M/S.Purbanchal Cables & Conductors ... vs Assam State Electricity Board & Anr on 10 July, 2012

Equivalent citations: AIR 2012 SUPREME COURT 3167, 2012 (7) SCC 462, 2012 AIR SCW 4358, 2012 CLC 970 (SC), (2012) 117 ALLINDCAS 131 (SC), (2012) 4 ALLMR 541 (SC), (2012) 4 JCR 183 (SC), (2012) 95 ALL LR 23, (2012) 5 GAU LT 1, 2012 (4) ALL MR 541, 2012 (6) SCALE 314, (2013) 118 REVDEC 18, 2012 (117) ALLINDCAS 131, AIR 2012 SC (CIVIL) 2165, (2012) 3 CIVILCOURTC 684, (2012) 4 MAD LW 410, (2012) 6 MAH LJ 24, (2012) 4 MPLJ 282, (2012) 4 RECCIVR 6, (2012) 6 SCALE 314, (2012) 2 WLC(SC)CVL 257, 2012 (3) KLT SN 71 (SC)

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Bench: Anil R. Dave, H.L. Dattu

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2348 OF 2003

M/s Purbanchal Cables & Conductors Pvt. Ltd. .…… Appellant

Versus

Assam State Electricity Board & Another ……..Respondents

WITH

CIVIL APPEAL NO. 2351 OF 2003

Assam State Electricity Board & Others …….. Appellants

Versus

M/s Shanti Conductors Pvt. Ltd. & Another ……..Respondents

J U D G M E N T

H.L. DATTU, J.

1) Since the issues in these appeals are common, they are disposed of by this common judgment and order.

Factual background of the two appeals

2) The facts in brief needs to be stated for answering the issues raised. They are: In the case of Purbanchal Cables (C.A. No. 2348 of 2003), the supplier is the manufacturer of Aluminium Conductors Steel Reinforced (for short "ACSR") for various specifications. The respondent-Board had placed orders for supply of ACSR of different specifications in three (3) quarterly phases, i.e. in June 1992, September 1992 and December 1992 with the appellant vide supply order dated 31.3.1992. In pursuance to the said supply order, the supplier had initially made delivery of goods with respect to three bills on 16.09.1992, but did not receive payment from the respondent. Subsequently, the supplier had made another delivery of goods with respect to nine other bills in between 25.09.1992 and 30.03.1993. These supplies were made after the expiry of the time stipulated in the agreement/supply order, but after obtaining specific extension of time by the buyer. The supplier had completed the entire supply by 12.10.1993 and received the payment for such supplies from the respondent in the month of September and October, 1993. In pursuance to such supplies, the supplier has raised the demand for interest on delayed payment made by the respondent, vide its letters dated 14.12.1992 and 3.12.1993, however, the same was not acceded to by the buyer.

3) The supplier had instituted a Money Suit No.109 of 1996 before Assistant District Judge No.1, Kamrup for the payment of interest to the tune of `24,57,927.28/-, on delayed payment of principal amount by the respondent, under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (for short 'the Act'). The said suit was decreed by the Civil Judge (Senior Division) No. 1, Kamrup vide his order dated 27.01.2000 in favour of the supplier, who granted the compound interest @ 18.25% per annum plus interest of 5% above the said rate of interest with monthly rest till realization. Being aggrieved by the said order, the respondent had filed a Regular First Appeal No. 80 of 2000 before the High Court of Gauhati. The Division Bench of the High Court has allowed the appeal and dismissed the suit vide its judgment and order dated 18.8.2001 on the ground that suit is not maintainable as no amount was due on the date of institution of the suit and thereby followed its earlier view rendered by the Division Bench of the High Court in Assam State Electricity Board and Another v. M/s Trusses and Towers (P) Ltd. (F.A. NO. 109/95), 2001 (2) GLT 121, whereby and whereunder a Division Bench of the High Court had held that a suit for interest simpliciter was not maintainable when the principal amount was received without any demur and that the Act did not revive the claims that were already settled. The High Court has also, inter alia, directed the appellant to refund the amount of ` 10 lakhs, paid by the respondents pursuant to the Court's direction at the time of admission of the appeal to the respondent within a period of two months and failure to pay within such period would entail interest at the rate of 12% per annum. Aggrieved by this decision of the High Court, the supplier has preferred this appeal.

4) In the case of Shanti Conductors (C.A. No. 2351 of 2003), the Board had placed two supply orders for the manufacture and supply of KM ACSR Penther Conductors, and the supplier completed the

supplies in eight parts between 22.03.93 and 04.10.93. In March 1997, about three and a half years of making the supplies, and after the receipt of the entire amount, the supplier filed a suit for interest on delayed payment by the Board in terms of the provisions of the Act, in Money Suit No. 21/1997 before the Court of the Civil Judge (Sr. Divn.) No. 1, Guahati. The same was disputed by the Board in the written statement filed in the suit. However, the suit filed by the supplier was decreed and the Learned Assistant District Judge awarded a sum of `51,60,507.42 by way of interest for the delayed payment. Being aggrieved by the said order, the Board preferred a Regular First Appeal (F.A. No. 66 of 2000) before the Guahati High Court. The Division Bench hearing the appeal of the Board in the case of Shanti Conductors doubted the correctness of the view taken by the Division Bench in the case of Trusses and Towers, and referred the matter to the Full Bench to determine whether a suit is maintainable only for interest and whether the provisions of the Act is applicable to contracts concluded prior to its commencement, where the delayed payment is made after its commencement.

5) The Full Bench of the High Court after considering the provisions of the Act, concluded that the findings of the Division Bench in the case of Trusses & Towers that once a principal amount is received without any protest, then no further claim for interest can be made; is not the correct legal position in law. In other words, the Full Bench came to the conclusion that a suit for only interest was also maintainable. Further, the Full Bench also held that the Act is applicable to any contracts entered into prior to the commencement of the Act, and a higher rate of interest could be charged in terms of the provisions of the Act, however, the same was to be done after 23.09.1992, i.e. after the Act came into force. The matter was then remitted back to the Division Bench to decide the other issues in accordance with law and in the light of the observations made therein. Aggrieved by the decision of the Full Bench, the Board is before us in Civil Appeal No.2351 of 2003.

6) The issues that are required to be answered by us in these appeals are whether a suit for interest alone is maintainable under the provisions of the Act, and whether the Act would be applicable to contracts that have been concluded prior to the commencement of the Act. In other words, we are required to examine whether the Act would apply to those contracts which were entered prior to the commencement of the Act but supplies were effected after the Act came into force.

The Scheme of the Act:

> 7) The Statement of Objects and Reasons read as under:
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> "A policy statement on small scale industries was made by the Government in Parliament. It was stated at that time that suitable legislation would be brought to ensure prompt payment of money by buyers to the small industrial units.
>
> 2. Inadequate working capital in a small scale or an ancillary industrial undertaking causes serious and endemic problems affecting the health of such undertakings. Industries in this sector have also been demanding that adequate measures by taken in this regard. The Small Scale Industries Board, which is an apex advisory body on polices relating to small scale industrial units with representatives from all the States,

governmental bodies and the industrial sector, also expressed this view. It was, therefore, felt that prompt payments of money by buyers should be statutorily ensured and mandatory provisions for payment of interest on the outstanding money, in case of default, should be made. The buyers, if required under law to pay interest, would refrain from withholding payment to small scale and ancillary industrial undertakings.

