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UNION OF INDIA AND ORS.

v.

M/S NITDIP TEXTILE PROCESSORS PVT. LTD. AND ANOTHER

(Civil Appeal No. 2960 of 2006)

B

NOVEMBER 03, 2011.

[H.L. DATTU AND CHANDRAMAULI KR. PRASAD,JJ.]

FINANCE (NO. 2) ACT, 1998:

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ss. 87 (m) (ii)(a) and (b) – 'Tax arrears' – Connotation of – Application of Kar Vivad Samadhana Scheme, 1998 to 'tax arrears' in respect of the amount of excise duty, interest, fine or penalty determined as due or payable as on 31.3.1998, or which constituted the subject matter of the demand notice or a show cause notice issued on or before 31.3.1998, but remaining unpaid as on the date of making a declaration u/s 88 – High Court declared s.87(m)(ii)(b) as violative of Article 14 of the Constitution in so far as it seeks to deny the benefit of the Scheme to those who were in arrears of duties etc. as on 31.3.1998, but to whom notices were issued after 31.3.1998, and struck down the expression "on or before the 31st day of March 1998" – HELD: The classification made by the legislature appears to be reasonable for the reason that the legislature has grouped two categories of assesses, namely, the assessees whose dues are quantified but not paid and the assessees who are issued with the Demand and Show Cause Notice on or before a particular date – The Legislature has not extended this benefit to those persons who do not fall under this category or group — The distinction so made cannot be said to be arbitrary or illogical which has no nexus with the purpose of legislation – The findings and the conclusion reached by the High Court cannot be sustained – The impugned common judgment and order is set aside –

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Central Excise Act, 1944 – s. 11A – Constitution of India, 1950 – Article 14 – Interpretation of Statutes – Legal fiction. A

CONSTITUTION OF INDIA, 1950:

Article 14 – Classification in taxation – HELD: In taxation, there is a broader power of classification than in some other exercises of legislation' – When the wisdom of the legislation while making classification is questioned, the role of the courts is very much limited – It is not reviewable by the courts unless palpably arbitrary – It is not the concern of the courts whether the classification is the wisest or the best that could be made – However, a discriminatory tax cannot be sustained if the classification is wholly illusory – Discrimination resulting from fortuitous circumstances arising out of particular situations, in which some of the tax payers 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 – In the instant case, keeping in view the Scheme, the legislation is based on a reasonable classification – Finance (No. 2) Act, 1998 – ss.87(m)(ii)(b) and 88. – Cut-off date – Kar Vivad Samadhana Scheme, 1998. B C D E

TAXATION:

Kar Vivad Samadhana Scheme, 1998 – Nature and scope of – Held: The Scheme is a step towards the settlement of outstanding disputed tax liability – The Scheme is a complete Code in itself and exhaustive of the matter dealt with therein – It is statutory in nature and character – While implementing the Scheme, liberal construction may be given but it cannot be extended beyond conditions prescribed in the statutory scheme – Therefore, the courts must construe the provisions of the Scheme with reference to the language used therein and ascertain what their true scope is by applying the normal rule of construction – Further, the object of the F G

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A *Scheme and its application to Customs and Central Excise cases involving arrears of taxes has been explained in detail by the Trade Notice No. 74/98 dated 17.8.1998 – It is a settled law that the Trade Notice, even if it is issued by the Revenue Department of any one State, is binding on all the other* B *departments with equal force all over the country – However, the Trade Notice, as such, is not binding on the courts but is certainly binding on the assessee and can be contested by him – Interpretation of Statute – Finance (NO.2) Act, 1998 – ss. 87(m) (ii) and 88 – Trade Notice No. 74/98 dated* C *17.8.1998 issued by the Commissioner of Central Excise and Customs, Ahmedabad-I – Practice and Procedure:*

The respondents in C. A. No. 2960 of 2006, engaged in the manufacture of textile fabrics, were found, on 5.9.1997, to have cleared the Man Made Fabric of Rs. D **5,38,449/- without the payment of excise duty of Rs. 84,290/-. A show cause notice dated 06.01.1999 was issued to the respondents demanding a duty of Rs.84,290/- u/s 11A of the Excise Act, 1944 along with penalties and interest under the relevant provisions for** E **non-payment of excise duty on clandestine clearance of the said fabrics. Kar Vivad Samadhana Scheme, 1998, as contained in the Finance (No.2) Act of 1998, was made applicable to tax arrears outstanding as on 31.3.1998. The benefit was also given to those assesses who had been** F **issued show cause notice on or before 31.3.1998. The benefits of the Scheme could be availed by any eligible assessee by filing a declaration of his arrears u/s 88 of the Act between 1.9.1998 and 31.12.2998 (subsequently extended to 31.1.1999). Since the show cause notice to** G **the respondents was issued on 6.1.1999, and, as such, they were not entitled to the benefit of the Scheme, they filed a writ petition, which was allowed by the High Court, by its judgment dated 25.7.2005. The High Court declared that s.87(m)(ii)(b) of Finance (No.2) Act,1998 was violative** H **of Article 14 of the Constitution, and struck down the**

expression "on or before the 31st day of March, 1998" in s. 87 (m) (ii) (b) as being unconstitutional. It further directed the competent authority to entertain and decide the declarations made by the assessees in terms of the Scheme. Aggrieved, the Revenue filed the appeals. A

Allowing the appeals, the Court B

HELD: 1.1 Kar Vivad Samadhan Scheme, 1998, as contained in Chapter IV of the Finance (N0.2) Act, 1998, is a step towards the settlement of outstanding disputed tax liability. The object and the purpose of the Scheme is to minimise the litigation and to realize the arrears by way of settlement in an expeditious manner. The Scheme is a complete Code in itself and exhaustive of the matter dealt with therein. It is statutory in nature and character. While implementing the Scheme, liberal construction may be given but it cannot be extended beyond conditions prescribed in the statutory scheme. Therefore, the courts must construe the provisions of the Scheme with reference to the language used therein and ascertain what their true scope is by applying the normal rule of construction. [para 6, 12 and 29] [44-F; 46-F; 60-A-B] C D E

Regional Director, ESI Corpn. v. Ramanuja Match Industries, **1985 (2) SCR 119 = (1985) 1 SCC 218;** *Hemalatha Gargya v. Commissioner of Income Tax,* **A.P., 2002 (4) Suppl. SCR 382 =(2003) 9 SCC 510;** *Union of India v. Charak Pharmaceuticals (India) Ltd.,* **(2003) 11 SCC 689;** *Deepal Girishbhai Soni v. United India Insurance Co. Ltd.,* **(2004) 5 SCC 385;** *Maruti Udyog Ltd. v. Ram Lal,* **2005 (1) SCR 790 = (2005) 2 SCC 638;** *Pratap Singh v. State of Jharkhand,* **2005 (1) SCR 1019 =(2005) 3 SCC 551;** *Sushila Rani v. Commissioner of Income Tax,* **2002 (1) SCR 809 =(2002) 2 SCC 697;** *Killick Nixon Ltd., Mumbai v. Deputy Commissioner of Income Tax, Mumbai,* **2002 (4) Suppl. SCR 348 =(2003) 1 SCC 145;** *CIT v. Shatrusailya Digvijaysingh Jadeja,* **2005 (2) Suppl. SCR 1119 = (2005)** F G H

A 7 SCC 294; and *Master Cables (P) Ltd. Vs. State of Kerala* (2007) 5 SCC 416 – relied on.

Speech of the Finance Minister dated 17.7.1998, 232 ITR 1998(14) – referred to.

B 1.2 Further, the object of the Scheme and its application to Customs and Central Excise cases involving arrears of taxes has been explained in detail by the Trade Notice No. 74/98 dated 17.8.1998 issued by the Commissioner of Central Excise and Customs, C Ahmedabad-I. It is a settled law that the Trade Notice, even if it is issued by the Revenue Department of any one State, is binding on all the other departments with equal force all over the country. The Trade Notice guides the traders and business community in relation to their D business, and how to regulate it in accordance with the applicable laws or schemes. However, the Trade Notice, as such, is not binding on the courts but is certainly binding on the assessee and can be contested by him. [para 18, 19 and 21] [49-F; 52-D-F; 53-E]

E *Steel Authority of India v. Collector of Customs*, (2001) 9 SCC 198; and *Purewal Associates Ltd. v. CCE*, 1996 (7) Suppl. SCR 117 = (1996) 10 SCC 752; *CCE v. Kores (India) Ltd.*, (1997) 10 SCC 338; *Union of India v. Pesticides Manufacturing and Formulators Association of India*, 2002 (F 3) Suppl. SCR 231 = (2002) 8 SCC 410; and *CCE v. Jayant Dalal (P) Ltd.*, (1997) 10 SCC 402) – relied on.

