Tirupati Chemicals Vs The Deputy Commercial Tax Officer and Others
 ABC Constructions Vs The Commercial Tax Officer

Court: Andhra Pradesh High Court

Date of Decision: Nov. 25, 2010

Acts Referred: Andhra Pradesh Value Added Tax Act, 2005 â€" Section 31, 31(1), 32(1), 33(1), 34
Andhra Pradesh Value Added Tax Rules, 2005 â€" Rule 17(4), 66, 66(11), 66(3), 66(4)
Constitution of India, 1950 â€" Article 129, 14, 141, 215, 226
Income Tax Act, 1961 â€" Section 245(2), 245(S), 263

Citation: (2011) 40 VST 81

Hon'ble Judges: Ramesh Ranganathan, J; Goda Raghuram, J

Bench: Division Bench

Advocate: T. Ramesh Babu, in WP No. 1582 of 2010 and K. Raji Reddy, in WP No. 2119 of 2010, for the Appellant; G.P. for Commercial Taxes, S.R. Ashok and S. Ravi in Writ Petition No. 1582 and 2119 of 2010, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Ramesh Ranganathan, J.
In W.P. No. 2119 of 2010, the validity of Clause (iii) of Sub-section (4) of Section 67 of the Andhra Pradesh

Value Added Tax Act, 2005 (for short the Act) is under challenge as being arbitrary, illegal and as taking away the powers of quasi-judicial

authorities under the Act. A consequential direction is sought to declare the assessment order, passed by the assessing authority, as without

jurisdiction.

2. The Petitioner is a proprietary concern and a registered VAT dealer on the rolls of the Respondent carrying on business of property

development, including construction and sale of apartments. They opted for payment of tax under the composition scheme in terms of Section 4(7)

(d) of the Act read with Rule 17(4)(i) of the A.P. VAT Rules, 2005 (""Rules"" for short). The Petitioner claims to have entered into an agreement

with the land owners for construction of apartments having obtained necessary permission from the Urban Development Authority; and to have

constructed apartments, and effected sale of apartments in a single sale deed along with the land owners. It is their case that they paid 1% tax on

the total sale consideration of Rs. 2,01,92,000/-. The Respondent issued notice dated 22.10.2008 informing the Petitioner of the advance ruling

dated 23.5.2006 and 30.7.2006, in the case of M/s Matyas Hill County Pvt. Ltd, Hyderabad and Lumbani Construction Pvt Ltd, wherein it was

clarified that the development agreement for construction and sale of apartments fell outside the scope of Section 4(7)(d) of the Act; the type of

construction undertaken by them fell u/s 4(7)(c); and they were liable to pay tax at 4% of the total consideration received by them. The Petitioner

was called upon to pay the differential tax of 3% amounting to Rs. 6,05,760/-. The Petitioner''s reply dated 3.12.2008 was of no avail, and an

order of assessment dated 30.10.2009 was passed.

3. In W.P. No. 1582 of 2010, the show cause notice issued by the fifth Respondent dated 30.12.2009, proposing to revise the order of

assessment in exercise of his powers u/s 32(2) of the Act, (upon setting aside the order of the Appellate Deputy Commissioner dated 10.09.2010

and restoring the order of the Deputy Commissioner (Commercial Tax) dated 21.02.2010), is under challenge. The Petitioner, a partnership firm

dealing in non-petroleum and non crystalline paraffin wax of less than 0.75% oil and normal waxes, is registered on the rolls of the 2nd

Respondent. The Petitioner has been paying VAT at 4% from the year 2006 onwards claiming that their goods fall under Sub-Entry 189 of Entry

No. 100 of Schedule IV to the Act. The 1st Respondent, after conducting an audit of the accounts of the Petitioner for the tax period April, 2006

to November, 2008, opined that the goods sold by them did not fall under sub-entry 189 as the customs tariff code did not tally with the HSN

code mentioned in sub-entry 189. The Petitioner was called upon to pay tax at 12.5% from September, 2006 onwards. The 1st Respondent

passed the assessment order dated 21.2.2009 levying tax at 12.5% treating the goods as falling under the residuary Schedule v. to the Act.

Aggrieved thereby, the Petitioner preferred an appeal to the 4th Respondent who, by his order dated 10.9.2009, set aside the assessment order

passed by the 1st Respondent holding that the waxes sold by the Petitioner were covered by Entry 100(189) of Schedule IV to the Act.

Thereafter the 5th Respondent issued the impugned show cause notice dated 30.12.2009, proposing to revise the order of the 4th Respondent

dated 10.9.2009, relying on the Advance Ruling Authority''s (ARA) proceedings dated 30.12.2007 which related to a clarification sought by M/s.

Tirupati Chemicals. In its ruling dated 30.12.2007 the ARA had clarified that only ""Paraffin Wax less than weight 0.75% of oil"" was taxable at 4%,

and the other goods i.e., residual wax, waxy oil, rubber process oil and slag wax"" were taxable at 12.5% under the residuary entry of the v.

Schedule to the Act. Apprehending that the 5th Respondent would classify their goods as falling under Schedule v. to the Act, and not under Entry

No. 100(189) of Schedule IV, and as the clarification of the ARA is binding on the authorities, the Petitioner has invoked the Writ jurisdiction of

this Court. As the scope of Section 67 of the Act falls for consideration in this case also, W.P. No. 1582 of 2010 was tagged with W.P. No.

2119 of 2010; both the Writ Petitions were heard together; and are now being disposed of by a common order.

4. Sri T. Ramesh Babu and Sri K. Raji Reddy, Learned Counsel for the Petitioners, made oral and written submissions. Sri A.V. Krishna

koundinya and Sri P. Balaji Verma, Learned Special Standing Counsel for Commercial Taxes, put forth their submissions on behalf of the

Respondents

IS SECTION 67(4)(ii) OF THE ACT ARBITRARY AND ULTRA VIRES ARTICLE 14 OF THE CONSTITUTION OF INDIA?

5. Except to contend that Section 67(4)(ii) of the Act is arbitrary, and in violation of Article 14 of the Constitution of India, the basis on which such

a submission is founded is not stated. It is for the person who assails a legislation as violative of Article 14, to establish that it is so. This burden is

all the heavier when the legislation under attack is a taxing statute. East India Tobacco Co. Vs. State of Andhra Pradesh, For attracting Article 14,

necessary facts are required to be pleaded, and the grounds taken must be based on factual foundation. Southern Petrochemical Industries Co.

Ltd. Vs. Electricity Inspector and E.T.I.O. and Others, The foundational facts as to how Section 67(4) (ii) of the Act is in violation of Article 14 of

the Constitution of India have not been stated at all. The test to be applied to determine whether a statutory provision is in violation of Article 14 is

of "palpable arbitrariness" in the context of the felt needs of the times and societal exigencies informed by experience. Shashikant Laxman Kale v.