3. An Ordinance, namely, the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Ordinance, 1992, was, therefore, promulgated by the President on 23rd September, 1992."

8) The long title of the Act reads as "An Act to provide for and regulate the payment of interest on delayed payments to small scale and ancillary industrial undertakings and for matters connected therewith or incidental thereto." The Act though enacted on 2nd April 1993, by a legal fiction is deemed to have come into effect from the date of promulgation of the Ordinance, i.e. 23rd September 1992. The provisions of the Act largely deal with the liability of the buyer to make payment for supplies, determination of the date from which and the rate at which interest is payable to the supplier from the buyer, liability of the buyer to pay compound interest, recovery of the amount due to the supplier from the buyer, and other provisions relating to appeal, etc.

9) Section 2(b) of the Act defines the meaning of the expression 'appointed day' to mean the day following immediately after the expiry of the payment period of thirty days from the date of payment, acceptance of any goods or any services by a buyer from a supplier. Section 3 of the Act imposes a statutory liability upon the buyer to make payment for the supplies of any goods either on or before the appeal date or where there is no agreement, before the appointed day. Section 4 provides for the award of interest where the price has not been paid within time. Section 5 provides for the liability of the buyer to pay compound interest.

Section 6 of the Act gives a right to the buyer to file a civil suit. Section 10 of the Act gives overriding effect to any other law which are inconsistent with the provisions of the Act.

On the question of maintainability of a suit for interest

10) Shri Rakesh Dwivedi and Shri Sunil Gupta, learned Senior Counsel appear for the suppliers and Shri Vijay Hansaria, learned Senior Counsel appears for the buyer – Assam State Electricity Board (hereinafter referred to as 'the Board').

11) The learned Senior Counsel appearing for the suppliers has brought to our notice that the first question that has been raised for our consideration has been answered by this Court in favour of the suppliers, in the case of Modern Industries v. Steel Authority of India Limited, (2010) 5 SCC 44, in which this Court has held:

> "40. In Assam SEB v. Shanti Conductors (P) Ltd. inter alia the question that fell for consideration before the Full Bench of the Gauhati High Court was as to whether the suit for recovery of a mere interest under the 1993 Act is maintainable. The argument on behalf of the appellant therein was that no suit merely for the recovery of the interest under the 1993 Act is maintainable under the provisions of Section 6. It was contended that both principal sum and the interest on delayed payment simultaneously must coexist for maintaining a suit under Section 6 of the 1993 Act.
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> 41. The Full Bench held that the suit is maintainable for recovery of the outstanding principal amount, if any, along with the interest on delayed payments as calculated under Sections 4 and 5 of the 1993 Act.

It said: (Assam SEB case, Gau LR pp. 559-60, para 12) "12. ... The opening words of Section 6(1) 'the amount due from the buyer, together with the amount of interest....' can only mean that the principal sum due from the buyer as well as or along with the amount of interest calculated under the provisions of the Act, are recoverable. The word 'together' here would mean 'as well as' or 'along with'. This cannot mean that the principal sum must be due on the date of the filing of the suits. The suits are maintainable for recovery of the outstanding, principal amount, if any, along with the amount of interest on the delayed payments as calculated under Sections 4 and 5 of the Act. We are unable to agree with that if the principal sum is not due, no suit would lie for the recovery of the interest on the delayed payments, which might have already accrued. If such an interpretation is given the very object of enacting the Act would be frustrated. The Act had been enforced to see that small- scale industries get the payment regarding supply made by them within the prescribed period and in case of delay in payments the interest would be at a much higher rate (one-and-a-half times of lending rate charged by State Bank of India). The obligation of payment of higher interest under the Act is mandatory. Sections 4 and 5 of the Act of 1993 contain a non obstante clause i.e. 'Notwithstanding anything contained in any agreement between the buyer and the supplier'. In other words, the parties to the contract cannot even contract out of the provisions of the 1993 Act. Even if such provision that interest under the Act on delay meant would not be chargeable is incorporated in the contract, Sections 4 and 5 of the Act of 1993 would still prevail as the very wording of these sections indicate. Take for instance that the buyer has not paid the outstanding amount of the supply by the due date. After much delay he offers the outstanding amount of the supply to the supplier. If the argument of the learned counsel for the appellant is to be accepted, then, if the supplier accepts entire amount he would be losing his right to recover the amount of interest on the delayed payment under the Act. Therefore, he would have to refuse to accept the amount of payment and then file a suit for recovery of the principal amount and the interest on the delayed payment under the Act. The Act does not create any embargo against supplier not to accept principal amount at any stage and thereafter file a suit for the recovery or realisation of the interest only on the delayed payments under the Act."

42. The word "due" has a variety of meanings, in different context it may have different meanings. In its narrowest meaning, the word "due" may import a fixed and settled obligation or liability. In a wider context the amount can be said to be "due", which may be recovered by action. The amount that can be claimed as "due" and recoverable by an action may sometimes be also covered by the

expression “due”. The expression “amount due from a buyer” followed by the expression “together with the amount of interest” under sub-section (1) of Section 6 of the 1993 Act must be interpreted keeping the purpose and object of the 1993 Act and its provisions, particularly Sections 3, 4 and 5 in mind. This expression does not deserve to be given a restricted meaning as that would defeat the whole purpose and object of the 1993 Act. Sub-section (1) of Section 6 provides that the amount due from a buyer together with amount of interest calculated in accordance with the provisions of Sections 4 and 5 shall be recoverable by the supplier from the buyer by way of suit or other proceeding under any law for the time being in force.

43. If the argument of the Senior Counsel for the buyer is accepted, that would mean that where the buyer has raised some dispute in respect of goods supplied or services rendered by the supplier or disputed his liability to make payment then the supplier shall have to first pursue his remedy for recovery of amount due towards goods supplied or services rendered under regular procedure and after the amount due is adjudicated, initiate action for recovery of amount of interest which he may be entitled to in accordance with Sections 4 and 5 by pursuing remedy under sub-section (2) of Section 6.

44. We are afraid the scheme of Section 6 of the 1993 Act read with Sections 3, 4 and 5 does not envisage multiple proceedings as canvassed. Rather, whole idea of Section 6 is to provide a single window to the supplier for redressal of his grievance where the buyer has not made payment for goods supplied or services rendered in its entirety or part of it or such payment has not been made within time prescribed in Section 3 for whatever reason and/or for recovery of interest as per Sections 4 and 5 for such default. It is for this reason that sub-section (1) of Section 6 provides that “amount due from a buyer together with the amount of interest calculated in accordance with the provisions of Sections 4 and 5” shall be recoverable by the supplier from buyer by way of a suit or other legal proceeding. Sub-section (2) of Section 6 talks of a dispute being referred to IFC in respect of the matters referred to in sub-section (1) i.e. the dispute concerning amount due from a buyer for goods supplied or services rendered by the supplier to the buyer and the amount of interest to which the supplier has become entitled under Sections 4 and 5.

45. It is true that word “together” ordinarily means conjointly or simultaneously but this ordinary meaning put upon the said word may not be apt in the context of Section 6. Can it be said that the action contemplated in Section 6 by way of suit or any other legal proceeding under sub-section (1) or by making reference to IFC under sub-section (2) is maintainable only if it is for recovery of principal sum along with interest as per Sections 4 and 5 and not for interest alone? The answer has to be in negative.

