State Of H.P. And Ors vs Gujarat Ambuja Cement Ltd. And Anr on 18 July, 2005

Equivalent citations: AIR 2005 SUPREME COURT 3936, 2005 (6) SCC 499, 2005 AIR SCW 3727, (2005) 6 JT 298 (SC), 2005 (5) SLT 464, 2005 (5) SCALE 548, 2005 (6) JT 298, (2005) 59 KANTLJ(TRIB) 430, (2005) 5 SUPREME 161, (2005) 5 SCJ 713, (2005) 142 STC 1, (2005) 5 SCALE 548

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Bench: Ruma Pal, Arijit Pasayat, C.K. Thakker

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           CASE NO.:
Appeal (civil)  2641 of 2000

PETITIONER:
STATE OF H.P. and ORS.

RESPONDENT:
GUJARAT AMBUJA CEMENT LTD. and ANR.

DATE OF JUDGMENT: 18/07/2005

BENCH:
RUMA PAL & ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
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JUDGMENT ARIJIT PASAYAT, J.

These appeals are inter-linked and, therefore, are taken up together for disposal. Civil Appeal Nos. 2641 and 2642 of 2000 relate to respondent- Gujarat Ambuja Cement Ltd. (in short `Gujarat Ambuja') while Civil Appeal Nos.3744-46 of 2000 relate to respondent-Associated Cement Ltd. (in short `ACC'). The common question so far as the appeals are concerned linking the respondents in the appeals relates to one issue i.e. liability to pay purchase tax on the royalty paid by the respondents. As other issues are involved in Gujarat Ambuja's cases, the factual scenario in Civil Appeal Nos.2641-2642 of 2000 needs to be noted in some detail.

Challenge in these appeals is to the judgments rendered by a Division Bench of the Himachal Pradesh High Court. Writ Petitions were filed by the present respondents questioning the action taken by the Sales Tax Authorities and the revisional orders passed setting aside the orders of assessment framed for the assessment years 1995-96 and 1996-97 under the Central Sales Tax Act, 1956 (in short the `Central Act') and the Himachal Pradesh General Sales Tax Act, 1968 (in short the `Act').

So far as the Gujarat Ambuja is concerned, the factual and legal background was highlighted in the writ petitions before the High Court as follows:

> It is a public limited Company incorporated under the Companies Act, 1956 inter alia carrying on the business of manufacture and sale of cement under the name and style of "Ambuja Cement" in the State of Himachal Pradesh and that it ranks amongst one of the best managed cement Companies in India. It had been conferred various prestigious awards for its performance, pollution control and management including the award in the year 1991 by the Prime Minister of India, namely, `National Award for Public Recognition of Outstanding Activity for prevention of control of pollution'. It submitted an application in the year 1989 for setting up a cement plant in Himachal Pradesh and it was approved by the State Level Industrial Projects and Review Authority (hereinafter referred to as `IPARA') in their letter dated 19.2.1990. It invested more than Rs.500 crores in setting up the cement plant at Darlaghat, Solan District of Himachal Pradesh and it is the largest investment made by any private entrepreneur so far as the State is concerned. The said cement project also had the approval of the World Bank/International Finance Corporation, Washington, which also financed the project by way of term loan in addition to the project being monitored by the Industrial Development Bank of India too. All these brought substantial economic development in the State.
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> On 27.3.1991, the Industrial Development Department of Himachal Pradesh Government issued an incentive scheme by their notification notifying the grant of certain incentives for new as well as already established units in the State in respect of deferment of payment of Sales Tax, Electricity Duty etc. Writ-petitioner obtained provisional Sales Tax registration from the Himachal Pradesh General Sales Tax Department on 14.2.1992, which was extended from time to time upto 30.6.1995 before ultimately being granted with permanent registration w.e.f. 11.8.1995, the date on which the petitioner started its trial production. On 31st July, 1992 the Industries Department issued another notification introducing the concept of "Prestigious and Pioneer Industries" by amending suitably the earlier notification dated 27.3.1991, according to which "Prestigious unit" meant any new industrial unit, which goes into commercial production in the State on or after 1.5.1992 and is registered with the Empowered Committee appointed under Rule 24 between 1.5.1992 and 31.3.1993, which has a fixed capital investment of at least Rs.50 crores and employed at least 200 persons on regular basis. The Empowered Committee considered the issue of grant of registration certificate as Prestigious unit in its meeting held on 25.11.1992 and decided to grant the same to Gujarat Ambuja treating it as a `Prestigious Unit'. Consequently, the Director of Industries, Himachal Pradesh issued on 13.1.1993 the required registration certificate registering the petitioner Unit as a `Prestigious Unit'. As the production of the unit could not be commenced by January 1995, which was one of the stipulated conditions, taking into account the substantial progress made by the Company, the Industries Department by its letter dated 28.1.1995 approved the grant of further extension initially till 30.6.1995 and thereafter upto 30.9.1995 by

their letters dated 28.1.1995 and 30.6.1995. On 1.12.1994, the Industries Department made further amendments to the notification dated 27.3.1991 and 31.7.1992, and brought into existence the concept of `Prestigious Cement Unit', according to which the unit must go into commercial production after 1.5.1992 and registered with the Empowered Committee under Rule 24 between 1.5.1992 and 31.3.1995. By the said amendment, it was also notified that such unit should have a fixed capital of Rs.50 crores and employ at least 200 persons on regular basis. It is to be noted that by Notifications dated 27.3.1991 and 31.7.1992 Rules were notified. They were called Revised Rules regarding grant of Incentives to Industrial Units in Himachal Pradesh, 1991 (in short `1991 Rules') and Revised (Amendment) Rules regarding grant of Incentives to Industrial Units in Himachal Pradesh, 1992 (in short `1992 Rules'). The Revised Rules were further amended by notifications dated 1.12.1994 and 6.7.1995 and these amended Rules were called Revised (Amendment II) Rules regarding grant of Incentives to Industrial Units in Himachal Pradesh, 1994 (in short `1994 Rules') and Revised (Amendment-III) Rules regarding grant of Incentives to Industrial Units in Himachal Pradesh, 1995 (in short `1995 Rules'). The 1991 Rules, as the notification of 27.3.1991 shows, were made after supersession of Rules-I dated 4.10.1976, Rules 9-4/73-SI-IV dated 14.5.1980, No.10-27/71-SI dated 28.8.1984 and No.9-4/73-V dated 5.1.1985.

In the light of all these, the Excise and Taxation Department issued a notification dated 31.12.1994 to grant exemption from payment of Sales Tax to pioneer industries, bifurcated in different categories with effect from the date of their commercial production against the periods as enumerated in the notification, which was further amended on 27.3.1995 introducing para 1(a) and 1(b). On 6.7.1995, the Department of Industries again amended Rule 27(1) regarding the grant of incentive to Prestigious Cement Units notifying that sales tax exemption/deferment under both Central Tax and Himachal Pradesh General Sales Tax shall be available for a period of 12, 9 and 7 years in respect of category A, B and C blocks, respectively, to new Prestigious Cement Units excluding from its purview the only existing cement unit, as per which the eligible cement units were those, which had come into commercial production within the State of Himachal Pradesh on or after 1.5.1992.

On 11.8.1995, Gujarat Ambuja started trial production and on 26.9.1995 regular commercial production was started. This entitled the Company to exemption from Sales Tax in terms of the notifications referred to supra. A formal certificate was also issued by the Department of Industries on 24.1.1996 specifying the commencement of the commercial production on 26.9.1995 confirming at the same time about the investment of about Rupees 391 crores and employment of 353 persons on regular basis. Sales tax due was paid to the Department for the intervening period from 11.8.1995 to 25.9.1995. The Excise and Taxation Department issued an amendment on 30.1.1996 to the earlier notification dated 31.12.1994 and introduced para 1(C) which was published in the Official Gazette on 6.2.1996, whereunder the State Government had specifically given exemption to Gujarat Ambuja from payment of sales tax subject to the fulfilment of certain conditions enumerated in the notification being a company classified and placed in the category of industrial Block `B' in terms of which it was shown to be eligible to avail of the concession of exemption for 108 months (9 years).