Union of India (1990) 4 SCC 366. It is only when a provision of a taxing/fiscal statute is so manifestly/palpably arbitrary as to be in violation of 14

of the Constitution of India would it be required to be struck down. No such case has been made out.

6. The submissions made by the learned Counsel for the Petitioners is on the construction of various Sub-sections of Section 67 of the Act. They

would contend that these provisions require the binding effect of the ruling of the ARA to be confined only to the applicant-dealer. For

convenience sake, the submissions in this regard are broadly classified into two different heads.

I. IS THE RULING OF THE ARA BINDING ON DEALERS OTHER THAN THE APPLICANT DEALER WHO SOUGHT THE

CLARIFICATION?

7. Learned Counsel for the Petitioners would submit that the order passed by the ARA is qua the applicant-dealer, and cannot bind all other

dealers and their respective officers and authorities; Clauses (ii) and (iii) of Section 67(4) interfere with the functioning of quasi-judicial authorities

whose duty it is to decide the liability of a dealer in accordance with law, and not based on the decision of the ARA; the chance of a non-applicant

coming to know of the order of the ARA, relating to another dealer, is remote; under Clauses (ii) 3 (1990) 4 SCC 366 and (iii) of Section 67(4),

the clarification given in respect of one applicant cannot be made applicable to another dealer; to hold otherwise would mean that the department

has to verify whether the ARA''s decision has become final, and no appeal was filed there against before the Tribunal within 30 days of the ruling;

the appeal provided u/s 33(1)(c) must draw colour from the proviso to Section 67(4) in respect of the very same applicant who sought the ruling

or order from the ARA; the expression ""any dealer"" in Section 33 must be confined to the applicant only, as is evident from the proviso to Section

67(4), which is the basis for filing an appeal before the Tribunal; the appeal u/s 33 comes with an onerous condition requiring the Appellant to pay

50% of the tax, penalty and interest which is due as per the order of the authority following the ruling; while the Assessee, in whose case the

ARA''s decision is not followed for whatsoever reason, has a right of appeal to the Appellate Deputy Commissioner by paying only 12.5% of the

disputed tax, other Assessees, who receive an order from the authority following the ruling, are forced to prefer an appeal to the Tribunal on the

onerous condition of paying 50% of the disputed tax; Act 4/09 only enables a non-applicant, in whose case the decision is followed, to prefer an

appeal against such order, but does not provide for a direct appeal against the decision of the ARA itself; Section 33 cannot remedy the situation

and sort out the anomaly in Section 67 in restricting the remedy of an appeal, against the decision of the ARA, only to the applicant-dealer; and

Section 67(4) of the Act is similar to Section 245S of the Income Tax Act. Learned Counsel would rely on K.S. Biyani v. State of A.P. (2005)

142 STC 111 ; and The Prudential Assurance Company Ltd. Vs. The Director of Income Tax (International Taxation) and The Union of India

(UOI),

8. On the other hand Learned Special Standing Counsel for Commercial Taxes would submit that Section 67(4)(ii) of the Act binds dealers, other

than the dealer who sought a clarification, in respect of goods or transactions in relation to which a clarification was sought; any other construction

would render either Clause (i) or Clause (ii) of Section 67(4) redundant; that an appeal is now provided u/s 33(1)(c) of the Act, consequent to its

amendment by Act 4 of 2009, to any dealer who has suffered an order passed by an authority following the ruling of the ARA, would show that

the ruling u/s 67(4)(ii) applies to dealers other than the applicant also; and any other construction would render such an appellate remedy wholly

unnecessary.

9. Before examining the rival contentions it is necessary to note the relevant provisions of the Act and the Rules made there under. Section 67 of

the Act relates to Clarification and Advance Ruling. The clarification, which the ARA is empowered to give u/s 67(1), is limited to such aspects

which relate to the implementation of the Act, and not beyond. The manner in which the clarification should be given is required to be prescribed

by Rules made under the Act. Rule 66 of the Rules prescribes the procedure for filing, and disposal, of applications before the ARA.

10. Under Sub-section (2) of Section 67 of the Act, no application shall be entertained where the question raised in the application is already

pending before any officer or authority of the department or appellate tribunal or any court. Under its proviso, no application shall be rejected

under Sub-section (2) unless an opportunity has been given to the applicant of being heard. Where the application is rejected, reasons therefore

are required be recorded in the order. Section 67(3) stipulates that no officer, or any other authority of the department, shall proceed to decide

any issue in respect of which an application has been made by an applicant u/s 67, and is pending. Under Sub-section (4), the order of the

authority shall be binding (i) on the applicant who had sought the clarification; (ii) in respect of the goods or transactions in relation to which a

clarification was sought; and (iii) on all the officers other than the Commissioner. Under its proviso, the order of the authority would bind only if the

dealer does not file an appeal, before the Sales Tax Appellate Tribunal (STAT), within 30 days of the ruling. Section 67(5) confers on the ARA

the power to review, amend or revoke its ruling at any time, for good and sufficient cause, by giving an opportunity to the affected parties. An

order, giving effect to such review or amendment or revocation, is not subject to the period of limitation. Section 67(6) enables the Commissioner

to refer any matter for the opinion of the ARA, without prejudice to his authority.

11. Under Rule 66(7) of the Rules, if an application is admitted under Sub-rule (4), the ARA shall, after examining such further material as may be

placed before it by the applicant or obtained by the ARA, pass such order as is deemed fit on the questions specified in the application, after giving

an opportunity to the applicant of being heard, if he so desires. The ARA is required to pass an order within four weeks from the date of the order

admitting the application, and a copy of such order is required to be sent to the applicant, to the authority specified in Sub-rule (3), and to the

assessing or registering authority concerned. Under Sub-rule (11) a copy of the order shall be sent to the applicant, the Commissioner and the

officer concerned.

12. While Section 67(4)(i) stipulates that the order of the authority (i.e., the clarification/ruling given by the ARA) shall be binding on the applicant

who sought the clarification, Section 67(4)(ii) makes the said order binding in respect of goods or transactions in relation to which a clarification

was sought. An applicant-dealer would seek a clarification only in respect of his goods or transactions, and the clarification/ruling would be given

only on the question/issue raised by him. As such the question of the clarification/ruling binding the applicant on matters other than those in respect

of their goods and transactions does not arise, more so as the clarification/ruling which the ARA is empowered to give is confined to aspects which

relate to the implementation of the Act. If the order of the ARA, u/s 67(4), is to bind only the applicant, and not other dealers, in respect of the

goods or transactions in relation to which he had sought a clarification, then Clauses (i) and (ii) would overlap, thereby rending either Clause (i) or

(ii) inapposite surplus sage.