46. We approve the view of the Gauhati High Court in Assam SEB that word “together” in Section 6(1) would mean “along with” or “as well as”. Seen thus, the action under Section 6(2) could be maintained for recovery of principal amount and interest or only for interest where liability is admitted or has been disputed in respect of goods supplied or services rendered. In our opinion, under Section 6(2) action by way of reference to IFC cannot be restricted to a claim for recovery of interest due under Sections 4 and 5 only in cases of an existing determined, settled or admitted liability. IFC has competence to determine the amount due for goods supplied or services rendered

in cases where the liability is disputed by the buyer. Construction put upon Section 6(2) by the learned Senior Counsel for the buyer does not deserve to be accepted as it will not be in conformity with the intention, object and purpose of the 1993 Act. The Preamble to the 1993 Act, upon which strong reliance has been placed by the learned Senior Counsel, does not persuade us to hold otherwise. It is so because the Preamble may not exactly correspond with the enactment; the enactment may go beyond the Preamble."

12) The decision of the Full Bench of the Gauhati High Court which has been approved by this Court in Modern Industries (supra) is impugned before us in one of the appeals. Since a Division Bench of this Court has already approved the dictum of the Full Bench of the High Court with regard to the maintainability of a suit only for interest, that question is no longer res integra. Therefore, the suppliers may file a suit only for a higher rate of interest on delayed payments made by the buyer from the commencement of the Act.

13) The other question that remains for our consideration is; as to whether the suppliers can get the benefit of the provisions of the Act even if the contract of supply was executed prior to the commencement of the Act, whereas the supplies being made after the commencement of the Act. In other words, the question we are called upon to answer is with regard to the status of contracts of supply concluded prior to the commencement of the Act vis-à-vis the Act.

Arguments on behalf of the suppliers

14) Shri Rakesh Dwivedi, learned Senior Counsel, would submit that the Act is a beneficial legislation and is aimed at providing relief to suppliers which are small scale industries, who are not paid on time even after supplies are effected and accepted and hence had to suffer severe financial crunch. He would submit that the Act is supply oriented and the date of the supply is the critical and crucial date for applying the provisions of the Act, and not the date on which the contract is entered into by the parties. Shri. Dwivedi, learned Senior Counsel would state that Section 1(3) of the Act by way of a deeming fiction, brought the Act into force from the date of the promulgation of the Ordinance i.e. 23rd September 1992. He would then draw our attention to the text of Section 3, and submit that the liability of a buyer to make payment arose on the completion of the event of supply of the good by the supplier/manufacturer. The learned Senior Counsel refers to the definition of 'appointed day' to mean the day of acceptance of the supply of goods or the date of deemed supply of goods. He would refer to Sections 4 and 5 and also Section 10 of the Act and submit that the liability and payment of higher rate of interest is a result of delayed payment by the buyer to the supplier at the time of the supply. He would also stress on the non-obstante clause that is found in the text of section 5 and overriding effect given to the Act vide section 10 to stress upon the fact that the provisions of the Act with regard to compound interest would prevail even if there was an agreement to the contrary that the Act would override the provisions of any other law. He would lay emphasis upon the crucial date for the operation of the Act as the date on which the supply is made and not the date on which the contract of supply was concluded as understood by the decisions of this Court in Assam Small Scale Industries and Shakti Tubes. He would also lay emphasis on the expression "appointed day" as defined in Section 2(b) of the Act to contend that though the contract between the parties was prior to the enactment, it is the date of acceptance of the goods or any other service

by a buyer from the supplier and thus, is the relevant date for applying the beneficial supply oriented legislation. In the alternative, it is contended by Shri Dwivedi that even if the contract is entered into prior to the date of commencement of the Act, and the supply was subsequent, then the Act would apply in respect of such buyers that made delayed payments to the suppliers. He would also submit that the ills of delayed payment was causing great inconvenience and hardship to the small scale industries, and that being the reason for the enactment of the legislation, coupled with the fact that the event of supply is the core theme of the legislation, hence all the supplies made after the 23rd September 1992 would attract the provisions of the Act.

15) In conclusion, Shri Dwivedi contends: (1) that the Act is a supply oriented; (2) that on a wholesome reading of Sections 4 and 5 and Section 10 of the Act, the Act has overriding effect over any other law which are inconsistent with the provisions of the Act; (3) the emphasis on the text of Section 3 on the supply of the goods and the liability of the buyer arose on the supply of goods; (4) It is a beneficial legislation and a purposive construction is required to be adopted. He points out that since these salient features are neither noticed nor considered in Assam Small Scale Industries, the decision needs reconsideration by a larger Bench.

16) Shri Sunil Gupta, learned Senior Counsel while adopting the principal arguments of Shri Rakesh Dwivedi would submit, that, on a plain reading of the Statement of Objects and Reasons of the Act, it is clear that Parliament enacted the legislation in order to assist the small scale industries to get their payment on time from the buyers. He would state that there is extrinsic evidence in the Act to show that the Act would apply even to those contracts, which were executed prior to 23rd September 1992. Shri Gupta would further rely on the long title of the Act to make good his submission that the scope of the Act was not restricted to contracts entered into after the Act came into force. He would further submit that the Act did not apply to those contracts or payment disputes that were ceased to exist but are maintainable to all those disputes, even if those cases in which recovery suit was filed and pending after the Act has come into force. The learned Senior Counsel would further submit that the Act is prospective and applies to all those contracts which had been executed earlier but supplies were made after the Act came into force. Shri Gupta would state that even if the agreement and supply was prior to the coming into force of the Act, it would still apply, if the issue with regard to delayed payment was still alive. He would submit that the vested right that has accrued in favour of the supplier should not be abrogated. Shri Gupta would also take us through the debates in Parliament by the various members while the legislation was being enacted and decisions of this Court in support of his submissions. Shri Gupta would also submit that the question to be addressed is not as to who is within the scope of the Act but who is necessarily out of the ambit of the Act.

Arguments of behalf of the Board

17) Shri Vijay Hansaria, learned Senior Counsel appearing for the Board, would submit that the suits in both the cases of Shanti Conductors and Purbanchal Cables were barred by limitation.

18) In case of Purbanchal Cables (C.A. No. 2348 of 2003), the learned Senior Counsel would state that the last supply was made on 12.10.1993 and the suit was filed on 31.08.1996 i.e. after the expiry of the period of limitation. He would contend that the only reason assigned in the suit to take the

benefit of Section 14 of the Limitation Act is that a writ petition filed on behalf of the Assam Conductors Manufacturers Association was pending and only after the same was disposed of, they have filed the suit. He would refer to Section 14 of the Limitation Act, 1963 and state that writ proceedings which caused the delay of the filing of the suit was filed by an Association on behalf of the suppliers. Further, he would submit that when the suit was filed, a writ appeal was pending. He would rely on the case of Consolidated Engineering Enterprises v. Municipal Secretary, Irrigation Department, (2008) 7 SCC 169, to contend that for the operation of Section 14, it was required that a civil proceeding be pending by the same party. Though, the learned Senior Counsel would state that the writ petition would fall within the ambit of a civil proceeding, it had to be filed by the same party, which is not the case in the present suit. The writ petition, he would state, was filed by an Association for different relief, than what was sought by the supplier in the suit, and hence, the benefit of Section 14 of the Limitation Act would not be available.

