Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3327 OF 2007

COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI …APPELLANT(S)

VERSUS

M/S. DILIP KUMAR AND COMPANY & ORS. …RESPONDENT(S)

JUDGMENT

N.V. RAMANA, J.

1. This Constitution Bench is setup to examine the correctness of the *ratio* in ***Sun Export Corporation, Bombay v. Collector of Customs, Bombay***, (1997) 6 SCC 564 [*hereinafter referred as* '**Sun Export Case**' *for brevity*], namely the question is - What is the interpretative rule to be applied while interpreting a tax exemption

provision/notification when there is an ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied?

2. In ***Sun Export Case*** (supra), a three-Judge Bench ruled that an ambiguity in a tax exemption provision or notification must be interpreted so as to favour the assessee claiming the benefit of such exemption. Such a rule was doubted when this appeal was placed before a Bench of two-Judges. The matter then went before a three-Judge Bench consisting one of us (Ranjan Gogoi, J.). The three-Judge Bench having noticed the *unsatisfactory state of law* as it stands today, opined that the dicta in ***Sun Export Case*** (supra), requires reconsideration and that is how the matter has been placed before this Constitution Bench.

3. Few facts necessary, to appreciate the issue involved are as follows - the respondents imported a consignment of Vitamin – E50 powder (feed grade) under Bill of Entry No. 8207, dated 19.08.1999. They claimed the benefit of concessional rate of duty at 5%, instead of standard 30%, as per the Customs Notification No. 20/1999 and classified the product under Chapter 2309.90 which admittedly pertains to prawn feed. They relied on the *ratio* in ***Sun Export Case*** (supra) and claimed the benefit of exemption. The benefit of Customs Notification No. 20/1999 was, however, denied to the respondents on the plea of the department that the goods under import contained chemical ingredients for animal feed and not animal feed/prawn feed, as such, the concessional rate of duty under the extant notification was not available. The department classified the consignment under Chapter 29 which

attracts standard rate of customs duty. The adjudicating authority, namely, the Assistant Commissioner of Customs, distinguished ***Sun Export Case*** (supra), while accepting the plea of the department to deny the concessional rate. The Commissioner of Customs (Appeals) reversed the order of the Assistant Commissioner and came to the conclusion that ***Sun Export Case*** (supra) was indeed applicable. The department then approached the Customs, Excise and Service Tax Tribunal (CESTAT), which affirmed the order of the Commissioner of Customs (Appeals). Aggrieved thereby, the present appeal is filed.

4. When the appeal was placed, as noticed earlier, before a Bench of two-Judges, the ruling in ***Sun Export Case*** (supra) was doubted, observing as follows-

"We have serious doubts as to whether the Bombay High Court judgment affirmed in Sun Export Corporation's case is correct. First and foremost, it is clear that the subsequent exemption Notification largely expanded the first Notification which referred only to animal feeds and nothing else. That being the case, it would be difficult to say that a large number of other categories which have subsequently been added would be clarificatory and therefore, retrospective. Further, we also feel that in view of the catena of judgments of this Court which have held that an exemption Notification has to be strictly construed (that is, if the person claiming exemption does not fall strictly within the letter of the Notification, he cannot claim exemption), have also been ignored by this Court in Sun Export Corporation's case in paragraph 13 thereof. Apart from this, the view of this Court in paragraph 13 that it is well-settled that if two views are possible, one favourable to the assessee in matters of taxation

> has to be preferred is unexceptionable. However, this Court was not concerned in that case with the charging Section of a taxation statute. It was concerned with the interpretation of an Exemption Notification which, as has been stated above, would require the exactly opposite test to be fulfilled."

Further this Court found that the subsequent judgment in ***Collector of Customs and Central Excise, Guntur and Ors. V. Surendra Cotton Oil Mills and Fertilizers Co. and Ors.***, 2001 (1) SCC 578 [*hereinafter referred as* '**Surendra Cotton Oil Mills Case**' *for brevity*], distinguished ***Sun Export Case*** (supra), which mandated this Court to take a re-look at the proposition laid down by the earlier cases in the following manner-

> "We also find that in the subsequent judgment of this Court, Surendra Cotton Oil Mills's case, this Court has distinguished the Sun Export Corporation's case and held

that it dealt with 'animal feed' which was large enough to include 'animal feed supplements' whereas the facts of Surendra Cotton Oil Mills's case showed that ingredients of animal feed could not be held to be included in 'animal feed'. In our opinion, this Court did not adequately deal with why Sun Exports Corporation's case which is a binding decision of a three Judges Bench should not be followed, apart from a specious distinction between 'ingredients' and 'supplements' which is logically speaking a distinction without a difference.

...

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

(emphasis supplied)

5. We feel that the reference to ***Surendra Cotton Oil Mills Case*** (supra), may not be necessary as the distinction was drawn on a factual footing, which this Court may not concern itself with, as we are only concerned with the principle of law. With this, the Division Bench was of the tentative view that the opinion expressed in ***Sun Export Case*** (supra) would require reconsideration, as the proposition laid down therein was unsatisfactory, and therefore placed before the Chief Justice of India for constituting an appropriate Bench.

6. When the matter was placed before a three Judge Bench presided over by one of us (Ranjan Gogoi, J.), the Bench reiterated the view for reconsideration of the ***Sun Export Case*** (supra) and again placed the matter,

before Hon'ble the Chief Justice of India for constitution of an appropriate Bench, considering the fact that ***Sun Export Case*** (supra) was decided by a Bench comprising of three learned judges of this Court. Hence, this matter came to be placed before this Bench of Five Judges with following observations-

> **"In paragraph 13 of the order of this Court in *Sun's case*, views have been expressed with regard to the interpretation of an exemption notification to support the conclusion reached. The same may require a reconsideration.**
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> That apart, in the referral order it has been noticed that *Sun's Case (supra)* has been distinguished in '*Collector of Central Excise, Guntur vs. Surendra Cotton Oil Mills & Fert. Co.* The basis on which the said distinction has been drawn needs to be further pursued.