1.3 The Scheme in s. 87 (m) (ii) defines the meaning of the expression 'tax arrear', in relation to indirect tax G enactments. It would mean the determined amount of duties, as due and payable which would include drawback of duty, credit of duty or any amount representing duty, cess, interest, fine or penalty determined. The legislation, by using its prerogative H power, has restricted the dues of duties quantified and

payable as on 31st day of March, 1998 and remaining unpaid till a particular event has taken place, as envisaged under the Scheme. The date has relevance. The definition is inclusive definition. It also envisages instances where a Demand Notice or Show Cause Notice issued under indirect tax enactment on or before 31st day of March, 1998 but not complied with the demand made, to be treated as tax arrears by legal fiction. [para 28] [58-H; 59-A-C]

1.4 Thus, legislation has carved out two categories of assessees viz. where tax arrears are quantified but not paid, and where Demand Notice or Show Cause Notice issued but not paid. In both the circumstances, legislature has taken cut-off date as on 31st day of March 1998. It cannot be disputed that the legislation has the power to classify. [para 28] [59-C-D]

2.1 It is now well settled by catena of decisions of this Court that a particular classification is proper if it is based on reason and is not purely arbitrary, capricious or vindictive. On the other hand, while there must be a reason for the classification, the reason need not be good one, and it is immaterial that the Statute is unjust. The test is not wisdom but good faith in the classification. The tests adopted to determine whether a classification is reasonable or not are, that the classification must be founded on an intelligible differentia which distinguishes person or things that are grouped together from others left out of the groups and that the differentia must have a rational relation to the object sought to be achieved by Statute in question. [para 28 and 30] [59-C-G; 60-C-D]

2.2 The concept of Article 14 of the Constitution of India vis-a-vis fiscal legislation is explained by this Court in several decisions. It has been time and again observed by this Court that the Legislature has a broad discretion

A in the matter of classification. In taxation, 'there is a broader power of classification than in some other exercises of legislation'. When the wisdom of the legislation while making classification is questioned, the role of the courts is very much limited. It is not reviewable B by the courts unless palpably arbitrary. It is not the concern of the courts whether the classification is the wisest or the best that could be made. However, a discriminatory tax cannot be sustained if the classification is wholly illusory. [para 28 and 30] [59-F-H; 61-F]

C *Amalgamated Tea Estates Co. Ltd. v. State of Kerala*, 1974 (3) SCR 820 = (1974) 4 SCC 415; *Anant Mills Co. Ltd. v. State of Gujarat*, 1975 (3) SCR 220 = (1975) 2 SCC 175; *Jain Bros* v. *Union of India*, 1970 (3) SCR 253 = (1969) 3 SCC 311; *Murthy Match Works v. CCE*, 1974 (3) SCR 121 = D (1974) 4 SCC 428; *R.K. Garg v. Union of India*, 1982 (1) SCR 947 = (1981) 4 SCC 675; *Elel Hotels and Investments Ltd.* v. *Union of India*, 1989 (2) SCR 880 =(1989) 3 SCC 698; *P.M. Ashwathanarayana Setty v. State of Karnataka*, (1989) Supp. (1) SCC 696; *Kerala Hotel and Restaurant Assn. v.* E *State of Kerala*, 1990 (1) SCR 516 =(1990) 2 SCC 502; *Spences Hotel (P) Ltd. v. State of W.B.*, 1991 (1) SCR 429 =(1991) 2 SCC 154; *Venkateshwara Theatre* v. *State of A.P.*, 1993 (3) SCR 616 = (1993) 3 SCC 677; *State of Kerala v. Aravind Ramakant Modawdakar*, (1999) 7 SCC 400; *State* F *of U.P. v. Kamla Palace*, 1999 (5) Suppl. SCR 452 = (2000) 1 SCC 557; *Aashirwad Films v. Union of India*, 2007 (7) SCR 310 = (2007) 6 SCC 624; and *Jai Vijai Metal Udyog Private Limited, Industrial Estate, Varanasi v. Commissioner, Trade Tax, Uttar Pradesh, Lucknow*, (2010) 6 SCC 705 – G relied on

2.3 However, it is well settled that the Legislature enjoys very wide latitude in the matter of classification of objects, persons and things for the purpose of taxation H in view of inherent complexity of fiscal adjustment of

diverse elements. 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. Even so, large latitude is allowed to the State for classification upon a reasonable basis and what is reasonable is a question of practical details and a variety of factors which the court will be reluctant and perhaps ill-equipped to investigate. 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 assessees. A power to classify being extremely broad and based on diverse considerations of executive pragmatism, the Judicature 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. [para 45] [73-F-H; 74-A-C]

2.4 Discrimination resulting from fortuitous circumstances arising out of particular situations, in which some of the tax payers 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 assessees 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. [para 45] [74-C-D]

Khandige Sham Bhat vs. Agricultural Income Tax Officer, Kasaragod and Anr. **AIR 1963 SC 591 – relied on**

2.5 As regards the instant matters, the Legislature in relation to 'tax arrears' has classified two groups of assessees. The first one being those assessees in whose cases duty is quantified and not paid as on the 31st day of March, 1998 and those assessees who are served with

A Demand or Show Cause Notice issued on or before the 31st day of March, 1998. The Scheme is not made applicable to such of those assessees whose duty dues are quantified but Demand Notice is not issued as on 31st day of March, 1998 intimating the assessee's dues B payable. The same is the case of the assessees who are not issued with the Demand or Show Cause Notice as on 31.03.1998. [para 30] [60-C-F]

2.6 The Legislature, in its wisdom, has thought it fit to extend the benefit of the Scheme to such of those C assessees whose tax arrears are outstanding as on 31.03.1998, or who are issued with the Demand or Show Cause Notice on or before 31st day of March, 1998, though the time to file declaration for claiming the benefit is extended till 31.01.1999. The classification made by the D legislature appears to be reasonable for the reason that the legislature has grouped two categories of assesses, namely, the assessees whose dues are quantified but not paid and the assessees who are issued with the Demand and Show Cause Notice on or before a E particular date. The Legislature has not extended this benefit to those persons who do not fall under this category or group. This position is made clear by s. 88 of the Scheme which provides for settlement or tax payable under the Scheme by filing declaration after 1st F day of September, 1998 but on or before the 31st day of December, 1998 in accordance with s.89 of the Scheme, which date was extended upto 31.01.1999. The distinction so made cannot be said to be arbitrary or illogical which has no nexus with the purpose of G legislation. [para 30] [60-F-H; 61-A-C]

2.7 In determining whether classification is reasonable, regard must be had to the purpose for which legislation is designed. Keeping in view the Scheme, the legislation is based on a reasonable basis which is firstly, H

the amount of duties, cesses, interest, fine or penalty must have been determined as on 31.03.1998 but not paid as on the date of declaration; and secondly, the date of issuance of Demand or Show Cause Notice on or before 31.03.1998, which is not disputed, but the duties remain unpaid on the date of filing of declaration. Therefore, the Scheme 1998 does not violate the equal protection clause where there is an essential difference and a real basis for the classification which is made. The mere fact that the line dividing the classes is placed at one point rather than another will not impair the validity of the classification. [para 30] [61-C-F]

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2.8 The findings and the conclusion reached by the High Court cannot be sustained. The impugned common judgment and order is set aside. [para 46] [75-C]

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Union of India v. M.V. Valliappan, **(1999) 6 SCC 259,** *Sudhir Kumar Consul v. Allahabad Bank,* **(2011) 3 SCC 486 and** *Government of Andhra Pradesh v. N. Subbarayudu,* **(2008) 14 SCC 702** *Government of India v. Dhanalakshmi Paper and Board Mills,* **1989 Supp. (1) SCC 596** *State of Jammu and Kashmir v. Triloki Naths Khosa,* **(1974) 1 SCC 19 – cited.**

E

Case Law Reference:

1985 (2) SCR 119	**relied on**	**para 6**
2002 (4) Suppl. SCR 382	**relied on**	**para 7**
(2003) 11 SCC 689	**relied on**	**para 8**
(2004) 5 SCC 385	**relied on**	**para 9**
2005 (1) SCR 790	**relied on**	**para 19**
2005 (1) SCR 1019	**relied on**	**para 11**
2002 (1) SCR 809	**relied on**	**para 14**

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A	2002 (4) Suppl. SCR 348	relied on	para 15
	2005 (2) Suppl. SCR 1119	relied on	para 16
	(2007) 5 SCC 416	relied on	para 17
B	2001 (9) SCC 198	relied on	para 19
	1996 (7) Suppl. SCR 117	relied on	para 20
	1997 (10) SCC 338	relied on	para 21
	2002 (3) Suppl. SCR 231	relied on	para 21
C	1997 (10) SCC 402	relied on	para 21
	232 ITR 1998(14)	referred to	para 23
	(1999) 6 SCC 259	cited	para 23
D	(2011) 3 SCC 486	cited	para 23
	(2008) 14 SCC 702	cited	para 23
	(1974) 1 SCC 19	cited	para 24
E	1989 Supp. (1) SCC 596	cited	para 24
	1974 (3) SCR 820	relied on	para 31
	1975 (3) SCR 220	relied on	para 32
F	1970 (3) SCR 253	relied on	para 33
	1974 (3) SCR 121	relied on	para 34
	1982 (1) SCR 947	relied on	para 35
	1989 (2) SCR 880	relied on	para 36
G	1990 (1) SCR 516	relied on	para 37
	(1989) Supp. (1) SCC 696	relied on	para 38
	1991 (1) SCR 429	relied on	para 39
H	1993 (3) SCR 616	relied on	para 40

1999 (7) SCC 400	**relied on**	**para 41**
1999 (5) Suppl. SCR 452	**relied on**	**para 42**
2007 (7) SCR 310	**relied on**	**para 43**
2010 (6) SCC 705	**relied on**	**para 44**
AIR 1963 SC 591	**relied on**	**para 45**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2960 of 2006.

