose’ and ‘similar situations’ in a manner which give considerable leeway to the Legislature. This approach of judicial restraint and presumption of constitutionality requires that the Legislature is given the benefit of doubt about its purpose. How far a court will go in attributing a purpose which though perhaps not the most probable is at least conceivable and which would allow the classification to stand depends to a certain extent upon its imaginative power and its devotion to the theory of judicial restraint.*

*8. Often times the courts hold that under-inclusion does not deny the equal protection of laws under Article 14. In strict theory, this involves an abandonment of the principle that classification must include all who are similarly situated with respect to the purpose. This under-inclusion is often explained by saying that the legislature is free to remedy parts of a mischief or to recognize degrees of evil and strike at the harm where it thinks it most*

acute.

9. *The courts have recognised the very real difficulties under which legislatures operate — difficulties arising out of both the nature of the legislative process and of the society which legislation attempts perennially to re-shape — and they have refused to strike down indiscriminately all legislation embodying classificatory inequality here under consideration. Mr Justice Holmes, in urging tolerance of under-inclusive classifications, stated that such legislation should not be disturbed by the court unless it can clearly see that there is no fair reason for the law which would not require with equal force its extension to those whom it leaves untouched. See Missouri K. and T. Rly. v. May [(1903) 194 US 267, 269] . What, then, are the fair reasons for non-extension? What should a court do when it is faced with a law making an under-inclusive classification in areas relating to economic and tax matters?*

10. *There are two main considerations to justify an under-inclusive classification. First, administrative necessity. Second, the legislature might not be fully convinced that the particular policy which it adopts will be fully successful or wise. Thus to demand application of the policy to all whom it might logically encompass would restrict the opportunity of a State to make experiment. These techniques would show that some sacrifice of absolute equality may be required in order that the legal system may preserve the flexibility to evolve new solutions to social and economic problems. The gradual and piecemeal change is often regarded as desirable and legitimate though in principle it is achieved at the cost of some equality. It would seem that in fiscal and regulatory matters the court not only entertains a greater presumption of constitutionality but also places the burden on the party challenging its validity to show that it has no reasonable basis for making the classification. This was the approach of this Court in State of Gujarat v. Ambica Mills [(1974) 4 SCC 656 : AIR 1974 SC 1300] . The Court said: [SCC p. 676 para 58]*

*“The piecemeal approach to a general problem permitted by under-inclusive classifications, appears justified when it is considered that legislative dealing with such problems is usually an experimental matter. It is impossible to tell how successful a particular approach may be, what dislocations might occur, what evasions might develop, what new evils might be generated in the attempt. Administrative expedients must be forged and tested. Legislators, recognizing these factors, may wish to proceed cautiously, and courts must allow them to do so (37 California Rev. 341).”*

**148. Balaji v. ITO [(1962) 2 SCR 983 : AIR 1962 SC 123 : (1961) 43 ITR 393]:**

*“5. It is well settled that the entries in the Lists are not powers but are only*

*fields of legislation, and that widest import and significance must be given to the language used by Parliament in the various entries. Sarkar, J., speaking for this Court, observed in Sardar Baldev Singh case [(1960) 40 ITR 605] thus at p. 615:*

*“So Entry 54 should be read not only as authorising the imposition of a tax but also as authorising an enactment which prevents the tax imposed being evaded. If it were not to be so read, then the admitted power to tax a person on his own income might often be made infructuous by ingenious contrivances.”*

*This decision holds that the said entry can sustain a law made to prevent the evasion of tax.*

*7. The constitutional validity of the said provision was next questioned on the ground that it violated the doctrine of equality before the law enshrined in Article 14 of the Constitution. Under Article 14, “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”. But decisions of this Court permitted classification if there was reasonable basis for the differentiation. It was held that what Article 14 prohibited was class legislation and not reasonable classification for the purpose of legislation. Two conditions were laid down for passing the test of permissible classification, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that the differentia must have rational relation to the object sought to be achieved by the statute in question. Under the impugned sub-section, an individual is taxed on the income of his wife or his minor children, if he carries on business in partnership with his wife or if he admits his minor sons to the benefits of the partnership, whereas an individual, if he carries on business in partnership with a third party, whether a man or a woman, or even with his major children, or if he and his wife or children carry on business separately, will be liable only to pay tax on his share of the partnership income, that is, for the purpose of this sub-section, the former is put in a category different from the latter. It cannot be said that there is no differentia between the two groups; but what is contended is that the said differentia has no rational relation to the object sought to be achieved by the statute in question. It was asked how, from the standpoint of imposition of tax, the difference between an individual and his wife doing business in partnership, and between an individual and his wife doing business separately, and an individual doing business in partnership with his wife and an individual doing business in partnership with a third party, male or female, and between an individual who has admitted his minor children to the partnership business and an individual who is doing business in partnership with his major children or outsiders, would have any reasonable basis. This argument ignores the object of the legislation. We have held that the object of the legislation was to prevent evasion of tax. A similar device would not ordinarily be resorted to by individuals by*



*entering into partnership with persons other than those mentioned in the sub-section, as it would involve a risk of the third party turring round and asserting his own rights. The legislature, therefore, selected for the purpose of classification only that group of persons who in fact are used as a cloak to perpetrate fraud on taxation.*

*8. It was then said that there might be genuine partnerships between an individual and his wife and, therefore, there is no reasonable relation between the classification and the object sought to be achieved, at any rate to the extent of those genuine cases. But there is no classification between genuine and non-genuine cases: the classification is between cases of partnership between husband, wife and/or minor children, whether genuine or not, and partnerships between others. In demarcating a group, the net was cast a little wider, but it was necessary, as any further sub-classification as genuine and non-genuine partnerships might defeat the purpose of the Act.*

*“14. Learned counsel for the petitioner argued that the restrictions are not reasonable for the following reasons: (1) the husband is made to pay tax on the income which his wife derived from the business, that is, a tax is levied on one person on the income of another; (2) such an imposition not only prevents a husband from taking his wife as a partner in his business but also prevents a wife who has got a business of her own, from taking her husband as a partner in the business; (3) the husband has to pay tax at a rate higher than that he would have to pay if the income of the wife was not added to his income; (4) the same situation is created inter se between a parent and his minor children vis-à-vis their joint business. Learned counsel, therefore, contended that the provisions prevented the honest pooling of resources of the members of a family so intimately connected with each other to the detriment of the family prosperity, and that it amounted to an unreasonable restriction on the said fundamental rights. There is some plausibility in this argument, but if an overall picture of the situation is taken, the reasonableness of the restrictions will be apparent. In the State of Madras v. V.G. Row [(1952) SCR 597] Patanjali Sastri, C.J., lays down the following test of reasonableness:*

*“The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict.”*  
*So judged, can it be said that the restrictions imposed, under the impugned provisions are not reasonable? The object sought to be achieved was to prevent the prevalent abuse, namely, evasion of tax by an individual doing business under a partnership nominally entered with his wife or minor children. The scope of the provisions is limited only to a few of the intimate members of a family who ordinarily are under the protection of the assessee and are dependants of him. The persons selected by the provisions, namely, wife and minor children, cannot also be ordinarily expected to*

*carry on their business independently with their own funds, when the husband or the father is alive and when they are under his protection. Doubtless some of the said partnerships may be genuine and the wife or minor children may have contributed capital to the business; but the provisions do not in any way affect their rights and even the liability inter se between the husband and the wife or the minor children, as the case may be, in respect of the tax paid. It is true that in computing the total income of an individual for the purpose of assessment, their income in their capacity as partners shall be included in the income of the individual; but the section does not prevent the husband or the father, as the case may be, from debiting against them in the partnership accounts that part of the tax referable to the share or shares of their income. It may be that a father or a husband may have to pay tax at a higher rate than ordinarily he would have to pay if the addition of the wife's or children's income to his own brings his total income to a higher slab. But it may not necessarily be so in a case where the income of the former is not appreciable; even if it is appreciable, he can debit a part of the excess payment to his wife and children. In short, the firm, though registered, would be treated as a distinct unit of assessment, with the difference that, unlike in the case of a registered firm, the entire income of the unit is added to the personal income of the father or the husband, as the case may be. This mode of taxation may be a little hard on a husband or a father in the case of genuine partnership with wife or minor children, but that is offset, to a large extent, by the beneficial results that flow therefrom to the public, namely, the prevention of evasion of income tax, and also by the fact that, by and large, the additional payment of tax made on the income of the wife or the minor children will ultimately be borne by them in the final accounting between them. In these circumstances, we cannot say that the provisions of Section 16(3) of the Act impose an unreasonable restriction on the fundamental rights of the petitioner under Article 19(1)(f) and (g) of the Constitution."*

In this case, the challenge to classification of a partnership firm between husband/father with wife and/or minor children as different from partnership firm between an individual with a third party, was turned down by holding that the classification is rational and has nexus with the object that is to prevent evasion of tax and that it neither violates Article 14 nor Article 19 (1) (g).

**149. *Javed v. State of Haryana [(2003) 8 SCC 369 : 2004 SCC (L&S) 561 : 2003 SCC OnLine SC 771]:***

***“Is the classification arbitrary?”***

*“8. It is well settled that Article 14 forbids class legislation; it does not forbid reasonable classification for the purpose of legislation. To satisfy the constitutional test of permissibility, two conditions must be satisfied, namely: (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that such differentia has a rational relation to the object sought to be achieved by the statute in question. The basis for classification may rest on conditions which may be geographical or according to objects or occupation or the like. (See Constitution Bench decision in Budhan Choudhry v. State of Bihar [AIR 1955 SC 191 : (1955) 1 SCR 1045 : 1955 Cri LJ 371] .) The classification is well defined and well perceptible. Persons having more than two living children are clearly distinguishable from persons having not more than two living children. The two constitute two different classes and the classification is founded on an intelligible differentia clearly distinguishing one from the other. One of the objects sought to be achieved by the legislation is popularizing the family welfare/family planning programme. The disqualification enacted by the provision seeks to achieve the objective by creating a disincentive. The classification does not suffer from any arbitrariness. The number of children viz. two is based on legislative wisdom. It could have been more or less. The number is a matter of policy decision which is not open to judicial scrutiny.*

***Is the provision discriminatory?***

*12. It was submitted that though the State of Haryana has introduced such a provision of disqualification by reference to elective offices in Panchayats, a similar provision is not found to have been enacted for disqualifying aspirants or holders of elective or public offices in other institutions of local self-governance and also not in State Legislatures and Parliament. So also all the States i.e. other than Haryana have not enacted similar laws, and therefore, it appears that people aspiring to participate in Panchayati Raj governance in the State of Haryana have been singled out and meted out hostile discrimination. The submission has been stated only to be rejected. Under the constitutional scheme there is a well-defined distribution of legislative powers contained in Part XI of the Constitution. Parliament and every State Legislature has power to make laws with respect to any of the matters which fall within its field of legislation under Article 246 read with the Seventh Schedule of the Constitution. A legislation by one of the States*

*cannot be held to be discriminatory or suffering from the vice of hostile discrimination as against its citizens simply because Parliament or the legislatures of other States have not chosen to enact similar laws. Such a submission, if accepted, would be violative of the autonomy given to the Centre and the States within their respective fields under the constitutional scheme.*

*13. Similarly, legislations referable to different organs of local self-government, that is, Panchayats, Municipalities and so on may be, rather are, different. Many a time they are referable to different entries of Lists I, II and III of the Seventh Schedule. All such laws need not necessarily be identical. So is the case with the laws governing legislators and parliamentarians.*

*14. It is not permissible to compare a piece of legislation enacted by a State in exercise of its own legislative power with the provisions of another law, though pari materia it may be, but enacted by Parliament or by another State Legislature within its own power to legislate. The sources of power are different and so do differ those who exercise the power. The Constitution Bench in State of M.P. v. G.C. Mandawar [AIR 1954 SC 493 : (1955) 1 SCR 599] held that the power of the Court to declare a law void under Article 13 has to be exercised with reference to the specific legislation which is impugned. Two laws enacted by two different Governments and by two different legislatures can be read neither in conjunction nor by comparison for the purpose of finding out if they are discriminatory. Article 14 does not authorize the striking down of a law of one State on the ground that in contrast with a law of another State on the same subject, its provisions are discriminatory. When the sources of authority for the two statutes are different, Article 14 can have no application. So is the view taken in Bar Council of U.P. v. State of U.P. [(1973) 1 SCC 261] , State of T.N. v. Ananthi Ammal [(1995) 1 SCC 519] and Prabhakaran Nair v. State of T.N. [(1987) 4 SCC 238]*

*64. Hypothetical examples were tried to be floated across the Bar by submitting that there may be cases where triplets are born or twins are born on the second pregnancy and consequently both of the parents would incur disqualification for reasons beyond their control or just by freak of divinity. Such are not normal cases and the validity of the law cannot be tested by applying it to abnormal situations. Exceptions do not make the rule nor render the rule irrelevant. One swallow does not make a summer; a single instance or indicator of something is not necessarily significant.”*

In this case, the Apex Court holding that classification is not arbitrary, satisfies the twin tests, hypothetical situations cannot be considered and each State is

entitled to have its own law, rejected the challenge under Articles 14 and 19 (1) (g).

**150. *Chiranjit Lal Chowdhuri v. Union of India* [1950 SCR 869 : AIR 1951 SC 41 : (1951) 21 Comp Cas 33]:**

*“8. The only serious point, which in my opinion, arises in the case is whether Article 14 of the Constitution is in any way infringed by the impugned Act. This article corresponds to the equal protection clause of the Fourteenth Amendment of the Constitution of the United States of America, which declares that “no State shall deny to any person within its jurisdiction the equal protection of the laws”. Professor Willis dealing with this clause sums up the law as prevailing in the United States in regard to it in these words:*

*“Meaning and effect of the guaranty.— The guaranty of the equal protection of the laws means the protection of equal laws. It forbids class legislation, but does not forbid classification which rests upon reasonable grounds of distinction. It does not prohibit legislation, which is limited either in the objects to which it is directed or by the territory within which it is to operate. ‘It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed’. ‘The inhibition of the amendment ... was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation’. It does not take from the states the power to classify either in the adoption of police laws, or tax laws, or eminent domain laws, but permits to them the exercise of a wide scope of discretion, and nullifies what they do only when it is without any reasonable basis. Mathematical nicety and perfect equality are not required. Similarity, not identity of treatment, is enough. If any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed. One who assails a classification must carry the burden of showing that it does not rest upon any reasonable basis.” [Constitutional Law by Prof. Willis, (1st Edn.), p. 579]*

*9. Having summed up the law in this way, the same learned author adds: “Many different classifications of persons have been upheld as constitutional. A law applying to one person or one class of persons is constitutional if there is sufficient basis or reason for it”. There can be no doubt that Article 14 provides one of the most valuable and important guarantees in the Constitution which should not be allowed to be whittled down, and, while accepting the statement of Professor Willis as a correct exposition of the principles underlying this guarantee, I wish to lay*

*particular emphasis on the principle enunciated by him that any classification which is arbitrary and which is made without any basis is no classification and a proper classification must always rest upon some difference and must bear a reasonable and just relation to the things in respect of which it is proposed.*

*11. Prima facie, the argument appears to be a plausible one, but it requires a careful examination, and, while examining it, two principles have to be borne in mind: (1) that a law may be constitutional even though it relates to a single individual, in those cases where on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself; (2) that it is the accepted doctrine of the American Courts, which I consider to be well-founded on principle, that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. A clear enunciation of this latter doctrine is to be found in *Middleton v. Texas Power and Light Company* [248 US 152, 157] in which the relevant passage runs as follows:*

*“It must be presumed that a legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based upon adequate grounds.”*

*20. Article 14 of the Constitution, as already stated, lays down an important fundamental right, which should be closely and vigilantly guarded, but, in construing it, we should not adopt a doctrinaire approach which might choke all beneficial legislation.*

*64. Article 14 of the Constitution, it may be noted, corresponds to the equal protection clause in the Fourteenth Amendment of the American Constitution which declares that “no State shall deny to any person within its jurisdiction the equal protection of the laws”. We have been referred in course of the arguments on this point by the learned counsel on both sides to quite a number of cases decided by the American Supreme Court, where questions turning upon the construction of the “equal protection” clause in the American Constitution came up for consideration. A detailed examination of these reports is neither necessary nor profitable for our present purpose but we think we can cull a few general principles from some of the pronouncements of the American Judges which might appear to us to be consonant with reason and help us in determining the true meaning and scope of Article 14 of our Constitution.*

*66. It must be admitted that the guarantee against the denial of equal protection of the laws does not mean that identically the same rules of law should be made applicable to all persons within the territory of India in spite of differences of circumstances and conditions. As has been said by the Supreme Court of America, “equal protection of laws is a pledge of the*

*protection of equal laws [Yick Wo v. Hopkins, 118 US at 369] ”, and this means “subjection to equal laws applying alike to all in the same situation [Southern Railway Company v. Greene, 216 US 400, 412.]”. In other words, there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is the same. I am unable to accept the argument of Mr Chari that a legislation relating to one individual or one family or one body corporate would per se violate the guarantee of the equal protection rule. There can certainly be a law applying to one person or to one group of persons and it cannot be held to be unconstitutional if it is not discriminatory in its character [ Willis Constitutional Law, p. 580] . It would be bad law “if it arbitrarily selects one individual or a class of individuals, one corporation or a class of corporations and visits a penalty upon them, which is not imposed upon others guilty of like delinquency [Gulf C & SFR Co. v. Ellis, 163 Us 150 at 159]”. The legislature undoubtedly has a wide field of choice in determining and classifying the subject of its laws, and if the law deals alike with all of a certain class, it is normally not obnoxious to the charge of denial of equal protection; but the classification should never be arbitrary. It must always rest upon some real and substantial distinction bearing a reasonable and just relation to the things in respect to which the classification is made; and classification made without any substantial basis should be regarded as invalid [Southern Railway Company v. Greene, 216 US 400, 412.] .”*

**151. *East India Tobacco Co. v. State of A.P. [(1963) 1 SCR 404 : AIR 1962***

***SC 1733 : (1962) 13 STC 529]:***

*“3. On the arguments addressed to us, two questions arise for our determination:*

*(1) Is the impugned Act repugnant to Article 14 for the reason that it singles out Virginia tobacco for taxation?*

*(2) Is the impugned legislation in contravention of Article 286(1)(b) as imposing a tax on sales in the course of export?*

*(1) On the first question the contention of the appellants may be thus stated. All laws must satisfy the requirements of Article 14. Taxation laws are no exception to it. In imposing a tax on the sale of Virginia tobacco and not on other kinds of tobacco the impugned Act is on the face of it discriminatory. It is therefore obnoxious to Article 14 and is void.*

*5. It is argued for the appellants that to repel the charge of discrimination in taxing only Virginia tobacco, and not the country tobacco, it is not sufficient merely to show that there are differences between the two varieties, but that it must further be shown, as held in Budhan*

*Choudhry v. The State of Bihar [(1955) 1 SCR 1045] and Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar [(1959) SCR 279] that the differentia has reasonable relation to the object of the legislation. The differences between the Virginia tobacco and the country tobacco, as found by the learned Judges are not, it is argued, germane to the levy of sales tax, and so there is no valid classification. We are unable to agree with this contention. If a State can validly pick and choose one commodity for taxation and that is not open to attack under Article 14, the same result must follow when the State picks out one category of goods and subjects it to taxation.*

6. It should, in this connection, be remembered that under the law it is for the person who assails a legislation as discriminatory to establish that it is not based on a valid classification and it is well settled that this burden is all the heavier when the legislation under attack is a taxing statute. "In taxation even more than in other fields" it was observed by the Supreme Court of United States in *Madden v. Kentucky* [(1940) 309 U.S. 83 : 84 L.Ed. 590] "Legislatures possess the greatest freedom in classification. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it". How wide the powers of the Legislature are in classifying objects for purposes of taxation will be seen from the following resume of the law given by Rottschaefer, in his "Constitutional Law" p. 668:

"The federal Supreme Court has seldom held invalid any classification made in connection with the levying of property taxes. It has sustained the levy of a heavier burden of taxation upon motor vehicles using the public highways than that levied upon other forms of property, and the imposition of a heavier tax upon oil than upon other property. The equal protection clause does not prohibit the levy of a tax on ores which is not imposed upon similar interests in quarries, forests and other forms of wasting asset, nor even the imposition of a tax upon anthracite that is not levied upon bituminous coal. A statute providing for the assessment of one type of intangible at its actual value while other intangibles are assessed at their face value does not deny equal protection even when both are subject to the same rate of tax. The decision of the Supreme Court in this field have permitted a State legislature to exercise an extremely wide discretion in classifying property for tax purposes so long as it refrained from clear and hostile discrimination against particular persons or classes."

