# RULES FOR INTERPRETATION OF TAXING STATUTES: A CRITICAL APPRAISAL OF NEW TRENDS AND APPROACHES.

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*ABSTRACT*

Legislative draftsman need to demonstrate greater precision in language whilst drafting fiscal statutes. Use of imprecise or ambiguous language, could in the wake of the strict construction rule, cause the entire legislative enterprise to collapse. In tandem with the strict reading of the charging section goes the liberal reading of the exemption provisions. This is on the reasoning that an exemption provision is something akin to a beneficent provision and hence the rule applicable for such provisions generally should also apply when such provisions are part of taxing statutes. In more recent times however, Courts have adopted the same strict scrutiny of exemption provisions as is extended to charging sections. The rationale being that a liberal reading of the exemption provisions will reduce the revenues that can be raised and this reduction impacts upon the welfare of the population at large. Consequently, these judges have perceived pro-revenue interpretations as interpretations which were advancing social welfare. Thus we find there has been a change in the approaches of the judges in interpreting a taxing statute in the recent past. This paper deals with the new trends and approaches in interpretation of taxing statutes.

Fiscal statutes comprise of statutes imposing taxes, fees, duties etc. Taxing statutes comprise of charging sections and machinery provisions, provisions laying down the procedure to assess the tax and penalties and method of their collection and may also contain provisions to prevent pilferage of revenue. A tax is imposed for raising general revenue for state coffers. In contrast to this, a fee is imposed for rendering services and bears a broad correlationship with the services rendered. Sovereignties raise revenue through various fiscal measures.

Taxation is the price we pay for civilization. In olden times the crown or the state in its taxing capacity was regarded as a public enemy and taxation was considered an impertinent intrusion into the sacred tights of private property. This is no longer so and it is now increasingly regarded as a potent fiscal tool of state policy.

The power to levy taxes is derived from the seventh Schedule to the Constitution of India. There are three lists in this Schedule. Taxes are specifically named and distributed between the Union and States by various entries in list I and II . Parliament can under its residuary power in Entry 97 of list I levy a tax not mentioned in either of these lists. The power to levy fee is conferred by the last entry in each list in general terms in respect of any of the matters in the list. A taxing legislation is therefore controlled by the fundamental rights and other provisions of the Constitution.

Taxation laws are generally complete codes in themselves. There are three components of a taxing statute, viz, subject of the tax, person liable to pay the tax and the rate at which the tax is levied. In case there is any real ambiguity in respect of any of these components which is not removable by reasonable construction, there would be no tax in law till the defect is removed by the legislature.

The principle of construction of fiscal statute does not differ from that of any other kind of law. Lord Cairns in Partington v Attorney-General [1]concluded that in determining of the liability of a subject to tax, one must have regard to the strict letter of the law , not merely to the spirit of the statute or the substance of the law.

In Attorney General v Calton Bon [2], Lord Russel said—

> "I see no reason why any special cannons of construction should be applied to any Act of parliament, and I know no authority for saying that a taxing statue is to be construed differently from any other Act"

Statutes imposing taxes or monetary burdens are to be strictly construed. The logic behind this principle is that imposition of taxes is also a kind of imposition of penalty which can only be imposed if the language of the statute unequivocally so say. A person cannot be taxed unless the language of the statute unambiguously imposes the obligation without straining itself.

Intention of the legislature to tax must be gathered from the natural meaning of the words by which it has expressed itself. Any kind of intendment or language must be explicit. It the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. However if the State, seeking to recover the tax, cannot bring the subject within the letter of the law , the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute where you simply adhere to the words of the statute. [3]

If the words of a taxing statute are clear, effect must be given to them irrespective of the consequences. Statutes imposing pecuniary burdens are interpreted strictly in favour of those on whom the burden is desired to be imposed. Neither can the language of a taxing legislation be so stretched as to do favour to the State nor can it be so narrowed as to benefit the person sought to be taxed.