19) In case of Shanti Conductors (C.A. No. 2351 of 2003), the supply order was completed on 4th October 1993 and the suit was filed only on 10th January 1997 i.e. after the expiry of three year limitation period. The learned Senior Counsel would submit that there was no specific pleading with regard to applicability of Section 14 of the Limitation Act, 1963, though it was raised by the defendant in the suit. He would assail the trial court's reasoning wherein it is held that in view of the Section 10 of the Act, the Limitation Act does not apply. He would submit that in the light of the judgment of this Court in Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker, (1995) 5 SCC 5, this Court while construing Section 29 (2) of the Limitation Act has held that if the operation of the Limitation Act has to be barred, then a time schedule has to be given under the special law and in the absence of such, the Limitation Act would apply.

20) On the question of applicability of Act, the learned Senior Counsel would submit that since 2005, this Court has consistently held that the Act was not applicable to the contracts which were concluded prior to commencement of the Act. In aid of his submission, the learned Senior Counsel would draw our attention to issues raised and arguments canvassed in Assam Small Scale Industries, which was specifically answered in the negative by observing that the Act is not applicable for the contracts entered into prior to the commencement of the Act. Shri Hansaria, further submits that this issue was again raised in the case of Shakti Tubes, wherein this Court was called upon to reconsider the question of law decided by this Court in Assam Small Scale Industries and this Court in Shakti Tubes categorically refused to refer the matter to a larger Bench for reconsideration by approving the decision in Assam Small Scale Industries as correctly decided. He would then submit this Court had also considered this issue in Rampur Fertilizers Limited v. Vigyan Chemical Industries- (2009) 12 SCC 324 and Modern Industries (supra). Therefore, he would submit that this Court has consistently followed the above view and relying on several decisions of this Court, he would state that it is desirable to further uphold the same view as per the doctrine of stare decisis and precedents in order to maintain certainty of the law.

Our Conclusion

21) Though the learned Senior Counsel would state that the suits, filed by both the suppliers in the present batch of appeals, were barred by limitation, we do not intend to express our view on the

issue, since some of the appeals filed by the suppliers are still pending before the High Court. Any observation that we may make would certainly effect the interest of both the parties since that issue is yet to be decided by the High Court.

Retrospective operation of the Act

22) The fundamental rule of construction is the same for all statutes whether fiscal or otherwise. The under-lying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather from any notion. To arrive at the real meaning, it is always necessary to get an exact conception, scope and object of the whole Act.

23) In the case of Zile Singh v. State of Haryana - (2004) 8 SCC 1, this Court observed that there were four relevant factors which needed to be considered while considering whether a statute applied prospectively or retrospectively:

> "15....Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated...."

> 24) The general scope of the Act has been discussed above. The remedy sought to be applied by the Act is made clear in the Statement of Objects and Reasons, in which, it is stated that due to the delayed payments by buyers to the small scale industries, their working capital was being affected, causing great harm to the small scale industries in general.

This Act was passed by Parliament to impose a heavy interest on the buyers who delayed the payments of the small scale industries, in order to deter the buyers from delaying the payments after accepting the supplies made by the suppliers. The policy statement of the Ministry of Micro, Small and Medium Enterprises dated 6th August 1991, reads:

> "3.4) A beginning has been made towards solving the problem of delayed payments to small industries setting up of 'factoring' services through Small Industries Development Bank of India (SIDBI). Network of such services would be set up throughout the country and operated through commercial banks. A suitable legislation will be introduced to ensure prompt payment of small industries' bills."

> 25) Keeping in view the above object, the Act was enacted by the Parliament. Before such enactment, it is required to examine rights of the supplier qua the buyer prior to the commencement of the Act. In case of delayed payment, the supplier, prior to the commencement of the Act, was required to file a suit for the payment of the principal amount, and could claim interest along with the principal amount. The supplier could avail of the same under Section 34 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC'), Section 61 of Sale of Goods Act, 1930 and Section 3 of Interest Act, 1978.

26) In other words, the supplier whose payment was delayed by the buyer prior to the commencement of the Act, could file a suit for payment of the principal amount along with the interest. The supplier, thus, had the vested right to claim the principal amount along with interest thereon in case of a delay in payment by the buyer and it was the discretion of the Court to award this interest. The Court has the discretion to award interest along with the principal amount and the same is clear from the use of the word 'may' in all the three provisions cited above. Section 34 of the CPC is the main provision under which interest could be awarded by the Court and Section 61 of the Sale of Goods Act, 1930 is an offshoot of Section 34 of the CPC. Section 3 of the Interest Act, 1978 also makes the Interest Act subject to the provision of Section 34 of the CPC. Hence, we can safely deduce that the interest awarded is a discretion exercised by the Court, on the principal amount claimed, in case of a suit for recovery of payment by the supplier if such payment is delayed by the buyer.

27) With the commencement of the Act, a new vested right exists with the supplier, that being, if there is delay in payment after the acceptance of the goods by the buyer, the supplier can file a suit for claiming interest at a higher rate, as prescribed by the Act. This position has been approved by this Court in the case of Modern Industries (supra). If a suit for interest simpliciter is maintainable as held by this Court in Modern Industries (supra), then a new liability qua the buyer is created with the commencement of the Act giving a vested right to the supplier in case of delayed payment. In other words, if there is a delayed payment by the buyer, then a right to claim a higher rate of interest as prescribed by the Act accrues to the supplier.

28) The phrase 'vested right' has been defined by this Court in the case of Bibi Sayeeda Vs. State of Bihar - (1996) 9 SCC 516 as:

"17. The word 'vested' is defined in Black's Law Dictionary (6th Edn.) at p. 1563 as:

"Vested; fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent." Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In Webster's Comprehensive Dictionary, (International Edn.) at p. 1397 'vested' is defined as:

"[L]aw held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interests.""

29) A statute creating vested rights is a substantive statute. This Court, in the case of Executive Engineer, Dhenkanal Minor Irrigation Division Vs. N.C. Budharaj - (2001) 2 SCC 721, opined:

"23. ... "Substantive law", is that part of the law which creates, defines and regulates rights in contrast to what is called adjective or remedial law which provides the method of enforcing rights. Decisions, including the one in Jena case while adverting to the question of substantive law has chosen to indicate by way of illustration laws such as Sale of Goods Act, 1930 [Section 61(2)], Negotiable Instruments Act, 1881 (Section 80), etc. The provisions of the Interest Act, 1839, which prescribe the general law of interest and become applicable in the absence of any contractual or other statutory provisions specially dealing with the subject, would also answer the description of substantive law..."

30) In the case of Thirumalai Chemicals Limited Vs. Union of India - (2011) 6 SCC 739, this Court comparing substantial law with procedural law, stated:

"23. Substantive law refers to a body of rules that creates, defines and regulates rights and liabilities. Right conferred on a party to prefer an appeal against an order is a substantive right conferred by a statute which remains unaffected by subsequent changes in law, unless modified expressly or by necessary implication. Procedural law establishes a mechanism for determining those rights and liabilities and a machinery for enforcing them. Right of appeal being a substantive right always acts prospectively. It is trite law that every statute is prospective unless it is expressly or by necessary implication made to have retrospective operation."

24. Right of appeal may be a substantive right but the procedure for filing the appeal including the period of limitation cannot be called a substantive right, and an aggrieved person cannot claim any vested right claiming that he should be governed by the old provision pertaining to period of limitation. Procedural law is retrospective meaning thereby that it will apply even to acts or transactions under the repealed Act."