7. A decision near to the present case on the facts is *C. Heisler v. Thomas Colliery Company* [260 U.S. 245 : 67 L.Ed. 237]. There the question was whether a law imposing a tax on Anthracite coal and not upon bituminous coal was unconstitutional as violating the equal protection of laws guaranteed by the 14th Amendment to the Federal Constitution. In upholding the validity of the law, Justice Makenna observed as follows:

"The fact of competition may be accepted. Both coals, being compositions of carbon are of course capable of combustion and may be used as fuels but under different conditions and manifestations and the difference determines



*a choice between them as fuels. By disregarding that difference and the greater ones which exist and by dwelling on competition alone, it is easy to erect an argument of strength against the taxation of one and not of the other. But this may not be done. The differences between them are a just basis for their different classification; and the differences are great and important. They differ even as fuels, they differ fundamentally in other particulars. Anthracite coal has no substantial use beyond a fuel; bituminous coal has other uses. Products of utility are obtained from it. The fact is not denied and the products are enumerated that the extent of their use. They are therefore incentives to industries that the State in natural policy might well hesitate to obstruct or burden and to yield to the policy or consider it is well within the concession or the power of the State expressed in the cases we have cited. The distinction in the treatment of the respective coals being within the power conceded by the cases to the State it has logical and legal justification and is necessarily, not unreasonable or arbitrary.”*

**152. *Shashikant Laxman Kale v. Union of India [(1990) 4 SCC 366 : 1990***

***SCC (Tax) 428 at page 386]*:**

*“35. It is clear that the government or the public sector undertakings have been treated as a distinct class separate from those in the private sector and the fact that the profit earned in the former is for public benefit instead of private benefit, provides an intelligible differentia from the social point of view which is of prime importance for the national economy. Thus, there exists an intelligible differentia between the two categories which has a rational nexus with the main object of promoting the national economic policy or the public policy. This element also appears in the impugned enactment itself wherein ‘economic viability of such company’ is specified as the most relevant circumstance for grant of approval of the scheme by the Central Government. This intrinsic element in the provision itself supports the view that the main object thereof is to promote and improve the health of the public sector companies even though its effect is a benefit to its employees.*

*36. As already indicated, clause (10-C) of Section 10 of the Act itself mentions economic viability of a public sector company as the most relevant circumstance to attract the provision. The economic status of employees of a public sector company who get the benefit of the provision is also lower as compared to their counterpart in the private sector. If this be the correct perspective as we think it is in the present case, the very foundation of the challenge to the impugned provision on the basis of economic equality of employees in both sectors is non-existent. Once the stage is reached where the differentiation is rightly made between a public sector company and a private sector company and that too essentially on the ground of economic*

*viability of the public sector company and other relevant circumstances, the argument based on equality does not survive. This is independent of the disparity in the compensation package of employees in the private sector and the public sector. The argument of discrimination is based on initial equality between the two classes alleging bifurcation thereafter between those who stood integrated earlier as one class. This basic assumption being fallacious, the question of any hostile discrimination by granting the benefit only to a few in the same class denying the same to those left out does not arise.*

*38. Once the impugned provision contained in the newly inserted clause (10-C) of Section 10 of the Income Tax Act, 1961 is viewed in the above perspective keeping in mind the true object of the provision, there is no foundation for the argument that it is either discriminatory or arbitrary. There is a definite purpose for its enactment. One of the purposes is streamlining the public sector to cure it of one of its ailments of overstaffing which is realised from experience of almost four decades of its functioning. In view of the role attributed to the public sector in the sphere of national economy, improvement in the functioning thereof must be achieved in all possible ways. A measure adopted to cure it of one of its ailments is undoubtedly a forward step towards promoting the national economy. The provision is an incentive to the unwanted personnel to seek voluntary retirement thereby enabling the public sector to achieve the true object indicated. The personnel seeking voluntary retirement no doubt get a tax benefit but then that is an incentive for seeking voluntary retirement and at any rate that is the effect of the provision or its fall-out and not its true object. It is similar to the incentive given to the tax payers to invest in the public sector bonds by non-inclusion of the interest earned thereon in the tax-payer's total income which promotes the true object of raising the resources of the public sector for its growth and modernisation. The real distinction between the true object of an enactment and the effect thereof, even though appearing to be blurred at times, has to be borne in mind, particularly in a situation like this. With this perspective, keeping in view the true object of the impugned enactment, there is no doubt that employees of the private sector who are left out of the ambit of the impugned provision do not fall in the same class as employees of the public sector and the benefit or the fall-out of the provision being available only to the public sector employees cannot render the classification invalid or arbitrary. This classification cannot, therefore, be faulted.*

*39. Some of the cases cited by the petitioners in support of the contention of equality of employees in the public and private sectors in the present context also are inapplicable. The decision in Hindustan Antibiotics v. Workman [(1967) 1 SCR 652 : AIR 1967 SC 948 : (1967) 1 LLJ 114] related to wage fixation and is distinguishable. S.K. Dutta, ITO v. Lawrence Singh Ingty [(1968) 68 ITR 272 : (1968) 2 SCR 165 : AIR 1968 SC 658] was distinguished and explained in ITO v. N. Takin Roy*

*Rymbai [(1976) 1 SCC 916 : 1976 SCC (Tax) 143 : (1976) 103 ITR 82] relied on by us. Moreover, ITO v. N. Tatin Roy Rymbai [(1976) 1 SCC 916 : 1976 SCC (Tax) 143 : (1976) 103 ITR 82] which also related to a provision in Section 10 of Income Tax Act, 1961 itself says as under: (SCC pp. 923-24, paras 29 and 35)*

*“Classification for purposes of taxation or for exempting from tax with reference to the source of the income is integral to the fundamental scheme of the Income Tax Act. Indeed, the entire warp and woof of the 1961 Act has been woven on this pattern.*

*...Suffice it to say that classification of sources of income is integral to the basic scheme of the 1961 Act. It is nobody's case that the entire scheme of the Act is irrational and violative of Article 14 of the Constitution. Such an extravagant contention has not been canvassed before us. Thus the classification made by the aforesaid sub-clause (a) for purposes of exemption is not unreal or unknown. It conforms to a well-recognised pattern. It is based on intelligible differentia. The object of this differentiation between income accruing or received from a source in the specified areas and the income accruing or received from a source outside such areas is to benefit not only the members of the Scheduled Tribes residing in the specified areas but also to benefit economically such areas...”*

*(emphasis in original)*

*40. The other submission of the petitioners is to read the provision in a manner which would cover all employees including employees of the private sector within the ambit of the impugned provision. This further question does not arise in view of our conclusion that there is no discrimination made out. We may, however, mention that the Finance Bill, 1987 while inserting a new clause (10-C) in Section 10 of the Income Tax Act simultaneously inserted a new clause (36-A) in Section 2 of the Act with effect from April 1, 1987 defining ‘public sector company’, which expression has been used in the newly inserted clause (10-C) of Section 10. In view of the simultaneous definition of ‘public sector company’ in the Act, there can be no occasion to construe this expression differently without which a private sector company cannot be included in it. It is, therefore, not possible to construe the impugned provision while upholding its validity in such a manner as to include a private sector company also within its ambit.”*

In this case, after laying down the principles to be considered, the Apex Court upholding the provision, held that the distinction drawn between a Private

sector company and Public sector company was rational and the provision was refused to be read down.

**153. *Ravi Agrawal v. Union of India* [(2019) 18 SCC 180 :2019 SCC**

***OnLine SC 5*]:**

*“15. At the outset, it may be observed that Section 80-DD of the Act is a provision made by Parliament under the Act in order to give incentive to the persons whose dependants are persons with disability. Incentive is to give such persons concessions in income tax by allowing deductions of the amount specified in Section 80-DD of the Act in case such parents/guardians of dependants with disability take insurance policies of the nature specified in this provision. Purpose is to encourage these parents/guardians to make regular payments for the benefit of dependants with disability. In that sense, the legislature, in its wisdom thought it appropriate to allow deductions in respect of such contribution made by the parent/guardian in the form of premium paid in respect of such insurance policies. Of course, this deduction is admissible only when conditions stipulated therein are satisfied.*

*17. To some extent, the grievance of the petitioner may be justified in this behalf in the plea that when there is a need to get these funds even for the benefit of handicapped persons, that will not be given to such a person only because of the reason that the assured who is a parent/guardian is still alive. This would happen even when the entire premium towards the said policy has been paid. The policy does not have maturity claim. Thus, after making the entire premium for number of years i.e. during the duration of the policy, the amount would still remain with the LIC. That may be so. However, the purpose behind such a policy is altogether different. As noted from the provisions of Section 80-DD as well as from the explanatory memorandum of the Finance Bill, 1998, by which this provision was added, the purpose is to secure the future of the persons suffering from disability, namely, after the death of the parent/guardian. The presumption is that during his/her lifetime, the parent/guardian would take care of his/her handicapped child.*

*18. Further, such a benefit of deduction from income for the purposes of tax is admissible subject to the conditions mentioned in Section 80-DD of the Act. The legislature has provided the condition that amount/annuity under the policy is to be released only after the death of the person assured. This is the legislative mandate. There is no challenge to this provision. The prayer is that Section 80-DD of the Act be suitably amended. This Court cannot give a direction to Parliament to amend or make a statutory provision in a specified manner. The Court can only determine, in exercise of its power of judicial review, as to whether such a provision passes the muster of the*

*constitutional scheme. Though, there is no specific prayer in this behalf, but in the body of writ petition, argument of discrimination is raised. Here, we find that the respondents have been able to successfully demonstrate that the main provision is based on reasonable classification, which has a valid rationale behind it and there is a specific objective sought to be achieved thereby”.*

**154.** In *State of U.P. v. Kamla Palace [(2000) 1 SCC 557]*, the Hon’ble Supreme Court, while considering a fiscal statute in relation to Article 14 of the Constitution, has stated as under : (SCC pp. 562-63, para 11)

*“11. Article 14 does not prohibit reasonable classification of persons, objects and transactions by the legislature for the purpose of attaining specific ends. To satisfy the test of permissible classification, it must not be “arbitrary, artificial or evasive” but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature. (See Special Courts Bill, 1978, In re [Special Courts Bill, 1978, In re, (1979) 1 SCC 380] , seven-Judge Bench; R.K. Garg v. Union of India [R.K. Garg v. Union of India, (1981) 4 SCC 675 : 1982 SCC (Tax) 30] , five-Judge Bench.) It was further held in R.K. Garg case [R.K. Garg v. Union of India, (1981) 4 SCC 675 : 1982 SCC (Tax) 30] that laws relating to economic activities or those in the field of taxation enjoy a greater latitude than laws touching civil rights such as freedom of speech, religion, etc. Such a legislation may not be struck down merely on account of crudities and inequities inasmuch as such legislations are designed to take care of complex situations and complex problems which do not admit of solutions through any doctrinaire approach or straitjacket formulae.”*

*Further, in CIT v. Lawrence Singh Ingty, (1968) 2 SCR 165 : AIR 1968 SC 658] , the Constitution Bench of the Hon’ble Supreme Court held as under : (AIR p. 660, para 8)*

*“8. It is not in dispute that taxation laws must also pass the test of Article 14. That has been laid down by this Court in Kunnathat Thatehunni Moopil Nair v. State of Kerala [Kunnathat Thatehunni Moopil Nair v. State of Kerala, AIR 1961 SC 552] . But as observed by this Court in East India Tobacco Co. v. State of A.P. [East India Tobacco Co. v. State of A.P., AIR 1962 SC 1733] , in deciding whether a taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others; it is only when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it*

would be violative of Article 14. It is well settled that a State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably.”

Further, in *State of A.P. v. Nallamilli Rami Reddi*, (2001) 7 SCC 708], this Court held : (SCC p. 715, para 8)

“8. What Article 14 of the Constitution prohibits is “class legislation” and not “classification for purpose of legislation”. If the legislature reasonably classifies persons for legislative purposes so as to bring them under a well-defined class, it is not open to challenge on the ground of denial of equal treatment that the law does not apply to other persons. The test of permissible classification is twofold : (i) that the classification must be founded on intelligible differentia which distinguishes persons grouped together from others who are left out of the group, and (ii) that differentia must have a rational connection to the object sought to be achieved. Article 14 does not insist upon classification, which is scientifically perfect or logically complete. A classification would be justified unless it is patently arbitrary. If there is equality and uniformity in each group, the law will not become discriminatory, though due to some fortuitous circumstance arising out of peculiar situation some included in a class get an advantage over others so long as they are not singled out for special treatment.”

**155. *Federation of Hotel & Restaurant Assn. of India v. Union of India* [(1989) 3 SCC 634]:**

“62. A taxing statute is not, per se, a restriction of the freedom under Article 19(1)(g). The policy of a tax, in its effectuation, might, of course, bring in some hardship in some individual cases. But that is inevitable, so long as law represents a process of abstraction from the generality of cases and reflects the highest common factor. Every cause, it is said, has its martyrs. Then again, the mere excessiveness of a tax or even the circumstance that its imposition might tend towards the diminution of the earnings or profits of the persons of incidence does not, per se, and without more, constitute violation of the rights under Article 19(1)(g). Fazal Ali, J., though in a different context, in *Sonia Bhatia v. State of U.P.* [(1981) 2 SCC 585 : (1981) 3 SCR 239, 258] observed : (SCC p. 600, para 29)

“The Act seems to implement one of the most important constitutional directives contained in Part IV of the Constitution of India. If in this process a few individuals suffer severe hardship that cannot be helped, for individual interests must yield to the larger interests of the community or the country as indeed every noble cause claims its martyr.”

**156. *Sakhawant Ali v. State of Orissa* [(1955) 1 SCR 1004 : AIR 1955 SC****166]:**

*“9. The contention that the disqualification prescribed in Section 16(1)(ix) violates the fundamental rights of the appellant under Article 14 and Article 19(1)(g) is equally untenable. Article 14 forbids class legislation but does not forbid reasonable classification for the purposes of legislation. That classification however cannot be arbitrary but must rest upon some real and substantial distinction bearing a reasonable and just relation to the things in respect of which the classification is made. In other words, the classification must have a reasonable relation to the object or the purpose sought to be achieved by the impugned legislation. The classification here is of the legal practitioners who are employed on payment on behalf of the municipality or act against the municipality and those legal practitioners are disqualified from standing as candidates for election. The object or purpose to be achieved is the purity of public life, which object would certainly be thwarted if there arose a situation where there was a conflict between interest and duty. The possibility of such a conflict can be easily visualised, because if a municipal councillor is employed as a paid legal practitioner on behalf of the municipality there is a likelihood of his misusing his position for the purposes of obtaining municipal briefs for himself and persuading the municipality to sanction unreasonable fees. Similarly if he was acting as a legal practitioner against the municipality he might in the interests of his client misuse any knowledge which he might have obtained as a councillor through his access to the municipal records or he might sacrifice the interests of the municipality for those of his clients. No doubt having regard to the best traditions of the profession very few legal practitioners would stoop to such tactics, but the legislature in its wisdom thought it desirable to eliminate any possibility of a conflict between interest and duty and aimed at achieving this object or purpose by prescribing the requisite disqualification. The classification thus would certainly have a reasonable relation to the object or purpose sought to be achieved.*

*10. It was however urged that besides this category there are also other categories where there would be a possibility of conflict between interest and duty and that in so far as they were not covered by the disqualifications prescribed by Section 16(1) of the Act the provision disqualifying the category to which the appellant belonged was discriminatory. It was particularly pointed out that a client who had a litigation against the municipality was not prevented from standing as a candidate for election whereas the legal practitioner who held a brief against the municipality was disqualified, though the ban against both these categories could be justified on ground of avoidance of conflict between interest and duty. The simple answer to this contention is that legislation enacted for the achievement of a*

*particular object or purpose need not be all embracing. It is for the Legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by Article 14 of the Constitution.*

*11. The right of the appellant to practice the profession of law guaranteed by Article 19(1)(g) cannot be said to have been violated, because in laying down the disqualification in Section 16(1)(ix) of the Act the Legislature does not prevent him from practising his profession of law but it only lays down that if he wants to stand as a candidate for election he shall not either be employed as a paid legal practitioner on behalf of the municipality or act as a legal practitioner against the municipality. There is no fundamental right in any person to stand as a candidate for election to the municipality. The only fundamental right which is guaranteed is that of practising any profession or carrying on any occupation, trade or business. There is no violation of the latter right in prescribing the disqualification of the type enacted in Section 16(1)(ix) of the Act. If he wants to stand as a candidate for election, it is but proper that he should divest himself of his paid brief on behalf of the municipality or the brief against the municipality in which event there will be certainly no bar to his candidature. Even if it be taken as a restriction on his right to practice his profession of law, such restriction would be a reasonable one and well within the ambit of Article 19 clause 5. Such restriction would be a reasonable one to impose in the interests of the general public for the preservation of purity in public life. We therefore see no substance in this contention of the appellant also."*

In this case, the Apex Court was considering a disqualification class on Advocates to contest in municipality election. It was held that classification is reasonable with public purpose, imposes no restriction to practice the profession and the condition imposed to contest elections was upheld as not violative of article 19 (1) (g). The court also laid down that just because similarly placed persons were not banned, provision cannot be held arbitrary, when the restriction is reasonable, it cannot be termed as violative of any fundamental right.



**157.** We have considered the rival contentions and the ratio laid down in the above judgments. It is evident that any law, which is not only discriminatory but also manifestly arbitrary, would offend Article 14. The concept of equality, as envisaged under Article 14 encompasses within it an interdiction against arbitrariness and discrimination in its second part. Insofar as the first part, it brings within its fold that the likes must be treated equally. In other words, the law must be equal for persons who fall into a specific category of equals.

**158.** Though the word 'discrimination' is not used in the Article, the principle object behind both parts of the Article is to avoid discrimination not only at the point of framing a law, but also at the point of implementation. The embargo, therefore, is applicable to substantive as well as procedural laws. To withstand successfully to the challenge of discrimination, the law must be based on reasonable classification. There must be an object to such classification which must be legal and the very object itself must not be to discriminate.

**159.** The classification must be such that there must be a logical difference between the persons grouped together and the persons left out. Such classification must not only have a nexus to the object, but must be determined towards achieving that object. If the classification is reasonable, based on intelligible differentia, it is neither discriminatory nor arbitrary. Anything that

is discriminatory is obviously arbitrary, but an arbitrary action need not be discriminative. Similarly, when the classification is found to be reasonable, just because it puts another class at a different pedestal or disadvantageous position would not be a ground to treat it either as arbitrary or warranting interference. Likewise, in evaluating a taxing statute juxtaposing it to the constitutional safeguards and guarantees, the legislature will have more latitude and the presumption of constitutionality of the statute is the norm. All attempts must be made to validate a statute rather than to strike it down. The concept of disproportionality or equity is unknown to taxing law, as a tax is levied in exercise of its sovereign power. The State is empowered to choose its object, subject, persons, goods and the rate of tax. Even if the object is not manifestly declared, it will not affect the authority of the State to legislate as because the primary object of any economic enactment is to raise the revenue, of-course, without or to bridge the inequalities.

**160.** Now, moving to the facts of these cases, it is the contention of the assesseees that all works contractors form a single class and that the division into sub-classes is impermissible. We do not agree with the said contention. According to us, “works contractor” does not constitute a homogeneous class, but comprises different species. Works contractor can only be considered as a genus with different facets or species. The contention is against the provisions

of the TNVAT Act, which itself divides the works contractors into different categories under Section 5, Section 6 of the TNVAT Act and the TNVAT Rules. As per Section 5, every dealer whose business involves transfer of property in goods, must pay the tax on his taxable turnover for the year which may be calculated as per the manner prescribed. Rule 8 (5) of the TNVAT Rules enumerates the deductions that are permitted to be deducted from the total turnover to arrive at the taxable turnover. As per rule 8 (5) (d) if the labour charges and other charges not involving transfer of property in goods are ascertainable, then the same are to be deducted from the total turnover. If not, the table prescribed under Rule 8 (5) (d), which deals with different types of works contracts, are to be followed for fixing the taxable turnover. As per the table, the type of works contract is classified into six namely Electrical Contracts, All structural contract, Sanitary contracts, watch and/or clock repair contracts, Dyeing contracts and all other contracts. The sixth classification is the residuary entry. The percentage of deduction towards labour and other charges is not uniform for all the contracts. That apart, three classifications are provided under Section 6 namely Civil Works Contract, Civil maintenance Contract and All other works contract which is a residuary entry. The rate at which the compounded tax is fixed at 2% for Civil Works Contract and Civil maintenance Contract. Whereas for the residuary entry, the tax prescribe

initially was 4% and later increased to 5%. Therefore, it is evident that right from inception or for that matter even in the erstwhile TNGST Act, there was sub-classification of works contractors based on their nature of work. Similarly, the dealers who effect inter-state purchase of same goods are treated differently under Sections 8(1) and 8(2) of the CST Act. Such classifications are not unknown to economic legislations. In this case, the classification has been made based on purchase of goods. As already discussed and held, while deciding the object of the amendment in preceding paragraphs of this order, when goods are purchased locally, the rate of tax as per the schedule is remitted to the State. But when goods brought in from an other-state dealer or by import, no tax on such transaction is remitted to the State. Therefore, there is a recurring fiscal loss to the State, which has been prevented by bringing in the amendment. Though it is permissible for dealers to plan their tax, it is equally within the right of the State to curb the evasion of tax by taking appropriate steps. They are the policy decisions of the government. Such steps cannot be called as arbitrary as it is in larger public interest. Hence, the dealers, who purchase goods locally and who bring in goods by interstate purchase from other state or by import, are not equals, despite being works contractors. They are different species of the same genus. The classification is based on intelligible differentia and the same is not unreasonable.

**161. On nexus between the classification and the object.**

The object behind the enactment is to curb the tax evasion by trade diversion. Another object that has been propounded by the State is to create a level playing field. The legislature is entitled to experiment in fiscal matters. The role of the legislature is to remove the inequalities. We have already seen that not only the State is deprived of its taxes, but also the works contractors who purchase goods from local dealers are put in a disadvantageous position when compared to the dealers who bring in goods from other states. These objects cannot be termed as arbitrary, illegal or unreasonable. There is a rational nexus between the action taken and the object sought to be achieved in this case.

**162.** The composition scheme is a deviation from the regular taxing method. It is not a charging section. It provides an option for the dealers to voluntarily adopt to the composition scheme. As held by the Apex Court in ***Builders' Association case*** as confirmed in ***Mycon Construction case***, a dealer is at free to opt in or opt out of the scheme and submit assessment under Section 5. There is no compulsion on the dealers that they must file their returns only under section 6. The condition therefore is not arbitrary and not violative of Article 19 (1) (g). Such condition has also been upheld by the Apex Court in ***Indian Dairy Machinery Co Ltd (supra)***, wherein the challenge to the assessment order by which the return filed under similar scheme for having

brought in the goods was rejected by holding that every dealer who wants to come under the compounding scheme, cannot do so if he effects interstate purchase.

**163.** The Apex Court, recently decided the challenge to the vires of Rule 89(5) of the CGST Rules viz. a. viz Section 54 (3) of the CGST Act and Section 54(3) as ultra vires Article 14, *qua* rejection of refund of input tax credit on services in view of the amendment in 2018 with retrospective effect from 01-07-2017 on the ground of being arbitrary, discriminative and a class legislation. The contention that all the dealers who avail Input Tax Credit belong to a homogenous or single class and hence, sub-classification as Input tax credit on goods and Input tax credit on services was not possible, was rejected by the Apex Court and held as under.