> **Having considered the matter at some length, we are of the tentative view, that the opinion expressed in Sun's case (supra) may require a reconsideration. Being a co-ordinate Bench, we believe we ought not to proceed any further in the matter. Hence, we direct the Registry to lay the papers before the Hon'ble the Chief Justice of India for appropriate orders**."
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> (**emphasis supplied**)

7. The learned Additional Solicitor General, Ms. Pinky Anand, submits that a tax exemption statute or notification needs to be strictly interpreted. According to her, strict interpretation is literal rule of interpretation, which means that Court has to apply the provision reading the language therein and no

interpretation is required if the language is clear. In the event of any ambiguity, according to her, the benefit has to be given to the revenue and that such ambiguity in tax exemption provision must not be interpreted to benefit the assessee who fails to demonstrate without any doubt that such assessee is covered by the tax exemption notification. She elaborated her arguments by relying on various judgments and contends that the *ratio* in ***Sun Export Case*** (supra), which was doubted in ***Surendra Cotton Oil Mills Case*** (supra), is not correct law. On merits of the case, she submitted that the artificial distinction created by ***Surendra Cotton Oil Mills Case*** (supra), in distinguishing the ingredients from supplements is not sound and may not be accepted by the Court.

8. *Per contra*, among others, Mr. Somnath Shukla, learned counsel appearing on behalf of the respondents would

submit that the *ratio* and observations in ***Sun Export Case*** (supra) has to be considered holistically without giving any narrow meaning to the conclusion arrived therein. The rule of strict interpretation cannot be applied in abstract. It has to be applied keeping in view the interpretation to be used in relation to Customs Tariff Entry. According to the learned counsel, when the Customs Tariff Entry is interpreted broadly, the same should be adopted in interpreting exemption notification. Indeed, the learned senior counsel would contend that the rule of strict interpretation should be limited to the eligibility conditions of an exemption notification and while conferring the benefits to such exemption. He distinguished all the judgments relied on by the appellants and submits that "*prawn feed supplements*" would also be included under the head "*prawn feed*", and the judgment of the Tribunal

impugned in these appeals does not warrant any interference.

9. ***Sun Export Case*** (supra) was a case against the judgment of the High Court of Judicature, Bombay. It was concerned with the interpretation of tax exemption notification, being Notification No. 234/1982 – CE, dated 01.11.1982, issued by the Central Government under sub-section (1) of Section 25 of the Customs Act. The High Court considered the issue whether Vitamin AD-3 mix (feed grade)/animal feed supplement could be included under the head 'animal feed, including compound livestock feed'. The Bombay High Court decided, in the affirmative, in favour of the assessee. The case then landed in this Court, which was persuaded to expand the meaning of 'animal feed' in the light of subsequent notification issued in 1984, which largely expanded the scope of exemption to the effect

that '*animal feed, including compound livestock feed, animal feed supplements and animal feed concentrates*'. This Court indeed countenanced the plea, namely, whenever there is ambiguity as to whether the subject matter was included or not, then the benefit of the same should be conferred on the assessee. The relevant portion in ***Sun Export Case*** (supra), reads as follows:

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

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

11. About three years after ***Sun Export Case*** (supra), in the year 2000, this Court in ***Surendra Cotton Oil Mills Case*** (supra), expressed reservations as to the soundness of the dicta in ***Sun Export Case*** (supra), observing that ***Sun Export Case*** (supra) ignored catena

of judgments of this Court expressing *contra* view. This Court *prima facie* came to the conclusion with regard to the principle that when two views are possible, one favourable to the assessee in matters of taxation has to be preferred, is unexceptionable when interpreting the charging section of a taxation statute, but the opposite principle would be applicable in interpretation of exemption notification. The three-Judge Bench in the referral order further observed that the views expressed in ***Sun Export Case*** (supra) with regard to interpretation of exemption notification to support the conclusion, required reconsideration.

12. We may, here itself notice that the distinction in interpreting a taxing provision (charging provision) and in the matter of interpretation of exemption notification is too obvious to require any elaboration. Nonetheless, in a nutshell, we may mention that, as observed in

Surendra Cotton Oil Mills Case (supra), in the matter of interpretation of charging section of a taxation statute, strict rule of interpretation is mandatory and if there are two views possible in the matter of interpretation of a charging section, the one favourable to the assessee need to be applied. There is, however, confusion in the matter of interpretation of exemption notification published under taxation statutes and in this area also, the decisions are galore[1].

13. We may passingly, albeit, briefly reiterate the general principles of interpretation, which were also adverted to

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1 See: ***Sun Export Corporation, Bombay v. Collector of Customs, Bombay and Anr.,*** (1997) 6 SCC 564; ***Commissioner of Central Excise, Pune v. Abhi Chemicals and Pharmaceuticals Pvt. Ltd***., (2005) 3 SCC 541; ***Collector of Central Excise, Bombay-1 and Anr. v. Parle Exports (Pvt.) Ltd***., (1989) 1 SCC 345; ***Commissioner of Customs (Import), Mumbai v. Konkan Synthetic Fibres***, (2012) 6 SCC 339; ***Collector of Customs, Bombay v. Swastic Wollens (Pvt.) Ltd. And Ors***., (1988) Supp. SCC 796; ***Commissioner of Customs (Preventive), Gujarat v. Reliance Petroleum Ltd***., (2008) 7 SCC 220.

by both the counsel. In his treatise, '***Principles of Statutory Interpretation***' Justice G.P. Singh, lucidly pointed the importance of construction of statutes in a modern State as under:

> "Legislation in modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the Legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite 'referents' are bound to be, in many cases lacking in clarity and precision and thus giving rise to

controversial questions of construction."