From the Judgment & Order dated 25.07.2005 of the High Court of Gujarat at Ahmedabadm, in Special Civil Application No. 735 of 1999.

WITH

C.A. Nos. 2961, 2962, 2963, 2964, 3659 & 5616 of 2006 and 990 of 2007.

R.P. Bhatt, Shalini Kumar, Arijit Prasad, Sunita Rani Singh, B. Krishna Prasad for the Appellants.

Prasas Kuhad, Hemant Sharma, Jitin Chaturvedi, Indu Sharma, Sheela Goel for the Respondents.

The Judgment of the Court was delivered by

H.L. DATTU, J. 1. The present batch of eight appeals arises out of the common Judgment and Order dated 25.07.2005 passed by the High Court of Gujarat at Ahmedabad in the Special Civil Application No.735 of 1999 and connected applications filed under Article 226 of the Constitution of India. Since these appeals involve common question of law, they are disposed of by this common Judgment and Order.

2. All the parties in these present appeals before us were duly served but none appeared for the respondents except one in Civil Appeal No. 5616 of 2006.

A 3. The High Court, *vide* its impugned Judgment and Order dated 25.07.2005, has declared that Section 87(m)(ii)(b) of Finance (No.2) Act, 1998 is violative of Article 14 of the Constitution of India insofar as it seeks to deny the benefit of the 'Kar Vivad Samadhana Scheme,' 1998 (hereinafter referred B to as "the Scheme") to those who were in arrears of duties etc., as on 31.03.1998 but to whom the notices were issued after 31.03.1998 and further, has struck down the expression "on or before the 31st day of March 1998" under Section 87(m)(ii)(b) of the Finance (No. 2) Act, 1998 as *ultra vires* of the C Constitution of India and in particular, Article 14 of the Constitution on the ground that the said expression prescribes a cut-off date which arbitrarily excludes certain category of persons from availing the benefits under the Scheme. The High Court has further held that as per the definition of the 'tax D arrears' in Section 87(m)(ii)(a) of the Act, the benefit of the Scheme was intended to be given to all persons against whom the amount of duties, cess, interest, fine or penalty were due and payable as on 31.3.1998. Therefore, this cut-off date in Section 87(m)(ii)(b) arbitrarily denies the benefit of the Scheme to those who were in arrears of tax as on 31.03.1998 but to E whom notices were issued after 31.3.1998. This would result in unreasonable and arbitrary classification between the assessees merely on the basis of date of issuance of Demand Notices or Show Cause Notices which has no nexus with the purpose and object of the Scheme. In other words, the persons F who were in arrears of tax on or before 31.03.1998 were classified as those, to whom Demand Notices or Show Cause Notices have been issued on or before 31.03.1998 and, those to whom such notices were issued after 31.3.1998. The High Court observed that this classification has no relation with the G purpose of the Scheme to provide a quick and voluntary settlement of tax dues. The High Court further observed that this artificial classification becomes more profound in view of the fact that the Scheme came into operation with effect from 1.9.1998 which contemplates filing of declaration by all persons H on or after 1.9.1998 but on or before 31.1.1999. The High

Court further held that all persons who are in arrears of direct as well as indirect tax as on 31.3.1998 constitute one class, and any further classification among them on the basis of the date of issuance of Demand Notice or Show Cause Notice would be artificial and discriminatory. The High Court concluded by directing the Revenue to consider the claims of the respondents for grant of benefit under the Scheme, afresh, in terms of the Scheme. The relevant portions of the impugned judgment of the High Court is extracted below:

> "In the light of the above, we shall now consider whether definition of "tax arrears" contained in Section 87 (m)(ii)(b) is arbitrary, irrational or violative of the doctrine of equality enshrined under Article 14 of the Constitution and whether the petitioners are entitle to avail benefit under Scheme. A reading of the speech made by the Finance Minister and the objects set out in memorandum to Finance (No. 2) Bill, 1998 shows that the Scheme was introduced with a view to quick and voluntary settlement of tax dues outstanding as on 31.3.1998 under various direct and indirect tax enactments by offering waiver of a part of the arrears of taxes and interest and providing immunity against prosecution and imposing of penalty. The definition of 'tax arrear' contained in Section 87 (m)(i) in the context of direct tax enactment also shows that the legislation was intended to give benefit of the scheme to the assessee who were in arrears of tax on 31.3.1998. The use of the words as on "31st day of March, 1998" in Section 87(m)(ii) also shows that even in relation to indirect tax enactments, the benefit of the scheme was intended to be given to those against whom the amount of duties, cess, interest, fine or penalty were due or payable upto 31.3.1998. Viewed in this context it is quite illogical to exclude the persons like the petitioners from whom the amount of duties, cess, interest, fine, penalty, etc. were due as on 31.3.1998 but to whom Demand Notices were issued after 31.3.1998. In our opinion, the distinction made between those who

A were in arrears of indirect taxes as on 31.3.1998 only on the basis of the date of issuance of notice is wholly arbitrary and irrational. The classification sought to be made between those Demand Notices or Show Cause Notices may have been issued on or before 31st day of March, B 1998 and those to whom such notices were issued after 31.3.1998 is per se unreasonable and has no nexus with the purpose of the legislation, namely to provide a quick and voluntary settlement of tax dues outstanding as on 31.3.1998.

C The irrationality of the classification becomes more pronounced when the issue is examined in the backdrop of the fact that the scheme was made applicable with effect from 1.9.1998, and in terms of Sections 88 (amended) a declaration was required to be filed on or D after first day of September, 1998 but on or before 31.1.1999. In our opinion, all persons who were in arrears of direct or indirect taxes as on 31.3.1998 constituted one class and no discrimination could have been made among them by introducing an artificial classification with reference E to the date of Demand Notice or Show Cause Notice. All of them should have been treated equally and made eligible for availing benefit under the Scheme subject to compliance of conditions contained in other provisions of the Scheme."

F 4. We will take Civil Appeal No. 2960 of 2006 as the lead matter. The facts of the case, in brief, are hereunder: The respondent is engaged in the manufacture of textile fabrics. The team of Preventive Officers of the Central Excise, Ahmedabad-I conducted a surprise inspection of the premises of the factory G on 5.9.1997. The Revenue Officers examined the statutory Central Excise Records and physically verified the stocks at various stages of manufacturing in the presence of two independent panchas and respondent no. 2, under the Panchnama dated 5.9.1997. The Revenue Officers found that H

the respondents have cleared the Man Made Fabric admeasuring 38,726 l.m. of Rs. 5,38,449/- without the payment of excise duty of Rs. 84,290/-. In this regard, the Statement of respondent no. 2 was recorded on 5.9.1997 under Section 14 of the Central Excise Act, 1944 (hereinafter referred to as "the Excise Act"). The respondent no. 2, in his Statement has admitted the processing of the said fabric in his factory, after registering it in the lot register, and its subsequent clandestine removal without payment of the excise duty. Accordingly, a Show Cause Notice dated 06.01.1999 was issued to the respondents demanding a duty of Rs. 84,290/- under Section 11A of the Excise Act along with an equal amount of penalty under Section 11AC of the Excise Act, and further penalty under Rule 173 Q of the Central Excise Rules, 1944 [hereinafter referred to as "the Excise Rules"] and interest under Section 11AB of the Excise Act for non-payment of excise duty on clandestine clearance of the said fabrics. Further, the Respondent no. 2 was also asked to show cause as to why penalty under Section 209 A of the Excise Rules should not be imposed on him for his active involvement in acquiring, possession, removal, concealing, selling and dealing of the excisable goods, which are liable to be confiscated under the Excise Act. In the meantime, the Scheme was introduced by the Hon'ble Finance Minister through the 1998 Budget, which was contained in the Finance (No.2) Act of 1998. The Scheme was made applicable to tax arrears outstanding as on 31.3.1998 under the direct as well as indirect tax enactments. Originally, the benefits of the Scheme could be availed by any eligible assessee by filing a declaration of his arrears under Section 88 of the Act on or after 1.9.1998 and on or before 31.12.1998. However, the period for declaration under the Scheme was extended upto 31.1.1999 by the Ordinance dated 31.12.1998. However, the cut-off date prescribed by the Scheme under Section 87 (m) (ii) (a) and (b) of the Act for availing the benefits under the Scheme excluded the respondents from its ambit. Being aggrieved, the respondents filed a Special Civil Application before the High Court of

A Gujarat, *inter-alia,* seeking a writ to strike down the words "on or before the 31st day of March 1998" occurring in Section 87 (m) (ii) of the Finance Act, 1998. They had further prayed for issuance of an appropriate direction to the petitioner to give them benefit of the Scheme, 1998 in respect of tax arrears B under tax enactments for which Show Cause Notices or Demand Notices were issued on or after 31.03.1998. The High Court, vide its impugned judgment and order dated 25.7.2005, struck down the expression "on or before the 31st day of March, 1998" in Section 87 (m) (ii) (b) as being unconstitutional. The C High Court further directed the competent authority to entertain and decide the declarations made by the assessees in terms of the Scheme. Aggrieved by the Judgment and Order, the Revenue is before us in this appeal.