**164. *Union of India v. VKC Footsteps (India) (P) Ltd. [(2022) 2 SCC 603 : 2021 SCC OnLine SC 706 at page 667]:***

*“88. The jurisprudential basis furnishes a depiction of an ideal state of existence of GST legislation within the purview of a modern economy, as a destination-based tax. But there can be no gainsaying the fact that fiscal legislation around the world, India being no exception, makes complex balances founded upon socio-economic complexities and diversities which permeate each society. The form which a GST legislation in a unitary State may take will vary considerably from its avatar in a nation such as India where a dual system of GST law operates within the context of a federal structure. The ideal of a GST framework which Article 279-A(6) embodies has to be progressively realised. The doctrines which have been emphasised by the counsel during the course of the arguments furnish the underlying rationale for the enactment of the law but cannot furnish either a valid basis for judicial review of the legislation or make out a ground for invalidating a*

*validly enacted law unless it infringes constitutional parameters. While adopting the constitutional framework of a GST regime, Parliament in the exercise of its constituent power has had to make and draw balances to accommodate the interests of the States. Taxes on alcohol for human consumption and stamp duties provide a significant part of the revenues of the States. Complex balances have had to be drawn so as to accommodate the concerns of the States before bringing them within the umbrella of GST. These aspects must be borne in mind while assessing the jurisprudential vision and the economic rationale for GST legislation. But abstract doctrine cannot be a ground for the Court to undertake the task of redrawing the text or context of a statutory provision. This is clearly an area of law where judicial interpretation cannot be ahead of policy-making. Fiscal policy ought not be dictated through the judgments of the High Courts or this Court. For it is not the function of the Court in the fiscal arena to compel Parliament to go further and to do more by, for instance, expanding the coverage of the legislation (to liquor, stamp duty and petroleum) or to bring in uniformity of rates. This would constitute an impermissible judicial encroachment on legislative power. Likewise, when the first proviso to Section 54(3) has provided for a restriction on the entitlement to refund it would be impermissible for the Court to redraw the boundaries or to expand the provision for refund beyond what the legislature has provided. If the legislature has intended that the equivalence between goods and services should be progressively realised and that for the purpose of determining whether refund should be provided, a restriction of the kind which has been imposed in clause (ii) of the proviso should be enacted, it lies within the realm of policy.*

**89.** *The submission which has been urged on behalf of the assesseees is that registered persons constitute a class within the meaning of sub-section (3) of Section 54 and each of them is entitled to claim a refund of unutilised ITC whether its origin lies in input goods or input services. In other words, it has been urged that Section 54(3) constitutes one homogeneous class of registered persons who have unutilised ITC. The fallacy of the argument is in the hypothesis that unutilised ITC cannot be unbundled for the purpose of fiscal legislation. Accumulated ITC may result due to a variety of circumstances, some of which may while others may not lie within the volition of a registered person. We have referred to some of these factors earlier, including:*

- (i) High discount pricing;*
- (ii) Predatory pricing;*
- (iii) Shutdown of business or industry;*
- (iv) Business loss;*
- (v) Economic compulsion to sell at below value prices; and*
- (vi) Stoppage of work.*

*These examples are indicators that the class, comprising of registered persons with unutilised ITC, covers a bundle of species as opposed to one*

*unique or homogeneous specie. Once we recognize this, it is necessary to allow the legislature the latitude to distinguish between credits arising out of the input goods stream and input service stream.*

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

#### **F.5. Constitutional validity : The ultra vires doctrine**

**100.** *The submission which has been urged on behalf of the assessee is that if Section 54(3) is construed to confine a refund of unutilised ITC only to the extent that the accumulation arises on account of the rate of tax on inputs (meaning input goods) exceeding the rate of tax on outward supplies, the principles underlying Article 14 of the Constitution would be attracted and the statutory provision would suffer from the vice of arbitrariness. The submission is that this has become an incident of a class legislation : the class consists of registered persons having unutilised ITC. The class comprises of the following species (i) domestic suppliers; and (ii) exporters. The sub-species are (i) input goods; and (ii) input services. Opposing this submission, the learned ASG's submission is that this is a valid classification, denying one of the species, namely, input services the benefit of refund.*

**101.** *The principle which the counsel for the assessee espouse is sought to be buttressed by relying upon the decision in State of J&K v. Triloki Nath Khosa [State of J&K v. Triloki Nath Khosa, (1974) 1 SCC 19 : 1974 SCC (L&S) 49] and in Special Courts Bill, 1978, In re [Special Courts Bill, 1978, In re, (1979) 1 SCC 380] . The principles which are gleaned by the counsel from the above decisions, in their application to the present case, are that:*

**101.1.** *Once the ITC comes within the fold of the electronic credit ledger and is comprised into a homogeneous credit, a "micro-distinction" cannot be carried out.*

**101.2.** *A similarity of features between species comprised in the class is*



*sufficient : in the case of goods as well as services, the taxable event is the value addition tax and the administrative machinery treats goods as well as services similarly. The mere fact of goods being tangible is a matter of no consequence.*

*102. Equality, it has been stressed in the above submission, cannot be cabined, cribbed and confined. Differentiating between goods and services, it has been urged, is not permissible and does not have a reasonable nexus to the object sought to be achieved. There is an evident difference in the rates at which goods and services are taxed but, according to the submission, this is not a provision for revenue harvesting. Finally, on this limb of submission, it has been urged that the wide latitude which is available with the legislature in the case of fiscal legislation is only where a revenue harvesting measure is involved. The twin test of reasonableness and the nexus with the object sought to be achieved must be demonstrated. The nexus (a) must be based on the object of the legislation alone; and (b) indicate a discernible principle which emanates from the classification. With the clarification on inputs by the Ministry of Finance, it is urged that no discernible principle emerges.*

*103. The counsel for the assesseees also argued that before the High Courts of Gujarat and Madras, the Union Government did not urge that outflow of finance was the reason to exclude refunds on input services and it is not open to the Court to conjure up a reason. In support of the above submissions on constitutional validity, which have been urged by Mr Sujit Ghosh, learned counsel, Mr Arvind P. Datar, learned Senior Counsel has urged that it would be paradoxical to posit on the one hand that goods and services are in pari materia for the purpose of levy, collection and penalty but, that a distinction will be made between them for the purpose of refund.*

*104. As a matter of first principle, it is not possible to accept the premise that the guiding principles which impart a measure of flexibility to the legislature in designing appropriate classifications for the purpose of a fiscal regime should be confined only to the revenue harvesting measures of a statute. The precedents of this Court provide abundant justification for the fundamental principle that a discriminatory provision under tax legislation is not per se invalid. A cause of invalidity arises where equals are treated as unequally and unequals are treated as equals. Both under the Constitution and the CGST Act, goods and services and input goods and input services are not treated as one and the same and they are distinct species.*

*105. Parliament engrafted a provision for refund Section 54(3). In enacting such a provision, Parliament is entitled to make policy choices and adopt appropriate classifications, given the latitude which our constitutional jurisprudence allows it in matters involving tax legislation and to provide for exemptions, concessions and benefits on terms, as it considers appropriate. The consistent line of precedent of this Court emphasises certain basic precepts which govern both judicial review and judicial*

*interpretation of tax legislation. These precepts are:*

**105.1.** *Selecting the objects to be taxed, determining the quantum of tax, legislating for the conditions for the levy and the socio-economic goals which a tax must achieve are matters of legislative policy. M. Hidayatullah, C.J., speaking for the Constitution Bench in Commr. of Urban Land Tax v. Buckingham & Carnatic Co. Ltd. [Commr. of Urban Land Tax v. Buckingham & Carnatic Co. Ltd., (1969) 2 SCC 55] held : (SCC p. 67, para 10)*

*“10. ... The objects to be taxed, the quantum of tax to be levied, the conditions subject to which it is levied and the social and economic policies which a tax is designed to subserve are all matters of political character and these matters have been entrusted to the legislature and not to the courts. In applying the test of reasonableness it is also essential to notice that the power of taxation is generally regarded as an essential attribute of sovereignty and constitutional provisions relating to the power of taxation are regarded not as grant of power but as limitation upon the power which would otherwise be practically without limit.”*

**105.2.** *The same principle has been reiterated in Federation of Hotel & Restaurant Assn. of India v. Union of India [Federation of Hotel & Restaurant Assn. of India v. Union of India, (1989) 3 SCC 634] , where M.N. Venkatachaliah, J. (as the learned Chief Justice then was), speaking for the Constitution Bench held : (SCC pp. 658-59, paras 46-47)*

*“46. It is now well settled that though taxing laws are not outside Article 14, however, having regard to the wide variety of diverse economic criteria that go into the formulation of a fiscal policy legislature enjoys a wide latitude in the matter of selection of persons, subject-matter, events, etc. for taxation. The tests of the vice of discrimination in a taxing law are, accordingly, less rigorous. In examining the allegations of a hostile, discriminatory treatment what is looked into is not its phraseology, but the real effect of its provisions. A legislature does not, as an old saying goes, have to tax everything in order to be able to tax something. If there is equality and uniformity within each group, the law would not be discriminatory. Decisions of this Court on the matter have permitted the legislatures to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes.*

*47. But, with all this latitude certain irreducible desiderata of equality shall govern classifications for differential treatment in taxation laws as well. The classification must be rational and based on some qualities and characteristics which are to be found in all the persons grouped together and absent in the others left out of the class. But this alone is not sufficient. Differentia must have a rational nexus with the object sought to be achieved by the law. The State, in the exercise of its governmental power, has, of necessity, to make laws operating differently in relation to different groups or classes of persons to attain certain ends and must, therefore, possess the*

*power to distinguish and classify persons or things. It is also recognised that no precise or set formulae or doctrinaire tests or precise scientific principles of exclusion or inclusion are to be applied. The test could only be one of palpable arbitrariness applied in the context of the felt needs of the times and societal exigencies informed by experience.”*

**105.3.** *In matters of classification, involving fiscal legislation, the legislature is permitted a larger discretion so long as there is no transgression of the fundamental principle underlying the doctrine of classification. In Hiralal Rattanlal [Hiralal Rattanlal v. State of U.P., (1973) 1 SCC 216 : 1973 SCC (Tax) 307] , K.S. Hegde, J., speaking for a four-Judge Bench observed : (SCC p. 223, para 20)*

*“20. It must be noticed that generally speaking the primary purpose of the levy of all taxes is to raise funds for public good. Which person should be taxed, what transaction should be taxed or what goods should be taxed, depends upon social, economic and administrative considerations. In a democratic set up it is for the legislature to decide what economic or social policy it should pursue or what administrative considerations it should bear in mind. The classification between the processed or split pulses and unprocessed or unsplit pulses is a reasonable classification. It is based on the use to which those goods can be put. Hence, in our opinion, the impugned classification is not violative of Article 14.”*

**105.4.** *More recently in Union of India v. Nitdip Textile Processors (P) Ltd. [Union of India v. Nitdip Textile Processors (P) Ltd., (2012) 1 SCC 226] , a two-Judge Bench observed : (SCC p. 255, para 67)*

*“67. It has been laid down in a large number of decisions of this Court that a taxation statute, for the reasons of functional expediency and even otherwise, can pick and choose to tax some. A power to classify being extremely broad and based on diverse considerations of executive pragmatism, the judiciary cannot rush in where even the legislature warily treads. All these operational restraints on judicial power must weigh more emphatically where the subject is taxation. Discrimination resulting from fortuitous circumstances arising out of particular situations, in which some of the taxpayers find themselves, is not hit by Article 14 if the legislation, as such, is of general application and does not single them out for harsh treatment. Advantages or disadvantages to individual assesseees are accidental and inevitable and are inherent in every taxing statute as it has to draw a line somewhere and some cases necessarily fall on the other side of the line.”*

**106.** *The principles governing a benefit, by way of a refund of tax paid, may well be construed on an analogous frame with an exemption from the payment of tax or a reduction in liability (CCT v. Dharmendra Trading Co. [CCT v. Dharmendra Trading Co., (1988) 3 SCC 570 : 1988 SCC (Tax) 432] ).*

**107.** *In Elel Hotels & Investments Ltd. v. Union of India [Elel Hotels &*

*Investments Ltd. v. Union of India*, (1989) 3 SCC 698] , M.N. Venkatachaliah, J. (as the learned Chief Justice then was) held that : (SCC p. 708, para 20)

“20. ... It is now well settled that a very wide latitude is available to the legislature in the matter of classification of objects, persons and things for purposes of taxation. It must need to be so, having regard to the complexities involved in the formulation of a taxation policy. Taxation is not now a mere source of raising money to defray expenses of Government. It is a recognised fiscal tool to achieve fiscal and social objectives. The differentia of classification presupposes and proceeds on the premise that it distinguishes and keeps apart as a distinct class hotels with higher economic status reflected in one of the indicia of such economic superiority. The presumption of constitutionality has not been dislodged by the petitioners by demonstrating how even hotels, not brought into the class, have also equal or higher chargeable receipts and how the assumption of economic superiority of hotels to which the Act is applied is erroneous or irrelevant.”

**108.** In *Spences Hotel (P) Ltd. v. State of W.B.* [*Spences Hotel (P) Ltd. v. State of W.B.*, (1991) 2 SCC 154] , a two-Judge Bench, speaking through K.N. Saikia, J. revisited the precedents of this Court governing the principles of classification in tax legislation and held : (SCC pp. 168-69, para 24)

“24. ... The history of taxation is one of evolution as is the case in all human affairs. Its progress is one of constant growth and development in keeping with the advancing economic and social conditions; and the fiscal intelligence of the State has been advancing concomitantly, subjecting by new means and methods hitherto untaxed property, income, service and provisions to taxation. With the change of scientific, commercial and economic conditions and ways of life new species of property, both tangible and intangible gaining enormous values have come into existence and new means of reaching and subjecting the same to contribute towards public finance are being developed, perfected and put into practical operation by the legislatures and courts of this country, of course within constitutional limitations.”

**109.** The Court held that the principle of equality does not preclude the classification of property, trade, profession and events for taxation — subjecting one kind to one rate of taxation and another to a different rate. The State may exempt certain classes of property from any taxation at all and impose different specific taxes upon different species which it seeks to regulate. The Court held : (*Spences Hotel case* [*Spences Hotel (P) Ltd. v. State of W.B.*, (1991) 2 SCC 154] , SCC p. 171, para 27)

“27. ‘Perfect equality in taxation has been said time and again, to be impossible and unattainable. Approximation to it is all that can be had. Under any system of taxation, however, wisely and carefully framed, a disproportionate share of the public burdens would be thrown on certain

*kinds of property, because they are visible and tangible, while others are of a nature to elude vigilance. It is only where statutes are passed which impose taxes on false and unjust principle, or operate to produce gross inequality, so that they cannot be deemed in any just sense proportional in their effect on those who are to bear the public charges that courts can interpose and arrest the course of legislation by declaring such enactments void.' 'Perfectly equal taxation', it has been said, 'will remain an unattainable good as long as laws and government and man are imperfect.' 'Perfect uniformity and perfect equality of taxation', in all the aspects in which the human mind can view it, is a baseless dream.'*

**110.** *Parliament while enacting the provisions of Section 54(3), legislated within the fold of the GST regime to prescribe a refund. While doing so, it has confined the grant of refund in terms of the first proviso to Section 54(3) to the two categories which are governed by clauses (i) and (ii). A claim to refund is governed by statute. There is no constitutional entitlement to seek a refund. Parliament has in clause (i) of the first proviso allowed a refund of the unutilised ITC in the case of zero-rated supplies made without payment of tax. Under clause (ii) of the first proviso, Parliament has envisaged a refund of unutilised ITC, where the credit has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies. When there is neither a constitutional guarantee nor a statutory entitlement to refund, the submission that goods and services must necessarily be treated on a par on a matter of a refund of unutilised ITC cannot be accepted. Such an interpretation, if carried to its logical conclusion would involve unforeseen consequences, circumscribing the legislative discretion of Parliament to fashion the rate of tax, concessions and exemptions. If the judiciary were to do so, it would run the risk of encroaching upon legislative choices, and on policy decisions which are the prerogative of the executive. Many of the considerations which underlie these choices are based on complex balances drawn between political, economic and social needs and aspirations and are a result of careful analysis of the data and information regarding the levy of taxes and their collection. That is precisely the reason why courts are averse to entering the area of policy matters on fiscal issues. We are therefore unable to accept the challenge to the constitutional validity of Section 54(3).*

.....

**135.** *While we are alive to the anomalies of the formula, an anomaly per se cannot result in the invalidation of a fiscal rule which has been framed in exercise of the power of delegated legislation. In R.K. Garg [R.K. Garg v. Union of India, (1981) 4 SCC 675 : 1982 SCC (Tax) 30] , P.N. Bhagwati, J. (as the learned Chief Justice then was) speaking for the Constitution Bench underscored the importance of the rationale for viewing laws relating to economic activities with greater latitude than laws touching civil rights. The Court held : (SCC pp. 690-91, para 8)*

*“8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in *Morey v. Doud* [*Morey v. Doud*, 1957 SCC OnLine US SC 105 : 1 L Ed 2d 1485 : 354 US 457 (1957)] where Frankfurter, J., said in his inimitable style:*

*In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events — self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.*

*The Court must always remember that ‘legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry’; ‘that exact wisdom and nice adaption of remedy are not always possible’ and that ‘judgment is largely a prophecy based on meagre and uninterpreted experience’. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the United States Supreme Court in *Secy. of Agriculture v. Central Roig Refining Co.* [*Secy. of Agriculture v. Central Roig Refining Co.*, 1950 SCC OnLine US SC 14 : 94 L Ed 381 : 338 US 604 (1950)] be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted*

*human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.”*

*(emphasis supplied)*

**141.** *The Court after reviewing the judicial precedents on this point observed : (Arun Kumar case [Arun Kumar v. Union of India, (2007) 1 SCC 732] , SCC pp. 755-56, paras 61 & 65)*

*“61. But it is equally well settled that if the provision of law is explicitly clear, language unambiguous and interpretation leaves no room for more than one construction, it has to be read as it is. In that case, the provision of law has to be tested on the touchstone of the relevant provisions of law or of the Constitution and it is not open to a court to invoke the doctrine of “reading down” with a view to save the statute from declaring it ultra vires by carrying it to the point of “perverting the purposes of the statute.”*

*\*\*\**

*65. As we have already indicated earlier, Rule 3 prior to its amendment in 2001 was totally different. It dealt with the method of calculation of concession keeping in view the concept of “fair rental value”. In the light of the principle and phraseology in Rule 3, the rule-making authority provided an opportunity to the assessee to satisfy the assessing officer that the rent sought to be recovered from the employee could not be said to be “concession” as it was “fair rent”, “reasonable rent”, “market rent” or “standard rent”. When the rule is amended and the concept of “fair rental value” has been done away with and the only method which has been adopted is to calculate the rent on the basis of population of the city in question, it cannot be successfully contended that the intention of the rule-making authority was to afford an opportunity to the assessee to convince the assessing officer that the rent recovered by the employer from his employee was not in the nature of concession. Nor a court of law would, by interpretative process, grant such opportunity to the assessee so as to enable him to convince the assessing officer that the rent fixed was not covered by Section 17(2)(ii) of the Act and therefore was not a “perquisite”. We are, therefore, unable to accept the argument of Mr Salve and allow import of the principles of natural justice in Rule 3.”*

*(emphasis supplied)*

**142.** *The above judicial precedents indicate that in the field of taxation, this Court has only intervened to read down or interpret a formula if the formula leads to absurd results or is unworkable. In the present case however, the formula is not ambiguous in nature or unworkable, nor is it opposed to the intent of the legislature in granting limited refund on*

*accumulation of unutilised ITC. It is merely the case that the practical effect of the formula might result in certain inequities. The reading down of the formula as proposed by Mr Natarajan and Mr Sridharan by prescribing an order of utilisation would take this Court down the path of recrafting the formula and walk into the shoes of the executive or the legislature, which is impermissible. Accordingly, we shall refrain from replacing the wisdom of the legislature or its delegate with our own in such a case. However, given the anomalies pointed out by the assesseees, we strongly urge the GST Council to reconsider the formula and take a policy decision regarding the same.”*

In the above case, the Apex Court confirmed the leverage available to the legislature while dealing with fiscal statutes to enact law or to bring in amendments to protect its interest and also refused to read down the provision. The Apex Court held that the dealers though engage in supply of goods and/or services may avail Input Tax Credit, cannot be classified as belonging to a homogenous class and that the State was entitled to treat the dealers who avail ITC on goods as distinct from dealers who avail ITC on services as they are different species. The ratio laid down in the above judgment by the Apex Court is squarely applicable to the present case. Even in the case before us, a similar contention that the works contractors are by themselves a class and hence sub-classification is impermissible, was raised. However, the same will not hold water in view of the reasons given by us and also in view of the ratio laid down in ***Union of India v. VKC Foodsteps (India) Pvt Ltd (supra)***.

**165.** The levy of tax cannot be termed as interference with the right to carry on any occupation, trade, or profession. Like Section 8 (1) of the CST Act,



wherein if a dealer wants to avail a concession in the rate of tax, he must deal only with registered dealers and produce “C” Forms, the condition imposed here is to be followed to avail the scheme. Similarly, as evident from the settled position of law, if the classification is found to be reasonable and based on intelligible differentia with nexus to the object, as in the instant case, it cannot be termed as arbitrary. The ratio laid down in service matters by invoking the doctrine of proportionality is of no avail to fiscal matters, in which the legislature enjoins a higher leverage and latitude. The condition imposed to avail the scheme cannot be compared with punishments under disciplinary proceedings. When the State is competent to introduce a composition scheme, it is within its right to impose any reasonable restriction in its interest. India is a democratic country with a federal structure. Each State has its own compulsions, reasons, and policy in fiscal matters. The sovereign authority of the State in tax matters is autonomous and cannot be correlated or compared with another State. Each State is empowered to fix its own rate of tax or to take policy decisions to grant or deny exemptions and/or concessions. Therefore, the challenge to the *vires* of the provision under Articles 14 and 19 (1) (g) fails. The challenge to the retrospective implementation has to be dealt with by us separately in the later part of the judgment.

## **XV. PART XIII OF THE CONSTITUTION**

**166.** The next line of attack on the impugned provision was with reference to the guarantees and safeguards provided in Part XIII of the Constitution. It was contended on behalf of the petitioners that trade, commerce or intercourse throughout the territory of India shall be free and the imposition of such condition amounts to breach of such guarantee and imposes an unreasonable restriction violating Articles 303 and 304 (a) of the Constitution. It was further submitted that since the amendment is discriminatory in nature, not only does it offend Article 301, but also the failure to get the previous sanction from the President as contemplated under proviso to Article 304 (b) vitiates the amendment. On the other hand, it has been contended on the side of the State that the amendment does not offend any part of Part XIII of the Constitution as by the amendment, no tax either discriminatory or non-discriminatory on goods is levied and there is no restriction impeding the movement of goods into the State. Both sides have relied upon certain paragraphs of the judgment in *Jindal Stainless Limited and another v. State of Haryana and others [(2017) 12 Supreme Court Cases 1]* and other judgments, to drive home their point.

**167.** Before proceeding to consider the judgments relied on either side, it is necessary to discuss the guarantees, safeguards, limitations and permissions

granted under this Part of the Constitution, which read thus.

**168.** As per Article 301, the trade, commerce and intercourse shall be free throughout the country, implying that any Act, law or provision which impede the sale or purchase of goods in the course of inter-state trade or commerce or impede the movement of goods from one state to another or in any part of the country is prohibited. However, the opening part of the Article gives an exception that the guarantee is not absolute, but is subject to other Articles in the part. Article 302 empowers the parliament to impose any restriction on the freedom guaranteed under Article 301 in public interest. However, Article 302 is amenable to Article 303 of the Constitution, whereby the Article prohibits the parliament or the legislature from imposing two types of restrictions namely (i) from making any law which gives a preference to one state over another and (ii) from making any discrimination between one state and another, *qua* any of the entries relating to trade and commerce in any of the list in seventh schedule. An exception to the prohibition in Article 303(1) is found in Article 303(2) by which the parliament is empowered to bring such laws to deal with a particular situation arising from scarcity of goods in any part of the country. Again by Article 304 (a), the legislature notwithstanding previous Articles, has been permitted to impose any tax on goods brought into the state from other states, however such tax shall not discriminate between the goods

brought in and the rate of tax on the local goods. By Article 304 (b), the legislature of the State is empowered to bring in reasonable restrictions in the freedom of movement of goods in public interest, however, only with the previous sanction of the President. The other Articles in Part XIII are irrelevant for the purpose of this case.