13. When a statute levies a tax it does so by inserting a charging section by which a liability is created or fixed, and then proceeds to provide the

machinery to make the liability effective. A distinction has to be made by the Court, while interpreting the provisions of a taxing statute, between

charging provisions which impose the charge to tax and machinery provisions which provide the machinery for the quantification of the tax, and the

levy and collection of the tax imposed. While charging provisions are construed strictly, machinery sections are not generally subject to a rigorous

construction, Associated Cement Company Limited Vs. Commercial Tax Officer, Kota and Others, ; Whitney v. Commr of Inland Revenue 1926

ACC 37; CIT v. Mahaliram Ramjidas (1940) 9 ITR 442 ; India United Mills Ltd. Vs. Commissioner of Excess Profits Tax, Bombay, and

Gursahai Saigal Vs. Commissioner of Income Tax, Punjab, and are to be construed like in any other Statute. J.K. Synthetics Limited and Birla

Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, ; Whitney; Mahaliram Ramjidas; India United Mills

Ltd. and Gursahai Saigal). The rule of strict construction of a taxing statute does not apply to a provision which merely lays down the machinery for

the calculation or procedure for the collection of tax. I.T.C. Ltd. Vs. Commissioner of Central Excise, New Delhi and Another, ; Gursahai Saigal.

Likewise if two constructions are possible, and a strict, construction would lead to an absurd result, then the construction which is in keeping with

the object of the statutory provision may be adopted. I.T.C. Ltd. Vs. Commissioner of Central Excise, New Delhi and Another, ; Commissioner

of Income Tax, Bangalore Vs. J.H. Gotla, Yadagiri, Similarly if there is a provision conferring a right of appeal in a fiscal/tax statute it should be

read in a reasonable and practical manner. Commissioner of Income Tax, A.P. v. Ashoka Engineering Co. 1993 Supp (1) SCC 754. The

presumption as to purposive construction applies to Taxing statutes as to other Acts. Commissioner of Central Excise, Pondicherry v. Acer India

Ltd. 2004 (8) SCC 151; Francis Bennion''s Statutory Interpretation, Fourth Edition, page 828).

14. Apart from the emphasis on the letter of the law, the fundamental rule of construction of a taxing statute is not different from that of any other

statute. The duty of the court is to give effect to the intention of the legislature, as that intention is to be gathered from the language employed having

regard to the context in connection with which it is employed. Banarasi Devi Vs. Income Tax Officer, Calcutta, ; Attorney-General v. Carlton

Bank (1899) 2 QB 158 . The primary rule of construction is that the intention of the Legislation must be found in the words used by the Legislature

itself. AIR 2003 SC 2103 The legislature is deemed to intend and mean what it says. The need for interpretation arises only when the words used

in the statute are, on their own terms, ambivalent and do not manifest the intention of the legislature. (ITC Ltd.12). A statute is an edict of the

legislature. The language employed in a statute is the determinative factor of legislative intent. Raghunath Rai Bareja and Another Vs. Punjab

National Bank and Others, ; Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others, A provision must be construed

according to the natural meaning of the language used. The court, in interpreting a statute, must therefore proceed without seeking to add words

which are not to be found in the statute. Southern Petrochemical Industries Co. Ltd.2; Union of India (UOI) Vs. Mohindra Supply Company, ;

Bank of England v. Vagliano Bros LR (1891) ACC 107 ; Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, ; J.

Srinivasa Rao v. Govt. of A.P. (2006) 12 SCC 607. Statutory language must always be given presumptively the most natural and ordinary

meaning which is appropriate in the circumstances, Chertsey Urban District Council v. Mixnam''s Properties Ltd. (1964) 2 All ER 627 , and must

be construed according to the rules of grammar. When the language is plain and unambiguous, and admits of only one meaning, no question of

construction of a statute arises, for the Act speaks for itself. The meaning must be collected from the expressed intention of the legislature. State of

Uttar Pradesh Vs. Dr. Vijay Anand Maharaj, . In construing a statutory provision, the first and the foremost rule of construction is the literal

construction. All that the court has to see at the very outset is what does that provision say. If the provision is unambiguous and if from that

provision the legislative intent is clear, the court need not call into aid other rules of construction of statutes, and the other rules of construction are

to be called into aid only when the legislative intention is not clear. Hiralal Rattanlal Vs. State of U.P. and Another etc. etc., .

15. If the words used are capable of one construction only, it would not be open to the Courts to adopt any other hypothetical construction on the

ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material

provisions of the Statute must be interpreted in their plain grammatical meaning, Kanai Lal Sur Vs. Paramnidhi Sadhukhan, and must be construed

it in its ordinary sense as it is well recognised that the language used speaks the mind and reveals the intention of the framers. The Commissioner of

Income Tax, Madras Vs. T.V. Sundram Iyengar (P) Ltd., . The language employed in a statute is the determinative factor of the legislative intent.

The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect in the

words used by the legislature, the court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible

result. Prakash Nath Khanna and Another Vs. Commissioner of Income Tax and Another, ; Delhi Fin. Corpn. and Another Vs. Rajiv Anand and

Others, It would be impermissible to call in aid any external aid of construction to find out the hidden meaning. A statute should be construed

according to the intention expressed in the Statute itself. Col. D.D. Joshi and Others Vs. Union of India (UOI) and Others, . The other rules of

interpretation i.e., the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead

to no intelligible results or, if read literally, would nullify the very object of the statute. Where"" the words of a statute are clear and unambiguous,

recourse cannot be had to principles of interpretation other than the literal rule. Swedish Match AB and Another Vs. Securities and Exchange

Board, India and Another, ; Raghunath Rai Bareja and Another Vs. Punjab National Bank and Others,

16. Resort can be had to the legislative intent for the purpose of interpreting a provision of law, when the language employed by the legislature is

doubtful or susceptible of meanings more than one. Ombalika Das and Another Vs. Hulisa Shaw, Unless there is any ambiguity it would not be

open to the Court to depart from the normal rule of construction which is that the intention of the Legislature should be primarily gathered from the

words which are used. It is only when the words used are ambiguous that they would stand to be examined and construed in the light of

surrounding circumstances and constitutional principles and practice. The Commissioner of Income Tax, Madhya Pradesh and Bhopal Vs. Sodra

Devi, A provision is not ambiguous merely because it contains a word which in different contexts is capable of different meanings. It would be hard

to find anywhere a sentence of any length which does not contain such a word. '' A provision is ambiguous only if it contains a word or phrase

which, in that particular context, is capable of having more than one meaning. Kirkness (Inspector of Taxes) v. John Hudson & Co., Ltd. (1955)

ACC 696 . It is only when the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act

whilst the other construction is likely to assist the achievement of the said policy, would Courts prefer to adopt the latter construction. It is only in

such cases that it becomes relevant to consider the mischief and defect which the Act purports to remedy and correct (The Commissioner of

Income Tax, Madras Vs. T.V. Sundram Iyengar (P) Ltd.,). In the instant case, however, we find no reason to resort to any secondary canon.