5. The Scheme was introduced by Finance (No.2) Act and D is contained in Chapter IV of the Act. The Scheme is known as Kar Vivad Samadhana Scheme, 1998. It was in force between 1.9.1998 and 31.1.1999. Briefly, the Scheme permits the settlement of "tax arrear" as defined in Section 87(*m*) of the Act. It is necessary to extract the relevant provisions of the E Scheme:

"Section 87 – Definitions.

In this Scheme, unless the context otherwise requires,

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h) "direct tax enactment" means the Wealth-tax Act, 1957 or the Gift-tax Act, 1958 or the Income-tax Act, 1961 or the Interest-tax Act, 1974 or the Expenditure-tax Act, 1987;

G (j) "indirect tax enactment" means the Customs Act, 1962 or the Central Excise Act, 1944 or the Customs Tariff Act, 1975 or the Central Excise Tariff Act, 1985 or the relevant Act and includes the rules or regulations made under such enactment;

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(m) "tax arrear" means,-

(i) in relation to direct tax enactment, the amount of tax, penalty or interest determined on or before the 31st day of March, 1998 under that enactment in respect of an assessment year as modified in consequence of giving effect to an appellate order but remaining unpaid on the date of declaration;

(ii) in relation to indirect tax enactment,-

(a) the amount of duties (including drawback of duty, credit of duty or any amount representing duty), cesses, interest, fine or penalty determined as due or payable under that enactment as on the 31st day of March, 1998 but remaining unpaid as on the date of making a declaration under section 88; or

(b) the amount of duties (including drawback of duty, credit of duty or any amount representing duty), cesses, interest, fine or penalty which constitutes the subject matter of a Demand Notice or a show-cause notice issued on or before the 31st day of March, 1998 under that enactment but remaining unpaid on the date of making a declaration under section 88,

but does not include any demand relating to erroneous refund and where a show-cause notice is issued to the declarant in respect of seizure of goods and demand of duties, the tax arrear shall not include the duties on such seized goods where such duties on the seized goods have not been quantified.

A Explanation.—Where a declarant has already paid either voluntarily or under protest, any amount of duties, cesses, interest, fine or penalty specified in this sub-clause, on or before the date of making a declaration by him under section 88 which includes any deposit made by him B pending any appeal or in pursuance of a Court order in relation to such duties, cesses, interest, fine or penalty, such payment shall not be deemed to be the amount unpaid for the purposes of determining tax arrear under this sub-clause;

C Section 88 - Settlement of tax payable

Subject to the provisions of this Scheme, where any person makes, on or after the 1st day of September, 1998 but on or before the 31st day of December, 1998, a declaration D to the designated authority in accordance with the provisions of section 89 in respect of tax arrear, then, notwithstanding anything contained in any direct tax enactment or indirect tax enactment or any other provision of any law for the time being in force, the amount payable under this E Scheme by the declarant shall be determined at the rates specified hereunder, namely ..."

6. The Scheme, as contained in Chapter IV of the Act, is a Code in itself and statutory in nature and character. While implementing the scheme, liberal construction may be given but F it cannot be extended beyond conditions prescribed in the statutory scheme. In *Regional Director, ESI Corpn. v. Ramanuja Match Industries*, (1985) 1 SCC 218, this Court observed:

G "10 ... We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the

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statute on the pretext of extending the statutory benefit to those who are not covered by the scheme." A

7. In *Hemalatha Gargya v. Commissioner of Income Tax, A.P.*, (2003) 9 SCC 510, this Court has held:

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"10. Besides, the Scheme has conferred a benefit on those who had not disclosed their income earlier by affording them protection against the possible legal consequences of such non-disclosure under the provisions of the Income Tax Act. Where the assessees seek to claim the benefit under the statutory scheme they are bound to comply strictly with the conditions under which the benefit is granted. There is no scope for the application of any equitable consideration when the statutory provisions of the Scheme are stated in such plain language." C D

8. In *Union of India v. Charak Pharmaceuticals* (India) Ltd., (2003) 11 SCC 689, this Court has observed thus:

"8. If benefit is sought under a scheme, like KVSS, the party must fully comply with the provisions of the Scheme. If all the requirements of the Scheme are not met then on principles of equity, courts cannot extend the benefit of that Scheme." E

9. In *Deepal Girishbhai Soni v. United India Insurance Co. Ltd.*, (2004) 5 SCC 385, at page 404, this Court observed as : F

"53. Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the court would not travel beyond the same and extend the scope of the statute on the pretext of extending the statutory benefit to those who G H

A are not covered thereby. (See *Regional Director, ESI Corpn. v. Ramanuja Match Industries*)"

10. In *Maruti Udyog Ltd. v. Ram Lal*, (2005) 2 SCC 638, this Court has observed:

B "A beneficial statute, as is well known, may receive liberal construction but the same cannot be extended beyond the statutory scheme. (See *Deepal Girishbhai Soni v. United India Insurance Co. Ltd.*)"

C 11. In *Pratap Singh v. State of Jharkhand*, (2005) 3 SCC 551, this Court has held:

D *"93. We are not oblivious of the proposition that a beneficent legislation should not be construed so liberally so as to bring within its fore a person who does not answer the statutory scheme. (See Deepal Girishbhai Soni v. United India Insurance Co. Ltd.)"*

12. The object and purpose of the Scheme is to minimize the litigation and to realize the arrears of tax by way of E Settlement in an expeditious manner. The object of the Scheme can be gathered from the Speech of the Finance Minister, whilst presenting the 1998-99 Budget:

F "Litigation has been the bane of both direct and indirect taxes. A lot of energy of the Revenue Department is being frittered in pursuing large number of litigations pending at different levels for long periods of time. Considerable revenue also gets locked up in such disputes. Declogging the system will not only incentivise honest taxpayers, it G would enable the Government to realize its reasonable dues much earlier but coupled with administrative measures, would also make the system more user-friendly. I therefore, propose to introduce a new scheme called Samadhan. he scheme would apply to both direct taxes and indirect taxes and offer waiver of interest, penalty and H

immunity from prosecution on payment of arrears of direct tax at the current rates. In respect of indirect tax, where in recent years the adjustment of rates has been very sharp, an abatement of 50 per cent of the duty would be available alongwith waiver of interest, penalty and immunity from prosecution"

13. The Finance Minister, whilst replying to the debate after incorporating amendments to the Finance (No. 2) Bill, 1998, made a Speech dated 17.7.1998. The relevant portion of the Speech, which highlights the object or purpose of the Scheme, is extracted below:

"The Kar Vivad Samadhan Scheme has evoked a positive response from a large number of organizations and tax professionals. Hon'ble Members of Parliament have also taken a keen interest in the scheme. The lack of clarity in regard to waiver of interest and penalty in relation to settlement of tax arrears under the indirect tax enactments is being taken care of by rewording the relevant clauses of the Finance Bill. I have also carefully considered the suggestions emanating from various quarters including the Standing Committee on Finance to extend the scope of this scheme so as to included tax disputes irrespective of the fact whether the tax arrears are existing or not. As you have seen from the scheme, it has two connected limbs- "Kar" and "Vivad". Collection of tax arrears is as important as settlement of disputes. The scheme is not intended to settle disputes when there is no corresponding gain to the other party. The basic objective of the scheme cannot be altered."

14. This Court, in plethora of cases, has discussed the object and purpose of this Scheme. In *Sushila Rani v. Commissioner of Income Tax*, (2002) 2 SCC 697, this Court observed:

"5. KVSS was introduced by the Central Government

with a view to collect revenues through direct and indirect taxes by avoiding litigation. In fact the Finance Minister while explaining the object of KVSS stated as follows:

> "Litigation has been the bane of both direct and indirect taxes. A lot of energy of the Revenue Department is being frittered in pursuing large number of litigations pending at different levels for long periods of time. Considerable revenue also gets locked up in such disputes. Declogging the system will not only incentivise honest taxpayers, it would enable the Government to realize its reasonable dues much earlier but coupled with administrative measures, would also make the system more user-friendly...."