**169.** A conjoint reading of Articles 301 to 304 of the Constitution would reveal that the freedom guaranteed under Article 301 cannot be understood to mean freedom from levy of tax, no preferential or discriminatory treatment in favour of one State over another, that any tax can be levied on goods brought into State which shall be similar to the tax on the local goods and any restrictions on movement can also be imposed however after the previous sanction from the President is received. If the rate of tax levied is same on the goods purchased locally and on the goods brought in from other State, then there is no discrimination and the previous sanction of the President is not necessary. A discrimination occurs, when the goods manufactured or sold within the State are not taxed, but the goods imported into the State are taxed. Similarly, discrimination occurs, when the rate of tax on goods imported from other State is higher than the goods manufactured or sold within the state. Similarly, when the goods are not available within the State, there cannot be any discrimination. When there is no discrimination in the rate of taxes on

goods, such law would not offend Article 301 or 304 (a). However, once it is found that there is a restriction in freedom of trade, commerce or intercourse, then the previous sanction of the President is essential. Therefore, it is always necessary to identify whether there is a restriction or impediment to the freedom of movement of goods or not, which has to be evaluated with regard to the facts of each case. So also, once it is found that the tax on goods is discriminatory, such law would fall foul of Articles 14, 301 and 304 (a) and even a President's previous sanction will not cure the defect. At this juncture it is appropriate to extract the relevant portion of the judgment in ***Jindal Stainless Limited (supra)***, which reads as under:

*"116. Reliance by the counsel for the dealers upon the judgment of Sinha, C.J., is also, in our opinion, of no avail to them. After holding taxes to be outside the purview of Part XIII of the Constitution, his Lordship made the following observations: (Atiabari case, AIR p.241, para 16) (AIR 1961 SC 232)*

*'16. ....If a law is passed by the legislature imposing a tax which in its true nature and effect is meant to impose an impediment to the free flow of trade, commerce and intercourse, for example, by imposing a high tariff wall, or by preventing imports into or exports out of a State, such a law is outside the significance of taxation, as such, but assumes the character of a trade barrier which it was the intention of the Constitutional-makers to abolish by Part XIII.'*

*A careful reading of the above would show that Sinha, C.J., had two situations in mind. One, where the State prevents imports into and exports out of the State and the other where the State imposes the high tariff wall with a view to imposing an impediment to the free flow of trade, commerce and intercourse. Insofar as the first category viz., laws that forbid imports into and exports out of a State are concerned, the same would work as a restriction in terms of restrictions within the contemplation of Part XIII and may be permissible in the manner and to the extent the said Part permits to do so, but in the second case viz., legislature imposing a high tariff wall so as to operate as an impediment to free flow of trade, commerce and intercourse, there are considerable difficulties. That is so because the*

*judgment does not elaborate as to what would constitute a high tariff wall for the tax to operate as a restriction/impediment."*

...

**136.** *Any challenge to a fiscal enactment on the touchstone of Article 304(a) must in our opinion be tested by the same standard as in Kathi case [Kathi Raning Rawat v. State of Saurashtra, AIR 1952 SC 123 : 1952 Cri LJ 805] . The Court ought to examine whether the differentiation made is intended or inspired by an element of unfavourable bias in favour of the goods produced or manufactured in the State as against those imported from outside. If the answer be in the affirmative, the differentiation would fall foul of Article 304(a) and may tantamount to discrimination. Conversely, if the Court were to find that there is no such element of intentional bias favouring the locally produced goods as against those from outside, it may have to go further and see whether the differentiation would be supported by valid reasons. In the words of Fazl Ali, J. discrimination without reason would be unconstitutional whereas discrimination with reason may be legally acceptable. In Video Electronic case [Video Electronics (P) Ltd. v. State of Punjab, (1990) 3 SCC 87 : 1990 SCC (Tax) 327] , this Court noted that the differentiation made was supported by reasons. This Court held that if economic unity of India is one of the constitutional aspirations and if attaining and maintaining such unity is a constitutional goal, such unity and objectives can be achieved only if all parts of the country develop equally. There is, if we may say so, with respect considerable merit in that line of reasoning. A State which is economically and industrially backward on account of several factors must have the opportunity and the freedom to pursue and achieve development in a measure equal to other and more fortunate regions of the country which have for historical reasons, developed faster and thereby acquired an edge over its less fortunate country cousins. Economic unity from the point of view of such underdeveloped or developing States will be an illusion if they do not have the opportunity or the legal entitlement to promote industries within their respective territories by granting incentives and exemptions necessary for such growth and development. The argument that power to grant exemption cannot be used by the State even in cases where such exemptions are manifestly intended to promote industrial growth or promoting industrial activity has not appealed to us. The power to grant exemption is a part of the sovereign power to levy taxes which cannot be taken away from the States that are otherwise competent to impose taxes and duties. The conceptual foundation on which such exemptions and incentives have been held permissible and upheld by this Court in Video case [Video Electronics (P) Ltd. v. State of Punjab, (1990) 3 SCC 87 : 1990 SCC (Tax) 327] is, in our opinion, juristically sound and legally unexceptionable. Video Electronics [Video Electronics (P) Ltd. v. State of Punjab, (1990) 3 SCC 87 : 1990 SCC (Tax) 327], therefore, correctly states the legal position as regards the approach to be adopted by the courts while examining the validity of levies. So long as the differentiation made by the States is not*

*intended to create an unfavourable bias and so long as the differentiation is intended to benefit a distinct class of industries and the life of the benefit is limited in terms of period, the benefit must be held to flow from a legitimate desire to promote industries within its territory. Grant of exemptions and incentives in such cases must be deemed to have been inspired by considerations which in the larger context help achieve the constitutional goal of economic unity.*

.....

**141.** *Reference may also be made to the Constitution Bench decision of this Court in Khandige Sham Bhat v. Agricultural ITO [Khandige Sham Bhat v. Agricultural ITO, AIR 1963 SC 591] , where this Court declared that a law may facially appear to be non-discriminatory and yet its impact on persons and property similarly situate may operate unequally in which event, the law would offend the equity clause. This implies that facial equality is not the only test for determining whether the law is constitutionally valid. What is equally important is the impact of the legislation. This Court held : (AIR pp. 594-95, para 7)*

*“7. ... Though a law ex facie appears to treat all that fall within a class alike, if in effect it operates unevenly on persons or property similarly situated, it may be said that the law offends the equality clause. It will then be the duty of the court to scrutinise the effect of the law carefully to ascertain its real impact on the persons or property similarly situated. Conversely, a law may treat persons who appear to be similarly situate differently; but on investigation they may be found not to be similarly situate. To state it differently, it is not the phraseology of a statute that governs the situation but the effect of the law that is decisive. If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstance arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment. Taxation law is not an exception to this doctrine vide Purshottam Govindji Halai v. B.M. Desai [Purshottam Govindji Halai v. B.M. Desai, AIR 1956 SC 20 : 1956 Cri LJ 129] , and Kunnathat Thatehunni Moopil Nair v. State of Kerala [Kunnathat Thatehunni Moopil Nair v. State of Kerala, AIR 1961 SC 552 : (1961) 3 SCR 77]. But in the application of the principles, the courts, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the legislature in the matter of classification, so long it adheres to the fundamental principles underlying the said doctrine. The power of the legislature to classify is of “wide range and flexibility” so that it can adjust its system of taxation in all proper and reasonable ways.”*

.....

**152.** *The non-discriminatory principle is embedded in two provisions of Part XIII : Article 303(1) — Parliament cannot impose restrictions under Article 302 and make a discriminatory law under any Entry relating to trade and*

commerce; the other is Article 304(a) which (unlike Section 297 of the erstwhile Government of India Act, 1935 which prohibited, through a negative mandate, discriminatory treatment) empowers State Legislatures to impose non-discriminatory taxes on goods. Thus, Article 304(a) differentiates between discriminatory and non-discriminatory taxes. The premise underlying this provision is the paramount aim of Part XIII to establish and foster economic unity of the country. Non-discrimination, or parity of treatment is therefore at the core of its purpose, which Shri T.T. Krishnamachari stressed, in his speech in the Constituent Assembly. He said that

“restrictions by the State have to be prevented so that the particular idiosyncrasy of some people in power or narrow provincial policies of certain States should not be allowed to come into play and affect the general economy of the country”. [Constituent Assembly Debates, Vol. 9, p. 1139 (1949).]

**163.** The entire discussion in my view leads to a fair conclusion that the views summarised by Sinha, C.J. in para 18 of his judgment in *Atiabari* case [*Atiabari Tea Co. Ltd. v. State of Assam*, AIR 1961 SC 232 : (1961) 1 SCR 809] depict the law emanating from Part XIII of the Constitution in the correct perspective. However same cannot be said of the observations in para 16 where his Lordship used the expression : (AIR p. 241)

“16. ... If a law is passed by the legislature ... imposing a high tariff wall ... assumes the character of a trade barrier which it was the intention of the Constitution-makers to abolish by Part XIII.”

These observations do create practical difficulties of insurmountable proportions. Hence these deserve to be treated as obiter or interpreted in the light of the entire passage, to mean such taxes which impose an impediment to the free flow of trade, commerce and intercourse by creating discriminatory tariff wall/trade barrier (emphasis supplied). For Part XIII there can be no real impediment through tax unless the so-called wall or barrier is one of hostile discrimination between local goods and outside goods.

**253.** I will now deal with the purport and scope of the word “discrimination” used in Article 304(a) by making some general observations. Article 304(a) should be interpreted keeping in mind the balanced development of the country, which is an important part of economic integration. To achieve the economic unity of the country, allowing trade and commerce without imposing taxes is not the only solution but it can also be achieved by bringing in overall prosperity. Part XIII of the Constitution permits some forms of differentiation, for example, to encourage a backward region or to create a level playing field for parts of the country that may not have reached the desired level of economic development. Therefore, Part XIII envisions a twofold object : (i) facilitation of a common market through ease of trade, commerce and intercourse by



erasing barriers; and (ii) regulations (or restrictions) which may be necessary for development of backward regions or in public interest.

**259.** A State law directed towards development of a particular region is permissible under Part XIII. In support, we may again refer to the discussion in the Constituent Assembly Debates dealing with the concepts of “public interest” and “interest of general public”. Clause 13 was introduced in the chapter dealing with Fundamental Rights making the right to free trade, commerce and intercourse as a fundamental right subject to reasonable restriction. Pandit Thakur Das Bhargava sought to move an amendment [ Constituent Assembly Debates, 1949, Vol. 9, p. 1145. “That is Amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new Article 274-D, for the words “in the public interest”, the words “interests of the general public and are not inconsistent with the provisions of Article 13’ be substituted.”] to substitute the words, “public interest” for “interests of the general public” he said : (CAD Vol. 9, pp. 1126-27)

“... I maintain that there is great difference between the two expressions. “Public interest” in regard to a State would only include the interests of the inhabitants of that State at the most though the word “public” includes portions of the public. Therefore, the interests of a part of the inhabitants of a State would also mean “public interest”, whereas if you use the words “interests of the general public” they would have reference to the interests, of the general public of India as a whole. It may be that on many occasions a conflict may arise between the public interest as understood in the amendment of Dr Ambedkar and “the interests of the general public” as used in Article 13. When that conflict arises it would be encouraging provincialism and the interests of a few as against the general interest if we accept the words “public interest” in the place of the words “in the interests of the general public.” [ Constituent Assembly Debates, 1949, Vol. 9, p. 1125.]

This amendment was negatived. The fact that this amendment did not go through would indicate that “public interest” could imply a regional interest that needs to be protected which may not be “in the interests of the general public” but specific to a smaller region. Such an interpretation is supported by the manner in which the word “discrimination” has been interpreted by the three-Judge Bench of this Court in *Video Electronics* [*Video Electronics (P) Ltd. v. State of Punjab*, (1990) 3 SCC 87 : 1990 SCC (Tax) 327] . Thus it can be said that the common thread in Part XIII is the achievement of economic unity and parity which does not altogether preclude differentiation for justifiable and rational reasons wherever necessary. The heart and soul of Part XIII is to dissolve hostile discrimination within the territory of India.

**262.** Discrimination is a relative concept; in order to discriminate a reference point is required. Article 304(a) rather than being an enabling provision to allow the State to impose tax, is a restricting provision, which prevents such levy of tax on goods as would result in discrimination between

*goods imported from other States and similar goods manufactured or produced within the State. The object is to prevent discrimination against imported goods by imposing tax on such goods at a rate higher than that borne by local goods since the difference between the two rates would constitute a tariff wall or fiscal barrier and thus impede the free flow of inter-State trade and commerce. It does not prohibit levy of tax as such in the situation wherein the goods are not produced or manufactured in the State itself and does not affect the authority of the State to tax the imported goods. It only bars discrimination on the basis of taxing the products manufactured within the State vis-à-vis imported goods which will only occur if the precondition of manufacturing in the taxing State is satisfied.*

***Freedom in Article 301 does not mean freedom from taxation***

**320.** *Historically, Article 301 was meant to do away with barriers between “native States” and the rest of India. Thus, Article 301 should be interpreted in the light of the object i.e. “economic integration of the nation”, as opposed to being aimed at any or every action which can possibly have an impact on trade, commerce and intercourse. “Free” in Article 301 does not mean freedom from taxation; taxation simpliciter is not within the purview of Article 301. In a sense, every tax imposed by a State Legislature may have an indirect effect on the flow of trade, commerce and intercourse. If the power of the State Legislature to enact any tax laws is held to be subject to the limitation under Article 301, the legislative power of the State to levy taxes under various entries in List II would be rendered ineffective.*

**339.** *After discussing various provisions of Part XIII and after tracing the constitutional background, speaking for the majority, Gajendragadkar, J. held as under : (Atiabari case [Atiabari Tea Co. Ltd. v. State of Assam, AIR 1961 SC 232 : (1961) 1 SCR 809] , AIR p. 254, para 51)*

*“51. ... Thus considered we think it would be reasonable and proper to hold that restrictions freedom from which is guaranteed by Article 301, would be such restrictions as directly and immediately restrict or impede the free flow or movement of trade. Taxes may and do amount to restrictions; but it is only such taxes as directly and immediately restrict trade that would fall within the purview of Article 301. The argument that all taxes should be governed by Article 301 whether or not their impact on trade is immediate or mediate, direct or remote, adopts, in our opinion, an extreme approach which cannot be upheld. If the said argument is accepted it would mean, for instance, that even a legislative enactment prescribing the minimum wages to industrial employees may fall under Part XIII because in an economic sense an additional wage bill may indirectly affect trade or commerce. We are, therefore, satisfied that in determining the limits of the width and amplitude of the freedom guaranteed by Article 301 a rational and workable test to apply would be : Does the impugned restriction operate directly or*

*immediately on trade or its movement?” (SCR pp. 860-61)*

*(emphasis supplied)*

*The majority based its opinion on the reasoning that any legislation whether taxing or otherwise which imposed any restrictions that had the effect of directly offending the movement or transport of goods would attract the provisions of Article 301 and its validity could be sustained only if it satisfied Article 302 or Article 304(b) of the Constitution.*

**396.** *The chargeable event in the case of entry tax is entry of goods into a local area. By its very nature, entry tax does not contemplate impost on indigenous goods. Goods imported into a local area from another State are subjected to entry tax but goods entering into a local area from another local area of the same State do not attract entry tax. In this way, it may appear that goods imported from outside the State are put to a disadvantageous position but in terms of tax treatment there is no discrimination. The essence of Article 304(a) lies in ensuring equality of fiscal burden and absence of discrimination. In terms of Article 304(a), the only requirement is that the goods imported into the local area should not be discriminated against. As discussed infra, in tax treatment there is no discrimination between the goods.*

**397.** *The expression “any tax” used in Article 304(a) is generic in nature and covers all taxes on goods which a State is competent to impose by virtue of Articles 245 and 246 read with List II of the Seventh Schedule. A scheme adopted by a State Legislature whereby several taxes are levied on the goods (either locally produced or imported from other States) under different heads, cannot be faulted with if it conforms to the principle of equivalence and non-discrimination. For e.g., both sales tax levied under Entry 54 List II and entry tax levied under Entry 52 List II are taxes on goods. It is the burden of the tax which can discriminate and not the form. States are free to equalise the burden of entry tax on the goods imported from other States by giving them set-off against the sales tax paid by them in the exporting State. In such a manner, equivalence can be brought about in the tax burden borne by the goods imported from other States and the locally manufactured/produced goods. The contention of the assesseees that the term “any tax” used in Article 304(a) refers to every tax distinctly, thereby prohibiting imposition of entry tax on imported goods unless, entry tax is imposed on locally manufactured/produced goods, does not lead to just and reasonable interpretation of Article 304(a). The wholesome effect of the taxes levied under distinct heads needs to be taken into account. The tax burden borne by the goods forms a part of the price of the goods and if both, locally manufactured/produced goods and imported goods are subjected to similar tax burdens, irrespective of the heads under which the taxes are levied, say entry tax or sales tax, etc. then no discrimination can be said to have been caused.*

**621.** *The legislative entries in the Lists of the Seventh Schedule to the Constitution delineate general fields of legislation separately from taxing*

heads. In the Union List taxing entries are contained from Entries 82 to 92-C. The residual entry, Entry 97 deals with matters not enumerated in the State or Concurrent Lists, including any tax not mentioned in either of those Lists. In the State List taxes are comprised in Entries 46 to 62. Fees are dealt with under separate heads : in Entry 96 of List I, Entry 66 of List II and Entry 47 of List III.

#### **G. Schedule VII List II Entry 52 to the Constitution**

**1060.** The legislative field under the State List Entry 52 is “taxes on the entry of goods into a local area for consumption, use or sale therein”. Entry 52 itself demonstrates that there are inherent limitations as regards the nature and character of the levy. In order to have a levy of tax to come within the purview of Entry 52, such levy has to satisfy three conditions:

- (i) The levy under the State entry must be “on the entry of goods” which constitutes the taxable events.
- (ii) The levy in question must be in respect of “into a local area”. The local area has been defined as “an area administered by local body like a municipality, a district board, a local board, a Union board, a panchayat or the like”.
- (iii) The goods must enter into the local area for the purpose of “consumption, use or sale therein”.

**1062.** Taxes levied under Entry 52 is commonly known as entry tax. While noticing the Constituent Assembly Debates, we have seen that freedom of trade and commerce was envisaged as freedom from border taxes, customs barriers, etc. which was prevalent in the Indian States. Section 297 of the 1935 Act had contained a prohibition for imposing taxes on entry of goods from other States. The Constitution Framers decided that States have to be conceded some taxing powers for revenue purposes and for purpose of carrying out various development projects. Article 301 provides freedom of trade, commerce and intercourse throughout the territory of India, simultaneously, exceptions to such freedom have been engrafted in Articles 302 to 306.

**1067.** The trade and commerce being contemplated to be free throughout the territory of India, any restriction on movement of goods per se has to be treated as violating Article 301 unless the tax is saved by exceptions provided in Part XIII. However, there may be a tax which though complies with Article 304(a) but still contains the restriction to trade and commerce which is an area where much difficulty has been felt. We have already concluded that all taxes which comply with Article 304(a) need not be routed through Article 304(b) and it is only those taxes which contain restrictions on trade, commerce and intercourse which need to be routed through Article 304(b). This can be demonstrated by taking a simple example. An entry tax legislation is passed complying with Article 304(a) levying entry tax on goods imported from outside the State as well as local goods at the rate of one per cent of value of goods. Normally, such levy

*cannot be treated as any restriction on the trade and commerce and shall pass muster of Article 304(a) and need no compliance with Article 304(b). But in a case where, entry tax is levied to the extent of hundred per cent of the value of goods both on imported goods and locally produced or manufactured goods, the said levy is clear restriction on trade and commerce and has to be routed through Article 304(b). For taking out such levy, from the effect of Article 301 both Articles 304(a) and 304(b) need to be complied with.*

**1068.** *We thus conclude that entry tax legislation which is a tax on movement of goods, trade and commerce is inhibited by Article 301 and such State legislation can be saved under Article 304. Whether a particular entry tax legislation is valid and does not contravene Part XIII of the Constitution, can be decided only after looking into the nature, content and extent of legislation and its impact on trade, commerce and intercourse.*

**1071.** *The restriction thus is an act to limit, confine and restrain. The “restriction”, in Part XIII has been used in the context of restriction to freedom of trade, commerce and intercourse. The laws, which restrict or limit such right are called restrictions.*

**1074.** *Now, we proceed to examine Part XIII of the Constitution insofar as it expressly refers to various acts, actions which are treated to be restrictions on freedom of trade and commerce. Articles 302 to 306 contain provisions, by which restriction can be put on the freedom of trade and commerce. Some restrictions have been expressly mentioned in the said articles. Article 303 provides for “restrictions on the legislative powers of the Union and of the States with regard to the trade and commerce”. As per Article 303 clause (1) following are treated to be restrictions:*

- (i) Any law giving or authorising the giving of any preference to one State over another,*
- (ii) Any law-making or authorising the making of, any discrimination between one State and another.*

**1075.** *Thus preferences and discrimination both are treated as restriction in the context of freedom of trade and commerce. Coming to Article 304(a) any law framed by the legislature is restriction on freedom of trade and commerce which:*

- (a) imposes on goods imported from other States, any tax when no such tax is imposed on similar goods manufactured or produced in that State,*
- (b) imposes on goods imported from other States any tax which discriminates between goods so imported and goods so manufactured or produced.*

**1080.** *Further, it was held in Laxmi Khandsari v. State of U.P. [Laxmi Khandsari v. State of U.P., (1981) 2 SCC 600 : (1981) 3 SCR 92] that incurring of the loss in trade is not a ground to render trade restrictions as unreasonable. Following was laid down : (SCC p. 611, para 21)*

*“21. Finally, in determining the reasonableness of restrictions imposed by law in the field of industry, trade or commerce, the mere fact that some of the persons engaged in a particular trade may incur loss due to the imposition of restrictions will not render them unreasonable because it is manifest that trade and industry pass through periods of prosperity and adversity on account of economic, social or political factors. In a free economy controls have been introduced to ensure availability of consumer goods like foodstuffs, cloth or the like at a fair price and the fixation of such a price cannot be said to be an unreasonable restriction in the circumstances.”*

**1081.** *This Court, in G.K. Krishnan v. State of T.N. [G.K. Krishnan v. State of T.N., (1975) 1 SCC 375] has held that the regulation like rules of traffic facilitate the freedom of trade whereas restrictions impede that freedom. It was held that a discriminatory tax against outside goods is not a tax simpliciter but is a barrier to trade and commerce. Following was laid down in paras 15 and 27 : (SCC pp. 381 & 385)*

*“15.Regulations like rules of traffic facilitate freedom of trade and commerce whereas restrictions impede that freedom. The collection of toll or tax for the use of roads, bridges, or aerodromes, etc., do not operate as barriers or hindrance to trade. For a tax to become a prohibited tax, it has to be a direct tax, the effect of which is to hinder the movement part of the trade. If the tax is compensatory or regulatory, it cannot operate as a restriction on the freedom of trade or commerce.*

*\*\*\**

*27. A discriminatory tax against outside goods is not a tax simpliciter but is a barrier to trade and commerce.”*

*(emphasis in original)*

**1083.** *It is, however, relevant to note that the issue as to whether the restriction contained in any taxing statute impedes the freedom of trade and commerce is a question which will vary from case to case. The nature of restriction and the magnitude of the restriction are all relevant factors to determine whether trade is impeded or not. It is well settled that provisions in a statute which is regulatory in nature which facilitates the trade have not been treated as restriction impeding the freedom of trade and commerce. Traffic regulations, registration of motor vehicles for plying in the State, collection of toll have not been treated to be restriction in freedom of trade and commerce.*

**1084.** *The above discussion makes it clear that what has been expressly prohibited in Articles 302 to 306 are all restrictions in the freedom of trade and commerce which shall obviously contravene Article 301, but there may be other instances when a law is treated to be restriction although not expressly enumerated in Articles 302 to 306. We may clarify that Article 301 is not attracted in a legislation which does not contain any kind of restriction to the freedom of trade and commerce. The question of applicability of Part XIII arises only when the legislation contains*

*restrictions which hamper, restrict, impede and adversely affect the freedom of trade and commerce directly and immediately.*

***I. Whether “direct and immediate effect test” as laid down in Atiabari [Atiabari Tea Co. Ltd. v. State of Assam, AIR 1961 SC 232 : (1961) 1 SCR 809] and approved in Automobile Transport [Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan, AIR 1962 SC 1406 : (1963) 1 SCR 491] is no longer a correct test***

***1085.*** Gajendragadkar, J., speaking for the majority in Atiabari Tea Co. [Atiabari Tea Co. Ltd. v. State of Assam, AIR 1961 SC 232 : (1961) 1 SCR 809] laid down that the restrictions, which directly and immediately impede the trade are hit by Article 301. Following was held at SCR p. 860 : (AIR p. 254, para 51)

“51. ... Thus considered we think it would be reasonable and proper to hold that restrictions freedom from which is guaranteed by Article 301, would be such restrictions as directly and immediately restrict or impede the free flow or movement of trade. Taxes may and do amount to restrictions; but it is only such taxes as directly and immediately restrict trade that would fall within the purview of Article 301.”