31) In the case of Shyam Sunder Vs. Ram Kumar - (2001) 8 SCC 24, a Constitution Bench of this Court discussing the scope and ambit of a declaratory law has observed:

"39. Lastly, it was contended on behalf of the appellants that the amending Act whereby new Section 15 of the Act has been substituted is declaratory and, therefore, has retroactive operation. Ordinarily when an enactment declares the previous law, it requires to be given retroactive effect. The function of a declaratory statute is to supply an omission or to explain a previous statute and when such an Act is passed, it comes into effect when the previous enactment was passed. The legislative power to enact law includes the power to declare what was the previous law and when such a declaratory Act is passed, invariably it has been held to be retrospective. Mere absence of use of the word "declaration" in an Act explaining what was the law before may not appear to be a declaratory Act but if the court finds an Act as declaratory or explanatory, it has to be construed as retrospective. Conversely where a statute uses the word "declaratory", the words so used may not be sufficient to hold that the

statute is a declaratory Act as words may be used in order to bring into effect new law."

32) In Katikara Chintamani Dora Vs. Guntreddi Annamanaidu - (1974) 1 SCC 567, this Court held:

"50. It is well settled that ordinarily, when the substantive law is altered during the pendency of an action, rights of the parties are decided according to law, as it existed when the action was begun unless the new statute shows a clear intention to vary such rights (Maxwell on Interpretation, 12th Edn. 220). That is to say, "in the absence of anything in the Act, to say that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act is passed"."

33) In Govind Das Vs. ITO - (1976) 1 SCC 906, this Court speaking through P.N. Bhagwati. J., (as he then was) held:

"11. Now it is a well settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that "all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective" and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."

34) In the case of Jose Da Costa Vs. Bascora Sadasiva Sinai Narcornium - (1976) 2 SCC 917, this Court held:

31. Before ascertaining the effect of the enactments aforesaid passed by the Central Legislature on pending suits or appeals, it would be appropriate to bear in mind two well-established principles. The first is that "while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment (see Delhi Cloth and General Mills Co. Ltd. v. ITC.) The second is that a right of appeal being a substantive right the institution of a suit carries with it the implication that all successive appeals available under the law then in force would be preserved to the parties to the suit

> throughout the rest of the career of the suit. There are two exceptions to the application of this rule viz. (1) when by competent enactment such right of appeal is taken away expressly or impliedly with retrospective effect and (2) when the court to which appeal lay at the commencement of the suit stands abolished (see Garikapati Veeraya v. N. Subbiah Choudhury and Colonial Sugar Refining Co. Ltd. v. Irving).

35) In K. Kapen Chako Vs. Provident Investment Co. (P) Ltd - (1977) 1 SCC 593, this Court discussing the dicta of the English Courts on the aspect of retrospectivity observed:

> "37. A statute has to be looked into for the general scope and purview of the statute and at the remedy sought to be applied. In that connection the former state of the law is to be considered and also the legislative changes contemplated by the statute. Words not requiring retrospective operation so as to affect an existing statutory provision pre-judicially ought not be so construed. It is a well recognised rule that statute should be interpreted if possible so as to respect vested rights. Where the effect would be to alter a transaction already entered into, where it would be to make that valid which was previously invalid, to make an instrument which had no effect at all, and from which the party was at liberty to depart as long as he pleased, binding, the prima facie construction of the Act is that it is not to be retrospective. (See Gardner v. Lucas).
>
> 38. In Moon v. Durden a question arose as to whether Section 18 of the Gaming Act, 1845 which came into effect in August 1845 was retrospective so as to defeat an action which had been commenced in June 1845. The relevant section provided that no suit shall be brought or maintained for recovering any such sum of money alleged to have been won upon a wager. It was held that it was not retrospective.

Parke, B. said:

> "It seems a strong thing to hold that the legislature could have meant that a party who under a contract made prior to the Act, had as perfect a title to recover a sum of money as he had to any of his personal property, should be totally deprived of it without compensation."
>
> 39. Again in Smithies v. National Union of Operative Plasterers Section 4 of the Trade Disputes Act, 1906 which enacted that an action for tort against a trade union shall not be entertained by any court was held not to prevent the courts from hearing and giving judgment in actions of that kind begun before the passing of the Act. It is a general rule that when the legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them.

But there is an exception to this rule, namely, where enactments merely affect procedure and do not extend to rights of action. See Re Joseph Suche & Co. Ltd. If the legislature forms a new procedure

alterations in the form of procedure are retrospective unless there is some good reason or other why they should not be. In other words, if a statute deals merely with the procedure in an action, and does not affect the rights of the parties it will be held to apply prima facie to all actions, pending as well as future."

36) In the case of Dahiben Vs. Vasanji Kevalbhai - 1995 Supp. (2) SCC 295, this Court held:

> "12. As the amendment in question is not to a procedural law, it may be stated that the settled principle of interpretation, where substantive law is amended, is that the same does not operate retrospectively unless it is either expressly provided or the same follows by necessary implication. Lest it be thought that a vested right cannot be taken away at all by retrospective legislation, reference may be made to Rafiquennessa v. Lal Bahadur Chetri where it was stated that even where vested rights are affected, legislature is competent to take away the same by means of retrospective legislation; and retrospectivity can be inferred even by necessary implication."

37) In the case of Zile Singh Vs. State of Haryana - (2004) 8 SCC 1, this Court examined the various authorities on statutory interpretation and concluded:

> "13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only — "nova constitutio futuris formam imponere debet non praeteritis" — a new law ought to regulate what is to follow, not the past. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid., p. 440).
>
> 14. The presumption against retrospective operation is not applicable to declaratory statutes.... In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended.... An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (ibid., pp. 468-69)."

38) In the case of State of Punjab Vs. Bhajan Kaur - (2008) 12 SCC 112, this Court held:

"9. A statute is presumed to be prospective unless held to be retrospective, either expressly or by necessary implication. A substantive law is presumed to be prospective. It is one of the facets of the rule of law."

39) There is no doubt about the fact that the Act is a substantive law as vested rights of entitlement to a higher rate of interest in case of delayed payment accrues in favour of the supplier and a corresponding liability is imposed on the buyer. This Court, time and again, has observed that any substantive law shall operate prospectively unless retrospective operation is clearly made out in the language of the statute. Only a procedural or declaratory law operates retrospectively as there is no vested right in procedure.

40) In the absence of any express legislative intendment of the retrospective application of the Act, and by virtue of the fact that the Act creates a new liability of a high rate of interest against the buyer, the Act cannot be construed to have retrospective effect. Since the Act envisages that the supplier has an accrued right to claim a higher rate of interest in terms of the Act, the same can only said to accrue for sale agreements after the date of commencement of the Act, i.e. 23rd September 1992 and not any time prior.

Earlier Precedents

41) On a careful perusal of the judgment of this Court in Assam Small Scale Industries, we find that even the question regarding the applicability of the Act to contracts concluded prior to coming into force of the Act is no longer res integra. This question is answered by this Court in the case of Assam Small Scale Industries Development Corpn. Ltd. Vs. J.D. Pharmaceuticals - (2005) 13 SCC 19 as under:

"37. We have held hereinbefore that clause 8 of the terms and conditions relates to the payments of balance 10%. It is not in dispute that the plaintiff had demanded both the principal amount as also the interest from the Corporation. Section 3 of the 1993 Act imposes a statutory liability upon the buyer to make payment for the supplies of any goods either on or before the agreed date or where there is no agreement before the appointed day. Only when payments are not made in terms of Section 3, Section 4 would apply. The 1993 Act came into effect from 23-9-1992 and will not apply to transactions which took place prior to that date. We find that out of the 71 suit transactions, Sl. Nos. 1 to 26 (referred to in the penultimate para of the trial court judgment), that is supply orders between 5-6-1991 to 28-7-1992, were prior to the date of the 1993 Act coming into force. Only the transactions at Sl. Nos. 27 to 71 (that is supply orders between 22-10-1992 to 19-6-1993), will attract the provisions of the 1993 Act.