If the language used in a fiscal statute is so wide as to include within it a large number of cases which perhaps were not intended to be covered, the court has no option but to give effect to it. If the words in taxing enactment are capable of two reasonable interpretations without doing violence to the language used, the interpretation which favours the person sought to be taxed has to be accepted. A taxing enactment does not apply by implication, and logical extensions are prohibited. Equitable considerations cannot be taken into account while construing a taxing statute. A taxing statute generally has no retrospective operation unless the language unequivocally makes it so.

TAXING STATUTES DISTINGUISHED FROM CONTRACT:

There is no authority for construing a taxing statue as if it was a contract. Muthusami Ayyar said that [4]—

> " Taxing Acts may confer general or special benefits, but in construing them we must be guided by the language both as to what are , or what are not, conditions precedent and as to what remedies are available for the withholding of the benefit contemplated by Legislature".

In the case of a contract, the reciprocal relation between rights and duties in the sense that they either exist together or neither could exist at all, in an implied condition and is a matter of legal inference, while in the case of a taxing Act, it must be the result of a statutory direction [5].

NO EQUITABLE CONSIDERATION:

The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed. It cannot import provisions in the statue so as to supple any assumed deficiency. While equitable considerations are of no avail in the construction of a taxing statutes, a proper balance must be struck between the essential needs for Revenue of a modern welfare state on the one hand and the desirability that the citizen must know his liability clearly before he can be called upon to contribute to the Revenue on the other [6] .

JUDICIAL PRONOUNCEMENTS INVOLVING TAXING STATUTES

In **New Piece Goods Bazaar Company v Commissioner of Income tax, Bombay** [7] ,the appellant had paid certain municipal taxes as also immovable property taxes. He claimed deductions for the same under section 9 (1) (iv) and section 9 (1) (v) of the Income Tax Act 1922. The Supreme Court held that since such deductions were clearly and unambiguously permissible under section 9 (1) (iv) as per words used therein, the appellant had a right to claim these deductions. Legislature's intention has clearly been expressed in the language of the enactment.

In **Union of India v Commercial Tax Officer** [8], certain goods were sold to the Ministry of Industry and Supplies, Government of India. The question was whether these were exempt from payment of sales tax under section 5 (2) of the Bengal Finance ( Sales Tax) Act , 1941 which exempts from payment of sales tax , sales to the Indian Stores Department , the Supply Department of the Government of India , and Administration of the Railway or Water Transport.

The Supreme Court agreed with the decision of the High Court in holding that the Ministry of Industry and Supplies to whom the goods were sold was not the same as the Indian Stores Department or Supply Department of Government of India who were exempted from payment of

sales tax. It was observed that section 5 (2) OF the Act names the two Departments unambiguously sales to whom were not subject to payment of sales tax. Since the Department to whom the good were actually sold does not figure in the section, no benefit on such a transaction could be given. There is no room for extension or analogy. If the legislature intended to give the same facility to sale of goods to other Department also, it could have done so by merely naming those Departments in the section.

In **Associated Cements Co Ltd v State of MP** [9] the Supreme Court was considering whether the production of 'refractory cement' was liable to imposition of export tax. The main issue was whether refractory cement fell within the Entry 'all types of cement' which was liable to export tax. Expatiating on the question, the court pointed out that cement was exclusively used as a building material and as a commodity of everyday use, whereas the main property of 'refractory cement' was that it could withstand very high temperatures, corrosion and abrasion. Anyone buying cement for building would under no circumstances buy refractory cement. As the word 'cement' had not been defined, it has to be understood as used in common parlance. Hence, refractory cement was held to not be liable to the imposition of export tax.

In **A,V Fernandez v State of Kerala** [10] ,the Supreme Court observed –

> "It is no doubt true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter"

In **Sevantilal v Commissioner of Income Tax , Bombay** [11] the appellant gifted some shares to his wife who sold them. He argued that these capital gains could not be included in his income under section 16 (3) (iii) of the Income Tax Act 1922 on the ground that when this provision was added to the Act in 1937 by an amendment, the expression income did not include capital gains. The concept of capital gains was included in the expression 'income' only in 1947 by an amendment in the Act.