14. An Act of Parliament/Legislature cannot foresee all types of situations and all types of consequences. It is for the Court to see whether a particular case falls within the broad principles of law enacted by the Legislature. Here, the principles of interpretation of statutes come in handy. In spite of the fact that experts in the field assist in drafting the Acts and Rules, there are many occasions where the language used and the phrases employed in the statute are not perfect. Therefore, Judges and Courts need to interpret the words.

15. In doing so, the principles of interpretation have been evolved in common law. It has also been the practice for the appropriate legislative body to enact Interpretation Acts or General Clauses Act. In all the Acts and Regulations, made either by the Parliament or

Legislature, the words and phrases as defined in the General Clauses Act and the principles of interpretation laid down in General Clauses Act are to be necessarily kept in view. If while interpreting a Statutory law, any doubt arises as to the meaning to be assigned to a word or a phrase or a clause used in an enactment and such word, phrase or clause is not specifically defined, it is legitimate and indeed mandatory to fall back on General Clauses Act. Notwithstanding this, we should remember that when there is repugnancy or conflict as to the subject or context between the General Clauses Act and a statutory provision which falls for interpretation, the Court must necessarily refer to the provisions of statute.

16. The purpose of interpretation is essentially to know the intention of the Legislature. Whether the Legislature intended to apply the law in a given case; whether the

Legislature intended to exclude operation of law in a given case; whether Legislature intended to give discretion to enforcing authority or to adjudicating agency to apply the law, are essentially questions to which answers can be sought only by knowing the intention of the legislation. Apart from the general principles of interpretation of statutes, there are certain internal aids and external aids which are tools for interpreting the statutes.

17. The long title, the preamble, the heading, the marginal note, punctuation, illustrations, definitions or dictionary clause, a *proviso* to a section, explanation, examples, a schedule to the Act etc., are internal aids to construction. The external aids to construction are Parliamentary debates, history leading to the legislation, other statutes which have a bearing, dictionaries, thesaurus.

18. It is well accepted that a statute must be construed according to the intention of the Legislature and the Courts should act upon the true intention of the legislation while applying law and while interpreting law. If a statutory provision is open to more than one meaning, the Court has to choose the interpretation which represents the intention of the Legislature. In this connection, the following observations made by this Court in ***District Mining Officer vs. Tata Iron and Steel Co.***, (2001) 7 SCC 358, may be noticed:

> "... A statute is an edict of the Legislature and in construing a statute, it is necessary, to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the Court is to act upon the true intention of the Legislature. If a

statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature. This task very often raises the difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of Legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative Legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the Courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the Legislature based on information derived from past and present experience. It may also be designed by use

> of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words the legislative intention i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed…"

19. The well settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give

effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature. In ***Kanai Lal Sur v. Paramnidhi Sadhukhan***, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

20. In applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the language employed by the legislation. This is especially so in fiscal statutes and penal statutes. Nevertheless, if the plain language results in absurdity, the Court is entitled to determine the meaning of the

word in the context in which it is used keeping in view the legislative purpose.[2] Not only that, if the plain construction leads to anomaly and absurdity, the court having regard to the hardship and consequences that flow from such a provision can even explain the true intention of the legislation. Having observed general principles applicable to statutory interpretation, it is now time to consider rules of interpretation with respect to taxation.

21. In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocent might become victims of discretionary decision making. Insofar as taxation statutes are concerned, Article 265 of the Constitution[3]

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2 ***Assistant Commissioner, Gadag Sub-Division, Gadag v. Mathapathi Basavannewwa***, 1995 (6) SCC 355.

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

prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because State cannot at their whims and fancies burden the citizens without authority of law. In other words, when competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the Legislature.

22. At the outset, we must clarify the position of 'plain meaning rule or clear and unambiguous rule' with respect of tax law. 'The plain meaning rule' suggests that when the language in the statute is plain and unambiguous, the Court has to read and understand the plain language as such, and there is no scope for any interpretation. This salutary maxim flows from the phrase "*cum inverbis nulla ambiguitas est, non debet*

admitti voluntatis quaestio". Following such maxim, the courts sometimes have made strict interpretation subordinate to the plain meaning rule[4], though strict interpretation is used in the precise sense. To say that strict interpretation involves plain reading of the statute and to say that one has to utilize strict interpretation in the event of ambiguity is self-contradictory.

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

> Strict interpretation. (16c) 1. An interpretation according to the narrowest, most literal meaning of the words without regard for context and other permissible

4 ***Mangalore Chemicals Case*** (Infra *para 37*)**.**

meanings. 2. An interpretation according to what the interpreter narrowly believes to have been the specific intentions or understandings of the text's authors or ratifiers, and no more.- Also termed (in senses 1 & 2) strict construction, literal interpretation; literal construction; restricted interpretation; interpretatio stricta; interpretatio restricta; interpretatio verbalis. 3. The philosophy underlying strict interpretation of statues.- Also termed as close interpretation; interpretatio restrictive.
See strict constructionism under constructionism. Cf. large interpretation; liberal interpretation (2).