38. The 1993 Act, thus, will have no application in relation to the transactions entered into between June 1991 and 23-9-1992. The trial court as also the High Court, therefore, committed a manifest error in directing payment of interest at the rate of 23% up to June 1991 and 23.5% thereafter."

42) In Shakti Tubes Ltd. Vs. State of Bihar - (2009) 7 SCC 673, this Court approved the ratio in Assam Small Scale Industries, and held:

18. In our considered opinion, the ratio of the aforesaid decision in Assam Small Scale Industries case is clearly applicable and would squarely govern the facts of the present case as well. The said decision was rendered by this Court after appreciating the entire facts as also all the relevant laws on the issue and therefore, we do not find any reason to take a different view than what was taken by this Court in the aforesaid judgment. Thus, we respectfully agree with the aforesaid decision of this Court which is found to be rightly arrived at after appreciating all the facts and circumstances of the case.

19. Now coming to the facts of the present case we find that there is no dispute with regard to the fact that the supply order was placed with the respondents on 16-7-1992 for supply of the pipes which date is admittedly prior to the date on which this Act came into effect.

20. Being faced with the aforesaid situation, the learned Senior Counsel appearing for the appellant-plaintiff sought to submit before us that the decision of this Court in Assam Small Scale Industries case refers to the expression "transactions". According to him, the transactions would be complete only when the appellant-plaintiff made the supply and since the supply was made in the instant case after coming into force of the Act, the appellant-plaintiff would be entitled to the benefit of Sections 4 and 5 of the Act. Refuting the aforesaid submission, the learned Senior Counsel appearing for the respondents submitted that the aforesaid contention is completely misplaced. He pointed out that if such a meaning, as sought to be given by the learned Senior Counsel appearing for the appellant-

plaintiff, is accepted that would lead to giving benefit of the provisions of the Act to unscrupulous suppliers who, in order to get the benefit of the Act, would postpone the delivery of the goods on one pretext or the other.

21. We have considered the aforesaid rival submissions. This Court in Assam Small Scale Industries case has finally set at rest the issue raised by stating that as to what is to be considered relevant is the date of supply order placed by the respondents and when this Court used the expression "transaction" it only meant a supply order. The Court made it explicitly clear in para 37 of the judgment which we have already extracted above. In our considered opinion there is no ambiguity in the aforesaid judgment passed by this Court. The intent and the purpose of the Act, as made in para 37 of the judgment, are quite clear and apparent. When this Court said "transaction" it meant

initiation of the transaction i.e. placing of the supply orders and not the completion of the transactions which would be completed only when the payment is made. Therefore, the submission made by the learned Senior Counsel appearing for the appellant-plaintiff fails.

43) The case of Assam Small Scale Industries has been followed in Rampur Fertilizers Limited as well as Modern Industries (supra). Therefore, we cannot agree with the submission that this Court in Assam Small Scale Industries Development Corporation's case did not specifically consider and decide the issue of whether the Act would apply to such of those contracts executed prior to the commencement of the Act but the supplies being made after the commencement of the Act.

Binding precedent or sub-silentio

44) However, the learned Senior Counsel appearing for the suppliers, Shri Rakesh Dwivedi, and Shri Sunil Gupta would contend that the decision of this Court is not a binding precedent.

45) Shri Rakesh Dwivedi, learned Senior Counsel would submit that the decisions of this Court in the case of Assam Small Scale Industries and Shakti Tubes (supra) regarding the prospective operation of the Act were not law declared under Article 141, as the point under consideration in those cases were different from the issues raised in these appeals. He would further submit that the question about operation of the Act for contracts concluded prior to 23rd September 1992 was not even a question, which came up for consideration before the Court and was not even argued by the learned Counsel appearing in that matter, and hence would not form a part of the ratio of the decision. He would further submit that the question was answered without adequately considering the provisions of the beneficial legislation and therefore, it cannot be treated as a binding precedent.

46) Shri Sunil Gupta, learned Senior Counsel while adopting the argument advanced by Shri Dwivedi on this issue, would submit that there are two exceptions to the doctrine of precedent, namely, per incurium and sub silentio. It was on the strength of the latter that Shri Gupta would submit that the decisions of this Court in Assam Small Scale Industries and Shakti Tubes (supra) cannot be considered as precedents. The learned Senior Counsel would state that a decision would not apply as a precedent when the Court has failed to consider the objects and purpose of the Act in question and also certain previous judgments of this Court. He would further contend that the aforesaid judgments suffer from the sub-silentio principle being rendered without full and adequate arguments on the issue. The learned Senior Counsel would also state that the Court did not look at the issue from the viewpoint canvassed presently.

47) The learned Senior Counsel would rely on the decision of this Court in Municipal Corporation, Delhi Vs. Gurnam Kaur - (1989) 1 SCC 101. This Court has held:

> "11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express

power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th Edn. explains the concept of sub silentio at p. 153 in these words:

"A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio."

12. In Gerard v. Worth of Paris Ltd. (k)., the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd., the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened.

The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

48) In the case of State of U.P. Vs. Synthetics and Chemicals Ltd. - (1991) 4 SCC 139, His Lordship R.M. Sahai. J., in his concurring judgment set out the principles of per incurium and sub silentio has held thus:

> "40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (Young v. Bristol Aeroplane Co. Ltd.). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In Jaisri Sahu v. Rajdewan Dubey this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding.
>
> 41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p. 153). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd. the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Shama Rao v. Union Territory of Pondicherry it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

49) In the case of Arnit Das Vs. State of Bihar - (2000) 5 SCC 488, this Court held:

"20. A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio, in the technical sense when a particular point of law was not consciously determined. (See State of U.P. v. Synthetics & Chemicals Ltd. SCC, para 41.)"

50) In the case of Tika Ram Vs. State of Uttar Pradesh - (2009) 10 SCC 689, it was held:

"104. We do not think that the law laid down in these cases would apply to the present situation. In all these cases, it has been basically held that a Supreme Court decision does not become a precedent unless a question is directly raised and considered therein, so also it does not become a law declared unless the question is actually decided upon. We need not take stock of all these cases and we indeed have no quarrel with the propositions settled therein...."

51) Though the submissions made by Shri Rakesh Dwivedi and Shri Sunil Gupta, learned Senior Counsel seems attractive in the first blush, we are of the view, they lack merit. In the case of Assam Small Scale Industries (supra), the question of retrospective operation of the Act or whether past contracts were governed by the Act, was argued by the learned Senior Counsel appearing for the respondent. In the said judgment this Court has observed:

"19..... The 1993 Act, it was submitted, being also a beneficent statute, the same should be construed liberally. The Act, Mr Chowdhury would argue, will thus, have a retrospective effect."