Since the unit was already registered as a `Prestigious unit' on 13.1.1993 in accordance with the notification issued by the State Government on 31.7.1992 by the Empowered Committee in its meeting held on 25.11.1992 and inasmuch as the requirements of the `Prestigious Unit' and the `Prestigious Cement Unit' were absolutely one and the same, unit was mentioned and referred to in the notification dated 30.1.1996 and a formal declaration was also made by the Industries Department on 2.2.1996 declaring the petitioner to be a `Prestigious Cement Industrial Unit' keeping in view the satisfaction of all the requisite eligibility criteria. The unit fulfilled all the conditions as required under Rule 2(rrr), as mentioned in the notification dated 6.7.1995 as well as 30.1.1996 issued by the Industries Department as also the Excise and Taxation Department of the State Government having regard to the fact that the unit has come into commercial production after 1.3.1992, that it was registered with the Empowered Committee as a `Prestigious Unit' on 13.1.1993, that it has already made investment of more than Rupees 50 crores and had also employed more than 200 persons on regular basis. The Director of Industries has issued a certificate in form STH-III on 15.2.1996 certifying that the unit had been registered as a `Prestigious Cement Industrial Unit' with the Empowered Committee, pursuant to which an application was made to the Excise and Taxation Department for the grant of exemption certificate in STH-II before the assessing authority and thereupon on 11.6.1996, the prescribed authority after due enquiry issued a certificate of exemption in form STH- II for the period from 30.1.1996 to 31.3.1996 and the same was extended further from time to time upto 31.3.1998.

On 14.3.1997, the Assessing Authority passed an order of assessment for the assessment year 1995-96 and granted exemption w.e.f. 30.1.1996. Aggrieved by a portion of the order, Gujarat Ambuja filed an appeal before the Additional Excise and Taxation Commissioner/Appellate Authority on the ground that the exemption should have been allowed from the date of commencement of the commercial production, namely, 26.9.1995 and not from 30.1.1996, the date of issuance of exemption notification. On 27.5.1997, the Sales Tax Department passed an order of assessment for the year 1995-96 granting exemption from payment of the sales tax w.e.f. 6.2.1996, which is the date on which the notification was actually published instead of from 30.1.1996 with reference to which it was granted earlier. Once again, in respect of this order also, an appeal was filed before the Additional Excise and Taxation Commissioner/Appellate Authority challenging the same on the ground that the exemption should have been granted from the date of commencement of the commercial production, namely, 26.9.1995 and not as is sought to be given by the authorities concerned. For the assessment year 1996-97, the Assessing Authority passed an order dated 24.10.1997 after considering all the relevant material on record granting exemption from the payment of sales tax.

While matter stood thus, according to the respondents on 24.3.1998 when two political parties formed a Coalition Government in the State of Himachal Pradesh, the Excise and Taxation Minister, who belonged to a political party and the leaders of that party started issuing number of statements against the respondent-company by prejudging the issue and questioning its entitlement for exemption under the Incentive Scheme announced. These statements in the shape of press cuttings were annexed to the writ petition. It was contended that on account of such extraneous reasons and influence and with ulterior motive, action was initiated by the Commissioner of Sales Tax without any justification in law and in an arbitrary manner proposing to revise the orders passed by the

Assessing officer in exercise of the powers conferred under Section 31(1) of the Act and for that purpose on 29.4.1998 issued a show cause notice calling upon the respondents to show cause as to why the exemption granted cannot be revoked on the ground that the declaration of the petitioner as a "Prestigious Cement Unit" within the meaning of para 1(C) of the notification was not correct for the reasons set out in the said notice. It was also proposed to revoke STE-II. On 4.5.1998, the revisional authority issued three other show cause notices being Revision Nos. 2, 3 and 4, both under the Central Act for the year 1995-96 and Act for the year 1996-97 and the Central Act for the year 1996-97 questioning the legality and propriety of the earlier assessment orders granting exemption on the ground that the petitioner was not a Prestigious Cement Unit within the meaning of para 1(C) of the notification dated 31.12.1994 and, therefore, was not entitled to any exemption from Sales Tax either under the State Act or the Central Act. It was also indicated in the show cause notices about the non-payment of the tax payable under Section 5A of the Act. As a sequel of the said notices issued by the revisional authority, the assessing authority also issued show cause notice proposing to withdraw the exemption accorded earlier in form STE-II for the assessment year 1997-98 on similar grounds as were assigned by the revisional authority in its notices, calling upon the respondent-company to appear before the said authority on 18.6.1998. So far as the two appeals filed by the petitioners before the Additional Commissioner (Appeals) against the assessment orders dated 14.3.1997 and 27.5.1995 for the assessment year 1995-96 are concerned, the appellate authority by its order dated 3.10.1998 and 9.10.1998 respectively dismissed the appeals upholding the assessment framed by the Assessing Officer and endorsed the view that the assessee was entitled to exemption from payment of sales tax with effect from 6.2.1996, the date of publication of the notification only and not from the date of commencement of commercial production, namely, 26.9.1995. In the light of the replies filed in response to the notices issued by the revisional authority, the respondent requested the Assessing Authority to adjourn the proceedings relating to the assessment year 1997-98, but on 1.12.1998, the Sales Tax Officer passed an order withdrawing the exemption earlier granted and directed the assessee to pay the Sales Tax to the tune of Rs.18.50 crores under the Act as well as the Central Act. It is stated that since para 1(C) of the notification dated 30.1.1996 published on 6.2.1996 prohibited by virtue of Clause 5 therein the assessee from charging tax on the sale of cement manufactured in the new unit and any collection of the sales tax would have exposed to penal consequences under Section 35 of the Act, the assessee had not actually collected any sales tax at all and in spite of all these, it was being made to pay huge amount, which is an illegal demand on account of the arbitrary, illegal and mala fide nature of the action initiated by the authorities. Against the order of the Sales Tax Officer dated 1.12.1998, an appeal was filed before the Additional Excise and Taxation Commissioner, Himachal Pradesh. The Assessing Authority in the meantime issued a notice dated 4.1.1999 for the assessment year 1997-98 calling upon the assessee to pay sales tax in a sum of Rs.18.50 crores under both the Act as well as Central Act, stipulating coercive action under Section 14(8) of the Act, in default thereof. In spite of the representations made before the Appellate Authority, the assessee was directed to make an initial deposit of Rs.1.50 crores before the appeal filed could be heard on merit. Appeals were filed before the Finance Commissioner against the orders passed by the Appellate Authority dated 3.10.1998 and 6.10.1998, which are said to be pending. Even in spite of all these, the Assessing Authority issued another show cause notice dated 9.2.1999 calling upon the assessee to pay a sum of Rs.5.50 crores excluding interest and penalty towards the liability of sales tax for the period from April 1998 to December 1998. In the meantime, the revisional authority has issued four more notices being

Revision Nos. 7, 8, 9, 10 under the Act as well as Central Act for the years 1992-93 to 1995-96 alleging that the orders passed by the Assessing Authority for those periods are neither legal nor proper and calling upon the assessee to show cause as to why penalty for the assessment year from 1992-93 to 1995-96 equivalent to one and half time of the tax that would have been payable on purchase of materials should not be levied in view of the fact that the provisional registration certificate under the Act expired on 30.6.1995 and regular registration certificate was only obtained on 11.8.1995. On 8.2.1999, the revisional authority cancelled and annulled the exemption certificate issued in form STE-II with retrospective effect and held that the assessee-company was liable to pay tax under both the Central Act and the Act in addition to its liability to pay the purchase tax under Section 5A of the State Act on the limestone extracted. The Revisional Authority was of the view that the respondents were not entitled to any exemption as they did not fulfil the requisite conditions. Additionally it was held that there was no compliance with the statutory requirements which was a condition precedent for grant of benefit. That was treated to be an additional ground for holding that the respondent was not entitled to any benefit. Reference was made to certain defective `C Forms' to highlight as to how the assessee had failed to comply with the requirements for entitlement of the benefits. Accordingly, the Revisional Authority directed fastening of additional tax liability. Apprehending that the Appellate Authority, which is only subordinate to the revisional authority is likely to follow the view expressed by the revisional authority and the remedy of appeal would be merely an empty formality in view of the order of the revisional authority, the writ petitions were filed. The High Court allowed the writ petitions by the impugned judgment and quashed the orders of the Sales Tax authorities; inter alia, holding as follows:

> "So long as the petitioners satisfied the eligibility criteria prescribed in the Revised Incentive Rules, as amended from time to time, he would be entitled to the benefits and incentives extended under the Rules and the statutory notification is not a must or an essential pre-requisite for the petitioners to assert/enforce such rights. The statutory notifications issued under the relevant taxing enactments only go to ratify and accord statutory recognition also to what was originally, planned and proclaimed as a policy decision and guidelines. Viewed thus, the petitioners would in our view be entitled to the benefit of the incentives from the date of commencement of commercial production on 26.9.1995. As held in State of Bihar and Ors. v. Suprabhat Steel Ltd. and Ors., [1991] 1 SCC 31, it would not be permissible for even the State Government to override or negate the incentives and benefits which may industrial unit would be otherwise entitled to under the Incentive policy, proclaimed by the Government itself."

Additionally, it was held that the levy of purchase tax on the royalty paid is not legally sustainable.