15. In *Killick Nixon Ltd., Mumbai v. Deputy Commissioner of Income Tax, Mumbai,* (2003) 1 SCC 145, this Court has held:

> "9. The scheme of KVSS is to cut short litigations pertaining to taxes which were frittering away the energy of the Revenue Department and to encourage litigants to come forward and pay up a reasonable amount of tax payable in accordance with the Scheme after declaration thereunder."

16. In *CIT v. Shatrusailya Digvijaysingh Jadeja*, (2005) 7 SCC 294, this Court has observed:

> "11. The object of the Scheme was to make an offer by the Government to settle tax arrears locked in litigation at a substantial discount. It provided that any tax arrears could be settled by declaring them and paying the prescribed amount of tax arrears, and it offered benefits and immunities from penalty and prosecution. In several matters, the Government found that a large number of cases were pending at the recovery stage and, therefore, the Government came out with the said Scheme under

which it was able to unlock the frozen assets and recover the tax arrears.

12. In our view, the Scheme was in substance a recovery scheme though it was nomenclatured as a "litigation settlement scheme" and was not similar to the earlier Voluntary Disclosure Scheme. *As stated above, the said Scheme was a complete code by itself.* Its object was to put an end to all pending matters in the form of appeals, references, revisions and writ petitions under the IT Act/ WT Act."

17. In *Master Cables (P) Ltd. v. State of Kerala*, (2007) 5 SCC 416, this Court has held:

"8. The Scheme was enacted with a view to achieve the purposes mentioned therein viz. recovery of tax arrears by way of settlement. It applies provided the conditions precedent therefor are satisfied."

18. Further, the object of the Scheme and its application to Customs and Central Excise cases involving arrears of taxes has been explained in detail by the Trade Notice No. 74/98 dated 17.8.1998 issued by the Commissioner of Central Excise and Customs, Ahmedabad-I. The relevant portion of the said Trade Notice has been extracted below:

Office of the Commissioner of Central Excise & Customs: Ahmedabad-1

Trade Notice No.: 74/98
Basic No.: 34/98

Sub: Kar Vivad Samadhan Scheme-1998

1. As a part of this year's Budget proposals, the Finance Minister had announced amongst others a scheme termed "Kar Vivad Samadhan Scheme" essentially to provide quick and voluntary settlement of tax dues. The basic aim of introducing this scheme has been to bring down the

A pending litigation/disputes between the Dept. and the assessees- both on the direct tax side and indirect tax side- as well as to speedily realize the arrears of taxes (including fines, penalties & interest) considered due from various parties which are locked up in various disputes.

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2. Essentially, these disputed cases involving duties, cesses, fine, penalty and interest on Customs and Central Excise side are proposed to be settled – case by case – if the concerned party agrees to pay up in each case a particular amount (which may be termed settled amount) C calculated as per provisions of the scheme, following the laid procedure. Whereas the department gets immediate revenue and it results in reduction in pending disputes which may be prolonged otherwise before final assessment, the party also gets significant benefit by way D of reduced payments instead of the disputed liability and immunity from prosecution.

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E 3.1. The relevant extracts containing provisions of the Samadhan Scheme as incorporated in the enacted Finance (No. 2) Act, 98 (21 of 1998) are enclosed herewith. The salient features of the Samadhan Scheme in relation to Indirect Taxes are briefly discussed below:-

F 4. APPLICABILITY OF THE SCHEME

A. CATEGORY OF CASES TO WHICH SCHEME APPLICABLE

4.1. The Scheme is limited to Customs or Central Excise G cases involving arrears of taxes (including duties, cesses, fine, penalty of (sic.) interest) which were not paid up as on 31.3.98 and are still in arrear and in dispute as on date of declaration (as envisaged in section 98 (sic.) of the aforesaid Act). The dispute and the case may be still at H the stage of Show Cause Notice or Demand Notice (other

than those of erroneous refunds) when party come (sic.) forward and makes a declaration for claiming the benefits of the scheme, or the duties, fine, penalty or interest after the issue of show cause/ Demand Notice may have been determined, but the assessee is disputing the same in appellate forums/courts etc and the amounts due have not been paid up.

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4.3. *It is pertinent to note that when a party comes forward for taking the benefits of the Samadhan Scheme and makes suitable declaration as provided thereunder (discussed further later) there must be dispute pending between the party and the Dptt.* (Section 98(ii)(c) of Finanace Act refers). In other words, if in any case, there is no Show Cause Notice pending nor the party is in dispute at the appellate/revision stage nor there is an admitted petition in the court of law where parties is contesting the stand of the Dptt., but certain arrears of revenue due in case, are pending payment, the benefits of the scheme will not be available in such case.

C D E

<u>B. TYPES OF REVENUE ARREARS CASES COVERED BY THE SCHEME</u>

4.4. The intention of the scheme is to cover almost all categories of cases involving revenue in arrears and in dispute on Customs and Central Excise side (with few exceptions mentioned specifically in section 95 of Finance Act). The cases covered may involved duty, cess, fine, penalty or interest – whether already determined as due or yet to be determined (in cases where show cause/ Demand Notice is yet to be decided). The term duty has been elaborated to include credit of duty, drawback of duty or any amount representing as duty. In other words, the scheme would extend not only disorted (sic.) cases of duties leviable under customs or Central Excise Acts and

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A relevant tariff Acts or various specified Act....

4.5. The nature of cases covered will vary depending upon contraventions/offence involved, but essentially it must involve quantified duty/cess and or penalty, fine or interest. Simple Show Cause Notices which do not quantify any amount of duty being demanded and which propose only penal action – like confiscation of ceased goods and or imposition of penalty for violation of statutory provisions/ collusion/abetment etc. thus will not be covered by the scheme. However, whenever quantified amount of duties are demanded and penal action also proposed for various violations even at Show Cause Notice stage benefits under the scheme for such Show Cause Notices can be claimed.

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19. In view of the aforementioned Trade Notice, it is clear that the object of the Scheme with reference to indirect tax arrears is to bring down the litigation and to realize the arrears which are considered due and locked up in various disputes. This Scheme is mutually beneficial as it benefits the Revenue Department to realize the duties, cess, fine, penalty or interest assessed but not paid in an expeditious manner and offers assessee to pay disputed liability at discounted rates and also afford immunity from prosecution. It is a settled law that the Trade Notice, even if it is issued by the Revenue Department of any one State, is binding on all the other departments with equal force all over the country. The Trade Notice guides the traders and business community in relation to their business as how to regulate it in accordance with the applicable laws or schemes. In *Steel Authority of India v. Collector of Customs*, (2001) 9 SCC 198, this Court has held:

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"3. Learned counsel for the Revenue submitted that this trade notice had been issued only by the Bombay Customs House. It is hardly to be supposed that the Customs Authorities can take one stand in one State and another stand in another State. *The trade notice issued by one Customs House must bind all Customs Authorities* and,

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if it is erroneous, it should be withdrawn or amended, which in the instant case, admittedly, has not been done." A

20. In *Purewal Associates Ltd. v. CCE*, (1996) 10 SCC 752, this Court has held:

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"10. *We must take it that before issuing a trade notice sufficient care is taken by the authorities concerned as it guides the traders to regulate their business accordingly.* Hence whatever is the legal effect of the trade notice as contended by the learned Senior Counsel for the respondent, the last portion of the above trade notice cannot be faulted as it is in accordance with the views expressed by this Court. Though a trade notice as such is not binding on the Tribunal or the courts, it cannot be ignored when the authorities take a different stand for if it was erroneous, it would have been withdrawn." C D

21. However, the Trade Notice, as such, is not binding on the Courts but certainly binding on the assessee and can be contested by the assessee. (see *CCE v. Kores (India) Ltd.*, (1997) 10 SCC 338; *Union of India v. Pesticides Manufacturing and Formulators Association of India,* (2002) 8 SCC 410; and *CCE v. Jayant Dalal (P) Ltd.*, (1997) 10 SCC 402) E

22. Shri. R.P. Bhatt, learned senior counsel, has appeared for the Revenue and the respondents in civil appeal no. 5616 of 2006 are represented by Shri. Paras Kuhad, learned senior counsel. F

23. Learned senior counsel Shri. R.P. Bhatt, submits that an assessee can claim benefits under the Scheme only when his tax arrears are determined and outstanding, or a Show Cause Notice has been issued to him, prior to or on 31.3.1998 in terms of Section 87 (m) (ii) (a) and (b) of the Act. He further submits that the determination of the arrears can be arrived at by way of adjudication or by issuance of the Show Cause G H