***1097.*** Non-discriminatory taxation by the State in reference to inter-State and intra-State trade is ingrained in Article 304(a) itself, and no abstract theory needs to be referred to for following non-discriminatory theory.

***1100.*** In view of foregoing discussion, we are of the view that submission raised on behalf of the learned counsel for the State that “direct and immediate effect test” is no longer a correct test, cannot be accepted. As observed above, each case has to be determined on facts of each case. The “direct and immediate effect test” as laid down in Atiabari [Atiabari Tea Co. Ltd. v. State of Assam, AIR 1961 SC 232 : (1961) 1 SCR 809] and approved in Automobile Transport [Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan, AIR 1962 SC 1406 : (1963) 1 SCR 491] still holds good.

***1107.*** It is an accepted proposition that one of the characteristics of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. The taxes imposed by the legislature, apart from being a source of revenue is also expended for various public welfare measures and when its object is in no way connected with the public interest or public welfare it loses its character of taxation, becomes a levy which is unconstitutional.

***1142.*** For enabling a State to make a law under Article 304(a) following two preconditions which are independent of each other have to be satisfied:

(i) It may impose on goods imported from other States or the Union Territory any tax to which similar goods manufactured or produced in that State are subject.

(ii) So, however, as not to discriminate between goods so imported and

*goods so manufactured and produced.*

**1144.** *A law made by the State Legislature exercising the power under clause (a) in Article 304, which does not impose any restriction on the freedom of trade, commerce and intercourse need not comply with Article 304(b), however, a law even though complying with Article 304(a) containing restriction on freedom of trade, commerce and intercourse is to obtain sanction of the President, as contemplated by the proviso to clause (b). The requirement of obtaining the previous sanction of the President has to be decided in accordance with the nature and content of the State legislation.*

**1151.** *What have been expressly prohibited under Articles 302, 303 and 304 are restrictions in the freedom of trade and commerce violating Article 301. A law containing restriction impeding freedom of trade and commerce and intercourse which is not saved by Articles 302, 303 and 304 violates Article 301.*

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

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

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

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

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

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

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

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



**170.** In *Jindal Stainless Ltd case*, the Constitutional Bench of the Apex Court was dealing with a reference related to the levy of Entry Tax on goods by various States which falls under Entry 52 of List II. In the process, the Apex Court answered the referendum holding that taxes simpliciter are not within the ambit of PART XIII, a non-discriminatory tax without any restriction will neither require the previous sanction of the President nor offend any part of Part XIII of the Constitution. It was also held that “the direct and immediate effect test” would be applicable to trace the restriction to freedom of trade, commerce and intercourse, any discrimination in the rate of tax on goods would vitiate the law as ultra vires Article 304 (a), which cannot be cured even with the previous sanction of the President. The State is at liberty to levy tax on goods, when similar goods are not available in the state. If there is no restriction, the proviso to Article 304 (b) is inapplicable and in other cases, sanction is mandatory.

**171.** In addition to *Jindal Stainless case*, the following judgments were relied upon by the counsel for the petitioners:

**172. *Firm A.T.B. Mehtab Majid and Company v. State of Madras [AIR 1963 SC 928]:***

*“11. Article 304(a) enables the legislature of a State to make laws affecting trade, commerce and intercourse. It enables the imposition of taxes on goods from other States if similar goods in the State are subjected to similar taxes, so as not to discriminate between the goods manufactured or*

*produced in that State and the goods which are imported from other States. This means that if the effect of the sales tax on tanned hides or skins imported from outside is that the latter becomes subject to a higher tax by the application of the proviso to sub-rule of Rule 16 of the Rules, then the tax is discriminatory and unconstitutional and must be struck down.”*

The above case is not applicable to the facts of this case. In that case, a higher rate of tax was imposed on goods brought from outside. Whereas, here, no additional tax is levied but only an option is to be exercised and the rate of tax on the goods is the same.

**173. *Shree Mahavir Oil Mills and another v. State of Jammu and Kashmir and others* [1997 104 STC 148: 1996 (11) SCC 39]:**

*“25. Now, what is the ratio of the decisions of this Court so far as clause (a) of Article 304 is concerned? In our opinion, it is this: the States are certainly free to exercise the power to levy taxes on goods imported from other States/Union Territories but this freedom, or power, shall not be so exercised as to bring about a discrimination between the imported goods and the similar goods manufactured or produced in that State. The clause deals only with discrimination by means of taxation; it prohibits it. The prohibition cannot be extended beyond the power of taxation. It means in the immediate context that States are free to encourage and promote the establishment and growth of industries within their States by all such means as they think proper but they cannot, in that process, subject the goods imported from other States to a discriminatory rate of taxation, i.e., a higher rate of sales tax vis-à-vis similar goods manufactured/produced within that State and sold within that State. Prohibition is against discriminatory taxation by the States. It matters not how this discrimination is brought about. A limited exception has no doubt been carved out in Video Electronics [(1990) 3 SCC 87 : 1990 SCC (Tax) 327] but, as indicated hereinbefore, that exception cannot be enlarged lest it eat up the main provision. So far as the present case is concerned, it does not fall within the limited exception aforesaid; it falls within the ratio of A.T.B. Mehtab Majid [1963 Supp (2) SCR 435 : AIR 1963 SC 928] and the other cases following it. It must be held that by exempting unconditionally the edible oil produced within the State of Jammu and Kashmir altogether from sales tax, even if it is for a period of ten years, while subjecting the edible oil produced in other States to sales tax at eight per cent, the State of Jammu and*

*Kashmir has brought about discrimination by taxation prohibited by Article 304(a) of the Constitution.”*

In this case, the Apex Court has followed the judgment in ***A.T.B Mehtab Majid case***. Therefore, this judgment also, on levy of higher rate of tax on goods, will not come to the aid of the petitioners. In fact, in this case, the Apex Court has clearly held that the prohibition in Article cannot be stretched to matters beyond taxation.

**174. *Anand Commercial Agencies v. CTO [AIR 1998 SC 113:(1998) 1 SCC 101 at page 110]:***

*“28. Clause (a) of Entry 24 of the First Schedule to the Andhra Pradesh General Sales Tax Act is declared violative of the provisions of Articles 301 and 304 insofar as it imposes a higher rate of tax on groundnut oil or refined oil which has been obtained from groundnuts that have not been taxed under the Andhra Pradesh Act. It is declared that the groundnut oil imported by the appellant from Karnataka for sale in Andhra Pradesh cannot be taxed at a rate higher than the rate prescribed in clause (b) of Entry 24 of the First Schedule to the Andhra Pradesh Act.”*

Unfortunately, this is also a case, where a higher rate of tax has been levied on goods that are brought into the state from another state. Therefore, this judgment is also not applicable. The State on the other hand, has relied upon the following judgments to contend that if the aspiration on discrimination is dispelled, there would be no legal grounds for the assesseees.

**175. *Kunhammed Kutty Haji v. Union of India [1989 SCC OnLine Ker 378 : (1989) 1 KLT 639 : (1989) 176 ITR 481 : (1989) 76 CTR 139]:***

*“54. Apart from stating that it is an undue burden and that the provisions are discriminatory, the petitioners have not been able to marshal materials massive enough to make the court feel that a constitutional guarantee of a trader citizen, is under serious jeopardy or that he has been subjected to an evil and vicious discrimination. In that background, the attack has to fail, and the petitioners have to seek solace elsewhere.*

*55. Some contentions about the impact of tax, particularly in the area of liquor, were urged by the learned Advocate General on behalf of the State of Kerala. If legislative competence for the Union is established and if the attack on grounds of discrimination are dispelled, the surviving contention would be more in the political arena than in the legal field. This Court shall ordinarily keep off from such political tickets, unless compulsive situations demand its entry. The writ petitions are dismissed. I do not, however, make any order as to costs.”*

**176. *Video Electronics (P) Ltd. v. State of Punjab [(1990) 3 SCC 87 : 1990***

***SCC (Tax) 327]*:**

*“25. Where the general rate applicable to the goods locally made and on those imported from other States is the same nothing more normally and generally is to be shown by the State to dispel the argument of discrimination under Article 304(a), even though the resultant tax amount on imported goods may be different. Here, reference may be made to Ratan Lal case [(1969) 2 SCR 544, 557 : AIR 1970 SC 1742] . In the instant writ petition, in the State of U.P. those producers or manufacturers who do not come within the ambit of notifications, have to pay tax on their goods at the general rate described and there is no differentiation or discrimination qua the imported goods. The question naturally arises whether the power to grant exemption to specified class of manufacturers for a limited period on certain conditions as provided by Section 4-A of the U.P. Sales Tax Act is violative of Article 304(a). It was contended by the petitioners that Part XIII of the Constitution was envisaged for preserving the unity of India as an economic unit and, hence, it guarantees free flow of trade and commerce throughout India including between State and State and as such Article 304(a), even though an exception to Article 301, yet applies where an exemption is granted by one State to a special class of manufacturers for a limited period on certain conditions. It was so submitted that either a State should grant exemption to all goods irrespective of the fact that the goods are locally manufactured or imported from other States, else it would be violative of Articles 304 and 304(a).*

.....

*27. In the instant case the general rate applicable to locally made goods is*

*the same as that on imported goods. Even supposing without admitting that sales tax is covered by Article 301 as a tax directly and immediately hampering the free flow of trade, it does not follow that it falls within the exemption of Article 304 and it would be hit by Article 301. Still the general rate of tax which is to be compared under Article 304(a) is at par and the same qua the locally made goods and the imported goods.*

*28. Concept of economic barrier must be adopted in a dynamic sense with changing conditions. What constitutes an economic barrier at one point of time often ceases to be so at another point of time. It will be wrong to denude the people of the State of the right to grant exemptions which flow from the plenary powers of legislative heads in List II of the Seventh Schedule of the Constitution. In a federal polity, all the States having powers to grant exemption to specified class for limited period, such granting of exemption cannot be held to be contrary to the concept of economic unity. The contents (sic concept) of economic unity by the people of India would necessarily include the power to grant exemption or to reduce the rate of tax in special cases for achieving the industrial development or to provide tax incentives to attain economic equality in growth and development. When all the States have such provisions to exempt or reduce rates the question of economic war between the States inter se or economic disintegration of the country as such does not arise. It is not open to any party to say that this should be done and this should not be done by either one way or the other. It cannot be disputed that it is open to the States to realise tax and thereafter remit the same or pay back to the local manufacturers in the shape of subsidies and that would neither discriminate nor be hit by Article 304(a) of the Constitution. In this case and as in all constitutional adjudications the substance of the matter has to be looked into to find out whether there is any discrimination in violation of the constitutional mandate.*

.....

*36. It has to be reiterated that sales tax laws in all the States provide for exemption. It is well settled that the different entries in Lists I, II and III of the Seventh Schedule deal with the fields of legislation, and these should be construed widely, liberally and harmoniously. And these entries have been construed to include ancillary or incidental power. Power to grant exemption is inherent in all taxing legislations. Economic unity is a desired goal, economic equilibrium and prosperity is also the goal. Development on parity is one of the commitments of the Constitution. Directive principles enshrined in Articles 38 and 39 must be harmonised with economic unity as well as economic development of developed and under developed areas. In that light on Article 14 of the Constitution, it is necessary that the prohibitions in Article 301 and the scope of Article 304(a) and (b) should be understood and construed. Constitution is a living organism and the latent meaning of the expressions used can be given effect to only if a particular situation arises. It is not that with changing times the meaning changes but changing times illustrate and illuminate the meaning of the expressions used.*

*The connotation of the expressions used takes its shape and colour in evolving dynamic situations. A backward State or a disturbed State cannot with parity engage in competition with advanced or developed States. Even within a State, there are often backward areas which can be developed only if some special incentives are granted. If the incentives in the form of subsidies or grant are given to any part of (sic or) units of a State so that it may come out of its limping or infancy to compete as equals with others, that, in our opinion, does not and cannot contravene the spirit and the letter of Part XIII of the Constitution. However, this is permissible only if there is a valid reason, that is to say, if there are justifiable and rational reasons for differentiation. If there is none, it will amount to hostile discrimination. Judged in this light, despite the submissions of Mr Sanjay Parikh and Mr Vaidyanathan, we are unable to accept the contentions that the petitioners sought to urge in this application.”*

In the above case, the Apex Court has clearly held that when the rate of tax is same, there is no violation of Article 304 (a). The States are empowered to have their own fiscal policy and that it is not necessary for them to follow any other State in the matters of taxation.

**177.** Now, in the case before us, we are concerned with the amendment by which the composition scheme is not extended to dealers who have purchased goods by interstate transactions or by import. Section 5 of the TNVAT Act is the charging section with respect to works contract. Section 6 only gives an option to pay tax at a compounded rate. The language employed is plain, clear and without any ambiguity. The use of the word “may” followed by the word “opt” makes it clear without any room for submission that the Section is not mandatory but only provides an option, which is to be exercised by voluntarily intimating the assessing authority in the return of the first month of the

financial year or in the first month after commencement of the works contract. Therefore, Section 6 is not a charging section imposing any levy of tax on goods.

**178.** The amendment does not levy any tax on the goods brought within the State. That apart, the rate of tax on goods manufactured and sold locally and brought within the State is the same. In other words, there is no discrimination in the rate of tax between the goods sold locally and brought from other State. Hence, Articles 304 (a) and 304 (b) are not attracted.

**179.** Insofar as Articles 301 and 303 are concerned, the amendment does not restrict the freedom of trade, commerce or intercourse in any manner as because it neither prohibits import of goods into the state nor does it impose any additional tax on the goods brought in when compared with the tax on locally manufactured goods nor is there any mandatory condition that the goods must be purchased only from dealers within the state. The levy of tax by itself cannot be termed as a restriction to the freedom guaranteed under Article 301. Further, as held by the Apex Court in *Builders' Association Case*, *Mycon Construction case and Indian Diary Case (Supra)*, the scheme itself is only applicable by voluntary exercise of the option. At the cost of repetition, in *Indian Diary case*, the Apex Court rejected the appeal filed by the assessee who wanted to avail the benefit of the scheme despite bringing in goods from

another state. The amendment itself has been brought about to bring in a level playing field and to curb trade diversion. We have already held that the classification is reasonable and that there is no discrimination. The State is well within its powers to impose such a condition, which is based on some rational and with nexus to the object for which such classification was made. The option given to file returns under Section 6 with the condition neither has direct effect on the rate of the tax on goods purchased from the other state nor does it in any way, has the effect of giving preference to any state. It is only an option. In view of the same, the amendment also does not offend the twin conditions in Article 303. At this juncture it is relevant to refer to the judgment of the Division Bench of the Madras High Court in ***Schwing Stetter (India) Pvt Ltd v. The Commissioner of Commercial Taxes and Others (MANU/TN/0881/2016)***, wherein while dealing with a challenge to Section 2(11) of the TNVAT Act on the ground of it being ultra vires the constitution as it imposes a condition that the goods shall be deemed to be capital goods only if it is used in the state, it was held as under:

*“55. We do not know how the definition of the expression "capital goods" is violative of Article 303 of the Constitution. Clause (1) of Article 303 of the Constitution prohibits the Parliament and the Legislature of a State from making any law that would confer a preferential treatment to one State over the other or from discriminating one State from another. As far as we understand the purport of the said Article, what is prohibited by the same is only the making of a law that would treat the goods purchased from or sold to a dealer in one State, more or less favourable than the goods purchased from or sold to a dealer in other States. Even the provisions of this Article*



*do not prevent a State from making a law that would provide a special treatment to certain types of goods or certain types of dealers or certain types of transactions. Therefore, the contention that the adoption of a restricted meaning to a particular word contained in the statute tantamounts to a violation of Article 303, can hardly be accepted.*

.....

*61. On the challenge of the petitioners to the impugned provision as being violative of Articles 301 and 303(1) of the Constitution, the answer lies in the decision of the Constitution Bench of the Supreme Court in the State of Tamil Nadu v. N.K.Nataraja Mudaliar. This decision actually took note of the earlier Bench decision in Atiabari Tea Co. and Automobile Transport. Eventually, the Court, by a majority, laid down the following principles:*

*"(i) It must be taken as settled law that the restrictions or impediments which directly and immediately impede or hamper the free flow of trade, commerce and intercourse fall within the prohibition imposed by Article 301 and subject to the other provisions of the Constitution they may be regarded as void.*

*(ii) It must be regarded as settled law that a tax may in certain cases directly and immediately restrict or hamper the flow of trade, but every imposition of tax does not do so.*

....

*(v) An Act which is merely enacted for the purpose of imposing tax which is to be collected and to be retained by the State does not amount to a law giving or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, merely because varying rates of tax prevail in different States.*

*(vi) The flow of trade does not necessarily depend upon the rates of sales tax, it depends upon a variety of factors, such as the source of supply, place of consumption, existence of trade channels, the rates of freight, trading facilities, availability of efficient transport and other facilities for carrying on trade. It is where differentiation is based on considerations not dependent upon natural or business factors which operate with more or less force in different localities that Parliament is prohibited from making a discrimination. Prevalence of differential rates of tax on sales of the same commodity cannot be regarded in isolation as determinative of the object to discriminate between one State and another."*

**180.** The Division Bench of this Court rejected the challenge and the said judgment was affirmed by the Apex Court in **Special Leave to Petition (Civil) Nos.17804 to 17808/2016** by its order dated 17/10/2016. That apart, the

primary and very important difference between the matters before us and in ***Jindal Stainless Ltd and other*** cases relied upon by the petitioners is that the option granted to avail the compounded rate is to the dealer. In other words, tax component under Section 6 is calculated with respect to the transaction of the “person” and not the goods as in other cases. Further, the levy of tax under the provisions of the TNVAT Act, 2006 on the transfer of property in goods is only a tax simpliciter. Though the term “tax simpliciter” is not defined in any enactment, it is settled law that when the levy, being a compulsory tax, without any *quid pro quo* it is “tax simpliciter”. In this connection, it is useful to refer to the judgment of the Constitutional Bench of the Apex Court in ***Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt***, [1954 SCR 1005 : AIR 1954 SC 282], which reads as under:

“45. A neat definition of what “tax” means has been given by Latham, C.J. of the High Court of Australia in *Matthews v. Chicory Marketing Board* [60 CLR 263, 276] . “A tax”, according to the learned Chief Justice, “is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered”. This definition brings out, in our opinion, the essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense, are included within it. It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the taxpayer's consent and the payment is enforced by law [ *Vide Lower Mainland Dairy v. Crystal Dairy Ltd.*, 1933 AC 168] . The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is, as it is said, no element of *quid pro quo* between the taxpayer and the public authority [ *See Findlay*

*Shirras on Science of Public Finance, Vol. I, p. 203] . Another feature of the taxation is that as it is a part of the common burden, the quantum of imposition upon the taxpayer depends generally upon his capacity to pay.”*

Thus, the prohibition in Article 304 is applicable only when there is a discrimination in the rate of tax on goods and it cannot be extended beyond the taxation. Section 6 only offers an option and a simple method to arrive at the same. Therefore, rejecting the contentions of the assesseees, we hold that the condition does not offend Part XIII of the constitution.

#### **XVI. CHALLENGE TO THE INVOCATION OF SECTION 27**

**181.** It has been contended by Mr.N.Sriprakash that once a dealer has filed his return under Section 6 and remitted the taxes, the assessment cannot be reopened by invoking section 27 as because the tax under Section 6 is not paid on turnover but on the total value of the works contract executed by him. In support of the same, he has relied upon the following judgments of this Court.