Rejecting the argument, the Supreme Court observed that even though it was correct that capital gains were included in the term 'income' by an amendment in the form of section 2 (6c) of the Act in 1947, the expression income will always be interpreted as including capital gains after 1947.Once the form is amended, the amended for takes the place of the old form. Consequently, there is only one natural meaning of the word income and that is that it includes capital gain. Since there is no ambiguity in the meaning of the word 'income' used in the statute, the appellant has no option but to pay taxes as per the law. In the absence of any ambiguity, therefore there is no question of interpreting the word 'income' strictly in his favour.

In **Real Optical Co v Appellate Collector of Customs** [12], the appellant imported Rough Ophthalmic Blanks and paid customs duty on them. However, the Revenue sought to charge him

customs duty on the import of 'glass' unlike the earlier charge which was made under residuary powers. The appellant argued that Rough Ophthalmic Blanks were not glass simpliciter, but a special commodity for the purpose of manufacture of spectacle lenses and hence they could not be taxed under the header of 'glass'. The court agreed with the appellant and held—

" It is settled law that in interpreting items in statutes like the Excise Acts or the Sales Tax Acts, resort should be had not to the scientific or technical meaning of the terms or expressions used but to how the products identified by the class or section of people dealing with or using the product. However, if any terms or expression has been defined in the enactment them it must be understood in the sense in which it is so defined. Thus a general merchant dealing in glass or tableware cannot be regarded as dealing in goods used for making spectacles… A general merchant dealing in glass or table ware does not deal in articles like Rough Optical Blanks with optical properties, which may be used for making spectacles. This functional character of Rough Optical Blanks is different from glass or glassware, as these commodities are used for different purpose viz , making of optical lenses ,etc. Rough Optical Blanks are purchased by manufacturer of spectacles for making spectacle lenses and not for the purpose of other glasses or glassware including tableware".

In **Commissioner of Income Tax, Punjab v K.V.T Company** [13] , a general notice was issued to the respondent under section 22 (2) , Income Tax Act , 1922 for filing returns of income for the assessment years 1953-54 and 1954-55 within a certain period. He could not file the returns within that period, but filed voluntary returns in 1956 showing losses during the two years. The Income Tax Department and the Tribunal held that carry forward of losses was no permissible under law as the returns were filed after the expiry of the period and the Department was therefore not bound to determine the losses

The High court held that a return could still be entertained under Section 22 ( 3) even though it has not been filed within the statutory period mentioned in section 22 (1) because section 22(3) permitted acceptance of all returns showing profits or losses made voluntarily or under a notice and so the Income Tax officer was bound to determine the losses of the respondent. The Supreme Court by majority rejected the appeal. It was observed that the argument that the decision of the High Court would cause a lot of inconvenience could not be accepted only on that ground. Further, there was a time limit under section 34 (3) of the Act after which no voluntary returns could be filed. When two views are possible while interpreting a taxing statute, the view favourable to the assessee must be accepted.

In **Baidyanath Ayurved Bhawan v Excise Commissioner, Uttar Pradesh** [14], certain medicines containing tincture and spirit etc were manufactured by appellant company. Since tincture and spirit contained alcohol, the appellant was asked to pay duties under the Medical and Toilet Preparation (Excise Duties) Act 1955. The appellant argued that alcohol under the Act means pure alcohol and that since pure alcohol was not used in the preparation of medicines, no duty could be imposed. The appellant pleaded for construing the word alcohol strictly in favour of the subject as it was an interpretation of a taxing statute which was involved.

The Supreme Court rejected the contention of the appellant and held that the principle of strict construction of taxing statutes means that the subject was bound to pay tax only when he was

asked to do so within the letter of the law and that if there were two reasonable interpretations possible that which helps the subject should be accepted. The word 'alcohol' does not have two interpretations. It has a clear and unambiguous meaning. If a medicine or a toilet preparation contains alcohol, it is subject to duties under the Act. It is therefore irrelevant whether the medicine contains pure alcohol or some substance which in itself contains alcohol.

A taxing statute should be strictly construed in favour of the assessee in such cases only where the expression used in the statute is capable of two reasonable interpretations. That being not the situation here, the appellant is bound to pay the duties under the Act.