A Notice to the assessee. He submits that once this condition is satisfied, then the assessee is required to submit a declaration under Section 88 of the Act on or after 1.9.1998 and on or before 31.1.1999, provided that the arrears are unpaid at the time of filing the declaration. He further submits that the present B Scheme is statutory in character and its provision should be interpreted strictly and those who do not fulfill the conditions of eligibility contained in the Scheme are not allowed to avail the benefit under the Scheme. In support of his contention, he has relied on the Judgment of this Court in *Union of India v. Charak* C *Pharmaceuticals (India) Ltd.,* (2003) 11 SCC 689. Learned senior counsel, relying on the, *Speech of the Finance Minister dated 17.7.1998*, [232 ITR 1998 (14)] asserts that the purpose or the basic object of the Scheme is the collection of tax and settlement of disputes and it is intended to be beneficial to both D assessee as well as the Revenue. He further contends that the determination of arrears or issuance of Show Cause Notice before or on 31.3.1998 is a substantive requirement for eligibility under the Scheme and filing of declaration of unpaid arrears under Section 88 of the Act is the procedural formality for availing the benefits of the Scheme. Therefore, he submits E that the extension of time to file declaration under the Scheme on or before 31.1.1999 is just a procedural formality and in no manner discriminatory, so as to violate the mandate of Article 14 of the Constitution. Learned senior counsel, on the strength of Trade Notice dated 17.8.1998 and the observations made F by this Court in the case of *Charak Pharmaceuticals* (supra), further submits that, in cases of Central Excise and Customs, the Scheme is limited only to two categories of cases: firstly, the arrears of tax which are assessed as on 31.3.1998 and are still unpaid and in dispute on the date of filing of declaration; G secondly, the arrears for which, the Show Cause Notice or Demand Notice has been issued by the Revenue as on 31.3.1998 and which are still unpaid and are in dispute on the date of filing of declaration. He submits that the said Trade Notice indicates that the concept of actual determination or H assessment has been extended to the Show Cause Notice in

order to grant the benefit of the Scheme to duty demanded in such Show Cause Notice. He submits that the Show Cause Notice is in the nature of tentative charge, which has been included in the ambit of the Scheme in order to realize the tax/ duty dues but not yet paid. He submits that the Scheme contemplates the conferring of the benefits only on the quantified duty either determined by way of adjudication or demanded in a Show Cause Notice. Learned senior counsel contends that in the present case, the Show Cause Notice demanding the duty was issued to the respondents only on 6.1.1999 and, therefore, the duty was determined as quantified only on the issuance of the Show Cause Notice. Hence, respondents are not eligible to avail the benefit under this Scheme. Learned senior counsel submits that the cut-off date of on or before 31.3.1998 prescribed by Section 87 (m) (ii) (b) cannot be considered as discriminatory or unreasonable only on the basis that it creates two classes of assessees unless it appears on the face of it as capricious or malafide. The cut-off date of 31.3.1998 in indirect tax enactments under the Scheme has been purposively chosen in order to maintain uniformity with direct tax enactments where assessment year ends on the said date. In support of his submission, learned senior counsel relies on *Union of India v. M.V. Valliappan*, (1999) 6 SCC 259, *Sudhir Kumar Consul v. Allahabad Bank*, (2011) 3 SCC 486 and *Government of Andhra Pradesh v. N. Subbarayudu*, (2008) 14 SCC 702. He further submits that the present Scheme extends the benefit of reduction of tax and does not deprive or withdraw any existing benefit to the assessees. He also submits that if certain section of assessees is excluded from its scope by virtue of cut-off date, they cannot challenge the entire Scheme merely on ground of their exclusion.

24. *Per contra*, Shri. Paras Kuhad, learned senior counsel, submits that the Scheme became effective from 1.09.1998 and remained operative till 31.1.1999. However, the arrears in question should relate to the period prior to or as on 31.3.1998 which is the essence of the Scheme or the qualifying condition.

A He submits that Section 87 (f) defines 'disputed tax' as the total tax determined and payable, in respect of an assessment year under any direct tax enactment but which remains unpaid as on the date of making the declaration under Section 88. In this regard, he submits that the factum of arrears exists even on the B date of filing of declaration. He contends that the Finance Act uses the expression 'determination' instead of 'assessment' in order to include the cases of self assessment. He submits that in the case of direct tax and payment of advance tax, the process of determination arises before the assessment. He C further argues that the purpose of the Scheme is to reduce litigation and recover revenue arrears in an expeditious manner. The classification should be in order to attain these objectives or purpose. The classification of assessees on the basis of date of issuance of Show Cause Notice or Demand Notice is D unreasonable and has no nexus with the purpose of the legislation. He further submits that all the assessees who are in arrears of tax on or before 31.3.1998 formed one class but further classification among them just on the basis of issuance of Show Cause Notice is arbitrary and unreasonable. The E criterion of date of issuance of Show Cause Notice is *per se* unreasonable as based on fortuitous circumstances. It is neither objective nor uniformly applicable. He further submits that the High Court has correctly struck down the words "on or before the 31st day of March 1998" in Section 87 (m) (ii) (b) and, thereby, created a right in favour of assessee to claim benefit F under the Scheme for all arrears of tax arising as on 31.3.1998. He further submits that by application of the doctrine of severability, the Scheme can operate as a valid one for all purposes. Learned senior counsel submits that the carving out of sub-group only on the basis of whether Show Cause Notice G has been issued or not and the Scheme being made effective from prospective date would render the operation or availability of Scheme variable or uncertain, depending on case to case. He further submits that this has no relation with the purpose of the Scheme which is beneficial in nature. He further submits H that the date of issuance of Show Cause Notice is not controlled

by the assessee. Therefore, it is fortuitous circumstance which is *per se* unreasonable. The objective of the doctrine of classification is that the unequal should not be treated equally in order to achieve equality. The basis for classification in terms of Article 14 should be intelligible criteria which should have nexus with the object of the legislation. He argues that the criterion of date of issuance of Show Cause Notice is just a fortuitous factor which is variable, uncertain, and fateful and cannot be considered as intelligible criteria for the purpose of Article 14 of the Constitution. He submits, however, criterion for classification is the prerogative of the Parliament but it should be certain and not vacillating like date of issuance of Show Cause Notice. He further submits that the hardships arising out of normal cut-off criteria is acceptable and justified but when injustice arises out of operation of the provision which prescribe criteria which is variable for same class of persons for availing the benefit of the Scheme, is against the mandate of Article 14 of the Constitution. He relies on the decision of this Court in *State of Jammu and Kashmir v. Triloki Naths Khosa*, (1974) 1 SCC 19 in order to buttress his argument that the classification is a subsidiary rule to the Fundamental Right of Equal Protection of Laws and should not be used in a manner to submerge and drown the principle of equality. Learned senior counsel contends that the purpose of the Scheme is to end the dispute qua assessee, who is in arrears of taxes and has not paid such arrears. He further submits that in case of Central Excise, the excise duty is determined on removal of goods but the actual payment is made later and also, in case of self assessment, the tax arrears are determined before the actual payment or possible dispute. He submits that as per Rule 173 F of the Excise Rules, the assessee is required to determine the duty payable by self assessment of the excisable goods before their removal from the factory. He further submits that the methodology of re-assessment under Section 11 A of the Excise Act, rate of product approved before hand under Section 173B and *ad valorem* for value of goods under Section 173C contemplates the determination of duty payable by the

A assessee. In this regard, he submits that the word 'determined' has been used purposively and deliberately in the Scheme instead of 'assessment'. He further argues that in view of the object of the Scheme to collect revenue, the Scheme envisages two elements: first, the determination of the amount of tax due B and payable on or before 31.3.1998 and, second, whether the tax so determined is in arrears on date of declaration under Section 88. In other words, he submits that the tax so determined on or before 31.3.1998 should be in arrears on the date of declaration under Section 88. Learned senior counsel, C in support of his submissions, relies on the decision of this Court in *Government of India v. Dhanalakshmi Paper and Board Mills*, 1989 Supp. (1) SCC 596.

25. Taxation is a mode of raising revenue for public purposes. In exercise of the power to tax, the purpose always D is that a common burden shall be sustained by common contributions, regulated by some fixed general rules, and apportioned by the law according to some uniform ratio of equality.

E 26. The word 'duty' means an indirect tax imposed on the importation or consumption of goods. 'Customs' are duties charged upon commodities on their being imported into or exported from a country.

27. The expression 'Direct Taxes' include those assessed F upon the property, person, business, income, etc., of those who are to pay them, while indirect taxes are levied upon commodities before they reach the consumer, and are paid by those upon whom they ultimately fall, not as taxes, but as part of the market price of the commodity. For the purpose of the G Scheme, indirect tax enactments are defined as Customs Act, 1962, Central Excise Act, 1944 or the Customs Tariff Act, 1985 and the Rules and Regulations framed thereunder.