The High Court held that the approach of the authorities was clearly erroneous, on a mis-reading of the various Notifications and keeping out of consideration certain relevant materials. Particular reference was made to the Registration Certificate dated 13th January, 1993 issued by the Empowered Committee. Taking note of the fact that the notifications were issued by promulgating rules, the High Court was of the view that they are to be considered in the background of Section 42 of the Act. The emphasis on defects in `C' forms was held to be clearly without any basis, and the

same was held to be totally insignificant for the purpose of denying benefits in terms of the policy of the State to encourage setting up of cement industries.

In ACC's case the High Court followed the view expressed in Gujarat Ambuja's case relating to levy of purchase tax on royalty paid. High Court's judgments are assailed in these appeals on various grounds.

Firstly, it is submitted that the High Court should not have entertained the writ petitions under Article 226 of the Constitution of India, 1950 (in short the `Constitution') when alternative remedy was available under the Central Act and the State Sales Tax Act, if the respondents were aggrieved by the revisional orders. Several factual controversies were involved and the High Court was not justified in holding that no factual controversy was involved. Whether the exemptions claimed were available in the factual background needed factual adjudication and, therefore, the High Court should not have entertained the writ petition.

Further submission of appellant-State is that benefits were not available to respondent No.1-Company as the requisite conditions were not fulfilled. Firstly, it was not a new industrial unit registered with the Empowered Committee appointed in accordance with Rule 24 between Ist May 1992 and 31st March, 1995 and had not gone into the commercial production on or after 1st May 1992. It was also submitted that various provisions of the Act and the Central Act were not complied with, as would be evident from the fact that the requisite declaration forms were not submitted and/or forms submitted were defective. That being so, the High Court was not justified in interfering with the revisional orders passed. There was no evidence before the revisional authority that respondent No.1-Company was registered with the Empowered Committee on 13th January, 1993. This did not form a part of the revisional record and obviously was not considered by the revisional authority. That being so, the High Court should not have taken the same into account. It was also pointed out that merely because certain defective forms were filed that cannot be taken as compliance with the statutory requirement of filing the declaration forms within the stipulated time. In any event, purchase tax on royalty had not been paid and, therefore, that also amounted to violation of the conditions stipulated.

It is submitted that the High Court confused between Prestigious Units and Prestigious Cement Units. The question of declaring the respondent-assessee as a Prestigious Cement Unit did not arise till it had started commercial production. The Notifications clearly show that at different points of time either no benefit was granted to cement industries or such industry was entitled to only deferment of payment of sales tax and not exemption. The respondent-assessee had failed to show as to under what provision the rules referred to in the Notifications were framed. According to learned counsel for the appellant the expression "Rules" has been loosely used in the Notifications and in the real sense the Notifications contained policy decisions which as the Notifications clearly indicated were not enforceable in any Court of law having been granted at the discretion of the State Government. It was submitted that the defective declaration forms (Form `C') clearly indicated that the respondent-assessee had not complied with the various Statutes, Rules and Notifications. The sine qua non for grant of benefits was not complied with. Therefore, the Revisional Authority was justified in holding that respondent-assessee was not entitled to any benefit.

In response, learned counsel for the respondents submitted that the revisional authority had clearly acted without jurisdiction. There was really no factual dispute involved and in essence the challenge related to the question whether on a bare reading of the concerned Notifications/Government Orders the exemptions claimed by the writ petitioners were originally allowed. The competent authority had considered the relevant aspects and the benefits had been granted. They should not have been withdrawn by the revisional authority in the manner done. It was clearly indicated in the writ petitions as to why the available statutory remedies would have an exercise in futility. It was clearly mentioned and substantiated by materials as to why the writ petitioners had become victims of a political vendetta. The political parties and persons who had let loose a smear campaign against the writ petitioners were in power and the subordinate authorities would have been in no position to give justice to the writ petitioners contrary to their dictates. The authorities recorded conclusions which clearly show the bias and preconceived notions. The conclusions were pre-determined. In that background, the writ petitions were filed and were entertained. The High Court has elaborately dealt with every relevant aspect and it has not been shown as to how the High Court's judgments suffer from any infirmity. Further, this Court should not interfere since the High Court had entertained writ petitions indicating reasons why the writ petitions were entertained when alternative remedy was available.

Stand of the respondents on the other issues was to the effect that the submissions of the appellants do not carry any weight and have been made overlooking the factual and legal position. The submissions completely overlook the essence of the notifications and are based on misreading them.

We shall first deal with the plea regarding alternative remedy as raised by the appellant-State. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

Constitution Benches of this Court in K.S. Rashid and Sons v. Income Tax Investigation Commission and Ors., AIR (1954) SC 207; Sangram Singh v. Election Tribunal, Kotah and Ors., AIR (1955) SC 425; Union of India v. T.R. Varma, AIR (1957) SC 882; State of U.P. and Ors. v. Mohammad Nooh, AIR (1958) SC 86 and M/s K.S. Venkataraman and Co. (P) Ltd. v. State of Madras, AIR (1966) SC 1089, held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

Another Constitution Bench of this Court in State of Madhya Pradesh and Anr. v. Bhailal Bhai etc.etc., AIR (1964) SC 1006, held that the remedy provided in a writ jurisdiction is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defence legitimately open in such actions. The power to give relief under Article 226 of the Constitution is a discretionary power. Similar view has been re- iterated in N.T. Veluswami Thevar v. G. Raja Nainar and Ors., AIR (1959) SC 422; Municipal Council, Khurai and Anr. v. Kamal Kumar and Anr., AIR (1965) SC 1321; Siliguri Municipality and Ors. v. Amalendu Das and Ors., AIR (1984) SC 653; S.T. Muthusami v. K. Natarajan and Ors., AIR (1988) SC 616; R.S.R.T.C. and Anr. v. Krishna Kant and Ors., AIR (1995) SC 1715; Kerala State Electricity Board and Anr. v. Kurien E. Kalathil and Ors., AIR (2000) SC 2573; A. Venkatasubbiah Naidu v. S. Chellappan and Ors., [2000] 7 SCC 695; and L.L. Sudhakar Reddy and Ors. v. State of Andhra Pradesh and Ors., [2001] 6 SCC 634; Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Anr. v. State of Maharashtra and Ors., [2001] 8 SCC 509; Pratap Singh and Anr. v. State of Haryana, [2002] 7 SCC 484 and G.K.N. Driveshafts (India) Ltd. v. Income Tax Officer and Ors., [2003] 1 SCC 72.

In Harbans Lal Sahnia v. Indian Oil Corporation Ltd., [2003] 2 SCC 107, this Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

In G. Veerappa Pillai v. Raman and Raman Ltd., AIR (1952) SC 192; Assistant Collector of Central Excise v. Dunlop India Ltd., AIR (1985) SC 330; Ramendra Kishore Biswas v. State of Tripura, AIR (1999) SC 294; Shivgonda Anna Patil and Ors. v. State of Maharashtra and Ors., AIR (1999) SC 2281; C.A. Abraham v. I.T.O. Kottayam and Ors., AIR (1961) SC 609; Titaghur Paper Mills Co. Ltd. v. State of Orissa and Anr., AIR (1983) SC 603; H.B. Gandhi v. M/s Gopinath and Sons, [1992] Suppl. 2 SCC 312; Whirlpool Corporation v. Registrar of Trade Marks and Ors., AIR (1999) SC 22; Tin Plate Co. of India Ltd. v. State of Bihar and Ors., AIR (1999) SC 74; Sheela Devi v. Jaspal Singh, [1999] 1 SCC 209 and Punjab National Bank v. O.C. Krishnan and Ors. [2001] 6 SCC 569, this Court held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction.

If, as was noted in Ram and Shyam Co. v. State of Haryana and Ors. AIR (1985) SC 1147 the appeal is from "Caeser to Caeser's wife" the existence of alternative remedy would be a mirage and an exercise in futility. In the instant case the writ petitioners had indicated the reasons as to why they thought that the alternative remedy would not be efficacious. Though the High Court did not go into that plea relating to bias in detail, yet it felt that alternative remedy would not be a bar to entertain the writ petition. Since the High Court has elaborately dealt with the question as to why the statutory remedy available was not efficacious, it would not be proper for this Court to consider the question again. When the High Court had entertained a writ petition notwithstanding existence of an alternative remedy this Court while dealing with the matter in an appeal should not permit the question to be raised unless the High Court's reasoning for entertaining the writ petition is found to be palpably unsound and irrational. Similar view was expressed by this Court in First Income-Tax

Officer, Salem v. M/s. Short Brothers (P) Ltd., [1966] 3 SCR 84 and State of U.P. and Ors. v. M/s. Indian Hume Pipe Co. Ltd., [1977] 2 SCC 724. That being the position, we do not consider the High Court's judgment to be vulnerable on the ground that alternative remedy was not availed. There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.

Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained. But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. It was noted by this Court in L. Hirday Narain v. Income Tax Officer, Bareilly, AIR (1971) SC 33 that if the High Court had entertained a petition despite availability of alternative remedy and heard the parties on merits it would be ordinarily unjustifiable for the High Court to dismiss the same on the ground of non exhaustion of statutory remedies; unless the High Court finds that factual disputes are involved and it would not be desirable to deal with them in a writ petition.

At this juncture, it would be appropriate to take note of the few expressions in Reg v. Hillington, London Borough Council, (1974) 1 QB 720 which seems to bring out well the position. Lord Widgery, C.J. stated in this case:

> "It has always been a principle that certiorari will go only where there is no other equally effective and convenient remedy..."

The statutory system of appeals is more effective and more convenient than application for certiorari and the principal reason why it may prove itself more convenient and more effective is that an appeal to (say) the Secretary of State can be disposed of at one hearing whether the issue between them is a matter of law or fact or policy or opinion or a combination of some or all of these .....whereas of course an appeal for certiorari is limited to cases where the issue is a matter of law and then only it is a matter of law appearing on the face of the order."

> "An application for certiorari has however this advantage that it is speedier and cheaper than the other methods and in a proper case therefore it may well be right to allow it to be used.....I would, however, define a proper case as being one where the decision in question is liable to be upset as a matter of law because on its face it is clearly made without jurisdiction or in consequence of an error of law."

After all the above discussion, the following observations of Roskill L.J. in Hanson v. Church Commissioner, (1978) QB 823 may not be welcomed but it should not be forgotten also:

> "There are a number of shoals and very little safe water in the unchartered seas which divide the line between prerogative orders and statutory appeals, and I do not propose to plunge into those seas...."

Therefore, the plea that the High Court should not have entertained the writ petition is without any merit and deserves rejection.

Though learned counsel for appellant-State urged that certificate showing that respondent No.1-Company was registered with the Empowered Committee on 13th January, 1993 should not have been considered on the ground that Revisional authority had not dealt with the same while dealing with the case of respondent-company, it is not disputed that the registration was within the knowledge of the appellants. In fact the certificate was a part of the record before the High Court. The registration with the Empowered Committee on 13.1.1993 therefore establishes that the respondent No.1- company was registered with the Empowered Committee within the period prescribed in the incentive notification. The appellant-State issued a Notification through the Department of Industries in the name of the Governor on 27.3.1991. The Notification notified rules for grant of revised incentives to industrial units and the rules were to be operative from 1st April 1991 which was referred to as the appointed date. Under the said Notification new industrial units were eligible for grant of incentives as detailed in the Notification. According to this Notification new industrial unit means "any industrial unit located in the State of Himachal Pradesh which commences production on or after the appointed date". The new industrial units were to be granted various benefits including central sales tax concession. But no concession under the State Act was available to a cement unit as cement was in the negative list mentioned in the Annexure III to the Notification. By Notification dated 31st July, 1992 the earlier Notification dated 27.3.1991 was amended. In other words, the rules contained in the Notification were amended. By the subsequent Notification, certain categories of units were taken out of the negative list. Cement was one of such units. Resultantly, in terms of the Notification dated 31st July, 1992 the cement units became eligible for exemption as provided in various incentives notifications. A significant change was also made by the Notification to the effect that the concept of "Prestigious cement unit"

> was introduced. Subject to fulfillment of certain conditions a prestigious unit was eligible for both sales tax exemption and deferment. The conditions are as follows:
>
> (i) The unit must be registered with the Empowered Committee as a new industrial unit between Ist May 1992 and 31st March, 1993.
>
> (ii) The new industrial unit must go into commercial production on or after 1st May 1992.
>
> (iii) The said unit must have a fixed capital investment of Rs.50 crores.

(iv) A new industrial unit must employ at least 200 persons on a regular basis.

Rule 24 (of 31st July, 1992 Notification) spelt out the constitution and function of the Empowered Committee. It also spelt out the procedure for setting up of a prestigious unit. Under Rule 24.4 applications for setting up of a prestigious unit were to be made to the Director of Industries who was then to put those for consideration of the Committee. One of the members of the Committee was the Excise and Taxation Commissioner. The member-secretary of the Committee was the Secretary of Industries Department. Finality was attached to the decision of the Empowered Committee in terms of Rule 24. The Empowered Committee was to stipulate the commencement date of the Unit. To put it differently, it was open to the Empowered Committee to register a unit prior to its going into the commercial production. This position is abundantly clear from the stipulation in the Rule itself that the Empowered Committee in certain cases could extend the outer limit of the period for going into commercial production, where 80% of the project had been completed. As noted above, on 13.1.1993 the proposed unit of respondent No.1-Company for the manufacture of Portland cement was registered with the Empowered Committee subject to certain conditions. It was stipulated that the unit was to commence production latest by January, 1995. Changes were introduced by the Notification dated 1st December, 1994 vis-a-vis earlier Notification dated 27th March, 1991 and 31st July, 1992. By this notification, the concept of "prestigious cement unit" was introduced. A unit to be eligible as a `prestigious cement unit' was to fulfil the following conditions:

(i) Must be a new industrial unit registered with the Empowered Committee appointed in accordance with Rule 24 between 1st May 1992 and 31st March 1995.

(ii) The new industrial unit must go into commercial production on or after 1st May 1992.

(iii) The new unit must have a fixed capital investment of Rs.50 crores.

(iv) The new unit must employ at least 200 persons on a regular basis.

After coming into force of the new definition of "prestigious cement industrial unit" the Director of Industries extended the date for commencement of commercial production upto 30th June, 1995 and subsequently upto 30th September, 1995.

Stand of the appellant-State is that even if there was a registration with the Empowered Committee on 13.1.1993, the same was of no consequence after the new definition of "prestigious cement industrial unit" was introduced. We find no substance in this submission of learned counsel because of several reasons. Firstly, there was nothing in the Notification dated 1st December, 1994 which required that those units which had obtained registration between 1st May, 1992 and 1st December, 1994 were required once again to seek registration as a "prestigious cement unit". Had it been so there was no question of extending the validity of the registration certificate dated 13.1.1993 after promulgation of Notification dated 1st December, 1994. In fact the final extension granted was upto 30th September, 1995 and there is no dispute that respondent No.1-company commenced its

production on 25th September, 1995. Para 27 of the Notification dated 1st December, 1994 provided that prestigious cement unit was entitled to deferment of sales tax as well as from exemption of payment the electricity duty. On 31st December, 1994 the State Government issued a Notification under Section 42 of the Act which granted sales tax exemption for pioneer industries from the date of commercial production. On 6th July, 1995 the Governor of Himachal Pradesh issued another Notification amending the revised rules of 27th March, 1991 regarding grant of incentives to industrial units. By this Notification incentives of sales tax deferment/exemption were restored to cement units. On 30th January, 1996 Exemption Notifications under Section 8(5) of the Central Act and Section 42(1) of the Act were issued by the Governor of Himachal Pradesh. In this Notification, the respondent No.1-Company was expressly named as a prestigious cement industrial unit that would be eligible for the benefit. This Notification also indicated that the respondent No.1-Company was eligible for sales tax exemption for a period of 9 years. It is to be noted that the respondent No.1-company was registered as a dealer on 11th August, 1995 under the Act and a certificate in Form STE-III had been issued by the Director of Industries. When respondent No.1 applied in Form STE-I, exemption certificate in Form STE-II had been granted by the prescribed authority. The denial of benefit contemplated under clause (3) of the Notification related to a finding about evasion of tax either under the Act or the Central Act.

On 28.1.1995 the Director of Industries extended the date of commencement of Commercial production till 30th June, 1995 keeping in view the progress of the plant. The same was further extended up to 30th September, 1995 keeping in view the progress of the plant by order dated 30th June, 1995. By Notification dated 6.7.1995 incentives of sales tax deferment/exemption were restored to cement units. There is no dispute that the respondent- company's commercial production started with effect from 26th September, 1995 and, in fact, the director of Industries by his Certificate dated 24.1.1996 confirmed this position. On 26.9.1995 respondent-company brought to the notice of the concerned department these facts and claimed incentives under the Exemption Notification indicating that commercial production had started. The Empowered Committee confirmed grant of Permanent Registration Certification (Declaration) to the respondent- assessee. On 30th January, 1996 the Exemption Notification was issued. The said Notification has also significance for the present dispute. In the Notification it was clearly stated that the respondent-company was exempted from payment of sales tax. It was expressly named as a "Prestigious Cement Industrial Unit". It was classified as a Category `B' Industry entitled to sales tax exemption for 9 years. The Notification was published on 6.2.1996. On 2.2.1996 declaration was issued by the Industry's department confirming respondent's eligibility for several incentives and more particularly sales tax concessions. By the certificate No. STE(III) the Director of Industries certified that the respondent-company fulfilled all conditions namely registration by Empowered Committee, employment of person belonging to the State and capital investment. On 2.3.1996 respondent- company applied for the necessary benefit in form STE (I) and on 7th June, 1996 Exemption Certificate was issued in form STE (II).