**182. *Sinotech v. Commercial Tax Officer* [2008 SCC OnLine Mad 1292 : (2008) 15 VST 398]:**

*“7. A Division Bench of this court in Deputy Commissioner of Commercial Taxes, Vellore v. Devandran & Co., [1981] 47 STC 264 dealt with the application of section 16 of the TNGST Act wherein it was held that if earlier assessment was made on a particular percentage and subsequently, if the assessing authority wanted to reopen the assessment by taking away part of the sales turnover from the turnover already assessed for finding out the corresponding purchase turnover of raw hides and skin and subject it to tax at thirteen per cent by invoking section 16 of the TNGST Act, the same power is not available to the authorities. The finding of the Tribunal was affirmed by the Division Bench in the following lines:*

*“In this case, as we pointed out already/arid as admitted, the entire sales turnover relating to the tanned hides and skins had been assessed at 11/2 per cent under item 7(b) and the sales turnover was assessable only under that item. Only if the whole or any part of this turnover had escaped such assessment, the whole of any part of the turnover can be said to have been assessed at a rate lower than the rate at which the same was assessable so as to attract the provisions of section 16(1)(b). That not being the case, the order of the Tribunal cannot be said to be erroneous in law and consequently the tax revision case is dismissed.”*

**8.** *The said judgment was affirmed by the Supreme Court in State of Tamil Nadu v. Devendran & Company, [1996] 103 STC 95.*

**9.** *The learned counsel also produced the work order issued by Indian Oil Corporation in favour of the petitioner which was also submitted to the respondent. Therefore, the only question that remains for consideration is whether the respondent had power under section 16 of the TNGST Act to reopen the assessment on the basis of the judgment of the Supreme Court in State of Andhra Pradesh v. Kone Elevators (India) Ltd., [2005] 140 STC 22. The reliance placed upon the said judgment of the Supreme Court in Kone Elevators case, [2005] 140 STC 22 is totally misconceived as in the present context, the petitioners have agreed to compound rate by paying the tax in terms of section 7C of the TNGST Act and also filed the returns in form A1. In such a case, the question of revising the compounding order does not arise especially when a dealer is exercising option in payment of tax at compounded rate and the petitioner was also made to pay tax at four per cent on the entire contract value.*

**10.** *Section 16 of the TNGST Act is not intended to withdraw the said option exercised by the petitioner-dealer.*

**11.** *In the light of the above and in view of the judgment of the Supreme Court in Devendran & Company case, [1996] 103 STC 95, the writ petition will stand allowed. The impugned order dated July 13, 2007, will stand set aside. No costs. Connected miscellaneous petition is closed.”*

### **183. South India Corporation Ltd. v. Commercial Tax Officer [2001 SCC**

**OnLine Mad 1150 : (2001) 124 STC 654]:**

**“13.** *The Act does not anywhere provide that the total value of the works contract in respect of which a dealer has exercised the option to pay the prescribed percentage towards tax instead of paying in accordance with section 3-B, shall be deemed to be either the turnover of such dealer or the taxable turnover of such dealer in so far as the works contract in which he is engaged is concerned.*

*14. It is in this background that the arguments advanced for the dealer that the Tamil Nadu Additional Sales Tax Act which imposes an additional tax on the tax payable under the TNGST Act with reference to taxable turnover of such dealer—a tax which cannot be passed on by the dealer to any other—is not attracted to the amounts paid by the dealer under section 7-C of the TNGST Act, 1959 is required to be considered.*

*17. While there is no difficulty in determining the taxable turnover of a dealer who is engaged in the execution of a works contract in cases where the tax is computed in terms of section 3-B of the Act, the determination of turnover of a dealer who has opted for payment of tax under section 7-C is not possible at all under the parent Act, as the amount computed under section 7-C is not an amount which is determined as tax on the taxable turnover, but is determined with reference to the total value of the works contract in respect of which option is exercised. As already noticed there is no provision in the Act which deems such a total contract value as total turnover.*

*16. As the additional tax is thus levied at the prescribed percentage on the taxable turnover of the dealer that percentage varying from 1.5 to 3 depending on the turnover of the assessee for the purpose of levy of this additional tax, the determination of the taxable turnover is crucial. Despite the declared intention to levy additional tax on the sale or purchase of goods, the tax levied under that Act having been linked solely to the taxable turnover, mere payment of tax under the principal enactment would not render the dealer liable for the additional sales tax unless taxable turnover of that dealer is determinable under the principal Act.*

*19. In the absence of any determination of the value of the goods transferred under the works contract in cases where a dealer has exercised an option under section 7-C, there is no determination of the taxable turnover as the dealer is not required to maintain books of accounts and is not called upon to render any account in relation to the actual value of the goods transferred under the works contract. There is no scope of determining the actual value of the goods transferred under such contract in cases where option has been exercised under section 7-C.”*

**184.** Per contra, the State has relied upon the following judgments to contend that Section 27 can be invoked.

**185. *Meenakshi v. State of Tamil Nadu* [1976 SCC OnLine Mad 443 : (1977) 40 STC 201]:**

“7. Clause (b) of sub-section (1) of section 16 relates to a case where the turnover of a dealer has been originally assessed at a rate lower than the rate at which it should be assessed and it is not relevant for the purpose of this case. Sub-section (2) of section 16 of the Act enables the assessing authority, while he reassesses under sub-section (1) of that section, to levy a penalty. It is under the provision of section 16 that action was taken in the case of the respective petitioners. The nature of the action taken can now be indicated in the form of a tabular statement, as has been done by the Tribunal itself in its order, and it is as follows:

T.C. No.	M.T.A. No.	Year of Assessment	Turnover originally determined	Turnover assessed under section 16	Turnover actually added to the original assessment (escaped turnover)	Penalty levied and sustained now under dispute
26/72	146/71	1968-69	56,806.00 (under section 7)	90,617 at 3 per cent	33,811.00	1,521
27/72	149/71	1968-69	58,135.00 (under section 7)	80,905.00 at 3 per cent	22,770.00	1,024
28/72	255/71	1967-68	60,827.30 (under section 7)	79,897.30 at 3 per cent	19,070.00	855
29/72	280/71	1968-69	60,827.00 (under section 7)	92,252.00 (91,879 at 3 per cent; 373 at 5 ½ per cent)	31,052.00 (Multi-point goods 373. single point goods chicory)	1,395

*8. Thus, it will be seen that what has been done in this case is to find out the turnover suppressed by the assessee and add that turnover to the original turnover fixed by the assessing authority and determine the tax payable on the turnover so determined and demand the tax after giving credit for the tax already paid under section 7 of the Act.*

*9. The learned counsel for the petitioners questions this action of reopening and reassessment made by the assessing authority in exercise of the powers under section 16 of the Act. According to the learned counsel, section 16 does not authorise any such action in relation to cases covered by section 7 of the Act. We are unable to accept this argument. The sole basis of the argument of the learned counsel is that section 16 of the Act talks of*

turnover escaping assessment and, therefore, the word “turnover” occurring in section 16 must necessarily refer to only “taxable turnover” and that as far as section 7 is concerned, the suppressed or escaped turnover cannot be said to be taxable turnover at all. As we have pointed out already, we are unable to accept this argument. We have extracted the definitions of “taxable turnover”, “total turnover” and “turnover”. Section 7 talks of “total turnover” and section 16 talks of “turnover” in general without specifying whether it is “taxable turnover” or “total turnover”. As a matter of fact, that section 16 will take in turnover in general will be clear from the fact that section 3 which is the charging section imposes the liability to tax only when the turnover exceeds a particular limit. Even section 3 uses only the word “turnover” and not “taxable turnover”. In a particular case, the assessee might not even be assessed on the ground that his total turnover did not exceed rupees fifteen thousand as provided for in section 3(1). Subsequently it may be found that he suppressed his turnover and, therefore, he would not be entitled to the exemption given under section 3(1). In that context the turnover, which would be added to the turnover of the assessee, would be only the total turnover and not taxable turnover for the purpose of finding out whether the case fell within the limit prescribed in section 3(1) or not. There is also another ground for holding that the expression “turnover” in section 16 is not confined only to “taxable turnover”. We have extracted section 7 already and it uses the expression “total turnover” only. Out of the total turnover contemplated by section 7 no part of it may be taxable turnover or the entirety may constitute taxable turnover. The section does not take note of the portion of the total turnover which constitutes taxable turnover, when it prescribes the lump sum rate of tax payable in respect of different slabs. As we have pointed out already, in the case of an assessee paying tax under section 7, he might not have any taxable turnover at all. From this point of view, the concept of taxable turnover and the payment of tax at a particular percentage of the said taxable turnover is foreign to the scope of section 7. All that section 7 says is, once an assessee, having regard to the quantum of the total turnover, exercises the option to be assessed under section 7, section 3(1) will not apply. But once the limit of turnover provided for in section 7 is overstepped, automatically the case will go out of section 7 with the result section 3(1) will become immediately applicable and that will be the consequence of the non obstante clause occurring in section 7. In the four cases before us, as we have pointed out already, the turnover originally assessed plus the suppressed turnover exceeded the maximum limit prescribed in section 7. Consequently, the moment the turnover was redetermined and the redetermined turnover exceeded the maximum limit of the total turnover fixed in section 7, the case would go out of section 7 and would attract section 3(1). Once section 3(1) is attracted, there is no dispute that section 16 will be automatically attracted. Therefore, we have no hesitation whatever in holding that section 16 is clearly applicable to the facts of the present cases and, accordingly, the reopening and reassessments were done in accordance with law.

*10. We have already indicated the fact that out of the total tax determined on the turnover redetermined pursuant to the action taken under section 16, credit has been given for the lump sum tax already paid in terms of section 7. Consequently, the petitioners cannot have any grievance on this account also. It may also be mentioned that though the said cases are not before the court, the Tribunal dealt with by the same order two other cases in which even the redetermined turnover fell within the maximum limit prescribed by section 7. Even in those cases, the assessing authority did not have recourse to section 3(1), but only applied the appropriate slab rate given in section 7 itself.*

*11. The last argument attempted by the learned counsel for the petitioners was that section 16 will not apply to the cases covered by section 7 is apparent from the fact that the legislature itself introduced a new section in the form of section 16-A by Tamil Nadu Act No. 31 of 1972. The said section is as follows:*

*“16-A. Assessment of turnover not declared under section 7.—(1) Where for any reason, any part of the turnover of business of a dealer who has been permitted to pay the tax under section 7 has escaped assessment from the tax, the assessing authority may, at any time within a period of five years from the expiry of the year to which the tax relates, determine to the best of its judgment the turnover which has escaped assessment and reassess the tax payable on the total turnover (including the turnover already assessed under section 7)—*

*(i) in case where such total turnover is not more than one lakh of rupees in accordance with the provisions contained in sub-section (1) of section 7; and*

*(ii) in other cases where the total turnover is more than one lakh of rupees in accordance with the other provisions contained in this Act.*

*(2) Before making the reassessment under sub-section (1), the assessing authority may make such enquiry as it may consider necessary and give the dealer concerned a reasonable opportunity to show cause against such reassessment.*

*(3) The amount of tax already paid by the dealer concerned in pursuance of the permission to compound under section 7 shall be adjusted towards the amount of tax due as the result of reassessment under subsection (1).*

*(4) The provisions of sub-sections (2) to (4) of section 16 shall, as far as may be, apply to reassessment under sub-section (1) as they apply to the reassessment of escaped turnover under sub-section (1) of section 16.”*

*12. One word of explanation is necessary in respect of the turnover of one lakh of rupees mentioned in this section. Section 7 originally had the maximum turnover fixed only as rupees seventy-five thousand. Subsequently that was amended by Tamil Nadu Act No. 25 of 1971 raising that maximum to rupees one lakh. Since Tamil Nadu Act No. 31 of 1972 came into force subsequent to Tamil Nadu Act No. 25 of 1971, it takes note of that increase*



*in the maximum. Thus, a perusal of the different provisions of section 16-A will clearly show that it constitutes the legislative recognition of what the assessing authorities and the Tribunal have done in the present cases. We have already indicated that the action of the assessing authority and the Tribunal in the present cases clearly fell within the scope of section 16 itself. In that context, the enactment of section 16-A may be said to be only declaratory of the law as flowing from section 16 with a view to place the position beyond all doubt. This section (section 16-A) constitutes merely an express provision of what is already impliedly contained in section 16 read with section 7 and section 3 of the Act.*

*13. Under these circumstances, we are unable to hold that the enactment of section 16-A in any way gives an indication that section 16 did not apply and was not intended to apply to cases covered by section 7 of the Act. Hence, these tax revision cases fail and they are dismissed with costs. Counsel's fee Rs. 150 in each of the cases."*

**186.** Upon perusal of the provisions of the TNVAT Act, 2006 more particularly Sections 27 and 28, we are unable to agree with the learned counsel for the petitioners. The reliance placed upon the judgment in the ***Sinotech case*** is misplaced. In any event, we do not agree with the proposition laid down by the Learned Judge, who has mechanically followed a judgment not related to the subject matter of dispute before him and without considering the provisions. In ***Deputy Commissioner of Commercial Taxes, Vellore v. Devandran & Co. [(1981) 47 STC 264]***, the Division Bench was dealing with a case, where the tanned hide and skin, taxed at 11.5% under entry 7(b) was sought to be taxed under different entry. The learned Judge failed to consider the definitions and the scope of Section 16 and Section 16 A of TNGST Act. Similarly, in ***South India corporation case***, the Division Bench of the Madras High Court was deciding whether the value of the works

contract was to be included for the purpose of calculating Additional Sales Tax which was leviable on taxable turnover. The said judgment is not applicable as this is not a case relating to levy of additional sales tax and as Section 27 uses the word “turnover” and not “taxable turnover”. The facts and the point of dispute are completely different. Rather, the judgment relied upon by the Learned Additional Advocate General in *S.Meenakshi v. State of Tamil Nadu* case will be squarely applicable. Section 27 (1) (a) of the TNVAT Act, 2006 deals with escaped turnover. The word “turnover” means, the aggregate amount for which goods are bought or sold, or delivered or supplied or otherwise disposed of in any of the ways referred to in clause (33), by a dealer either directly or through another, on his own account or on account of others whether for cash or for deferred payment or other valuable consideration. Section 2 (33) defines “sale” which also includes deemed sale or transfer of property in goods. It is also necessary to note the difference in the language used by the legislature while framing Section 5, where the term “taxable turnover” is used and Section 6, where “turnover” alone is used.

**187.** The value of the works contract includes the value of goods purchased by the dealer which are deemed to be sold when there is a transfer of property. Section 27 can be invoked even when a part of the turnover has escaped assessment. Section 28 comes into operation when it is learnt that the dealer

has failed to disclose any part of turnover under Section 6. The fact that there is provision to assess the escaped “turnover” in the return filed under Section 6 under Section 28, implies that the word “turnover” under Section 2 (41) is exhaustive to include the value of works contracts. In this case, if a dealer, more particularly, a works contractor is found ineligible to opt to the composition scheme, he must be charged under Section 5 as per the scheme provided therein. Therefore, after the period to treat the assessee to be deemed to be assessed is over as per section 22, it is open to the assessing officer to invoke Section 27 and revise the assessment.

**188.** It is also not out of place to mention here that as per Section 28, the assessee will be re-assessed on his entire total turnover, in case of escapement. The word “total turnover” would also include the taxable and non taxable turnover. It is also relevant to note that as per section 22 (4), if any return filed is incorrect or incomplete, it is open for the authority to assess the dealer on best judgment. Similarly, Section 25 enables provisional assessment in case of incorrect or incomplete return. Decoding the provisions, once the assessment is not made either under Section 22 (4) or under section 25 of the Act, a dealer is deemed to be assessed on the 31<sup>st</sup> day of October of the Succeeding year from 2011-12 onwards and on 30<sup>th</sup> day of June 2012 for the assessment years upto 2010-11. When a dealer files a return under a provision, which is not

applicable to him, it is an incorrect return. An incomplete or an incorrect return results in escapement of turnover and therefore provisions of Section 27 can be invoked. As per section 27 (1) (b), the assessment can be revised if the dealer has paid tax at a rate lower than the rate payable. If the dealer files his return under Section 5, he has to pay tax as per the rate in the First schedule by adhering to the method of calculation prescribed under Rule 8(5) of TNVAT Rules. However, when it comes under Section 6, the rate of tax payable is either 2 % or 4 % irrespective of the value of the goods. When a dealer, though ineligible to file a return under Section 6, but files such a return and pays tax at a lower rate, he ought to calculate the taxable turnover out of the total turnover and pay taxes at rates specified in the First schedule, then section 27 (1) (b) is applicable. In such cases, it is not a part of the turnover that is to be reassessed at a higher rate, the return filed under Section 6 is to be rejected and the entire taxable turnover becomes assessable as per Section 5.

**189.** Further, as per the provisions of the TNVAT Act, more particularly Section 10, a dealer is liable to pay tax on the transfer of property in goods, purchases from dealers in the other State. It is relevant at this point to refer to the other judgments relied upon by the Learned Additional Advocate General.

**190. *State of Kerala v. Unitech Machines Ltd. [2009 SCC OnLine Ker 6740: (2010) 32 VST 80]:***

*“5. The Government Pleader contended that the work awarded to the respondent by the oil companies in Kerala did not provide for any inter-State sale of goods. Further, he also contended that the respondent also has not made any inter-State sales to the awarders. On the other hand, it is the admitted position that the goods from outside the State were purchased by the respondent for resale in the execution of works contract in Kerala and for this purpose, the respondent availed of concessional rate of tax under the Central Sales Tax Act by issuing C form declarations obtained from Kerala to the outside suppliers. The awarders also understood the contracts awarded by them as purely work orders and consequently, they have deducted tax from contract amounts while making payment to the respondent. These are facts clearly found by the Tribunal for the assessment years 1997-98 and 1999-2000 and also by the member who wrote the dissenting order in the appeal filed for the year 1998-99. We are unable to uphold the majority decision of the Tribunal for the year 1998-99 for the reason that they have relied on a decision of this court in Siemens Ltd. v. State of Kerala, [2001] 122 STC 1 where the facts are entirely different inasmuch as the contractor-company in that case made inter-State sale of goods by invoicing the goods from outside the State to the awarders in Kerala. On the other hand, in this case, admittedly the respondent purchased equipment from outside Kerala and brought the same to Kerala for use in execution of works contract which is a subsequent sale after inter-State purchase. Even though counsel for the respondent relied on several decisions to canvass for the proposition that the works contract can involve inter-State sale, we do not think any such decision is applicable in this case because the two contracts given here are for supply and installation of fire fighting equipment at the site of the awarder to their satisfaction. In fact, the awarder has not contracted for the purchase of any particular equipment and on the other hand, the contract is for installation of a system of a particular kind to suit the requirement of the customer. Admittedly, the transfer of said equipment takes place only when the materials are incorporated to the work at site of the customer and the awarder will accept the work only when the respondent, after installation, commissions the fire fighting equipment to prove its performance in terms of the contract. The equipment and materials for the fire fighting were purchased by the respondent within Kerala and from outside Kerala as well. In fact, all the materials so purchased were brought to the site and it is the respondent, who incorporated the same to form the fire fighting equipment on the site of the awarders. Therefore, the concept of inter-State sale does not apply to the facts of the two works executed by the respondent referred to above. The respondent's argument that the turnover of works contract should be assessed only for the value of the materials purchased or made in Kerala after excluding the value of the goods brought from outside Kerala because there is no provision in the KGST Act pertaining to works contract to exclude so much of the value of the goods from the turnover of the works contract, merely because such goods were brought from outside*

*Kerala or from outside the country. We also notice that what weighed with the Tribunal to exclude the value of the goods brought from outside the State from the turnover on works contract is that the respondent is essentially based in Delhi. We do not think the base of the contractor has any relevance for deciding whether turnover on part of the works contract representing the value of goods brought from outside Kerala was inter-State sales. As found by all the authorities, the work executed by the respondent was with materials purchased in Kerala and from outside Kerala and the sale for these items took place from the respondent to the awarders only in the course of execution of the works contract in terms of the contracts and not at any time anterior to that. The awarding companies have no case that they made any inter-State purchase of any equipment and issued the same to the respondent-contractor for incorporation in the works. On the other hand, the scope of the work covered procurement of the entire materials at the site and setting up of the system by the contractor. We, therefore, allow the revision petitions filed by the State by reversing the order of the Tribunal and by restoring the assessment confirmed in the first appeals.”*

**191. *Dosal Ltd. v. State of Kerala* [2009 SCC OnLine Ker 2789 : (2009) 3 KLT**

**682 : (2010) 29 VST 158 at page 683]:**

*“3. On going through the orders of the Tribunal, we find that clear-cut findings on facts entered by the Tribunal are that goods are brought on stock transfer basis by the petitioner from Mumbai, Coimbatore, etc. to Kerala stocked the same here and used it in the execution of works contract. Similar is the position for the goods purchased inter-State from outside the State, which were also appropriated to the contract during pipe-laying. Petitioner's claimed exemption on the ground that movement of goods from outside the State to Kerala is under contract of sale and so much so it is an inter-State sale assessable outside Kerala. The Tribunal found that stock transfer of goods from Mumbai to Kerala and inter-State purchase of goods from outside Kerala are independent transactions prior to appropriation of goods in the execution of work. Since the sale takes place locally in the execution of works contract, the entire material value is assessable for works contract in Kerala, is the finding of the Tribunal. Even though counsel has relied on the decision of this Court in SIEMEN's case (122 STC 1), we do not think the decision has any application on the peculiar facts found by the Tribunal. A sale becomes inter-State only if the sale takes place in the course of movement of goods from one State to another or if it is made by endorsement of title to deeds in the course of movement of goods from one State to another. A contractor bringing materials from outside the State, stocking it in their godown and later appropriating it to the work cannot claim that sale in the execution of works contract is an inter-State sale from outside the State. Admittedly*

*petitioner has not billed the goods to the awarder in Kerala to claim the transaction as inter-State sale. On the other hand, the petitioner brought the goods to Kerala, stocked it in their godown at their own risk and later appropriated it in the works contract. We are of the view that transfer of property in goods admittedly took place in Kerala when the goods are appropriated to the contract that is by laying pipe in the location identified by the awarder. Until then the goods were retained by the petitioner at their risk in their godown. A trader making inter-State purchase or bringing goods on stock transfer and selling the same later becomes liable for payment of tax under the K.G.S.T. Act on sale of such goods. The position is not different so far as contractors are concerned, who bring goods from outside the State either as stock transfer or as inter-State purchase, stock it in their godown and later use it in the execution of works contract. We are therefore of the view that Tribunal rightly held that transfer of materials in the course of execution of work in Kerala does not amount to inter-State sale of goods from Mumbai to Kerala. We therefore dismiss the Revision Petitions.”*

**192. *Sudhakar S. Pangol v. State of Maharashtra* [2009 SCC OnLine Bom**

**1182 : 2010 Supp Bom CR 236 : (2009) 25 VST 369]:**

*“8. In its decision in Builders Association of India v. State of Maharashtra (supra), this Court has upheld the constitutional validity of the Works Contract Act, 1989 and has held that the Legislature of Maharashtra has a power to impose tax on the value of goods which are transferred by a person to another while executing the works contract. In determining value of the goods as transferred, a dispute may arise as to how the value of goods which have been transferred by a person to another in execution of works contract, is to be determined. The property in which it is transferred may have been purchased by the dealer/contractor either within the State or from outside the State. While there may be no dispute between the parties as to the computation of the price of the goods purchased by the dealer or the contractor or a dealer in the State of Maharashtra and used in execution of the work, a dispute may arise as to the value of the goods purchased by the dealer or the contractor outside the State and used in execution of a works contract. In order to obviate such dispute, the Legislature has defined the word “sale price” in section 2(m). By that definition, it is provided that in respect of the goods brought by a contractor or a dealer from outside the State and used in the works contract, the price of the goods at which they were purchased would be the sale price for computation of the “turnover of sale” in section 2(p). The combined effect of section 2(p) read with 2(m) is to consider the price at which the goods were purchased by the dealer or the contractor outside the State and brought into the State for*