17. Courts have adhered to the principle that effort should be made to give meaning to each and every word used by the legislature and it is not a

sound principle of construction to brush aside words in a statute, as being inapposite surplus age, if they can have a proper application in

circumstances conceivable within the contemplation of the statute. Gurudevdatta VKSSS Maryadit and Others Vs. State of Maharashtra and

Others, , Manohar Lal Vs. Vinesh Anand and Others, . When the legislative intent is found specific mention and expression in the provisions of the

Act itself, the same cannot be whittled down or curtailed and rendered nugatory. Bharathidasan University v. All India Council for Technical

Education (2001)8 SCC 676 . Effect should be given to all the provisions and a construction that reduces one of the provisions to a ""dead letter

must be avoided. Anwar Hasan Khan Vs. Mohammad Shafi and Others,

18. On a literal construction, of Clause (ii) of Section 67(4), it is evident that the order of the ARA would be binding ""in respect of the goods or

transactions in relation to which a clarification was sought"" irrespective of whether such goods or transactions relate to the applicant or other

dealers. It is no doubt true that such a ruling would bind other dealers, who had not sought a clarification, without their being heard by the ARA.

That, by itself, would not necessitate this Court reading the words ""the applicant"" into Clause (ii) of Section 67(4). A construction which requires,

for its support, addition or substitution of words or which results in rejection of words, has to be avoided. The Income Tax Officer, "A" Ward,

Indore Vs. Gwalior Rayon Silk Manufacturing (Weaving) Co. Ltd., Birlagram, Nagda, , Smt. Shyam Kishori Devi Vs. Patna Municipal

Corporation and Another, , A.R. Antulay Vs. Ramdas Sriniwas Nayak and Another, , Dental Council of India and Another Vs. Hari Parkash and

Others, , J.P. Bansal Vs. State of Rajasthan and Another, and State of Jharkhand v. Govind Singh . Courts should not, ordinarily, add words to a

statute or read words into it which are not there, especially when a literal reading thereof produces an intelligible result. Delhi Fin. Corpn. and

Another Vs. Rajiv Anand and Others, The court cannot rewrite, recast or reframe the legislation as it has no power to do so. Even if there is a

defect or an omission in the statute the court cannot, ordinarily, correct the defect or supply the omission. Union of India and another Vs. Deoki

Nandan Aggarwal, ; Smt. Shyam Kishori Devi Vs. Patna Municipal Corporation and Another, ; Satheedevi v. Prasanna (2010) 5 SCC 622.

There is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. Courts expound the law, they

do not legislate. State of Kerala Vs. Mathai Verghese and Others, , Union of India and another Vs. Deoki Nandan Aggarwal, A Judge is not

entitled to add something more than what is there in the Statute by way of a supposed intention of the legislature. Union of India Vs. Elphinstone

Spinning and Weaving Co. Ltd. and Others etc., The legislative casus omissus cannot be supplied by the judicial interpretative process. Maruti

Wire Industries Pvt. Ltd. Vs. S.T.O., Ist Circle, Mattancherry and Others, State of Jharkhand v. Govind Singh . The Legislature has, u/s 67(4)(ii),

made the ruling of the ARA binding in respect of goods or transactions in relation to which a clarification is sought, and has not restricted its

application only to the applicant. Notwithstanding that the clarification has been given at the behest of the applicant-dealer, if the goods or

transaction of another dealer are identical to those for which a clarification was sought, the ruling of the ARA would bind such other dealers also.

19. Under Articles 129 and 215 of the Constitution of India, the Supreme Court and the High Courts are Courts of Record. The law laid down by

High Courts, as Courts of Record, are binding not only on its co-ordinate benches, but also on subordinate courts, and inferior tribunals, within

their territorial jurisdiction. Under Article 141 of the Constitution of India the law declared by the Supreme Court shall be binding on all Courts

within the territory of India. Unlike Superior courts, i.e., the Supreme Court and the High Courts, the order of subordinate courts/inferior tribunals

are, ordinarily, binding only on the parties to the dispute, and do not bind others. By passing a law within its competence the legislature can vest

judicial power in any authority for deciding a dispute, as there is no exclusive vesting of judicial power in Courts by the Constitution. Smt. Indira

Nehru Gandhi v. Shri Raj Narain 1975 (Suppl.) SCC 1. The legislature, which has the power to make laws constituting tribunals and conferring

judicial power on them, also has the power, by law, to make the orders passed by such tribunals binding even on those who are not parties to the

list. It is only the ratio or the legal principle in a judgment of a Superior Court which is binding and not every observation made therein. It needs no

emphasis, therefore, that it is only the principle laid down in a ruling of the ARA which would have binding force under Clauses (i) to (iii) of Section

67(4) of the Act, and not a clarification without any principle or, for that matter, the ipse-dixit of the ARA in its ruling/clarification.

20. It, no doubt, appears harsh that the ruling of the ARA would bind dealers, other than the applicant, in respect of goods or transactions in

relation to which a clarification was sought. This, however, is a matter essentially for the legislature. u/s 67(4)(iii) of the Act, the order of the ARA

binds officers in the commercial tax department below the rank of the Commissioner of Commercial Taxes. In the exercise of his revisional

powers, u/s 32(1)of the Act, the Commissioner of Commercial taxes is not bound by the Ruling of the ARA. Use of the word ''officers'' in Section

67(4)(iii) makes it clear that the order of the ARA would not bind the STAT, or this Court in the exercise of its jurisdiction u/s 34 of the Act.

Orders of the STAT would bind all officers/quasi-judicial authorities of the commercial taxes department, including the Commissioner,

notwithstanding a ruling of the ARA to the contrary, more so as an appeal lies to the STAT against the ruling of the ARA.

21. Under the proviso to Section 67(4), the remedy of an appeal to the STAT is available .only to the applicant-dealer for the words used therein

are ""the dealer"", and not ""any dealer"". Once the applicant-dealer prefers an appeal, the issue or question is required to be decided by the STAT

whose order is binding on all the officers/authorities in the commercial taxes department, the applicant and all other dealers of similar goods or

transaction for which a clarification has been sought. The binding effect of the ruling of the ARA is removed, on such an appeal being preferred, as

the question/issue is now required to be determined by the Tribunal. The STAT does not fall within the ambit of any of Clauses (i) to (iii) of Section

67 of the Act and, on the question being finally decided by the STAT, (whichever view it may take, either affirming or overruling the clarification of

the ARA), it is the order of the STAT which would bind the quasi-judicial authorities, (assessing, appellate, revisional authorities), and Assessee-

dealers under the Act.