The respondent No.1-company was registered with the Empowered Committee and was also declared as a unit which is eligible for incentive of sales tax concession as available to a prestigious cement unit under the revised Rules regarding grant of incentives to industrial units. The definition of prestigious cement industrial unit as introduced on 1st December, 1994 was not intended to

provide that there has to be registration either as a prestigious unit or as a prestigious cement industrial unit. It only required registration as a new industrial unit with the Empowered Committee. It is significant to note that the pre-conditions for grant of prestigious unit status and prestigious cement unit status were materially identical.

One fallacy in the argument of the State is clearly revealed from the fact that the Notification dated Ist December, 1994 contemplates registration from 1st May 1992. To put it differently, registration with the Empowered Committee prior to 1st December, 1994 was permissible in terms of the Notification and that is why 13.1.1993 registration cannot be said to have lost its currency after the promulgation of 1st December, 1994 Notification. There is no dispute that respondent No.1-company was registered as a new industrial unit within the stipulated dates. If the contention of the State is accepted, it would mean that the extension given by the Secretary of Industries who was the Member Secretary of the Empowered Committee extending the date of commercial production after considering the progress of the units was in derogation of the prescriptions. That is not the case of the appellant-State. Further, it overlooks the powers available under Rule 24.4 of the Notification dated 31st July, 1992.

Another significant aspect which needs to be noted at this juncture is that in the Notification dated 13.1.1993 respondent No.1-company was clearly and specifically named as one of the units to which the exemption from payment of sales tax for a period of 9 years was available. That being so, there is no question of the appellant-State subsequently raising a question that the respondent No.1-company was not registered between the specified dates. A plea was taken that if that was the position there was no necessity for the respondent No.1-company to apply and obtain another certificate on 2nd February, 1996, if according to it there was a valid registration dated 13.1.1993. The certificate dated 2nd February, 1996 is a declaration issued by the Empowered Committee. It declared, confirmed and re-stated the status of respondent No.1-company. It did not create any such status for the first time.

In the 30th January, 1996 Notification two distinct expressions have been used; (i) registration by the Empowered Committee between the two specified dates and (ii) declaration as a prestigious cement company by the said date as one of the alternate criteria in addition to the registration. The position is clear from a reading of 30th January, 1996 Notification which reads as follows:

> Sale of goods manufactured by certain industries-Exemption-Amendment (Himachal Pradesh) Notification No.EXN-C(9) 2/90-IV Dated 30th January, 1996 In exercise of the powers conferred by sub-section (1) of Section 42 of the Himachal Pradesh General Sales Tax Act, 1968 (Act No.24 of 1968), the Governor of Himachal Pradesh is pleased to make the following further amendments in this Department's Notification No.EXN-C(p)/90 dated 31.12.1994 published in the Rajpatra, Himachal Pradesh (Extraordinary) on 31.12.1994, as amended from time to time (hereinafter called the "said notification") with immediate effect:-
>
> Amendment-1. After the existing para 1-B of the said Notification the following new para "1-C" shall be inserted namely:-

"1-C.(1) The Governor of Himachal Pradesh in exercise of the powers conferred by sub-section (1) of Section 42 of the Himachal Pradesh General Sales Tax Act, 1968 (Act No. pleased to order exemption fro tax subject to their being eligible as per the terms of this para to the following other industries from the payment of tax leviable on the sale of cement manufactured by such `other industries' as specified in the Table given below and subject to the conditions specified below in sub-para (2):-

Serial Name of the Category of Total time limit Number industry industrial block within which In which located concession of Exemption will be available

1. M/s Gujarat Ambuja `B' One hundred eight Cements Ltd., Village months (9 years) P.O. Darlaghat, Tehsil Suli, Arki, District Solan (H.P.)

2. M/s The Associated `B' One hundred eight Cement Companies Ltd. months (9 years) P.O. Barmana, District Bilaspur (H.P.) (2) The concession of exemption from payment of tax under this Act, shall be admissible to `other industries' only if-

(i) it is a prestigious cement industrial unit;

(ii) it has been registered a dealer under the Himachal Pradesh General Sales Tax Act, 1968, for manufacture of cement for sale in the `new cement industrial unit';

(iii) it has obtained a certificate in form STE-III from the Director of Industries, Himachal Pradesh and has furnished the same to the prescribed authority for the grant of exemption certificate in form STE-III.

(iv) it has been granted an exemption certificate in form STE-II by the prescribed authority;

(v) it (registered dealer) complies with the provisions of (a) the Himachal Pradesh General Sales Tax Act, 1968 (b) the Central Sales Tax Act, 1956 and (c) the rules, notifications and orders made and issued under these Acts;

(vi) the exemption certificate continues to remain operative and it has not been withdrawn or cancelled by the prescribed authority or is not annulled or quashed in any appellate, revisional or other proceedings;

Provided that the exemption contained in sub-para (1) to M/s The Associated Cement Companies Limited, Barmana, District Bilaspur (Himachal Pradesh) shall be granted by the prescribed authority only if, in addition to the preceding conditions-

(a) the payment of tax under the Himachal Pradesh General Sales Tax Act, 1968 and the Central Sales Tax Act, 1956 in respect of the old component of the M/s The Associated Cement Companies Limited, Barmana, District Bilaspur (Himachal Pradesh) is actually made even during each financial year of the period of exemption in respect of the new component of this unit, established as a result

of expansions on the quantity respectively of 5,51,664 metric tonnes and 3,71,028 metric tonnes sold during the year 1991-92; and

(b) the level of manufacture of 9,22,692 metric tonnes of cement in the old component of M/s Associated Companies Limited, Barmana, District Bilaspur (Himachal Pradesh) is also maintained unchanged throughout each financial year during the period of exemption in respect of the new component of this unit established as a result of expansion.

(3) Notwithstanding anything contained in sub-paras (1) and (2), no exemption shall be granted by the prescribed authority to such other industry-

(i) if it is found that the evasion of tax under the Himachal Pradesh General Sales Tax Act, 1968 or the Central Sales Tax Act, 1956 has been committed by the entrepreneur (registered dealer);

(ii) in respect of the sale of finished cement, which has been procured or acquired by it for the sale in Himachal Pradesh; and

iii) in respect of the sale of cement which has not been included and duly returned in the return filed under Section 12(3) of the Himachal Pradesh General Sales Tax Act, 1968.

(4) The provisions contained in paras 5, 7, 8, 9, 11,12, 13 and 14 of the Himachal Pradesh General Sales Tax (Deferred Payment of Tax) Scheme, 1992 notified vide Government Notification No.1-12/73- E&T-III dated 25.9.1992 published in Rajpatra, Himachal Pradesh (Extraordinary) on 1.10.1992 shall apply mutatis mutandis in relation to (1) mode of availing of benefit of exemption and issue of exemption certificate, (ii) renewal of exemption certificate,

(iii) cancellation of exemption certificate in form STE-II, (iv) filing of returns, assessment, etc. (v) registers to be maintained,

(vi) condonation of delay, (vi) other powers of the prescribed authority, and (viii) overriding effect of this notification.

(5) The exemption is subject to the further condition that the entrepreneur (registered dealer) shall not charge sales tax on the sale of cement manufactured in the new cement industrial unit during the period of exemption.

Explanation-

For the purpose of para 1-C of this notification-

(a) `other industries' means `prestigious cement industrial units';

(b) `prestigious cement industrial unit' means a new cement industrial unit which has fixed capital investment of not less than rupees fifty crores, comes into production after the Ist day of May, 1992

is registered by the Empowered Committee between the Ist day of May, 1992 and the 31st day of March, 1995 and employs on permanent basis not more than two hundred persons; and

(i) is based on local raw material; or

(ii) carries out value addition of fifty percentum or more, in its manufactured products; or

(iii) undertakes an export commitment of 50% or more of its production; or

(iv) is declared to be prestigious cement unit by the Empowered Committee headed by the Secretary (Industries) to the Government of Himachal Pradesh;

and also includes an existing industrial unit which fulfills the above criteria for `prestigious cement unit' exclusively by virtue of the component of `expansion' or `diversification' or `modernisation', as the case may be;

(c) the expressions `diversification', `expansion', `modernisation', `Empowered Committee' and `prescribed authority' shall have the same meanings assigned to them in clauses (iii),

(iv), (v) and (xv) respectively of sub para (1) of para 2 of the Himachal Pradesh General Sales Tax (Deferred Payment of (Tax) Scheme, 1992;

(d) `Fixed Capital Investment' means capital investment made of land, building, machinery and plant as verified by the prescribed authority; and

(e) forms `STE-I', `STE-II' and `STE-III' mean the forms as appended to this notification; and

(f) unless there is anything repugnant in the subject or context, all words and expressions used herein shall have the meaning assigned to them under the Himachal Pradesh General Sales Tax Act, 1968.