52) Further, in the case of Shakti Tubes Ltd. (supra), this issue was canvassed by the learned Counsel, due to which, this Court referred to the precedent in the case of Assam Small Scale Industries (supra). The argument on this point has been noted thus:

"9. According to the appellant-plaintiff, the said interest has been claimed by the appellant-plaintiff since it is entitled to so claim in terms of the provisions of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (hereinafter referred to as "the Act"). Mr G.C. Bharuka, learned Senior Counsel appearing for the appellant-plaintiff drew our attention to the provisions of the Act and to the decision of this Court in Assam Small Scale Industries Development Corpn. Ltd. v. J.D. Pharmaceuticals. In support of his contention that the transaction in the instant case came to an end with the appellant-plaintiff supplying the goods after coming into force of the Act he has taken us through the relevant sections of the Act as also the Statements of Objects and Reasons of the Act. According to him, the appellant-plaintiff is entitled to be paid in terms of the

provisions of the Act.

10. Mr Bharuka contended that the earlier supply order which was issued on 16-7-1992 came to be materially altered and substituted by a fresh supply order issued on 18-3-1993 by which date the aforesaid Act had already been enforced and therefore, the appellant-plaintiff was entitled to claim interest at a higher rate as envisaged in Sections 4 and 5 of the said Act.

11. Mr Dinesh Dwivedi, learned Senior Counsel appearing for the respondents strongly refuted the aforesaid submissions made by the learned Senior Counsel appearing for the appellant-plaintiff on the ground that the supply order was issued in the instant case on 16-7-

1992 and therefore, in terms of and in line with the decision of this Court in Assam Small Scale Industries case the appellant-plaintiff was entitled to be paid interest only at the rate of 9% per annum and not at a higher rate as contended by the appellant-plaintiff."

53) This Court, in Shakti Tubes Ltd. (supra) expressly rejected the argument of the learned Senior Counsel appearing for the appellant in that case, that the Act should be given retrospective effect because it was a beneficial legislation, in paragraphs 24 to 26, which have been set out below:

"24. Generally, an Act should always be regarded as prospective in nature unless the legislature has clearly intended the provisions of the said Act to be made applicable with retrospective effect.

"13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. [The aforesaid] rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only—nova constitutio futuris formam imponere debet non praeteritis—a new law ought to regulate what is to follow, not the past. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid., p. 440)."

25. In Zile Singh Vs. State of Haryana (supra), SCC at p. 9, this Court observed as follows: (SCC pp. 9-10, paras 15-16) "15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication

> from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute;

(ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right. (p. 392)

16. Where a statute is passed for the purpose of supplying an obvious omission in a former statute or to 'explain' a former statute, the subsequent statute has relation back to the time when the prior Act was passed. The rule against retrospectivity is inapplicable to such legislations as are explanatory and declaratory in nature. A classic illustration is Attorney General v. Pougett (Price at p. 392). By a Customs Act of 1873 (53 Geo. 3, c. 33) a duty was imposed upon hides of 9s 4d, but the Act omitted to state that it was to be 9s 4d per cwt., and to remedy this omission another Customs Act (53 Geo. 3, c. 105) was passed later in the same year. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s 4d per cwt., but Thomson, C.B., in giving judgment for the Attorney General, said: (ER p. 134) 'The duty in this instance was, in fact, imposed by the first Act; but the gross mistake of the omission of the weight, for which the sum expressed was to have been payable, occasioned the amendment made by the subsequent Act: but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act;' (Price at p.

392)"

26. There is no dispute with regard to the fact that the Act in question is a welfare legislation which was enacted to protect the interest of the suppliers especially suppliers of the nature of a small-scale industry. But, at the same time, the intention and the purpose of the Act cannot be lost sight of and the Act in question cannot be given a retrospective effect so long as such an intention is not clearly made out and derived from the Act itself."

54) In the case of Rampur Fertilizers Limited (supra), this Court again examined the entire scheme of the Act before following the dicta of this Court in the case of Assam Small Scale Industries (supra). Even in Modern Industries (supra), this Court did not differ from the dicta of this Court in Assam Small Scale Industries and Shakti Tubes (supra).

Binding value of a precedent

55) In the case of Waman Rao Vs. Union of India - (1981) 2 SCC 362, His Lordship Y.V. Chandrachud. C.J., speaking for the Constitution Bench, held:

"40. It is also true to say that for the application of the rule of stare decisis, it is not necessary that the earlier decision or decisions of longstanding should have considered and either accepted or rejected the particular argument which is advanced in the case on hand. Were it so, the previous decisions could more easily be treated as binding by applying the law of precedent and it will be unnecessary to take resort to the principle of stare decisis. It is, therefore, sufficient for invoking the rule of stare decisis that a certain decision was arrived at on a question which arose or was argued, no matter on what reason the decision rests or what is the basis of the decision. In other words, for the purpose of applying the rule of stare decisis, it is unnecessary to enquire or determine as to what was the rationale of the earlier decision which is said to operate as stare decisis."

56) In Union of India Vs. Raghubir Singh - (1989) 2 SCC 754, this Court held:

"8. Taking note of the hierarchical character of the judicial system in India, it is of paramount importance that the law declared by this Court should be certain, clear and consistent. It is commonly known that most decisions of the courts are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the dispute between them, but also because in doing so they embody a declaration of law operating as a binding principle in future cases. In this latter aspect lies their particular value in developing the jurisprudence of the law.

9. The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court."

57) In Krishena Kumar Vs. Union of India - (1990) 4 SCC 207, this Court observed:

"33. Stare decisis et non quieta movere. To adhere to precedent and not to unsettle things which are settled. But it applies to litigated facts and necessarily decided questions. Apart from Article 141 of the Constitution of India, the policy of courts is to stand by precedent and not to disturb settled point. When court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle, and apply it to all future cases where facts are substantially the same. A deliberate and solemn decision of court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same court, or in other courts of equal or lower rank in subsequent cases where the very point is again in controversy unless there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. It should be invariably applied and should not ordinarily be departed from where decision is of long standing and rights have been acquired under it, unless considerations of public policy demand it."

58) In the case of Mishri Lal Vs. Dhirendra Nath - (1999) 4 SCC 11, this Court held:

"13....It is further to be noted that Meharban Singh case came to be decided as early as 1970 and has been followed for the last three decades in the State of Madhya Pradesh and innumerable number of matters have been dealt with on the basis thereof and in the event, a different view is expressed today, so far as this specific legislation is concerned, it would unsettle the situation in the State of Madhya Pradesh and it is on this score also that reliance on the doctrine of "stare decisis" may be apposite. While it is true that the doctrine has no statutory sanction and the same is based on a rule of convenience and expediency and as also on "public policy" but in our view, the doctrine should and ought always to be strictly adhered to by the courts of law to subserve the ends of justice."

59) In Central Board of Dawoodi Bohra Community Vs. State of Maharashtra, (2005) 2 SCC 673, a Constitution Bench of this Court held:

"8. In Raghubir Singh case Chief Justice Pathak pointed out that in order to promote consistency and certainty in the law laid down by the superior court the ideal condition would be that the entire court should sit in all cases to decided questions of law, as is done by the Supreme Court of United States. Yet, His Lordship noticed, that having regard to the volume of work demanding the attention of the Supreme Court of India, it has been found necessary as a general rule of practice and convenience that the Court should sit in divisions of consisting of Judges whose numbers may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relating thereto and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. The Constitution Bench reaffirmed the doctrine of binding precedents as it has been merit of promoting certainty and consistency in judicial decisions and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs."