"Strict construction of a statute is that which refuses to expand the law by implications or equitable considerations, but confines its operation to cases which are clearly within the letter of the statute, as well as within its spirit or reason, not so as to defeat the manifest purpose of the legislature, but so as to resolve all reasonable doubts against the applicability of the statute to the particular case.' Willam M. Lile et al.,

> Brief Making and the use of Law Books 343 (Roger W. Cooley & Charles Lesly Ames eds., 3d ed. 1914).
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> "Strict interpretation is an equivocal expression, for it means either literal or narrow. When a provision is ambiguous, one of its meaning may be wider than the other, and the strict (i.e., narrow) sense is not necessarily the strict (i.e., literal) sense." John Salmond , Jurisprudence 171 n. (t) (Glanville L. Williams ed., 10th ed. 1947).

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

The decision of this Court in ***Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. Presiding Officer, Labour Court Chandigarh and Ors.***, (1990) 3 SCC 682, made the said distinction, and explained the literal rule-

> "The literal rules of construction require the wording of the Act to be construed according to its literal and grammatical meaning whatever the result may be. Unless otherwise provided, the same word must normally be construed throughout the Act in the same sense, and in the case of old statutes regard must be had to its contemporary meaning if there has been no change with the passage of time."

That strict interpretation does not encompass strict-literalism into its fold. It may be relevant to note that simply juxtaposing 'strict interpretation' with 'literal rule' would result in ignoring an important aspect that

is 'apparent legislative intent'. We are alive to the fact that there may be overlapping in some cases between the aforesaid two rules. With certainty, we can observe that, 'strict interpretation' does not encompass such literalism, which lead to absurdity and go against the legislative intent. As noted above, if literalism is at the far end of the spectrum, wherein it accepts no implications or inferences, then 'strict interpretation' can be implied to accept some form of essential inferences which literal rule may not accept.

25. We are not suggesting that literal rule *de hors* the strict interpretation nor one should ignore to ascertain the interplay between 'strict interpretation' and 'literal interpretation'. We may reiterate at the cost of repetition that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely contextual or purposive

interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. Indeed, it is well settled that in a taxation statute, there is no room for any intendment; that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a tax statute. Strictly one has to look to the language used; there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute.

26. Justice G.P. Singh, in his treatise '***Principles of Statutory Interpretation***' (14th ed. 2016 p. – 879) after referring to ***Re, Micklethwait***, (1885) 11 Ex 452; ***Partington v. A.G.***, (1869) LR 4 HL 100; ***Rajasthan***

Rajya Sahakari Spinning & Ginning Mills Federation Ltd. v. Deputy CIT, Jaipur, (2014) 11 SCC 672, ***State Bank of Travancore v. Commissioner of Income Tax***, (1986) 2 SCC 11 and ***Cape Brandy Syndicate v. IRC***, (1921) 1 KB 64, summed up the law in the following manner-

> "A taxing statute is to be strictly construed. The well-established rule in the familiar words of LORD WENSLEYDALE, reaffirmed by LORD HALSBURY AND LORD SIMONDS, means: 'The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words. In a classic passage LORD CAIRNS stated the principle thus: "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is

> free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute. VISCOUNT SIMON quoted with approval a passage from ROWLATT, J. expressing the principle in the following words: "In a taxing Act one has to look merely at what is clearly said. This is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

It was further observed:

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

Yet again, it was observed:

> "It may thus be taken as a maxim of tax law, which although not to be overstressed ought not to be forgotten that, "the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax on him", [Russel v. Scott, (1948) 2 All ER 1]. The proper course in construing revenue Acts is to give a fair and reasonable construction to their language without leaning to one side or the other but keeping in mind that no tax can be imposed without words clearly showing an intention to lay the burden and that equitable construction of the words is not permissible [Ormond Investment Co. v. Betts, (1928) AC 143]. Considerations of hardship, injustice or anomalies do not play any useful role in construing taxing statutes unless there be some real ambiguity [Mapp v. Oram, (1969) 3 All ER 215]. It has also been said that if taxing provision is "so wanting in clarity that no meaning is reasonably clear, the courts will be unable to regard it as of any effect

> [IRC v. Ross and Coutler, (1948) 1 All ER 616]."

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

> "Therefore, if the words used are ambiguous and reasonable open to two interpretations benefit of interpretation is given to the subject [Express Mill v. Municipal Committee, Wardha, AIR 1958 SC 341]. If the Legislature fails to express itself clearly and the taxpayer escapes by not being brought within the letter of the law, no question of unjustness as such arises [CIT v. Jalgaon Electric Supply Co., AIR 1960 SC 1182]. But equitable considerations are not relevant in construing a taxing statute, [CIT, W.B. v. Central India Industries, AIR 1972 SC 397], and similarly logic or reason cannot be of much avail in interpreting a taxing statute [Azam Jha v. Expenditure Tax Officer, Hyderabad, AIR 1972 SC 2319]. It is well settled that in the field of taxation, hardship or equity has no role to play in determining eligibility to tax and it is for

> the Legislature to determine the same [Kapil Mohan v. Commr. of Income Tax, Delhi, AIR 1999 SC 573]. Similarly, hardship or equity is not relevant in interpreting provisions imposing stamp duty, which is a tax, and the court should not concern itself with the intention of the Legislature when the language expressing such intention is plain and unambiguous [State of Madhya Pradesh v. Rakesh Kohli & Anr., (2012) 6 SCC 312]. But just as reliance upon equity does not avail an assesse, so it does not avail the Revenue."