FAIR INTERPRETATION:

The rule of strict construction of taxing statues is often misunderstood. It is not the same thing as saying that a taxing statute should not receive a reasonable construction. It is true that a taxing statute must receive a strict construction at the hands of the courts and if there is any ambiguity, the benefit of that ambiguity must go to the assessee. But that is not the same thing as saying that a taxing provision should not receive a reasonable construction. The tendency of modern decisions upon the whole is to narrow down materially the difference between what is called a strict and a beneficial construction. The principle of strict construction is applicable only to charging provisions or a provision imposing penalty and is not applicable to parts of the taxing statute which contain machinery provisions [15].

In **Indian Cable Co Ltd v Collector of Central Excise** [16], the court was considering whether excise duty was validly levied on the production of 'PVC compound' form PVC resin . It was argued by the appellant that the process was one of polymerization, which would not qualify as 'manufacture' within section 2 9f) of the Central Excises and Salt Act 1944. The Court applied the test of 'marketability' to agree with the appellant and observed—

"In construing the relevant item or entry in fiscal statutes, if it is one of everyday use, the concerned authority must normally, construe it, as to how it is understood in common parlance or in the commercial world or trade circles, it must be given its popular meaning. The meaning given in the dictionary must not prevail. Nor should the entry be understood in any technical or botanical or scientific sense. In the case of technical words, it may call for a different approach"

In **Commissioner of Wealth Tax v Kripashanker** [17] **,** the respondent who by a trust deed transferred certain properties to himself as the trustee and provided for maintenance and expenses for his family consisting of himself, his wife and children was asked to pay wealth tax under section 21 , Wealth Tax Act 1957. The section says that the trustee is liable to pay wealth tax in the same manner and to the same extent as would be the liability of the person whole behalf the assets are held. The argument of the respondent was that he was holding the trust properties on his own right as provided under the Indian Trusts Act , 1882 and not holding them on behalf of anyone else though it was being held by him for the benefit of the beneficiaries

Rejecting the argument the Supreme Court held that in the context of the Wealth Tax Act 1957 a trustee holds the property on behalf of the beneficiaries even though that is untenable with the

provisions of the Indian Trusts Act 1882. The concept of a trustee in any other Act cannot be applied in the present situations where the language of the enactment explicitly points out to the effect that a trustee holds property on behalf of the beneficiaries. If the construction suggested by the respondent is accepted as correct, a part of the section will have no effect, and that cannot be the intention of the legislature. Therefore, the principle of strict construction in favour of the assessee does not apply here.

In **Ramavtar v Assistant Sales Tax Officer** [18], the question was whether betel leaves are vegetables and, therefore exempt from imposition of sales tax. The dictionary meaning of vegetable was sought to be relied on wherein it has been defined as pertaining to, comprised or consisting of , or derived or obtained from plants, or their parts. The court was requested to apply the rule of strict interpretation with reference to the taxing statute and since the word could have more than one reasonable meaning, the meaning favouring the subject was to be accepted. The Supreme Court refused to apply any technical or botanical considerations. It was observed that when the legislature uses a particular word of everyday use in a statute the presumption is that it has been used in this popular sense unless, there are compelling reasons for the Court to think otherwise. Such being not the case here, there is no doubt about the meaning of the term. Therefore of sale of betel leaves is subject to the sales tax law.

In **Motipur Zamindary Company Private Limited v State of Bihar** [19], the question was whether sugarcane fell within the term ‘green vegetables ‘ in entry 6 of the schedule and as such no sales tax could be levied under the Bihar Sales Tax Act 1947 on its sale. The appellant sought the diligence of the Court to the dictionary meaning of the word as well as to the principle of strict construction of taxing statutes.

The Supreme Court held that the principle of strict construction of taxing statutes means that an assessee cannot be taxed unless he falls within the letter of the law and in case of a reasonable doubt or ambiguity in the meaning of the expression, the doubt has to be resolved in favour of the assessee. In the present case, there is no reasonable ambiguity in the meaning of the term ‘green vegetable’. The term means those vegetables which can be grown in a kitchen garden and used for the table, that is to say, used for eating lunch or dinner. Sugarcane does not fall under this category. The word should, therefore, be given that connotation with which the people are familiar. The popular meaning of the term is, therefore the correct meaning and the sale of it is consequently not outside the purview of sales tax law.