28. The Scheme defines the meaning of the expression H 'Tax Arrears', in relation to indirect tax enactments. It would

mean the determined amount of duties, as due and payable which would include drawback of duty, credit of duty or any amount representing duty, cesses, interest, fine or penalty determined. The legislation, by using its prerogative power, has restricted the dues of duties quantified and payable as on 31st day of March, 1998 and remaining unpaid till a particular event has taken place, as envisaged under the Scheme. The date has relevance, which aspect we would elaborate a little later. The definition is inclusive definition. It also envisages instances where a Demand Notice or Show Cause Notice issued under indirect tax enactment on or before 31st day of March, 1998 but not complied with the demand made to be treated as tax arrears by legal fiction. Thus, legislation has carved out two categories of assessees viz. where tax arrears are quantified but not paid, and where Demand Notice or Show Cause Notice issued but not paid. In both the circumstances, legislature has taken cut off date as on 31st day of March 1998. It cannot be disputed that the legislation has the power to classify but the only question that requires to be considered is whether such classification is proper. It is now well settled by catena of decisions of this Court that a particular classification is proper if it is based on reason and not purely arbitrary, caprice or vindictive. On the other hand, while there must be a reason for the classification, the reason need not be good one, and it is immaterial that the Statute is unjust. The test is not wisdom but good faith in the classification. It is too late in the day to contend otherwise. It is time and again observed by this Court that the Legislature has a broad discretion in the matter of classification. In taxation, 'there is a broader power of classification than in some other exercises of legislation'. When the wisdom of the legislation while making classification is questioned, the role of the Courts is very much limited. It is not reviewable by the Courts unless palpably arbitrary. It is not the concern of the Courts whether the classification is the wisest or the best that could be made. However, a discriminatory tax cannot be sustained if the classification is wholly illusory.

A 29. Kar Vivad Samadhan Scheme is a step towards the settlement of outstanding disputed tax liability. The Scheme is a complete Code in itself and exhaustive of matter dealt with therein. Therefore, the courts must construe the provisions of the Scheme with reference to the language used therein and B ascertain what their true scope is by applying the normal rule of construction. Keeping this principle in view, let us consider the reasoning of the High Court.

30. The tests adopted to determine whether a classification is reasonable or not are, that the classification C must be founded on an intelligible differentia which distinguishes person or things that are grouped together from others left out of the groups and that the differentia must have a rational relation to the object sought to be achieved by Statute in question. The Legislature in relation to 'tax arrears' has D classified two groups of assessees. The first one being those assessees in whose cases duty is quantified and not paid as on the 31st day of March, 1998 and those assessees who are served with Demand or Show Cause Notice issued on or before the 31st day of March, 1998. The Scheme is not made E applicable to such of those assessees whose duty dues are quantified but Demand Notice is not issued as on 31st day of March, 1998 intimating the assessee's dues payable. The same is the case of the assessees who are not issued with the Demand or Show Cause Notice as on 31.03.1998. The F grievance of the assessee is that the date fixed is arbitrary and deprives the benefit for those assessees who are issued Demand Notice or Show Cause Notice after the cut off date namely 31st day of March, 1998. The Legislature, in its wisdom, has thought it fit to extend the benefit of the scheme to such of G those assessees whose tax arrears are outstanding as on 31.03.1998, or who are issued with the Demand or Show Cause Notice on or before 31st day of March, 1998, though the time to file declaration for claiming the benefit is extended till 31.01.1999. The classification made by the legislature H appears to be reasonable for the reason that the legislature has

grouped two categories of assessees namely, the assessees whose dues are quantified but not paid and the assessees who are issued with the Demand and Show Cause Notice on or before a particular date, month and year. The Legislature has not extended this benefit to those persons who do not fall under this category or group. This position is made clear by Section 88 of the Scheme which provides for settlement or tax payable under the Scheme by filing declaration after 1st day of September, 1998 but on or before the 31st day of December, 1998 in accordance with Section 89 of the Scheme, which date was extended upto 31.01.1999. The distinction so made cannot be said to be arbitrary or illogical which has no nexus with the purpose of legislation. In determining whether classification is reasonable, regard must be had to the purpose for which legislation is designed. As we have seen, while understanding the Scheme of the legislation, the legislation is based on a reasonable basis which is firstly, the amount of duties, cesses, interest, fine or penalty must have been determined as on 31.03.1998 but not paid as on the date of declaration and secondly, the date of issuance of Demand or Show Cause Notice on or before 31.03.1998, which is not disputed but the duties remain unpaid on the date of filing of declaration. Therefore, in our view, the Scheme 1998 does not violate the equal protection clause where there is an essential difference and a real basis for the classification which is made. The mere fact that the line dividing the classes is placed at one point rather than another will not impair the validity of the classification. The concept of Article 14 vis-a-vis fiscal legislation is explained by this Court in several decisions.

31. In *Amalgamated Tea Estates Co. Ltd. v. State of Kerala*, (1974) 4 SCC 415, this Court has held:

> 8. It may be pointed out that the Indian Income Tax Act also makes a distinction between a domestic company and a foreign company. But that circumstance per se would not help the State of Kerala. The impugned legislation, in order

A to get the green light from Article 14, should satisfy the classification test evolved by this Court in a catena of cases. According to that test: (1) the classification should be based on an intelligible differentia and (2) the differentia should bear a rational relation to the purpose of the legislation.

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9. The classification test is, however, not inflexible and doctrinaire. It gives due regard to the complex necessities and intricate problems of government. Thus as revenue is the first necessity of the State and as taxes are raised for
C various purposes and by an adjustment of diverse elements, the Court grants to the State greater choice of classification in the field of taxation than in other spheres. According to Subba Rao, J.:

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> "(T)he 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 as it adheres to the fundamental principles underlying the said doctrine.
E 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." (Khandige Sham Bhat v. Agricultural Income Tax Officer, Kasargod; V. Venugopala Ravi Verma
F Rajah v. Union of India.)

10. Again, on a challenge to a statute on the ground of Article 14, the Court would generally raise a presumption in favour of its constitutionality. Consequently, one who challenges the statute
G bears the burden of establishing that the statute is clearly violative of Article 14. "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 is a clear transgression of the

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constitutional principle." (See Charanjit Lal v. Union of India.)

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32. In *Anant Mills Co. Ltd. v. State of Gujarat*, (1975) 2 SCC 175, this Court has observed:

"25. It is well-established that Article 14 forbids class legislation but does not forbid classification. Permissible 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 the differentia must have a rational relation to the object sought to be achieved by the statute in question. In permissible classification mathematical nicety and perfect equality are not required. *Similarity, not identity of treatment, is enough.* If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstances 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. 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 as 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 (see *Ram Krishna Dalmia v. Justice S.R. Tendolkar* and *Khandige Sham Bhat v. Agricultural Income Tax Officer, Kasaragod*) Keeping the above principles in view, we find no violation of Article 14 in treating pending cases as a class different from decided cases. It cannot be disputed that so far as the pending cases covered by clause (i) are concerned, they have been all treated alike."

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33. In *Jain Bros v. Union of India,* (1969) 3 SCC 311, the

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A issue before this Court was whether the clause (*g*) of Section 297(2) of the Income Tax Act, 1961 is violative of Article 14 of the Constitution inasmuch as in the matter of imposition of penalty, it discriminated between two sets of assessees with reference to a particular date, namely, those whose B assessment had been completed before 1st day of April 1962 and others whose assessment was completed on or after that date. Whilst upholding the validity of the above provision, this Court has observed:

> C "Now the Act of 1961 came into force on first April 1962. It repealed the prior Act of 1922. Whenever a prior enactment is repealed and new provisions are enacted the Legislature invariably lays down under which enactment pending proceedings shall be continued and concluded. Section 6 of the General Clauses Act, 1897, deals with the D effect of repeal of an enactment and its provisions apply unless a different intention appears in the statute. It is for the Legislature to decide from which date a particular law should come into operation. It is not disputed that no reason has been suggested why pending proceedings E cannot be treated by the Legislature as a class for the purpose of Article 14. The date first April, 1962, which has been selected by the Legislature for the purpose of clauses (f) and (g) of Section 297(2) cannot be characterised as arbitrary or fanciful."

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34. In *Murthy Match Works v. CCE*, (1974) 4 SCC 428, this Court has observed:

> "15. Certain principles which bear upon classification may be mentioned here. It is true that a State may classify G persons and objects for the purpose of legislation and pass laws for the purpose of obtaining revenue or other objects. Every differentiation is not a discrimination. But classification can be sustained only it it is founded on pertinent and real differences as distinguished from H irrelevant and artificial ones. The constitutional standard by

which the sufficiency of the differentia which form a valid basis for classification may be measured, has been repeatedly stated by the Courts. If it rests on a difference which bears a fair and just relation to the object for which it is proposed, it is constitutional. To put it differently, the means must have nexus with the ends. Even so, a large latitude is allowed to the State for classification upon a reasonable basis and what is reasonable is a question of practical details and a variety of factors which the Court will be reluctant and perhaps ill-equipped to investigate. In this imperfect world perfection even in grouping is an ambition hardly ever accomplished. In this context, we have to remember the relationship between the legislative and judicial departments of Government in the determination of the validity of classification. Of course, in the last analysis Courts possess the power to pronounce on the constitutionality of the acts of the other branches whether a classification is based upon substantial differences or is arbitrary, fanciful and consequently illegal. At the same time, the question of classification is primarily for legislative judgment and ordinarily does not become a judicial question. A power to classify being extremely broad and based on diverse considerations of executive pragmatism, the Judicature 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.