The passages extracted above, were quoted with approval by this Court in at least two decisions being ***Commissioner of Income Tax vs. Kasturi Sons Ltd.***, (1999) 3 SCC 346 and ***State of West Bengal vs. Kesoram Industries Limited,*** (2004) 10 SCC 201 [*hereinafter referred as* '**Kesoram Industries Case**' *for brevity*]. In the later decision, a Bench of seven Judges, after citing the above

passage from Justice G.P. Singh's treatise, summed up the following principles applicable to the interpretation of a taxing statute:

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

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

applying the notification, it came to the conclusion that one has to consider liberally.

28. With the above understanding the stage is now set to consider the core issue. In the event of ambiguity in an exemption notification, should the benefit of such ambiguity go to the subject/assessee or should such ambiguity should be construed in favour of the revenue, denying the benefit of exemption to the subject/assessee? There are catena of case laws in this area of interpretation of an exemption notification, which we need to consider herein. The case of ***Commissioner of Inland Revenue vs. James Forrest***, [(1890) 15 AC 334 (HL)] – is a case which does not discuss the interpretative test to be applied to exemption clauses in a taxation statute – however, it was observed that '*it would be unreasonable to suppose that an exemption was wide as practicable to make the*

tax inoperative, that it cannot be assumed to have been in the mind of the Legislature' and that exemption '*from taxation to some extent increased the burden on other members of the community*'. Though this is a dissenting view of Lord Halsbury, LC, in subsequent decisions this has been quoted vividly to support the conclusion that any vagueness in the exemption clauses must go to the benefit of the revenue. Be that as it is, in our country, at least from 1955, there appears to be a consistent view that if the words in a taxing statute (not exemption clause) are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and it does not matter if the taxpayer escapes the tax net on account of Legislatures' failure to express itself clearly (See the passage extracted hereinabove from ***Kesoram Industries Case*** (supra)).

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

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

30. The majority was of the view that the Government of India, Ministry of Industries and Supplies was not similar to those mentioned in the exemption notification. The majority extensively relied on the history and origin of Ministry of Industries and Supplies and concluded that the functions of the aforesaid Ministry were different from the erstwhile departments mentioned under the exemption provision. The majority reasoned that the exemption being the creation of the statute itself, it should have to be construed strictly and the interpretation cannot be extended to sales to other departments. We might find some clue as to the content of a strict construction also. It was canvassed

before the Court that the object of Section 5(2)(a)(iii) of the relevant statute, was to give exemption not to the particular departments but to the sale of such goods to those departments and, therefore, sale of those goods made to any Departments of the Government of India, which came to be charged with the duty of purchasing those goods should also come within the purview of the exemption. The Court while repelling the aforesaid interpretation, reasoned as under:

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

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

32. On the contrary, the minority opinion of Justice B.P. Sinha (as His Lordship then was) provided a purposive interpretation for Section 5(2)(a)(iii) of the Act, which is clear from the following passage:

> "The judgment under appeal is based chiefly on the consideration that the exemption clause in question does not in

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

33. The minority construed 'strict interpretation' to be an interpretation wherein least number of "determinates in terms of quantity" would fall under the exemption. The minority referred to an old English case of

Commissioner of Inland Revenue v. James Forrest, (1890) 15 AC 334. It may be relevant to note that the minority could not find the justification to apply strict interpretation as the exemption notification was broad enough to include exemptions for commodities purchased by the Government of India. The Court was of the opinion that the strict interpretation provided by the majority was uncalled for as there was no additional burden on others by giving such exemptions. The relevant observations are as follows-

> "The High Court referred to the observations of Lord Halsbury in the case of Commissioner of Inland Revenue v. James Forrest (1890) 15 AC 334, to the effect that exemptions from taxation should be strictly construed because otherwise the burden of taxation will fall on other members of the community. Those observations, in my opinion, have no relevance to the facts and circumstances of the present controversy, because we know that the exemption was granted to the Government of India in the

department dealing with purchase of certain commodities and articles without reference to quantity. As already pointed out, the Indian Stores Department was concerned with purchase of stores for public services on behalf of all Central Departments of Government and local Government, etc., and the Government of Bengal as then constituted was one of the provinces of India which have been receiving subsidies and subventions to make up the deficit in their budgets. As a matter of fact, as stated on behalf of the Bengal Government the concession was granted in order to enable business communities within the province of Bengal to compete on favourable terms with others outside Bengal in the matter of supplying the needs of the Government. Hence, there is no question of liberal construction of the exemption resulting in throwing a greater burden on other citizens. On the other hand, the larger the sales in the province of Bengal as it used to be, the greater the benefit to the business community doing business within that province. It was therefore stated at the Bar that though the present case involved taxes

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

34. In ***Hansraj Gordhandas v. H.H. Dave, Asst. Collector of Central Excise & Customs, Surat and Ors.***, AIR 1970 SC 755 = (1969) 2 SCR 253 [*hereinafter referred as* '***Hansraj Gordhandas Case***' *for brevity*], wherein this Court was called upon to interpret an exemption notification issued under the Central Excise Act. It would be relevant to understand the factual context which gave rise to the aforesaid case before the Court. The appellant was sole proprietor who used to procure

cotton from a co-operative society during the relevant period. The society had agreed to carry out the weaving work for the appellant on payment of fixed weaving charges at Re.0.19 np. per yard which included expenses the society would have to incur in transporting the aforesaid cotton fabric. In the years 1959 and 1960, the Government issued an exemption notification which exempted cotton fabrics produced by any co-operative society formed of owners of cotton power looms, registered on or before 31st March, 1961. The question before the Court was whether the appellant who got the cotton fabric produced from one of the registered co-operative society was also covered under the aforesaid notification. It may be of some significance that the revenue tried to interpret the aforesaid exemption by relying on the purposive interpretation by contending that the object of granting the above exemption was to encourage the formation of co-operative societies which

not only produced cotton fabrics but also consisted of members, not only owning but having actually operated not more than four power looms during the three years immediately preceding their having joined the society. The policy was that instead of each such member operating his looms on his own, he should combine with others by forming a society to produce clothes. It was argued that the goods produced for which exemption could be claimed must be goods produced on his own and on behalf by the society. The court did not countenance such purposive interpretation. It was held that a taxing legislation should be interpreted wholly by the language of the notification. The relevant observations are:

> "It is well-established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax-payer is within the plain terms of the

exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different, but that is not the case here. In this connection we may refer to the observations of Lord Watson in Salomon vs. Salomon & Co., (1897) AC 22):

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

It is an application of this principle that a statutory notification may not be extended so as to meet a casus omissus. As appears in

> the judgment of the Privy Council in Crawford v. Spooner.
>
> '... we cannot aid the Legislature's defective phrasing of the Act, we cannot add, and mend, and, by construction, make up deficiencies which are left there.'
>
> Learned Counsel for the respondents is possibly right in his submission that the object behind the two notifications is to encourage the actual manufacturers of handloom cloth to switch over to power looms by constituting themselves in co-operative Societies. But the operation of the notifications has to be judged not by the object which the rule making authority had in mind but by the words which it has employed to effectuate the legislative intent."

35. In the judgment of two learned Judges in ***Union of India v. Wood Papers Limited***, (1990) 4 SCC 256 [*hereinafter referred as* '**Wood Papers Ltd. Case**' *for brevity*], a distinction between stage of finding out the eligibility to seek exemption and stage of applying the nature of exemption was made. Relying on the decision

in ***Collector of Central Excise vs. Parle Exports (P) Ltd.***, (1989) 1 SCC 345, it was held "*Do not extend or widen the ambit at the stage of applicability. But once that hurdle is crossed, construe it liberally*". The reasoning for arriving at such conclusion is found in *para 4* of ***Wood Papers Ltd. Case*** (supra), which reads-

> "… Literally exemption is freedom from liability, tax or duty. Fiscally, it may assume varying shapes, specially, in a growing economy. For instance tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective etc. That is why its construction, unlike charging provision, has to be tested on different touchstone. In fact, an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption

becomes applicable no rule or principles requires it to be construed strictly. **Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject, but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction...**"

(**emphasis supplied**)

36. In ***Mangalore Chemicals & Fertilizers Ltd. vs. Dy. Commissioner of Commercial Taxes***, (1992) Supp. 1 SCC 21 [*hereinafter referred as* '**Mangalore Chemicals Case**' *for brevity*], the facts of the case were that the State Government issued a notification in exercise of power under Section 8-A of the Karnataka Sales Tax

Act, 1957, providing certain incentives to entrepreneurs starting new industries in the State pursuant to State's policy for "rapid industrialization". The notification contains a package of reliefs and incentives including one concerning relief from payment of sales tax with which the case was concerned. There was no dispute that the appellant was entitled to the benefit of the Notification dated June 30, 1969. There was also no dispute that the refunds were eligible to be adjusted against sales tax payable for respective years. The only controversy was whether the appellant, not having actually secured the "prior permission" would be entitled to adjustment having regard to the words of the Notification of August 11, 1975, that "until permission of renewal is granted by the Deputy Commissioner of Commercial Taxes, the new industry should not be allowed to adjust the refunds". The contention of the appellants therein was that the permission for the three

years had been sought well before the commencement of the respective years but had been withheld for reasons which were demonstrably extraneous. Therefore, contention was that if, in these circumstances, the Deputy Commissioner could withold the permission.

37. This Court while accepting the interpretation provided by the appellant, observed on the aspect of strict construction of a provision concerning exemptions as follows:

> "... There is support of judicial opinion to the view that exemptions from taxation have a tendency to increase the burden on the other unexempted class of tax payers and should be construed against the subject in case of ambiguity. It is an equally well known principle that a person who claims an exemption has to establish his case.
>
> ... The choice between a strict and a liberal construction arises only in case of

> doubt in regard to the intention of the legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation. It appears to us the true rule of construction of a provision as to exemption is the one stated by this Court in Union of India v. Wood Papers Ltd. [(1990) 4 SCC 256 = 1990 SCC (Tax) 422 = JT (1991) SC 151]"

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

38. We will now consider another Constitution Bench decision in ***Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal***, (2011) 1 SCC 236 [*hereinafter referred as* '**Hari Chand Case**' *for brevity*]. We need not refer to the facts of the case which gave rise to the questions for consideration before the Constitutional Bench. K.S. Radhakrishnan, J., who wrote the unanimous opinion for the Constitution Bench, framed the question, viz., whether manufacturer of a specified final product falling under Schedule to the Central Excise Tariff Act, 1985 is eligible to get the benefit of exemption of remission of excise duty on specified intermediate goods as per the Central Government Notification dated 11.08.1994, if captively consumed for the manufacture of final product on the ground that the records kept by it at the recipient end would indicate its "intended use" and "substantial compliance" with procedure set out in Chapter 10 of the

Central Excise Rules, 1994, for consideration? The Constitution Bench answering the said question concluded that a manufacturer qualified to seek exemption was required to comply with the pre-conditions for claiming exemption and therefore is not exempt or absolved from following the statutory requirements as contained in the Rules. The Constitution Bench then considered and reiterated the settled principles *qua* the test of construction of exemption clause, the mandatory requirements to be complied with and the distinction between the eligibility criteria with reference to the conditions which need to be strictly complied with and the conditions which need to be substantially complied with. The Constitution Bench followed the *ratio* in ***Hansraj Gordhandas Case*** (supra), to reiterate the law on the aspect of interpretation of exemption clause in *para 29* as follows-

> "The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, thought at times, some latitude can be shown, if there is failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption."