22. As observed hereinabove the remedy of an appeal, under the proviso to Section 67(4), is not available to a dealer who has not sought a

clarification, despite his being bound by the ruling of the ARA u/s 67(4)(ii) of the Act. The remedy, hitherto, was for him to suffer an adverse

assessment order, thereafter have the appeal u/s 31 rejected on the basis of the ruling of the ARA, and then carry the matter in second appeal to

the STAT u/s 33 and question the order on grounds including that the ruling of the ARA is erroneous. It is with a view to remedy this mischief that

Section 33 of the Act was substituted by Act 4 of 2009 with effect from 03.03.2009. Section 33(1)(c), as substituted, enables any dealer,

objecting to an order passed or proceeding recorded by any authority following the ruling or order passed u/s 67, to appeal to the STAT within

sixty days from the date of service of the order or proceeding on him. When the legislature intends that an enactment shall remedy a particular

mischief, it is presumed that the legislature intends that the Court, while considering in relation to the facts of a case which of the opposing

constructions of the enactment corresponds to its legal meaning, should find a construction which applies the remedy provided by it in such a way

as to suppress that mischief. For a true interpretation of statutes, four things are to be discerned and considered: (1) what was the common law

before the making of the Act; (2) what was the mischief and defect for which the common law did not provide; (3) what remedy has the legislature

resolved and appointed to cure the disease; and (4) the true reason of the remedy. The Judge has always to make such construction as shall

suppress the mischief and advance the remedy 53. Commissioner of Income Tax v. Swarna Bar & Restaurant I.T.T.A. Nos. 613 of 2006.

23. It is evident that an appellate remedy is now provided to all dealers against whom orders are passed by officers of the commercial taxes

department following the ruling of the ARA, as the legislature was conscious that the order of the ARA would bind even such dealers, who had not

sought a ruling from the ARA, in respect of goods or transactions in relation to which a clarification was sought. It is with a view to provide such

dealers an appellate remedy that Section 33(1) was substituted by Act 4 of 2009 providing the remedy of an appeal to ""any dealer"" who had

suffered an order passed by an authority following the ruling of the ARA, even though he had not sought a clarification from the ARA u/s 67 of

Act. If the construction, placed on behalf of the Petitioners, on Section 67(4)(ii) of the Act is to be accepted the appellate remedy u/s 33(1)(c)

would be wholly unnecessary as the order of the ARA would not bind such of those dealers who had not sought a clarification from the ARA.

24. Unlike the proviso to Section 67(4) which restricts the right of appeal only to the applicant dealer, the words used in Section 33(1) are ""any

dealer"". The remedy of an appeal u/s 33(1)(c) is available to all such dealers in whose cases the assessing/appellate/revisional authorities under the

Act have passed orders following the ruling of the ARA. As a result a dealer can now prefer an appeal directly to the STAT, even against an

assessment order, without having to prefer an appeal u/s 31, provided the assessment order was passed following the ruling of the ARA. A direct

appeal is provided to the STAT u/s 33(1)(c) as the appellate authority u/s 31, being an officer/authority in the commercial taxes department, is also

bound by the ruling of the ARA. Likewise a non-applicant dealer would be bound by the ruling of the ARA, u/s 67(4)(ii), till such a ruling, is set

aside, or a view contrary thereto is taken, by the STAT. The remedy of an appeal u/s 33(1)(c) s available to the applicant-dealer also, provided he

has not preferred an appeal to the STAT under the proviso to Section 67(4) of the Act. The distinction between an appeal filed under the proviso

to Section 67(4), and Section 33(1)(c) of the Act, is that in the former mere filing of an appeal to the STAT would remove the binding effect of a

ruling of the ARA, while in the latter it is only when the STAT finally takes a view contrary thereto would the ruling of the ARA cease to bind.

25. A right of appeal is a creature of a statute. It is not an inherent right. While conferring such a right, the Statute may impose restrictions, like pre-

deposit or it may limit the area of appeal to questions of law or sometimes to substantial questions of law. Whenever such limitations are imposed,

they are to be strictly followed. Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement and Another, The legislature has,

evidently, chosen not to provide an appeal, against an order of assessment passed following the ruling of the ARA, to the Appellate Authority u/s

31, as the said authority, being an officer/ authority of the commercial taxes department, is also bound by the ruling of the ARA. While the pre-

deposit, in the case of an appeal to the appellate authority u/s 31, is 12.5% of the disputed tax, the said authority is not entitled to take a view

contrary to the ruling of the ARA in view of Section 67(4)(iii) of the Act and the dealer would, necessarily, have had to prefer a second appeal to

the STAT. The pre-deposit, for preferring an appeal to the STAT, is 50% of the disputed tax, interest and penalty irrespective of whether the

appeal is preferred under Clause (a) or (c) of Section 33(1) of the Act. The legislature has, u/s 33(1)(c) of the Act, chosen only to provide the

remedy of an appeal to the STAT against an order passed by the Assessing, Appellate or Revisional authorities, (officer of the Commercial Taxes

department below the rank of Commissioner), and the mere fact that it has not provided a remedy of appeal, to a non-applicant dealer, to the

STAT against the order of the ARA would neither render Section 67(4)(ii) of the Act ultravires nor would it necessitate the conclusion that the said

provision is applicable only in the case of an applicant-dealer, and none other.

26. In K.S, Biyani (2005) 142 STC 111, the question which fell for consideration was whether an appeal lay against an order of the ARA, passed

u/s 67 of the Act, in as much as Section 33 made no mention of any such order. Prior to its amendment by Act 4 of 2009, with effect from

03.03.2009, Section 33 enabled any dealer, objecting to an order passed or proceeding recorded by (a) any authority/proceeding in an appeal u/s

31; or (b) by the Additional Commissioner or Joint Commissioner or Deputy Commissioner u/s 21 or Section 32 or 38; to prefer an appeal to the

Appellate Tribunal.

27. On the ground that Section 33 did not provide for an appeal against an order passed u/s 67 of the Act, it was contended before a Division

Bench of this Court that no appeal lay against the order of the ARA to the Tribunal. It is in this context that the Division bench held that Section 67

laid down a complete mechanism as far as the ARA is concerned; the proviso to Section 67(4) made it clear that any order passed by the ARA

u/s 67 was appealable before the STAT; and the appeal must be filed within a period of thirty days of the ruling.

28. The question whether or not the clarification given by the ARA is binding u/s 67(4)(ii) of the Act, in respect of goods or transactions in relation

to which the clarification was sought, on dealers other than the applicant-dealer did not arise for consideration in K.S. Biyani4.