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19. It is well-established that the modern state, in exercising its sovereign power of taxation, has to deal with complex factors relating to the objects to be taxed, the quantum to be levied, the conditions subject to which the levy has to be made, the social and economic policies which the tax is designed to subserve, and what not. In the famous words of Holmes, J. in Bain Peanut Co. v. Pinson[2]:

A "We must remember that the machinery of Government would not work if it were not allowed a little play in its joints."

35. In *R.K. Garg v. Union of India*, (1981) 4 SCC 675, this Court has held:

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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.

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"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*

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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."

36. In *Elel Hotels and Investments Ltd.* v. *Union of India*, (1989) 3 SCC 698, this Court has held:

"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."

37. In *P.M. Ashwathanarayana Setty v. State of Karnataka*, (1989) Supp. (1) SCC 696, this Court has held:

"... the State enjoys the widest latitude where measures of economic regulation are concerned. These measures for fiscal and economic regulation involve an evaluation of diverse and quite often conflicting economic criteria and adjustment and balancing of various conflicting social and economic values and interests. It is for the State to decide what economic and social policy it should pursue and what discriminations advance those social and economic policies."

38. In *Kerala Hotel and Restaurant Assn. v. State of Kerala*, (1990) 2 SCC 502, this Court has observed:

A "24. 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...."

B 39. In *Spences Hotel (P) Ltd. v. State of W.B.*, (1991) 2 SCC 154, this Court has observed:

"26. What then 'equal protection of laws' means as applied to taxation? Equal protection cannot be said to be denied C by a 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. It prohibits any person or class of persons from being singled out as special D subject for discrimination and hostile legislation; but it does not require equal rates of taxation on different classes of property, nor does it prohibit unequal taxation so long as the inequality is not based upon arbitrary classification. Taxation will not be discriminatory if, within the sphere of E its operation, it affects alike all persons similarly situated. It, however, does not prohibit special legislation, or legislation that is limited either in the objects to which it is directed, or by the territory within which it is to operate. In the words of Cooley: It merely requires that all persons F subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed. The rule of equality requires no more than that the same means and methods be applied impartially to all the constituents of each class, G so that the law shall operate equally and uniformly upon all persons in similar circumstances. Nor does this requirement preclude the classification of property, trades, profession and events for taxation — subjecting one kind to one rate of taxation, and another to a different rate. "The rule of equality of taxation is not intended to prevent a State H from adjusting its system of taxation in all proper and

reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, may impose different specific taxes upon different trades and professions." "It cannot be said that it is intended to compel the State to adopt an iron rule of equal taxation." In the words of Cooley :[21]

> "Absolute equality is impossible. Inequality of taxes means substantial differences. Practical equality is constitutional equality. There is no imperative requirement that taxation shall be absolutely equal. If there were, the operations of government must come to a stop, from the absolute impossibility of fulfilling it. The most casual attention to the nature and operation of taxes will put this beyond question. No single tax can be apportioned so as to be exactly just and any combination of taxes is likely in individual cases to increase instead of diminish the inequality."

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

A of taxation', in all the aspects in which the human mind can view it, is a baseless dream."

40. In *Venkateshwara Theatre v. State of A.P.*, (1993) 3 SCC 677, this Court has held:

B "21. Since in the present case we are dealing with a taxation measure it is necessary to point out that 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 C from clear and hostile discrimination against particular persons or classes."

41. In *State of Kerala v. Aravind Ramakant Modawdakar*, (1999) 7 SCC 400, this Court has held:

D "Coming to the power of the State in legislating taxation law, the court should bear in mind that the State has a wide discretion in selecting the persons or objects it will tax and thus a statute is not open to attack on the ground that it taxes some persons or objects and not others. It is also E well settled that a very wide latitude is available to the legislature in the matter of classification of objects, persons and things for the purpose of taxation. While considering the challenge and nature that is involved in these cases, the courts will have to bear in mind the principles laid down F by this Court in the case of Murthy Match Works v. CCE[2] wherein while considering different types of classifications, this Court held: (AIR Headnote)

"[T]hat a pertinent principle of differentiation, which was G visibly linked to productive process, had been adopted in the broad classification of power-users and manual manufacturers. It was irrational to castigate this basis as unreal. The failure however, to mini-classify between large and small sections of manual match manufacturers could H not be challenged in a court of law, that being a policy

decision of Government dependent on pragmatic wisdom playing on imponderable forces at work. Though refusal to make rational classification where grossly dissimilar subjects are treated by the law violates the mandate of Article 14, even so, as the limited classification adopted in the present case was based upon a relevant differentia which had a nexus to the legislative end of taxation, the Court could not strike down the law on the score that there was room for further classification."

42. In *State of U.P. v. Kamla Palace*, (2000) 1 SCC 557, this Court has observed:

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, Re, seven-Judge Bench; R.K. Garg v. Union of India, five-Judge Bench.) It was further held in R.K. Garg case 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. Their Lordships quoted with approval the observations made by Frankfurter, J. in Morey v. Doud:

> "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.

A 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 B been overruled by events — self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."

12. The legislature gaining wisdom from historical facts, existing situations, matters of common knowledge and C practical problems and guided by considerations of policy must be given a free hand to devise classes — whom to tax or not to tax, whom to exempt or not to exempt and whom to give incentives and lay down the rates of taxation, benefits or concessions. In the field of taxation if the test D of Article 14 is satisfied by generality of provisions the courts would not substitute judicial wisdom for legislative wisdom.

43. In *Aashirwad Films v. Union of India*, (2007) 6 SCC E 624, this Court has held:

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 F 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 G 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, East India Tobacco Co. v. State of A.P., N. Venugopala Ravi Varma Rajah v. Union of India,*

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Asstt. Director of Inspection Investigation v. A.B. Shanthi and Associated Cement Companies Ltd. v. Govt. of A.P.)

44. In *Jai Vijai Metal Udyog Private Limited, Industrial Estate, Varanasi v. Commissioner, Trade Tax, Uttar Pradesh, Lucknow*, (2010) 6 SCC 705, this Court held:

> 19. Now, coming to the second issue, it is trite that in view of the inherent complexity of fiscal adjustment of diverse elements, a wider discretion is given to the Revenue for the purpose of taxation and ordinarily different interpretations of a particular tariff entry by different authorities as such cannot be assailed as violative of Article 14 of the Constitution. Nonetheless, in our opinion, two different interpretations of a particular entry by the same authority on same set of facts, cannot be immunised from the equality clause under Article 14 of the Constitution. It would be a case of operating law unequally, attracting Article 14 of the Constitution.

45. To sum up, 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. The taxation laws are no exception to the application of this principle of equality enshrined in Article 14 of the Constitution of India. However, it is well settled that the Legislature enjoys very wide latitude in the matter of classification of objects, persons and things for the purpose of taxation in view of inherent complexity of fiscal adjustment of diverse elements. 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. Even so, large latitude is allowed to the State for classification upon a reasonable basis and what is reasonable is a question of practical details and a variety of factors which

A the Court will be reluctant and perhaps ill-equipped to investigate. 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 B and based on diverse considerations of executive pragmatism, the Judicature 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 C out of particular situations, in which some of the tax payers 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 assesses are accidental and inevitable and are inherent in every taxing D Statute as it has to draw a line somewhere and some cases necessarily fall on the other side of the line. The point is illustrated by two decisions of this Court. In *Khandige Sham Bhat vs. Agricultural Income Tax Cfficer, Kasaragod and Anr.* (AIR 1963 SC 591). Travancore Cochin Agricultural Income Tax E Act was extended to Malabar area on November 01, 1956 after formation of the State of Kerala. Prior to that date, there was no agricultural income tax in that area. The challenge under Article 14 was that the income of the petitioner was from areca nut and pepper crops, which were harvested after November F in every year while persons who grew certain other crops could harvest before November and thus escape the liability to pay tax. It was held that, that was only accidental and did not amount to violation of Article14. In *Jain Bros. vs. Union of India* (supra), Section 297(2)(g) of Income Tax Act, 1961 was challenged because under that Section proceedings completed G prior to April, 1962 was to be dealt under the old Act and proceedings completed after the said date had to be dealt with under the Income Tax Act, 1961 for the purpose of imposition of penalty. April 01, 1962 was the date of commencement of Income Tax Act, 1961. It was held that the crucial date for H imposition of Penalty was the date of completion of assessment

or the formation of satisfaction of authority that such act had been committed. It was also held that for the application and implementation of the new Act, it was necessary to fix a date and provide for continuation of pending proceedings. It was also held that the mere possibility that some officer might intentionally delay the disposal of a case could hardly be a ground for striking down the provision as discriminatory.

46. In view of the above discussion, we cannot agree with the findings and the conclusion reached by the High Court for which, we have made reference earlier. We have also not discussed in detail the individual issues raised by the learned senior counsel for the respondent, since those were the issues which were canvassed and accepted by the High Court. Accordingly, the appeals are allowed. The impugned common judgment and order is set aside. Costs are made easy.

N.J. Appeals allowed.