39. The Constitution Bench then considered the doctrine of substantial compliance and "intended use". The

relevant portions of the observations in *paras 31 to 34* are in the following terms –

> "31. Of course, some of the provisions of an exemption notification may be directory in nature and some are mandatory in nature. A distinction between the provisions of a statute which are of substantive character and were built in with certain specific objectives of policy, on the one hand, and those which are merely procedural and technical in there nature, on the other, must be kept clearly distinguished…
>
> **Doctrine of substantial compliance and "intended use"**
>
> 32. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose

and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleased if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the Court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.

33. A fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance with an enactment is insisted, where mandatory and directory

requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.

34. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the “substance” or “essence” of the statute, if so, strict adherence to those requirements is a precondition to give effect

> to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance with those factors which are considered as essential."

40. After considering the various authorities, some of which are adverted to above, we are compelled to observe how true it is to say that there exists unsatisfactory state of law in relation to interpretation of exemption clauses. Various Benches which decided the question of interpretation of taxing statute on one hand and exemption notification on the other, have broadly assumed (we are justified to say this) that the position is well settled in the interpretation of a taxing statute: It is the law that any ambiguity in a taxing statute should enure to the benefit of the subject/assessee, but any

ambiguity in the exemption clause of exemption notification must be conferred in favour of revenue – and such exemption should be allowed to be availed only to those subjects/assesses who demonstrate that a case for exemption squarely falls within the parameters enumerated in the notification and that the claimants satisfy all the conditions precedent for availing exemption. Presumably for this reason the Bench which decided ***Surendra Cotton Oil Mills Case*** (supra) observed that there exists unsatisfactory state of law and the Bench which referred the matter initially, seriously doubted the conclusion in ***Sun Export Case*** (supra) that the ambiguity in an exemption notification should be interpreted in favour of the assessee.

41. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified

to conclude and also compelled to hold that every taxing statue including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.

42. In ***Govind Saran Ganga Saran v. Commissioner of Sales Tax***, 1985 Supp (SCC) 205, this Court pointed out three components of a taxing statute, namely subject of the tax; person liable to pay tax; and the rate at which the tax is to be levied. If there is any ambiguity in understanding any of the components, no tax can be levied till the ambiguity or defect is removed by the legislature [See ***Mathuram Agrawal v. Sate of***

Madhya Pradesh, (1999) 8 SCC 667; ***Indian Banks' Association vs. Devkala Consultancy Service***, (2004) 4 JT 587 = AIR 2004 SC 2615; and ***Consumer Online Foundation vs. Union of India***, (2011) 5 SCC 360.]

43. There is abundant jurisprudential justification for this. In the governance of rule of law by a written Constitution, there is no implied power of taxation. The tax power must be specifically conferred and it should be strictly in accordance with the power so endowed by the Constitution itself. It is for this reason that the Courts insist upon strict compliance before a State demands and extracts money from its citizens towards various taxes. Any ambiguity in a taxation provision, therefore, is interpreted in favour of the subject/assessee. The statement of law that ambiguity in a taxation statute should be interpreted strictly and in the event of ambiguity the benefit should go to the

subject/assessee may warrant visualizing different situations. For instance, if there is ambiguity in the subject of tax, that is to say, who are the persons or things liable to pay tax, and whether the revenue has established conditions before raising and justifying a demand. Similar is the case in roping all persons within the tax net, in which event the State is to prove the liability of the persons, as may arise within the strict language of the law. There cannot be any implied concept either in identifying the subject of the tax or person liable to pay tax. That is why it is often said that subject is not to be taxed, unless the words of the statute unambiguously impose a tax on him, that one has to look merely at the words clearly stated and that there is no room for any intendment nor presumption as to tax. It is only the letter of the law and not the spirit of the law to guide the interpreter to decide the liability to tax ignoring any amount of hardship and eschewing

equity in taxation. Thus, we may emphatically reiterate that if in the event of ambiguity in a taxation liability statute, the benefit should go to the subject/assessee. But, in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the revenue, the aforesaid conclusions are expounded only as a prelude to better understand jurisprudential basis for our conclusion. We may now consider the decisions which support our view.

44. In ***Hansraj Gordhandas Case*** (supra), the Constitutional Bench unanimously pointed out that an exemption from taxation is to be allowed based wholly by the language of the notification and exemption cannot be gathered by necessary implication or by construction of words; in other words, one has to look to the language alone and the object and purpose for granting exemption is irrelevant and immaterial.