*execution of the works contract as the price for the purpose of computing the turnover of a works contract. Undoubtedly, the State is competent to tax the goods, whether purchased within the State or outside the State and brought in the State, the property in which is transferred to another in execution of a works contract within the State of Maharashtra. For the purpose of taxation, it matters not where from the goods have been brought by the contractor/dealer and used in execution of a works contract. Section 2(p) read with 2(m) of the Works Contract Act, 1989 only provides the mechanism of determining the value of the goods which have been purchased outside the State and used in a works contract in the State. By doing so, the Legislature has not taxed the sale transaction which has taken place outside the State, but has only provided a mechanism as to how the value of the goods, the property in which it is transferred by the contractor/dealer in execution of works contract, is to be determined. This definition is introduced to obviate any dispute in ascertaining the price of the goods which form the total turnover of the contractor/dealer."*

**193.** It was also contended on the side of the assesseees that in case of a dealer exercising his option under Section 6, it is not necessary for him to maintain any accounts and therefore, there is no scope for revision of assessment. We are not in agreement with such contention. A dealer opting to file his return under Section 6, is liable to maintain records only relating to his works contract as contemplated under Section 6 (4) of the Act. However, when a dealer purchases goods either from another state dealer or imports goods, he has to maintain the records including the books of accounts relating to purchases, sales, stocks, etc., as per Rule 4 of the Central Sales Tax (Tamil Nadu) Rules, 1957. Failure to maintain such particulars would constitute an offence. In view of the same, the contention that records need not be maintained and hence, there cannot be any revision, cannot be accepted. It is



gainful to refer to the following judgment of the Apex Court in ***India Agencies (Regd.) v. CCT***, [(2005) 2 SCC 129 : 2004 SCC OnLine SC 1616], wherein, it was held as follows:

*“15. The very purpose of prescribing the filing of C Forms is that there should not be suppression of any inter-State sales by a selling dealer and evasion of tax to the State from where the actual sales are effected. Secondly, the purchasing dealer also cannot suppress such purchases once he issues C Form to the selling dealer. Since the dealer should issue C Form, he has to maintain a detailed account of such C Forms obtained from the department prescribed under the State's taxation law. The C Form is a declaration to be issued only by the Sales Tax Authorities of the States concerned. By issuing declaration in C Form the purchasing dealer would be benefited as he is entitled to purchase goods by paying only concessional rate of tax of 4% as prescribed by the State concerned of the purchasing dealer otherwise the purchasing dealer has to pay tax at a higher rate besides additional taxes on such sales effected within the State where the selling dealer is situated.”*

**194.** Further, when there are provisions under the Act to revise or assess a dealer, it cannot be said that the assessing officer will not have power. It is needless to point out that a mere quoting of a wrong provision will not augment the case of the petitioners. The provisions of the statute are to be interpreted and constructed to achieve the purpose of the enactment. At this juncture, it is useful to refer to the judgment of the Apex Court in ***Pine Chemicals Ltd. v. Assessing Authority*** [(1992) 2 SCC 683 at page 694], wherein it was held as follows:

*“9. The government orders were made implementing the Cabinet decision No. 101 of the same date. There is no ambiguity about the class of persons or dealers to whom the government orders apply, no ambiguity about the class or description of goods and the transactions of sale which are exempt from tax. It has been duly authenticated in terms of Section 45 of the Constitution of Jammu and Kashmir. It is well settled that if power to*

*do an act or pass an order can be traced to an enabling statutory provision, then even if that provision is not specifically referred to, the act or order shall be deemed to have been done or made under the enabling provision.”*

**195.** A construction which goes against the scheme of the Act and which defeats the very purpose of the provisions must be avoided. No doubt, in tax matters, if the subject cannot be brought within the four corners of law, it is not possible to tax him. But, once the provisions are clearly available, a harmonious construction would serve the purpose. If the view of the petitioner is accepted, it would create a situation that even an incomplete or an incorrect return or a return by an ineligible person has to be accepted and assessed without any scope for revision. That, according to us, is neither contemplated under the Act nor the object of the provisions. Hence, the contention that a dealer's return under Section 6 cannot be reopened, is rejected.

## **XVII. SPECIAL ECONOMIC ZONE**

**196.** The next contention raised by Mr.N.Sriprakash, learned counsel for the petitioner is that the Co-developer of SEZ, who on the basis of a valid contract with the Developer, is entitled to the benefits like that of a Developer and is entitled to total exemption from the purview of tax. Reliance was placed upon Section 8(6) of the Central Sales Tax Act and section 26(1)(g) of the Central Special Economic Zones Act, 2005 in support of his contentions. Further, placing reliance upon Section 50 and G.O.Ms.No.193 dated 30.12.2006, it

was contended that the State of Tamil Nadu has exempted the sales to a Developer, who has been authorized to carry out certain activities. The petitioner being a Co-Developer is entitled to the same privileges and exemptions as that of a Developer as they have been authorised to put up residential units in the SEZ. It was further contended that even assuming that the petitioner is liable to pay tax for transfer of property in goods, in view of the exemption, no liability would arise. It was also contended that the order was passed in violation of the principles of natural justice. Further, the exemption is claimed by virtue of the provisions under the Central and State Economic Zone Acts and not under Section 15 or 30 of the TNVAT Act. Referring to the following judgement, it was contended that it is only when tax is leviable, there could be an exemption.

**197. *Peekay Re-Rolling Mills (P) Ltd. v. Asstt. Commr. [(2007) 4 SCC 30 : 2007 SCC OnLine SC 394]:***

***“Impact of exemption on the liability to tax***

**35.** *The first aspect of the argument of the respondent is with respect to the impact of exemption upon the liability to tax. In our opinion, exemption can only operate when there has been a valid levy, for if there was no levy at all, there would be nothing to exempt.*

**39.** *A reading of the above judgments makes it amply clear that exemption does (sic not) negate a levy of tax altogether. Despite an exemption, the liability to tax remains unaffected, only the subsequent requirement of payment of tax to fulfil the liability is done away with.”*

**198.** Per contra, the Learned Additional Advocate General contended that construction done by the co-developer is not related to the activities of developing, operating and maintaining SEZ, and is ineligible for grant of exemption from payment of taxes on purchases of the goods from local registered dealers in the State of Tamil Nadu. Further, the construction of residential houses is not an authorized activity. In the instant case, the lands are leased out by the Developer to the petitioners who are co-developers, who in turn after constructing the houses, sub-leased the same to third parties. According to the Learned Additional Advocate General, the factual disputes like stock difference, whether the activity is authorised, the question where the construction is put up, the person is in a processing area, whether the sub-lease is made out to a worker, the duration of the sub-lease and the scope and effect of allotment of building are to be agitated only before the Appellate authority and sought the dismissal of the writ petition.

**199.** We have considered the rival contentions. The SEZ Act has been enacted to provide for establishment, development and management of the Special Economic Zone for promotion of exports and for matters connected therewith. Section 2(f) of the SEZ Act defines a "Co-developer" which means a person, who or a State Government which, has been granted by the Central Government, a letter of approval under sub-section 12 of Section 3. Section

2(g) defines the word "Developer", which means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section 10 of Section 3 and includes an Entrepreneur and a Co-developer. Section 3 of the Act provides for procedures to establish a Special Economic Zone, either jointly or severally by the Central Government, State Government or any person for manufacture of goods or rendering services or for both or as a Free Trade and Warehousing zone. Section 50 of the Act empowers the State Government to grant exemption for the purpose of giving effect to the provisions of the Act with particular reference to grant of exemption from the State Taxes, levies and duties to the developer or the entrepreneur. Section 6 of the SEZ Act, 2005 classifies the processing area and non-processing area. As per Sub-section (c) of Section 6, the non-processing area is one where there are activities other than those specified under clause (a) and (b) thereof which relates to areas meant for setting up Units for activities such as manufacture of goods, or rendering service, including area earmarked for providing warehousing facilities.

**200.** A conjoint reading of all the provisions would make it explicit that the co-developer upon necessary authorization is liable to be treated on par with a Developer. Exemption is available to all the activities that are authorised activities as per Section 12 (1) (a) and (2) of the State SEZ Act. The

Government order also exempts the sale to any Developer who has been authorised to carry out the activities in the SEZ. As per Rule 11 (6) of the Central Special Economic Zone Rules, 2016, the developer holding the land on lease, shall assign the lease hold right to the entrepreneur holding valid Letter of Approval and as per sub-rule (7) any transfer by way of sub-lease or any other mode by the Developer shall be valid only if the same is made to a person holding a valid letter of approval issued by the Development Commissioner. Therefore, it is clear that a sub-lease can be made only if the lessee also has a valid letter of approval. As per the proviso to Rule 11 (10), a completed infrastructure can be leased out by the Co-Developer along with the land for such purpose. The word “such purpose” here would have to be read as “authorized purpose”. The exemption is not available when a sale is effected to a dealer in Domestic Tariff Area. In this case, there is a factual finding by the authority that the goods were not exported. The exemption granted on 30/12/2006 in this case is only with respect to sale of any goods for the purpose of setting up, operation, maintenance, manufacture, trading, production, processing, assembling, repairing, reconditioning, re-engineering, packaging or use as packing materials or packing accessories in an unit located as special economic zone or for development, operation and maintenance of special economic zone by the developer. Similarly, whether all the conditions

imposed under Section 12 or under the letter dated 12/06/2006 are satisfied, are all factual matters. It is also not out of place to mention here that it has to be factually verified as to whether the constructed residential units are in fact leased out to the workers, the effect of such lease and whether the activities carried out by the petitioners are authorized. The above exercise also involves verification of the terms of agreement between the parties.

**201.** Insofar as Section 8 (6) of the CST Act is concerned, no tax shall be payable under the CST Act by any dealer in respect of sale of any goods made by such dealer, in the course of interstate trade or commerce to a registered dealer for the purpose of setting up, operation, maintenance, manufacture, trading, production, processing, assembling, repairing, reconditioning, re-engineering, packaging or for use as packing material or packing accessories in a unit located in any special economic zone or for development, operation and maintenance of special economic zone by the developer of the special economic zone, if such registered dealer has been authorised to establish such unit or to develop, operate and maintain such special economic zone by the authority specified by the Central Government in this behalf. The exemption from payment of tax is applicable only with respect to the above said activities which are connected with the processing of goods for export and not for putting up any residential unit and leasing out the same. However, what

may not be permitted under the CST Act may be permitted under the SEZ Act, which requires factual verification. Insofar as the violation of the principles of natural justice is concerned, we do not agree with the counsel for the petitioner. The objections have been considered by the authority in the orders impugned. That apart, there are other issues like difference in stock and sales suppression in the assessment order, which require adjudication by the fact finding authority. Hence, it is appropriate that all the issues including the issue of exemption, are left open for the petitioner to agitate the same before the appellate authority.

#### **XVIII. DOCTRINE OF READING DOWN**

**202.** The learned counsel for the petitioners have in the alternative pleaded that the provision must be read down to exempt the application of Section 6 to Developers/Co-Developers in SEZ, that the purchase turnover proportionate to the value of goods brought into the state either by interstate purchase or import must be excluded and the dealers ought to be permitted to file returns under Section 6 for the purchase from local dealers and under Section 5 for the purchases from outside the state. It was also contended that instead of striking down the provision, it can be read down to meet the requirements of the assesseees.



**203.** In this regard, reliance was placed on the Hon'ble Supreme Court Judgment in *TVS Motor Co. Ltd. v. State of T.N. [(2019) 13 SCC 403 : 2018 SCC OnLine SC 1944]*, in which it was held as under:

*“28. While entertaining Question 2, namely, whether the impugned provisions are violative of Articles 14, 19(1)(g) and 301 of the Constitution, the High Court pointed out that on this aspect, argument of the assessee was that the words “rate applicable” employed in Section 8(2) of the CST Act have to necessarily take into account the effective rate after considering the deductions made under Section 3(3) of the TNVAT Act. It was argued that Section 19(5)(c) of the Tnvat Act, which denied ITC on purchase of goods sold or used in the manufacture of other goods and falls within Section 8(2) of the CST is per se discriminatory. The High Court took note of the scheme of the TNVAT Act and found that though Section 3(2) stipulated many taxable transactions, only few such transactions are carved out to give benefit of ITC. After discussing certain judgments of this Court and other High Courts, the High Court has observed that the legal position was that right to claim ITC is not a vested right or an indefeasible right. It is a benefit conferred under the Act in certain contingencies and subject to conditions prescribed in the statutory scheme. Therefore, it is open to the State Legislature to provide for conditions and restrictions while extending the concession. Likewise, it was also necessary for any assessee to claim input credit to fulfil those conditions. Thus, the provision made in the statute that unregistered dealers in other States would not be entitled to ITC was justified. The High Court noted that specific stand of the State Government was that in respect of such unregistered dealers in other States, the State of Tamil Nadu had no mechanism to prevent evasion of tax and loss of revenue caused by trade with such unregistered dealers in the State of Tamil Nadu. This kind of provision, in the opinion of the High Court, was not violative of the constitutional provisions contained in Articles 14, 19(1)(g) and 301.*

*40. It is very clear from the aforesaid discussion that this Court held that ITC is a form of concession which is provided by the Act; it cannot be claimed as a matter of right but only in terms of the provisions of the statute; therefore, the conditions mentioned in the aforesaid section had to be fulfilled by the dealer; and sub-section (20) of Section 19 was constitutionally valid. It was also noted, in the process, that there were valid and cogent reasons for inserting that provision and the main purpose was to protect the Revenue against clandestine transaction resulting in evasion of tax.*

*41. The reasoning given in that judgment while upholding sub-section*

*(20) of Section 19 shall equally apply while examining the validity of Section 19(5)(c) thereof. The High Court has noted the specific stand taken by the State Government to the fact that in respect of unregistered dealer in other States, the State of Tamil Nadu has no mechanism to prevent evasion of tax and loss of revenue caused by trade with such unregistered dealers in the State of Tamil Nadu. Therefore, the provision was aimed at achieving a specific and justified purpose and could not be treated as discriminatory.*

*44. One argument of Mr Bagaria, however, needs little deeper consideration. He has argued that the appellant represented in his case is making sales only to the State of Karnataka. In such a case, there cannot be any apprehension about evasion of tax.*

*46. Thus, wherever the State Government buys, sells, supplies or distributes goods, it shall be deemed to be the dealer for the purposes of the Tnvat Act. At the same time, the Tnvat Act does not require registration by the State Government inasmuch as Section 38 which deals with registration of dealers explicitly provides, under sub-section (8) thereof, that this provision shall not apply to any State Government or Central Government. A conjoint reading of the aforesaid two provisions would show that when a sale is made to the State of Karnataka, it is made to a dealer but that dealer is under no obligation to get itself registered under the Tnvat Act. Because of this exemption, no State Government does that and since it is not a registered dealer, it would not be in a position to issue any Form C. But for that, the genuineness of sales made to a State Government cannot be doubted. This situation puts those dealers who are making sales to the State Government in disadvantageous position, even when it is clear that there is no possibility of tax evasion as there cannot be any such apprehension in case of sales to the State Government. We may point out here that benefit of ITC is given whenever sale is made to a dealer outside the State of Tamil Nadu and the said dealer is a registered dealer.*

*47. Having regard to the above, we are of the opinion that the provisions of Section 19(5)(c) are to be read down by construing that those dealers who are making sales exclusively to the other State Governments (i.e. outside the State of Tamil Nadu), the said States would be deemed as registered dealers for the purposes of availing benefits of ITC. Otherwise, in such a situation, it would be difficult to hold that test of reasonable classification is met in this limited context. It becomes unnecessary to deal with other contentions of Mr Bagaria.*

*48. Result of the aforesaid discussion would be to uphold the judgment of the High Court with one rider, namely, that in those cases where a dealer makes sales exclusively to the other State Government(s), benefit of ITC would be allowed without insisting on the furnishing of Form C. However, in order to avail this benefit, a certificate from the said State Government*

*to whom the supplies are made would be obtained by the dealer claiming ITC and submitted to the VAT authorities.”*

**204.** In the above case, Section 19 (5) (c) by which the Input Tax Credit on purchases falling under Section 8(2) of the CST Act was denied, was challenged as ultra vires the constitution. It was also contended that there is no requirement for state governments to register themselves under the CST Act and hence it is impossible to obtain the “C” forms on those transactions. The Apex Court after holding that the provision is intra-vires, read down the provision to exclude the applicability of the provision to sales made to other state government(s). The concession of reading down the provision was under peculiar circumstances to fill in the anomaly where there was no law to deal with such a situation. The said decision will do no favour to the petitioners.

**205.** On the contrary, the law on the point is well settled. In cases where the provision(s) are challenged as *ultravires* the Constitution, the courts would apply the doctrine of reading down to avoid the provision being struck down as *ultravires*. In view of the above findings, there is no necessity to apply the said doctrine inasmuch as we have already held that the challenge to the *vires* of section 6 of the Act must fail. It is useful to refer to the following judgments in this regard:

**206. Prashanti Medical Services & Research Foundation v. Union of India****[(2020) 14 SCC 785 : 2019 SCC OnLine SC 925]:**

*“28. We find no merit in this submission. In a taxing statute, a plea based on equity or/and hardship is not legally sustainable. The constitutional validity of any provision and especially taxing provision cannot be struck down on such reasoning.*

*30. We are afraid, we cannot accept this submission for more than one reason. First, as held above, in tax matter, neither any equity nor hardship has any role to play while deciding the rights of any taxpayer qua the Revenue; second, once the action is held in accordance with law and especially in tax matters, the question of invoking powers under Article 142 of the Constitution does not arise; and third, the appellant's donors were admittedly allowed to claim deduction of the amount paid by them to the appellant under Section 35-AC during the two Financial Years 2015-2016 and 2016-2017. It is for all these reasons, the matter must rest there.”*

**207. Indian Oil Corpn. Ltd. v. State of Bihar [(2018) 1 SCC 242 : 2017****SCC OnLine SC 1321]:**

*“23. Shri Datar then referred to State of Bihar v. Bihar Chamber of Commerce [State of Bihar v. Bihar Chamber of Commerce, (1996) 9 SCC 136] for the proposition that the Objects and Reasons appended to the Bill of the Entry Tax Act showed that it was with a view to make the provision of the Bihar Finance Act more workable. From this it can scarcely be held that this being the object, the second proviso must be completely altered in order that it subserves such object. We have already held that a literal reading of the second proviso, which gives a concession by way of set-off, cannot possibly be held to be altered qua every material condition, so that the appellant be entitled to claim a set-off. Consequently, this judgment and other judgments cited by the appellant, such as CIT v. J.H. Gotla [CIT v. J.H. Gotla, (1985) 4 SCC 343 : 1985 SCC (Tax) 670] , to buttress the plea of purposive interpretation cannot be held to apply in the facts and circumstances of this case.”*

*24. Shri Datar's next plea was that a literal reading of the second proviso would lead to a situation where the same goods would suffer different rates of tax and this would be discriminatory. We are afraid that this plea also does not avail the appellant for the simple reason that there are two taxes which are levied in the present case, one is VAT and the other is entry tax. In one case, VAT is set-off against the entry tax and in another, VAT is not so set-off. Any anomaly arising from the aforesaid position*

would not lead to a charge of clear and hostile discrimination.

25. When it comes to taxing statutes, the law laid down by this Court is clear that Article 14 of the Constitution can be said to be breached only when there is perversity or gross disparity resulting in clear and hostile discrimination practised by the legislature, without any rational justification for the same. (See *Twyford Tea Co. Ltd. v. State of Kerala* [*Twyford Tea Co. Ltd. v. State of Kerala*, (1970) 1 SCC 189] at paras 16 and 19; *Ganga Sugar Corpn. Ltd. v. State of U.P.* [*Ganga Sugar Corpn. Ltd. v. State of U.P.*, (1980) 1 SCC 223 : 1980 SCC (Tax) 90] at p. 236 and *P.M. Ashwathanarayana Setty v. State of Karnataka* [*P.M. Ashwathanarayana Setty v. State of Karnataka*, 1989 Supp (1) SCC 696] at pp. 724-26).

27. However, *Shri Datar* referred to observations contained in *Ayurveda Pharmacy v. State of T.N.* [*Ayurveda Pharmacy v. State of T.N.*, (1989) 2 SCC 285 : 1989 SCC (Tax) 273] , *Aashirwad Films v. Union of India* [*Aashirwad Films v. Union of India*, (2007) 6 SCC 624] , *State of U.P. v. Deepak Fertilizers & Petrochemical Corpn. Ltd.* [*State of U.P. v. Deepak Fertilizers & Petrochemical Corpn. Ltd.*, (2007) 10 SCC 342] and *Union of India v. N.S. Rathnam and Sons* [*Union of India v. N.S. Rathnam and Sons*, (2015) 10 SCC 681] . Each of these judgments concerned taxation rates that were *ex facie* arbitrary and/or discriminatory, in that the very same tax was levied at different rates without any rational justification for the same and were, thus, struck down as being arbitrary and/or discriminatory. None of these judgments would have any application to the facts of the present case, in which it is clear that the plea of discrimination is *qua* a set-off of one tax against a separate and independent tax imposed. This fact circumstance would be sufficient to distinguish the said judgments from the facts of the present case.

28. Since we have found that the plea of discrimination must fail on the aforesaid grounds, no question of reading down the provisions would then arise.”

**208.** It is clear from the above judgments that there is no equity or hardship in tax matters. Once provision is held to be valid, the same cannot be read down to confer some benefit or exception contrary to such provision. Further the need to read down the provision instead of striking it down would arise only if the court is satisfied that the provision under challenge suffers from

constitutional anomalies. In the present case, we have already held that the classification is rational and has a nexus with the object behind the amendment. There is also no violation to Part XIII. Permitting the petitioners to file returns both under Section 5 and Section 6 is not contemplated under the Act. Similarly, with regard to the exemption claimed by the co-developers in SEZ, it depends upon the conditions imposed, the activity carried out and the exemption granted by the state. Therefore, the provision cannot be read down to exclude the Developer or Co-Developer. Hence, the requests of the assesseees are rejected.