NO EXTENSION BY ANALOGY

Court fees legislations are covered in the category of fiscal enactments and must be construed strictly. At the same time it is an established principle that court fees is payable on the substance of the relief asked for, and that, even though the plaintiff might try to conceal the real relief which he seeks and has framed his relief in a manner which might attract the provision of the Court Fees Act under which a lesser court fee is payable, the court is entitled to look to the substance and not the mere form of the relief.

In **Koongaran Mukumdan v Nalin** [20], the Court was considering whether on a petition for divorce and maintenance under Sections 10- A and 10- B of the Madras Marumakkathayam

Act 1933, Court fees could be charged at the rate charged on 'suits' . The court held that such applications were not 'suits' and hence a higher value of Court Fees could not be charged. On the interpretation of the Court fees legislation, the Court observed—

"In a poor country like ours, the Court may not be able to render justice to all or effectively ensure the observance of the rule of law if parties can be scared away by demand of heavy sums initially before entry into the temple of justice. This means that the court-fees Act will have to be so construed that the benefit of any serious doubt must go against the levy of fee and only if the court, on a strict construction, finds that the proceeding comes squarely within any of the provisions of the Act, will it direct payment thereof"

In **T.S Ramaswami Aiyar V M.A Rangaswami Aiyar** [21] , the question before the Court was whether court fees should be paid ( at the rate of a plaint) by another creditor, who came in with a claim after a preliminary decree for administration had been made in a suit for administration. The Court held that there was no specific provision in the Court Fees Act which exactly covered the point in issue, due to which no court fees could be levied on the appellant. Rejecting an argument of analogy with plaints, the Court observed—

"And apart from that with very great respect I may say that I do not understand how any fiscal statute can be applied by analogy. When the state requires the subject to pay a tax of any kind, that must be done by definite enactment strictly interpreted; and that is a principle which we are bound always to defend. In my opinion, there being no enactment requiring court –fee to be paid on such claims as these, the learned District Munsif was wrong in his order; these petitions should be allowed and the claims inquired into without Court-fees: if the petitioners have now paid Court-fees , they should be refunded".

In **Commissioner of Sales Tax v S.R Brothers** [22] ,the question was whether 'food colours' are 'dyes and colours' and' syrup essences' are 'scents and perfumes' within the meaning of items 10 and 37 respectively of the notification issued under section 3-A of the U.P Sales Tax Act 1948. The Supreme Court, following the decision of the High Court, held that meaning of a word may depend on the context in which it has been used. Dictionary gives all the meanings of a word. Some of them may be correct in particular context and some incorrect. In a taxing statute meaning should not be found by doing violence with the words. It is a presumption that the words have been used in that sense in which they have been known in common parlance unless contrary is proved. By no stretch of imagination, therefore, can the term' food colours' be included within 'dyes and colours' and the term 'syrup essences' within 'scents and perfumes' in the context of the Act. The expression 'dyes and colours' and 'scents and perfumes' have been used in the statute in a particular context and they bear the same meaning as the people know them to mean generally.

In **State of Uttar Pradesh v Kores ( India) Limited** [23], the question was whether carbon paper was paper within the meaning of a notification issued by the appellant under Section 3-A of the U.P Sales Tax Act 1948. The Supreme Court held that carbon paper was not a paper within the meaning of the notification. The term paper should be understood in its popular sense. Its ordinary and natural meaning is that it is used for writing, printing or packaging purposes. The context of the Act and the notification issued there under do not indicate any other meaning.

The carbon paper is used for making carbon copies of written or typed matter and has to be manufactured through a different complicated process. The meaning is quite clear and there is no need of interpreting it in favour or against anyone.

In **Dunlop India Limited v Union of India** [24] , the question was whether the commodity known as V.P Latex comes within the meaning of rubber. The Supreme Court said that while using a word in a taxing statute the legislature always keeps in mind the popular meaning of that word as understood in trade and commerce circles. So interpreted, there is no doubt that V.P Latex is rubber . The natural and popular sense of the term has no ambiguity and the legislature while using the term had this meaning in mind.