45. In ***Parle Exports Case*** (supra), a bench of two Judges of this Court considered the question whether non-alcoholic beverage base like Gold spot base, Limca base and Thumps Up base, were exempted from payment of duty under the Central Government notification of March, 1975. While considering the issue, this Court pointed out the Strict interpretation to be followed in interpretation of a notification for exemption. These observations are made in para 17 of the judgment, which read as follows:

> "How then should the courts proceed? The expressions in the Schedule and in the notification for exemption should be understood by the language employed therein bearing in mind the context in which the expressions occur. The words used in the provision, imposing taxes or granting exemption should be understood in the same way in which these are understood in ordinary parlance in the area in which the law is in force or by the people who

ordinarily deal with them. It is, however, necessary to bear in mind certain principles. The notification in this case was issued under Rule 8 of the Central Excise Rules and should be read along with the Act. The notification must be read as a whole in the context of the other relevant provisions. When a notification is issued in accordance with power conferred by the statute, it has statutory force and validity and, therefore, the exemption under the notification is as if it were contained in the Act itself. See in this connection the observations of this Court in Orient Weaving Mills (P) Ltd. v. Union of India, 1962 Supp 3 SCR 481 = AIR 1963 SC 98. See also Kailash Nath v. State of U.P., AIR 1957 SC 790. The principle is well settled that when two views of a notification are possible, it should be construed in favour of the subject as notification is part of a fiscal enactment. But in this connection, it is well to remember the observations of the Judicial Committee in Coroline M. Armytage v. Frederick Wilkinson, (1878) 3 AC 355, that it is only, however, in the event of there being a real difficulty in ascertaining the meaning of a particular enactment that the question

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

In the above passage, no doubt this Court observed that "*when two views of a notification are possible, it should be construed in favour of the subject as notification is part of fiscal document*". This observation may appear to support the view that ambiguity in a notification for exemption must be interpreted to benefit the subject/assessee. A careful reading of the entire para, as extracted hereinabove would, however, suggest that an

exception to the general rule of tax has to be construed strictly against those who invoke for their benefit. This was explained in a subsequent decision in ***Wood Papers Ltd. Case*** (supra). In para 6, it was observed as follows:

> "... In Collector of Central Excise v. Parle Exports (P) Ltd., (1989) 1 SCC 345, this Court while accepting that exemption clause should be construed liberally applied rigorous test for determing if expensive items like Gold Spot base or Limca base of Thums Up base were covered in the expression food products and food preparations used in Item No. 68 of First Schedule of Central Excises and Salt Act and held 'that it should not be in consonance with spirit and the reason of law to give exemption for non-alcoholic beverage basis under the notification in question'. Rationale or ratio is same. Do not extend or widen the ambit at stage of applicability. But once that hurdle is crossed construe it liberally. Since the respondent did not fall in the first clause of

> the notification there was no question of giving the clause a liberal construction and hold that production of goods by respondent mentioned in the notification were entitled to benefit."

46. The above decision, which is also a decision of two-Judge Bench of this Court, for the first time took a view that liberal and strict construction of exemption provisions are to be invoked at different stages of interpreting it. The question whether a subject falls in the notification or in the exemption clause, has to be strictly construed. When once the ambiguity or doubt is resolved by interpreting the applicability of exemption clause strictly, the Court may construe the notification by giving full play bestowing wider and liberal construction. The ratio of ***Parle Exports Case*** (supra) deduced as follows:

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

47. We do not find any strong and compelling reasons to differ, taking a *contra* view, from this. We respectfully record our concurrence to this view which has been subsequently, elaborated by the Constitution Bench in ***Hari Chand Case*** (supra).

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

49. The ratio in ***Mangalore Chemicals Case*** (supra) was approved by a three-Judge Bench in ***Novopan India Ltd. v. Collector of Central Excise and Customs***, 1994 Supp (3) SCC 606. In this case, probably for the first time, the question was posed as to whether the benefit of an exemption notification should go to the subject/assessee when there is ambiguity. The three-Judge Bench, in the background of English and Indian cases, in para 16, unanimously held as follows:

> "We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemicals – and in Union of India v. Wood Papers, referred to therein – represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee – assuming that the said principle is good and sound – does not apply to the construction of an exception or an exempting provision, they have to be construed strictly. A person invoking an exception or an exemption provision to

> relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State…."

50. In ***Tata Iron & Steel Co. Ltd. v. State of Jharkhand***, (2005) 4 SCC 272, which is another two-Judge Bench decision, this Court laid down that eligibility clause in relation to exemption notification must be given strict meaning and in para 44, it was further held –

> "The principle that in the event a provision of fiscal statute is obscure such construction which favours the assessee may be adopted, would have no application to construction of an exemption notification, as in such a case it is for the assessee to show that he comes within the purview of exemption (See Novopan India Ltd v. CCE and Customs)."

51. In ***Hari Chand Case*** (supra), as already discussed, the question was whether a person claiming exemption is required to comply with the procedure strictly to avail

the benefit. The question posed and decided was indeed different. The said decision, which we have already discussed supra, however, indicates that while construing an exemption notification, the Court has to distinguish the conditions which require strict compliance, the non-compliance of which would render the assessee ineligible to claim exemption and those which require substantial compliance to be entitled for exemption. We are pointing out this aspect to dispel any doubt about the legal position as explored in this decision. As already concluded in para 50 above, we may reiterate that we are only concerned in this case with a situation where there is ambiguity in an exemption notification or exemption clause, in which event the benefit of such ambiguity cannot be extended to the subject/assessee by applying the principle that an obscure and/or ambiguity or doubtful fiscal statute must receive a construction favouring the assessee.

Both the situations are different and while considering an exemption notification, the distinction cannot be ignored.

52. To sum up, we answer the reference holding as under -

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

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

(3) The ratio in ***Sun Export case*** (supra) is not correct and all the decisions which took similar view as in ***Sun Export Case*** (supra) stands over-ruled.

53. The instant civil appeal may now be placed before appropriate Bench for considering the case on merits

after obtaining orders from the Hon'ble Chief Justice of India.

.....J.
(**Ranjan Gogoi**)

.....J.
(**N.V. Ramana**)

.....J.
(**R. Banumathi**)

.....J.
(**Mohan M. Shantanagoudar**)

.....J.
(**S. Abdul Nazeer**)

New Delhi
July 30, 2018