#### **XIX. RETROSPECTIVE OPERATION**

**209.** It has been contended by the counsels appearing for the assesseees that legislation ought not to have been brought into force with retrospective effect. According to them, such retrospective effect is not only arbitrary but also is violative of Article 19 (1) (g). It was further contended that by such retrospective effect, even the closed assessments are reopened, which ought not to be permitted. In the alternative to the contentions regarding *vires* of the constitution, it was sought that the Act must be directed to be implemented with prospective effect. In support of the contention, reliance was placed upon the judgment of the Apex Court in *Jayam & Co. v. Commr. [(2016) 15 SCC 125 : 2016 SCC OnLine SC 909]* wherein it was held as under:

*“15. At the same time, this Court has also held that retrospective legislation would be admissible in cases of validation laws i.e. where the laws as initially passed were held to be inoperative by the court and when there is a new provision inserted, it should normally be prospective. We may refer to the judgment of this Court in Tata Motors Ltd. v. State of Maharashtra [Tata Motors Ltd. v. State of Maharashtra, (2004) 5 SCC 783] . In that case, the appellant assessee company, manufactured motor vehicle chassis and spare parts. It procured steel in primary form covered by Entry 6 of Schedule B to the Bombay Sales Tax Act, 1959 for use in the manufacturing process which resulted also in iron and steel scrap which was covered by the said entry. Therefore, in Assessment Year 1982-83, the appellant therein claimed set-off of a certain amount in terms of Rule 41-E for the quantum of iron and steel purchased which was converted into iron and steel scrap. The claim was allowed. Subsequently, Maharashtra Act 9 of 1989 was enacted and by Sections 26 and 27, the benefit of Rule 41-E was denied altogether for the period 1-7-1981 to 31-3-1988 where the manufactured goods falling under Schedule B were in the nature of waste goods/scrap goods/by products. The validity of such retrospective amendment to Rule 41-E was unsuccessfully challenged before the High Court. The High Court took the view [Telco Ltd. v. State of Maharashtra, 1997 SCC OnLine Bom 290 : (1998) 3 Mah LJ 747] that the impugned amendment of Rule 41-E was clarificatory to remove the doubts in interpretation. However, by the Bombay Sales Tax (Amendment) Rules, 1992 Rule 41-E was amended. That amendment removed the exclusionary clause of goods manufactured out of waste or scrap goods or products and restored the position as it stood prior to 1981. The appellant's appeal and another connected appeal were heard simultaneously.*

*16. The appellant assessee in Tata Motors Ltd. case [Tata Motors Ltd. v. State of Maharashtra, (2004) 5 SCC 783] contended that retrospective operation of a provision depriving the assessee of the vested statutory right and covering a long period (eight years in that case) imposed a prima facie unreasonable restriction and was, therefore, unconstitutional. More so, when the original provision was subsequently reintroduced deleting the amendments and there was no material to justify the special treatment given for the said eight years. The respondent State could not meet the said contention. The assessee company further contended that since the CST Act had not been extended to Dadra and Nagar Haveli, where the assessee's branch office was located, the requirement under Rule 41-D for registration of the assessee under the CST Act in that place was impossible of performance and should, therefore, be ignored.*

*17. Though the latter contention was rejected, the first contention noted above, touching upon the retrospectivity of the amendment, was accepted and while allowing the appeal the matter was dealt with in the following manner: (Tata Motors Ltd. case [Tata Motors Ltd. v. State of*

*Maharashtra, (2004) 5 SCC 783] , SCC pp. 789-90, para 15)*

*“15. It is no doubt true that the legislature has the powers to make laws retrospectively including tax laws. Levies can be imposed or withdrawn but if a particular levy is sought to be imposed only for a particular period and not prior or subsequently it is open to debate whether the statute passes the test of reasonableness at all. In the present case, the High Court sustained the enactment by advertng to Rai Ramkrishna case [Rai Ramkrishna v. State of Bihar, AIR 1963 SC 1667] when the benefit of the rule had been withdrawn for a specific period. The learned counsel for the State contended that the amendments had been made to overcome certain defects arising on account of the decision of the Tribunal in regard to the modalities of working out the relief. But, the impugned amendment brought about by Section 26 is not for that purpose. Assuming that it was the legislative policy not to grant set-off in respect of waste or scrap material generated, it becomes difficult to appreciate the stand of the State in the light of the fact that the original rule continued to be in operation (with certain modifications) subsequent to 1-4-1988. The reason for withdrawal of the benefit retrospectively for a limited period is not forthcoming. It is no doubt true that the State has enormous powers in the matter of legislation and in enacting fiscal laws. Great leverage is allowed in the matter of taxation laws because several fiscal adjustments have to be made by the Government depending upon the needs of the Revenue and the economic circumstances prevailing in the State. Even so an action taken by the State cannot be so irrational and so arbitrary so as to introduce one set of rules for one period and another set of rules for another period by amending the laws in such a manner as to withdraw the benefit that had been given earlier resulting in higher burdens so far as the assessee is concerned, without any reason. Retrospective withdrawal of the benefit of set-off only for a particular period should be justified on some tangible and rational ground, when challenged on the ground of unconstitutionality. Unfortunately, the State could not succeed in doing so.....*

*18. The entire gamut of retrospective operation of fiscal statutes was revisited by this Court in a Constitution Bench judgment in CIT v. Vatika Township (P) Ltd.[CIT v. Vatika Township (P) Ltd., (2015) 1 SCC 1] in the following manner: (SCC p. 24, paras 33-35)*

*“33. A Constitution Bench of this Court in Keshavlal Jethalal Shah v. Mohanlal Bhagwandas [Keshavlal Jethalal Shah v. Mohanlal Bhagwandas, AIR 1968 SC 1336 : (1968) 3 SCR 623] , while considering the nature of amendment to Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act as amended by Gujarat Act 18 of 1965, observed as follows: (AIR p. 1339, para 8)*

*‘8. ... The amending clause does not seek to explain any pre-existing legislation which was ambiguous or defective. The power of the High Court to entertain a petition for exercising revisional jurisdiction was before the*



*amendment derived from Section 115 of the Code of Civil Procedure, and the legislature has by the amending Act not attempted to explain the meaning of that provision. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act.'*

34. *It would also be pertinent to mention that assessment creates a vested right and an assessee cannot be subjected to reassessment unless a provision to that effect inserted by amendment is either expressly or by necessary implication retrospective. (See CED v. M.A. Merchant [CED v. M.A. Merchant, 1989 Supp (1) SCC 499 : 1989 SCC (Tax) 404] .)*

35. *We would also like to reproduce hereunder the following observations made by this Court in Govind Das v. ITO [Govind Das v. ITO, (1976) 1 SCC 906 : 1976 SCC (Tax) 133] , while holding Section 171(6) of the Income Tax Act to be prospective and inapplicable for any assessment year prior to 1-4-1962, the date on which the Income Tax Act came into force: (SCC p. 914, para 11)*

*'11. Now it is a well-settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that*

*"all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."'*

*(emphasis in original)*

19. *When we keep in mind the aforesaid parameters laid down by this Court in testing the validity of retrospective operation of fiscal laws, we find that the amendment in question fails to meet these tests. The High Court has primarily gone by the fact that there was no unforeseen or unforeseeable financial burden imposed for the past period. That is not correct. Moreover, as can be seen, sub-section (20) of Section 19 is altogether new provision introduced for determining the input tax in a*

*specified situation i.e. where goods are sold at a lesser price than the purchase price of goods. The manner of calculation of ITC was entirely different before this amendment. In the example, which has been given by us in the earlier part of the judgment, “dealer” was entitled to ITC of Rs 10 on resale, which was paid by the dealer as VAT while purchasing the goods from the vendors. However, in view of Section 19(20) inserted by way of amendment, he would now be entitled to ITC of Rs 9.50. This is clearly a provision which is made for the first time to the detriment of the dealers. Such a provision, therefore, cannot have retrospective effect, more so, when vested right had accrued in favour of these dealers in respect of purchases and sales made between 1-1-2007 to 19-8-2010. Thus, while upholding the vires of sub-section (20) of Section 19, we set aside and strike down Amendment Act 22 of 2010 whereby this amendment was given retrospective effect from 1-1-2007.”*

**210.** Per contra, justifying the retrospective amendment, the Learned Additional Advocate General contended that the State is well within its powers to bring in a retrospective amendment in fiscal matters, that too, when the object of such amendment is to curb tax evasion and to protect the interest of the State. It was also urged that the judgment in *Jayam and Co. case* is not applicable as a new provision was introduced, whereas here, the mischief was sought to be rectified by such an amendment. In support of his contentions, the following judgments were relied upon.

**211. Addl. Commr. (Legal) v. Jyoti Traders [(1999) 2 SCC 77]:**

*“25. The two decisions in the cases of Ahmedabad Manufacturing & Calico Printing Co. Ltd. [AIR 1963 SC 1436 : 1963 Supp (2) SCR 92 : (1963) 48 ITR 154] and Biswanath Jhunjhunwalla [(1996) 5 SCC 626] are more closer to the issue involved in the present case before us. They laid down that it is the language of the provision that matters and when the meaning is clear, it has to be given full effect. In both these cases, this Court held that the proviso which amended the existing provision gave it retrospectivity. When the provision of law is explicit, it has to operate fully and there could not be any limits to its operation. This Court in Biswanath*

*Jhunjhunwalla case*[(1996) 5 SCC 626] said that if the language expressly so states or clearly implies, retrospectivity must be given to the provision. Under Section 34 of the Income Tax Act, 1922, it is the service of the notice which is the sine qua non, an indispensable requisite, for the initiation of assessment or reassessment proceedings where income had escaped assessment. That is not so in the present case. Under sub-section (1) of Section 21 of the Act before its amendment, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or reassess the dealer according to law. Sub-section (2) provided that except as otherwise provided in this section, no order for any assessment year shall be made after the expiry of 4 years from the end of such year. However, after the amendment, a proviso was added to sub-section (2) under which the Commissioner of Sales Tax authorises the assessing authority to make assessment or reassessment before the expiration of 8 years from the end of such year notwithstanding that such assessment or reassessment may involve a change of opinion. The proviso came into force w.e.f. 19-2-1991. We do not think that sub-section (2) and the proviso added to it leave anyone in doubt that as on the date when the proviso came into force, the Commissioner of Sales Tax could authorise making of assessment or reassessment before the expiration of 8 years from the end of that particular assessment year. It is immaterial if a period for assessment or reassessment under sub-section (2) of Section 21 before the addition of the said proviso had expired. Here, it is the completion of assessment or reassessment under Section 21 which is to be done before the expiration of 8 years of that particular assessment year. Read as it is, these provisions would mean that the assessment for the year 1985-86 could be reopened up to 31-3-1994. Authorisation by the Commissioner of Sales Tax and completion of assessment or reassessment under sub-section (1) of Section 21 have to be completed within 8 years of the particular assessment year. Notice to the assessee follows the authorisation by the Commissioner of Sales Tax, its service on the assessee is not a condition precedent to reopen the assessment. It is not disputed that a fiscal statute can have retrospective operation. If we accept the interpretation given by the respondents, the proviso added to sub-section (2) of Section 21 of the Act becomes redundant. Commencement of the Act can be different than the operation of the Act though sometimes, both may be the same. The proviso now added to sub-section (2) of Section 21 of the Act does not put any embargo on the Commissioner of Sales Tax not to reopen the assessment if the period, as prescribed earlier, had expired before the proviso came into operation. One has to see the language of the provision. If it is clear, it has to be given its full effect. To reassure oneself, one may go into the intention of the legislature in enacting such provision. The date of commencement of the proviso to Section 21(2) of the Act does not control its retrospective operation. Earlier the assessment/reassessment could have been completed within four years of that particular assessment year and now by the amendment adding the proviso to Section 21(2) of the Act it is eight years. The only safeguard being that it is after the

*satisfaction of the Commissioner of Sales Tax. The proviso is operative from 19-2-1991 and a bare reading of the proviso shows that the operation of this proviso relates and encompasses back to the previous eight assessment years. We need not refer to the provisions of the Income Tax Act to interpret the proviso to Section 21(2) the language of which is clear and unambiguous and so is the intention of the legislature. We are, thus, of the view that the High Court was not right in quashing the sanction given by the Commissioner of Sales Tax and notices issued by the assessing authority in pursuance thereof.”*

**212. *MRF Ltd. v. CST [(2006) 8 SCC 702 : 2006 SCC OnLine SC 986]:***

*“27. The provisions of the Act or notification are always prospective in operation unless the express language renders it otherwise making it effective with retrospective effect. This Court in S.L. Srinivasa Jute Twine Mills (P) Ltd. v. Union of India[(2006) 2 SCC 740 : 2006 SCC (L&S) 440] has held that it is a settled principle of interpretation that: (SCC p. 747, para 18)*

*“... retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication, there is a subordinate rule to the effect that a statute or a section in it is not to be construed so as to have larger retrospective operation than its language renders necessary.”*

**213.** Upon consideration of the above judgments, it is evident that the legislature is empowered to bring in legislation with retrospective effect. Such intention must be spelt out by express words or by necessary implication. Retrospective effect can be given only to substantive provision either expressly or by necessary implication. Though with regard to procedural laws, the presumption is, it would apply retrospectively, there is no vested right to procedure. The effect of such enactment because of its retrospectivity must not be irrational or unreasonable.

**214.** In *Jayam & Co case*, a new provision, namely Section 19 (20) by which the ITC was restricted when the sale price was lesser than the purchase price, was introduced on 19/08/2010 with retrospective effect from 01-01-2007, which was unaccepted and the Apex Court held that the provision was to be given prospective effect.

**215.** Insofar as the challenge that the retrospective effect violates Article 19 (1) (g) is concerned, we have already held that the classification is reasonable, not arbitrary and has nexus with the object sought to be achieved. The amendment does not discriminate on the taxes levied on the goods purchased locally and brought in from outside. It is also settled law that imposition of tax will not amount to interference with the right to carry on any trade or profession.

**216.** At the cost of repetition, the composition scheme is only an option available to the dealer. The dealer is free not to opt for the scheme. The object of the amendment or the condition is to curb the tax evasion by trade diversion and to create a level playing field. The TNVAT, 2006 came into effect from 01/01/2007. The amendment was made to an existing Section 6 by imposing a condition in June 2007 itself with effect from 01/01/2007 by explicit and clear words. The legislature, as seen from the various judgments referred above, enjoys a greater latitude in fiscal matters; and is entitled to experiment and

rework on the laws. Such actions, if backed by necessary and rational objects, are to be upheld. It is also settled law that there is no equity in taxes and harsh results or higher tax burden cannot be a ground for interference. Considering the object and the nature of the amendment, the duration of the time within which it has been brought into effect, this court is of the view that the State is well within its power to give retrospective effect and that it is neither arbitrary or violative of Article 19 (1) (g) and therefore, the challenge of the assessee fails on that account.

**217.** However, can it affect the right of the assessee who had already exercised the option, is to be considered by taking into account the effect of the amendment *qua* the compounding scheme and the assessment years. The value added tax came into force on 01.01.2007, three months before the end of the assessment year 2006-07. When the Act was introduced, the condition that the persons who wanted to come under the composition scheme, should neither effect interstate purchases or imports was not there. Therefore, the dealers filed their returns during the VAT period for 2006-07 under section 6. As per Section 6 (3), the option once exercised is final for that year. With regard to the assessment year 2007-08, the amendment was introduced in June 2007. As per Section 6 (2), the dealer has to exercise his option along with the first monthly return for the financial year or in the first monthly return after the

commencement of the works contract. When they had exercised their option as per the then existing provision, they can neither be blamed nor can their returns be termed as incorrect or incomplete or that the turnover has escaped or lower rate of tax has been paid. The right that had accrued to them becomes a vested right. Therefore, we are of the view that the amendment shall not be applicable insofar as the dealers, who had exercised their option in the financial year 2006-07. Insofar as the assessment year 2007-08 is concerned, the provision shall not be applicable for that financial year for the dealers who had exercised their option prior to the date of amendment, but shall apply retrospectively to all dealers who had though commenced the works contract, did not exercise the option as on the date of the amendment. In other words, for the assessment year 2007-08, the impugned conditions in Section 6 shall not apply for dealers who had already exercised their option prior to the amendment and it shall apply to any dealer who had not exercised the option. Insofar as the other years are concerned, the Amendment had already come into effect. Therefore, by reason of purchase from other State dealers or by import, they are not entitled to file returns under the composition scheme. The issue is answered accordingly, partly in favour of the Revenue and partly in favour of the assesseees.

## **XX. CONCLUSION**

**218.** In view of the foregoing discussions and findings, we hold thus:

a. Section 6 of the TNVAT Act, 2006 is not a charging Section. It only provides for an alternate mode of discharging taxes to the dealers, who voluntarily opt for the compounding scheme to pay taxes at a compounded rate. It is always open to the dealers to fall back under Section 5 from the next year, if their tax planning permits them. No tax under the TNVAT Act, can be levied at the point of interstate purchase. However, when such goods are brought in and used in the execution of the works contract, they are liable to pay tax on the deemed sale in accordance with Sections 5 and 10 of the TNVAT Act.

b. While granting the concession at the point of payment of output tax, it is open to the State to impose any restriction or conditions for availing such concession. The concession at the point of interstate purchase from a registered dealer is already available under Section 8 of the CST Act and there is no tax on imported goods and such goods are taxed only at the first point of sale within the State.

c. The composition scheme under Section 6 cannot be treated as provision for levy of tax on purchases or imposing any restriction on purchases from other State or import. The conditions do not alter the rate of tax of goods



imported from outside the State. The concession is granted at the point of output tax payable on the transfer of property in goods.

d. Works contract in general denotes the genus with different species. The dealers purchasing goods from local dealers form a distinct category/species from dealers who purchase goods from local as well as other state dealers or dealers who import goods to be used in the works contract. There is a rationale behind such classification for the purpose of Section 6. In fiscal or taxing enactments, it is not necessary that every enactment should be backed by objects and reasons. What is relevant is the competence of the State and whether such enactment offends any constitutional rights, which in the instant cases, are held to be negative. The object and the reason adduced in the counter, which in the opinion of this court, can be discerned even without such counter as because, whenever, a purchase takes place in the course of inter-trade or commerce falling under Section 8(1) of the CST Act, the rate of tax payable is at a concessional rate upon satisfaction of the requirement under Section 8(4), which is much lower than the rate of tax prescribed for the purchase of goods from a local dealer. The State obviously is at loss of revenue at the point of purchase, added together the option to pay tax at compounded rate on the value of the Contract, the State is at a loss. Such classification or distinction is not unknown in taxing law. Even Sections 5 and

6 of TNVAT Act classify works contractors into different categories. Similarly, Section 8 of the CST Act treats the dealers of the same goods differently, depending upon whether they fall under Section 8(1) or 8(2) of the CST Act. The object that is sought to be achieved is two folds viz., (i) to curb the loss of revenue accrued due to interstate purchase of goods or import; and (ii) to create a level playing field for the local dealers. Therefore, the condition is well found on intelligible differentia and has a nexus to the object that is sought to be achieved. Hence, the challenge to the provision as being arbitrary and in violation of Article 14 is rejected.

e. The challenge to a provision as being *ultra vires* to the constitution is available only on limited circumstances, (i) when it is beyond the legislative competence of the State and (ii) when it offends or violates the constitutional guarantees and safeguards. In the present case, the authority of the State to levy tax on sale of goods is traceable to Entry 54 of List II of Seventh Schedule as it stood then. The authority to impose tax carries with it all the incidental authority to lay down the procedure, to grant exemption or concession and to impose conditions or restrictions for availment of such exemptions and conditions. Therefore, the amendment challenged is well within the legislative competence of the State.

f. As regards the provision offending Article 14, 19(1) (g), 301, 303 and 304 of the Constitution, we have already held that the impugned amendment is based on intelligible differentia, does not affect the right of the dealers to carry on any trade of business or impedes the free movement of goods. The compounding Scheme under Section 6 is only an option to be exercised voluntarily. There is no compulsion to opt under section 6 and it is open to a works contractor to pay taxes under section 5. The condition contained in section 6 cannot be regarded as giving any preference to one State over another or as discriminatory by levying more tax on the goods brought in from outside the State as because the State by such amendment has not imposed any tax. Therefore, the Amendment does not infringe any of the guarantees or safeguards provided under the Constitution. Accordingly, all the writ petitions challenging the *vires* of Section 6 of TNVAT Act, 2006, fail and are hence, dismissed.

g. Insofar as the challenge to the retrospective effect given to the amendment as being violative of Article 19 (1) (g) of the Constitution, the same is rejected as because it is within the authority of the State to bring in such amendments in fiscal statutes by clearly prescribing the date from which it must be given effect. The hardship that is caused to individuals seldom

matters as validity of any fiscal enactment ought to be tested on the basis of generality of its operation and not on the basis of few individual cases. However, by the time amendment was introduced, the assessment year 2006-07 was over. Hence, it will not apply to the assessment year 2006-07. With respect to the assessment year 2007-08, the retrospective operation will not affect the dealers, who had already exercised the option prior to the date of amendment for that year and would be applicable only to those dealers who had not exercised the option by that date.

h. Insofar as reading down the provision to permit the assesseees to exclude the turnover relating to interstate purchase or import and pay tax for that separately under Section 5 and for the balance turnover under Section 6, the said request is rejected as the same is not possible, once the provisions are upheld. The same would amount to re-writing the law and defeat the very purpose of the amendment.

i. Regarding the co-developers of SEZ are concerned, the provision cannot be read down to exclude the co-developers of SEZ, when the validity has been upheld. Such an exercise would amount to dichotomy in law. The facts, as to whether the activity against which an exemption is claimed, is an authorized activity of the Developer to extend the benefit to the co-developer, as to whether the ownership is transferred to third parties and the interpretation

of contracts cannot be adjudicated in this writ petition. It is open to the concerned petitioner to challenge the order of assessment, if any, passed against him in the manner known to law.

j. With regard to the writ petitions challenging the notices are concerned, the petitioners are directed to submit their reply within a period of four weeks from the date of receipt of a copy of this order and the concerned assessing officers shall fix a date for personal hearing within two weeks thereafter and pass orders within a further period of four weeks. In case, the assessee fails to submit their reply, it is open to the assessing officers to fix a date for hearing and thereafter, pass orders in accordance with law.

k. Insofar as the challenge to the assessment orders is concerned, this court has already upheld the *vires* of Section 6. In some cases, this court finds that there are other issues which are dealt with in the assessment orders. It is only appropriate that the factual aspects are raised before the appellate authority. Therefore, this court relegates the petitioners to avail the alternative remedy of appeal under Section 51 of the TNVAT Act, 2006 within a period of four weeks from the date of receipt of a copy of this order. The Registry is directed to return the original impugned orders to the respective counsel.

**219.** To sum up, the writ petitions challenging the *vires* of Section 6 of TNVAT, 2006 are dismissed and the writ petitions challenging the notices and

assessment orders are disposed of with the above directions. There will be no orders as to the costs. All the connected miscellaneous petitions are closed.

**(R.M.D., J.)      (M.S.Q., J.)**

31.03.2022

Index : Yes/No

rsh/rk

To

1. The Chief Secretary to Government of Tamil Nadu,  
Secretariat, Chennai.
2. The Commercial Tax Officer  
Anna Salai II Assessment Circle  
Chennai.

WP No. 29096 of 2007 etc., batch

**R. MAHADEVAN, J.**

and

**MOHAMMED SHAFFIQ, J.**

rsh/rk

Pre-delivery Common Order in  
WP No. 29096 of 2007 etc., batch

31.03.2022