Judged from the above background, the appellant's plea about non entitlement of the respondent No.1-company of the sales tax benefits and exemptions is clearly mis-conceived. The High Court's judgment does not suffer from any infirmity to warrant interference.

It may be noted here that there are two additional factors which also made the revisional order indefensible. Firstly, assessments were made for the assessment years 1995-96 and 1996-97 fixing the date of entitlement first to be 31st January, 1996 and subsequently from 7th February, 1996. The respondent No.1-company had questioned the correctness of the fixation of the dates by filing appeals which came to be dismissed. In other words, the assessment orders merged with the first appellate orders, so far as the date of entitlement is concerned. It may be noted at this juncture that the respondent No.1-company wanted the exemption from an anterior date. In any event, the fixation of the date of entitlement w.e.f. 7.2.1996 became final by the first appellate orders. The revisional authority did not take note of the said appellate orders. In that view of the matter, the

assessment orders which had got merged with the first appellate orders could not have been revised. Significantly, by the revisional orders the revisional authority set aside only the assessment orders, though according to the show cause notices the respondent No.1 was required to show cause as to why the exemption notification shall not be recalled. In the operative part of the order, only the assessment orders have been quashed. The final certificate was issued to the respondent No.1-company on Ist June, 1996 but was made effective from 11.8.1995. Undisputedly, the provisional registration certificate under the Act was originally valid upto 14.2.1994 and was re-validated upto 30.6.1995. On 17.6.1995 an application was made for its renewal upto 31.12.1995 and the requisite fee had been deposited and the renewal was granted. Though much stress was laid on the absence of a certificate of provisional registration upto the date of commercial production, it has not been disputed that an application for extension of the validity period was filed on 17.6.1995. A certificate of registration as a dealer was issued on 1st January, 1996 same was made effective from 11.8.1995.

A plea was made about absence of the validity of provisional certificate of registration for two months. That actually loses significance because the application for extension of period of validation had not been turned down at any subsequent point of time.

It was urged on behalf of the appellant-State that declaration forms under the Central Act were not filed within the time and/or were defective. That does not in reality amount to non-compliance of a statutory provision. The respondent No.1-company was claiming exemption and, therefore, had not filed the declaration forms. Some of the forms which were filed were treated to be defective. Undisputedly, before the revisional authority a prayer was made for grant of opportunity to rectify the defects, if any. That was turned down. It is to be noted that under Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957 (in short the `Registration Rules') the declaration form can be filed at a subsequent point of time and not necessarily along with returns. On an application being made before the Assessing Officer the exemption can be granted. The object of the Rule is to ensure that the assessee is not denied a benefit which is available to it under law on a technical plea. The Assessing Officer is empowered to grant time. That means that the provisions requiring filing of declaration forms along with the return is a directory provision and not a mandatory provision. In a given case even the declaration forms can be filed before the appellate authority as an appeal is continuation of the assessment proceedings. In a given case, if the appellate authority is satisfied that assessee was prevented by reasonable and sufficient cause which dis-enabled him to file the forms in time, it can be accepted. It can also be accepted as additional evidence in support of the claim for deduction. In the instant case, respondent No.1-company made a specific request before the revisional authority which was turned down. Therefore, the question of any non-compliance with the relevant statutes does not arise. It was noted by this Court in Sahney Steel and Press Works Ltd. and Anr. v. Commercial Tax Officer and Ors., [1985] 4 SCC 173 that even in a given case, an assessee can be given an opportunity to collect Declaration Forms and furnish them to the assessing authority if the challenge of the assessee to taxability of a particular transaction is turned down.

Respondent No.1-company's stand was that it was granted exemption from payment of sales tax and, therefore, there was no requirement of furnishing any "C Form" for certain periods relating to which there was a doubt about availability of the concession, the declaration Forms were filed.

Therefore, the assessing officer shall grant opportunity to the respondent No.1-company to cure the defects, if any in the Declaration Forms.

It was urged by learned counsel for the appellant-State that revision notices nos. 7 to 10 were erroneously quashed by the High Court. Learned counsel for the respondents submitted that in the writ petition filed by it there was no prayer for quashing revision notices nos. 7 to 10. It is stated that the High Court had not clearly quashed the said revision notices and the appellant-State and its functionaries have not pursued the revision notices. Be that as it may, the respondent No.1-company is granted two months' time to respond to the said notices and indicate its stand. The revisional authority shall consider desirability of continuing the revision notices after considering the response of the respondents, if any, filed. The basic issue involved in these notices is to the effect of absence of provisional registration certificate after 11.8.1995 upto 25th September, 1995. As noted above, respondent No.1-company's stand is that it had applied for extension of the validity period upto 31.12.1995 and absence of any order on the same has not been disputed. Let the concerned authority deal with the application within a period of 6 weeks after giving notice to the respondent No.1-company. The Revisional authority shall take note of the order to be passed thereon.

The question relating to liability to pay purchase tax on royalty paid is common to both Gujarat Ambuja and ACC. According to learned counsel for appellant-State, the High Court erroneously held that royalty paid did not attract levy of purchase tax. The foundation for the argument is a decision of this Court in State of M.P. v. Orient Paper Mills Ltd., [1977] 2 SCC 77. In that case it was held that royalty paid under the lease was the sale price. There is a contrast between sale and purchase. The definition of purchase is wider. It involves the acquisition and, therefore, nothing but a transfer. Reference is also made to several provisions of Mines and Minerals (Regulation and Development) Act, 1957 (in short `Minerals Act, 1957') and it was submitted that position is different after amendment in 1972. In fact, according to the appellant what is being taxed is the consideration as minerals are being removed.

According to learned counsel for the respondents, the plea is untenable in view of the decision of this Court in State of Orissa v. Titaghur Paper Mills Ltd., [1985] Supp. SCC 280.

In State of Orissa and Ors. v. Titaghur Paper Mills Co. Ltd. and Anr. [1985] Supp SCC 280, it was, inter alia, observed by this Court as follows:

> "102. Royalty is not a term used in legal parlance for the price of goods sold. `Royalty' is defined in Jowitt's Dictionary of English Law, Fifth Edition, Vol. 2, page 1595 as follows:
>
> Royalty, a payment reserved by the grantor of a patent, lease of a mine or similar right, and payable proportionately to the use made of the right by the grantee. It is usually a payment of money, but may be a payment in kind, that is, of part of the produce of the exercise of the right.

Royalty also means a payment which is made to an author or composer by a publisher in respect of each copy of his work which is sold, or to an inventor in respect of each article sold under the patent.

We are not concerned with the second meaning of the word `royalty' given in Jowitt. Unlike the Timber contracts, the Bamboo Contract is not an agreement to sell bamboos standing in the contract areas with an accessory licence to enter upon such areas for the purpose of felling and removing the bamboos nor is it, unlike the Timber Contracts in respect of a particular felling season only. It is an agreement for a long period extending to fourteen years, thirteen years and eleven years with respect to different contract areas with an option to the respondent company to renew the contract for a further term of twelve years and it embraces not only bamboos which are in existence at the date of the contract but also bamboos which are to grow and come into existence thereafter. The payment of royalty under the Bamboo Contract has no relation to the actual quantity of bamboos cut and removed. Further, the respondent Company is bound to pay a minimum royalty and the amount of royalty to be paid by it is always to be in excess of the royalty due on the bamboos cut in the contract area.

103. We may pause here to note what the Judicial Committee of the Privy Council had to say in the case of Raja Bahadur Kamakshya Narain Singh of Ramgarh v. C. I. T., Bihar and Orissa, (1943) 11 ITR 513 (PC) about the payment of minimum royalty under a coal mining lease. The question in that case was whether the annual amounts payable by way of minimum royalty to the lessor were in his hands capital receipt or revenue receipt. The Judicial Committee held that it was an income flowing from the covenant in the lease. While discussing this question, the Judicial committee said (at pages 522-3) :

These are periodical payments, to be made by the lessee under his covenants in consideration of the benefits which he is granted by the lessor. What these benefits may be is shown by the extract from the lease quoted above, which illustrates how inadequate and fallacious it is to envisage the royalties as merely the price of the actual tons of coal. The tonnage royalty is indeed only payable when the coal or coke is gotten and dispatched : but that is merely the last stage. As preliminary and ancillary to that culminating act, liberties are granted to enter on the land and search, to dig and sink pits, to erect engines and machinery, coke ovens, furnaces and form railways and roads. All these and the like liberties show how fallacious it is to treat the lease as merely one for the acquisition of a certain number of tons of coal, or the agreed item of royalty as merely the price of each ton of coal.