In **Alladi Venkateswarlu v Government of Andhra Pradesh** [25] , the question was whether the word 'rice' used in entry 66 (b) of the first schedule of the Andhra Pradesh General Sales Tax Act, 1957 includes parched rice and 'puffed rice' both.

The Supreme Court observed that there is nothing wrong in taxing a raw product and a finished product separately. The only condition to be fulfilled in such cases should be that the raw material should be taxed in form and the finished product should have assumed another form. In other words, the identity of the raw material should have changed. Paddy as mentioned in item 8 of the second schedule and rice as described in item 66 of the first schedule are different. But separate entries do not exist for rice and rice reduced into an edible form by heating or parching without any addition of ingredients or appreciable changes in the chemical composition. The word 'rice' should be given such a meaning as the people generally give it ad this consequently includes all forms of rice, edible and inedible. ' Rice' is a very common article of food and its commonly accepted meaning should prevail. Commercial parched rice and puffed rice may be two different varieties of rice by they do not cease to be rice. Further, whenever there is any reasonable ambiguity in the meaning of a word it should be so resolved in a taxing statute as not to put the assessee in a disadvantageous situation. Therefore, since rice has not been changed into another thing, it cannot be taxed again. Consequently, the sale of the same commodity, viz, rice cannot be subjected to double taxation.

In **M/s Filterco and another v Commissioner of Sales Tax, Madhya Pradesh and another** [26] ,the woolen felt manufactured by the assessee appellants were a material obtained by compressing woolen fibers and subjecting the same to hear and moisture. It was non-woven material.

The Supreme Court held that in order to attract the benefit of the exemption conferred by entry 6 of the Schedule I of the Madhya Pradesh General Sales Tax Act 1959 , the good must fall within the description ' all varieties of cloth'. The legal position is now well settled that words of everyday use occurring in a taxing statute must be construed not in their scientific or technical sense but as understood in common parlance, ie in their popular sense. Going by the dictionary meaning and also its generally accepted popular connotation 'cloth' is woven, knitted or fitted material which is pliable and is capable of being wrapped, folded or wound around. It need not necessarily be material suitable for making garment because there can be cloth suitable only for industrial purpose but nevertheless it must possess the basic feature of pliability. Hard and thick

material which cannot be wrapped or wound around cannot be regarded as 'cloth'. The Commissioner was perfectly right in his view in the instant case.

EXEMPTION FROM TAXATION:

It is true that when in a fiscal provision of benefit of exemption is to be considered this should be strictly considered. However, the strictness of the construction of exemption notification does not mean that the full effect to the exemption notification should not be given by any circuitous process of interpretation. After all, exemption notifications are meant to be implemented. They have to be interpreted strictly and in its entirety and not in parts.

Where an exemption is conferred by a statute by an exemption clause, that clause has to be interpreted liberally and in favour of the assessee but must always be without any violence to the language used. The rule must be construed together with the exemption provision, which must be regarded as paramount. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority.

Taxation laws are not in the nature of penal laws; they are substantially remedial in their character and are intended to prevent fraud, suppress public wrong and promote the public good. They should therefore be construed in such a way as to accomplish those objects [27]

In **Grasim Industries Limited v State of Madhya Pradesh** [28] , the Supreme Court held that an exemption notification in connection with a fiscal statute has to be read in its entirely and not in parts.

In **Tata Oil Mills Company Collector of Central Excise** [29], there was a notification which exempted imposition of excise duty on 'such soap as is made from indigenous rice bran oil'. This oil can be used in making soap only after it get converted into fatty acid. The Supreme Court held that the exemption applied to both rice bran oil and rice bran fatty acid.

In **M/s D.H Brothers Private Limited v Commissioner of Sales Tax** [30] ,the assessee invoked the jurisdiction of the Commissioner , Sales Tax under section 35 U,P Sales Tax Act 1948 claiming that the 'Kolhu' meant for extracting juice from sugarcane was an 'agricultural implement' within a 1980 notification issued by the State Government exempting agricultural implements from levy of sales tax and as such exempt from the sales tax purview.