29. In The Prudential Assurance Company Ltd. Vs. The Director of Income Tax (International Taxation) and The Union of India (UOI), the

question which fell for consideration before the Division bench of the Bombay High Court was whether an advance ruling would be binding u/s

245S(2) of the Income Tax Act given in the Assessee''s own case, and whether the Commissioner could take recourse to the jurisdiction u/s 263

of the Act. It is in this factual context that the Division bench of the Bombay High Court held that, unless the binding ruling in the case of the

Assessee was displaced by pursuing requisite procedures under the law, the ruling must continue to operate and be binding between the Assessee

and the Revenue; and, in any event, the Commissioner could not have come to the conclusion that the view of the Assessing Officer was

erroneous, or that it Was prejudicial to the interests of the revenue, when the assessing Officer had followed a binding ruling of the ARA.

30. Section 245S of the Income Tax Act relates to the applicability of advance ruling. Under Sub-Section 1(b) thereof the advance ruling,

pronounced by the authority u/s 245R, shall be binding only in respect of the transaction in relation to which the ruling had been sought. Except for

the word ""goods"", Section 67(4)(ii) of the Act is in pari-materia with Section 245S(1)(b) of the income tax Act. In The Prudential Assurance

Company Ltd. Vs. The Director of Income Tax (International Taxation) and The Union of India (UOI), the Bombay High Court was not called

upon to examine the scope and ambit of Section 245S(1)(b) of the Income Tax Act. Reliance placed on the said judgment is, therefore, misplaced.

31. We, accordingly, hold that in view of Section 67(4)(ii) of the Act the ruling of the ARA is also binding on dealers, other than the applicant, in

respect of the goods or transactions in relation to which a clarification was sought. It is made clear that it is only the principle, on which the ruling of

the ARA is based, which is binding under Clauses (i) to (iii) of Section 67(4), and not a clarification/ruling devoid of any principle.

II. WOULD A HARMONIOUS CONSTRUCTION OF THE OTHER Sub-sections OF SECTION 67 WITH SECTION 67(4)(ii).

REQUIRE THE RULING OF THE ARA TO BIND ONLY THE APPLICANT:

32. It is contended on behalf of the Petitioners-dealers that, on a harmonious construction of various Sub-sections of Section 67 of the Act, it is

evident that the intention of the legislature is to restrict the binding effect of the ARA''s ruling only to the applicant; it is not possible for the applicant

to ascertain whether the issue raised in his case has already been raised in respect of any other applicant or Assessee, and is pending before any of

the forums mentioned in Section 67(2); it is difficult for the authority to verify whether the question raised by the applicant is already pending before

any officer or authority, as is referred to in Section 67(2), in respect of dealers throughout the length and breadth of the State; by necessary

implication it must be construed that the power to entertain an application is qua the applicant/dealer, otherwise it would result in the anomaly of the

ARA being restrained from entertaining any application just for the reason that an issue is pending before any officer or authority in respect of any

dealer other than the applicant; the proviso to Section 67(2) is qua the applicant, as otherwise a non-applicant would be denied the right of being

heard under the proviso thereto; in which event application of the ruling, in the case of a non-applicant, would violate principles of natural justice;

Section 67(3) only insulates the applicant, and cannot be stretched to protect all other dealers who face a similar issue or question; no officer is

bound to avoid dealing with the question or issue in a dealer''s assessment merely because the application of another dealer, on the same question,

is pending before the ARA; Section 67(3) must be construed as a restriction placed on all the authorities, having jurisdiction over the application,

from proceeding further in respect of the issue for which the application is pending; if it is construed otherwise it would lead to the anomaly that all

VAT dealers, other than the applicant, can restrain their officers and authorities from proceeding against them merely on the ground that one VAT

dealer has filed an application before the ARA; the officers cannot discharge their quasi -judicial functions, and the decision making process would

be delayed resulting in loss of revenue to the State; if an order of the ARA is considered as not qua the applicant then, in the light of Section 67(5),

even for reviewing an order already passed a notice is required to be given to all dealers other than the applicant; only the applicant, who sought

the ruling, is required to be put on notice before an order is reviewed, which suggests that the scheme of advance ruling is qua the applicant;

Section 67(5) cannot also be understood as referable to non-applicants; the affected parties are the applicants who sought the Ruling and the

department; it does not envisage notice to all the Assessees who are engaged in a similar line of business, and whose liability will be affected by

exercising the power of review, amendment or revocation; in case an appeal against the ruling of the ARA, u/s 33(1)(c), is held available to non-

applicants and other dealers also, the authorities u/s 33(1)(c) would only be required to pass an order simply following the ruling, and such orders

need not be preceded by a show cause notice since filing of objections to such a notice would be a futile exercise; and some of the officers of the

department have held that the ruling of the ARA is binding only on the applicant.

33. As is evident from the title of Section 67 the clarification/ruling, which the ARA is required to give, is in ""advance"". The word ""advance"" means

made or given ahead of time. It is only a ruling given ahead of time which is an ""advance ruling"". The object of giving a clarification in advance is to

ensure uniformity in orders of assessment, appellate and revisional orders (other than a revisional order passed by the Commissioner), with regards

classification of goods under different entries, of the various Schedules to the Act, or the rate of tax applicable to such goods, etc., thereby

avoiding conflicting orders being passed by different assessing /appellate/revisional authorities under the Act. It is in furtherance of this object that

Sections 67(2) and (3) of the Act respectively prohibit the ARA, and the officers or authorities in the commercial taxes department, from

entertaining an application seeking clarification, or to decide any issue for which an application has been made by an applicant under the Section

and is pending before the ARA. The words ""question"" and ""issue"" are used inter-changeably in Sections 67(2) and (3), and mean the same. The

effect of these two provisions is that the applicant-dealer is required to seek a clarification from the ARA prior to assessment proceedings being

initiated against him, or before an appeal is filed either before the appellate authority or the STAT. Likewise the ARA is prohibited from giving a

clarification when the quasi judicial/judicial authorities under the Act have already initiated appropriate proceedings for, in such an event, the

clarification given by the ARA would no longer be an advance ruling, and would fetter exercise of quasi judicial functions under the Act. The

statutory bar u/s 67(3) would require the officers/authorities to defer assessment/appellate/revisional proceedings under the Act, and await the

ruling of the ARA. The binding effect of the Ruling on all officers of the commercial taxes department, (other than the Commissioner), would ensure

uniformity in the quasi-judicial orders passed by such officers as all of them are statutorily bound to follow the ruling of the ARA. A similar bar is

found in the proviso to Section 32(2) of the Act and, there under, the power of revision, u/s 32(1) and (2), cannot be exercised by the revisional

authority in respect of any issue or question which is the subject matter of appeal before the Tribunal. The bar, under Sub-section (3) of Section

67, would not apply either to the proceedings pending before the STAT u/s 33 of the Act, or those before this Court u/s 34, as such a bar is

limited only to officers and authorities of the commercial taxes department.