Though the case before the Judicial Committee was of a lease of a coal-mine and we have before us the case of a grant for the purpose of felling, cutting and removing bamboos with various other rights and licences ancillary thereto, the above observations of the Judicial Committee are very pertinent and apposite to what we

have to decide.

xxx xxx xxx

120. It is true that the nomenclature and description given to a contract is not determinative of the real nature of the document or of the transaction thereunder. They, however, have to be determined from all the terms and clauses of the document and all the rights and results flowing therefrom and not by picking and choosing certain clauses and the ultimate effect or result as the Court did in the Orient Paper Mills case.

xxx xxx xxx

127. Conclusions:

To summarize our conclusions :

xxx xxx xxx

(9) The dictionary meaning of a word cannot be looked at where that word has been statutorily defined or judicially interpreted but where there is no such definition or interpretation, the court may take the aid of dictionaries to ascertain the meaning of a word in common parlance, bearing in mind that a word is used in different senses according to its context and a dictionary gives all the meanings of a word, and the court has, therefore, to select the particular meaning which is relevant to the context in which it has to interpret that word.

xxx xxx xxx (16) Being a benefit to arise out of land, any attempt on the part of the State Government to tax the amounts payable under the Bamboo Contract would be not only ultra vires the Orissa Act but also unconstitutional as being beyond the State's taxing power under Entry 45 in List II in the Seventh Schedule to the Constitution of India.

(17) The case of Firm Chhotabhai Jethabai Patel & Co. v. State of M. P., [1953] SCR 476 is not good law and has been overruled by decisions of larger benches of this Court as pointed out by this Court is State of M. P. v. Yakinuddin, AIR (1962) SC 1916.

(18) The case of State of M. P. v. Orient Paper Mill Ltd., [1977] 2 SCC 77 is also not good law as that decision was given per incuriam and laid down principles of interpretation which are wrong in law."

In Cooch-Behar Contractors' Association and Ors. v. State of West Bengal and Ors., [1996] 10 SCC 380, a two-Judge Bench of this Court followed Orient Paper Mills Ltd., case (supra), and held that in view of the decision of this Court in Orient Paper Mills Ltd., case (supra), payment of royalty amounts to payment of price for the goods obtained from the government departments and used in the works contract. Unfortunately, the subsequent judgment of a larger Bench in Titagurh Paper

Mills, case (supra) does not appear to have been cited. That being so, this decision does not lay down the correct position and is overruled.

`Royalty' is not a term used in legal parlance for the price of the goods sold. It is a payment reserved by the grantor of a patent, lease of a mine or similar right, and payable proportionately to the use made of the right by the grantee as held in Titaghur Paper Mills Co. Ltd. case (supra).

In its primary and natural sense `royalty' in the legal world, is known as the equivalent or translation of `jura regalia' or `jura regin'. Royal rights and prerogatives of a sovereign are covered thereunder. In its secondary sense, the word `royalty' would signify, as in mining leases, that part of the reddendum, variable though, payable in cash or kind, for rights and privileges obtained. (See Inderjeet Singh Sial and Anr. v. Karam Chand Thapar and Ors., [1995] 6 SCC 166).

`Royalty' is not a tax. Simply because the royalty is levied by reference to the quantity of the minerals produced and the impugned cess too is quantified by taking into consideration the same quantity of the mineral produced, the latter does not become royalty. The former is the rent of the land on which the mine is situated or the price of the privilege of winning the minerals from the land parted by the government in favour of the mining lessee. The cess is a levy on mineral rights with impact on the land and quantified by reference to the quantum of mineral produced. The distinction, though fine, yet exists and is perceptible. (See The State of West Bengal and Anr. v. Kesoram Industries Ltd. and Ors., JT (2004) 1 SC

375).

Though Section 9 refers to "mineral removed" it does not mean that the royalty is paid on removal. It is print of payability. Royalty in the context of the agreement is an alternate to dead rent. Section 9 speaks of rates of royalty. It is nothing but measure of levy. The charging of dead rent and royalty is under different situations. It is shifting of the measure. Both "dead rent" and "royalty" are returns to the lessor. The stand of appellant that under Section 9 of the Minerals Act royalty is a payment in respect of any mineral removed or consumed or that royalty is a money consideration for transfer of property is clearly untenable in view of the analysis made above.

A mining lease is an interest in immovable property. The extraction and removal of minerals is essentially an extension of the enjoyment of immovable property. As noted in Titagarh Paper Mill's case (supra) the right conferred by the lease deed to extract and remove the minerals is a profit a prendre.

It will be useful to know the meaning of the expressions "dead rent" and "royalty" and their connotation. Wharton's Law Lexicon, 14th Edn., at p. 300, defines "dead rent" as :

> Dead Rent - A rent payable on a mining lease in addition to a royalty, so called because it is payable whether the mine is being worked or not.

The definition of "dead rent" given in Black's Law Dictionary, 5th ed., at p. 359, is as follows:

Dead Rent. - In English law, a rent payable on a mining lease in addition to a royalty, so called because it is payable although the mine may not be worked.

Jowitt's Dictionary of English Law, 2nd Edn., at p. 555, defined "dead rent" as :

Dead Rent, a term sometimes used in mining leases in contradistinction to a royalty, to denote a fixed rent to be paid whether the mine is productive or not. See Rent.

The same dictionary states under the heading "Rent", at p. 1544 :

When a mine, quarry, brick-works, or similar property is leased, the lessor usually reserves not only a fixed yearly rent but also a royalty or galeage rent, consisting of royalties (q. v.) varying with the quantity of minerals, bricks, etc., produced during each year. In this case the fixed rent is called a dead rent.

"Royalty" is defined in Jowitt's Dictionary of English Law, 2nd ed., at p. 1595, inter alia, as :

Royalty, a payment reserved by the grantor of a patent, lease of a mine or similar right, and payable proportionately to the use made of the right by the grantee. It is usually a payment of money, but may be a payment in kind, that is, of part of the produce of the exercise of the right. See Rent.

"Royalty" is defined in Wharton's Law Lexicon, 14th Edn., at p. 893, as:

Royalty, payment to a patentee by agreement on every article made according to his patent : or to an author by a publisher on every copy of his book sold; or to the owner of minerals for the right of working the same on every ton or other weight raised.

The definition of "royalty" given in Black's Law Dictionary, 5th Edn., at p. 1195, is as follows :

Royalty. Compensation for the use of property, usually copyrighted material or natural resources, expressed as a percentage of receipts from using the property or as an account per unit produced. A payment which is made to an author or composer by an assignee, licensee or copyright holder in respect of each copy of his work which is sold, or to an inventor in respect of each article sold under the patent. Royalty is share of product or profit reserved by owner for permitting another to use the property. In its broadest aspect, it is share of profit reserved by owner for permitting another the use of property.....

> In mining and oil operations, a share of the product or profit paid to the owner of the property.....
>
> In H. R. S. Murthy v. Collector of Chittoor and Anr., AIR (1965) SC 177, this Court said that "royalty" normally connotes the payment made for the materials or minerals won from the land.
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> In Halsbury's Laws of England, 4th Edn. in the volume which deals with "Mines, Minerals and Quarries", namely, volume 31, it is stated in paragraph 224 as follows:
>
> 224. Rents and royalties. An agreement for a lease usually contains stipulations as to the dead rents and other rent and royalties to be reserved by, and the covenants and provisions to be inserted in, the lease.....

The topics same of dead rent and royalties are dealt with in Halsbury's Laws of England in the same volume under the sub-heading "Consideration", the main heading being "Property demised; Consideration". Paragraph 235 deals with "dead rent" and paragraph 236 with "royalties". The relevant passages are as follows:

> 235. Dead rent. It is usual in mining lease to reserve both a fixed annual rent (otherwise known as a "dead rent", "minimum rent" or "certain rent") and royalties varying with the amount of minerals worked. The object of the fixed rent is to ensure that the lessee will work the mine; but it is sometimes ineffective for that purpose. Another function of the fixed rent is to ensure a definite minimum income to the lessor in respect of the demise.

If a fixed rent is reserved, it is payable until the expiration of the term even though the mine is not worked, or is exhausted during the currency of the term, or is not worth working, or is difficult or unprofitable to work owing to faults or accidents, or even if the demised seam proves to be non-existent.