The Supreme Court rejected the argument and held that 'Kolhu'( Sugarcane crushers) do not come within the definition of agricultural implement s. The court observed that the definition of 'agricultural implements' in the notification being inclusive it has a wider impact and any other implements which answers the description of an agricultural implements can be included. A bare reading of the implements mentioned after the word 'including' shows that these are used for cultivation of land and other operations which foster the growth and preserve the agricultural produce and none of these implements can be worked after the agricultural process in respect of a crop comes to an end. The agricultural process concerning sugarcane finishes when it is harvested. Preparation of jiggery from sugarcane is not the continuation of the agricultural

process and therefore, a crusher used in this process is not within the definition of 'agricultural implements' within the notification.

In **Wealth Tax Commissioner, Ahmadabad v Ellis Bridge Gymkhana** [31], the Supreme Court ruled that no one can be taxed by implication. A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all.

In **Tata Iron and Steel Company Limited v State of Jharkhand** [32] , the Supreme Court held that, the principle that in the event a provision of a fiscal statute is obscure, such construction which favours the assessee may be adopted , but it would have no application to construction of an exemption notification as in such case it is for the assessee to show that he comes within the purview of exemption.

TAX PLANNING, TAX AVOIDANCE AND TAX EVASION:

According to Odgers [33]---

"The word 'evasion' may mean either of two things. It may mean an evasion of the Act by something which, while it evades Act , is within the sense of it , or it may mean an evasion of the Act by doing something to which the Act does not apply. The first of these methods suggests underhand dealing, the second merely the intentional avoidance of something disagreeable which is a wholly different thing. There is no obligation not to do what the legislature has not really prohibited and it is not evading an Act to keep outside it"

Lord Cranworth has said in the case of Edwards v Hall [34]—

" I never understood what is meant by an evasion of an Act of Parliament ; either you are within the Act or you are not within it. If you are not within it you have a right to avoid it, to keep out of the prohibition".

In **Mcdowell & Co v Commercial tax officer** [35] ,the Supreme Court observed that –

" The shortest definition of tax avoidance that I have come across is ' the art of dodging tax without breaking the law' . Much legal sophistry and judicial exposition have gone into the attempt to differentiate the concepts of tax evasion and tax avoidance and to discover the invisible line supposed to exist which distinguishes one form the other. Tax avoidance, it seems is legal; tax evasion is illegal… We must recognize that there is behind taxation laws as much moral sanctions behind any other welfare legislation and it is pretence to say that avoidance of taxation is not unethical and that it stands on no less moral plane than honest payment of taxation. In our view, the proper way to construe a taxing statue, while considering a device to avoid tax, is not to ask whether the provisions should be construe literally or liberally, not whether the transaction is not unreal and not prohibited by the statute but whether the transaction is a device to avoid tax and whether the transaction is such that judicial process may accord its approval to it.. It is neither fair not desirable to expect the legislature to intervene and take care of every device and scheme to avoid taxation. It is up to the court to take stock to determine the

nature of the new and sophisticated legal devices to avoid tax and consider whether the situation created by the device could be related to the existing legislation with aid of 'emerging techniques of interpretation".

Taxing laws have always been the subject of evasion in the sense that a person always tried to avoid something disagreeable and court have recognized that everyone is entitle to so arrange his affairs as not to attract the tax burden by legitimately taking advantage of any express terms or omissions that he can find in his favour in taxing statutes.. The normal principle is that in general where a taxpayer can carry through a transaction in tow alternate ways, one of which will attract tax liability and the other which will not, he is free to choose the latter—in the absence of any specific tax avoidance provision.

In **Union of India v Play World Electronics Pvt.Ltd [36],** it has been observed m, tax planning is legitimate provided it is within the framework of the law, but colourable devices, cannot be part of tax planning.

The distinction between acceptable tax mitigation and unacceptable tax avoidance needs to be carefully understood. Acceptable tax mitigation involves tax planning within the framework of law so as to minimize the incidence of tax. Unacceptable tax avoidance typically involves the creation of complex artificial structures by which the tax payer as though by wave of a magic wand conjures out of thin air a loss or a gain or expenditure or whatever it may be which otherwise would never have existed.