34. The requirement of the proviso to Section 67(2), of giving the applicant an opportunity of being heard, is to enable him to satisfy the ARA that

the matter, pending before any officer or authority of the department or the tribunal or the Court, is not on a question raised in the application filed

before the ARA. The requirement of the ARA recording reasons, for rejection of the application, is to enable the STAT to examine the validity of

the ruling of the ARA (i.e., the principle on which the ruling is based), in the appeal preferred there against by the applicant.

35. As noted hereinabove, the manner in which the ARA should clarify an aspect, relating to the implementation of the Act, is required to be

prescribed by way of rules. Rule 66 of the Rules prescribes the procedure for filing of applications, and disposal thereof, by the authority for

clarification and advanced ruling. Rule 66(2)(ii) prescribes that the application fee shall be paid by way of crossed demand draft in favour of the

Commissioner of Commercial Taxes and, under Rule 66(3), on receipt of the application the ARA is required to cause a copy thereof to be

forwarded to the assessing or registering authority concerned, and call for any information or records. Sub-rule (4) enables the ARA, after

examining such application and any records called for, by order, to either admit or reject the application within 30 days of receipt thereof. Under

Sub-rule (5) a copy of every order, made under Sub-rule (4), shall be sent to the applicant and the authority specified in Sub-rule (3).

36. It is evident, from the aforementioned rules, that the Commissioner of Commercial Taxes is made aware of an application being filed by an

applicant-dealer before the ARA. These rules also require the assessing/registering authority, and the applicant, to be informed of an application

being admitted, in which event alone can the application be said to be pending before the ARA. The mere fact that the rules, now in force, require

intimation to be given only to the assessing/ registering authority and the applicant would not necessitate the conclusion that Section 67(4)(ii) of the

Act would bind only an applicant-dealer, and not other dealers in respect of the goods or transactions in relation to which the clarification was

sought, as the provisions of an Act cannot, ordinarily, be interpreted on the basis of Rules made in exercise of the powers conferred under the Act.

In our country the hierarchy is as follows: (1) The Constitution of India; (2) The statutory law, which may be either parliamentary law or law made

by the State Legislature; (3) Delegated or subordinate legislation, which may be in the form of rules made under the Act, regulations made under

the Act, etc; (4) Administrative orders or executive instructions without any statutory backing. The A.P. VAT Act falls in the second layer in this

hierarchy, whereas the Rules made under the Act fall in the third layer. Hence, if there is any conflict between the provisions of the Act and the

Rules, the former will prevail. The Rules should be interpreted in a manner so as to be in conformity with the provisions of the Act. Ispat Industries

Ltd. v. Commr. of Customs (2006) 12 SCC 583 , and not the other way round. A rule has to be read as supplemental to the provisions of the

parent Act. It cannot be interpreted in a way as to come into conflict with the parent Act, in which case the Act will prevail. The S.T.O.,

Moradabad and Another Vs. H. Farid Ahmed and Sons, A piece of subordinate legislation should be read in the light of the statutory scheme of

the Act. Bombay Dyeing and Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and Others, Rules made for carrying out the purposes of

the Act cannot be so framed as not to carry out the purpose of the Act, and cannot be in conflict therewith. Laghu Udyog Bharati and Another Vs.

Union of India and Others,

37. It is a recognised canon of construction that an expression used in a rule made in exercise of the power conferred by a statute must, unless

there is anything repugnant in the subject or context, have the same meaning as is assigned to it under the Statute. Onkarlal Nandlal Vs. State of

Rajasthan and Another, Rules should be consistent with the provisions of the Act. The State of Uttar Pradesh and Others Vs. Babu Ram

Upadhya, A statutory rule cannot enlarge or restrict the meaning of a Section. If a rule goes beyond, or is contrary to, what the section

contemplates, the rule must yield to the statute. The Central Bank of India Vs. Their Workmen,

38. It is no doubt difficult for the quasi judicial authorities under the Act, and the Assessee-dealers, to be aware of whether or not a matter is

pending before the ARA, and likewise for the ARA to know whether quasi judicial proceedings were initiated in respect of other dealers, under

the Act in respect of similar goods or transaction for which a clarification is sought by the applicant-dealer. While that may necessitate rules being

amended to make provision for intimation, of admission of an application before the ARA, to the Commissioner who in turn can, in exercise of his

powers u/s 77 of the Act, issue instructions to all the assessing and other quasi-judicial authorities under the Act, (officers of the commercial taxes

department subordinate to the Commissioner), regarding pendency of an application before the ARA, it would not justify a construction of Section

67(4)(ii) contrary to its plain language, for hardship cannot be a ground for construction of a provision which does not suffer from ambiguity.

39. It is, normally, not the concern of courts to examine the reasonableness of a statutory provision or consider its consequences. Lord Halsbury

as early as 1901, in Cooke v. Charles A. Vogeler Co. 1901 ACC 102, stated the law:

court of law, has nothing to do with the reasonableness or unreasonableness of a provision of a statute except so far as it may help it in interpreting

what the legislature has said. If the language of a statute be plain, admitting of only one meaning, the legislature must be taken to have meant and

intended what it has plainly expressed, and whatever it has in clear terms enacted must be enforced though it should lead to absurd or mischievous

results. If the language of this Sub-section be not controlled by some of the other provisions of the statute, it must, since its language is plain and

unambiguous, be enforced, and your Lordships'' House sitting judicially is not concerned with the question whether the policy it embodies is wise

or unwise, or whether it leads to consequences just or unjust, beneficial or mischievous.