236. Royalties. A royalty, in the sense in which the word is used in connection with mining leases, is a payment to the lessor proportionate to the amount of the demised mineral worked within a specific period.

In paragraph 238 of the same volume of Halsbury's Laws of England it is stated :

> 238. Covenant to pay rent and royalties. Nearly every mining lease contains a covenant by the lessee for payment of the specified rent and royalties.

Rent is an integral part of the concept of a lease. It is the consideration moving from the lessee to the lessor for demise of the property to him. Section 105 of the Transfer of Property Act, 1882, contains the definitions of the terms "lease", "lessor", "lessee", "premium" and "rent" and is as follows:

> 105. Lease defined - A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent."

The decision of this Court in D.K. Trivedi & Sons and Ors. v. State of Gujarat and Ors., [1986] Supp SCC 20 is a complete answer to the plea raised by learned counsel for the appellate-State. It was, inter alia, held in that case as follows: (The relevant paras are quoted).

> "39. In a mining lease the consideration usually moving from the lessee to the lessor is the rent for the area leased (often called surface rent), dead rent and royalty. Since the mining lease confers upon the lessee the right not merely to enjoy the property as under an ordinary lease but also to extract minerals from the land and to appropriate them for his own use or benefit, in addition to the usual rent for the area demised, the lessee is required to pay a certain amount in respect of the minerals extracted proportionate to the quantity so extracted. Such payment is called "royalty". It may, however, be that the mine is not worked properly so as not to yield enough return income, whether the mine is worked properly so as not to yield enough return to the lessor in the shape of royalty. In order to ensure for the lessor a regular income, whether the mine is worked or not, a fixed amount is provided to be paid to him by the lessee. This is called "dead rent". "Dead rent" is calculated on the basis of the area leased while royalty is calculated on the quantity of minerals extracted or removed. Thus, while dead rent is a fixed return to the lessor, royalty is a return which varies with the quantity of minerals extracted or removed. Since dead rent and royalty are both a return to the lessor in respect of the area leased, looked at from one point of view dead rent can be described as the minimum guaranteed amount of royalty payable to the lessor but calculated on the basis of the area leased and not on the quantity of minerals extracted or removed. In fact, clause (ix) of Rule 3 of the Rajasthan Minor Mineral Concession Rules, 1977, defines "dead rent" as meaning "the minimum guaranteed amount of royalty per year payable as per rules or agreement under a mining lease". Stipulations providing for the lessee's liability to pay surface rent, dead rent and royalty to the lessor are the usual covenants to be found in a mining lease.
>
> 54. As pointed out earlier, since dead rent is the minimum guaranteed amount of royalty and partakes of the nature of royalty, what, therefore, applies to royalty must necessarily apply or should be made applicable dead rent also. The proviso to Section 9(3) prohibits the Central Government from enhancing the rate of royalty in respect of any mineral other than a minor mineral more than once during any period of four

years. The proviso to Section 9-A(2) also prohibits the Central Government from enhancing the dead rent in respect of any area more than once during any period of four years. Halsbury's Laws of England, 4th Edn., volume 31, paragraph 236, points out that "usually the royalties are made to merge in the fixed rent by means of a provision that the lessee, without any additional payment, may work, in each period for which a payment of fixed rent is made, so much of the minerals as would, at the royalties reserved, produce a sum equal to the fixed rent". The same purpose is achieved by the proviso to Section 9- A(1) and in the Mineral Concession Rules, 1960, by the proviso to clause

(c) of Rule 27 under which the lessee is liable to pay the dead rent or royalty in respect of each mineral, whichever be higher in amount, but not both. In all State rules which provide for payment of both dead rent and royalty, there is a provision that only dead rent or royalty, whichever is higher in amount, is to be paid, but not both. Rules made under the 1948 Act, as for example, Rule 41 of the Mineral Concession Rules, 1949, and Rule 18 of the Bombay Mineral Extraction Rules, 1955, also contained a similar provision. Thus, the practice followed throughout in exercising the power to make rules regulating the grant of mining leases has been to provide that either dead rent or royalty, whichever is higher in amount, should be paid by the lessee, but not both."

Following paras in Halsbury's Laws of England (Fourth Edition) 2003 Re- issues need to be noted:

Para 321: Nature of mining lease. A lease may be granted of land or any part of land, and since minerals are a part of the land it follows that a lease can be granted of the surface of the land and the minerals below, or of the surface alone, or of the minerals alone. It has been said that a contract for the working and getting of minerals, although for convenience called a mining lease, is not in reality a lease at all in the sense in which one speaks of an agricultural lease, and that such a contract, property considered, is really a sale of a portion of the land at a price payable by instalments, that is, by way of rent orroyalty, spread over a number of years.

Para 322: Statutory definitions of `mining lease.' In the Law of Property Act, 1925, `mining lease' means a lease for mining purpose, that is, the searching for, winning, working, getting, making merchantable, carrying away or disposing of mines and minerals, or connected purposes, and includes a grant or licence for mining purposes; and `lease' includes an underlease or other tenancy.

In the Settled Land Act 1925 and the Landlord and Tenant Act 1927, `mining lease' means a lease for any mining purpose or connected purposes, and `mining purposes' includes the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away and disposing of mines and minerals, in or under land, and the erection of buildings and the execution of engineering and other works

suitable for those purposes.

`Mining lease' is also defined for the purposes of the Opencast Coal Act 1958, whilst `coal-mining lease', `lease' and `mine of coal' were all defined for the purposes of the Coal Act 1938.

Para 323:Rents and royalties. An agreement for a lease usually contains stipulation as to the dead rents and other rents and royalties to be reserved by, and the covenants and provisions to be inserted in the lease, but the omission to provide for the payment of a dead rent does not render the agreement so inequitable as to be unenforceable.

Rent and royalties are true rents in the sense that they are incident to the reversion, but periodical payments under a lease of mines for a specific period may amount to personal debts only.

A lessee who goes into possession and works minerals before completion of the lease may be ordered on interim application to pay into Court the amount of royalties due in respect of minerals raised.

Para 324: Usual provisions in leases- The statutory formalities regarding the disposition of an interest in land will apply to a contract for a mining lease. In a contract for a lease for working a mine, time is of the essence of the contract even if not expressly stated to be so. Mining leases usually contain clauses providing for the reference of dispute to arbitration or determination by an expert where the value of the minerals gotten is in dispute."

Relevant clauses in the Lease Deed dated 28.5.19923 also need to be quoted. They read as follows:

"xxx xxx xxxx Part V : RENT AND ROYALTIES RESERVED BY THE LEASE

1. To pay dead rent or lease whichever is higher.

The lessee shall pay, for every year except the first year of the lease, deed rent as specified in clause 2 of this part:

Provided that, where the holder of such mining lease becomes liable under Section 9 of the Act, to pay royalty for any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area, he shall be liable to pay either such royalty or the deed rent in respect of that area, whichever is higher.

2. Rate and mode of payment of dead rent:

Subject to the provisions of clause 1 of this Part, during the subsistence of the lease, the lessee shall pay to the State Government annual deed rent for the lands demised and described in Part I of this Schedule at the rate for the time being specified in the Third Schedule to the Act in such manner as may be specified in this behalf by the State Government.

3. Rate and mode of payment of royalty:

Subject to the provision of clause 1 of this Part, the lessee shall, during the substance of this issue, pay to the State Government at such times and in such manner, as the State Government may prescribe in respect of any minerals removed by him from the leased area at the rate for the time being specified in the Second Schedule to the Mines and Minerals (Regulation and Development) Act, 1957.

4. Payment of surface rent and water rate The lessee shall pay rent and water rate to the State Government in respect of all parts of the surface of the said lands which shall from time to time, be occupied or used by the lessee under the authority of these presents at the rates as assessed by the Deputy Commissioner per hectare of the area so occupied or used and so in proportion for any area less than a hectare during the period from the commencement of such occupation or use until the area shall cease to be so occupied or used and shall as far as possible restore the surface lands so used to its original condition.

Surface rent and water rate shall be paid as hereinbefore detailed in clause 2: PROVIDED THAT NO such rent/water rate shall be payable, in respect of the occupation and use of the area comprised in any roads or ways to which the public have full right of access".

Civil Appeal Nos.3744-46 of 2000 These appeals are concerned so far as the issue regarding liability to pay purchase tax on royalty has been dealt with in detail in the connected Civil Appeal Nos. 2641-42 of 2000 (State of Himachal Pradesh and Ors. v. M/s Gujarat Ambuja Cement Ltd. and Ors.,) Following the view expressed therein, these appeals deserve dismissal which we direct.

The appeals are dismissed subject to the aforesaid observations with no order as to costs.