60) In the case of Shanker Raju Vs. Union of India - (2011) 2 SCC 132, this Court observed:

"10. It is settled principle of law that a judgment, which has held the field for a long time, should not be unsettled. The doctrine of stare decisis is expressed in the maxim stare decisis et non quieta movere, which means "to stand by decisions and not to disturb what is settled". Lord Coke aptly described this in his classic English version as "those things which have been so often adjudged ought to rest in peace". The underlying logic of this doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that a view which has held the field for a long time should not be disturbed only because another view is possible...."

61) In the case of Fida Hussain Vs. Moradabad Development Authority - (2011) 12 SCC 615, this Court held:

"15. Having carefully considered the submissions of the learned Senior Counsel Shri Varma, we are of the view that the judgment in Gafar case does not require reconsideration by this Court. In Gafar case this Court had meticulously examined all the legal contentions canvassed by the parties to the lis and had come to the conclusion that the High Court has not committed any error which warrants interference. In the present appeals, the challenge is for the compensation assessed for the lands notified and acquired under the same notification pertaining to the same villages. Therefore, it would not be proper for us to take a different view, on the ground that what was considered by this Court was on a different fact situation. This view of ours is fortified by the judgment of this Court in Ballabhadas Mathurdas Lakhani v. Municipal Committee, Malkapur, wherein it was held that a decision of this Court is binding when the same question is raised again before this Court, and reconsideration cannot be pleaded on the ground that relevant provisions, etc., were not considered by the Court in the former case."

62) Judicial discipline demands that a decision of a Division Bench of two Judges should be followed by another Division Bench of two Judges and this has been stated time and again by this Court. In Raghubir Singh (supra), a Constitution Bench of this Court speaking through Chief Justice R.S. Pathak, held:

"28. We are of the opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court...."

63) In Union of India Vs. Paras Laminates (P) Ltd. - (1990) 4 SCC 453 this Court has observed:

"9. It is true that a bench of two members must not lightly disregard the decision of another bench of the same Tribunal on an identical question. This is particularly true when the earlier decision is rendered by a larger bench. The rationale of this rule is the need for continuity, certainty and predictability in the administration of justice. Persons affected by decisions of Tribunals or courts have a right to expect that those exercising judicial functions will follow the reason or ground of the judicial decision in the earlier cases on identical matters. Classification of particular goods adopted in earlier decisions must not be lightly disregarded in subsequent decisions, lest such judicial inconsistency should shake public confidence in the administration of justice...."

64) Shri Vijay Hansaria, learned Senior Counsel contends that a case for referring the matter to a larger Bench though is pleaded by the learned Senior Counsel, Shri

Rakesh Dwivedi, this Court ought to test the same by the parameters laid down by this Court in the case of CIT Vs. Saheli Leasing and Industries Limited - (2010) 6 SCC 384 to find out whether the matter deserves to be referred to a larger Bench. In Saheli Leasing, this Court held:

"29...(x) In order to enable the Court to refer any case to a larger Bench for reconsideration, it is necessary to point out that particular provision of law having a bearing over the issue involved was not taken note of or these is an error apparent on its face or that a particular earlier decision was not noticed, which has direct bearing or has taken a contrary view...."

65) The Constitution Bench of this Court in the case of Keshav Mills Co.

Ltd. Vs. CIT - (1965) 2 SCR 908 crystallized the position with regard to what the Court should do when a plea for consideration of an earlier judgment is made. It was held:

"...When it is urged that the view already taken by this Court should be reviewed and revised, it may not necessarily be an adequate reason for such review and revision to hold that though the earlier view is a reasonably possible view, the alternative view which is pressed on the subsequent occasion is more reasonable. In reviving and revising its earlier decision, this Court should ask itself whether in the interests of the public good or for any other valid and compulsive reasons it is necessary that the earlier decision should be revised. When this Court decided questions of law, its decisions are, under Art. 141, binding on courts within the territory of India, and so, it must be the constant endeavour and concern of this Court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise by this Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. This is not to say if on a subsequent occasion, the Court is satisfied that its earlier decision was clearly erroneous, it should hesitate the correct the error; but before a previous decision is pronounced to plainly erroneous the Court must be satisfied with fair amount of unanimity amongst its members that a revision of the said view is fully justified. It is not possible or desirable, and in any case it would be inexpedient to lay down any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions. It would always depend on several relevant considerations:- What is the nature of the infirmity or error on which a plea for a review and revision of the earlier view is based? On the earlier occasion, did some patent aspects of the question remain unnoticed, or was the attention of the Court not drawn to any relevant and material statutory provision, or was any previous decision of this Court bearing on the point not noticed? Is the Court hearing such plea fairly unanimous there is such an error in the earlier view? What would be the impact of the error on the general administration of law or public good? Has the

earlier decision been followed on subsequent occasions either by this Court or by High Courts? And, would the reversal of the earlier decision lead to public inconvenience, hardship or mischief? These and other relevant considerations must be carefully borne in mind whenever this Court is called upon to exercise its jurisdiction to review and revise its earlier decisions...."

66) We are in full agreement with the view expressed in Keshav Mills case (supra). The learned Senior Counsel Shri Rakesh Dwivedi has not been able to make out a case for reconsideration of the decision of this Court in Assam Small Scale Industries (supra). In fact, a plea for reconsideration of the same was rejected by a Division Bench of this Court in Shakti Tubes (supra). We are unable to agree with the argument of Shri Dwivedi and Shri Gupta that the provisions of the Act were not considered in its entirety. In fact, the entire scheme of the Act has been considered in the case of Rampur Fertilizers (supra) and specific answer to the issue under consideration was answered.

67) In the case of Ambika Prasad Mishra Vs. State of U.P. - (1980) 3 SCC 719, His Lordship V.R. Krishna Iyer. J., speaking for the Constitution Bench held:

"6. It is wise to remember that fatal flaws silenced by earlier rulings cannot survive after death because a decision does not lose its authority "merely because it was badly argued, inadequately considered and fallaciously reasoned."..."

68) In light of this dictum, and the factum that no case has been made out for reconsideration by the learned Senior Counsel appearing for the suppliers, we do not see any reason much or less good reason to doubt the correctness of the decision in Assam Small Scale Industries or Shakti Tubes (supra). When there are four decisions of this Court with regard to the applicability of the Act for contracts entered into prior to the commencement of the Act, and when the plea for reconsideration has been expressly rejected in the past, we are of the view, it would be against the spirit of the doctrine of stare decisis for us to take any view in divergence with same.

69) Lastly, learned Senior Counsel for suppliers also contended that the extension of date of supply order, from time to time by Board, amounts to a novation of contract or supply order in terms of Section 62 of the Indian Contracts Act and, therefore, the new contract or supply order would be governed by the Act. In our opinion, the ground or issue of novation of Contract is a mixed question of fact and law and it is being raised, for the first time, at the time of hearing of the case before us which cannot be permitted to be raised. The said fact of novation or alteration of contract is required to be urged evidentially and scrutinised by the courts below. In absence of such factual findings, it is not possible to decide such a mixed question of law and facts. In Shakti Tubes Ltd. (supra), the issue of novation of contract was raised before this Court for the first time at the time of hearing. This Court declined to entertain such ground as being a mixed question of law and fact. This Court further observed

that even on the merits of the case the escalation of price, reduction of the quantity of the supply order and extension of date of supply does not amount to novation or alteration in the supply order.

Conclusion

70) The result is appeals fail and accordingly, they are dismissed. No order as to costs.

.....J. [H.L. DATTU] .....J. [ANIL R. DAVE] New Delhi, July 10 , 2012