40. In construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from

giving effect to the language used. Even if the literal interpretation results in hardship or inconvenience, it has to be followed. Hence departure from

the literal rule should only be done in very rare cases, and ordinarily there should be judicial restraint in this regard. AIR 1945 48 (Privy Council)

41. As regards the submission that the proviso to Section 67(2) is qua the applicant-dealer only, as it does not provide other dealers with an

opportunity of being heard, it must be borne in mind that the Legislature may, by express provision, exclude application of the principles of natural

justice or restrict its application in the manner provided under the statute. Rules of natural justice are not statutory rules. These rules are not cast in

a rigid mould nor can they be put in a legal strait-jacket. They are not immutable but flexible. These rules can be adapted and modified by statutes

and statutory rules. Union of India and Another Vs. Tulsiram Patel and Others, Principles of natural justice can be excluded by a Statute. State of

U.P. Vs. Sheo Shanker Lal Srivastava and Others, Not only can the principles of natural justice be modified but, in exceptional cases, they can

even be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its

exclusion. (The Central Bank of India Vs. Their Workmen, If a statutory provision either specifically, or by necessary implication, excludes the

application of any or all the principles of natural justice then the court cannot ignore the mandate of the Legislature or the statutory authority and

read into the concerned provision the principles of natural justice. Union of India (UOI) Vs. Col. J.N. Sinha and Another, ; The Central Bank of

India Vs. Their Workmen,

42. Where an authority functions under a statute, and the statute provides for the observance of the principles of natural justice in a particular

manner, natural justice will have to be observed in that manner and in no other. No wider right than that provided by the statute can be claimed nor

can the right be narrowed. The implication of natural justice being presumptive it may be excluded by express words of the statute or by necessary

intendment. Swadeshi Cotton Mills Vs. Union of India (UOI), ; Union of India and Another Vs. Tulsiram Patel and Others, The mere fact that

Section 67(2) does not provide for an opportunity of being heard to dealers, other than the applicant-dealer, does not mean that the

clarification/ruling of the ARA should be confined only to an applicant-dealer, and none else. As noted hereinabove the legislature may, by law,

provide that the orders /ruling of inferior tribunals would also bind persons other than those who are parties to the proceedings before it.

43. The submission that making Section 67(3) applicable to dealers other than the applicant-dealer would fetter exercise of quasi judicial functions

under the Act, thereby delaying the decision making process resulting in loss of revenue to the State, must only be noted to be rejected. The quasi

judicial authorities/ tribunals, under the Act, being creatures of the Statute have limited jurisdiction and have to function within the four-corners of

the Statute creating them. Om Prakash Gupta Vs. Rattan Singh and Another, It is not open to them to travel beyond the provisions of the statute.

D. Ramakrishna Reddy and Others Vs. The Addl. Revenue Division Officers and Others, Since such authorities/Tribunals are required to function

in accordance with the provisions of the Act the restriction u/s 67(3), as a result of which they are required to defer a decision on any issue in

respect of which an application is pending before the ARA, cannot be said to interfere with their quasi judicial functions under the Act. As noted

hereinabove, Rule 66(7) of the Rules requires the ARA to pass an order within four weeks from the date of the order admitting the application. It

is only when an application is admitted can it be said to be pending before the ARA. Since a statutory obligation is cast on the ARA to pass

orders, in a pending application, within four weeks the quasi-judicial authorities are merely required to defer adjudication for a period of four

weeks. This delay, when viewed in the context of the ruling of the ARA ensuring uniformity in orders passed by quasi-judicial authorities under the

Act, cannot be said to be so inordinate as to necessitate Section 67(4)(ii) of the Act being held ultravires Article 14 of the Constitution of India.

44. The submission that it is only the applicant who can seek review of the ruling of the ARA u/s 67(5) of the Act is not tenable. On a literal

construction thereof, it cannot be said that the power of review u/s 67(5) can only be exercised by the ARA suo motu or at the instance of the

applicant-dealer, for the words used therein are ""affected parties"". Any dealer who is affected by the ruling/ clarification of the ARA would also be

entitled to seek review, amendment or revocation of such a ruling. As Section 67(4)(ii) also binds dealers, other than the applicant, they would fall

within the ambit of ""affected parties"" u/s 67(5) of the Act. Unlike the proviso to Section 67(4) where a time limit of 30 days is prescribed for the

applicant-dealer to prefer an appeal before the STAT against the ruling of the ARA, Section 67(5), by the use of the words "at any time", does not

prescribe any period of limitation for invoking the ARA"s power to review, amend or revoke its earlier ruling. All that is required of an affected

dealer, to invoke the said provision, is to show ""good and sufficient cause"" for seeking review, amendment or revocation of the earlier ruling.

45. The submission that some of the officers of the commercial taxes department have restricted the binding effect of a ruling of the ARA, u/s 67(4)

(ii), only to the applicant is of no consequence. A view of law, or a legal provision, expressed by a Government officer cannot afford a reliable

basis or even guidance in the matter of construction of a legislative measure. It is the function of the Court to construe statutory provisions and, in

reaching its correct meaning, the opinion of the executive branch is hardly relevant. Nor can the court abdicate in favour of such an opinion. Babaji

Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others, The submission that on a harmonious construction of all the

Sub-sections of Section 67 the ruling of the ARA, u/s 67(4)(ii), would only bind the applicant-dealer does not merit acceptance. A harmonious

construction of a provision, which sub serves the object and purpose for which the provision is intended to serve, is permissible provided it does

not cause violence to the language of the provision. Oxford University Press v. Commissioner of Income Tax AIR 2001 SC 886 ; Administrator

Municipal Corporation, Bilaspur Vs. Dattatraya Dahankar and another, and when a literal meaning may result in absurdity-. Courts must, however,

keep in mind that an interpretation which reduces one of the provisions to a ""dead letter"" or ""useless lumber"" is not harmonious construction. To

harmonies is not to destroy any statutory provision or to render it otiose. Sultana Begum Vs. Prem Chand Jain,

Conclusion:

46. Learned Counsel for the Petitioners would submit that, since the vires of Clause (ii) of Sub-section (4) of Section 67 of the Act is under

challenge, they have not made any submissions on merits and, in the event this Court does not accept the submissions, the

Petitioners may be permitted to contest the matter before the appropriate forum as prescribed under the Act.

47. While the submission of the Learned Standing Counsel for Commercial Taxes, that the authorities under the Act cannot condone the delay in

preferring an appeal beyond the period prescribed in the Act, cannot be brushed aside, it must also not be lost sight of that it is only on account of

pendency of these Writ Petitions before this Court, wherein the vires of Section 67(4)(iii) of the Act was under challenge, that the Petitioners did

not choose to submit a reply to the show cause notice or prefer an appeal to the STAT. It is not open to the quasi judicial authorities, or the

Tribunal, constituted under the Act to examine the vires of a provision of the Act whereby they were created. In such facts and circumstances, we

are satisfied that ends of justice would require exercise of our extraordinary jurisdiction under Article 226 of the Constitution of India, (which, in L.

Chandra Kumar Vs. Union of India and others, has been held to be a part of the basic structure of the Constitution of India), to direct the STAT,

in case an appeal is filed by the Petitioner in W.P. No. 2119 of 2010, to exclude the period, during which the said Writ Petition was pending on

the file of this Court, in computing the period of limitation for filing an appeal under the Act. In case the Petitioner in W.P. No. 1582 of 2010 files a

reply to the show cause notice, within three weeks from today, the objections raised therein shall be considered on its merits and appropriate

orders passed, thereafter in accordance with low

48. subject to the above, both the Writ Petitions fail and are, accordingly, dismissed. However in the circumstances, without costs.