There has for years been going on a constant struggle, a battle of manoeuvre between legislature and those who are minded to throw the burden of taxation off their shoulders. In this battle cunningly advised taxpayers do mostly succeed by continuously coming up with newer and more sophisticated ingenious devices and schemes to avoid tax. Attempts at evading incidence of taxation though not commendable are not illegal. The recent trend of authorities is to deprecate such devices [37] .

Lately, the courts have adopted a new approach known as 'Ramsay principle' and gone to the extent of not recognizing tax avoidance schemes or devices even if they are strictly not no-genuine. This trend which can be seen in decisions of the House of Lords in **W.T Ramsay Ltd v Inland Revenue Commissioners [38]** and **Furniss, Inspector of taxes v Dawson [39]** .The conditions for application of this principle as laid down in Dawson's case are as follows—

1. There must be a pre-ordained series of transactions or one single composite transaction, and
2. There must be steps inserted which have no commercial purpose apart from the avoidance or deferment of a liability of tax.

If these conditions are satisfied the inserted steps are to be disregarded for fiscal purposes and the court is to look at the end result for the purpose of taxing it in accordance with the provisions of the taxing statute.

TAXING LEGISLATION SUBJECT TO CONSTITUTIONAL PROVISONS:

A taxing statute is not per se a restriction on the freedom under Article 19 (1) (g) of the Indian Constitution. The policy of a tax, in its effectuation, might of course bring in some hardship in some individual case. But that is inevitable, so long as law represents a process of abstraction from the generality of case and reflects the highest common factor. . Then again, the mere excessiveness of a tax or even the circumstance that its imposition might tend towards diminution of earning or profits of the persons of incidence does not per se constitute violation of rights.

A taxing statute if divisible in nature and partly falls within and partly outside the Constitution should not be declared wholly *ultra vires*. The principle of severability includes separability in enforcement and this principle should be applied in cases of all taxing statutes [40].

In order that a tax may be valid it is, firstly within the competency of the legislature imposing it. Secondly that it is for a public purpose. Thirdly that it does not violate the fundamental right guaranteed by part II of the Constitution.

In **Cibatul Ltd v Union of India [41],** the court held that while the charging section may not be *ultra vires* , the procedural section could be held to be *ultra vires* if it exceeded the constitutional competence of the legislature which enacted it. It was held that while section 3, the charging section of the Central Excise and Salt Act 1944 was valid, section 4, the machinery or procedural section, was invalid as it impinged upon the legislative authority of the state.

CONCLUSION:

Legislative draftsman need to demonstrate greater precision in language whilst drafting fiscal statutes. Use of imprecise or ambiguous language, could in the wake of the strict construction rule, cause the entire legislative enterprise to collapse. In tandem with the strict reading of the charging section goes the liberal reading of the exemption provisions. This is on the reasoning that an exemption provision is something akin to a beneficent provision and hence the rule applicable for such provisions generally should also apply when such provisions are part of taxing statutes. In more recent times however, Courts have adopted the same strict scrutiny of exemption provisions as is extended to charging sections. The rationale being that a liberal reading of the exemption provisions will reduce the revenues that can be raised and this reduction impacts upon the welfare of the population at large. Consequently, these judges have perceived pro-revenue interpretations as interpretations which were advancing social welfare. Thus the rule of strict construction has been used to interpret taxing statutes both in favour of the assessee and in favour of the revenue [42].

The intention of the legislature in a taxing statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing statue it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. Words cannot be added to or substituted so as to give a meaning to a statue which will serve the spirit and intention of the legislature. The statute should clearly and

unambiguously convey the true components of the tax law that is to say, the subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in taxation statute then there is no tax law. Then it is for the legislature to do the needful in the matter. There is no room for any intendment in taxing statute. There is no equity about a tax. Nothing is to be read in and nothing is to be implied. One can only look fairly at the language used.

It is settled that interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed. It cannot imply anything which is not expressed. It cannot import provisions in the statutes so as to supply any assumed deficiency.

## NOTES AND REFERENCES

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